

AR 9313

**LAWS**  
*OF THE*  
**STATE OF DELAWARE**

*ONE HUNDRED AND THIRTY-SIXTH*  
*GENERAL ASSEMBLY*  
*FIRST SESSION COMMENCED AND HELD AT DOVER*

**On Tuesday, January 8, A.D.**  
**1991**

*SECOND SESSION COMMENCED AND HELD AT DOVER*

**On Tuesday, January 14, A.D.**  
**1992**

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**VOLUME LXVIII**  
**Part II**

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## CHAPTER 191

FORMERLY

SENATE BILL NO. 130  
AS AMENDED BY HOUSE AMENDMENT NO. 1

AN ACT TO AMEND TITLE 29, DELAWARE CODE RELATING TO RULES AND REGULATIONS ESTABLISHED BY STATE AGENCIES BY ESTABLISHING APPROPRIATE PROCEDURES FOR ASSESSING WHETHER OR NOT RULES AND REGULATIONS MAY RESULT IN TAKING OF PRIVATE PROPERTY.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Chapter 6, Title 29, Delaware code by adding thereto a new section to read as follows:

"§605. Promulgation of Rules and Regulations by State Agencies - Review by Attorney General To Determine Affect on Private Property Right

- a) No rule or regulation promulgated by any state agency shall become effective until the Attorney General has reviewed the rule or regulation and has informed the issuing agency in writing as to the potential of the rule or regulation to result in a taking of private property.
- b) Judicial review of actions taken pursuant to this section shall be limited to whether the Attorney General has reviewed the rule or regulation and has informed the issuing agency in writing.
- c) The term "taking of private property" as used under this section shall mean an activity wherein private property is taken such that compensation to the owner of that property is required by the Fifth and Fourteenth Amendments to the Constitution of the United States or any other similar or applicable law of this State.
- d) Nothing in this section shall affect any otherwise available judicial review of agency action."

Section 2. This Act shall apply to all Rules and Regulations promulgated after the effective date of the Act, excluding those Rules and Regulations which do not purport to restrict the uses to which property could be put.

Approved January 24, 1992.

## CHAPTER 192

## FORMERLY

## HOUSE BILL NO. 316

AN ACT TO AMEND CHAPTER 27, TITLE 21, DELAWARE CODE, RELATING TO QUALIFICATIONS FOR SCHOOL BUS DRIVERS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend §2708(a)(8), Chapter 27, Title 21, Delaware Code, by striking said paragraph in its entirety and substituting in lieu thereof the following:

"(a)(8) The applicant shall never have been convicted of manufacture, delivery, possession, possession with intent to deliver, or trafficking a controlled substance or a counterfeit controlled substance classified in Schedule I, II, III, IV, or V of Chapter 47, Title 16 in this State or any other jurisdiction."

Approved January 24, 1992.

## CHAPTER 193

## 136TH GENERAL ASSEMBLY

## HOUSE BILL NO. 223

AN ACT TO AMEND SUBCHAPTER IV, TITLE 31 OF THE DELAWARE CODE RELATING TO PRIVATE CHILD WELFARE AGENCIES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Amend Subchapter IV, Title 31, Delaware Code by repealing Sections 365 - 368 inclusive.

Approved January 24, 1992.

## CHAPTER 194

## FORMERLY

## HOUSE BILL NO. 286

AN ACT TO AMEND CHAPTER 9, TITLE 10, OF THE DELAWARE CODE RELATING TO FAMILY COURT MASTERS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Chapter 9, Title 10, Delaware Code by deleting the number "10" from subsection (d) of §913 as it appears in two places after the word "within" and before the word "days" and inserting in both places the number "15".

Section 2. Amend Chapter 9, Title 10, Delaware Code by adding at the end of subsection (d) of §913 the following:

"The time period for requesting a review de novo shall not begin to run until the Master has entered the order in writing and Family Court has issued said order to the parties and attorneys. If either party has requested a new trial, reargument, to alter or amend judgment, the time period for requesting a review de novo shall not begin to run until the Master has ruled on said request in writing and Family Court has issued that ruling to the parties and attorneys. If any order or ruling is sent by mail, an additional 3 days to request a review de novo shall be allowed."

Approved January 24, 1992.



CHAPTER 195

FORMERLY

HOUSE BILL NO. 260

AS AMENDED BY HOUSE AMENDMENT NO. 1 AND SENATE AMENDMENT NO. 1

AN ACT TO AMEND SUBPART I, SUBCHAPTER III, CHAPTER 5, TITLE 11, OF THE DELAWARE CODE ESTABLISHING THE OFFENSE OF CRIMINAL IMPERSONATION, ACCIDENT RELATED.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Chapter 5, Title 11 of the Delaware Code by adding a new §907A to read as follows:

"§907A. Criminal Impersonation, Accident Related: Class G Felony.

A person is guilty of criminal impersonation, accident related when after being in a motor vehicle accident involving serious physical injury or death to any person:

- (1) a driver knowingly pretends to have been someone other than the driver of the vehicle he was operating; or
- (2) any person knowingly pretends to have been a driver of one of the vehicles involved in the accident.

Criminal impersonation, accident related is a Class G Felony. The driving privileges of anyone convicted of violating subsection (1) shall be suspended by the Division of Motor Vehicles for a period of two (2) years."

Approved January 24, 1992.

## CHAPTER 196

## FORMERLY

HOUSE BILL NO. 304  
AS AMENDED BY HOUSE AMENDMENT NO. 1

AN ACT TO AMEND CHAPTER 81, PART V, TITLE 10 OF THE DELAWARE CODE RELATING TO LIMITATION FROM CIVIL LIABILITY FOR CERTAIN VOLUNTEERS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Paragraph (2), Subsection (a), Section 8133, Chapter 81, Part V, Title 10 of the Delaware Code by deleting therefrom the words "is organized and exempted from federal income tax" and inserting in lieu thereof the following:

"was organized and exempted from federal income tax, and in the case of a governmental entity described in Subparagraph (5)b, in furtherance of the exercise of any governmental function".

Section 2. Amend Paragraph (5), Subsection (a), Section 8133, Chapter 81, Part V, Title 10 of the Delaware Code by deleting therefrom paragraph (5) in its entirety and inserting in lieu thereof the following:

"(5) 'Organization' shall include:

a. Any not-for-profit organization exempt from federal income tax under §501(c) of the Internal Revenue Code (26 U.S.C. §501(c)) as amended or other act of Congress and engaged in any activity within the State in furtherance of a purpose for which it was organized; and

b. Any governmental entity, including the United States, the State and any board, commission, division, office, task force or other agency of the State or the United States, exempt from federal income tax under §115 of the Internal Revenue Code (26 U.S.C. §115) as amended or other acts of Congress and engaged in any activity within the State in furtherance of the exercise of any governmental function."

Approved January 24, 1992.

## CHAPTER 197

## FORMERLY

## SENATE BILL NO. 192

AN ACT TO AMEND CHAPTER 17, TITLE 24 OF THE DELAWARE CODE RELATING TO PHYSICIANS' RECORDS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE :

Section 1. Amend §1761, Title 24, Delaware Code by designating the current §1761 as subsection (a) thereof and by adding thereto a new subsection (b) as follows:

"(b) Whenever a physician licensed to practice under this Chapter dies and has not transferred his or her records to another physician and has not made provisions for such a transfer to occur at his/her death, the personal representative of the physician's estate shall notify his/her patients of record for the past 3 years by publication in a newspaper of general circulation in the area where the physician practiced. All patients of record who have not requested their records 30 days after publication shall be notified by first class mail by the personal representative of the estate to permit the patients to procure their records."

Section 2. Amend §1761, Title 24, Delaware Code by inserting before the phrase "notification of patients" in the section heading thereof the phrase "death of a physician;"

Approved January 24, 1992.

CHAPTER 198

FORMERLY

SENATE BILL NO. 193  
AS AMENDED BY HOUSE AMENDMENT NO. 1

AN ACT TO AMEND DELAWARE CODE, TITLE 29, CHAPTER 58, REGARDING THE CONDUCT OF OFFICERS AND EMPLOYEES OF THE STATE.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Delaware Code, Title 29, Section 5805 by inserting a new Subsection (h) to read as follows:

"(h) Except for transportation supervisors for any school district within this state, nothing in this Section shall prohibit an employee or his or her spouse or children (natural or adopted) from contracting for the transportation of school children. Such transportation contracts may be entered into by an employee or his or her spouse or children without public notice and competitive bidding as is provided in Section 6916 of this Title."

Approved February 5, 1992.

## CHAPTER 199

## FORMERLY

## SENATE SUBSTITUTE NO. 1

## TO

SENATE BILL NO. 63  
AS AMENDED BY SENATE AMENDMENT NO. 1

AN ACT TO AMEND CHAPTER 9, TITLE 7, DELAWARE CODE, TO PERMIT RECREATIONAL DRIFT GILL NET FISHING FOR SHAD IN THE DELAWARE RIVER.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend §915, Chapter 9, Title 7, Delaware Code by adding thereto a new subsection (j) to read as follows:

"(j)(1.) It shall be lawful for any person who has appropriate food fishing equipment permits for gill nets and a recreational drift gill net permit issued by the Department to fish any drifting gill net, subject to the provisions of this subsection."

(2.) It shall be unlawful for any recreational finfishermen who has been issued a recreational drift gill net permit by the Department to fish a drift gill net in any waters of the State except in a section of the Delaware River, not including any tributaries thereto, located to the south of a line beginning at the tip of the southern most jetty at the mouth of the C & D Canal and extending due east and to the north of a line beginning at Liston Point and continuing due east during a period of time beginning at 12:01 a.m. on March 15 and ending at 12:00 p.m. on May 10 next ensuing each year.

(3.) It shall be lawful for any recreational finfisherman who has been issued a recreational drift gill net permit for gill nets and appropriate food fishing equipment permit for gill nets by the Department to fish a single drift net provided it does not exceed 300 feet in length.

An application for a recreational drift gill net permit may be submitted annually to the Department on a form supplied by the Department. Each application shall provide credible evidence that the person applying for the recreational drift gill net permit fished a drift gill net prior to 1984 in the Delaware River for American shad. Applications shall be submitted to the Department prior to 4:30 p.m. on the last Friday in February. The Department shall hold a public drawing of the applicants no later than 4:30 p.m. on first Friday in March. The first 10 applications drawn will be issued a recreational drift net permit to be valid until midnight on May 10 next ensuing. If any of the 10 selected applicants fail to obtain his/her recreational drift gill net permit from the Department by 4:30 p.m. on the second Friday in March, applicants drawn in numerical order after the first 10 shall be authorized to be issued a recreational drift gill net permit."

Section 2. Amend §903(e)(1) by adding a new paragraph (f) to read as follows:

"(f) Restrict the mesh size of recreational drift gill nets that may be fished for American shad in the Delaware River."

Approved February 5, 1992.

CHAPTER 200

FORMERLY

HOUSE BILL NO. 246

AN ACT TO AMEND CHAPTER 1, TITLE 16 OF THE DELAWARE CODE RELATING TO THE STATE BOARD OF HEALTH.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Amend Chapter 1, Subchapter II, Title 16, Delaware Code, §122(3), by adding a new paragraph "r." to read as follows:

"r. Provide for the sanitary control, specifically addressing drinking water, human waste disposal, and control of other vectors of human disease, of mobile/manufactured home parks and other housing of similar usage, which consist of more than three dwelling units or lots located on the same or adjacent properties served by a common water and/or sewage disposal system, and which are held out to the public for rent or lease."

Approved February 5, 1992.

CHAPTER 201

FORMERLY

SENATE BILL NO. 260

AN ACT TO AMEND TITLE 30, 5, 8, AND 18 OF THE DELAWARE CODE RELATING TO TAX PREFERENCES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Title 30 of the Delaware Code by striking §105 thereof, entitled "Sunset repeal of tax preferences.", in its entirety.

Approved February 5, 1992.

## CHAPTER 202

## FORMERLY

HOUSE BILL NO. 415  
AS AMENDED BY HOUSE AMENDMENT NOS. 1 AND 5

AN ACT TO AMEND CHAPTERS 11 AND 20 OF TITLE 30 AND CHAPTER 11 OF TITLE 5 OF THE DELAWARE CODE AND 64 DELAWARE LAWS CHAPTER 460 AS AMENDED BY 67 DELAWARE LAWS CHAPTER 120 AND 68 DELAWARE LAWS CHAPTER 6 RELATING TO TAX CREDITS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend §2010, Title 30 of the Delaware Code by striking the year "1992" as the same appears in subsections (4) and (5) thereof and substituting in lieu thereof the year "1997".

Section 2. Amend §12 of 64 Delaware Laws, Chapter 460, as amended by 67 Delaware Laws, Chapter 120, and 68 Delaware Laws, Chapter 6, by striking the year "1992" as the same appears in said section and substituting in lieu thereof the year "1997".

Section 3. Amend §2011, Title 30 of the Delaware Code by adding thereto new subsections (h), (i) and (j) to read as follows:

"(h) Any taxpayer (other than a public utility as defined in Chapter 1 of Title 26) engaged in a qualified activity that, for any taxable year ('the current year') ending after December 31, 1991 or before January 1, 1994, has an average number of employees employed by the taxpayer in full-time employment in this State during said tax year in excess of the average number of employees employed by the taxpayer during the period January 1, 1991 through December 31, 1991 ("the base year") shall be allowed a credit against the tax imposed for the current year by Chapter 19 or Chapter 11 by virtue of §1115 or §2024 of this title.

The amount of such credit for such current year shall equal \$250 times the average number of employees employed by the taxpayer in full-time employment within this State during the current year minus the average number of employees employed by the taxpayer in full-time employment within this State during the base year, rounded down to the next full number, such difference to be defined as 'new employment'. Employees who are employed in this State by the taxpayer for a continuous period of fewer than six months shall not be considered in calculating the credit provided under this subsection. However, employees employed for a continuous period of at least six months during the base and current year which includes a period of less than six months in either the base year or the current year shall be considered in calculating the credit under this subsection. Employees of a taxpayer employed at the same facility in substantially the same capacity by a different taxpayer during all or part of the base year shall not be considered in computing employment during the current year under this subsection.

(i) In the case of any taxpayer qualifying for credits under subsection (a) or (h) of this section or §2021 of this title who provides health care benefits as defined in §2010(15) of this title during any tax year ending after December 31, 1991 or before January 1, 1994, the credits provided by subsections (b)(1) or (h) (but, in the case of any taxpayer, not both) of this section or §2021 of this title shall be increased by \$250.

(j) Notwithstanding the provisions of §2011 of this title, credits provided by subsections (h) and (i) of this section may be earned and applied only in tax years beginning after December 31, 1991, and ending before January 1, 1994, subject to carryover under the provisions of §2011(f) of this title."

Section 4. Amend §2010(3)e., Title 30 of the Delaware Code by designating said paragraph e. as paragraph h. of §2010(3), and by striking the letter and punctuation "d." as they appear in said paragraph and substitute in lieu thereof the letter and punctuation "g."

Section 5. Amend §2010(3), Title 30 of the Delaware Code by striking the word "or" as it appears at the end of paragraph d. thereof, and by adding to

§2010(3) new paragraphs e., f., and g. to read as follows:

"e. Any activity more than 50% of whose annual gross receipts are derived from computer processing or data preparation or processing services, including data entry (but not word processing) and making data processing equipment available on an hourly or time-sharing basis;

f. Any activity more than 50% of whose annual gross receipts are derived from engineering services including providing and supervising the taxpayer's engineering staff on temporary contract to other firms. The term 'engineering services' does not include businesses providing engineering personnel but not general supervision; nor does it include businesses primarily engaged in architectural or photogrammetric engineering;

g. Any activity more than 50% of whose annual gross receipts are derived from consumer credit reporting services, including adjustment and collection services and credit reporting services. Adjustment and collection services are establishments primarily engaged in the collection or adjustment of claims, other than insurance. Credit reporting services are establishments primarily engaged in providing mercantile and consumer credit reporting services; or

Section 6. Amend §2010(3), Title 30 of the Delaware Code, by striking paragraph d. in its entirety and substituting in lieu thereof the following:

"d. The administration, management, or support operations, including marketing, of any activity described in paragraphs a. through g. of this subdivision;"

Section 7. Amend §1105, Title 5 of the Delaware Code by designating existing §1105 as subsection (a) of said section and by adding to said section new subsections (b) and (c) to read as follows:

"(b) For taxable years beginning after December 31, 1991, and ending before January 1, 1994, there shall be allowed as a credit against the tax imposed under subsection (a) of this section the applicable amounts provided in §2011(h) or (i) (or both) of Title 30 as if the definition of 'Taxpayer' in §2010(13) and the definition of 'qualified activity' of §2010(3) of Title 30 also included, solely for purposes of the credit provided in this subsection, banks subject to tax under this section, provided the taxpayer meets the qualifications set forth in said §2011(h) or (i). Notwithstanding the provisions of this subsection, credits arising solely by virtue of §2011(a) shall not be allowed against the tax imposed by this chapter.

(c)(1) The amount of credit allowable under subsection (b) of this section shall not exceed 50% of the amount of tax imposed upon the taxpayer by subsection (a) of this section for such taxable year; and (2) The amount of the credit determined under subsection (b) of this section for any taxable year that is not allowable for such taxable year solely as a result of the limitation contained in paragraph (1) of this subsection shall be a credit carryover to each of the succeeding nine years in the manner described in §2011(f) of Title 30."

Section 8. Amend §2010, Title 30 of the Delaware Code by adding to said section new subsections (14) and (15) to read as follows:

"(14) 'Full-time employment' means employment of one individual for at least 35 hours per week, not including absences excused by reason of vacations, illness, holidays or similar causes.

(15) 'Health care benefits' means financial protection against the medical care cost arising from disease and accidental bodily injury for which cost the employer pays at least 50% for employees employed by the employer for a continuous period of six months or more."

Section 9. Amend Section 2020(1), Title 30 of the Delaware Code by adding a new subparagraph e. to read as follows:

"e. When socio-economic data becomes available from the 1990 Census, the Director of the Delaware Development Office in conjunction with the Secretary of Finance shall evaluate all census tracts using the following criteria: percent of persons below poverty level; percent of

households receiving public assistance; unemployment rate; median household income; a significant presence of vacant property within the target area; the character of the Community; and population. Based on these criteria census tracts shall be reallocated on the following basis: 10 in City of Wilmington; 10 in New Castle County outside of the City of Wilmington; 5 in Kent County; and 5 in Sussex County. The provisions of this subparagraph shall supercede subparagraph d. of this subsection upon the reallocation of the census tracts.

Upon request, the Director of the Delaware Development Office, in conjunction with the Secretary of Finance, may consider extending the geographic boundary lines of the target area where the adjacent community otherwise satisfies the above-referenced criteria."

Section 10. Amend Title 30 of the Delaware Code by adding thereto a new §1115 to read as follows:

"§1115. Subchapter S -- Business Tax Credits.

A resident shareholder in a small business corporation having made a valid election under Subchapter S of the Internal Revenue Code in effect for any tax year shall be allowed as a credit a proportionate share, according to the percentage of the stock in such corporation owned by the resident on the last day of the taxable year of such corporation, of any business tax credits allowed such corporation under Subchapters II, III, or V of Chapter 20 of this Title; provided, however, that such credit shall not exceed 50% times the maximum rate for the tax year under §1102 of this Chapter times the resident's share of the distributable income of the Subchapter S corporation."

Section 11. Amend Title 30 of the Delaware Code by adding thereto a new §2023 to read as follows:

"§2023. Subchapter S Corporations.

Whenever a corporation having made a valid election under Subchapter S of the Internal Revenue Code is subject to tax under Chapter 19 of this Title and is eligible for credits under Subchapters II, III, or V of this Chapter, such credits shall be applied by multiplying the credits calculated under §2011, §2021, or §2041 (credits under §2011 and §2021 to include any adjustments by virtue of §2042, §2043, or §2044 of this title) by the percentage of its stock owned by non-resident individuals on the last day of its tax year."

Section 12. Amend Chapter 20, Title 30 of the Delaware Code by adding thereto a new §2024 to read as follows:

"§2024. Credit against Personal Income Tax.

(a) Notwithstanding any reference in this chapter to Chapter 19 of this title, any taxpayer not subject to taxation under Chapter 19 of this title may claim such credits calculated under §2011, §2021 or §2041 of this Chapter (including adjustments thereto under §2042, §2043 and §2044 of this title); provided, however, that the amount of credit claimed by an individual under Chapter 11 shall not exceed: (1) the multiplicative product of the following: (A) the amount of credit calculated under §2011 or §2021 of this Chapter; and (B) the percentage of ownership in the organization attributable to the taxpayer; or (2) 50% of the amount of tax imposed upon such individual by Chapter 11 of this title for such taxable year; and provided further that §1115 and §2023 of this title and not this section shall govern taxpayers electing under Subchapter S of the Internal Revenue Code and their shareholders."

Section 13. Amend §2010(13), Title 30 of the Delaware Code, by striking said subsection in its entirety and substituting in lieu thereof a new subsection (13) to read as follows:

"(13) 'Taxpayer' means any person or corporation carrying on business in this State including a corporation having made a valid election under Subchapter S of the Internal Revenue Code, irrespective of the state of residence of its shareholders."



Section 14. Amend §2011, Title 30 of the Delaware Code, by adding thereto a new subsection (k) to read as follows:

"(k) Any taxpayer (other than a public utility as defined in Chapter 1, Title 26) that for any taxable year has a qualified investment in a qualified facility that is placed in service by the taxpayer during such taxable year shall be allowed a credit under this section irrespective of the limitations contained in subsections (a)(1), (b), or (c) of this section; provided, however, as follows:

(1) Such investment must equal or exceed the greater of:

(A) \$1 million; or (B) 15% of the unadjusted basis in such facility at the close of the taxable year preceding the date on which installation or construction of the investment described in this paragraph commenced;

2) Substantially all the use of the qualified facility by the taxpayer occurs in the activity of manufacturing or wholesaling as defined respectively in §2701(2) or §2901(7)a. of this title;

(3) The amount of the credit allowed under this subsection shall be 75% of the credit allowable if the taxpayer were eligible for credit under subsection (a) of this section subject, however, to limitation and carryover provisions under subsections (d) and (f) of this section. Credits claimed in any tax year (including amounts carried over from previous tax years) shall not exceed the difference between \$500,000 and the amount of credits claimed under §2012 of this chapter for the twelve months comprising said tax year. Amounts of credit not used by virtue of the preceding sentence may be carried forward as if such unused credits arose by virtue of §2011(d);

(4) No facility may be eligible for credits under both this subsection and subsection (a) of this section;

(5) Should the qualified facility be an expanded facility, total wages paid during the taxable year by the taxpayer to qualified employees employed at the qualified facility must equal or exceed 85% of the wages paid by the taxpayer to qualified employees at the same facility during the twelve months preceding the date on which the qualified facility was placed in service; and

(6) Construction of the qualified facility was commenced after the enactment of this Act into law. For purposes of this subsection, construction of a facility shall commence on the date on which site alteration first occurs."

Section 15. Amend §2012, Title 30 of the Delaware Code, by adding to said section a new subsection (c) to read as follows:

"(c) Any taxpayer placing in service a facility meeting the conditions set forth in §2011(k) of this title shall be allowed a reduction in license fees other than those set forth in §2902(c)(4) equal to 75% of the reduction allowable to taxpayers qualifying under subsection (a) of this section; provided, however, that such credits may not exceed \$500,000 over their ten year life. No taxpayer may be eligible for reductions under both this subsection and subsection (a) of this section for the same facility."

Section 16. Amend §2021, Title 30 of the Delaware Code, by adding thereto a new subsection (c) to read as follows:

"(c) In the case of any taxpayer that (1) places in service, within any targeted area, as defined by §2020(1) of this title, a qualified facility in which the taxpayer is engaged in a qualified activity described in §2010(3) of this title, and (2) satisfies the requirements contained in §2011(k) of this title, such taxpayer shall be allowed a credit equal to 75% of the credit allowable under subsection (a) of this section, subject, however, to limitation and carryover provisions under §2011(d) and (f) of this Chapter. The credit claimed in any tax year (including amounts carried over from previous tax years) shall not exceed the difference between \$500,000 and the amount of credits claimed under §2022 of this title for the twelve months comprising said tax year. Amounts of credit not used by virtue of the preceding sentence may be carried forward as if such unused

credits arose by virtue of §2011(f). No taxpayer may be eligible for credit under both this subsection and subsection (a) of this section for the same facility."

Section 17. Amend §2022, Title 30 of the Delaware Code, by adding thereto a new subsection (c) to read as follows:

"(c) In the case of any taxpayer that (1) places in service, within any targeted area, as defined by §2020(1) of this title, a qualified facility in which the taxpayer is engaged in a qualified activity described in §2010(3) of this title, and (2) satisfies the requirements contained in §2011(k) of this title, such taxpayer shall be allowed a reduction in license fees equal to 75% of the reduction allowable under subsection (a) of this section; provided, however, that said reduction shall be allowed against only those license fees imposed by §2902(c)(1), (3) and (5) and §2702(b)(1) and (3) of this title, that no facility shall be eligible for reduction under both this subsection and subsection (a) of this section, and that credits under this subsection shall not exceed \$500,000 over the 180 month life of the credits."

Section 18. Amend §2010(5), Title 30 of the Delaware Code by adding the following sentence to the end of said subsection:

"For property placed in service after July 1, 1992, a facility which constitutes a replacement facility, as defined in subsection (6) of this section, shall be deemed an expanded facility, and the investment shall be deemed a qualified investment, to the extent the taxpayer's investment in the replacement facility exceeds the greater of: (a) 150% of the unadjusted cost basis of the facility which is being replaced; or (b) 100% of the market value of the facility which is being replaced."

Section 19. Amend Chapter 20, Title 30 of the Delaware Code, by adding thereto a new Subchapter V to read as follows:

"Subchapter V.  
Green Industries Credits

§2040. Definitions.

(a) 'Toxic Release Inventory' means an inventory of chemical releases as required under the Federal Superfund Amendments and Reauthorization Act of 1986 (42 U.S.C. §9601 *et seq.*).

(b) 'Other wastes' means measurable solid waste products other than those reported under the Toxic Release Inventory and any substances released in the air or in the waters of the State for which a permit has been issued under Chapters 60 or 63 of Title 7.

(c) 'Solid waste' means solid waste as defined in §6002 of Title 7.

(d) 'Recycled materials' means materials that have been removed from the Delaware solid waste stream and have been processed into a value added material.

(e) 'Source reduction' means any practice which reduces the production of waste products prior to recycling, treatment, or disposal.

(f) 'Taxpayer' has the same meaning as set forth in §2010(13) of this chapter.

§2041. Reductions in Waste Release.

(a) In the case of any manufacturer, as defined in §2701(2) of this title, who in any taxable year complies with the requirements of subsection (b) there shall be allowed a credit against the tax imposed under Chapter 19 or Chapter 11 by virtue of §1115 or §2024 of this title.

(b) The amount of the credit under subsection (a) shall be either,

(1) In the case of a manufacturer that, by source reduction techniques, voluntarily reduces by at least 20% the weight of wastes reported under the Toxic Release Inventory reflected by Inventory Report forms filed for a year ending in such tax years compared with such amount reported

for the immediately preceding twelve months, the credit shall be \$250 for each full 10% of waste reduction during said tax year and each of the four succeeding tax years during which such reduced amount of release is maintained, or

(2) In the case of a manufacturer that, during such tax year, by source reduction techniques, voluntarily reduces by at least 50% the weight of other wastes released in the current tax year compared with such amount released in the immediately preceding twelve months, the credit shall be \$250 for each full 10% in waste reduction during said tax year and each of the four succeeding tax years during which such reduced amount of release is maintained.

(c) Unused credits may be carried forward for four years following the year in which the credit could otherwise be taken.

#### §2042. Use of Recycled Materials as Raw Materials of Manufacturing.

(a) In the case of any manufacturer, as defined in §2701(2) of this title, who (1) in any taxable year derives at least 25% by weight, of its raw materials from either (i) recycled materials or (ii) materials removed from the Delaware solid waste stream; (2) satisfies the requirements of §2011(a) of this title for the allowance of a credit against the tax imposed by Chapter 19 or Chapter 11 by virtue of §1115 or §2024 of this title for the taxable year of the taxpayer in which such qualified facility is placed in service by the taxpayer; and (3) uses such materials in its qualified facility as defined in §2010 of this title, the amount of such credit shall be determined as provided in subsection (b) of this section.

(b) The amount of the credit allowed under subsection (a) shall, for such tax year, be the amount of credit allowed under §2011 of this title applied with respect to such qualified facility by substituting '\$500' for '\$250' in §2011(b)(1) and (2) of this title; or, in the event the taxpayer also qualifies for credit under §2021 of title, by substituting '\$750' instead of '\$500' for '\$250' in §2011(b)(1) and (2) of this title.

(c) Unused credits may be carried forward for nine years following the year in which the credit could otherwise be taken.

#### §2043. Processing of Waste Materials.

(a) In the case of any taxpayer, as defined in §2010(13) of this title, who (1) in any taxable year is engaged in the business of processing materials removed from the Delaware solid waste stream for resale as raw materials to persons defined as manufacturers under §2701(2) of this title; (2) satisfies the requirements of §2011(a) of this title for the allowance of a credit against the tax imposed by Chapter 19 or Chapter 11 by virtue of §1115 or §2024 of this title for the taxable year of the taxpayer in which such qualified facility is placed in service by the taxpayer; and (3) whose qualified investment is devoted entirely to the processing and resale of materials removed from the Delaware solid waste stream as described in this section; the amount of such credit shall be determined as provided in subsection (b) of this section.

(b) The amount of the credit allowed under subsection (a) shall be the amount of credit allowed under §2011 of this title applied with respect to such qualified facility by substituting '\$500' for '\$250' in §2011(b)(1) and (2) of this title; or, in the event the taxpayer also qualifies for credit under §2021 of title by substituting '\$750' instead of '\$500' for '\$250' in §2011(b)(1) and (2) of this title.

(c) Unused credits may be carried forward for nine years following the year in which the credit could otherwise be taken.

#### §2044. Collection and Distribution of Recycled Materials.

(a) In the case of any taxpayer, as defined in §2010(13) of this title, who (1) in any taxable year is engaged in the business of collecting materials for recycling and distributing recycled materials; (2) satisfies the requirements of §2011(a) of this title for the allowance of a credit against the tax imposed by Chapter 19 or Chapter 11 by virtue of §1115 or §2024 of this title for the taxable year of the taxpayer in which such

qualified facility is placed in service by the taxpayer; and (3) whose qualified investment is devoted entirely to collection of materials for recycling and distribution of recycled materials as described in this section; the amount of such credit shall be determined as provided in subsection (b) of this section.

(b) The amount of the credit against tax allowed under subsection (a) shall, for such tax year, be the amount of credit allowed under §2011 of this title applied with respect to such qualified facility by substituting '\$500' for '\$250' in §2011(b)(1) and (2) of this title; or, in the event the taxpayer also qualifies for credit under §2021 of title by substituting '\$750' instead of '\$500' for '\$250' in §2011(b)(1) and (2) of this title.

(c) Unused credits may be carried forward for nine years following the year in which the credit could otherwise be taken.

#### §2045. Exceptions and Procedures.

(a) No taxpayer is eligible for any credit under this Subchapter unless and until a determination of eligibility has been made by both the Director of the Delaware Development Office and the Secretary of the Department of Natural Resources and Environmental Control and certified in writing to the Director of Revenue, who shall implement said determination. A determination as to the eligibility of a taxpayer for credit under this Subchapter and to the amount of such credit shall be reviewable by the Superior Court only for abuse of discretion and, in any case, notwithstanding §329 of this title, shall not be appealable to the Tax Appeal Board.

(b) No taxpayer shall be eligible for any credit under this Subchapter if, within twelve months immediately prior to application, but after the effectiveness of this Subchapter, the taxpayer or any of its executive officers or directors has been convicted of any criminal offense involving environmental pollution or has been the subject of any administrative penalty or order by the Department of Natural Resources and Environment Control or any agency of the United States by which it was finally determined that the taxpayer violated any state or federal statute or regulation prohibiting environmental pollution.

(c) The credits allowed under this subchapter are exclusive of one another, and a taxpayer may claim credits under only one of sections 2041, 2042, 2043, or 2044 of this title in any tax year."

Section 20. If any provision of this Act, or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this Act that can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

Section 21. This Act shall be effective for tax years ending after December 31, 1991; provided that subsequent limitations on effectiveness shall be as stated in the Act.

Approved February 6, 1992.

## CHAPTER 203

## FORMERLY

## HOUSE BILL NO. 416

AN ACT TO AMEND CHAPTER 11 OF TITLE 30 AND CHAPTER 50 OF TITLE 29 OF THE DELAWARE CODE RELATING TO PERSONAL INCOME TAX CREDITS FOR CERTAIN QUALIFIED INVESTMENTS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Title 30 of the Delaware Code by adding thereto a new §1116 to read as follows:

§1116. Delaware Investment Credit.

A resident and non-resident individual shall be allowed a credit against that individual's tax otherwise due under this chapter in an amount equal to 15% of the individual's investment that is qualified under Subchapter VIII, Chapter 50 of Title 29 of the Delaware Code ('The Delaware Investment Tax Credit Program') and certified as such by the Director of the Delaware Development Office to the Director of Revenue. Notwithstanding §329 of this title to the contrary, determinations by the Delaware Economic Development Authority as to the qualification of any investment under the Delaware Investment Tax Credit Program shall not be appealable to the Tax Appeal Board. In no event shall the credit allowable under this section exceed the tax otherwise due under this chapter. Unused credits under this section may be carried forward four years from the tax year in which they are certified under the Delaware Investment Tax Credit Program."

Section 2. Amend Chapter 50 of Title 29 of the Delaware Code by adding to said Chapter a new Subchapter VIII to read as follows:

"Subchapter VIII.

Delaware Investment Tax Credit Program

§5095. Legislative findings; authorization.

The General Assembly finds that the growth of small businesses in the State results in increased job opportunities for Delaware residents, produces more spending in the State and increases tax bases. Existing or new small businesses and recently displaced Delaware employees beginning new businesses can provide significant economic benefits to the State provided they can obtain sufficient equity financing to carry them from start-up through the initial development phases of a business. In order to encourage the increased availability of risk equity capital to these enterprises, the Delaware Development Office through the Delaware Economic Development Authority is authorized to establish, and issue certifications of eligibility for investors qualifying for the Investment Tax Credit Program.

§5096. Eligibility for tax credits.

The Delaware Economic Development Authority ('the Authority') shall, by rules and regulations, establish the Delaware Investment

Tax Credit Program ('the Program'), which Program shall provide for qualification of businesses to receive investment from individuals obtaining tax credit certification under the Program and for the certification of qualified investments by individuals for tax credits under §1116 of Title 30. The Authority shall by rule or regulation set forth qualifications for participation in the Program in accordance with §5097 and §5098 of this title and may issue rules or regulations relating to such other matters as, in the judgment of the Authority, are necessary or desirable to further the purposes of the Program, not inconsistent with the provisions of this Subchapter. Rules or regulations issued under this Subchapter shall have the force and effect of law.

§5097. Qualification of Businesses seeking investment under the Program.

Without limitation, the requirements for qualifying for receipt of investment capital under the Program shall include the following:

(a) Businesses may apply to the Delaware Economic Development Authority for investment under the Program provided:

(1) Such business had annual gross revenues of \$5,000,000 or less during the full twelve month period immediately preceding the date on which it filed its application for investment;

(2) The operation of the business must be the full-time activity of a natural person owning at least 10% of the voting interests in the business;

(3) The investment qualified for certification under this Chapter must be expended on plant, equipment, research and development or acquisition of inventory or raw materials (provided the plant or equipment is to be installed, the research and development to occur, and the inventory or raw materials to be accumulated, in Delaware) or for such other purpose as, in the Authority's discretion, promotes the purposes of the Program; and

(4) Such application is made in such form and at such time as the Authority may by regulation prescribe.

(b) No owner of more than 50% of the voting interests in the business nor such owner's spouse, parents, brothers, sisters, or children shall be eligible for tax credit under this Subchapter for investment in such business. For purposes of this subsection, ownership by the spouse, parents, brothers, sisters, or children of an owner shall be attributed to such owner for purposes of determining whether such owner owns more than 50% of the voting interests in the business.

(c) Applications for businesses seeking investment qualifying under this Chapter shall be subject to approval as follows:

(1) Business applications shall be reviewed by the Council on Development Finance ('the Council') which shall evaluate such applications based on criteria established by the Authority through its rulemaking authority; and

(2) Based on such review, the Council shall recommend applications for approval by the Chairman of the Delaware Economic Development Authority. No application shall receive any investment qualifying for tax credits under the Program unless and until it has been recommended for approval by a majority of the Council and has been approved by the Chairman of the Delaware Economic Development Authority.

§5098. Certification of individuals for tax credits.

Without limitation, the requirements for qualifying for certification of individuals' investments for tax credits under the Program shall include the following:

(a) Individuals may apply for tax credit certification provided:

(1) Such individual's investment is in a business approved to receive such investment under §5097 of this title;

(2) Such investment must be not less than \$10,000 or more than \$100,000 in any one business; provided that this paragraph shall not limit an applicant from making other investments in the business for which a tax credit is not requested; and

(3) Such application shall be made in such form and at such time as the Authority may by regulation prescribe.

(b) Applications by individuals for investment tax credit certification shall not be approved to the extent that:

(1) The investment is in excess of 15% of the actual investment made during any tax year;

(2) Total shares of voting stock received in exchange for

investment certified for tax credits under this Chapter exceed 50% of the voting shares of stock outstanding in the business qualifying for investment under the Program.

(c) No investment in any business shall be certified: (1) unless other investments in the same business qualifying for certification under this Chapter along with said investment amount in the aggregate to at least \$25,000, or (2) if such investment along with all investments in the same business already certified under this Chapter exceed \$950,000;

(d) No application shall be approved for any investment under whose terms the investor obtains a return of the principal invested at any time prior to the end of five years from the date of the investment or under whose terms the investment is not at risk in the qualifying business. Notwithstanding this paragraph, the investor may transfer his or her investment at any time and may transfer any unused tax credits certified under this Chapter but only as part of the transfer of the investment and only so long as the transferor and transferee of the unused credits meet whatever reporting requirements may be established by the Director of Revenue or the Authority, or both; and

(e) The Authority may not issue in the aggregate more than \$3,000,000 in tax credit certifications nor may it issue any certifications after December 31, 1995.

§5099. Revocation of qualification or certification.

(a) The Delaware Economic Development Authority may, after notice and an opportunity for a hearing, revoke any business' qualification for receipt of investments under this program if the Authority finds:

(1) any material representation made by the business or by any person on behalf of such business in connection with an application under this subchapter was false when made; or

(2) the application otherwise violates any conditions established for such application by the Authority. If any such qualification is revoked, the business and any person making application on behalf of said business shall be required immediately to pay the State of Delaware the full amount of any tax credit certifications authorized for investment in said business whether or not such certificates have yet been used to obtain tax credits, plus a penalty of 100% the amount of such certificates. The validity of tax credit certifications issued for investment in such business shall not be affected by revocation of qualification of said business for participation in the Program.

(b) The Delaware Economic Development Authority may, after notice and an opportunity for a hearing, revoke any tax credit certification issued under this program if the Authority finds:

(1) any material representation made by the applicant for such certification in connection with an application under this subchapter was false when made; or

(2) the application otherwise violates any conditions established for such application by the Authority. If any such certification is revoked, the applicant shall be required immediately to repay the State of Delaware the full amount of any tax credit taken under §1116 of Title 30 as well as a penalty of 100% of such credit. In the event the applicant has transferred unused credits to a transferee, the applicant shall be liable for repayment of the full amount of the certifications plus 100% thereof as penalty. Unless a transferee knew of the falsity of facts represented by the applicant at the time he obtained an interest in unused tax credits, the validity of such unused credits shall not be affected by the revocation of the applicant's certification.

(c) The Authority is authorized to require that any application or such other document as it requires to be filed with the Authority be submitted under penalties of perjury.

(d) Notwithstanding §581 of Title 30, the Director of Revenue may disclose tax return information of any applicant to the Authority whenever the Authority notifies the Director of Revenue that such information is necessary or desirable for any determination required under this Chapter. The Authority may not further disclose any information received under this subsection except to the Council on Development Finance and then only to the extent necessary for the Council to carry out the duties specified in §5097 of this title.

(e) The Authority and the Council on Development Finance shall not disclose to any person, other than in compliance with a proper judicial order, any information contained on any application for qualification for investment other than to any applicant for tax credit certification, provided the business applicant authorizes such disclosure, and to the Director of Revenue."

Section 3. If any provision of this Act, or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this Act that can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

Section 4. This Act shall be effective upon its enactment into law; provided, however, that qualification of businesses for investments or individuals for tax credit certification shall not occur prior to issuance of rules and regulations under this Act by the Delaware Economic Development Authority.

Approved February 6, 1992.



## CHAPTER 204

## FORMERLY

## HOUSE BILL NO. 417

A BOND AND CAPITAL IMPROVEMENTS ACT OF THE STATE OF DELAWARE AND CERTAIN OF ITS AUTHORITIES DEAUTHORIZING FROM THE DEPARTMENT OF CORRECTION AND THE DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL PRIOR GENERAL OBLIGATION BOND AUTHORIZATIONS AND AUTHORIZING THE ISSUANCE OF GENERAL OBLIGATION BONDS OF THE STATE; REVERTING AND REPROGRAMMING CERTAIN FUNDS OF THE STATE; SPECIFYING CERTAIN PROCEDURES, CONDITIONS AND LIMITATIONS FOR THE EXPENDITURE OF SUCH FUNDS; AND AMENDING CERTAIN PERTINENT STATUTORY PROVISIONS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (Three-quarters of all members elected to each House thereof concurring therein):

Section 1. Deauthorization of Prior General Obligation Bond Authorizations. The State hereby repeals the authorization to issue bonds, the proceeds of which were heretofore appropriated to the following departments and agencies for the following projects and amounts:

Department, Agency, or Instrumentality	Project		
	Authorized Vol. & Ch.	Appropriation Code	Amount
Department of Correction	68/13	38-04-06-6113	\$3,100,000
Department of Natural Resources & Environmental Control	68/156	40-08-01-6212	3,141,323
<b>TOTAL</b>			<b>\$6,241,323</b>

Section 2. Reauthorization and Authorization of Twenty-Year Bonds. The State hereby reauthorizes and authorizes the issuance of Two Million Four Hundred Ninety-One Thousand Three Hundred Twenty-Three Dollars (\$2,491,323) of bonds to which the State shall pledge its full faith and credit. Bonds reauthorized and authorized to be used by this Section shall mature not later than twenty (20) years from their date of issuance. The proceeds of such bonds are hereby appropriated for a portion of the purposes set forth in the "Fiscal Year 1992 Capital Improvements Project Schedule" attached hereto and made a part hereof and summarized as follows:

<u>Department, Agency, or Instrumentality</u>	<u>Amount</u>
Delaware Development Office	\$ 250,000
Department of Services for Children, Youth & Their Families	1,700,000
Delaware Technical & Community College	541,323
<b>TOTAL</b>	<b>2,491,323</b>

Section 3. Reauthorization of Ten-Year Bonds. The State hereby reauthorizes the issuance of Four Million Dollars (\$4,000,000) in bonds to which the State shall pledge its full faith and credit. Bonds reauthorized to be issued by this Section shall mature not later than ten (10) years from their date of issuance. The proceeds of such bonds are hereby appropriated for a portion of the purposes set forth in the "Fiscal Year 1992 Capital Improvements Project Schedule" attached hereto and made a part hereof and summarized as follows:

<u>Department, Agency, or Instrumentality</u>	<u>Amount</u>
Department of Administrative Services	\$3,000,000
Department of Correction	<u>1,000,000</u>
<b>TOTAL</b>	<b><u>\$4,000,000</u></b>

Three Million One Hundred Thousand Dollars (\$3,100,000) in aggregate principal amount of bonds authorized by this Section 3 shall not be subject to, and shall not be counted against, the authorization limit contained in Title 29, Delaware Code, Section 7422.

Section 4. Reversion to the First State Improvement Fund. On the effective date of this Act, the State Treasurer shall transfer the sum of Six Hundred Twenty-Nine Thousand Eight Hundred Thirty-Five Dollars (\$629,835) to the First State Improvement Fund (12-05-03-9600) from the following project:

Project			
Department, Agency, or Instrumentality	Authorized Vol. & Ch.	Code	Amount
Delaware Development Office	67/285	10-03-03-9652	\$629,835
<b>TOTAL</b>			<b><u>\$629,835</u></b>

Section 5. Appropriation of First State Improvement Fund. The State hereby authorizes the appropriation of Two Million Five Hundred Thousand Dollars (\$2,500,000) from the First State Improvement Fund (12-05-03-9600) for the purpose set forth in the "Fiscal Year 1992 Capital Improvements Project Schedule" attached hereto and made a part hereof.

<u>Department, Agency, or Instrumentality</u>	<u>Amount</u>
Delaware Development Office	<u>\$2,500,000</u>
<b>TOTAL</b>	<b><u>\$2,500,000</u></b>

Section 6. Transfers to the State Treasurer's Bond Reversion Account. On the effective date of this Act, the State Treasurer shall transfer the remaining appropriation balances, not in excess of the amounts indicated below in the enumerated project accounts, to the State Treasurer's Bond Reversion Account (12-05-03-8101).

Project			
Department, Agency, or Instrumentality	Authorized Vol. & Ch.	Code	Amount
Budget Office	67/285	10-02-01-6113	\$ 38,463
Dept.of Administrative Services	65/385	30-05-10-5718	150,000
Dept.of Administrative Services	67/285	30-05-10-6120	17,346
Department of Natural Resources & Environmental Control	65/385	40-05-01-5712	45,400
Department of Natural Resources & Environmental Control	67/46	40-08-01-6012	1,258,677
Department of Public Safety	66/360	45-01-01-5912	2
Department of Public Safety	67/285	45-06-08-6112	4

Delaware National Guard

67/46

76-01-01-6012

1.289

TOTAL\$1,511.181

Section 7. Transfers from the State Treasurer's Bond Reversion Account. Notwithstanding the provisions of other State law, the State Treasurer shall transfer, as funds become available, the sum of One Million Five Hundred Forty-One Thousand One Hundred Forty-Two Dollars (\$1,541,142) from the State Treasurer's Bond Reversion Account (12-05-03-8101) to the following departments in the following amounts for the purposes set forth in the "Fiscal Year 1992 Capital Improvements Project Schedule, Reversion & Reprogramming Column" attached hereto and made a part hereof:

<u>Department, Agency, or Instrumentality</u>	<u>Amount</u>
Delaware Development Office	\$ 282,465
Delaware Technical & Community College	1,258,677
<u>TOTAL</u>	<u>\$1,541.142</u>

Section 8. Transfers from the School Bond Reversion Account. Notwithstanding the provisions of Chapter 75, Title 29, Delaware Code or any other State law, the State Treasurer shall transfer, as funds become available, the sum of Ninety-Seven Thousand Three Hundred Seventy Dollars (\$97,370) on deposit in the School Bond Reversion Account (12-05-03-8102) for the following purposes in the following amounts as set forth in the "Fiscal Year 1992 Capital Improvements Project Schedule, Reversion & Reprogramming Column" attached hereto and made a part hereof:

<u>Department, Agency, or Instrumentality</u>	<u>Amount</u>
Delaware Development Office	<u>\$97,370</u>
<u>TOTAL</u>	<u>\$97,370</u>

#### DELAWARE DEVELOPMENT OFFICE

Section 9. Economic Development Fund. Amend Section 29(d) (e) of Volume 66, Chapter 360 of the Laws of Delaware by adding the phrase ", data processing, engineering, financial services" after the phrase "agricultural-related businesses" and before the phrase "and the administration and management support required for these activities;".

Section 10. Relocation Assistance Fund. It is the intent of the General Assembly that funds appropriated in Section 5 of this Act provide out-of-state businesses with financial assistance to offset some of the expenses associated with physically relocating personnel and/or equipment related to the establishment of their Delaware operation. The Fund will be administered by the Delaware Development Office. The relocation expenses will be based on a formula of \$5,000 maximum for each new full-time permanent Delaware job created. Qualifications for this program are as follows:

- New businesses will be from targeted industries which include manufacturers, wholesalers, laboratories, data processing, engineering, financial services, or administration and/or management support for the above industries.
- The new business must provide a minimum of 25 new jobs by either transferring out-of-state employees to new residences in Delaware or by hiring new employees for the Delaware Operation.

The amount of relocation assistance that any new business would be reimbursed under this program would be a maximum of \$500,000.

#### DEPARTMENT OF SERVICES FOR CHILDREN, YOUTH & THEIR FAMILIES

Section 11. NCC Secure Detention Center. It is the intent of the General Assembly that funds appropriated in Section 2 of this Act for the Secure Detention Center be transferred to the Department of Administrative Services for continued project oversight. The funds appropriated herein shall

not be encumbered or disbursed without the approvals of the Secretary of the Department of Services for Children, Youth & Their Families and the Secretary of the Department of Administrative Services.

#### DEPARTMENT OF CORRECTION

Section 12. Minor Capital Improvements and Equipment. It is the intent of the General Assembly that One Million Dollars (\$1,000,000) appropriated in Section 3 of this Act to the Department of Correction ("Department") be used to correct statewide correctional facility deficiencies as identified and prioritized in the professional engineering survey to be completed by March 1992. The Department of Administrative Services shall provide technical oversight of all projects to be accomplished.

Section 13. Bond Verification. All bonds issued, or herein before or herein authorized to be issued, by the State are hereby determined to be within all debt and authorization limits of the State.

Section 14. Inconsistency. Insofar as the provisions of this Act are inconsistent with the provisions of any general, special, or local laws, or parts thereof, the provisions of this Act shall be controlling.

Section 15. Severability. If any section, part, phrase, or provision of this Act or the application thereof be held invalid by any court of competent jurisdiction, such judgment shall be confined in its operation to the section, part, phrase, provision, or application directly involved in the controversy in which such judgment shall have been rendered and shall not affect or impair the validity of the remainder of this Act or the application thereof.

Section 16. Effective Date. This Act shall take effect in accordance with the provisions of State law.

Approved February 6, 1992.

## CHAPTER 205

## FORMERLY

HOUSE BILL NO. 302  
AS AMENDED BY SENATE AMENDMENT NO. 1

AN ACT TO AMEND CHAPTER 5, TITLE 4, OF THE DELAWARE CODE RELATING TO ALCOHOLIC LIQUORS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (Two-thirds of all members elected to each House thereof concurring therein):

Section 1. Amend Subchapter II, Chapter 5, Title 4 of the Delaware Code by adding a new section designated as §512A which shall read as follows:

"§512A. Brewery-Pubs

(a) Subject to the provisions, restrictions and prohibitions of this Title, the Commission may grant a brewery-pub license to each qualified applicant therefor. No person shall own or operate a brewery-pub unless licensed to do so by the Commission. For purposes of this section, a brewery-pub shall be an establishment in which beer is manufactured on the premises of the licensed establishment, limited to restaurants owned or leased by the brewery-pub applicant; and where beer is manufactured in the establishment, and is sold for on-premises consumption, in conjunction with the service of complete meals for consideration.

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

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

(2) It may brew, bottle, and sell only beer at a single licensed establishment;

(3) It shall brew not more than two thousand (2,000) barrels of beer in any calendar year;

(4) It may sell solely for on-premises consumption all beer manufactured in the licensed establishment;

(5) It shall be prohibited from owning or operating, or being affiliated with any other manufacturer, importer, or supplier of alcoholic liquor either in or without this State.

(c) It shall be unlawful for a person to operate a brewery-pub if:

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

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

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

(d) This Section shall not prohibit the granting of a restaurant license to sell alcoholic liquors, for on-premises consumption, as provided in §512 of this Title.

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

Section 2. Amend §554, Subchapter IV, Chapter 5, Title 4 of the Delaware Code by adding thereto a new subsection, designated as subsection (ff), which new subsection shall read as follows:

"(ff) For a brewery-pub license, the fee shall be \$1,000."

Approved February 11, 1992.

## CHAPTER 206

## FORMERLY

## HOUSE BILL NO. 354

## AS AMENDED BY HOUSE AMENDMENT NO. 1 AND SENATE AMENDMENT NO. 1

## AN ACT TO AMEND CHAPTER 25, TITLE 24, DELAWARE CODE RELATING TO PHARMACY.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE: (Two-thirds of all members elected to each House thereof concurring therein):

Section 1. Amend Chapter 25, Title 24, Delaware Code by striking said chapter in its entirety and substituting in lieu thereof the following:

## "CHAPTER 25. PHARMACY

The Practice of Pharmacy in the State of Delaware is declared a learned professional practice affecting the public health, safety and welfare and is subject to regulation and control in the public interest. It is further declared to be a matter of public interest and concern that the Practice of Pharmacy, as defined in this Act, merit and receive the confidence of the public and that only qualified persons be permitted to engage in the practice of Pharmacy in the State of Delaware. This Act shall be liberally construed to carry out these objects and purposes.

It is the purpose of this Act to promote, preserve and protect the public health, safety and welfare by and through the effective control and regulation of the Practice of Pharmacy and of the registration of Drug Outlets engaged in the manufacture, production, sale and distribution of drugs, medications, and such other materials as may be used in the diagnosis and treatment of injury, and prevention of illness and disease.

## SECTION 2502 Definitions as used in this Chapter

1. "Board," "Board of Pharmacy," or "State Board of Pharmacy" as used in this Chapter means Delaware State Board of Pharmacy.
2. "Dispense" or "Dispensing" means the preparation and delivery of a prescription drug pursuant to a lawful order of a practitioner in a suitable container appropriately labeled for subsequent administration or use by a patient or other individual entitled to receive the prescription drug.
3. "Drug" means (i) substances recognized as drugs in the official United States Pharmacopoeia/National Formulary or any supplement to any of them; (ii) substances intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in man or animals; (iii) substances (other than food) intended to affect the structure or any function of the body of man or animals; (iv) substances intended for use as a component of any article specified in clause (i) (ii), (iii) of this subsection. It does not include devices or their components, parts or accessories.
4. "Drug outlets" mean pharmacies, in-state or out-of-state wholesalers, manufacturers, and non pharmacy veterinary outlets.
5. "Intern" means a person registered by the Board supervised by an approved preceptor, who is completing practical experience requirements of the Board prior to licensure.
6. "Internship/Externship" means a period of practical experience established by Board regulation that must be completed by applicants applying for licensure in the State.
7. "Manufacturer" means anyone who is engaged in manufacturing, preparing, propagating, compounding, processing, packaging, repackaging, or labeling of a drug, excluding the dispensing of a drug pursuant to a prescription.
8. "Over-the-Counter Medication," "OTC," means medicines or drugs which may be sold without a prescription and which are packaged for use by the consumer and labeled in accordance with the requirements of the statutes and regulations of this State and the Federal Government.

9. "Pharmacist" means an individual licensed by this state to engage in the Practice of Pharmacy in compliance with applicable Federal and State Statutes and Regulations.

10. "Pharmacist-in-Charge" means a person licensed by the State of Delaware to engage in the Practice of pharmacy; who has overall responsibility for compliance with Statutes and Regulations that apply to the operation of a pharmacy.

11. "Pharmacy" means an establishment licensed as such by the Board where pharmacy may be practiced.

12. "Practice of Pharmacy" means the interpretation and evaluation of authorized prescriber's order. This process shall include, but not be limited to, the proper compounding, dispensing, labeling, packaging, and administering of a drug to the patient or his/her agent. The practice shall include the application of the pharmacist's knowledge of pharmaceuticals, pharmacology, pharmacokinetics, drug and food interactions, drug product selection, and patient counselling. It shall also include:

- a. Maintenance of proper records.
- b. Proper safe storage of drugs.
- c. Participation in drug utilization and or drug regimen review.
- d. Participation in therapeutic drug selection and substitution of therapeutically equivalent drug products.
- e. Advisor to the practitioner as well as to the patient regarding the total scope of drug therapy, so as to deliver the best care possible.
- f. The ability of a pharmacist to recommend over-the-counter products.
- g. Monitoring drug therapy to determine if there is any potential problem with doses, combinations of medications ordered or non-compliance with the prescriber's orders.
- h. The teaching of pharmacy, the practice in an industrial setting which is directly related to the Practice of Pharmacy and the activities of licensed pharmacists who are involved with administrative duties, which are directly related to the Practice of Pharmacy.

13. "Practitioner" means any person who is authorized by law to prescribe drugs in the course of professional practice or research in this State.

14. "Preceptor" means a registered pharmacist approved by the Board who supervises an intern.

15. "Prescription Drug" or "Legend Drug" means any drug required by Federal or State law or regulation to be dispensed only by a prescription, including finished dosage forms and active ingredients subject to section 503(b) of the Federal Food, Drug and Cosmetic Act.

16. "Prescription Drug Order" means a lawful written or verbal order of a practitioner for a drug.

17. "Wholesale distribution" and "wholesale distributions" means distribution of drugs to persons other than a consumer or patient, but does not include:

- a. The purchase or other acquisition by a hospital or other health care entity which is a member of a group purchasing organization of a drug for its own use from the group purchasing organization or from other hospitals or health care entities which are members of such organizations;
- b. The sale, purchase, or trade of a drug or an offer to sell, purchase, or trade a drug by a charitable organization described in



section 501(c)(3) of the Internal Revenue Code of 1954 to a nonprofit affiliate of the organization to the extent otherwise permitted by law;

c. The sale, purchase, or trade of a drug or an offer to sell, purchase, or trade a drug among hospitals or other health care entities which are under common control;

d. The sale, purchase, or trade of a drug or an offer to sell, purchase, or trade a drug for emergency medical reasons;

e. The sale, purchase or trade of a drug, an offer to sell, purchase, or trade a drug, or the dispensing of a drug pursuant to a prescription; or

f. A transfer of prescription drugs by a pharmacy to another pharmacy to alleviate a temporary shortage.

18. "Wholesaler distributor" means any one engaged in wholesale distribution of drugs, including, but not limited to, manufacturers' and distributors' warehouses, chain drug warehouses, and wholesale drug warehouses; independent wholesale drug traders; and pharmacies that conduct wholesale distributions.

19. "Therapeutically Equivalent" means drugs which contain the same active ingredient(s) and are identical in strength or concentration, dosage form and route of administration which are classified as being therapeutically equivalent in the latest edition or supplement of F.D.A.'s Approved Drug Product List.

20. "Approved Drug Products with Therapeutic Equivalent Evaluations" means a text containing a list of prescription drug products by generic name prepared from time to time by the Food and Drug Administration which contains therapeutic evaluations.

#### SECTION 2503 State Board of Pharmacy; Appointment

(A) The State Board of Pharmacy, heretofore established and hereinafter in this Chapter referred to as the "Board," shall consist of nine (9) persons who shall be appointed by the Governor for terms of three (3) years from the first day of July in the year of appointment.

(1) Five (5) of the nine (9) persons appointed shall be:

(a) Graduates of a school or college of pharmacy accredited by the American Council on Pharmaceutical Education at the time of graduation; and

(b) Licensed as pharmacists in this State; and

(c) Residents of this State and actively engaged in the Practice of Pharmacy in this State; and

(d) Have five (5) years of experience in the Practice of Pharmacy in this State after licensure.

(e) Three (3) of the five (5) shall reside in New Castle County, one (1) in Kent County, and one (1) in Sussex County.

(f) The Governor shall appoint a committee of six (6) persons who are residents of the State, at least three members of the committee will be pharmacists licensed in Delaware. That Committee will review the nominations and make recommendations to the Governor. Such nominations shall be recommendations only and shall not be binding in any manner upon the Governor.

(2) Four (4) of the nine (9) persons shall be appointed by the Governor and shall be known as the "public members." Said public members shall be residents of this State who have attained the age of majority and shall not be nor ever have been a member of the profession of pharmacy, or a person who has ever had any material financial interest in the providing of pharmacy service, nor shall they have been related to someone engaged in the practice of

pharmacy, nor shall they be engaged in any activity directly related to the practice of pharmacy.

(b) Vacancies occurring for any reason other than the expiration of term shall be filled by the Governor for the remainder of the unexpired term.

(c) Before entering upon the discharge of their official duties, the members of the Board shall take and subscribe the oath as provided in Article XIV of the Constitution.

#### SECTION 2504 Terms of Office.

##### (A) Length.

Except as provided in subsection (b), members of the Board of Pharmacy shall be appointed for a term of three (3) years beginning July 1 in the year of appointment, except that members of the Board who are appointed to fill vacancies which occur prior to the expiration of a former member's full term shall serve the unexpired portion of such term.

##### (B) Staggered Terms.

(1) The terms of the members of the Board shall be staggered, so that the terms of no more than three (3) members shall expire in any year.

(2) Members of the Board at the time of enactment of this Chapter shall serve the balance of their terms.

##### (C) Successorship.

A person who has never served on the Board may be appointed to the Board two consecutive times, but no such person shall thereafter be eligible for two consecutive appointments. No person who has been twice appointed to the Board, or who has served on the Board for six years within any nine-year period, shall again be appointed to the Board until an interim period of at least one term has expired since such person last served.

(D) Any act or vote by a person appointed in violation of subsection (C) shall be invalid. An amendment or revision of this Chapter is not sufficient cause for any appointment or attempted appointment in violation of subsection (C), unless such amendment or revision amends this section to permit such appointment.

#### SECTION 2505 Removal of Board Members

##### (A) Grounds.

The Governor may remove a member of the Board for cause for one or more, but not limited to, the following grounds:

(1) The refusal or inability for any reason of a Board Member to perform his duties as a member of the Board in an efficient, responsible and professional manner;

(2) The misuse of office by a member of the Board, whether or not to obtain personal pecuniary or material gain or advantage for himself or another through such office;

(3) The violation of this Act or any of the rules and regulations adopted hereunder.

(4) Misconduct or incompetencies in the performance of his duties.

#### SECTION 2506 Organization.

##### (A) Officers.

The Board shall elect from its members a President and such other officers as it deems appropriate and necessary to the conduct of its business. The President of the Board shall preside at all meetings of the Board and shall be responsible for the performance of all of the duties and functions of the Board required or permitted by this Act. Each additional officer elected by

the Board shall perform those duties normally associated with his position and such other duties assigned to him from time to time by the Board.

(B) Terms of Office.

Officers elected by the Board shall serve terms of one (1) year commencing with the day of their election, and ending upon election of their successors.

(C) Executive Secretary.

The Board shall elect annually, a licensed pharmacist who shall be an ex-officio member of the Board without vote to serve as Executive Secretary. The Executive Secretary shall be responsible for the performance of the regular administrative functions of the Board and such other duties as the Board may direct.

SECTION 2507 Compensation.

The members of the Board shall receive the sum of at least fifty dollars (50 dollars) for each day, or fraction of a day, actually employed in the discharge of their official duties and their necessary expenses while engaged therein. Each member may not receive more than \$500 each year in salary.

SECTION 2508 Meetings

(a) Number.

The Board shall meet at least six (6) times a year to transact its business. One such meeting held during each fiscal year of the State shall be designated as the annual meeting and shall be for the purpose of electing officers and for the reorganization of the Board. The Board shall meet at such additional times as it may determine. Such additional meetings may be called by the President of the Board, or by two-thirds of the members of the Board.

(b) Place.

The Board shall meet at such place as it may from time to time determine. The place for each meeting shall be determined prior to giving notice of such meeting.

(c) Notice.

Notice of all meetings of the Board shall be given in a manner and pursuant to requirements prescribed by law.

(d) Quorum.

A majority of the members of the Board shall constitute a quorum for the conduct of a Board meeting and, except where a greater number is required by this Act, or by any rule or regulation of the Board, all actions of the Board shall be by a majority of a quorum.

(e) Open Meetings.

All Board meetings and hearings shall be open to the public in accordance with the law.

SECTION 2509 Rules and Regulations.

The Board shall make, adopt, amend and repeal such rules and regulations as may be deemed necessary by the Board, from time to time, for the proper administration and enforcement of this Act. Such rules and regulations shall be promulgated in accordance with the procedures specified in the Administrative Procedures Act of this State. All rules and regulations adopted prior to the enactment of this Chapter shall remain valid as if enacted pursuant to this Section unless inconsistent with this Chapter.

SECTION 2510 Licensure Responsibility

The Board shall be responsible for the control and regulation of the Practice of pharmacy in this State including, but not limited to, the following:

- (1) The licensing by examination or by reciprocity of applicants who are qualified to engage in the Practice of Pharmacy under the provisions of this Act.
- (2) The renewal of licenses to engage in the Practice of Pharmacy;
- (3) The determination and issuance of standards for recognition and approval of degree programs of schools and colleges of pharmacy whose graduates shall be eligible for licensure in this State, and the specification and enforcement of requirements for practical training, including internship.

#### SECTION 2511 Medications, Drugs, and Other Materials.

##### (A) Responsibility.

The Board shall also have the following responsibilities in regard to medications, drugs, and other materials used in this State in the diagnosis, mitigation and treatment or prevention of injury, illness and disease.

- (1) The regulation of the sale and the dispensing of medications, drugs, and other materials including the right to seize any such drugs, and other materials found to be detrimental to the public health and welfare by the Board in accordance with 16 Del. C. Chapter 33;
- (2) The specifications of minimum professional and technical equipment, environment, supplies and procedures for the compounding and/or dispensing of such medications, drugs, and other materials within the Practice of Pharmacy;
- (3) The control of the purity and quality of such medications, drugs, and other materials within the Practice of Pharmacy;
- (4) The issuance and renewal of certificates of registration of drug outlets for purposes of ascertaining those persons engaged in the manufacture and distribution of drugs.

(B) The Board shall enforce the provisions of, and promulgate rules and regulations to carry out, the law relating to pure drugs, as provided by 3315, Chapter 33 of Title 16.

#### SECTION 2512 Other Duties, Powers and authority.

The Board shall have such other duties, powers and authority as may be necessary to the enforcement of this Act and to the enforcement of Board rules and regulations made pursuant thereto, which shall include, but are not limited to, the following:

##### (A) Professional Associations.

The Board may join such professional organizations and associations organized exclusively to promote the improvement of the standards of the Practice of Pharmacy for the protection of the health and welfare of the public and whose activities assist and facilitate the work of the Board and may pay such amount as is necessary for the annual dues.

##### (B) Seal.

The Executive Secretary of the Board shall keep the seal of the Board and shall affix it only in such manner as may be prescribed by the Board.

(C) The legal services will be provided by the Department of Justice pursuant to Chapter 25 of Title 29.

##### (D) Reports.

The Board shall submit a written report to the Governor and to the Delaware Pharmaceutical Society within three (3) months after the conclusion of the fiscal year.

(E) The President and Secretary may administer oaths in all matters before the Board.

(F) The Board may issue subpoenas to require the attendance of persons and the production of books and papers for the purpose of conducting investigations preliminary to hearings and for the purpose of eliciting testimony at hearings. Persons who have been subpoenaed may be required to testify in any and all matters within the jurisdiction of the Board. Subpoenas shall be issued by the President or the Executive Secretary of the Board and enforceable by Superior Court.

(G) Fees.

All persons who are qualified under this Chapter shall be entitled to a renewal biennially by submitting the fee required as well as showing evidence of compliance with the continuing education requirements established by the Board if applicable. Registrants who do not pay the fee by the date due shall be assessed an additional \$10. The amount to be charged for each fee imposed under this Chapter shall approximate and reasonably reflect all costs necessary to defray the expenses of the Board as well as the proportional expenses incurred by the Division of Professional Regulation in its service on behalf of the Board. There shall be a separate fee charged for each service or activity, but no fee shall be charged for a purpose not specified in this Chapter. The application fee shall not be combined with any other fee or charge. At the beginning of each calendar year, the Division of Professional Regulation, or any other State agency acting in its behalf, shall compute, for each separate service or activity, the appropriate Board fees for the coming year.

(H) Grants.

The Board may receive and expend funds from parties other than the State, provided:

(1) Such funds are awarded for the pursuit of a specific objective which the Board is authorized to accomplish by this Act, or which the Board is qualified to accomplish by reason of its jurisdiction or professional expertise;

(2) Such funds are expended for the pursuit of the objective for which they are awarded;

(3) Activities connected with or occasioned by the expenditures of such funds do not interfere with or impair the performance of the Board's duties and responsibilities and do not conflict with the exercise of the Board's powers as specified by this Act;

(4) Such funds are kept in a separate, special State account; and

(5) Periodic reports are made to the Governor concerning the Board's receipt and expenditure of such funds.

(6) The Board has the power to contract for the specific objective of the grant.

## SUB CHAPTER II Pharmacists

### SECTION 2513 Certificate requirement; exceptions.

(A) No person who has not been issued a certificate as a pharmacist within the meaning of this Chapter shall conduct or manage any pharmacy, drug or chemical store, apothecary shop or other place of business for the compounding or dispensing of any drugs, or chemicals which require by law a practitioner's authority or for the compounding of prescriptions, except as provided in this Chapter.

(B) No person who has not been issued a certificate as a pharmacist within the meaning of this Chapter shall compound, dispense, any drug, chemical, or

pharmaceutical preparation upon the prescription of a practitioner or otherwise or compound prescriptions, or order, except as an aid to or under the supervision of a person holding a certificate as a pharmacist under this Chapter.

(C) No owner or manager of a pharmacy, or drug store, or other place of business, shall cause or permit any person other than one holding a certificate as a pharmacist to compound, dispense any drug, or medicine, except as an aid to or under the supervision of a person holding a certificate as a pharmacist.

(D) Nothing in this section shall be construed to interfere with:

(1) Any legally registered practitioner of the healing arts licensed under the law of this State to dispense or compound his own prescriptions or to prevent him supplying to his patients such medicines as he may deem proper; or

(2) The selling at retail of over-the-counter preparations; or

(3) The sale of non controlled drugs designated for veterinary use which require a prescription by a business not licensed as a pharmacy; provided that:

(a) The business is registered with the Board;

(b) The sale is authorized by a written or oral order from a veterinarian licensed in this or another State.

(1) Prior to dispensing an order from an out-of-state veterinarian, the seller must confirm and document that the veterinarian is properly licensed in his State.

(2) Oral orders must be confirmed by the veterinarian in writing no later than 72 hours after the seller receives the order.

(c) The written order or confirmation of an oral order must be retained on the premises of the business for at least two years after the original date of the order.

(E) Anyone who was licensed as an assistant pharmacist prior to the effective date of this Act shall hereby be considered pharmacists under this Act.

#### SECTION 2514 Application for license; examination

Every person who desires to be licensed as a pharmacist shall:

(1) File with the Secretary of the Board an application accompanied by a fee that reflects the cost of the examination, duly verified under oath, setting forth

(i) the name and age of the applicant;

(ii) the place or places at which he studied and the time spent in the study of the science and art of pharmacy; and

(iii) his experience in the compounding of practitioners' prescriptions which he had under the direction of a legally licensed pharmacist; and

(2) Appear at a time and place designated by the Board and submit to an examination as to his qualifications for registration as a licensed pharmacist.

#### SECTION 2515 Qualifications of Applicants for License.

(A) An applicant for a license as a pharmacist, except a renewal license, shall:

1) Have graduated from a school or college of pharmacy accredited by the American Council on Pharmaceutical Education at the time of

graduation or, in the event that the applicant is a graduate of a foreign school, have graduated and received the first professional undergraduate degree from a pharmacy degree program which has been approved by the Board.

(2) Pass a National examination as may be approved by the Board.

(3) Internship and Other Training Programs.

(a) All applicants for licensure by examination shall obtain practical experience in the Practice of Pharmacy concurrent with or after college attendance or both, under such terms and conditions as the Board shall determine. The Board shall also determine the necessary qualifications of any preceptors used in any internship or other programs.

(4) Be of good moral character.

#### SECTION 2516 Qualifications for Licensure by Reciprocity

##### (A) Requirements.

To obtain a license as a pharmacist by reciprocity, an applicant for licensure shall:

(1) Have submitted a written application in the form prescribed by the Board.

(2) Have attained the age of majority.

(3) Have good moral character.

(4) Have possessed at the time of initial licensure as a pharmacist such other qualifications necessary to have been eligible for licensure at that time in this State.

(5) Have presented to the Board proof of initial licensure by examination and proof that such license and any other license or licenses granted to the applicant by any other State or States have not been suspended, revoked, cancelled or otherwise restricted for any reason except non-renewal or the failure to obtain required continuing education credits in any State where the applicant is licensed but not engaged in the practice of Pharmacy.

(6) Have paid the fees specified by the Board for issuance of a license.

##### (B) Eligibility.

No applicant shall be eligible for licensure by reciprocity unless the state in which the applicant was initially licensed as a pharmacist also grants reciprocal licensure to pharmacists duly licensed by examination in this State, under like circumstances and conditions.

#### SECTION 2517 Renewal of License.

(A) On or before the first day of January biennially, each pharmacist shall make application to the Secretary of the Board for a renewal of license.

(B) Every licensed pharmacist who desires to continue in the practice of his profession shall, within thirty (30) days next preceding the expiration of his license, file with the Board an application for the renewal thereof, which application shall be accompanied by the fee prescribed in 2513 of this Title. If the Board finds that the applicant has been legally licensed in this state and is entitled to a renewal of license, it shall issue to him a certificate attesting to that fact.

(C) If any pharmacist fails for a period of 60 days after the expiration of his license, to make application to the Board for its renewal, his name shall be erased from the register of licensed pharmacists. Such person in order to again become registered as a licensed pharmacist shall be required to pay all such biennial registration fees as had become due since the year his

name was dropped as herein provided and shall also comply with the Board's Continuing Education requirements for relicensure for such years.

(D) Continuing education. No renewal certificates shall be issued to a pharmacist pursuant to this Section unless such pharmacist has submitted proof to the Board of the required number of continuing education units obtained through the satisfactory completion of an accredited program of continuing professional education prescribed by Board Regulation. The number of continuing education units (CEU's) required for relicensure shall not exceed 3 CEU's during any biennial registration. One CEU is equivalent to 10 hours of continuing education. Any continuing education program that is currently approved by the American Council on Pharmaceutical Education will automatically qualify for continuing education credit. The Board shall renew the license of a pharmacist who has completed a recognized alternative program of compliance. Alternative programs may include any other program which the Board deems equivalent to completing required continuing education units.

#### SECTION 2518 Discipline

(A) The Board may refuse to issue or renew or may suspend, revoke or restrict the license of any person after due notice and hearing pursuant to procedures established in compliance with Chapter 101 of Title 29, Administrative Procedures Act, upon one or more of the following grounds:

- (1) Procuring or attempting to procure a license by fraud or intentional misrepresentation;
- (2) Incapacity of a nature that prevents a pharmacist from engaging in the practice of pharmacy with reasonable skill, competence and safety to the public. This would include incapacity due to mental incompetence, a physical condition, addiction to alcohol or narcotics or other dangerous drugs.
- (3) Guilty of any act involving moral turpitude or gross immorality;
- (4) Guilty of a felony as defined by the Statutes of this State or the United States;
- (5) Guilty of engaging or aiding and abetting an individual to engage in the practice of Pharmacy without a license;
- (6) Guilty of any dishonorable, unethical or unprofessional conduct likely to deceive, defraud or harm the public;
- (7) Gross negligence or incompetence in his practice as a pharmacist.
- (8) Failure to notify the Board that his license to practice pharmacy has been subject to discipline, surrendered, suspended, or revoked by another Board; or if the registrant has been found guilty of a felony.
- (9) Failure to provide the report required by section 2522.

(B) Upon due notice and hearing, the Board may revoke or suspend any license granted pursuant to this Chapter, if the Board determines that the licensee, or a person employed by the pharmacy has violated any provision of this Chapter, any regulation promulgated pursuant to section 2509 of this Title or any law of this State or of the United States.

(C) The hearing be conducted in accordance with the Administrative Procedures Act Chapter 101 of Title 29.

(D) Any person aggrieved by an order of the Board may appeal therefrom to the Superior Court in the County where such person resided within thirty days (30 days) after receipt of such order. If the hearing is held in absentia, the order must be appealed within thirty days (30 days) of issuance. The appeal to the Superior Court shall be on the record of the proceedings before the Board.

#### SECTION 2519 Emergency Suspension

By a decision of five members, the Board may suspend any license prior to a hearing simultaneously with the scheduling of a hearing if it finds that the pharmacist continuing the practice is an imminent danger to the public



health and safety which warrants this action. The suspension shall continue in effect until the conclusion of the proceedings, including judicial review thereof, unless sooner withdrawn by the Board or stayed by the Superior Court. The hearing must be held no later than thirty days (30 days) from the date of service of the suspension order unless continued at the request of the licensee.

#### SECTION 2520 Register

If the applicant for license as a pharmacist has complied with the requirements sections 2514 and 2515 and 2516 of this title, the Board shall enroll his name upon the register of pharmacists and issue him a license which shall entitle him to practice as pharmacist for the remainder of the renewal period. A certificate may be replaced if lost or destroyed upon the payment of \$10 by the registrant.

#### SECTION 2521 Use of Title

No person not legally licensed as a pharmacist shall take, use or exhibit the title of pharmacist, or licensed or registered pharmacist or the title, druggist, or apothecary, or pharmacy or medicine store or any other title or description of like import.

#### SECTION 2522 Impaired Pharmacists; Reporting, Disciplinary Action

(A) The Board may defer and ultimately take no action with regard to an impaired licensee who voluntarily reports to the Board that he is impaired and voluntarily signs an agreement, in a form satisfactory to the Board, agreeing to not practice Pharmacy and to enter an approved treatment program in accordance with this Section, provided that this Section should not apply to a licensee who has been convicted of, pleads guilty to, or enters a plea of nolle contendere to a felonious act prohibited by 16 Del. C. Ch. 47 or a conviction relating to a controlled substance in a court of law of the United States or any other state, territory or country. A licensee who is physically or mentally impaired due to addiction to drugs or alcohol may qualify as an impaired pharmacist and have disciplinary action deferred and ultimately waived only if the Executive Secretary of the Board is satisfied that such action will not endanger the public and the licensee enters into an agreement with the Board for a treatment plan approved by the Board, progresses satisfactorily in such treatment program, complies with all terms of the agreement and all other applicable terms of part C of this Section. Failure to enter into such agreement or to comply with the terms and make satisfactory progress in the treatment program shall disqualify the licensee from the provisions of this Section and the Board shall activate an immediate investigation and disciplinary proceedings. Upon completion of the rehabilitation program in accordance with the agreement signed by the Board the licensee may apply for permission to resume the practice of Pharmacy upon such conditions as the Board determines necessary. Upon resumption of practice, licensee's records shall not reflect any disciplinary action and all records concerning his impairment shall be sealed and not considered public records open to public inspection; provided however, that licensee consents that should a further incident of the impairment come to light, the Board may consider these records in imposing future disciplinary action.

(B) The Board may defer and ultimately dismiss disciplinary action brought under 2518 of this Chapter with regard to an impaired licensee who does not qualify under subsection A so long as the licensee is progressing satisfactorily in an approved treatment program in accordance with this Section. A licensee who is physically or mentally impaired due to addiction to drugs or alcohol may qualify as an impaired pharmacist and have disciplinary action deferred only if the Board finds that such action will not endanger the public and the licensee enters into an agreement with the Board for a treatment plan approved by the Board and progresses satisfactorily in such treatment program and complies with all terms of the agreement.

(C) The Board may require a licensee to enter into an agreement which includes, but not be limited to, the following provisions:

1. Licensee agrees that his license shall be suspended or revoked indefinitely under subsection (B) or who has voluntarily agreed not to practice under subsection (A) hereof.

2. Licensee will enroll in a treatment program approved by the Board.

3. Licensee agrees that failure to satisfactorily progress in such treatment program shall be reported to the Board by the treating professional who shall be immune from any liability for such reporting made in good faith.

4. Licensee consents to the treating physician or professional of the approved treatment program reporting to the Board on the progress of licensee at such intervals as the Board deems necessary and such person making such report will not be liable when such reports are made in good faith.

(D) The ability of an impaired pharmacist to practice shall only be restored and charges dismissed when the Board is satisfied by the reports it has received from the approved treatment program that licensee can resume practice without danger to the public.

(E) Licensee consents, in accordance with applicable law, to the release of any treatment information from anyone within the approved treatment program.

(F) The impaired licensee who has enrolled in an approved treatment program and entered into an agreement with the Board in accordance with subsection B hereof shall have his license suspended or revoked but enforcement of this suspension or revocation shall be stayed by the length of time the licensee remains in the program and makes satisfactory progress, and complies with the terms of the agreement and adheres to any limitations on his practice imposed by the Board to protect the public. Failure to enter into such agreement or to comply with the terms and make satisfactory progress in the treatment program shall disqualify the licensee from the provisions of this Section and the Board shall activate an immediate investigation and disciplinary proceedings.

(G) Any pharmacist who has substantial evidence that a licensee has an active addictive disease for which the licensee is not receiving treatment under a program approved by the Board pursuant to an agreement entered into under this Section, is diverting a controlled substance, or is mentally or physically incompetent to carry out the duties of his/her license, shall make or cause to be made a report to the Board. Any person who reports pursuant to this Section in good faith and without malice shall be immune from any civil or criminal liability arising from such reports. Failure to provide such a report within a reasonable time from receipt of knowledge may be considered grounds for disciplinary action against the licensee so failing to report, in accordance with 2518 of this Chapter.

#### SECTION 2523 Penalties.

(A) Whoever, not being licensed as a pharmacist, conducts or manages any drug store, pharmacy or other place of business for the compounding, dispensing or sale of any drugs, or medicine, or for the compounding of physicians' prescriptions, contrary to section 2513 of this Title shall be fined not less than one hundred dollars (100 dollars) nor more than one thousand dollars (1,000 dollars).

(B) Whoever, not being licensed as a pharmacist, compounds, dispenses or sells any drug, medicine, or pharmaceutical preparation, either upon a prescription or otherwise; and whoever, being the owner or manager of a drug store, pharmacy or other place of business, causes or permits anyone not licensed as a pharmacist, to dispense, sell or compound any drug, medicine, or prescriptions contrary to Section 2513 of this Title shall be fined not less than \$100 nor more than \$1,000.

(C) Whoever, being the holder of any license granted under this Chapter, continues, after the expiration of such license, and without renewing the same, to carry on the business for which such license was granted, contrary to section 2514 of this Title, shall be fined not less than one hundred dollars (100 dollars) nor more than one thousand dollars (1,000 dollars).

(D) Any person not legally licensed as a pharmacist or pharmacy who takes, uses or exhibits the title, "pharmacist," or the title, "druggist," or

"apothecary" or a "pharmacy" or "medicine store" or any other title or description of like import, contrary to section 2521 of this Title shall be fined not less than one hundred dollars (100 dollars) nor more than one thousand dollars (1,000 dollars). Each week that such a violation exists shall constitute a separate and distinct offense.

(E) Justices of the Peace shall have original jurisdiction to hear offenses under this Chapter.

#### SUB CHAPTER III Pharmacies

##### SECTION 2524 Permit Required for Each Pharmacy

No person shall operate any pharmacy within this State without first having obtained a permit to do so from the Board. If anyone desires to operate, maintain, open, or establish more than one pharmacy, separate applications shall be made and separate permits issued for each. No permit granted by the Board shall be assigned or otherwise transferred to another person except upon such conditions as the Board might specifically designate and then only pursuant to a written consent from the Board. A separate permit is not required for sites designated as pharmacies within the same institution at one general location provided that those sites are approved by the Board.

##### SECTION 2525 Application and Fee for Permit

The application for a permit required by this Statute shall be made on a form to be prescribed and furnished by the Board and shall be accompanied by a fee established in Section 2512 of this Chapter.

##### SECTION 2526 Requirements for an Issuance of Permit

In determining if a permit should be issued, the Board shall consider the following factors:

1. The Pharmacy will be conducted in full compliance with the law and with rules and regulations of the Board.

2. The Pharmacy will be managed by a pharmacist-in-charge properly registered in the State who can only serve in that position for one pharmacy.

3. The location and appointments of the pharmacy are such that it can be operated and maintained without endangering public health and safety. In determining a danger to the public health or safety, the Board shall consider the following factors:

- (a) Applicant, principal, or anyone having controlling ownership interest is of good moral character.

- (b) Any conviction of applicant, principal, or anyone having controlling ownership interest under Federal or any State's law for deceptive business practices or violations of drug law.

- (c) Any actions by a regulatory agency against the permit holder or applicant, principal or anyone having controlling ownership interest for violations of its Statutes and Regulations.

4. The application shall contain the name of a pharmacist-in-charge who will assume the responsibility in writing for compliance with the pharmacy, Controlled Substances and other applicable Statutes and Regulations.

5. No permit shall be issued for the conduct of a pharmacy unless the premises of such a pharmacy shall be equipped with proper sanitary appliances and kept in a clean and orderly manner.

##### SECTION 2527 Hearings on applications; notice; hearing, records

(A) Before refusing an application to conduct a pharmacy, and in other cases where deemed advisable, the Board shall hold a hearing at which time, the applicant shall be afforded an opportunity to be heard.

(B) Notice shall be given and the hearing conducted in accordance with the Administrative Procedures Act (Chapter 101 of Title 29) and this Chapter.

#### SECTION 2528 Renewal and Lapse of Permit

(A)(1) Prior to the expiration date of a permit each drug outlet will receive a renewal notice.

(2) If the permit holder fails for a period of sixty (60) days after the expiration of the license to make application to the Board for renewal, that person's name will be removed from the register of licensed drug outlets.

(3) No new permit will be granted except:

(a) Upon evidence to the Board of good and sufficient grounds for the failure to file the application for renewal within the time prescribed; and (b) Upon payment of fees set forth in Section 2512 of this Title.

(B) If a prescription department is going to be closed for more than seven (7) consecutive business days, the Board must be notified five (5) days prior to the temporary closing. The procedure established by Board regulation must be followed.

(C) The permit shall terminate if and when there is a transfer of a controlling interest in the business, or the business ceases legal existence or discontinues business or professional practice.

(D) If a pharmacy closes permanently the Board must be notified fourteen days (14 days) prior to the closing. The closing must be in compliance with regulations established by the Board.

#### SECTION 2529 Revocation or Suspension of Permit; Notice and Hearing

(A) The Board may, after due notice and opportunity for hearing, revoke or suspend any permit when examination or inspection of the pharmacy discloses that such pharmacy is not being conducted according to law or is being so conducted as to endanger the public health or safety.

(B) If the prescription department of any store having a permit to conduct a pharmacy is closed for more than fourteen day (14 day) consecutive days, the Board may revoke or suspend the pharmacy permit that had been granted to that store, unless it be shown to the Board that the closing of the prescription department was due to a cause satisfactory to the Board.

(C) In determining a danger to the public health or safety, the Board shall consider the following factors:

(1) Compliance with applicable State and Local Statutes and Regulations.

(2) Any conviction of the principle or anyone having controlling ownership interest under Federal or any State's law other than minor traffic offenses.

(3) Any action by a Regulatory Agency against the permit holder for violations of its Statutes or Regulations.

(4) Whether the principle or anyone having controlling ownership interest is of good moral character.

#### SECTION 2530 Appeals to Superior Court

Any person to whom the Board has refused to issue a permit to conduct a pharmacy or whose permit has been suspended or revoked may appeal from the decision and order of the Board to the Superior Court of the county in which the pharmacy or proposed pharmacy in question is or is intended to be located at any time within thirty days (30 days) after the date of the receipt by the applicant or permit holder of the decision of the Board. The appeal to the Superior Court shall be on the record of the proceedings before the Board.

#### SECTION 2531 Availability of Permit Expiration Date

Permits issued under the provisions of this Sub Chapter shall:

- (1) Be available on site for inspection by authorized persons.
- (2) Expire on the last day of December biennially.
- (3) Not be transferrable.

SECTION 2532 Equipment Requirements; Penalty

(a) The Board shall prescribe the minimum of the professional and technical equipment and texts which a pharmacy shall at all times possess.

(b) Whoever violates this Section shall be fined not more than fifty dollars (50 dollars).

SECTION 2533 Prescriptions; Preservation of Record

Every proprietor or manager of a pharmacy shall keep a suitable book or file, in which shall be preserved for a period of not less than three years (3 years) the original of every prescription compounded or dispensed at such pharmacy. Such book or file of original prescriptions shall at all times be open to inspection by duly authorized agents of the Board and the Board of Health.

SECTION 2534 Prescription Department; Custody of Keys; Absence of Custodian:

Sign; Merchandise

(A) The owner of the business or the pharmacist making application for a permit to conduct a pharmacy must agree to place his entire stock of prescription drugs, chemicals and preparations used in compounding medicines and prescriptions, and all opened packaged drugs, liquids, tablets, pills or preparations of whatever character the dispensing or sale of which is restricted to a registered pharmacist, in a room or adequately partitioned-off section of the pharmacy or storeroom, which room or section must be provided with a door or doors which can be locked when the store is without the attendance and supervision of a pharmacist.

(B) No one but a pharmacist shall be able to unlock and lock the prescription department.

(C) There must be a sign in the vicinity of the prescription department which shows the names of the pharmacists employed at the pharmacy or at least the pharmacist on duty.

(D) Nothing contained in this Section shall be construed to prevent the use of the balance of the store for the sale of other merchandise when the room or partitioned-off section shall be closed and locked as provided for in this section.

(E) When the requirements of this section are faithfully complied with, a pharmacist may be absent from the pharmacy without the necessity of closing the merchandising section of the store. During such absence, the prescription room, or partitioned-off section must be locked until the return of the pharmacist to duty.

(F) No permit shall be issued for the operation of a pharmacy unless the prescription department, being the room or partitioned-off section aforementioned, meets the following requirements:

1. The department shall occupy at least 250 square feet of floor space excluding a storage room.
2. The prescription counter must be at least 18 inches wide. It must have four linear feet, kept clear and free of all merchandise and other materials not currently in use in the practice of dispensing and compounding, for each pharmacist working concurrently on dispensing and compounding.

3. The counter shall contain an additional space for computers if that is applicable.

4. The aisle behind the counter must be at least 30 inches wide and shall be kept free of obstruction at all times. Prescription departments which exist on the effective date of this section are exempt from these requirements unless the department is enlarged or relocated within the store.

#### SECTION 2535 Inspections

(A) The Board and its duly authorized agents and representatives and the State Board of Health and its duly authorized agents and representatives may inspect in a lawful manner the medicines or drugs or drug products or domestic remedies which are manufactured, packed, packaged, made, sold, distributed, dispensed, offered for sale, exposed for sale or kept for sale in the State and for this purpose may enter and inspect during business hours any pharmacy or other place in this State where medicines or drugs or drug products or domestic remedies are manufactured, packed, packaged, made, distributed, dispensed, sold, offered for sale, exposed for sale or kept for sale.

(B) Authorized agents of the Board may inspect and copy records required to be kept by this Chapter; inspect within reasonable limits and in a reasonable manner, premises and all pertinent equipment, finished and unfinished materials, containers and labeling found therein. All other things, therein, including records, files, papers processes, controls and facilities bearing on a violation of this Chapter; and inventory any stock of medications therein and obtain samples thereof.

#### SECTION 2536 Labeling

(A) Any person prescribing any drug to be prepared by a pharmacist for the use of a patient or any third person must, as a part of the prescription, include directions describing the exact method by which the drug or medicine prescribed must be taken or administered. Blank prescriptions or prescriptions solely bearing the notation "as directed" are prohibited.

(B) Any pharmacist licensed within this State to dispense drugs or fill prescriptions issued by practitioner shall affix to every container in which any drug is sold or dispensed, a label containing the following information:

- (1) The prescription number;
- (2) The date such drugs were originally dispensed to the patient;
- (3) The patient's full name;
- (4) The brand or established name and strength of the drug to the extent that it can be measured;
- (5) The practitioner's directions as found on the prescription;
- (6) The practitioner's name;
- (7) The name and address of the dispensing pharmacy or practitioner.

(C) Practitioners who, for good reason, do not wish to reveal the name or strength of the drug prescribed to the patient shall so inform the pharmacist by a notation on the face of the prescription. However, practitioners who sell or dispense drugs directly to patients shall label all such drugs in accordance with this section with the exception of a prescription number.

#### Section 2537 Penalties

Whoever violates this Sub Chapter, except Section 2532 of this Title, shall be fined not more than twenty-five dollars (25 dollars) for each offense. Every day any such violation continues shall constitute a separate and distinct offense.

#### Section 2538 Non-Resident Pharmacies

Any pharmacy located outside this State which ships, mails, or delivers in any manner, controlled substances or any prescription drugs into the State shall be considered a non-resident pharmacy for the purposes of this

subchapter. No non-resident pharmacy shall ship, mail or deliver any controlled substance or prescription drug to a patient in this State unless first having obtained a permit from the Board.

#### Section 2539 Service of Process; Registered Agent

Each non-resident pharmacy shall designate a resident agent in Delaware for Service of Process. Any such non-resident pharmacy that does not so designate a registered agent that ships, mails or delivers prescription drugs or controlled substances into the State of Delaware shall be deemed to have appointed the Secretary of State of the State of Delaware to be its true and lawful attorney upon whom may be served all legal process in any action or proceeding against such pharmacy growing out of or arising from such shipping, mailing or delivering prescription drugs or controlled substances.

A copy of such Service of Process shall be mailed to the non-resident pharmacy by the complaining party by certified mail, return receipt requested, at the address of such non-resident pharmacy as designated on the application for a permit filed with the Board. Any such non-resident pharmacy which does not obtain a permit in this State, shall be deemed to have consented to Service of Process on the Secretary of State as sufficient service.

#### Section 2540 Conditions of Permit

A non-resident pharmacy shall:

(A) Provide the location, names and titles of all principal corporate officers and all pharmacists who are dispensing prescription drugs or controlled substances to residents of this State. A report containing this information shall be made upon application for a permit, on a biennial basis thereafter, and within 30 days after any change of office, corporate officer, or pharmacist.

(B) Certify that it complies with all lawful directions and requests for information from regulatory or licensing agencies of the State in which it is licensed and will comply with all such requests made by the Board pursuant to this section. The non-resident pharmacy shall maintain, at all times, a valid unexpired license, permit or registration to conduct the pharmacy which complies with the laws of the State in which it is a resident. A non-resident pharmacy must maintain patient profiles in compliance with the Board regulations and must comply with the Delaware Drug Product Selection Act, 24 Del. C. Section 2553, and must provide pertinent patient medication information. Prior to being issued a permit, the non-resident pharmacy must provide the Board with a copy of the most recent inspection report and thereafter must provide the Board with inspection reports within 60 days after receipt from the regulatory licensing agency of the State in which it is a resident.

(C) Certify that it maintains its records of prescription drugs dispensed to patients in this State so that the records are readily retrievable from the record of drugs dispensed for other patients.

(D) As a condition of being granted a permit under this section, a non-resident pharmacy agrees that during its regular hours of operation, but not less than 6 days per week, for a minimum of 40 hours per week, it will provide a toll-free telephone service to facilitate communications between patients in this State and pharmacists at the facility who have access to the patients' records and that this toll-free number shall be disclosed on the label affixed to each container of drugs dispensed to patients in this State.

(E) The Board will report any action it takes against the non resident pharmacy to the Board in the State where the pharmacy is physically located.

#### SUB CHAPTER IV Pharmaceutical Establishments other than Pharmacies

Section 2541 Requirements as to Pharmaceutical Activities not carried on in a Pharmacy.

(A) No drugs, medicines, toilet preparations, dentifrices or cosmetics shall be manufactured, made, produced, packed, packaged, or prepared within this State except under the personal and immediate supervision of such

persons as may be approved by the Board after investigation and determination by the Board that they are qualified by scientific or technical training or experience to perform such duties of supervision as may be necessary to protect the public health and safety.

(B) No person shall manufacture, make, produce, pack, package, prepare or distribute on a wholesale basis to persons other than the ultimate consumer any such articles without first obtaining a permit so to do from the Board.

(C) The permit shall be subject to such rules and regulations with respect to storage and handling of drugs, the establishment and maintenance of drug distribution records, and compliance with Federal, State, and Local Law as the Board may from time to time adopt for the protection of the public health and safety.

(D) Nothing in this subchapter shall be construed to apply to those operating pharmacies.

#### Section 2542 Applications and fees for permits.

(A) The application for a permit required under Section 2525 of this Title shall be made on the form to be prescribed and furnished by the Board and shall be accompanied by a fee of two hundred dollars (200 dollars).

(B) Separate applications shall be made and separate permits issued for each separate place of manufacture, making, production, and packing, packaging, preparation or distribution on a wholesale basis to persons other than the ultimate consumer.

(C) Applicants must meet the minimum requirements for persons engaged in the wholesale distribution of drugs mandated by 21 CFR Part 205.

#### Section 2543 Permits; display; transfer; term

Permits issued under the provisions of this subchapter shall:

- (1) Be displayed in a conspicuous place in the laboratory or place for which issued;
- (2) Not be transferable;
- (3) Expire on the last day of December biennially.

#### Section 2544 Inspections

(A) The Board and its duly authorized agents and representatives and the State Board of Health and its duly authorized agents and representatives may inspect in a lawful manner the medicines or drugs or drug products or domestic remedies which are manufactured, packed, packaged, made, sold, distributed, dispensed, offered for sale, exposed for sale or kept for sale in the state and for this purpose may enter and inspect during business hours any pharmacy or other place in this State where medicines or drugs or drug products or domestic remedies are manufactured, packed, packaged, made, distributed, dispensed, sold, offered for sale, exposed for sale or kept for sale.

(B) Authorized agents of the Board may inspect and copy records required to be kept by this Chapter; inspect within reasonable limits and in a reasonable manner, premises and all pertinent equipment, finished and unfinished material, containers and labeling found therein. All other things, therein, including records, files, papers processes, controls and facilities bearing on a violation of this Chapter and inventory any stock of medications therein and obtain samples thereof.

#### Section 2545 Hearings.

Any person aggrieved by any Board decision, rule, or regulation promulgated by the Board under this subchapter shall be entitled to have his complaint set down for hearing by the Board. Requests for such hearings shall be made in writing and shall specify in detail the basis for the complaint. The hearing shall be conducted in accordance with the Administrative Procedures Act, Chapter 101 of Title 29.



### Section 2546 Appeals to Superior Court

Any person aggrieved by an order of the Board may appeal therefrom to the Superior Court in the county where such person resided within thirty (30) days after receipt of such order. If the hearing is held in absentia, the order must be appealed within thirty (30) days of issuance. The appeal to the Superior Court shall be on the record of the proceedings before the Board.

### Section 2547 Penalties

(A) Whoever violates this subchapter; or whoever, being a permittee under this subchapter, violates any of the conditions of his permit or any of the rules or regulations adopted by the Board in pursuance of its power shall be fined not more than fifty dollars (50 dollars) for each offense. Each day such violation continues shall constitute a separate and distinct violation.

(B) In addition to the penalties set out in Subsection A above, upon conviction of a permittee under this section, or a finding by the Board of a violation of this subchapter or the Prescription Drug Marketing Act, the Board may suspend or revoke the permit.

### SUB CHAPTER V Prohibited Acts; Penalties Generally; Enforcement

Section 2548 Use of certain descriptive titles. Nothing in this chapter shall be construed to prohibit the use of the phrase, "proprietary medicine store," "patent medicine store" or "health and beauty aids."

### Section 2549 Fraud; misrepresentations; false affidavits.

(A) Any permit or renewal thereof obtained through fraud or by any false or fraudulent representation shall be void and of no effect in law.

(B) Whoever makes any false or fraudulent representation for the purpose of procuring a license, or renewal thereof, either for himself or for another, shall be fined not less than one hundred dollars (100 dollars) nor more than one thousand dollars (1,000 dollars).

### Section 2550 Entry and inspection; penalty.

Whoever in any manner hinders an entry or inspection under Section 2544 and section 2535 of this Title shall be fined not more than five hundred dollars (500 dollars) for each offense.

### Section 2551 Jurisdiction.

Justice of the Peace shall have jurisdiction over any offenses under this Chapter.

### Section 2552 Prosecution; duty of Attorney General.

Upon receiving information that any provisions of this chapter have been or are being violated, the Executive Secretary of the Board shall investigate the matter, and, upon probable cause appearing, shall, under the direction of the Board, file a complaint and prosecute the offender before the Board. The Attorney General, upon request of the Executive Secretary, shall take charge of and conduct the prosecutions.

### Section 2553 Substitution of drugs; penalty; exception.

(A) Substitution prohibited. - Any person or corporation engaged in the business of selling drugs, medicines, chemicals or preparations for medicinal use or of compounding or dispensing physicians' prescriptions, who shall, in person or by his or its agents or employees, or as agent or employee of some other person, knowingly sell or deliver to any person a drug, medicine, chemical or preparation for medicinal use, recognized or authorized by the latest edition of the United States Pharmacopoeia/National Formulary, or prepared according to the private formula of some individual or firm, other or different from the drug, medicine, chemical or preparation for medicinal use, recognized or authorized by the latest edition of the United States Pharmacopoeia/National Formulary, or prepared according to the private formula of some individual or firm, ordered or called for by such person, or called for in a physician's prescription, shall be punished by a fine of not less than one hundred dollars (100 dollars) nor more than five hundred

dollars (500 dollars) or by not less than one month nor more than twelve months imprisonment or both.

(B) Dispensing therapeutically equivalent drug product permitted. Notwithstanding subsection (a) of this Section, when a pharmacist receives a prescription for a brand or trade name drug product, the pharmacist may dispense a therapeutically equivalent drug product if the following conditions are met:

(1) The prescriber, in the case of a written prescription, places his signature on the signature line alongside the words "substitution permitted" provided for pursuant to subsection (c) or, in the case of a verbal prescription, states that substitution may be made, or in the case of an order written in an institution licensed by the State Board of Health pursuant to Chapters 10 or 11 of Chapter 16, the prescriber has given his written authorization to fill all orders for drugs with therapeutically equivalent drug products, unless otherwise indicated;

(2) The pharmacist informs the patient or the patient's adult representative that a generic drug has been dispensed which results in a monetary savings for the patient;

(3) The pharmacist indicates on the prescription label the name of the manufacturer or distributor of the drug substituted, unless the prescriber otherwise indicates. In addition, the pharmacist shall record on the prescription the name of the manufacturer or distributor of the substituted drug product; and

(4) The drug is therapeutically equivalent according to the United States Food and Drug Administration's "Approved Prescription Drug Products with Therapeutic Equivalents Evaluations" and its supplements.

(C) Prescription form. - Every prescription written in this State by a person authorized to prescribe drugs and licensed in State by a person authorized to prescribe drugs and licensed in Delaware shall be on prescription forms containing two (2) lines for the prescriber's signature. Alongside the first line shall be clearly printed the words, "Dispense as Written;" alongside the second signature line shall be clearly printed the words, "Substitution Permitted." Prescription forms containing the appropriate signature lines shall be used by every prescriber of prescription drugs.

#### Section 2554 Emergency Refills, Non Controlled Substances

A pharmacist may dispense a 72-hour supply of a non controlled drug to a patient whose refill authorization has expired under the following conditions:

1. The pharmacist has attempted to reach the prescriber and determine he/she is not available.
2. The medication is essential for the continuation of therapy for a chronic condition in the pharmacist's professional judgment.
3. The prescription was originally dispensed at the pharmacy.
4. The refill date, quantity dispensed, and pharmacist's initials must appear on both the original prescription and profile.
5. The prescriber must be notified either in writing or verbally about the pharmacist's action. The date of the notification must be documented on the prescription and profile.
6. Each prescription can only be refilled in this manner one time.

#### Section 2555 Authority of the Board to impose fines; appeal to Superior Court

(A) Whenever the Board has found a holder of a license to practice pharmacy or the holder of a pharmacy permit to be guilty of a violation of the rules of the Board or this Chapter, in addition to the power and authority granted to the Board by this Chapter, the Board shall have the power and authority to impose a fine on the licensee or the permit holder and to require

that the license or the permit holder pay a fine with regard to such violation with the sanction that the license or permit may be suspended until the fine is paid. Prior to the imposition of any fine, the Board shall hold an investigation and hearing after notice to the licensee or his attorney and the fine shall only be imposed and required to be paid if the Board formally finds that the public welfare and morals would not be impaired by the imposition of the fine and that the payment of the sum of money will achieve the desired disciplinary purposes.

(B) No fine imposed by the Board may exceed five hundred dollars (500 dollars) for each violation of this Chapter, nor shall the Board impose a fine on a licensee or a permit holder where the license of such licensee or permit holder has been revoked by the Board of Pharmacy for such violation. The power and authority of the Board of Pharmacy to impose such fines is not to be affected by any other proceeding, civil or criminal, concerning the same violation, nor shall the imposition of such fine preclude the Board from imposing other sanctions short of revocation.

(C) Any person so fined may appeal to the Superior Court of the County in which the alleged violation was committed or in the County where the premises of the permit are located, provided the appeal is taken at any time within thirty days (30) after the receipt by the applicant of the decision of the Board. The appeal to the Superior Court shall be on the record of the proceedings before the Board.

#### SUB CHAPTER VI Pharmacy Peer Review

##### Section 2556 Immunity of Officials Reviewing Prescription Records and Pharmacists' Work.

The members of the Board and pharmacists who are members of pharmaceutical society committees, whose functions are to review prescription records and pharmacists' work with the view to the validity, quality, and appropriateness of service, shall jointly and severally not be subject to, and shall be immune from, claim, suit, liability, damages or any other recourse, civil or criminal arising from any act or proceeding, decision or determination undertaken, performed or reached in good faith and without malice by any such member or members acting individually or jointly in carrying out the responsibilities, authority, duties, powers and privileges of the offices conferred by law upon them under this Chapter, or any other provisions of law or duly adopted rules and regulations of the aforementioned committees, good faith being presumed until proven otherwise with malice required to be shown by the complainant.

Approved February 11, 1992.

## CHAPTER 207

## FORMERLY

## HOUSE BILL NO. 280

AN ACT TO AMEND AN ACT BEING CHAPTER 288, VOLUME 64, LAWS OF DELAWARE, AS AMENDED, ENTITLED "AN ACT TO REINCORPORATE THE TOWN OF LAUREL" TO PERMIT QUARTERLY SUPPLEMENTAL ASSESSMENTS OF REAL ESTATE.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (Two-thirds of all members elected to each House concurring therein):

Section 1. Chapter 288, Volume 64, Laws of Delaware, as amended, be and the same is hereby further amended by adding following Section 26 a new Section to be designated as Section 26A to read as follows:

"SUPPLEMENTAL ASSESSMENT OF TAXES

Section 26A.

(a) In addition to the annual valuation or assessment provided for in Section 26 of this Charter, the Board of Assessment may, at its option, prepare quarterly supplemental assessment rolls for the purpose of:

(1) Adding property not included on the last assessment; or

(2) Increasing the assessed value of property which was included on the last assessment. The supplemental assessment roll may be used to correct errors on the prior assessment and to remove or modify any exemption from taxation applicable to property in the Town.

(b) Such supplemental assessment roll shall be prepared quarterly in each fiscal year. The first such supplemental assessment roll shall be certified to the Town Council on October 1 of each year; the second on December 1 of each year; the third on February 1 of each year; and the fourth on May 1 of each year.

(c) On the date of certification of a supplemental assessment roll to the Town Council:

(1) The property owners listed thereon shall be liable to pay taxes equal to the assessed valuation of the property and multiply it by the tax rates for the then current fiscal year applicable to the property, reduced by twenty-five percent (25%) where the property is listed on the second supplemental assessment roll; by fifty percent (50%) where the property is listed on the third supplemental assessment roll; and by seventy-five percent (75%) where the property is listed on the fourth supplemental assessment roll; and

(2) The amount of such tax shall be and remain and a lien on such property, together with any penalties which might thereafter accrue, until such taxes and penalties are fully paid.

(d) In no case shall the supplemental assessment procedure be employed to impose taxes retroactively.

(e) Immediately after receiving the supplemental assessment list from the Board of Assessment, the Town Council shall cause a full and complete copy of the same, containing the amount assessed to each taxable to be hung in a public place in The Town of Laurel and there it shall remain for a period of at least ten (10) days for the information and examination by all concerned. Appended thereto and also in five (5) or more public places in said Town shall be posted notices advertising to all concerned that upon a certain day mentioned therein and not earlier than ten (10) days after the date of posting of the true and correct copy of the supplemental assessment list and notices that, at the next regular meeting of the Town Council, the Town Council will hold a Court of Appeals at which time and place they shall hear appeals from the said supplemental assessment. The decision of the Town Council sitting as the Board of Appeals shall be final and conclusive and said Town Council shall revise and complete said supplemental assessment at this sitting. No member of the Town Council shall sit upon his own appeal but the same shall be heard and determined by the other Councilmen.

that the license or the permit holder pay a fine with regard to such violation with the sanction that the license or permit may be suspended until the fine is paid. Prior to the imposition of any fine, the Board shall hold an investigation and hearing after notice to the licensee or his attorney and the fine shall only be imposed and required to be paid if the Board formally finds that the public welfare and morals would not be impaired by the imposition of the fine and that the payment of the sum of money will achieve the desired disciplinary purposes.

(B) No fine imposed by the Board may exceed five hundred dollars (500 dollars) for each violation of this Chapter, nor shall the Board impose a fine on a licensee or a permit holder where the license of such licensee or permit holder has been revoked by the Board of Pharmacy for such violation. The power and authority of the Board of Pharmacy to impose such fines is not to be affected by any other proceeding, civil or criminal, concerning the same violation, nor shall the imposition of such fine preclude the Board from imposing other sanctions short of revocation.

(C) Any person so fined may appeal to the Superior Court of the County in which the alleged violation was committed or in the County where the premises of the permit are located, provided the appeal is taken at any time within thirty days (30) after the receipt by the applicant of the decision of the Board. The appeal to the Superior Court shall be on the record of the proceedings before the Board.

#### SUB CHAPTER VI Pharmacy Peer Review

##### Section 2556 Immunity of Officials Reviewing Prescription Records and Pharmacists' Work.

The members of the Board and pharmacists who are members of pharmaceutical society committees, whose functions are to review prescription records and pharmacists' work with the view to the validity, quality, and appropriateness of service, shall jointly and severally not be subject to, and shall be immune from, claim, suit, liability, damages or any other recourse, civil or criminal arising from any act or proceeding, decision or determination undertaken, performed or reached in good faith and without malice by any such member or members acting individually or jointly in carrying out the responsibilities, authority, duties, powers and privileges of the offices conferred by law upon them under this Chapter, or any other provisions of law or duly adopted rules and regulations of the aforementioned committees, good faith being presumed until proven otherwise with malice required to be shown by the complainant.

Approved February 11, 1992.

## CHAPTER 207

## FORMERLY

## HOUSE BILL NO. 280

AN ACT TO AMEND AN ACT BEING CHAPTER 288, VOLUME 64, LAWS OF DELAWARE, AS AMENDED, ENTITLED "AN ACT TO REINCORPORATE THE TOWN OF LAUREL" TO PERMIT QUARTERLY SUPPLEMENTAL ASSESSMENTS OF REAL ESTATE.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (Two-thirds of all members elected to each House concurring therein):

Section 1. Chapter 288, Volume 64, Laws of Delaware, as amended, be and the same is hereby further amended by adding following Section 26 a new Section to be designated as Section 26A to read as follows:

"SUPPLEMENTAL ASSESSMENT OF TAXES

Section 26A.

(a) In addition to the annual valuation or assessment provided for in Section 26 of this Charter, the Board of Assessment may, at its option, prepare quarterly supplemental assessment rolls for the purpose of:

(1) Adding property not included on the last assessment; or

(2) Increasing the assessed value of property which was included on the last assessment. The supplemental assessment roll may be used to correct errors on the prior assessment and to remove or modify any exemption from taxation applicable to property in the Town.

(b) Such supplemental assessment roll shall be prepared quarterly in each fiscal year. The first such supplemental assessment roll shall be certified to the Town Council on October 1 of each year; the second on December 1 of each year; the third on February 1 of each year; and the fourth on May 1 of each year.

(c) On the date of certification of a supplemental assessment roll to the Town Council:

(1) The property owners listed thereon shall be liable to pay taxes equal to the assessed valuation of the property and multiply it by the tax rates for the then current fiscal year applicable to the property, reduced by twenty-five percent (25%) where the property is listed on the second supplemental assessment roll; by fifty percent (50%) where the property is listed on the third supplemental assessment roll; and by seventy-five percent (75%) where the property is listed on the fourth supplemental assessment roll; and

(2) The amount of such tax shall be and remain and a lien on such property, together with any penalties which might thereafter accrue, until such taxes and penalties are fully paid.

(d) In no case shall the supplemental assessment procedure be employed to impose taxes retroactively.

(e) Immediately after receiving the supplemental assessment list from the Board of Assessment, the Town Council shall cause a full and complete copy of the same, containing the amount assessed to each taxable to be hung in a public place in The Town of Laurel and there it shall remain for a period of at least ten (10) days for the information and examination by all concerned. Appended thereto and also in five (5) or more public places in said Town shall be posted notices advertising to all concerned that upon a certain day mentioned therein and not earlier than ten (10) days after the date of posting of the true and correct copy of the supplemental assessment list and notices that, at the next regular meeting of the Town Council, the Town Council will hold a Court of Appeals at which time and place they shall hear appeals from the said supplemental assessment. The decision of the Town Council sitting as the Board of Appeals shall be final and conclusive and said Town Council shall revise and complete said supplemental assessment at this sitting. No member of the Town Council shall sit upon his own appeal but the same shall be heard and determined by the other Councilmen.

(f) The Board of Assessment shall be present on the day fixed for hearing appeals to the supplemental assessment and shall furnish the Town Council such information that answers such questions as the Town Council may require in respect to any supplemental assessment from which that appeal has been taken. The Town Council shall have the authority to enforce the attendance of the members of the Board of Assessment by appropriate process."

Approved February 11, 1992.

#### CHAPTER 208

#### FORMERLY

#### HOUSE BILL NO. 364

AN ACT TO AMEND CHAPTER 17, TITLE 18, DELAWARE CODE, RELATING TO AGENTS, BROKERS, SOLICITORS AND ADJUSTERS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend §1715(f), Chapter 17, Title 18, Delaware Code, by adding thereto a new subsection (3) to read as follows:

"(3) Life insurance or annuity products used solely to fund a pre-arranged funeral program".

February 11, 1992.

## CHAPTER 209

## FORMERLY

## HOUSE BILL NO. 151

AN ACT TO AMEND CHAPTER 137, VOLUME 61, LAWS OF DELAWARE, AS AMENDED ENTITLED "AN ACT TO REINCORPORATE THE TOWN OF DELMAR" AS IT RELATES TO SUPPLEMENTAL ASSESSMENTS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (Two-thirds of all members elected to each House thereof concurring therein):

Section 1: Amend Section 27, Chapter 137, Volume 61, Laws of Delaware, as amended, by adding a new subsection designated as (F) as follows:

"(F). (1) In addition to the annual assessment provided for herein, the Town Council may direct the Board of Assessment to prepare a quarterly supplemental list for the purpose of adding property not included on the last assessment or increasing the assessed value of property which was included on the last assessment. The supplemental list may be used to correct errors on the prior assessment rolls and to remove or modify any exemption from taxation applicable to property in the town.

(2) Such supplemental list shall be prepared quarterly in each fiscal year. The first such supplemental list shall be certified on July 1 of each year; the second on October 1 of each year; the third on January 1 of each year; and the fourth on April 1 of each year.

(3) On the date of certification of a supplemental list, the property owners listed thereon shall be liable to pay taxes equal to the assessed value of the property multiplied by the tax rate for the current year applicable to the property, reduced by twenty-five percent (25%) where the property is listed on the second supplemental assessment roll; fifty percent (50%) where the property is listed on the third assessment roll; and by seventy-five percent (75%) where the property is listed on the fourth supplemental assessment roll; and the amount of such tax shall be and remain a lien on the property from the time of its certification. For all taxes paid after the first day of the second month after certification, the interest rate shall be at the rate of one-half of one percent (.5%) per month and an additional sum of one percent (1%) per month as a penalty added until the same shall have been paid. All taxes unpaid after the first day of the second month after certification shall be considered delinquent. After the collection of such delinquent taxes, the Town Council may impose a collection charge not to exceed eighteen percent (18%) of the amount of the tax and any interest or penalty imposed thereon.

(4) Whenever the Board of Assessment places a property on a supplemental assessment roll, it shall deposit notice thereof in the regular mail addressed to the owner of the property effective thereby at the address shown on the assessment rolls; or, if the address of such owner does not appear on the assessment roll, then to the person occupying the property, or if there is no apparent occupant, such notice shall be posted on the land. Such notice shall be given no later than the date on which the supplemental assessment roll on which the property appears is certified to the Town Council.

(5) The Town Council shall publish notices of the places where the supplemental assessment roll may be inspected and the procedure for appeals shall be in accordance with the provisions of section 28(d).

(6) In no case shall the supplemental assessment procedure be employed to impose taxes retroactively."

Approved February 11, 1992.



CHAPTER 210

FORMERLY

HOUSE BILL NO. 429

AN ACT TO AMEND CHAPTER 43, TITLE 21 OF THE DELAWARE CODE RELATING TO MOTOR VEHICLES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Amend Chapter 43, §4313, Title 21 of the Delaware Code by adding thereto a new subsection as follows:

"(d) No person shall be convicted under this section if that person possesses a statement, signed by a licensed medical doctor, verifying that tinted windows are medically required by the owner of said vehicle."

Approved February 11, 1992.

CHAPTER 211

FORMERLY

SENATE BILL NO. 279

AN ACT TO AMEND CHAPTER 1, TITLE 8 OF THE DELAWARE CODE RELATING TO RECORDING OF CORPORATE FILINGS AND RELATED FEES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend §103(c)(4), Title 8 of the Delaware Code by deleting said paragraph in its entirety and substituting in lieu thereof the following:

"The Secretary of State shall collect and disperse to the counties any documents and related county fees for the recording of corporate filings. An administrative charge of one percent of the total county fees shall be retained by the State."

Section 2. Amend §103(c)(5), Title 8 of the Delaware Code by deleting the phrase "The copy of the instrument so certified by" and substituting in lieu thereof the phrase "A copy of the instrument filed with".

Section 3. Amend §103(c)(6), Title 8 of the Delaware Code by deleting the word "certified" as it appears in said paragraph.

Section 4. Amend §103(d), Title 8 of the Delaware Code by deleting the second sentence of said subsection.

Section 5. This Act shall become effective July 1, 1992.

Approved February 11, 1992.

## CHAPTER 212

## FORMERLY

## SENATE BILL NO. 255

AN ACT TO AMEND AN ACT BEING CHAPTER 457, VOLUME 60, LAWS OF DELAWARE, AS AMENDED, ENTITLED "AN ACT TO REINCORPORATE THE TOWN OF MILLSBORO" TO INCREASE THE AMOUNT PERMITTED TO BE RAISED FROM THE TAXATION OF REAL ESTATE AND TO PERMIT QUARTERLY ASSESSMENTS OF REAL ESTATE.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (Two-thirds of all members elected to each House thereof concurring therein):

Section 1. Subsection 30, Section 30, Chapter 457, Volume 60, Laws of Delaware, as amended, be and the same is hereby further amended by striking out the words and figures "five hundred thousand dollars (\$500,000.00) as they appear in said Subsection and substituting in lieu thereof the words and figures "seven hundred fifty thousand dollars (\$750,000.00)".

Section 2. Chapter 457, Volume 60, Laws of Delaware, as amended, be and the same is hereby further amended by adding the following Section 26, a new Section, to be designated as Section 26A to read as follows:

"SUPPLEMENTAL ASSESSMENT

Section 26A.

(a) In addition to the annual assessment provided for in Section 26 of this Charter, the Board of Assessment may, at its option, prepare a quarterly supplemental assessment list for any of the following purposes:

(1) Adding property which was not included on the last annual assessment;

(2) Increasing the assessed value of property which was included in the last assessment;

(3) Correcting errors on the prior annual assessment;

(4) Revising or modifying any exception from taxation applicable to property within the Town;

(b) The supplemental assessment list shall be prepared quarterly by the Board of Assessment and the first such supplemental assessment shall be certified to the Town Council on June 1, the second on September 1, the third on December 1, and the fourth on March 1 of each year.

(c) On the date of certification of the supplemental assessment list of the Town Council by the Board of Assessment each property owner shall be liable for the payment of real estate taxes equal to the assessed value of the property multiplied by the tax rate for the then current fiscal year applicable to the property reduced by twenty-five percent (25%) when the property is listed on the second supplemental assessment list, fifty percent (50%) when the property is listed on the third supplemental assessment list and by seventy-five percent (75%) when the property is listed on the fourth supplemental assessment list and the amount of such tax, together with any interest, penalty and collection charge shall be a lien for a period of ten (10) years and such lien shall have preference and priority to all other created liens on real estate or upon improvements located on land under lease as prescribed in the Charter or suffered by said property owner although such lien or liens be of a date prior to the time of the attaching of such lien for taxes.

(d) Whenever the Board of Assessment places a property on a supplemental assessment list, he shall deposit notice thereof in the regular mail addressed to the owner of the property affected thereby at the address shown on the assessment list, or if the address of such owner does not appear on the assessment list, then to the person occupying the property, or if there is no apparent occupant, such notice shall be posted on the property. Such notice shall be given no later than the date on which the supplemental list on which the property appears is certified to

the Town Council by the Board of Assessment. The certification by the Board of Assessment that the notice required by this Subsection was mailed or posted, as the case may be, shall be conclusive evidence that notice to the property owner was received.

(e) The Board of Assessment shall publish a notice of the place or places where the supplemental assessment list may be inspected together with a notice of the time and place in the Town when the Town Council, not earlier than ten (10) days from the date of the last publication, shall sit, between the hours of one o'clock in the afternoon, prevailing time, and five o'clock in the afternoon, prevailing time, to hear appeals. Such notice shall appear at least once a week for two (2) consecutive weeks in a newspaper of general circulation in the Town. The decision of the Town Council sitting as a Board of Appeals, shall be final and conclusive and the said Town Council shall revise and complete the said supplemental assessment at this sitting. Neither the Mayor nor any member of the Town Council shall sit upon his appeal but the same shall be held and determined by the other members of the Town Council.

(f) Pending determination of the appeal, the property owner may either pay the tax imposed by the supplemental assessment and if on appeal the assessment is reduced, the property owner shall be entitled to a refund of the taxes which he has overpaid plus interest thereon at the rate of one percent (1%) per month for each month or fraction thereof from the date of payment or the property owner may decline to pay the tax imposed by the supplemental assessment in which case, interest and penalties shall accrue at the rate of one percent (1%) per month for each month or fraction thereof that the taxes remain unpaid from the expiration of thirty (30) days following the date of mailing or the posting of the notice, as the case may be, required by this Section.

(g) In the collection of all taxes imposed by the supplemental assessment list, the Town Clerk shall deduct four percent (4%) from the amount of taxes assessed against the real property of any property owner if the property is listed on the second supplemental assessment list, a credit of two and one-half percent (2-1/2%) if property is listed on the third supplemental assessment list, and a credit of two (2%) if the property is listed on the fourth supplemental assessment list and is paid within thirty (30) days following the date of mailing of the notice by the Board of Assessment to the owner of the property.

(h) All taxes imposed by the supplemental assessment list paid more than thirty (30) days following the date that notice is mailed by the Board of Assessment to the property owner as provided for in this Section shall be delinquent."

Approved February 11, 1992.

## CHAPTER 213

## FORMERLY

SENATE BILL NO. 249  
AS AMENDED BY SENATE AMENDMENT NO. 1

AN ACT TO AMEND CHAPTER 90, TITLE 11, DELAWARE CODE, RELATING TO COMPENSATION FOR VICTIMS OF CRIME.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend §9005(1), Chapter 90, Title 11, Delaware Code, by striking the second sentence thereof in its entirety.

Section 2. Amend §9012, Chapter 90, Title 11, Delaware Code, by striking the word "crimes" as it appears therein and substituting in lieu thereof the words "crimes or offenses as defined in §233 of this Title."

Approved February 11, 1992.

## CHAPTER 214

## FORMERLY

## SENATE BILL NO. 221

AN ACT TO AMEND CHAPTER 100, TITLE 3 OF THE DELAWARE CODE RELATING TO THE HARNESS RACING COMMISSION.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Chapter 100, Part X, Title 3 of the Delaware Code by striking §10006 in its entirety; by re-designating present §1007 as new §1006; and by re-designating each succeeding section in Subchapter I accordingly.

Section 2. Amend §10023, Chapter 100, Title 3 of the Delaware Code by striking the last three sentences of subsection (c), and substituting in lieu thereof the following:

"There shall be no racing between the Saturday before and the Saturday after Christmas, unless Christmas falls on a Saturday or Sunday, in which case there shall be no racing between the Monday before Christmas, and the Monday after Christmas. The decision of the Commission regarding racing dates, including concurrent racing dates, shall be final."

Section 3. Amend §10029, Chapter 100, Title 3 of the Delaware Code by striking the period (.) at the end of subsection (a), and substituting in lieu thereof the following:

"; provided however, that where the Commission imposes a penalty on any person, such penalty shall not apply to that person's spouse unless such spouse has committed the same offense."

Approved February 11, 1992.

## CHAPTER 215

## FORMERLY

## SENATE BILL NO. 269

AN ACT TO AMEND CHAPTER 59, TITLE 29 OF THE DELAWARE CODE RELATING TO THE MERIT SYSTEM OF PERSONNEL ADMINISTRATION.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Subsection 5901(a), Chapter 59, Title 29, Delaware Code, by adding a new subsection as follows:

(7) "Merit Comparable Positions" means those positions which for salary determination purposes, are assigned, pursuant to the State Budget Act, classification titles and/or pay grades that are comparable to the titles and/or pay grades of similar positions in the classified service.

Section 2. Amend Subsection 5915, Chapter 59, Title 29, Delaware Code by adding the following sentence at the end of said section: "A written appeal to the Commission also shall be prescribed, in the regulations, for Merit comparable positions."

Approved February 13, 1992.

## CHAPTER 216

## FORMERLY

HOUSE BILL NO. 368  
AS AMENDED SENATE AMENDMENT NOS. 1 AND 2

AN ACT TO AMEND CHAPTER 9, TITLE 29 DELAWARE CODE RELATING TO THE LEGISLATIVE PROCESS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Chapter 9, Title 29, Delaware Code by adding thereto a new §913 to read as follows:

"§913. (A) All legislation proposing new fees or increases in existing fees charged by any state agency shall include therewith an explanation of:

- (1) the purpose of the proposed new fee or fee increase;
- (2) a general identification of the persons, business entities or organizations affected by the legislation;
- (3) impact of the proposed new fees or fee increases on these affected persons, business entities or organizations.
- (4) intended use by the agency of the revenues generated by the new fees or fee increases.

(B) The Office of the Controller General shall conduct such review or audit of the information offered by the agency pursuant to Subsection (a) as is deemed necessary to evaluate the reasons presented for the new fees or fee increases, and shall issue a written report of its findings.

The written report of the Office of the Controller General's findings shall be attached to the legislation by the sponsor of the legislation prior to the legislation's initial committee consideration in the House of origin.

(C) Each House may waive the requirements of this section as to any specific legislation pending before such House by a vote of the majority of all members elected to such House."

Approved February 13, 1992.

## CHAPTER 217

## FORMERLY

## HOUSE BILL NO. 353

AN ACT TO AMEND CHAPTER 11, TITLE 19, DELAWARE CODE RELATING TO WAGE PAYMENT AND COLLECTION.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Chapter 11, Title 19, Delaware Code, by adding a new paragraph (d) to §1102 as follows:

"(d) When the regular payday is within the pay period, overtime compensation (if applicable), compensation for employees hired or resuming employment during the regular pay period (if the pay period does not exceed 16 days), and compensation for part-time or temporary employees with variable working time (if the pay period does not exceed 16 days) must be paid in full no later than the regular payday of the succeeding pay period. If an employer pays an employee more than five (5) calendar days in advance of a regular payday, the employer shall be allowed an additional pay period in which to compensate the employee for overtime hours worked in the previous pay period."

Approved February 13, 1992.

## CHAPTER 218

## FORMERLY

## SENATE BILL NO. 294

AN ACT TO AMEND AN ACT BEING CHAPTER 170, COLUMN 57, LAWS OF DELAWARE, AS AMENDED, ENTITLED "AN ACT TO REINCORPORATE THE CITY OF LEWES" TO INCREASE THE AMOUNT PERMITTED TO BE RAISED FROM THE TAXATION OF REAL ESTATE AND TO PERMIT QUARTERLY ASSESSMENTS OF REAL ESTATE.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (Two-thirds of all members elected to each House thereof concurring therein):

Section 1. Amend Subsection (30), Section 29, Chapter 170, Volume 57, Laws of Delaware, as amended, by striking the phrase "seven hundred fifty thousand dollars (\$750,000.00)" as they appear therein and substituting in lieu thereof the phrase "One Million Five Hundred Thousand Dollars (\$1,500,000.00)."

Section 2. Amend Chapter 170, Volume 57, Laws of Delaware, as amended, by adding thereto a new section to read as follows:

"SUPPLEMENTAL ASSESSMENT

Section 26A

(a) In addition to the annual assessment provided for in Section 26 of this Charter, the Assessor may, at his option, prepare a quarterly supplemental assessment list for any of the following purposes:

- (1) Adding property which was not included on the last annual assessment;
- (2) Increasing the assessed value of property which was included in the last assessment;
- (3) Correcting errors on the prior annual assessment;
- (4) Revising or modifying any exemption from taxation applicable to property within the City;

(b) The supplemental assessment list shall be prepared quarterly by the Assessor and the first such supplemental assessment shall be certified to the City Council on May 1, the second on August 1, the third on November 1, and the fourth on February 1 of each year.

(c) On the date of certification of the supplemental assessment list to the City Council by the Assessor each property owner shall be liable for the payment of real estate taxes equal to the assessed value of the property multiplied by the tax rate for the then current fiscal year applicable to the property; reduced by twenty-five percent (25%) when the property is listed on the second supplemental assessment list; fifty percent (50%) when the property is listed on the third supplemental assessment list; and seventy-five percent (75%) when the property is listed on the fourth supplemental assessment list. The amount of such tax, together with any interest, penalty and collection charge shall be a lien for a period of ten (10) years from the date of certification of the supplemental assessment list to the City Council by the Assessor and such lien shall have preference and priority to all other liens created or suffered on real estate or upon leaseholds or upon improvements located on land under lease as prescribed in this Charter although such lien or liens be of a date prior to the time of the attaching of such lien for taxes.

(d) Whenever the Assessor places a property on a supplemental assessment list, he shall deposit notice thereof in the regular mail addressed to the owner of the property affected thereby at the address shown on the assessment list, or if the address of such owner does not appear on the assessment list, then to the person occupying the property, or if there is no apparent occupant, such notice shall be posted on the property. Such notice shall be given no later than the date on which the supplemental list on which the property appears is certified to the City Council by the Assessor. The certification by the Assessor that the notice

required by this Subsection was mailed or posted, as the case may be, shall be conclusive evidence that notice to the property owner was received.

(e) The Assessor shall publish a notice of the place or places where the supplemental assessment list may be inspected together with a notice of the time and place in the City when the City Council, not earlier than ten (10) days from the date of the last publication, shall sit, between the hours of one o'clock in the afternoon, prevailing time, and five o'clock in the afternoon, prevailing time, to hear appeals. Such notice shall appear at least once a week for two (2) consecutive weeks in a newspaper of general circulation in the City. The decision of the City Council sitting as a Board of Appeals, shall be final and conclusive and the said City Council shall revise and complete the said supplemental assessment at this sitting. Neither the Mayor nor any member of the City Council shall sit upon his appeal but the same shall be held and determined by the other members of the City Council.

(f) Pending determination of the appeal, the property owner may either pay the tax imposed by the supplemental assessment and if on appeal the assessment is reduced, the property owner shall be entitled to a refund of the taxes which he has overpaid plus interest thereon at the rate of One Percent (1%) per month for each month or fraction thereof from the date of payment or the property owner may decline to pay the tax imposed by the supplemental assessment in which case, interest and penalties shall accrue at the rate of one percent (1%) per month for each month or fraction thereof that the taxes remain unpaid from the expiration of thirty (30) days following the date of mailing or the posting of the notice, as the case may be, required by this Section.

(g) In the collection of all taxes imposed by the supplemental assessment list, there shall be no deduction nor abatement of the taxes and the City Manager shall add an amount equal to one percent (1%) per month for each month or fraction thereof that such taxes remain unpaid following the expiration of thirty (30) days from the date of mailing or posting, as the case may be, of the notice required under this Section.

(h) All taxes imposed by the supplemental assessment list and paid more than thirty (30) days following the date that notice is mailed by the Assessor to the property owner or posted as provided for in this Section shall be delinquent."

Section 3. Amend Subsection (e), Section 28, Chapter 170, Volume 57, Laws of Delaware, as amended, by striking said Subsection (e) and substituting in lieu thereof a new Subsection (e) to read as follows:

"(e) In the collection of said taxes, the City Manager shall neither deduct nor abate any amount from the tax assessment and shall add an amount equal to one percent (1%) per month for each month or fraction thereof that such taxes remain unpaid following April 30. All taxes unpaid after April 30 of any year shall be considered delinquent."

Approved March 31, 1992.



## CHAPTER 219

## FORMERLY

## SENATE BILL NO. 295

AN ACT WAIVING THE STATUTORY PROVISIONS OF §107(a) OF CHAPTER 1, TITLE 13, DELAWARE CODE, AS IT RELATES TO LEE ROY TIBBETT, IV OF NEWARK, DELAWARE AND AMELIA DAWN LUTZ OF NEW CASTLE, DELAWARE, BOTH RESIDENTS OF THE STATE OF DELAWARE.

WHEREAS, under the provisions of §107(a), Chapter 1, Title 13, Delaware Code, persons intending to be married within this State, who are residents, shall obtain a marriage license at least 24 hours prior to the time of the ceremony; and

WHEREAS, Lee Roy Tibbett, IV, the groom, is a Lance Corporal with the U. S. Marine Corps, stationed in Millington, Tennessee; and

WHEREAS, Lance Corporal Tibbett is unable to get a leave of absence from his base in Tennessee before April 3, 1992, thus making it impossible to comply with the requirements of §107(a) of Title 13, Delaware Code; and

WHEREAS, arrangements have been made with the Clerk of the Peace of New Castle County to either issue a marriage license late Friday evening or early Saturday morning provided, however, a waiver is granted by the State Legislature exempting them from complying with the 24 hour provision.

NOW, THEREFORE:

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Lee Roy Tibbett, IV of Newark, Delaware, presently stationed with the U. S. Marine Corps in Tennessee and Amelia Dawn Lutz of New Castle, Delaware are hereby exempted from the provisions of §107(a), Chapter 1, Title 13, Delaware Code, and are specifically authorized to marry on April 4, 1992. The Clerk of the Peace of New Castle County shall issue to Lee Roy Tibbett, IV and Amelia Dawn Lutz one official marriage license pursuant to this Act, the provisions of §107(a), Chapter 1, Title 13, Delaware Code, or any other law of this State to the contrary notwithstanding.

Approved April 1, 1992.

## CHAPTER 220

## FORMERLY

## SENATE BILL NO. 102

AN ACT TO AMEND CHAPTER 10, TITLE 14, OF THE DELAWARE CODE, RELATING TO QUALIFIED VOTERS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Section 1077, Title 14, Delaware Code, by deleting said section in its entirety and by substituting in lieu thereof a new Section 1077 to read as follows:

"§1077. Qualified Voters

Every citizen 18 years of age or over, and a resident of the reorganized school district shall be eligible to vote at the school election in the reorganized school district in which he resides, whether or not he is at the time a registered voter for purposes of a general election."

Approved April 1, 1992.

## CHAPTER 221

## FORMERLY

## SENATE BILL NO. 30

AN ACT TO AMEND CHAPTER 5, TITLE 11 OF THE DELAWARE CODE RELATING TO PAYMENTS BY CREDIT CARDS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (Two-thirds of all members elected to each House thereof concurring therein):

Section 1. Amend §914(b), Title 11, Delaware Code by deleting paragraphs 2 and 3 in their entirety.

Approved April 9, 1992.

## CHAPTER 222

## FORMERLY

SENATE BILL NO. 38  
AS AMENDED BY SENATE AMENDMENT NO. 1

AN ACT TO AMEND CHAPTER 49, TITLE 15 OF THE DELAWARE CODE RELATING TO CONDUCT OF ELECTION.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend §4937, Title 15, Delaware Code by adding thereto the following subsection:

"(f) The rest of this Title notwithstanding, any voter permitted to enter the voting machine may be accompanied by one of his or her children or wards of not more than ten years of age. Any challenge as to the relationship of the voter to the child and/or the age of the child shall be resolved by the voter signing an affidavit (which shall be prepared by the Election Commissioner) that he or she is the parent or guardian of the child in question and/or that the child is not more than 10 years of age."

Approved April 9, 1992.

## CHAPTER 223

## FORMERLY

SENATE BILL NO. 93  
AS AMENDED BY SENATE AMENDMENT NO. 1

AN ACT TO AMEND CHAPTER 90, TITLE 11, DELAWARE CODE, RELATING TO THE EXPUNGEMENT OF PENALTY ASSESSMENTS AFTER THE ASSESSMENT REMAINS UNCOLLECTED FOR A PERIOD IN EXCESS OF THREE YEARS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend §9012(a), Chapter 90, Title 11, Delaware Code, by striking the period "." immediately following the word "suspended" as the same appears in the third sentence and inserting the following:

"; provided, however, that if the penalty assessment herein imposed remains uncollected for a period in excess of three (3) years, the courts may expunge the record of such assessment."

Approved April 9, 1992.

CHAPTER 224

FORMERLY

SENATE BILL NO. 146  
AS AMENDED BY SENATE AMENDMENT NO. 1

AN ACT TO AMEND CHAPTER 87, TITLE 29, DELAWARE CODE, RELATING TO THE COUNCIL  
ON ARCHIVES AND CULTURAL AFFAIRS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend §8706, Chapter 87, Title 29, of the Delaware Code by deleting said Section in its entirety.

Section 2. Amend §8707, Chapter 87, Title 29, of the Delaware Code by deleting said section in its entirety.

Section 3. Amend §8708, Chapter 87, Title 29, of the Delaware Code by deleting subsection 4 and renumbering the following subsections accordingly.

Approved April 9, 1992.

## CHAPTER 225

## FORMERLY

## SENATE BILL NO. 300

AN ACT TO AMEND SUBCHAPTER I, CHAPTER 41, TITLE 9 OF THE DELAWARE CODE RELATING TO REDISTRICTING BY THE KENT COUNTY LEVY COURT.

WHEREAS, the Kent County Levy Court is bound by the provisions of Sub-chapter I, Chapter 41, Title 9 of the Delaware Code to a particular process and timetable for completing its decennial redistricting; and

WHEREAS, the Levy Court completed its redistricting process within the required time limit and approved new district boundaries by enacting Kent County Ordinance No. 91-07 prior to the enactment of the General Assembly's redistricting legislation; and

WHEREAS, following enactment of the new General Assembly district boundaries on November 4, 1991, the staff of the Kent County Department of Elections found that there were numerous instances in which a "mandated election district" was created by the failure of the new Levy Court district boundaries and the new house and senate district boundaries to match precisely; and

WHEREAS, every one of the mandated election districts in question contains fewer than the 500 registered voters suggested by statute as a reasonable minimum number, with several containing fewer than 25 registered voters; and

WHEREAS, the existence of such small mandated election districts will, if they are left in place until the next redistricting occurs in the year 2001, cost the taxpayers of Delaware many tens of thousands of dollars because of the legal requirement to establish polling places and hire poll workers and other officials for each and every election district in every primary, general and special election; and

WHEREAS, the Kent County Levy Court has been advised by its legal advisors that it does not, under present state law, have the power to adjust its new district boundaries to remove such mandated election districts without being given the specific authority to do so by action of the General Assembly; and

WHEREAS, the Kent County Department of Elections is unable to meet its scheduled legal commitment to establish new election district boundaries and undertake the process of establishing polling places and hiring poll workers for the 1992 election until such time as these problems are resolved.

NOW, THEREFORE:

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend §4106, Subchapter I, Chapter 41, Title 9 of the Delaware Code by adding a new Subsection (f) thereto, to read as follows:

"(f) The Levy Court is authorized to make those adjustments to the new Levy Court boundaries approved by enactment of County Ordinance No. 91-07 which have been identified by the Kent County Department of Elections as being necessary to bring their boundaries into harmony with new house and senate district boundaries, provided, however, that no change shall be made which would have the effect of moving the total population of any levy court district above or below its legally required maximum or minimum population."

Approved April 13, 1992.

## CHAPTER 226

## FORMERLY

## HOUSE BILL NO. 438

AN ACT TO AMEND VOLUME 67, CHAPTER 285, LAWS OF DELAWARE AS IT RELATES TO THE F.Y. 1991 CAPITAL BOND.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (three-fourths of all members elected to each House thereof concurring therein):

Section 1. AMEND Volume 67, Chapter 285 by deleting the work "ext." as it appears on Page A-7 of the F.Y. 1991 Capital Improvements Project Schedule under the line Delaware State College, Humanities Building as it appears in the F.Y. 1991 Capital Improvements Project Schedule.

Approved April 15, 1992.

## CHAPTER 227

## FORMERLY

## HOUSE BILL NO. 412

AN ACT TO AMEND CHAPTER 3, TITLE 25, DELAWARE CODE RELATING TO CONTRACTS FOR THE SALE OF REAL ESTATE.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Chapter 3, Title 25, Delaware Code by adding thereto a new §314 to read as follows:

"§314. Contract requirements for the sale of real estate involving seller financing.

(a) Every contract for the sale of improved or unimproved real estate under which the seller(s) agree to provide any financing for the purchaser(s) shall include as an integral part of the contract a complete amortization schedule for all payments to be made under such financing agreement. Such amortization schedule shall (a) include a per payment breakdown of principal and interest and a per payment computation of the unpaid principal balance remaining, (b) include a statement that the seller(s) and purchaser(s) have read and understand the amortization schedule, and (c) be signed by the seller(s) and purchaser(s).

(b) Every contract for the sale of improved or unimproved real estate under which the seller(s) agree to provide any financing for the purchaser(s) shall clearly state the principal amount of seller financing, exclusive of interest, which comprises the purchase price thereunder, and the amount of any interest to accrue under said seller financing shall not be included in the purchase price stated thereunder.

(c) Failure to comply with the requirements of either subsection (a) or (b) of this section shall make the contract voidable at the option of either party to the contract prior to settlement."

Section 2. This Act shall take effect 90 days following its enactment into law.

Approved April 15, 1992.

## CHAPTER 228

## FORMERLY

HOUSE BILL NO. 30  
AS AMENDED BY SENATE AMENDMENT NOS. 1 AND 2

AN ACT PROPOSING AN AMENDMENT TO ARTICLE V, SECTION 2, OF THE CONSTITUTION OF THE STATE OF DELAWARE RELATING TO QUALIFICATIONS FOR VOTING AND FORFEITURE OF RIGHT.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (Two-thirds of all members elected to each House thereof concurring therein):

Section 1. Amend §2, Article V, of the Constitution of the State of Delaware by adding the following language to the end of said Section:

"Any person who is disqualified as a voter because of a conviction of a crime deemed by law a felony shall have such disqualification removed upon being pardoned, or two years after the expiration of his/her sentence, whichever may first occur.

The term 'sentence' as used in this section shall include all periods of modification of a sentence, such as, but not limited to, probation, parole and suspension. The provisions of this paragraph shall not apply, however, to those persons who were convicted of any felony of murder or manslaughter in any degree."

Approved April 2, 1992.

## CHAPTER 229

## FORMERLY

## SENATE BILL NO. 322

AN ACT TO ALLOW BRIAN M. PATTERSON, A NON-RESIDENT, TO MARRY EVELYN B. TUSKA, A NON-RESIDENT.

WHEREAS, Brian M. Patterson wishes to marry Evelyn B. Tuska on May 16, 1992, in the State of Delaware; and

WHEREAS, both Brian Patterson and Evelyn Tuska wish to be married in the First Presbyterian Church of Newark, since this was their home church while they were in Newark and was central to their lives while pursuing graduate studies at the University of Delaware; and

WHEREAS, being married at First Presbyterian would allow Brian Patterson and Evelyn Tuska to be married among family and friends, including the Church's pastor Barry Dawson; and

WHEREAS, both Brian Patterson and Evelyn Tuska are presently residing in the State of Nebraska; and

WHEREAS, Brian Patterson will not be able to return to Delaware more than 96 hours prior to the time of their scheduled marriage; and

WHEREAS, §107(a), Title 13 of the Delaware Code states that a non-resident of Delaware must wait 96 hours after acquiring a marriage license before the marriage ceremony may take place; and

WHEREAS, Brian Patterson and Evelyn Tuska could be married but for the non-residency requirements of the Delaware Code; and

WHEREAS, it is the public policy of this State to encourage marriage.

NOW, THEREFORE:

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Brian M. Patterson and Evelyn B. Tuska are hereby exempted from the application of §107(a), Title 13 of the Delaware Code and are specifically permitted to marry on May 16, 1992, or within 30 days thereafter; the Clerk of the Peace for New Castle County shall issue to Brian M. Patterson and Evelyn B. Tuska an official marriage license pursuant to this Act, the provisions of Chapter 1, Title 13, or any other law of this State to the contrary notwithstanding.

Approved April 16, 1992.

## CHAPTER 230

## FORMERLY

## SENATE BILL NO. 280

AN ACT TO AMEND CHAPTER 80, TITLE 15 OF THE DELAWARE CODE RELATING TO CAMPAIGN CONTRIBUTIONS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Subsection (d), §8012, Title 15 of the Delaware Code by striking said subsection in its entirety and substituting in lieu thereof the following:

"(d) No agency of the State, no political subdivision of the State, no agency of any political subdivision of the State and no agency authorized by an act of the General Assembly shall make any contribution to any political committee or candidate for any elective office. No candidate, treasurer or other person acting on behalf of a political committee shall accept any contribution from any agency of the State, any political subdivision of the state, any agency of any political subdivision of the State or any agency authorized by an act of the General Assembly. Notwithstanding the foregoing, a political subdivision of the State which has enacted an ordinance providing for public financing of elections shall be permitted to make contributions in an amount authorized by such ordinance for campaign expenditures authorized by §8020 of this Chapter to a candidate committee of a candidate for public office of such political subdivision and the candidate committee shall be permitted to accept such contributions."

Approved April 21, 1992.

## CHAPTER 231

## FORMERLY

## SENATE BILL NO. 236

AN ACT TO AMEND CHAPTER 216, VOLUME 27, LAWS OF DELAWARE, AS AMENDED, RELATING TO THE CHARTER OF THE MAYOR AND COUNCIL OF NEW CASTLE AND THE ANNUAL STATEMENT OF THE CITY'S FINANCES AND FISCAL YEAR OF THE CITY.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (Two-thirds of all members elected to each House thereof concurring therein):

Section 1. Amend Section 22, Chapter 216, Volume 27, Laws of Delaware, as amended by Chapter 118, Volume 38, Laws of Delaware, by striking the word "March" and the phrase "March thirty-first" wherever they appear in paragraphs 1 and 2 thereof and inserting in lieu thereof the word "June" and the phrase "June thirtieth", as appropriate.

Section 2. Amend Section 22, Chapter 216, Volume 27, Laws of Delaware, by striking out the phrase "competent and accredited public accountant" where it appears in paragraph 2 thereof and inserting in lieu thereof the phrase "competent and accredited certified public accountant".

Approved April 22, 1992.



## CHAPTER 232

## FORMERLY

## HOUSE BILL NO. 376

AN ACT TO AMEND CHAPTER 27, TITLE 24 OF THE DELAWARE CODE RELATING TO THE REGULATION OF PROFESSIONAL LAND SURVEYORS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend §2729, Chapter 27, Title 24 of the Delaware Code by striking said section in its entirety and substituting in lieu thereof the following:

"§2729. Expiration and Renewals.

Certificates of registration shall expire biennially on June 30 and shall be renewed upon submission of a renewal application provided by the Board and payment of the renewal fee, along with the evidence of successful completion of continuing education courses as may be required by the rules and regulations set forth by the Board. The Division of Professional Regulation or its designee shall notify every registrant of the date of expiration of his or her certificate and the amount of fee that shall be required for renewal at least one month prior to the expiration thereof. Failure to give or receive such notice shall not prevent the certificate from becoming invalid after its expiration date.

In the event a professional land surveyor, who was previously licensed in Delaware and who has let his/her certificate lapse, is applying for renewal under this section, the Board shall grant a renewal to such applicant, subject to evidence of successful completion of the required continuing education and upon payment of the appropriate fee, which shall not be less than two times the amount of the regular certificate renewal fee as established by the Division of Professional Regulation."

Approved April 22, 1992.

## CHAPTER 233

## FORMERLY

## HOUSE BILL NO. 205

AN ACT TO AMEND CHAPTER 70, TITLE 29 OF THE DELAWARE CODE RELATING TO THE SALE OF STATE-OWNED MATERIAL.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend §7001, Chapter 70, Title 29 of the Delaware Code by striking subsection (a) in its entirety, and substituting in lieu thereof the following:

"(a) As used in this chapter 'Agency' includes every board, department, bureau, commission, person or group of persons or other authority created and now existing or hereafter to be created to execute, supervise, control and/or administer governmental functions under the laws of this State or to perform such other duties as may be prescribed or to whom any moneys are appropriated under any budget appropriation act or supplemental appropriation act or any other act which authorizes and requires any department to collect and/or use any taxes, fees, licenses, permits or other receipts for services or otherwise for the performance of any function of or related to or supported in whole or in part by the laws of this State, and/or created to administer any laws providing for the collection of taxes, fees, permits, licenses or other forms of receipts from any sources whatsoever for the use of the State or any agency of the State."

Section 2. Amend §7002(a), Chapter 70, Title 29 of the Delaware Code by inserting after the words "Department of Administrative Services" and before the words "for appropriate reallocation" the words ",Division of Purchasing" in the second sentence of said subsection.

Section 3. Amend §7002, Chapter 70, Title 29 of the Delaware Code by striking subsection (b) in its entirety and substituting in lieu thereof the following:

"(b) When the Division of Purchasing determines that the material so reported by the agency has additional useful life, the Division of Purchasing shall give two weeks written notice to State agencies and volunteer fire departments of the availability of such material. Requests for such material shall be submitted in writing to the Division of Purchasing. In the event two or more agencies request the same material, the Division shall make the appropriate determination as to allocation."

Section 4. Amend §7002, Chapter 70, Title 29, Delaware Code by striking Subsection (c) in its entirety and substituting in lieu thereof the following:

"(c) In the event that no State agency or volunteer fire department submits a request for such material within the two-week period, the Division of Purchasing shall transfer the material to an appropriate storage area. The material can then be made available to other political subdivisions or nonprofit organizations with tax exempt status under §501(c)(3) of the United States Internal Revenue Code. If the quantity or size of the material makes removal from the site of the disposing agency unwarranted, the Division may arrange for public sale or auction on site."

Section 5. Amend §7002(e), Chapter 70, Title 29, Delaware Code by deleting the word "Finance" as it appears in the third sentence of said subsection and substituting in lieu thereof the phrase "Administrative Services, Division of Purchasing", by deleting the word "Department" as it appears after the words "shall interfere with the right of the" and before the words "to transfer or sell such equipment" in the fourth sentence of said subsection and substituting in lieu thereof the words "Division of Purchasing", and by inserting after the words "Department of Administrative Services" and before the words "upon written request of the agency" as they appear in the fifth sentence of said subsection the words ", Division of Purchasing."

Approved April 22, 1992.

## CHAPTER 234

## FORMERLY

## HOUSE BILL NO. 305

AN ACT TO AMEND TITLES 9, 10 AND 12 OF THE DELAWARE CODE RELATING TO THE SALARIES OF PARTICULAR SUSSEX COUNTY OFFICIALS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend §9402(3), Chapter 94, Title 9 of the Delaware Code by deleting same and substituting in lieu thereof the following:

"(3) In Sussex County the clerk of the peace of Sussex County shall receive a salary in an amount to be set by ordinance of the Sussex County Council."

Section 2. Amend §9602(3), Chapter 96, Title 9 of the Delaware Code by deleting same and substituting in lieu thereof the following:

"(3) In Sussex County the Recorder of Sussex County shall receive a salary in an amount to be set by ordinance of the Sussex County Council."

Section 3. Amend §2101(b)(2), Chapter 21, Title 10 of the Delaware Code by deleting same and substituting in lieu thereof the following:

"(2) In Sussex County the Sheriff shall receive a salary in an amount to be set by ordinance of the Sussex County Council."

Section 4. Amend §2502(3), Chapter 25, Title 10 of the Delaware Code by deleting same and substituting in lieu thereof the following:

"(3) In Sussex County the Register in Chancery of Sussex County shall receive a salary in an amount to be set by ordinance of the Sussex County Council."

Section 5. Amend §2504(3), Chapter 25, Title 12 of the Delaware Code by deleting same and substituting in lieu thereof the following:

"(3) In Sussex County the Register of Wills of Sussex Council shall receive a salary in an amount to be set by ordinance of the Sussex County Council."

Section 6. This Act shall be effective upon enactment.

Approved April 22, 1992.

## CHAPTER 235

## FORMERLY

## HOUSE BILL NO. 440

AN ACT TO AMEND AN ACT BEING CHAPTER 3, VOLUME 68, LAWS OF DELAWARE, ENTITLED "AN ACT TO REINCORPORATE THE TOWN OF ELSMERE," TO ELIMINATE THE OFFICE OF DIRECTORS OF PUBLIC SAFETY AND TO PROVIDE FOR THE POLICE FORCE OF THE TOWN OF ELSMERE.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (Two-thirds of all members elected to each House thereof concurring therein):

Section 1. Amend Volume 68, Chapter 3, Laws of Delaware, by deleting Section 702 thereof in its entirety and substituting in lieu thereof a new Section 702 to read as follows:

"Section 702. Police and Department of Public Safety

(1) Department of Public Safety; Created; Composition.

There is hereby created a department for the Town of Elsmere, to be known as the Department of Public Safety, which shall consist of a full-time Chief of Police and such officers and employees as may be assigned to this Department.

(2) Appointment.

(i) The Chief of Police shall be appointed by a three-quarters vote of the whole Council and shall serve with compensation in accordance with the policy wage scale. The Chief of Police shall be entitled to and shall receive all of the benefits given to all sworn police personnel including police pension.

(ii) The Chief shall have the same rights to engage in political activity as are afforded to any other person. The right to engage in political activity shall not apply to the Chief while he or she is on duty or while he or she is acting in his or her official capacity or while in uniform.

(iii) The Chief of Police shall not hold any other municipal office while serving as the Chief of Police.

(iv) The Chief of Police may be removed for cause by the Council, with concurrence of a three-quarters vote of the whole Council, in accordance with applicable Town ordinances adopted by a three-quarters vote of the whole Council and the laws of the State of Delaware.

(v) The Chief of Police shall be a certified police officer and shall be appointed from within the Department, unless the Council by a three-quarters vote of the whole Council determines there is not a qualified person in the Department. To be eligible for appointment to Chief of Police from within the Department, an officer shall have applied for such appointment and shall meet the following criteria:

1. The candidate shall have at least five (5) years of continuous service within the Department.
2. The candidate shall currently hold the rank of sergeant or above.
3. The candidate shall have received two consecutive favorable evaluations by his or her superiors.
4. The candidate shall have experience in police command.

(vi) Notwithstanding subparagraph (v), above, the Council may appoint a Chief of Police who is not then an officer in the Department if the Council determines by a three-quarters vote of the whole Council that it is in the best interest of the Town to do so. Any person so appointed shall have qualifications at least equal to those set forth for appointment from

within the Department, except that his or her years of continuous service need not have been within the Department.

(3) Investigation, Disciplinary Action, Demotion or Dismissal.

(a) Whenever the Chief is under investigation or is subject to questioning for any reason which could lead to disciplinary action, demotion or dismissal, the investigation or questioning shall be conducted pursuant to the procedures provided by Town Ordinance adopted by a three-quarters vote of the whole Council and the laws of the State of Delaware.

(b) If Council, following a hearing on any charges against the Chief of Police, determines to impose any disciplinary action, demotion or dismissal, the Chief of Police shall have the right to appeal to the Superior Court of the State of Delaware within thirty (30) days of any vote by Council on such charges. The appeal shall be taken in accordance with the rules of the Superior Court and shall be based solely on the record made before Council.

(4) Powers and Duties.

The Chief of Police shall be responsible for the day to day operation, jurisdiction, management and control of the Department of Public Safety of the Town of Elsmere. He shall be responsible to the Council for the administration of the Public Safety Department.

(5) Preparation and Approval of Budget.

The Chief of Police shall each year submit in writing a budget to the Council in the time-frame as ordained by Council. After careful consideration of said proposed budget, the Council shall make an appropriation of monies to the Department which shall serve as the actual annual budget.

The Chief of Police shall then administer the Department within the monetary restraints or the total amount of funds allocated by the annual budget to the Department of Public Safety. Should additional monies become necessary to properly administer the Department, the Chief of Police shall prepare a presentation to the Council which will explain in detail the reason for the expected shortfall and will discuss possible alternative solutions to the problem(s). The Chief will then request the Council to take action to eliminate the problem. The Council shall act on such request within a reasonable time.

(6) Payment of Accounts.

All accounts contracted by the Department of Public Safety in the course of the affairs of the Department shall be paid by the Town Treasurer out of the appropriation provided for in the preceding Section upon proper voucher approved by the Chief of Police and in accordance with the standard operating procedures of the Town.

(7) Duties of the Town Solicitor.

The Town Solicitor shall be the legal advisor and attorney for the Department of Public Safety; he shall prosecute all actions against an officer, agent or employee of the Department of Public Safety for official misconduct; he shall be the legal counsel of such Department.

(8) Department Physician.

The Department of Public Safety is hereby authorized to appoint and commission annually a physician.

(9) Personnel of Department.

In addition to the powers conferred upon the Chief by this Act, the Chief of Police shall appoint such number of officers, agents, members and employees of the Department and fill vacancies therein; provided that any increase in the number of employees currently employed upon the adoption of this Act shall be proposed by the Chief and approved by a three-quarters

vote of the whole Council. The Chief shall fix and regulate the salary of the employees provided that any amendment of the current police wage compensation scale in effect upon the adoption of this Act shall be proposed by the Chief and approved by a three-quarters vote of the whole Council."

Section 2. All employees of the Department of Public Safety of the Town of Elsmere at the time this Act goes into effect shall continue in such employment at the same compensation and in the same positions as during the month preceding the adoption of this Act until removed or until the compensation is changed.

Section 3. Mayor and members of the Council not to Interfere with the Department.

The Mayor and no individual member of Council and none of the committees of the Council shall attempt to coerce or influence the Chief of Police in any of the day to day operations of the Department of Public Safety.

Except for the purpose of inquiry, the Mayor and no individual member of Council shall direct any employee of the Department of Public Safety except through the Chief of Police under this Act.

Section 4. Saving Clause.

If any section, subsection, sentence, clause, or phrase of this Act is for any reason held invalid, such decision or decisions shall not affect the validity of the remaining portions of this Act. All rules, regulations, directives, orders and standard operating procedures shall remain in full force and effect except insofar as they conflict with the provisions of this Act in which case the provisions of the Act shall govern.

Section 5. This Act shall take effect upon its enactment into law by the signature of the Governor.

Approved April 27, 1992.

## CHAPTER 236

## FORMERLY

HOUSE BILL NO. 374  
AS AMENDED BY HOUSE AMENDMENT NO. 1, HOUSE AMENDMENT NO. 1  
TO HOUSE AMENDMENT NO. 1 AND HOUSE AMENDMENT NOS. 2 AND 3

AN ACT TO AMEND TITLE 24 OF THE DELAWARE CODE BY ADDING A NEW CHAPTER 53 GOVERNING THE REGULATION OF MASSAGE/BODYWORK PRACTITIONERS, FURTHER AMENDING TITLE 24 OF THE DELAWARE CODE BY EXEMPTING MASSAGE/BODYWORK PRACTITIONERS FROM CERTIFICATION BY THE COMMISSION ON ADULT ENTERTAINMENT ESTABLISHMENTS, AND AMENDING TITLE 29 OF THE DELAWARE CODE BY ADDING THE COMMITTEE ON MASSAGE/BODYWORK PRACTITIONERS TO ORGANIZATIONS ADMINISTERED BY THE DIVISION OF PROFESSIONAL REGULATION.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (Two-thirds of all members elected to each House thereof concurring therein):

Section 1. Amend Title 24, Delaware Code by adding a new chapter to read as follows:

"Chapter 53. Massage/Bodywork Practitioner Act

§5301. Short Title

This chapter shall be known and may be cited as the "The Professional Massage/Bodywork Practitioner Act."

§5302. Declaration of Purpose.

Recognizing that the practice of massage/bodywork is a privilege and not a natural right of individuals, it is hereby deemed necessary as a matter of policy in the interests of public health, safety and welfare to provide laws and provisions covering the granting of that privilege and its subsequent use and control, and to provide regulations to the desired end that the public health shall be promoted and that the public shall be properly protected against the unprofessional, improper, unauthorized and unqualified practice of massage/bodywork, and from unprofessional conduct by persons certified to practice massage/bodywork in this State.

§5303. Requirements For Practice of Massage/Bodywork.

No person shall claim to be a state-certified massage/bodywork practitioner in this State, or use in connection with his or her name, by verbal claim, sign, advertisement, letterhead, card or in any other way represent himself/herself to be a state-certified massage/bodywork practitioner, or claim or imply that he/she is a state-certified massage/bodywork practitioner registered under this Chapter, or to advertise any title or description tending to convey the impression that he/she is a certified massage/bodywork practitioner without having first obtained from the Committee on Massage/Bodywork Practitioners a certificate to practice massage/bodywork and a current active registration therefor as provided within this Chapter.

§5304. Definitions.

The following words, terms and phrases, when used in this Chapter, shall have the meaning ascribed to them, except for where the context clearly indicates a different meaning.

(1) "Application Fee" means the amount to be charged for an application that shall approximate and reasonably reflect all costs necessary to defray the expenses of the Committee as well as the proportional expenses incurred by the Division of Professional Regulation in its services on behalf of the Committee.

(2) "Certified Instructor" means a practitioner who is qualified for certification in the State of Delaware under this Chapter and has practiced professionally for five (5) years, or who has been certified as an instructor by a national organization.

(3) "Committee" means the Committee on Massage/Bodywork Practitioners which shall assist the State in the regulation of massage/bodywork practice.

(4) "Division" means the Division of Professional Regulation of the Department of Administrative Services of Delaware.

(5) "Massage/Bodywork" means systems of activity applied to the superficial or deep tissue, muscle or connective tissue by means of applying pressure with hands, feet, arms or elbows in non-pathological conditions. Such application may include, but is not limited to friction, stroking, rocking, tapping, kneading or non-specific stretching whether or not aided by massage oils. Massage/bodywork practices are designed to promote general relaxation, improve joint mobilization, or relieve stress and muscle tension, and to enhance a general sense of well-being in the client.

(6) "State Certified Massage/Bodywork Practitioner" means any person who is practicing massage/bodywork certified under this chapter but excludes any person who is certified or licensed in this State by any other law engaged in the profession or occupation for which he or she is certified or licensed, and any person engaged in an occupation which does not require a certificate or certification, including but not limited to, physical education teachers, athletic coaches, health or recreation directors, instructors at health clubs or spas; martial arts, water safety and dance instructors, coaches, and practitioners of techniques which may involve touch but which do not require disrobing or the application of lubricants, when acting within the scope of activity for which they are trained; or massage/bodywork students practicing within the scope of their course of study.

**§5305. Committee on Massage/Bodywork Practitioners; Qualifications; Terms of Office; Prohibition on Compensation.**

(a) The Committee on Massage/Bodywork Practitioners is hereby established. It shall consist of seven (7) members who are residents of this State and shall be appointed by the Governor. A member who was initially appointed to fill a vacancy, may succeed himself or herself for only 1 additional full term. Each term of office shall expire on a date specified in the appointment except that each member shall serve until his or her successor is duly appointed. Members of the initial Committee shall be appointed in such a manner that the terms of 4 members shall expire in 1994, and that the terms of the remaining 3 members shall expire in 1995. Thereafter, appointments shall be made for a term of 3 years. A member of the Committee shall be eligible for reappointment, but a member shall not be appointed to serve more than 2 consecutive terms. Members of the committee shall serve without compensation.

(b) Four (4) members shall be massage/bodywork practitioners, certified to practice in Delaware with a maximum of one member from the same national organization or school. The remaining three (3) members shall be from the general public, who are not massage/bodywork practitioners and are not in any way; connected to the practice of massage/bodywork either monetarily or by their immediate family relations.

(c) The Committee shall meet at least quarterly or more often as required. The location of the meetings shall be determined by the Division, but shall be within the boundaries of the State. All meetings shall be opened to the public.

**§5306. Powers and Duties of Committee.**

The Committee on Massage/Bodywork Practitioners shall have the authority to:

(1) Compile a list of schools and certified teachers, the training of which shall be equivalent to the educational requirements as set forth in §5307, and to be used as references sources in the certification process. Recognized schools and teachers may teach any method of massage/bodywork including, but not limited to Alexander technique, Therapeutic technique, Feldenkrais, Hellerwork, Oriental Bodywork, Rolfing, Trager, Bioenergetics and Shiatsu;

(2) Grant or deny certification to an applicant in accordance with the qualifications criteria set forth in this Chapter;



(3) Establish an application fee for applicants and registrants, to help underwrite the costs and to support the activities of this Committee, with the concurrence of the Division;

(4) Formulate rules and regulations to carry-out the intent of this Chapter;

(5) Receive complaints from practitioners and from the public concerning practitioners, or concerning practice of the profession; to request the Division investigate such complaints and to take appropriate action within its powers as the Committee deems appropriate;

(6) Suspend, revoke or reinstate the certification of a massage/bodywork practitioner who has been found to be in violation of this Chapter.

#### §5307. Qualifications of Applicants.

Upon application to the Committee, a massage/bodywork applicant may be certified for a period of two (2) years if the applicant meets either of the following qualifications of subsection a) or b):

(a) Education: Successful completion of a five hundred (500) hour course of supervised study by a school or certified instructor in the field of massage/bodywork with a curriculum including no less than:

(1) Fifty (50) hours of anatomy;

(2) Fifty (50) hours of physiology;

(3) Three hundred (300) hours of technique and theory in a specific massage/bodywork modality, to include a cardiopulmonary resuscitation training program accredited by the State.

(4) One hundred (100) hours of elective courses pertaining to the field of massage/bodywork practice; or

(b) Examination: Successful completion of an examination administered by a school or national organization whose curriculum meets the standards of educational requirements equivalent to those specified in §5307.

#### §5308. Reciprocity.

(a) Upon payment of an appropriate application fee, the Committee shall waive the examination, education or experience requirements and grant a certificate to any applicant who shall present proof of current certification or license as a massage/bodywork practitioner in another state, the District of Columbia, or territory of United States which requires standards for certification/licensing considered by the Committee to be equivalent to the requirements for certification under this Chapter.

(b) Upon receipt of an application for reciprocity, the Committee shall contact each jurisdiction which has previously certified/licensed the applicant, to determine whether or not there are disciplinary proceedings or unresolved complaints pending against the applicant. In the event a disciplinary proceeding or an unresolved complaint is pending, the applicant shall not be certified until the proceeding or the complaint has been resolved in the applicant's favor.

#### §5309. Provisional Certification.

Upon acceptance of an application by the Committee, a massage/bodywork applicant may be provisionally certified by the Committee to practice massage/bodywork for an initial period of not more than two (2) years, which may be renewed for another two (2) year period, while pursuing courses of study necessary to comply with the eligibility provisions and qualifications of this Chapter. An applicant for provisional certification shall meet the following requirements:

(1) Has completed a basic massage/bodywork course of study with a minimum of three hundred (300) hours of instruction with a school or instructor; and

(2) Has fewer than the five hundred (500) hours of education specified in this Chapter; and

(3) Is engaged in the practice of massage/bodywork in the State of Delaware at the time of the enactment of this Chapter.

§5310. Ineligibility.

(a) Any person who has been convicted in any jurisdiction of a crime involving sexual abuse or a felony involving violence may not apply for a certificate under this Chapter.

(b) Any person who has been convicted of a felony, professionally penalized or convicted of drug addiction, or who has been penalized or convicted of a willful violation of any confidential communication, or who has been professionally penalized or convicted of fraud within the last five (5) years may not apply for a certificate.

§5311. Professional Conduct.

A certified massage/bodywork practitioner shall:

(1) Represent herself or himself and his or her practice accurately and ethically and perform only those services for which he or she is certified.

(2) Keep all client information strictly confidential unless written permission is given by the client, or ordered by the court.

Failure to comply with these standards constitutes professional misconduct and may result in certification suspension, or certification revocation by the Committee, in accordance with the Delaware Administrative Procedures Act.

§5312. Advertising.

(a) Any applicant certified by the Committee is entitled to advertise as "Delaware State Certified", and is entitled to advertise only the specific type of massage/bodywork certification which the applicant received from his or her school or national organization.

(b) Any person found to have engaged in false advertising in connection with massage/bodywork may be fined in accordance with the rules and regulations of the Committee, and enjoined from further false advertising.

§5313. Denial, Suspension or Revocation of Certification.

The following actions by a certified massage/bodywork practitioner or applicant may result in refusal to certify, suspension of certification or revocation of certification by the Committee:

(a) Advertising and/or claiming to be a state-certified massage/bodywork practitioner as defined by this Chapter without a valid certificate;

(b) Attempting to procure a certification to practice massage/bodywork through fraud, bribery or misrepresentation;

(c) Commission of two or more incidents of negligence or misconduct in massage/bodywork practice;

(d) Practicing massage/bodywork, as defined in this Chapter, while judgment is impaired by the use of drugs or alcohol;

(e) Conviction in any jurisdiction of a felony or misdemeanor involving sexual abuse or a felony involving violence;

(f) Prescribe, or diagnose, or in any way represent himself or herself as practicing medicine, chiropractic, physical therapy, or psychotherapy unless he or she is licensed or certified to do so by his or her State or County.

(2) Any person aggrieved by a violation of this Chapter by any certified massage/bodywork practitioner or applicant shall file a complaint with the

Committee which shall request that the Division investigate the complaint. If the allegations of the complaint are true and constitute a violation of this Chapter, the Committee shall deny an application for certification, suspend certification or revoke certification, as appropriate.

§5314. Administrative Procedures.

All procedures under this Chapter shall be governed by the Delaware Administrative Procedures Act.

§5315. Continuing Education.

As a condition precedent to the renewal of the two year certification, a massage/bodywork practitioner must file with the Committee evidence of completion of at least twelve (12) hours of study in the field of massage/bodywork practice during the immediately preceding two years which may include but are not limited to conferences, seminars and classes."

Section 2. Amend §8810(a), Chapter 88, Title 29 of the Delaware Code, by adding a new subsection (29), which subsection shall read as follows;

'(29) Committee on Massage/Bodywork Practitioners, as set forth in Chapter 53 of Title 24; and'; and redesignating present subsection (29) as new subsection (30).'"

Section 3. Amendment of Adult Entertainment Establishment Statute.

Amend §1602(2)e, Chapter 16, Title 24 of the Delaware Code, by adding the words 'massage/bodywork practitioner' after the word 'physician,' as the same appears in said section.

Approved April 27, 1992.

## CHAPTER 237

## FORMERLY

SENATE BILL NO. 288  
AS AMENDED BY SENATE AMENDMENT NO. 1

AN ACT TO AMEND TITLE 18, DELAWARE CODE, RELATING TO MEDICARE SUPPLEMENT INSURANCE STANDARDS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Title 18, Delaware Code, by striking Chapter 34 in its entirety and substituting in lieu thereof a new Chapter 34 to read as follows:

## "CHAPTER 34. MEDICARE SUPPLEMENT INSURANCE MINIMUM STANDARDS

§3401. Definitions

(a) 'Applicant' means:

(1) in the case of an individual Medicare supplement policy, the person who seeks to contract for insurance benefits, and

(2) in the case of a group Medicare supplement policy, the proposed certificate holder.

(b) 'Certificate' means, for the purposes of this Chapter, any certificate delivered or issued for delivery in this State under a group Medicare supplement policy.

(c) 'Certificate Form' means the form on which the certificate is delivered or issued for delivery by the issuer.

(d) 'Issuer' includes insurance companies, fraternal benefit societies, health care service plans, health maintenance organizations, and any other entity delivering or issuing for delivery in this State Medicare supplement policies or certificates.

(e) 'Medicare' means the 'Health Insurance for the Aged Act', Title XVIII of the Social Security Amendments of 1965, as then constituted or later amended.

(f) 'Medicare Supplement Policy' means a group or individual policy of accident and sickness insurance or a subscriber contract of hospital and medical service associations or health maintenance organizations, other than a policy issued pursuant to a contract under Section 1876 or Section 1833 of the federal Social Security Act (42 U.S.C. Section 1395 et seq.), or an issued policy under a demonstration project authorized pursuant to amendments to the federal Social Security Act, which is advertised, marketed or designed primarily as a supplement to reimbursements under Medicare for the hospital, medical or surgical expenses of persons eligible for Medicare.

(g) 'Policy Form' means the form on which the policy is delivered or issued for delivery by the issuer.

§3402. Applicability and Scope

(a) Except as otherwise specifically provided in §3404, this Chapter shall apply to:

(1) All Medicare supplement policies delivered or issued for delivery in this State on or after the effective date hereof, and

(2) All certificates issued under group Medicare supplement policies, which certificates have been delivered or issued for delivery in this State.

(b) This Chapter shall not apply to a policy of one or more employers or labor organizations, or of the trustees of a fund established by one or more employers or labor organizations, or combination thereof, for

employees or former employees or a combination thereof, or for members or former members, or a combination thereof, of the labor organizations.

(c) The provisions of this Chapter are not intended to prohibit or apply to insurance policies or health care benefit plans, including group conversion policies, provided to Medicare eligible persons which policies are not marketed or held to be Medicare supplement policies or benefit plans.

§3403. Standards for Policy Provisions and Authority to Promulgate Regulations

(a) No Medicare supplement policy or certificate in force in this State shall contain benefits that duplicate benefits provided by Medicare.

(b) Notwithstanding any other provision of law of this State, a Medicare supplement policy or certificate shall not exclude or limit benefits for loss incurred more than six (6) months from the effective date of coverage because it involved a pre-existing condition. The policy or certificate shall not define pre-existing condition more restrictively than a condition for which medical advice was given or treatment recommended by or received from a physician within six (6) months before the effective date of coverage.

(c) The Commissioner shall adopt reasonable regulations to establish specific standards for policy provisions of Medicare supplement policies and certificates. Such standards shall be in addition to and in accordance with applicable laws of this State. No requirement of the Insurance Code relating to minimum required policy benefits, other than the minimum standards contained in this Chapter, shall apply to Medicare supplement policies and certificates. The standards may cover, but not be limited to:

- (1) terms of renewability;
- (2) initial and subsequent conditions of eligibility;
- (3) nonduplication of coverage;
- (4) probationary periods;
- (5) benefit limitations, exceptions and reductions;
- (6) elimination periods;
- (7) requirements for replacement;
- (8) recurrent conditions; and
- (9) definitions of terms.

(d) The Commissioner shall adopt reasonable regulations to establish minimum standards for benefits, claims payment, marketing practices and compensation arrangements and reporting practices, for Medicare supplement policies and certificates.

(e) The Commissioner may adopt from time to time, such reasonable regulations as are necessary to conform Medicare supplement policies and certificates to the requirements of federal law and regulations promulgated thereunder, including but not limited to:

- (1) Requiring refunds or credits if the policies or certificates do not meet loss ratio requirements;
- (2) Establishing a uniform methodology for calculating and reporting loss ratios;
- (3) Assuring public access to policies, premiums and loss ratio information of issuers of Medicare supplement insurance;
- (4) Establishing a process for approving or disapproving policy forms and certificate forms and proposed premium increases;

(5) Establishing a policy for holding public hearings prior to approval of premium increases; and

(6) Establishing standards for Medicare Select policies and certificates.

(f) The Commissioner may adopt reasonable regulations that specify prohibited policy provisions not otherwise specifically authorized by statute which, in the opinion of the Commissioner, are unjust, unfair or unfairly discriminatory to any person insured or proposed to be insured under a Medicare supplement policy or certificate.

#### §3404. Loss Ratio Standards

Medicare supplement policies shall return to policyholders benefits which are reasonable in relation to the premium charged. The Commissioner shall issue reasonable regulations to establish minimum standards for loss ratios of Medicare supplement policies on the basis of incurred claims experience, or incurred health care expenses where coverage is provided by a health maintenance organization on a service rather than reimbursement basis, and earned premiums in accordance with accepted actuarial principles and practices.

#### §3405. Disclosure Standards

(a) In order to provide for full and fair disclosure in the sale of Medicare supplement policies, no Medicare supplement policy or certificate shall be delivered in this State unless an outline of coverage is delivered to the applicant at the time application is made.

(b) The Commissioner shall prescribe the format and content of the outline of coverage required by subsection (a). For purposes of this Section, 'format' means style, arrangements and overall appearance, including such items as the size, color and prominence of type and arrangement of text and captions. Such outline of coverage shall include:

(1) a description of the principal benefits and coverage provided in the policy;

(2) a statement of the renewal provisions, including any reservation by the issuer of a right to change premiums; and disclosure of the existence of any automatic renewal premium increases based on the policyholder's age;

(3) a statement that the outline of coverage is a summary of the policy issued or applied for and that the policy should be consulted to determine governing contractual provisions.

(c) The Commissioner may prescribe by regulation a standard form and the contents of an informational brochure for persons eligible for Medicare, which is intended to improve the buyer's ability to select the most appropriate coverage and improve the buyer's understanding of Medicare. Except in the case of direct response insurance policies, the Commissioner may require by regulation that the information brochure be provided to any prospective insureds eligible for Medicare concurrently with delivery of the outline of coverage. With respect to direct response insurance policies, the Commissioner may require by regulation that the prescribed brochure be provided upon request to any prospective insureds eligible for Medicare, but in no event later than the time of policy delivery.

(d) The Commissioner may adopt regulations for captions or notice requirements, determined to be in the public interest and designed to inform prospective insureds that particular insurance coverages are not Medicare supplement coverages, for all accident and sickness insurance policies sold to persons eligible for Medicare by reason of age, other than:

(1) Medicare supplement policies;

(2) disability income policies;

(3) basic, catastrophic or major medical expense policies; or

(4) single premium, nonrenewable policies.

(e) The Commissioner may adopt reasonable regulations to govern the full and fair disclosure of the information in connection with the replacement of accident and sickness policies, subscriber contracts or certificates by persons eligible for Medicare.

§3406. Notice of Free Examination

Medicare supplement policies and certificates, shall have a notice prominently printed on the first page of the policy or certificate or attached thereto stating in substance that the applicant shall have the right to return the policy or certificate within thirty (30) days of its delivery and to have the premium refunded if, after examination of the policy or certificate, the applicant is not satisfied for any reason. Any refund made pursuant to this section shall be paid directly to the applicant by the issuer in a timely manner.

§3407. Filing Requirements for Advertising

Every issuer of Medicare supplement insurance policies or certificates in this State shall provide a copy of any Medicare supplement advertisement intended for use in this State whether through written, radio or television medium to the Commissioner of Insurance of this State for review or approval by the Commissioner to the extent it may be required under State law.

§3408. Administrative Procedures

Regulations adopted pursuant to this Chapter shall be subject to the provisions of 29 Del. C., Chapter 101.

§3409. Penalties

In addition to any other applicable penalties for violations of the Insurance Code, the Commissioner may require issuers violating any provision of this Chapter or regulations promulgated pursuant to this Chapter to cease marketing any Medicare supplement policy or certificate in this State which is related directly or indirectly to a violation or may require such issuer to take such actions as are necessary to comply with the provisions of this Chapter, or both.

§3410. Severability

If any provision of this Chapter or the application thereof to any person or circumstances is for any reason held to be invalid, the remainder of the Chapter and the application of such provisions to other persons or circumstances shall not be affected thereby."

Approved May 13, 1992.

## CHAPTER 238

## FORMERLY

## SENATE BILL NO. 297

AN ACT TO AMEND CHAPTER 21, TITLE 9, DELAWARE CODE, RELATING TO STREET AND HIGHWAY LIGHTING IN UNINCORPORATED COMMUNITIES AND VILLAGES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend §2101, Chapter 21, Title 9, Delaware Code, by designating the existing paragraph as paragraph (a) and adding thereto a new paragraph (b) to read as follows:

"(b) For purposes of this Chapter, the term 'property owner' shall mean a person or entity who owns a fee simple interest in land situated in any unincorporated community or village in New Castle County entitling the owner to sign a petition filed pursuant to §2101(a) and cast one vote in favor of or against illuminating streets or highways covered by such petition. In the event that a property is owned by more than one person or entity, either as joint tenants with right of survivorship, tenants in common, or tenants by the entirety, each such party shall be entitled to cast a proportional vote equal to such party's proportional interest in and to the jointly-held property, as set forth in the deed of conveyance or other evidence of ownership. If the deed or other evidence of ownership does not set forth each owner's proportionate interest, each owner's interest shall be presumed to be equal for purposes hereof. It is the intent of this section that each property shall have no more than one vote, and each property owner shall have a vote equal to such property owner's proportional interest in such property."

Approved May 13, 1992.



## CHAPTER 239

## FORMERLY

SENATE BILL NO. 270  
AS AMENDED BY SENATE AMENDMENT NO. 1

AN ACT TO AMEND CHAPTER 90 OF TITLE 11, DELAWARE CODE, RELATING TO COMPENSATION FOR INNOCENT VICTIMS OF CRIME.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend §9008(a), Chapter 90, Title 11, Delaware Code, by striking the second, third and fourth sentences in their entirety and substituting in lieu thereof the following:

"The Board shall initiate an investigation of the claim within 30 days of the filing of the claim. After this investigation, the Board shall render a decision on whether or not to award compensation to the claimant, and if an award is made, the amount of that award. The Board shall immediately mail a copy of its decision to the claimant, together with written notice that if claimant is dissatisfied with the Board's decision then claimant must, within 15 days of the date of the Board's decision, request a hearing before the Board, and that if such request is not timely made, then the Board's decision shall be final and not appealable to Superior Court, notwithstanding §9005(3) of this Title."

Section 2. Amend Chapter 90, Title 11, Delaware Code by striking §9008(b) in its entirety and substituting the following in lieu thereof:

"(b) If the claimant is dissatisfied with the Board's decision, the claimant may, within 15 days of the date of the decision, request a hearing before the Board. If no hearing is requested within 15 days of the date of the Board's decision, the Board's decision shall be final and not appealable to Superior Court, notwithstanding §9005(3) of this Title. If a hearing is timely requested, the Board shall fix the time and place for a hearing. The Board shall, at least 20 days before the time set for the hearing, mail notices of the time and place of such hearing to all interested persons and agencies. At the hearing, the claimant may present evidence to the Board to show why the Board's decision should be reversed or modified. Within 90 days of the conclusion of any and all hearings on the matter, the Board shall mail to the claimant a statement of its final decision to award or deny the claim and a statement of any conditions under which the claim shall be awarded. The Board may affirm, reverse, or modify its initial decision."

Approved May 13, 1992.

## CHAPTER 240

## FORMERLY

SENATE BILL NO. 168  
AS AMENDED BY SENATE AMENDMENT NO. 1

AN ACT TO AMEND TITLE 11 OF THE DELAWARE CODE RELATING TO DECEPTIVE BUSINESS PRACTICES BY USE OF 900 SERVICE OR SIMILAR TOLL SERVICE TELEPHONE NUMBERS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (Two-thirds of all members elected to each House thereof concurring therein):

Section 1. Amend §906, Chapter 5, Title 11 of the Delaware Code by adding thereto a new subparagraph to read as follows:

"(7) Notifies any other person that the other person has won a prize, received an award or has been selected or is eligible to receive anything of value if the other person is required to respond through the use of a 900 service telephone number or similar service number."

Approved May 13, 1992.

## CHAPTER 241

## FORMERLY

SENATE BILL NO. 284  
AS AMENDED BY HOUSE AMENDMENT NO. 2

AN ACT TO AMEND TITLE 29 OF THE DELAWARE CODE RELATING TO ESTIMATION AND REPORTING OF TAX PREFERENCES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend §8305(6), Title 29 of the Delaware Code, by striking the phrase "Once every 5 years, on or before November 15, in the year preceding the convening of a new General Assembly." as it appears in said subsection and substituting in lieu thereof the phrase "On or before November 1 of each odd-numbered year,".

Section 2. Amend §6534(b), Title 29 of the Delaware Code, by adding thereto a new paragraph (3) to read as follows:

"(3) The Delaware Economic and Financial Advisory Council shall review the Report described in §8305(6)b. of this title and shall, based on such review and any other information as the Council deems appropriate, approve by majority vote no later than April 25 of the year following the issuance by the Division of Revenue of such report an estimate of the revenue loss to the State caused by tax preferences as that term is defined in §8305(6) of this title."

Section 3. This Act shall become effective upon its enactment into law.

Approved May 13, 1992.

## CHAPTER 242

## FORMERLY

HOUSE BILL NO. 40  
AS AMENDED BY HOUSE AMENDMENT NO. 1 AND SENATE AMENDMENT NO. 1

AN ACT TO AMEND CHAPTER 9, TITLE 4 OF THE DELAWARE CODE RELATING TO THE PURCHASING, BUYING OR GIVING OF ALCOHOLIC LIQUOR TO A MINOR OR THE CONSUMPTION OF ALCOHOLIC LIQUOR BY SUPERVISED MINORS AND PENALTIES THEREFOR.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (Two-thirds of all members elected to each House thereof concurring therein):

Section 1. Amend subsection (c), Section 904, Chapter 9, Title 4, Delaware Code by striking said section in its entirety and substituting in lieu thereof the following:

"(c) Whoever purchases, buys or gives alcoholic liquor for or to a person under the age of 21 years or knowingly allows a person under his or her supervision and under the age of 21 years to consume alcoholic liquor shall, in addition to the payment of costs, be fined for the first offense, not less than \$100 nor more than \$500, and may be ordered by the court to perform community service for a period of 40 hours in such form and on such terms as the court shall deem appropriate under the circumstances and may be imprisoned for not more than 30 days; and for each subsequent like offense, shall be fined not less than \$500 nor more than \$1,000 and may be ordered by the court to perform community service for a period of 80 hours in such form and on such terms as the court shall deem appropriate under the circumstances and may be imprisoned for not more than 60 days. This subsection shall not apply to religious services or members of the same family within the private home of any of said members."

Approved May 13, 1992.

## CHAPTER 243

## FORMERLY

## HOUSE BILL NO. 439

AN ACT TO AMEND AN ACT BEING CHAPTER 457, VOLUME 60, LAWS OF DELAWARE, AS AMENDED, ENTITLED "AN ACT TO REINCORPORATE THE TOWN OF MILLSBORO" TO CONFER UPON THE COMMISSIONERS OF THE TOWN OF MILLSBORO CERTAIN POWERS RELATING TO THE TAXATION OF REAL ESTATE TRANSFERS WITHIN THE TOWN OF MILLSBORO, AND TO INCREASE THE AMOUNT FOR WHICH CONTRACTS CAN BE AWARDED WITHOUT COMPETITIVE BIDDING.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (Two-thirds of all members elected to each House thereof concurring therein):

Section 1. Chapter 457, Volume 60, Laws of Delaware, as amended, be and the same is hereby further amended by adding a new Section following Section 26A to be designated as Section 26B to read as follows:

## "TAXATION OF REAL ESTATE TRANSFERS

## Section 26B.

(a) The Town Council of the Town of Millsboro, in addition to all other powers conferred upon it by this Act, shall have the power and authority by ordinance or ordinances to levy, assess and collect or provide for the levying, assessment and collection of such taxes as shall be determined by the Town Council to be paid by the transferor or transferee upon the transfer of real property or any interest in real property situate within the corporate limits of the Town of Millsboro, regardless of where the instruments making the transfers are made, executed or delivered or where the actual settlements on such transfers occur; provided however, that no tax shall be levied upon an organization exempted from ad valorem real estate taxes.

(b) No ordinance or ordinances providing for a tax on the transfer of real property or any interest in real property authorized under this Section shall become effective unless it receives an affirmative vote of two-thirds (2/3) of all the elected members of the Town Council of the Town of Millsboro. If the taxing power authority granted under this Section shall be exercised by way of a stamp affixed to a document presented for recording, the Recorder of Deeds, in and for Sussex County, shall not receive for record any document subject to such tax unless such stamps are affixed thereto.

(c) The Town Council of the Town of Millsboro may adopt an ordinance or ordinances to provide for the effective administration and regulation of any tax adopted pursuant to the provisions of this Section.

(d) No tax levied under this Section shall exceed one percent (1%) of the sale price (including the value of any assumed mortgage or mortgages) or of the fair market value of the real property so transferred; and provided however, that no tax shall be imposed upon an organization which is exempted from ad valorem taxes. The provisions of Section 5401 and Section 5403, Chapter 54, Title 30, Del. C., shall be applicable to any realty transfer tax imposed pursuant to this Act.

(e) The Town Council may provide by Ordinance for the collection of such tax by the Recorder of Deeds, in and for Sussex County, or such other agent as may be appointed by the Town Council and shall prescribe in such Ordinance the charge that will be paid for such collection of such realty transfer tax authorized by this Section.

(f) This Act shall not become effective until it shall be approved by a majority of the qualified voters at a Special Election to be held pursuant to a Special Election to be held pursuant to a Resolution adopted by the Town Council of the Town of Millsboro. The Town Council shall give notice of the Special Election by printing a copy of the Resolution calling the Special Election in at least two (2) issues of a newspaper having a general circulation within the corporate limits of the Town of Millsboro within thirty (30) days immediately preceding the date of such Special

Election. At the said Special Election, every person who is a bona fide resident of the Town of Millsboro and who would be entitled at the time of the holding of the said Special Election pursuant to the provisions of this Act to register and vote in the Annual Municipal Election if such Annual Municipal Election were held on the day of the Special Election were held on the day of the Special Election to be held pursuant to the provisions of this Act may vote at the said Special Election regardless of whether such person is registered to vote in the Annual Municipal Election. The Special Election shall be held by a Board of Election to be appointed by the President of the Town Council of the Town of Millsboro at least two (2) weeks before such Special Election. The Board of Election shall consist of an Inspector of the Special Election and such Judges as shall be appointed by the President of the Town Council of the Town of Millsboro. If a majority of the votes cast at the Special Election shall be in favor of the transfer tax authorized by this Act, the tax may be levied and collected as provided for in this Act. The Board of Election holding the Special Election shall meet immediately after the close of such Special Election to ascertain the result and shall certify the result to the Town Council. The hours of the Special Election shall be from one o'clock in the afternoon, prevailing time, until six o'clock on the same day, prevailing time, and such persons who are in the polling place at six o'clock noon, prevailing time, shall be entitled to vote even though such votes may be cast after six o'clock in the afternoon, prevailing time. If the majority of the votes cast at any Special Election held under this Act shall be against the levying of the tax authorized by this Act, the proposition shall not again be submitted to the qualified voters until the expiration of ninety (90) days from the date of the said Special Election."

Section 2. Paragraph 1, Subsection (b), Section 15, Chapter 457, Volume 60, Laws of Delaware, as amended, be and the same is hereby further amended by striking out the words and figures Three Thousand Five Hundred Dollars (\$3,500.00) and substituting in lieu thereof the words and figures Twenty Thousand Dollars (\$20,000.00).

Approved May 13, 1992.

#### CHAPTER 244

#### FORMERLY

#### SENATE BILL NO. 217 AS AMENDED BY HOUSE AMENDMENT NO. 1

AN ACT TO AMEND CHAPTER 33, TITLE 24, DELAWARE CODE, RELATING TO THE BOARD OF VETERINARIANS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Subsection (a), Sec. 3305, Chapter 33, Title 24, Delaware Code, by striking said subsection in its entirety and substituting in lieu thereof the following:

"(a) In the same month of each year, the members shall elect, from among their number, a President and a Vice President. Each officer shall serve for one year and may succeed him/herself in the same office for one additional year."

Section 2. Amend paragraph (2), Subsection (a), Sec. 3306, Chapter 33, Title 24, Delaware Code, by striking said paragraph in its entirety and substituting in lieu thereof the following:

"(2) Designate the application form to be used by all applicants; however, no application form shall require a picture of the applicant, nor require information relating to citizenship, place or date of birth, length of state residency, marital status, professional association memberships, moral character or require personal or professional references."

Approved May 15, 1992.

## CHAPTER 245

## FORMERLY

HOUSE BILL NO. 14  
AS AMENDED BY SENATE AMENDMENT NO. 1

AN ACT TO AMEND TITLE 25 OF THE DELAWARE CODE RELATING TO SATISFACTION OF MORTGAGES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

SECTION 1. Amend Section 2111, Chapter 21, Title 25 of the Delaware Code by striking Subsection (a) in its entirety and substituting therein the following:

"§2111. Satisfaction of Mortgages; Penalty; Enforcement in Superior Court.

(a) Whenever the debt or duty secured by a mortgage or conveyance in the nature of a mortgage is satisfied or performed, the legal holder of such mortgage or conveyance at the time the satisfaction or performance is completed, shall, forthwith, after satisfaction or performance is completed, cause an entry of such satisfaction or performance to be made upon the record by any procedure enumerated in this subsection. The fee for entering such satisfaction or performance upon the record shall be paid by the debtor or obligor unless the mortgage or conveyance provides otherwise.

(1) A satisfaction may be endorsed on the recorded mortgage or conveyance, by the mortgagee or his assignee, or his attorney duly constituted; or, when the holder is not an individual, by any general partner, trustee or any officer or the cashier, or the assistant cashier, or the attorney of a corporation duly constituted and verified by the Recorder.

(2) A satisfaction of a mortgage or conveyance may be made by recordation of a satisfaction piece if the instrument is presented in substantially the same form as set out in Subsection (b) of this Section and acknowledged in the same manner as provided by law for the acknowledgement of deeds. The satisfaction piece shall be presented to the Recorder, and the Recorder or the Recorder's Deputy shall be authorized to endorse the satisfaction on the mortgage.

(3) If a full or partial release of the mortgage or conveyance is recorded, the Recorder of Deeds shall place a reference to a book and page number or other place where the release is recorded on the recorded mortgage or conveyance."

SECTION 2. Amend Section 2111, Chapter 21, Title 25 of the Delaware Code by redesignating the existing Subsections (b), (c) and (d) as (d), (e) and (f) respectively, and by inserting a new Subsection (b) to read as follows:

"§2111(b). The following shall be a sufficient form of satisfaction piece as authorized by Subsection a(2) of this Section:

To: Recorder of Deeds	This instrument prepared by:
_____ County	Name: _____
State of Delaware	Address: _____

You are hereby requested and authorized to enter satisfaction of, and cancel of record, the mortgage executed by \_\_\_\_\_, mortgagor, to \_\_\_\_\_, mortgagee, dated \_\_\_\_\_, 19\_\_\_\_, and recorded \_\_\_\_\_, 19\_\_\_\_, in your office in Mortgage Record \_\_\_\_\_, at Page \_\_\_\_\_. [and if applicable, Assigned by \_\_\_\_\_ to \_\_\_\_\_ and recorded in Assignment Record \_\_\_\_\_, Page \_\_\_\_\_.]

## INDIVIDUAL SIGNATURE AND ACKNOWLEDGEMENT

IN WITNESS WHEREOF, Mortgagee(s), [Assignee(s)] has(ve) hereunto set its/their hand(s) and seal(s) this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

\_\_\_\_\_  
 WITNESS MORTGAGEE (SEAL)  
 State of \_\_\_\_\_  
 County of \_\_\_\_\_

This instrument was acknowledged before me on (date) by (Name(s) of person(s)).

\_\_\_\_\_  
 (Signature of notarial officer)

(Seal, if any)

\_\_\_\_\_  
 (Title and rank)

(My commission expires \_\_\_\_\_)

**SIGNATURE AND ACKNOWLEDGEMENT IN A REPRESENTATIVE CAPACITY**

IN WITNESS WHEREOF, Mortgagee [Assignee] has hereunto set its hand and seal this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_.

MORTGAGEE [ASSIGNEE] NAME

\_\_\_\_\_  
 BY: \_\_\_\_\_ (SEAL)  
 WITNESS ATTEST: \_\_\_\_\_ (SEAL)  
 State of \_\_\_\_\_  
 County of \_\_\_\_\_

This Instrument was acknowledged before me on \_\_\_\_\_ (date),  
 by \_\_\_\_\_ [name(s) of persons (s)] as \_\_\_\_\_  
 [type of authority, e.g., officer, trustee, etc.] of \_\_\_\_\_  
 [name of party on behalf of whom instrument was executed].

\_\_\_\_\_  
 (Signature of notarial officer)

(Seal, if any)

\_\_\_\_\_  
 (Title and rank)

(My commission expires \_\_\_\_\_)

**SECTION 3.** Amend Section 2111, Chapter 21, Title 25 of the Delaware Code by adding a new Subsection (c) to read as follows:

"Each Recorder shall be authorized to create and maintain a separate index and record for the recording of documents which are authorized to be recorded by this Chapter including, but not limited to, Powers of Attorney to Satisfy Mortgages, Satisfaction Pieces, Partial and Complete Releases of Mortgages and Security Interests. If the Recorder creates such an index, it shall be called the Release and Satisfaction Index. The Recorder shall also be authorized to maintain a separate record of said instruments and shall not be required to maintain other than a micrographic or electronic record of said instruments."

**SECTION 4.** This Act will become effective 60 days after its enactment.

Approved May 15, 1992.

## CHAPTER 246

## FORMERLY

## HOUSE BILL NO. 467

AN ACT TO AMEND TITLES 8, 6 AND 12 OF THE DELAWARE CODE RELATING TO CORPORATE FEES AND PENALTIES, LIMITED PARTNERSHIPS AND BUSINESS TRUSTS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (three-fifths of all members elected to each House thereof concurring therein):

Section 1. Amend §391(a)(8), Title 8 of the Delaware Code by deleting the symbol and number "\$40" and substituting the symbol and number "\$50" and by inserting at the end of said paragraph the following:

"In the event of neglect, refusal or failure on the part of any foreign corporation to file the annual report with the Secretary of State on or before the 30th day of June each year, the corporation shall pay a penalty of \$50."

Section 2. Amend §391(c), Title 8 of the Delaware Code by deleting the phrase "a fee of \$1 per page shall be paid therefor" as it appears at the end of the first sentence and substitute in lieu thereof the phrase "a fee of \$5 shall be paid for the first page and \$1.00 for each additional page".

Section 3. Amend §391(h), Title 8 of the Delaware Code by deleting the phrase "subsection (a)" wherever it appears in subsection (h) and substituting in lieu thereof the phrase "subsections (a) and (c)".

Section 4. Amend §504(c), Title 8 of the Delaware Code by deleting the phrase "1 percent" and substituting in lieu thereof the phrase "1 1/2 percent".

Section 5. Amend §17-1109(b), Title 6 of the Delaware Code by deleting the number and symbol "1%" and substituting in lieu thereof the number and symbol "1 1/2%".

Section 6. Amend §3813, Title 12 of the Delaware Code by redesignating subsection "(b)" as subsection "(c)" and by adding the following new subsection (b):

"(b) In addition to those fees charged under subsection (a) of this section, there shall be collected by and paid to the Secretary of State the following:

(1) For all services described in subsection (a) of this section that are requested to be completed within the same day as the day of the request, an additional sum of up to \$200; and

(2) For all services described in subsection (a) of this section that are requested to be completed within a 24-hour period from the time of the request, an additional sum of up to \$100.

The Secretary of State shall establish (and may from time to time alter or amend) a schedule of specific fees payable pursuant to this subsection."

Approved May 15, 1992.

## CHAPTER 247

## FORMERLY

HOUSE BILL NO. 249  
AS AMENDED BY HOUSE AMENDMENT NO. 1

AN ACT TO AMEND SECTION 3315(4), CHAPTER 33, TITLE 19, DELAWARE CODE, RELATING TO UNEMPLOYMENT COMPENSATION BENEFITS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Section 3315(4), Chapter 33, Title 19, Delaware Code, by inserting between the word "dispute" and the word "at" the following phrase: "(other than a lockout)".

Section 2. Amend §3315(4), Chapter 33, Title 19, Delaware Code, by replacing the semicolon ";" that appears therein with a period ".".

Section 3. Amend §3315(4), Chapter 33, Title 19, Delaware Code, by adding a new second sentence to read as follows:

"For purposes of this subsection, a lockout exists when:

a. The contract between the employing unit and the individual's bona fide labor organization has expired and contract negotiations are continuing; and

b. The individual, through his bona fide labor organization, has offered to continue working for a reasonable time under the pre-existing terms and conditions of employment so as to avert a work stoppage pending the final settlement of the contract negotiations; and

c. The employing unit has refused to permit work to continue and maintain the status quo for a reasonable time pending further negotiations."

Approved May 20, 1992.

## CHAPTER 248

## FORMERLY

## HOUSE BILL NO. 461

AN ACT TO AMEND CHAPTER 80, TITLE 7 OF THE DELAWARE CODE RELATING TO THE GOVERNOR'S REPRESENTATIVES TO THE APPALACHIAN STATE LOW-LEVEL RADIOACTIVE WASTE COMMISSION.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend §8002(a), Title 7 of the Delaware Code by deleting the last two sentences of said subsection which read as follows:

"The Commissioners shall serve for four-year staggered terms in order that 1 Commissioner be appointed or replaced every 2 years. The Governor shall also appoint 1 alternate Commissioner to serve in the place of 1 of the original Commissioners, should he be unable to attend a Commission meeting or otherwise fulfill the duties of his appointed office."

Section 2. Amend §8002(a), Title 7 of the Delaware Code by adding the following sentence in place of the two sentences deleted in Section 1:

"The Governor shall also appoint two alternate Commissioners to serve in the respective place of the two original Commissioners, should a Commissioner be unable to attend a Commission meeting or otherwise fulfill the duties of their appointed office. The Commissioners and respective alternates shall serve four-year terms."

Approved May 20, 1992.



## CHAPTER 249

## FORMERLY

HOUSE BILL NO. 239  
AS AMENDED BY SENATE AMENDMENT NO. 3

AN ACT TO AMEND TITLE 6 OF THE DELAWARE CODE RELATING TO THE UNIFORM COMMERCIAL CODE; PROVIDING FOR THE CODIFICATION OF THE LAW WITH RESPECT TO LEASES OF GOODS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Title 6 of the Delaware Code by adding thereto a new Article, designated as Article 2A, which new Article shall read as follows:

"ARTICLE 2A. LEASES

PART 1. GENERAL PROVISIONS

§2A-101. SHORT TITLE.

This Article shall be known and may be cited as the Uniform Commercial Code-Leases.

§2A-102. SCOPE.

This Article applies to any transaction, regardless of form, that creates a lease.

§2A-103. DEFINITIONS AND INDEX OF DEFINITIONS.

(1) In this Article unless the context otherwise requires:

(a) "buyer in ordinary course of business" means a person who in good faith and without knowledge that the sale to him is in violation of the ownership rights or security interest or lease hold interest of a third party in the goods, buys in ordinary course from a person in the business of selling goods of that kind but does not include a pawnbroker. "Buying" may be for cash or by exchange of other property or on secured or unsecured credit and includes receiving goods or documents of title under a pre-existing contract for sale but does not include a transfer in bulk or as security for or in total or partial satisfaction of a money debt.

(b) "Cancellation" occurs when either party puts an end to the lease contract for default by the other party.

(c) "Commercial unit" means such a unit of goods as by commercial usage is a single whole for purposes of lease and division of which materially impairs its character or value on the market or in use. A commercial unit may be a single article, as a machine, or a set of articles, as a suite of furniture or a line of machinery, or a quantity, as a gross or carload, or any other unit treated in use or in the relevant market as a single whole.

(d) "Conforming" goods or performance under a lease contract means goods or performance that are in accordance with the obligations under the lease contract.

(e) "Consumer lease" means a lease that a lessor regularly engaged in the business of leasing or selling makes to a lessee who is an individual and who takes under the lease primarily for a personal, family, or household purposes.

(f) "Fault" means wrongful act, omission, breach, or default.

(g) "Finance lease" means a lease with respect to which:

(i) the lessor does not select, manufacture or supply the goods;

(ii) the lessor acquires the goods or the right to possession and use of the goods in connection with the lease; and

(iii) one of the following occurs:

(A) the lessee receives a copy of the contract by which the lessor acquired the goods or the right to possession and use of the goods before signing the lease contract;

(B) the lessee's approval of the contract by which the lessor acquired the goods or the right to possession and use of the goods is a condition to effectiveness of the lease contract;

(C) the lessee, before signing the lease contract, receives an accurate and complete statement designating the promises and warranties, and any disclaimers of warranties, limitations or modifications of remedies, or liquidated damages, including those of a third party, such as the manufacturer of the goods, provided to the lessor by the person supplying the goods in connection with or as part of the contract by which the lessor acquired the goods or the right to possession and use of the goods; or

(D) if the lease is not a consumer lease, the lessor, before the lessee signs the lease contract, informs the lessee in writing

(1) of the identity of the person supplying the goods to the lessor, unless the lessee has selected that person and directed the lessor to acquire the goods or the right to possession and use of the goods from that person,

(2) that the lessee is entitled under this Article to the promises and warranties, including those of any third party, provided to the lessor by the person supplying the goods in connection with or as part of the contract by which the lessor acquired the goods or the right to possession and use of the goods, and

(3) that the lessee may communicate with the person supplying the goods to the lessor and receive an accurate and complete statement of those promises and warranties, including any disclaimers and limitations of them or of remedies.

(h) "Goods" means all things that are movable at the time of identification to the lease contract, or are fixtures (Section 2A-309), but the term does not include money, documents, instruments, accounts, chattel paper, general intangibles, or minerals or the like, including oil and gas, before extraction. The term also includes the unborn young of animals.

(i) "Installment lease contract" means a lease contract that authorizes or requires the delivery of goods in separate lots to be separately accepted, even though the lease contract contains a clause "each delivery is a separate lease" or its equivalent.

(j) "Lease" means a transfer of the right to possession and use of goods for a term in return for consideration, but a sale, including a sale on approval or a sale or return, or retention or creation of a security interest is not a lease. Unless the context clearly indicates otherwise, the term includes a sublease.

(k) "Lease agreement" means the bargain, with respect to the lease, of the lessor and the lessee in fact as found in their language or by implication from other circumstances including course of dealing or usage of trade or course of performance as provided in this Article. Unless the context clearly indicates otherwise, the term includes a sublease agreement.

(l) "Lease contract" means the total legal obligation that results from the lease agreement as affected by this Article and any other applicable rules of law. Unless the context clearly indicates otherwise, the term includes a sublease contract.

(m) "Leasehold interest" means the interest of the lessor or the lessee under a lease contract.

(n) "Lessee" means a person who acquires the right to possession and use of goods under a lease. Unless the context clearly indicates otherwise, the term includes a sublessee.

(o) "Lessee in ordinary course of business" means a person who in good faith and without knowledge that the lease to him is in violation of the

ownership rights or security interest or leasehold interest of a third party in the goods leases in ordinary course from a person in the business of selling or leasing goods of that kind but does not include a pawnbroker. "Leasing" may be for cash or by exchange of other property or on secured or unsecured credit and includes receiving goods or documents of title under a preexisting lease contract but does not include a transfer in bulk or as security for or in total or partial satisfaction of a money debt.

(p) "Lessor" means a person who transfers the right to possession and use of goods under a lease. Unless the context clearly indicates otherwise, the term includes a sublessor.

(q) "Lessor's residual interest" means the lessor's interest in the goods after expiration, termination, or cancellation of the lease contract.

(r) "Lien" means a charge against or interest in goods to secure payment of a debt or performance of an obligation, but the term does not include a security interest.

(s) "Lot" means a parcel or a single article that is the subject matter of a separate lease or delivery, whether or not it is sufficient to perform the lease contract.

(t) "Merchant lessee" means a lessee that is a merchant with respect to goods of the kind subject to the lease.

(u) "Present value" means the amount as of a date certain of one or more sums payable in the future, discounted to the date certain. The discount is determined by the interest rate specified by the parties if the rate was not manifestly unreasonable at the time the transaction was entered into; otherwise, the discount is determined by a commercially reasonable rate that takes into account the facts and circumstances of each case at the time the transaction was entered into.

(v) "Purchase" includes taking by sale, lease, mortgage, security interest, pledge, gift, or any other voluntary transaction creating an interest in goods.

(w) "Sublease" means a lease of goods the right to possession and use of which was acquired by the lessor as a lessee under an existing lease.

(x) "Supplier" means a person from whom a lessor buys or leases goods to be leased under a finance lease.

(y) "Supply contract" means a contract under which a lessor buys or leases goods to be leased.

(z) "Termination" occurs when either party pursuant to a power created by agreement or law puts an end to the lease contract otherwise than for default.

(2) Other definitions applying to this Article and the sections in which they appear are:

"Accessions". Section 2A-310(1).

"Construction mortgage". Section 2A-309(1)(d).

"Encumbrance". Section 2A-309(1)(e).

"Fixtures". Section 2A-309(1)(a).

"Fixture filing". Section 2A-309(1)(b).

"Purchase money lease". Section 2A-309(1)(c).

(3) The following definitions in other Articles apply to this Article:

"Account". Section 9-106.

"Between merchants". Section 2-104(3).

"Buyer". Section 2-103(1)(a).

"Chattel paper". Section 9-105(1)(b).

"Consumer goods". Section 9-109(1).

"Document". Section 9-105(1)(f).

"Entrusting". Section 2-403(3).

"General intangibles". Section 9-106.

"Good faith". Section 2-103(1)(b).

"Instrument". Section 9-105(1)(i).

"Merchant". Section 2-104(1).

"Mortgage". Section 9-105(1)(j).

"Pursuant to commitment". Section 9-105(1)(k).

"Receipt". Section 2-103(1)(c).

"Sale". Section 2-106(1).

"Sale on approval". Section 2-326.

"Sale or return". Section 2-326.

"Seller". Section 2-103(1)(d).

(4) In addition, Article 1 contains general definitions and principles of construction and interpretation applicable throughout this Article.

#### §2A-104. LEASES SUBJECT TO OTHER LAW.

(1) A lease, although subject to this Article, is also subject to any applicable:

(a) certificate of title statute of this State;

(b) certificate of title statute of another jurisdiction (Section 2A-105); or

(c) consumer protection statute of this State, or final consumer protection decision of a court of this State existing on the effective date of this Article.

(2) In case of conflict between this Article, other than Sections 2A-105, 2A-304(3) and 2A-305(3), and a statute or decision referred to in subsection (1), the statute or decision controls.

(3) Failure to comply with an applicable law has only the effect specified therein.

#### §2A-105. TERRITORIAL APPLICATION OF ARTICLE TO GOODS COVERED BY CERTIFICATE OF TITLE.

Subject to the provisions of Sections 2A-304(3) and 2A-305(3), with respect to goods covered by a certificate of title issued under a statute of this State or of another jurisdiction, compliance and the effect of compliance or noncompliance with a certificate of title statute are governed by the law (including the conflict of laws rules) of the jurisdiction issuing the certificate until the earlier of (a) surrender of the certificate, or (b) four months after the goods are removed from that jurisdiction and thereafter until a new certificate of title is issued by another jurisdiction.

#### §2A-106. LIMITATION ON POWER OF PARTIES TO CONSUMER LEASE TO CHOOSE APPLICABLE LAW AND JUDICIAL FORUM.

(1) If the law chosen by the parties to a consumer lease is that of a jurisdiction other than a jurisdiction in which the lessee resides at the time

the lease agreement becomes enforceable or within 30 days thereafter, or in which the goods are to be used, the choice is not enforceable.

(2) If the judicial forum chosen by the parties to a consumer lease is a forum that would not otherwise have jurisdiction over the lessee, the choice is not enforceable.

#### §2A-107. WAIVER OR RENUNCIATION OF CLAIM OR RIGHT AFTER DEFAULT.

Any claim or right arising out of an alleged default or breach of warranty may be discharged in whole or in part without consideration by a written waiver or renunciation signed and delivered by the aggrieved party.

#### §2A-108. UNCONSCIONABILITY.

(1) If the court as a matter of law finds a lease contract or any clause of a lease contract to have been unconscionable at the time it was made, the court may refuse to enforce the lease contract, or it may enforce the remainder of the lease contract without the unconscionable clause, or it may so limit the application of any unconscionable clause as to avoid any unconscionable result.

(2) With respect to a consumer lease, if the court as a matter of law finds that a lease contract or any clause of a lease contract has been induced by unconscionable conduct or that unconscionable conduct has occurred in the collection of a claim arising from a lease contract, the court may grant appropriate relief.

(3) Before making a finding of unconscionability under subsection (1) or (2), the court, on its own motion or that of a party, shall afford the parties a reasonable opportunity to present evidence as to the setting, purpose, and effect of the lease contract or clause thereof, or of the conduct.

(4) In an action in which the lessee claims unconscionability with respect to a consumer lease:

(a) If the court finds unconscionability under subsection (1) or (2), the court shall award reasonable attorney's fees to the lessee.

(b) If the court does not find unconscionability and the lessee claiming unconscionability has brought or maintained an action he knew to be groundless, the court shall award reasonable attorney's fees to the party against whom the claim is made.

(c) In determining attorney's fees, the amount of the recovery on behalf of the claimant under subsections (1) and (2) is not controlling.

#### §2A-109. OPTION TO ACCELERATE AT WILL.

(1) A term providing that one party or his successor in interest may accelerate payment or performance or require collateral or additional collateral "at will", or "when he deems himself insecure" or in words of similar import must be construed to mean that he has power to do so only if he in good faith believes that the prospect of payment or performance is impaired.

(2) With respect to a consumer lease, the burden of establishing good faith under subsection (1) is on the party who exercised the power; otherwise the burden of establishing lack of good faith is on the party against whom the power has been exercised.

### PART 2. FORMATION AND CONSTRUCTION OF LEASE CONTRACT

#### §2A-201. STATUTE OF FRAUDS.

(1) A lease contract is not enforceable by way of action or defense unless:

(a) the total payments to be made under the lease contract, excluding payments for options to renew or buy, are less than \$1,000; or

(b) there is a writing, signed by the party against whom enforcement is sought or by that party's authorized agent, sufficient to indicate that a

lease contract has been made between the parties and to describe the goods leased and the lease term.

(2) Any description of leased goods or of the lease term is sufficient and satisfies subsection (1)(b), whether or not it is specific, if it reasonably identifies what is described.

(3) A writing is not insufficient because it omits or incorrectly states a term agreed upon, but the lease contract is not enforceable under subsection (1)(b) beyond the lease term and the quantity of goods shown in the writing.

(4) A lease contract that does not satisfy the requirements of subsection (1), but which is valid in other respects, is enforceable:

(a) if the goods are to be specially manufactured or obtained for the lessee and are not suitable for lease or sale to others in the ordinary course of the lessor's business, and the lessor, before notice of repudiation is received and under circumstances that reasonably indicate that the goods are for the lessee, has made either a substantial beginning of their manufacture or commitments for their procurement;

(b) if the party against whom enforcement is sought admits in that party's pleading, testimony or otherwise in court that a lease contract was made, but the lease contract is not enforceable under this provision beyond the quantity of goods admitted; or

(c) with respect to goods that have been received and accepted by the lessee.

(5) The lease term under a lease contract referred to in subsection (4) is:

(a) if there is a writing signed by the party against whom enforcement is sought or by that party's authorized agent specifying the lease term, the term so specified;

(b) if the party against whom enforcement is sought admits in that party's pleading, testimony, or otherwise in court a lease term, the term so admitted; or

(c) a reasonable lease term.

#### §2A-202. FINAL WRITTEN EXPRESSION: PAROL OR EXTRINSIC EVIDENCE.

Terms with respect to which the confirmatory memoranda of the parties agree or which are otherwise set forth in a writing intended by the parties as a final expression of their agreement with respect to such terms as are included therein may not be contradicted by evidence of any prior agreement or of a contemporaneous oral agreement but may be explained or supplemented:

(a) by course of dealing or usage of trade or by course of performance; and

(b) by evidence of consistent additional terms unless the court finds the writing to have been intended also as a complete and exclusive statement of the terms of the agreement.

#### §2A-203. SEALS INOPERATIVE.

The affixing of a seal to a writing evidencing a lease contract or an offer to enter into a lease contract does not render the writing a sealed instrument and the law with respect to sealed instruments does not apply to the lease contract or offer.

#### §2A-204. FORMATION IN GENERAL.

(1) A lease contract may be made in any manner sufficient to show agreement, including conduct by both parties which recognizes the existence of a lease contract.

(2) An agreement sufficient to constitute a lease contract may be found although the moment of its making is undetermined.

(3) Although one or more terms are left open, a lease contract does not fail for indefiniteness if the parties have intended to make a lease contract and there is a reasonably certain basis for giving an appropriate remedy.

#### §2A-205. FIRM OFFERS.

An offer by a merchant to lease goods to or from another person in a signed writing that by its terms gives assurance it will be held open is not revocable, for lack of consideration, during the time stated or, if no time is stated, for a reasonable time, but in no event may the period of irrevocability exceed 3 months. Any such term of assurance on a form supplied by the offeree must be separately signed by the offeror.

#### §2A-206. OFFER AND ACCEPTANCE IN FORMATION OF LEASE CONTRACT.

(1) Unless otherwise unambiguously indicated by the language or circumstances, an offer to make a lease contract must be construed as inviting acceptance in any manner and by any medium reasonable in the circumstances.

(2) If the beginning of a requested performance is a reasonable mode of acceptance, an offeror who is not notified of acceptance within a reasonable time may treat the offer as having lapsed before acceptance.

#### §2A-207. COURSE OF PERFORMANCE OR PRACTICAL CONSTRUCTION.

(1) If a lease contract involves repeated occasions for performance by either party with knowledge of the nature of the performance and opportunity for objection to it by the other, any course of performance accepted or acquiesced in without objection is relevant to determine the meaning of the lease agreement.

(2) The express terms of a lease agreement and any course of performance, as well as any course of dealing and usage of trade, must be construed whenever reasonable as consistent with each other; but if that construction is unreasonable, express terms control course of performance, course of performance controls both course of dealing and usage of trade, and course of dealing controls usage of trade.

(3) Subject to the provisions of Section 2A-208 on modification and waiver, course of performance is relevant to show a waiver or modification of any term inconsistent with the course of performance.

#### §2A-208. MODIFICATION, RESCISSION AND WAIVER.

(1) An agreement modifying a lease contract needs no consideration to be binding.

(2) A signed lease agreement that excludes modification or rescission except by a signed writing may not be otherwise modified or rescinded, but, except as between merchants, such a requirement on a form supplied by a merchant must be separately signed by the other party.

(3) Although an attempt at modification or rescission does not satisfy the requirements of subsection (2), it may operate as a waiver.

(4) A party who has made a waiver affecting an executory portion of a lease contract may retract the waiver by reasonable notification received by the other party that strict performance will be required of any term waived, unless the retraction would be unjust in view of a material change of position in reliance on the waiver.

#### §2A-209. LESSEE UNDER FINANCE LEASE AS BENEFICIARY OF SUPPLY CONTRACT.

(1) The benefit of a supplier's promises to the lessor under the supply contract and of all warranties, whether express or implied, including those of any third party provided in connection with or as part of the supply contract, extends to the lessee to the extent of the lessee's leasehold interest under a finance lease related to the supply contract, but is subject to the terms of the warranty and of the supply contract and all defenses or claims arising therefrom.

(2) The extension of the benefit of a supplier's promises and of warranties to the lessee (Section 2A-209(1)) does not: (i) modify the rights and obligations of the parties to the supply contract, whether arising therefrom or otherwise, or (ii) impose any duty or liability under the supply contract on the lessee.

(3) Any modification or rescission of the supply contract by the supplier and the lessor is effective between the supplier and the lessee unless, before the modification or rescission, the supplier has received notice that the lessee has entered into a finance lease related to the supply contract. If the modification or rescission is effective between the supplier and the lessee, the lessor is deemed to have assumed, in addition to the obligations of the lessor to the lessee under the lease contract, promises of the supplier to the lessor and warranties that were so modified or rescinded as they existed and were available to the lessee before modification or rescission.

(4) In addition to the extension of the benefit of the supplier's promises and of warranties to the lessee under subsection (1), the lessee retains all rights that the lessee may have against the supplier which arise from an agreement between the lessee and the supplier or under other law.

#### §2A-210. EXPRESS WARRANTIES.

(1) Express warranties by the lessor are created as follows:

(a) Any affirmation of fact or promise made by the lessor to the lessee which relates to the goods and becomes part of the basis of the bargain creates an express warranty that the goods will conform to the affirmation or promise.

(b) Any description of the goods which is made part of the basis of the bargain creates an express warranty that the goods will conform to the description.

(c) Any sample or model that is made part of the basis of the bargain creates an express warranty that the whole of the goods will conform to the sample or model.

(2) It is not necessary to the creation of an express warranty that the lessor use formal words, such as "warrant" or "guarantee," or that the lessor have a specific intention to make a warranty, but an affirmation merely of the value of the goods or a statement purporting to be merely the lessor's opinion or commendation of the goods does not create a warranty.

#### §2A-211. WARRANTIES AGAINST INTERFERENCE AND AGAINST INFRINGEMENT; LESSEE'S OBLIGATION AGAINST INFRINGEMENT.

(1) There is in a lease contract a warranty that for the lease term no person holds a claim to or interest in the goods that arose from an act or omission of the lessor, other than a claim by way of infringement or the like, which will interfere with the lessee's enjoyment of its leasehold interest.

(2) Except in a finance lease, there is in a lease contract by a lessor who is a merchant regularly dealing in goods of the kind a warranty that the goods are delivered free of the rightful claim of any person by way of infringement or the like.

(3) A lessee who furnishes specifications to a lessor or a supplier shall hold the lessor and the supplier harmless against any claim by way of infringement or the like that arises out of compliance with the specifications.

#### §2A-212. IMPLIED WARRANTY OF MERCHANTABILITY.

(1) Except in a finance lease, a warranty that the goods will be merchantable is implied in a lease contract if the lessor is a merchant with respect to goods of that kind.

(2) Goods to be merchantable must be at least such as

(a) pass without objection in the trade under the description in the lease agreement;



(b) in the case of fungible goods, are of fair average quality within the description;

(c) are fit for the ordinary purposes for which goods of that type are used;

(d) run, within the variation permitted by the lease agreement, of even kind, quality, and quantity within each unit and among all units involved;

(e) are adequately contained, packaged, and labeled as the lease agreement may require; and

(f) conform to any promises or affirmations of fact made on the container or label.

(3) Other implied warranties may arise from course of dealing or usage of trade.

#### §2A-213. IMPLIED WARRANTY OF FITNESS FOR PARTICULAR PURPOSE.

Except in a finance lease, if the lessor at the time the lease contract is made has reason to know of any particular purpose for which the goods are required and that the lessee is relying on the lessor's skill or judgment to select or furnish suitable goods, there is in the lease contract an implied warranty that the goods will be fit for that purpose.

#### §2A-214. EXCLUSION OR MODIFICATION OF WARRANTIES.

(1) Words or conduct relevant to the creation of an express warranty and words or conduct tending to negate or limit a warranty must be construed wherever reasonable as consistent with each other; but, subject to the provisions of Section 2A-202 on parol or extrinsic evidence, negation or limitation is inoperative to the extent that the construction is unreasonable.

(2) Subject to subsection (3), to exclude or modify the implied warranty of merchantability or any part of it the language must mention "merchantability", be by a writing, and be conspicuous. Subject to subsection (3), to exclude or modify any implied warranty of fitness the exclusion must be by a writing and be conspicuous. Language to exclude all implied warranties of fitness is sufficient if it is in writing, is conspicuous and states, for example, 'There is no warranty that the goods will be fit for a particular purpose'.

(3) Notwithstanding subsection (2), but subject to subsection (4),

(a) unless the circumstances indicate otherwise, all implied warranties are excluded by expressions like 'as is,' or 'with all faults,' or by other language that in common understanding calls the lessee's attention to the exclusion of warranties and makes plain that there is no implied warranty, if in writing and conspicuous;

(b) if the lessee before entering into the lease contract has examined the goods or the sample or model as fully as desired or has refused to examine the goods, there is no implied warranty with regard to defects that an examination ought in the circumstances to have revealed; and

(c) an implied warranty may also be excluded or modified by course of dealing, course of performance, or usage of trade.

(4) To exclude or modify a warranty against interference or against infringement (Section 2A-211) or any part of it, the language must be specific, be by a writing, and be conspicuous, unless the circumstances, including course of performance, course of dealing, or usage of trade, give the lessee reason to know that the goods are being leased subject to a claim or interest of any person.

#### §2A-215. CUMULATION AND CONFLICT OF WARRANTIES EXPRESS OR IMPLIED.

Warranties, whether express or implied, must be construed as consistent with each other and as cumulative, but if that construction is unreasonable, the intention of the parties determines which warranty is dominant. In ascertaining that intention the following rules apply:

(a) Exact or technical specifications displace an inconsistent sample or model or general language of description.

(b) A sample from an existing bulk displaces inconsistent general language of description.

(c) Express warranties displace inconsistent implied warranties other than an implied warranty of fitness for a particular purpose.

#### §2A-216. THIRD-PARTY BENEFICIARIES OF EXPRESS AND IMPLIED WARRANTIES.

A warranty to or for the benefit of a lessee under this Article, whether express or implied, extends to any natural person who may reasonably be expected to use, consume or be affected by the goods and who is injured by breach of the warranty. This section does not displace principles of law and equity that extend a warranty to or for the benefit of a lessee to other persons. The operation of this section may not be excluded, modified, or limited with respect to injury to the person of an individual to whom the warranty extends, but an exclusion, modification, or limitation of the warranty, including any with respect to rights and remedies, effective against the lessee is also effective against any beneficiary designated under this section.

#### §2A-217. IDENTIFICATION.

Identification of goods as goods to which a lease contract refers may be made at any time and in any manner explicitly agreed to by the parties. In the absence of explicit agreement, identification occurs:

(a) when the lease contract is made if the lease contract is for a lease of goods that are existing and identified;

(b) when the goods are shipped, marked, or otherwise designated by the lessor as goods to which the lease contract refers, if the lease contract is for a lease of goods that are not existing and identified; or

(c) when the young are conceived, if the lease contract is for a lease of unborn young of animals.

#### §2A-218. INSURANCE AND PROCEEDS.

(1) A lessee obtains an insurable interest when existing goods are identified to the lease contract even though the goods identified are nonconforming and the lessee has an option to reject them.

(2) If a lessee has an insurable interest only by reason of the lessor's identification of the goods, the lessor, until default or insolvency or notification to the lessee that identification is final, may substitute other goods for those identified.

(3) Notwithstanding a lessee's insurable interest under subsections (1) and (2), the lessor retains an insurable interest until an option to buy has been exercised by the lessee and risk of loss has passed to the lessee.

(4) Nothing in this section impairs any insurable interest recognized under any other statute or rule of law.

(5) The parties by agreement may determine that one or more parties have an obligation to obtain and pay for insurance covering the goods and by agreement may determine the beneficiary of the proceeds of the insurance.

#### §2A-219. RISK OF LOSS.

(1) Except in the case of a finance lease, risk of loss is retained by the lessor and does not pass to the lessee. In the case of a finance lease, risk of loss passes to the lessee.

(2) Subject to the provisions of this Article on the effect of default on risk of loss (Section 2A-220), if risk of loss is to pass to the lessee and the time of passage is not stated, the following rules apply:

(a) If the lease contract requires or authorizes the goods to be shipped by carrier

(i) and it does not require delivery at a particular destination, the risk of loss passes to the lessee when the goods are duly delivered to the carrier; but

(ii) if it does require delivery at a particular destination and the goods are there duly tendered while in the possession of the carrier, the risk of loss passes to the lessee when the goods are there duly so tendered as to enable the lessee to take delivery.

(b) If the goods are held by a bailee to be delivered without being moved, the risk of loss passes to the lessee on acknowledgment by the bailee of the lessee's right to possession of the goods.

(c) In any case not within subsection (a) or (b), the risk of loss passes to the lessee on the lessee's receipt of the goods if the lessor, or, in the case of a finance lease, the supplier, is a merchant; otherwise the risk passes to the lessee on tender of delivery.

#### §2A-220. EFFECT OF DEFAULT ON RISK OF LOSS.

(1) Where risk of loss is to pass to the lessee and the time of passage is not stated:

(a) If a tender or delivery of goods so fails to conform to the lease contract as to give a right of rejection, the risk of their loss remains with the lessor, or, in the case of a finance lease, the supplier, until cure or acceptance.

(b) If the lessee rightfully revokes acceptance, he, to the extent of any deficiency in his effective insurance coverage, may treat the risk of loss as having remained with the lessor from the beginning.

(2) Whether or not risk of loss is to pass to the lessee, if the lessee as to conforming goods already identified to a lease contract repudiates or is otherwise in default under the lease contract, the lessor, or, in the case of a finance lease, the supplier, to the extent of any deficiency in his effective insurance coverage may treat the risk of loss as resting on the lessee for a commercially reasonable time.

#### §2A-221. CASUALTY TO IDENTIFIED GOODS.

If a lease contract requires goods identified when the lease contract is made, and the goods suffer casualty without fault of the lessee, the lessor or the supplier before delivery, or the goods suffer casualty before risk of loss passes to the lessee pursuant to the lease agreement or

Section 2A-219, then:

(a) if the loss is total, the lease contract is avoided; and

(b) if the loss is partial or the goods have so deteriorated as to no longer conform to the lease contract, the lessee may nevertheless demand inspection and at his option either treat the lease contract as avoided or, except in a finance lease that is not a consumer lease, accept the goods with due allowance from the rent payable for the balance of the lease term for the deterioration or the deficiency in quantity but without further right against the lessor.

### PART 3. EFFECT OF LEASE CONTRACT

#### §2A-301. ENFORCEABILITY OF LEASE CONTRACT.

Except as otherwise provided in this Article, a lease contract is effective and enforceable according to its terms between the parties, against purchasers of the goods and against creditors of the parties.

#### §2A-302. TITLE TO AND POSSESSION OF GOODS.

Except as otherwise provided in this Article, each provision of this Article applies whether the lessor or a third party has title to the goods, and whether the lessor, the lessee, or a third party has possession of the goods, notwithstanding any statute or rule of law that possession or the absence of possession is fraudulent.

§2A-303. ALIENABILITY OF PARTY'S INTEREST UNDER LEASE CONTRACT OR OF LESSOR'S RESIDUAL INTEREST IN GOODS; DELEGATION OF PERFORMANCE; TRANSFER OF RIGHTS.

(1) As used in this section, "creation of a security interest" includes the sale of a lease contract that is subject to Article 9, Secured Transactions, by reason of

Section 9-102(1)(b).

(2) Except as provided in subsections (3) and (4), a provision in a lease agreement which (i) prohibits the voluntary or involuntary transfer, including a transfer by sale, sublease, creation or enforcement of a security interest, or attachment, levy, or other judicial process, of an interest of a party under the lease contract or of the lessor's residual interest in the goods, or (ii) makes such a transfer an event of default, gives rise to the rights and remedies provided in subsection (5), but a transfer that is prohibited or is an event of default under the lease agreement is otherwise effective.

(3) A provision in a lease agreement which (i) prohibits the creation or enforcement of a security interest in an interest of a party under the lease contract or in the lessor's residual interest in the goods, or (ii) makes such a transfer an event of default, is not enforceable unless, and then only to the extent that, there is an actual transfer by the lessee of the lessee's right of possession or use of the goods in violation of the provision or an actual delegation of a material performance of either party to the lease contract in violation of the provision. Neither the granting nor the enforcement of a security interest in (i) the lessor's interest under the lease contract or (ii) the lessor's residual interest in the goods is a transfer that materially impairs the prospect of obtaining return performance by, materially changes the duty of, or materially increases the burden or risk imposed on, the lessee within the purview of subsection (5) unless, and then only to the extent that, there is an actual delegation of a material performance of the lessor.

(4) A provision in a lease agreement which (i) prohibits a transfer of a right to damages for default with respect to the whole lease contract or of a right to payment arising out of the transferor's due performance of the transferor's entire obligation, or (ii) makes such a transfer an event of default, is not enforceable, and such a transfer is not a transfer that materially impairs the prospect of obtaining return performance by, materially changes the duty of, or materially increases the burden or risk imposed on, the other party to the lease contract within the purview of subsection (5).

(5) Subject to subsections (3) and (4):

(a) if a transfer is made which is made an event of default under a lease agreement, the party to the lease contract not making the transfer, unless that party waives is the default or otherwise agrees, has the rights and remedies described in Section 2A-501(2);

(b) if paragraph (a) is not applicable and if a transfer is made that (i) is prohibited under a lease agreement or (ii) materially impairs the prospect of obtaining return performance by, materially changes the duty of, or materially increases the burden or risk imposed on, the other party to the lease contract, unless the party not making the transfer agrees at any time to the transfer in the lease contract or otherwise, then, except as limited by contract, (i) the transferor is liable to the party not making the transfer for damages caused by the transfer to the extent that the damages could not reasonably be prevented by the party not making the transfer and (ii) a court having jurisdiction may grant other appropriate relief, including cancellation of the lease contract or an injunction against the transfer.

(6) A transfer of "the lease" or of "all my rights under the lease", or a transfer in similar general terms, is a transfer of rights and, unless the language or the circumstances, as in a transfer for security, indicate the

contrary, the transfer is a delegation of duties by the transferor to the transferee. Acceptance by the transferee constitutes a promise by the transferee to perform those duties. The promise is enforceable by either the transferor or the other party to the lease contract.

(7) Unless otherwise agreed by the lessor and the lessee, a delegation of performance does not relieve the transferor as against the other party of any duty to perform or of any liability for default.

(8) In a consumer lease, to prohibit the transfer of an interest of a party under the lease contract or to make a transfer an event of default, the language must be specific, by a writing, and conspicuous.

#### §2A-304. SUBSEQUENT LEASE OF GOODS BY LESSOR.

(1) Subject to Section 2A-303, a subsequent lessee from a lessor of goods under an existing lease contract obtains, to the extent of the leasehold interest transferred, the leasehold interest in the goods that the lessor had or had power to transfer, and except as provided in subsection (2) and Section 2A-527(4), takes subject to the existing lease contract. A lessor with voidable title has power to transfer a good leasehold interest to a good faith subsequent lessee for value, but only to the extent set forth in the preceding sentence. If goods have been delivered under a transaction of purchase, the lessor has that power even though:

- (a) the lessor's transferor was deceived as to the identity of the lessor;
- (b) the delivery was in exchange for a check which is later dishonored;
- (c) it was agreed that the transaction was to be a "cash sale"; or
- (d) the delivery was procured through fraud punishable as larcenous under the criminal law.

(2) A subsequent lessee in the ordinary course of business from a lessor who is a merchant dealing in goods of that kind to whom the goods were entrusted by the existing lessee of that lessor before the interest of the subsequent lessee became enforceable against that lessor obtains, to the extent of the leasehold interest transferred, all of that lessor's and the existing lessee's rights to the goods, and takes free of the existing lease contract.

(3) A subsequent lessee from the lessor of goods that are subject to an existing lease contract and are covered by a certificate of title issued under a statute of this State or of another jurisdiction takes no greater rights than those provided both by this section and by the certificate of title statute.

#### §2A-305. SALE OR SUBLEASE OF GOODS BY LESSEE.

(1) Subject to the provisions of Section 2A-303, a buyer or sublessee from the lessee of goods under an existing lease contract obtains, to the extent of the interest transferred, the leasehold interest in the goods that the lessee had or had power to transfer, and except as provided in subsection (2) and Section 2A-511(4), takes subject to the existing lease contract. A lessee with a voidable leasehold interest has power to transfer a good leasehold interest to a good faith buyer for value or a good faith sublessee for value, but only to the extent set forth in the preceding sentence. When goods have been delivered under a transaction of lease the lessee has that power even though:

- (a) the lessor was deceived as to the identity of the lessee;
- (b) the delivery was in exchange for a check which is later dishonored; or
- (c) the delivery was procured through fraud punishable as larcenous under the criminal law.

(2) A buyer in the ordinary course of business or a sublessee in the ordinary course of business from a lessee who is a merchant dealing in goods of that kind to whom the goods were entrusted by the lessor obtains, to the

extent of the interest transferred, all of the lessor's and lessee's rights to the goods, and takes free of the existing lease contract.

(3) A buyer or sublessee from the lessee of goods that are subject to an existing lease contract and are covered by a certificate of title issued under a statute of this State or of another jurisdiction takes no greater rights than those provided both by this section and by the certificate of title statute.

#### §2A-306. PRIORITY OF CERTAIN LIENS ARISING BY OPERATION OF LAW.

If a person in the ordinary course of his business furnishes services or materials with respect to goods subject to a lease contract, a lien upon those goods in the possession of that person given by statute or rule of law for those materials or services takes priority over any interest of the lessor or lessee under the lease contract or this Article unless the lien is created by statute and the statute provides otherwise or unless the lien is created by rule of law and the rule of law provides otherwise.

#### §2A-307. PRIORITY OF LIENS ARISING BY ATTACHMENT OR LEVY ON, SECURITY INTERESTS IN, AND OTHER CLAIMS TO GOODS.

(1) Except as otherwise provided in Section 2A-306, a creditor of a lessee takes subject to the lease contract.

Except as otherwise provided in subsections (3) and (4) and in Sections 2A-306 and 2A-308, a creditor of a lessor takes subject to the lease contract unless:

(a) the creditor holds a lien that attached to the goods before the lease contract became enforceable,

(b) the creditor holds a security interest in the goods and the lessee did not give value and receive delivery of the goods without knowledge of the security interest; or

(c) the creditor holds a security interest in the goods which was perfected (Section 9-303) before the lease contract became enforceable.

(3) A lessee in the ordinary course of business takes the leasehold interest free of a security interest in the goods created by the lessor even though the security interest is perfected (Section 9-303) and the lessee knows of its existence.

(4) A lessee other than a lessee in the ordinary course of business takes the leasehold interest free of a security interest to the extent that it secures future advances made after the secured party acquires knowledge of the lease or more than 45 days after the lease contract becomes enforceable, whichever first occurs, unless the future advances are made pursuant to a commitment entered into without knowledge of the lease and before the expiration of the 45-day period.

#### §2A-308. SPECIAL RIGHTS OF CREDITORS.

(1) A creditor of a lessor in possession of goods subject to a lease contract may treat the lease contract as void if as against the creditor retention of possession by the lessor is fraudulent under any statute or rule of law, but retention of possession in good faith and current course of trade by the lessor for a commercially reasonable time after the lease contract becomes enforceable is not fraudulent.

(2) Nothing in this Article impairs the rights of creditors of a lessor if the lease contract (a) becomes enforceable, not in current course of trade but in satisfaction of or as security for a pre-existing claim for money, security, or the like, and (b) is made under circumstances which under any statute or rule of law apart from this Article would constitute the transaction a fraudulent transfer or voidable preference.

(3) A creditor of a seller may treat a sale or an identification of goods to a contract for sale as void if as against the creditor retention of possession by the seller is fraudulent under any statute or rule of law, but retention of possession of the goods pursuant to a lease contract entered into

by the seller as lessee and the buyer as lessor in connection with the sale or identification of the goods is not fraudulent if the buyer bought for value and in good faith.

§2A-309. LESSOR'S AND LESSEE'S RIGHTS WHEN GOODS BECOME FIXTURES.

(1) In this section:

(a) goods are "fixtures" when they become so related to particular real estate that an interest in them arises under real estate law;

(b) a "fixture filing" is the filing, in the office where a mortgage on the real estate would be filed or recorded, of a financing statement covering goods that are or are to become fixtures and conforming to the requirements of Section 9-402(5);

(c) a lease is a "purchase money lease" unless the lessee has possession or use of the goods or the right to possession or use of the goods before the lease agreement is enforceable;

(d) a mortgage is a "construction mortgage" to the extent it secures an obligation incurred for the construction of an improvement on land including the acquisition cost of the land, if the recorded writing so indicates; and

(e) "encumbrance" includes real estate mortgages and other liens on real estate and all other rights in real estate that are not ownership interests.

(2) Under this Article a lease may be of goods that are fixtures or may continue in goods that become fixtures, but no lease exists under this Article of ordinary building materials incorporated into an improvement on land.

(3) This Article does not prevent creation of a lease of fixtures pursuant to real estate law.

(4) The interest of a lessor of fixtures, including the lessor's residual interest, has priority over a conflicting interest of an encumbrancer or owner of the real estate if:

(a) the lease is a purchase money lease, the conflicting interest of the encumbrancer or owner arises before the goods become fixtures, a fixture filing covering the interest of the lessor is made before the goods become fixtures or within ten days thereafter, and the lessee has an interest of record in the real estate or is in possession of the real estate; or

(b) a fixture filing covering the interest of the lessor is made before the interest of the encumbrancer or owner is of record, the lessor's interest, has priority over any conflicting interest of a predecessor in title of the encumbrancer or owner, and the lessee has an interest of record in the real estate or is in possession of the real estate.

(5) Whether or not a fixture filing covering the fixtures has been made, the interest of a lessor of fixtures, including the lessor's residual interest, has priority over the conflicting interest of an encumbrancer or owner of the real estate if:

(a) the fixtures are readily removable factory or office machines, readily removable equipment that is not primarily used or leased for use in the operation of the real estate, or readily removable replacements of domestic appliances that are goods subject to a consumer lease, and before the goods become fixtures the lease contract is enforceable; or

(b) the conflicting interest is a lien on the real estate obtained by legal or equitable proceedings after the lease contract is enforceable; or

(c) the encumbrancer or owner has consented in writing to the lease or has disclaimed an interest in the goods as fixtures; or

(d) the lessee has a right to remove the goods as against the encumbrancer or owner. If the lessee's right to remove terminates, the priority of the interest of the lessor continues for a reasonable time.

(6) Notwithstanding subsection (4)(a) but otherwise subject to subsections (4) and (5), the interest of a lessor of fixtures, including the lessor's residual interest, is subordinate to the conflicting interest of an encumbrancer of the real estate under a construction mortgage recorded before the goods become fixtures if the goods become fixtures before the completion of the construction. To the extent given to refinance a construction mortgage, the conflicting interest of an encumbrancer of the real estate under a mortgage has this priority to the same extent as the encumbrancer of the real estate under the construction mortgage.

(7) In cases not within the preceding subsections, priority between the interest of a lessor of fixtures, including the lessor's residual interest, and the conflicting interest of an encumbrancer or owner of the real estate who is not the lessee is determined by the priority rules governing conflicting interests in real estate.

(8) If the interest of a lessor of fixtures, including the lessor's residual interest, has priority over all conflicting interests of all owners and encumbrancers of the real estate, the lessor or the lessee may (i) on default, expiration, termination, or cancellation of the lease agreement but subject to the lease agreement and this Article, or (ii) if necessary to enforce other rights and remedies of the lessor or lessee under this Article, remove the goods from the real estate, free and clear of all conflicting interests of all owners and encumbrancers of the real estate, but the lessor or lessee must reimburse any encumbrancer or owner of the real estate who is not the lessee and who has not otherwise agreed for the cost of repair of any physical injury, but not for any diminution in value of the real estate caused by the absence of the goods removed or by any necessity of replacing them. A person entitled to reimbursement may refuse permission to remove until the party seeking removal gives adequate security for the performance of this obligation.

#### §2A-310. LESSOR'S AND LESSEE'S RIGHTS GOODS BECOME ACCESSIONS.

(1) Goods are "accessions" when they are installed in or affixed to other goods.

(2) The interest of a lessor or a lessee under a lease contract entered into before the goods became accessions is superior to all interests in the whole except as stated in subsection (4).

(3) The interest of a lessor or a lessee under a lease contract entered into at the time or after the goods became accessions is superior to all subsequently acquired interests in the whole except as stated in subsection (4) but is subordinate to interests in the whole existing at the time the lease contract was made unless the holders of such interests in the whole have in writing consented to the lease or disclaimed an interest in the goods as part of the whole.

(4) The interest of a lessor or a lessee under a lease contract described in subsection (2) or (3) is subordinate to the interest of:

(a) a buyer in the ordinary course of business or a lessee in the ordinary course of business of any interest in the whole acquired after the goods became accessions; or

(b) a creditor with a security interest in the whole perfected before the lease contract was made to the extent that the creditor makes subsequent advances without knowledge of the lease contract.

(5) When under subsections (2) or (3) and (4) a lessor or a lessee of accessions holds an interest that is superior to all interests in the whole, the lessor or the lessee may (a) on default, expiration, termination, or cancellation of the lease contract by the other party but subject to the provisions of the lease contract and this Article, or (b) if necessary to enforce his other rights and remedies under this Article, remove the goods from the whole, free and clear of all interests in the whole, but he must reimburse any holder of an interest in the whole who is not the lessee and who has not otherwise agreed for the cost of repair of any physical injury but not for any diminution in value of the whole caused by the absence of the goods removed or by any necessity for replacing them. A person entitled to



reimbursement may refuse permission to remove until the party seeking removal gives adequate security for the performance of this obligation.

§2A-311. PRIORITY SUBJECT TO SUBORDINATION.

Nothing in this Article prevents subordination by agreement by any person entitled to priority.

PART 4. PERFORMANCE OF LEASE CONTRACT: REPUDIATED, SUBSTITUTED AND EXCUSED

§2A-401. INSECURITY: ADEQUATE ASSURANCE OF PERFORMANCE.

(1) A lease contract imposes an obligation on each party that the other's expectation of receiving due performance will not be impaired.

(2) If reasonable grounds for insecurity arise with respect to the performance of either party, the insecure party may demand in writing adequate assurance of due performance. Until the insecure party receives that assurance, if commercially reasonable the insecure party may suspend any performance for which he has not already received the agreed return.

(3) A repudiation of the lease contract occurs if assurance of due performance adequate under the circumstances of the particular case is not provided to the insecure party within a reasonable time, not to exceed 30 days after receipt of a demand by the other party.

(4) Between merchants, the reasonableness of grounds for insecurity and the adequacy of any assurance offered must be determined according to commercial standards.

(5) Acceptance of any nonconforming delivery or payment does not prejudice the aggrieved party's right to demand adequate assurance of future performance.

§2A-402. ANTICIPATORY REPUDIATION.

If either party repudiates a lease contract with respect to a performance not yet due under the lease contract, the loss of which performance will substantially impair the value of the lease contract to the other, the aggrieved party may:

(a) for a commercially reasonable time, await retraction of repudiation and performance by the repudiating party;

(b) make demand pursuant to Section 2A-401 and await assurance of future performance adequate under the circumstances of the particular case; or

(c) resort to any right or remedy upon default under the lease contract or this Article, even though the aggrieved party has notified the repudiating party that the aggrieved party would await the repudiating party's performance and assurance and has urged retraction. In addition, whether or not the aggrieved party is pursuing one of the foregoing remedies, the aggrieved party may suspend performance or, if the aggrieved party is the lessor, proceed in accordance with the provisions of this Article on the lessor's right to identify goods to the lease contract notwithstanding default or to salvage unfinished goods (Section 2A-524).

§2A-403. RETRACTION OF ANTICIPATORY REPUDIATION.

(1) Until the repudiating party's next performance is due, the repudiating party can retract the repudiation unless, since the repudiation, the aggrieved party has cancelled the lease contract or materially changed the aggrieved party's position or otherwise indicated that the aggrieved party considers the repudiation final.

(2) Retraction may be by any method that clearly indicates to the aggrieved party that the repudiating party intends to perform under the lease contract and includes any assurance demanded under Section 2A-401.

(3) Retraction reinstates a repudiating party's rights under a lease contract with due excuse and allowance to the aggrieved party for any delay occasioned by the repudiation.

#### §2A-404. SUBSTITUTED PERFORMANCE.

(1) If without fault of the lessee, the lessor and the supplier, the agreed berthing, loading, or unloading facilities fail or the agreed type of carrier becomes unavailable or the agreed manner of delivery otherwise becomes commercially impracticable, but a commercially reasonable substitute is available, the substitute performance must be tendered and accepted.

(2) If the agreed means or manner of payment fails because of domestic or foreign governmental regulation:

(a) the lessor may withhold or stop delivery or cause the supplier to withhold or stop delivery unless the lessee provides a means or manner of payment that is commercially a substantial equivalent; and

(b) if delivery has already been taken, payment by the means or in the manner provided by the regulation discharges the lessee's obligation unless the regulation is discriminatory, oppressive, or predatory.

#### §2A-405. EXCUSED PERFORMANCE.

Subject to Section 2A-404 on substituted performance, the following rules apply;

(a) Delay in delivery or nondelivery in whole or in part by a lessor or a supplier who complies with paragraphs (b) and (c) is not a default under the lease contract if performance as agreed has been made impracticable by the occurrence of a contingency the nonoccurrence of which was a basic assumption on which the lease contract was made or by compliance in good faith with any applicable foreign or domestic governmental regulation or order, whether or not the regulation or order later proves to be invalid.

(b) If the causes mentioned in paragraph (a) affect only part of the lessor's or the supplier's capacity to perform, he shall allocate production and deliveries among his customers but at his option may include regular customers not then under contract for sale or lease as well as his own requirements for further manufacture. He may so allocate in any manner that is fair and reasonable.

(c) The lessor seasonably shall notify the lessee and in the case of a finance lease the supplier seasonably shall notify the lessor and the lessee, if known, that there will be delay or nondelivery and, if allocation is required under paragraph (b), of the estimated quota thus made available for the lessee.

#### §2A-406. PROCEDURE ON EXCUSED PERFORMANCE.

(1) If the lessee receives notification of a material or indefinite delay or an allocation justified under Section 2A-405, the lessee may by written notification to the lessor as to any goods involved, and with respect to all of the goods if under an installment lease contract the value of the whole lease contract is substantially impaired (Section 2A-510):

(a) terminate the lease contract (Section 2A-505(2)); or

(b) except in a finance lease that is not a consumer lease, modify the lease contract by accepting the available quota in substitution, with due allowance from the rent payable for the balance of the lease term for the deficiency but without further right against the lessor.

(2) If, after receipt of a notification from the lessor under section 2A-405, the lessee fails so to modify the lease agreement within a reasonable time not exceeding 30 days, the lease contract lapses with respect to any deliveries affected.

#### §2A-407. IRREVOCABLE PROMISES: FINANCE LEASES.

(1) In the case of a finance lease that is not a consumer lease the lessee's promises under the lease contract become irrevocable and independent upon the lessee's acceptance of the goods.

(2) A promise that has become irrevocable and independent under subsection (1):

(a) is effective and enforceable between the parties, and by or against third parties including assignees of the parties, and

(b) is not subject to cancellation, termination, modification, repudiation, excuse, or substitution without the consent of the party to whom the promise runs.

(3) This section does not affect the validity under any other law of a covenant in any lease contract making the lessee's promises irrevocable and independent upon the lessee's acceptance of the goods.

## PART 5. DEFAULT

### A. IN GENERAL

#### §2A-501. DEFAULT: PROCEDURE.

(1) Whether the lessor or the lessee is in default under a lease contract is determined by the lease agreement and this Article.

(2) If the lessor or the lessee is in default under the lease contract, the party seeking enforcement has rights and remedies as provided in this Article and, except as limited by this Article, as provided in the lease agreement.

(3) If the lessor or the lessee is in default under the lease contract, the party seeking enforcement may reduce the party's claim to judgment, or otherwise enforce the lease contract by self-help or any available judicial procedure or nonjudicial procedure, including administrative proceeding, arbitration, or the like, in accordance with this Article.

(4) Except as otherwise provided in Section 1-106(1) or this Article or the lease agreement, the rights and remedies referred to in subsections (2) and (3) are cumulative.

(5) If the lease agreement covers both real property and goods, the party seeking enforcement may proceed under this Part as to the goods, or under other applicable law as to both the real property and the goods in accordance with that party's rights and remedies in respect of the real property, in which case this Part does not apply.

#### §2A-502. NOTICE AFTER DEFAULT.

Except as otherwise provided in this Article or the lease agreement, the lessor or lessee in default under the lease contract is not entitled to notice of default or notice of enforcement from the other party to the lease agreement.

#### §2A-503. MODIFICATION OR IMPAIRMENT OF RIGHTS AND REMEDIES.

(1) Except as otherwise provided in this Article, the lease agreement may include rights and remedies for default in addition to or in substitution for those provided in this Article and may limit or alter the measure of damages recoverable under this Article.

(2) Resort to a remedy provided under this Article or in the lease agreement is optional unless the remedy is expressly agreed to be exclusive. If circumstances cause an exclusive or limited remedy to fail of its essential purpose, or provision for an exclusive remedy is unconscionable, remedy may be had as provided in this Article.

(3) Consequential damages may be liquidated under Section 2A-504, or may otherwise be limited, altered, or excluded unless the limitation, alteration, or exclusion is unconscionable. Limitation, alteration or exclusion of consequential damages for injury to the person in the case of consumer goods is prima facie unconscionable but limitation, alteration or exclusion of damages where the loss is commercial is not prima facie unconscionable.

(4) Rights and remedies on default by the lessor or the lessee with respect to any obligation or promise collateral or ancillary to the lease contract are not impaired by this Article.

#### §2A-504. LIQUIDATION OF DAMAGES.

(1) Damages payable by either party for default, or any other act or omission, including indemnity for loss or diminution of anticipated tax benefits or loss or damage to lessor's residual interest, may be liquidated in the lease agreement but only at an amount or by a formula that is reasonable in light of the then anticipated harm caused by the default or other act or omission.

(2) If the lease agreement provides for liquidation of damages, and such provision does not comply with subsection (1), or such provision is an exclusive or limited remedy that circumstances cause to fail of its essential purpose, remedy may be had as provided in this Article.

(3) If the lessor justifiably withholds or stops delivery of goods because of the lessee's default or insolvency (Section 2A-525 or 2A-526), the lessee is entitled to restitution of any amount by which the sum of his payments exceeds:

(a) the amount to which the lessor is entitled by virtue of terms liquidating the lessor's damages in accordance with subsection (1); or

(b) in the absence of those terms, 20 percent of the then present value of the total rent the lessee was obligated to pay for the balance of the lease term, or, in the case of a consumer lease, the lesser of such amount or \$500.

(4) A lessee's right to restitution under subsection (3) is subject to offset to the extent the lessor establishes:

(a) a right to recover damages under the provisions of this Article other than subsection (1); and

(b) the amount or value of any benefits received by the lessee directly or indirectly by reason of the lease contract.

#### §2A-505. CANCELLATION AND TERMINATION AND EFFECT OF CANCELLATION, TERMINATION, RESCISSION, OR FRAUD ON RIGHTS AND REMEDIES.

(1) on cancellation of the lease contract, all obligations that are still executory on both sides are discharged, but any right based on prior default or performance survives, and the cancelling party also retains any remedy for default of the whole lease contract or any unperformed balance.

(2) on termination of the lease contract, all obligations that are still executory on both sides are discharged but any right based on prior default or performance survives.

(3) Unless the contrary intention clearly appears, expressions of "cancellation," "rescission," or the like of the lease contract may not be construed as a renunciation or discharge of any claim in damages for an antecedent default.

(4) Rights and remedies for material misrepresentation or fraud include all rights and remedies available under this Article for default.

(5) Neither rescission nor a claim for rescission of the lease contract nor rejection or return of the goods may bar or be deemed inconsistent with a claim for damages or other right or remedy.

#### §2A-506. STATUTE OF LIMITATIONS.

(1) An action for default under a lease contract, including breach of warranty or indemnity, must be commenced within 4 years after the cause of action accrued. In a lease contract that is not a consumer lease, the parties in the original lease contract may reduce the period of limitation to not less than one year.

(2) A cause of action for default accrues when the act or omission on which the default or breach of warranty is based is or should have been discovered by the aggrieved party, or when the default occurs, whichever is later. A cause of action for indemnity accrues (a) in the case of an indemnity against liability, when the act or omission on which the claim for indemnity is based is or should have been discovered by the indemnified party, whichever is later, or

(b) in the case of an indemnity against loss or damage, when the person indemnified makes payment thereof.

(3) If an action commenced within the time limited by subsection (1) is so terminated as to leave available a remedy by another action for the same default or breach of warranty or indemnity, the other action may be commenced after the expiration of the time limited and within 6 months after the termination of the first action unless the termination resulted from voluntary discontinuance or from dismissal for failure or neglect to prosecute.

(4) This section does not alter the law on tolling of the statute of limitations nor does it apply to causes of action that have accrued before this Article becomes effective.

#### §2A-507. PROOF OF MARKET RENT: TIME AND PLACE.

(1) Damages based on market rent (Section 2A-519 or 2A-528) are determined according to the rent for the use of the goods concerned for a lease term identical to the remaining lease term of the original lease agreement and prevailing at the times specified in Sections 2A-519 and 2A-528.

(2) If evidence of rent for the use of the goods concerned for a lease term identical to the remaining lease term of the original lease agreement and prevailing at the times or places described in this Article is not readily available, the rent prevailing within any reasonable time before or after the time described or at any other place or for a different lease term which in commercial judgment or under usage of trade would serve as a reasonable substitute for the one described may be used, making any proper allowance for the difference, including the cost of transporting the goods to or from the other place.

(3) Evidence of a relevant rent prevailing at a time or place or for a lease term other than the one described in this Article offered by one party is not admissible unless and until he has given the other party notice the court finds sufficient to prevent unfair surprise.

(4) If the prevailing rent or value of any goods regularly leased in any established market is in issue, reports in official publications or trade journals or in newspapers or periodicals of general circulation published as the reports of that market are admissible in evidence. The circumstances of the preparation of the report may be shown to affect its weight but not its admissibility.

#### B. DEFAULT BY LESSOR

##### §2A-508. LESSEE'S REMEDIES.

(1) If a lessor fails to deliver the goods in conformity to the lease contract (Section 2A-509) or repudiates the lease contract (Section 2A-402), or a lessee rightfully rejects the goods (Section 2A-509) or justifiably revokes acceptance of the goods (Section 2A-517), then with respect to any goods involved, and with respect to all of the goods if under an installment lease contract the value of the whole lease contract is substantially impaired (Section 2A-510), the lessor is in default under the lease contract and

the lessee may:

(a) cancel the lease contract (Section 2A-505(1));

(b) recover so much of the rent and security as has been paid and is just under the circumstances;

(c) cover and recover damages as to all goods affected whether or not they have been identified to the lease contract (Sections 2A-518 and 2A-520), or recover damages for nondelivery (Sections 2A-519 and 2A-520);

(d) exercise any other rights or pursue any other remedies provided in the lease contract.

(2) If a lessor fails to deliver the goods in conformity to the lease contract or repudiates the lease

contract, the lessee may also:

(a) if the goods have been identified, recover them (Section 2A-522); or

(b) in a proper case, obtain specific performance or replevy the goods (Section 2A-521).

(3) If a lessor is otherwise in default under a lease contract, the lessee may exercise the rights and pursue the remedies provided in the lease contract, which may include a right to cancel the lease, and in Section 2A-519(3).

(4) If a lessor has breached a warranty, whether express or implied, the lessee may recover damages (Section 2A-519(4)).

(5) On rightful rejection or justifiable revocation of acceptance, a lessee has a security interest in goods in the lessee's possession or control for any rent and security that has been paid and any expenses reasonably incurred in their inspection, receipt, transportation, and care and custody and may hold those goods and dispose of them in good faith and in a commercially reasonable manner, subject to Section 2A-527(5).

(6) Subject to the provisions of Section 2A-407, a lessee, on notifying the lessor of the lessee's intention to do so, may deduct all or any part of the damages resulting from any default under the lease contract from any part of the rent still due under the same lease contract.

#### §2A-509. LESSEE'S RIGHTS ON IMPROPER DELIVERY; RIGHTFUL REJECTION.

(1) Subject to the provisions of Section 2A-510 on default in installment lease contracts, if the goods or the tender or delivery fail in any respect to conform to the lease contract, the lessee may reject or accept the goods or accept any commercial unit or units and reject the rest of the goods.

(2) Rejection of goods is ineffective unless it is within a reasonable time after tender or delivery of the goods and the lessee seasonably notifies the lessor.

#### §2A-510. INSTALLMENT LEASE CONTRACTS: REJECTION AND DEFAULT.

(1) Under an installment lease contract a lessee may reject any delivery that is nonconforming if the nonconformity substantially impairs the value of that delivery and cannot be cured or the nonconformity is a defect in the required documents; but if the nonconformity does not fall within subsection (2) and the lessor or the supplier gives adequate assurance of its cure, the lessee must accept that delivery.

(2) Whenever nonconformity or default with respect to one or more deliveries substantially impairs the value of the installment lease contract as whole there is a default with respect to the whole. But, the aggrieved party reinstates the installment lease contract as a whole if the aggrieved party accepts a nonconforming delivery without seasonably notifying of cancellation or brings an action with respect only to past deliveries or demands performance as to future deliveries.

#### §2A-511. MERCHANT LESSEE'S DUTIES AS TO RIGHTFULLY REJECTED GOODS.

(1) Subject to any security interest of a lessee (Section 2A-508(5)), if a lessor or a supplier has no agent or place of business at the market of rejection, a merchant lessee, after rejection of goods in his possession or control, shall follow any reasonable instructions received from the lessor or the supplier with respect to the goods. In the absence of those instructions,

a merchant lessee shall make reasonable efforts to sell, lease, or otherwise dispose of the goods for the lessor's account if they threaten to decline in value speedily. Instructions are not reasonable if on demand indemnity for expenses is not forthcoming.

(2) If a merchant lessee (subsection (1)) or any other lessee (Section 2A-512) disposes of goods, he is entitled to reimbursement either from the lessor or the supplier or out of the proceeds for reasonable expenses of caring for and disposing of the goods and, if the expenses include no disposition commission, to such commission as is usual in the trade, or, if there is none, to a reasonable sum not exceeding 10 percent of the gross proceeds.

(3) In complying with this section or Section 2A-512, the lessee is held only to good faith. Good faith conduct hereunder is neither acceptance or conversion nor the basis of an action for damages.

(4) A purchaser who purchases in good faith from a lessee pursuant to this section or Section 2A-512 takes the goods free of any rights of the lessor and the supplier even though the lessee fails to comply with one or more of the requirements of this Article.

#### §2A-512. LESSEE'S DUTIES AS TO RIGHTFULLY REJECTED GOODS.

(1) Except as otherwise provided with respect to goods that threaten to decline in value speedily (Section 2A-511) and subject to any security interest of a lessee (Section 2A-508(5)):

(a) the lessee, after rejection of goods in the lessee's possession, shall hold them with reasonable care at the lessor's or the supplier's disposition for a reasonable time after the lessee's seasonable notification of rejection;

(b) if the lessor or the supplier gives no instructions within a reasonable time after notification of rejection, the lessee may store the rejected goods for the lessor's or the supplier's account or ship them to the lessor or the supplier or dispose of them for the lessor's or the supplier's account with reimbursement in the manner provided in Section 2A-511; but

(c) the lessee has no further obligations with regard to goods rightfully rejected.

(2) Action by the lessee pursuant to subsection (1) is not acceptance or conversion.

#### §2A-513. CURE BY LESSOR OF IMPROPER TENDER OR DELIVERY; REPLACEMENT.

(1) If any tender or delivery by the lessor or the supplier is rejected because it is nonconforming and the time for performance has not yet expired, the lessor or the supplier may seasonably notify the lessee of the lessor's or the supplier's intention to cure and may then make a conforming delivery within the time provided in the lease contract.

(2) If the lessee rejects a nonconforming tender that the lessor or the supplier had reasonable grounds to believe would be acceptable with or without money allowance, the lessor or the supplier may have a further reasonable time to substitute a conforming tender if he seasonably notifies the lessee.

#### §2A-514. WAIVER OF LESSEE'S OBJECTIONS.

(1) In rejecting goods, a lessee's failure to state a particular defect that is ascertainable by reasonable inspection precludes the lessee from relying on the defect to justify rejection or to establish default:

(a) if, stated seasonably, the lessor or the supplier could have cured it (Section 2A-513); or

(b) between merchants if the lessor or the supplier after rejection has made a request in writing for a full and final written statement of all defects on which the lessee proposes to rely.

(2) A lessee's failure to reserve rights when paying rent or other consideration against documents precludes recovery of the payment for defects apparent on the face of the documents.

§2A-515. ACCEPTANCE OF GOODS.

(1) Acceptance of goods occurs after the lessee has had a reasonable opportunity to inspect the goods and

(a) the lessee signifies or acts with respect to the goods in a manner that signifies to the lessor or the supplier that the goods are conforming or that the lessee will take or retain them in spite of their nonconformity; or

(b) the lessee fails to make an effective rejection of the goods (Section 2A-509(2)).

(2) Acceptance of a part of any commercial unit is acceptance of that entire unit.

§2A-516. EFFECT OF ACCEPTANCE OF GOODS; NOTICE OF DEFAULT; BURDEN OF ESTABLISHING DEFAULT AFTER ACCEPTANCE; NOTICE OF CLAIM OR LITIGATION TO PERSON ANSWERABLE OVER.

(1) A lessee must pay rent for any goods accepted in accordance with the lease contract, with due allowance for goods rightfully rejected or not delivered.

(2) A lessee's acceptance of goods precludes rejection of the goods accepted. In the case of a finance lease, if made with knowledge of a nonconformity, acceptance cannot be revoked because of it. In any other case, if made with knowledge of a nonconformity, acceptance cannot be revoked because of it unless the acceptance was on the reasonable assumption that the nonconformity would be seasonably cured. Acceptance does not of itself impair any other remedy provided by this Article or the lease agreement for nonconformity.

(3) If a tender has been accepted:

(a) within a reasonable time after the lessee discovers or should have discovered any default, the lessee shall notify the lessor and the supplier, if any, or be barred from any remedy against the party not notified;

(b) except in the case of a consumer lease, within a reasonable time after the lessee receives notice of litigation for infringement or the like (Section 2A-211) the lessee shall notify the lessor or be barred from any remedy over for liability established by the litigation; and

(c) the burden is on the lessee to establish any default.

(4) If a lessee is sued for breach of a warranty or other obligation for which a lessor or a supplier is answerable over, the following apply:

(a) The lessee may give the lessor or the supplier, or both, written notice of the litigation. If the notice states that the person notified may come in and defend and that if the person notified does not do so that person will be bound in any action against that person by the lessee by any determination of fact common to the two litigations, then unless the person notified after seasonable receipt of the notice does come in and defend that person is so bound.

(b) The lessor or the supplier may demand in writing that the lessee turn over control of the litigation including settlement if the claim is one for infringement or the like (Section 2A-211) or else be barred from any remedy over. If the demand states that the lessor or the supplier agrees to bear all expense and to satisfy any adverse judgment, then unless the lessee after seasonable receipt of the demand does turn over control the lessee is so barred.

(5) Subsections (3) and (4) apply to any obligation of a lessee to hold the lessor or the supplier harmless against infringement or the like (Section 2A-211).



**§2A-517. REVOCATION OF ACCEPTANCE OF GOODS.**

(1) A lessee may revoke acceptance of a lot or commercial unit whose nonconformity substantially impairs its value to the lessee if the lessee has accepted it:

(a) except in the case of a finance lease, on the reasonable assumption that its nonconformity would be cured and it has not been seasonably cured; or

(b) without discovery of the nonconformity if the lessee's acceptance was reasonably induced either by the lessor's assurances or, except in the case of a finance lease, by the difficulty of discovery before acceptance.

(2) Except in the case of a finance lease that is not a consumer lease, a lessee may revoke acceptance of a lot or commercial unit if the lessor defaults under the lease contract and the default substantially impairs the value of that lot or commercial unit to the lessee.

(3) If the lease agreement so provides, the lessee may revoke acceptance of a lot or commercial unit because of other defaults by the lessor.

(4) Revocation of acceptance must occur within a reasonable time after the lessee discovers or should have discovered the ground for it and before any substantial change in condition of the goods which is not caused by the nonconformity. Revocation is not effective until the lessee notifies the lessor.

(5) A lessee who so revokes has the same rights and duties with regard to the goods involved as if the lessee had rejected them.

**§2A-518. COVER, SUBSTITUTE GOODS.**

(1) After a default by a lessor under the lease contract of the type described in Section 2A-508(1), or, if agreed, after other default by the lessor, the lessee may cover by making any purchase or lease of or contract to purchase or lease goods in substitution for those due from the lessor.

(2) Except as otherwise provided with respect to damages liquidated in the lease agreement (Section 2A-504) or otherwise determined pursuant to agreement of the parties (Sections 1-102(3) and 2A-503), if a lessee's cover is by a lease agreement substantially similar to the original lease agreement and the new lease agreement is made in good faith and in a commercially reasonable manner, the lessee may recover from the lessor as damages (i) the present value, as of the date of the commencement of the term of the new lease agreement, of the rent under the new lease agreement applicable to that period of the new lease term which is comparable to the then remaining term of the original lease agreement minus the present value as of the same date of the total rent for the then remaining lease term of the original lease agreement, and (ii) any incidental or consequential damages, less expenses saved in consequence of the lessor's default.

(3) If a lessee's cover is by lease agreement that for any reason does not qualify for treatment under subsection (2), or is by purchase or otherwise, the lessee may recover from the lessor as if the lessee had elected not to cover and Section 2A-519 governs.

**§2A-519. LESSEE'S DAMAGES FOR NON-DELIVERY, REPUDIATION, DEFAULT, AND BREACH OF WARRANTY IN REGARD TO ACCEPTED GOODS.**

(1) Except as otherwise provided with respect to damages liquidated in the lease agreement (Section 2A-504) or otherwise determined pursuant to agreement of the parties (Subsection 1-102(3) and Section 2A-503), if a lessee elects not to cover or a lessee elects to cover and the cover is by lease agreement that for any reason does not qualify for treatment under Section 2A-518(2), or is by purchase or otherwise, the measure of damages for non-delivery or repudiation by the lessor or for rejection or revocation of acceptance by the lessee is the present value, as of the date of the default, of the then market rent minus the present value as of the same date of the original rent, computed for the remaining lease term of the original lease agreement, together with incidental and consequential damages, less expenses saved in consequence of the lessor's default.

(2) Market rent is to be determined as of the place for tender or, in cases of rejection after arrival or revocation of acceptance, as of the place of arrival.

(3) Except as otherwise agreed, if the lessee has accepted goods and given notification (Section 2A-516(3)), the measure of damages for non-conforming tender or delivery or other default by a lessor is the loss resulting in the ordinary course of events from the lessor's default as determined in any manner that is reasonable together with incidental and consequential damages, less expenses saved in consequence of the lessor's default.

(4) Except as otherwise agreed, the measure of damages for breach of warranty is the present value at the time and place of acceptance of the difference between the value of the use of the goods accepted and the value if they had been as warranted for the lease term, unless special circumstances show proximate damages of a different amount, together with incidental and consequential damages, less expenses saved in consequence of the lessor's default or breach of warranty.

#### §2A-520. LESSEE'S INCIDENTAL AND CONSEQUENTIAL DAMAGES.

(1) Incidental damages resulting from a lessor's default include expenses reasonably incurred in inspection, receipt, transportation, and care and custody of goods rightfully rejected or goods the acceptance of which is justifiably revoked, any commercially reasonable charges, expenses, or commissions in connection with effecting cover, and any other reasonable expense incident to the default.

(2) Consequential damages resulting from a lessor's default include:

(a) any loss resulting from general or particular requirements and needs of which the lessor at the time of contracting had reason to know and which could not reasonably be prevented by cover or otherwise; and

(b) injury to person or property proximately resulting from any breach of warranty.

#### §2A-521. LESSEE'S RIGHT TO SPECIFIC PERFORMANCE OR REPLEVIN.

(1) Specific performance may be decreed if the goods are unique or in other proper circumstances.

(2) A decree for specific performance may include any terms and conditions as to payment of the rent, damages, or other relief that the court deems just.

(3) A lessee has a right of replevin, detinue, sequestration, claim and delivery, or the like for goods identified to the lease contract if after reasonable effort the lessee is unable to effect cover for those goods or the circumstances reasonably indicate that the effort will be unavailing.

#### §2A-522. LESSEE'S RIGHT TO GOODS ON LESSOR'S INSOLVENCY.

(1) Subject to subsection (2) and even though the goods have not been shipped, a lessee who has paid a part or all of the rent and security for goods identified to a lease contract (Section 2A-217) on making and keeping good a tender of any unpaid portion of the rent and security due under the lease contract may recover the goods identified from the lessor if the lessor becomes insolvent within 10 days after receipt of the first installment of rent and security.

(2) A lessee acquires the right to recover goods identified to a lease contract only if they conform to the lease contract.

### C. DEFAULT BY LESSEE

#### §2A-523. LESSOR'S REMEDIES.

(1) If a lessee wrongfully rejects or revokes acceptance of goods or fails to make a payment when due or repudiates with respect to a part or the whole, then, with respect to any goods involved, and with respect to all of the goods if under an installment lease contract the value of the whole lease contract

is substantially impaired (Section 2A-510), the lessee is in default under the lease contract and the lessor may:

- (a) cancel the lease contract (Section 2A-505(1));
- (b) proceed respecting goods not identified to the lease contract (Section 2A-524);
- (c) withhold delivery of the goods and take possession of goods previously delivered (section 2A-525);
- (d) stop delivery of the goods by any bailee (Section 2A-526);
- (e) dispose of the goods and recover damages (Section 2A-527), or retain the goods and recover damages (Section 2A-528), or in a proper case recover rent (Section 2A-529);
- (f) exercise any other rights or pursue any other remedies provided in the lease contract.

(2) If a lessor does not fully exercise a right or obtain a remedy to which the lessor is entitled under subsection (1), the lessor may recover the loss resulting in the ordinary course of events from the lessee's default as determined in any reasonable manner, together with incidental damages, less expenses saved in consequence of the lessee's default.

(3) If a lessee is otherwise in default under a lease contract, the lessor may exercise the rights and pursue the remedies provided in the lease contract, which may include a right to cancel the lease. In addition, unless otherwise provided in the lease contract:

- (a) if the default substantially impairs the value of the lease contract to the lessor, the lessor may exercise the rights and pursue the remedies provided in subsections (1) or (2); or
- (b) if the default does not substantially impair the value of the lease contract to the lessor, the lessor may recover as provided in subsection (2).

#### §2A-524. LESSOR'S RIGHT TO IDENTIFY GOODS TO LEASE CONTRACT.

(1) After default by the lessee under the lease contract of the type described in Section 2A-523(1) or Section 2A-523(3)(a) or, if agreed, after other default by the lessee, the lessor may:

(a) identify to the lease contract conforming goods not already identified if at the time the lessor learned of the default they were in the lessor's or the supplier's possession or control; and

(b) dispose of goods (Section 2A-527(1)) that demonstrably have been intended for the particular lease contract even though those goods are unfinished.

(2) If the goods are unfinished, in the exercise of reasonable commercial judgment for the purposes of avoiding loss and of effective realization, an aggrieved lessor or the supplier may either complete manufacture and wholly identify the goods to the lease contract or cease manufacture and lease, sell, or otherwise dispose of the goods for scrap or salvage value or proceed in any other reasonable manner.

#### §2A-525. LESSOR'S RIGHT TO POSSESSION OF GOODS.

(1) If a lessor discovers the lessee to be insolvent, the lessor may refuse to deliver the goods.

(2) After a default by the lessee under the lease contract of the type described in Section 2A-523(1) or 2A-523(3)(a) or, if agreed, after other default by the lessee, the lessor has the right to take possession of the goods. If the lease contract so provides, the lessor may require the lessee to assemble the goods and make them available to the lessor at a place to be designated by the lessor which is reasonably convenient to both parties. Without removal, the lessor may render unusable any goods employed in trade or business, and may dispose of goods on the lessee's premises (Section 2A-527).

(3) The lessor may proceed under subsection (2) without judicial process if it can be done without breach of the peace or the lessor may proceed by action.

§2A-526. LESSOR'S STOPPAGE OF DELIVERY IN TRANSIT OR OTHERWISE.

(1) A lessor may stop delivery of goods in the possession of a carrier or other bailee if the lessor discovers the lessee to be insolvent and may stop delivery of carload, truckload, planeload, or larger shipments of express or freight if the lessee repudiates or fails to make a payment due before delivery, whether for rent, security, or otherwise under the lease contract, or for any other reason the lessor has a right to withhold or take possession of the goods.

(2) In pursuing its remedies under subsection (1), the lessor may stop delivery until:

(a) receipt of the goods by the lessee;

(b) acknowledgment to the lessee by any bailee of the goods, except a carrier, that the bailee holds the goods for the lessee; or

(c) such an acknowledgment to the lessee by a carrier via reshipment or as warehouseman.

(3) (a) To stop delivery, a lessor shall so notify as to enable the bailee by reasonable diligence to prevent delivery of the goods.

(b) After notification, the bailee shall hold and deliver the goods according to the directions of the lessor, but the lessor is liable to the bailee for any ensuring charges or damages.

(c) A carrier who has issued a nonnegotiable bill of lading is not obliged to obey a notification to stop received from a person other than the consignor.

§2A-527. LESSOR'S RIGHTS TO DISPOSE OF GOODS.

(1) After a default by a lessee under the lease contract of the type described in Section 2A-523(1) or 2A-523(3)(a) or after the lessor refuses to deliver or takes possession of goods (Section 2A-525 or 2A-526), or, if agreed, after other default by a lessee, the lessor may dispose of the goods concerned or the undelivered balance thereof by lease, sale, or otherwise.

(2) Except as otherwise provided with respect to damages liquidated in the lease agreement (Section 2A-504) or otherwise determined pursuant to agreement of the parties (Subsection 1-102(3) and Section 2A-503), if the disposition is by lease agreement substantially similar to the original lease agreement and the new lease agreement is made in good faith and in a commercially reasonable manner, the lessor may recover from the lessee as damages (i) accrued and unpaid rent as of the date of the commencement of the term of the new lease agreement, (ii) the present value, as of the same date, of the total rent for the then remaining lease term of the original lease agreement minus the present value, as of the same date, of the rent under the new lease agreement applicable to that period of the new lease term which is comparable to the then remaining term of the original lease agreement, and (iii) any incidental damages allowed under Section 2A-530, less expenses saved in consequence of the lessee's default.

(3) If the lessor's disposition is by lease agreement that for any reason does not qualify for treatment under subsection (2), or is by sale or otherwise, the lessor may recover from the lessee as if the lessor had elected not to dispose of the goods and Section 2A-528 governs.

(4) A subsequent buyer or lessee who buys or leases from the lessor in good faith for value as a result of a disposition under this section takes the goods free of the original lease contract and any rights of the original lessee even though the lessor fails to comply with one or more of the requirements of this Article.

(5) The lessor is not accountable to the lessee for any profit made on any disposition. A lessee who has rightfully rejected or justifiably revoked

acceptance shall account to the lessor for any excess over the amount of the lessee's security interest (Section 2A-508(5)).

**§2A-528. LESSOR'S DAMAGES FOR NON-ACCEPTANCE, FAILURE TO PAY, REPUDIATION, OR OTHER DEFAULT.**

(1) Except as otherwise provided with respect to damages liquidated in the lease agreement (Section 2A-504) or otherwise determined pursuant to agreement of the parties (Subsection 1-102(3) and Section 2A-503), if a lessor elects to retain the goods or a lessor elects to dispose of the goods and the disposition is by lease agreement that for any reason does not qualify for treatment under Section 2A-527(2), or is by sale or otherwise, the lessor may recover from the lessee as damages for a default of the type described in Section 2A-523(1) or 2A-523(3)(a), or, if agreed, for other default of the lessee, (i) accrued and unpaid rent as of the date of default if the lessee has never taken possession of the goods, or, if the lessee has taken possession of the goods, as of the date the lessor repossesses the goods or an earlier date on which the lessee makes a tender of the goods to the lessor, (ii) the present value as of the date determined under clause (i) of the total rent for the then remaining lease term of the original lease agreement minus the present value as of the same date of the market rent at the place where the goods are located computed for the same lease term, and (iii) any incidental damages allowed under Section 2A-530, less expenses saved in consequence of the lessee's default.

(2) If the measure of damages provided in subsection (1) is inadequate to put a lessor in as good a position as performance would have, the measure of damages is the present value of the profit, including reasonable overhead, the lessor would have made from full performance by the lessee, together with any incidental damages allowed under Section 2A-530, due allowance for costs reasonably incurred and due credit for payments or proceeds of disposition.

**§2A-529. LESSOR'S ACTION FOR THE RENT.**

(1) After default by the lessee under the lease contract of the type described in Section 2A-523(1) or 2A-523(3)(a) or, if agreed, after other default by the lessee, if the lessor complies with subsection (2), the lessor may recover from the lessee as damages:

(a) for goods accepted by the lessee and not repossessed by or tendered to the lessor, and for conforming goods lost or damaged within a commercially reasonable time after risk of loss passes to the lessee (Section 2A-219), (i) accrued and unpaid rent as of the date of entry of judgment in favor of the lessor, (ii) the present value as of the same date of the rent for the then remaining lease term of the lease agreement, and (iii) any incidental damages allowed under Section 2A-530, less expenses saved in consequence of the lessee's default; and

(b) for goods identified to the lease contract if the lessor is unable after reasonable effort to dispose of them at a reasonable price or the circumstances reasonably indicate that effort will be unavailing, (i) accrued and unpaid rent as of the date of entry of judgment in favor of the lessor, (ii) the present value as of the same date of the rent for the then remaining lease term of the lease agreement, and (iii) any incidental damages allowed under Section 2A-530, less expenses saved in consequence of the lessee's default.

(2) Except as provided in subsection (3), the lessor shall hold for the lessee for the remaining lease term of the lease agreement any goods that have been identified to the lease contract and are in the lessor's control.

(3) The lessor may dispose of the goods at any time before collection of the judgment for damages obtained pursuant to subsection (1). If the disposition is before the end of the remaining lease term of the lease agreement, the lessor's recovery against the lessee for damages is governed by Section 2A-527 or Section 2A-528, and the lessor will cause an appropriate credit to be provided against a judgment for damages to the extent that the amount of the judgment exceeds the recovery available pursuant to Section 2A-527 or 2A-528.

(4) Payment of the judgment for damages obtained pursuant to subsection (1) entitles the lessee to the use and possession of the goods not then disposed of for the remaining lease term of and in accordance with the lease agreement.

(5) After default by the lessee under the lease contract of the type described in Section 2A-523(1) or Section 2A-523(3)(a) or, if agreed, after other default by the lessee, a lessor who is held not entitled to rent under this section must nevertheless be awarded damages for non-acceptance under Section 2A-527 or Section 2A-528.

#### §2A-530. LESSOR'S INCIDENTAL DAMAGES.

Incidental damages to an aggrieved lessor include any commercially reasonable charges, expenses, or commissions incurred in stopping delivery, in the transportation, care and custody of goods after the lessee's default, in connection with return or disposition of the goods, or otherwise resulting from the default.

#### §2A-531. STANDING TO SUE THIRD PARTIES FOR INJURY TO GOODS.

(1) If a third party so deals with goods that have been identified to a lease contract as to cause actionable injury to a party to the lease contract (a) the lessor has a right of action against the third party, and (b) the lessee also has a right of action against the third party if the lessee:

(i) has a security interest in the goods;

(ii) has an insurable interest in the goods; or

(iii) bears the risk of loss under the lease contract or has since the injury assumed that risk as against the lessor and the goods have been converted or destroyed.

(2) If at the time of the injury the party plaintiff did not bear the risk of loss as against the other party to the lease contract and there is no arrangement between them for disposition of the recovery, his suit or settlement, subject to his own interest, is as a fiduciary for the other party to the lease contract.

(3) Either party with the consent of the other may sue for the benefit of whom it may concern.

#### §2A-532. LESSOR'S RIGHTS TO RESIDUAL INTEREST.

In addition to any other recovery permitted by this Article or other law, the lessor may recover from the lessee an amount that will fully compensate the lessor for any loss of or damage to the lessor's residual interest in the goods caused by the default of the lessee.

SECTION 2. Amend Section 1-105, Subtitle I, Title 6 of the Delaware Code by striking said Section in its entirety, and substituting in lieu thereof the following:

#### §1-105. TERRITORIAL APPLICATION OF THE ACT; PARTIES' POWER TO CHOOSE APPLICABLE LAW

(1) Except as provided hereafter in this section, when a transaction bears a reasonable relation to this state and also to another state or nation the parties may agree that the law either of this state or of such other state or nation shall govern their rights and duties. Failing such agreement this Act applies to transactions bearing an appropriate relation to this state.

(2) Where one of the following provisions of this Act specifies the applicable law, that provision governs and a contrary agreement is effective only to the extent permitted by the law (including the conflict of laws rules) so specified:

Rights of creditors against sold goods. Section 2-402.

Applicability of the Article on Leases. Sections 2A-105 and 2A-106.

Applicability of the Article on Bank Deposits and Collections. Section 4-102.

Bulk transfers subject to the Article on Bulk Transfers. Section 6-102.

Applicability of the Article on Investment Securities. Section 8-106.

Perfection provisions of the Article on Secured Transactions. Section 9-103.

SECTION 3. Amend Subsection 1-201(37), Subtitle I, Title 6 of the Delaware Code by striking said Subsection in its entirety and substituting in lieu thereof the following:

§1-201(37). GENERAL DEFINITIONS: "SECURITY INTEREST"

(37) "Security interest" means an interest in personal property or fixtures which secures payment or performance of an obligation. The retention or reservation of title by a seller of goods notwithstanding shipment or delivery to the buyer (Section 2-401) is limited in effect to a reservation of a "security interest". The term also includes any interest of a buyer of accounts or chattel paper which is subject to Article 9. The special property interest of a buyer of goods on identification of those goods to a contract for sale under Section 2-401 is not a "security interest", but a buyer may also acquire a "security interest", by complying with Article 9. Unless a consignment is intended as security, reservation of title thereunder is not a "security interest" but a consignment in any event is subject to the provisions on consignment sales (Section 2-326).

Whether a transaction creates a lease or security interest is determined by the facts of each case; however:

(a) a transaction creates a security interest if the consideration the lessee is to pay the lessor for the right to possession and use of the goods is an obligation for the term of the lease not subject to termination by the lessee, and

(i) the original term of the lease is equal to or greater than the remaining economic life of the goods,

(ii) the lessee is bound to renew the lease for the remaining economic life of the goods or is bound to become the owner of the goods,

(iii) the lessee has an option to renew the lease for the remaining economic life of the goods for no additional consideration or nominal additional consideration upon compliance with the lease agreement, or

(iv) the lessee has an option to become the owner of the goods for no additional consideration or nominal additional consideration upon compliance with the lease agreement.

(b) A transaction does not create a security interest merely because it provides that

(i) the present value of the consideration the lessee is obligated to pay the lessor for the right to possession and use of the goods is substantially equal to or is greater than the fair market value of the goods at the time the lease is entered into,

(ii) the lessee assumes risk of loss of the goods, or agrees to pay taxes, insurance, filing, recording, or registration fees, or service or maintenance costs with respect to the goods,

(iii) the lessee has an option to renew the lease or to become the owner of the goods,

(iv) the lessee has an option to renew the lease for a fixed rent that is equal to or greater than the reasonably predictable fair market rent for the use of the goods for the term of the renewal at the time the option is to be performed, or

(v) the lessee has an option to become the owner of the goods for a fixed price that is equal to or greater than the reasonably predictable fair market value of the goods at the time the option is to be performed.

(c) For purposes of this subsection (37):

(i) Additional consideration is not nominal if (A) when the option to renew the lease is granted to the lessee the rent is stated to be the fair market rent for the use of the goods for the term of the renewal determined at the time the option is to be performed, or (B) when the option to become the owner of the goods is granted to the lessee the price is stated to be the fair market value of the goods determined at the time the option is to be performed. Additional consideration is nominal if it is less than the lessee's reasonably predictable cost of performing under the lease agreement if the option is not exercised;

(ii) "Reasonably predictable" and "remaining economic life of the goods" are to be determined with reference to the facts and circumstances at the time the transaction is entered into; and

(iii) "Present value" means the amount as of a date certain of one or more sums payable in the future, discounted to the date certain. The discount is determined by the interest rate specified by the parties if the rate is not manifestly unreasonable at the time the transaction is entered into; otherwise, the discount is determined by a commercially reasonable rate that takes into account the facts and circumstances of each case at the time the transaction was entered into.

SECTION 4. Amend Section 9-113, Subtitle I, Title 6 of the Delaware Code by striking said Section in its entirety and substituting in lieu thereof the following:

**§9-113. SECURITY INTERESTS ARISING UNDER ARTICLE ON SALES OR UNDER ARTICLE ON LEASES**

A security interest arising solely under the Article on Sales (Article 2) or the Article on Leases (Article 2A) is subject to the provisions of this Article except that to the extent that and so long as the debtor does not have or does not lawfully obtain possession of the goods

(a) no security agreement is necessary to make the security interest enforceable; and

(b) no filing is required to perfect the security interest; and

(c) the rights of the secured party on default by the debtor are governed (i) by the Article on Sales (Article 2) in the case of a security interest arising solely under such Article or (ii) by the Article on Leases (Article 2A) in the case of a security interest arising solely under such Article.

SECTION 5. Amend Subsection 9-318(4), Subtitle I, Title 6 of the Delaware Code by striking said Subsection in its entirety and substituting in lieu thereof the following:

**§9-318(4) TERM PROHIBITING ASSIGNMENT INEFFECTIVE.**

(4) A term in any contract between an account debtor and an assignor is ineffective if it prohibits assignment of an account or prohibits creation of a security interest in chattel paper or a security interest in a general intangible for money due or to become due or requires the account debtor's consent to the assignment or security interest.

**SECTION 6. EFFECTIVE DATES.**

This Act takes effect 30 days after its enactment into law and shall apply to all lease agreements that are first made or that first become effective between the parties on or after that date, but shall not apply to lease agreements first made or that first became effective prior to that date unless the parties thereto specifically agree in writing that the lease agreement as extended, amended, modified, renewed or supplemented, shall be governed by applicable law as supplemented or amended by this Act. Absent such specific agreement transactions validly entered into before that date and the rights,



duties and interests flowing from them remain valid thereafter and may be terminated, completed, consummated or enforced as through this Act had not taken effect.

Approved May 20, 1992.

## CHAPTER 250

### FORMERLY

#### HOUSE BILL NO. 481 AS AMENDED BY SENATE AMENDMENT NO. 2

AN ACT TO AMEND CHAPTER 5, TITLE 11 OF THE DELAWARE CODE RELATING TO CRIMES AND CRIMINAL PROCEDURE.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Chapter 5, Title 11 of the Delaware Code by adding a new §1312A as follows:

"§1312A. Stalking; Class F Felony.

(a) Any person who willfully, maliciously, and repeatedly follows or harasses another person or who repeatedly makes a credible threat with the intent to place that person in reasonable fear of death or serious physical injury is guilty of the crime of stalking.

(b) For the purposes of this section the following definitions are provided:

(1) "Harasses" means a knowing and willful course of conduct directed at a specific person which seriously alarms, annoys, or harasses the person, and which serves no legitimate purpose. The course of conduct must be such as would cause a reasonable person to suffer substantial emotional distress, and must actually cause substantial emotional distress to the person.

(2) "Course of conduct" means a pattern of conduct composed of a series of acts over a period of time, however short, evidencing a continuity of purpose. Constitutionally protected activity is not included within the meaning of "course of conduct."

(3) "A credible threat" means a threat made with the intent and the apparent ability to carry out the threat so as to cause the person who is the target of the threat to reasonably fear for his or her safety. The threat must be against the life, or a threat to cause serious physical injury to a person.

(c) In the event a person charged under this section is engaged in lawful labor picketing, there shall be a rebuttable presumption that such person does not have the intent required under subsection a of this section.

(d) Any person who violates subsection (a) when there is a no contact order, temporary restraining order or injunction in effect prohibiting the behavior described in subsection (a) against the same party shall be imprisoned for a period of not less than six months and fined not more than one thousand dollars.

(e) A subsequent conviction occurring within seven years of a prior conviction under subsection (a) against the same victim, and involving an act of violence or a credible threat of violence, as defined in this section shall be imprisoned for a period of not less than one year and fined not more than one thousand dollars.

(f) This section shall not apply to conduct which occurs in furtherance of law enforcement or private detective business. Private detective business is defined consistent with Chapter 13 of Title 24 of the Delaware Code.

(g) Stalking is a Class F felony."

Approved May 20, 1992.

## CHAPTER 251

## FORMERLY

## HOUSE BILL NO. 352

AN ACT TO AMEND TITLE 21, DELAWARE CODE REGARDING AUTHORIZED EMERGENCY VEHICLES AND TRAFFIC SIGNS, SIGNALS AND MARKINGS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend §4106(e), Chapter 41, Title 21, Delaware Code by inserting between the phrase "the vehicle of the Forest Fire Control Supervisor in the performance of his duties," and the word "and" as they appear therein, the following phrase:

"the vehicles of the State Emergency Response Team in the performance of its duties"

May 20, 1992.

## CHAPTER 252

## FORMERLY

## HOUSE BILL NO. 409

AN ACT TO AMEND TITLE 11 AND TITLE 28 OF THE DELAWARE CODE RELATING TO GAMBLING DEVICES; AND PERMITTING THE POSSESSION OF ANTIQUE SLOT MACHINES UNDER CERTAIN CIRCUMSTANCES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend §1405, Subchapter VII, Chapter 5, Title 11 of the Delaware Code by re-designating the first paragraph of said section as new subsection (a); by re-designating the second paragraph of said section as new subsection (b); and by adding a new subsection, which shall read as follows:

"(c) A person is not guilty of a violation of this section if the devices or machines are antique slot machines, and such machines are not used for gambling purposes. For purposes of this section, a slot machine is an antique slot machine if such machine is at least twenty-five years old."

Section 2. Amend §1406, Subchapter VII, Chapter 5, Title 11 of the Delaware Code by re-designating the first paragraph of said section as subsection (a); by re-designating the second paragraph of said section as new subsection (b); and by adding a new subsection, which shall read as follows:

"(c) An antique slot machine, as defined in §1405 of this Title, is not a gambling device for purposes of this section."

Section 3. Amend Chapter 9, Title 28 of the Delaware Code by adding thereto a new section, designated as §904, which new section shall read as follows:

"904. Antique Slot Machines

No person shall offer or make available any slot machine as a form of public amusement or entertainment. An individual may, however, possess and privately use antique slot machines if such machines are not used for gambling purposes. For purposes of this section, a slot machine is an antique slot machine if such machine is at least twenty-five years old."

Approved May 20, 1992.

CHAPTER 253

FORMERLY

SENATE BILL NO. 296

AN ACT TO AMEND TITLE 3 OF THE DELAWARE CODE RELATING TO RACING DAYS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Chapter 101, Title 3, Delaware Code by striking the last three sentences of Section 10122(c) in their entirety, and by substituting in lieu thereof the following:

"The dates so awarded for racing to be conducted in any 1 county shall not exceed 340 days in the aggregate in which racing will be conducted in any 1 county in this State, and the decision of the Commission on the award of dates shall be final. Dates awarded in any 1 county shall be used by the licensee in that county for racing in that county only. Anything in this subsection to the contrary notwithstanding, in calendar year 1992 only, the Commission may upon application submitted to it on or before September 1, 1992, meet subsequent to the 1st Tuesday in May and award additional dates for racing within the respective counties of this State for 1992."

Approved May 20, 1992.

## CHAPTER 254

## FORMERLY

SENATE BILL NO. 345  
AS AMENDED BY SENATE AMENDMENT NO. 2

AN ACT TO AMEND TITLE 3, CHAPTERS 100 AND 101 OF THE DELAWARE CODE RELATING TO THE NUMBER OF HARNESS HORSE RACING DAYS AND THE SIMULCASTING OF HARNESS HORSE RACES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Chapter 100, Title 3, Delaware Code by striking the first sentence of §10023(c) in its entirety, and by substituting in lieu thereof the following:

"The Commission shall, on or before the 15th of September of the year preceding that for which a license is desired, award all dates for harness horse racing in this State for the succeeding year; but the dates so awarded shall not exceed 340 days for any one licensee, but may exceed more than 340 days in the aggregate for all licensees. To the extent a licensee under this Chapter conducts harness horse races during a given year, it shall, at a minimum, subject to the availability of racing stock, conduct live harness horse races on the same number of days as the licensee conducted live harness horse races between September 1, 1991 and April 1, 1992."

Section 2. Amend Chapter 101, Title 3, Delaware Code by adding the following sentence at the end of §10142:

"This prohibition against racing after sundown shall not apply to a display by a licensee under this Chapter of:

(1) simulcasts of harness horse races conducted in this State, provided that no such simulcasts shall be displayed without the prior written consent of all licensees under Chapter 100 of this Title; and,

(2) simulcasts of harness horse races conducted outside of this State where such racing is legal, provided that no such simulcasts shall be displayed without the prior written consent of all licensees under Chapter 100 of this title. Such consent may, if at all, be obtained upon such terms and conditions as are mutually agreeable among the parties.

In the event that all or any part of subsection (2) of this section 10142 shall be declared, by a court of competent jurisdiction, to be violative of any provision of federal law (including but not limited to the United States Constitution) or of the Constitution of this State, then, in such event, said subsection (2) shall be void in its entirety."

Approved May 20, 1992.

## CHAPTER 255

## FORMERLY

HOUSE BILL NO. 27  
AS AMENDED BY SENATE AMENDMENT NOS. 1, 3 AND 4

AN ACT TO AMEND TITLE 2 OF THE DELAWARE CODE RELATING TO PUBLIC CARRIERS, REGULATORY DUTIES AND FUNCTIONS, REGULATORY REQUIREMENTS, POWERS AND LIMITATIONS, AND PUBLIC CARRIER RATES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (three-fifths of all members elected to each House thereof concurring therein):

Section 1. Amend Section 1801(5), Chapter 18, Title 2 of the Delaware Code by deleting the words "Chapter 15, 16 or 17" and substituting in lieu thereof the words "Chapter 13".

Section 3. Amend Section 1801(9), Chapter 18, Title 2 of the Delaware Code by striking the period "." at the end of said section and by substituting in lieu thereof a comma "," and by adding new language after such substituted comma as follows:

"except, however, that "gross revenue" of a public carrier operating by leasing all or part of its vehicles to non-employee independent contractor drivers as authorized under this chapter shall mean as to such leased vehicles all revenue which (i) is collected from the non-employee independent contractor lessees operating vehicles under such public carrier's certificate of public convenience and necessity and (ii) is derived from the intrastate public carrier business of such a carrier."

Section 4. Amend Section 1801(10) of Title 2 of the Delaware Code by striking that section in its entirety and substituting in lieu thereof the following:

"(10) 'Charter Bus' means a motor vehicle having a passenger capacity of 12 persons or more, exclusive of the driver, which bus is used exclusively for hire or lease."

Section 5. Amend Section 1801(11), Chapter 18, Title 2 of the Delaware Code by deleting the words "the use of transportation or transportation related services as a commercial venture whether operated for profit or not" and substituting in lieu thereof the words "service provided in exchange for a fee or charge, regardless of whether the operator intends to make a profit, and deleting the period at the end of said section and adding at the end thereof new language to read as follows:

", and (iii) shuttle-type transportation provided by business establishments without charge to customers of the businesses offering such shuttle transportation between fixed termini."

Section 6. Amend Section 1801(13) of Title 2 of the Delaware Code by deleting the number "18" in the second line thereof and substituting in its place the number "10".

Section 7. Amend Section 1801 of Title 2 of the Delaware Code by adding a new subsection at the end thereof as follows:

"(15) 'Fixed-Route Carrier' means a transportation provider which uses a self-propelled vehicle having a passenger capacity exclusive of the driver of 10 persons or more and which transports persons and their property over regular routes between termini that are fixed and cannot be altered without the advance, written approval of the Authority."

Section 8. Amend Sections 1802, 1802A and 1802B of Title 2 of the Delaware Code by striking the sections in their entirety and substituting in their place the following:

"1802. Regulation of Public Carriers.

(a) The Authority shall make and impose charges and fees for filing, copying, inspection and other services rendered pursuant to the powers granted by this chapter or in accordance with such rules and regulations as it may from time to time adopt.

(b) The Authority shall, with the approval of the Secretary, prepare proposed rules and regulations governing the responsibilities of the public carriers it regulates. The rules and regulations shall be adopted at a public hearing following public notice. The rules and regulations as adopted, and as they may be from time to time amended by the Authority, shall have the effect of law and shall remain in power and force until the same are amended or repealed by the Authority.

(c)(1) The Authority shall grant, upon an applicant's proof of qualification as set forth in subsection (d) hereof, a certificate of public convenience and necessity. Such certificate shall authorize the certificate holder to operate motor vehicles for hire in public transportation. The certificate shall authorize the number of vehicles the certificate holder may operate, which number may be increased by subsequent application, in the Authority's discretion, and may contain restrictions or conditions related to such items as, but not limited to, geographic areas of operation, bonding, safety and maintenance, insurance, quality control and unfair competition; provided, however, that each holder of any such certificate, or of a successor 'grandfather' certificate of public convenience and necessity obtained under subsection (c)(2) of Section 8 of Chapter 125, Volume 62 of the Laws of Delaware, may not be limited to operate fewer vehicles than were in such holder's authorized fleet of taxicab vehicles on December 31, 1991.

(2) The rules and regulations adopted pursuant to subsection (b) hereof shall provide that a certificate holder may request that the Authority divide the certificate into as many certificates of public convenience and necessity as there are authorized vehicles. The certificate resulting from a division of the original certificate shall authorize the operation of only one vehicle per certificate. Each certificate of public convenience and necessity shall be a franchise and create a proprietary interest owned by the certificate holder, subject, however, to suspension or revocation by the Authority upon a showing beyond a reasonable doubt that the certificate holder is knowingly operating or knowingly permitting operation of a vehicle, or the business authorized by the certificate, in disregard or violation of State law, the rules and regulations and/or applicable practices and orders of the Authority.

(3) The rules and regulations adopted pursuant to subsection (b) hereof shall provide that the Authority shall issue to each certificate holder a medallion or other identifying insignia, and that this medallion or other identifying insignia shall be physically affixed to the top of the hood of the taxicab vehicle operated under that certificate. The rules and regulations also shall provide that the certificate holder may sell and assign each certificate, vehicle, medallion or other identifying insignia to another or others to operate in the taxicab business under such sold or assigned certificate. If the certificate holder replaces the vehicle identified by the medallion or insignia, the certificate holder, with the approval of the Authority, shall affix the medallion or other identifying insignia to the vehicle replacing the former vehicle.

(4) No person who purchases a certificate of public convenience and necessity from a certificate holder as authorized by subsection (c)(3) may commence operations as a public carrier without having first obtained from the Authority a certificate of compliance. The Authority will issue a certificate of compliance when the purchaser of a certificate of public convenience and necessity provides evidence to the Authority to prove by a preponderance of the evidence that purchaser has complied with Section 1802(e) (1)(B), (C) and (D) and is of good moral character as specified in Section 1802 (e)(1).

(5) By its rules and practices, or by order, the Authority shall provide for authority to management, maintenance and dispatching companies and organizations (i) to manage parts or all of the operations and businesses of certificated taxicab companies and operators, (ii) to maintain and repair taxicab vehicles for such companies and operators, and/or (iii) to provide radio dispatching of taxicab vehicles for such

certificated taxicab companies and operators, pursuant to contractual arrangements made between such management, maintenance and dispatching companies and organizations, on the one hand, and, on the other, such certificated taxicab companies and operators. The Authority shall have power to void any contracts and services of any such management, maintenance and dispatching company or organization upon proper and adequate proof of knowing and repeated noncompliance by such company with State law and/or the rules, regulations, practices and orders of the Authority.

(d) The Authority may, by its rules and regulations, authorize a holder of a certificate of public convenience and necessity to operate the public carrier business thereunder with vehicles leased by such holder to non-employee independent contractor drivers who will operate such vehicles as such drivers under the authorization of said certificate of public convenience and necessity, provided, however, that the holder of the certificate of public convenience and necessity shall remain responsible for the proper operation and maintenance of said vehicles in said public carrier business and for the compliance with all laws, rules, regulations, practices, and applicable orders and provided further, that such non-employee independent contractor drivers do not thereby become public carriers and do not thereby have any rights under this title as a public carrier. The Authority may, by its rules and regulations, authorize a system of restricted certification where deemed to be appropriated and only in accordance with such terms and conditions as the Authority shall determine. The Authority shall have the power to void any leases and/or suspend or revoke the certificate of public convenience and necessity of any holder thereof upon proper and adequate proof of knowing and repeated noncompliance by such certificate holder or its lessees with such laws, rules, regulations, practices, and orders.

(e) The Authority may issue a Certificate of Public Convenience and Necessity upon satisfaction of the following terms and conditions and such other terms and conditions imposed by the Authority:

(1) No public carrier shall commence any new operations, or continue any existing operations, without having first obtained from the Authority a certificate of public convenience and necessity and having paid the registration fee therefor. Any public carrier which holds a certificate of public convenience and necessity issued by the Authority on the date this section becomes effective shall be deemed to have an existing certificate of public convenience and necessity as contemplated herein and may continue such operations authorized by the existing certificate of public convenience and necessity. The Authority may, after notice and a hearing, impose such terms and conditions upon the certificate as may be required by the public convenience and necessity. The application for a certificate of public convenience and necessity shall be verified and contain a certification by the applicant that notice of his application has been sent to existing public carriers. In addition, the applicant shall be of good moral character, as shall be evidenced by exhibiting compliance with all applicable laws and regulations, and shall not have been convicted of a felonious or infamous crime involving fraud or deceit. The Authority shall require the applicant for a certificate of public convenience and necessity to prove by a preponderance of the evidence the following:

A. That his or its proposed operations will serve a useful public purpose, a useful public necessity, and a useful public convenience responsive to a public demand.

B. That the applicant, as to its proposed service and/or operations, has sufficient financial ability to compensate members of the public for injuries to person or property which they may sustain from acts or failures to act of the public carrier. To this end, the Authority may require that an applicant post a bond to secure its performance for the first two years of its operation in this State.

C. That, as to the proposed service and/or operations, the applicant has complied with all applicable motor vehicle laws of the State of Delaware, including but not limited to sub-chapter VI of Chapter 21 of Title 21 of the Delaware Code, as the same may be

amended and that the applicant will otherwise ensure that its vehicles are safely operated and maintained.

D. That, as to the proposed service and/or operations, the applicant is covered by and with a public liability and property damage policy or policies issued by a company licensed to conduct insurance business in the State of Delaware with coverages in the amounts specified in this section.

(2) If the Authority finds that the applicant has proven by a preponderance of the evidence subsections A. through D. of section 1802(e)(1), a certificate of public convenience and necessity shall be issued, unless an existing public carrier or a member of the public can prove by a preponderance of evidence that the applicant's operation will have a significant adverse impact on the public health and safety or an adverse impact on existing carriers such as to impair their ability to serve the public. For the purposes of this section a preponderance of the evidence means evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it. The burden of proof of significant adverse impact is on the intervenor.

(3) Any public carrier operating without a certificate of public convenience shall, upon such a finding by the Authority, be liable for the payment of a penalty in an amount not to exceed \$500 per day of operation for the first such finding, and not to exceed \$1,000 per day for the second or subsequent such findings. An action alleging failure to comply with the provisions of this section shall include an action alleging a continuing offense and the penalty contemplated herein shall be assessed for each day of operations in which a violation is proven.

(f) Whenever the Authority, pursuant to its duties under this chapter, shall investigate the operations, services, rates, charges, accounting records, or practices of any public carrier, including a public carrier operating without having received a certificate of public convenience and necessity, and shall hold a hearing in connection therewith, such public carrier shall be charged with and pay such portion of the expenses of the Authority, and the compensation and expenses of its agents, representatives, consultants, and employees as is reasonably attributable to such investigation, provided that notice of the intent to so charge the public carrier shall be given to the public carrier as soon as the Authority makes such intent. This provision shall not apply to the compensation of the full-time employees of the Authority. The Authority shall have the power to subpoena such records and witnesses as it may require to carry on an investigation pursuant to this chapter.

(g) In order to maintain and foster the effective regulation of public carriers under this title, public carriers subject to regulation of the Authority shall bear the expense of regulation by means of an assessment measured by the annual gross revenue of such public carriers. This assessment shall be in addition to all other fees and charges imposed by the Authority pursuant to this title. Such assessment shall be in the amount equal to the product of .002 (2 mills) multiplied by the public carrier's gross operating revenue for each of the State's fiscal years. Whenever a public carrier commences operations on a date other than July 1, so that it has not operated for a full fiscal year prior to the date its assessment is calculated, such carrier's assessment shall be prorated, based on the portion of the fiscal year during which the carrier operated.

(h) On or before October 1 of each year, each public carrier subject to this title shall file with the Authority an annual gross revenue return. Forms for such returns and amended returns shall be devised and supplied by the Authority.

(i) All returns and the accompanying fees submitted to the Authority by a public carrier, as provided in this section, shall be sworn to by an appropriate officer of the public carrier. The Authority may audit each such return submitted and may take such measures as are necessary to ascertain the correctness of the returns submitted, and to require the correction of incorrect returns. All returns will be used for the regulatory purposes set out in this section, and shall not be open to



public inspection under federal or state Freedom of Information statutes and shall be precluded from discovery or inspection as a privileged business record, except as otherwise provided by law. In default of compliance with this section, the public carrier shall be subject to the penalties provided in subsection (m) below.

(j) Each payment of the assessment imposed by this section is due by midnight of the date specified. Late filings will be subject to payment of a late fee to be determined by the Authority in its Regulations. If a public carrier has failed to pay or has underpaid the proper amount, it shall pay a penalty to the Authority of 1% of the amount due for each month or fraction thereof that such amount remains unpaid. The Authority may enforce the collection of any delinquent payments by any legal action or other manner by which the collection of debts due the State may be enforced under the laws of this State.

(k) There is hereby maintained within the Authority a special fund designated as the Delaware Transportation Authority Regulatory Revolving Fund, which shall continue to be used in the operation of the Authority in the performance of the various regulatory functions and duties required of it by law.

(l) All fees, licenses, assessments and other charges collected by the Authority pursuant to this title shall be deposited in the Delaware Transportation Authority Regulatory Revolving Fund to be used by the Authority as provided above, subject to annual appropriations by the General Assembly for salaries and other routine operating expenses of the Authority. All penalties or fines assessed and collected by the Authority shall be deposited in said Fund to be used only for such purposes as described in this chapter.

(m) In default of compliance with this chapter, the rules and regulations, or any order of the Authority when the same becomes effective, the public carrier shall be subject to (1) a penalty of up to \$500 per day for every day during which such default continues, to be recovered in an action in the name of the State; and (2) the suspension, for a duration not to exceed one year, or revocation of the public carrier's certificate of public convenience and necessity. The observance of the rules and regulations and orders of the Authority may be compelled by mandamus or injunction. Within 10 days of receiving notice that it is in default of compliance, the public carrier may appeal to the Authority for a hearing. Should the Authority, after such hearing, determine that the public carrier remains in default of compliance, the public carrier may appeal to the Superior Court. Such an appeal will be on the record only and shall be taken as provided in Rule 72 of the Superior Court Civil Rules. The burden of proof of any such appeal is on the public carrier.

(n) Whoever knowingly performs, commits or does, or participates in performing, committing or doing, or knowingly causes, participates or joins with others in causing any public carrier to do, perform, or commit, or advises, solicits, persuades or knowingly instructs, directs or orders any officer, agent or employee of any public carrier to perform, commit or do any act or thing prohibited by this chapter shall be fined not more than \$2,000 or imprisoned not more than 6 months or both.

(o) The Authority is authorized to hire sufficient staff to carry out this chapter subject only to the funding granted by the General Assembly.

(p) The Authority shall prescribe by rule, regulation, or order minimum amounts and kinds of insurance which shall be carried by public carriers, provided that no public carrier shall be permitted to operate as such unless and until each and all of its vehicles transporting passengers shall be covered by and with a public liability and property damage insurance policy or policies issued by an insurance company authorized to do business in the State of Delaware in the minimum amounts of \$100,000 per person per accident for personal injury or death and \$50,000 per accident for property damage.

(q) The Authority shall have jurisdiction to review, investigate, conduct hearings, revise and approve all rates, fares, tariffs, or changes imposed or sought to be imposed upon the public in accordance with the following:

(1) Every public carrier shall file with the Authority complete schedules of every classification of fares or rates charged by it for service offered in this State. A current copy of all rates, fares or tariffs in effect shall be kept available for inspection by the public at the business office of the carrier and in or on each vehicle used by the public carrier in performing its services. Every application for a certificate of public convenience and necessity shall include a proposed rate schedule shall be approved by the Authority prior to its granting the certificate to the applicant.

(2) Rates, fares, tariffs, or charges of each public carrier may be based upon the public carrier's operating ratio or by reference to the rate base of the carrier, a fair rate of return for the carrier and the revenues and expenses of the carrier. The Authority shall have access, upon reasonable notice, to all records, books and documents of a public carrier which the Authority deems relevant in enabling it to act upon rates, fares, tariffs, and charges of the carrier, including records, books and documents in the custody of a third party.

(3) No public carrier shall make, impose, or exact any unjust or unreasonable or unduly preferential or unjustly discriminatory individual or joint rate or fare for any service supplied by it within this State.

(4) No public carrier shall put into effect any new rate or fare except after 30 days' notice to the Authority, which notice shall plainly state the new rate or fare and the time such new rate or fare will go into effect. The public carrier shall also post a notice of the new rate or fare at its place of business 30 days prior to the intended effective date of such new rate or fare. All proposed new rates or fares shall be published at least one a week for two consecutive weeks during the 30-day period in a newspaper of county wide circulation in each county in which the public carrier holds itself out to operate, in a form approved by the authority. The Authority may, for good cause shown, permit temporary changes in fares to take effect without requiring the 30 day notice, provided, however, that such temporary changes shall be in effect for only so long as the request for same shall state. Any such temporary change shall be clearly posted at the public carrier's place of business and in each of its vehicles.

(5) The Authority may, either upon complaint or upon its own initiative, hold a hearing concerning the lawfulness of a rate or fare charged by a public carrier. Such hearing shall be scheduled 20 days after written notice to the public carrier and after notice of such hearing is published in a newspaper of general circulation in the county in which such carrier operates. The hearing will be conducted in accordance with the procedures set forth in 29 Del. C. ch. 101.

(6) The Authority may, after notice and a hearing, in writing, fix just and reasonable individual rates or fares, joint rates or fares, charges or schedules thereof, as well as commutation, mileage, and other special rates or fares, which shall be imposed, observed, and followed thereafter by any public carrier affected by such order. An order entered in accordance with this subsection shall be effective 30 days following the date the order is issued, unless the Authority, in its discretion, makes the order effective at an earlier date.

(7) In any hearing to determine the lawfulness of a rate, fare, or charge imposed by the public carrier, the burden of proof that the rate, fare, or charge is lawful is on the public carrier. The standard of review utilized by the Authority to determine if any rate, fare, tariff or charges whether proposed or approved is lawful is whether said rate, fare, tariff or charge is reasonable and in accord with the public and the financial obligation of the public carrier. Upon review by the Authority of all surrounding circumstances."

Section 9. Amend Section 1819(c), Chapter 18 of Title 2 of the Delaware Code by striking the section in its entirety and substituting in its place the following:

"(c) The scope of review before the Court shall be whether the Authority's decision is based on substantial evidence."

Section 10. This Act shall not affect the validity of any certificate of public convenience and necessity, or part thereof, which was issued or amended in accordance with the requirements of Chapter 125, Volume 62 of the Laws of Delaware, prior to the enactment of this Act.

Section 10. Amend §1817, Title 2, Delaware Code by deleting the term "motor bus" wherever it appears therein and by inserting in lieu thereof the term "charter bus".

Section 11. Amend §1818, Title 2, Delaware Code by deleting the term "motor buses" as it appears therein and by inserting in lieu thereof the term "charter buses".

Approved May 21, 1992.

#### CHAPTER 256

##### FORMERLY

#### HOUSE BILL NO. 523

AN ACT TO AMEND CHAPTER 26, PART 1, TITLE 14 OF THE DELAWARE CODE, RELATING TO THE POWER OF COUNTY VOCATIONAL HIGH SCHOOL DISTRICTS AND COUNTY VOCATIONAL-TECHNICAL DISTRICTS TO LEVY TAXES FOR SCHOOL PURPOSES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Chapter 26, Title 14, Delaware Code by striking §2601(a)(2) in its entirety and substituting in lieu thereof the following:

"(2) The amount to be raised by taxation shall not exceed 14 cents on each \$100 of value of real property in Kent County for the tax year 1993 and all years thereafter."

Approved June 5, 1992.

#### CHAPTER 257

##### FORMERLY

#### SENATE BILL NO. 399

AN ACT TO AMEND CHAPTER 26, TITLE 14 OF THE DELAWARE CODE, RELATING TO THE POWER OF COUNTY VOCATIONAL HIGH SCHOOL DISTRICTS AND COUNTY VOCATIONAL-TECHNICAL SCHOOL DISTRICTS TO LEVY TAXES FOR SCHOOL PURPOSES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Chapter 26, Title 14, Delaware Code by striking §2601(a)(1) in its entirety, and substituting in lieu thereof the following:

"(1) The amount to be raised by taxation shall not exceed 17.3 cents on each \$100 of value of real property in Sussex County for the tax year 1992 and all years thereafter."

Approved June 5, 1992.

## CHAPTER 258

## FORMERLY

SENATE BILL NO. 319  
AS AMENDED BY SENATE AMENDMENT NO. 1

AN ACT TO AMEND TITLE 26 OF THE DELAWARE CODE RELATING TO THE REGULATION OF PUBLIC UTILITIES PROVIDING TELECOMMUNICATIONS SERVICES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Chapter 1, Title 26, Delaware Code by adding thereto a new subchapter to read as follows:

"Subchapter VII. Telecommunications Regulation Modernization

§701. Short Title

This subchapter shall be known and referred to as the "Telecommunications Regulatory Authorization Act of 1992".

§702. Findings of Public Policy

(a) With respect to the provision of telecommunications services in Delaware, it is the policy of this State that:

(1) Basic telecommunications services shall be universally available at affordable prices.

(2) To foster economic development in this State, responsible and reasonable investment in and development of telecommunications systems employing advanced technology shall be encouraged as an integral part of the State's infrastructure.

(3) The availability of customer choices among a continuously developing variety of telecommunications services shall be encouraged.

(4) The growth of competitive markets for the provision of telecommunications services shall be encouraged and, where they exist or develop in the future, the availability, price, terms of service and quality should be determined by such competitive markets.

§703. Commission Authority

To create an environment which permits the pursuit of the policy declared herein, the General Assembly finds and declares that:

(1) In a competitive marketplace, some utility regulation may be necessary in protecting the public interest. However, where competition helps promote efficiency in the use of resources, deployment of technology or fosters productivity and innovation, such competition shall be authorized and encouraged by the Commission.

(2) Where competitive market pressures are inadequate for regulation of price, as well as availability and terms of service for particular telecommunications services, the Commission is authorized and encouraged to develop and implement alternate methods of regulation which will encourage the providers of such services to take advantage of technological advances and efficiencies.

(3) The Commission is authorized and encouraged to respond to the changing technology and structure of the telecommunications industry by modifying its regulation of telecommunications services where such modifications will foster the universal availability of basic telecommunications services; protect the public interest; promote efficiency in public and private resource allocation or encourage economic development. Such authorized modifications include, but are not limited to, such regulatory features as: incentive regulation, earnings sharing, categorization of services for the purposes of pricing, price caps, price indexing, ranges of authorized returns, detariffing and deregulation. In conjunction with alternative methods

of regulation, the Commission is encouraged to consider appropriate safeguards to (a) protect customers of service which the Commission has not found to be competitive and (b) protect the further development of competition in the state. The Commission is specifically authorized to depart from rate base, rate of return regulation."

Approved June 10, 1992.

## CHAPTER 259

## FORMERLY

HOUSE BILL NO. 187  
AS AMENDED BY HOUSE AMENDMENT NOS. 1, 2 AND 4

AN ACT TO AMEND SUBCHAPTER I, CHAPTER 9, TITLE 13, OF THE DELAWARE CODE RELATING TO THE ADOPTION OF MINORS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Subchapter I, Chapter 9, Title 13 of the Delaware Code by striking the subchapter in its entirety and substituting therefore the following:

"SUBCHAPTER I. MINORS.

Section 901. Definitions.

For the Purposes of this chapter:

(1) 'Authorized agency' means any agency duly approved, certified, recognized or licensed by the proper authority of any other state or country in which that agency is located to place children for adoption.

(2) 'Child' means any male or female who has not attained his or her eighteenth birthday.

(3) 'Department' means the Department of Services for Children, Youth, and Their Families of this State.

(4) 'Identified adoption' means an adoption in which the birth parents and adoptive parents first know each other, without the services or assistance of an intermediary, and then seek placement or adoption services from the Department, a licensed agency, or an authorized agency.

(5) 'Identifying information' means any data, including that described in Section 929 of this title, that can distinguish a party to the adoption from the general public.

(6) 'Intermediary' means any person for compensation and in his professional capacity, firm, corporation, organization or other legal entity, except the Department or a licensed agency, which in any way acts, or offers to act, as a link between a birth parent and an adoptive family in any proposed placement of a child or any person who receives remuneration for so acting or offering to act.

(7) 'Legally free' means that there has been a prior termination or transfer of parental rights by judicial order.

(8) 'Legally separated' means any person or persons who, by a decree of the appropriate court of any other state of the United States, other than a decree of absolute divorce, entered in accordance with the laws of that state, has been accorded the right to reside separate and apart from his or her spouse, or is a party to a decree of divorce from bed and board or its equivalent.

(9) 'Licensed agency' means any agency granted a license by the Department to provide adoption services in the State of Delaware.

(10) 'To place' includes any of the following activities, each of which may be performed only by the Department, a licensed agency or an authorized agency: the selection of an approved family for the child; the arrangement for the child's move into an adoptive home; or the relocation of the child with an adoptive family.

Section 902. Jurisdiction and venue; removal of petitioner from county.

(a) Family Court shall have jurisdiction of proceedings under this chapter.

(b) A petition for adoption shall be filed either in the Family Court of the county in which the licensed or authorized agency placing the child is located, or the Family Court of the county in which the petitioner resides.

(c) In any case in which, before the proposed adoption has been finally approved or disapproved, the petitioner or petitioners move into a county other than the county in which the original petition was filed, or into another jurisdiction, the Family Court of the county in which the petition was originally filed may continue to exercise jurisdiction over the proceeding until a final decision has been rendered on the petition.

(d) Whenever the Family Court shall assume jurisdiction for the purposes of terminating parental rights over a child, it shall be deemed to have retained jurisdiction for the purposes of proceeding under this chapter for the adoption.

#### Section 903. Persons eligible to petition to adopt.

An unmarried person or a husband and wife jointly, who are not legally separated or who are not living apart from each other, or a divorced or legally separated person, being a resident of the state of Delaware at the time of filing the petition or with whom a child has been placed for adoption under Section 904 of this title, and being over 21 years of age, may petition the Family Court for an order authorizing the petitioner or petitioners to adopt a child not his, hers or theirs. Nothing herein shall in any way affect the right of any person to adopt a person who has reached age 18 as provided in Subchapter II of this chapter.

#### Section 904. Placement and supervision for adoption.

(a) No petition for adoption shall be presented unless prior to the filing of the petition the child sought to be adopted has been placed for adoption by the Department, a licensed agency or an authorized agency, and the placement has been supervised by the Department or a licensed agency, but no such placement or supervision shall be necessary in the case of:

(1) A child sought to be adopted by a stepparent;

(2) A child sought to be adopted by a blood relative, except as provided in Section 926 of this title.

(b) No placement for an identified adoption in which an intermediary has been involved shall be approved or permitted by the Department or a licensed agency.

(c) No child shall be placed for adoption in this State pursuant to Section 926 of this title unless the placement is approved and supervised by the Department or a licensed agency.

(d) When the prospective adoptive parents are legal residents of the State but live elsewhere the approval and supervision required by this section shall be provided by an authorized agency located in close proximity to the family, as will the social report required by Section 912 of this title.

#### Section 905. Appeal from decision of the Department or licensed agency.

In any case where the Department or a licensed agency refuses to place a child for adoption when requested by the parent of the child, or refuses the request of any person that a child be placed with him for adoption, or terminates any placement prior to adoption contrary to the wishes of the birth parent or prospective adoptive parent of the child, the decision of the Department or a licensed agency in so refusing or so terminating shall be final unless within 30 days after notice of refusal or termination, the birth parent or proposed adoptive parent shall appeal to the Family Court of the county in which the adoption is proposed. The Department or licensed agency shall not remove a child who is legally free for adoption from an adoptive placement prior to the adoption without good cause.

#### Section 906. Contents of petition for adoption.

The petition shall state:

(a) The name, address and marital status of the petitioner or petitioners;

(b) The sex and date of birth of the child whose adoption is sought;

(c) The relationship of the petitioner to the child;

(d) The name of the person, persons or organization legally qualified to consent to the adoption and the basis for the existence in such person, persons or organization of the right to so consent;

(e) The date of the child's placement in the adoptive home, or, in the case of a child to be adopted by a stepparent, the date of the marriage of the stepparent and the child's natural parent;

(f) The name to be assumed by the child upon adoption;

(g) If, in the case of an adoption by a stepparent or blood relative, there has not been a prior legal termination of parental rights, the petition shall also include:

(1) The name and residence of the mother and natural father or any presumed father, as defined in Chapter 8 of this title, of the child whose adoption is sought. If either or both parents are deceased, a statement to that effect, with a certified copy of the death certificate(s) attached.

(2) The mother's marital status at the time of the child's conception and birth. In the event that the mother was not married at the time of the child's conception or birth, or in the event that she was married at the time of the child's conception or birth but her husband at those times is not the child's natural father, an affidavit by the mother setting forth either:

a. The name and last known address of the natural father; or

b. A statement that the mother knows the name of the natural father but is unwilling to disclose the name of the natural father; or

c. A statement that the mother does not know the name of the natural father; or

d. The name of the natural father, and a statement that the mother has never known his address.

(3) In the case of a stepparent adoption where the petitioner is the wife of the alleged natural father and the child to be adopted has been born out of wedlock to the father and another woman, evidence of paternity blood testing which does not exclude the alleged natural father.

(h) In the case of a child being brought into this State from another state or country for adoption in this State, proof of compliance with all requirements of the Interstate Compact on the Placement of Children, as set out in Chapter 3 of Title 31 of the Delaware Code, relating to such placement.

(i) After execution of the petition by the petitioner or petitioners, there shall be attached so as to preserve the confidential nature of the information contained therein, as required by Section 923 of this title, the exhibits set out in paragraphs (1), (2), and (3) of subsection (6) above; provided, however that confidentiality is not required in the case of a petition by a stepparent or blood relative or where the birth parent(s) and adoptive parent(s) have exchanged identifying information as provided in Section 929 of this title and copies of the written agreements required thereunder are attached:

a. The birth certificate of the child.

b. The legal name of the child whose adoption is being sought.



c. All required consents, or facts justifying the absence of consent, or a certified copy of the Court order terminating or transferring parental rights.

(j) All petitions for adoption filed shall have attached thereto affidavits of the petitioners stating the amount of the service fee charged by all agencies and any other expenses paid by the adopting family in the adoption process, and attesting that no intermediary assisted in locating the child.

#### Section 907. Consent requirements.

(a) A petition for adoption shall contain a consent to the proposed adoption. The consent shall be in writing, notarized and attached to the petition as an exhibit. If consent is obtained or given outside this State, it must be executed in accordance with this section and Section 908 of this title.

(b) A written consent to adoption, duly acknowledged, must be given by any child 14 years of age or over unless the Court, upon further investigation or inquiry, deems it to be in the best interest of the child that such consent be waived. Such consent, when obtained, shall be attached to the petition as an exhibit thereto.

#### Section 908. Right to Consent.

(a) Except in the case of an adoption by a stepparent or blood relative, no petition for adoption shall be filed unless the child to be adopted is legally free for adoption. The consent to the adoption shall be granted by the Department or by the licensed or authorized agency in whom the parental rights are vested.

(b) In the case of an adoption by a stepparent or blood relative, the consent to the adoption shall be granted as follows:

(1) By mother of a child; and

(2) The biological father and any presumed father of a child; provided, however, that the consent of the alleged biological father or presumed father need not contain an admission that he is the father. In the event that the named biological or presumed father disclaims paternity, an affidavit signed by him to that effect shall be attached to the petition in lieu of a consent from the natural or presumed father. It is further provided that in the event of a petition containing statements described in Section 906(g)(2) b., c. or d. of this title, after a hearing in which it is established on the record that the mother and father of the child are not living together as husband and wife openly and that they have not done so nor married since the birth of the child, the Court may, following consideration of the social report, dispense with the requirement of the father's consent in compliance with Section 932 of this title.

(3) If, in the case of an adoption by a stepparent or blood relative, any person from whom consent is required is deceased, a certified copy of the death certificate of such person shall be filed with the petition in lieu of consent.

(c) If the individual in whom the right to consent exists is under the age of 18 years, this fact shall not be a bar to the giving of consent nor render the consent when given invalid.

#### Section 909. Withdrawal of consent.

In any case in which consent has been given in accordance with the provisions of Section 907 of this chapter, and the person, Department, licensed agency, authorized agency or child over age 14 giving the consent desires to withdraw the consent, he shall file, within 60 days from the date of the filing of the adoption petition containing the consent, a petition asking the Court to revoke his consent and dismiss the adoption petition. The Family Court shall refer the petition to revoke and dismiss to the Department or licensed agency, and the Department or licensed agency shall, within 30 days of the reference, make a formal report thereon to the Court. Promptly

upon receipt of the report, the Court shall rule upon the petition to revoke and dismiss.

#### Section 910. Withdrawal of petition.

In any case in which the petition to adopt is withdrawn, the Court may order the removal of the child from the prospective adoptive home if, in the opinion of the Court, such removal is in the best interest of the child. If such a removal is ordered, the Court shall include in the order a grant of authority to the Department or to a licensed agency to make the removal and to provide for the future disposition of the child.

#### Section 911. Religious Affiliation.

(a) If either natural parent, in a notarized statement made prior to the placement for adoption, specifies the religion in which he or she desires the child to be raised, the Department or licensed agency shall make placement in accordance with such statement. If the natural parents declare indifference to the religion in which the child should be reared, or if their religion is not known, or if there is none, then the Department or licensed agency shall make placement without regard to religion.

(b) If the proposed adoptive parent is a stepparent or blood relative, there shall be no restriction regarding the religious affiliation.

(c) Whenever the provisions as set forth in subsection (a) of this section appear to create a hardship for the child to be adopted in obtaining a suitable and prompt placement, the Family Court, in its discretion, may waive these requirements in the best interest of the child.

#### Section 912. Social Study and report.

(a) Upon the filing of a petition for adoption, the Judge of the Family Court in which the petition has been filed, after determining that the petition has been properly filed and that the petitioner or petitioners are eligible to adopt under this chapter, shall order a social study report by the Department or licensed agency or authorized agency unless the report was filed with the petition.

(b) The report shall include:

(1) Information regarding the child, its background, its eligibility for adoption;

(2) Information regarding the adoptive parent or parents, and the proposed adoptive home;

(3) Information regarding the physical and mental condition of the child;

(4) Information regarding the suitability of the placement;

(5) A statement as to whether all requirements of this chapter have been complied with;

(6) A recommendation.

(c) If the placement is made by the Department or licensed agency, the report shall be rendered within 60 days from the receipt of the order for the report unless the report is filed with the petition for adoption. In the case of adoption by a stepparent or blood relative, the report is to be rendered within 60 days following the completion of the social study, and shall include a statement of the cost of the study.

(d) If the Court orders any further social investigation or any supplement of the social report, any such investigation shall be conducted and a supplement shall be prepared by the Department or the licensed or authorized agency party to the proceedings.

#### Section 913. Time for filing the adoption petition.

(a) A petition for adoption may be filed when the requirements of Section 904 of this title have been met, the child is legally free for adoption, and the adoptive placement of the child has been supervised for a period of one year by the Department or licensed agency, except that on recommendation of the Department or licensed agency, a petition may be filed at any time after six months supervision.

(b) In the case of a child to be adopted by a stepparent or a blood relative, the petition for adoption shall be filed only after the child has resided in the home of the petitioner for at least one year; except that, on recommendation of the Department or licensed agency, a petition may be filed after six months continuous residence of the child in the petitioner's home. In the case of adoption by a stepparent or blood relative, it is not necessary that the child be legally free prior to the filing of the petition.

Section 914. Death, divorce, annulment, separation of petitioner pending proceeding.

(a) In the event of the death of a sole petitioner, or of both petitioners, the proceedings shall abate and the petition shall be dismissed.

(b) When, after a petition for adoption has been filed, one of two petitioners dies, or as a result of divorce, annulment or separation, legal or otherwise, the petitioners would no longer be qualified to petition jointly, the proceedings shall be stayed. The Family Court in which the petition was originally filed shall then decide on the basis of a report to be obtained by it from the Department or licensed agency, whether the proceedings shall continue or whether the petition should be dismissed.

Section 915. Decree of adoption.

(a) Within 60 days from the date of the receipt by the Court of the report, the Court shall render a decision upon the petition. If the Court is of the opinion that the petitioner or petitioners are qualified properly to maintain, care for and educate the child, that the child is suitable for adoption and that the best interest of the child will be promoted by the adoption, a decree of adoption shall be entered. If the Court is of the opinion that such a decree should not be entered, it shall notify the petitioner or petitioners and, if requested by any petitioner, it shall order a hearing to which all interested parties shall be duly summoned, and, based upon the report and evidence adduced at the hearing, the Court shall issue its decree granting or refusing the prayer of the petitioner.

(b) At any time after the report has been filed but prior to the Court's rendering a decision, the Court may order the removal of the child from the proposed adoptive home if, in the opinion of the Court, such removal is in the best interest of the child. If such a removal is ordered, the Court shall include in the order a grant of authority to the Department or to a licensed agency, to make the removal and to provide for the future disposition of the child.

(c) The decree of adoption shall state:

- (1) The name by which the child is henceforth to be known;
- (2) The sex and age of the child;
- (3) The name of the child at the time the petition was filed.

(d) Upon the entry of a decree of adoption the Clerk of Court shall issue to the adopting parent or parents a certificate of adoption stating the date of the decree, the age and sex of the child, the name by which the child is henceforth to be known, and the names of the adopting parent or parents. Neither the original name of the child nor the names of the birth parents shall be included in the certificate of adoption.

Section 916. Court costs.

The costs in all cases of adoption under this chapter shall be taxed by the Court on the person or persons filing the petition, and they shall pay the same to the Clerk of Court.

#### Section 917. Appeal.

(a) Appeal from any order or decree entered in any adoption proceedings shall lie to the Supreme Court. No appeal shall lie from any order or decree involving proceedings for adoption unless taken within 30 days from the date of such order or decree.

(b) The Department, licensed agency or any person party to the proceedings may file such appeal.

(c) In any case in which the effect of the decision of the Supreme Court, on appeal, is to deny the petition for adoption, the Supreme Court shall remand the cause to the Family Court for a determination as to whether or not the child shall remain in the proposed adoptive home. If a removal is ordered, the Family Court shall include in the order a grant of authority to the Department or a licensed agency to make the removal and to provide for the future disposition of the child.

#### Section 918. Finality of decree of adoption.

Upon the expiration of two years from the date of the entry of the decree of adoption, any irregularities in the proceedings shall be deemed cured, and the validity of such decree shall not thereafter be subject to attack either through collateral or direct proceedings.

#### Section 919. General effect of adoption.

(a) Upon the issuance of the decree of adoption, the adopted child shall be considered the child of the adopting parent or parents, entitled to the same rights and privileges and subject to the same duties and obligations as if he has been born to the adopting parent or parents.

(b) Upon the issuance of a decree of adoption, the adopted child shall no longer be considered the child of his birth parent or parents and shall no longer be entitled to any of the rights or privileges or subject to any of the duties or obligations of a child with respect to the birth parent or parents; but, when a child is adopted by a stepparent his relationship to his birth parent who is married to the stepparent shall in no way be altered by reason of the adoption.

#### Section 920. Effect of adoption on inheritance.

(a) Upon the issuance of a decree of adoption, the adopted child shall lose all rights of inheritance from its natural parent or parents and from their collateral or lineal relatives. The rights of the natural parent or parents or their collateral or lineal relatives to inherit from such child shall cease upon the adoption.

(b) Upon the issuance of a decree of adoption, the adopted child shall acquire the right to inherit from its adoptive parent or parents and from the collateral or lineal relatives of such adoptive parent or parents, and the adoptive parent or parents and the collateral or lineal relatives of the adoptive parent or parents shall at the same time acquire the right to inherit from the adopted child.

(c) Nothing contained in this section shall limit in any way the right of any person to provide for the disposition of his or her property by will. The rights of a child adopted after the making of a will by the adopting parent or parents shall be the same as the rights of an after-born child, as prescribed in Section 301 of Title 12. When the adopting parent is a stepparent, married to the birth or legal parent, nothing contained in this section shall affect the rights of inheritance between the child and the birth or legal parent or their collateral or lineal relatives.

#### Section 921. Report of vital statistics data.

(a) Upon the entry of a decree of adoption, the Clerk of the Family Court shall forward to the Department of Health and Social Services, Office of Vital Statistics, a report on the form provided for this purpose, which shall include the following information:

(1) Prior legal name of the child and its sex;

- (2) Date and place of birth of child;
- (3) Name of the father as stated on the birth certificate, if stated;
- (4) Maiden name of mother;
- (5) Child's name after adoption;
- (6) Name of adoptive father, place and date of his birth, his occupation;
- (7) Maiden name of adoptive mother, place and date of her birth, and her occupation;
- (8) Address of adoptive parents.

(b) If the adoptive child was born in another state, the Clerk of the Family Court in which the order was entered shall forward the same information to the Bureau of Vital Statistics, or like agency, in the state of the child's birth.

#### Section 922. Birth certificate.

(a) If a child born in this State is adopted in this State or in another State, the State Registrar shall file a new certificate of birth upon receipt of a certified copy of the decree of adoption from the proper authorities of the state in which the adoption took place.

(b) If the adopted child was born outside this State, and a certificate of birth cannot be secured from the place of birth, the State Registrar may file and issue a special birth certificate as herein provided, upon receipt from the agency responsible for the adoption of evidence of the birth, considered satisfactory by the Registrar.

#### Section 923. Confidential nature of information; old and new birth certificates.

All information regarding any adoption which is furnished to any State Registrar shall be confidential and not open to public inspection. The names of the biological or previous legal parent or parents or the former name of the child shall not be furnished to the adoptive parents, nor shall the name of the adoptive parents be furnished to the biological or previous legal parent or parents and, after the entry of the decree of adoption, the original record of birth shall be impounded and all birth certificates shall be issued in the adoptive name only, if a new name has been assumed, and shall contain no reference to the former name or background or the fact of adoption.

#### Section 924. Confidential nature of Court records.

All Court records of any adoption shall be treated as strictly confidential and shall be kept by the Clerk of the Court in a sealed container which shall be opened only upon the order of the Judge of Family Court concerned. Nothing in the section shall be construed in such a way as to restrict the Department or licensed agency from releasing nonidentifying information in its records to any of the parties to the adoption. Except as otherwise provided in Section 929 of this title, identifying information, such as names and addresses, shall not be released except by order of the Court or with the consent of all the parties involved when it is deemed by the agency to be in the adoptee's best interest, except in cases where the adopted individual's health or the health of any blood relative of the adopted individual is concerned and the adoption agency has refused to release the health information to the individual, the Court may, through petition by the adopted individual, permit the party to inspect only that part of the adoption agency or Court record containing medical information for health reasons. The Court shall order open to inspection by the individual the part of the record containing the needed medical information if the Court finds that any medical information in the Court or adoption agency record of the individual's adoption is needed for the health of the individual or of any blood relative of the individual. This section shall apply to information as to the identification and location of any biological sibling of the individual if the individual's health or the

health of any blood relative of the individual depends on the sibling's participation in any medical treatment.

Section 925. Inspection of Court records.

Anyone wishing to inspect any of the papers filed in connection with any adoption shall petition the Judge of the Family Court concerned setting forth the reasons for the inspection. The Judge shall refer the petition to the Department or licensed agency for investigation and recommendation. If in the opinion of the Court, the information is necessary, and the interest of the adopted individual, the biological or previous legal parent or parents or of the adoptive parents will not be prejudiced by its disclosure, the Court shall issue an order permitting the release of the information and setting forth the terms under which it shall be released. Where the adoption proceedings were held in Superior Court, any petition under this section, shall be presented to that Court, which shall consider and decide the matter in accordance with this section.

Section 926. Receiving child into State for adoption.

No child shall be brought or received into the State for the purpose of adoption without the approval of the Department, pursuant to Section 381 of Title 31. No petition for adoption of a child brought or received into this State in violation of this section shall be presented or granted.

Section 927. Foreign adoptions; validity.

(a) Adoptions finalized by a Court with appropriate jurisdiction in a foreign country or in another State or territory of the United States shall be entitled to the application of the principles of full faith and credit provided that the final adoption decree was issued in full accord with the adoption laws of that foreign country or that state or territory, and that the child was not brought into this State until after the finalization of adoption.

(b) No adoption proceeding or order therein which occurs in a foreign country or in another state or territory of the United States shall be valid or recognized by any court in this State as respects persons who are residents of this State where a child is brought into this State prior to the finalization of the adoption, unless the adoption proceedings shall be in substantial compliance with the adoption laws of this State. This subsection shall not apply to any adoption proceedings or order therein initiated in a foreign country or in another State or territory of the United States as respects persons who are not residents of this State at the time of the commencement of such adoption proceedings.

Section 928. Contributions and fees.

(a) No biological parent of any child whose adoption is proposed shall receive any contribution, fee or emolument, of any sort from any person or organization having any connection or association with the placement of the child for adoption or with the adoption.

(b) No person or organization who is in any way connected with an adoption shall receive any remuneration in connection therewith, except for court costs and legal services; provided, however, that the Department, licensed agency or authorized agency may charge a service fee for each adoption in an amount not exceeding the cost of services rendered, to be paid by the adopting parent or parents. The amount of any such fee shall be made a part of the petition as provided in Section 906(j) of this title.

Section 929. Exchange of Identifying Information.

(a) As part of the adoption planning and placement process, the Department or licensed agency may provide, when in the best interest of the child, identifying information to the birth parent(s) and to the adoptive parent(s) as follows:

(1) In the preplacement planning of adoption for children, identifying information shall be limited to the viewing of photographs, provided that such viewing is with the consent of birth parent(s) and adoptive parent(s) and further provided that no additional identifying information is contained in the photographs;

(2) After the placement selection process has been completed, and prior to the finalization of the adoption, identifying information may include, but is not limited to, the exchange of names, addresses, photographs, and face to face meetings, provided that:

a. The birth parent(s) and adoptive parent(s) request the exchange of identifying information in writing; and

b. Birth parent(s) and adoptive parent(s) and the Department or licensed agency agree to the exchange of identifying information as specified in writing; and

c. The birth parent(s) and adoptive parent(s) acknowledge in writing their understanding that no legal right of or assurance of continuing contact after finalization of the adoption exists; and

d. The birth parent(s) and adoptive parent(s) acknowledge in writing and under oath that there has been no violation of Section 928 of this title.

(3) Written consent to the exchange of identifying information, duly acknowledged, must be given by any child 14 years of age or over unless the Department or licensed agency deems it to be in the best interest of the child that such consent be waived.

(b) The Department or licensed agency may participate in the exchange of identifying information after the finalization of the adoption only with the agreement of the parties required to consent in accordance with subsection (a) or an order of the Court.

#### Section 930. Advertising for Adoption.

No natural parent or prospective adoptive parent, nor anyone acting on behalf of such natural or prospective adoptive parent, and no person, firm, corporation, organization or other legal entity, except the Department or a licensed agency, shall advertise in this State regarding the availability of adoption services or for the placement of a child for the purpose of adoption.

#### Section 931. Penalties.

Except as provided in this subchapter, whoever places a child in this State for the purpose of adoption, brings or receives a child from outside this State into this State for the purpose of adoption, advertises in this State regarding adoption services or for the placement of a child for the purpose of adoption, or acts as an intermediary for the purpose of adoption, shall be fined not more than \$5,000 or shall be imprisoned not more than 5 years, or both.

#### Section 932. Interpretation.

This chapter is designed to achieve without undue delay the paramount objectives of the best interest of the child, and all questions of interpretation shall be resolved with that objective in mind. Where there appears to be a conflict between the best interest of the parent(s) and the child, the best interest of the child shall prevail.

Section 2. This act shall become effective 60 days after its enactment. Actions commenced prior to the effective date of this act shall be governed by Chapter 9 of Title 13 operative prior to such effective date, and those provisions shall remain in effect as to those actions as if this act was not in effect.

Approved June 12, 1992.

## CHAPTER 260

## FORMERLY

SENATE BILL NO. 318  
AS AMENDED BY HOUSE AMENDMENT NOS. 2, 4 AND 5

AN ACT TO AMEND CHAPTER 10, TITLE 14, DELAWARE CODE, RELATING TO CHANGING THE BOUNDARIES OF REORGANIZED SCHOOL DISTRICTS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend §1026, Chapter 10, Title 14, Delaware Code by re-designating the current Subsection (d) and Subsection (e) and by adding thereto a new Subsection (d) to read as follows:

"(d) Notwithstanding the provisions of subsections (b) and (c) of this section, the State Board of Education may change or alter the boundaries of any reorganized school district if a written request for such change or alteration is signed by at least three-quarters of the owners of the real property to be transferred and a special referendum of the qualified voters of the area to be transferred is held and a majority of the total vote cast by said qualified voters approve the question of the change of boundary. The referendum shall be held within 30 days of the public hearing required by this section. The referendum shall be conducted by the school district to which the area may be transferred. Any person who is a resident of the area to be transferred may vote. Changes or alterations under this subsection may only be approved by the State Board if the real property being transferred is contiguous to the reorganized school district to which the transfer is requested. Furthermore, prior to ordering a change or alteration of a school district boundary under this subsection, the State Board shall conduct a public hearing on the request. The hearing shall be advertised at least once a week for two consecutive weeks in a newspaper published or circulated in each county of the State. Such advertising shall occur at least 20 days prior to the public hearing on the proposed boundary change or alteration. In its decision and order to change or alter a school district boundary under this subsection, the State Board of Education shall specify a transition plan, which will provide for the orderly reassignment of pupils affected by the boundary change. Such transition plan may permit pupils to continue their attendance at the school they attended prior to the boundary change, with tuition payments by the sending district as provided in Chapter 6 of this Title, until such time as the pupils complete the grade levels offered in that school. The authority of the State Board of Education to act under the provisions of this subsection shall terminate on January 1, 1994."

Approved June 12, 1992.



## CHAPTER 261

## FORMERLY

## HOUSE BILL NO. 225

AN ACT TO AMEND TITLE 18, DELAWARE CODE TO LIMIT INVESTMENTS MADE BY INSURANCE COMPANIES IN ANY SINGLE INVESTMENT.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend §1305(2), Chapter 13, Title 18, Delaware Code by adding thereto the following sentence to appear immediately before the last sentence of that paragraph:

"The cost of such investments in any one corporation shall not exceed 3% of the insurer's assets."

Section 2. Amend §1305(3), Chapter 13, Title 18, Delaware Code by adding thereto a new subparagraph to read as follows:

"c. The cost of such investments in any one corporation shall not exceed 3% of the insurer's assets."

Section 3. Amend §1305(4), Chapter 13, Title 18, Delaware Code by adding thereto a second sentence to read as follows:

"The investment by an insurer in any one property shall not exceed 3% of the insurer's assets."

Section 4. Amend §1305(5), Chapter 13, Title 18, Delaware Code by adding thereto a second sentence to read as follows:

"Upon a request in writing the Commissioner may permit an insurer to invest an amount up to 5% in excess of any specific investment limitation if determined by him to be a sound and prudent investment."

Section 5. Amend §1305, Chapter 13, Title 18, Delaware Code by renumbering the present paragraphs (5) and (6) accordingly and inserting a new paragraph (5) to read as follows:

"(5) Certain mortgage pools. An insurer may invest in and hold at any time up to 50% of its assets in certificates or other instruments evidencing participating interests in mortgage loans or pools thereof issued by the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation. The cost of such investment in any one mortgage pool shall not exceed 7% of the insurer's assets."

Section 6. Any insurer which at the time of adoption of this Act has investments which exceed the limits set forth herein shall dispose of such investments pursuant to Section 1325 of this title if real estate or pursuant to Section 1326 of this title if other than real estate.

Section 7. This Act shall become effective 60 days after its adoption.

Approved June 16, 1992.

## CHAPTER 262

## FORMERLY

HOUSE BILL NO. 444  
AS AMENDED BY HOUSE AMENDMENT NO. 1

AN ACT TO AMEND CHAPTER 80, TITLE 15, DELAWARE CODE RELATING TO ELECTIONS AND REPORTS OF POLITICAL COMMITTEES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend §8030(c), Chapter 80, Title 15, Delaware Code by striking said subsection in its entirety and substituting in lieu thereof the following:

"(c) The year-end summary reports required by this section shall be filed by the political committee and received by the Commissioner by 4:30 p.m., January 14th or, the immediate preceding business day if January 14th is a Saturday, Sunday or State holiday. All reports, other than the year-end reports required by this section, shall be filed by the political committee and received by the Commissioner by 4:30 p.m. of the 2nd day after the end of the reporting period which is not a state holiday under Chapter 5 of Title 1."

Approved June 16, 1992.

## CHAPTER 263

## FORMERLY

HOUSE BILL NO. 298  
AS AMENDED BY HOUSE AMENDMENT NO. 1

AN ACT PROPOSING AN AMENDMENT TO ARTICLE V OF THE CONSTITUTION OF THE STATE OF DELAWARE, RELATING TO ABSENTEE REGISTRATION AND ABSENTEE VOTING.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (Two-thirds of all members elected to each House thereof concurring therein):

Section 1. Amend §4A, Article V of the Constitution of the State of Delaware by adding the phrase ", or his or her spouse or dependents when residing with or accompanying him or her" after the words "United States or of this State" and before the words ", because of the nature of his or her business".

Section 2. Amend §4B, Article V of the Constitution of the State of Delaware by striking the words "or persons accompanying or serving therewith" and substituting in lieu thereof the words "or his or her spouse or dependents when residing with or accompanying him or her".

Approved June 9, 1992.

## CHAPTER 264

## FORMERLY

## HOUSE BILL NO. 23

AN ACT PROPOSING AN AMENDMENT TO SECTION 22, ARTICLE III, AND ARTICLE IV OF THE DELAWARE CONSTITUTION RELATING TO THE APPOINTMENT BY THE COURT OF CHANCERY OF A REGISTER IN CHANCERY IN EACH COUNTY AND THE POWERS AND DUTIES OF REGISTERS IN CHANCERY.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (Two-thirds of all members elected to each House thereof concurring therein):

Section 1. Amend Section 22, Article III, of the Delaware Constitution of 1897, as amended, by deleting the words "Registers in Chancery" and "Clerks of the Orphans' Court" as the same appear therein.

Section 2. Amend Article IV of the Delaware Constitution of 1897, as amended, by adding a new Section to be designated as "Section 25" thereto to read as follows:

"§25. Register in Chancery: Appointment: Powers and Duties

The Court of Chancery shall appoint a Register in Chancery in each County to hold office at the pleasure of the said Court. The Register in Chancery shall be the Clerk of the Court of Chancery in and for the County in which he or she holds office. He or she may issue process, and enter judgment and do such other things as are according to law and the practice of the court."

Section 3. Any person elected and commissioned as a Register in Chancery as of the effective date of this legislation shall continue to hold the respective office for the full term for which the person was elected; provided, however, that a vacancy in the office prior to the expiration of the full term by reason of ineligibility, death, resignation, or otherwise shall be filled by appointment of the Court of Chancery.

Approved June 11, 1992.

## CHAPTER 265

## FORMERLY

## HOUSE BILL NO. 19

AN ACT TO AMEND ARTICLE 4, SECTIONS 12, 13 AND 38 OF THE CONSTITUTION OF THE STATE OF DELAWARE TO HARMONIZE THOSE SECTIONS REGARDING THE AUTHORITY OF A JUSTICE UNDER SECTIONS 12, 13 AND 38 TO DESIGNATE STATE JUDGES TO SIT IN VARIOUS COURTS OF THE STATE OR TO DESIGNATE RETIRED STATE JUDGES OR JUSTICES TO TEMPORARILY PERFORM JUDICIAL SERVICE IN THE ABSENCE, DISQUALIFICATION OR INCAPACITY OF THE CHIEF JUSTICE OR A VACANCY IN THAT OFFICE, AND TO HARMONIZE SECTION 13 WITH SECTIONS 2, 3 AND 12 TO MAKE UNIFORM THE REFERENCES THEREIN TO MEMBERS OF THE SUPREME COURT, TO ELIMINATE OBSOLETE REFERENCES IN SECTION 13 TO THE ORPHANS' COURT, WHICH NO LONGER EXISTS, AND TO PROVIDE FOR THE DESIGNATION OF A STATE JUDGE FROM VARIOUS COURTS OF THE STATE TO SIT IN THE COURT OF CHANCERY AND SUPERIOR COURT TO TEMPORARILY PERFORM JUDICIAL SERVICE.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (Two-thirds of all members elected to each House thereof concurring therein):

Section 1. Article 4, Section 12 of the Constitution of the State of Delaware of 1897, as amended, is amended to read as follows:

"Section 12. A quorum of the Supreme Court shall consist of not less than three Justices. The entire Court shall sit in any criminal case in which the accused has been sentenced to death and in such other civil and criminal cases as the Court, by rule, or the General Assembly, upon the concurrence of two-thirds of all the members elected to each house, shall determine. In case of a lack of quorum by reason of vacancies in their number, incapacity, or disqualification to sit by reason of interest, or to constitute a three-member panel of the Court, the Chief Justice of the Supreme Court, or in case of his absence from the State, disqualification, incapacity, or if there be a vacancy in that office, the next qualified and available Justice, who by seniority is next in rank to the Chief Justice, shall have the power to designate judges from among the judges of the constitutional courts to sit in the Supreme Court temporarily to satisfy the number of Justices required by law. It shall be the duty of the judges of the constitutional courts so designated to sit accordingly. No judge shall be so designated to sit in the Supreme Court in any cause in which he sat below. Any one of the Justices of the Supreme Court may open and adjourn court."

Section 2. Article 4, Section 13 of the Constitution of the State of Delaware of 1897, as amended, is amended to read as follows:

"Section 13. The Chief Justice of the Supreme Court, or in case of his absence from the State, disqualification, incapacity, or if there be a vacancy in that office, the next qualified and available Justice who by seniority is next in rank to the Chief Justice shall be administrative head of all the courts in the State, and shall have general administrative and supervisory powers over all the courts. Such powers shall include but shall not be limited to the following:

(1) Upon the approval of a majority of the Justices of the Supreme Court to adopt rules for the administration of justice and the conduct of the business of any or all the courts in this State: Provided, however, that any other of the courts in this State may from time to time, subject to the exercise of the power in this paragraph (1) conferred upon the Justices of the Supreme Court, adopt rules of pleading practice and procedure applicable to such Court.

(2) Upon written request made by the Chancellor, or in his absence or incapacity by the next qualified and available Vice-Chancellor who by seniority is next in rank to the Chancellor, or upon the written request made by the President Judge of the Superior Court, or in his absence or incapacity by the next qualified and available Associate Judge who by seniority is next in rank to the President Judge, to designate one or more of the State Judges (including the Justices of the Supreme Court) to sit in the Court of Chancery or the Superior Court, as the case may be, and to hear and

decide such causes in such Court and for such period of time as shall be designated. It shall be the duty of the State Judge so designated to serve according to such designation as a Judge of the Court designated. The provisions of this paragraph shall not be deemed to limit in any manner the powers conferred upon the judges of the Superior Court under Section 14 of this Article."

Section 3. Article 4, Section 38 of the Constitution of the State of Delaware of 1897, as amended, is amended to read as follows:

"Section 38. A former State Judge or a former Justice of the Supreme Court, who is retired and is receiving a state judicial pension and who assents to active judicial duty and who is not engaged in the practice of law, upon designation of the Chief Justice of the Supreme Court, or in case of his absence from the State, disqualification, incapacity, or if there be a vacancy in that office, upon designation of the next qualified and available Justice, who by seniority is next in rank to the Chief Justice, shall be authorized to sit temporarily in the court from which he retired or in any other court to which he could be designated under the Constitution and statutes of the State if he still held the judicial position from which he retired. Any person so designated shall receive compensation as the General Assembly shall provide. Nothing herein shall authorize the designation of any former State Judge or a former Justice of the Supreme Court to sit in the Supreme Court except temporarily to fill up the number of that Court to the required quorum. The term "State Judge" as used in this section means a Chancellor or Vice-Chancellor of the Chancery Court or a President Judge or Associate Judge of the Superior Court.

Approved June 11, 1992.

#### CHAPTER 266

##### FORMERLY

#### HOUSE BILL NO. 460

AN ACT TO AMEND 67 DELAWARE LAWS CHAPTER 226 RELATING TO CHAPTER 17, TITLE 24 OF THE DELAWARE CODE RELATING TO THE MEDICAL PRACTICES ACT.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend 67 Delaware Laws Chapter 226 by deleting the existing Section 19 in its entirety and inserting in lieu thereof the following new Section 19:

"19. Nothing in this Act shall effect any pending investigation or disciplinary action which was commenced prior to its enactment into law, except that members of the Board of Medical Practice appointed pursuant to this Act may fully participate in all such proceedings."

Approved June 23, 1992.

#### CHAPTER 267

##### FORMERLY

#### HOUSE BILL NO. 525 AS AMENDED BY HOUSE AMENDMENT NO. 1

AN ACT TO AMEND CHAPTER 6, TITLE 24 OF THE DELAWARE CODE RELATING TO COSMETOLOGISTS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend subsection (1), Section 605, Chapter 6, Title 24 of the Delaware Code by striking the words "nor less than a minimum of 35 hours per week" as the same appear in paragraph a, and by inserting in lieu thereof the following: "however, upon a written agreement signed by the school owners and the student the student may work more than ten hours per day or 40 hours per week."

Approved June 23, 1992.

## CHAPTER 268

## FORMERLY

## SENATE BILL NO. 320

AN ACT TO AMEND CHAPTER 72, TITLE 7, DELAWARE CODE RELATING TO SUBAQUEOUS LANDS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend §7202, Title 7, Delaware Code by amending the definition of "Navigable Water" as it appears therein to read as follows:

"Navigable Water" means a river, stream, lake, bay, or inlet capable of having been used or being used for transport of useful commerce."

Section 2. Amend Chapter 72, Title 7, Delaware Code by adding a new §7217 to read as follows:

"§7217. MAINTENANCE

This Chapter shall not apply to maintenance, reconstruction or retro-fitting work performed along any existing non-tidal ditch, stream, culvert, bridge, water control structure, stormwater basin or pond by or with the assistance of any state, county, municipal government or conservation district. All maintenance, reconstruction or retro-fitting work performed along any existing non-tidal ditch, stream, culvert, bridge, water control structure, stormwater basin or pond by or with the assistance of any state, county, municipal government or conservation district shall comply with the standards and specifications associated with best management practices in the Delaware Erosion and Sediment Control Handbook, 1989 or as revised."

Approved June 24, 1992.

## CHAPTER 269

## FORMERLY

## HOUSE BILL NO. 472

AN ACT TO AMEND TITLE 3 OF THE DELAWARE CODE RELATING TO SEEDS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (three-fifths of all members elected to each House thereof concurring therein):

Section 1. Amend Subsection (b) §1507, Chapter 15, Title 3 of the Delaware Code by adding thereto a new paragraph to read as follows:

"(8) To collect Royalty fees on patented varieties where a royalty agreement is in force."

Approved June 24, 1992.

## CHAPTER 270

## FORMERLY

## HOUSE BILL NO. 557

AN ACT TO AMEND CHAPTER 63, TITLE 16 OF THE DELAWARE CODE, RELATING TO "THE EMERGENCY PLANNING AND COMMUNITY RIGHT-TO-KNOW ACT."

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend §6307, Chapter 63, Title 16 of the Delaware Code by striking present subsection (f) in its entirety, and substituting in lieu thereof a new subsection (f), which shall read as follows:

"(f) All local emergency planning committees and state agencies to be funded under this Chapter shall submit to the State Emergency Response Commission for review and approval each year a budget worksheet plan for the next fiscal year."

Section 2. Amend §6307, Chapter 63, Title 16 of the Delaware Code by striking subsection (d) in its entirety; by redesignating present subsection (e) as new subsection (d); and by redesignating present subsection (f) as new subsection (e).

Approved June 24, 1992.

## CHAPTER 271

## FORMERLY

HOUSE BILL NO. 414  
AS AMENDED BY HOUSE AMENDMENT NO. 2

AN ACT TO AMEND TITLE 22, DELAWARE CODE RELATING TO RESIDENCY REQUIREMENTS FOR MUNICIPAL EMPLOYEES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (Two-thirds of all members elected to each House thereof concurring therein):

Section 1. Amend Chapter 8, Title 22, Delaware Code by adding thereto a new subchapter to read as follows:

"Subchapter VII. Residency Requirements.

§841. Referendum Requirement.

All municipal corporations with a population exceeding 50,000 and having a charter provision, ordinance or other provision requiring that, as a condition of employment, an employee of a municipality be, become, or remain a resident of the municipality shall be required to hold a binding referendum thereon at its next general election. Such referendum shall read as follows:

'Yes. As a condition of employment, employees of this municipality must be residents of this municipality.

No. As a condition of employment, employees of this municipality need not be residents of this municipality.'"

Approved June 24, 1992.

## CHAPTER 272

## FORMERLY

## HOUSE BILL NO. 3

## AS AMENDED BY HOUSE AMENDMENT NO. 2 AND SENATE AMENDMENT NO. 3

## AN ACT TO AMEND TITLE 9, DELAWARE CODE RELATING TO CHANGES IN ZONING

## BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Chapter 26, Title 9, Delaware Code by adding a new Section thereto which shall read as follows:

"§2614. Changes in zoning.

Unless the Planning Department recommends approval of a rezoning, the County government shall not change the zoning for any parcel of land without the county council approving such change in zoning by a concurrence of two-thirds of all members elected to the county council."

Section 2. Amend Chapter 49, Title 9, Delaware Code by adding a new Section thereto which shall read as follows:

"§4925. Changes in zoning.

In the case of a rezoning application the county government shall determine its voting requirement necessary to take action thereon, which shall not be less than a majority of all members elected to Levy Court."

Section 3. Amend Chapter 69, Title 9, Delaware Code by adding a new Section thereto which shall read as follows:

"§6925. Changes in zoning.

In the case of a rezoning application the county government shall determine its voting requirement necessary to take action thereon, which shall not be less than a majority of all members elected to County Council."

Approved June 25, 1992.



## CHAPTER 273

## FORMERLY

SENATE BILL NO. 212  
AS AMENDED BY SENATE AMENDMENT NO. 1

AN ACT TO AMEND CHAPTER 5, TITLE 22 OF THE DELAWARE CODE RELATING TO PARKING AUTHORITIES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (Two-thirds of all members elected to each House thereof concurring therein):

Section 1. Amend §502, Title 22, Delaware Code by adding a new subsection (12) as follows:

"(12) 'Business Owner' means any individual, general partner, or owner of 50% or more of the voting stock of a corporation which has a business location within the city and which has a business license under the city business license ordinance or has a state business license in cities without licensing ordinance which lists the location of said business within the city."

Section 2. Amend §507(a), Title 22, Delaware Code by striking the first sentence of said subsection which reads as follows:

"The powers of each authority shall be exercised by a board composed of five (5) members, all of whom shall be residents of the city creating the authority." and substituting in lieu thereof the following:

"The powers of each authority shall be exercised by a board composed of not less than five (5) nor more than seven (7) members, all of whom shall be residents or business owners within the city creating the authority. In municipalities with population greater than 50,000, however, the powers of each authority shall be exercised by a board composed of five (5) members, all of whom shall be residents of the city creating the authority."

Section 3. Amend §507(a), Title 22, Delaware Code by inserting a new sentence between the second and third sentences thereof, to read as follows:

"If the board is composed of six (6) members, initially two (2) rather than one (1) shall be appointed for 2 year terms and if the board is composed of seven (7) members, initially two (2) rather than one (1) shall be appointed for both 2 year terms and 3 year terms."

Section 4. Amend §507(c), Title 22, Delaware Code by deleting the sentence "Three members of the board shall constitute a quorum for its meetings" and by substituting in lieu thereof the sentence "A majority of the total board membership shall constitute a quorum for its meetings".

Section 5. Amend §503(d), Title 22, Delaware Code by adding a new sentence at the end thereof as follows:

"Any change in the numerical composition of the board shall likewise be certified to the Secretary of State within 10 days after such change."

Approved June 25, 1992.

## CHAPTER 274

## FORMERLY

SENATE BILL NO. 273  
AS AMENDED BY SENATE AMENDMENT NO. 1

## AN ACT TO AMEND CHAPTER 31, TITLE 16, RELATING TO VITAL STATISTICS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (Two-thirds of all members elected to each House thereof concurring therein):

Section 1. Amend Part III, Title 16 of the Delaware Code by deleting Chapter 31 in its entirety and substituting in lieu thereof the following:

## CHAPTER 31. REGISTRATION OF BIRTHS, DEATHS, MARRIAGES, DIVORCES, ANNULMENTS AND ADOPTIONS

## Subchapter I. General Provisions

## §3101. Definitions.

As used in this chapter:

(1) "Vital Statistics" means the data derived from certificates and reports of birth, death, spontaneous fetal death, marriage, divorce or annulments, and related reports.

(2) "System of vital statistics" means the registration, collection, preservation, amendment and certification of vital records; the collection of other reports required by this chapter; and activities related thereto including the tabulation, analysis and publication of vital statistics.

(3) "Vital records" means certificates or reports of birth, death, marriage, divorce or annulment, and data related thereto.

(4) "File" means the presentation of a vital record provided for in this chapter for registration by the Office of Vital Statistics.

(5) "Registration" means the acceptance by the Office of Vital Statistics and the incorporation of vital records provided for in this chapter into its official records.

(6) "Live Birth" is defined as the complete expulsion or extraction from its mother of a product of conception (irrespective of the duration of pregnancy) which, after such separation, breathes or shows any other evidence of life such as beating of the heart, pulsations of the umbilical cord, or definite movement of voluntary muscles, whether or not the umbilical cord has been cut or the placenta is attached. Heartbeats are to be distinguished from transient cardiac contractions; respirations are to be distinguished from fleeting respiratory efforts or gasps.

(7) "Spontaneous Fetal Death" or "Stillborn Fetus" is defined as a spontaneous death (i.e., not an induced termination of pregnancy) prior to the complete expulsion or extraction from its mother of a product of conception. The death is indicated by the fact that after such separation, the fetus does not breathe or show any other evidence of life such as beating of the heart, pulsation of the umbilical cord, or definite movement of voluntary muscles. Heartbeats are to be distinguished from transient cardiac contractions; respirations are to be distinguished from fleeting respiratory efforts or gasps.

(8) "Dead body" means a human body or such parts of such human body from the condition of which it reasonably may be concluded that death recently occurred.

(9) "Physician" means a person authorized or licensed to practice medicine or osteopathy pursuant to the laws of this State.

(10) "Institution" means any establishment, public or private, which provides in-patient medical, surgical, or diagnostic care or treatment or nursing, custodial, or domiciliary care, or to which persons are committed by law.

(11) "State Board" means Delaware State Board of Health.

§3102. Supervision and enforcement of registrations.

(a) The State Board has charge of the registration of births, deaths, marriages, divorces and fetal deaths and shall prepare the necessary methods, forms and blanks for obtaining and preserving such records and insuring the faithful registration of the same throughout this State and in the central Office of Vital Statistics.

(b) The State Board is charged with the uniform and thorough enforcement of this chapter throughout the State and shall from time to time promulgate any additional forms and regulations that are necessary for this purpose.

§3103. Regulations of State Board; adoption and enforcement.

The State Board may adopt, promulgate, amend and repeal such regulations as may be consistent with law relative to this chapter, including regulations governing the conditions under which the bodies of persons dying from an infectious or communicable disease can be transported from any portion of the State to a crematorium for the purpose of cremation. The regulations shall be enforced by the State Board.

§3104. Central Office of Vital Statistics.

(a) There is hereby established within the Division of Public Health an Office of Vital Statistics which shall install, maintain and operate the only system of vital statistics throughout this State.

(b) The Office of Vital Statistics shall have branch offices in each county. The State Board shall designate one such branch as the central Office of Vital Statistics, and this branch shall be responsible for the supervision of the operation of the other vital statistics offices throughout this State.

§3105. State Registrar of Vital Statistics; duties.

(a) The Director of the Division of Public Health of the Department of Health and Social Services shall be the State Registrar and shall:

(1) Direct and supervise the system of vital statistics and the Office of Vital Statistics and be custodian of its records.

(2) Direct, supervise and control the activities of all persons when they are engaged in activities pertaining to the operation of the system of vital statistics.

(3) Conduct training programs to promote uniformity of policy and procedures throughout the State in matters pertaining to the system of vital statistics.

(4) Prescribe, with the approval of the State Board, furnish and distribute such forms as are required by this chapter and the rules and regulations issued hereunder, or prescribe such other means for transmission of data as will accomplish the purpose of complete and accurate reporting and registration.

(5) Prepare and publish reports of vital statistics of this State and such other reports as he or she may deem necessary.

(b) The Delaware Health Statistics Center within the Bureau of Health Planning and Resources Management shall have responsibility for the statistical analysis of vital statistics data and shall prepare and publish vital statistics reports of this State. The State Registrar may establish or designate other offices in the State to aid in the efficient administration of the system of vital statistics.

(c) The State Registrar may delegate such functions and duties vested in him or her to employees of the Office of Vital Statistics and to employees of any office established or designated under §3105(b) of this Title.

§3106. Employment of personnel and acquisition of equipment.

The Division of Public Health shall provide the Office of Vital Statistics with sufficient staff, suitable offices, and other resources for the proper administration of the system of vital statistics and for the preservation of its official records.

§3107. Reproduction of vital records; official seal for certification.

(a) To preserve vital records, the State Registrar is authorized to prepare typewritten, photographic, electronic or other reproductions of certificates or reports in the Office of Vital Statistics. Such reproductions when certified by the State Registrar shall be accepted as the original records.

(b) The State Board shall adopt an official seal for purposes of certification. Every certificate or other official paper executed by the State Registrar, in pursuance of any authority conferred by law, and bearing the seal of the State Board shall be received as evidence when duly certified by the State Board, under its seal, with the same force and effect as the original would, in law, be entitled to if produced in open court.

§3108. Form of certificates and reports.

(a) In order to promote and maintain nationwide uniformity in the system of vital statistics, the forms of certificates and reports required by this chapter, or by regulations adopted hereunder, shall include as a minimum the items recommended by the Federal agency responsible for national vital statistics, subject, however, to approval of and modification by the State Board.

(b) Each certificate, report, and other document required by this chapter shall be on a form or in a format prescribed by the State Registrar.

(c) All vital records shall contain the date received for registration.

(d) Information required in certificates or reports authorized by this chapter may be filed and registered by photographic, electronic, or other means as prescribed by the State Registrar.

§3109. Completion of certificates and reports.

(a) Those individuals and/or institutions responsible for completion of certificates or reports according to this chapter or regulations adopted hereunder shall complete all items on the forms provided by the State Registrar. The State Registrar shall carefully examine the certificates and reports received in the Office of Vital Statistics, and if they are incomplete or unsatisfactory, shall require such further information as may be necessary to make the record complete and satisfactory.

(b) No claim or cause of action shall arise and no judgment, damages, penalties, costs or other money entitlement shall be awarded against an individual or institution that furnishes vital statistics in accordance with this chapter.

§3110. Disclosure of records.

(a) To protect the integrity of vital records, to ensure their proper use and to ensure the efficient and proper administration of the system of vital statistics, the records and files of the Office of Vital Statistics shall be considered confidential matter and shall not be open to inspection, except as authorized by this chapter, and regulations adopted hereunder or by order of a court of competent jurisdiction. Regulations, adopted under this section shall provide for adequate standards of security and confidentiality of vital records and reports.

(b) The State Registrar shall upon receipt of an application issue a certified copy of a vital record in his or her custody or a part thereof to the registrant, his or her spouse, children, parents, or guardian, or their

respective authorized representative. Others may be authorized to obtain certified copies when they demonstrate that the record is needed for the determination or protection of their personal or property rights or for genealogical purposes. The State Board shall adopt regulations to further define those who may obtain copies of vital records under this Chapter.

(c) The State Board may authorize by regulation the disclosure of information contained on vital records for research purposes.

(d) Subject to the provisions of this section, the State Registrar may, by agreement, transmit copies of records and other reports required by this Chapter to the federal agency responsible for national vital statistics and other offices of vital statistics outside this state when such records or other reports relate to residents of those jurisdictions or persons born in those jurisdictions. The agreement shall require that the copies be used for statistical and/or administrative purposes only and the agreement shall further provide for the retention and disposition of such copies. Copies received by the Office of Vital Statistics from offices of vital statistics in other states shall be handled in the same manner as prescribed in this section.

(e) Appeals from decisions of custodians of vital records, as designated under authority of Section 3105, who refuse to disclose information, or to permit inspection or copying of records as prescribed by this section and regulations adopted hereunder, shall be made to the State Board whose decisions shall be binding upon such custodians.

(f) When 72 years have elapsed after the date of birth or 40 years have elapsed after the date of death or marriage, the records of these events shall become public records and information shall be made available in accordance with regulations which shall provide for the continued safekeeping of the records.

#### §3111. Penalties.

(a) A fine of not more than \$10,000 or imprisonment of not more than five years, or both, shall be imposed on:

(1) Any individual who willfully and knowingly makes any false statement in a certificate, record, or report required by this chapter, or in an application for an amendment thereof, or in an application for a certified copy of a vital record, or who willfully and knowingly supplies false information intending that such information be used in the preparation of any such report, record, or certificate, or amendment thereof; or

(2) Any individual who without lawful authority and with the intent to deceive, makes, counterfeits, alters, amends, or mutilates any certificate, record, or report required by this chapter or a certified copy of such certificate, record, or report; or

(3) Any individual who willfully and knowingly obtains, possesses, uses, sells, furnishes, or attempts to obtain, possess, use, sell, or furnish to another, for any purpose of deception, any certificate, record, or report required by this chapter or certified copy thereof so made, counterfeited, altered, amended, or mutilated, or which is false in whole or in part or which relates to the birth of another person, whether living or deceased; or

(4) Any employee of the State who willfully and knowingly furnishes or processes a certificate, or certified copy of a certificate, with the knowledge or intention that it be used for the purposes of deception; or

(5) Any individual who without lawful authority possesses any certificate, record, or report, required by this chapter or a copy or certified copy of such certificate, record, or report knowing same to have been stolen or otherwise unlawfully obtained.

(b) A fine of not more than \$1,000 or imprisonment of not more than one year, or both, shall be imposed on:

- (1) Any individual who willfully and knowingly refuses to provide information required by this chapter or regulations adopted hereunder; or
- (2) Any individual who willfully and knowingly transports or accepts for transportation, interment, or other disposition a dead body without an accompanying permit as provided in this chapter or regulations adopted hereunder; or
- (3) Any individual who willfully and knowingly neglects or violates any of the provisions of this chapter or regulations adopted hereunder or refuses to perform any of the duties imposed upon him or her by this chapter or regulations adopted hereunder.

#### §3112. Immunity.

No employee of the Office of Vital Statistics or other State offices established or designated under §3105(b) of this Title shall be subject to, and such persons shall be immune from any claim, suit, liability or damages or any other recourse, civil or criminal, arising from any act or proceedings, decision or determination undertaken or performed while discharging any duty or authority under this chapter, so long as such person acted in good faith, without gross negligence, and within the scope of his or her duty or authority under this chapter or any other provisions of the Delaware law, federal law or regulations or duly adopted rules and regulations providing for the administration of this chapter, good faith being presumed until proven otherwise, with gross negligence required to be shown by the complainant.

#### Subchapter II. Registration Requirements and Procedures

#### §3121. Registration of births.

(a) A certificate of birth for each live birth which occurs in this State shall be filed with the Office of Vital Statistics, or as otherwise directed by the State Registrar, within ten days after such birth and shall be registered if it has been completed and filed in accordance with this section.

(b) When a birth occurs in an institution or en route thereto, the person in charge of the institution or his or her designated representative shall obtain the personal data, prepare the certificate, secure the signatures required, and file the certificate as directed in §3121(a) of this Title or as otherwise directed by the State Registrar within the required ten days. The physician or other person in attendance shall provide the medical information required by the certificate and certify to the facts of birth within 72 hours after the birth. If the physician, or other person in attendance, does not certify to the facts of birth within the 72-hour period, the person in charge of the institution shall complete and sign the certificate.

(c) When a birth occurs outside an institution, the certificate shall be prepared and filed by one of the following in the indicated order of priority:

- (1) The physician in attendance at or immediately after the birth, or in the absence of such a person,
- (2) Any other person in attendance at or immediately after the birth, or in the absence of such a person,
- (3) The father, the mother, or, in the absence of the father and the inability of the mother, the State Registrar or a duly authorized representative.

(d) When a birth occurs on a moving conveyance within the United States and the child is first removed from the conveyance in this State, the birth shall be registered in this State and the place where it is first removed shall be considered the place of birth. When a birth occurs on a moving conveyance while in international waters or air space or in a foreign country or its air space and the child is first removed from the conveyance in this State, the birth shall be registered in this State but the certificate shall show the actual place of birth insofar as can be determined.

- (e) (1) If the mother was married at the time of either conception or birth, or between conception and birth, the name of the husband shall

be entered on the certificate as the father of the child unless paternity has been determined otherwise by Family Court.

(2) If the mother was not married at the time of either conception or birth or between conception and birth, the name of the father shall not be entered on the certificate without a Court Order from Family Court.

(3) In any case in which paternity of a child is determined by Family Court, the name of the father and surname of the child shall be entered on the certificate of birth in accordance with the finding and order of the court.

(4) If the father is not named on the certificate of birth, no other information about the father shall be entered on the certificate.

(f) Either of the parents of the child, or other informant, shall attest to the accuracy of the personal data entered on the certificate in time to permit the filing of the certificate within ten days prescribed in this section.

(g) The time within which a supplementary report furnishing information omitted from the original certificate may be returned for the purpose of completing the certificate shall not be more than six months from the date of birth. Certificates of birth completed by a supplementary report shall not be considered delayed or altered.

§3122. Infants of unknown parentage; foundling registration.

(a) When the State assumes the custody of a live born infant of unknown parentage, an officer of the Department of Services for Children, Youth and Their Families shall report on a form and in a manner prescribed by the State Registrar within five days to the Office of Vital Statistics the following information:

- (1) The date and place of finding;
- (2) Sex, race and approximate age of child;
- (3) Name and address of the person or institution with whom the child has been placed for care;
- (4) Name given to the child by the custodian of the child;
- (5) Other data required by the State Registrar.

(b) The place where the child was found shall be known as the place of birth and the date of birth shall be determined by approximation.

(c) The report shall constitute the certificate of birth.

(d) If the child is identified and a regular certificate of birth is found or obtained, the report shall be sealed and filed in the Office of Vital Statistics and may be opened only by court order.

§3123. Registration of deaths.

(a) A certificate of death for each death which occurs in this State shall be filed with the Office of Vital Statistics, or as otherwise directed by the State Registrar, within three days after death and prior to final disposition, and shall be registered if it has been completed and filed in accordance with this section.

(1) If the place of death is unknown but the dead body is found in this State, the certificate of death shall be completed and filed in accordance with this section. The place where the body is found shall be shown as the place of death. If the date of death is unknown, it may be determined by approximation.

(2) When death occurs in a moving conveyance in the United States and the body is first removed from the conveyance in this State, the death shall be registered in this State and the place where it is first removed shall be considered the place of death. When a death occurs

on a moving conveyance while in international waters or air space or in a foreign country or its air space and the body is first removed from the conveyance in this State, the death shall be registered in this State but the certificate shall show the actual place of death insofar as can be determined.

(b) The funeral director or person acting as such who assumes custody of the dead body shall file the certificate of death. He or she shall obtain the personal data from the next of kin or best qualified person or source available and shall obtain the medical certification from the attending physician or Medical Examiner.

(c) The medical certification shall be completed, signed, and returned to the funeral director within 48 hours after death by the attending physician, except when an official death investigation is required by the Office of the Chief Medical Examiner. In the absence of the attending physician the certificate may be completed and signed by his or her designated physician or the chief medical officer of the institution in which death occurred provided such individual has knowledge about the medical history of the case.

(d) When an official death investigation is required pursuant to 29 Delaware Code, Section 4706(a), the Medical Examiner shall determine the manner and cause of death and shall complete and sign the medical certification.

(e) If the cause of death cannot be determined within 48 hours after death, the attending physician or medical examiner shall file with the Office of Vital Statistics a pending certificate of death. When the cause of death is determined a revised certification of death shall be issued and presented to the funeral director or his or her agent, who in turn shall file the certificate with the Office of Vital Statistics.

(f) When a death is presumed to have occurred within this State but the body cannot be located, a death certificate may be prepared by the State Registrar upon receipt of a Court Order which shall include the finding of facts required to complete the death certificate. Such a death certificate shall be marked "By Court Order" and shall show on its face the date of registration and shall identify the court and the date of decree.

#### §3124. Registration of spontaneous fetal death.

(a) Each spontaneous fetal death of 350 grams or more, or in the absence of weight, of 20 completed weeks gestation or more, calculated from the date the last normal menstrual period began to the date of delivery, which occurs in this State shall be reported within three days after delivery to the Office of Vital Statistics by filing a Fetal Death certificate. Induced terminations of pregnancy shall not be reported as spontaneous fetal deaths.

(1) When a fetal death occurs in an institution, the person in charge of the institution or a designated representative shall prepare and file a Certificate of Fetal Death..

(2) When a fetal death occurs outside an institution, the physician in attendance at or immediately after delivery shall prepare, and file a Certificate of Fetal Death. No person other than a physician may sign a Certificate of Fetal Death.

(3) When a fetal death occurs without medical attendance at or shortly after the delivery, or when a fetal death occurs in a moving conveyance and the fetus is first removed from the conveyance in this State or when a fetal death occurs in this State and the place of fetal death is unknown, an investigation by the Office of the Chief Medical Examiner shall be conducted to determine the cause and manner of the fetal death.

#### §3125. Registration of marriage.

(a) A record of each marriage performed in this State shall be filed with the Office of Vital Statistics and shall be registered if it has been completed and filed in accordance with this section.



(b) The official who issues the marriage license shall prepare the record on the form prescribed and furnished by the State Registrar upon the basis of information obtained from the parties to be married.

(c) The person who performs the marriage ceremony shall certify the fact of marriage and, within five days following the day on which the marriage was solemnized, file the marriage license/certificate with one of the three Vital Statistics offices in this State.

§3126. Registration of adoptions; duty of Clerk of Court; old and new birth certificates.

(a) Upon the issuance of a final decree of adoption, the clerk of the court in which the decree of adoption was made shall immediately file in the office of the State Registrar, on forms provided by the State Registrar for this purpose, a report setting forth the information required by §921 of Title 13, together with a certified copy of the final decree of adoption.

(b) Upon receipt of the information, the State Registrar shall remove from his or her files the original certificate of birth and, after proper identification, shall place it in a confidential file which shall be accessible only upon court order. The State Registrar shall file a new certificate setting forth the adopted name and sex of the child, together with the names of the adopting parents and the actual birth date and birthplace of the child. Certificates may be issued in accordance with §3110 of this Title.

(c) The State Registrar shall file a new certificate of birth for any child born in Delaware who is legally adopted in another state upon receipt of a certified or exemplified copy of the court order of adoption from the clerk of the court of such other state, and shall issue a certificate as provided under §3110 of this Title.

(d) In the event of a child born outside of the United States and who is adopted in Delaware and for whom no certificate of birth can be secured from the nation of birth, the State Registrar may file and issue a special certificate of birth in accordance with this chapter, provided the adopting parents can furnish evidence considered satisfactory by the State Registrar of the facts and circumstances surrounding the birth of the child.

§3127. Acknowledgement or establishment of paternity.

In cases of acknowledgement or establishment of paternity, the State Registrar, upon receipt of a court order, shall prepare an amended or new certificate of birth, as the case may be, consistent with the findings of the court. The fact that the father-and-child relationship was declared after the child's birth shall not be ascertainable from the amended or new certificate, but the actual place and date of birth shall be shown. The evidence upon which the amended or new certificate was made and the original birth certificate shall be sealed and filed and may be opened only upon court order.

§3128. Divorce or annulment registration for statistical purposes.

(a) A record of each divorce or annulment granted by the Family Court in this State shall be filed by that court with the Office of Vital Statistics and shall be registered if it has been completed and filed in accordance with this section. The record shall be prepared by the petitioner or his or her legal representative on a form prescribed and furnished by the State Registrar and shall be presented to the Family Court with the petition. In all cases the completed record shall be a prerequisite to the granting of the final decree.

(b) The Family Court shall complete and forward to the Office of Vital Statistics on or before the fifteenth (15) day of each calendar month the records of each divorce or annulment decree granted during the preceding calendar month.

(c) Records of divorce are collected by the Office of Vital Statistics for statistical purposes only. Certified copies of a divorce decree may be issued by Family Court in the county in which the decree was granted.

§3129. Registration of birth, death, marriage, divorce or fetal death where registration has been neglected or omitted.

Notwithstanding any other provisions of this chapter, the State Registrar, on the production of evidence satisfactory to him or her relative to a birth, death, marriage, divorce or fetal death, if for any reason registration has been neglected or omitted, may register any birth, death, marriage, divorce or fetal death which may have occurred when registration was not effective or which may from any cause have escaped registration.

§3130. Certificates as evidence.

Certificates filed within 6 months after the time prescribed therefor shall be prima facie evidence of the facts therein stated. Data therein pertaining to the father of the child are prima facie evidence only if the alleged father is the husband of the mother. The data pertaining to the father of the child are not evidence in any proceeding adverse to the interests of the alleged father or of his heirs, next of kin, devisees, legatees or other successors in interest if the father is not the husband of the mother and the paternity is not acknowledged.

§3131. Delayed or amended certificates; procedures; evidence.

(a) A person born in this State may file or amend a certificate of birth after the time prescribed by this chapter upon submitting such evidence relative to the circumstances surrounding the birth as may be required by the State Registrar. In the case of a correction to the birth record of an American Indian, the substantiating documentary proof may include, but shall not be limited to, an affidavit satisfactory to the State Registrar or any local registrar and signed by the Chief of the tribe that according to tribal records the person whose certificate is to be amended is a member of the tribe of the Chief whose signature appears on the affidavit.

(b) Any certificate in the custody of the State Registrar upon which the information thereon is charged to be in error may be corrected or amended upon submitting such proof of error as may be required by the State Registrar.

(c) Certificates accepted subsequent to 6 months after the time prescribed in this chapter for filing or certificates which have been amended after being filed with the State Registrar shall contain the date of the delayed filing or the date of amendment and shall be marked "delayed" or "amended", respectively.

(d) A summary statement of the evidence submitted in support of the acceptance for delayed filing or amendment shall be endorsed on the certificate.

(e) Such evidence submitted in support of a delayed or amended registration as may be retained by the State Registrar shall be kept in special permanent file.

(f) The probative value of a delayed or amended certificate shall be determined by the judicial or administrative body or official before whom the certificate is offered for evidence.

§3132. Fee for issuance of certificates and searches.

(a) The State Registrar shall receive a fee not to exceed \$10 for each certified copy of a certificate or record, or for a search of the files or records when no copy is made, or for a copy or information provided for research, statistical, or administrative purposes. The fee shall be established by the State Board to reflect the costs of doing such work.

(b) The State Registrar shall upon request furnish any applicant with a heirloom certificate of birth for births registered in this State. Heirloom certificates shall be specially designed for framing and display. The name of the person shall be calligraphed on the heirloom certificate. The State Board shall receive a fee of \$25 for heirloom certificates. Said fee shall be apportioned as follows: \$12.50 shall be deposited to the Delaware Children's Trust Fund to advance the purposes of that Fund and \$12.50 shall be retained by the Department of Health and Social Services to offset the cost of certificates in the Office of Vital Statistics. Any excess funds shall be deposited in a special account to be used for the Delaware Health Statistics Center.

(c) The State Registrar shall furnish free of charge to the relative of a veteran, one time, a certified copy of the veteran's certificate of death providing that said certified copy is essential to the settlement of a claim involving the settlement of the veteran's affairs. All other copies shall be issued at the statutory fee.

(d) Subject to §3110 of this Title, the Federal agency responsible for national vital statistics and other vital statistics offices outside this State may obtain transcripts or copies of certificates, without payment of fees.

(e) The State Registrar shall keep an account of all fees received and turn the same over to the State Treasurer.

#### Subchapter III. Burial, Removal or Cremation of Dead Bodies.

§3151. Permit for removal, burial or other disposition; foreign permits; prerequisites for permit.

When a death or a fetal death occurs or a dead body is found, the body shall not be disposed of until the Burial/Transit permit is completed. Said permit is required to accompany the body and is to be :

- (1) given to the sexton of the cemetery when the body is interred.
- (2) retained by the Funeral Director when the cemetery has no sexton.
- (3) retained with the ashes in cases of cremation, or by the Funeral Director if so desired.

§3152. Burial/transit permits for shipment of corpses - required.

No common carrier shall receive for shipment from any point within this State to any other point either within or without this State any dead human body, unless the Funeral Director or person acting as such presents a completed Burial/Transit permit as provided in §3151 of this Title.

§3153. Disinterment - rules and regulations.

No body or stillborn fetus shall be disinterred within the State of Delaware except upon a permit granted by the State Registrar of Vital Statistics. The forms of Disinterment Permits shall be prepared by the Office of Vital Statistics. Disinterment and removal must be conducted under the personal supervision of a licensed funeral director.

§3154. Authorization for disinterment and reinterment.

(a) Authorization. A permit for disinterment and reinterment of a dead body or fetus shall be issued by the State Registrar upon receipt of a notarized application/authorization signed by the next of kin and the person who is in charge of the disinterment, or upon receipt of an order of a court of record of this state directing such disinterment, or upon notarized written application of the Attorney General to request a special disinterment permit for legal purposes.

(b) Mass Disinterment and Reinterment. Upon receipt of a court order, a signed and notarized permission of the next of kin of all decedents, or a signed and notarized application for disinterment for legal purposes, the State Registrar may issue one (1) permit for disinterment and reinterment of all remains in a mass disinterment provided that, insofar as possible, the remains of each body be identified and the place of disinterment and reinterment specified.

(c) Nature of Permit. The authorization issued in accordance with the statutes and regulations governing disinterment shall be permission for disinterment, transportation and reinterment.

(d) Fee for Permit. The State Board shall receive a fee not to exceed \$10 for each Disinterment/Reinterment permit issued.

§3155. Permits for disinterment of bodies buried in Kent or Sussex Counties before January 1, 1893.

The State Registrar of Vital Statistics through the central office or any of the county vital statistics offices, upon application to and the payment of the usual fee to any or either of them, shall issue a permit to any relative of any deceased person buried prior to January 1, 1893 and now remaining in private, family or old and neglected burying grounds in Sussex County and Kent County for the disinterment of the remains and the reinterment of the remains in public or private cemeteries or any other chosen or designated place in Kent County or Sussex County or without the State, the same as if the application had been made by a duly licensed undertaker. Upon obtaining the permit, the relative is vested with the same authority as a duly licensed undertaker in the disinterment and reinterment of the remains including the securing of vaults and providing for all other necessary arrangements in connection therewith.

§3156. Disinterment from condemned land.

The State Board shall modify the relax its regulations and restrictions relative to the disinterring and reinterring of dead bodies, including the securing of separate disinterment and transfer permits of the bodies in those cases where the bodies are in public or private burying grounds which have been condemned by this State or the United States Government for the purposes of public improvement, in order to enable the carrying into effect of complete removals in such cases to the full extent that the same can be accomplished, in the opinion of the State Board, by licensed undertakers under its supervision and without jeopardizing the public health.

§3157. Cremation; prohibited except in licensed crematory.

No person shall destroy or dispose of by burning in this State the body of an individual dead from any cause, except in a crematorium or crematory licensed for this express purpose and under the conditions provided in §§3158-3164 of this Title.

§3158. Crematory; license for construction; requirements; inspection.

(a) A person, firm organization or association desiring to acquire, erect or construct a crematory shall first obtain a license from the State Board after depositing with the State Board such blueprints giving construction details, plans of location or other information as are required.

(b) The crematory shall be so constructed as to be able to reduce to ashes a body so that there shall remain not more than 5 percent of the weight of the body immediately after death. It shall not be located, managed or conducted at any time in such a way as to be a public nuisance.

(c) The crematory shall be subject at all times to inspection by the State Board and by such officers of the State, legal or police departments as may desire to inspect it.

§3159. Permit for cremation; issuance, retention and inspection.

(a) A body may be cremated only after the preparation of a special cremation permit signed by the chief medical examiner or an assistant or deputy medical examiner. In the presentation of the cremation permit to the chief medical examiner or his representative for signature, the permit must be accompanied by a death certificate signed by the attending physician and by a cremation authorization signed by the next of kin or legal representative of the deceased. The signature of the chief medical examiner or his representative to the cremation permit shall constitute his affirmation that there is no medical reason why the cremation should not take place. The chief medical examiner or an assistant or deputy medical examiner shall have the authority to hold the remains of the deceased pending any investigation into the cause and manner of death.

(b) One copy of the cremation permit shall be retained by the person, firm, corporation or association conducting the crematory and shall be produced for inspection or other purposes when asked for by the inspecting authority. A second copy of the cremation permit shall accompany the death certificate when it is filed in the Office of Vital Statistics.

§3160. Report of cremation.

Within 24 hours after the cremation is completed a report indicating the name of the individual, his or her address while alive, the date and cause of death, the names of the individuals signing the permit, the date of the cremation and the disposal of the ashes shall be forwarded by the person in charge of the crematory to the central Office of Vital Statistics.

§3161. Delivery, transportation and disposal of ashes.

The ashes resulting from the cremation of a body may be delivered by the attendants of the crematory to any member of the family of the deceased designated to receive them or to the person arranging for the cremation. After this delivery, they may be transported in any way in the State and disposed of in such a way as is desired by the person receiving them.

§3162. Witnesses at cremation.

A representative of the family or some individual accredited to act as representative of the family of the individual being cremated may be present at the time the cremation is being carried out.

§3163. Permit where death occurs in this State and cremation takes place elsewhere.

The provisions of §3159 of this Title, respecting the signatures of the chief medical examiner or an assistant or deputy medical examiner and by the Attorney General or a deputy attorney general, are required in respect of the cremation of the body of an individual dying in the State but removed to any other state for the purpose of cremation.

§3164. Cremation in this State when death occurred elsewhere.

The cremation in this State of the bodies of persons dying in other states is permissible if all the legal requirements of the state in which the death occurred have first been complied with.

Section 2. Severability

If any clause, sentence, section, provision or part of this Act shall be adjudged to be unconstitutional or invalid for any reason by any court of competent jurisdiction, such judgement shall not impair, invalidate or affect the remainder of this Act which shall remain in full force and effect.

Section 3. Repealing Clause

All laws and parts of laws in conflict herewith are hereby repealed to the extent of such conflict.

Section 4. Effective Date

This Act shall become effective 180 days after its passage.

Approved June 25, 1992.

## CHAPTER 275

## FORMERLY

## SENATE BILL NO. 314

AN ACT TO AMEND CHAPTER 295, VOLUME 65, LAWS OF DELAWARE, ENTITLED "ACT TO REINCORPORATE THE TOWN OF BETHANY BEACH" BY PERMITTING REFUNDINGS OF BOND INDEBTEDNESS WITHOUT A REFERENDUM.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (Two-thirds of all members elected to each House thereof concurring therein):

Section 1. Amend §12.2.1(A), Chapter 295, Volume 65, Laws of Delaware by deleting the period at the end thereof, and inserting the following language:

" , but refunding such Bonds or other indebtedness of the Town shall not require the procedure set out in §12.2.4 so long as the outstanding principal amount of the refunding Bonds or other evidence of indebtedness does not exceed the face amount refunded, plus the cost of refunding, and shall be enacted by resolution of the Town Council."

Section 2. This bill shall take effect upon adoption.

Approved June 25, 1992.

## CHAPTER 276

## FORMERLY

SENATE BILL NO. 40  
AS AMENDED BY SENATE AMENDMENT NO. 5 AND HOUSE AMENDMENT NO. 1

AN ACT TO AMEND TITLE 13, CHAPTER 11 OF THE DELAWARE CODE RELATING TO THE TERMINATION OF PARENTAL RIGHTS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Title 13, Chapter 11 of the Delaware Code by striking said Chapter in its entirety and substituting in lieu thereof a new Chapter 11 to read as follows:

"§1101. Definitions

(1) 'Abandoned' shall be interpreted as referring to any child who, for a period of six months, or to any infant who, for a period of ninety days, has not received any regular and reasonable financial help from his parent or parents or any person having parental rights or responsibility and on whose behalf no substantial contacts have been initiated by his parent or parents or any person having parental rights or responsibility during that period.

(2) 'Authorized agency' means any agency duly approved, certified, recognized or licensed by the proper authority of any other state in which that agency is located to place children for adoption.

(3) 'Child' means any male or female who has not attained his or her eighteenth (18) birthday.

(4) 'Court' shall mean the Family Court of the State of Delaware.

(5) 'Department' means the Department of Services for Children, Youth, and Their Families of this state.

(6) 'Father' means the biological or adoptive male parent of the child.

(7) 'Infant' means any child who is less than six (6) months of age.

(8) 'Licensed agency' means any agency granted a license by the Department to place children for adoption.

(9) 'Mentally incompetent' shall be interpreted as referring to a parent who is unable to discharge parental responsibilities by reason of mental illness, psychopathology, mental retardation or mental deficiency.

(10) 'Parental' responsibilities' means the care, support and control of the child in a manner that provides for the child's necessary physical needs, including adequate food, clothing and shelter, and that also provides for the mental and emotional health and development of such child.

(11) 'Presumed father' means any man who is assumed to be the father of a child in accordance with Chapter 8 of this title.

§1102. Jurisdiction and Venue

(a) The Family Court shall have jurisdiction of proceedings under this chapter to terminate parental rights.

(b) A petition for termination of parental rights may be filed in the Family Court of any of the following counties:

(1) The county in which at least one parent resides;

(2) The county in which the organization having legal or physical care, custody, or control of the child is located;

(3) The county in which the child is located.

(c) Whenever the Family Court shall assume jurisdiction for the purposes of this chapter, it shall be deemed to have retained jurisdiction for the purpose of proceeding under Chapter 9 of this Title relating to adoption.

§1103. Grounds for Termination of Parental Rights

(a) The procedure for termination of parental rights for the purpose of adoption or, if a suitable adoption plan cannot be effected, for the purpose of providing for the care of the child by some other plan which may or may not contemplate the continued possibility of eventual adoption, may be initiated whenever it appears to be in the child's best interest and that one or more of the following grounds exist:

(1) The parent or parents of a child, or the person or persons or organization holding parental rights over such child, desires to relinquish such parental rights for the purpose of adoption;

(2) The child has been abandoned; or

(3) The parent or parents of the child or any person or persons holding parental rights over such child are found by the Court to be mentally incompetent and, from evidence of two qualified psychiatrists selected by the court, found to be unable to discharge parental responsibilities in the foreseeable future. The court shall appoint a licensed attorney as guardian ad litem to represent the alleged incompetent in the proceeding; or

(4) The parent or parents of a child are convicted of a felony in which this child is a victim or which involves harm to the child; or

(5) The parent or parents of the child, or any person or persons holding parental rights over such child, are not able, or have failed, to plan adequately for the child's physical needs or his mental and emotional health and development and;

a. In the case of a child in the care of the Department or licensed agency:

1. The child has been in the care of the Department or licensed agency for a period of one year, or for a period of six months in the case of a child who comes into care as an infant, or there is a history of previous placement or placements of this child; or a history of neglect, abuse or lack of care of this child or other children by this parent; or the parent has been convicted of a felony involving the child; or the parent is incapable of discharging parental responsibilities because of extended or repeated incarceration, except that the Court shall consider post-conviction conduct of the parent or parents.

11. The conditions which led to the child's placement, or similar conditions of a harmful nature, continue to exist and there appears to be little likelihood that these conditions will be remedied at an early date which would enable the parent to discharge parental responsibilities so that the child can be returned to the parent in the near future.

b. In the case of a child in the home of a stepparent or blood relative:

1. The child has resided in the home of the stepparent or blood relative for a period of at least one year, or for a period of six months in the case of an infant; and

11. The Court finds the non-custodial parent or parents incapable of discharging parental responsibilities, and that there appears to be little likelihood such parent or parents will be able to discharge such parental responsibilities in the near future.

(b) Unless adoption is contemplated, the termination of one parent's rights by the other parent shall not be granted if the effect will be to



leave only one parent holding parental rights, unless the court shall find the continuation of the rights to be terminated will be harmful to the child.

(c) Nothing in this Act shall be construed to authorize any court to terminate the rights of a parent to a child, solely because the parent, in good faith, provides for his child, in lieu of medical treatment, treatment by spiritual means alone through prayer in accordance with the tenets and practice of a recognized church or religious denomination. However, nothing contained herein shall prevent a court from immediately assuming custody of a child and ordering whatever action may be necessary, including medical treatment, to protect his health and welfare.

#### §1104. Persons Eligible to Petition for Termination of Parental Rights

A petition for the termination of parental rights may be filed by any of the following:

- (1) the mother of a child;
- (2) the father or presumed father of a child;
- (3) both parents of a child;
- (4) a blood relative of a child;
- (5) the Department or a licensed agency.

#### §1105. Contents of petition

(a) The petition for the termination of parental rights shall state:

- (1) Name and place of residence of the petitioner or petitioners;
- (2) Name, sex, date of birth and place of birth of the child;
- (3) Relationship of the petitioner or petitioners to the child or the fact that no such relationship exists;
- (4) The name and address of the mother and the address of the father or presumed father;
- (5) Where the name and address of the father is not provided, a statement, with an affidavit from the mother attached to the petition, that:
  - a. The mother knows the name of the biological father but is unwilling to disclose his name; or
  - b. The mother does not know the name of the biological father; or
  - c. The mother knows the name of the biological father and has provided it, but that she has never known his address; and
  - d. The mother's husband, if she was married at the time of the child's conception or birth, is not the child's biological father.

If the mother is unavailable or refuses to provide the requisite affidavit, the petition shall set forth such information as required by this paragraph as is known to the petitioner.

(6) The name and last known address of the person or persons or organization holding parental rights and the name and address of the person or persons or organization having the care, control or custody of the child;

(7) The grounds for termination of parental rights;

(8) The name and address of the person or persons or of the Department or licensed agency to which parental rights are requested to be transferred.

(9) In addition to other pertinent information, the petition, if either the name or address of the parent or parents is not included, shall

furnish detailed information concerning the efforts made to locate the parent or parents to enable the Court to determine what further steps, if any, should be taken.

(10) A statement that petitioner has explored the possibility of placement of the child with blood relatives, if both parents rights are being terminated, and the results of such efforts; and

(11) A statement outlining what other placement efforts have been taken, if any.

(b) Any consents required in §1106 of this title shall accompany the petition as exhibits.

(c) In any case in which a petition for the termination of parental rights has been filed pursuant to §1103(a)(1) and the Department or a licensed agency is a party to the proceeding, there shall be attached to the petition a social report. In any case in which a petition for the termination of parental rights has been filed on any other ground set forth in §1103(a) and the Department or a licensed agency is a party to the proceeding, a social report shall be filed no later than the date of the hearing on the petition.

§1106. Consent Requirements: Waiver of Notice

(1) In the case of proceedings based on §1103(a)(1) of this section consent shall be required from:

- a. The mother of the child;
- b. The father and any presumed father of the child; provided that:

- i. The consent of an alleged biological father or presumed father need not contain an admission of paternity. In the event the alleged biological father or presumed father denies paternity, an affidavit to that effect signed by him shall be attached to the petition in lieu of a consent.

- ii. In the event that the mother was married at the time of the child's conception or birth but her husband at those times is not the biological father of the child, a notarized statement of the husband that he is not the biological father of the child shall be prima facie proof thereof in the absence of evidence to the contrary. If such a notarized statement of the legal husband cannot be obtained, a notice of hearing shall be sent to him as provided in §1107 of this title;

- iii. In the event of a petition containing statements described in §1105(a)(5) a, b, or c of this title, after a hearing in which it is established on the record that the mother and father of the child are not living together as husband and wife openly and that they have not done so nor married since the birth of the child, the court may, following consideration of the social report, dispense with the requirement of the father's consent in compliance with §1115 of this title.

- c. One parent, if the other is deceased.
- d. Any other person or persons or organization holding parental rights.
- e. One parent alone if the termination of the other parent's rights is being sought based on grounds as in §1103 (a) (2), (3), (4), or (5) of this title.

(2) If the person in whom the right to consent exists is under the age of eighteen, this fact shall not be a bar to the giving of consent nor render the consent invalid when given.

(3) Every petition shall be accompanied by a formal written consent executed by the person or persons for whom or the organization to which parental rights are requested to be transferred.

(4) When a petition for the termination of parental rights is filed by a licensed agency and the child is an infant and the person or persons or organization holding parental rights wish to waive their right to any and all notice of hearing or right to appear at such hearing, the petition shall be accompanied by a notarized statement to this effect executed by the person or persons or organization holding parental rights.

(5) Consent by the father or presumed father may be executed either before or after the actual birth of the child involved.

§1107. Hearing Procedure: Notice of Hearing: Report

(a) When a petition for the termination of parental rights is filed in which the Department or licensed agency is a party to the proceedings, the court shall set a date for hearing thereon, and shall cause notice of the time, place and purpose of the hearing to be served upon the parent or parents, person or persons or organization holding parental rights at the respondent's last known address or to the address recited in the petition.

(b) No such notice of hearing shall be necessary if:

i. a waiver executed by the parent or parents, person or persons or organization holding parental rights has been filed with the petition, in accordance with §1106(4) of this title. The court may require notice to be served upon any other person or organization.

ii. prior to the filing of the petition for termination of parental rights, the parent or parents, person or persons or organization holding parental rights has failed to respond to the petitioning agency within 20 days after receiving notice of the intention to file the petition. Such notice shall contain information regarding the child's name and date of birth, grounds for the petition, the right to file with the Court or the petitioning agency opposition to the termination of parental rights or to deny paternity, and shall be mailed by registered or certified mail. Proof of receipt shall be attached to the petition as an exhibit.

(c) If the court shall find that personal service within the state cannot be accomplished upon the parent or parents, person or persons or organization holding parental rights, the court shall then cause notice of the time, place and purpose of the hearing to be published once a week, for three successive weeks, in such newspaper of the county, one or more, as the court may judge best for giving the parent or parents, or person or persons or organization holding parental rights notice, the formal wording of said notice to be approved by the court. Such publication shall constitute conclusive evidence of service and a hearing will then proceed at the time and date set, with or without the appearance of the parent or parents, person or persons or organization so notified. Publication shall also be made in the locality in which the parent or parents, person or persons or organization holding parental rights is believed to be located if different from the county where the publication just described has been caused.

(d) If any publication is ordered pursuant to subsection (c), the Court shall also order that the Clerk of the Court, at least three weeks prior to the hearing, send by regular and registered or certified mail to the parent or parents or person or persons or organization holding parental rights, at the address or addresses given in the petition, a copy of the same notice, or a similar notice of the time, place and purpose of the hearing.

(e) Personal service at any time prior to the hearing shall be sufficient to give jurisdiction.

(f) When a petition for termination of parental rights is filed and the Department or a licensed agency is not a party to the proceeding, the Court shall, before any hearing, order a social study and report on the petition, by the Department or a licensed agency, to be filed within four months, subject to such additional time as the Court shall determine is reasonably required. The Court shall set a date for hearing to take place after the report is to be filed and notice shall be accomplished as outlined above.

(g) All hearings shall be held before the Court privately, but for reasons appearing sufficient to the Court the hearing in any particular case may be public.

#### §1108. Order of Termination and Transfer of Parental Rights

(a) Should the Court find the termination of existing parental rights and their transfer to be in the best interest of the child, it shall make an order terminating such rights in the parent or parents, person or persons or organization in which they have existed and transferring them to some other person or persons or the Department or a licensed agency as may, in the opinion of the Court, be best qualified to receive them.

(b) In the case of proceedings based on §1103(a)(1) of this title in which all individuals entitled to consent have waived notice of hearing and the right to appear at such hearing in accordance with §1106(4) of this title, the Court shall issue its decision and order within 30 days after the filing of the petition and social report. In all other cases, the Court shall issue its decision and order within 30 days following the conclusion of the proceedings.

(c) If a child is abandoned by 1 parent only, the rights of such parent may be terminated without affecting the rights of the other.

(d) The Court shall consider post-conviction conduct of parent or parents.

#### §1109. Petition for Transfer of Parental Rights of Deceased Parents

When the mother and the father or presumed father of a child are deceased, the Department or a licensed agency may file a petition to transfer the parental rights of the deceased parents to the Department or licensed agency for the purpose of adoption planning when such appears to be in the best interest of the child. The petition shall contain:

(a) Name and place of residence of the petitioner or petitioners;

(b) Name, sex, date and place of birth of the child;

(c) The names, places of residence and dates of death of the mother and father or presumed father of the child; and

(d) Certified copies of the death certificates of the parents of the child.

#### §1110. Appeals

The petitioner, if the petition is not granted, or any person or organization whose parental rights have been terminated by the order, may, at any time within 30 days after the making and entry of such decree, take an appeal therefrom to the Supreme Court.

#### §1111. Court Costs

All court costs including costs of giving notice and advertising shall be paid by the petitioners. Court costs do not include attorney fees of the respondent(s).

#### §1112. Confidential Nature of Court Records

(a) All Court records and dockets pertaining to any termination shall be confidential and shall be kept by the Clerk of the Court in a sealed container which shall be opened only by the order of a Judge of the Family Court.

(b) Nothing in this section shall be construed in such a way as to restrict the Department or a licensed agency from releasing non-identifying information in its records to any of the parties to the termination.

(c) Identifying information, such as names and addresses, shall not be released by the Department or a licensed agency except:

- (1) by order of the Court;
- (2) according to §929 of this title.

(d) In cases where the adopted individual's health or the health of any blood relative of the adopted individual is concerned and the agency has refused to release the health information to the adopted individual, the Court, through petition by the adopted individual, may permit the individual to inspect only that part of the agency or Court record containing medical information for health reasons. The Court shall order open to inspection by the adopted individual the part of the record containing the needed medical information if the Court finds that any medical information in the Court or agency record of the adopted individual is needed for the health of the adopted individual or any blood relative of the adopted individual. This section shall apply to information as to the identification and location of any biological sibling of the adopted individual if the adopted individual's health or the health of any blood relative of the adopted individual depends on the sibling's participation in any medical treatment.

(e) Anyone wishing to inspect the papers filed in connection with any termination shall petition the Family Court or the court of original jurisdiction setting forth the reasons for the inspection. The Court may refer the petition to the Department or a licensed agency for investigation and report. If, in the opinion of the Court, the information is necessary, and the interests of the adopted individual, the biological parents or the adoptive parents will not be prejudiced by its disclosure, the Court shall issue an order permitting the release of the information and setting forth the terms under which it shall be released.

#### §1113. Effect of Termination of Parental Rights

(a) Upon the issuance of an order terminating the existing parental rights and transferring such parental rights to another person or organization, the effect of such order shall be that all of the rights, duties, privileges and obligations recognized by law between the person or persons whose parental rights are terminated and the child shall forever thereafter cease to exist. The person or organization to whom said parental rights are transferred shall have custody and guardianship of the child but such custody and guardianship shall terminate automatically upon the entry of another order transferring parental rights or on an order of adoption.

(b) Upon the issuance of an order terminating the existing parental rights and transferring such parental rights to another person or organization, the child shall lose all rights of inheritance from the parents whose parental rights were terminated and from their collateral or lineal relatives and the parents whose parental rights were terminated and their collateral or lineal relatives shall lose all rights of inheritance from the child.

(c) Nothing contained in this section shall limit in any way the right of any person to provide for the disposition of his or her property by will.

#### §1114. Placement for Adoption

After the issuance of an order terminating the existing parental rights and transferring them to the Department or a licensed agency, the agency shall attempt to promptly place the child for adoption. Every six months thereafter until an adoption decree is entered the agency shall advise the Court in writing of the status of the child stating the reasons for the delay in placement or adoption. The Court may, after notice, hold a hearing to determine if any further action is required in the best interest of the child.

#### §1115. Interpretation

This Chapter is designed to achieve without undue delay the paramount objective of the best interest of the child, and all questions of interpretation shall be resolved with that objective in mind."

Section 2. This Act shall become effective 60 days after its enactment. Actions commenced prior to the effective date of this act shall be governed by Chapter 11 of Title 13 operative prior to such effective date, and those provisions shall remain in effect as to those actions as if this act was not in effect.

Approved June 25, 1992.

CHAPTER 277

FORMERLY

HOUSE BILL NO. 452

AN ACT TO AMEND CHAPTER 27, TITLE 14 OF THE DELAWARE CODE RELATING TO SCHOOL ATTENDANCE.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend §2708 by inserting between the phrases "superintendent of schools" and "presents an excuse" as they appear in said section the following phrase:

"or persons authorized by him or her".

Approved June 25, 1992.

## CHAPTER 278

## FORMERLY

SENATE BILL NO. 274  
AS AMENDED BY SENATE AMENDMENT NO. 1

AN ACT TO AMEND CHAPTER 27, TITLE 29, DELAWARE CODE RELATING TO THE CASH MANAGEMENT POLICY BOARD AND INVESTMENT POOLS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend §2716(a), Chapter 27, Title 29, Delaware Code by inserting between the word "State" and the punctuation "," as the same appear in the first sentence therein, the following phrase:

"or on deposit from its political subdivisions".

Section 2. Further Amend §2716(a), Chapter 27, Title 29, Delaware Code by inserting the phrase "or its political subdivisions" after the phrase "money belonging to the State" as such phrase appears in the third and fourth sentences therein.

Section 3. Amend §2716(a)(1), Chapter 27, Title 29, Delaware Code by striking the phrase "state money" as it appears in the first sentence therein and substitute the phrase "such funds" in lieu thereof.

Section 4. Amend Chapter 27, Title 29 of the Delaware Code by adding a new §2719 as follows:

"§2719. Local Government Investment Pool.

(a) The governing body or investing authority of a local government, meaning any city, town or county in Delaware, may pay public moneys of the local government into the Local Government Investment Pool which shall be in the custody of the State Treasurer. The State Treasurer shall invest the funds in the same manner and the same types of investments and subject to the same limitations provided for the deposit and investment of State funds. Funds of the local governments may be combined with funds of the State while invested in the Pool.

(b) The State Treasurer shall adopt such rules as are necessary for the administration of this Investment Pool including specification of minimum amounts which may be paid into the Pool and minimum periods of time for which such payments shall be retained in the Pool. Administrative expenses shall be handled by the Office of the State Treasurer. Earnings shall be equitably pro-rated among the local governments in the Pool based upon the amount and length of time the monies are on deposit in the Pool.

(c) Local Government Accounts shall remain confidential while in the custody of the State Treasurer. Public records available through the local government will be sufficient public record of the funds on deposit with the Local Government Investment Pool."

Approved June 29, 1992.

## CHAPTER 279

## FORMERLY

## HOUSE BILL NO. 446

AN ACT TO AMEND CHAPTER 29, TITLE 25 OF THE DELAWARE CODE RELATING TO LIENS OF THE STATE AND/OR ITS POLITICAL SUBDIVISIONS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend §2901(a)(1)f. Chapter 29, Title 25 of the Delaware Code by deleting the word "and" where said word appears at the end of §2901(a)(1)f.

Section 2. Amend §2901(a)(1)g. Chapter 29, Title 25 of the Delaware Code by deleting the period "." where said period "." appears at the end of §2901(a)(1)g. and by substituting in lieu thereof the phrase "; and".

Section 3. Amend §2901(a)(1), Chapter 29, Title 25 of the Delaware Code by adding thereto a new subparagraph h. to read as follows:

"h. Assessments for the installation of sewer lines, water mains, sidewalks and curbing, including penalty and interest thereon."

Approved June 29, 1992.

## CHAPTER 280

## FORMERLY

## SENATE BILL NO. 385

AN ACT TO AMEND TITLE 7, DELAWARE CODE RELATING TO BEACH REPLENISHMENT.

WHEREAS, publicly funded beach replenishment projects are a benefit to all of the citizens of Delaware; and

WHEREAS, the public has a historic right of access to the water for the purpose of navigation and fishing; and to the shore as far landward as the vegetation line; and

WHEREAS, the General Assembly recognizes the public trust doctrine's particular applicability to publicly funded beach replenishment projects;

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend §6810, Title 7 of the Delaware Code by adding a new subsection to read as follows:

"(c) Notwithstanding the provisions of subsection (a) of this section, the Secretary may undertake any or all necessary works to restore private beaches as designated by the Department, whenever two-thirds or more of the property owners in the project area along the private beach have petitioned the Department to undertake the work. The public will maintain rights on the beach landward to the dune vegetation line or the structure line, whichever is further seaward, in the area of any publicly financed project for the purposes of navigation, fishing, swimming and sunbathing. Privately financed projects may be included in a public project when the Department determines that their inclusion will enhance the public project."

Approved June 29, 1992.



CHAPTER 281

FORMERLY

SENATE BILL NO. 349

AN ACT TO AMEND CHAPTER 45, TITLE 21 DELAWARE CODE RELATING TO WEIGHTS AND SIZES OF SPECIFIC FARM EQUIPMENT AND FIRE APPARATUS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Section 4502, Chapter 45, Title 21 of the Delaware code by adding a new subsection to read as follows:

"(e) The provisions of this Section do not apply to the following vehicles when such vehicles are being operated on interstate highways and United States numbered routes; provided, however, that the liability for damages caused by any vehicle operated under this provision shall be borne by the owner of said vehicle:

- (1) Fire apparatus owned or used by an organized fire company.
- (2) Farm equipment being temporarily operated, moved or transported on a highway. This provision only applies to farmers engaged in their agricultural related practices."

Approved June 30, 1992.

## CHAPTER 282

## FORMERLY

## SENATE BILL NO. 267

AN ACT TO AMEND LAWS OF DELAWARE, VOLUME 66, CHAPTER 291, AS AMENDED, THE CHARTER OF THE TOWN OF CLAYTON, TO ESTABLISH THE POSITION OF VICE-PRESIDENT OF THE TOWN COUNCIL OF THE TOWN OF CLAYTON.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (Two-thirds of all members elected to each House thereof concurring therein):

Section 1. Article III, §3.1 of Chapter 291, Volume 66, Laws of Delaware, shall be and the same is hereby amended by deleting Article III, §3.1 in its entirety and substituting in lieu thereof the following:

"3.1 Organization

The government of the Town of Clayton and the exercise of all powers conferred by this Charter, except as otherwise provided herein, shall be vested in five (5) Councilmen (two of whom shall be by them chosen as President and Vice-President)."

Section 2. Article III, §3.8(a) of Chapter 291, Volume 66, Laws of Delaware, shall be and the same is hereby amended by inserting the phrase "a Vice-President," after the phrase "a President," and before the phrase "a Secretary," where said phrases appear in the first sentence of Article III, §3.8(a).

Section 3. Article III, §3.10(c) of Chapter 291, Volume 66, Laws of Delaware, shall be and the same is hereby amended by deleting Article III, §3.10(c) in its entirety.

Section 4. Article III, §3.11 through Article III, §3.14 of Chapter 291, Volume 66, Laws of Delaware, shall be and the same are hereby re-designated as Article III, §3.12 through Article III, §3.15, respectively, and Article III shall be and the same is hereby further amended by inserting a new Article III, §3.11 to read as follows:

"§3.11 - Council Vice-President

(a) The Vice-President shall also be known as the Vice-Mayor of the Town of Clayton. If the President shall be incapacitated from acting by reason of absence, or for any other cause whatsoever, then all powers and duties conferred and imposed upon him by this Charter or any other law, or any resolution or ordinance now or hereafter adopted or enacted by the Town Council, shall be exercised and performed by the Vice-President as acting President and Mayor for the period of such incapacity.

(b) The Vice-President shall have the same right as other officers and Council members to vote on all matters."

Section 5. Article XIII, §13.2 of Chapter 291, Volume 66, Laws of Delaware, shall be and the same is hereby amended by inserting the phrase "the Council Vice-President," after the phrase "the Council President," and before the phrase "the Town Treasurer," where said phrases appear in the first sentence of Article XIII, §13.2.

Approved June 30, 1992.

CHAPTER 283

FORMERLY

SENATE BILL NO. 324

AN ACT TO AMEND CHAPTER 26, TITLE 21 RELATING TO WAIVERS FOR COMMERCIAL DRIVER LICENSE PROVISIONS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (two-thirds of all members elected to each House thereof concurring therein):

Section 1. Amend Subsection 2621, Chapter 26, Title 21 of the Delaware Code by inserting "(a)" prior to the first sentence that begins "The Provisions of this Chapter".

Section 2. Amend Subsection 2621, Chapter 26, Title 21 of the Delaware Code by adding thereto a new subsection to read as follows:

"(b) When operating Commercial Motor Vehicle as defined by Subsection 2603(6), Title 21, under the Waiver Provisions of Subsection 2621(A)(1) and (A)(2) operators are required to hold a Non-CDL Class A or Non-CDL Class B License. These Licenses will be classified in accordance with Subsection 2611(B)(1) of Title 21.

Approved June 30, 1992.

## CHAPTER 284

## FORMERLY

## SENATE BILL NO. 328

AN ACT TO AMEND BEING CHAPTER 32, VOLUME 47, LAWS OF DELAWARE, AS AMENDED, ENTITLED, "AN ACT TO REINCORPORATE THE TOWN OF FREDERICA" RELATING TO POWER TO OPERATE A WATER SYSTEM AND PROVIDING FOR THE ISSUANCE OF BONDS THEREFOR.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (Two-thirds of all members elected to each House thereof concurring therein):

AMEND Section 1. Chapter 32, Volume 47, Laws of Delaware by adding thereto a new section to read as follows:

"Section 5(a).

The Council shall have power to operate a water system for the Town, including the procurement and distribution of same, and to do all things necessary for its maintenance and operation upon such terms, charges and conditions as Council shall determine. The Council may at their option distribute water to places or properties outside of the Town Limits upon such terms, charges and conditions as they shall determine. Any term, charges and condition as Council shall determine may at Council's election constitute a lien on the real estate serviced by the system.

The Council may take condemnation proceedings for water purposes, private land or the right to use private land under the surface thereof for the laying of water mains or the procurement of water.

The Council shall have power to adopt ordinances, rules and regulations in regard to the use for public or private purposes of water furnished and to provide penalties for any willful or negligent injury or damage to its water procurement and distribution system and to any objectionable use in connection with its water system and to any interferences or obstruction of the said system.

Council shall have and is hereby authorized and empowered to borrow money and issue bonds, notes or certificates of indebtedness from time to time on the full faith and credit of the Town of Frederica to provide funds for the furnishing of water to the public and the construction, extension, repairs, maintenance and upkeep of a water system. The authority to issue bonds, notes or certificates of indebtedness shall by resolution approved by Council.

The form of the bond, note or certificate of indebtedness, the times of payment of interest, the classes, the time of maturity and provisions as to registration shall be determined by Council. The Council shall provide in its budget and in fixing the tax rate for the payment of interest and principle of said Bonds at the maturity or maturities thereof and a sinking fund therefore. The full faith and credit of the Town of Frederica shall be deemed to be pledged for provision thereof when the same have been properly executed and delivered for value."

Approved June 30, 1992.

CHAPTER 285

FORMERLY

SENATE BILL NO. 336

AN ACT TO AMEND TITLE 3 OF THE DELAWARE CODE RELATING TO RABIES CONTROL.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Subsection (b) §8202, Chapter 82, Title 3, of the Delaware Code by inserting the word ", city" after the word "county" as it appears therein.

Section 2. Amend Subsection (a) §8205, Chapter 82, Title 3 of the Delaware Code by inserting the words ", wild animal hybrid" after the word "animal" in the first sentence therein.

Section 3. Amend Subsection (c)(1), §8208, Chapter 82, Title 3, of the Delaware Code by inserting the following after the period at the end of said subsection:

"If the quarantined animal dies, escapes or for any other reason is not available to complete the quarantine period, the owner shall immediately notify the Division of Public Health by telephone, to be followed by a signed, notarized affidavit stating the reason for the animals unavailability to complete the quarantine period. This affidavit must be submitted within seven (7) days of the animal's disappearance or death to the Division of Public Health."

Section 4. Amend Subsection (c), §8210, Chapter 82, Title 3, of the Delaware Code by inserting the words "or having bitten a person and that animal having not been immunized with a vaccine specifically approved for use in that species and administered by a veterinarian, shall" between the words "rabies" and "be" as they appear in the first sentence thereof.

Approved June 30, 1992.

## CHAPTER 286

## FORMERLY

## SENATE BILL NO. 351

AN ACT TO AMEND CHAPTERS 59 AND 83, TITLE 29, DELAWARE CODE CLARIFYING RESPONSIBILITY FOR THE DETERMINATION OF STATE PENSION BENEFITS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend §5910(d), Chapter 59, Title 29, Del. C., by deleting the comma after the phrase "state pension funds" and substituting a period (.) in lieu thereof.

Section 2. Amend §5910(d), Chapter 59, Title 29, Del. C., by deleting the phrase beginning with the words "the determination" through the words "Title 20."

Section 3. Amend §8308(b)(2), Chapter 83, Title 29, Del. C., by deleting said subsection in its entirety and substituting in lieu thereof a new subsection "2", to read as follows:

"(2) The power and duty to appoint an Executive Secretary who shall be responsible for determining the eligibility for retirement pension benefits for all state administered pension plans including the determination of eligibility for paraplegic veterans' benefits as provided for in §1001, Chapter 10, Title 20, Delaware Code."

Section 4. Amend §8308(b)(3), Chapter 83, Title 29 by deleting said subsection in its entirety and substituting in lieu thereof a new subsection "3" to read as follows:

"(3) The power and duty to hear appeals from the decision of the Executive Secretary regarding pension benefits provided for all state administered pension plans."

Approved June 30, 1992.

## CHAPTER 287

## FORMERLY

## SENATE BILL NO. 359

## AS AMENDED BY SENATE AMENDMENT NOS. 1 AND 2

AN ACT TO AMEND CHAPTER 41, TITLE 21 OF THE DELAWARE CODE RELATING TO HANDICAPPED PARKING.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend §4183(a), Title 21, Delaware Code by adding at the end thereof the following:

"For the purposes of this section, 'conspicuously marked' shall require a vertical sign placed at an approximate height of at least 5 feet but no more than 7 feet (measured from the surface directly below the sign to the top of the sign) for each such parking space. The sign shall substantially follow the Federal specifications of R7-8. Substantially following shall be presumed if the sign is at least 12 inches wide by 18 inches tall, includes the words 'reserved parking' and an international handicapped symbol. These requirements shall not be construed to preclude additional markings such as an international handicapped symbol on the space itself and/or a tow-away indicator."

Section 2. This Act shall become effective 90 days after its enactment into law.

Approved June 30, 1992.

## CHAPTER 288

## FORMERLY

## HOUSE BILL NO. 517

AN ACT TO AMEND CHAPTER 98, TITLE 10 OF THE DELAWARE CODE RELATING TO FEES IN THE JUSTICE OF THE PEACE COURTS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (three-fifths of all members elected to each House thereof concurring therein):

Section 1. Amend §9801, Title 10, Delaware Code by striking paragraph (1) in its entirety and by substituting in lieu thereof the following new paragraph:

"(1) Civil

- |  |      |
|--|------|
| a. For receipt, issuance and process of a civil action | \$30 |
| In addition to the above:                              |      |
| For issuance of an alias, pluries                      |      |
| or any subsequent writ of process                      | \$15 |
| Action of replevin                                     | \$15 |
| Attachment in lieu of summons                          | \$20 |
| Scire facias   | \$10 |
| Hearings for relief from judgment or order             |      |
| under J.P. Ct. Civ. R. 20, or to vacate                |      |
| a default judgment or a non-suit judgment              | \$10 |
| For preparation of docket entries or                   |      |
| full copies of records, duly certified                 | \$10 |
| b. Landlord/Tenant:                                    |      |
| Appeals to 3 judge court                               | \$50 |
| Service of writ of summary possession                  | \$35 |
| c. Executions:   |      |
| Execution process, to include                          |      |
| Prothonotary fee and fieri facias                      | \$25 |
| Garnishment  | \$25 |
| Vendition exponas and costs                            |      |
| incident to sale of goods                              | \$20 |
| d. For issuance and service of civil subpoena          | \$ 5 |
| e. For mailing of subpoena at prevailing               |      |
| mail rate"   |      |

Approved July 1, 1992.

## CHAPTER 289

## FORMERLY

## HOUSE BILL NO. 603

AN ACT TO AMEND CHAPTER 65, TITLE 11 OF THE DELAWARE CODE RELATING TO THE ESTABLISHMENT AND COLLECTION OF SUPERVISION FEES BY THE DEPARTMENT OF CORRECTION.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (three-fifths of all members elected to each House thereof concurring therein):

Section 1. Amend §6504, Title 11 of the Delaware Code by inserting new paragraph (14) to read as follows:

"(14) Collecting as a condition of supervision, a fee based on the Accountability Level of the offender. An offender sentenced to an Accountability Level I sanction shall be charged a \$10.00 monthly fee; an offender sentenced to an Accountability Level II sanction shall be charged a \$20.00 monthly fee; and an offender sentenced to an Accountability Level III sanction shall be charged a \$25.00 monthly fee. The Director of Community Services shall develop policies and procedures with regard to determining an offender's ability to pay the monthly fee. Such policies and procedures shall be applied on a consistent basis to all offenders, and shall be subject to approval by the Commissioner of Correction. In the event the department determines an offender is unable to pay the monthly fee due to lack of employment or other significant extenuating circumstances, such as an offender's responsibility to remit payment for victim compensation, restitution, or child support, said inability shall not constitute a violation of supervision. The offender shall remain liable to pay the fee at such time as the department determines he or she is able to do so."

Approved July 1, 1992.



CHAPTER 290  
FORMERLY  
SENATE BILL NO. 444

AN ACT MAKING APPROPRIATIONS FOR THE EXPENSE OF THE STATE GOVERNMENT FOR THE FISCAL YEAR ENDING JUNE 30, 1993; SPECIFYING CERTAIN PROCEDURES, CONDITIONS AND LIMITATIONS FOR THE EXPENDITURE OF SUCH FUNDS; AND AMENDING CERTAIN PERTINENT STATUTORY PROVISIONS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. The several amounts named in this Act, or such part thereof as may be necessary and essential to the proper conduct of the business of the agencies named herein, during the Fiscal Year ending June 30, 1993, are hereby appropriated and authorized to be paid out of the Treasury of the State by the respective departments and divisions of State Government, and other specified spending agencies, subject to the limitations of this Act and to the provisions of Title 29, Part VI, Delaware Code, as amended or qualified by this Act, all other provisions of the Delaware Code notwithstanding. All parts or portions of the several sums appropriated by this Act which, on the first day of July 1993, shall not have been paid out of the State Treasury, shall revert to the General Fund; provided, however, that no funds shall revert which are encumbered pursuant to Title 29, Section 6521, Delaware Code.

The several amounts hereby appropriated are as follows:

## DEPARTMENTS

Year ending June 30, 1993

**(01-00-00) LEGISLATIVE**

Personnel		
NSF	ASF	GF
1		

\$ Program		\$ Line Item	
ASF	GF	ASF	GF

**(01-01-01) General Assembly – House**

5			21.0
6			
7			
8			
9			
10			
11			
12			
13			
14			21.0

Personnel Costs	2,483.8
Travel	
Mileage - Legislators	50.0
Other - Travel	25.2
Contractual Services	249.2
Supplies and Materials	25.0
Capital Outlay	20.0
Expenses - House Members	257.0
House Committee Expenses	12.2
<b>AL --- General Assembly - House</b>	<b>3,122.4</b>

**(01-02-01) General Assembly - Senate**

19			13.0
20			
21			
22			
23			
24			
25			
26			
27			
28			
29			13.0

Personnel Costs	1,544.4
Travel	
Mileage - Legislative	38.5
Other - Travel	35.0
Contractual Services	140.0
Supplies and Materials	28.0
Capital Outlay	40.0
Advertising - Senate Substance Abuse Committee	50.0
Expenses - Senate Members	154.1
Senate Committee Expenses	60.0
<b>TOTAL -- General Assembly - Senate</b>	<b>2,090.0</b>

**(01-05-01) Commission on Interstate Cooperation**

3  
4  
5  
6  
7  
8  
9  
0  
1  
2

Travel	18.0
Legislative Travel	75.0
Contractual Services	30.0
Contractual Services -- Appalachian Compact	58.3
Supplies and Materials	0.5
Council of State Governments	51.7
Delaware River Basin Commission	282.0
National Conference of State Legislatures	59.2
<b>TOTAL -- Commission on Interstate Cooperation</b>	<b>574.7</b>

Year ending June 30, 1993

	Personnel				\$ Program		\$ Line Item	
	NSF	ASF	GF		ASF	GF	ASF	GF
1				(01-08-00) Legislative Council				
2								
3				(01-08-01) Division of Research				
4			15.0	Personnel Costs				567.4
5				Travel				8.5
6				Contractual Services				53.5
7				Supplies and Materials				48.1
8				Capital Outlay				32.0
9				Sunset Committee Expenses				35.9
10				Printing - Laws and Journals				8.0
11				Debt Service				13.6
12			15.0	TOTAL -- Division of Research				767.0
13								
14				(01-08-02) Office of the Controller General				
15			13.0	Personnel Costs				693.3
16				Travel				13.0
17				Contractual Services				122.3
18				Supplies and Materials				24.5
19				Capital Outlay				2.0
20				Family Law Commission Expenses				4.7
21				Contingency - JFC/CIP				9.5
22				Contingency - Internship				10.0
23				Computer Training				5.0
24				Contingency - Legislative Council				20.0
25				Contingency - N.C.S.L.				25.0
26			13.0	TOTAL -- Office of the Controller General				929.3
27								
28				(01-08-03) Code Revisors				
29				Travel				0.5
30				Contractual Services				165.8
31				Supplies and Materials				1.0
32				TOTAL -- Code Revisors				167.3
33								
34				(01-08-06) Commission on Uniform State Laws				
35				Travel				8.5
36				Contractual Services				8.1
37				Supplies and Materials				0.1
38				TOTAL -- Commission on Uniform State Laws				16.7
39								
40			28.0	TOTAL -- Legislative Council				1,880.3
41								
42								
43			62.0	TOTAL -- LEGISLATIVE				7,667.4

Year ending June 30, 1993

## (02-00-00) JUDICIAL

## Personnel

## \$ Program

## \$ Line Item

NSF	ASF	GF
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ASF	GF	ASF	GF
-----	----	-----	----

## (02-01-00) Supreme Court

		22.0
		22.0

Personnel Costs  
Travel  
Contractual Services  
Supplies and Materials  
Capital/Equipment  
Court on the Judiciary  
**TOTAL -- Supreme Court**

	1,397.5
5.0	11.9
15.0	59.4
3.0	26.0
8.5	1.0
31.5	1,495.8

(-10) Supreme Court  
**TOTAL -- Internal Program Unit**

31.5	1,495.8
31.5	1,495.8

## (02-02-00) Court of Chancery

		24.0
		24.0

Personnel Costs  
Travel  
Contractual Services  
Supplies and Materials  
Capital/Equipment  
**TOTAL -- Court of Chancery**

	1,444.2
	6.9
	55.9
	22.7
	2.5
	1,532.2

(-10) Case Processing  
**TOTAL -- Internal Program Unit**

	1,532.2
	1,532.2

## (02-03-00) Superior Court

8.0		232.0
8.0		232.0

Personnel Costs  
Travel  
Contractual Services  
Supplies and Materials  
Capital/Equipment  
**TOTAL -- Superior Court**

	8,515.7
	30.8
	462.7
	73.2
	37.0
	9,119.4

(-10) Case Processing  
(-50) NCC Prothonotary  
(-60) Kent County Prothonotary  
(-70) Sussex County Prothonotary  
**TOTAL -- Internal Program Units**

	6,635.4
	1,873.6
	294.4
	316.0
	9,119.4

## (02-06-00) Court of Common Pleas

		66.0
		66.0

Personnel Costs  
Travel  
Contractual Services  
Supplies and Materials  
Capital/Equipment  
**TOTAL -- Court of Common Pleas**

	2,565.5
	2.8
	81.9
	29.6
	2,679.8

(-10) Court Operations  
**TOTAL -- Internal Program Unit**

	2,679.8
	2,679.8

Year ending June 30, 1993

Personnel			(02-08-00) Family Court	\$ Program		\$ Line Item	
NSF	ASF	GF		ASF	GF	ASF	GF
3.0	62.0	229.0	Personnel Costs			1,733.2	8,390.2
			Travel			13.0	20.4
			Contractual Services			127.3	461.7
			Supplies and Materials			58.8	97.5
			Capital/Equipment			42.3	
3.0	62.0	229.0	TOTAL -- Family Court			1,974.6	8,969.8
3.0	62.0	229.0	(-10) Court Activities	1,974.6	8,969.8		
3.0	62.0	229.0	TOTAL -- Internal Program Unit	1,974.6	8,969.8		
			(02-13-00) Justices of the Peace Courts				
		210.0	Personnel Costs				6,778.1
			Travel				92.3
			Contractual Services				452.4
			Energy				67.9
			Supplies and Materials				213.4
			Capital/Equipment				12.5
			Debt Service				153.5
		210.0	TOTAL -- Justices of the Peace Courts				7,768.1
		196.0	(-10) Case Processing		7,282.2		
		14.0	(-20) Support Service Unit		485.9		
		210.0	TOTAL -- Internal Program Units		7,768.1		
			(02-17-00) Administrative Office of the Courts - Court Services				
2.0		32.0	Personnel Costs				1,425.6
			Travel				28.9
			Contractual Services				2,642.5
			Energy				1.5
			Supplies and Materials				263.2
			Capital/Equipment				15.9
			Retired Judges				6.0
			Upgrade Mainframe				289.0
			Debt Service				15.7
2.0		32.0	TOTAL -- Administrative Office of the Courts - Court Services				4,686.3
		16.0	(-01) Office of the Director		3,496.2		
		11.5	(-02) Continuing Judicial Education		37.3		
2.0		4.5	(-04) Judicial Information Center		755.6		
2.0		32.0	(-05) Law Libraries		397.2		
			TOTAL -- Internal Program Units		4,686.3		

Year ending June 30, 1993

Personnel			(02-18-00) Administrative Office of the Courts -- Non-Judicial Services	\$ Program		\$ Line Item	
NSF	ASF	GF		ASF	GF	ASF	GF
	8.0	13.0	Personnel Costs			297.8	450.3
			Travel			19.3	20.6
			Contractual Services			55.2	49.4
			Energy			2.8	
			Supplies and Materials			7.3	10.9
			Capital/Equipment			3.2	1.8
			Other Items			1,350.2	8.0
	8.0	13.0	TOTAL -- Administrative Office of the Courts -- Non-Judicial Services			1,735.4	540.8
		6.0	(-01) Office of the Public Guardian	1,735.4	258.5		
	8.0	6.0	(-02) Violent Crimes Compensation Board		234.3		
		1.0	(-03) Foster Care Review Board		50.0		
			(-04) Educational Surrogate Parent Program				
	8.0	13.0	TOTAL -- Internal Program Units	1,735.4	540.8		
13.0	70.0	828.0	TOTAL -- JUDICIAL			3,741.5	36,792.2

Year ending June 30, 1993

## (10-00-00) EXECUTIVE

Personnel		
NSF	ASF	GF

\$ Program		\$ Line Item	
ASF	GF	ASF	GF

## (10-01-01) Office of the Governor

2.0	1.0	19.3
2.0	1.0	19.3

Personnel Costs  
Travel  
Contractual Services  
Supplies and Materials  
Woodburn Expenses  
Contingency—Other Expenses  
TOTAL -- Office of the Governor

37.9	1,113.9
74.9	167.0
	15.8
	35.0
	8.7
112.8	1,353.2

## (10-02-00) Office of the Budget

3.0	14.5	179.1
3.0	14.5	179.1

Personnel Costs  
Travel  
Contractual Services  
Energy  
Supplies and Materials  
Capital/Equipment  
Data Processing -- Development Projects  
Budget Automation -- Operations  
Contingency:  
Budget Commission  
One-Time Appropriations  
Prior Years' Obligations  
Self Insurance  
Legal Fees  
Salary Increase  
Termination Pay/Salaries  
Hedging  
Selective Market/Reclassification  
& Maintenance Review  
Appropriated Special Funds  
Debt Service

## TOTAL -- Office of the Budget

533.6	8,213.9
23.4	48.0
2,525.4	5,444.4
	337.3
40.5	352.9
31.1	29.9
	2,000.0
	50.0
	100.0
	5,569.9
	300.0
	2,458.0
	650.0
	2,688.2
	381.4
	299.9
	175.8
20,000.0	
	686.8
23,154.0	29,784.4

6.5	22.5
3.0	4.5
	64.0
8.0	10.1
	7.0
	53.0
	11.0
	7.0
3.0	14.5
	179.1

(-01) Office of the Budget Administration  
(-04) Contingency & One-Time Items  
(-06) Budget Commission  
(-07) Delaware Higher Education Commission  
(-09) Office of Information Systems Production  
(-11) Office of Information Systems  
Northern Data Center  
(-12) Office of Information Systems  
Telecommunications Management  
(-13) Office of Information Systems  
Development  
(-14) Office of Information Systems  
Planning & Data Administration  
(-15) Office of Information Systems  
Administration

## TOTAL -- Internal Program Units

968.4	3,955.0
20,000.0	12,523.2
	100.0
	1,718.7
569.5	5,226.7
1,331.6	924.5
127.0	649.3
87.5	2,973.2
	643.1
70.0	1,070.7
23,154.0	29,784.4

Year ending June 30, 1993

## Personnel

NSF	ASF	GF
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## (10-03-00) Delaware Development Office

## (10-03-01) Office of the Director

Personnel Costs

Travel

Contractual Services

Energy

Supplies and Materials

Capital Outlay

Debt Service

TOTAL -- Office of the Director

## (10-03-02) Delaware Tourism Office

Personnel Costs

Travel

Contractual Services

Supplies and Materials

Junior Miss

Mother of the Year

Young Mother of the Year

Business Tourism Promotion

TOTAL -- Delaware Tourism Office

## (10-03-03) Delaware Economic Development

Authority

Personnel Costs

Travel

Contractual Services

Energy

Supplies and Materials

Capital Outlay

General Obligation Bonds

International Trade

Other Grants

Blue Collar

Other Items

Debt Service

TOTAL -- Delaware Economic Development  
Authority

## \$ Program

ASF	GF
-----	----

## \$ Line Item

ASF	GF
-----	----

540.0

8.7

25.2

27.9

4.2

1.3

193.8

799.1

278.3

24.1

425.1

11.2

0.5

0.8

0.8

28.0

768.8

1,340.1

33.9

578.4

1.4

25.0

301.1

55.0

67.5

1,486.8

3,887.8

1,881.0

3,887.8



Year ending June 30, 1993

Personnel					\$ Program		\$ Line Item	
	NSF	ASF	GF		ASF	GF	ASF	GF
1				(10-03-04) State Housing Authority				
2				Personnel Costs			1,894.8	
3	3.0	58.0		Travel			24.2	
4				Contractual Services			635.0	
5				Energy			19.0	
6				Supplies and Materials			71.2	
7				Capital Outlay			241.3	
8				Holly Square			85.0	
9				Huling Cove			140.0	
10				Huling Cove Annex			318.0	
11				Housing Development Fund			32,300.0	
12				Public Housing			661.7	
13				Home Improvement Insurance			320.0	
14				Debt Service				22.7
15	3.0	56.0		TOTAL -- State Housing Authority			36,710.2	22.7
16	3.0	60.0	47.0	TOTAL -- Delaware Development Office			38,621.2	5,478.4
17								
18				(10-04-00) Office of State Personnel				
19				Personnel Costs			2,216.1	1,159.5
20		66.0	27.0	Travel			37.8	12.7
21				Contractual Services			6,805.0	558.5
22				Supplies and Materials			44.5	61.7
23				Capital/Equipment			330.0	
24				Generic Aides/Handicapped Employees				240.1
25			20.0	Travel Commission				2.0
26				Ethics Commission				20.0
27				Employee Recognition				7.1
28				Blue Collar			135.0	
29		2.0		Workers' Compensation			10,800.0	
30				Health Insurance--Retirees in Closed State				1,990.8
31				Police Plan				16.8
32				Pensions -- Paraplegic Veterans				218.9
33				Debt Service			20,368.4	4,278.9
34		68.0	47.0	TOTAL -- Office of State Personnel				
35								
36				(-02) Operations	611.0	1,498.1		
37		16.0	44.0	(-04) Staff Development and Training	264.3	236.5		
38		2.0	3.0	(-05) Insurance Coverage Office	10,800.0	536.9		
39		2.0		(-06) Pensions	8,693.1	2,007.4		
40		48.0		TOTAL -- Internal Program Units	20,368.4	4,278.9		
41		68.0	47.0					
42								
43								
44								

Year ending June 30, 1993

Personnel		
NSF	ASF	GF

## (10-07-00) Criminal Justice

4.5		12.0
4.5		12.0

## (10-07-01) Criminal Justice Council

Personnel Costs

Travel

Contractual Services

Supplies and Materials

Capital Outlay

SENTAC

Other Grants

TOTAL --- Criminal Justice Council

## (10-07-02) Delaware Justice Information System

Personnel Costs

Travel

Contractual Services

Supplies and Materials

TOTAL --- Delaware Justice Information System

## (10-07-03) Statistical Analysis Center

Personnel Costs

Travel

Contractual Services

Supplies and Materials

TOTAL --- Statistical Analysis Center

TOTAL --- Criminal Justice

TOTAL --- EXECUTIVE

\$ Program		\$ Line Item	
ASF	GF	ASF	GF

	474.0
	4.2
	29.5
	2.6
	2.1
	9.5
	65.0
	586.9

	262.8
	3.5
	480.7
	3.4
	750.4

	170.4
	4.1
	9.9
	4.1
	188.5

	1,525.8
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82,256.4	42,420.7
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7.5		21.5
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15.5	143.5	313.9
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(12-00-00) OTHER ELECTIVE  
OFFICES

Year ending June 30, 1983

Personnel		
NSF	ASF	GF

\$ Program		\$ Line Item	
ASF	GF	ASF	GF

## (12-01-01) Lieutenant Governor

		5.0
		5.0

Personnel Costs  
Travel  
Contractual Services  
Supplies and Materials  
Expenses - Lieutenant Governor  
**TOTAL -- Lieutenant Governor**

	225.4
	5.5
	13.3
	1.4
	7.7
	253.3

## (12-02-01) Auditor of Accounts

	16.0	35.0
	16.0	35.0

Personnel Costs  
Travel  
Contractual Services  
Supplies and Materials  
Capital Outlay  
**TOTAL -- Auditor of Accounts**

582.0	1,519.9
3.6	4.2
238.0	177.5
11.5	12.6
15.3	
850.4	1,714.2

## (12-03-00) Insurance Commissioner

## (12-03-01) Regulatory Activities

		16.0
		16.0

Personnel Costs  
Travel  
Contractual Services  
Supplies and Materials  
Malpractice Review  
Revenue Refund  
**TOTAL -- Regulatory Activities**

	644.9
	3.7
29.5	157.0
	2.4
	10.6
0.5	
30.0	818.6

(12-03-02) Bureau of Examination,  
Rehabilitation and Guaranty

	28.0	
	28.0	

Personnel Costs  
Travel  
Contractual Services  
Supplies and Materials  
Capital Outlay  
Contract Examiners  
Insurance Pool  
**TOTAL -- Bureau of Examination, Rehabilitation  
and Guaranty**

1,342.6	
60.0	
493.9	
26.2	
80.0	
6,500.0	
40.0	
8,542.7	

## (12-03-03) Delaware Insurance Authority

	28.0	16.0
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Contractual  
**TOTAL -- Delaware Insurance Authority**

1,054.8	
1,054.8	

**TOTAL -- Insurance Commissioner**

9,627.5	818.6
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Year ending June 30, 1993

Personnel			(12-05-00) State Treasurer	\$ Program		\$ Line Item	
NSF	ASF	GF		ASF	GF	ASF	GF
			(12-05-01) Administration				
			Personnel Costs			282.9	678.1
			Travel			10.0	3.0
			Contractual Services			30.2	71.4
			Supplies and Materials			7.0	8.0
			Capital Outlay			4.0	
			Banking Services			900.0	
			Data Processing			62.0	
			Blood Bank Membership Dues				75.0
			TOTAL -- Administration			1,308.1	835.6
			(12-05-03) Debt Management				
			Expense of Issuing Bonds				235.0
			Debt Service - Regular			403.2	1,348.8
			Debt Service - Old				181.0
			Debt Service - Local Schools				4,355.7
			Debt Service - Farmers Bank Preferred Stock				1,141.0
			Debt Service - Solid Waste Authority				270.6
			Debt Service - Refunding				1,625.7
			Financial Advisor				70.0
			TOTAL -- Debt Management			403.2	9,225.8
			TOTAL -- State Treasurer			1,709.3	10,061.3
			TOTAL -- OTHER ELECTIVE OFFICES			12,187.2	12,847.4

Year ending June 30, 1993

**(15-00-00) LEGAL**

### Personnel

	NSF	ASF	GF
1			
2			
3			
4			
5	24.6	19.5	167.5
6			
7			
8			
9			
10			
11			
12			
13			
14			
15			
16	24.6	19.5	167.5

**(15-01-01) Office of Attorney General**

Personnel Costs  
Travel  
Contractual Services  
Supplies and Materials  
Capital Outlay  
Extradition  
Medicaid Fraud Program  
Securities Administration  
AG Opinion Fund  
Child Support  
Consumer Protection

**TOTAL -- Office of Attorney General**

**(15-02-01) Public Defender**

21	12.0	86.0
22		
23		
24		
25		
26		
27	12.0	86.0

**TOTAL -- Public Defender**

**(15-03-01) Board of Parole**

32			7.0
33			
34			
35			
36			7.0

**TOTAL -- Board of Parole**

39	36.6	19.5	260.5	TOTAL -- LEGAL
----	------	------	-------	----------------

\$ Program

**\$ Line Item**

Sine Item	
ASF	GF
	7,148.4
	12.2
	839.8
	44.3
	47.0
	55.0
30.0	
231.5	
15.0	
529.3	
200.0	
1,005.8	8,146.5

	3,580.5
	1.9
	397.3
	4.6
	31.4
	3.8
	4,019.5

	255.1
	3.8
	11.2
	4.1
	274.0

1,005.8	12,440.0
---------	----------



Year ending June 30, 1983

Personnel			(20-06-00) Historical and Cultural Affairs	\$ Program		\$ Line Item	
NSF	ASF	GF		ASF	GF	ASF	GF
7.5	6.0	66.0	Personnel Costs			175.2	1,900.0
			Travel			4.8	0.3
			Contractual Services			74.5	144.4
			Energy				96.8
			Supplies and Materials			76.9	88.8
			Capital/Equipment			8.5	4.0
			Delaware Heritage Commission				75.0
			Debt Service				1,082.3
7.5	6.0	66.0	TOTAL -- Historical and Cultural Affairs			339.7	3,391.2
		4.0	(-01) Office of Administration		560.8		
3.5	5.0	27.0	(-02) Delaware State Archives	207.8	872.4		
			(-03) Delaware State Historic Preservation				
			Office	20.0	123.3		
4.0	0.5	3.5	(-04) Delaware State Museums	111.9	1,834.7		
7.5	6.0	66.0	TOTAL -- Internal Program Units	339.7	3,391.2		
			(20-07-00) Arts				
2.8		6.0	Personnel Costs				196.4
			Travel				2.5
			Contractual Services				70.8
			Supplies and Materials				2.5
			Delaware Art				1,000.0
2.8		6.0	TOTAL -- Arts				1,272.2
2.8		6.0	(-01) Office of the Director		1,272.2		
2.8		6.0	TOTAL -- Internal Program Unit		1,272.2		
			(20-08-00) Libraries				
9.0		9.0	Personnel Costs				308.3
			Travel				1.0
			Contractual Services				100.3
			Energy				16.4
			Supplies and Materials				39.3
			Library Standards				831.8
			Debt Service				56.6
9.0		9.0	TOTAL -- Libraries				1,355.5
9.0		9.0	(-01) Libraries		1,355.5		
9.0		9.0	TOTAL -- Internal Program Unit		1,355.5		

Year ending June 30, 1993

Personnel			(20-15-00) State Banking Commission	\$ Program		\$ Line Item	
NSF	ASF	GF		ASF	GF	ASF	GF
	43.0		Personnel Costs			1,538.4	
			Travel			44.1	
			Contractual Services			288.7	
			Supplies and Materials			26.6	
			Capital/Equipment			62.8	
			Revenue Refund			2.0	
	43.0		TOTAL -- State Banking Commission			1,962.6	*
	43.0		(-01) State Banking Commission	1,962.6			
	43.0		TOTAL -- Internal Program Unit	1,962.6			
			* Special Funds total budget appropriated per Chapter 1, Title 5, Delaware Code.				
19.3	102.0	129.0	TOTAL -- DEPARTMENT OF STATE			5,111.9	8,357.4



(25-00-00) DEPARTMENT OF  
FINANCE

Year ending June 30, 1993

Personnel		
NSF	ASF	GF

\$ Program		\$ Line Item	
ASF	GF	ASF	GF

## (25-01-00) Office of the Secretary

		16.0
		16.0

Personnel Costs  
Travel  
Contractual Services  
Supplies and Materials  
Capital/Equipment  
Fiscal Notebook  
Technology Improvement Fund  
TOTAL -- Office of the Secretary

	783.7
	8.7
	148.7
	9.6
	2.7
	2.0
3,000.0	
3,000.0	955.4

		16.0
		16.0

(-01) Office of the Secretary  
TOTAL -- Internal Program Unit

3,000.0	955.4
3,000.0	955.4

## (25-05-00) Accounting

		39.0
		39.0

Personnel Costs  
Travel  
Contractual Services  
Supplies and Materials  
Capital/Equipment  
State Accounting Course  
TOTAL -- Accounting

	1,469.7
	5.0
	349.0
	71.8
	13.0
	33.0
	1,941.6

		39.0
		39.0

(-01) Accounting  
TOTAL -- Internal Program Unit

	1,941.6
	1,941.6

## (25-06-00) Revenue

	6.0	198.0
	6.0	198.0

Personnel Costs  
Travel  
Contractual Services  
Energy  
Supplies and Materials  
Capital/Equipment  
Credit Card Processing  
FCA Contracts  
Escheat  
Debt Service  
TOTAL -- Revenue

255.3	6,775.3
3.0	52.3
115.0	955.0
	1.5
5.6	90.8
10.0	40.5
40.5	
200.0	
35.0	
	263.8
664.4	8,179.3

	6.0	198.0
	6.0	198.0

(-01) Revenue  
TOTAL -- Internal Program Unit

664.4	8,179.3
664.4	8,179.3

Year ending June 30, 1993

Personnel			(25-07-00) State Lottery Office	\$ Program		\$ Line Item	
NSF	ASF	GF		ASF	GF	ASF	GF
	25.0		Personnel Costs			859.6	
			Travel			17.3	
			Contractual Services			4,944.1	
			Supplies and Materials			48.0	
			Capital/Equipment			56.7	
	25.0		<b>TOTAL -- State Lottery Office</b>			5,925.7	*
	25.0		(-01) State Lottery Office	5,925.7			
	25.0		<b>TOTAL -- Internal Program Unit</b>	5,925.7			
* Special Funds appropriated under Chapter 48, Title 29, Delaware Code							
	31.0	253.0	<b>TOTAL -- DEPARTMENT OF FINANCE</b>			9,590.1	11,076.3



Year ending June 30, 1993

**Personnel**

NSF	ASF	GF
-----	-----	----

**(30-04-00) Support Operations**

	21.0	18.0
	21.0	18.0

Personnel Costs

Travel

Contractual Services

Energy

Supplies and Materials

Capital/Equipment

**TOTAL -- Support Operations**

		10.0
		8.0
	17.0	
	4.0	
	21.0	18.0

(-10) Mail/Courier Services

(-20) Telephone Services

(-30) Graphics and Printing

(-40) Fleet Management

**TOTAL -- Internal Program Units****\$ Program**

ASF	GF
-----	----

**\$ Line Item**

ASF	GF
-----	----

878.4	392.7
10.3	
8,418.5	18.2
11.9	3.0
325.8	7.4
481.7	
7,926.4	421.3

701.0	223.5
5,419.0	197.8
1,449.7	
358.7	
7,926.4	421.3

**(30-05-00) Facilities Management**

5.0	5.0	70.0
5.0	5.0	70.0

Personnel Costs

Travel

Contractual Services

Energy

Supplies and Materials

Capital/Equipment

Real Estate Acquisition Program (REAP)

Other

Debt Service

**TOTAL -- Facilities Management**

137.8	2,095.8
4.5	
163.0	1,927.4
	1,488.6
9.3	173.7
218.5	
218.5	2,069.1
	117.0
	11,439.0
751.6	19,310.6

5.0	4.0	18.0
	1.0	54.0
5.0	5.0	70.0

(-10) Property Management

(-20) Building Operations/Maintenance

**TOTAL -- Internal Program Units**

336.5	14,285.4
415.1	5,025.2
751.6	19,310.6

**(30-06-00) Purchasing**

2.0	10.0	18.0
2.0	10.0	18.0

Personnel Costs

Travel

Contractual Services

Energy

Supplies and Materials

Capital/Equipment

**TOTAL -- Purchasing**

255.0	624.9
10.1	3.7
89.8	67.4
6.5	12.5
244.2	29.3
146.8	
752.2	737.8

	4.0	14.0
2.0	6.0	4.0
2.0	10.0	18.0

(-10) Purchasing

(-20) Surplus Property

(-30) Food Distribution

**TOTAL -- Internal Program Units**

100.0	560.1
299.0	
353.2	177.7
752.2	737.8

**TOTAL -- DEPARTMENT OF  
ADMINISTRATIVE SERVICES**

11.5	89.0	183.5
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13,659.5	23,678.0
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Year ending June 30, 1993

(35-00-00) DEPARTMENT OF  
HEALTH AND SOCIAL  
SERVICES

## Personnel

NSF	ASF	GF
-----	-----	----

## \$ Program

ASF	GF	ASF	GF
-----	----	-----	----

## \$ Line Item

## (35-01-00) Administration

56.3	13.3	135.6
56.3	13.3	135.6

Personnel Costs  
Travel  
Contractual Services  
Energy  
Supplies and Materials  
Capital/Equipment  
Debt Service

TOTAL --- Administration

479.0	5,076.8
16.9	11.8
215.0	291.2
	39.3
18.4	28.9
76.5	4.7
	2,431.7
805.8	7,884.4

		5.6
56.3	13.3	130.0
56.3	13.3	135.6

(-10) Office of the Secretary

(-20) Management Services

TOTAL --- Internal Program Units

33.4	346.1
772.4	7,538.3
805.8	7,884.4

## (35-02-00) Delaware Health Care Commission

		3.0
		3.0

Personnel Costs  
Travel  
Contractual Services  
Supplies and Materials  
Capital/Equipment  
Pilot Programs  
Educational Programs  
Program Evaluation

TOTAL --- Delaware Health Care Commission

	138.8
	2.0
	160.0
	5.0
	15.0
	2,013.4
	400.0
	230.1
	2,962.3

		3.0
		3.0

(-01) Delaware Health Care Commission

TOTAL --- Internal Program Unit

	2,962.3
	2,962.3

## (35-04-00) Medical Examiner

		30.0
		30.0

Personnel Costs

Travel  
Contractual Services  
Energy  
Supplies and Materials  
Capital/Equipment  
Debt Service

TOTAL --- Medical Examiner

	1,421.4
	6.5
	98.5
	68.7
	107.8
	38.6
	413.3
	2,152.8

		30.0
		30.0

(-01) Medical Examiner

TOTAL --- Internal Program Unit

	2,152.8
	2,152.8

Year ending June 30, 1993

## Personnel

NSF	ASF	GF
-----	-----	----

## (35-05-00) Public Health

154.0	25.5	1,356.0
154.0	25.5	1,356.0

## Personnel Costs

Travel

Contractual Services

Energy

Supplies and Materials

Capital/Equipment

Other Items:

Renal Disease

Treatment of Handicapped

AIDS

Animal Bite Control

Office of Narcotics &amp; Dangerous Drugs

Debt Service

## TOTAL -- Public Health

\$ Program		\$ Line Item	
ASF	GF	ASF	GF

953.8	37,128.8
7.0	29.7
528.9	4,817.4
	1,327.3
131.2	2,733.5
37.3	216.3
	296.2
	98.0
	158.2
	39.6
	20.0
	1,755.9
1,658.0	48,420.9

25.0	6.0	80.0
127.0	19.5	275.3
		7.0
		641.1
2.0		205.6
		147.0
154.0	25.5	1,356.0

(-10) Director's Office

(-20) Community Health

(-30) Office of Paramedic Administration

(-40) Delaware Hospital for the

Chronically Ill

(-50) Emily Bissell

(-60) Governor Bacon

## TOTAL -- Internal Program Units

198.0	2,924.7
1,460.0	12,831.2
	1,082.0
	19,912.2
	6,729.6
	4,941.0
1,658.0	48,420.9

## (35-06-00) Alcoholism, Drug Abuse and Mental Health

26.8	4.0	814.0
26.8	4.0	814.0

## Personnel Costs

Travel

Contractual Services

Energy

Supplies and Materials

Capital/Equipment

Other Items:

Sheltered Workshop

Residential Detox

Debt Service

## TOTAL -- Alcoholism, Drug Abuse and Mental Health

152.9	24,561.5
	11.2
1,357.1	10,434.5
	846.9
75.0	1,540.1
	129.0
	8.9
	1,208.5
	1,334.3
1,585.0	40,075.9

13.0		14.0
4.0		126.1
0.8	4.0	663.9
9.0		10.0
26.8	4.0	814.0

(-10) Administration - Mental Health

(-20) Community Mental Health

(-30) Inpatient Mental Health

(-40) Alcoholism &amp; Drug Abuse

## TOTAL -- Internal Program Units

40.0	709.6
400.0	10,843.3
500.0	25,109.3
645.0	3,413.7
1,585.0	40,075.9

Year ending June 30, 1993

Personnel			(35-07-00) Social Services	\$ Program		\$ Line Item	
NSF	ASF	GF		ASF	GF	ASF	GF
285.9		260.0	Personnel Costs				7,874.2
			Travel				8.6
			Contractual Services				2,583.0
			Energy				34.0
			Supplies and Materials				103.0
			Capital/Equipment				15.7
			Other Items:				
			General Assistance -- Health Insurance				3,308.4
			General Assistance				2,978.3
			AFDC				21,187.2
			Homemaker				125.1
			SSI Supplement				751.0
			Child Care				3,467.2
			Emergency Assistance				287.0
			First Step				484.4
			Medicaid -- State				23,861.3
			Medicaid -- Non--State				93,562.6
			Access for Children				3,510.3
285.9		260.0	TOTAL -- Social Services				164,152.5
285.9		260.0	(-01) Social Services		164,152.5		
285.9		260.0	TOTAL -- Internal Program Unit		164,152.5		
			(35-08-00) Visually Impaired				
30.2	2.8	23.5	Personnel Costs			81.6	864.8
			Travel				2.3
			Contractual Services			0.5	184.2
			Energy				35.1
			Supplies and Materials				38.6
			Capital/Equipment			4.0	23.4
			Business Enterprise Program			610.0	
30.2	2.8	23.5	TOTAL -- Visually Impaired			696.1	1,148.2
30.2	2.8	23.5	(-01) Visually Impaired Services	696.1	1,148.2		
30.2	2.8	23.5	TOTAL -- Internal Program Unit	696.1	1,148.2		
			(35-10-00) Child Support Enforcement				
72.6		39.2	Personnel Costs				1,022.7
			Travel				2.7
			Contractual Services			52.5	228.0
			Energy				12.1
			Supplies and Materials				12.5
			Capital/Equipment				2.1
72.6		39.2	TOTAL -- Child Support Enforcement			52.5	1,278.1
72.6		39.2	(-01) Child Support Enforcement	52.5	1,278.1		
72.6		39.2	TOTAL -- Internal Program Unit	52.5	1,278.1		

Year ending June 30, 1993

Personnel		
NSF	ASF	GF

## (35-11-00) Mental Retardation

\$ Program	
ASF	GF

\$ Line Item	
ASF	GF

1	3.0	841.8
2		
3		
4		
5		
6		
7		
8		
9		
10		
11		
12	3.0	841.8

Personnel Costs  
Travel  
Contractual Services  
Energy  
Supplies and Materials  
Capital/Equipment  
Other Items:  
Music Stipends  
Purchase of Care  
Purchase of Community Services  
Debt Service

	22,767.0
	9.8
	1,815.3
	569.2
	1,030.4
	197.1
	9.6
	7,185.2
	4,269.0
	204.0
	38,058.4

TOTAL -- Mental Retardation

13	3.0	24.0
14		688.0
15		129.8
16		
17	3.0	841.8

(-10) Administration - Mental Retardation  
(-20) Institutional Services  
(-30) Community Services  
TOTAL -- Internal Program Units

	975.1
	20,785.7
	16,295.8
	38,056.4

## (35-12-00) State Service Centers

21		
22	39.4	0.5
23		63.2
24		
25		
26		
27		
28		
29		
30		
31		
32	39.4	0.5
33		63.2

Personnel Costs  
Travel  
Contractual Services  
Energy  
Supplies and Materials  
Capital/Equipment  
Kent County RSVP  
Community Food Program  
Emergency Assistance  
Debt Service

15.4	2,189.8
	7.9
978.5	1,422.4
84.2	391.8
78.5	59.4
	6.0
	29.4
	85.5
	497.0
	141.8
1,154.8	4,831.0

TOTAL -- State Service Centers

34	26.8	32.3
35		13.5
36	9.0	2.0
37	3.6	15.4
38	39.4	0.5
39		63.2

(-10) Family Support Services  
(-20) Service Center Management  
(-30) Community Services  
(-40) Volunteer Services  
TOTAL -- Internal Program Units

	1,006.1
1,139.0	1,930.1
	774.4
15.8	1,120.4
1,154.8	4,831.0

## (35-14-00) Aging

43	28.8	28.3
44		
45		
46		
47		
48		
49		
50		
51	26.8	28.3

Personnel Costs  
Travel  
Contractual Services  
Energy  
Supplies and Materials  
Capital/Equipment  
Nutrition Program  
Debt Service

	914.0
	2.2
5.9	1,042.4
	6.5
	3.7
	2.0
	382.2
	2.9
5.9	2,355.9

TOTAL -- Aging

53	28.8	28.3
54	28.8	28.3

(-01) Aging Services  
TOTAL -- Internal Program Unit

5.9	2,355.9
5.9	2,355.9

TOTAL -- DEPARTMENT OF HEALTH  
AND SOCIAL SERVICES

895.0	46.1	3,592.6
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5,957.9	313,318.4
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Year ending June 30, 1993

(37-00-00) DEPARTMENT OF  
SERVICES FOR CHILDREN,  
YOUTH AND THEIR FAMILIES

Personnel			\$ Program		\$ Line Item		
1	NSF	ASF	GF	ASF	GF	ASF	GF
2							
3							
4							
5	6.4		89.6				
6							
7							
8							
9							
10							
11	6.4		89.6				
12							
13							
14	0.5		7.0				
15	3.8		14.2				
16			12.0				
17			3.0				
18	2.1		48.4				
19	6.4		89.6				
20							
21							
22							
23							
24	88.5		138.0				
25							
26							
27							
28							
29							
30	88.5		138.0				
31							
32							
33	3.0		14.0				
34	11.0		41.0				
35	31.2		57.2				
36	37.6		16.1				
37	5.7		9.7				
38	88.5		138.0				
39							
40							
41							
42							
43			159.0				
44							
45							
46							
47							
48							
49							
50			159.0				
51							
52			20.1				
53			16.0				
54			16.5				
55			22.5				
56			47.0				
57			1.3				
58			31.2				
59			2.4				
60			2.0				
61			159.0				

Services for CHILDREN, YOUTH AND THEIR FAMILIES			\$ Program		\$ Line Item	
NSF	ASF	GF	ASF	GF	ASF	GF
(37-01-00) Administration						
Personnel Costs						4,285.7
Travel						6.6
Contractual Services					90.0	393.9
Supplies and Materials					7.0	71.2
Capital/Equipment					27.0	18.3
Debt Service						1,555.1
TOTAL -- Administration					124.0	6,328.8
(-10) Office of the Secretary			11.0	565.0		
(-15) Office of the Director			18.0	1,750.0		
(-20) Fiscal Operations and Management			60.0	506.7		
(-30) Personnel Services			25.0	426.5		
(-35) Center for Professional Development			10.0	222.2		
(-40) Education				2,858.4		
TOTAL -- Internal Program Units			124.0	6,328.8		
(37-02-00) Child Protective Services						
Personnel Costs						4,763.6
Travel						2.3
Contractual Services						6,063.2
Energy						24.2
Supplies and Materials						32.5
Capital/Equipment						6.8
Emergency Material Assistance						30.0
TOTAL -- Child Protective Services						10,922.6
(-10) Office of the Director				752.2		
(-20) Report and Initial Assessment				2,291.9		
(-30) Protective Treatment				2,040.3		
(-40) Intensive Protective Services				4,897.6		
(-50) Adoption Services				940.6		
TOTAL -- Internal Program Units				10,922.6		
(37-03-00) Child Mental Health Services						
Personnel Costs						5,637.3
Travel						10.9
Contractual Services						8,815.3
Energy						166.6
Supplies and Materials						170.5
Capital/Equipment						38.5
Debt Service						4.2
TOTAL -- Child Mental Health Services						14,843.3
(-10) Clinical / Administrative Office				925.6		
(-15) Consultation & Assessment Services				827.9		
(-20) Terry Outpatient Treatment				720.6		
(-30) Terry Day Hospital Treatment				1,063.8		
(-40) Terry Inpatient Treatment				1,689.6		
(-50) Outpatient Treatment				1,707.1		
(-60) Residential Treatment				4,539.5		
(-70) Adolescent Hospital Treatment				3,020.7		
(-80) Alcohol and Drug Treatment Services				548.5		
TOTAL -- Internal Program Units				14,843.3		

## (37-01-00) Administration

Personnel Costs  
Travel  
Contractual Services  
Supplies and Materials  
Capital/Equipment  
Debt Service

TOTAL -- Administration

(-10) Office of the Secretary  
(-15) Office of the Director  
(-20) Fiscal Operations and Management  
(-30) Personnel Services  
(-35) Center for Professional Development  
(-40) Education

TOTAL -- Internal Program Units

\$ Program

ASF GF

\$ Line Item

ASF GF

4,285.7  
6.8  
90.0 393.9  
7.0 71.2  
27.0 16.3  
1,555.1

124.0 6,328.8

11.0 565.0  
18.0 1,750.0  
60.0 506.7  
25.0 426.5  
10.0 222.2  
2,858.4

124.0 6,328.8

## (37-02-00) Child Protective Services

Personnel Costs  
Travel  
Contractual Services  
Energy  
Supplies and Materials  
Capital/Equipment  
Emergency Material Assistance

TOTAL -- Child Protective Services

(-10) Office of the Director  
(-20) Report and Initial Assessment  
(-30) Protective Treatment  
(-40) Intensive Protective Services  
(-50) Adoption Services

TOTAL -- Internal Program Units

4,763.6  
2.3  
6,063.2  
24.2  
32.5  
6.8  
30.0

10,922.6

752.2  
2,291.9  
2,040.3  
4,897.6  
940.6

10,922.6

## (37-03-00) Child Mental Health Services

Personnel Costs  
Travel  
Contractual Services  
Energy  
Supplies and Materials  
Capital/Equipment  
Debt Service

TOTAL -- Child Mental Health Services

(-10) Clinical / Administrative Office  
(-15) Consultation & Assessment Services  
(-20) Terry Outpatient Treatment  
(-30) Terry Day Hospital Treatment  
(-40) Terry Inpatient Treatment  
(-50) Outpatient Treatment  
(-60) Residential Treatment  
(-70) Adolescent Hospital Treatment  
(-80) Alcohol and Drug Treatment Services

TOTAL -- Internal Program Units

5,637.3  
10.9  
8,815.3  
166.6  
170.5  
38.5  
4.2

14,843.3

925.6  
827.9  
720.6  
1,063.8  
1,689.6  
1,707.1  
4,539.5  
3,020.7  
548.5

14,843.3

Year ending June 30, 1993

Personnel			\$ Program		\$ Line Item	
NSF	ASF	GF	ASF	GF	ASF	GF
(37-05-00) Youth Rehabilitation Services						
1.0		229.5				7,869.5
						14.6
						7,115.4
						322.6
						427.8
						23.9
						191.8
1.0		229.5	TOTAL -- Youth Rehabilitation Services			15,965.6
		10.0		475.9		
		29.0		1,179.9		
1.0		14.5		6,688.1		
		176.0		7,641.7		
1.0		229.5	TOTAL -- Internal Program Units			15,965.6
(37-08-00) Program Support						
26.0		37.0				1,330.6
						7.6
					63.0	410.2
						19.2
						14.3
26.0		37.0	TOTAL -- Program Support		63.0	1,781.9
		8.0		63.0	449.7	
4.5		9.5			375.6	
7.0		9.0			564.3	
8.5		10.5			392.3	
26.0		37.0	TOTAL -- Internal Program Units		63.0	1,781.9
TOTAL -- DEPARTMENT OF						
SERVICES FOR CHILDREN,						
YOUTH AND THEIR FAMILIES						
121.9		653.1			187.0	49,842.2

Year ending June 30, 1993

(38-00-00) DEPARTMENT OF  
CORRECTION

Personnel		
NSF	ASF	GF

\$ Program		\$ Line Item	
ASF	GF	ASF	GF

## (38-01-00) Administration

1.0	8.0	257.0
1.0	6.0	257.0

Personnel Costs  
Travel  
Contractual Services  
Energy  
Supplies and Materials  
Capital/Equipment  
Medical Services  
AIDS Education and Counseling  
Contingency - Shakedowns  
Maintenance/Restoration  
Debt Service

252.9	10,091.0
0.5	8.3
708.2	758.3
11.0	50.8
260.2	5,373.0
7.3	34.9
	7,778.3
	80.0
	15.4
	348.2
	335.2
1,240.1	24,869.4

## TOTAL -- Administration

		36.0
		40.0
		27.0
		41.0
		36.0
		30.0
	8.0	12.0
		7.0
1.0		19.0
		9.0
1.0	8.0	257.0

(-01) Office of the Commissioner  
(-02) Personnel/Staff Training  
(-10) Administrative Services  
(-20) Food Services  
(-30) Medical Services  
(-40) Facilities Maintenance  
(-50) Transportation  
(-60) Prison Industries  
(-61) Inmate Construction  
(-70) Education  
(-80) Operational Services

	1,507.5
	1,564.6
	1,043.3
	5,933.5
	7,858.3
	2,791.0
	1,664.8
1,239.1	551.8
	250.7
1.0	1,061.7
	642.2
1,240.1	24,869.4

## TOTAL -- Internal Program Units

## (38-04-00) Prisons

		975.0
		975.0

Personnel Costs  
Travel  
Contractual Services  
Energy  
Supplies and Materials  
Capital/Equipment  
Debt Service

	31,707.1
	2.0
4.0	1,467.4
	1,628.0
	1,240.4
	15.5
	9,173.6
4.0	45,234.0

## TOTAL -- Prisons

		7.0
		25.0
		408.0
		164.0
		59.0
		286.0
		26.0
		975.0

(-01) Office of the Bureau Chief  
(-02) Pre-Trial Annex  
(-03) Delaware Correctional Center  
(-04) Sussex Correctional Institution  
(-05) Women's Correctional Institution  
(-06) Multi-Purpose Criminal Justice Facility  
(-07) Morris Correctional Institution

	756.8
1.0	1,002.7
1.0	16,217.8
	6,635.9
1.0	4,830.6
1.0	14,714.7
	1,075.7
4.0	45,234.0

## TOTAL -- Internal Program Units

Year ending June 30, 1993

## Personnel

NSF	ASF	GF
		263.0
		263.0

(36-06-00) Community Custody and Supervision

Personnel Costs  
Travel  
Contractual Services  
Energy  
Supplies and Materials  
Debt Service

TOTAL -- Community Custody and Supervision

## \$ Program

ASF	GF
	3,095.2
1.0	1,391.3
50.0	1,093.9
51.0	10,482.0

## \$ Line Item

ASF	GF
	8,627.1
26.0	1,573.1
25.0	114.0
61.0	10,482.0

	8,627.1
	10.3
26.0	1,573.1
	86.8
25.0	114.0
	70.9
61.0	10,482.0

(-01) Office of the Bureau Chief  
(-02) Probation and Parole  
(-03) Intensive Supervision  
(-04) House Arrest  
(-05) Administrative Supervision  
(-06) Plummer Halfway House  
(-07) Sussex Halfway House

TOTAL -- Internal Program Units

	3,095.2
	2,819.5
	1,845.3
	348.1
	88.7
1.0	1,391.3
50.0	1,093.9
51.0	10,482.0

TOTAL -- DEPARTMENT OF CORRECTION

1.0	8.0	1,495.0
1,295.1	80,585.4	

1.0	8.0	1,495.0
-----	-----	---------

(40-00-00) DEPARTMENT OF  
NATURAL RESOURCES AND  
ENVIRONMENTAL CONTROL

Personnel		
NSF	ASF	GF

\$ Program		\$ Line Item	
ASF	GF	ASF	GF

(40-01-00) Department Management

6.0	16.5	25.5
6.0	16.5	25.5
6.0	16.5	25.5
6.0	16.5	25.5

Personnel Costs  
Travel  
Contractual Services  
Energy  
Supplies and Materials  
Capital/Equipment  
Non-Game Habitat  
Coastal Zone Management  
Community Projects  
Outdoor Delaware  
Debt Service

TOTAL -- Department Management

556.6	1,089.1
6.4	4.9
50.5	110.7
121.8	186.9
8.3	8.0
20.0	
150.0	
100.0	
65.0	70.0
	2,123.9
1,078.6	3,593.5

(-01) Department Management  
TOTAL -- Internal Program Unit

1,078.6	3,593.5
1,078.6	3,593.5

(40-05-00) Fish and Wildlife

3.0	51.5	63.0
3.0	51.5	63.0

Personnel Costs  
Travel  
Contractual Services  
Energy  
Supplies and Materials  
Capital/Equipment  
Spraying and Insecticides  
Non-Game Habitat  
Other Items  
Debt Service

TOTAL -- Fish and Wildlife

1,705.1	2,179.7
44.5	13.0
1,300.0	770.6
19.0	50.3
509.4	218.5
1,450.2	45.9
	342.1
15.0	25.0
4.3	
	471.8
5,047.5	4,116.7

(-01) Management and Support -  
Fish & Wildlife

2.5	2.0
47.0	18.0
	18.0
3.0	2.0
3.0	51.5
	27.0
3.0	63.0

(-02) Wildlife/Fisheries  
(-04) Mosquito Control  
(-05) Dog Control  
(-06) Fish & Wildlife Enforcement  
TOTAL -- Internal Program Units

198.6	449.5
4,534.1	934.8
9.4	1,184.8
105.0	481.0
200.4	1,068.8
5,047.5	4,116.7

## Personnel

NSF	ASF	GF
2.0	51.5	69.5
2.0	51.5	69.5

## (40-06-00) Parks and Recreation

Personnel Costs  
Travel  
Contractual Services  
Energy  
Supplies and Materials  
Capital/Equipment  
Non-Game Habitat  
Open Space Grants  
Other Items  
Debt Service

TOTAL -- Parks and Recreation

## \$ Program

ASF	GF
-----	----

## \$ Line Item

ASF	GF
3,222.1	2,270.7
15.0	
781.5	
19.0	176.5
1,127.2	
773.5	
50.0	
1,000.0	
16.5	
	2,098.1
6,984.8	4,545.3

(-01) Management & Support --  
Parks and Recreation

(-02) Operations &amp; Maintenance

(-03) Special Programs

(-04) Parks Technical Services

TOTAL -- Internal Program Units

155.2	198.7
4,313.2	1,689.4
622.5	171.0
1,893.9	2,486.2
6,984.8	4,545.3

## (40-07-00) Soil and Water Conservation

3.5	1.0	44.5
3.5	1.0	44.5

Personnel Costs  
Travel  
Contractual Services  
Energy  
Supplies and Materials  
Capital/Equipment  
New Castle County Dredge  
Beach Erosion Control Program  
Sand Bypass System  
Tax Ditches\*  
Debt Service

TOTAL -- Soil and Water Conservation

16.1	1,720.2
2.1	7.5
769.7	524.8
	4.8
12.1	186.4
20.0	
	150.0
800.0	
75.0	
	180.0
	1,261.2
1,695.0	4,034.7

(-01) Management & Support --  
Soil & Water

(-02) Drainage

(-03) Shoreline and Waterway

Management

(-04) District Operations

TOTAL -- Internal Program Units

3.5		4.5
		8.0
		26.0
	1.0	6.0
3.5	1.0	44.5

	489.7
	1,094.1
1,095.2	1,743.0
599.8	707.9
1,695.0	4,034.7

\*Pursuant to Section 3921, Title 7, Delaware Code

	Personnel				\$ Program		\$ Line Item	
	NSF	ASF	GF		ASF	GF	ASF	GF
1				(40-08-00) Water Resources				
2								
3	39.0	61.0	56.0	Personnel Costs			2,318.3	2,314.3
4				Travel			27.1	13.6
5				Contractual Services			888.0	834.8
6				Energy				18.8
7				Supplies and Materials			240.4	95.6
8				Capital/Equipment			312.5	3.0
9				Estuaries Research			46.3	10.1
10				Water Resources Agency				45.0
11				Debt Service				3,113.1
12	39.0	61.0	56.0	TOTAL -- Water Resources			3,830.6	6,448.1
13								
14				(-01) Management & Support -				
15	1.0	4.0	6.0	Water Resources	354.9	1,278.3		
16				(-02) Water Resources Technical				
17		22.0	17.0	Services	1,588.4	971.2		
18	34.0	16.0	14.0	(-04) Surface Water Management	1,336.0	3,380.9		
19	4.0	19.0	18.0	(-05) Ground Water Management	551.3	817.7		
20	39.0	61.0	56.0	TOTAL -- Internal Program Units	3,830.6	6,448.1		
21								
22								
23				(40-09-00) Air and Waste Management				
24								
25	76.0	64.0	38.0	Personnel Costs			1,606.3	1,817.5
26				Travel			21.5	7.8
27				Contractual Services			212.0	163.4
28				Energy				34.4
29				Supplies and Materials			54.2	54.5
30				Capital/Equipment			61.8	81.4
31				Local Emergency Planning Committees			150.0	
32				HSCA - Administration			794.2	
33				HSCA - Clean-up			4,300.0	
34				Cost Recovery			260.0	
35				UST Administration			423.8	
36				UST Amnesty			1,100.0	
37				Recycle Delaware			30.0	
38				Right-to-Know				37.1
39				Debt Service				208.6
40	76.0	64.0	38.0	TOTAL - Air and Waste Management			9,013.8	2,404.9
41								
42				(-01) Management & Support -				
43	4.0	13.0	8.0	Air & Waste	547.0	437.8		
44	18.0	27.0	11.0	(-02) Air Resources	1,271.0	727.2		
45	54.0	24.0	19.0	(-03) Waste Management	7,195.8	1,239.9		
46	76.0	64.0	38.0	TOTAL -- Internal Program Units	9,013.8	2,404.9		
47								
48				TOTAL -- DEPARTMENT OF				
49				NATURAL RESOURCES AND				
50	129.5	245.5	298.5	ENVIRONMENTAL CONTROL			27,650.3	25,143.2

**(45-00-00) DEPARTMENT OF  
PUBLIC SAFETY**

**Personnel**

NSF	ASF	GF
-----	-----	----

**\$ Program**

ASF	GF
-----	----

**\$ Line Item**

ASF	GF
-----	----

**(45-01-00) Office of the Secretary**

21.5		35.5
21.5		35.5

Personnel Costs  
Travel  
Contractual Services  
Energy  
Supplies and Materials  
Police Training Council  
Other Items  
Debt Service

**TOTAL -- Office of the Secretary**

	1,347.6
	11.7
100.0	58.7
	10.7
60.0	21.9
	15.0
0.7	
	347.6
160.7	1,813.2

		11.0
		5.0
		13.0
21.5		6.5
21.5		35.5

(-01) Administration  
(-10) Boiler Safety  
(-20) Communication  
(-30) EPO

**TOTAL -- Internal Program Units**

100.0	791.2
	187.3
60.7	571.8
	262.9
160.7	1,813.2

**(45-06-00) State Police**

21.0	5.0	664.0
21.0	5.0	664.0

Personnel Costs  
Travel  
Contractual Services  
Energy  
Supplies and Materials  
Capital/Equipment  
Pension - 20 Year Retirees  
Crime Reduction Fund  
Career Development  
Debt Service

**TOTAL -- State Police**

398.4	28,409.0
15.0	33.3
77.8	1,955.6
	213.6
187.9	1,328.4
41.0	698.9
	11,750.0
	75.0
	35.0
	407.1
718.1	44,905.9

		35.0
		6.0
		346.0
4.0		76.0
8.0		20.0
		18.0
	4.0	22.0
		29.0
		8.0
	1.0	77.0
		15.0
5.0		11.0
4.0		3.0
21.0	5.0	664.0

(-01) Executive  
(-02) Building Maintenance & Construction  
(-03) Patrol  
(-04) Criminal Investigation  
(-05) Special Investigation  
(-06) Aviation  
(-07) Traffic  
(-08) State Bureau of Identification  
(-09) Training  
(-10) Communications  
(-11) Transportation  
(-12) Community Relations  
(-13) Highway Safety

**TOTAL - Internal Program Units**

	14,341.3
	323.1
	16,837.9
	3,627.0
	1,043.9
	1,616.4
598.8	948.9
90.0	1,043.6
	321.6
29.3	2,760.4
	1,447.0
	475.5
	119.3
718.1	44,905.9



Personnel		
NSF	ASF	GF

(45-07-00) Licenses, Taxes & Registrations

\$ Program		\$ Line Item	
ASF	GF	ASF	GF

2.0		194.0
2.0		194.0

Personnel Costs  
Contractual Services  
Supplies and Materials  
Capital/Equipment  
CDL Fees  
Contingency -- Firemen's Special Plates  
Debt Service

80.0	5,117.5
2.5	489.8
	443.7
	0.1
275.0	45.0
	32.3
357.5	6,108.4

TOTAL -- Licenses, Taxes & Registrations

		25.0
2.0		63.0
		106.0
2.0		194.0

(-01) Administration -- Licenses, Taxes & Registrations

82.5	1,082.7
275.0	1,818.5
	3,207.2
357.5	6,108.4

(-10) Driver Services  
(-20) Vehicle Services  
TOTAL -- Internal Program Units

TOTAL -- DEPARTMENT OF PUBLIC SAFETY

44.5	5.0	893.5
------	-----	-------

1,236.3	52,827.5
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(55-00-00) DEPARTMENT OF  
TRANSPORTATION

Personnel

\$ Line Item

NSF	TFO	TFC	GF
-----	-----	-----	----

TTF	GF
-----	----

(55-01-01) Office of the Secretary

	12.0	1.0	
	12.0	1.0	

Personnel Costs  
Operations/Capital  
TOTAL -- Office of the Secretary

575.0	
75.5	
650.5	

(55-02-01) Office of Administration

2.0	68.0		
2.0	68.0		

Personnel Costs  
Travel  
Capital Outlay  
Contractual/Supplies  
TOTAL -- Office of Administration

2,417.8	
15.7	
14.5	
1,357.7	
3,805.7	

(55-03-01) Office of Planning

	36.0		
	36.0		

Personnel Costs  
Operations/Capital  
TOTAL -- Office of Planning

1,568.3	
323.8	
1,892.1	

(55-04-00) Division of Highway Operations

(55-04-01) Office of the Director

	15.0		
	15.0		

Personnel Costs  
Operations/Capital  
TOTAL -- Office of the Director

651.7	
87.8	
739.5	

(55-04-40) Bureau of Construction

	75.0	79.0	
	75.0	79.0	

Personnel Costs  
Operations/Capital  
TOTAL -- Bureau of Construction

2,614.7	
14.5	
2,629.2	

(55-04-50) Bureau of Traffic

	99.0	6.0	
	99.0	6.0	

Personnel Costs  
Travel  
Energy  
Capital Outlay  
Contractual/Supplies  
TOTAL -- Bureau of Traffic

3,274.6	
1.9	
516.6	
27.0	
2,167.7	
5,987.8	

Personnel			
NSF	TFO	TFC	GF
	31.0	54.0	
	31.0	54.0	
	525.0		
	525.0		
	1.0	6.0	
	1.0	6.0	
	746.0	145.0	

(55-04-60) Field Services  
 Personnel Costs  
 Operations/Capital  
 TOTAL --- Field Services

\$ Line Item	
TTF	GF
1,189.2	
103.0	
1,292.2	

(55-04-70) Bureau of Maintenance  
 Personnel Costs  
 Travel  
 Energy  
 Capital Outlay  
 Contractual/Supplies  
 TOTAL --- Bureau of Maintenance

14,318.4	
7.5	
869.2	
2,487.2	
8,822.9	
24,503.2	

(55-04-80) Bureau of Freeways Construction  
 Personnel Costs  
 Operations/Capital  
 TOTAL --- Bureau of Freeways Construction

104.0	
9.8	
113.8	

TOTAL --- Division of Highway Operations

35,265.7	
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#### (55-06-01) Delaware Transportation Authority

	17.0		
0.3	13.7		
0.3	30.7		

Delaware Transportation Authority  
 Operations  
 Commuter Services  
 DART Operations 'Public'  
 DAST Operations 'E & H'  
 Rail Operations  
 Aviation  
 Contingencies  
 Motor Fuel Tax  
 Personnel Costs  
 Operations/Capital  
 Taxi Services Support 'E & H'  
 Newark Transportation  
 Kent and Sussex Transportation 'E & H'  
 Dover Transportation 'E & H'  
 Debt Service  
 Motor Fuel Tax Bonds  
 General Obligations  
 Transportation Trust Fund  
 TOTAL --- Delaware Transportation Authority

2,572.1	
285.0	
7,157.0	
3,338.8	
2,173.0	
59.0	
15.0	
472.2	
259.6	
182.2	
70.1	
750.0	
110.0	
2,437.0	
17,601.3	
55,389.7	
92,871.8 *	

\*Delaware Transportation Authority, Chapter 13, Title 2,  
 Delaware Code. These funds, except the Regulatory Revolving  
 Funds, are not deposited with the State Treasurer.

## Personnel

Year ending June 30, 1993

## \$ Line Item

TTF GF

2,915.5	
370.9	
3,286.4	

## (55-07-10) Office of Pre-Construction

Personnel Costs  
Operations/Capital

## TOTAL -- Office of Pre-Construction

## (55-08-01) Division of Turnpike Administration

Turnpike Operations  
Turnpike Operating Reserve \*  
Turnpike Improvements  
Interstate Operations  
Interstate Improvements

## TOTAL -- Division of Turnpike Administration

4,904.7	
768.0	
2,440.8	
695.0	
8,808.5	

NSF	TFO	TFC	GF
-----	-----	-----	----

4.0	60.0	84.0	
4.0	60.0	84.0	

	138.0		
	138.0		

\* The Cumulative Turnpike Operating Reserve Fund  
is established at \$ 837.8

TOTAL -- DEPARTMENT OF  
TRANSPORTATION

146,580.7	
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6.3	1,090.7	230.0	
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Year ending June 30, 1993

(60-00-00) DEPARTMENT OF LABOR

	Personnel				\$ Program		\$ Line Item	
	NSF	ASF	GF		ASF	GF	ASF	GF
1								
2								
3				(60-01-00) Administration				
4								
5	18.0	12.6	5.4	Personnel Costs			588.5	202.2
6				Travel			12.6	5.1
7				Contractual Services			72.8	19.4
8				Supplies and Materials			11.4	2.4
9				Capital/Equipment			4.3	
10	18.0	12.6	5.4	TOTAL -- Administration			689.6	229.1
11								
12		12.6	1.4	(-10) Office of the Secretary	689.6	68.3		
13				(-20) Office of Occupational and				
14	18.0		1.0	and Labor Market Information			42.6	
15			3.0	(-30) Commission for Women			118.2	
16	18.0	12.6	5.4	TOTAL -- Internal Program Units	689.6	229.1		
17								
18								
19				(60-06-00) Unemployment Insurance				
20								
21	143.0	5.0		Personnel Costs			155.6	
22				Travel			2.1	
23				Contractual Services			74.8	
24				Supplies and Materials			12.2	
25				Capital/Equipment			2.5	
26	143.0	5.0		TOTAL -- Unemployment Insurance			247.2	
27								
28	143.0	5.0		(-01) Unemployment Insurance	247.2			
29	143.0	5.0		TOTAL -- Internal Program Unit	247.2			
30								
31								
32				(60-07-00) Industrial Affairs				
33								
34	6.5		42.5	Personnel Costs				1,353.3
35				Travel			21.6	8.9
36				Contractual Services			188.5	71.5
37				Supplies and Materials			33.3	10.5
38				Capital/Equipment			3.9	5.0
39				Second Injury			5,859.7	
40	6.5		42.5	TOTAL -- Industrial Affairs			6,107.0	1,449.2
41								
42				(-01) Workers Compensation, Safety				
43	1.5		29.5	and Health	6,107.0	981.3		
44	5.0		13.0	(-02) Enforcement			467.9	
45	6.5		42.5	TOTAL -- Internal Program Units	6,107.0	1,449.2		

Year ending June 30, 1993

Personnel

NSF	ASF	GF
114.6	4.4	
114.6	4.4	

(60-08-00) Vocational Rehabilitation

Personnel Costs  
Contractual Services  
Supplies and Materials  
Capital/Equipment  
Sheltered Workshop  
Governor's Committee

TOTAL -- Vocational Rehabilitation

85.6	4.4	
29.0		
114.6	4.4	

(-10) Vocational Rehabilitation Services  
(-20) Disability Determination Services

TOTAL -- Internal Program Units

(60-09-00) Employment and Training

86.9	3.0	14.1
86.9	3.0	14.1

Personnel Costs  
Travel  
Contractual Services  
Supplies and Materials  
Capital/Equipment  
Women's Vocational Services  
Dislocated Workers' Program  
Summer Youth Program  
Blue Collar Projects

TOTAL -- Employment and Training

57.9		4.0
29.0	3.0	10.1
86.9	3.0	14.1

(-10) Placement Services

(-20) Training Services

TOTAL -- Internal Program Units

\$ Program		\$ Line Item	
ASF	GF	ASF	GF

228.2	
360.0	1,268.6
	34.9
90.0	310.4
	8.0
678.2	1,621.9

678.3	1,621.9
678.3	1,621.9

132.2	450.0
0.9	3.7
42.3	91.0
2.0	3.8
	3.0
	40.0
	21.0
	135.2
1,194.8	
1,372.2	747.7

	159.6
1,372.2	588.1
1,372.2	747.7

369.0 25.0 62.0 TOTAL -- DEPARTMENT OF LABOR

9,094.2 4,047.9

(65-00-00) DEPARTMENT OF  
AGRICULTURE

Personnel		
NSF	ASF	GF

\$ Program		\$ Line Item	
ASF	GF	ASF	GF

## (65-01-00) Resource Management

3.5	2.0	29.5
3.5	2.0	29.5

Personnel Costs  
Travel  
Contractual Services  
Energy  
Supplies and Materials  
Capital/Equipment  
Delaware Agricultural Lands Preservation  
Foundation  
Debt Service

48.9	1,025.7
1.5	4.3
69.5	36.9
3.9	28.5
54.7	7.6
15.5	
	48.0
	61.2
194.0	1,212.2

## TOTAL -- Resource Management

	1.0	12.0
3.5	1.0	14.5
3.5	2.0	29.5

(-01) Administration  
(-02) Agricultural Lands Preservation  
(-03) Forestry  
TOTAL -- Internal Program Units

108.4	553.3
	187.3
85.6	471.6
194.0	1,212.2

## (65-03-00) Consumer Protection

3.0	0.5	27.5
3.0	0.5	27.5

Personnel Costs  
Travel  
Contractual Services  
Energy  
Supplies and Materials  
Debt Service  
TOTAL -- Consumer Protection

17.3	968.1
2.7	6.9
2.3	30.9
	10.0
1.5	22.6
	4.2
23.8	1,042.7

		5.0
		6.0
		12.0
3.0	0.5	4.5
3.0	0.5	27.5

(-02) Agriculture Compliance Lab  
(-03) Weights & Measures  
(-05) Meat Inspection  
(-07) Pesticides Compliance  
TOTAL -- Internal Program Units

10.8	211.5
	193.7
	475.0
13.0	162.5
23.8	1,042.7

**Year ending June 30, 1993**

### Personnel

NSF	ASF	GF
-----	-----	----

**(65-04-00) Promotion and Production Support**

**\$ Program**

ASF	GF
-----	----

**\$ Line item**

ASF	GF
-----	----

	15.0	23.0
	15.0	23.0

**Personnel Costs**  
**Travel**  
**Contractual Services**  
**Energy**  
**Supplies and Materials**  
**Capital/Equipment**  
**First State Trotting & Pacing Series**  
**Agriculture Development Program**  
**Laurel Auction**  
**International Trade**  
**International Trade Travel**  
**Alternative Agriculture Projects**  
**Research Plots**  
**Agriculture Advertising**  
**Cooperative Advertising**  
**TOTAL -- Promotion and Production Support**

579.1	819.9
4.9	19.6
4.6	253.9
	26.1
7.7	45.9
10.6	
	123.0
	23.0
	9.5
	1.5
	3.0
	15.0
	39.0
	15.0
606.9	1,394.4

	11.0	1.0
		2.0
		5.0
		7.0
		5.0
	4.0	3.0
	15.0	23.0

(-02) Thoroughbred Racing Commission  
 (-03) Harness Racing Commission  
 (-04) Agriculture Products Grading  
 (-05) Marketing & Product Development  
 (-06) Plant Industry  
 (-07) Poultry & Animal Health  
 (-08) Seed Lab  
**TOTAL -- Internal Program Units**

	10.0
	165.9
395.3	73.1
	405.6
	374.4
	247.4
211.6	118.0
606.9	1,394.4

**TOTAL -- DEPARTMENT OF AGRICULTURE**

6.5	17.5	80.0
-----	------	------

824.7	3,649.3
-------	---------



Year ending June 30, 1993

**(70-00-00) DEPARTMENT OF  
ELECTIONS****Personnel**

NSF	ASF	GF
-----	-----	----

**\$ Program**

ASF	GF
-----	----

**\$ Line Item**

ASF	GF
-----	----

**(70-01-01) Commissioner of Elections**

		7.0
		7.0

Personnel Costs

Travel

Contractual Services

Supplies and Materials

Capital Outlay

**TOTAL -- Commissioner of Elections**

	212.3
	0.8
	54.9
	18.0
	0.5
	286.5

**(70-02-01) New Castle County Department  
of Elections**

		12.0
		12.0

Personnel Costs

Travel

Contractual Services

Energy

Supplies and Materials

Other Items

**TOTAL -- New Castle County Department  
of Elections**

	392.9
	12.0
	146.1
	12.7
	7.7
	5.0
	576.4

**(70-03-01) Kent County Department  
of Elections**

		5.0
		5.0

Personnel Costs

Travel

Contractual Services

Energy

Supplies and Materials

Other Items

**TOTAL -- Kent County Department of Elections**

	199.3
	0.5
	53.8
	7.9
	3.5
	1.5
	266.3

**(70-04-01) Sussex County Department  
of Elections**

		4.0
		4.0

Personnel Costs

Travel

Contractual Services

Supplies and Materials

Other Items

**TOTAL -- Sussex County Department of Elections**

	177.1
	0.7
	28.8
	5.9
	5.7
	218.2

**TOTAL -- DEPARTMENT OF  
ELECTIONS**

		28.0
--	--	------

	1,347.4
--	---------

Year ending June 30, 1993

**(75-00-00) FIRE PREVENTION  
COMMISSION****Personnel****\$ Program****\$ Line Item**

NSF	ASF	GF
-----	-----	----

ASF	GF
-----	----

ASF	GF
-----	----

**(75-01-01) Office of the State Fire Marshal**

	17.3	18.7
	17.3	18.7

Personnel Costs  
Contractual Services  
Energy  
Supplies and Materials  
Capital Outlay  
Revenue Refund  
Juvenile Firesetter Intervention Program  
Debt Service  
**TOTAL -- Office of the State Fire Marshal**

548.6	726.4
34.8	52.3
	23.2
8.5	32.1
	2.8
0.5	
	2.0
	1.3
590.4	840.1

**(75-02-01) State Fire School**

4.3		12.7
4.3		12.7

Personnel Costs  
Contractual Services  
Energy  
Capital Outlay  
Debt Service  
**TOTAL -- State Fire School**

	498.3
20.0	70.0
	100.0
10.0	
	188.5
30.0	836.8

**(75-03-01) State Fire Prevention  
Commission**

		1.0
		1.0

Personnel Costs  
Travel  
Contractual Services  
Supplies and Materials  
Statewide Fire Safety Education  
Contingency - Extraordinary Expenses  
Debt Service  
**TOTAL -- State Fire Prevention Commission**

	29.4
	17.1
	18.2
	1.2
	50.0
	20.0
	138.0
	289.9

**TOTAL -- FIRE PREVENTION  
COMMISSION**

4.3	17.3	32.4
-----	------	------

620.4	1,946.8
-------	---------

Year ending June 30, 1993

**(76-00-00) DELAWARE NATIONAL  
GUARD**

Personnel		
NSF	ASF	GF

\$ Program		\$ Line Item	
ASF	GF	ASF	GF

**(76-01-01) Delaware National Guard**

70.7		29.7
70.7		29.7

Personnel Costs  
 Travel  
 Contractual Services  
 Energy  
 Supplies and Materials  
 Educational Assistance  
 Sick—Leave Entitlements  
 Unit Fund Allowance  
 Widows Compensation Fund  
 Debt Service

**TOTAL -- DELAWARE NATIONAL  
GUARD**

	1,067.3
	0.7
	253.1
	306.6
	80.9
	37.8
	7.0
	5.2
	7.9
	197.0
	<b>1,963.5</b>

**(77-00-00) ADVISORY COUNCIL FOR  
EXCEPTIONAL CITIZENS**

\$ Program		\$ Line Item	
ASF	GF	ASF	GF

7			2.0
8			
9			
10			
11			
12			2.0

Personnel Costs  
Travel  
Contractual Services  
Supplies and Materials  
**TOTAL -- ADVISORY COUNCIL FOR  
EXCEPTIONAL CITIZENS**

	42.9
	2.8
	4.9
	0.8
	<b>51.4</b>

**\$ Line Item**

ASF	GF	ASF	GF
-----	----	-----	----

**TOTAL -- Delaware State College**

	16,443.0
	125.0
	169.5
	36.0
	100.0
	50.0
	15.1
	88.6
	120.0
	50.0
	154.0
	83.1
	120.0
	915.0
	3,066.8
	21,536.1

44.7		393.3
------	--	-------

Personnel

\$ Program

\$ Line Item

NSF	ASF	GF
-----	-----	----

(90-04-00) Delaware Technical and Community College

ASF	GF
-----	----

ASF	GF
-----	----

10.0		34.0
10.0		34.0

(90-04-01) Office of the President

Personnel Costs  
Travel  
Contractual Services  
Energy  
Supplies and Materials  
Occupational Teacher Program  
Academic Incentive  
Dental Program  
Day Care Training  
Salary Plan A & D  
Parallel Program - Operations  
Parallel Program - Academic  
Debt Service

TOTAL --- Office of the President

	1,582.2
	6.5
	152.2
	14.2
	31.7
	36.8
	50.0
	78.8
	40.0
	535.2
	391.4
	900.6
	163.0
	3,982.8

40.7		152.0
40.7		152.0

(90-04-02) Southern Campus

Personnel Costs  
Contractual Services  
Energy  
Supplies and Materials  
NDSL Match  
Aid-to-Needy Students  
Work Study  
Debt Service  
Capital/Books

TOTAL -- Southern Campus

	7,503.0
	39.8
	332.6
	4.0
	6.6
	66.7
	16.5
	1,986.4
	42.4
	9,996.0

25.0		113.0
25.0		113.0

(90-04-04) Wilmington Campus

Personnel Costs  
Contractual Services  
Energy  
Capital Outlay  
Aid-to-Needy Students  
Work Study  
Debt Service

TOTAL -- Wilmington Campus

	5,582.9
	81.1
	275.9
	76.1
	83.7
	20.0
	1,253.3
	7,403.0

38.0		138.0
38.0		138.0

(90-04-05) Stanton Campus

Personnel Costs  
Contractual Services  
Energy  
Capital Outlay  
Aid-to-Needy Students  
Work Study  
Debt Service  
Building Contingency

TOTAL -- Stanton Campus

	7,164.1
	27.2
	25.7
	9.0
	68.6
	21.0
	735.8
	234.0
	8,285.4

36	203.9	926.3	TOTAL -- HIGHER EDUCATION	134,642.0
----	-------	-------	---------------------------	-----------

## (95-00-00) PUBLIC EDUCATION

## Personnel

## \$ Program

## \$ Line Item

NSF	ASF	GF
-----	-----	----

ASF	GF
-----	----

ASF	GF
-----	----

(95-01-00) State Board of Education and  
State Board for Vocational Education

56.5	3.9	76.3
56.5	6.4	76.3

Personnel Costs  
 Travel  
 Contractual Services  
 Supplies and Materials  
 Capital Outlay  
 Other Items:  
   Teacher In Spaca  
   Education Compact of the States  
   Private Business and Trade School  
   Evaluation - Higher Education  
   Teacher of the Year  
   Odyssey of the Mind  
   Pension - Retired and Disabled Teachers  
   Desegregation Monitoring  
   Operating Costs - Training Lab  
   Pupil Accounting System  
   Career Guidance System  
   Operating Costs - Direct  
   Tallman Scholarships  
   Mather Library Endowment Fund  
   Brown Trust Fund  
   Film Library  
   Department of Public  
     Instruction Library  
   Trailer Rental Fund  
   DPI Publications  
   Delaware Secondary School  
   Athletic Fund  
   Registration Fees

4,714.5
23.4
137.9
29.6
68.7
63.5
33.8
2.0
1.0
46.5
15.0
22.3
100.0
20.0
41.8
16.5
183.4
294.5
3.8
2.5
35.0
62.4
34.0
27.5
10.0
84.1
40.0
482.7
5,631.0

TOTAL -- State Board of Education and  
 State Board for Vocational Education

4.5	14.6
12.0	5.0
26.1	40.0
1.4	35.6
56.5	6.4
76.3	

(-01) State Board & Superintendent  
 (-02) Administrative Services  
 (-04) Instructional Services  
 TOTAL -- Internal Program Units

1,256.8
358.6
2,073.5
124.1
2,300.7
482.7
5,631.0





Year ending June 30, 1993

**Personnel**

**\$ Program**

**\$ Line Item**

NSF	ASF	GF
		3.0
		1.0
		4.0

ASF	GF
500.0	21,377.5
	1,439.8
	5,535.1
	780.2
500.0	29,132.6

(-10) Education Block Grants  
 (-15) K-12 Pass Throughs  
 (-20) Special Needs Programs  
 (-30) Driver Training  
 TOTAL -- Internal Program Unite

**(95-04-00) Pupil Transportation**

Public School Transportation  
 Non-Public School Transportation  
 Reimbursement  
 TOTAL -- Pupil Transportation

	35,928.2
	2,830.7
	38,758.9

(-01) Transportation  
 TOTAL -- Internal Program Unit

	38,758.9
	38,758.9

**(95-08-00) Delaware Advisory Council on  
 Career and Vocational Education**

1.5		3.5
1.5		3.5

Personnel Costs  
 Contractual Services  
 Travel  
 Supplies and Materials  
 TOTAL -- Delaware Advisory Council on Career  
 and Vocational Education

	107.0
	6.8
	1.0
	2.0
	116.8

1.5		3.5
1.5		3.5

(-01) Advisory Council  
 TOTAL -- Internal Program Unit

	116.8
	116.8

**58.0 6.4 9,349.8 TOTAL -- PUBLIC EDUCATION**

**982.7 438,406.6**

Year ending June 30, 1993

Personnel				
TFO	TFC	NSF	ASF	GF

\$		
TTF	ASF	GF

**TOTALS**

1,090.7	230.0	1,545.60	870.4	9,267.7
		203.90		926.3
		58.00	6.4	9,349.8
<b>1,090.7</b>	<b>230.0</b>	<b>1,807.50</b>	<b>876.8</b>	<b>19,543.8</b>

TOTAL - DEPARTMENTS

TOTAL - HIGHER EDUCATION

TOTAL - PUBLIC EDUCATION

GRAND TOTAL

146,580.7	174,418.3	690,002.4
		134,642.0
	982.7	438,406.6
<b>146,580.7</b>	<b>175,401.0</b>	<b>1,263,051.0</b>

## GENERAL

Section 2. Any previous Act inconsistent with the provisions of this Act is hereby repealed to the extent of such inconsistency.

Section 3. If any provision of this Act, or of any rule, regulation or order thereunder, or the application of such provision to any person or circumstances, shall be invalid, the remainder of this Act and the application of such provisions of this Act or of such rule, regulation or order to persons or circumstances other than those to which it is held invalid shall not be affected thereby.

Section 4. The monies appropriated in Section 1 of this Act shall be paid by the State Treasurer from the General Fund, except as otherwise referenced in Section 1.

Section 5. The provisions of this Act to the contrary notwithstanding, any section, chapter or title of the Delaware Code and any Laws of Delaware providing for the application of "Sunset" shall be operative for those agencies, commissions or boards affected during the fiscal year commencing July 1, 1992.

Section 6. Due to the pilot budget format, the restructuring of divisions into programs within divisions has created more exempt positions per division than allowed by law for the participating departments; therefore, all exempt positions authorized by Title 29, Section 5903, Delaware Code, prior to July 1, 1987, shall remain exempt for Fiscal Year 1993.

Section 7. The abbreviations set forth in this Act for special fund authorized positions means funding from the following:

ASF - Appropriated Special Funds

NSF - Non-appropriated Special Funds

TFO - Trust Fund Operations

TFC - Trust Fund Capital

Section 8. (a) The General Assembly of the State of Delaware supports the statewide policy that the pay plan for Merit System employees be developed in accordance with the results of valid surveys of salaries provided by a defined labor market. The Director of State Personnel shall conduct such surveys on a yearly basis and report the findings of such surveys by December 15 to the Governor and members of the General Assembly who will be responsible for recommending and approving yearly adjustments as are necessary to maintain the competitive posture of the plan. As the Director of State Personnel has conducted the required surveys for the fiscal year ending June 30, 1993, and as the Governor and members of the General Assembly have reviewed the findings of such surveys, effective July 1, 1992, the following pay plans are established for State Merit System employees:

Annual Salary  
STATE OF DELAWARE PAY PLAN\*  
(Standard Work Schedule of 37.5 Hours Per Work Week)

PAY GRADE	75% of Midpoint	100% of Midpoint	125% of Midpoint
1	10,679	14,239	17,799
2	11,426	15,235	19,044
3	12,227	16,303	20,379
4	13,081	17,441	21,801
5	13,999	18,665	23,331
6	14,979	19,972	24,965
7	16,025	21,367	26,709
8	17,147	22,863	28,579
9	18,349	24,465	30,581
10	19,634	26,178	32,723
11	21,006	28,008	35,010
12	22,478	29,970	37,463
13	24,051	32,068	40,085
14	25,733	34,311	42,889
15	27,536	36,714	45,893
16	29,463	39,284	49,105
17	31,526	42,034	52,543
18	33,731	44,974	56,218
19	36,093	48,124	60,155
20	38,621	51,495	64,369
21	41,324	55,098	68,873
22	44,216	58,955	73,694
23	47,312	63,082	78,853
24	50,625	67,500	84,375
25	54,168	72,224	90,280
26	57,959	77,279	96,599

\* Annual Salary in \$

Annual Salary  
STATE OF DELAWARE PAY PLAN\*  
(Standard Work Schedule of 40 Hours Per Work Week)

PAY GRADE	75% of Midpoint	100% of Midpoint	125% of Midpoint
1	11,390	15,187	18,984
2	12,188	16,250	20,313
3	13,041	17,388	21,735
4	13,954	18,605	23,256
5	14,932	19,909	24,886
6	15,976	21,301	26,626
7	17,094	22,792	28,490
8	18,291	24,388	30,485
9	19,571	26,094	32,618
10	20,942	27,922	34,903
11	22,406	29,874	37,343
12	23,975	31,967	39,959
13	25,654	34,205	42,756
14	27,450	36,600	45,750
15	29,371	39,161	48,951
16	31,429	41,905	52,381
17	33,627	44,836	56,045
18	35,980	47,973	59,966
19	38,500	51,333	64,166
20	41,195	54,927	68,659
21	44,080	58,773	73,466
22	47,165	62,887	78,609
23	50,465	67,287	84,109
24	54,000	72,000	90,000
25	57,779	77,039	96,299
26	61,823	82,430	103,038

\* Annual Salary in \$

- (f) Merit Rule 5.0200 notwithstanding, the standard work week for employees in positions within the Correctional Officer class series, Correctional Security Superintendent class and Warden class series assigned to the Department of Correction, Meat Inspectors and Meat and Poultry Inspection Coordinators in the Department of Agriculture and Emergency Services Training Administrator class assigned to the State Fire School shall be 40 hours.
- (11) During the fiscal year ending June 30, 1993, the State Personnel Director may designate, with the concurrence of the Budget Director and the Controller General, other appropriate classes or groups of employees to work and be paid according to a standard work week of 40 hours. Such designation shall be based upon the operational necessity of agencies to require employees to regularly and consistently work in excess of 37.5 hours per week and upon the availability of any required funding.
- (b)(i) The defined labor market survey in Section 8(a) for Fiscal Year 1993 shall be limited to those governments and institutions of higher education as follows:

Delaware

New Castle County  
 Kent County  
 Sussex County  
 Wilmington  
 Newark  
 Dover  
 University of Delaware

Other Counties and Municipalities

Cecil County, Maryland  
 Caroline County, Maryland  
 Salisbury, Maryland  
 Chester County, Pennsylvania  
 Delaware County, Pennsylvania  
 Salem County, New Jersey

Other States

Maryland  
 Pennsylvania  
 New Jersey  
 North Carolina  
 Massachusetts  
 New York  
 Virginia

- (11) The findings of the survey in Section 8(a) for Fiscal Year 1994 shall be calculated in the same manner as Fiscal Year 1993, using the same weighting formula and other components.
- (c) Recognizing the need for flexibility to respond to critical external market pressures, selective market variations are permitted to the uniform pay plan structure for job classes that are key to the performance of state functions.
- (1) The appointing authority shall identify job classes or job families to be considered for selective market variations according to turnover rates, recruitment problems, vacancy rates, feasibility for the work to be performed on a contractual basis and other criteria established by the State Personnel Director.
- (2) Upon receipt of the identified classes, the State Personnel Director shall survey the appropriate labor market to determine the state's position in this labor market.
- (3) This survey information will be reviewed by the Budget Director, the State Personnel Director and the Controller General who shall recommend approval or disapproval for the classes for selective market compensation variations.
- (4) Any such selective market variations which the State Personnel Director, the Budget Director and the Controller General have determined to be warranted and have been approved by the Joint Finance Committee, shall be designated to become effective July 1, 1992, provided that such variations have been processed as part of the regular budgetary process and the funds for such changes shall be appropriated.
- (5) Upon approval, the minimum, mid-point and maximum salary values shall be raised according to the results of the labor market surveys for the job class.

- (6) Before application of the general increase outlined in Section 8(d)(1), the salary of employees whose salary in effect as of June 30, 1992, is below the adjusted minimum salary for the assigned job classification shall be raised to the adjusted minimum salary; the salaries of employees whose current salaries fall within the adjusted salary range shall not be increased.

(d) The amount appropriated by Section 1 of this Act for salaries includes the estimated amount needed to provide for a general salary increase for each state employee, unless as otherwise excepted by subsections of this Section. This increase is to be provided as follows:

(1) Salary Adjustments for departments 01 through 77:

- (i) Effective July 1, 1992, the salary of each employee shall be increased by 3.0 percent, unless otherwise noted in this Section.
- (ii) The salary of employees whose salary in effect as of June 30, 1992, is above the maximum salary of the assigned paygrade of the pay plan in effect on July 1, 1992, shall be increased by 1.5 percent.
- (iii) The salary of employees whose salary in effect as of June 30, 1992, is near the maximum salary of the assigned paygrade of the pay plan in effect on July 1, 1992, and where the general 3.0 percent increase would place that salary above the maximum salary, shall be increased by a percentage amount which would place the salary at the maximum or 1.5 percent, whichever is greater.
- (iv) Salaries of employees employed in accordance with Title 29, Section 5903(17), Delaware Code, shall be excluded from Subsection (d)(1)(i) of this Section and may receive a salary increase at the discretion of the agency.

(e) Any such reclassifications/regrades which the State Personnel Director determines to be warranted as a result of the classification maintenance reviews regularly scheduled by the State Personnel Office shall be designated to become effective July 1, 1993, provided that such reclassifications/regrades have been processed as part of the regular budgetary process and the funds for such reclassifications/regrades shall be appropriated.

(f) The classification of any position whose salary is covered by the appropriations in Section 1 of this Act, may be changed to be effective January 1, 1993, or July 1, 1993, if the requested change is certified critical by the appointing authority; and

- (1) The requested change is approved by the State Personnel Director prior to the effective date of January 1, 1993, or July 1, 1993; and
- (2) The funding source is approved by the Budget Director; and
- (3) The requested change is approved by the Controller General.

(g) Other than those reclassifications/regrades approved in accordance with Section 8(e) or 8(f), no position shall be reclassified or regraded during the fiscal year ending June 30, 1993.

(h) The salaries of teachers and administrators employed by state agencies and who are paid based on the Basic Schedule contained in Title 14, Section 1305, of the Delaware Code, as amended by this Act, shall receive as salary an amount equal to the index value specified in the appropriate training and experience cell multiplied by the base salary amount of \$16,012.00 and divided by .7 for ten months employment. If employed on an 11 or 12 month basis, the ten month amount shall be multiplied by 1.1 or 1.2, respectively.

(i) During the fiscal year ending June 30, 1993, paragraph 5.1100 of the Merit Rules for a Merit System of Personnel Administration shall be null and void.

(j) The review date for employees of the classified service shall be December 31 of each fiscal year.

(k) The administrative regulation and procedures necessary to implement this Section shall be promulgated by the State Personnel Director, Budget Director and Controller General.

(l) (i) The provisions of Subsection (d) of this Section shall not apply to the employees of the General Assembly - House or the General Assembly - Senate. Salaries for those employees will be established by the Speaker of the House of Representatives and the President Pro-Tempore of the Senate, respectively.

(ii) The provisions of Subsection (d) of this Section shall not apply to the Governor, members of the General Assembly, Uniformed State Police, employees of the University of Delaware, Delaware State College and members and employees of the Delaware National Guard, excluding the Adjutant General. However, funds have been appropriated in Section 1 of this Act for Delaware State College to provide for an increase in salaries paid from General Funds.

(iii) Any Merit System employee who is denied the general salary increase referred to in Section 8(d)(1) due to an unsatisfactory performance rating in accordance with Merit Rule 5.1000, shall become eligible for the general increase six months after the effective date of the scheduled increase, but not retroactively, provided that upon re-appraisal, the employee's overall performance rating is at least satisfactory.

(m) Salary schedules and staffing formulas contained in Title 14, Chapter 13, Delaware Code, shall be revised as specified in this Subsection.

(1) Amend Title 14, Subsection 1305(b), Delaware Code, by striking the value, "\$15,546.00," as it appears therein and by substituting in lieu thereof the value, "\$16,012.00."

(2) Amend Title 14, Subsection 1308(a), Delaware Code, by striking the salary schedule contained in said subsection in its entirety and by substituting in lieu thereof the following:

Years of Exper.	Clerk	Secretary	Senior Secretary	Financial Secretary	Administrative Secretary
0	\$ 8,601	\$ 9,778	\$10,462	\$10,860	\$11,523
1	9,031	10,225	10,911	11,311	11,980
2	9,461	10,672	11,360	11,764	12,438
3	9,891	11,120	11,809	12,215	12,896
4	10,321	11,567	12,258	12,667	13,353
5	10,751	12,014	12,708	13,118	13,811
6	11,181	12,461	13,157	13,569	14,269
7	11,611	12,908	13,606	14,021	14,726
8	12,041	13,356	14,055	14,473	15,183
9	12,471	13,803	14,504	14,925	15,642
10	12,901	14,250	14,954	15,376	16,099
11	13,331	14,697	15,403	15,827	16,556
12	13,761	15,144	15,852	16,279	17,015
13	14,191	15,592	16,301	16,730	17,472
14	14,621	16,039	16,750	17,182	17,929
15	15,051	16,486	17,200	17,634	18,388
16	15,481	16,933	17,649	18,085	18,845
17	15,911	17,380	18,098	18,537	19,302
18	16,341	17,828	18,547	18,988	19,760
19	16,771	18,275	18,996	19,440	20,218
20	17,201	18,722	19,445	19,891	20,675

(3) Amend Title 14, Subsection 1311(a), Delaware Code, by striking the salary schedule contained in said subsection in its entirety and by substituting in lieu thereof the following:



"

Years of Exper.	Custodian	Custodian Fireman	Chief Custodian Supervising 5 or Fewer Custodians	Chief Custodian Supervising 6 or More Custodians	Maintenance Mechanic	Building & Grounds Supervisor
0	\$11,003	\$11,454	\$11,682	\$12,585	\$13,004	\$13,374
1	11,342	11,793	12,022	12,925	13,397	13,828
2	11,682	12,131	12,361	13,264	13,792	14,280
3	12,021	12,472	12,699	13,602	14,186	14,732
4	12,361	12,810	13,040	13,942	14,529	15,184
5	12,699	13,148	13,375	14,282	14,974	15,637
6	13,040	13,490	13,716	14,620	15,368	16,089
7	13,375	13,830	14,055	14,959	15,762	16,542
8	13,716	14,167	14,393	15,298	16,156	16,992
9	14,055	14,507	14,732	15,637	16,549	17,447
10	14,393	14,847	15,073	15,976	16,944	17,898
11	14,732	15,186	15,412	16,315	17,338	18,351 "

(4) Amend Title 14, Subsection 1322(a), Delaware Code, by striking the salary schedule contained in said subsection in its entirety and by substituting in lieu thereof the following:

"SCHOOL FOOD SERVICE MANAGERS

Number of Pupils in School Served by Cafeteria							
Yrs. of Exp.	Below 351	351-500	501-800	801-1200	1201-1600	1601-2000	2000+
0	\$ 9,919	\$10,651	\$11,383	\$12,114	\$12,849	\$13,578	\$14,313
1	10,285	11,016	11,750	12,482	13,213	13,946	14,678
2	10,651	11,383	12,114	12,849	13,578	14,313	15,045
3	11,016	11,750	12,482	13,213	13,946	14,678	15,411
4	11,383	12,114	12,849	13,578	14,313	15,045	15,779
5	11,750	12,482	13,213	13,946	14,678	15,411	16,146
6	12,114	12,849	13,578	14,313	15,045	15,779	16,511
7	12,482	13,213	13,946	14,678	15,411	16,146	16,877
8	12,849	13,578	14,313	15,045	15,779	16,511	17,244
9	13,213	13,946	14,678	15,411	16,146	16,877	17,611
10	13,578	14,313	15,045	15,779	16,511	17,244	17,975
11	13,946	14,678	15,411	16,146	16,877	17,611	18,342
12	14,313	15,045	15,779	16,511	17,244	17,975	18,709
13	14,678	15,411	16,146	16,877	17,611	18,342	19,076
14	15,045	15,779	16,511	17,244	17,975	18,709	19,444
15	15,411	16,146	16,877	17,611	18,342	19,076	19,812"

(5) Amend Title 14, Subsection 1322(c), Delaware Code, by striking the salary schedule contained in said subsection in its entirety and by substituting in lieu thereof the following:

"SCHOOL LUNCH COOKS AND GENERAL WORKERS

Years of Experience	General Worker	Cook/Baker
0	\$5.72	\$6.34
1	5.81	6.43
2	5.92	6.53
3	6.00	6.62
4	6.10	6.72
5	6.23	6.85
6	6.33	6.94
7	6.40	7.01
8	6.47	7.08
9	6.55	7.17
10	6.65	7.28
11	6.77	7.39
12	6.88	7.49
13	6.98	7.59
14	7.07	7.68
15	7.17	7.78
16	7.29	7.91
17	7.40	8.00 "

(6) Amend Title 14, Subsection 1324(b), Delaware Code, by striking the salary schedule contained in said subsection in its entirety and by substituting in lieu thereof the following:

"(b) Aides actually working and paid ten months per year shall receive annual salaries in accordance with the following schedule:

Years of Experience	Service Aides	Instructional Aides
0	\$ 7,984	\$ 9,763
1	8,249	10,089
2	8,516	10,414
3	8,782	10,740
4	9,049	11,065
5	9,314	11,391
6	9,580	11,716
7	9,847	12,042
8	10,113	13,367
9	10,379	12,693
10	10,645	13,018
11	10,911	13,344
12	11,178	13,669
13	11,443	13,995
14	11,710	14,320
15	11,976	14,646
16	12,242	14,971
17	12,508	15,297
18	12,774	15,622
19	13,041	15,947
20	13,307	16,273

The 12-year step on the schedule in this subsection is effective July 1, 1989, and one additional step shall be effective in each succeeding fiscal year. Thus, the 20-year step will be effective for the fiscal year beginning July 1, 1997."

(7) Amend Title 14, Subsection 1326(a), Delaware Code, by striking schedule contained in said subsection in its entirety and by substituting in lieu thereof the following:

Class A - \$57.46 per day  
Class B - \$46.41 per day  
Class C - \$35.34 per day

(n) Each school district shall continue to use salary schedules not less than those in Title 14, Section 1322, Delaware Code, for all school lunch employees.

(o) Effective July 1, 1990, the state shall pay 38 percent of the annual salary rate for school lunch employees as set forth in the salary schedules in Title 14, Section 1322(a) and (b), Delaware Code, and 34 percent of the salary rate for school lunch employees as set forth in the salary schedule in Title 14, Section 1322(c), Delaware Code. The remaining percentage of the hourly salary rate for school lunch employees shall be paid from local funds. The state shall pay other employment costs for school lunch employees at the ratio of state supported salaries to total salaries, provided for by this Section, for school lunch employees.

(p) No provision in this Act shall be construed as affecting the eligibility of school lunch employees as an employee under Title 29, Section 5501, Delaware Code.

(q) Section 1 of this Act provides an amount for salaries and other employment costs for Formula Employees in Public Education. Additional amounts are included in some Block Grants and Pass Through Programs (95-03-00). Local school districts must charge payroll for local share salary supplements and other employment costs and fringe benefits on a semi-monthly basis simultaneously with state-share charges. The amount of salary and other employment costs that can be charged to state appropriations for any one-day period or for any one individual cannot exceed the amount the individual is entitled to receive based on the state salary schedules provided by this Act and Title 14, Chapter 13, Delaware Code, divided by the number of pays the individual has chosen to schedule per year. The provisions of this Section do not apply to Division III - Equalization (APPR 0186) which may be charged for local contractual obligations before local current operating funds are used.

(r) Amend Title 14, Section 9219(c), Delaware Code, by striking said subsection in its entirety and substituting in lieu thereof the following:

"(c) The actual Fiscal Year 1993 salary paid to any Salary Plan A employee shall be determined as follows:

(1) Placement on the index for Fiscal Year 1993 for any Salary Plan A employee shall be based on the employee's actual degree, additional credits, and years of relevant experience as certified by the College on July 1, 1992. Advancement in any of these areas after that date will become effective for salary purposes on July 1, 1993.

(2) For Fiscal Year 1993, the minimum increase for a Plan A employee shall be 1.5 percent of the employee's Fiscal Year 1992 salary."

(s) During Fiscal Year 1993, Delaware Technical and Community College will continue a merit system comparable pay system for Plan B employees. Such system shall be subject to the following provisions:

1. For salary purposes, the 37.5 hour merit salary schedule shall become the pay plan for Plan B employees in Fiscal Year 1993, and salary adjustments shall be granted under the same conditions as listed in Section 8(d)1, (i), (ii), (iii) of this Act.

2. (a) The class specifications for positions occupied by Delaware Technical and Community College Plan B employees shall be assigned paygrades comparable to the Merit System pay plan using the same criteria authorized by the State Personnel Office for Merit System positions.

(b) Periodic classification maintenance reviews will be processed under the normal State Personnel maintenance review processes. Critical reclassifications will be processed under the same general system as the Merit System, subject to final approval of a Committee composed of the President of the College, Budget Director and Controller General.

3. The College is authorized to hire at up to 80 percent of the midpoint of an assigned paygrade upon the signature of the appropriate Vice President and Campus Director; hiring beyond 80 percent of midpoint up to 100 percent of midpoint shall require the signature of the College President; hiring beyond the 100 percent of midpoint shall require the signatures of the Budget Director and Controller General.

4. Selective market variation and any other special considerations relative to standard compensation exceptions will be handled in accordance with hiring/compensation procedures outlined in the Merit System.

5. Vacation and sick leave policies shall remain at the discretion of the College.

6. Part-time employees' salaries shall not exceed the hourly rate of the grade assigned to comparable full-time employees.

7. The College will retain its practice of compensating Plan B employees for additional degrees as earned. This compensation will be in the form of a one-time bonus not added into the employee's base rate, and not paid out of state funds.

8. The College shall retain the ability to underfill any position and to advance any employee in an underfilled position, upon determination of satisfactory performance, to the paygrade to which the position is assigned.

9. The College's flexible benefits plan shall remain at the discretion of the College.

(t)(1) The salary plan for administration shall cover full-time employees of Delaware Technical and Community College not covered by Salary Plan A or Salary Plan B. The compensation of an employee on the Administrative Salary Plan (Plan D) shall be computed as follows:

(a) The base salary shall be determined by placement on the same index and in the same manner as Salary Plan A as outlined in Title 14, Section 9219, Delaware Code;

(b) In addition to the salary received under Title 14, Section 9219, an employee will receive an annual amount for administrative responsibility. That amount will be computed by multiplying the amount provided under Title

14, Section 9219, Delaware Code, by the index volume specified in the schedule below that corresponds with the appropriate classification level and experience level.

# ADMINISTRATIVE RESPONSIBILITY INDEX SCHEDULE

	Years in Level	Index
Level 1	0	4%
	1	5%
	2	6%
	3	7%
	4	8%
Level 2	0	9%
	1	10%
	2	11%
	3	12%
Level 3	0	26%
	1	28%
Level 4		37%
Level 5		55%

(c) For Fiscal Year 1993, the minimum increase for a Plan D employee shall be 1.5 percent of the employee's Fiscal Year 1992 salary.

(2) The following provisions shall apply during Fiscal Year 1993:

(a) Placement on the Plan A index for the Fiscal Year 1993 shall be based on actual degrees, additional credits and relevant work experience.

(b) Placement on the Administrative Responsibility Index Schedule shall be determined by the employees actual years of experience in the assigned level while in the Administrative Pay Plan at Delaware Technical and Community College.

(c) The new salary for any employee shall not be effective until the presentation by the employee of proof of credentials to support claimed degrees, additional credits, and relevant work experience.

(d) Any changes in the allocation of jobs to grade level will be approved by the Board of Trustees and filed with the Budget Director and the Controller General.

(e) The Board of Trustees may provide additional compensation and benefits with non-state funds to employees in the Administrative Salary Plan.

**Section 9.** (a) Except as specifically authorized to the contrary by the Delaware Code, no state employee whose title is designated in this Act shall receive total compensation whether in wages, salary, wages-in-kind or food allotment bonus or overtime from agencies of this state in excess of the total amount specified in such line item regardless of the source of funds involved. No full-time, part-time or casual and seasonal employee of the State of Delaware shall receive any additional stipend for the purchase of food or be supplied with food or be reimbursed for food that was consumed during normal working hours within the state; except as provided in Title 29, Chapter 51, Section 5112 (b)(3), Delaware Code; or unless approval has been granted by the Budget Director and the Controller General; provided, however that this Section shall not apply to employees of state agencies who regularly receive wages-in-kind in addition to their salary nor to State Police recruits during the period of their training. In the event that an employee shall receive excessive compensation, the amount of the appropriation from the General Fund shall be reduced by the amount of such excessive compensation and the Attorney General shall take such steps as are necessary to recover from such employee any such excessive amount as has actually been paid. In the event the "All Other" part of the salary is made up entirely of federal funds, and such federal funds are terminated or reduced, the state appropriation is hereby increased to provide the "Total Salary" indicated. An agency may provide housing for such employee without reduction in the salary provided such housing is on the site of the principal location of employment and further provided that the head of the department or agency has determined that such location of the employee is necessary to the operation

of the agency and that the employee has no other employment. No agency shall provide an employee with a housing allowance or compensation for housing.

(b) A state employee whose salary is designated in this Act may perform additional duties for a State agency other than his/her principal employing agency, with the consent of his/her principal employing agency, and may be paid additional compensation therefore, provided such additional duties are not a part of his/her regular duties for the principal employing agency and not rendered during time paid for by the principal employing agency. All wage payments resulting from the performance of such additional duties, including FLSA overtime, shall be the responsibility of the secondary employing agency unless otherwise authorized by the Budget Director and State Personnel Director.

Section 10. (a) For the fiscal year ending June 30, 1993, the salaries displayed below represent the salary effective on July 1, 1992.

<u>Budget Unit</u>	<u>Line Item</u>	<u>July 1, 1992</u>	
		<u>General Funds</u>	<u>All Other Funds</u>
(02-01-00)	Chief Justice - Supreme Court	\$ 102.6	\$
(02-01-00)	Justice - Supreme Court	99.0	
(02-02-00)	Chancellor - Court of Chancery	97.8	
(02-02-00)	Vice Chancellor - Court of Chancery	94.1	
(02-03-00)	President Judge - Superior Court	97.8	
(02-03-00)	Associate Judge - Superior Court	94.1	
(02-03-00)	New Castle County Prothonotary	36.5	
(02-03-00)	Kent County Prothonotary	13.1	
(02-03-00)	Sussex County Prothonotary	9.9	
(02-06-00)	Chief Judge - Court of Common Pleas	96.6	
(02-06-00)	Judge - Court of Common Pleas	91.7	
(02-08-00)	Chief Judge - Family Court	96.6	
(02-08-00)	Associate Judge - Family Court	91.7	
(02-13-00)	Chief Magistrate - Justice of the Peace Courts	67.5	
(02-13-00)	Magistrate - Justice of the Peace Courts	38.3	
(02-17-00)	Director - Administrative Office of the Courts	69.5	
(02-18-00)	Public Guardian	41.3	
(02-18-00)	Executive Secretary - Violent Crimes Compensation Board		37.3
(02-18-00)	Executive Director - Foster Care Review Board	37.9	
(10-01-01)	Governor	80.0	
(10-02-00)	Budget Director	79.1	
(10-02-00)	Executive Director - Higher Education Commission	53.5	
(10-02-00)	Executive Director - Information Systems	80.1	
(10-03-01)	Director - Delaware Development Office	79.1	

(10-03-04)	Director - State Housing Authority		66.6
(10-04-00)	Personnel Director	73.7	
(10-07-01)	Executive Director - CJC	58.5	
(10-07-02)	Executive Director - DELJIS	49.1	
(10-07-03)	Executive Director - SAC	60.4	
(12-01-01)	Lieutenant Governor	36.5	\$
(12-02-01)	Auditor	62.8	
(12-03-01)	Insurance Commissioner	62.8	
(12-05-01)	State Treasurer	68.2	
(15-01-01)	Attorney General	84.7	
(15-02-01)	Public Defender	68.2	
(15-03-01)	Parole Board Chairman	51.5	
(20-01-00)	Secretary - State	73.7	
(20-02-00)	Director - Human Relations	45.8	
(20-05-00)	Director - Corporations	30.5	30.5
(20-06-00)	Director - Historical and Cultural Affairs	57.6	
(20-07-00)	Director - Arts	43.1	
(20-08-00)	State Librarian	46.4	
(20-15-00)	State Banking Commissioner		73.1
(25-01-00)	Secretary - Finance	84.7	
(25-05-00)	Director - Accounting	65.5	
(25-06-00)	Director - Revenue	75.5	
(25-07-00)	Director - State Lottery		62.4
(30-01-00)	Secretary - Administrative Services	68.2	
(30-01-00)	Executive Director - Public Employment Relations Board	46.9	
(30-03-00)	Executive Secretary - Alcoholic Beverage Control Commission	50.9	
(30-03-00)	Director - Professional Regulation		51.3
(30-03-00)	Director - Public Service Commission		49.6
(30-03-00)	Director - Consumer Affairs	46.0	
(30-03-00)	Public Advocate	49.5	
(30-04-00)	Director - Support Operations		49.7
(30-05-00)	Director - Facilities Management	58.6	

(30-05-00)	Executive Secretary - Architectural Accessibility Board	27.1	
(30-06-00)	Director - Purchasing	52.0	
(35-01-00)	Secretary - Health and Social Services	84.7	
(35-01-00)	Director - Management Services	56.2	6.1
(35-04-00)	Chief Medical Examiner	105.9	
(35-05-00)	Director - Public Health	104.4	
(35-06-00)	Director - Alcoholism, Drug Abuse and Mental Health	89.5	
(35-07-00)	Director - Social Services	37.1	34.3
(35-10-00)	Director - Child Support Enforcement	19.3	35.2
(35-11-00)	Director - Mental Retardation	71.4	
(35-12-00)	Director - State Service Centers	52.7	
(35-12-00)	Director - Community Services	46.2	
(35-14-00)	Director - Aging	52.0	
(37-01-00)	Secretary - Services for Children, Youth, and Their Families	73.7	
(37-01-00)	Director - Administration	60.2	
(37-02-00)	Director - Child Protective Services	67.4	
(37-03-00)	Director - Child Mental Health Services	82.7	
(37-05-00)	Director - Youth Rehabilitation Services	67.4	
(37-08-00)	Director - Program Support	59.0	
(38-01-00)	Commissioner - Correction	79.1	
(38-04-00)	Bureau Chief - Prisons	71.4	
(38-06-00)	Bureau Chief - Community Custody and Supervision	57.3	
(40-01-00)	Secretary - Natural Resources and Environmental Control	73.7	
(40-05-00)	Director - Fish and Wildlife	26.2	26.3
(40-06-00)	Director - Parks and Recreation	62.2	
(40-07-00)	Director - Soil and Water Conservation	55.0	
(40-08-00)	Director - Water Resources	66.3	
(40-09-00)	Director - Air and Waste Management	71.7	
(45-01-00)	Secretary - Public Safety	73.7	\$
(45-01-00)	Director - Emergency Planning and Operations	23.8	23.9

(45-01-00)	Director - Boiler Safety	39.3	
(45-06-00)	Superintendent - State Police	72.7	
(45-06-00)	Assistant Superintendent - State Police	60.2	
(45-07-00)	Director - Motor Vehicles	61.1	
(55-01-01)	Secretary - Transportation		79.1
(55-02-01)	Director - Administration		56.9
(55-03-01)	Director - Transportation Planning		64.9
(55-04-01)	Director - Highway Operations		72.2
(55-06-01)	Director - Delaware Transportation Authority		70.0
(55-07-10)	Director - Pre-construction		72.2
(55-08-01)	Director - Toll Administration		64.5
(60-01-00)	Secretary - Labor	7.9	60.3
(60-06-00)	Director - Unemployment Insurance		59.1
(60-07-00)	Director - Industrial Affairs	49.6	
(60-08-00)	Director - Vocational Rehabilitation		59.1
(60-09-00)	Director - Employment and Training	3.8	55.3
(65-01-00)	Secretary - Agriculture	62.8	
(65-01-00)	Deputy Secretary - Agriculture	52.8	
(70-01-01)	Commissioner - Elections	42.4	
(70-02-01)	Administrative Director - New Castle County Elections	39.3	
(70-02-01)	Deputy Administrative Director - New Castle County Elections	38.4	
(70-03-01)	Administrative Director - Kent County Elections	39.3	
(70-03-01)	Deputy Administrative Director - Kent County Elections	38.4	
(70-04-01)	Administrative Director - Sussex County Elections	39.3	
(70-04-01)	Deputy Administrative Director - Sussex County Elections	38.4	
(75-01-01)	State Fire Marshal	33.7	\$ 16.7
(75-02-01)	Director - State Fire School	33.7	16.7
(76-01-01)	Adjutant General	62.8	
(95-01-00)	Superintendent - State Board of Education	99.9	



(95-06-00)

Executive Secretary - Advisory  
Council on Career and  
Vocational Education

30.4

30.5

(b)(1) Salaries of designated positions in Section 10(a) of this Act shall have no further increase applied by any other section of this Act except as provided in Section 10(b)(11), Section 10(b)(111), Section 10(b)(iv), Section 10(d) or Section 10(f).

(11) The salaries contained in Section 10(a) of this Act for the Kent County Prothonotary and the Sussex County Prothonotary shall remain in effect until such time as the current term expires or the position becomes vacant. Upon expiration of the current term or when a vacancy occurs, the State Personnel Director, the Budget Director and the Controller General shall determine an evaluated pay range for the position based on a Position Classification Questionnaire (PCQ) approved by the President Judge of the Superior Court. If the elected incumbent is appointed, the salary in effect shall remain at the current level or be brought to the minimum of the evaluated pay range, whichever is greater. If the appointee is other than the elected incumbent, compensation shall be set according to Sections 10(b)(111) and (iv) of this Act.

(111) If a position in Section 10(a) becomes vacant during the fiscal year and the scheduled salary associated with a vacant position is below the position's evaluated midpoint and the appointing authority determines that a suitable replacement cannot be recruited and hired for the compensation provided under this Section, the appointing authority may submit a request to the State Personnel Director to increase the salary up to the evaluated midpoint. If the scheduled salary associated with a vacant position is above the position's evaluated midpoint, the appointing authority shall justify to the State Personnel Director why the salary of a proposed replacement should be kept above the evaluated midpoint. If adequate justification cannot be provided, the starting salary shall be decreased as appropriate and may be set lower than the evaluated midpoint depending upon the qualifications of the proposed incumbent. In reviewing requests made pursuant to this paragraph, the State Personnel Director shall provide an analysis of the request and shall solicit the advice and written consent of the Budget Director and the Controller General.

(iv) Regardless of the provisions of this Act, any state employee who is offered a promotional opportunity to become a Division Level Manager and who at the time such offer is made, is being paid a salary that equals or exceeds the salary for the Division Level Manager position as established by this Section of this Act, shall be eligible for a five percent promotional salary increase. This eligibility shall be conditioned on a determination that the duties and responsibilities of the Division Level Manager position are at least one paygrade higher than the position proposed to be vacated based on a comparison of equivalent value. For the purpose of this paragraph, the equivalent value of one paygrade is defined as a seven percent difference in the constant fiscal year dollar value of the evaluated pay range midpoint of the Division Level Manager position compared to the position that the employee is vacating. If an employee is offered an appointment to a Division Level Manager position that has an equivalent value equal to or less than the paygrade assigned to the position the employee is vacating, the employee may retain his/her current salary, provided that it does not exceed the evaluated pay range midpoint, or the current salary of the Division Level Manager position, whichever is greater.

(c) Effective May 1, 1993, the Office of State Personnel shall submit to the Joint Finance Committee a listing of employees designated in Section 10(a). The listing shall indicate for each position the number of points applicable for Fiscal Year 1993 and the number of points of any recommended changes for any position for Fiscal Year 1994.

(d) Effective January 19, 1993, the annual salary for the Governor shall be increased to \$95.0 pursuant to the Delaware Compensation Commission Final Report dated January 1, 1989. The report has the force and effect of law since it was not rejected in full by the General Assembly prior to February 1, 1989.

(e) Amend Title 29, Chapter 33, Section 3304, Delaware Code by deleting the date "February 1, 1989" and substituting in lieu thereof the phrase "the 1st day of February following submission."

(f) The salaries contained in Section 10(a) of this Act may be increased according to the recommendations of the Delaware Compensation Commission Report as contained in Title 29, Chapter 33, Delaware Code, as amended in this Act.

(g) For the fiscal year ending June 30, 1993, the following represent the maximum salaries appropriated within Section 1 of this Act. These maximum salaries may be increased upon approval of the Budget Director and the Controller General to accommodate changes in statutory requirements.

<u>Budget Unit</u>	<u>Line Item</u>	<u>General Funds</u>	<u>All Other Funds</u>
(10-02-00)	Higher Education Commissioners	\$ 2.4	\$
(10-04-00)	Personnel Commissioners	7.5	
(10-04-00)	Board Members - Pensions		9.6
(15-03-01)	Board Members - Parole	15.0	
(20-02-00)	Board Members - Human Relations	2.5	
(25-06-00)	Board Members - Revenue	33.0	
(30-01-00)	Board Members - Public Employment Relations Board	7.4	
(30-03-00)	Board Members - Alcoholic Beverage Control Commission	8.6	
(30-03-00)	Board Members - Professional Regulations		71.2
(30-03-00)	Board Members - Public Service Commission		80.0
(30-03-00)	Board Members - Consumer Affairs	3.5	
(30-05-00)	Board Members - Architectural Accessibility Board	2.3	
(38-04-00)	Board Members - Institutional Classification	12.0	
(60-07-00)	Board Members - Industrial Accident Board	84.0	
(70-02-01)	Board Members - New Castle County Elections	10.5	
(70-03-01)	Board Members - Kent County Elections	6.5	
(70-04-01)	Board Members - Sussex County Elections	6.5	
(95-01-00)	Board Members - State Board of Education	8.4	

Section 11. Salaries and wage rates for state employees who are not covered by the provisions of Title 14, Chapter 13, Delaware Code, or by the Merit System, excluding employees of the General Assembly - House or the General Assembly - Senate, Uniformed State Police, employees of the University of Delaware, employees of Delaware State College, employees of Delaware Technical and Community College who are paid on the Administrative Salary Plan or Salary Plan A, members and employees of the Delaware National Guard and employees whose salaries are governed by Section 10 of this Act, shall have the following:

(a)(i) The salary of employees shall be comparable to salaries and wage rates paid from funds appropriated by the state to employees with similar training and experience who serve in similar positions in the Merit System. In the event that there are no similar positions in the Merit System, the State Personnel Director shall establish an exempt position classification only for the purpose of assigning a salary or wage rate to said position. On or before August 15, 1992, the State Personnel Director shall publish a list of exempt positions and the comparable Merit System class and/or paygrade for each position. In addition, such listing shall show the name of the incumbent, if the position is filled, and shall show the statutory citation which authorizes the establishment of the exempt position(s). The State Personnel Director shall provide copies of such listing to members of the Joint Finance Committee and the Controller General. No exempt employee shall be hired until said list is published. No reclassification of exempt employee, otherwise permitted under Delaware law, shall become effective unless and until a new position is placed on the comparability list. In order to permit the development of the comparability list, state agencies shall provide to the State Personnel Director job descriptions of all exempt positions and position classification questionnaires describing the duties and responsibilities of each of the positions. The certification of comparability by the State Personnel Director shall not be withheld unreasonably. Those

positions assigned on a list of comparability that are assigned a comparable class and/or paygrade in the Merit System shall be paid in accordance with Sections 8(c) and (d) of this Act and Merit System Rules 13.0110 and 5.0900 through 5.0931; no other salary increases shall be given to such employees unless specifically authorized in this Act.

(11) Positions authorized by this Act in accordance with Title 29, Section 5903(5) shall retain the paygrade comparability authorized by Volume 68, Chapter 84, Laws of Delaware, formerly House Bill No. 350, Section 11. Any changes in paygrade comparability must be approved by the Personnel Director, Budget Director and Controller General.

(b) The salary of employees whose salary in effect as of June 30, 1992, is below the minimum salary of the assigned paygrade of the pay plan shall be raised to the minimum salary. This adjustment shall be made after the implementation of the general increase contained in Section 8(d)(1).

(c) Notwithstanding any other provision of the Delaware Law or this Act to the contrary, civilian employees of the Delaware National Guard shall be compensated at a salary and wage rate established by the Federal Civil Service Commission.

(d) Merit rules 5.0900 through 5.0931 and the applicable appeal rights provided in Title 29, Section 5915, Delaware Code, shall apply retroactively to any employee who was an incumbent in a merit comparable position that was reviewed for class/paygrade comparability with an effective date of July 1, 1990 or July 1, 1991.

Section 12. The payment of hazardous duty pay to selected casual/seasonal employees by the Department of Correction and the Department of Services for Children, Youth and Their Families has been provided in accordance with all applicable statutes.

Section 13. Any employee eligible for termination pay, whose regular pay was from special funds, shall have termination pay paid from special funds. If the employee's regular pay is from both General Funds and special funds, termination pay shall be on a pro rata basis. The intent of this Section is that if any school district charges their local share to Division III - Equalization Funds, that for termination pay purposes only, these funds are considered special funds. Exceptions to this method of payment must have the approval of the Budget Director and Controller General. All agencies shall absorb termination pay within the appropriations set forth in Section 1 of this Act.

Section 14. All agencies or schools receiving federal funds must transfer to the Budget Office three-tenths or five-tenths of one percent, respectively, of the federal funds received to a special fund account known as the "Federal Audit Set-Aside Account". Agreement has been signed with the federal government approving this methodology of paying for the single audit concept.

Section 15. All departments with Internal Programs identified in Section 1 of this Act are hereby authorized to transfer appropriations among Travel, Contractual Services, Supplies and Materials, and Capital Outlay lines within an internal program and amend ASF estimated appropriations/receipts. These transfers shall not require the approval of the Budget Director and Controller General. Copies of these transfers shall be sent to the Controller General after entry into the state's accounting system.

Section 16. All State agencies and departments which own land shall inform the Budget Director, the Controller General, and the General Assembly, quarterly, as to any and all developments relating to the possible new use, lease or sale, of any portion of said land. This section shall not apply to lands owned by the Department of Transportation that are intended for highway use.

Section 17. Those agencies which receive energy funding in Section 1 of this act or are housed in state owned or rented facilities must comply with the following heating and air conditioning guidelines during Fiscal Year 1993.

(1) Operate heating systems with temperatures not to exceed 67 degrees during normal working hours. Temperatures shall also not exceed 55 degrees in those facilities during unoccupied times including the non-business hours of 5:00 p.m. to 7:30 a.m. workdays, weekends and holidays. Whenever possible, doors to unused rooms should be closed and heat controls for those areas set to the minimum temperature of 55 degrees.

(2) Operate air conditioning no more than is necessary to maintain a temperature of 78 degrees between the hours of 8 a.m. and 5 p.m. during normal working days. During non-working hours, weekends and holidays the air conditioning temperature should be no less than is required to maintain the integrity and operation of the system.

(3) Schools, health care and correctional facilities are exempt from these restrictions if such temperatures threaten life, health or safety; however, some adjustment toward these settings should be applied. Further, when heating and cooling systems permit, administrative areas of such facilities should be operated at the temperatures stated in this section. Additionally, any room or area that houses computer mainframe equipment or other equipment that requires precise climate controlled conditions in order to operate efficiently shall also be exempt.

These actions are necessary in order to allow the state to reduce its annual energy consumption and to ensure that each agency can cover its energy needs within the appropriation contained in Section 1 of this Act.

Section 18. Section 1 of this Act provides funding for a state employee pension rate of 10.60 percent. The components of the rate are approximately 6.25 percent for the pension liability and 4.35 percent for the retiree health insurance liability. The 1991 Early Retirement Option (ERO) accounts for approximately .81 percent of the pension liability and 1.09 percent of the retiree health insurance liability.

Section 19. No agency shall engage a consultant or authorize expenditure of any General or special funds for the purpose of studying personnel policies and/or the wage and salary classification of employees without the written authorization of the Personnel Director, Budget Director and the concurrence of the Controller General.

Section 20. Any internal program unit/budget unit having energy funding (electricity, natural or propane gas and heating oils) for the purpose of reimbursing a host internal program unit/budget unit must release the remaining sums to the host internal program unit/budget unit in the event that the tenant internal program unit/budget unit vacates the premises. It is the responsibility of the host internal program unit/budget unit to initiate the transfer request.

Section 21. All state agencies are directed to remit payment for services rendered by the Division of Support Operations (Mail/Courier Services, Telephone Services, Graphics and Printing and Fleet Management) within 30 days after receipt of invoice. Services may include postal metering, paper supplies, facsimile, printing, telephone, photocopiers, printing and vehicle rental, Carvel Building Parking, etc.

Section 22. All graphics and printing services for state agencies shall be obtained from the Division of Support Operations or, if appropriate, the Director of the Division of Support Operations may award a contract in accordance with Title 29, Chapter 69, Delaware Code.

Section 23. If a timely payment problem exists, the Department of Administrative Services may require all agencies and school districts paying telephone system payments through the Division of Support Operations (30-04-00) to make monthly estimated payments toward their telephone bills. The estimated payment is due within five working days of the beginning of each month. The estimated payment should equal the average of the last three months of actual reconciled payments; or payments based on a schedule established by the Division of Support Operations. The Division of Support Operations will continue to be responsible for the actual payments to the telephone companies and the reconciliation of accounts with the user agencies and school districts.

Section 24. With the exception of the custodial work associated with Legislative Hall and the Governor's Office, the Department of Administrative Services (30-00-00) may not hire any permanent, full-time custodial employees in any fiscal year without the approval of the Budget Director and the Controller General.

Section 25. It is hereby directed that the Indirect Cost Recovery Program, Office of the Budget, may recover indirect costs from non-federal special funded regulatory and service agencies. Costs that are allocated to a state agency under this authority shall be billed to the state agency and the cost is payable to the General Fund of the state. The source of payment for the billed indirect cost shall be any revenue source except the General Fund. If the billed agency is authorized to bill and recover direct expenses, the agency shall recover indirect costs in the same manner. An initial effort in the fiscal year beginning July 1, 1992, shall be limited to: State Banking Commission, Professional Regulation, Public Service Commission and Emergency Planning and Operations.

Section 26. Notwithstanding the provisions of Title 29, Section 6340(a), Delaware Code, Section 1 of this Act summarizes salary and wage and other employment costs related to those salaries and wages for agencies which remain part of the Zero Based Budget process into a single line entitled Personnel Costs.

Section 27. Amend Section 6515(a), Title 29, Delaware Code by inserting between the words "agency," and "except" the following: "unless specifically exempted by the accounting manual,".

Section 28. Amend Title 29, Section 6519, Chapter 65 of the Delaware Code by adding a new subsection to read as follows:

"(d) Notwithstanding any other provisions of law, the state, in order to comply with the Federal Cash Management Improvement Act of 1990 (Public Law 101-453, dated October 24, 1990), may advance funds from the Treasury to state agencies participating in federal assistance programs, where participation in such programs has been authorized in accordance with Chapter 76 of this title. Any advances and reimbursements made pursuant to this subsection shall be in compliance with rules and regulations of the Budget Director."

Section 29. Amend Title 29, Section 5301(h), Delaware Code by deleting the sentence "This report shall continue to be submitted on or before every December 1 through Calendar Year 1994." as it appears in the first paragraph.

Section 30. For the fiscal year ending June 30, 1993, any sums in the following accounts shall remain as continuing appropriations and shall not be subject to a reversion until June 30, 1993.

<u>Fiscal Year</u> <u>Appropriation</u>	<u>Account</u> <u>Codes</u>	<u>Remarks</u>
1991	(01-08-02-01-80)	Task Force on Juvenile Detention
1992	(01-08-02-01-81)	Contingency - Legislative Council
1991	(02-02-20-01-98)	Historical Records Reproduction - Kent County
1992	(02-08-10-01-80)	Civil Case Management
1992	(10-02-01-01-82)	Computer One-times
1990/91/92	(10-02-01-01-85)	Development Fund
1991/92	(10-02-01-01-91)	Budget Automation
1992	(10-02-04-01-80)	Hedging Contingency
1992	(10-02-04-01-85)	Legal Obligations
1992	(10-02-04-01-93)	Other Items
1990	(10-02-09-01-98)	Equipage-Expansion of Facilities
1990	(10-02-11-01-98)	Equipage-Expansion of Facilities
1990/91/92	(10-02-15-01-99)	Development Special Projects
1991/92	(25-01-01-01-80)	Notebook
1989	(25-01-01-01-81)	Input/Output
1991/92	(25-01-01-01-85)	Systems Development
1990	(30-05-10-01-81)	Real Estate
1992	(35-01-50-01-80)	Pilot Projects
1992	(35-01-50-01-81)	Health Care Commission/Education
1992	(35-07-01-01-89)	Medicaid
1991	(38-01-40-01-80)	Energy Saving Projects
1991	(38-01-40-01-99)	Maintenance/Restoration
1992	(38-01-40-01-99)	Maintenance/Restoration
1992	(40-09-02-180)	SARA III
1986	(45-01-01-03-81)	Hazardous Waste Revolving Fund
1991	(65-01-02-01-81)	Aglands Foundation.
1992	(70-01-01-01-98)	One Time
1990	(76-01-01-0-98)	Dover Armory Upgrade
1992	(95-01-02-01-80)	Operating Costs - Direct
1992	(95-03-10-01-82)	Educational Assessment
1992	(95-03-10-01-91)	Professional Development
1992	(95-03-20-01-53)	Program for Children with Disabilities
1991	(95-15-00-01-88)	Principal of the Year
1992	(95-32-00-01-88)	Principal of the Year
1990	(95-34-00-01-88)	Principal of the Year

## LEGISLATIVE

Section 31. Of the total positions authorized in Section 1 of this Act for the Division of Research (01-08-01), the position of Research Assistant to the House and Senate Sunset Standing Committees shall be an exempt position and shall report to the Director.

Section 32. Section 1 of this Act provides an appropriation to the Office of the Controller General (01-08-02) for Salaries - Casual and Seasonal for Standing Legislative Committees. Requests from Chairmen of Standing Legislative Committees for professional staff assistance shall be submitted to the Legislative Council for approval or disapproval. Approvals for professional staff assistance shall be allowed within the limits of the appropriation and as provided by guidelines established by the Legislative Council.

Section 33. Section 1 of this Act provides an appropriation to the Office of the Controller General (01-08-02) for Contingency - Legislative Council. Requests from various task forces and committees of either the House of Representatives or the Senate for travel expenses, meeting expenses, contractual services and any other expenses shall be submitted to the Legislative Council for consideration.

Section 34. The Hay points and the salary schedule for the Controller General shall be calculated in a manner comparable to division directors.

## JUDICIAL

Section 35. Section 1 of this Act authorizes one (1) new position and appropriates \$24.0 to the Superior Court (02-03-10). This position is to be a Case Scheduling Clerk for the Georgetown Court.

Section 36. Section 1 of this Act authorizes one (1) new position and appropriates \$22.6 to the Sussex County Prothonotary (02-03-70). This position shall be a Secretary for the Georgetown Office.

Section 37. Any fees, assessments, costs or other financial obligations imposed by the Family Court for the issuance and service of subpoenas or summons by way of court rules, regulations or administrative procedure may not be charged to the Department of Services for Children, Youth and Their Families. Any such costs associated with these procedures shall be the financial responsibility of Family Court.

Section 38. Section 1 of this Act contains an appropriation to the Justice of the Peace Courts (02-13-10) for supplies and materials. Of this appropriation, \$120.0 shall be used for expenses incident to implementation of victims notification standards.

Section 39. Section 1 of this Act contains position authorizations and associated appropriations to the Justices of the Peace Courts (02-13-10) included exclusively for the purpose of extending business hours in the following courts as specified:

J.P. Court #2 (Lewes)	10 eight-hour shifts per week
J.P. Court #4 (Seaford)	10 eight-hour shifts per week
J.P. Court #10 (Prices Corner)	12 eight-hour shifts per week
J.P. Court #15 (Penny Hill)	10 eight-hour shifts per week

Section 40. For the period July 1, 1992, through June 30, 1993, the State Escheator shall deposit escheated monies from the Judicial Department in an amount not to exceed \$50.0 into the special fund revolving account in the Administrative Office of the Courts (02-17-01). The \$50.0 is to supplement existing funds in the special fund revolving account, which are to be used for the specific purpose of addressing the reconciliation expenses incurred during the initiation of a centralized accounting system for all state courts.

The Administrative Office of the Courts shall submit an updated workplan for the reconciliation project to the Secretary of Finance, the Controller General and the Budget Director on or before July 31, 1992.

## EXECUTIVE

Section 41. (a) The appropriation in Section 1 of this Act for Data Processing - Development Projects to the Office of the Budget (10-02-01), contemplates information technology planning, development and procurement services for the following state department/agencies development projects and feasibility studies:

<u>DEPARTMENT/AGENCY</u>	<u>SERVICE NEED</u>
Executive Office of the Budget Office of State Personnel	statewide Maintenance/Enhancements statewide Human Resource Management System
State	Corporations System Enhancements
Finance	Information System Enhancements
Administrative Services	Information System Enhancements
Health and Social Services	Information System Enhancements
Services for Children, Youth and Their Families	CYCIS System Enhancements
Public Safety	Motor Vehicle System Enhancements

Allocation of the funds appropriated for this purpose shall be made by the Budget Director in consultation with the affected department/agency head. Service need allocations shall not be transferred to another department or service need unless approved by the Budget Director. In the event there are federal funds available for match in support of a project or projects, the Budget Director and the Controller General may transfer such funds as are necessary for matching purposes to the department/agency involved.

(b) No computer or computer-programming related systems project identified in Subsection (a) of this Section may be initiated by the departments/agencies during Fiscal Year 1993 unless covered by a formalized plan approved by the department/agency head and the Budget Director. After the Budget Director approves a formalized project, he/she shall forward a copy to the Controller General. Such project will be in the form approved by the Budget Director, or his/her designee, and shall include:

- (i) statement of work to be done;
- (ii) existing work to be modified or displaced;
- (iii) total cost of systems development and conversion effort, including systems analysis and programming cost, establishment of master files, testing, documentation, special equipment costs, including full overhead, savings or additions in positions and operating costs that will result after development or conversion;
- (iv) other advantages or reasons that justify the work;
- (v) source of funding for the work and whether or not work is within scope of work envisioned under this Section; and
- (vi) estimated costs of such project shall include a three-year projection, i.e., current fiscal year and two succeeding fiscal years.

(c) No project is to be undertaken which is beyond the scope of work approved by the department/agency head and the Budget Director. This requirement applies to all computer or computer-programming related systems development performed by the Office of Information Systems in the Office of the Budget, department/agency itself or an outside consultant or contractor. Further, this requirement applies to new computer programs or systems purchased or otherwise acquired and placed in use.

(d) Status reports, sufficiently descriptive in nature of each project, shall be prepared by each department/agency and provided quarterly to the Budget Director and the Controller General.

(e) In support of all projects executed between Information Systems in the Office of the Budget and the concerned department/agency, Information Systems shall maintain staff

support to the benefit of department/agency at the projected level of effort (subject to recruitment delays) until the project work has been accomplished.

(f) No funds appropriated in Section 1 of this Act may be used to employ data or word processing professionals in support of current or proposed data or word processing systems without prior written approval of the Budget Director.

Section 42. The amount appropriated to the Office of the Budget - Contingency - Prior Years' Obligations, shall be used to pay Personnel Costs, reimbursement of overpayment of fringe benefits, and other obligations which require adjustment of the state's accounts. Any use of the Prior Years' Obligations account by any agency receiving funds in Section 1 of this Act, in excess of the amount reverted from the applicable line code on June 30 of the fiscal year in which the expense was incurred, will require the requesting agency or school district to reimburse the Prior Years' Obligations account by the amount equal to the excess requested. A line code reversion sum does not negate the necessity of encumbering sufficient funds to cover known expenses: proof of circumstances beyond an agency's ability to encumber must be documented on the request for transfer to be excluded from the reimbursement clause. All requests for prior year funds to complete the payment of one-time items will require a reimbursement to the Prior Years' Obligations account by the requesting agency. The reimbursement can be removed from the current fiscal year's budget. The reimbursement clause shall not apply to legal judgments against the agency or school district. A reimbursement under this Section shall not be deemed to be prohibited by Title 10, Section 8111, Delaware Code.

Section 43. During Fiscal Year 1993, Title 29, Subsection 6903(d) is waived for the purpose of contracting for heating oil and gasoline price caps only. The Division of Purchasing will be required to advertise for companies interested in bidding on the capping of heating oil and or gasoline during a specified bidding period not to exceed 60 days. The Division of Purchasing will qualify and register interested companies prior to the 60 day bidding period. The qualified and registered companies shall receive 24 hour notice by telephone, facsimile, or in writing of the state's intent to request bids to cap an indicated heating oil and or gasoline product. If events or market conditions become undesirable the Division of Purchasing and/or the Office of the Budget reserves the right to cancel the bid solicitation and or reject all bids. The Division of Purchasing and the Office of the Budget may then re-bid anytime during the 60 day period of time as specified above. Nothing in this Section waives other requirements under Title 29, Chapter 69 of the Delaware Code.

Section 44. (a) The sum of \$299.9 has been withdrawn from the various heating oil using agencies, excluding the University of Delaware, in Section 1 of this Act for the purpose of entering into a contract or contracts to cap the price which the state will have to pay for numbers 2, 4, and 6 heating oils during the heating season of 1992/1993. The Division of Purchasing (30-06-00) and the Office of the Budget, Administration (10-02-01) will be responsible for negotiating the contract/s necessary to cap the state's heating oil prices at the most favorable advantage possible within the budgeted sum appropriated to the Budget Office for this purpose. In the event the Energy Contingency and the hedging contract receipt funds are of a sufficient amount after meeting the agencies and the School Districts needs per the epilogue of this legislation, the Division of Purchasing (30-06-00) and the Budget Office (10-02-01) may enter into Fiscal Year 1994 heating oil hedging contract/s during the final four months of Fiscal Year 1993.

(b) The Office of the Budget will be responsible for the collection of any funds that are due the state via the capping contract/s. The funds generated by the capping contract/s will be administered from a fund established in the Office of the Budget, to contract covered agencies which use heating oils and have a demonstrated need for additional energy funds during Fiscal Year 1993. Any funds remaining at the end of the fiscal year will revert to the General Fund with the exception of contract or received funds for the portion of the contract related to the Department of Transportation. Any surplus contract funds or funds received for the Department of Transportation portion of the contract shall be returned to the Department of Transportation in a timely manner.

(c) In the event that funds are collected by the state from the heating oil hedging contract/s, the portion due the Public School Districts shall be distributed using the State Board approved Division II unit count for each district. The distributed amount shall be in addition to the energy appropriations for each district authorized in Section 1 of this Act.

Section 45. The continuing analysis of the statewide energy data has led to adjustments to all heating oil prices and almost all gas and electricity prices. The adjustments have been developed by agencies, the University of Delaware and the school districts. The Office of the Budget shall make, at the discretion of the Budget Director, the necessary



adjustment to accommodate the new energy values while loading the Fiscal Year 1993 Budget into the state accounting system.

Section 46. For Fiscal Year 1993, Title 29, Chapter 65, Section 6529, Delaware Code is interpreted to include the ability to implement a hiring review process. All state agencies with the exception of Legislative, Judicial, Higher Education and School Districts shall be subject to the provisions of Section 6529 as interpreted by this section. Implementation of a hiring review process shall require all positions to be reviewed and approved by the Budget Director and the State Personnel Director prior to filling. All non-cabinet agency hiring requests shall also require the review and approval of the Controller General prior to filling.

Section 47. The appropriation in Section 1 of this Act to the Office of the Budget - Contingency (10-02-04) for Contingency - Appropriated Special Funds for \$20,000.0 shall be used to make adjustments in the amount of state special fund appropriations in the event additional state special funds are received which were not previously anticipated. Such adjustments shall be made in accordance with the approval of the Budget Director and the Controller General.

Section 48. Section 1 of this Act provides an appropriation to Office of the Budget - Contingency and One-Time Items (10-02-04) for the Fiscal Year ending June 30, 1993. It is the intent that the appropriation for One-Time Appropriations in the amount of \$5,569.9 shall be non-recurring expenditure items. The Budget Director shall transfer the appropriations as itemized to the departments. Each receiving department shall identify the line item, object code and, for all practical purposes, complete and separate accountability for each appropriation amount transferred. No appropriation shall be transferred without the Budget Director and Controller General approvals. Any one-time appropriation for computer/word processing hardware, software and telecommunications, which contemplates the development of computer-related systems, shall be transferred into the line computer one-time projects in Office of the Budget Administration (10-02-01). The allocation of these funds shall be made by the Budget Director upon the approval of a formalized plan approved by the Department/Agency head and the approval of the Executive Director of the Office of Information Systems or his/her designee, and subject to the same language in Section 41 of this Act.

Further, it is the legislative intent that none of the appropriations for One-Time Appropriations be included, or be considered, as a part of the basic budget request for the Fiscal Year 1993 Appropriation Bill.

Where applicable, the appropriations to Office of the Budget - Contingency - One-Time Appropriations (10-02-04) are subject to the following terms and conditions:

DDS	Amount	Purpose
01-08-02	35.0	Capital Outlay
02-03-10	20.0	Board of Canvass
02-03-70	3.0	Furniture & Equipment for New Position
02-08-10	1.0	Lettering for Wilmington Building
02-17-01	20.0	Furniture & Fixtures - Sussex County Courthouse
02-17-01	57.0	Upgrade Judicial Mainframe
02-18-03	32.0	Ivy Davis Scholarship Fund
10-01-01	150.0	Transitional Expenses
10-02-15	25.0	NCIC 2000 Migration Study
10-03-02	40.0	Flags and Pins
10-03-04	2,000.0	Housing Development Fund
10-07-02	50.0	J.P. Case Management - Training/Implementation
10-07-02	80.0	Offender Classification and Tracking
10-07-02	31.3	Six Months Lease/Moving Expenses
10-07-02	67.2	Victims Notification Development
10-07-02	28.0	Victims Notification - J.P. Court Printers
12-05-03	22.5	Arbitrage Audit
20-06-02	1.5	Historical Marker - Ashley Mansion
20-06-02	1.5	Historical Marker - Caesar Rodney's Life
20-06-02	1.5	Historical Marker - Delaware State Fair
20-06-02	1.5	Historical Marker - European Settlers - Laurel
20-06-02	3.0	Historical Markers - Georgetown and General Talbot
20-06-02	1.5	Historical Marker - Old French Boxcar
20-06-02	1.5	Historical Marker - Town of Delmar
20-06-02	4.5	Historical Markers - Town of Harrington
20-06-02	30.0	Legislative Audio Tapes Preservation

20-06-04	12.0	Office and Cultural Equipment
20-06-04	19.1	Service vehicle - Belmont Hall
20-08-01	9.0	County Computer Systems - SARA Program
20-08-01	53.0	DELNET
20-08-01	27.0	Information Technology Equipment for 27 Public Libraries
30-01-20	5.0	Equipment to Aid the Disabled
35-05-20	25.4	Authority on Radiation Protection
35-05-20	60.0	Health Clinic Services
35-07-01	349.2	Health Care Start-Up
35-11-30	50.0	POST 21 Group Home Start-up
37-05-50	58.0	Movable Furniture & Equipment - New Castle County Detention Center
38-06-01	35.0	Equipment
40-06-03	28.0	Maintenance Port Penn Museum
40-07-03	50.0	New Castle County Dredge - Moores Lake Project
40-09-02	100.0	Equipment - Clean Air Act Amendments
45-06-08	20.0	Disk Drive
70-01-01	177.2	Election Year Costs
70-02-01	1,053.6	Election Year Costs
70-03-01	181.6	Election Year Costs
70-04-01	111.9	Election Year Costs
75-01-01	61.3	Contingency - Plan Review Section
90-01-02	96.0	Topographical Maps
90-04-04	11.0	Accreditation Expenses
95-01-02	100.0	VAX Reconfiguration/Relocation
95-04-01	168.1	School Bus Replacement

Section 49. Section 1 of this Act makes an appropriation to the Delaware Higher Education Commission (10-02-07) for scholarships: \$150.0 shall be made available for scholarship/loans for Delaware students who pursue degrees in nursing in accordance with Chapter 34, Title 14 of the Delaware Code; \$170.0 shall be used for scholarship/loans for the Christa McAuliffe Teacher Incentive Scholarship/Loan Program in accordance with the provisions of House Bill 707 of the 133rd General Assembly; \$90.0 shall be used for the Engineering and Science Fund in accordance with Senate Substitute 1 for Senate Bill 334 of the 134th General Assembly; and \$44.0 shall be used for the B. Bradford Barnes Scholarship Program.

Section 50. Listed below are the allocations of Office of Information Systems services for Fiscal Year 1993.

Agency	Fiscal Year 1993 Projections	
	General Funds	Other Funds
Legislative	\$ 52.6	\$
Judicial	336.9	
Executive	1,233.2	209.2
Other Elective Offices	368.4	
Legal	63.1	
State	1,189.5	130.0
Finance	4,762.4	2.0
Administrative Services	200.0	
Health and Social Services (Dover)	294.8	35.0
Health and Social Services (Biggs)	924.5	1,331.6
Children, Youth and Their Families (Dover)	31.5	
Children, Youth and Their Families (Biggs)	105.2	
Correction	200.0	127.0
Natural Resources and Environmental Control	73.6	
Public Safety	735.7	
Transportation		350.8
Labor	42.1	
Agriculture	8.0	
Elections	466.5	

Fire Prevention Commission	7.0	
National Guard	3.0	
Higher Education	73.7	
Public Education	<u>315.8</u>	
<b>Total:</b>	<b>\$ 11,487.5</b>	<b>\$ 2,185.6</b>
<b>GRAND TOTAL</b>	<b>\$ 13,673.1</b>	

Section 51. Section 1 of this Act appropriates \$67.5 for Other Items to Delaware Economic Development Authority (10-03-03). Of this amount, \$30.0 shall be used in support of the Small Business Development Center and \$20.0 shall be allocated for the Delmarva Advisory Council.

Section 52. (a) Section 1 of this Act appropriates to the State Housing Authority (the "Authority") \$4,410.2 for its Fiscal Year 1993 Discretionary Operating Expenses. Discretionary Operating Expenses include Personnel Costs, Travel, Contractual Services, Supplies and Materials and other normal business expenses of the Authority which are not required to be made pursuant to bond resolutions, trust indentures, agreements with the Federal Department of Housing and Urban Development, or otherwise required by operating agreements of the Authority. Notwithstanding any other provision of this Act, all parts or portions of the several sums appropriated by this Act which, on the last day of June, 1993, shall not have been paid out of the State Treasury, shall not revert to the General Fund, but shall revert to the Authority to be expended for any lawful purpose of the Authority.

(b) Nothing herein shall be construed to require any prior approval for the Authority to meet its previously contracted obligations, including debt service requirements under bond resolution or trust indenture of the Authority, nor shall anything contained herein require any such prior approval for any expenditure by the Authority under any such bond resolution or trust indenture or under any agreement with the Federal Department of Housing and Urban Development.

(c) Further, nothing contained herein shall authorize the General Assembly to approve an amount for Discretionary Operating Expenses for the Authority in any subsequent years in an amount less than the amount actually incurred as Discretionary Operating Expenses by the Authority in its last prior fiscal year, plus an inflation factor equal to the United States Consumer Price Index (CPI) or successor indices, annualized at November of the year prior to the year for which such budget is prepared, unless the budget prepared by the Authority, with the approval of the Director of the Delaware Development Office, requests a lesser amount.

Section 53. Section 1 of this Act appropriates \$240.1 to the Office of State Personnel, Operations (10-04-02) for Generic Aides/Handicapped Employees. This appropriation is intended to encourage and enable qualified mentally and physically handicapped persons to obtain state employment per the provisions of Senate Bill 496 of the 132nd General Assembly and House Bill 136 of the 134th General Assembly.

Section 54. Section 1 of this Act provides authorization for a Staff Development Officer to be funded with Appropriated Special Funds in the Office of State Personnel, Staff Development and Training (10-04-04). The position will support statewide training programs for state managers, supervisors and employees. It is the intent of this Act to support these statewide training programs, in part, with funds generated from the assessment of charges for courses on agencies participating in certain classes held by the Office of State Personnel. The Office of State Personnel may set charges for courses to sustain or create training programs with the funds placed in an Appropriated Special Fund account established by the Budget Director.

Section 55. The State Employees Pension Benefits Review Committee will continue to review the pension plan by using appropriate and accepted comparative analysis, including, but not limited to, the benefit structure of the various State pension systems for the purpose of evaluating current pension plan benefits and recommending changes.

The Committee membership will consist of the Chairman and the Vice Chairman of the Legislative Joint Finance Committee, one member of the Senate appointed by the President Pro Tem, one member of the House of Representatives appointed by the Speaker, three members appointed by the Chairman of the Board of Pension Trustees, one member of the Pension Advisory Council, the Pension Administrator, the State Personnel Director, the Budget Director, and the Controller General.

The Budget Office, the Controller General's Office, and the Pension Office shall provide the Committee with staff support and such other resources as the Committee may require.

The Committee shall report by April 1, 1993, to the Governor, the Speaker of the House of Representatives, and the President Pro Tempore of the Senate, its findings and recommendations.

Section 56. Whenever the annual valuation of the market value of the assets of the Special Pension Fund exceeds the actuarial value of benefits available to persons entitled to receive special pensions by a factor of at least 20 percent, the Board of Pension Trustees, in its sole discretion, may transfer the excess over 20 percent or any part of it to the State Employees Pension Fund for the benefit of that Fund.

Section 57. The Board of Pension Trustees may allocate the pension/health insurance monies received from the state during any month to ensure that funds are available to pay health insurance premiums for retirees in each month.

Section 58. Amend §5302(b), Chapter 53, Title 29, Delaware Code by deleting the phrase "§5501(b)(8)-(11)" as it appears in the first sentence of said subsection and substituting in lieu thereof the phrase "§5501(b)(5), (8)-(11)"

Section 59. Amend §5302(b), Chapter 53, Title 29, Delaware Code by adding a new sentence at the end of said subsection to read as follows:

"This subsection shall be in effect retroactively as of February 1, 1991."

Section 60. Amend §5316, Chapter 53, Title 29, Delaware Code by striking said section in its entirety and substituting in lieu thereof the following:

"5316. GROUP LIFE INSURANCE.

(a) Upon the death of an individual receiving a pension under this chapter the sum of \$4,000 shall be paid from the Fund to his or her designated beneficiary or in the absence of a designated beneficiary the amount of this benefit shall be paid to the deceased pensioner's estate.

(b) The benefit granted under this section shall not be construed as a contractual obligation of the State or of the Pension Fund and may be revised or terminated by an act of the General Assembly."

(c) Subsections (a) and (b) shall be in effect retroactively as of February 1, 1991.

Section 61. Section 1 of this Act authorizes two (2.0) positions and \$56.2 in Personnel Costs to the Criminal Justice Council (10-07-01) to implement a pilot Treatment Alternatives to Street Crime program. Hiring of said positions shall be contingent upon receipt of a matching Federal grant from The State Justice Institute. Should the matching grant not be received, the two (2.0) positions will be de-authorized and \$56.2 in Personnel Costs shall revert to the General Fund.

Section 62. Section 1 of this Act makes an appropriation to the Office of the Budget - Contingency - One-Time Appropriations (10-02-04) for one-time items for DELJIS (10-07-02). At the request of the agency, these amounts may be transferred among the various items listed with the approval of the Budget Director and the Controller General.

Section 63. Position Number 2092 within the Statistical Analysis Center (10-07-03) will remain vacant during F.Y. 1993 unless hiring approval is granted by the Budget Director and Controller General.

Section 64. The duties of the State Personnel Director shall include the administration and management of a statewide human resource information system and upon implementation, serve as the administrator of all data and processes supported by the system throughout the state, including all government agencies, school districts, Delaware State College and Delaware Technical and Community College.

## OTHER ELECTIVE OFFICES

Section 65. Of the total positions authorized in Section 1 of this Act for the Auditor of Accounts (12-02-01), the position of Community Relations Officer shall be exempt from classified service.

Section 66. Section 1 of this Act reflects for the Auditor of Accounts (12-02-01) sufficient state-match funding for federally-mandated audit services. If during the first three months of Fiscal Year 1993, the State Auditor should experience a cash flow deficit in fulfillment of federal audit responsibilities, the Budget Director, upon the request of the State Auditor, shall attempt to advance sufficient funding from the Federal Audit Set-Aside or Indirect Cost Accounts.

Section 67. Section 1 of this Act provides a special fund appropriation of \$1,306.1 to the State Treasurer, Administration (12-05-01) Cash Management Policy Board, authorized by Title 29, Chapter 27, Delaware Code, for the purpose of providing staff support and operational expenses, including payment of fees for banking services. The \$1,306.1 in interest income on bank deposits shall be coded as special fund revenue to provide funds for operation of the Cash Management Policy Board.

Section 68. A sum of \$3,300.0 is hereby advanced from the General Fund of the state to the State Treasurer, Administration (12-05-01) in order that monthly advance payments can be paid for Health Insurance. This advance is to be repaid by June 30, 1993.

Section 69. Section 1 of this Act authorizes \$235.0 for Expense of Issuing Bonds in the Office of the State Treasurer, Debt Management (12-05-03), for payment of expenses relating to the issuance of State Long-Term Debt. Disbursement from the Expense of Issuing Bonds fund shall not be made without the prior approval of the State Treasurer and the Secretary of Finance.

## LEGAL

Section 70. Section 1 of this Act authorizes an appropriation for Contractual Services for the Office of Attorney General (15-01-01). Of this amount, \$347.7 shall be used for the purpose of providing services covering family violence in New Castle County, and \$178.0 shall be used for the purpose of providing services covering family violence in Kent County and Sussex County.

Section 71. Of the total Deputy Attorneys General authorized in Section 1 of this Act to the Office of Attorney General (15-01-01), two shall be assigned to the Family Court for service in Kent and Sussex Counties. Additionally, one Special Fund Deputy Attorney General shall be assigned to the Family Court to be used to increase the existing staff assigned to prosecute Child Support Cases.

Section 72. The Industrial Accident Board of the Department of Labor shall be assigned two Deputy Attorneys General on a full-time basis. The two Deputy Attorneys General shall come from the existing complement of Deputy Attorneys General assigned to the Office of Attorney General (15-01-01), as authorized in Section 1 of this Act.

Section 73. Of the total Deputy Attorneys General authorized in Section 1 of this Act to the Office of the Attorney General (15-01-01), one half (.5) shall be assigned to the Foster Care Review Board.

Section 74. During Fiscal Year 1993, the Attorney General shall provide legal assistance/representation as needed for the implementation of House Bill No. 561 - 136th General Assembly (Delaware Fair Housing Act) until funds in the "Special Administration Fund" are sufficiently available, should such legislation be enacted.

Section 75. Section 1 of this Act provides an appropriation in Appropriated Special Funds to the Office of the Attorney General (15-01-01). Of this appropriation, \$231.5 and 5.0 positions shall be used to support the Securities Division. To support the enhanced enforcement powers program, and the registration unit of the Securities Division, the Attorney General is authorized to collect and use revenues from the increased fees realized by House Bill No. 444 of the 135th General Assembly, and House Bill No. 361 of the 136th General Assembly. The balance at the end of any fiscal year in excess of \$100.0 collected from the fees and charges as outlined in the aforementioned House Bills, shall be deposited to the General Fund of the State of Delaware.

Section 76. Section 1 of this Act makes an appropriation to the Office of the Attorney General (15-01-01) in Appropriated Special Funds to establish an Attorney General Opinion Fund. In order to carry out the mandate of Title 29, Chapter 25, Section 2504(2), Delaware Code, the Office of the Attorney General is authorized to publish and sell the opinions of the Attorney General and to deposit the proceeds of any sales in a special fund to be designated "Attorney General Opinion Fund." The Office of the Attorney General is hereby authorized to expend all monies deposited in such fund for any expense connected with the publishing or sale of opinions of the Attorney General. Copies of the published opinions will be distributed at no cost to the General Assembly, the Governor and state agencies. If at the end of the fiscal year, the amount deposited in this fund exceeds \$15.0, the amount exceeding \$15.0 shall be deposited into the General Fund.

Section 77. Section 1 of this Act makes an appropriation of \$529.3 Appropriated Special Funds, \$272.7 General Funds and 19.0 positions, split-funded 66 percent Appropriated Special Funds and 34 percent General Funds to the Office of the Attorney General to support the Child Support Enforcement function. The Child Support Enforcement

function in the Attorney General's Office will operate on a reimbursement basis, wherein the State makes the initial expenditures and is reimbursed from federal funds controlled by the Department of Health and Social Services. The reimbursement rate for operations will be 66 percent of total direct costs; the reimbursement rate for indirect costs will be 40 percent of federal dollars spent on direct salary costs.

Notwithstanding the provisions of Title 29, Chapter 64, Subsection 6404 (h)(1)(2)(3), of the Delaware Code, which requires receipts of such federal reimbursements to be deposited into a Special Fund account in the Office of the Treasurer, the Attorney General's Office shall be allowed to retain the federal reimbursement of direct costs in an Appropriated Special Funds account to pay the Appropriated Special Funds share of operating expenses associated with the Child Support function.

The Attorney General's Office shall also be allowed to retain up to a maximum of \$30.0 of the departmental portion of indirect cost recoveries for this function to support the agency's overhead. The statewide portion of indirect cost recoveries will be deposited to the indirect cost account in the Budget Office. The remainder of the indirect cost recoveries and any unused portion of indirect cost funds in the Attorney General's Office will be deposited into a separate account in the Office of the Treasurer, to be established by the Budget Office, and retained to be used to support the General Fund portion of the budget for this function in subsequent years.

## STATE

Section 78. Section 1 of this Act provides an appropriation to the Department of State, Office of the Secretary, Delaware Commission on Veteran's Affairs (20-01-02) for Contractual Services. Of that amount, \$28.8 shall be used to provide mental health services for veterans in Kent County and Sussex County.

Section 79. Section 1 of this Act provides an appropriation to the Department of State, Office of the Secretary, Delaware Veterans Memorial Cemetery (20-01-03) for Personnel Costs. Of that amount, \$71.3 shall be used to fund 4.0 additional positions in Fiscal Year 1993.

Section 80. Section 1 of this Act includes a one-time appropriation to the Department of State, Division of Historical & Cultural Affairs, Delaware State Archives (20-06-02) in the amount of \$30.0. This represents Phase I of the Legislative Audio Tape Preservation Project.

Section 81. Notwithstanding any other provision of law to the contrary, The Department of State is authorized to enter into a written agreement with private contractor/s for the purpose of collecting Franchise Taxes that are six or more months past due. The Secretary of State is empowered to establish the terms of any such contract, including the method of payment, entered into by the department. Funds, net of collection expenses shall be deposited into the General Fund.

Section 82. Section 1 of this Act includes the amount of \$12.0 in Salaries & Wages (Casual & Seasonal) for grounds maintenance for Dickinson Mansion in the Department of State, Division of Historical & Cultural Affairs, Delaware State Museums (20-06-04).

Section 83. The allocation of Fiscal Year 1993 microfilm services is based on approved agency service requests. These allocations are subject to change by the Delaware State Archives in the event of agency defaults in records preparation or other related developments during Fiscal Year 1993. Agencies may be added or deleted from the service authorization list based on the terms of their formal agreement with the B/ARM and subject to the Bureau's standard operating procedures.

Agency	Fiscal Year 1993 Projections	
	GF	ASF
Judicial	\$ 101.6	\$
Executive	11.9	32.0
Other Elective Offices	17.1	
Legal	4.1	
State	24.5	2.0
Finance	7.8	
Administrative Services	4.4	8.4
Health and Social Services	22.7	
Correction	24.2	
Natural Resources and Environmental Control	26.6	
Public Safety	84.0	
Transportation		52.2

Agriculture	3.1	
Fire Prevention Commission	9.7	
Public Education - School Districts	41.5	
<u>Grand Total</u>	<u>\$ 383.2</u>	<u>\$ 94.6</u>

Section 84. Amend Title 7, Section 5408 of the Delaware Code by adding a new paragraph (e). Said paragraph shall read: "Any state agency which is responsible, either directly or indirectly, for the unearthing of human remains deemed to be the responsibility of the Division of Historical and Cultural Affairs shall be responsible for the cost of re-interment of those remains."

Section 85. Section 1 of this Act provides an appropriation to the Department of State, Libraries (20-08-00) for library standards. Funds shall be paid to libraries in installments equal to 25 percent of the total amount allocated to that library, one installment each quarter of the fiscal year. In the event the library is entitled to \$6.0 or less, the amount shall be paid on an annual basis. Funds granted to any library under the provisions of Title 29, Chapter 66, if unspent at the end of the fiscal year shall not revert to the General Fund, but instead shall be held in an account for the benefit of the library from which the unspent funds came. These funds may be spent in subsequent years for purposes described in Title 29, Chapter 66. The use of such carryover funds shall not be used as part of any subsequent years' formula payment.

Section 86. Section 1 of this Act provides a one-time appropriation to the Department of State, Division of Libraries (20-08-01) in the amount of \$27.0. These funds shall provide \$1.0 to each of the twenty-seven public libraries in Delaware for information technology equipment.

Section 87. Section 1 of this Act provides a one-time appropriation to the Department of State, Division of Libraries (20-08-01) in the amount of \$9.0. These funds shall provide \$3.0 to each county for computer equipment for compliance with SARA requirements. This shall be administered by the State Librarian.

## FINANCE

Section 88. (a) Amend Title 29, Section 6903(b) of the Delaware Code, by inserting the words "and approved by the Budget Director and the Secretary of Finance", immediately following the words, "Secretary of Administrative Services", as they appear in the first sentence.

(b) The current small purchasing procedures shall be reviewed by the Budget Director and the Secretary of Finance. The recommended changes shall be implemented by the Secretary of Administrative Services by September 30, 1992.

Section 89. Pursuant to Title 29, Section 6505(c) of the Delaware Code, credit cards authorized by the Secretary of Finance and distributed by the Division of Purchasing to state employees may also be used for the procurement of small purchases made by state agencies for the Fiscal Year ending June 30, 1993, pursuant to policy and procedures as established by the Secretary of Finance.

Section 90. The Department of Finance, Office of the Secretary, is authorized to establish and maintain a special fund with the State Treasurer for the purposes of acquiring technology and payment of other costs incident to the implementation of computer systems at the Department of Finance. Deposits to the special fund shall be from the receipts escheated to the state. Deposits to the special fund shall not exceed \$3 million.

Section 91. The Division of Revenue is authorized to establish and maintain a special fund with the State Treasurer for the purposes of contracting for the collection of delinquent state taxes. The contracts may provide for either or both: (a) collection or assistance in collection of delinquent accounts from businesses or persons; and (b) audit of business taxables. Deposits to the special fund shall be from the collection of delinquent taxes under such contracts. Deposits which are not required to carry out the purposes described in this Section, which purpose shall be deemed to include recording of Division of Revenue judgments and warrants in the offices of clerks of various courts, shall be transferred by the Director of the Division of Revenue to the General Fund within 30 days from the end of each quarter of the calendar year. A detailed report on all expenditures from and collections to this special fund shall be sent annually to the Budget Director and the Controller General.

Section 92. The Director of the Division of Revenue shall have the authority to accept, on whatever terms and conditions he may establish by regulation, payment of delinquent taxes by credit card. Such authority shall include a determination not to accept such payments or to permit payment only for certain classes of taxes to be specified

by the Director. The Director is authorized to enter into contracts for the processing of credit card payments and fees associated with such contract may be paid. Section 1 of this Act establishes an Appropriated Special Fund account "Credit Card Processing" from which fees and associated costs may be paid and into which tax remittances by credit cards may, at the discretion of the Director, be deposited. Unencumbered balances on June 30, in excess of \$5.0 shall revert to the General Fund. Any transfer into this account shall be reversed prior to June 30. The Secretary of Finance shall submit to the Controller General a detailed statement of expenditures from the "Credit Card Processing" account and revenues generated as a result of credit card tax remittances. Said report shall be submitted prior to January 1 of the next fiscal year.

Section 93. The Director of the Division of Revenue shall have the authority to enter into agreements according to which contingency fees are provided to finders of property to be escheated to the state. When the Director deems it to be appropriate, he/she may enter into escrow, custodian, or similar agreements for the purpose of protecting the state's interest in property to be escheated or fees payable pursuant to the aforesaid agreements. The Director may direct that payment for said fees or other costs incident to escheat of property under the aforesaid agreements, including charges relating to receiving and processing remittances and reports by holders, and claims by owners of abandoned property as well as advertising under escheat laws and travel or litigation expenses incident to escheat administration be made out of such money held in the escrow, custodian or other account established under this paragraph. No account shall be used to pay for employees of the Division of Revenue. A semi-annual report of amounts in escrow or custodian accounts shall be furnished to the Budget Director and Controller General.

Section 94. The Division of Revenue is authorized to require payment of fees for issuance of certificates or other documents reflecting the status of taxes, if any, owed by the taxpayer requesting such certificate. Payment of these fees shall be deemed to reduce the Contractual Services expenditures of the division and shall be recorded as expenditure-reducing items.

Section 95. (a) In the event that the gross sales of the State Lottery shall exceed the amount specified in Section 1 of this Act, the Appropriated Special Funds budget in Section 1 of this Act may be amended by the Secretary of Finance, the Controller General and the Budget Director; provided, the total operating budget for the fiscal year ending June 30, 1993, shall not exceed 20 percent of gross sales as limited by Title 29, Chapter 48, Delaware Code.

(b) The Appropriated Special Funds budget for the State Lottery Office (25-07-01) provides for the services of two resident auditors and additional audit services under the appropriation for Contractual Services. In addition to the duties of the two resident auditors, other duties shall be performed as assigned by the Secretary of Finance.

Section 96. The Delaware State Lottery Office shall transfer to the Department of Health and Social Services \$95.0 from the State Lottery Fund during the first month of the fiscal year ending on June 30, 1993. Said \$95.0 shall be accounted for within the portion of the gross amount received from ticket sales allowed for administration and operations expense allowed the State Lottery Office by Title 29, Section 4815, Delaware Code.

Section 97. Amend Title 29, Section 8318 (a) and (b), Delaware Code, by deleting "Secretary of the Department of Finance" and replacing it with "Secretary of the Department of Administrative Services".

## **ADMINISTRATIVE SERVICES**

Section 98. Section 1 of this Act appropriates special funds for the Office of the Public Advocate to perform studies consistent with the goals and objectives of the Public Utility Revolving Fund as defined in Title 26, Chapter 1, Delaware Code. The Budget Director, with concurrence of the Controller General, is authorized to transfer up to \$163.8 from the Public Service Commission's Revolving Account (8600) to the Public Advocate's Appropriated Special Fund account.

Section 99. During Fiscal Year 1993, the Department of Administrative Services, Division of Facilities Management, Building Operations/Maintenance IPU (30-05-20) shall retain the rental fees as Appropriated Special Funds for the building known as the Wilmington Public Building. The retained portion must be deposited as per state laws and shall be disbursed per Section 1 of this Act.

Section 100. The Department of Administrative Services and the Office of the Attorney General are hereby directed to review office space requirements in Sussex County (Georgetown, DE). Such review shall include the space requirements of the Attorney General and may include other affected agencies such as the Judiciary. The report and



recommendations resolving office space issues in Georgetown shall be submitted to the Budget Director and the Controller General no later than September 30, 1992.

Section 101. (a) The Division of Purchasing, Department of Administrative Services (30-06-00) will distribute the Delaware Code Supplement copies per Title 1, Chapter 1 of the Delaware Code to the extent possible with the number of copies provided by the Code Revisors Budget Unit (01-08-03). Funding for additional copies will be the responsibility of the requesting agency.

(b) During Fiscal Year 1993, the Division of Purchasing (30-06-00) is required to purchase 22 complete sets of the Delaware Code at a sum not to exceed \$13.5. Funding for additional copies will be the responsibility of the requesting agency.

Section 102. For energy backcharge purposes, the Department of Administrative Services (host department) Fiscal 1993 Energy Budget assumes that Motor Fuel Tax uses ten percent of the new Public Safety Building, for which energy payment is the responsibility of the host department. The Department of Transportation is responsible for paying the Motor Fuel Tax portion of the energy bills upon request for payment by the host department.

Section 103. Amend Title 29, Chapter 88, Section 8810, Delaware Code by adding the following at the end of subsection (d):

"All revenue generated by any of the activities performed by or on behalf of the boards or commissions listed in this Chapter shall be deposited in an Appropriated Special Fund account in the Division of Professional Regulation. These funds shall be used to fund all costs necessary to defray the expenses of each board or commission or of the division on behalf of such board or commission, up to the budget authority for any fiscal year or portion thereof."

Section 104. Section 1 of this Act provides an appropriation in Appropriated Special Funds to Professional Regulation (30-03-20). Recognizing that the conversion of this unit from General Funded to special funded may from time-to-time produce casual deficiencies in unit revenue, the Department of Administrative Services is authorized to advance to Professional Regulation funds from other fund sources. Any such advance will be reimbursed to the source on a timely basis, but in any event, no later than June 30, 1993.

## HEALTH AND SOCIAL SERVICES

Section 105. Effective January 1, 1993, the Delaware Health Care Commission (35-02-00), Delaware Health Care Commission (35-02-01) shall be organizationally reassigned from the Department of Health and Social Services (35-00-00) to Executive (10-00-00) and shall operate as a new APU to be designated the Delaware Health Care Commission (10-05-00), Delaware Health Care Commission (10-05-01). All positions authorized and all funding available, regardless of source, to the Delaware Health Care Commission shall accompany the Commission. To the extent practicable, any appropriation, receipt or reimbursement activity incurred prior to January 1, 1993, shall be adjusted to reflect the organization structure subsequent to December 31, 1992.

Section 106. Effective January 1, 1993, amend Section 9902(b), Title 16, Delaware Code, by striking the last sentence in its entirety as follows: "For administrative and budgetary purposes only, the Commission shall be located within the Department of Health and Social Services."

Section 107. The Governor's Advisory Council on Long-Term Care issued a report dated February, 1992, entitled "Division of Public Health - Nursing Homes - Recommendations For Their Future."

The Secretary of the Department of Health and Social Services shall study these recommendations in terms of their impact upon:

- 1) Current residents of public nursing homes
- 2) The general aging population
- 3) State employees
- 4) Future operating and capital budgets
- 5) The private sector nursing home industry

The Department of Health and Social Services shall collaborate with the Governor's Advisory Council on Long-Term Care, representatives of the private nursing home industry

and others, as appropriate, in developing a report to be submitted to the Joint Finance Committee prior to March 1, 1993.

Section 108. Results of investigations conducted by the Audit and Recovery Management Services concerning any and all public welfare programs administered by the Department of Health and Social Services that indicate possible error or fraud shall be transmitted to the Office of the Attorney General directly by the Secretary of the Department of Health and Social Services without approval by any other authority. The Office of the Attorney General shall prosecute those cases deemed actionable and return the rest to the Department of Health and Social Services for collection of overpayment. The Secretary of the Department of Health and Social Services shall file a quarterly report directly with the Budget Director, the Controller General, the Director of Research of Legislative Council, members of the Joint Finance Committee, and the Chairmen of the House and Senate Committees on Health and Social Services by the twentieth day of the next month after the end of a quarter, which report shall not be subject to prior review by any other authority.

Section 109. The Secretary of the Department of Health and Social Services (35-01-10), shall submit a report to the Budget Director and the Controller General as to the status of the nursing shortage in the Department. This report shall be made February 1, 1993, for the period ending December 31, 1992.

Section 110. Temporary, Casual and Seasonal Registered Nurses and Licensed Practical Nurses in the Department of Health and Social Services may be allowed to work more than 129 working days in a fiscal year upon the approval of the Department Secretary. These positions shall not be considered positions of a continuing nature or regular employment.

Section 111. Section 1 of this Act includes an appropriation for the Department of Health and Social Services, Administration, Management Services (35-01-20). This new unit for F.Y. 1993 combines the F.Y. 1992 program units of Business Administration (35-01-20), Health Planning (35-01-30), Planning, Research & Evaluation (35-01-40), and Information Resource Management (35-01-50). The Department shall submit a reorganization plan to the Budget Director and the Controller General for their approval prior to implementation.

During Fiscal Year 1993, there shall not be any change in the status of Budget Position No. 2356, (as of the List of Authorized Position Report dated 5/29/92), without the approval of the Personnel Director, the Budget Director and the Controller General. "Change in the Status" shall include but not be limited to: (1) change in paygrade comparability; (2) classification change; (3) exempt to merit change; and (4) any other classification or paygrade adjustment.

Said Budget Position No. 2356 shall remain in (35-01-20) and not be transferred to any other program unit, appropriation unit or department during F.Y. 1993.

Section 112. The sum of \$170.0 is hereby advanced from the General Fund of the State to the Management Services IPU (35-01-20), in order that the Public Welfare Revolving Fund emergency checks can be paid on a timely basis and without interruption.

Section 113. Section 1 of this Act makes an appropriation to the Department of Health and Social Services, Social Services, for Title XIX federal programs (Medicaid). Notwithstanding the provisions of the Delaware Code to the contrary, the Division shall be permitted to use Medicaid (XIX-OTSI) funds when necessary to reimburse the federal government for its portion of overpayments not collected within sixty (60) days of identification. When such overpayments are collected, the funds collected shall be deposited back into the Medicaid XIX-OTSI account.

Section 114. The Secretary of the Department of Health and Social Services shall annually issue a report to the Budget Director and the Controller General on what the Health Care Cost Containment Program has accomplished relative to containing health care costs.

Section 115. The Department of Health and Social Services, Division of Management Services (35-01-20), includes the responsibility for reviewing the Birth to Three Early Intervention Program under P.L. 99-457, Part H, Early Intervention. Planning for the possible implementation has been in progress for four years. In order for policy to be developed, the Secretary of the Department of Health and Social Services shall submit a report to the Budget Director and the Controller General on December 1, 1992, which shall include definitive recommendations on the following:

- A. Complete implementation plan
- B. Financing structure/source
- C. Eligibility criteria detailing proposed population(s) to be served
- D. Management structure

- E. Estimated FY 1994 program costs
- F. How interagency provision of services will occur

Section 116. The Division of Public Health currently operates the following programs for which a fee for service is charged to cover the cost of the program:

- Handicapped Children
- Maternal and Child Health Services
- Family Planning Services
- Medicare Occupational/Physical Therapy
- Public Water Systems Program
- Infant Mortality Initiative
- Speech Therapy
- Radon Testing
- Summer Food Inspection
- Casual/Seasonal Nursing Services
- Case Management for High Risk Pregnancies
- Vaccines

Notwithstanding the provisions of Title 29, Section 6102, Delaware Code, the Division shall be allowed to collect and expend fees from the aforementioned accounts, except as noted below. Corresponding Appropriated Special Fund spending authority has been provided in Section 1 of this Act.

The Handicapped Children (Appropriation 8610) and Maternal and Child Health Services (Appropriation 8611) programs shall continue to deposit 30 percent of program collections to the General Fund.

Section 117. In Fiscal Year 1993, the Budget Director and the Controller General shall review any Public Health Restructure Proposal. No implementation of the proposal shall take place without the approval of the Budget Director and the Controller General.

Section 118. Section 1 of this Act provides an appropriation to the Department of Health and Social Services, Division of Public Health, Community Health (35-05-20) for "Renal Disease" in the amount of \$296.2. Of that amount, \$101.6 shall be used for transportation, \$186.2 for medications and \$8.4 for other items related to this program.

Section 119. Section 1 of this Act includes an appropriation to the Department of Health & Social Services, Division of Public Health, Community Health (35-05-20) for Contractual Services. Of that amount, \$30.0 shall be used to provide adolescent pregnancy prevention services.

Section 120. Section 1 of this Act provides a one-time appropriation to the Department of Health and Social Services, Division of Public Health, Community Health (35-05-20) for Health Clinic Services. Of that amount, \$60.0 shall be available for medicines, equipment and part-time nursing services for a community-based health clinic serving the Claymont area of New Castle County.

Section 121. Section 1 of this Act includes an appropriation to Public Health, Community Health (35-05-20) for Contractual Services. Of that amount, \$145.3 shall be used for the purpose of providing school nursing services three days a week to non-public schools in New Castle County.

The Secretary of the Department of Health and Social Services will ensure that the contracts with the various schools in this program are executed no later than August 15 of each year. The Secretary will also ensure that timely payments are made to all contractors.

Section 122. Section 1 of this Act provides an appropriation to the Department of Health and Social Services, Public Health, Director's Office (35-05-10), in the line item "Office of Narcotics and Dangerous Drugs" in the amount of \$20.0. This amount shall be used at the discretion of the Drug Control Administrator.

Section 123. Section 1 of this Act provides an appropriation to the Department of Health and Social Services, Public Health, Community Health (35-05-20), for Personnel Costs. Of that amount, \$25.0 shall be used for the purpose of an additional 1.0 Enforcement Officer over the Fiscal Year 1992 complement, for the Office of Narcotics and Dangerous Drugs.

Section 124. Amend Title 16, Chapter 98, Section 9814, Delaware Code, by adding a new section (1) to read as follows:

"(1) The Delaware Paramedic Budget Review package shall be submitted by the counties to the Paramedic Administrator by September 1 of each year. Such request shall include but not be limited to, a detailed plan of expenditure for each county's approved paramedic

program for the subsequent fiscal year. The Paramedic Administrator shall forward copies of the counties' requests, along with the Department's funding recommendation to the Budget Director by November 1st."

Section 125. Section 1 of this Act provides Appropriated Special Funds in the Department of Health and Social Services, Division of Alcoholism, Drug Abuse and Mental Health (35-06-00) for the revenue generated from the Health Care Financing Administration (HCFA) for disproportionate share and from Medicaid reimbursements for covered services. The Division will collect an estimated \$1.74 million under the arrangement with HCFA. The Division shall be allowed to spend the first \$1.1 million received to maintain existing services, including the Reflections program; reinvestment in the hospital; and expansion of community-based programs to increase future revenues. Of the remaining revenue, the first \$300.00 shall be deposited to the General Fund. The next \$340.00 in revenue shall be allocated to Alcoholism, Drug Abuse and Mental Health; the first \$40.00 for contractual services for technical staff hours to maintain an automated billing system; and the next \$300.00 for a program to implement a secure facility to detain intoxicated persons. This program shall serve as an alternative to inappropriate admissions to Delaware State Hospital, and to expand access to emergency placements for intoxicated persons. The Director of Alcoholism, Drug Abuse and Mental Health shall submit a description of the proposed program to the Budget Director and the Controller General prior to August 30, 1992. The Division shall file a quarterly status report to the Budget Director and the Controller General on all collection efforts. Any additional revenue shall be deposited to the General Fund.

Section 126. Section 1 of this Act includes an appropriation to the Department of Health and Social Services, Division of Alcoholism, Drug Abuse and Mental Health, Community Mental Health (35-06-20) for the Young Adult Mental Health Program. This program was to be restructured during Fiscal Year 1992. Part of the planned restructuring was to establish a group home in the community to serve ten individuals residentially. This initiative was not accomplished during Fiscal Year 1992.

The restructured Young Adult Mental Health Program shall also serve individuals that are age and program appropriate that have been recommended by the Department of Public Instruction with the concurrence of the Director of the Division of Alcoholism, Drug Abuse and Mental Health.

The Secretary of the Department of Health and Social Services shall insure that the restructured Young Adult Mental Health Program initiatives are implemented during Fiscal Year 1993 and shall provide a detailed report to the Joint Finance Committee concerning the status of these initiatives as of January 1, 1993.

Section 127. Section 1 of this Act provides an appropriation to the Department of Health and Social Services, Alcoholism, Drug Abuse & Mental Health, Inpatient Mental Health (35-06-30), for Contractual Services. Of that amount, \$41.2 shall be made available for a Nurse Intern Program. Such program will enable graduate nurses to take graduate courses to increase their skills in specialty areas.

It is understood that participants in this program will provide clinical services with compensation to Delaware State Hospital during the duration of their graduate level education. It is further understood that these individuals shall remain in the employ of Delaware State Hospital for a minimum of one year after graduation or reimburse the state for any and all tuition received.

Section 128. Section 1 of this Act provides funds for a Dietitian position in the Inpatient Mental Health (35-06-30). The purpose of this position is to allow the IPU to provide services by a registered Dietitian as required for certification. This position shall also provide dietitian services to the Terry Children's Psychiatric Center.

Section 129. Section 1 of this Act includes funding for a Pharmacy contract in the Inpatient Mental Health (35-06-30). This contract shall continue to provide once a month drug inspections of the Terry Children's Psychiatric Center.

Section 130. Inpatient Mental Health maintains appropriation accounts 35-06-30-86-06 and 86-08 to receive reimbursement for providing a work study program for local nursing schools and for assigning residents to work at the Medical Center of Delaware on a rotating basis, respectively. Notwithstanding the provisions of Title 29, Section 6102, Delaware Code, the Division shall be allowed to collect and expend the proceeds from the aforementioned accounts.

Section 131. Section 1 of this Act provides an appropriation to the Department of Health & Social Services, Alcoholism, Drug Abuse & Mental Health, Alcoholism & Drug Abuse (35-06-40) in Contractual Services. In addition to this General Fund appropriation, the

Director of the Division of Alcoholism, Drug Abuse & Mental Health, shall insure that the amount of \$25.0 be expended from available Federal Funds to contract for employment, alcohol, and drug counseling and referral services for youth and adults to encourage an alcohol and drug-free environment in South Wilmington.

Section 132. Section 1 of this Act provides Appropriated Special Funds for Contractual Services in the Department of Health and Social Services, Division of Alcoholism, Drug Abuse and Mental Health, Alcoholism and Drug Abuse (35-06-40). Of that amount, \$95.0 shall be used to contract for the treatment and counseling for those Delawareans with gambling problems. These funds are transferred from the Delaware State Lottery Office out of the State Lottery Fund pursuant to Section 96 of this Act.

Section 133. (a) The amount appropriated by Section 1 of this Act to the Department of Health and Social Services for Title XIX Federal Programs (Medicaid) - other than state institutions shall be expended solely in accordance with the following conditions and limitations:

- (1) This appropriation shall be used for the purpose of continuing the program of medical assistance provided for within the state plan under Title XIX of the Social Security Act and the requirement of Section 121(a) of P.L. 89-97 enacted by the Congress of the United States and commonly known as Title XIX of the Social Security Act;

- (11) The State Plan of Medical Care to be carried out by the Department of Health and Social Services shall meet the requirement for Federal Financial Participation under the aforementioned Title XIX, and the sums expended by the department pursuant to this Act shall be limited to:

- (1) Inpatient hospital services
- (2) Outpatient hospital services
- (3) Rural health clinics services
- (4) Laboratory and X-ray services
- (5) Skilled nursing facility services
- (6) Early and periodic screening, diagnosis, and treatment services
- (7) Family planning services
- (8) Physician services
- (9) Home health services
- (10) Other licensed practitioners with limitations
- (11) Clinic services
- (12) Prescribed drugs with limitations
- (13) Services for individuals, age 65 or older, in institutions for mental disease
- (14) Intermediate care facility services
- (15) Emergency hospital services
- (16) Transportation
- (17) Co-insurance and deductibles for Title XVIII/and Title XIX recipients
- (18) Limited services in the following areas:
  - (a) Prosthetic devices
  - (b) Diagnostic services, as defined in 42 CFR §440, Sub-part A and as limited by the Medicaid State Plan
- (19) Private duty nursing services with limitations
- (20) Nurse-midwife services
- (21) Services provided to eligible individuals in the home or community offered under a federal waiver pursuant to Section 2176 of the Omnibus Budget Reconciliation Act of 1981, as an alternative to institutionalization, including but not limited to:
  - (a) Case management
  - (b) Clinical support
  - (c) Day habilitation
  - (d) Residential habilitation
  - (e) Respite care
  - (f) Homemaker services
  - (g) Adult and medical day care
  - (h) Emergency response systems
  - (i) Medical equipment, supplies and appliances
- (22) Services provided to pregnant women and infants up to 185 percent of the federal poverty level; children up to the age of six up to 133 percent of the poverty level; and children up to the age of ten up to 100 percent of the federal poverty level shall be eligible to receive Medicaid Services in accordance with federal regulations.

- (23) Services to eligible special needs children who are receiving an adoption subsidy from the Department of Services for Children, Youth and Their Families and children who from birth are placed with private agencies for the purpose of adoption. Medicaid coverage will be from the date of birth until the child is placed with the prospective adoptive parent(s).
- (24) Hospice services
- (25) Extended services for pregnant women
- (26) Medicare premiums
- (27) Optional Medicaid Services-Rehabilitative Services
- (28) Additional services provided to eligible individuals, in the home or community, offered under an AIDS waiver as an alternative to institutionalization including:
  - (a) routine dental services for adults,
  - (b) intensive supervision and supplemental payment for children and adults in foster care,
  - (c) private duty nursing,
  - (d) mental health services.
- (29) Other medical or remedial care recognized under state law, that is identified as medically necessary for individuals under age 21 through the Early and Periodic Screening Diagnosis and Treatment (EPSDT) Program, within limitations defined by the state's Medicaid Program.
- (30) Optional Medicaid Services - Personal Care Services

(b) The amount appropriated by Section 1 of this Act to the Department of Health and Social Services for Title XIX - State Institutions shall be expended solely in accordance with the following conditions and limitations:

- (i) Such appropriation shall be expended for the purpose of providing medical services to patients eligible under the federal Title XIX Medicaid Program residing in various facilities of, or under the jurisdiction of, the Department of Health and Social Services;
- (ii) An amount, subject to approval by the Budget Director, may be expended by the Department of Health and Social Services for administrative costs involved in carrying out the purpose of this Section; and
- (iii) The funds hereby appropriated shall be expended only on condition that the program is approved and federal matching funds are provided by the appropriate federal agency.

(c) Patients who reside in skilled care nursing homes, intermediate care nursing homes, or state facilities and who receive services covered by the Medicaid Program shall be eligible for Medicaid if their income is no more than 210 percent of the federal Supplemental Security Income (SSI) monthly payment standard and if they meet other eligibility requirements. Funds appropriated to the Department of Health and Social Services for Title XIX are sufficient to pay the state's share of Medicaid costs for such patients.

(d) Certain disabled children, age 18 or under, who are living at home, who would otherwise be eligible, if they were in a medical institution, for SSI or a state supplemental payment under Title XVI of the Social Security Act and, therefore, for Medicaid under the state plan.

(e) Qualified Medicare Beneficiaries (QMBs) with incomes less than 100 percent of the federal non-farm poverty limit and resources less than two times the SSI resource limits are eligible only for Medicare premiums and Title XVIII coinsurance and deductibles.

Section 134. In Fiscal Year 1992, an appropriation was made to the Department of Health and Social Services, Social Services (35-07-01) for 4.0 General Fund and 4.0 Non-Appropriated Special Fund full-time equivalent (FTE) positions. As their primary responsibilities for the fiscal year ending June 30, 1993, these employees shall be dedicated to administering implementation of the Children's Services Cost Recovery Project via the Early and Periodic Screening, Diagnosis and Treatment Program. In addition, these employees may plan, develop and administer the Early and Periodic Screening, Diagnosis and Treatment Program.

Section 135. There will be additional costs to the Department of Health and Social Services, Social Services (35-07-00) for processing claims associated with the Children's Services Cost Recovery Project (CSCR). The Office of the Budget (10-02-00) will provide funding from CSCR recoveries, as the first priority for payment, to pay for the state's one-quarter share of the processing charges.

Section 136. Section 1 of this Act makes an appropriation to Health and Social Services, Social Services (35-07-00) for Title XIX federal programs (Medicaid). Notwithstanding any provisions of the Delaware Code to the contrary, the Division shall deposit any drug rebate funds into the Social Service's Medicaid grant line.

Section 137. Section 1 of this Act provides an appropriation to the Department of Health and Social Services, Division of Social Services (35-07-01) for Title XIX programs - Medicaid. These amounts include an increase in reimbursement to nursing homes, which was recommended as a result of a study performed in response to Epilogue Section 101 in House Bill No. 350 of the 136th General Assembly. The study concluded that Delaware's patient classification system needed to be refined and that the State should provide sufficient reimbursement for patients who need a high level of care. As a result of this study conducted by a consultant under the direction of a Task Force comprised of Department and nursing home industry representatives, an 8-level classification system was recommended to be effective April 1, 1993. This will allow for appropriate systems changes and training, and provide additional resources to enable more private nursing homes to care for frail, sick, elderly and disabled Medicaid recipients.

Section 138. Section 1 of this Act provides an appropriation to the Department of Health and Social Services, Division for the Visually Impaired (35-08-01) for Capital/Equipment. Of that amount, \$8.0 shall be used for adaptive equipment for visually impaired school children.

Section 139. Section 1 of this Act provides an appropriation to the Department of Health and Social Services, Division for the Visually Impaired (35-08-01) for Contractual Services. Of that amount, \$4.0 shall be used to compensate correctional inmates for the purpose of producing braille materials for visually impaired school children.

Section 140. The state accepts the provisions and benefits of the Vocational Rehabilitation Act of 1973 (P.L. 93-112), as amended. The Department of Health and Social Services shall act as the sole state agency with the Secretary of the Department as the State Officer, and Visually Impaired (35-08-00) as the Designated State Unit for all monies from the Act that are designated for persons with visual impairment and blindness, as defined in a Cooperative Agreement dated December, 1985, between Visually Impaired and Vocational Rehabilitation (60-08-00), Department of Labor. The Department shall cooperate with the U.S. Department of Education, Rehabilitation Services Administration and, in accordance with all state laws, prepare the State Plan and carry out the Rehabilitation Act of 1973 and amendments thereto.

Section 141. Section 1 of this Act provides an appropriation for Contractual Services to the Department of Health and Social Services, Mental Retardation, Institutional Services (35-11-20). Of that amount, up to \$10.0 shall be available for services provided by Camp Barnes.

Section 142. Section 1 of this Act provides an appropriation to the Department of Health and Social Services, Mental Retardation, Community Services (35-11-30), for Contractual Services to reimburse facilities to provide sheltered workshop services to clients while they are actively attending sheltered workshop programs. The Director of Mental Retardation shall submit a report detailing the various cost components of each facility's per diem to the Budget Director and the Controller General no later than December 1, 1992. The Director of Mental Retardation shall ensure that only reasonable and appropriate cost items shall be included in each facility's per diem. The reimbursement shall not in the aggregate exceed the appropriation amount in Fiscal Year 1993.

The Division is encouraged, where appropriate, to provide supported employment opportunities for these clients within the appropriation limit.

Section 143. The Division of Mental Retardation, Institutional Services receives a federal reimbursement for the purchase of wheelchairs. Notwithstanding the provisions of Title 29, Section 6102, Delaware Code, the Division shall be allowed to collect and deposit the federal reimbursement into an Appropriated Special Fund account entitled "Wheelchair Reimbursement". The account shall be used as a revolving fund to purchase additional wheelchairs.

Section 144. The Division of State Service Centers, Family Support Services, maintains appropriation accounts (35-12-10-80-00) and (35-12-10-80-02) for the purposes of lending car seats to families who cannot afford to buy them and to publish a Human Services Directory, respectively.

Section 145. The Division of State Service Centers, Service Center Management IPU (35-12-20), currently operates 12 facilities throughout the state for which a Tenant User

Notwithstanding the provisions of Title 29, Section 6102, Delaware Code, the Division shall be allowed to collect and deposit to the aforementioned accounts. Corresponding Appropriated Special Fund spending authority has been provided in Section 1 of this Act.

Section 146. Community Services (35-12-30) is charged with the support of the Council on Hispanic Affairs. Members of the Council on Hispanic Affairs shall serve without compensation, except that they may be reimbursed for reasonable and necessary expenses incident to their duties.

Section 147. If at any time during the fiscal year ending June 30, 1993, there should be a temporary delay in receiving federal funds to start up the Low Income Energy Assistance Program (LIEAP) within the Department of Health and Social Services, Community Services (35-12-30), such funds as may be required to assure initial awards to eligible households receiving energy assistance shall be advanced from the oil overcharge funds approved by the Delaware State Clearinghouse Committee for the Weatherization Program. The Department of Health and Social Services, Community Services (35-12-30), shall promptly reimburse the oil overcharge fund upon receipt of the federal funds.

Section 148. Section 1 of this act makes an appropriation to the Department of Health and Social Services, Community Services (35-12-30), for emergency assistance. Some of this appropriation may be used for programs of longer than 30 days duration.

Section 149. Section 1 of this Act provides an appropriation to the Department of Health and Social Services, Division of State Service Centers, Community Services (35-12-30) for Contractual Services. Of that amount, \$55.0 shall be used in conjunction with other resources from the community to provide a Senior Companion Program to lower Kent and Sussex Counties.

Section 150. The position of Director - Community Services transferred to the Department of Health and Social Services, State Service Centers from the Department of Community Affairs shall remain exempt from classified service until such time as the position becomes vacant.

Section 151. Section 1 of this Act provides an appropriation for Contractual Services in the Department of Health and Social Services, Division of Aging (35-14-01). Of that amount, \$25.0 shall be used to provide a Nautilus Program.

Section 152. Section 1 of this Act provides an appropriation to the Department of Health and Social Services, Division of Aging (35-14-01) for Contractual Services. Of that amount, \$52.1 shall be utilized for the Joining Generations Program.

## **CHILDREN, YOUTH AND THEIR FAMILIES**

Section 153. The Secretary of the Department of Services for Children, Youth and Their Families shall keep the Budget Director and Controller General well informed on a quarterly basis about any and all developments relating to the possible sale of any portion of the Ferris School property and any and all developments relating to the possible new use or sale of any portion of the Woods Haven-Kruse property.

Section 154. Section 1 of this Act provides appropriations to the Department of Public Education, Block Grants and Pass Through Programs (95-03-00) in the line items "Parent Early Education Center" and "Pregnant Students". These funds shall be used as a match for available federal funds for the Children's Trust Fund. They will not be available to match any other federal funds during Fiscal Year 1993.

Section 1 of this Act also provides appropriations to the Department of Services for Children, Youth and Their Families for Parent Education (training). These funds shall be used as a match for available federal funds for the Children's Trust Fund. They will not be available to match any other federal funds during Fiscal Year 1993.

Section 155. Funds which are appropriated for foster care of children in Section 1 of this Act in the Department of Services for Children, Youth and Their Families, Division of Child Protective Services (37-02-00), are made available with the goal of limiting the number of children who remain in foster care for more than two years. For the year beginning October 1, 1992, the goal will be 152 children. This goal statement is intended to satisfy the requirements of the Federal Adoption Assistance and Child Welfare Act (P.L. 96-272).



Section 156. The Division of Child Protective Services is hereby directed to formally notify, in advance, the Foster Care Review Board of any meeting, hearing or other event of which the Board desires notification. Said notification shall be directed to the Executive Director of the Board.

Section 157. Section 1 of this Act provides an appropriation to the Department of Services for Children, Youth and Their Families, Division of Child Protective Services, Report and Initial Assessment (37-02-20) for contractual services. Of that amount, \$823.0 shall be used to provide Statewide emergency shelter services. These shelter services shall be contracted on a "cost reimbursement basis" similar to Fiscal Year 1992.

Section 158. The Secretary of the Department of Services for Children, Youth and Their Families shall certify to the Governor and the General Assembly that the mixing of adjudicated and non-adjudicated youths shall not take place in Ferris School.

Section 159. (a) Section 1 of this act authorizes an appropriation for contractual services in the Division of Youth Rehabilitation Services, Alternatives to Incarceration (37-05-40). Of this amount, \$219.0 has been allocated for six months funding of the High Impact Treatment Program. The department shall not issue Requests for Proposals or begin the bidding process to establish this program without the approval of the Budget Director and the Controller General. Such approval shall not be granted prior to the submission and review of the final report of the Ferris Oversight Committee as established by Senate Joint Resolution No. 10, of the 136th General Assembly.

(b) If it is determined that the program will be operated by the department, the department shall request of the Delaware State Clearinghouse Committee authorization of General Fund positions for this purpose. Positions authorized by the Delaware State Clearinghouse Committee shall not be filled without the approval of the Budget Director and the Controller General. Upon approval of the Budget Director and the Controller General, the department may transfer the \$219.0 from contractual services to personnel costs to fund these positions.

## CORRECTION

Section 160. The following positions within the Department of Correction (38-00-00) will remain vacant during FY 1993, unless hiring approval is granted by the Budget Director and Controller General. Approval will be contingent upon the department identifying alternative positions that will generate comparable savings:

Budget Unit	Position Title	Position Numbers
38-01-10	Sr. Accountant	6930
38-01-40	Correctional Mechanical Engineer	7035
38-01-60	Correctional Officer/ Trades Instructor I	7617
38-01-70	Teacher	6977
38-01-70	Teacher	6978
38-04-03	Correctional Lieutenant	7313
38-04-04	Deputy Warden	7466
38-04-04	Sr. Correctional Counselor	7605
38-04-06	Statistical Clerk II	53610
38-06-01	Probation and Parole Collection Unit Supervisor	7658
38-06-02	Typist	59918
38-06-06	Statistical Clerk II	58922
38-06-07	Community Work Program Coordinator II	7753
38-06-07	Correctional Officer/ Supervised Custody Officer	7780

Section 161. The Department of Correction may make disbursements from current year funds, for legal-related expenses, to pay prior year obligations.

Section 162. Section 1 of this Act includes funding for five positions for an Internal Affairs Unit in the Department of Correction, Office of the Commissioner (38-01-01). The Internal Affairs Investigator positions must have at least ten years of investigative experience and are to be classified as exempt positions. Merit Rule 7.011 (Recruitment) shall not apply to these positions.

Section 163. Section 1 of this Act provides an appropriation for Personnel Costs to the Department of Correction - Office of the Commissioner (38-01-01). Of the total amount appropriated, up to \$15.0 shall be used to employ an Attorney on a casual and seasonal basis to oversee the para-legal staff assigned to the Department of Correction - Education (38-01-70).

Section 164. Section 1 of this Act provides funding of \$15.0 to the Department of Correction - Personnel/Staff Training (38-01-02) for supplies and materials. These funds are intended to implement the intent of Senate Bill No. 39 of the 136th General Assembly. If Senate Bill No. 39 is not enacted into law, these funds shall revert to the General Fund of the State of Delaware.

Section 165. Section 1 of this Act provides an appropriation to the Department of Correction, Medical Services (38-01-30). Administration of the Medical Services contract shall be the responsibility of the Commissioner of Correction or his designee.

Section 166. The Medical Services Contract for the Department of Correction expires in FY 1993. The Department of Correction shall issue a Request for Proposal (RFP) for a new medical contract. As part of the process of designing the RFP, the Department shall submit such RFP to the Office of State Personnel for review prior to submitting any proposal to the open market for competitive bids.

Section 167. The Department of Correction, Facilities Maintenance, (38-01-40) receives funding for maintenance and restoration projects in the Budget Act and the Capital Improvements Act. The department must submit a quarterly report to the Budget Director and Controller General, detailing the expenditure of such funds and the respective projects. The department shall submit a preliminary plan for maintenance projects for Fiscal Year 1994 by October 30, to the Budget Director and Controller General.

Section 168. In addition to the positions authorized in Section 1 of this Act for the Department of Correction (38-00-00), additional positions are authorized in Personnel/Staff Training (38-01-02) for the purpose of training classes. During the training sessions, up to 30 positions will be made available to accommodate the class being trained.

Funding is authorized to seed the first-time use of these 30 positions. In order to utilize these positions after the first time use, the department will use salary savings realized throughout the year.

Section 169. Section 1 of this Act includes funding for relief positions in the Personnel/Staff Training IPU of the Department of Correction (38-01-02). These positions shall be used primarily for training relief. The Department of Correction shall provide a quarterly report to the Budget Director and Controller General detailing the non-training relief assignments of the staff training relief officers.

Section 170. Section 1 of this Act appropriates the sum of \$9.0 in "gate money" or "release money" to the Department of Correction, Prisons - Office of the Bureau Chief (38-04-01). The General Assembly intends that these funds be used for inmates, who upon their release, are financially unable to obtain transportation away from the facility. The funds thus appropriated shall be used for the express purpose of providing cash payments to eligible inmates being released from an adult correctional facility and shall be expended as follows:

- (a) Upon release, a prisoner who within 30 days prior to release has \$50.00 or more in his/her inmate account or accounts shall not be eligible for such payment, but shall be paid in cash the amount in his/her inmate account or accounts.
- (b) Upon release, a prisoner who has less than \$50.00 in his/her inmate account or accounts shall be paid in cash the amount remaining in his/her account or accounts and may be paid an additional sum sufficient to ensure transportation to his/her place of residence. Such sum sufficient, together with the funds available in the inmate account, shall not exceed \$50.00.

- (c) Any prisoner who, after using option (a) or (b) of said Section, has insufficient funds to provide a one-way bus ticket to his/her place of residence, shall forfeit all such funds and shall be provided with a one-way bus ticket to his/her place of residence, as well as sufficient funding to provide food during travel.

Section 171. (a) Of the total positions authorized in Section 1 of this Act for the Morris Correctional Institution (38-04-07), three positions shall be used to continue the existing highway beautification project.

(b) Of the total positions authorized in Section 1 of this Act for the Delaware Correctional Center (38-04-03), four positions shall be used to continue the existing highway beautification project.

(c) Of the total positions authorized in Section 1 of this Act for the Sussex Correctional Institution (38-04-04), four positions shall be used for a highway beautification project.

Section 172. Section 1 of this Act provides an appropriation for Personnel Costs to the Department of Correction - Delaware Correctional Center (38-04-03). Included in this appropriation are casual & seasonal funds to allow the Department to oversee a program to manufacture reading materials in braille for the visually impaired. The Department shall provide this service in cooperation with the Division of the Visually Impaired.

Section 173. Section 1 of this Act includes an appropriation for Contractual Services to the Department of Correction - Women's Correctional Institution (38-04-05). Of this appropriation, \$20.0 shall be used to provide Drug & Alcohol counseling and/or treatment.

If the Department is successful in receiving a federal grant for Drug and Alcohol Counseling/Treatment in F.Y. 1993 (the "Mirror" Program), the restriction on the use of Contractual Services' General Funds listed in this section shall no longer apply.

Section 174. Section 1 of this Act makes an appropriation for Contractual Services to the Department of Correction, Morris Correctional Institution (38-04-07). Of this amount, \$5.0 shall be used for "tipping" fees.

Section 175. Section 1 of this Act makes an appropriation of \$808.5 to the Department of Correction - Community Custody & Supervision - Office of the Bureau Chief (38-06-01) for various drug and alcohol treatment programs.

The Secretary of Health and Social Services and the Commissioner of Correction, or their designees, shall jointly participate in developing the appropriate Request for Proposals (RFP's) for contract services to provide drug and alcohol treatment. Further, each department shall jointly participate in a Screening & Evaluation Team to determine levels of service required for each referral, as well as periodic review of all referrals. All selected contract providers shall report on a regular basis to the Department of Correction on any and all follow-up regarding referrals to the various support programs.

Section 176. Section 1 of this Act makes an appropriation of \$330.0 and 11 positions to the Department of Correction, Community Custody and Supervision, Office of the Bureau Chief (38-06-01). The use of these funds are conditioned on the passage of legislation granting the Department of Correction the authority to impose fees for probation supervision. Upon passage, the Department is authorized to fill four positions to enhance the collection of supervision fees. Beginning on September 30, 1992, the Department shall submit to the Budget Director, Controller General and Chairs of the House and Senate Committees, a report of revenues collected from supervision fees. The Budget Director and the Controller General, upon review of the monthly reports, may authorize the filling of up to seven General Fund Probation and Parole Officer positions authorized in Section 1 of this Act, once they are satisfied that the projected revenues from the supervision fees are sufficient to cover the associated expenses. All personnel collecting supervision fees and all other fees, costs, etc., shall offer a legitimate receipt upon collection of said fees. If the supervision fee legislation is not enacted, the amount appropriated shall revert to the General Fund of the State of Delaware.

Section 177. Section 1 of this Act provides a one-time appropriation of \$35.0 to the Department of Correction - Bureau Chief - Community Custody and Supervision (38-06-01). These funds shall be used to provide weapons and related equipment in order to implement the intent of Senate Bill No. 39 of the 136th General Assembly. If Senate Bill No. 39 is not enacted into law, these funds shall revert to the General Fund of the State of Delaware.

## NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

Section 178. Section 1 of this Act provides an appropriation to the Special Programs, Parks and Recreation, Department of Natural Resources and Environmental Control (40-06-03), for Contractual Services in Appropriated Special Funds. Of that amount, \$5.0 shall be used to provide primitive camping services in State Parks for non-profit youth organizations.

Section 179. Section 1 of this Act contains a \$539.8 Appropriated Special Funds appropriation and 15.0 Appropriated Special Funds positions in Air and Waste Management, Air Resources (40-09-02) for the purpose of supporting the development of regulations to meet the requirements of the 1990 federal Clean Air Act Amendments. If legislation has not been adopted prior to July 15, 1992 implementing fees to support these activities, the department is authorized to transfer and expend an amount not to exceed \$200.0 from the Penalty Account (40-01-01-88-60); \$200.0 from the Hazardous Substance Cleanup Fund (40-09-03-85-50) and \$139.8 from the Lab Certification Loan Repayment Account (40-01-87-60) for the purpose of providing Air Resources (40-09-02) with a loan to support these activities. The loans shall be repaid following the adoption of the federally mandated fee schedule, but no later than June 30, 1996.

Before any of the fifteen (15) positions added for this program can be hired, the Personnel Director, Budget Director and Controller General, shall approve the classifications and the hiring dates.

## PUBLIC SAFETY

Section 180. Section 1 of this Act makes an appropriation to the Division of State Police, Executive IPU (45-06-01). Included in this budget are funds for implementation of a Career Development Program. Any adjustment received under this program will be added to base compensation and will be included to determine retirement benefits.

Section 181. The Division of State Police receives funds resulting from drug and other seizure activities. If the seizure is defined as being under federal jurisdiction, then the funds flow to State Police - Executive (45-06-01) as Non-Appropriated Special Funds. A Quarterly Report as to the expenditure of such funds and to the respective projects shall be submitted to the Budget Director and the Controller General.

Section 182. The positions in the Office of the Secretary, Highway Safety (45-01-40) transferred to State Police, Highway Safety (45-06-13) as of July 1, 1991, shall remain in the classified service until such time as a vacancy occurs. When a vacancy occurs, the position(s) shall be made exempt from the classified service and shall be given a merit system comparability in accordance with Section 11 of this Act.

Section 183. Section 1 appropriates \$45.0 to the Division of Licenses, Taxes and Registrations - Vehicle Services (45-07-20) for Contingency - Firemen's Tags. If legislation authorizing special license tags for volunteer firemen is not approved, these funds will revert to the General Fund.

Section 184. Amend Section 2911, Title 6 of the Delaware Code, Section 10303, Title 29 of the Delaware Code and Sections 5101, 5102, 5103, 5104, 5105, 5106, 5107, 5108, 5109, 5110, 5111, 5113, 5114, 5115, 5116, 5117, 5118, 5119, 5120, 5121, 5122, 5123, 5124, 5126, 5128, 5131, 5132, 5134, 5135, 5136, 5137, 5138, 5202, 5204, 5205, 5208, 5209, 5210, 5211, 5214, 5216, 5217, 5218, 5219, 5220, 5222, 5223, 5225, 5228, 5229, Title 30 of the Delaware Code by deleting the words "Public Safety" wherever they appear in said sections and substitute in lieu thereof the word "Transportation".

Section 185. Amend Section 10303, Title 29 of the Delaware Code, and Section 5139, Title 30 of the Delaware Code by deleting the words "Division of Motor Fuel Tax" wherever they appear in said sections and substitute in lieu thereof the words "Motor Fuel Tax Administration".

Section 186. Amend Section 5229(a), Title 30 of the Delaware Code by striking said subsection in its entirety and substituting in lieu thereof the following:

"(a) The Secretary of the Department of Transportation may enter into cooperative agreements with other states, for exchange of information and auditing of users of motor fuels used in fleets of motor vehicles operated or intended to operate interstate. An agreement, arrangement, declaration or amendment thereto is not effective until executed and filed with the Department of Transportation."

Section 187. Amend Section 5229, Title 30 of the Delaware Code by deleting the word "Departments" wherever it appears in said section and substitute in lieu thereof the word "Department".

Section 188. Delete Section 8222, Title 29 of the Delaware Code in its entirety and renumber the remaining sections of Chapter 82 accordingly.

Section 189. Amend Chapter 13, Title 2 of the Delaware Code by adding a new section to read as follows:

"Section 1331. Motor Fuel Tax Administration

There is hereby created, as an administrative body of the Authority, the Motor Fuel Tax Administration. The Motor Fuel Tax Administration shall be responsible for administration of Chapters 51 and 52, Title 30 and Chapter 29, Title 6 of the Delaware Code and shall perform such other duties and functions as shall be specifically delegated to the Motor Fuel Tax Administrator by the Director of the Delaware Transportation Authority, with the written approval of the Secretary of Transportation.

The Motor Fuel Tax Administration shall be managed by the Motor Fuel Tax Administrator. The Director, Division of Motor Fuel Tax and the employees of the former Division of Motor Fuel Tax shall be transferred to the Department of Transportation and, notwithstanding any provision of Section 1325, Title 2 of the Delaware Code to the contrary, shall be deemed to be employees of the state in the classified service with all the benefits accrued as merit employees as of July 1, 1992."

Section 190. The Director, Division of Motor Fuel Tax shall assume the same responsibilities as the Motor Fuel Tax Administrator as defined in Section 1331, Title 2 of the Delaware Code. When a vacancy occurs in the Director, Division of Motor Fuel Tax position, that position shall be made exempt from the classified service and shall be given a merit system comparability in accordance with Section 11 of this Act. In addition to becoming an exempt position, the Director, Division of Motor Fuel Tax position, at such time as it becomes vacant shall be renamed as Motor Fuel Tax Administrator. All remaining positions within the former Division of Motor Fuel Tax shall maintain merit system status.

## TRANSPORTATION

Section 191. All state agencies are directed to remit payment for services rendered by the Department of Transportation within (30) days after receipt of invoice. Services may include fuel billing, sign manufacturing, photocopies, specialized transit services, etc. Partial payments or estimated payments will not be permitted.

Section 192. All monies received by the Division of Highways during the fiscal year as reimbursement for motor fuel and oil supplied to other departments and agencies shall be credited to a unique special fund and associated GAAP Fund revenue account as so designated by the Budget Office, and all monies shall be credited to said account regardless of the year in which the motor fuels were supplied. All billings shall be at state purchase price only.

Section 193. The Delaware Transportation Authority budget, as set forth in memorandum form in Section 1 of this Act, shall be expended in accordance with the following limitations:

(a) Debt Service estimates are for current project financing as authorized by Title 2, Chapter 13, Delaware Code.

(b) Funds provided for "Newark Transportation" and any carry-over funds available are intended to cover the expenses of the public transportation system operated by the City of Newark. The funds may be used to provide up to 100 percent of the total operating cost of the system during the year.

(c) Funds provided for "Kent/Sussex Transportation" are intended for continuation of specialized transportation service for the elderly and handicapped in Kent and Sussex Counties. It is intended that management and direction of the service will reside with the Delaware Transportation Authority which may contract for services as they see fit, and that Kent and Sussex County Governments will review and approve allocation of the service levels within each county.

(d) Funds provided for "Dover Capital" are intended to aid the elderly and handicapped transportation system operated by the City of Dover. The funds may be used to provide up to 100 percent of the cost of capital needs of the system.

(e) Funds provided for "Dover Transportation" and any carry-over funds available are intended to aid the elderly and handicapped transportation system operated by the City of Dover.

(f) It is intended that funds for "Taxi Service Support", along with any carry-over funds available for the Taxi Services Support Program, will be maintained at least at the

same service level as in the previous year. It is intended that management and direction of these services shall reside with the Delaware Transportation Authority who may contract for this service as required.

(g) Funds of the Delaware Transportation Authority may not be provided as aids to local governments for transportation systems which restrict passengers because of residential requirements. Nothing in this Section is meant to require that governments must operate these transportation systems outside their political boundaries.

(h) Funds provided for "DAST Operations" are intended to include funding to allow DAST or a private operator to continue to provide the present level of service to dialysis patients on normal service days during the hours offered in New Castle County by DART to the extent that such service does not place DAST in violation of federal Americans with Disabilities Act.

Section 194. The Department of Transportation is hereby authorized to participate in \$250.0 worth of research with the University of Delaware, College of Engineering, through the Delaware Transportation Center. Funding for this program is derived from Transportation Trust Fund Revenues.

Section 195. Section 1 of this Act appropriates \$323.8 to the Office of Planning (55-03-01) for Operations/Capital. Of this amount, \$25.0 shall be used for infrastructure research and forums through the University of Delaware, College of Urban Affairs and Public Policy. Funding for this initiative is derived from Transportation Trust Fund revenues.

Section 196. Section 1 of this Act makes various appropriations from the Transportation Trust Fund for all transportation-related operations. The Department of Transportation shall promulgate and carry out the policies and procedures necessary to deauthorize any unprogrammed appropriations remaining at the end of each fiscal year.

Section 197. The Department of Transportation may participate in heating oil price hedging contract/s by transferring \$6.4 to the Division of Purchasing (30-06-00) within a timely manner as needed to cover the Department of Transportation's portion of the contract/s cost. Any unused portion will be promptly returned to the Department of Transportation.

Section 198. Section 1 of this Act authorizes disbursement of \$17,601.3 in Transportation Trust Funds for Debt Service, General Obligation. Of this amount, \$403.2, which reflects savings from previous General Obligation refunding activities, shall be remitted to the State Treasurer, Debt Management, to offset payments of authorized but unissued General Obligation debt.

## LABOR

Section 199. Section 1 contains a position authorization for, and an appropriation to the Commission for Women (60-01-30). This authorization and appropriation shall be for the continuance of position number 9274 as an Administrative Assistant II.

Section 200. Amend Title 19, Section 1311 of the Delaware Code by adding between the words "dues", and "as certified" as they appear therein the words "or service fee",.

Section 201. (a) Section 1 of this Act provides an appropriation of \$135.2 to Employment and Training, Training Services (60-09-20) for the Delaware State Summer Youth Employment Program to operate a ten-week program commencing July 1, 1992. This sum is to be allocated in the following manner:

New Castle County (outside the City of Wilmington)	\$ 40.5
City of Wilmington	40.7
Kent County	27.0
Sussex County	27.0
TOTAL	\$135.2

(b) Notwithstanding any other provision of the Delaware Code to the contrary, youths chosen for work under this program shall not be less than 14 years of age nor more than 20 years of age (except that work leaders may be 21 years of age) and shall be required to provide evidence of same before becoming eligible. All youths participating in the state-assisted program shall be required to present a letter from their parents or guardian indicating their consent to work and also releasing the State of Delaware and the sponsoring agency from any liability for assignments in the low-risk jobs that will be available.

Preference shall be given to those youths who are members of single-parent households whose income does not exceed \$15.0 annually and applicants who qualify based upon parental

income guidelines for two-parent households of \$26.0 or less. Notwithstanding income limits provided for participation in the State Summer Youth Employment Program, consideration may be given to other applicants at a ratio of at least eight applicants qualified on income to three persons considered beyond the income limits.

Any non-profit or tax exempt organization certified by the Department of Labor may be authorized to be a sponsoring agent for the state-assisted youth work program.

Sponsoring agents shall be required to submit a plan or project of activity of meaningful and productive work experience providing such details as the department shall deem necessary before becoming eligible as a sponsoring agent.

The sponsoring agent shall provide one work leader for each 20 youths employed in the program to supervise and monitor the attendance and work performance of the youths selected for the program. Work leaders shall be paid no more than \$4.50 per hour and shall work no longer than eight hours per day and five days per week.

In each of the political subdivisions wherein funds have been appropriated, no more than \$2.0 shall be extended for administrative purposes and no more than \$1.0 shall be expended for equipment, supplies and mileage.

A record of all equipment and supplies purchased with funds herein appropriated shall be kept by the sponsoring agent, and at the conclusion of the ten-week program such supplies and equipment shall be reverted to the Department of Labor.

Section 202. The funds appropriated for the Delaware State Summer Youth Employment Program shall not be co-mingled with funds appropriated from any other source. The guidelines for youth employment and administrative costs for all persons employed in the State Summer Youth Employment Program shall be based in accordance with prior years' practice of payment for services. The program management shall be directed by the Urban Affairs Specialist as provided for in prior years at no additional expense to the citizens of Delaware.

Section 203. Amend §8516, Chapter 85, Title 29, Delaware Code by striking said section in its entirety and substituting in lieu thereof the following:

"§8516. Exemptions.

The following positions set forth in this chapter shall be exempt from Chapter 59 of this title:

- (1) Secretary of Labor;
- (2) Chief of the Office of Occupational and Labor Market Information;
- (3) Director of Employment and Training;
- (4) Director of Unemployment Insurance;
- (5) Director of Industrial Affairs;
- (6) Director of Vocational Rehabilitation."

## AGRICULTURE

Section 204. Section 1 of this Act provides an appropriation to the Department of Agriculture of \$48.0 for the Delaware Agricultural Lands Preservation Foundation. Prior to the obligation or expenditure of said funds, the Foundation must present a proposal to the Budget Director, the Secretary of Agriculture and the Controller General, detailing how the funds will be spent during the fiscal year.

Section 205. (a) Section 1 of this Act provides an appropriation to the Department of Agriculture, Promotion and Production Support, Harness Racing Commission (65-04-03). Of the amount appropriated, \$123.0 may be used for the "First State Trotting and Pacing Series". This will consist of special harness horse races to be contested at Delaware's parimutuel harness tracks for six-year-old or younger horses that are owned in whole by a Delaware resident.

(b) The Department of Agriculture in consultation with the Cloverleaf Standardbred Owners Association shall establish the rules and regulations for this program to include, but not be limited to, the following:

- (1) There must be at least five horses declared to start in each race.

(2) Purses shall be divided as follows:

50% for 1st Place  
25% for 2nd Place  
12% for 3rd Place  
8% for 4th Place  
5% for 5th Place

(3) Participating harness tracks will add no less than 25 percent to the total funding made available by the Department of Agriculture for this program.

Section 206. Notwithstanding any other provision of law, memorandum of understanding or other agreement to the contrary, in no event shall the Department of Agriculture be liable or in any way legally obligated to pay compensation to any person/s or other entities in any amount totalling more than \$5 million during any single state fiscal year as the result of its having ordered the destruction of any poultry to prevent the spread of disease.

## ELECTIONS

Section 207. Section 1 of this Act includes one-time appropriations to the New Castle County Department of Elections (70-02-01), Kent County Department of Elections (70-03-01) and Sussex County Department of Elections (70-04-01) for "Election Year Costs." Of these amounts, \$57.7, \$15.3 and \$11.8, respectively, shall be used to provide poll workers a \$10.00 per day increase which includes training days.

## FIRE PREVENTION

Section 208. Section 1 of this Act includes a one-time appropriation for the Fire Prevention Commission, Fire Marshal's Office (75-01-01) in the amount of \$61.3. These funds shall be used to supplement the Appropriated Special Funds for the Plan Review Section for a total F.Y. 1993 Budget of \$590.4. Appropriated Special Funds shall be expended first with the \$61.3 General Funds being spent only if Appropriated Special Funds funds received in F.Y. 1993 fall below \$590.4. General Funds unexpended shall revert to the General Fund and not be used for any other purpose.

If the anticipated Appropriated Special Funds funds exceed \$590.4 in F.Y. 1993, they shall be used to fund a 1.0 Appropriated Special Funds Juvenile Firesetter position in the annualized amount of \$30.0 including other employment costs.

The Controller General and the Budget Director shall review and approve expenditures exceeding \$620.4 if justified and funded by excess Appropriated Special Funds revenues.

Section 209. Section 1 of this Act provides an appropriation of \$50.0 to the State Fire Prevention Commission (75-03-01) in the line item "statewide Fire Safety Education". These funds are to be matched by members of the Delaware Association of Volunteer Firemen and are to be used for the purpose of operating a statewide Fire Safety Education Program.

Section 210. Of the funds appropriated in Section 1 of this Act to the Fire Prevention Commission (75-03-01) in the line item "Contingency - Extraordinary Expenses", an amount not to exceed \$20.0 may be used to reimburse volunteer fire companies which incur extraordinary expenses. These funds may be disbursed to volunteer fire companies only for extraordinary expenses at the discretion of the Fire Prevention Commission upon the request of a volunteer fire company. An extraordinary expense under the provisions of this Act shall be defined as those expenses for which a volunteer fire company would not normally prepare for in its company budget and are not covered by said company's own private insurance.

## NATIONAL GUARD

Section 211. Section 1 of this Act provides an appropriation for Energy to Delaware National Guard (76-01-01). Within this appropriation, sufficient energy funds are included to defray energy expenses of the Lora Little School building that are not directly attributable to occupancy by the National Guard.

## HIGHER EDUCATION

Section 212. (a) Section 1 of this Act provides an appropriation for "Operations" of the University of Delaware (90-01-01) and an appropriation for "Operations" of the Delaware Geological Survey (90-01-02). This figure includes total state assistance for University operations costs as well as funds required to be appropriated by Title 29, Section 5505(6), Delaware Code. The appropriation for "Operations" of the University of Delaware includes \$1,951.4 for energy.



(b) The University of Delaware shall pay on a regularly scheduled basis as determined by the Secretary of Finance to the State Treasurer, at a rate determined under Title 29, Section 6340, Delaware Code, or otherwise by the Secretary of Finance, the amount of all fringe benefits applicable to salaries and wages paid to employees of the University of Delaware as the term "employee" is defined in Title 29, Sections 5501(a) and 5505, Delaware Code or any other fringe benefit costs applicable to the University of Delaware.

Section 213. Section 1 of this Act appropriates amounts for "scholarships", "agricultural programs" and "other programs" to the University of Delaware (90-01-01). Those amounts shall be allocated as follows:

Scholarships:

General	\$ 1,249.0	
Scholarships	648.5	
Title VI Compliance	926.3	
Aid-to-Needy Students	783.1	
Delaware Scholars Program	100.0	
Student Employment Program	136.9	
Total		\$ 3,843.8

Agricultural Programs:

Agricultural Experimental Station	\$ 92.1	
Agricultural Cooperative Extension	289.1	
Poultry Disease Research	241.5	
Crop Extension	32.3	
Agricultural Environmental Quality	38.3	
Soil Testing and Pesticide Control	97.3	
Diagnostic Poultry Program	53.1	
Total		\$ 843.7

Other Programs:

Academic Incentive	\$ 100.0	
Sea Grant	358.8	
Summer School for Teachers	208.9	
Urban Agent Program	62.1	
Public Service and Applied Research Projects	118.6	
Research Partnership Fund	1,000.0	
Afro-American and Other Minority Person Recruitment	204.9	
Pike Creek Greenway	50.0	
Urban Journalism	4.0	
Financial Services Center	25.4	
Local Government Research and Assistance	20.2	
Total		\$ 2,152.9

Section 214. Section 1 of this Act appropriates \$1,000.0 for the "Research Partnership Fund" at the University of Delaware, subject to the following:

(a) This appropriation shall be used to match, on a dollar-for-dollar basis, grants or contracts from private industry to conduct cooperative research with the University. The objective of the cooperative research efforts shall be to attract new high-technology research facilities and industries to locate within the State of Delaware.

(b) This appropriation shall be used to match "new" money and cannot be allocated to any projects in progress.

(c) The University President shall submit to the Governor, members of the General Assembly and the Controller General, within 120 days after the close of each fiscal year, a report containing an account of how these funds were expended; what new, industrial research organizations were attracted to the state; and plans for the ensuing fiscal year.

Section 215. Section 1 of this Act appropriates \$1,533.6 to the Delaware Institute of Medical Education and Research (90-02-01). This amount shall be allocated as follows:

Jefferson Medical College	\$ 1,002.0
University of Delaware	49.0
Medical Center of Delaware	200.0
Scholarships/Loans	182.0
Summer Research Program	24.6
Health Care Professional Recruitment	75.0
Academy of Medicine	1.0
	\$ 1,533.6

Any changes in this allocation must receive prior approval from the Budget Director and the Controller General.

The Delaware Institute for Medical Education and Research is also directed to use \$75.0 to recruit health care professionals who will provide needed preventive and primary care in underserved areas. The Board of the Delaware Institute for Medical Education and Research shall file an annual report detailing actual and intended uses of the Health Care Professional Recruitment Fund with the Secretary of Health and Social Services and the Chairman of the Health Care Commission on or before January 1, 1993.

**Section 216.** Section 1 of this Act provides funds to the University of Delaware (90-01-01) and Delaware State College (90-03-01) which were developed in accordance with the Title VI Compliance Plan for Higher Education in the State of Delaware. These funds shall be utilized expressly for that purpose.

**Section 217.** Section 1 of this Act provides an appropriation for "Operations" of Delaware State College (90-03-01). This figure includes funding for the Fiber Optic System, \$175.0 and Faculty Salaries Improvement, \$25.0.

**Section 218.** Section 1 of this Act makes an appropriation to Delaware State College (90-03-01) for General Scholarships. Of that amount, \$22.0 shall be for state scholarships for high ability students and \$20.0 shall be for departmental scholarships to attract high achievers into the sciences.

**Section 219.** For the period July 1, 1992, through June 30, 1993, in order to assess procedures intended to reduce the administrative burden incurred as a result of processing accounting transaction data into two independent accounting systems, the Budget Director has authorized Delaware State College to:

(a) Discontinue detail data input to the Delaware Financial Management System (DFMS) for encumbrance and vendor payment transactions related to General Fund, federal financial assistance and college funds;

(b) Effect vendor payment disbursements of the above identified funds on Delaware State College checks, generated through the College Accounting System and drawn on a College bank account;

(c) Summarize General Fund and federal financial assistance fund disbursements on a weekly, post disbursement basis, and draw down the corresponding amounts through the standard DFMS Payment Voucher process.

This authorization does not provide for any change to the processing of encumbrances and vendor payment transactions related to Bond/Capital funds; it does not affect payroll processing and does not relax or alter any control requirements prescribed by law or policy related to procurement, encumbrance and payment activity.

The College shall comply with specific procedures developed and prescribed by the Office of the Budget and Department of Finance, Division of Accounting. In addition, the College shall cooperate fully with the Office of Auditor of Accounts to aid in any review or examination of the College's accounting procedures, records and system.

Operations as enabled by this section shall be periodically reviewed and evaluated during the stated period by the Office of the Budget, Department of Finance and Office of Auditor of Accounts. Any procedural/control weaknesses identified shall be addressed and resolved, and this authority may be withdrawn for cause at any time during the stated period, with the allowance that Delaware State College will be provided reasonable time to revert to standard processes.

**Section 220.** Section 1 of this Act provides an appropriation to Delaware Technical and Community College, Office of the President (90-04-01) for Parallel Program Operations and Parallel Program Academics. This appropriation is to assist in the provision of the Delaware Technical/University of Delaware Parallel Program which will be operated jointly by the two institutions under a two-year contract initiated by Delaware Technical and Community College. Under this contract, the University of Delaware will teach students at Delaware Technical and Community College's facilities. Future budget requests will be made jointly by Delaware Technical and Community College and the University of Delaware, and budget cuts, if necessary, will be shared on a pro rata basis. Approval of tuition and other fees will be made by the Board of Trustees of the institution that delivers the relevant service, and the institutions have reached an agreement for tuition sharing. Representatives from both institutions will meet at least once each semester to review program operations.

**Section 221.** Section 1 of this Act makes an appropriation to Delaware Technical and Community College, Terry Campus (90-04-06) for Aid-To-Needy Students. Of that amount, \$3.0 is to be utilized for match for the SEOG, a federal program.

Section 222. The line item, Subvention, in Section 1 of this Act, Delaware Institute of Dental Education and Research (90-08-01), as provided by Title 14, Chapter 88, Delaware Code, provides for three dental internships and sufficient funds to contract with Delaware State Hospital (Inpatient Mental Health) to continue the Dental Internship Program. This program also will serve clients in the Community Mental Retardation Program.

## PUBLIC EDUCATION

Section 223. Section 1 of this Act authorizes positions for Public Education, School District Operations, Formula Salaries (95-02-00). This number is an estimate of the total number of the state-funded positions in the school districts within the state. Included in this number are all administrators, teachers, custodians, secretaries, cafeteria workers, aides and other state-funded positions. Also, included in this number are state-funded positions associated with numerous school district programs that receive funding on a pass through basis through the Department of Public Instruction. In addition to these state-funded positions, it is estimated that there will be 281.0 FTE locally-funded positions and 647.0 FTE federally-funded positions in the school districts of the state in Fiscal Year 1993.

Section 224. Amend § 1321(a), Title 14, Delaware Code, by striking the headings on the salary schedules in said subsection in their entirety and by substituting in lieu thereof the following:

Yrs.Admin Exper.	Teacher/ Other	Educ. Spec.	Supervisor/ Educ.Assoc.	Director/Senior Educ.Assoc.	Assist.Supt./ Assoc. Supt	Deputy Supt.	State Supt
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Section 225. Amend § 121(3), Title 14, Delaware Code, by inserting the words "associate superintendents," after the words "deputy superintendents," as they appear in the second sentence of said subsection.

Section 226. For the fiscal year ending June 30, 1993, the State Board of Education is permitted to move authorized positions among its Internal Program Units.

Section 227. Section 1 of this Act appropriates \$2,267.9 in General Funds and \$500.0 in Appropriated Special Funds to Public Education, Block Grants and Pass Through Programs, Education Block Grants (95-03-10), for the Professional Accountability and Instructional Advancement Fund. It is the intent of the General Assembly that the \$500.0 in Appropriated Special Funds and up to \$700.0 in General Funds appropriated in that line be used to initiate the "New Directions for Education in Delaware" plan. Further, the State Board of Education is authorized to use 5.0 positions, in the specified Internal Program Units in Section 1, to employ the following personnel:

- Associate Superintendent, Standards & Curriculum (95-01-04)
- Associate Superintendent, Improvements & Assistance (95-01-04)
- Associate Superintendent, Assessments & Accountability (95-03-10)
- Education Associate, Curriculum Frameworks (95-03-10)
- Education Associate, Performance Assessment (95-03-10)

It is contemplated that the State Board of Education will further reorganize the Department of Public Instruction on or about July 1, 1993. The State Board of Education shall submit a reorganization plan to the Budget Director as a part of the State Board budget request for Fiscal Year 1994 and shall proceed with any employee notifications required by Section 121, Title 14, Delaware Code that may be necessitated by such proposed reorganization. During Fiscal Year 1993, it is the desire of the General Assembly that major services of the Department of Public Instruction will be maintained at the Fiscal Year 1992 level.

Section 228. Amend Title 14, Chapter 15, Delaware Code, by striking Section 1509 in its entirety and substituting in lieu thereof the follow:

### "§1509. School District Quarterly Reports

Beginning with the fiscal year ending June 30, 1993, all reorganized school districts are required to submit to the State Superintendent of Public Instruction and the State Board of Education, quarterly financial reports on or before November 30, February 28 and May 31 of the current fiscal year. The final quarterly report will be submitted on or before August 31 of the following fiscal year. Such quarterly revenue and expenditure reports shall detail the district's cash position for all funds compared to its current local school board approved operating budget. Any reorganized school district that is projecting, in the May report, to close a fiscal year with less than or equal to 7.5 percent of the estimated amount of taxes collectible for current operating expense for the same year, shall attach written documentation with this report. This documentation shall

assess the district's long-term financial outlook and include a plan for increasing and maintaining the end of the year unobligated balance above the 7.5 percent level. The estimated amount of taxes collectible for current operating expense revenues shall be determined in accordance with the annual Assessment and Tax Rates study prepared by the State Board of Education. Three copies of each quarterly report shall be submitted. The State Superintendent of Public Instruction shall provide copies of the submitted reports to the Budget Director and Controller General within five working days.

Section 229. Section 1 of this Act makes an appropriation of \$15.0 to Public Education, State Board of Education, State Board and Superintendent (95-01-01) for Odyssey of the Mind. This appropriation shall be made available to school students to assist in defraying out-of-state travel expenses associated with this program.

Section 230. Section 1 of this Act provides appropriations of \$202,162.2 for Formula Salaries and \$75,130.0 for Other Employment Costs to Public Education, School District Operations, Division Funding (95-02-01). These amounts provide salaries and other employment costs for the following categories as determined by the September 30 unit count entitlement of each school district: Title 14, Section 1305, Section 1306, Section 1307, Section 1308, Section 1309, Section 1310, Section 1311, Section 1321, Section 1324, Section 1331 and Section 1332, Delaware Code. These appropriations also contain salaries and other employment costs funds for the Americanization Program operated by the Caesar Rodney and Red Clay Consolidated School Districts. These sums are \$7.3 and \$83.2, respectively.

Section 231. During the fiscal year ending June 30, 1993, school districts are authorized to receive cash for any official administrative position that the district qualifies for under the provisions of Title 14, Section 1321, Delaware Code. This option shall apply only if the district has not filled the position at any time during the fiscal year. The value of this cash option will be the corresponding value of Doctorate plus ten years of experience on schedule 1305 plus the amount for state administrative supplement from salary schedule 1321(c), at nine years experience for the administrative type involved. If a position is gained as a result of unit growth, and this option is utilized for that position, the district will receive three-fourths of the above funds. Districts wishing to exercise this option must make application to the State Board of Education.

Funds received as a result of this section may be used for any Division I or Division II purpose. Funds received as a result of this section may not be used to supplement state salaries authorized in Title 14, Chapter 13, Delaware Code for any employee.

Section 232. Delete Title 14, Section 1321(e)(15), Delaware Code, in its entirety.

Section 233. Line item funds appropriated in Section 1 of this Act to Public Education, School District Operations, Other Items (95-02-02) are to cover adjustments in the Appropriation Units of the State Board of Education and State Board for Vocational Education, Block Grants and Pass Through Programs, Pupil Transportation, or the local school districts. Examples of such use are: salary line transfers and adjustments; unit adjustments; state share of tuition payment for private placement of handicapped pupils; for Delaware residents of the Delmar School District attending Maryland schools; expenditures for Americanization classes; pupil transportation costs.

Section 234. Amend Title 29, Section 6519, Delaware Code, by adding a new subsection:

"(d) Notwithstanding any provisions of law to the contrary, if during the course of a fiscal year, any reorganized local school district is unable to meet its obligation to fund the local share of semi-monthly payroll due to either delayed receipt of property tax collectibles or previous expenditure of all available revenues, the Secretary of Finance and Budget Director, with the consultation of the Controller General, are authorized to release the unfunded payroll by covering the local liability with General Funds. Such a use of General Funds shall be contingent upon the reorganized local school district submitting to the Secretary of Finance a letter of agreement, signed by the district superintendent and president of the local board of education, which stipulates that the district will repay the state General Fund in full, including an amount for interest defined as the average rate of return on state investments during the period of the loan. Such repayment shall be made by means of a tax anticipation note or other means available to the district and shall be accomplished prior to releasing the next regular payroll. The provisions of this Section shall not apply to obligations other than payroll. The provisions of this Section may be utilized only once by each reorganized local school district during the course of any one fiscal year."

Section 235. Section 1 of this Act provides certain appropriations to Public Education, School District Operations, Other Items (95-02-02) and Block Grants and Pass Through Programs (95-03-00) for school districts in the state for the fiscal year ending June 30, 1993. Title 14, Chapter 17, Section 1704, Delaware Code, provides the method of determining the appropriate number of pupil units for each school district based on the

September 30 enrollment. Sufficient funds will be placed in the School District accounts to operate for a partial year. Based on the approved State Board Unit Count for September 30, adjustments will be made to the district accounts. These adjustments will be accomplished through the transfer process and therefore approved by the Budget Director and the Controller General.

Section 236. Section 1 of this Act provides certain appropriations to Public Education, School District Operations, Other Items and Debt Service in the state. These amounts are not based on the unit system. Allocation of these funds shall conform to the following:

(a) Debt Service amounts are predicated upon the amortization schedule as provided by the State Treasurer.

(b) The line item "Other Items" in the Internal Program Unit Other Items (95-02-02) shall be allocated as follows:

1. Caesar Rodney - Americanization	\$ 4.7
2. Red Clay - Americanization	9.0
3. Margaret S. Sterck -	
Residence - Other Costs	85.4
Consultant Services	11.0
Preschool Summer Program	6.9
4. Christina Autistic -	
Residence - Other Costs	102.5
Contractual Services	11.4

Total	\$ 230.9
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Section 237. Section 1 of this Act makes appropriations to Public Education, School District Operations, Division Funding (95-02-01) for Division II - All Other Costs and Energy. During the fiscal year ending June 30, 1993, a school district upon approval of the Budget Director and the Controller General, may transfer part of its allocated appropriation from Division II - Energy to Division II - All Other Costs. A school district may use Division II - Energy funds to obtain engineering studies required for Exxon or stripper well funds. A Division II - Energy Unit shall be valued at \$1,272.00. A Division II - All Other Costs Unit shall be valued at \$2,571.00.

Section 238. During Fiscal Year 1993, the two school districts selected to enter into multi-year contracts to test the concept of guaranteed energy cost reduction through energy management are authorized to continue to participate in the program. The committee made up of one member each from the Office of the Budget, the Energy Office of the Division of Facilities Management, the Office of the Controller General, and the Department of Public Instruction will continue to oversee the implementation of this program.

During the life of the contract entered into, these two districts will be empowered to use yearly Division II energy appropriations to make payments on the contract. In no event will additional state revenue be available to the district by way of participation in the program. As is currently the case, in the event that the Division II energy appropriation is not sufficient to meet the cost of the contract and any additional energy used, the districts must cover the costs with other funds available to them.

The Division of Accounting is directed to continue to assist the committee and school districts in implementing this program. The selected districts will be required to submit annual reports to the committee detailing savings for the life of the contract.

Section 239. Subject to the approval of the Budget Director and the Controller General, the State Board of Education is authorized to provide, on a competitive basis, one-time grants to local school districts to implement pilot alternative educational programs for seriously disruptive pupils who might otherwise be suspended or expelled from school. The State Board of Education shall establish guidelines and application procedures and shall be responsible for determining the effectiveness of the pilot programs. The guidelines shall be based upon the recommendations made by the statewide Task Force on Discipline constituted under the provisions of Senate Joint Resolution No. 11 of the 136th General Assembly. These grants shall not be provided prior to March 15, 1993. The provision of grants outlined in this section shall be contingent upon the identification of surplus funds within the State Board of Education Fiscal Year 1993 Budget. Such identification, for the purpose of this section, must be approved by the Budget Director and the Controller General before grants can be provided. The total amount of funds granted under the provisions of this section shall not exceed \$200.0.

Section 240. Section 1 of this Act provides an appropriation of \$17,626.8 to Public Education, School District Operations, Division Funding (95-02-01) for Division II - All Other Costs. This appropriation shall be used for all school costs except salaries and other employment costs, state and local benefits, debt service, energy, and transportation of pupils to and from their regular sessions of school. The purchase of computer equipment with Division II - All Other Costs funds shall be subject to the technical review and purchase requirements of the Office of Information Systems Planning and Development of the Office of the Budget.

Section 241. Section 1 of this Act provides an appropriation of \$3,164.9 to Public Education, Block Grants and Pass Through Programs, Adult Education and Work Force Training Block Grant (95-03-10). This appropriation shall be allocated by the State Board of Education to the following programs: Adult Incarcerated, Adult Trade Extension, Apprentice Program, James H. Groves High School, Adult Basic Education, New Castle County Learning Center, Delaware Skills Center and Alternative Secondary Education Program. For Fiscal Year 1993, each program shall receive the same allocation from this appropriation as its Fiscal Year 1992 allocation.

Section 242. Amend Title 14, Section 1716(g), Delaware Code by striking said section 1716(g) in its entirety and substituting in lieu thereof the following:

1716(g) A school district may elect to take a cash option for up to thirty percent of the units to which it is entitled under this section in any fiscal year. In such case, the district may use the funds so derived for either Division I or Division II purposes, provided, however, that such funds must be used for educational services specified in Subsection (c) and may not be used to supplement State salaries authorized in Chapter 13 of this title for any employee. The cash option shall provide \$35,000 per unit.

Section 243. Section 1 of this Act makes an appropriation to the State Board of Public Education Block Grants and Pass Through Programs, Education Block Grants (95-03-10). Of the amount appropriated, \$13,013.4 shall be used to fund units for academic excellence in the school districts in accordance with Delaware Code, Title 14, Section 1716. The balance of \$2,931.3 shall be allocated to school districts in proportion to the number of Division I units each district enrolls on the last school day in September 1992. School districts may use the funds to: purchase computer hardware, software or services, fund homebound instruction costs, provide substitute teachers, provide additional nurses so long as the district is entitled to less than one nurse per school, or provide a student work-study program.

Section 244. Section 1 of this Act provides an appropriation of \$1,417.3 to Public Education, Block Grants and Pass Through Programs, Special Needs Programs (95-03-20) for the operation of the Program for Children with Disabilities. The school districts in which children reside who are to be provided the special services are authorized to levy and collect local tuition tax to cover the local share of the program costs.

Section 245. Section 1 of this Act provides an appropriation of \$1,417.3 to Public Education, Block Grants and Pass Through Programs, Special Needs Programs (95-03-20) for the Program for Children with Disabilities (PCD).

The Interagency Resource Management Committee (IRMC) established in Fiscal Year 1992, shall continue in existence in Fiscal Year 1993. The IRMC shall be composed of the following members:

Superintendent of Public Instruction who shall be the chairperson of the IRMC;  
Cabinet Secretary, Department of Health and Social Services;  
Cabinet Secretary, Department of Services for Children, Youth and Their Families;  
Budget Director;  
Comptroller General.

The affirmative vote of a majority of all members shall be required to take action.

The IRMC shall review proposed eligibility criteria for services under the PCD and shall recommend to the State Board of Education a definition of eligibility for incorporation into the Administrative Manual: Programs for Exceptional Children.

The IRMC is created to promote interagency collaboration in the service of those eligible for the PCD, to promote the cost-effective use of existing resources -- federal and state, public and private, and to promote the opportunity for coordination with programs for other exceptional children. To accomplish these goals, the IRMC shall do the following:

1. Allocate all funds provided by the state, obtained by it, or under its control, which are designated for the service of children eligible for the PCD including:
  - a. State General Funds authorized by this section; and,
  - b. Monies provided by the Federal Government.

2. Seek to coordinate services to children eligible for the PCD with those provided by other public and private agencies.
3. Coordinate resources to support family-centered services for eligible children and their families, as appropriate.
4. Seek to develop collaborative approaches with the institutions of higher education for the service of those eligible for the PCD. Special emphasis shall be placed on the use of existing preschool educator training and child care provider training programs.
5. At its discretion, hire a full-time director who shall report to the IRMC. The director shall serve as liaison to the Department of Public Instruction, Instructional Services Branch.
6. The staff of DPI is encouraged to provide assistance in implementation of PCD.

The IRMC may, at its discretion, apply for and allocate grant funds that will serve children eligible for the PCD and further any of the purposes of this section. Sources of such grant funds may include the Federal Childcare Block Grant, Developmental Disabilities Council, Federal Child and Maternal Health grant, Federal Title XX, Delaware First Again grants, where appropriate.

The IRMC is hereby granted the power to use any funds under its control and not otherwise restricted to either hire employees or contract for services.

The IRMC shall report at least twice on its activities. The first report shall be made by December 19, 1992, and the second report by April 15, 1993. Each report shall be to the Governor, President Pro-Tempore of the Senate, and the Speaker of the House. Each report shall include:

1. A summary of IRMC experience in attempting to accomplish its purposes as stated above; and,
2. A recommendation of the IRMC whether and how to institutionalize its activities and functions.

The Budget Director and Controller General are hereby authorized to transfer additional funds serving this population among the budgets of the departments represented on the IRMC if there is prior agreement by the Secretary or Superintendent of the department, as the case may be, to which the funds were previously allocated.

For the purpose of facilitating a continuation of services, programs receiving an allocation under the provisions of this section may receive 20% of the prior year's allocation at the outset of Fiscal Year 1993. These programs are required to present program proposals to the IRMC at the first IRMC meeting of Fiscal Year 1993. Upon IRMC approval, adjustments to the program allocations may be made.

Section 246. Section 1 of this Act makes an appropriation which may be used for homebound instruction to the Public Education Block Grants and Pass Through Programs, Education Block Grants (95-03-10). School districts may form consortiums, utilizing homebound funds, to purchase or provide services. No homebound funds may be spent to provide services to students who have been suspended or expelled from school.

Section 247. Section 1 of this Act provides an appropriation of \$274.9 to Public Education, Block Grants and Pass Through Programs, K-12 Pass Throughs (95-03-15) for Parent Early Education Center.

Section 248. General Fund appropriations to Public Education in Appropriation Units (95-03-00), (95-04-00) and the Delmar Tuition, General Contingency, Teacher of the Year, Desegregation Monitoring, and Debt Service Appropriations in Appropriation Units (95-01-00) and (95-02-00) shall not be subject to the limitations as defined for Division I and Division II in Title 14, Chapter 17, Sections 1706 and 1709, Delaware Code.

Section 249. In order that the children for whom the learning disability and socially or emotionally maladjusted units were devised shall be the sole beneficiaries of all funds available for such children, the State Board of Education shall require strict adherence to approved guidelines before release of any funds designated for such children. The State Board of Education shall particularly ascertain that no educable, mentally handicapped are being classified as learning disabled; and that strict guidelines are developed to determine eligibility of socially or emotionally maladjusted children so that this category

does not become a catch-all for low-achieving, unmotivated or disruptive pupils without serious physiological or neurological disorders. All pupils classified learning disabled or socially or emotionally maladjusted must be reevaluated at least every two years, except psychological evaluation shall be made at least every three years.

Section 250. Section 1 of this Act makes an appropriation of \$510.3 to Public Education, Block Grants and Pass Through Programs, Special Needs Programs (95-03-20) for the Children's Services Cost Recovery Project (CSCR).

All local school districts shall fully participate in the implementation and operation of the project for the fiscal year ending June 30, 1993. Local school district participation shall be on a district-wide basis.

The following resources are appropriated to support implementation of the Children's Services Cost Recovery Project during the fiscal year ending June 30, 1993. Of the total amount appropriated, up to \$10.0 may be allocated for supplies and up to \$9.0 may be allocated for in-state travel, including reimbursement for the costs associated with operating personal vehicles pursuant to this section. No appropriation is made for the purchase of additional state-owned vehicles pursuant to this section. The appropriated funds for supplies and in-state travel pursuant to this section shall be dedicated to implementing the Children's Services Cost Recovery Project.

In addition, 13.0 full-time equivalent (FTE) staff positions are appropriated to support this project: 1.0 FTE shall be a State Specialist - Cost Recovery Specialist at the Department of Public Instruction (DPI). The State Board of Education is hereby permitted to authorize the hiring of up to 12.0 FTE positions in the local school districts for the sole purpose of implementing this section. The State Board of Education shall designate specifications regarding required skills and abilities and a job title for these positions. The 12.0 FTE local school district positions shall be paid in accordance with the Financial Secretary salary schedule 1308(a) including the local salary supplement in place at the employing local school districts.

Section 251. Section 1 of this Act provides an appropriation of \$9.9 to Public Education, Block Grants and Pass Through Programs, K-12 Pass Throughs (95-03-15) for the Delaware Nature Society. It is the intent that this money be used to provide summer programs including an eighth grade program in environmental heritage.

Section 252. Section 1 of this Act provides an appropriation of \$101.9 to Public Education, Block Grants and Pass Through Programs, K-12 Pass Throughs (95-03-15) for the READ-ALoud Delaware Program. READ-ALoud Delaware is to continue to develop and foster programs for the purpose of encouraging regular reading to preschool-aged children as an effective way to prepare them for learning. The monies passed through to READ-ALoud Delaware shall be used to provide programs in each county, focused on the more disadvantaged segment of the population of preschool-aged children. The State Board of Education shall report annually on the number of children participating and the effectiveness of the program.

Section 253. Section 1 of this Act provides an appropriation of \$1,393.5 to Public Education, Block Grants and Pass Through Programs, Special Needs Programs, Private Placement of the Handicapped/Unique Alternatives (95-03-20) to implement Title 14, Section 3124, Delaware Code. For the fiscal year ending June 30, 1993, any placement made pursuant to this Section shall be considered a special program placement and shall be eligible for inclusion in local school district tuition tax rate setting. Districts shall contribute 30 percent of the total cost associated with the placement of any district student in such a program. The provisions of the Delaware Code to the contrary notwithstanding, for the fiscal year ending June 30, 1993, the State Board of Education is authorized to continue utilizing funds appropriated for private placement of the handicapped in Section 1 of this Act to develop unique program alternatives, in lieu of private placement, for persons who have been, or who would otherwise be, identified as "complex or rare" and unable to benefit from the regularly offered free, appropriate public educational programs and up to six students in present education programs within this state whose individual education plan requires services not presently available within the present unit funding system. Unique program alternatives shall be defined and approved by the State Board of Education and may include, but not be limited to, related and supportive services.

Section 254. Section 1 of this Act appropriates \$1,393.5 to the Public Education, Block Grants and Pass Through Programs, Special Needs Programs, Private Placement of the Handicapped (95-03-20). Before the State Board of Education can authorize expenditures for new placements from this appropriation, the case must be reviewed by the Interagency Collaborative Team. The Interagency Collaborative Team shall consist of:



Division Director, Division of Child Mental Health Services of DSCYF;  
 Division Director, Division of Program Support of DSCYF;  
 Chairperson, Private Placement Committee of Department of Public Instruction;  
 Deputy Superintendent of Public Instruction for Instructional Services;  
 Division Director, Division of Mental Retardation of DHSS;  
 Division Director, Division of Alcoholism, Drug Abuse and Mental Health of DHSS;  
 Director of the Office of the Budget or designee;  
 Controller General or designee.

Division Director, Child Protective Services of DSCYF

The Interagency Collaborative Team shall invite to its meetings:

1. A representative of a responsible school district for the case under consideration;
2. The parents of the child;
3. Other persons the team believes can contribute to their deliberations.

The Interagency Collaborative Team shall:

1. Review existing assessments of new referrals;
2. Prescribe, if required, additional assessments for new referrals;
3. Review proposed treatment plans of new referrals;
4. Recommend alternatives for treatment plans of new referrals;
5. Coordinate interagency delivery of services;
6. Review each existing Private Placement/Unique Alternatives Case Treatment Plan for the appropriateness for transition plans for new treatments.

The Interagency Collaborative Team will ensure that state costs incurred as the result of a Team recommendation or assessment of a child currently funded from the Private Placement/Unique Alternatives appropriation for this purpose in Section 1 of this Act will be covered from the existing appropriation. New referrals will be assessed in the inter-agency manner described above. The Interagency Collaborative Team may accept and review up to ten cases from agencies other than DPI.

New referrals and these new non-DPI cases will employ Private Placement/Unique Alternatives funding to cover state costs to the extent determined appropriate by the Interagency Collaborative Team. Other agencies may recognize a portion of the responsibility for the treatment of these children if determined appropriate by the Team. Funds may be transferred upon the approval of the Budget Director and Controller General.

The Interagency Collaborative Team shall report on its activities to the Governor, Budget Director, President Pro-Tempore, Speaker of the House and Controller General by December 16, 1992, and April 15, 1993. The report shall include those items listed in the work plan detailed in the Interagency Treatment Planning and Service Delivery Team Final Report dated May 1992.

**Section 255.** Section 1 of this Act provides an appropriation of \$808.0 to Public Education, Block Grants and Pass Through Programs, Special Needs Programs (95-03-20) for Exceptional Student Unit - Vocational. This appropriation shall be used to continue the program of vocational education for handicapped students in New Castle, Kent, and Sussex counties. The funds appropriated shall provide for Divisions I, II, and III funding for a maximum of six units in a single program. The unit shall be based upon 13,500 pupil minutes per week of instruction or major fraction thereof after the first full unit and shall be in addition to the funding otherwise provided under Title 14, Subsection 1703(d), Delaware Code. The deduct contained in Title 14, Subsection 1703 (1), Delaware Code, shall not apply to the units authorized by this section.

**Section 256.** Any provisions of the Delaware Code to the contrary notwithstanding, the State Board of Education is authorized and directed to provide an aide for the purpose of providing mainstreaming services to deaf students in the Lake Forest School District, Caesar Rodney School District and Woodbridge School District.

**Section 257.** Section 1 of this Act provides an appropriation of \$97.2 to Public Education, Block Grants and Pass Through Programs, K-12 Pass Throughs (95-03-15) for Advanced Studies. The State Board of Education shall transfer this appropriation to the University of Delaware to help fund a summer school program, for college credit, for gifted and talented students.

**Section 258.** Section 1 of this Act makes an appropriation to Public Education, Block Grants and Pass Through Programs, Education Block Grants (95-03-10). Of that amount, any amounts allocated to Delaware Skills Center shall be transferred to New Castle County Vocational Technical School District for Adult Education.

Section 259. Section 1 of this Act provides an appropriation to Public Education, Block Grants and Pass Through Programs, Education Block Grants (95-03-10). The State Board of Education shall transfer any amount allocated to the New Castle County Learning Center to the Christina School District for the purpose of continuing the services provided by the New Castle County Learning Center.

Section 260. Section 1 of this Act provides an appropriation to Public Education, Block Grants and Pass Through Programs, Education Block Grants (95-03-10). The State Board of Education shall transfer any funds allocated for the Adult Incarcerated Program to the New Castle County Vocational Technical School District which shall continue to administer this program.

Section 261. Section 1 of this Act provides, at the discretion of the State Board of Education, for the possible operation of a RE:Learning Program. Funds shall be distributed to pilot schools that are to be selected by the State Board of Education. The goal of this program is to restructure the organization of individual schools to personalize instructional delivery systems to the needs of local student populations. These funds may be used to provide stipends for professional employees who participate in the planning process during the summer months or for those who take on additional responsibility during the school year, to provide travel costs or funds for supplies and materials, and/or to permit hiring of additional personnel. Alternate uses may be approved by the State Board of Education. In order to implement this Section, the State Board of Education shall have the authority to waive or suspend any and all requirements related to uses of funds contained in the Delaware Code or applicable State Board of Education regulations. Participating school districts must agree to at least maintain existing resource allocations to an individual pilot school site. If operated, the State Board of Education shall prepare a status report for submission to the Budget Director and the Controller General on or before October 15, 1992, regarding the activities of the pilot schools and the implications that their collective experiences have produced in terms of further refinements to the state formula aid system.

Section 262. Section 1 of this Act provides an appropriation of \$90.0 to Public Education, Block Grants and Pass Through Programs, K-12 Pass Throughs (95-03-15) for the Delaware Institute for Arts in Education. The State Board of Education shall transfer this appropriation to the University of Delaware which acts as the fiscal agent for this statewide program.

Section 263. It is the intent of the General Assembly that sabbatical leave authorized under Delaware Code, Title 14, Section 1325, at state expense, be limited to one full year leave or two 1/2 year leaves per local school district during the fiscal year ending June 30, 1993. Nothing in this section, however, shall prevent a school district from granting additional sabbatical leaves if the district pays the salary and other employment costs for the employee who is on leave.

Section 264. Section 1 of this Act provides, at the discretion of the State Board of Education, for the possible operation of a tuition reimbursement program for the purpose of reimbursing public school employees and teachers employed by state agencies for tuition payments for graduate college courses they successfully complete. Funds may only be used to reimburse certificated non-administrative employees. No payment shall be made unless the course taken, relates to the employee's job assignment and is taken with the prior approval of the employing district board, superintendent or state agency. Local school district Boards of Education are required to prioritize the allocation of the funds they receive to support the educational advancement efforts of regular education teachers taking special education and/or mainstreaming related courses and other educational priorities established by the local boards of education based on staff development goals or to ameliorate identified deficiencies. A copy of each school district's prioritized plan for the allocation of these funds shall be filed with the State Board of Education by December 15, 1992.

Reimbursement for tuition may be made for courses taken during summer school or during the academic year for which a passing grade of C or better is obtained. No reimbursement shall be in excess of the tuition charged a Delaware resident taking a course with an equal number of credit hours at the University of Delaware. Of the total allocation made by the State Board, a minimum of .75 percent shall be allocated to state agencies and the balance shall be allocated to the several school districts in amounts equal to each school district's proportion of Division I units to the total number of Division I units statewide on September 30, 1992. Any funds not expended by a school district or a state agency shall be transferred to other districts or agencies. In the event that any district's allocation is not sufficient to provide total reimbursement to all eligible employees, the district shall pro-rate the funds so that each eligible employee receives a share of the total district allocation equal to the individual employee's reimbursable expenditure divided by the total reimbursable expenditure of all employees in the district multiplied by the

district allocation. Funding for each school district shall be divided into two equal parts. The first one-half shall be prorated as described above among eligible employees who complete their courses prior to February 1, 1993. The second one-half shall be prorated as described above among eligible employees who complete their courses prior to June 15, 1993. In the event that funds remain in either half year, the district shall be authorized to reallocate those funds to reimburse eligible employees in the other portion of the year who did not receive full reimbursement. This Section shall supersede collective bargaining agreements to the contrary.

Section 265. Section 1 of this Act provides an appropriation of \$2,267.9 to Public Education, Block Grants and Pass Through Programs, Education Block Grants, Professional Accountability and Instructional Advancement Fund (95-03-10). This appropriation is to be used by the State Board of Education to operate staff development programs for educational personnel, programs to assess student performance and educator accountability initiatives which incorporate indicators of success as determined by the Board. As the ultimate objective of any educational staff development initiative ought to be increased student performance, the State Board of Education shall ensure that the operation of such programs benefits from an informed perspective on issues surrounding student assessment, curriculum improvement, school organization, site-based decision-making, and system-wide reform and restructuring in support of advancing the learning relationship between teachers and students.

Section 266. Section 1 of this Act makes an appropriation to Public Education, Block Grants and Pass Through Programs, Special Needs Programs (95-03-20) for Tech Prep 2+2. A Delaware Tech Prep Consortium is formed to provide for overall program development and management, coordination and technical assistance. The Consortium will review and provide technical assistance and in-service training for each proposal submitted to the State Board of Education by any partnership initiating or operating a tech prep program. The Consortium will adopt rules and regulations consistent with state regulations and federal legislation.

The Consortium Board of Directors shall include: the President, Delaware Technical And Community College; the Superintendent of New Castle County Vocational-Technical School District; Kent County Vocational-Technical School District; the Sussex County Vocational-Technical School District; the State Director of Vocational Education, Department of Public Instruction, (Ex-Officio); the Executive Director of Delaware Advisory Council on Career and Vocational Education; President or Designee, Delaware State College and Wilmington College and one representative of business and industry. The Superintendent or Designee of two comprehensive local school districts will also be appointed consistent with the rules and regulations of the consortium. Programs will be conducted in all three counties, on all campuses of Delaware Technical And Community College and other Postsecondary Institutions as specified by the consortium consistent with federal legislation. All Secondary Schools are eligible.

Kent County Vocational-Technical School District will act as financial agent for the consortium and an annual financial and program report will be submitted to the Co-Chairpersons of the Delaware Legislative Joint Finance Committee.

The Consortium may select another member to serve as the financial agent in a subsequent year consistent with the rules and procedures it adopts.

Section 267. (a) Section 1 of this Act provides an appropriation of \$2,830.7 to Public Education, Pupil Transportation (95-04-01) for Non-Public School Transportation Reimbursements. This appropriation shall be allocated for qualifying non-public, non-profit schools, based on the procedure adopted by the Joint Finance Committee on April 16, 1981.

(b) Transportation funds for public school districts during the fiscal year ending June 30, 1993, shall be allocated and shall not exceed \$35,928.2, according to bus contract or district transportation formula, as adopted by the State Board of Education on July 23, 1987, subject to the following amendments and procedural modifications:

(1) The per gallon price used to calculate the gasoline allowance shall be based on the state contract bid price for unleaded gasoline plus \$.07 per gallon for districts and plus \$.28 per gallon for contractors. For districts and contractors north of the Chesapeake and Delaware Canal, the per gallon price shall be based on delivery to a large-sized tank (5,000 or more gallons). In the case of contractors located south of the Chesapeake and Delaware Canal, the per gallon price shall be based on delivery to a small-sized tank (275 - 1,900 gallons). Upon determination by the State Board of Education that a contractor located North of the Chesapeake and Delaware Canal and operating five or fewer buses does not have existing storage capacity in the large tank range, the per gallon price shall be based on the smaller tank size. During

Fiscal Year 1993, the Department of Public Instruction is authorized to continue to calculate gasoline price adjustments for contractors based on a published price of gasoline. The source of this price must be agreed upon by the State Budget Director and Controller General and will be used as a proxy for fluctuations in the state bid price had a fixed price not been set. Adjustments will be made according to existing State Board of Education regulations.

(2) The Fiscal Year 1993 operating allowance will not be adjusted for inflation.

(3) For the fiscal year ending June 30, 1993, the allowable cost of a new bus purchased by a contractor shall be the Fiscal Year 1992 state bid price for new buses minus three percent for salvage value, plus 10 percent to account for dealer charges and profits not reflected in the state bid price due to the higher number of buses being purchased and the lag time between the ordering and delivery. The State Board of Education shall continue to utilize the procedures developed in Fiscal Year 1989 for determining the allowable cost for any size bus that it did not bid in Fiscal Year 1992. In addition to the procedure for establishing the allowable cost of a new bus specified above, the State Board of Education is requested to structure its bids for buses in the fiscal year ending June 30, 1993, in such a manner that public school bus contractors will be permitted to purchase buses from the successful lower bidder at the same price as the State of Delaware. If a contractor elects to purchase a bus at the bid price, that bid price minus 3 percent for salvage value will be the allowable cost in subsequent reimbursements to the contractor.

(4) The formula rate for reimbursing public school bus contractors for the cost of liability insurance shall be determined by the State Board of Education in consultation with the Insurance Commissioner based on the data available on April 30 of the previous fiscal year.

(c) The State Board of Education shall amend its transportation formula to permit replacement of a vehicle which has operated 100,000 school-related miles and is seven model-years old or a vehicle which has operated 150,000 school-related miles regardless of the age of the vehicle.

(d) The State Board of Education is authorized to amend its formula to allow the purchase of diesel-powered buses as the minimum standard in those sizes where gasoline-powered buses are no longer available.

(e) Except as specified in the Section, or for changes in the price of gasoline, or for the adjustments of those items changed by state or federal laws, the State Board of Education shall not change the transportation formula unless the change has been authorized by the General Assembly and an appropriation therefore has been made by the General Assembly.

(f) An account called the Transportation Incentive Fund shall be established for each school district in the state which has a district-operated pupil transportation system. When the State Board of Education approves the district-operated pupil transportation funding allocation for a school district and initiates the transfer of state funds to the district transportation account, an amount equivalent to ten percent of the district's prior year net allocation for district-operated pupil transportation shall be placed into the district's Transportation Incentive Fund account. Into the district's current year district-operated pupil transportation account shall be placed the difference between the current year district-operated pupil transportation allocation and the amount placed into the district's Transportation Incentive Fund account. Funds in the Transportation Incentive Fund account may be transferred at any time to the district transportation account. On June 1, 1993, any balance remaining in the Transportation Incentive Fund account may be transferred to Division II - All Other Costs if the district so chooses based on a projected year-end transportation surplus. In no case shall district transportation cost overruns be reimbursed with state funds if a transfer identified in the previous sentence has been made. If pupil transportation savings cannot be realized, up to the full balance in the Transportation Incentive Fund account may be transferred to the school district's transportation account.

Section 268. (a) During the fiscal year ending June 30, 1993, the Department of Public Instruction is hereby directed to provide bus transportation of public school students previously declared ineligible by the Unique Hazards Committee, including the following:

- (1) Students attending the Stanton Junior High School who are now forced to walk along Telegraph Road with a constant threat of injury.
- (2) Students attending Mt. Pleasant High School who are now forced to walk along Marsh Road with a constant threat of injury.

- (3) Students in the town of Seaford, living west of Conrail and north of the Nanticoke River, who attend the Seaford schools, grades K-6.
- (4) Students attending Seaford Central Elementary who live in the area east of Conrail, north of the Nanticoke River, and west of Williams Pond, within the Seaford city limits.
- (5) Students attending the Wilmington High School on Lancaster Avenue to Delaware Avenue in the north-south grid and on Jackson Street to duPont Street on the east-west grid.
- (6) Students attending Newark High School who, live in Windy Hills, and are forced to walk along Kirkwood Highway with a constant threat of injury.
- (7) Students attending schools in Laurel living in the areas of Lakeside Manor, Route 24 east of Laurel town limits, Route 13A South of Laurel town limits and Dogwood Acres.
- (8) Students attending Delcastle Technical High School, who live in Newport, and are forced to walk along Centerville Road (Rt. 141) with a constant threat of injury.
- (9) Students attending Woodbridge Junior-Senior High School who must travel along Route 13A south of Bridgeville, and students living west of Bridgeville who must travel along Route 404 or Route 18.
- (10) Students attending Smyrna Middle School who reside in the Sunnyside Acres area between Sunnyside Road and U.S. 13 and who would otherwise be required to walk along U.S. 13 in order to reach school.
- (11) Students attending the Concord High School who live south of Naamans Road in the Talleybrook-Chalfonte, Brandywood, Brandon and Beacon Hill areas who must walk along Grubb and/or Naamans Road with a constant threat of injury.
- (12) Students attending Richardson Park School and Conrad Junior High School who live on Brookside Drive.
- (13) Students attending the Laurel Elementary Schools in Grades K-6 who live in the Town of Laurel and the surrounding areas.
- (14) Students attending Dover High School who live in Old Sherwood, south of Waples Avenue.
- (15) Students attending the Mt. Pleasant Elementary School, who would be forced to walk along Bellevue Road.
- (16) Students attending the Mt. Pleasant Elementary School, who would be forced to cross over and/or walk along River Road between Lore and Bellevue.
- (17) Students attending the Douglas Kindergarten Center, who would be forced to walk along Route 2 (Union Street) or through Canby Park via the paths, with a constant threat of injury.
- (18) K-3 - New Todd Estates Development to Jeannie Smith - because of hazards of Route 4 at Pierson Drive intersection.
- (19) Children living in West Wilmington Manor who walk to Wilmington Manor Elementary School

The transportation of the students specified herein shall continue until the funds requested are appropriated and construction is completed. Spur routes shall continue to be served as at present.

Section 269. During the fiscal year ending June 30, 1993, the State Board of Education is hereby directed that students attending the Woodbridge School District, who live in the Canterbury Apartments in Bridgeville, will embark and disembark in the parking lot of the apartment complex in lieu of the bus stop area along the heavily traveled U.S. Route 13 Highway.

Section 270. For the fiscal year ending June 30, 1992, any sum in the School Pupil Transportation 1990 appropriation (95-04-01-01-90) shall remain encumbered and shall not be subject to lapsing until June 30, 1993.

Approved July 1, 1992.

#### CHAPTER 291

#### FORMERLY

#### SENATE BILL NO. 457

AN ACT TO AMEND AN ACT ENTITLED "AN ACT MAKING APPROPRIATIONS FOR THE EXPENSE OF STATE GOVERNMENT FOR THE FISCAL YEAR ENDING JUNE 30, 1993; SPECIFYING CERTAIN PROCEDURES, CONDITIONS AND LIMITATIONS FOR THE EXPENDITURE OF SUCH FUNDS; AND AMENDING CERTAIN PERTINENT STATUTORY PROVISIONS", BEING SENATE BILL NO. 444 OF THE 136TH GENERAL ASSEMBLY OF THE STATE OF DELAWARE.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Section 1 of Senate Bill No. 444 of the 136th General Assembly of the State of Delaware by striking the figure "93,562.8" as it appears on line 19, page 23 of said Bill and inserting in lieu thereof the figure "67,732.8".

Section 2. Further amend Section 1 of Senate Bill No. 444 of the 136th General Assembly of the State of Delaware by recomputing all totals and subtotals as they appear in said Bill.

Approved July 1, 1992.

CHAPTER 291

FORMERLY

SENATE BILL NO. 457

AN ACT TO AMEND AN ACT ENTITLED "AN ACT MAKING APPROPRIATIONS FOR THE EXPENSE OF STATE GOVERNMENT FOR THE FISCAL YEAR ENDING JUNE 30, 1993; SPECIFYING CERTAIN PROCEDURES, CONDITIONS AND LIMITATIONS FOR THE EXPENDITURE OF SUCH FUNDS; AND AMENDING CERTAIN PERTINENT STATUTORY PROVISIONS", BEING SENATE BILL NO. 444 OF THE 136TH GENERAL ASSEMBLY OF THE STATE OF DELAWARE.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Section 1 of Senate Bill No. 444 of the 136th General Assembly of the State of Delaware by striking the figure "93,562.8" as it appears on line 19, page 23 of said Bill and inserting in lieu thereof the figure "67,732.8".

Section 2. Further amend Section 1 of Senate Bill No. 444 of the 136th General Assembly of the State of Delaware by recomputing all totals and subtotals as they appear in said Bill.

Approved July 1, 1992.

## CHAPTER 292

## FORMERLY

## SENATE BILL NO. 450

AN ACT TO MAKE A SUPPLEMENTARY APPROPRIATION FOR CERTAIN GRANTS-IN-AID FOR THE FISCAL YEAR ENDING JUNE 30, 1993; SPECIFYING CERTAIN PROCEDURES, CONDITIONS AND LIMITATIONS FOR THE EXPENDITURE OF SUCH FUNDS; AND AMENDING CERTAIN PERTINENT STATUTORY PROVISIONS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (THREE-FOURTHS OF ALL THE MEMBERS ELECTED TO EACH HOUSE THEREOF CONCURRING THEREIN):

Section 1. Funds are hereby appropriated to the following grants-in-aid in the amounts listed:

<u>Accounting Code</u>	<u>Organization/Description</u>	<u>Amount</u>
	<u>Dept. of Health &amp; Social Services</u>	
(35-01-10)	Office of Secretary Adolescent Program	\$ 507,790
(35-05-30)	Office of Paramedic Administration Paramedic Program Operations	\$ 5,000,000
<u>Accounting Code</u>	<u>Organization/Description</u>	<u>Amount</u>
(35-14-10)	<u>Division of Aging</u>	
	<u>Senior Centers</u>	
	Absolom Jones Senior Center	\$ 100,738
	Brandywine Senior Center	71,991
	Bridgeville Senior Center	77,886
	Cape Henlopen Senior Center	126,116
	Chesapeake and Delaware Senior Center	44,862
	Clarence Fraim Senior Center	107,568
	DeLaHarr Senior Center	75,991
	Frederica Adult Center	63,305
	Georgetown CHEER Center	28,703
	Greenwood CHEER Center	28,703
	Harrington Senior Center	59,557
	Harvest Years Senior Center	32,557
	Howard Weston Senior Center	197,990
	Huling Cove Community Center- Lewes CHEER Center	43,661
	Indian River Senior Center	65,925
	Jewish Community Center	61,375
	Jimmy Jenkins Senior Center	61,399
	Julia Tallman Golden Age Center	61,356
	Kenton/Hartly Senior Center	55,476
	Kirkwood United Methodist Church Senior Center	24,752
	Laurel Senior Center	131,159
	Lewes Senior Citizens Center	36,386
	Los Abuelos Senior Center (Methodist Action Program)	20,656
	M.O.T. Senior Center	68,862
	Mid-County Senior Center	125,000
	Milford Senior Center	71,557
	Modern Maturity Center	175,186
	Nanticoke Senior Center	112,473
	New Castle Senior Center	54,754
	Newark Senior Center	102,460
	Northeast Senior Center	64,508
	Oak Grove Senior Center, Inc.	127,131
	Oak Orchard CHEER Center	28,703
	Ocean View CHEER Center	15,192
	Peoples Settlement - Senior Citizens Program	52,043



Roxana CHEER Senior Center	28,703
St. Ann's Neighborhood Services	81,226
St. Anthony's Senior Center	83,906
St. Hedwig's Senior Center	159,652
St. Patrick's Senior Center	104,766
St. Peter's Adult Center	81,566
St. Thomas Senior Center	96,269
Sellers Senior Center	78,991
Slaughter Neck CHEER Center	28,703
Smyrna-Clayton Senior Center	23,506
South Wilmington Senior Adult Center	16,450
West Center City Senior Activity Center	73,556
Wilmington Senior Center	141,554

#### Department of Public Safety

(45-01-01)	Office of Secretary - Administration	
	Local Police Coordination	\$ 42,500
	Aid to Local Law Enforcement	350,000
	TOTAL - Section 1	\$ 9,475,119

Section 2. Funds are hereby appropriated to the following grants-in-aid in the amounts listed:

<u>Category/Description</u>	<u>Amount</u>
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#### One-Time Items:

Department of Public Safety -	
Aid to Local Law Enforcement	\$ 1,400,000
Gumboro Volunteer Fire Co., Inc.	1,938
Seaford Volunteer Fire Co., Inc.	1,750

#### Arts/Historical/Cultural/Tourism

Afro-American Historical Society of Delaware, Inc.	\$ 16,686
Associated Community Talents, Inc.-The Everett Theater	15,450
Delaware Academy of Science-Iron Hill Museum	6,077
Delaware Agricultural Museum Assoc., Inc.	36,050
Delaware City Day Committee	13,905
Delaware Humanities Council-Visiting Scholars Program	30,591
Delaware Nature Society, Inc.	10,300
Delaware State Fair	195,000
Greater Harrington Historical Society	13,493
Historic Red Clay Valley, Inc.	
Wilmington & Western Railroad	11,124
Historical Society of Delaware	58,195
Miss Delaware Pageant	6,386
Naaman's Kill Questors, Inc.	5,150
Nanticoke Indian Association, Inc.	7,828
New Castle - Separation Day	11,124
New Castle Historical Society	6,077
WHYY	391,400
Wilmington Garden Center, Inc.	9,270

#### Aging - Other

Boys Club of Wilmington	\$ 14,935
Geriatric Services of Delaware, Inc.	108,150
Meals on Wheels - Lewes and Rehoboth	36,565
Rehabilitative Opportunities for Homebound Residents	30,900
Sussex County Home Services (HOPE Program)	36,050
William Hicks Anderson Community Center	
- Physical Fitness Program	6,900

#### Handicapped/Health/Labor

AHEDD, Inc. - Dover/Wilmington	\$ 42,230
Adult Special Education Program, Inc.	43,260
Alliance for the Mentally Ill	36,050
American Diabetes Assoc. - Delaware Affiliate, Inc.	5,150
Arthritis Foundation	15,450
Association for the Rights of Citizens	

with Mental Retardation in Delaware	8,240
Career Exploration Program, Inc.	35,020
Delaware Alzheimer's Association	5,000
Delaware Association for Blind Athletes	6,000
Delaware Association for the Blind	45,320
Delaware Center for Wellness	25,000
Delaware Elwyn Institute	18,540
Delaware Epilepsy Association	5,150
Delaware Hospice, Inc.	185,400
Delaware Nursing Centers, Inc. - Westside Health Service	10,300
Delaware Paralyzed Veterans Prosthetic Foundation, Inc.	27,810
Delaware Special Olympics	13,390
Easter Seal Society for Crippled Children & Adults of Delaware	81,370
Institute for Development of Human Resources	24,000
Jobs for Delaware Graduates	176,130
Kent/Sussex Industries	49,440
Mancus Foundation	33,990
Mental Health Association in Delaware	13,500
National Multiple Sclerosis Society of Delaware	10,300

#### Family and Youth Services

Residential Treatment	
Aid-in-Dover, Inc.	\$ 44,290
Children's Home, Inc.	44,290
Diamond State Youth, Inc.	108,150
Independent Living, Inc.	87,550
Layton Home for Aged Persons	144,200
Minquadales Home, Inc. - Gilpin Hall	10,300
The Shepherd Place, Inc.	12,360

Other	
Because We Care II	\$ 12,360
Big Brothers/Big Sisters of Delaware, Inc.	43,775
Boys Club of Wilmington	16,995
Child Care Connection	71,070
Child, Inc.	75,190
Children's Bureau of Delaware	118,450
Delaware Assn. of Chiefs of Police - Camp Barnes	22,500
Del. Guidance Services for Children & Youth, Inc.	154,500
Del. State Headstart Parents Association	14,420
Family Services of Delaware	48,410
Jewish Family Service of Delaware, Inc.	21,630
National Council on Agricultural Life and Research Fund, Inc.	28,840
Parents Anonymous of Delaware	30,900
Peoples Place II	90,640
Turnabout Counseling Center/Seaford Action Committee	175,100
United Cerebral Palsy of Delaware, Inc.,	51,500
YMCA of Southern Delaware - Mini-Bike	25,750
Youth Guidance Program	14,420

Adult Day Care	
Total Living Care, Inc.	\$ 25,750

#### Alcohol/Drug Abuse

1212 Program	\$ 24,617
ANKH, Inc.	25,750
Center for Pastoral Care	32,445
Delaware Association for Children of Alcoholics	8,755
Limen House	38,110
Open Door, Inc.	120,510
Peoples Settlement Association	16,000
Resource Center, Inc.	49,440
Sojourner's Place, Inc.	5,000

#### Neighborhood/Community Services

American Red Cross, Delaware Chapter	\$ 11,330
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Casa San Francisco	49,749
Chesapeake Bay Girl Scout Council, Inc.	29,870
Civil Air Patrol - Cadet Program	15,000
Claymont Community Center	227,115
Community Legal Aid - Social Security Advocacy	96,305
CONTACT Delaware, Inc.	61,800
Delaware Crime Stoppers	10,300
Delaware Crop Improvement Association	2,500
Delaware Housing Coalition	16,480
Delaware Safety Council, Inc.	39,140
Delmarva Rural Ministries, Inc.	22,660
Eastlawn Area Human Services, Inc.	40,000
Eastside Citizens, Inc.	46,350
Edgemoor Educational and Recreational Community Center	175,100
Food Bank of Delaware	113,300
Girls Club of Delaware	33,475
Greater Elsmere Recreation & Education Center	136,269
Hilltop Lutheran Neighborhood Center	34,608
Hockessin Community Center	77,765
Home of Divine Providence, Inc.	38,110
Ingleside Homes, Inc.	33,990
Latin American Community Center, Inc.	32,960
Mary Mother of Hope - House of Joseph	30,385
Mary Mother of Hope House - Phase I	53,045

Neighborhood/Community Services (cont.)

Mary Mother of Hope House - Phase II and III	\$	57,165
Mary Mother of Hope House - Emmanuel Dining Room		56,135
Mary Mother of Hope House - Job Placement Center		22,145
Methodist Mission and Church Extension Society, Inc. -		
Methodist Action Program		35,020
Neighborhood House, Inc.		50,264
Neighborhood House - Lower New Castle County Program		61,800
New Castle County Crisis Pregnancy/A Door of Hope, Inc.		24,000
Newark Housing Ministries		37,595
Richardson Park Community Action		15,450
Rosehill Community Center, Inc.		142,140
Salvation Army Emergency Housing		82,400
Salvation Army - Kent County Crisis Alleviation		28,840
Salvation Army - Supported Employment Program		5,150
Salvation Army - Sussex Crisis Alleviation		5,150
Seamen's Center of Wilmington, Inc.		5,150
Slaughter Neck Community Action Committee		39,140
Southbridge Medical Advisory Council, Inc.		
T/A Henrietta Johnson Medical Center		92,700
Southwest Wilmington Community Center		98,365
STEHM, Inc.		11,330
Sussex Community Crisis Housing Services, Inc.		18,540
Sussex County Community Action		54,590
Tri-State Bird Rescue and Research		21,012
Union Baptist Services		66,950
West End Neighborhood House, Inc.		33,475
Whatcoat Social Service Agency		51,500
YMCA of Delaware Eastern Sussex Family Branch		19,570
YMCA of New Castle County		173,040

TOTAL - Section 2

\$ 7,947,523

Section 3. (a) There is appropriated to the listed fire companies the following sums to be used for the prevention and extinguishment of fires throughout the State and for the maintenance of apparatus and equipment:

New Castle County

Aetna Hose, Hook and Ladder Co.	Newark	\$	14,147
Belvedere Volunteer Fire Company	Belvedere		14,147
Brandywine Hundred Fire Co. No. 1	Bellefonte		14,147
Christiana Fire Co.	Christiana		14,147
Claymont Fire Co.	Claymont		14,147

Cranston Heights Fire Co.	Cranston Heights	14,147
Delaware City Fire Co.	Delaware City	14,147
Elsmere Fire Co.	Elsmere	14,147
Five Points Fire Co. No. 1	Richardson Park	14,147
Goodwill Fire Co. No. 1	New Castle	14,147
Hockessin Fire Co.	Hockessin	14,147
Holloway Terrace Fire Co.	Holloway Terrace	14,147
Mill Creek Fire Co.	Marshallton	14,147
Mingquada Fire Co.	Mingquada	14,147
Minquas Fire Co. No. 1	Newport	14,147
Odessa Fire Co., Inc.	Odessa	14,147
Port Penn Volunteer Fire Co., Inc.	Port Penn	14,147
Talleyville Fire Co., Inc.	Talleyville	14,147
Townsend Fire Co., Inc.	Townsend	14,147
Volunteer Hose Co., Inc.	Middletown	14,147
Wilmington Manor Volunteer Fire Co., Inc.	Wilmington Manor	14,147

Kent County

Bowers Volunteer Fire Co., Inc.	Bowers	\$ 14,147
Camden-Wyoming Fire Co.	Camden	14,147
Carlisle Fire Co.	Milford	14,147
Cheswold Volunteer Fire Co.	Cheswold	14,147
Citizens' Hose Co. No. 1, Inc.	Smyrna	14,147
Clayton Fire Co.	Clayton	14,147
Robbins Hose Co. (Dover Fire Dept.)	Dover	14,147
Farmington Volunteer Fire Co.	Farmington	14,147
Felton Community Fire Co.	Felton	14,147
Frederica Volunteer Fire Co.	Frederica	14,147
Harrington Fire Co.	Harrington	14,147
Hartly Volunteer Fire Co.	Hartly	14,147
Houston Volunteer Fire Co.	Houston	14,147
Leipsic Volunteer Fire Co.	Leipsic	14,147
Little Creek Volunteer Fire Co.	Little Creek	14,147
Magnolia Volunteer Fire Co.	Magnolia	14,147
Marydel Volunteer Fire Co., Inc.	Marydel	14,147
South Bowers Fire Co.	South Bowers	14,147

Sussex County

Bethany Beach Volunteer Fire Co.	Bethany Beach	\$ 14,147
Blades Volunteer Fire Co., Inc.	Blades	14,147
Bridgeville Volunteer Fire Co.	Bridgeville	14,147
Dagsboro Volunteer Fire Co.	Dagsboro	14,147
Delmar Fire Department	Delmar	14,147
Ellendale Volunteer Fire Co.	Ellendale	14,147
Frankford Volunteer Fire Co.	Frankford	14,147
Georgetown Fire Co., Inc.	Georgetown	14,147
Greenwood Volunteer Fire Co.	Greenwood	14,147
Gumboro Volunteer Fire Co., Inc.	Gumboro	14,147
Indian River Volunteer Fire Co.	Indian River	14,147
Laurel Fire Department, Inc.	Laurel	14,147
Lewes Fire Department, Inc.	Lewes	14,147
Millsboro Fire Co.	Millsboro	14,147
Milton Volunteer Fire Co.	Milton	14,147
Millville Volunteer Fire Co.	Millville	14,147
Rehoboth Beach Volunteer Fire Co.	Rehoboth Beach	14,147
Roxanna Volunteer Fire Co.	Roxanna	14,147
Seaford Volunteer Fire Dept., Inc.	Seaford	14,147
Selbyville Volunteer Fire Co., Inc.	Selbyville	14,147
Slaughter Beach Memorial Fire Co.	Slaughter Beach	14,147

TOTAL \$ 848,820

(b) There is appropriated to the listed fire companies the following sums to be used for the maintenance and operation of ambulances in the public service:

Aetna Hose, Hook and Ladder Co.	Newark	\$ 1,938
Blades Volunteer Fire Co., Inc.	Blades	1,938
Bridgeville Volunteer Fire Co.	Bridgeville	1,938
Bowers Volunteer Fire Co., Inc.	Bowers	1,938
Brandywine Hundred Fire Co., No. 1	Bellefonte	1,938

Camden-Wyoming Fire Co.	Camden	1,938
Carlisle Fire Co.	Milford	1,938
Cheswold Volunteer Fire Co.	Cheswold	1,938
Christiana Fire Co.	Christiana	1,938
Claymont Fire Co.	Claymont	1,938
Cranston Heights Fire Co.	Cranston Heights	1,938
Dagsboro Volunteer Fire Co.	Dagsboro	1,938
Delaware City Fire Co.	Delaware City	1,938
Delmar Fire Department	Delmar	1,938
Ellendale Volunteer Fire Co.	Ellendale	1,938
Elsmere Fire Co.	Elsmere	1,938
Felton Community Fire Co.	Felton	1,938
Five Points Fire Co. No. 1	Richardson Park	1,938
Frankford Volunteer Fire Co. No. 1	Frankford	1,938
Frederica Volunteer Fire Co.	Frederica	1,938
Goodwill Fire Co. No. 1	New Castle	1,938
Greenwood Volunteer Fire Co.	Greenwood	1,938
Gumboro Volunteer Fire Co., Inc.	Gumboro	1,938
Harrington Fire Co.	Harrington	1,938
Hartly Volunteer Fire Co., Inc.	Hartly	1,938
Holloway Terrace Fire Co.	Holloway Terrace	1,938
Hockessin Fire Co.	Hockessin	1,938
Laurel Fire Department, Inc.	Laurel	1,938
Leipsic Volunteer Fire Co.	Leipsic	1,938
Lewes Fire Department, Inc.	Lewes	1,938
Magnolia Volunteer Fire Co.	Magnolia	1,938
Mill Creek Fire Co.	Marshallton	1,938
Millville Volunteer Fire Co., Inc.	Millville	1,938
Milton Volunteer Fire Co.	Milton	1,938
Minquadale Fire Co.	Minquadale	1,938
Minquas Fire Co. No. 1	Newport	1,938
Port Penn Volunteer Fire Co.	Port Penn	1,938
Rehoboth Beach Volunteer Fire Co., Inc.	Rehoboth Beach	1,938
Roxanna Volunteer Fire Co.	Roxanna	1,938
Seaford Volunteer Fire Co., Inc.	Seaford	1,938
Selbyville Volunteer Fire Co., Inc.	Selbyville	1,938
Slaughter Beach Memorial Fire Co.	Slaughter Beach	1,938
Talleyville Fire Co., Inc.	Talleyville	1,938
Wilmington Manor Volunteer Fire Co., Inc.	Wilmington Manor	1,938

TOTAL \$ 85,272

(c) There is appropriated to the listed fire companies the following sums to be used for the maintenance and operation of rescue trucks in the public service:

Aetna Hose, Hook and Ladder Co.	Newark	\$ 1,938
Bethany Beach Volunteer Fire Co.	Bethany Beach	1,938
Blades Volunteer Fire Co.	Blades	1,938
Bowers Volunteer Fire Co., Inc.	Bowers	1,938
Brandywine Hundred Fire Co. No. 1	Bellefonte	1,938
Bridgeville Volunteer Fire Co.	Bridgeville	1,938
Camden-Wyoming Fire Co.	Camden	1,938
Carlisle Fire Co.	Milford	1,938
Cheswold Volunteer Fire Co.	Cheswold	1,938
Christiana Fire Co.	Christiana	1,938
Citizens' Hose Co. No. 1, Inc.	Smyrna	1,938
Claymont Fire Co.	Claymont	1,938
Clayton Fire Co.	Clayton	1,938
Cranston Heights Fire Co.	Cranston Heights	1,938
Dagsboro Volunteer Fire Co.	Dagsboro	1,938
Delaware City Fire Co.	Delaware City	1,938
Delmar Fire Department	Delmar	1,938
Robbins Hose Co. (Dover Fire Dept.)	Dover	1,938
Elsmere Fire Co.	Elsmere	1,938
Farmington Volunteer Fire Co.	Farmington	1,938
Felton Community Fire Co.	Felton	1,938
Five Points Fire Co. No. 1	Richardson Park	1,938
Frederica Volunteer Fire Co.	Frederica	1,938
Georgetown Fire Co.	Georgetown	1,938
Greenwood Fire Co. No. 1	Greenwood	1,938
Goodwill Fire Co. No. 1	New Castle	1,938

Gumboro Volunteer Fire Co., Inc.	Gumboro	1,938
Harrington Fire Co.	Harrington	1,938
Hartly Volunteer Fire Co., Inc.	Hartly	1,938
Hockessin Fire Co.	Hockessin	1,938
Holloway Terrace Fire Co.	Holloway Terrace	1,938
Indian River Volunteer Fire Co.	Indian River	1,938
Laurel Fire Dept., Inc.	Laurel	1,938
Leipsic Volunteer Fire Co.	Leipsic	1,938
Lewes Fire Department, Inc.	Lewes	1,938
Little Creek Volunteer Fire Co.	Little Creek	1,938
Magnolia Volunteer Fire Co.	Magnolia	1,938
Marydel Volunteer Fire Co.	Marydel	1,938
Mill Creek Fire Co.	Marshallton	1,938
Millsboro Fire Co.	Millsboro	1,938
Millville Volunteer Fire Co., Inc.	Millville	1,938
Milton Volunteer Fire Co.	Milton	1,938
Minquadale Fire Co.	Minquadale	1,938
Minquas Fire Co. No. 1	Newport	1,938
Odessa Fire Co., Inc.	Odessa	1,938
Port Penn Volunteer Fire Co., Inc.	Port Penn	1,938
Rehoboth Beach Volunteer Fire Co., Inc.	Rehoboth Beach	1,938
Roxanna Volunteer Fire Co.	Roxanna	1,938
Seaford Volunteer Fire Department, Inc.	Seaford	1,938
Selbyville Fire Co., Inc.	Selbyville	1,938
Slaughter Beach Memorial Fire Co.	Slaughter Beach	1,938
South Bowers Fire Co.	South Bowers	1,938
Ellendale Volunteer Fire Co.	Ellendale	1,938
Houston Volunteer Fire Co.	Houston	1,938
Talleyville Fire Co., Inc.	Talleyville	1,938
Townsend Fire Co., Inc.	Townsend	1,938
Volunteer Hose Co., Inc.	Middletown	1,938
Wilmington Manor Volunteer Fire Co., Inc.	Wilmington Manor	1,938
TOTAL		\$ 112,404

(d) There is appropriated to the listed fire companies the following sums to be used for the maintenance of aerial or platform trucks and for the training of personnel in the techniques of extinguishing highrise fires throughout Delaware:

New Castle County

Aetna Hose, Hook and Ladder Co.	Newark	\$ 2,889
Brandywine Hundred Fire Co., No. 1	Bellefonte	2,889
Christiana Fire Co.	Christiana	2,889
Claymont Fire Co.	Claymont	2,889
Delaware City Fire Co.	Delaware City	2,889
Elsmere Fire Co.	Elsmere	2,889
Five Points Fire Co. No. 1	Richardson Park	2,889
Goodwill Fire Co. No. 1	New Castle	2,889
Hockessin Fire Co.	Hockessin	2,889
Mill Creek Fire Co.	Marshallton	2,889
Selbyville Volunteer Fire Co., Inc.	Selbyville	2,889
Talleyville Fire Co., Inc.	Talleyville	2,889
Volunteer Hose Co., Inc.	Middletown	2,889
Wilmington Manor Volunteer Fire Co.	Wilmington Manor	2,889

Kent County

Carlisle Fire Co.	Milford	2,889
Citizens' Hose Co., No. 1, Inc.	Smyrna	2,889
Hartly Volunteer Fire Co., Inc.	Hartly	2,889
Robbins Hose Co., (Dover Fire Dept.)	Dover	2,889

Sussex County

Bethany Beach Volunteer Fire Co.	Bethany Beach	\$ 2,889
Lewes Fire Department, Inc.	Lewes	2,889
Millsboro Fire Co.	Millsboro	2,889
Rehoboth Beach Volunteer Fire Co., Inc.	Rehoboth Beach	2,889
Seaford Volunteer Fire Co., Inc.	Seaford	2,889

TOTAL                      \$            66,447

(e) There is appropriated to the listed fire companies the following sums to be used for the maintenance and operation of rescue boats in the public service:

Bowers Volunteer Fire Co., Inc.	Bowers	\$	1,750
Citizens' Hose Co. No. 1, Inc.	Smyrna		1,750
Delaware City Fire Co.	Delaware City		1,750
Goodwill Fire Co. No. 1	New Castle		1,750
Holloway Terrace Fire Co.	Holloway Terrace		1,750
Leipsic Volunteer Fire Co.	Leipsic		1,750
Little Creek Volunteer Fire Co.	Little Creek		1,750
Milton Volunteer Fire Co.	Milton		1,750
Port Penn Volunteer Fire Co., Inc.	Port Penn		1,750
Roxanna Volunteer Fire Co.	Roxanna		1,750
Seaford Volunteer Fire Co., Inc.	Seaford		1,750
South Bowers Fire Co.	South Bowers		1,750

TOTAL                      \$            21,000

(f) There is appropriated to the Mayor and Council of Wilmington the following sums to be used for:

(i) The prevention and extinguishment throughout the City of Wilmington and for the maintenance of the apparatus and equipment of the 8 fire companies organized and equipped in the City.		\$	99,029
(ii) The maintenance of aerial or platform trucks and for the training of personnel in the techniques of extinguishing highrise fires throughout the City of Wilmington.		\$	5,778
(iii) The maintenance and operation of rescue boats in the public service.		\$	1,750
TOTAL		\$	106,557

(g) There is appropriated to the listed fire companies the following sums to help level up the insurance premium tax revenues to be used for the maintenance of apparatus and equipment:

Bethany Beach Volunteer Fire Co.	Bethany Beach	\$	18,553
Blades Volunteer Fire Co., Inc.	Blades		18,553
Bowers Volunteer Fire Co., Inc.	Bowers		18,553
Bridgeville Volunteer Fire Co.	Bridgeville		18,553
Camden-Wyoming Fire Co.	Camden		18,553
Carlisle Fire Co.	Milford		18,553
Cheswold Volunteer Fire Co.	Cheswold		18,553
Citizens' Hose Co. No. 1, Inc.	Smyrna		18,553
Clayton Fire Co.	Clayton		18,553
Dagsboro Volunteer Fire Co.	Dagsboro		18,553
Delmar Fire Department	Delmar		18,553
Robbins Hose Co., (Dover Fire Dept.)	Dover		18,553
Ellendale Volunteer Fire Co.	Ellendale		18,553
Farmington Volunteer Fire Co.	Farmington		18,553
Felton Community Fire Co.	Felton		18,553
Frankford Volunteer Fire Co.	Frankford		18,553
Frederica Volunteer Fire Co.	Frederica		18,553
Georgetown Fire Co., Inc.	Georgetown		18,553
Greenwood Volunteer Fire Co.	Greenwood		18,553
Gumboro Volunteer Fire Co., Inc.	Gumboro		18,553
Harrington Fire Co.	Harrington		18,553
Hartly Volunteer Fire Co.	Hartly		18,553
Houston Volunteer Fire Co.	Houston		18,553
Indian River Volunteer Fire Co.	Indian River		18,553
Laurel Fire Department, Inc.	Laurel		18,553
Leipsic Volunteer Fire Co.	Leipsic		18,553
Lewes Fire Department, Inc.	Lewes		18,553
Little Creek Volunteer Fire Co.	Little Creek		18,553

Magnolia Volunteer Fire Co.	Magnolia	18,553
Marydel Volunteer Fire Co., Inc.	Marydel	18,553
Millsboro Fire Co.	Millsboro	18,553
Milton Volunteer Fire Co.	Milton	18,553
Millville Volunteer Fire Co.	Millville	18,553
Rehoboth Beach Volunteer Fire Co.	Rehoboth Beach	18,553
Roxanna Volunteer Fire Co.	Roxanna	18,553
Seaford Volunteer Fire Dept., Inc.	Seaford	18,553
Selbyville Volunteer Fire Co., Inc.	Selbyville	18,553
Slaughter Beach Memorial Fire Co.	Slaughter Beach	18,553
South Bowers Fire Co.	South Bowers	18,553
TOTAL		\$ 723,567

(h) There is appropriated to the listed organizations the following sums to be used for the operation and maintenance of ambulances in the public service:

Mid-Sussex Rescue Squad, Inc.	Millsboro	\$ 1,938
American Legion, Sussex Post #8	Georgetown	1,938
American Legion, Kent Post #14	Smyrna	1,938
Sussex Memorial Post #7422, V.F.W.	Millsboro	1,938
TOTAL		\$ 7,752
Total - Section 3		\$ 1,971,819

Section 4. (a) Funds are hereby appropriated to the following grants-in-aid in the amounts listed and shall be used to furnish services through a duly selected service officer to Delaware Veterans of the Armed Forces of the United States, their widows and orphans, by providing contact services in Sussex, Kent and New Castle Counties:

American Legion, Department of Delaware	\$ 25,402
Veterans of Foreign Wars, Department of Delaware	25,402
Disabled American Veterans, Department of Delaware	21,165
Vietnam Veterans of America, Department of Delaware	21,165
Paralyzed Veterans of America, Department of Delaware	21,165

(b) Funds are hereby appropriated to the following grants-in-aid in the amounts listed for operations expenses:

Veterans of Foreign Wars, Department of Delaware	\$ 6,177
American Legion, Department of Delaware	6,177
Disabled American Veterans, Department of Delaware	6,177
Vietnam Veterans of America	6,177
Jewish War Veterans of the U.S., Department of Delaware	3,536
Delaware Veterans of World War I	2,641
Paralyzed Veterans of America, Department of Delaware	5,295

(c) Expenses for Memorial Day programs incurred by local Posts in Sussex, Kent and New Castle Counties shall be reimbursed out of operation expenses appropriated in subsection (b) of this Section on vouchers properly submitted to and approved by their representative veterans' organizations.

(d) The sum of \$4,993 is hereby appropriated to the American Legion, Department of Delaware, for the bearing of expenses incident to the holding of Boys' State.

(e) The sum of \$4,993 is hereby appropriated to the American Legion Auxiliary, Department of Delaware, for the bearing of expenses incident to the holding of Girls' State.

(f) The sum of \$1,995 is hereby appropriated to the American Legion, Department of Delaware, for the bearing of expenses incident to the holding of Trooper Youth Week in conjunction with the Delaware State Police.

(g) The funds appropriated by this Section shall be paid to the Finance Officer of the respective veterans' organizations, upon warrants signed by the proper Finance Officer and approved by the Secretary, Department of Finance.

TOTAL - Section 4 \$ 162,460

Section 5. Section 1 of this Act appropriates \$195,000 to the Delaware State Fair. Of that amount, \$75,000 shall be used for prizes for achievements



in agriculture, animal raising and in works of manual training and the domestic arts to be awarded at the annual State Fair and shall be paid by the State Treasurer at the beginning of the first quarter of Fiscal Year 1993. The remaining \$120,000 shall be paid in quarterly allotments, as provided in Chapter 65, Section 6505 of Title 29, Delaware Code.

Section 6. The appropriation in Section 2 of this Act to the Delaware Association of Chiefs of Police shall be used for the purpose of maintaining and operating Camp Barnes for the recreation of deserving youths from throughout the State.

Section 7. The sums appropriated to the various Senior Centers in Section 1 of this Act shall be made available to the Division of Aging in order to meet the State's matching requirement for federal funds appropriated under the Older Americans Act of 1965, as amended. Those senior centers receiving funds under the Older Americans Act of 1965, as amended, shall present to the Division of Aging a proposal for expenditure of State funds. The proposal submitted to the Division of Aging shall be prepared in accordance with the guidelines established for the administration of programs under the Older Americans Act.

Section 8. The provisions of House Joint Resolution No. 2, as amended by House Amendment No. 1, of the 132nd General Assembly shall continue in effect for the term of this Act.

Section 9. No funds appropriated in this Act shall be expended in a political campaign or for partisan political purposes.

Section 10. The Controller General may from time to time conduct performance audits of any non-state agency for which funds are appropriated in this Act.

Section 11. Funds appropriated in this Act shall not be used by any agency to provide child day care. It is the intent of the General Assembly that no funds will be appropriated in Fiscal Year 1994 in grants-in-aid to agencies for the purchase of capital equipment, relocation, rehabilitation, renovation or purchase of buildings. Organizations will not be eligible for consideration of a grant-in-aid appropriation unless they have been incorporated and operating for a two-year period prior to June 30th of the fiscal year in which they apply for funding for the following fiscal year.

Section 12. This Act is a supplementary appropriation and the monies appropriated shall be paid by the State Treasurer from General Fund monies not otherwise appropriated. Any funds remaining unexpended or unencumbered as of June 30, 1993, shall revert to the General Fund of the State of Delaware.

Section 13. (a) The State Treasurer is authorized to take the necessary steps to make a total payment of the appropriation in Section 2 of this Act at the beginning of the first quarter of Fiscal Year 1993 for the agencies as follows:

Association for Retarded Citizens  
Delaware Association for Blind Athletes  
Delaware Association of Police Chiefs - Camp Barnes  
Delaware City Day Committee  
Miss Delaware Pageant  
National Multiple Sclerosis Society  
New Castle - Separation Day  
West Center City Community Center - Physical Fitness Program

(b) The State Treasurer is authorized to take the necessary steps to make a total payment of the appropriation in Section 1 of this Act at the beginning of the first quarter of Fiscal Year 1993 for the municipalities which receive \$6,000 or less from the line item Aid to Local Law Enforcement.

(c) The State Treasurer is authorized to take the necessary steps to make a total payment of the appropriation to fire companies listed in Section 3 of this Act at the beginning of the first quarter of Fiscal Year 1993.

Section 14. Paragraph (d), Chapter 65, Title 29, Delaware Code, provides that monies appropriated for grants-in-aid shall be paid in installments of twenty-five percent each quarter of the fiscal year. An installment payment may

be delayed or withheld if the grant-in-aid recipient because of, but not limited to, the following:

- (a) Has not submitted a quarterly statement of expenditures if required to do so;
- (b) Expended funds from the grant-in-aid for purposes not intended by the General Assembly;
- (c) Expended funds for day care, purchase of capital equipment, relocation, renovation, rehabilitation or purchase of buildings; and
- (d) Agency is no longer in operation.

Upon notification by the Chairman of the Joint Finance Committee, the State Treasurer shall be directed to withhold such installment payment(s).

Section 15. (a) It is the intent of the General Assembly that each Grant-in-Aid recipient shall submit one of the following with its application for a grant award in Fiscal Year 1994:

(i) An audit prepared by a Certified Public Accountant covering the prior full fiscal year of the receiving agency, or

(ii) A Balance Sheet reflecting total Assets, Liabilities, and Fund Balances covering the prior fiscal year of the receiving agency; Statements of Support, Revenue and Expenses and Changes in Fund Balances covering the prior fiscal year of the receiving agency; and Statements of Functional Expenses covering the prior fiscal year of the receiving agency.

(b) Fire companies listed in this Act shall submit financial information on the form approved by the State Treasurer, the Budget Director and the Controller General. The listed fire companies are exempt from the provisions of Subsection (a) of this Section.

(c) Veterans' organizations in Subsection (4) of this Act are exempt from the provisions of this Section.

(d) Recipients of the appropriations for Aid to Local Law Enforcement shall be exempt from the provisions of this Section.

(e) Non-compliance by a Grant-in-Aid recipient with the provisions of this Section shall automatically disqualify the applicant for consideration of a Grant-in-Aid award in Fiscal Year 1994.

(f) For Fiscal Year 1993, it is the legislative intent that a Grant-in-Aid recipient listed in Sections 1 or 2 of this Act shall not be entitled to receive any of the funds appropriated by this Act unless certain financial information has been received by the Office of the Controller General on or before July 25, 1992. Such financial information shall be in the form as defined in Subsection (a)(i) or Subsection (a)(ii) of this Section covering full fiscal year of the receiving agency. If any Grant-in-Aid recipient fails to comply with this Subsection (f) the funds appropriated by this Act to that recipient shall revert to the General Fund of the State.

Section 16. (a) Section 2 of this Act appropriates a one-time item to the Department of Public Safety - Aid to Local Law Enforcement in the amount of one million four hundred thousand dollars (\$1,400,000) for the purpose of contracting with local law enforcement agencies for Emergency Illegal Drug Enforcement programs.

(b) There is hereby established a Drug Emergency Fund for Local Law Enforcement Agencies to be administered by the State Aid to Local Law Enforcement Committee (SALLE) and disbursed by the Department of Public Safety under authorized contracts.

(c) Local law enforcement agencies are encouraged to develop and maintain increased programs to combat illegal drug manufacturing, sale, and abuse. The Department of Public Safety may contract with any local law enforcement agency which qualifies under standards established by the SALLE Committee to establish and maintain emergency programs to increase their efforts to combat illegal drug use and abuse. No part of this appropriation may be used to

supplant funds already committed by a local law enforcement agency to regular police operations, or to pay salaries of full-time police officers and supporting personnel authorized by said agency as of June 30, 1991.

(d) The funds appropriated in Section 2 for the Department of Public Safety - Aid to Local Law Enforcement shall be allocated according to the formula presently used by the SALLE Committee as revised from time to time.

(e) Local law enforcement agencies may combine their allocations, upon approval of the SALLE Committee, to support a pool arrangement to fund a contiguous area served by more than one local law enforcement agency.

(f) Each local law enforcement agency contracting for an allocation shall, not later than April 1, 1993, report in detail the plan under which such funds are being expended, and any other information requested by the SALLE Committee. The SALLE Committee shall report to the General Assembly of the State of Delaware on or before May 1, 1993, as to the agencies that were awarded grants from these funds, the amount of the grant, and the purpose of the grant.

Section 17. Section 1 of this Act makes an appropriation to the Department of Health & Social Services, Public Health, Office of Paramedic Administration (35-05-30), for the state component of the operational costs associated with each county's paramedic service for Advanced Life Support. These funds shall be disbursed by the Office of Paramedic Administration on a quarterly basis to counties that operate approved programs.

The Office of Paramedic Administration shall have an audit performed by the State Auditor annually to insure that reimbursement to the counties for the State share of costs was for approved Advanced Life Support Services. Adjustments shall be made to the final quarterly reimbursement based on the audit results.

Section 18. For Fiscal Year 1993, the remaining balance in the Fiscal Year 1992 account (35-05-30-01-81) shall remain as a continuing appropriation and shall not be subject to reversion until June 30, 1993.

Section 19. Amend §9814(d), Title 16, Delaware code, by inserting the following after the words "approved costs":

"of the fourth quarter operations of the prior fiscal year and 60 percent of approved costs for the first three quarters' operations of the year of appropriation."

Section 20. Appropriations made in Section 1 of this Act to the Office of Paramedic Administration and Aid to Local Law Enforcement and in Section 2 of this Act to One-time Items--Aid to Local Enforcement shall not be subject to the provisions in Sections 11, 14 and 15 of this Act. Funds appropriated to Aid to Local Law Enforcement shall not be subject to reversion at the end of the fiscal year if unexpended or unencumbered, but shall be continued for a period of up to three years.

Section 21. For Fiscal Year 1993, the remaining balance in Account Number F.Y. 1992 (12-05-04-01-80) shall remain as a continuing appropriation and shall not be subject to reversion until June 30, 1993. This amount shall be appropriated to First State Games, Inc. provided satisfactory evidence is presented to the Controller General that the First State Games will be held in F.Y. 1993 or July of 1993.

Section 22. No funds appropriated in this Act may be used to hire lobbyists.

Section 23. Section 1 of this Act makes an appropriation to Neighborhood House - Lower New Castle Program. Upon determination the conditions have changed, the Budget Director and Controller General may transfer that appropriation to another agency.

Approved July 1, 1992.

## CHAPTER 293

## FORMERLY

## SENATE BILL NO. 458

AN ACT MAKING A SUPPLEMENTAL APPROPRIATION TO THE OFFICE OF THE BUDGET CONTINGENCY - CAPITAL IMPROVEMENTS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. The sum of eight million eight hundred ninety two thousand one hundred dollars (\$8,892,100) is hereby appropriated to the Office of the Budget, Contingency and One-time Items (10-02-04), Contingency - Capital Improvements.

Section 2. Funds herein appropriated shall be used to allow for a Public Education Capital Improvements authorization of not less than thirty two million seven hundred seventeen thousand (\$32,717,000) in the F.Y. 1993 Capital Improvements Act. The State Budget Director is hereby directed to transfer these funds at such time as the Capital Improvements Act of the State of Delaware for Fiscal Year 1993 is enacted into law and as directed therein.

Section 3. This Act is a supplemental appropriation and shall be paid by the State Treasurer from the General Fund of the State of Delaware from funds not otherwise appropriated.

Approved July 1, 1992.

## CHAPTER 294

## FORMERLY

## SENATE BILL NO. 459

AN ACT TO PROVIDE FOR A SUPPLEMENTAL APPROPRIATION TO THE DEPARTMENT OF HEALTH AND SOCIAL SERVICES, SOCIAL SERVICES FOR THE PURPOSE OF AN EMERGENCY CONCERNING MEDICAID FUNDS FOR NON-STATE INSTITUTIONS.

WHEREAS, the cost of health care is increasing at an astronomical rate; and

WHEREAS, the need for funds to match federal funding is deemed critical; and

WHEREAS, patients in Non-State institutions have the urgent need for medical care; and

WHEREAS, it is essential to maximize the availability of federal funds; and

WHEREAS, an emergency situation exists when the patients in Non-State institutions cannot receive medical care.

NOW, THEREFORE:

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (three-fifths of all the members elected to each House thereof concurring therein):

Section 1. The General Assembly hereby finds that an emergency exists in the appropriation of funds for Medicaid for Non-State institutions.

Section 2. The amount of twenty five million eight hundred thirty thousand dollars (\$25,830.0) is hereby appropriated to the Department of Health and Social Services, Social Services for the purpose of Medicaid for Non-State institutions.

Section 3. This Act is a supplementary appropriation and the monies herein appropriated shall be paid by the State Treasurer out of funds in the General Fund of the State of Delaware not otherwise appropriated.

Section 4. The funds herein appropriated which remain unencumbered on June 30, 1993, shall revert to the General Fund of the State of Delaware.

Approved July 1, 1992.

## CHAPTER 295

## FORMERLY

## SENATE SUBSTITUTE NO. 1

## TO

## SENATE BILL NO. 371

## AS AMENDED BY SENATE AMENDMENT NO. 1

AN ACT TO AMEND CHAPTER 138, VOLUME 68, LAWS OF DELAWARE, ENTITLED "AN ACT TO REINCORPORATE THE TOWN OF DAGSBORO" TO REVISE THE PROCEDURES FOR THE ANNUAL MUNICIPAL ELECTIONS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (Two-thirds of all members elected to each House thereof concurring therein):

Section 1. Section 4, Chapter 138, Volume 68, Laws of Delaware, As Amended, is amended by striking said subsection in its entirety and substituting in lieu thereof the following:

"Section 4. The Government of the Town in the exercise of all powers conferred by this Charter, except as otherwise provided herein, shall be vested in and exercised by a five (5) member Town Council, each of whom shall be elected by a popular vote as hereinafter provided. The term of office for each member of the Town Council shall be two (2) years, commencing at the Annual Meeting of the Town Council following his/her election and continuing until his/her successor is duly elected and qualified. Town Council members shall continue to serve as Council members and officers of the Town from and after the effective date of this Charter as amended until the successors are duly elected or appointed. The Mayor and each Council person shall receive as compensation such amount as shall be determined by the Town Council by ordinance or resolution for attendance at any regular meeting, special meeting or workshop meeting. The time of payment shall be determined by the Town Council, but in no event shall such compensation be paid less frequently than quarterly."

Section 2. Subsection C, Section 7, Chapter 138, Volume 68, Laws of Delaware, is amended by striking said subsection in its entirety and substituting in lieu thereof the following:

"(C) At the annual municipal election to be held on the first Saturday in December, A.D. 1992, two (2) members of the Town Council shall be elected. Each of the Councilperson so elected shall serve for a period of one (1) year or until his/her successor has been duly elected and qualified. At the annual municipal election to be held the first Saturday in December, A.D. 1993, three (3) members of the Town Council shall be elected. Each of the Councilperson so elected shall serve for a period of two (2) years or until his/her successor has been duly elected and qualified."

Section 3. Subsection D, Section 7, Chapter 138, Volume 68, Laws of Delaware, is amended by striking said subsection in its entirety and substituting in lieu thereof the following:

"(D) Thereafter, the terms of the Council shall be staggered so that at each Annual Municipal Election, there shall be elected Councilperson who shall serve for a term of two (2) years or until their successors have been duly elected and qualified."

Approved July 2, 1992.

## CHAPTER 296

## FORMERLY

## SENATE BILL NO. 374

AN ACT TO AMEND TITLE 6 OF THE DELAWARE CODE RELATING TO PARTNERSHIP INTERESTS IN GENERAL PARTNERSHIPS AND LIMITED PARTNERSHIPS AND THE UNIFORM COMMERCIAL CODE.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. AMEND Subsection (1)(b) of Section 8-102, Subtitle I, Title 6 of the Delaware Code by deleting the "and" at the end of Subsection (11).

Section 2. AMEND Subsection (1)(b) of Section 8-102, Subtitle I, Title 6 of the Delaware Code by deleting the "." at the end of Subsection (111), and substituting in lieu thereof ";and", and adding the following Subsection (iv):

"(iv) not a partnership interest in a general partnership or a limited partnership."

Section 3. AMEND Subsection (1)(c) of Section 8-102, Subtitle I, Title 6 of the Delaware Code by inserting in said Subsection, after the fourth sentence thereof and before the fifth sentence thereof a new sentence as follows:

"This Article applies to partnership interests in general partnerships and limited partnerships only to the extent such interests constitute certificated securities under subsection (1)(a) of this section."

Section 4. This Act shall take effect immediately after its enactment.

Approved July 2, 1992.

## CHAPTER 297

## FORMERLY

## SENATE BILL NO. 416

AN ACT TO AMEND CHAPTER 101, TITLE 29 OF THE DELAWARE CODE RELATING TO THE ADMINISTRATIVE PROCEDURES ACT TO REMOVE DELAWARE THOROUGHBRED RACING COMMISSION FROM ITS APPLICATION.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend §10161 (42), Chapter 101, Title 29 of the Delaware Code by striking said subsection in its entirety and by renumbering existing subsections accordingly.

Approved July 2, 1992.

CHAPTER 298

FORMERLY

SENATE BILL NO. 421

AN ACT TO AMEND CHAPTER 10 OF TITLE 5, DELAWARE CODE, RELATING TO THE DEPOSIT TAKING AUTHORITY OF CONSUMER CREDIT BANK ACT BANKS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (Two-thirds of all members elected to each House thereof concurring therein):

Section 1. Amend §1051(a)(3) of Chapter 10, Title 5, Delaware Code, by adding the following phrase after the words "not less than \$100,000;":

"provided, however, that the above limitation on the acceptance of deposits shall not apply to deposits accepted in connection with a revolving credit plan, as defined in Subchapter II of Chapter 9 of this title, pursuant to which a consumer credit bank, as a means of securing such bank's extension of credit under the plan, takes a security interest in funds deposited by an individual borrower in an amount not to exceed the greater of the amount of credit extended or the amount of the credit line approved under the plan;"

Approved July 2, 1992.

## CHAPTER 299

## FORMERLY

## SENATE BILL NO. 423

AN ACT TO AMEND TITLE 22 AND TITLE 26, DELAWARE CODE, RELATING TO THE PUBLIC SERVICE COMMISSION AND PUBLIC UTILITIES; AND PROVIDING FOR THE ESTABLISHMENT OF SERVICE TERRITORIES FOR PUBLIC UTILITIES PROVIDING RETAIL ELECTRIC SERVICE.

WHEREAS, the General Assembly finds and declares that it is in the public interest to provide for the establishment of service territories within the State of Delaware for all public utilities which provide retail electric service so as to avoid duplication of facilities by such utilities; to preserve and enhance the State's physical environment; to minimize inconvenience, diminished efficiency and higher cost in serving retail customers; and that in the interest of public convenience and necessity, the State should be divided into territories within which such public utilities shall be obligated and allowed to provide service; and that the Delaware Public Service Commission be specifically empowered and directed to administer the division of such territories.

## NOW THEREFORE:

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (two-thirds of all members elected to each House thereof concurring therein):

Section 1. Amend Chapter 13, Title 22, Delaware Code by striking §1309 in its entirety and substituting in lieu thereof the following:

"Except as otherwise provided in Sections 201, 203A and 203B of Subchapter II of Title 26, the Delaware Public Service Commission shall have no supervision or regulation over any municipal electric company formed pursuant to this chapter or over the budget, operations, rates, property, property rights, equipment, facilities or franchises of any municipal electric company formed under this chapter."

Section 2. Amend Subchapter I, Section 114, Title 26, Delaware Code by adding at the end thereof the following new subsection:

"(c) In connection with any Commission proceedings under §§203A and 203B the Commission shall charge the public utilities involved therein, including any electric utility that is municipally owned or a municipal electric company formed pursuant to Chapter 13 of Title 22, the expenses of the Commission and its employees related to such proceedings as is reasonably attributable thereto prorated among such public utilities upon the basis of their gross intrastate electric revenues for the last preceding calendar year."

Section 3. Amend Subchapter II, Section 202, Title 26, Delaware Code by deleting subsection (a) and inserting in place thereof the following:

"(a) Except insofar as may be necessary to implement Sections 203A and 203B regarding the establishment and administration of retail electric service territories the Commission shall have no supervision or regulation over any public utility, or over the rates, property, property rights, equipment, facilities or franchises of any public utility that is municipally owned or any municipal electric company formed pursuant to Chapter 13 of Title 22."

Section 4. Amend Subchapter II, Section 203B, Title 26, Delaware Code by replacing subsections (a) and (b) with the following:

"(a) Subject to the provisions of §202 of this title, the Commission shall, upon notice and after hearing, establish boundaries throughout the State within which public utilities providing retail electric service shall have the obligation and authority to provide retail electric service. All certificates of public convenience and necessity granted by the Commission shall be issued or amended to reflect such boundaries. Upon establishment, reestablishment or adjustment of any such boundaries the Commission shall cause maps to be issued designating and certifying the territorial



boundaries within which such public utilities shall be authorized and obligated to provide service. In acting hereunder, except with respect to customers residing within the boundaries of a municipality which owns an electric utility or a municipal electric company formed pursuant to Chapter 13 of Title 22 and who, as of the date of this Act are served by another public utility, the Commission shall not authorize or obligate any public utility to provide retail electric service to any customer within the boundaries of a municipality which owns an electric utility or municipal electric company formed pursuant to Chapter 13 of Title 22 without its consent. Notwithstanding the provisions of this subsection (a) or subsection (d), if such a municipality shall annex adjacent or adjoining territory, any retail electric customer of another public utility within such territory may be acquired by such municipality pursuant to Chapter 61 of Title 10. Nothing contained herein shall invalidate or otherwise affect any contract entered into on or before June 30, 1992, between any municipality and a public utility relating to the acquisition of retail electric customers within the boundaries of the municipality listing as of such date. In the event a municipality which owns an electric utility or a municipal electric company formed pursuant to Chapter 13 of Title 22 shall annex adjacent or adjoining territory whether or not such territory contains retail electric customers, upon notice to the Commission by such municipality, the Commission shall issue or revise maps previously issued to reflect such acquisition.

(b) In acting under this section, the Commission shall consider and account for as the primary factor, currently existing territories within which utility electric customers are being served at retail including the boundaries of municipalities which serve such customers. In acting further under this section, the Commission shall consider among other pertinent factors, which of 2 or more public utilities:

(1) Had distribution facilities in nearest proximity to a designated area as of July 1, 1992;

(2) Was the first to furnish retail service to, or in close proximity to, a designated area;

(3) Can install and/or upgrade its facilities to furnish service to a designated area with the smaller amount of additional investment; and

(4) Is demonstrably capable of providing adequate and reliable service to a designated area within a reasonable period of time and in a feasible manner. In connection with any proceedings undertaken by the Commission pursuant to subsections (a) and (b) of this section the Commission shall approve and implement agreements between two or more public utilities if such agreements are consistent with the public interest."

Section 5. Nothing herein shall be deemed to invalidate any action heretofore taken by the Commission pursuant to Section 203B of Title 26, Delaware Code.

Approved July 2, 1992.

## CHAPTER 300

## FORMERLY

SENATE BILL NO. 326  
AS AMENDED BY SENATE AMENDMENT NO. 1

AN ACT TO AMEND TITLE 21 DELAWARE CODE RELATING TO FARM TRUCK REGISTRATION AND TRACTION ENGINES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (two-thirds of all members elected to each House thereof concurring therein):

Section 1. Amend §2113, Title 21, Delaware Code by striking §2113 in its entirety and substituting in lieu thereof the following:

"§2113. Special Farm Vehicle Registration.

Farmers may register vehicles for farm use in the following matter:

(a) Farm Truck License Plates (FT Tags):

Farmers may qualify for the reduced registration fee for "FT" license tags if they derive 70 percent or more of their income from the operation of their farm. The truck must be used exclusively in the operation of the farm. Farmers cannot hire or rent the farm truck or permit the truck to be used for hauling merchandise, farm products or other items whatsoever under rent, hire or for pay, or shall use such motor farm trucks for any use except in the operation of the farms owned or rented by the registered owner of such trucks or in aid of and assistance to other farmer for harvest purposes.

(b) Farm Vehicles Exempt From Inspection and Registration:

The requirement for registration and inspection of farm motor vehicles, vehicles, or trailers is waived for those motor vehicles, vehicles or trailers if they are:

- (1) Not used for hire;
- (2) Used exclusively as farm machinery or farm implements;
- (3) Operated or towed upon the public highways or roads solely for the purpose of traveling from one farm, or portion thereof, to another farm or portion thereof; both owned or managed by the owner of the vehicles. Distance to be traveled on the public highways or roads is not to exceed five (5) miles;
- (4) Operated or towed upon the public highways or roads only during the hours between sunrise and sunset; and
- (5) Properly equipped with a stop light, turn signals and brakes which are in a safe operating condition."

Section 2. Amend Chapter 65, Title 21 of the Delaware Code by striking Chapter 65 in its entirety.

Approved July 2, 1992.

## CHAPTER 301

## FORMERLY

SENATE BILL NO. 316  
AS AMENDED BY  
SENATE AMENDMENT NOS. 1 AND 2

AN ACT TO AMEND CHAPTER 55, TITLE 15 OF THE DELAWARE CODE RELATING TO THE REQUIREMENTS FOR AND PROCEDURE APPLICABLE TO ABSENTEE VOTING.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend §5502(2), Chapter 55, Title 15, Delaware Code by deleting the words ", Society of Friends".

Section 2. Amend §5502(3), Chapter 55, Title 15, Delaware Code by striking said subsection in its entirety and substituting in lieu thereof a new subsection to read as follows:

"(3) Because of the nature of such person's business or occupation; or"

Section 3. Amend §5503, Chapter 55, Title 15, Delaware Code by striking said section in its entirety and substituting in lieu thereof a new §5503 to read as follows:

"§5503. Affidavits required of Persons Applying for Absentee Ballots.

Any voter desiring to receive an absentee ballot because he qualifies under any of the reasons set forth in Section 5502 of this title shall file an affidavit with the Department of Elections for that county, subscribed and sworn to by him before an officer authorized by law to administer oaths; provided, however, that the affidavit of any voter desiring to receive an absentee ballot because he qualifies under any of the reasons set forth in section 5502(1) or 5502(2) of this Title may be subscribed and sworn to before a commissioned officer of the Armed Forces; and provided further that the affidavit of any voter desiring to receive an absentee ballot because he is physically disabled may be self-administered. The affidavit shall be dated during the calendar year in which the election is to be held. The affidavit shall state the reason why he cannot appear at the regular polling place for his election district on the day of the election, his birth date, his social security number, his expected location, including his address and a telephone number (if available) to be used for the purpose of challenge on election day and, if sick or disabled, the name and address of a physician or Christian Science practitioner who can attest to the voter's inability to go to his polling place on the day of election. The department shall mail or deliver the official ballot, envelopes and instructions to the voter as soon as possible after receiving the affidavit."

Section 4. Amend §5506, Chapter 55, Title 15, Delaware Code by striking said section in its entirety and substituting in lieu a new Section 5506 to read as follows:

"§5506. Affidavit of Eligibility on Voucher Envelope; Form.

There shall be printed on the face of each voucher envelope a self-administered affidavit in substantially the following form:

I do solemnly swear (affirm) that I am a resident of the State of Delaware and that my voting address is

\_\_\_\_\_ in or near \_\_\_\_\_

Street Address

City

\_\_\_\_\_ Election District, of the \_\_\_\_\_ Representative District  
of \_\_\_\_\_ County.

I do also solemnly swear (affirm) under penalty of perjury that I have not received or accepted, or offered to receive or accept any money or other item of value as compensation, inducement or reward for the giving or withholding of a vote at this election, nor that I am acting under duress or threat of duress or harm.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Sign name here

\_\_\_\_\_  
Print name here

Section 5. Amend §5509, Chapter 55, Title 15, Delaware Code, by striking said section in its entirety and substituting a new §5509 to read as follows:

"§5509. Voting Procedure; Return of Ballot.

The absentee voter who qualified for his ballot under any of the reasons set forth in section 5502 of the Title shall mark his ballot and deposit the ballot in the official envelope. The voter shall then deposit the official envelope containing the ballot in the voucher envelope and securely seal the voucher envelope. The voter shall then execute the self-administered affidavit on the voucher envelope. Thereupon the voter shall enclose the voucher envelope containing the marked ballot in the mailing envelope received by the voter from the department and after the voter has enclosed the voucher envelope containing the marked ballot in the mailing envelope, he shall securely seal the mailing envelope and mail it, postage prepaid, to the department of the county issuing the ballot or deliver it to the department before 12:00 noon of the day before the election and not thereafter; provided, however, that ballot received after 12:00 noon of the day before the election shall be counted to the extent required under federal law."

Section 6. Amend §5510, Chapter 55, Title 15, Delaware Code, by striking said section in its entirety and substituting a new Section 5510 to read as follows:

"§ 5510. Time Limit for Return of Ballot; Late Ballots.

The absentee voter shall return his marked ballot enclosed in the voucher envelope to the Department of Elections of the county where the voter resides before 12:00 noon of the day before the election; and any absentee ballot received by any Department of Elections after 12:00 noon of the day before the election shall not be forwarded to the polls; provided, however, that any absentee ballot received by any Department of Elections after 12:00 noon of the day before the election but before 8:00 p.m. of the day of the election shall be forwarded to a polling place designated by the Department of Elections of the county where the voter resides to be counted to the extent required under federal law. The department shall endorse the time of receipt on the voucher envelope of all ballots received after 12:00 noon of the day before the election and shall retain the unopened voucher envelopes containing all ballots received after 8:00 p.m. on the day of the election until the last day of February next after the election, and longer if directed by proper authority."

Section 7. Amend §5511(a), Chapter 55, Title 15, Delaware Code, by striking the words "by the elector in his affidavit thereon." and substituting in lieu thereof the words "on the voucher envelope or as designated by the Department of Elections."

Section 8. Amend §5512, Chapter 55, Title 15, Delaware Code, by striking the words "while said polls are open".

Section 9. Amend §5513, Chapter 55, Title 15, Delaware Code, by inserting the words "; provided, however, that any ballot received after 12:00 noon of the day before the election but before 8:00 p.m. of the day of the election shall be forwarded to a polling place designated by the Department of Elections of the county where the voter resides to be counted to the extent required under federal law" after the words "the absentee voter is a resident".

Section 10. Amend §5513, Chapter 55, Title 15, Delaware Code, by inserting the words "; provided, however, that voucher envelopes received after 12:00 noon of the day before the election but before 8:00 p.m. of the day of the election shall be forwarded to a polling place designated by the Department of Elections of the county where the voter resides to be counted to the extent required under federal law" after the words "4 hours before the closing of the polls".

Section 11. Amend §5515, Chapter 55, Title 15, Delaware Code, by deleting the word "only" and inserting the words "containing all ballots received before 12:00 noon of the day before the election" after the words "open the outer or carrier envelope".

Section 12. Amend §5515, Chapter 55, Title 15, Delaware Code, by deleting the word "executed" and inserting the word "self-administered" after the words "ascertain the name of the absentee voter as appears by the".

Section 13. Amend §5515, Chapter 55, Title 15, Delaware Code, by inserting the word "self-administered", after the words "deface or destroy the number thereof, or the".

Section 14. Amend §5515, Chapter 55, Title 15, Delaware Code, by inserting a new paragraph at the end of existing Section 5515 to read as follows:

"The same procedure shall be followed in voting any absentee ballot received after 12:00 noon but before 8:00 p.m. of the day of the election to the extent to which it is required to be counted under federal law at a polling place designated by the Department of Elections of the county where the voter resides except that such ballot may be voted after the polls close. In the event that there is no polling place for the election of federal offices, only, the several Departments of Election are hereby empowered to open, record and vote any absentee ballot received after 12:00 noon of the day before the election and before 8:00 P.M. of the day of the election, to the extent required by federal law. Such counting of federal absentee ballots shall be certified in exactly the same manner as the absentee ballots are certified in the normal polling places, with representatives of both major political parties certifying the total voted counted."

Section 15. Amend §5520, Chapter 55, Title 15, Delaware Code, by deleting it in its entirety and substituting in lieu thereof the following:

"Any notarized affidavit required under this chapter may be taken before any person with authority to administer oaths and affirmations in the place where such affidavits may be taken, and whenever taken outside this state, the authority of such person shall be conclusively presumed."

Section 16. Amend §5521 (a), Chapter 55, Title 15, Delaware Code by deleting the words "executing affidavits for such and disabled persons" and inserting the words "or Christian Science practitioner who can attest to a sick or disabled voter's inability to go to the polling place on the day of the election".

Section 17. Amend §5522 (a), Chapter 55, Title 15, Delaware Code, by deleting the words "to the end that there shall be extended to the absentee voters listed in subsection (b) of this section full opportunity to receive and return a marked ballot to the department for delivery to the poll of his

residence on election day to be acted upon and counted as other votes personally cast at such poll".

Section 18. Amend §5522 (a), Chapter 55, Title 15, Delaware Code, by adding a new sentence to the end of the existing §5522 (a) to read as follows:

"Such changes shall be uniform for absentee voting throughout this State."

Section 19. Amend §5522 (b), Chapter 55, Title 15, Delaware Code, by deleting it in its entirety.

Section 20. Amend §5522 (c), Chapter 55, Title 15, Delaware Code, by deleting the words "and instructions" and inserting the words "instructions or other election forms".

Section 21. Amend §5522 (c), Chapter 55, Title 15, Delaware Code, by inserting at the end of §5522 (c) the words "; provided, however, that nothing in this section shall invalidate any votes duly cast during the election year when such changes are made using the ballots, envelopes, instructions or other election forms distributed prior to such changes."

Section 22. Amend §5522 (c), Chapter 55, Title 15, Delaware Code, by renumbering §5522 (c) to be §5522 (b).

Approved July 2, 1992.

CHAPTER 302

FORMERLY

SENATE BILL NO. 304

AS AMENDED BY SENATE AMENDMENT NO. 1 AND HOUSE AMENDMENT NO. 5

AN ACT TO AMEND TITLE 25, DELAWARE CODE RELATING TO MECHANIC'S LIENS AND WAIVERS THEREOF.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend §2706 Chapter 27, Title 25 of the Delaware Code by designating the existing paragraph as subsection (a) and adding thereto a new subsection to read as follows:

"(b) Notwithstanding the provisions of any other law, except as provided in this subsection: any contract, any agreement or understanding whereby the right to file or enforce any lien created under this Chapter is waived, shall be void as against public policy and wholly unenforceable. This Section shall not preclude a requirement for a written waiver of the right to file a mechanics' lien executed and delivered by a contractor, subcontractor, materialman or laborer simultaneously with or after payment for the labor performed or the materials supplied has been made to such contractor, subcontractor, materialman or laborer nor shall this Section be applicable to a written agreement to subordinate, release or satisfy all or part of such lien made after a statement of claim has been filed under this chapter. Nothing in this subsection shall amend, exempt, limit or qualify the provisions of Section 2707 of this Chapter."

Section 2. Amend Chapter 27, §2718(a), Title 25 of the Delaware Code by changing the period at the end of the sentence to a comma "," and adding the following phrase:

"or the time immediately following the time of recording of a first mortgage, or a conveyance in the nature of a first mortgage, upon such structure which is granted to secure an existing indebtedness or future advances provided at least 50% of the loan proceeds are used for the payment of labor or materials, or both, for such structure, whichever shall last occur."

Section 3. Amend Chapter 27, §2712(b), Title 25 of the Delaware Code by adding a new subparagraph (11) to read as follows:

"(11) The time of recording of a first mortgage, or a conveyance in the nature of a first mortgage, upon such structure which is granted to secure an existing indebtedness or future advances provided at least 50% of the loan proceeds are used for the payment of labor or materials, or both, for such structure."

Approved July 2, 1992.

## CHAPTER 303

## FORMERLY

SENATE BILL NO. 382  
AS AMENDED BY SENATE AMENDMENT NO. 1

AN ACT TO AMEND CHAPTERS 1, 3, 7, 8, 9, 11, 18, 22, 25, 29 and 32 OF TITLE 5, DELAWARE CODE RELATING TO POWERS, ORGANIZATION AND TAXATION OF BANKS, SAVINGS BANKS AND OTHER FINANCIAL INSTITUTIONS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (two-thirds of all members elected to each House thereof concurring therein):

Section 1. Amend §101(7)b. of Chapter 1, Title 5, Delaware Code, by deleting the phrase "organized and existing as a national banking organization pursuant to the National Bank Act, 12 U.S.C. §21 et seq., and maintaining" and inserting in lieu thereof ", including a federal savings bank, with".

Section 2. Amend §101 of Chapter 1, Title 5, Delaware Code, by adding a new subsection to read:

"(16) 'Automated service branch' means an automated teller machine, cash dispensing machine or other electronic facility located in this State installed or operated by any bank, remote from its main office or any branch office, by which funds may be deposited into or withdrawn from established accounts, advances may be obtained against previously authorized lines of credit, transfers of funds between accounts may be made, loan and other payments may be made, or cash may be received or dispensed."

Section 3. Amend Chapter 1, Title 5, Delaware Code, by deleting §102 in its entirety. Amend the title of §103, Chapter 1, Title 5, Delaware Code, by deleting the phrase "; bonds and vacancies" as it appears therein. Amend §103 of Chapter 1, Title 5, Delaware Code, by deleting subsection (c) in its entirety. Further amend §103 of Chapter 1, Title 5, Delaware Code, by redesignating existing subsection (d) as subsection (c).

Section 4. Amend subsection 103(b) of Chapter 1, Title 5, Delaware Code, by deleting the period after the phrase "as provided by law" and adding the following new language ", in a manner consistent with the Merit System of Personnel Administration, Chapter 59, Title 29, Delaware Code, where applicable."

Section 5. Amend §104 of Chapter 1, Title 5, Delaware Code, by deleting the sentence "They shall be residents of the State except that when necessary, the Commissioner may make temporary appointments of persons who are not residents of this State." and inserting in lieu thereof the sentence "The Commissioner shall be a resident of the State."

Section 6. Amend subsection 105(a) of Chapter 1, Title 5, Delaware Code, by deleting the phrase "the costs of the bonds required to be given by the Commissioner and the employees who work for the Commissioner," following the phrase "The necessary expenses of the office,".

Section 7. Amend §138 of Chapter 1, Title 5, Delaware Code, by deleting the phrase "or 137" immediately following the number "136" and inserting in lieu thereof ", 137 or 143".

Section 8. Amend Chapter 1, Title 5, Delaware Code, by adding a new section 142 to read as follows:

"§142. Subpoena Powers.

The Commissioner's authority to subpoena witnesses and documents outside the state shall exist to the maximum extent permissible under federal constitutional law."

Section 9. Amend Chapter 1 of Title 5, Delaware Code, by adding a new section 143 to read as follows:

"143. General Penalty.



(a) Notwithstanding any other provisions of this title, the Commissioner may, if he finds that any financial institution has violated any provision of this title or any regulation implementing said title:

(1) Issue a notice of violation; and

(2) Require the violator to take affirmative action to correct the violation.

(3) If a violator fails to take the affirmative action required under paragraph (2) of this subsection, the Commissioner may impose a civil penalty in an amount that is appropriate in view of the facts and circumstances surrounding the violation for each violation from which the violator failed to cease and desist or for which the violator failed to take affirmative action to correct.

(b) In determining the amount of the financial penalty to be imposed under subsection (a), the Commissioner shall consider the following:

(1) The seriousness of the violation;

(2) The good faith of the violator;

(3) The institution's history of previous violations;

(4) The deleterious effect of the violation on the public and banking industry;

(5) The assets and overall financial condition of the violator; and

(6) Any other factors relevant to the determination of the financial penalty.

(c) In no event shall the penalty exceed \$50,000 per violation for any financial institution subject to this title.

(d) Notice of a civil penalty imposed pursuant to this section shall include a statement of facts upon which the civil penalty is based. A notice of civil penalty may be served by any member of the Commissioner's Office who is designated by the Commissioner. Service may be effected by hand delivering the notice of civil penalty to the financial institution at its principal place of business during normal working hours.

(e) A civil penalty shall not become effective in less than ten days after the notice of civil penalty is served. After notice of a civil penalty is served, but before its effective date, upon petition of any interested party, the Commissioner shall conduct a hearing. At the conclusion of such hearing, the Commissioner may affirm the civil penalty as originally issued, or he may modify, amend or rescind such civil penalty.

(f) Any financial penalty imposed pursuant to this section may be in addition to any other action or remedy available to the Commissioner or any penalty, fine or sentence ordered by a court in any civil or criminal proceeding.

(g) Any penalty that may be imposed by the Commissioner shall be paid to the State Treasurer for deposit in the General Fund."

Section 10. Amend Chapter 3, Title 5, Delaware Code, by adding a new section 307 to read as follows:

"§307. Periodic Report Requirements.

A licensee shall file with the Commissioner such reports at such time as the Commissioner may require. Any reports required by the Commissioner under this section shall be in such form and shall contain such information as the Commissioner may specify."  
and by redesignating existing sections 307 and 308 as sections 308 and 309.

Section 11. Amend §769 of Chapter 7, Title 5, Delaware Code, by deleting the number "\$5,000" following the words "fee in the amount of" and inserting in lieu thereof "\$5,750".

Section 12. Amend §770 of Subchapter IV of Chapter 7, Title 5, Delaware Code, by deleting existing subsection (c) in its entirety.

Section 13. Amend Subchapter IV of Chapter 7, Title 5, Delaware Code, by adding a new §772 to read as follows:

"§772. Automated Service Branch.

Any bank, with prior approval of the Commissioner, may install or operate one or more automated service branches in this State. No certificate of authority shall be issued by the Commissioner unless he shall be satisfied that the applicant has paid-in-capital stock of at least \$2,500 for each automated service branch then established by the applicant in this State and for each automated service branch sought to be established and a surplus of at least \$2,500 for each automated service branch then established by the applicant in this State and for each automated service branch sought to be established.

The Commissioner's approval need only be conditioned upon the determination that the automated service branch will be an effective and efficient service consistent with sound banking practices. The Commissioner shall promulgate regulations which prescribe the form and content of the application and related procedures for approval in such a manner as to expedite the approval process for automated service branches. An automated service branch shall be deemed to be a branch office of the bank installing and operating it.

Without the approval of the Commissioner, an automated service branch may be shared among banks, savings banks, national banks, savings and loan associations, and credit unions having their main offices within or without the State, and shall not be deemed to be a branch office of any bank, savings bank, national bank, savings and loan association, or credit union other than the bank installing and operating it. In addition, the Commissioner shall be authorized to exempt certain types of electronic devices, as the Commissioner shall find inappropriate to include within the coverage of this section in order to effectuate the purposes of this chapter.

A fee of \$375 for every such certificate shall be required by the Commissioner before issuing the same. In addition, the applicant shall pay an investigation fee of \$375, which shall not be refundable and shall be submitted with the application."

Section 14. Amend §779 of Chapter 7, Title 5, Delaware Code, by inserting the word "subject" following the phrase "trust company shall be".

Section 15. Amend §801(2) of Chapter 8, Title 5, Delaware Code, by adding the phrase "or a corporation established under the laws of a foreign country which owns or controls a foreign bank" immediately following the phrase "(12 U.S.C. §1841 et seq.)". Further amend §801(2) of Chapter 8, Title 5, Delaware Code, by adding the phrase "or in a foreign country" immediately following the phrase "state other than Delaware".

Section 16. Amend §804 of Chapter 8, Title 5, Delaware Code, by deleting the number "\$5,000" following the words "fee in the amount of" and inserting in lieu thereof "\$5,750".

Section 17. Amend §833 of Chapter 8, Title 5, Delaware Code, by deleting the number "\$5,000" following the words "fee in the amount of" and inserting in lieu thereof "\$5,750".

Section 18. Amend §844 of Chapter 8, Title 5, Delaware Code, by deleting the number "\$5,000" following the words "fee in the amount of" and inserting in lieu thereof "\$5,750".

Section 19. Amend §852(b) of Chapter 8, Title 5, Delaware Code, by deleting the number "\$5,000" following the words "filing fee in the amount of" and inserting in lieu thereof "\$5,750".

Section 20. Amend §903(c) of Chapter 9, Title 5, Delaware Code, by deleting the number "\$5,000" following the words "fee of" and inserting in

lieu thereof "\$5,750". Amend §903(d) of Chapter 9, Title 5, Delaware Code, by deleting the number "\$1,000" following the words "fee of" and inserting in lieu thereof "\$1,150".

Section 21. Amend §944 of Chapter 9, Title 5, Delaware Code, by adding the words "or any part of" immediately before the words "outstanding unpaid indebtedness" appearing in the second sentence of §944. Further amend §944 of Chapter 9, Title 5, Delaware Code, by adding the following sentence to the end thereof:

"Without limitation, a permissible schedule or formula hereunder may include provision in the agreement governing the plan for a change in the periodic percentage rate or rates of interest applicable to all or any part of outstanding unpaid indebtedness, whether by variation of the then applicable periodic percentage rate or rates of interest, variation of an index or margin or otherwise, contingent upon the happening of any event or circumstance specified in the plan, which event or circumstance may include the failure of the borrower to perform in accordance with the terms of the plan."

Section 22. Amend §950 of Chapter 9, Title 5, Delaware Code, by deleting the text thereof preceding the words "provided, however," and inserting in lieu thereof the following:

"If the agreement governing a revolving credit plan so provides, a bank may impose, as interest, a late or delinquency charge upon any outstanding unpaid installment payments or portions thereof under the plan which are in default;"

Further amend §950 of Chapter 9, Title 5, Delaware Code, by adding the following sentence at the end thereof:

"Nothing contained in this §950 shall limit, restrict or otherwise affect the right of a bank under and pursuant to §944 of this title to change the periodic percentage rate or rates of interest applicable to the revolving credit plan between the bank and a borrower upon the occurrence of a delinquency or default or other failure of the borrower to perform in accordance with the terms of the plan."

Section 23. Amend §964 of Chapter 9, Title 5, Delaware Code, by deleting the phrase "any or all outstanding and unpaid amounts" appearing in the second sentence of §964 and inserting the phrase "all or any part of outstanding unpaid amounts" in lieu thereof. Further amend §964 of Chapter 9, Title 5, Delaware Code, by adding the following sentence at the end thereof:

"Without limitation, a permissible schedule or formula hereunder may include provision in the agreement governing the loan for a change in the periodic percentage rate or rates of interest applicable to all or any part of outstanding unpaid amounts, whether by variation of the then applicable periodic percentage rate or rates of interest, variation of an index or margin or otherwise, contingent upon the happening of any event or circumstance specified in the loan agreement, which event or circumstance may include the failure of the borrower to perform in accordance with the terms of the loan agreement."

Section 24. Amend §968 of Chapter 9, Title 5, Delaware Code, by deleting the text thereof preceding the words "provided, however," and inserting in lieu thereof the following:

"If the agreement governing a loan so provides, a bank may impose, as interest, a late or delinquency charge upon any outstanding unpaid installment payments or portions thereof under the loan agreement which are in default;"

Further amend §968 of Chapter 9, Title 5, Delaware Code, by adding the following sentence at the end thereof:

"Nothing contained in this §968 shall limit, restrict or otherwise affect the right of a bank under and pursuant to §964 of this title to change the periodic percentage rate or rates of interest applicable to the loan agreement between the bank and a borrower upon the occurrence of a

delinquency or default or other failure of the borrower to perform in accordance with the terms of the loan agreement."

Section 25. Amend subsection 1101(a)(1)b. of Chapter 11, Title 5, Delaware Code, by deleting the phrase "That portion of net operating income before taxes from any subsidiary which is" and inserting in lieu thereof "That portion of net operating income before taxes, verifiable by documentary evidence, from any subsidiary or foreign branch established within the United States pursuant to §771 of this title which is". Further amend subsection 1101(a)(1)b. of Chapter 11, by deleting the word "subsidiary" immediately preceding the phrase "other than a Delaware-chartered banking organization" and inserting in lieu thereof the words "such entity". Further amend subsection 1101(a)(1)b. of Chapter 11, Title 5, Delaware Code, by deleting the word "subsidiary" following the phrase "(as defined in §801(5) of this title) which" and inserting in lieu thereof the word "entity".

Section 26. Amend §1101 of Chapter 11, Title 5, Delaware Code, by deleting subsection 1101(a)(1)g. in its entirety and inserting in lieu thereof a new subsection 1101(a)(1)g. to read as follows:

"g. Any examination fee paid to the Office of the State Bank Commissioner pursuant to §127(a) of this title."

Section 27. Amend §1101 of Chapter 11, Title 5, Delaware Code, by adding a new subsection (b) to read as follows:

"(b) A franchise tax is hereby imposed on the "taxable income" of federal savings banks not headquartered in this State but maintaining branches in this State, verifiable by documentary evidence. The "taxable income" on which tax is imposed shall be equal to the net operating income of the branch or branches located in Delaware before taxes increased by the amount of securities gains before taxes and reduced by the amount of securities losses before taxes and by the interest income from obligations of volunteer fire companies."  
and by redesignating existing subsections (b) through (e) as subsections (c) through (f).

Section 28. Amend §1101 of Chapter 11, Title 5, Delaware Code, by adding a new subsection (g) to read as follows:

"(g) Notwithstanding any of the foregoing, the tax imposed under this section shall not be imposed upon any "taxable income" derived from acting as an insurer pursuant to §761(a)(14) of this title or from acting as an insurer pursuant to Title 18 of the Delaware Code."

Section 29. Amend §1102 of Chapter 11, Title 5, Delaware Code, by deleting the phrase "cashier or treasurer" as it appears therein and inserting in lieu thereof "treasurer, or other proper officer". Further amend §1102 of Chapter 11, Title 5, Delaware Code, by adding the following sentence to the end thereof:

"Any and all documents relating to the taxation of a banking organization shall be true statements, verified by oath, by the president, treasurer, or other proper officer of such banking organization."

Section 30. Amend §1104(c)(1) of Chapter 11, Title 5, Delaware Code, by deleting the number "1" following the words "rate of" and inserting in lieu thereof the number "1%".

Section 31. Amend §1104 of Chapter 11, Title 5, Delaware Code, by inserting a new subsection (d) to read as follows:

"(d) In the case of a banking organization which has been engaged in banking business of any kind in this State for less than the whole year, the amount of tax due, at the rates provided in this chapter, shall be prorated for that portion of the year during which the banking organization was engaged in banking business of any kind within this State. Within 30 days of the cessation of all banking business of any kind within this State, the president, treasurer or other proper officer shall file a true statement, verified by oath, setting forth the net income of such banking organization as defined in this chapter, and such other true statements, in

such form as shall be specified by the Commissioner, verified by oath, setting forth the "taxable income" of such banking organization as defined in this chapter."

Section 32. Amend §1104 of Chapter 11, Title 5, Delaware Code, to add a new subsection (e) to read as follows:

"(e) If any banking organization shall fail to pay any tax due under this Chapter on or before the due date, a penalty of 1% percent shall be assessed for each month or fraction thereof that the same shall remain unpaid after such date."

Section 33. Amend §1108 (newly redesignated §1109) of Chapter 11, Title 5, Delaware Code, by deleting the characters "§1101(f)" following the phrase "election provided in" and inserting in lieu thereof the characters §1101(e)". Further amend §1108 (newly redesignated §1109) of Chapter 11, Title 5, Delaware Code, by deleting the characters "1101(g)" following the phrase "by reason of" and inserting in lieu thereof the characters "§1101(f)".

Section 34. Amend §1801 of Chapter 18, Title 5, Delaware Code, by deleting the existing title and section in its entirety and inserting in lieu thereof the following:

"§1801. Annual Franchise Tax: Rate of Taxation.

(a) A franchise tax is hereby imposed on the "taxable income" of building and loan associations (computed on a basis that consolidates with the income of such building and loan association for the tax year involved, the income of all subsidiary corporations of such building and loan organization in accordance

with generally accepted accounting principles). The "taxable income" on which such tax is imposed shall be equal to the product of (1) and (2) as follows:

(1) Net operating income before taxes reduced by:

a. That portion of net operating income before taxes verifiable by documentary evidence from any subsidiary or branch which is (i) otherwise subject to income taxation under Delaware law, or (ii) derived from business activities carried on outside the State and subject to income taxation under the laws of another state;

b. The gross income derived from international banking transactions (as defined in §101 of this title) after subtracting therefrom any expenses or deductions attributable thereto;

c. The gross income of an international banking facility (as defined in §101 of this title) less any expenses or other deductions attributable thereto;

d. The interest income from obligations of volunteer fire companies; and

e. Any examination fee paid to the Office of the State Bank Commissioner pursuant to §127(a) of this title.

(2) Multiplied by the factor .56.

(b) A franchise tax is hereby imposed on the "taxable income" of building and loan associations not headquartered in this State but maintaining branches in this State, verifiable by documentary evidence. The "taxable income" on which tax is imposed shall be equal to the net operating income of the branch or branches located in Delaware, reduced by the interest income from obligations of volunteer fire companies.

(c) The rate of tax upon the taxable income of building and loan associations shall be as follows: 8.7% of the amount of net operating income not in excess of \$20,000,000; 6.7% of the amount of net operating income in excess of \$20,000,000 but not in excess of \$25,000,000; 4.7% of the amount of net operating income in excess of \$25,000,000 but not in

excess of \$30,000,000; 2.7% of the amount of net operating income in excess of \$30,000,000."

Section 35. Amend the title of §1802 of Chapter 18, Title 5, Delaware Code, by deleting the period following the word "tax" and inserting in lieu thereof "; penalties." Amend §1802 of Chapter 18, Title 5, Delaware Code, by designating the entire existing section as subsection (a). Further amend §1802(a) of Chapter 18, Title 5, Delaware Code, by adding the following sentence to the end thereof:

"Any and all documents relating to the taxation of a building and loan association pursuant to this chapter shall be true statements, verified by oath, by the president, treasurer, or other proper officer of the building and loan association."

Further amend §1802 of Chapter 18, Title 5, Delaware Code, by adding a new subsection (b) to read as follows:

"(b) In the case of a building and loan association which has been engaged in a building and loan business of any kind in this State for less than the whole year, the amount of tax due, at the rates provided in this chapter, shall be prorated for that portion of the year during which the building and loan association was engaged in a building and loan business of any kind within this State. Within 30 days of the cessation of all building and loan business of any kind within this State, the president, treasurer or other proper officer shall file a true statement, verified by oath, setting forth the net income of such building and loan association as defined in this chapter, and such other true statement, in such form as shall be specified by the Commissioner, verified by oath, setting forth the "taxable income" of such building and loan association as defined in this chapter."

Further amend §1802 of Chapter 18, Title 5, Delaware Code, by adding a new subsection (c) to read as follows:

"(c) If any building and loan association shall fail to pay any tax due under this chapter on or before the due date, a penalty of 1% percent shall be assessed for each month or fraction thereof that the same remain unpaid after such date."

Section 36. Amend §1803 of Chapter 18, Title 5, Delaware Code, by deleting the sentence "In addition, a penalty of 1 percent shall be assessed for each month or fraction thereof that the same remain unpaid after such date." as it appears therein.

Section 37. Amend §2209(g) of Chapter 22, Title 5, Delaware Code, by deleting the sentence "Such application for review as authorized by this section must be made within 30 days from the date of such order of suspension or revocation." as it appears therein.

Section 38. Amend §2210 of Chapter 22, Title 5, Delaware Code, by adding a new subsection (d) to read as follows:

"(d) If, in the Commissioner's opinion, it is necessary for a thorough examination of a licensee, the Commissioner may retain one or more accountants, attorneys, appraisers or other third parties to assist the Commissioner in such examination. Within ten days after receipt of a statement from the Commissioner, such licensee shall pay or reimburse the fees, costs and expenses of any third parties retained by the Commissioner under this subsection."

and by redesignating existing subsection (d) as subsection (e).

Section 39. Amend §2217 of Chapter 22, Title 5, Delaware Code, by adding the phrase "or any part of" immediately before the words "outstanding unpaid indebtedness" appearing in the second sentence of §2217. Further amend §2217 of Chapter 22, Title 5, Delaware Code, by adding the following sentence at the end thereof:

"Without limitation, a permissible schedule or formula hereunder may include provision in the agreement governing the plan for a change in the periodic percentage rate or rates of interest applicable to all or any part of outstanding unpaid indebtedness, whether by variation of the then

applicable periodic percentage rate or rates of interest, variation of an index or margin or otherwise, contingent upon the happening of any event or circumstance specified in the plan, which event or circumstance may include the failure of the borrower to perform in accordance with the terms of the plan."

Section 40. Amend §2222 of Chapter 22, Title 5, Delaware Code, by deleting the text thereof preceding the words "provided, however," and inserting in lieu thereof the following:

"If the agreement governing a revolving credit plan so provides, a licensee may impose, as interest, a late or delinquency charge upon any outstanding unpaid installment payments or portions thereof under the plan which are in default;"

Further amend §2222 of Chapter 22, Title 5, Delaware Code, by adding the following sentence at the end thereof:

"Nothing contained in this §2222 shall limit, restrict or otherwise affect the right of a licensee under and pursuant to §2217 of this title to change the periodic percentage rate or rates of interest applicable to the revolving credit plan between the licensee and a borrower upon the occurrence of a delinquency or default or other failure of the borrower to perform in accordance with the terms of the plan."

Section 41. Amend §2230 of Chapter 22, Title 5, Delaware Code, by deleting the phrase "any or all outstanding and unpaid amounts" appearing in the second sentence of §2230 and inserting the phrase "all or any part of outstanding unpaid amounts" in lieu thereof. Further amend §2230 of Chapter 22, Title 5, Delaware Code, by adding the following sentence at the end thereof:

"Without limitation, a permissible schedule or formula hereunder may include provision in the agreement governing the loan for a change in the periodic percentage rate or rates of interest applicable to all or any part of outstanding unpaid amounts whether by variation of the then applicable periodic percentage rate or rates of interest, variation of an index or margin or otherwise, contingent upon the happening of any event or circumstance specified in the loan agreement, which event or circumstance may include the failure of the borrower to perform in accordance with the terms of the loan agreement."

Section 42. Amend §2231(2) of Chapter 22, Title 5, Delaware Code, by deleting the text thereof preceding the words "provided, however," and inserting in lieu thereof the following:

"If the agreement governing a loan so provides, a licensee may impose, as interest, a late or delinquency charge upon any outstanding unpaid installment payments or portions thereof under the loan agreement which are in default;"

Further amend §2231(2) of Chapter 22, Title 5, Delaware Code, by adding the following sentence at the end thereof:

"nothing contained in this §2231(2) shall limit, restrict or otherwise affect the right of a licensee under and pursuant to §2230 of this title to change the periodic percentage rate or rates of interest applicable to the loan agreement between the licensee and a borrower upon the occurrence of a delinquency or default or other failure of the borrower to perform in accordance with the terms of the loan agreement;"

Section 43. Amend Chapter 25, Title 5, Delaware Code, by deleting this chapter in its entirety.

Section 44. Amend §2905 of Chapter 29, Title 5, Delaware Code, by adding a new subsection (f) to read as follows:

"(f) If, in the Commissioner's opinion, it is necessary for a thorough examination of a licensee, the Commissioner may retain one or more accountants, attorneys, appraisers or other third parties to assist the Commissioner in such examination. Within ten days after receipt of a statement from the Commissioner, such licensee shall pay or reimburse the

fees, costs and expenses of any third parties retained by the Commissioner under this subsection."

Section 45. Amend §3213 of Chapter 32, Title 5, Delaware Code, by redesignating the entire existing section as subsection (a). Further amend §3213 by adding a new subsection (b) to read as follows:

"(b) If, in the Commissioner's opinion, it is necessary for a thorough examination of a licensee, the Commissioner may retain one or more accountants, attorneys, appraisers or other third parties to assist the Commissioner in such examination. Within ten days after receipt of a statement from the Commissioner, such licensee shall pay or reimburse the fees, costs and expenses of any third parties retained by the Commissioner under this subsection."

Section 46. If any provision of this act or the application of any section or part thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this act which can be given effect without the invalid provision or application.

Section 47. This Act shall take effect immediately upon its adoption except that Sections 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35 and 36 shall become effective January 1, 1993.

Approved July 2, 1992.



## CHAPTER 304

## FORMERLY

## SENATE BILL NO. 331

## AN ACT TO CORRECT ERRORS AND DISCREPANCIES BETWEEN NEW CASTLE COUNTY DISTRICT LINES AND LEGISLATIVE DISTRICT LINES.

WHEREAS, New Castle County Council Council pursuant to Substitute No. 1 to Ordinance No. 91-208, reapportioned New Castle County's Councilmanic Districts; and

WHEREAS, the Department of Elections for New Castle County requested technical changes to the redistricting; and

WHEREAS, it appears that there may be no authority in the Government of New Castle County to make the recommended changes in district lines.

NOW THEREFORE:

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. The County Council of New Castle County district lines as established by Substitute No. 1 to New Castle County Ordinance No. 91-208 adopted by County Council of New Castle County on October 22, 1991, are hereby amended by adding the language which is underlined and deleting the language which is bracketed as set forth as follows:

"DISTRICT 1

The First Councilmanic District shall comprise all that portion of New Castle County bounded by a line beginning at the intersection of Lancaster Pike (Del. 48) and Centre Road (Del. 141), thence southerly along the center line of Centre Road (Del. 141) to its intersection with Faulkland Road, thence westerly along the center line of Faulkland Road to its intersection with Red Clay Creek, thence southerly along the center line of Red Clay Creek to its intersection with the east bound lane of the Robert Kirkwood Highway (Del. 2), thence southwesterly along the center line of the east bound lane of the Robert Kirkwood Highway (Del. 2) to its intersection with [Old] Harmony Road, thence southeasterly along the center line of [Old] Harmony Road to its intersection with White Clay Creek, thence northeasterly along the center line of White Clay Creek to its intersection with the Delaware Park Entrance Road, thence southeasterly along the center line of the Delaware Park Entrance Road until its intersection with Ogletown Road (Del. 273), thence southwesterly along the center line of the Ogletown Road (Del. 273) to its intersection with Harmony Road, thence southerly along the center line of Harmony Road until its intersection with Del. 273, thence southeasterly along the center line of Del. 273, which becomes Main Street, until its intersection with Del. 7, thence southerly along the center line of Del. 7 until its intersection with U.S. 40, thence northeasterly along the center line of the east bound lane of U.S. 40 until its intersection with U.S. 13, thence northerly along the center line of the north bound lane of U.S. 13 until its intersection with Landers Lane extended to intersect with U.S. 13, thence easterly along the center line of Landers Lane (extended) to its intersection with New Castle Avenue, thence southerly along the center line of New Castle Avenue to its intersection with the northern boundary of the City of New Castle, thence easterly along the northern boundary of the City of New Castle extended to its intersection with the boundary between the States of Delaware and New Jersey, thence northerly along the boundary between the States of Delaware and New Jersey until its intersection with the southern boundary of the City of Wilmington extended east, thence along the southern boundary of the City of Wilmington to its intersection with Lambson's Lane (County Road 370), thence westerly along the center line of Lambson's Lane to its intersection with New Castle Avenue (Del. 9), thence southerly along the center line of New Castle Avenue to its intersection with the [east] west bound lane of U.S. I-295, thence westerly along the center line of the east bound lane of U.S. I-295 to its intersection with a line drawn parallel to Hazeldell Avenue connecting U.S. I-295 with a point on the north bound lane of U.S. 13, 130 feet north of the intersection of the north bound lane of U.S. 13 and Hazeldell Avenue, thence northerly along that line to its intersection with U.S. 13, thence northerly along the north bound lane of U.S. 13 to its intersection with the boundary of the City

of Wilmington, thence in a generally northerly direction along the boundary line of the City of Wilmington to its intersection with Lancaster Avenue (Del. 48), thence northwesterly along the center line of Lancaster Avenue (Del. 48) to the place of beginning.

#### DISTRICT 2

The Second Councilmanic District shall comprise all that portion of New Castle County bounded by a line beginning at the point of intersection of the boundary of the State of Delaware and the State of New Jersey and the State Delaware and the State of Pennsylvania, thence northwesterly along the boundary of the State of Delaware and the State of Pennsylvania to its intersection with the south bound lane of U.S. 202, thence southerly along the center line of the south bound lane of U.S. 202 to its intersection with the boundary of the City of Wilmington, thence easterly along the boundary of the City of Wilmington to its intersection with the boundary between the States of Delaware and New Jersey, thence northeasterly along the boundary between the States of Delaware and New Jersey to the place of beginning.

#### DISTRICT 3

The Third Councilmanic District shall comprise all that portion of New Castle County bounded by a line beginning at the intersection of the south bound lane of U.S. 202 and the boundary between the States of Delaware and Pennsylvania, thence westerly along the boundary between the States of Delaware and Pennsylvania to its intersection with the boundary between the States of Maryland and Delaware, thence southerly along the boundary between the States of Maryland and Delaware to its intersection with Nottingham Road (Del. 273), [thence southeasterly along the center line of Nottingham Road (Del. 273) to its intersection with the boundary of the City of Newark, thence in a clockwise direction around the boundary of the City of Newark to its intersection] thence in an easterly and southerly direction along the center line of Nottingham Road (Del. 273) to its intersection with an imaginary point located at the western (rear) property boundaries of all of the properties facing Delrem, Windsor, Country Club Drives and Darien Road, from that point on an imaginary line extending in a northerly direction from the last said intersection west of the properties located on Delrem Drive, north of Windsor Drive, and west of Country Club Drive and the extension of said imaginary line to its intersection with the northern boundary of the City of Newark west of Darien Road, thence along the boundary of the City of Newark in an easterly direction to its intersection with New London Road (Del. 896) thence southerly and easterly along the center line of New London Road (Del. 896) to its intersection with the boundary of the City of Newark just north of Fairfield Crest, thence proceeding along said boundary by its various courses to an imaginary point located on the boundary of the City of Newark easterly of the intersection of Woodhill Court and Wakefield Drive, thence from that point along an imaginary line extending southwesterly to New London Road (Del. 896) at a point just south of Fairfield Crest, to its intersection with New London Road (Del. 896) just south of Fairfield Crest, thence turning left and proceeding along the center line of New London Road (Del. 896) to its intersection with Ray Street, thence in an easterly direction along the center line of Ray Street to its intersection with North College Avenue, thence in a northerly direction along the center line of North College Avenue, to its intersection with Bogey Run, thence in an easterly direction along the center line of Bogey Run to its intersection with White Clay Creek, thence southeasterly and easterly along the center line of White Clay Creek to its intersection with the east bound lane of the Robert Kirkwood Highway (Del. 2), thence easterly along the center line of the east bound lane of the Robert Kirkwood Highway (Del. 2) to its intersection with Red Clay Creek thence northerly along the center line of Red Clay Creek to its intersection with Faulkland Road, thence easterly along the center line of Faulkland Road to its intersection with Centre Road (Del. 141), thence northeasterly along the center line of Centre Road (Del. 141) to its intersection with Lancaster Pike (Del. 48), thence southeasterly along the center line of Lancaster Pike (Del. 48), to its intersection with the boundary of the City of Wilmington, thence in a clockwise direction around the boundary of the City of Wilmington to its intersection with Greenhill Avenue, thence [northeasterly] southeasterly along the center line of Greenhill Avenue to its intersection with Seventh Street, thence southeasterly along the center line of Seventh Street to its intersection with Woodlawn Avenue, thence northeasterly along the center line of Woodlawn Avenue to its intersection with Ninth Street, thence southeasterly along the center line of Ninth Street to its intersection with North Union

Street, thence northeasterly along the center line of North Union Street to its intersection with 14th Street, thence southeasterly along the center line of 14th Street to its intersection with DuPont Street, thence northeasterly along the center line of DuPont Street to its intersection with 16th Street, thence southeasterly along the center line of 16th Street until its intersection with Delaware Avenue, thence southeasterly along the center line of Delaware Avenue until its intersection with Broom Street, thence in a northeasterly direction along the center line of Broom Street to its intersection with the center line of Gilpin Avenue, thence in a southeasterly direction along the center line of Gilpin Avenue to its intersection with Franklin Street, thence northeasterly along the center line of Franklin Street until its intersection with Lovering Avenue, thence southeasterly along the center line of Lovering Avenue until its intersection with Van Buren Street, thence northeasterly along the center line of Van Buren Street until its intersection with Brandywine Creek, thence northerly along the center line of Brandywine Creek to its intersection with the boundary of the City of Wilmington, thence easterly along the boundary of the City of Wilmington to its intersection with the south bound lane of U.S. 202, thence northerly along the center line of the south bound lane of U.S. 202 to the place of beginning.

#### DISTRICT 4

The Fourth Councilmanic District shall comprise all that portion of New Castle County bounded by a line beginning at the point of intersection of the northern boundary of the City of Wilmington with the boundary line of the States of Delaware and New Jersey, thence in a generally westerly direction along the boundary of the City of Wilmington in a counter clockwise direction to its intersection with Brandywine Creek, thence southerly along the center line of Brandywine Creek to its intersection with Van Buren Street, thence southwesterly along the center line of Van Buren Street to its intersection with Lovering Avenue, thence northwesterly along the center line of Lovering Avenue to its intersection with Franklin Street, thence [southeasterly] southwesterly along the center line of Franklin Street to its intersection with Gilpin Avenue, thence in a northwesterly direction along the center line of Gilpin Avenue to its intersection with Broom Street, thence in a southwest direction along the center line of Broom Street to its intersection with Delaware Avenue, thence northwesterly along the center line of Delaware Avenue to its intersection with 16th Street, thence westerly along the center line of 16th Street to its intersection with DuPont Street, thence southwesterly along the center line of DuPont Street until its intersection with 14th Street, thence westerly along the center line of 14th Street to its intersection with North Union Street, thence southwesterly along the center line of North Union Street to its intersection with Ninth Street, thence northwesterly along the center line of Ninth Street to its intersection with Woodlawn Avenue, thence southwesterly along the center line of Woodlawn Avenue to its intersection with Seventh Street, thence northwesterly along the center line of Seventh Street to its intersection with Greenhill Avenue, [thence southwesterly along the center line of Greenhill Avenue to its intersection with boundary of the City of Wilmington] thence from the center of said intersection in a westerly direction along an imaginary line to the western boundary of the City of Wilmington at Greenhill Avenue, thence along [the] the boundary of the City of Wilmington in a counter clockwise direction to its intersection with the north bound lane of U.S. 13, thence southwesterly along the north bound lane of U.S. 13 until its intersection with a point 130 feet north of the intersection of Hazeldell Avenue and the north bound lane of U.S. 13, thence southeasterly along a line drawn beginning at that point paralleling Hazeldell Avenue until its intersection with the east bound lane of U.S. 1-295, thence easterly along the center line of the east bound lane of U.S. 1-295 until its intersection with New Castle Avenue (Del. 9), thence northerly along the center line of New Castle Avenue until its intersection with Lambson's Lane, thence easterly along the center line of Lambson's Lane until its intersection with the boundary of the City of Wilmington, thence southeasterly along the boundary of the City of Wilmington until its intersection with the boundary of the States of Delaware and New Jersey, thence northerly along the boundary between the States of Delaware and New Jersey to the place of beginning.

#### DISTRICT 5

The Fifth Councilmanic District shall comprise all that portion of New Castle County bounded by a line beginning at the point of intersection of the east bound lane of the Robert Kirkwood Highway (Del. 2) and [Old] Harmony Road, thence southwesterly along the center line of the east bound lane of the

Robert Kirkwood Highway (Del. 2) to its intersection with White Clay Creek, thence westerly along the center line of White Clay Creek [past Paper Mill Road to its next intersection with the boundary of the City of Newark boundary, thence in a counter clockwise direction around the boundary of the City of Newark to its intersection with Darien Road, thence southerly along the center line of Darien Road to its intersection with Country Club Drive, thence southerly along the center line of Country Club Drive to its intersection with Windsor Drive, thence westerly along the center line of Windsor Drive until its intersection with Delrem Drive, thence southerly along the center line of Delrem Drive until its intersection] in a northwesterly direction to its intersection with Bogey Run, thence turning left onto the center line of Bogey Run and continuing in a westerly direction along the center line of Bogey Run by its various courses to its intersection with North College Avenue, thence in a southerly direction along the center line of North College Avenue to its intersection with Ray Street, thence in a westerly direction along the center line of Ray Street to its intersection with the center line of New London Road (Del. 896) thence in a northerly and westerly direction along the center line of New London Road (Del. 896) to its intersection with an imaginary point located just south of Fairfield Crest, thence from that point northerly along an imaginary line extending to the northern boundary of the City of Newark, east of the intersection of Woodhill Court and Wakefield Drive, thence along the boundary of the City of Newark in a counter clockwise direction to its intersection with New London Road (Del. 896) north of Fairfield Crest, thence turning right onto New London Road (Del. 896) and proceeding in a northwesterly direction along said road to its intersection with the northernmost boundary of the City of Newark, thence turning left onto said boundary and proceeding along said boundary to its intersection with an imaginary line extending from Nottingham Road to said intersection running west of Darien Road, east of Point Avenue, west of Country Club Drive, east of Fair Valley Road, north of Windsor Drive and west of Delrem Drive, thence along said imaginary line to its intersection with Nottingham Road (Del. 273), thence northwesterly along the center line of Nottingham Road (Del. 273) to its intersection with the boundary between the States of Delaware and Maryland, thence southerly along the boundary between the States of Delaware and Maryland until its intersection with the east bound lane of U.S. 40, thence easterly along the center line of the east bound lane of U.S. 40 to its intersection with Salem Church Road, thence northerly along the center line of Salem Church Road until its intersection with Old Baltimore Pike, thence [westerly] easterly along the center line of Old Baltimore Pike, to its intersection with Del. 273, Main Street, thence northwesterly along the center line of Del. 272, Main Street, until its intersection with Harmony Road, thence northerly along the center line of Harmony Road to its intersection with Ogletown Road, thence northeasterly along the center line of Ogletown Road until its intersection with the Delaware Park Entrance Road, thence northwesterly along the center line of the Delaware Park Entrance Road until its intersection with White Clay Creek, thence westerly along the center line of White Clay Creek until its intersection with the center line of [Old] Harmony Road, thence to the place of beginning.

#### DISTRICT 6

The Sixth Councilmanic District shall comprise all that portion of New Castle County bounded by a line beginning at the intersection of the boundaries of the States of Delaware and New Jersey and the northern boundary of the City of New Castle extended east, thence along the boundary of the City of New Castle to its intersection with New Castle Avenue (Del. 9), thence northerly along the center line of New Castle Avenue to its intersection with Landers Lane, thence westerly along the center line of Landers Lane to its dead end, thence along a line extending Landers Lane to its intersection with the north bound lane of U.S. 13, thence southerly along the north bound lane of U.S. 13 until its intersection with the east bound lane of U.S. 40, thence westerly along the center line of U.S. 40 until its intersection with Del. 7, thence northerly along the center line of Del. 7 until its intersection with Del. 273, thence northwesterly along the center line of Del. 273, which becomes Main Street, until its intersection with Old Baltimore Pike, thence westerly along the center line of Old Baltimore Pike until its intersection with Salem Church Road, thence southerly along the center line of Salem Church Road until its intersection with the eastbound lane of U.S. 40, thence westerly along the center line of the east bound lane of U.S. 40 until it intersects with the boundary between the States of Maryland and Delaware, thence southerly along the border between the States of Maryland and Delaware to its intersection with the boundaries between New Castle County and Kent

County, thence easterly along the boundary between New Castle County and Kent County to its intersection with the boundary between the States of Delaware and New Jersey, thence northeasterly along the boundary between the State of Delaware and New Jersey to the place of beginning.

#### DISTRICT 7

The boundaries of the Seventh Councilmanic District shall comprise all of New Castle County."

Section 2. The district boundaries established herein shall be effective as of the first Tuesday in January, 1993; however, for the General Election of November, 1992, the members of County Council shall be elected based upon the new districts described herein.

Approved July 2, 1992.

#### CHAPTER 305

##### FORMERLY

#### HOUSE BILL NO. 551

AN ACT TO AMEND CHAPTER 197, VOLUME 54, LAWS OF DELAWARE, THE CHARTER OF REHOBOTH BEACH, AS AMENDED BY CHAPTER 40, VOLUME 68, LAWS OF DELAWARE, IN ORDER TO INCLUDE CHRISTIAN SCIENCE PRACTITIONERS AS PERSONS QUALIFIED TO CERTIFY THAT A VOTER IS CONFINED INDOORS AS A RESULT OF PHYSICAL ILLNESS OR INFIRMITY FOR PURPOSES OF ABSENTEE VOTING.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (Two-thirds of all members elected to each House thereof concurring therein):

Section 1. Subsection (c)(11), Section 4, Chapter 197, Volume 54, Laws of Delaware, as heretofore amended, be and the same is hereby further amended by inserting the phrase "or Christian Science practitioner" after the phrase "medical doctor" where said phrase appears in the fourth sentence of Subsection (c)(11).

Approved July 2, 1992.

#### CHAPTER 306

##### FORMERLY

#### HOUSE BILL NO. 510 AS AMENDED BY SENATE AMENDMENT NO. 1

AN ACT TO AMEND CHAPTER 9, TITLE 3, DELAWARE CODE RELATING TO THE DELAWARE AGRICULTURAL LANDS PRESERVATION ACT.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend §921(d), Chapter 9, Title 3, Delaware Code by striking the date "March 1, 1992" as it appears in the last sentence thereof and substituting in lieu thereof the date "March 1, 1993".

Approved July 2, 1992.

## CHAPTER 307

## FORMERLY

## SENATE BILL NO. 341

AN ACT TO AMEND CHAPTER 22, TITLE 16, DELAWARE CODE, RELATING TO THE COMMITMENT AND EMERGENCY TREATMENT OF INTOXICATED PERSONS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend §2203(11), Title 16, Delaware Code by deleting said paragraph and substituting in lieu thereof the following:

"(11) 'Intoxicated person' means a person whose mental or physical functioning is substantially impaired as a result of the use of alcohol, drugs or other substances."

Section 2. Amend §2203, Title 16, Delaware Code by adding new paragraphs (17) and (18) to read as follows:

"(17) 'Designated transport personnel' means such personnel as designated by the Secretary of the Department of Health and Social Services to transport an intoxicated person to and from the hospital and public treatment facilities.

(18) 'Peace officer' means any public officer authorized by law to make arrests in a criminal case."

Section 3. Amend §2212, Title 16, Delaware Code by deleting subsections (b) and (c) in their entirety and substituting in lieu thereof new subsections to read as follows:

"(b) A physician, spouse, guardian or relative of the person to be committed, or any other responsible person, may make a written application for commitment under this section, directed to the administrator of the approved public treatment facility. The application shall state the facts to support the need for emergency treatment and be accompanied by the certificate of a certifying physician stating that the physician has examined the person sought to be committed, within 2 working days before the certificate's date, and the facts supporting such need for emergency treatment. The certifying physician shall be someone other than the person making the written application for commitment. The person shall be brought to the facility by a peace officer, or in the sole discretion of the examining physician, by designated transport personnel or any other interested person. The person shall be detained at the facility to which he or she was admitted, or transferred to another appropriate public or private treatment facility by designated transport personnel, until discharged under this section. However, no person may be detained under this section for more than 2 working days unless a Family Court or Superior Court Judge has reviewed and approved the commitment application.

(c) The State Treasurer shall pay constables, sheriffs, and deputy sheriffs for service as peace officers under this section at the rate of 15 cents for each mile necessarily traveled and a custody fee of \$25 for the first peace officer and \$15 for each additional peace officer, and shall pay medical doctors for services under this section \$15 for each case."

Approved July 6, 1992.

## CHAPTER 308

## FORMERLY

## SENATE BILL NO. 342

AN ACT TO AMEND CHAPTER 51, TITLE 16, DELAWARE CODE RELATING TO THE ADMISSION, MAINTENANCE AND DISCHARGE OF PATIENTS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend §5122(a), Title 16, Delaware Code by adding a new paragraph (3) to read as follows:

"(3) 'Designated transport personnel' means such personnel as designated by the Secretary of the Department of Health and Social Services to transport mentally ill persons to and from the hospital and public treatment facilities."

Section 2. Amend §5122(c), Title 16, Delaware Code by inserting after the word "officer" and before the word "to" in the third sentence of said subsection the following, "or, in the sole discretion of the examining physician, by designated transport personnel".

Section 3. Amend §5122(d), Title 16, Delaware Code by deleting said subsection and substituting in lieu thereof the following:

"(d) Upon receiving an alleged mentally ill person at the Delaware State Hospital, the Superintendent shall detain, care for and treat as medically appropriate the said patient for a period not to exceed 24 hours; provided, however, that this period shall be 72 hours for minors admitted in conformity with §5135 of the Title. If it appears that the nearest known relative has not received prior notice of the proceedings, the Superintendent shall, if reasonably possible, promptly give such notice. Unless the patient is discharged from the Hospital within that period, then at the termination of the period he shall be discharged unless he is admitted or committed to the said Hospital under some other provision of law. A psychiatrist designated by the Secretary of the Department of Services for Children, Youth and Their Families may conduct an independent review of a determination that a person under 18 years of age admitted to any mental health facility pursuant to this chapter is a dangerously mentally ill person. A psychiatrist designated by the Secretary of the Department of Health and Social Services may conduct an independent review of a determination that a person 18 years of age or older admitted to any mental health facility pursuant to this chapter is a dangerously mentally ill person."

Section 4. Amend §5136, Title 16, Delaware Code by deleting said section in its entirety and substituting in lieu thereof the following:

"The Secretary of the Department of Health and Social Services, upon voluntary application of a private or public hospital, may certify such hospital as an appropriate facility for the detention, diagnosis, care and treatment of mentally ill adults under this chapter. If so certified, on a case-by-case basis, any such hospital shall be authorized to serve in addition to the Delaware State Hospital under this chapter."

Approved July 6, 1992.

## CHAPTER 309

## FORMERLY

SENATE BILL NO. 343  
AS AMENDED BY HOUSE AMENDMENT NOS. 1 AND 2

AN ACT TO AMEND CHAPTER 50, TITLE 16, DELAWARE CODE, RELATING TO THE INVOLUNTARY COMMITMENT OF THE MENTALLY ILL.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend §5001, Title 16, Delaware Code by adding new paragraphs (8) and (9) to read as follows:

"(8) 'Designated transport personnel' means such personnel as designated by the Secretary of the Department of Health and Social Services to transport mentally ill persons to and from the hospital and public treatment facilities.

(9) 'Peace officer' means any public officer authorized by law to make arrests in a criminal case."

Section 2. Amend §5004, Title 16, Delaware Code by striking said section in its entirety and substituting in lieu thereof the following:

"§5004. Legal effect of psychiatrist's certificate.

Where the psychiatric examination occurs at a place other than the hospital, the certificate of the examining psychiatrist shall constitute legal authorization for the alleged mentally ill person to be transported (together with the examining psychiatrist's certificate) to the hospital by a peace officer or, in the sole discretion of the examining physician, by designated transport personnel. Receipt by the hospital of the certificate of the examining psychiatrist shall authorize the hospital provisionally to admit the alleged mentally ill person as a patient. No peace officer or medical doctor shall be subject to civil damages or criminal penalties for any harm to the mentally ill person resulting from the performance of his or her functions under this section or under §5003 of this title unless such harm was the result of negligent, reckless, willful, wanton and/or intentional misconduct on his or her part."

Section 3. Amend Chapter 50, Title 16, Delaware Code by adding a new §5015 to read as follows:

"§5015. Costs of transportation and medical services.

The State Treasurer shall pay constables, sheriffs, and deputy sheriffs for service as peace officers under this section at the rate of 15 cents for each mile necessarily traveled as well as a custody fee of \$25 for the first peace officer and \$15 for each additional peace officer; and shall pay medical doctors for services under this section \$15 for each case."

Approved July 6, 1992.



## CHAPTER 310

## FORMERLY

## HOUSE BILL NO. 567

AN ACT TO AMEND CHAPTER 50, TITLE 16 OF THE DELAWARE CODE, RELATING TO THE INVOLUNTARY COMMITMENT PROCESS OF THE MENTALLY ILL.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Chapter 50, Title 16, Delaware Code by striking the number "3" as it appears in the first sentence of Section 5005(2) and by substituting in lieu thereof the number "2".

Section 2. Amend Chapter 50, Title 16, Delaware Code by striking the number "6" as it appears in the first sentence of Section 5007(a) and by substituting in lieu thereof the number "2".

Section 3. Amend Chapter 50, Title 16, Delaware Code by striking the number "8" as it appears in Section 5007(c) and by substituting in lieu thereof the number "4".

Section 4. Amend Chapter 50, Title 16, Delaware Code by striking the number "18" as it appears in Section 5008(1) and substituting in lieu thereof the number "8".

Section 5. Amend Title 16, Chapter 50 Delaware Code by striking the number "6" as it appears in the first sentence of Section 5010(2) and substituting in lieu thereof the number "3".

Section 6. Amend Chapter 50, Section 5012(a), Title 16, Delaware Code by striking said section in its entirety and by substituting in lieu thereof the following:

"(a) Duties of hospital upon involuntary patient's admission. Upon the involuntary patient's admission to the hospital pursuant to court order, the hospital shall for a period not to exceed 3 months render treatment to the involuntary patient in accordance with professional standards. If by the expiration of 3 months the involuntary patient has not been discharged by the hospital, and if in the opinion of the hospital the involuntary patient is still a mentally ill person, the hospital shall so notify the court; and the court shall order a hearing to be held within 14 working days of such notice. If the court continues the involuntary confinement upon the expiration of an additional 6 months, and the involuntary patient has not been discharged by the hospital, and if in the opinion of the hospital the patient is still a mentally ill person, the hospital shall so notify the court; and the court shall order a hearing to be held within 14 working days of such notice."

Section 7. Amend Chapter 50, Section 5012(b), Title 16, Delaware Code by striking said subsection in its entirety and by substituting in lieu thereof the following:

"(b) Further Hearing. In any further hearing the procedural requirements of Section 5006 of this Title shall govern, and the court may make such findings and orders as are permitted by Section 5010 of this Title; provided, that the court may order that the involuntary patient's admission to the hospital shall be continued for an indefinite period, in which case the hospital shall report to the court at intervals not more than 6 months as to the continued need for involuntary hospitalization, and the court shall review the involuntary patient's status at such 6-month intervals and be required to hold hearings, at such intervals, until such time as the involuntary patient is discharged."

Section 8. Amend Chapter 50, Section 5012, Title 16, Delaware Code by adding thereto a new subsection to read as follows:

"(c) Waiver of Hearing. An involuntary patient, if represented by counsel, may waive, orally or in writing, any hearing under this section. The waiver must be submitted in writing to the court or be orally presented in open court."

Approved July 6, 1992.

## CHAPTER 311

## FORMERLY

HOUSE BILL NO. 561  
AS AMENDED BY SENATE AMENDMENT NO. 1

AN ACT TO AMEND CHAPTER 46, TITLE 6, DELAWARE CODE, RELATING TO EQUAL RIGHTS TO HOUSING AND TO AMEND CHAPTER 30, TITLE 31, DELAWARE CODE, RELATING TO THE STATE HUMAN RELATIONS COMMISSION AND THE CREATION OF A SPECIAL ADMINISTRATION FUND.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Chapter 46, Title 6, Delaware Code, is amended by striking it in its entirety and inserting in lieu thereof a new Chapter 46 to read as follows:

"CHAPTER 46 FAIR HOUSING ACT

<u>Section</u>	<u>Title</u>
4600	Title
4601	Declaration of policy and purpose
4602	Definitions
4603	Discrimination in the sale or rental of housing and other prohibited practices
4604	Discrimination in residential real estate-related transactions
4605	Discrimination in the provision of brokerage services
4606	Aiding Discriminatory Practices
4607	Exemptions in certain situations
4608	Administration
4609	Education and conciliation
4610	Administrative enforcement; preliminary matters
4611	Subpoenas; giving of evidence
4612	Enforcement by Commission
4613	Enforcement by private persons
4614	Enforcement by the attorney general
4615	Fees, Costs and Expenses for Respondent or Defendant
4616	Rules to implement title
4617	Effect on other laws
4618	Interference, coercion, or intimidation
4619	Prohibition of Intimidation, Violations and penalties

§4600. Short Title.

This Chapter may be cited as the "Delaware Fair Housing Act".

§4601. Declaration of Purpose and Construction.

(a) **Purpose.** This chapter is intended to eliminate, as to housing offered to the public for sale, rent, or exchange, discrimination based upon race, color, national origin, religion, creed, sex, marital status,

familial status, age or handicap, and to provide an administrative procedure through which disputes concerning the same may effectively and expeditiously be resolved with fairness and due process for all parties concerned.

(b) **Construction.** This chapter shall be liberally construed to the end that its purposes may be accomplished and all persons may fully enjoy equal rights and access to housing for themselves and their families. Furthermore, in defining the scope or extent of any duty imposed by this chapter, including the duty of reasonable accommodation, higher or more comprehensive obligations established by otherwise applicable Federal, State or local enactments may be considered.

§4602. Definitions.

As used in this Chapter:

(1) 'Age' - For the purpose of defining what is a Discriminatory Housing Practice, "Age" means any age 18 years or older.

(2) 'Aggrieved persons' includes any person who:

(a) claims to have been injured, directly or indirectly, by a discriminatory housing practice;

(b) believes that such person will be injured, directly or indirectly, by a discriminatory housing practice that is about to occur; or

(c) is associated with a person having a protected status under this chapter and claims to have been injured, directly or indirectly, as a result of a discriminatory housing practice against such person having the protected status.

(3) 'Chairperson' means the Chairperson of the State Human Relations Commission.

(4) 'Commission' means the State Human Relations Commission.

(5) 'Complainant' means the person (including the Commission) who files a complaint under section 4610.

(6) 'Conciliation' means the attempted resolution of issues raised by a complaint, or by the investigation of such complaint, through informal negotiations involving the aggrieved person, the respondent, and the Commission.

(7) 'Conciliation agreement' means a written agreement setting forth the resolution of the issues in conciliation.

(8) 'Court' means the Superior Court of the State of Delaware unless otherwise designated.

(9) 'Covered multifamily dwellings' means:

(A) buildings consisting of 4 or more dwelling units if such buildings have one or more elevators; and

(B) ground floor dwelling units in other buildings consisting of 4 or more dwelling units.

(10) 'Discriminatory housing practice' means an act that is unlawful under section 4603, 4604, 4605, 4606 or 4618.

(11) 'Dwelling' means any building, structure, or portion thereof which is occupied as, or designed or intended for occupancy as, a residence by one or more families, together with any land which is offered for sale, rent or exchange therewith and also means any vacant land which is offered for sale, lease or exchange for the construction or location thereon of any such building, structure, or portion thereof. 'Dwelling' also includes the public and common use areas associated therewith.

(12) 'Familial status' means: one or more individuals who have not attained the age of 18 years being domiciled with-

(a) a parent or another person having legal custody of such individual or individuals; or

(b) the designee of such parent or other person having such custody, with the written permission of such parent or other person; or

(c) any person who is pregnant or is in the process of securing legal custody of any individual who has not attained the age of 18 years.

(13) 'Family' includes a single individual.

(14) 'Handicap' or 'Disability' means, with respect to a person-

(a) a physical or mental impairment which substantially limits one or more of such person's major life activities;

(b) a record of having such an impairment; or

(c) being regarded as having such an impairment, but such term does not include current, illegal use of a controlled substance as defined in Section 102 of the Controlled Substances Act (21 U.S.C. 802) or Delaware Code Title 16, Chapter 47, Uniform Controlled Substances Act.

(15) 'Housing for Older Persons' means housing-

(a) provided under any State or Federal program that the Commission determines is specifically designed and operated to assist elderly persons; or

(b) intended for, and solely occupied by, persons 62 years of age or older; or

(c) intended and operated for occupancy by at least one person 55 years of age or older per unit. In determining whether housing qualifies as housing for older persons under this subsection, the Commission shall develop regulations which shall require at least the following factors:

(i) the existence of significant facilities and services specifically designed to meet the physical or social needs of older persons, or if the provision of such facilities and services is not practicable, that such housing is necessary to provide important housing opportunities for older persons; and

(ii) that at least 80 percent of the units are occupied by at least one person 55 years of age or older per unit; and

(iii) the publication of, and adherence to, policies and procedures which demonstrate an intent by the owner or manager to provide housing for persons 55 years of age or older.

(16) 'Marital Status' means the legal relationship of parties as determined by the laws of marriage applicable to them or the absence of such a legal relationship.

(17) 'Panel': A body of Commissioners, appointed by the Commission Chair to investigate, conciliate, adjudicate, or otherwise perform any task imposed by applicable law.

(18) "Panel Chair": That Commissioner designated by the Commission Chair to preside at case hearings, and, further, to perform such other duties as may be specified by applicable laws and regulations.

(19) 'Person' includes one or more individuals, corporations, partnerships, associations, labor organizations, legal representatives,

mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in bankruptcy in cases under Title 11 of the United States Code, receivers, fiduciaries and land use commissions or boards.

(20) 'Residential real estate-related transaction' means any of the following:

(a) the making, brokering or purchasing of loans or providing other financial assistance-

(i) for purchasing, constructing, improving, repairing, or maintaining a dwelling; or

(ii) secured by residential real estate; or

(b) the selling, brokering, or appraising of residential real property.

(21) 'Respondent' means-

(a) the person or other entity accused in a complaint of an unfair housing practice; and

(b) any other person or entity identified in the course of investigation and notified as required with respect to respondents so identified under section 4610(a)(2)(A).

(22) 'To rent' includes to lease, to sublease, to assign a lease, to let and otherwise to grant, continue or renew for a consideration the right to occupy premises not owned by the occupant.

(23) 'To sell' or 'sale' includes a sale, gift, exchange or other means of conveyance.

(24) 'Special Administration Fund' means the Fund established and maintained pursuant to Section 3005, Chapter 30, Title 31, Delaware Code.

§4603. Discrimination in Sale or Rental of Housing and Other Prohibited Practices.

For purposes of subsections (a) through (f) of this section, the unlawful discrimination against a person on the basis of a specified protected status refers to the protected status of -

(1) that buyer, renter or aggrieved person,

(2) a person residing in or intending to reside in that dwelling after it is sold, rented or made available, or

(3) any person associated with that buyer or renter.

Except as exempted by section 4607 of this chapter, it shall be unlawful-

(a) To discriminate in the sale or rental, to refuse to sell or rent, to refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling to any person because of race, color, national origin, religion, creed, sex, marital status, familial status, age or handicap.

(b) To discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith, because of race, color, national origin, religion, creed, sex, marital status, familial status, age or handicap.

(c) To make, print, or publish, or cause to be made, printed, or published any notice, statement, or advertisement, with respect to the sale or rental of a dwelling that indicates any preference, limitation, or discrimination based on race, color, national origin, religion, creed, sex, marital status, familial status, age, or handicap, or an intention to make

any such preference, limitation, or discrimination. However, nothing in this chapter restricts the inclusion of information about the availability of housing accessible to handicapped persons in advertising of dwellings.

(d) To represent to any person because of race, color, national origin, religion, creed, sex, marital status, familial status, age or handicap that any dwelling is not available for inspection, sale, or rental when such dwelling is in fact so available.

(e) To induce or attempt to induce any person to sell or rent any dwelling by representations regarding the entry or prospective entry into the neighborhood of a person or persons of a particular race, color, national origin, religion, creed, sex, marital status, familial status, age or handicap.

(f) Other provisions on Handicap -

(1) For purposes of this chapter, discrimination on the basis of handicap also includes-

(A) a refusal to permit, at the expense of the handicapped person, reasonable modifications of existing premises occupied or to be occupied by such person if such modifications may be necessary to afford such person full enjoyment of the premises; except that, in the case of a rental, the landlord may where it is reasonable to do so condition permission for a modification on the renter agreeing to restore the interior of the premises to the condition that existed before the modification, reasonable wear and tear excepted;

(B) a refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling;

(C) a failure to design and construct or alter those two categories of multifamily dwellings specified at the end of this subparagraph in such a manner that-

(i) the dwellings have at least one building entrance on an accessible route, unless it is impractical to do so because of the terrain or unusual characteristics of the site;

(ii) with respect to dwellings with a building entrance on an accessible route:

(aa) the public use and common use portions of such dwellings are readily accessible to and usable by handicapped persons;

(bb) all the doors designed to allow passage into and within all premises within such dwellings are sufficiently wide to allow passage by handicapped persons in wheelchairs; and

(cc) all premises within such dwellings contain the following features of adaptive design:

(I) an accessible route into and through the dwelling;

(II) light switches, electrical outlets, thermostats, and other environmental controls in accessible locations;

(III) reinforcements in bathroom walls to allow later installation of grab bars; and

(IV) usable kitchens and bathrooms such that an individual in a wheelchair can maneuver about the space and make use of the facilities.

This subparagraph (C) applies to the following two categories of covered multifamily dwellings:

1. covered multifamily dwellings for first occupancy after the effective date of this Act, and
2. covered multifamily dwellings after one year from the effective date of this Act, undergoing alterations costing fifty percent or more of the replacement cost of the building unless to do so is structurally impracticable; or

(D) to make an inquiry to determine whether an applicant for a dwelling, a person intending to reside in that dwelling after it is so sold, rented or made available, or any person associated with that person, has a handicap or to make inquiry as to the nature or severity of a handicap of such a person. However, this paragraph does not prohibit the following inquiries, provided these inquiries are made of all applicants, whether or not they have handicaps:

(i) Inquiry into an applicant's ability to meet the requirements of ownership or tenancy;

(ii) Inquiry to determine whether an applicant is qualified for a dwelling available only to persons with a particular type of handicap;

(iii) Inquiry to determine whether an applicant for a dwelling is qualified for a priority available to persons with handicaps or to persons with a particular type of handicap; or

(iv) Inquiry to determine whether an applicant for a dwelling is a current illegal user of a controlled substance.

(2) Compliance with the appropriate requirements of the American National Standard for buildings and facilities providing accessibility and usability for physically handicapped people (commonly cited as "ANSI A117.1") suffices to satisfy the requirements of paragraph (1)(C)(ii)(cc).

(3) (A) If an agency or a political subdivision of the State has incorporated into its laws the requirements set forth in paragraph (1)(C), compliance with such laws shall be deemed to satisfy the requirements of that paragraph.

(B) The State or a political subdivision thereof with a building code may review and approve newly constructed covered multifamily dwellings for the purpose of making determinations as to whether the design and construction requirements of paragraph (1)(C) are met.

(C) The Commission shall encourage, but may not require, any agency or political subdivision of the State to include in their existing procedures for the review and approval of newly constructed covered multifamily dwellings, determinations as to whether the design and construction of such dwellings are consistent with paragraph (1)(C), and may provide technical assistance to the State, political subdivisions thereof and other persons to implement the requirements of paragraph (1)(C).

(D) Nothing in this chapter shall be construed to require the Commission to review or approve the plans, designs or construction of any covered multifamily dwellings, to determine whether the design and construction of such dwellings are consistent with the requirements of paragraph (1)(C).

(4) (A) Nothing in paragraph (5) shall be construed to affect the authority and responsibility of the Commission to receive and process complaints or otherwise engage in enforcement activities under this chapter.

(B) Determinations by an agency or a political subdivision of the State under paragraphs (3)(A) and (B) shall not be conclusive in enforcement proceedings under this chapter.

(5) Nothing in this chapter shall be construed to invalidate or limit any law of the State or political subdivision thereof, that requires dwellings to be designed and constructed in a manner that affords handicapped persons greater access than is required by this chapter.

(g) Nothing in this section requires that a dwelling be made available to a handicapped individual whose tenancy would constitute a direct threat to the health or safety of other individuals or whose tenancy would result in substantial physical damage to the property of others.

§4604. Discrimination in Residential Real Estate-Related Transactions.

(a) In General. It shall be unlawful for any person or other entity whose business includes engaging in residential real estate-related transactions to discriminate against any person in making available such a transaction, or in the terms or conditions of such a transaction, because of race, color, national origin, religion, creed, sex, marital status, familial status, age, or handicap.

(b) Appraisal Exemption - Nothing in this chapter prohibits a person engaged in the business of furnishing appraisals of real property to take into consideration factors other than race, color, national origin, religion, creed, sex, marital status, familial status, age, or handicap.

§4605. Discrimination in Provision of Brokerage Services.

It shall be unlawful to deny any person access to or membership or participation in any multiple-listing service, real estate brokers' organization or other service, organization, or facility relating to the business of selling, exchanging or renting dwellings, or to discriminate against the person in the terms or conditions of such access, membership, or participation, on account of race, color, national origin, religion, creed, sex, marital status, familial status, age, or handicap.

§4606. Aiding Discriminatory Practices.

Notwithstanding the provisions enumerated in §4619, it shall be unlawful to assist, induce, incite or coerce another person to commit any of the Discriminatory Housing Practices prohibited by this chapter.

§4607. Exemptions in Certain Situations.

(a) Nothing in this chapter shall prohibit a religious organization, association, or society, or any nonprofit institution or organization operated, supervised or controlled by or in conjunction with a religious organization, association, or society, from limiting the sale, rental or occupancy of dwellings which it owns or operates for other than a commercial purpose to persons of the same religion, or from giving preference to such persons, unless membership in such religion is restricted on account of race, color, or national origin.

(b) Nothing in this chapter shall prohibit a private club not in fact open to the public, which as an incident to its primary purpose or purposes provides lodgings which it owns or operates for other than a commercial purpose, from limiting the rental or occupancy of such lodgings to its members or from giving preference to its members, unless membership in such private club is restricted on account of race, color, or national origin.

(c) Nothing in this chapter limits the applicability of any reasonable local, State, or Federal restrictions regarding the maximum number of occupants permitted to occupy a dwelling as long as they are applied to all occupants and do not operate to discriminate or have the effect of discriminating on the basis of race, color, national origin, religion, creed, sex, marital status, familial status, age or handicap. Nor does any provision in this chapter regarding familial status or age apply with respect to housing for older persons as defined in §4602(15).

(d) Housing shall not fail to meet the requirements for housing for older persons by reason of:



(1) persons residing in such housing as of the effective date of this chapter who do not meet the age requirements of subsections 4602(15)(b) or (c): Provided, That new occupants of such housing meet the age requirements of subsections 4602(15)(b) or (c);

(2) unoccupied units: Provided, that such units are reserved for occupancy by persons who meet the age requirements of subsections 4602(15)(b) or (c); or

(3) persons under 18 years of age residing in such housing with a person or persons who do meet the age requirements of subsections 4602(15)(b) or (c) provided that,

(A) such person under 18 years of age must move into the housing by reason of death, serious injury, or serious illness of the parent, guardian or person acting in the place of a parent with whom such person under 18 years of age resided immediately before the time of such death, serious injury or serious illness; and

(B) occupancy by the person under 18 years of age is of a temporary nature terminating when reasonably practicable.

(e) Nothing in §4603 of this chapter, other than subsections (b) and (c), shall apply to rentals of rooms or units in dwellings containing living quarters occupied or intended to be occupied by no more than four families living independently of each other, if the owner actually maintains and occupies one of such living quarters as his residence.

(f) Nothing in this chapter shall prohibit discrimination on the basis of sex for single sex student dormitories, fraternities, sororities, other housing or portion thereof of an educational institution certified, chartered, or established by the State of Delaware and operated for students of that educational institution.

(g) Nothing in this chapter shall prohibit a religious organization, association, or society, or any nonprofit institution or organization operated, supervised or controlled by or in conjunction with a religious organization, association, or society, from discriminating on the basis of sex for single sex dormitories or portions thereof where such discrimination on the basis of sex is necessary for the safety of individuals in such dormitories or to preserve the personal privacy of such individuals, unless such organization, association, society or institution restricts its membership on account of race, color, or national origin.

#### §4608. Administration.

(a) The authority and responsibility for administering this chapter shall be in the State Human Relations Commission.

(b) The Commission may delegate any functions, duties, and powers to employees of the Office of Human Relations, or to members of the Commission, including functions, duties, and powers with respect to investigating, conciliating, hearing, determining, ordering, certifying, reporting or otherwise acting as to any work, business, or matter under this chapter. Insofar as possible, conciliation meetings shall be held in the county where the discriminatory housing practices allegedly occurred.

(c) All executive departments and agencies of the State or any political subdivision thereof shall administer their programs and activities relating to housing and urban development (including, but not limited to, any agency having regulatory or supervisory authority over financial institutions) in a manner affirmatively to further the purposes of this chapter and shall cooperate with the Commission to further such purposes.

(d) The Commission, in connection with its enforcement of this chapter,

(1) may study the nature and extent of discriminatory housing practices in representative urban, suburban, and rural communities throughout the State.

(2) may publish and disseminate reports, recommendations, and information derived from such studies;

(3) shall cooperate with and render technical assistance to Federal and State agencies, organizations, and institutions which are formulating or carrying on programs to prevent or eliminate discriminatory housing practices;

(4) may provide similar assistance to other local public or private agencies, organizations and institutions consistent with the purposes of this chapter; and

(5) shall administer the programs and activities relating to eliminating discriminatory housing practices in a manner affirmatively to further the purpose of this chapter.

#### §4609. Education and Conciliation.

The Commission may commence such educational and conciliatory activities as in its judgment will further the purposes of this chapter. It may call conferences of persons in the housing industry and other interested parties to acquaint them with the provisions of this chapter and its suggested means of implementing it, and endeavor with their advice to work out programs of voluntary compliance and of enforcement. The Commission may consult with State and local officials and other interested parties to learn the extent, if any, to which housing discrimination exists in the State or locality, and whether and how State or local enforcement programs might be utilized to combat such discrimination in connection with or in place of, the Commission's enforcement of this chapter. The Commission may issue reports on such conferences and consultations as it deems appropriate.

#### §4610. Administrative Enforcement: Preliminary Matters.

##### (a) Complaints and answers.-

(1) (A) (i) An aggrieved person, not later than one year after an alleged discriminatory housing practice has occurred or terminated, or not later than one year after such practice has been discovered or reasonably should have been discovered by the aggrieved person, may file a complaint with the Commission alleging such discriminatory housing practice. The Commission on its own initiative may also file such a complaint subject to the same time limitations.

(ii) Such complaints shall be in writing and shall contain such information and be in such form as the Commission requires.

(iii) The Commission may also investigate housing practices to determine whether a complaint should be brought under this chapter.

##### (B) Upon the filing of such a complaint-

(i) the Commission shall serve notice upon the aggrieved person acknowledging such filing and advising the aggrieved person of the time limits and choice of forums provided under this chapter;

(ii) the Commission shall, not later than 10 days after such filing or the identification of an additional respondent under paragraph (2), serve on the respondent a notice identifying the alleged discriminatory housing practice and advising such respondent of the procedural rights and obligations of respondents under this chapter, together with a copy of the original complaint;

(iii) each respondent may file, not later than 20 days after receipt of notice from the Commission, an answer to such complaint; and

(iv) the Commission shall make an investigation of the alleged discriminatory housing practice and complete such investigation within 100 days after the filing of the complaint unless it is impracticable to do so.

(C) If the Commission is unable to complete the investigation within 100 days after the filing of the complaint, the Commission shall notify the complainant and respondent in writing of the reasons for not doing so.

(D) Complaints and answers shall be verified under oath or affirmation, and may be reasonably and fairly amended at any time.

(2) (A) A person who is not named as a respondent in a complaint, but who is identified as a respondent in the course of investigation, may be joined as an additional or substitute respondent to the same extent such person could be joined in a civil action in Superior Court and upon written notice, under paragraph (1), to such person, from the Commission.

(B) Such notice, in addition to meeting the requirements of paragraph (1), shall explain the basis for the Commission's belief that the person to whom the notice is addressed is properly joined as a respondent.

(b) Investigative report and conciliation.-

(1) During the period beginning with the filing of such complaint and ending with the filing of a charge or a dismissal by the Commission, the Commission shall, to the extent feasible, engage in conciliation with respect to such complaint.

(2) A conciliation agreement arising out of such conciliation shall be an agreement between the respondent and the complainant, and shall be subject to approval by the Commission.

(3) A conciliation agreement may provide binding arbitration of the dispute arising from the complaint. Any such arbitration that results from a conciliation agreement may award appropriate relief, including monetary relief.

(4) Each conciliation agreement shall be made public unless the complainant and respondent otherwise agree and the Commission determines that disclosure is not required to further the purpose of this chapter;

(5) (A) At the end of each investigation under this section, the Commission shall prepare a final investigative report containing-

(i) the names and dates of contacts with witnesses;

(ii) a summary and the dates of correspondence and other contacts with the aggrieved person and the respondent;

(iii) a summary description of other pertinent records;

(iv) a summary of witness statements;

(v) answers to interrogatories; and

(vi) such other matters as the Commission requires.

(B) A final report under this paragraph may be amended if additional evidence is later discovered.

(c) Failure to comply with conciliation agreement.-Whenever the Commission has reasonable cause to believe that a respondent has breached a conciliation agreement, the Commission shall refer the matter to the Attorney General with a recommendation that a civil action be filed under section 4614 for the enforcement of such agreement.

(d) Prohibitions and requirements with respect to disclosure of information.-

(1) Nothing said or done for the purpose of promoting conciliation under this chapter may be made public or used as evidence in a

subsequent proceeding under this chapter without the written consent of the persons whose words or actions are at issue.

(2) Notwithstanding paragraph (1), the Commission shall make available to the aggrieved person and the respondent, at any time, upon request following completion of the Commission's investigation, information derived from an investigation and any final investigative report relating to that investigation.

(e) Prompt judicial action.-

(1) If the Commission concludes at any time following the filing of a complaint that prompt judicial action is necessary to carry out the purposes of this chapter, the Commission may authorize a civil action for appropriate temporary or preliminary relief pending final disposition of the complaint under this section. Upon receipt of such an authorization, the Attorney General may elect to commence and maintain such an action in the Court of Chancery on behalf of the Commission in the name of the Commission or the aggrieved person or persons. The commencement of a civil action under this subsection does not affect the initiation or continuation of administrative proceedings under this section or section 4612 of this chapter.

(2) If the Attorney General does not elect to pursue such an action, the Commission shall, provided it has the funds available in the Special Administration Fund, employ special counsel to pursue such action in accordance with 29 Del. C. Section 2507. The expenses of such employment shall be paid by the State Treasurer out of the Special Administration Fund upon the approval of the Commission. Whenever an action under this subsection will be pursued by special counsel, such action shall be commenced promptly after the Commission employs such counsel.

(3) Whenever the Commission has reason to believe that a basis may exist for the commencement of proceedings against any respondent under section 4614(a) and 4614(c) or for proceedings by any governmental licensing or supervisory authorities, the Commission shall transmit the information upon which such belief is based to the Attorney General, or to such authorities, as the case may be.

(f) Reasonable cause determination and effect.-

(1) The Commission shall, within 100 days after the filing of the complaint determine based on the facts whether reasonable cause exists to believe that a discriminatory housing practice has occurred or is about to occur, unless it is impracticable to do so, or unless the Commission has approved a conciliation agreement with respect to the complaint. If the Commission is unable to make the determination within 100 days after the filing of the complaint the Commission shall notify the complainant and respondent in writing of the reasons for not doing so.

(2) (A) If the Commission determines that reasonable cause exists to believe that a discriminatory housing practice has occurred or is about to occur, the Commission shall, except as provided in subparagraph (C), immediately issue a charge on behalf of the aggrieved person, for further proceedings under section 4612.

(B) Such charge -

(i) shall consist of a short and plain statement of the facts upon which the Commission has found reasonable cause to believe that a discriminatory housing practice has occurred or is about to occur;

(ii) shall be based on the final investigative report; and

(iii) need not be limited to the facts or grounds alleged in the complaint filed under section 4610(a).

(C) If the Commission determines that the matter involves the legality of any State or local zoning or other land use law or

(C) If the Commission is unable to complete the investigation within 100 days after the filing of the complaint, the Commission shall notify the complainant and respondent in writing of the reasons for not doing so.

(D) Complaints and answers shall be verified under oath or affirmation, and may be reasonably and fairly amended at any time.

(2) (A) A person who is not named as a respondent in a complaint, but who is identified as a respondent in the course of investigation, may be joined as an additional or substitute respondent to the same extent such person could be joined in a civil action in Superior Court and upon written notice, under paragraph (1), to such person, from the Commission.

(B) Such notice, in addition to meeting the requirements of paragraph (1), shall explain the basis for the Commission's belief that the person to whom the notice is addressed is properly joined as a respondent.

(b) Investigative report and conciliation.-

(1) During the period beginning with the filing of such complaint and ending with the filing of a charge or a dismissal by the Commission, the Commission shall, to the extent feasible, engage in conciliation with respect to such complaint.

(2) A conciliation agreement arising out of such conciliation shall be an agreement between the respondent and the complainant, and shall be subject to approval by the Commission.

(3) A conciliation agreement may provide binding arbitration of the dispute arising from the complaint. Any such arbitration that results from a conciliation agreement may award appropriate relief, including monetary relief.

(4) Each conciliation agreement shall be made public unless the complainant and respondent otherwise agree and the Commission determines that disclosure is not required to further the purpose of this chapter;

(5) (A) At the end of each investigation under this section, the Commission shall prepare a final investigative report containing-

(i) the names and dates of contacts with witnesses;

(ii) a summary and the dates of correspondence and other contacts with the aggrieved person and the respondent;

(iii) a summary description of other pertinent records;

(iv) a summary of witness statements;

(v) answers to interrogatories; and

(vi) such other matters as the Commission requires.

(B) A final report under this paragraph may be amended if additional evidence is later discovered.

(c) Failure to comply with conciliation agreement.-Whenever the Commission has reasonable cause to believe that a respondent has breached a conciliation agreement, the Commission shall refer the matter to the Attorney General with a recommendation that a civil action be filed under section 4614 for the enforcement of such agreement.

(d) Prohibitions and requirements with respect to disclosure of information.-

(1) Nothing said or done for the purpose of promoting conciliation under this chapter may be made public or used as evidence in a

subsequent proceeding under this chapter without the written consent of the persons whose words or actions are at issue.

(2) Notwithstanding paragraph (1), the Commission shall make available to the aggrieved person and the respondent, at any time, upon request following completion of the Commission's investigation, information derived from an investigation and any final investigative report relating to that investigation.

(e) Prompt judicial action.-

(1) If the Commission concludes at any time following the filing of a complaint that prompt judicial action is necessary to carry out the purposes of this chapter, the Commission may authorize a civil action for appropriate temporary or preliminary relief pending final disposition of the complaint under this section. Upon receipt of such an authorization, the Attorney General may elect to commence and maintain such an action in the Court of Chancery on behalf of the Commission in the name of the Commission or the aggrieved person or persons. The commencement of a civil action under this subsection does not affect the initiation or continuation of administrative proceedings under this section or section 4612 of this chapter.

(2) If the Attorney General does not elect to pursue such an action, the Commission shall, provided it has the funds available in the Special Administration Fund, employ special counsel to pursue such action in accordance with 29 Del. C. Section 2507. The expenses of such employment shall be paid by the State Treasurer out of the Special Administration Fund upon the approval of the Commission. Whenever an action under this subsection will be pursued by special counsel, such action shall be commenced promptly after the Commission employs such counsel.

(3) Whenever the Commission has reason to believe that a basis may exist for the commencement of proceedings against any respondent under section 4614(a) and 4614(c) or for proceedings by any governmental licensing or supervisory authorities, the Commission shall transmit the information upon which such belief is based to the Attorney General, or to such authorities, as the case may be.

(f) Reasonable cause determination and effect.-

(1) The Commission shall, within 100 days after the filing of the complaint determine based on the facts whether reasonable cause exists to believe that a discriminatory housing practice has occurred or is about to occur, unless it is impracticable to do so, or unless the Commission has approved a conciliation agreement with respect to the complaint. If the Commission is unable to make the determination within 100 days after the filing of the complaint the Commission shall notify the complainant and respondent in writing of the reasons for not doing so.

(2) (A) If the Commission determines that reasonable cause exists to believe that a discriminatory housing practice has occurred or is about to occur, the Commission shall, except as provided in subparagraph (C), immediately issue a charge on behalf of the aggrieved person, for further proceedings under section 4612.

(B) Such charge -

(1) shall consist of a short and plain statement of the facts upon which the Commission has found reasonable cause to believe that a discriminatory housing practice has occurred or is about to occur;

(11) shall be based on the final investigative report; and

(111) need not be limited to the facts or grounds alleged in the complaint filed under section 4610(a).

(C) If the Commission determines that the matter involves the legality of any State or local zoning or other land use law or

ordinance, the Commission shall immediately refer the matter to the Attorney General for appropriate action under section 4614, instead of issuing such charge.

(3) If the Commission determines that no reasonable cause exists to believe that a discriminatory housing practice has occurred or is about to occur, the Commission shall promptly dismiss the complaint. The Commission shall make public disclosure of each such dismissal.

(4) The Commission may not issue a charge under this section regarding an alleged discriminatory housing practice after the beginning of the trial of a civil action commenced by the aggrieved party under a State or Federal law, seeking relief with respect to that discriminatory housing practice.

(g) Service of copies of charge. After the Commission issues a charge under this section, the Commission shall cause a copy thereof, together with information as to how to make an election under §4612(a) and the effect of such an election, to be served:

(1) on each respondent named in such charge, together with a notice of opportunity for a hearing at a time and place specified in the notice, unless that election is made; and

(2) on each aggrieved person on whose behalf the complaint was filed.

#### §4611. Subpoenas: Giving of Evidence.

(a) In general.—The Commission may, in accordance with this subsection, issue subpoenas and order discovery in aid of investigations and hearings under this chapter. Such subpoenas and discovery may be ordered to the same extent and subject to the same limitations as would apply if the subpoenas or discovery were ordered or served in aid of a civil action in the Superior Court.

(b) Witness fees — Witnesses summoned by a subpoena under this chapter shall be entitled to the same witness and mileage fees as witnesses in proceedings in Superior Court.

(c) Civil Enforcement — Where any person fails or neglects to attend and testify or answer any lawful inquiry or to produce records, document, or other evidence, if it is in such person's power to do so, in obedience to the subpoena or other lawful order under such subsection (a), the Commission may petition the Superior Court in the county where such person resides or conducts business for an order requiring such person to appear before the Commission to produce evidence if so ordered or to give testimony pertaining to the matter under investigation or in question. Any failure to obey such order may be punished by the court as being in contempt of the court.

#### (d) Criminal Penalties—

(1) Any person who willfully fails or neglects to attend and testify or to answer any lawful inquiry or to produce records, documents or other evidence, if it is in such person's power to do so, in obedience to the subpoena or other lawful order under subsection (a), shall in each instance be fined not more than \$2,500 or imprisoned not more than one year, or both.

(2) Any person who, with intent thereby to mislead another person in any proceeding under this chapter—

(A) makes or causes to be made any false entry or statement of fact in any report, account, record, or other document produced pursuant to subpoena or other lawful order under subsection (a);

(B) willfully neglects or fails to make or to cause to be made full, true, and correct entries in such reports, accounts, records, or other documents; or

(C) willfully mutilates, alters, or by any other means falsifies any documentary evidence; shall in each instance be fined not more than \$2,500 or imprisoned not more than one year, or both.

§4612. Enforcement by Commission.

(a) Election of judicial determination. - When a charge is issued under section 4610, a complainant, a respondent, or an aggrieved person on whose behalf the complaint was filed, may elect to have the claims asserted in that charge decided in a civil action under subsection (n) in lieu of a hearing under subsection (b). The election must be made not later than 20 days after the receipt by the electing person of service under section 4610(g) or, in the case of the Commission, not later than 20 days after such service. The person making such election shall give notice of doing so to the Commission and to all other parties to the proceeding to whom the charge relates.

(b) Administrative hearing on absence of election. - If an election is not made under subsection (a) with respect to a charge issued under section 4610, the Commission shall provide an opportunity for a hearing on the record. The Commission shall delegate the conduct of a hearing under this section to an Administrative Hearing Officer or Panel appointed by the Commission Chairperson in accordance with regulations established by the Commission. The Administrative Hearing Officer or Panel shall conduct the hearing in the county in which the discriminatory housing practice is alleged to have occurred or to be about to occur.

(c) Rights of parties. - At a hearing under this section, each party may appear in person, be represented by counsel, present evidence, cross-examine witnesses, and obtain the issuance of subpoenas under section 4611. Any aggrieved person may intervene as a party in the proceeding. The Delaware Rules of Evidence shall apply to the presentation of evidence in such hearing as they would in an administrative hearing conducted in accordance with subchapter III of the Administrative Procedures Act.

(d) Expedited discovery and hearing. -

(1) Discovery in administrative proceedings under this section shall be conducted as expeditiously and inexpensively as possible, consistent with the need of all parties to obtain relevant evidence.

(2) A hearing under this section shall be conducted as expeditiously and inexpensively as possible consistent with the needs and rights of the parties to obtain a fair hearing and a complete record.

(3) The Commission shall, not later than 180 days after the date of enactment of this subsection, issue rules to implement this subsection.

(e) Resolution of charge. Any resolution of a charge before a final order under this section shall require the consent of the aggrieved person on whose behalf the charge is issued.

(f) Effect of trial of civil action on administrative proceedings. An Administrative Hearing Officer or Panel may not continue administrative proceedings under this section regarding any alleged discriminatory housing practice after the beginning of the trial of a civil action commenced by the aggrieved party under a State or Federal law, seeking relief with respect to that discriminatory housing practice.

(g) Hearings, findings and conclusions, and order. -

(1) The Administrative Hearing Officer or Panel shall commence the hearing under this section not later than 120 days following the issuance of the charge, unless it is impracticable to do so. If the Administrative Hearing Officer or Panel is unable to commence the hearing within 120 days after the issuance of the charge, the Administrative Hearing Officer or Panel Chair shall notify the Commission, the aggrieved person on whose behalf the charge was filed, and the respondent, in writing of the reasons for not doing so.



(2) The Administrative Hearing Officer or Panel shall make findings of fact and conclusions of law within 60 days after the end of the hearing under this section, unless it is impracticable to do so. If the Administrative Hearing Officer or Panel is unable to make findings of fact and conclusions of law within such period, or any succeeding 60-day period thereafter, the Administrative Hearing Officer or Panel Chair shall notify the Commission, the aggrieved person on whose behalf the charge was filed, and the respondent, in writing of the reasons for not doing so.

(3) If the Administrative Hearing Officer or Panel finds that a respondent has engaged or is about to engage in a discriminatory housing practice, such administrative hearing officer or panel shall promptly issue an order for such relief as may be appropriate, which may include actual damages suffered by the aggrieved person, costs, expenses, attorneys fees, and injunctive or other equitable relief. Such order may, to vindicate the public interest, assess a civil penalty against the respondent to be paid to the Special Administration Fund-

(A) in an amount not exceeding \$10,000 for each discriminatory practice if the respondent has not been adjudged to have committed any prior discriminatory housing practice;

(B) in an amount not exceeding \$25,000 for each discriminatory practice if the respondent has been adjudged to have committed one other discriminatory housing practice during the 5-year period ending on the date of the filing of this charge; and

(C) in an amount not exceeding \$50,000 for each discriminatory practice if the respondent has been adjudged to have committed 2 or more discriminatory housing practices during the 7-year period ending on the date of the issuing of this charge; except that if the acts constituting the discriminatory housing practice that is the object of the charge are committed by the same natural person who has been previously adjudged to have committed acts constituting a discriminatory housing practice, then the civil penalties set forth in subparagraphs (B) and (C) may be imposed without regard to the period of time within which any subsequent discriminatory housing practice occurred.

(4) No such order shall affect any contract, sale, encumbrance, or lease consummated before the issuance of such order and involving a bona fide purchaser, encumbrancer, or tenant without actual notice of the charge issued under this chapter.

(5) In the case of an order with respect to a discriminatory housing practice that occurred in the course of a business subject to a licensing or regulation by a governmental agency, the Commission shall, not later than 30 days after the date of the issuance of such order (or, if such order is judicially reviewed, 30 days after such order is in substance affirmed upon such review):

(A) send copies of the findings of fact, conclusions of law, and the order, to that governmental agency; and

(B) recommend to that governmental agency appropriate disciplinary action (including, where appropriate, a reprimand or the suspension or revocation of the license of the respondent).

(6) In the case of an order against a respondent against whom another order was issued within the preceding 5 years under this section, the Commission shall send a copy of each such order to the Attorney General.

(7) If the Administrative Hearing Officer or Panel finds that the respondent has not engaged or is not about to engage in a discriminatory housing practice, as the case may be, such Administrative Hearing Officer or Panel shall enter an order dismissing the charge. The Commission shall make public disclosure of each such dismissal.

(h) Service of final order. -

(1) The Commission shall cause the findings of fact and conclusions of law made with respect to any final order for relief under this section, together with a copy of such order, to be served on each aggrieved person and each respondent in the proceeding.

(i) Judicial review. -

(1) Any party aggrieved by a final order for relief under this section granting or denying in whole or in part the relief sought may obtain a review of such order in the Superior Court in the county in which the discriminatory practice is alleged to have occurred pursuant to the civil rules of that court and the Administrative Procedures Act. Filing of the petition for review shall be not later than 30 days after the order is entered.

(2) Any party to the proceeding before the Administrative Hearing Officer or Panel may intervene in the Superior Court in the appeal process.

(3) No objection not made before the Administrative Hearing Officer or Panel shall be considered by the Court, unless the failure or neglect

to urge such objection is excused because of extraordinary circumstances or when the interests of justice so require.

(j) Court enforcement of administrative order upon petition by Commission. -

(1) The Commission may petition the Court of Chancery in the county in which the discriminatory housing practice is alleged to have occurred or in which any respondent resides or transacts business for the enforcement of the order of the Administrative Hearing Officer or Panel and for appropriate temporary relief or restraining order, by filing in such court a written petition requesting that such order be enforced and for appropriate temporary relief or restraining order.

(2) The Commission shall file in court with the petition the record in the proceeding. A copy of such petition shall be forthwith transmitted by the Register in Chancery to the parties to the proceeding before the Administrative Hearing Officer or Panel.

(3) Upon the filing of a petition under this subsection (j), the court may grant to the petitioner, or any other party, such temporary relief, restraining order, or other order as the court deems just and proper to enforce the Commission's order.

(4) Any party to the proceeding before the Administrative Hearing Officer or Panel may intervene in the Court of Chancery in the enforcement process.

(k) Enforcement Decree in Absence of Petition for Review.- If no petition for review is filed under subsection (i) before the expiration of 30 days after the date the order is entered, the findings of fact and order of the Administrative Hearing Officer or Panel shall be conclusive in connection with any petition for enforcement-

(1) which is filed by the Commission under subsection (j) after the end of such day; or

(2) under subsection (l).

(l) Court enforcement of administrative order upon petition of any person entitled to relief. If before the expiration of 60 days after the date of the order of the Administrative Hearing Officer or Panel is entered, no petition for review has been filed under subsection (i), and the Commission has not sought enforcement of the order under subsection (j), any person entitled to relief under the order may petition for a decree enforcing the order in the Court of Chancery in the county in which the discriminatory housing practice has occurred or is about to occur.

(m) Entry of Decree. The Register in Chancery for the court in which a petition for enforcement is filed under subsection (k) or (l) shall forthwith, upon order of the court, enter a decree enforcing the order and shall transmit a copy of such decree to the Commission, the respondent named in the petition, and to any other parties to the proceeding before the Administrative Hearing Officer or Panel.

(n) Civil action for enforcement when election is made for such civil action-

(1) If an election is made under subsection (a), the Commission shall authorize a civil action on behalf of the aggrieved person or persons in the county in which the discriminatory practice is alleged to have occurred. The Commission shall immediately refer the matter to the Attorney General for appropriate action.

(2) Not later than 30 days after the Commission's referral, the Attorney General may elect to pursue a civil action on behalf of the Commission in the name of the aggrieved person or persons. Whenever the Attorney General elects to pursue a civil action under this subsection, such action shall be commenced promptly.

(3) If the Attorney General does not elect to pursue a civil action, the Commission shall, provided it has the funds available in the Special Administration Fund, employ special counsel to pursue such action in accordance with 29 Del. C. §2507. The expenses of such employment shall be paid by the State Treasurer out of the Special Administration Fund upon the approval of the Commission. Whenever a civil action under this subsection will be pursued by special counsel, such action shall be commenced promptly after the Commission employs such counsel.

(4) Any aggrieved person with respect to the issues to be determined in a civil action under this subsection may intervene as of right in that civil action.

(5) In a civil action under this subsection, if the court finds that a discriminatory housing practice has occurred or is about to occur, the court may grant as relief any relief which a court could grant with respect to such discriminatory housing practice in a civil action under section 4613 or 4614(d)(2)(B). Any relief so granted that would accrue to an aggrieved person in a civil action commenced by that aggrieved person under section 4613 shall also accrue to that aggrieved person in a civil action under this subsection. If monetary relief is sought for the benefit of an aggrieved person who does not intervene in the civil action, the court shall not award such relief if that aggrieved person has not complied with discovery orders entered by the court.

(o) Attorneys' fees and expenses. In any administrative proceeding brought under this section, or any court proceeding arising therefrom, the Administrative Hearing Officer, Panel or the court, as the case may be, in its discretion, may allow the prevailing aggrieved person or persons, which may include the State, costs, reasonable attorneys' fees and expenses. The Administrative Hearing Officer, Panel or the Court, as the case may be, may order that the attorneys' fees and expenses be paid directly to the attorney, who, when a court enters the order, may enforce the order in the attorneys' name.

#### §4613. Enforcement by Private Persons.

(a) Civil action.

(1) (A) An aggrieved person may commence a civil action in the county in which the discriminating housing practice is alleged to have occurred not later than 2 years after the occurrence or the termination of an alleged discriminatory housing practice, not later than two years after such practice has been discovered or reasonably should have been discovered by the aggrieved person, or not later than two year after the breach of a conciliation agreement entered into under this chapter,

whichever occurs last, to obtain appropriate relief with respect to such discriminatory housing practice or breach.

(B) The computation of such 2-year period shall not include any time during which an administrative proceeding under this chapter was pending with respect to a complaint or charge under this chapter based upon such discriminatory housing practice. This subparagraph does not apply to actions arising from a breach of a conciliation agreement.

(2) An aggrieved person may commence a civil action under this subsection whether or not a complaint has been filed under section 4610 and without regard to the status of any such complaint, but if the Commission has obtained a conciliation agreement with the consent of an aggrieved person, no action may be filed under this subsection by such aggrieved person with respect to the alleged discriminatory housing practice which forms the basis for such complaint except for the purpose of enforcing the terms of such an agreement.

(3) An aggrieved person may not commence a civil action under this subsection with respect to an alleged discriminatory housing practice which forms the basis of a charge issued by the Commission if an Administrative Hearing Officer or Panel has commenced a hearing on the record under this chapter with respect to such charge.

(b) Appointment of attorney by court. Upon application by a person alleging under subsection (a), a discriminatory housing practice or a person against whom such a practice is alleged the court may:

(1) appoint an attorney for such person; or

(2) authorize the commencement or continuation of a civil action under subsection (a) without the payment of fees, costs, or security, if in the opinion of the court such person is financially unable to bear the expenses of such action.

(c) Relief which may be granted.

(1) In a civil action under subsection (a) in Superior Court, if a discriminatory housing practice is found to have occurred the aggrieved person may be awarded actual and punitive damages; and

(2) subject to subsection (d), in a civil action under subsection (a), in the Court of Chancery, if the court finds that a discriminatory housing practice has occurred or is about to occur, the court, as the court deems appropriate, may grant,

(A) any temporary, preliminary, permanent or mandatory injunctive relief enjoining the defendant from engaging in such practice;

(B) ordering such affirmative action as may be appropriate; and

(C) such other relief as the court deems appropriate to the fullest extent of its jurisdiction.

(3) In a civil action under subsection (a), the court, in its discretion, may allow the prevailing aggrieved person or persons, a reasonable attorneys' fees, expenses and costs.

(d) Effect on certain sales, encumbrances, and rentals. Relief granted under this Section shall not affect any lease consummated before the granting of such relief and involving a tenant without actual notice of the filing of a complaint with the commission or civil action under this chapter. Relief granted under this section shall not affect any contract, option, sale, or encumbrance, consummated before the granting of such relief and involving a bona fide purchaser, encumbrancer, or optionee, without either actual notice of the filing of a complaint with the Commission or civil action under this chapter, or notice by Lis Pendens when appropriate under Title 25 Delaware Code Chapter 16.

(e) Intervention by Attorney General. Upon timely application, the Attorney General may intervene in such civil action, if the Attorney

General certifies that the case is of general public importance. Upon such intervention the Attorney General may obtain such relief as would be available to the Attorney General under section 4614 in a civil action to which such section applies.

§4614. Enforcement by the Attorney General.

(a) Pattern or Practice cases. Whenever the Attorney General has reasonable cause to believe that any person or group of persons is engaged in a pattern or practice of resistance to the full enjoyment of any of the rights granted by this chapter, or that any group of persons has been denied any of the rights granted by this chapter and such denial raises an issue of general public importance, the Attorney General may commence a civil action in the Superior Court, Court of Chancery or both in any county of the state.

(b) On referral of discriminatory housing practice or conciliation agreement for enforcement.

(1) (A) The Attorney General may commence a civil action in any State court of competent jurisdiction for appropriate relief with respect to a discriminatory housing practice referred to the Attorney General by the Commission under §4610(f)(2)(C).

(B) A civil action under this paragraph may be commenced not later than the expiration of 18 months after the date of the occurrence or the termination of the alleged discriminatory housing practice.

(2) (A) The Attorney General may commence a civil action in any State court of competent jurisdiction for appropriate relief with respect to breach of a conciliation agreement referred to the Attorney General by the Commission under §4610(c).

(B) A civil action may be commenced under this paragraph not later than the expiration of 90 days after the referral of the alleged breach under §4610(c).

(c) Enforcement of subpoenas. The Attorney General, on behalf of the Commission may enforce a subpoena issued by the Commission for itself or other party at whose request a subpoena is issued in appropriate proceedings in the Superior Court for the county in which the person to whom the subpoena was addressed resides, was served, or transacts business.

(d) Relief which may be granted in civil actions under subsections (a) and (b).--

(1) In a civil action brought in the Court of Chancery, the court--

(A) may award such preventive relief, including a permanent or temporary injunction, restraining order, or other order against the person responsible for a violation of this chapter as is necessary to assure the full enjoyment of the rights granted by this chapter;

(B) may allow the prevailing aggrieved person or persons, which may include the State, a reasonable attorneys' fees, expenses and costs; and

(C) may award such other relief as the court deems appropriate, including monetary damages to persons aggrieved.

(2) In a civil action brought in the Superior Court, the court--

(A) may award monetary damages to the aggrieved person or persons;

(B) may, to vindicate the public interest, assess a civil penalty against the respondent to be paid to the Special Administration Fund--

(i) in an amount not exceeding \$50,000, for a first violation;

(11) in an amount not exceeding \$100,000, for any subsequent violation;

(C) may allow the prevailing aggrieved person or persons, which may include the State, a reasonable attorneys' fees, expenses and costs; and

(D) may award such other relief as the court deems appropriate.

(3) In a civil action under subsection(b)(2), the court may award such relief as is enumerated in subsections (d)(1) and (d)(2) above as may be appropriate given the nature of the action initiated and the jurisdiction of the court.

(e) Limitation of fees. Where a civil action is initiated by the Attorney General, or by the Attorney General or Special Counsel on behalf of the Commission or any aggrieved person, pursuant to the applicable provisions of this chapter, no court or any officer of such court shall charge fees of any kind in such proceeding to the Attorney General, the Commission, Special Counsel or such individual.

(f) Intervention in civil actions. Upon timely application, any person may intervene in a civil action commenced by the Attorney General under subsection (a) or (b) which involves an alleged discriminatory housing practice with respect to which such person is an aggrieved person or a conciliation agreement to which such person is a party. The court may grant such appropriate relief to any such intervening party as is authorized to be granted to a plaintiff in a civil action under section 4613.

#### §4615. Fees, Costs and Expenses for Respondent or Defendant.

In any action, pleading or motion under this chapter, the Administrative Hearing Office, Panel or court hearing or reviewing the matter, may in its discretion, award attorneys' fees, costs and expenses to the respondent or defendant if an action was brought for an improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

#### §4616. Rules to Implement Chapter.

The Commission may make rules and regulations (including rules for the collection, maintenance, and analysis of appropriate data) to carry out this chapter. The Commission shall give public notice and opportunity for comment with respect to all rules and regulations made under this section in accordance with the Administrative Procedures Act.

#### §4617. Effect on Other Laws.

Nothing in this chapter shall be construed to invalidate or limit any law of the State or any political subdivision thereof that grants, guarantees, or protects the same rights as are granted by this chapter, but any law of the State or any political subdivision thereof that purports to require or permit any action that would be a discriminatory housing practice under this chapter shall to that extent be invalid.

#### §4618. Interference, Coercion, or Intimidation.

It shall be unlawful to coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of, or on account of his having exercised or enjoyed, or on account of his having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected by section 4603, 4604, 4605 or 4606 of this chapter.

#### §4619. Prohibition of Intimidation. Violations and Penalties.

Whoever, whether or not acting under color of law, by force or threat of force willfully injures, intimidates or interferes with, or attempts to injure, intimidate or interfere with;

(a) any person because of his race, color, national origin, religion, creed, sex, marital status, familial status, age, or handicap and because

he is or has been selling, purchasing, renting, financing, occupying, or contracting or negotiating for the sale, purchase, rental, financing or occupation of any dwelling, or applying for participating in any service, organization, or facility relating to the business of selling or renting dwellings; or

(b) any person because he is or has been, or in order to intimidate such person or any other person or any class of persons from-

(1) participating, without discrimination on account of race, color, national origin, religion, creed, sex, marital status, familial status, age or handicap in any of the activities, services, organizations or facilities described in subsection (a) of this section; or

(2) affording another person or class of persons opportunity or protection so to participate; or

(c) any citizen because he is or has been, or in order to discourage such citizen or any other citizen from lawfully aiding or encouraging other persons to participate, without discrimination on account of race, color, national origin, religion, creed, sex, marital status, familial status, age or handicap in any of the activities, services, organizations or facilities described in section 4619(a), or participating lawfully in speech or peaceful assembly opposing any denial of the opportunity to so participate shall be fined for each such act not more than \$2,500, or imprisoned not more than one year, or both, and if bodily injury results shall be fined for each such act not more than \$10,000, or imprisoned not more than ten years, or both; and, if death results, for each such act shall be subject to imprisonment for any term of years or for life."

Section 2. Amend Chapter 30, Title 31, Delaware Code by adding thereto a new §3005 to read as follows:

"§3005. Special Administration Fund.

(a) Creation.-- There is created in the State Treasury a special fund to be known as The Special Administration Fund of the Human Relations Commission. This Fund shall consist of:

(1) All civil penalties assessed and collected pursuant to sections 4612 and 4614 of Title 6, Delaware Code.

(2) Costs, attorneys' fees and expenses awarded to the Commission pursuant to sections 4612 and 4614 of Title 6, Delaware Code.

(3) All Community Development Block Grant moneys designated for the administration and enforcement of Chapter 46, Title 6, Delaware Code.

(4) All other moneys specifically designated for this Fund.

(5) All interest on or profits earned by the Special Administration Fund.

(b) Administration.--

(1) All moneys collected pursuant to this section shall be deposited or paid into this Fund and shall be continuously available to the Commission for expenditure in accordance with this section and shall not lapse at any time or be transferred to any other fund. All moneys in this Fund shall be prudently invested to the credit of this Fund, administered and disbursed in the same manner as is provided by law for other special funds in the State Treasury and such moneys shall be 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 agency thereof or which are appropriated by this State for purposes described in this chapter or sections 4605 and 4606 of Title 6, Delaware Code, shall be expended solely for the proper and efficient administration of this part.

(3) The State Treasurer shall be the custodian of and shall be liable on his official bond for the faithful performance of his duties in connection with the Fund. Such liability on the official bond shall exist in addition to the liability on any separate bond which may be given by the State Treasurer. All sums recovered on any such official bond for losses sustained by the Fund shall be deposited in the Fund.

(c) Use.-- The moneys in the Special Administration Fund may be used by the Commission for:

(1) The payment of litigation expenses, costs and attorneys' fees in connection with the enforcement provisions of Chapters 45 and 46 of Title 6, Delaware Code.

(2) The payment of the expenses of investigations conducted pursuant to Chapters 45 and 46 of Title 6, and Chapter 30 of Title 31, Delaware Code.

(3) The payment of studies and surveys conducted pursuant to Chapter 30 of Title 31, Delaware Code.

(d) Transfer.-- The Commission, whenever it determines that the money in the Special Administration Fund is more than adequate to pay for all foreseeable needs for which this Fund is created, may authorize the transfer therefrom to the General Fund of such amount as it deems proper."

Section 3. If any clause, sentence, section, subsection, provision or part of this Act shall be adjudged to be unconstitutional or invalid for any reason by any court of competent jurisdiction, such judgment shall not impair, invalidate or affect the remainder of this Act which shall remain in full force and effect, and the application of the provision in question to other persons not similarly situated or to other circumstances shall not be affected thereby.

Section 4. This Act shall be effective on September 1, 1992. Causes of action accruing prior to the effective date of this Act shall be governed by the provisions of the Delaware Code operative prior to such effective date and those provisions shall remain in effect as to those actions as if this Act were not in effect.

Approved July 6, 1992.



## CHAPTER 312

## FORMERLY

HOUSE BILL NO. 578  
AS AMENDED BY SENATE AMENDMENT NO. 1

AN ACT TO AMEND SUBTITLE I, TITLE 6 OF THE DELAWARE CODE RELATING TO THE UNIFORM COMMERCIAL CODE - SECURED TRANSACTIONS AND CHAPTER 23, TITLE 29 RELATING TO THE SECRETARY OF STATE.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (three-fifths of all members elected to each House thereof concurring therein):

Section 1. Amend §9-401, Subtitle I, Title 6 of the Delaware Code by adding a new subsection (6) thereto to read as follows:

"(6) Notwithstanding that any writing authorized to be filed with the Secretary of State under this title is when filed inaccurately, defectively or erroneously executed, or otherwise defective in any respect, neither the Secretary of State nor any filing officer shall have any liability to any person for the acceptance for filing or the filing and indexing of such writing by the Secretary of State."

Section 2. Amend §9-402(1), Subtitle I, Title 6 of the Delaware Code by deleting the last sentence thereof in its entirety.

Section 3. Amend subsection (5) of §9-403, Subtitle I, Title 6 of the Delaware Code by deleting such subsection in its entirety and by substituting in lieu thereof the following:

"(5) The uniform fee for filing, indexing and providing a copy stamped to show the file number and the hour, date and place of filing for an original financing statement, a continuation statement or a statement of amendment shall be \$25 if the statement is completed on the standard form prescribed by the Secretary of State and otherwise shall be \$50, plus in each case, if the financing statement being filed or to which the continuation statement or statement of amendment being filed relates is subject to subsection (5) of Section 9-402, \$25. The uniform fee shall include indexing for each name shown as a debtor on a financing statement, continuation statement or a statement of amendment."

Section 4. Amend §9-404(2), Subtitle I, Title 6 of the Delaware Code by deleting the phrase "to the secured party" from the second sentence thereof.

Section 5. Amend §9-404(3), Subtitle I, Title 6 of the Delaware Code by deleting such subsection in its entirety and substituting in lieu thereof the following:

"(3) The uniform fee for filing, indexing and providing a copy stamped to show the file number and the hour, date and place of filing for an original termination statement shall be \$25 if the statement is completed on the standard form prescribed by the Secretary of State and otherwise shall be \$50. The uniform fee shall include indexing for each name against which the termination statement is required to be indexed."

Section 6. Amend §9-405(1), Subtitle I, Title 6 of the Delaware Code by deleting the last sentence thereof in its entirety.

Section 7. Amend §9-405(2), Subtitle I, Title 6 of the Delaware Code by deleting the next to the last sentence thereof in its entirety and substituting in lieu thereof the following: "The uniform fee for filing, indexing and providing a copy stamped to show the file number and the hour, date and place of filing of a separate statement of assignment shall be \$25 if the statement is in the standard form prescribed by the Secretary of State and otherwise shall be \$50. The uniform fee shall include indexing for each name against which the statement of assignment is required to be indexed."

Section 8. Amend §9-406, Subtitle I, Title 6 of the Delaware Code by deleting the last sentence thereof in its entirety and by substituting in lieu thereof the following: "The uniform fee for filing, noting and providing a

copy stamped to show the file number and the hour, date and place of filing of a statement of release shall be \$25 if the statement is in the standard form prescribed by the Secretary of State and otherwise shall be \$50. The uniform fee shall include indexing for each name against which the statement of release is required to be indexed."

Section 9. Amend §9-407, Subtitle I, Title 6 of the Delaware Code by deleting such section in its entirety and substituting in lieu thereof the following:

"9-407. Information from filing officer.

(1) If the person filing any financing statement, termination statement, continuation statement, statement of assignment, statement of amendment or statement of release shall so request, the filing officer shall provide to such person or to such person's designee a copy of such statement stamped to show the file number and the hour, date and place of filing for the original statement.

(2) Upon the request of any person, the filing officer shall provide a certificate showing whether there is on file on the date and hour stated therein any presently effective financing statement naming a particular debtor and/or any statement of assignment, continuation, amendment, release or termination with respect thereto, and if there is, giving the date and hour of filing of each such statement and the names and addresses of each secured party therein. The uniform fee for such a certificate shall be \$25 if the request for the certificate is in the standard form prescribed by the Secretary of State and otherwise shall be \$35. Upon request the filing officer shall provide a copy of any filed financing statement or any statement of assignment, continuation, amendment, release or termination with respect thereto for a uniform fee of \$2 per page; provided, however, that the minimum fee for furnishing any copy under this subsection (2) shall be \$5.

(3) For each service described in subsection (1) or subsection (2) of this section that is requested to be completed within a twenty-four hour period from the time of the request, the Secretary of State shall charge the additional sum of up to \$25.

(4) For each service described in subsection (1) or subsection (2) of this section that is requested to be completed within the same day as the day of the request, the Secretary of State shall charge the additional sum of up to \$50.

(5) For each service described in subsection (1) or subsection (2) of this section that is requested to be completed within a two-hour period from the time of the request, the Secretary of State shall charge the additional sum of up to \$75.

(6) At the time of the presentation for filing of an original financing statement or a continuation statement, the person presenting such statement may request the filing officer to mail to the secured party of record at its address of record or to any other specified person a notice setting forth the date that the effectiveness of such original financing statement or continuation statement, as the case may be, shall lapse. Such notice shall be deposited in the mail by a filing officer not earlier than six months, nor later than four months prior to the date such effectiveness shall lapse. Notwithstanding the foregoing, neither the Secretary of State nor any filing officer shall have any liability to any person for any failure by a filing officer to mail timely or properly the notice described in this subsection (6).

(7) The uniform fee for each notice requested to be mailed by a filing officer pursuant to subsection (6) of this section shall be \$25, payable at the time the original financing statement or continuation statement, as the case may be, to which such notice relates is presented for filing."

Section 10. Amend Part 4, Subtitle I, Title 6 of the Delaware Code by adding a new §9-409 thereto to read as follows:

"§9-409. Execution; electronic filing.

Any signature on any writing authorized to be filed with the Secretary of State under this Article may be a facsimile. Any such writing may be filed by telecopy, fax or similar electronic transmission."

Section 11. Amend §2311(a), Chapter 23, Title 29 of the Delaware Code by inserting immediately following the words "pursuant to" the following: "§9-407(3)-(5) of Title 6,".

Section 12. Amend §2311(c), Chapter 23, Title 29 of the Delaware Code by inserting immediately following the words "pursuant to" the following: "§9-407(3)-(5) of Title 6 and".

Approved July 6, 1992.

#### CHAPTER 313

#### FORMERLY

#### SENATE BILL NO. 307

AN ACT TO AMEND VOLUME 67, CHAPTER 220, LAWS OF DELAWARE, RELATING TO STATEWIDE AUTHORITY OF POLICE OFFICERS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Volume 67, Chapter 220, Laws of Delaware, by striking Section 2 thereof in its entirety.

Approved July 6, 1992.

## CHAPTER 314

## FORMERLY

SENATE BILL NO. 407  
AS AMENDED BY SENATE AMENDMENT NO. 1

AN ACT TO AMEND CHAPTER 88, TITLE 29, DELAWARE CODE, RELATING TO CONSUMER AFFAIRS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend §8823, Title 29, Delaware Code by redesignating said section as subsection "(a)" and by inserting the following at the end of said subsection:

"(b) The objective of the programs and functions of Consumer Affairs is to protect the general public against consumer fraud and deceptive trade practices through enforcement of state statutes, consumer education, consumer advocacy and coordinated inter and intra governmental cooperation.

(c) The programs and functions of Consumer Affairs, shall be performed by the Director of Consumer Affairs, or his or her duly authorized designee, with the approval of the Secretary. The powers, duties and functions of the Director, or his or her designee, shall include the authority:

(1) To issue cease and desist orders against any person, firm, business, corporation, proprietorship, partnership or otherwise when there has been any violation of §§2513 or 2532, Title 6, and Chapter 51 through 61 and Chapter 70, Title 25, and §1311(2) and (3), Title 11 by vendors for the purpose of selling goods or services, or sections 914 or 915, Title 11. This paragraph shall not limit any powers of the Attorney General. Cease and desist orders shall:

a. Be in writing and shall state what alleged violations have occurred or are about to occur which are the basis for the issuance of such orders;

b. Be served upon the violator and a copy shall be filed in the office of the Prothonotary of the county where the violator's main place of business in this State is located or in the office of the Prothonotary of the county where the violation occurred, or both;

c. Not be issued by the Director of Consumer Affairs in cases where the Attorney General has filed a complaint seeking injunctive action, in cases where the Attorney General has signed a cease and desist agreement which has not been violated, or in cases where an injunction has been issued; and

d. Upon receipt by the violator, result in the immediate cessation by the violator of any activity which has been ordered ceased. Any person or agent or employee of any corporation, partnership or other business who conducts any activity which he has been ordered to cease shall be considered to be in contempt of the Consumer Affairs Board and shall be proceeded against in accordance with §8824 of this Title.

(2) To receive and forward to appropriate agencies of the State, for final processing and determination, complaints from any citizen relating to consumer affairs;

(3) To advise the Governor and the Attorney General as to all matters affecting the interests of the public as consumers;

(4) To review and make recommendations regarding state policies and programs of primary importance to consumers or the unmet consumer needs which can be met appropriately through state action;

(5) To review and make recommendations regarding state policies, programs and operations wherein the view of consumers should be made

Any signature on any writing authorized to be filed with the Secretary of State under this Article may be a facsimile. Any such writing may be filed by telecopy, fax or similar electronic transmission."

Section 11. Amend §2311(a), Chapter 23, Title 29 of the Delaware Code by inserting immediately following the words "pursuant to" the following: "§9-407(3)-(5) of Title 6,".

Section 12. Amend §2311(c), Chapter 23, Title 29 of the Delaware Code by inserting immediately following the words "pursuant to" the following: "§9-407(3)-(5) of Title 6 and".

Approved July 6, 1992.

#### CHAPTER 313

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Section 1. Amend Volume 67, Chapter 220, Laws of Delaware, by striking Section 2 thereof in its entirety.

Approved July 6, 1992.

## CHAPTER 314

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BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend §8823, Title 29, Delaware Code by redesignating said section as subsection "(a)" and by inserting the following at the end of said subsection:

"(b) The objective of the programs and functions of Consumer Affairs is to protect the general public against consumer fraud and deceptive trade practices through enforcement of state statutes, consumer education, consumer advocacy and coordinated inter and intra governmental cooperation.

(c) The programs and functions of Consumer Affairs, shall be performed by the Director of Consumer Affairs, or his or her duly authorized designee, with the approval of the Secretary. The powers, duties and functions of the Director, or his or her designee, shall include the authority:

(1) To issue cease and desist orders against any person, firm, business, corporation, proprietorship, partnership or otherwise when there has been any violation of §§2513 or 2532, Title 6, and Chapter 51 through 61 and Chapter 70, Title 25, and §1311(2) and (3), Title 11 by vendors for the purpose of selling goods or services, or sections 914 or 915, Title 11. This paragraph shall not limit any powers of the Attorney General. Cease and desist orders shall:

a. Be in writing and shall state what alleged violations have occurred or are about to occur which are the basis for the issuance of such orders;

b. Be served upon the violator and a copy shall be filed in the office of the Prothonotary of the county where the violator's main place of business in this State is located or in the office of the Prothonotary of the county where the violation occurred, or both;

c. Not be issued by the Director of Consumer Affairs in cases where the Attorney General has filed a complaint seeking injunctive action, in cases where the Attorney General has signed a cease and desist agreement which has not been violated, or in cases where an injunction has been issued; and

d. Upon receipt by the violator, result in the immediate cessation by the violator of any activity which has been ordered ceased. Any person or agent or employee of any corporation, partnership or other business who conducts any activity which he has been ordered to cease shall be considered to be in contempt of the Consumer Affairs Board and shall be proceeded against in accordance with §8824 of this Title.

(2) To receive and forward to appropriate agencies of the State, for final processing and determination, complaints from any citizen relating to consumer affairs;

(3) To advise the Governor and the Attorney General as to all matters affecting the interests of the public as consumers;

(4) To review and make recommendations regarding state policies and programs of primary importance to consumers or the unmet consumer needs which can be met appropriately through state action;

(5) To review and make recommendations regarding state policies, programs and operations wherein the view of consumers should be made

available to state officials and the manner in which such views can be communicated to appropriate departments and agencies;

(6) To recommend the enactment of such legislation as it deems necessary to protect and promote the interest of the public as consumers;

(7) To cooperate with and provide assistance to federal, state and local governmental agencies and activities relating to consumer affairs;

(8) To appear before federal, state and local governmental departments, agencies and commissions to represent and be heard on behalf of consumer interests;

(9) To cooperate with and establish necessary liaison with consumer organizations;

(10) To promulgate such rules and regulations as may be given by law under this section;

(11) To perform all the necessary administrative and clerical functions of the Consumer Affairs Board;

(12) To promulgate rules and regulations interpreting an unlawful practice or deceptive trade practice as those terms are used in §§2513 and 2531, Title 6, in accordance with the Administrative Procedures Act.

(13) To do such other acts as may be necessary and proper to exercise of the powers, duties and function conferred by this Chapter;

(d) The Attorney General shall represent the Director of Consumer Affairs in all administrative and judicial proceedings."

Approved July 6, 1992.

## CHAPTER 315

### FORMERLY

HOUSE BILL NO. 432

AS AMENDED BY SENATE AMENDMENT NO. 1

AN ACT TO AMEND CHAPTER 39, TITLE 25 DELAWARE CODE RELATING TO LIEN.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend §3907 of Title 25 of the Delaware Code by designating the existing section as subsection "(a)" and by adding thereto the following new subsection:

"(b) Notwithstanding the provisions of subsection (a) any person who stores or safe keeps any motor vehicle towed at the request of a party other than the owner of the vehicle may attain priority of lien as follows:

(1) by providing notice by certified mail to a title holder of record within 7 business days of the date upon which possession is taken; and

(2) by providing notice by certified mail to lien holders of record within 7 business days of the date upon which possession is taken; and

(3) by providing notice by telephone or in person to the appropriate police agency."

Approved July 6, 1992.

## CHAPTER 316

## FORMERLY

## HOUSE BILL NO. 462

AN ACT TO AMEND CHAPTER 302, VOLUME 49, LAWS OF DELAWARE, AS AMENDED, ENTITLED "AN ACT TO INCORPORATE THE TOWN OF FENWICK ISLAND, DELAWARE" RELATING TO CREATING A TAX LIEN AND PROVIDING FOR A MONITION FORM OF SALE.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (Two-thirds of all members elected to each House thereof concurring therein):

Section 1. Amend Section 24, Charter of the Town of Fenwick Island, Chapter 302, Volume 49, Laws of Delaware, as amended, by deleting the fourth, fifth and sixth paragraphs and substituting in lieu thereof the following:

"B. COLLECTION OF ANNUAL TAXES

(1) The Treasurer, within ten (10) days after the receipt of said tax list and warrant, shall render to each person named therein an account or tax bill showing the amount due, either by delivering the same in person, or mailing to the last known post office address of the taxable. Not less than sixty (60) days or more than ninety (90) days after mailing or delivery of said accounts or tax bills to the taxables, as herein provided, the Treasurer shall cause a list of unpaid taxes to be posted in some convenient and public place within the Town. Unless said taxes are paid within thirty (30) days after the posting of said notices, the Treasurer of the Town and in the name of the Town shall proceed at once to collect the taxes on said tax list and warrant with all costs.

(2) All taxes so laid or imposed by The Town of Fenwick Island in such Annual Tax List shall be and constitute a lien upon all the real estate of the taxable for a period of ten (10) years against or upon whom such taxes are laid or imposed of which such taxable was seized or possessed at any time after such taxes shall have been levied and imposed that is situate within The Town of Fenwick Island. Such lien shall have preference and priority to all other liens on such real estate, as aforesaid, created or suffered by the said taxable, although such lien or liens be of a time and date prior to the time of the attaching of such lien for taxes.

(3) All taxes, when and as collected by the Treasurer, shall be paid to The Town of Fenwick Island, and all taxes shall be due and payable at and from the time of the delivery of the Annual Tax List to the Treasurer.

(4) All taxes shall be payable at the Office of the Treasurer during the regular business hours of that Office.

(5) On all taxes unpaid after thirty (30) days following the delivery of the duplicate Annual Tax List to the Treasurer there shall be added a penalty of Five Percent (5%) for each month or fraction thereof such taxes shall remain unpaid and said penalty shall be collected in the same manner as the original amount of the tax. All taxes unpaid on such date as specified by appropriate resolution or ordinance shall be considered delinquent. The Town Council shall have the power by appropriate resolution to make just allowances for delinquencies in the collection of taxes. The Treasurer shall cause a list of such unpaid taxes to be posted in a public place in the Town. In effecting a collection of delinquent tax, the Town Council may impose a collection charge not to exceed eighteen percent (18%) of the amount of the tax and any penalty imposed thereon.

(6) At the August meeting of the Town Council of each year, the Treasurer shall account to the Town Council for all taxes and charges collected by him during the year and shall be liable on his bond for failure to account for any uncollected taxes or charges unless he can show to the satisfaction of the Town Council that all remedies permitted for the collection of said taxes were pursued without result or, if not pursued, the remedies would have been without avail.

(7) The Treasurer or the President, when any tax has become delinquent, may, in the name of The Town of Fenwick Island, institute suit before any Justice of the Peace or in the Court of Common Pleas of the



State of Delaware, in and for Sussex County, or in the Superior Court of the State of Delaware, in and for Sussex County, for the recovery of the unpaid tax in an action of debt, and upon judgment obtained, may sue out writs of execution as in case of other judgments recovered before a Justice of the Peace or in the Court of Common Pleas, or in the Superior Court, as the case may be.

(8) However, should the Treasurer or President so elect, he is empowered to sell the lands and tenements of the delinquent taxpayer or the lands and tenements of a delinquent taxpayer alienated subsequent to the levy of the tax by the direction of the Town Council using any of those procedures specified for the sale of land for the collection of taxes on the part of the individuals charged with the responsibility for the collection of taxes for Sussex County, and all such procedures and methods available for the sale of land, as aforesaid, as they are presently enacted and hereafter amended, are included herein and made a part hereof by reference thereto, including the method of sale by monition, as the same is set forth in the statutes made and provided, substituting the Town of Fenwick Island for Sussex County therein."

Section 2. Amend Subsection B. Section 24, Charter of the Town of Fenwick Island, Chapter 302, Volume 49, Laws of Delaware, as amended, by changing "B" to "C" so that the heading shall read as follows:

"C. REALTY TRANSFER TAX."

Approved July 6, 1992.

## CHAPTER 317

### FORMERLY

#### HOUSE BILL NO. 423

AN ACT TO AMEND CHAPTER 29 OF TITLE 29, DELAWARE CODE RELATING TO ANNUAL AUDITING OF SCHOOL DISTRICT'S LOCAL TAX BUDGET.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend §2906, Title 29 Delaware Code by adding thereto a new paragraph (f) to read as follows:

"(f) The Auditor of Accounts shall conduct postaudits of local school district tax funds budget and expenditures annually. The results of the audit shall be submitted to the local board, the State Board of Education and the office of Controller General and the local libraries within said school district."

Approved July 6, 1992.

## CHAPTER 318

## FORMERLY

SENATE BILL NO. 251  
AS AMENDED BY SENATE AMENDMENT NO. 1

AN ACT TO AMEND CHAPTER 3, TITLE 25, DELAWARE CODE, RELATING TO TITLES AND CONVEYANCES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend §309(b), Chapter 3, Title 25, Delaware Code, by striking said subsection (b) in its entirety and substituting in lieu thereof a new subsection (b) to read as follows:

"(b) This section shall be construed as authorizing a conveyance of an interest in real property:

(1) By either spouse without the joinder of the other spouse to themselves as tenants by the entireties;

(2) By husband and wife as tenants by the entireties to either husband or wife alone;

(3) By either tenant by the entireties alone to the other without the other joining in the deed; and

(4) By husband and wife in any individual or joint capacity to themselves as tenants by the entireties.

Approved July 7, 1992.

## CHAPTER 319

## FORMERLY

## SENATE BILL NO. 250

AN ACT TO AMEND CHAPTER 1, TITLE 25, DELAWARE CODE, RELATING TO DEEDS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend §131, Chapter 1, Title 25, Delaware Code, by striking the words ", prior to January 1, 1974," as the same appears in the first sentence thereof.

Approved July 7, 1992.

CHAPTER 320

FORMERLY

SENATE BILL NO. 290  
AS AMENDED BY SENATE AMENDMENT NO. 1

AN ACT TO AMEND CHAPTER 9, TITLE 7, DELAWARE CODE RELATING TO MENHADEN FISHING.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Chapter 9, Title 7, Delaware Code by striking subsections (a) through (h) of Section 919 thereof and substituting a new subsection (a) to read as follows:

"(a) It shall be unlawful for any person to fish, use, employ or attempt to fish, use or employ any purse seine to take or attempt to take menhaden in the tidal waters of this state."

Approved July 7, 1992.

CHAPTER 321

FORMERLY

SENATE BILL NO. 298

AN ACT TO AMEND CHAPTER 28, TITLE 24, DELAWARE CODE, RELATING TO PROFESSIONAL ENGINEERS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend subsection (5), §2817, Chapter 28, Title 24 of the Delaware Code, by striking the words "is of good character and reputation and" as the same appear in paragraph b.

Section 2. Amend subsection (5), §2817, Chapter 28, Title 24 of the Delaware Code, by striking paragraph a. in its entirety; by redesignating present paragraph b. as new paragraph a.; and redesignating each succeeding paragraph accordingly.

Section 3. Amend §2817, Chapter 28, Title 24 of the Delaware Code, by adding a new subsection (6), which new subsection shall read as follows:

"(6) The Council may refuse an applicant for registration if the Council finds that the applicant has:

- a. been convicted of a felony, or,
- b. misstated or misrepresented a fact in connection with his or her application, or,
- c. been found guilty of a violation of the Delaware Association of Professional Engineers' Code of Ethics, or,
- d. engaged in the practice of engineering in this State without being registered as a professional engineer."

Section 4. Amend §2817, Chapter 28, Title 24 of the Delaware Code, by adding thereto a new subsection (7), which new subsection shall read as follows:

"(7) Where an application of a person has been refused or rejected, and such applicant feels that the Council has acted without justification; has imposed higher or different standards for him or her than for other applicants; or, has in some other manner contributed to or caused the failure of such application, the applicant may appeal to the Superior Court."

Approved July 7, 1992.

## CHAPTER 322

## FORMERLY

SENATE BILL NO. 358  
AS AMENDED BY HOUSE AMENDMENT NOS. 1 AND 2

AN ACT TO AMEND CHAPTER 37, TITLE 24 OF THE DELAWARE CODE RELATING TO LICENSURE.

WHEREAS, the Department of Public Instruction until January 30, 1986, certified speech/language pathologists and audiologists who worked in the public or private schools of Delaware, said certificates being good for 10 years; and

WHEREAS, the General Assembly as of January 30, 1986, required speech/language pathologists and audiologists certified by the Department of Public Instruction to become licensed by the State Board of Speech/Language Pathologists, Audiologists and Hearing Aid Dispensers; and

WHEREAS, the General Assembly allowed those actively engaged in speech/language pathology or audiology at any time in the two (2) years prior to January 30, 1986, to be "grandfathered" into licensure provided that they applied within one (1) year of January 30, 1986; and

WHEREAS, the Department of Public Instruction notified the public schools of this "window of opportunity" but did not notify the private schools nor did they have the capabilities to attempt to notify directly those certified by the Department of Public Instruction; and

WHEREAS, it seems unfair that those working in private schools should have missed this "window of opportunity" when the State chose to attempt to notify some but not all.

NOW, THEREFORE:

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend §3707, Title 24, Delaware Code by adding thereto a new subsection as follows:

"(e) Upon payment of a nonrefundable application fee, the Board shall waive the examination and educational requirements and grant a license to applicants who, at any time in the two (2) years prior to January 30, 1986, were actively engaged in the practice of speech/language pathology or audiology in a non-public school in Delaware and who worked continuously in the field of speech/language pathology in public or private schools of Delaware since 1986 upon proof of bona fide practice presented to the Board in the manner prescribed by the Board's rules and regulations providing that they submit an affidavit stating that they were not notified of subsection (a) of this section prior to January 30, 1987, and providing that they file an application within one (1) year of the effective date of this Act. Any individual who qualifies for licensure under the provisions of this subsection shall have two (2) years from the date of licensure to complete all courses of continuing education required of those individuals who maintained licenses from January 30, 1986 to the present."

Section 2. Licensure under the provisions of this Act shall be retroactive to January 30, 1986.

Approved July 7, 1992.

## CHAPTER 323

## FORMERLY

SENATE BILL NO. 258  
AS AMENDED BY HOUSE AMENDMENT NO. 1

AN ACT TO AMEND CHAPTERS 33 AND 35, TITLE 18, DELAWARE CODE TO CLARIFY COVERAGE OF INSURED DURING A PERIOD OF HOSPITALIZATION WHEN INSURERS CHANGE OR TERMINATE.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Title 18, Delaware Code Chapter 33, Section 3313 by adding a new subsection (c) and (d) as follows:

"(c) There shall be a provision as follows in contracts issued by an insurer, health service corporation or Health Maintenance Organization: 'Payment of claims when coverage terminated during a period of hospitalization: If you are in the hospital when this policy non-renews or terminates for any reason except non-payment of premium, this policy shall continue coverage for that hospitalization at the same benefit level for a ten-day period from the date of termination.'

(d) There shall be a provision as follows in contracts issued by an insurer, health service corporation or health maintenance organization: 'If this policy immediately succeeds prior coverage, and if you are in the hospital when this coverage becomes effective, benefits for that hospitalization will start at the end of ten consecutive days of hospitalization under this policy at the level provided by this policy notwithstanding any pre-existing conditions or other similar exclusions for the duration of the single continuing period of hospitalization.' The requirements of this subsection shall not apply to specified accident, specified disease, hospital indemnity, Medicare supplement, long-term care, or other limited benefit health insurance policies."

Section 2. Amend Title 18, Delaware Code Chapter 35, Section 3517 by adding the notation "(a)" at the beginning of the existing text thereof and adding a new subsection (b) and (c) as follows:

"(b) Notwithstanding the above, a group health insurance policy issued by a health insurer, health service corporation or health maintenance organization shall contain a provision which extends coverage for an insured who is hospitalized on the date coverage terminates for a period of ten consecutive days during a single period of continuous hospitalization, if coverage terminates for any reason except nonpayment of premium. Benefits shall continue at the same level as provided in the terminated policy for the ten-day period.

(c) Following the termination of the ten-day period set forth in (b) above, the succeeding insurer, if any, shall provide benefits for an insured who is hospitalized on the effective date of coverage at the level provided in the policy then in force notwithstanding any pre-existing conditions or other similar exclusions contained in the new policy. This provision applies only to a continuing single period of hospitalization."

Section 3. Nothing in this section shall require an insurer to pay for services otherwise properly excluded under the terms of its policies.

Section 4. This Act shall apply to contracts issued or renewed ninety (90) days after its enactment.

Approved July 7, 1992.

## CHAPTER 324

## FORMERLY

## SENATE BILL NO. 396

## AN ACT TO REINCORPORATE THE TOWN OF KENTON.

WHEREAS, it is deemed advisable that the Charter of the Town of Kenton, set forth in Chapter 176, Volume 18, Laws of Delaware, enacted in 1887, with subsequent amendments, be consolidated into one complete Act and in certain respects be further amended and revised.

NOW, THEREFORE:

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (Two-Thirds of all members elected to each House thereof concurring therein):

## Section 1. BOUNDARIES AND TOWN PLOT

(a) BOUNDARIES:

The limits and boundaries of the Town of Kenton in Kent County, Delaware, shall be as previously fixed and established or hereafter altered according to law and shall be marked and defined according to maps and plots now of record or hereafter recorded in the Office of the Recorder of Deeds in and for Kent County pursuant to lawful annexation proceedings. Such maps and plots, when so made and approved by the said Council, and signed by the Mayor and Secretary of Council, and sealed with the town seal and when recorded in the Office of the Recorder of Deeds of the State of Delaware, in and for Kent County, at Dover shall be deemed to be the true and correct maps and plots of the Town and of all the streets, boundaries, lanes and alleys thereof, and the same, or the record thereof, or a duly certified copy of said record, shall be evidence in all courts of Law and Equity in the State of Delaware.

(b) ALTERATION OF BOUNDARIES

The Town of Kenton is authorized to alter its boundaries by the annexation of new territory in the manner hereinafter set forth; provided however, that no territory not contiguous to the Town at the time of the annexation may be annexed in the Town.

(1) The Council shall adopt a resolution proposing the inclusion of territory within the limits of the Town of Kenton and calling for a special election to be held in said territory. The resolution shall contain a description of the territory proposed to be annexed and shall specify the date, time, and place or places of said election. The resolution shall be published at least twice in a newspaper of general circulation in the Town of Kenton at least two weeks but not more than four weeks before the day of the election.

(2) If more than one territory is involved in any resolution, elections may be held in more than one of them on the same day, but the elections shall be separate; only the votes of the qualified voters and real estate owners of a territory shall be counted in the election to determine whether that territory shall be annexed.

(3) At any such election, the following rules shall govern votings:

(a) Each legal entity (whether an individual, partnership, corporation, association, trust, or any other entity capable of holding legal title), owning property solely in its own name, shall be entitled to one vote. Where property is held in a life estate, the holders of the life estate shall be deemed, for purposes of this provision, to be the owners in fee thereof and entitled to vote accordingly.

(b) Each bona fide domiciliary of the provided they are 18 years of age or older and have resided in the territory for at least 30 days prior to the day of the election.

(c) Each legal entity entitled to vote (other than a natural person) must cast their vote by a duly executed power of attorney. Any natural person entitled to vote may cast his vote in person or by a duly executed power of attorney; however, no person whose name is not listed either as a taxpayer or voter in the Town of Kenton shall be entitled to authorize another person to cast his vote by use of a Power of Attorney.

(d) These rules shall be construed so as to permit only "one-man, one-vote." Where a voter is entitled to vote by virtue of both residence and ownership of property in the territory, that voter shall be entitled to only one vote. Where a voter is entitled to vote by virtue of ownership of two or more properties in the territory, that voter shall be entitled to only one vote.

(e) Any person holding a power of attorney will be accompanied into the voting booth by an elections officer to insure that the vote is cast in accordance with the Power of Attorney.

(4) Any such election shall be conducted by the Elections Board of the Town of Kenton who shall make all decisions concerning eligibility of voters, validity of Powers of Attorney, and other similar matters pertaining to the conduct of the election. The Town Council shall bear the cost of conducting the election and shall provide ballots. The ballots shall briefly but clearly indicate the territory proposed to be annexed into the Town and shall provide two boxes beside which shall appear the words: "For inclusion within the Town of Kenton" and "Against inclusion within the Town of Kenton."

Each voter shall indicate his preference by making a mark within the box beside the words expressing his preference.

(5) When the polls are closed, the election officers shall publicly count the votes and forthwith certify to the Secretary of the Council the numbers of votes cast for and against inclusion within the Town limits. At the next regular or special meeting of the council, the Council shall receive the results of the election and make the same a part of the minutes of said meeting.

(6) If a majority of the votes cast in an election held in a territory proposed to be annexed shall be in favor of the inclusion of that territory, the Council shall thereupon adopt a resolution annexing said territory and including it within the limits of the Town of Kenton. Upon the adoption of a resolution of annexation, a copy thereof certified by the Secretary of the Council and a plot of the area annexed shall be forthwith filed for record with the Recorder of Deeds of Kent County and the area so annexed shall for all purposes thenceforth be a part of the Town of Kenton.

(7) If a majority of the votes cast in an election held in a territory proposed to be annexed shall be against the inclusion of that territory within the limits of the Town of Kenton, the proposed annexation shall be declared by the Council to have failed.

(8) Nothing in this section shall prohibit the Council from resubmitting a proposal of annexation to the voters of said territory, or any portion thereof, under the authority of this section and in accordance with the provisions thereof.

## Section 2. BODY CORPORATE, POWERS

### (a) BODY CORPORATE:

The inhabitants of the Town of Kenton, within the limits and boundaries referred to in Section 1 of this Charter, or within the limits and boundaries hereafter established, shall be and they are hereby created a body politic and corporate in Law and in Equity by the corporate name of the "Town of Kenton", and under that name shall have perpetual succession.

The Town of Kenton shall succeed to own or possess all property, whether real, personal, or mixed, and all powers, rights, privileges or

immunities now or heretofore belonging to, possessed, or enjoyed by the Town of Kenton.

(b) POWERS:

The Town of Kenton shall have and enjoy all the powers possible for a municipal corporation, city, or town to have under the Constitution and Laws of the State of Delaware, as fully and completely as though they were specifically enumerated in this Charter. Included among, but not in limitation of its powers, the Town:

(1) May have and use a corporate seal, which may be altered, changed or renewed at pleasure.

(2) May sue and be sued, plead and be impleaded in all courts of Law and Equity in the State of Delaware or elsewhere.

(3) May hold and acquire by gift, negotiation and purchase, devise, lease or condemnation property both real (improved or unimproved) and personal or mixed, within or without the boundaries of the Town, in fee or lesser estate or interest, necessary or desirable for any municipal or public purpose, including but not limited to, providing sites for construction, improving, extending, altering, or demolishing:

(a) public buildings;

(b) parks;

(c) streets, squares, lanes, alleys, and sidewalks;

(d) sewer systems, including but not limited to sewage disposal or treatment plants, and all appurtenants thereto;

(e) water systems, including but not limited to, waterplants, wells, lines, conduits and all appurtenants thereto;

(f) electric systems, including but not limited to, electric plants substations, distribution systems, lines, conduits and all appurtenants thereto;

(g) gas systems, including but not limited to, storage tanks, distribution systems, conduits and all appurtenants thereto;

(h) recreational facilities, including but not limited to, public bathing beaches, gymnasiums, athletic fields, bicycle paths, tennis, basketball, or paddleball courts and all appurtenants thereto;

(i) for slum clearance and redevelopment, urban renewal, revitalization, or rehabilitation of blighted areas, or removal of dangerous buildings;

(j) for the protection of the health of the citizens of the Town,

(k) for the proper furnishing of adequate municipal services to the citizens of the Town and those persons residing in such proximity to, but beyond the corporate limits of the Town of Kenton who can be furnished with such municipal services, in the discretion of the Council to the mutual benefit and advantage of the Town and such non-residents thereto, upon such terms, charges, and conditions as the Town Council may determine and approve.

(4) May sell, grant, alienate, lease, mortgage, manage, hold and control such property as the interests of the Town may require except as prohibited by the Constitution of the State of Delaware or as restricted by this Charter.

(5) May pay for the acquisition, construction, improvement, extension, alteration, or demolition of any municipal or public property, real, personal, or mixed, from the general fund of the Town, from the proceeds of any bond issue which may be authorized and sold



for any of the purposes for which lands and premises are authorized by this Act to be acquired, and/or from the proceeds of any grant or loan made to the Town by any governmental entity of the United States or the State of Delaware where the proceeds of the grant or loan are for the purposes for which lands and premises are authorized by this act to be acquired.

(6) May prevent vice, drunkenness and immorality;

(7) May provide for and preserve the health, peace, safety, cleanliness, ornament, good order and public welfare of the Town and its inhabitants;

(8) May prohibit all gaming and fraudulent devices;

(9) May prohibit, restrain, license or regulate all public sports, exhibitions, shows, parades, production, circuses or other public performances, amusements and games;

(10) May ascertain, locate, lay out, establish, open, change, alter, widen, abandon, regulate the use and enjoyment of, prevent or remove any obstruction of, level, grade, flag, dress, macadamize, pave, gravel, shell, improve, dredge, erect, remove, repair and replace any new or present street, highway, lane, alley, water course, park, lake, crosswalk, wharf, dock, sewer, drain, aqueduct, or pipeline or portion thereof, or any new or present sidewalk, curb, or gutter or portion thereof in the Town; to specify the grade thereof, the materials to be used in the doing thereof and the manner in which the same shall be done; to enter into contracts or agreements for the doing thereof, including contracts or agreements with the State of Delaware for the permanent maintenance, repair and upkeep of any street, lane, alley, roadway or other public thoroughfare within the Town; and may hire skilled surveyors to make plots or maps showing the limits of the Town and the ascents, descents, and limits of all streets, lanes, alleys, sidewalks, and building lines, and to show the location, depth, and grade of all sewer and water mains.

(11) May establish and regulate pounds and to restrain, prohibit and impound any domestic or wild animal, beast, bird or fowl running at large and to authorize the destruction of the same; and to regulate the keeping of dogs within the Town, and to provide for registration and fees therefore.

(12) May enforce the removal of ice, snow or dirt or other foreign substance from sidewalks and gutters by owners or abutting owners;

(13) May prohibit, remove or regulate the erection of any stoop, step, platform, bay window, cellar, gate, area, descent, sign, post or any other erection or projections in, over, upon or under any street, highway, alley, lane, water course, park, lake, strand, sidewalk, crosswalk, wharf, dock, sewer drain, aqueduct or pipeline of the Town;

(14) May provide, construct, extend, maintain, manage and control jetties, bulkheads, embankments, flood gates, piers, or fills for the preservation of any strand or high land within the limits of the Town and contiguous thereto to the end that the same may be preserved, property protected that the general public might enjoy the use thereof.

(15) May grant franchises or licenses to any responsible person, firm, association or corporation for such period of time, upon such terms, restriction, stipulations and conditions and for such considerations as the Town Council shall deem in the best interest of the municipality, to use the present and future streets, highways, lanes, alleys, water courses, parks, lakes, strands, sidewalks, crosswalks, wharfs, docks and other public places of the Town for the purpose of furnishing heat, light, power, gas, water, sewer, drainage, electric current, telephone, telegraph, television, railroad, excepting railroad or railways engaged in interstate commerce, bus, taxi, or other transportation, carrier or public service to the Town to points outside the limits thereof, and for the purpose of erecting wharfs and piers and for the purpose of vending any article or merchandise or

service upon or from any vehicle upon any present and future street, highway, lane, alley, etc.

(16) May direct, regulate and control the planning, rearing, treatment and preserving of ornamental shade trees in the streets, avenues, highways, parks and grounds of the Town and to authorize or prohibit the removal or destruction of said trees;

(17) May direct the digging down, draining, filling up, cleaning, cutting or fencing of lots, tracts, pieces or parcels of ground in the Town which may be deemed dangerous or unwholesome or necessary to carry out any improvements authorized by this Charter;

(18) May provide for or regulate the numbering of houses and lots on the streets and the naming of the streets and avenues;

(19) May regulate, control or prevent the use or storage of gasoline, naphtha, gun powder, fireworks, tar, pitch, resin, and all other combustible or dangerous materials and the use of candles, lamps, and other lights in stores, shops, stables and other places; to regulate, suppress, remove or secure any fireplace, stove chimney, oven broiler, or other apparatus which may be a fire hazard.

(20) For the prevention of fire and the preservation of the beauty of the Town, may regulate and control the manner of building or removal of dwelling houses and other building; to establish a building line for buildings to be erected; to zone or district the Town and make particular provisions for particular zones or districts with regard to building or building materials; and may prohibit any building or construction except those for which a building permit has been issued as prescribed by Council; and generally to exercise all powers and authorities vested by virtue of Chapter 3, Title 22, of the Delaware Code and all amendments heretofore or hereafter adopted;

(21) May regulate or prevent the use of guns, air guns, spring guns, pistols, sling shots, bean shooters, and any other device for discharging missiles which may cause bodily injury or harm to property; and to regulate or prevent the use of bonfires, fireworks, bombs and detonating works of all kinds;

(22) May provide for the punishment of a violation of any ordinance of the Town by fine or imprisonment, or both, not exceeding one thousand dollars (\$1,000.00) or thirty (30) days imprisonment, or both;

(23) May provide for the organization of a fire department and the control and government thereof; to establish fire limits and to do all things necessary for the prevention or extinguishment of fires; and at the discretion of the Town Council, to contribute, donate or give an amount or amounts to any volunteer fire company or companies incorporated under the laws of the State of Delaware, or any volunteer fire association or associations maintaining and operating fire fighting equipment and service to the Town, provided that any such contribution, donation or gift may be made subject to such conditions and stipulations as to the use therefor as the Town Council shall deem advisable;

(24) To condemn, upon inspection, any existing building or structure in the Town which is determined to be a fire hazard or otherwise unsafe, and cause the same to be torn down or removed.

(25) To levy and collect taxes upon all gas and water mains, telephone, telegraph, power poles, pipelines, rail lines, and other constructions or erections of a like character, erected within the limits of the Town, together with the wire or other appliances thereto or thereon attached and to this end may at any time direct the same to be included in or added to the Town assessment. In case the owner or lessee of such construction or erections, wires or other appliances shall refuse or neglect to pay the taxes levied thereon, in addition to collection proceedings, the Town Council shall have the authority to cause the same to be removed; and to enact ordinances to prevent, abate or regulate disturbances with radio or television reception in the Town.

(26) To license, tax and collect fees annually for any and all municipal purposes (including the cost and expense of advertising to the Town) of such various amounts as the Town Council from time to time shall fix from any individual, firm, association or corporation carrying on or practicing any business, profession or occupation within the limits of the Town.

(27) To provide for the collection of and disbursement of all monies to which the Town may become entitled by law, including licenses and fines where no provision for the collection and disbursement thereof is otherwise provided in this Charter;

(28) To appropriate money to pay the debts, liabilities and expenditures of the Town, or any part or item thereof, from any fund applicable thereto, and to transfer temporarily money from one fund to another fund of the Town in case of emergency;

(29) To provide for the payment of any tax, fine, penalty, license, forfeiture, assessment, fee, charge, or other amount due the Town by the performance of labor or service for the Town by any person owing the same;

(30) To inquire into and investigate the conduct of any officer, agent or employee of the Town of any municipal affair and for such purpose or purposes may subpoena witnesses, administer oaths or affirmations, and compel the attendance of witnesses and the production of books, papers, or other evidence by subpoena;

(31) To establish a Pension Plan or a Health and Welfare Plan, or both, for the employees of the Town under such terms and conditions as the Town Council, in its discretion, may deem most appropriate. The method of funding may, if deemed desirable by the Town Council be accomplished through an insurance company licensed by the State of Delaware or authorized to do business in this State and approved by a majority of the elected members of the Town Council;

(32) To make, adopt and establish all such Ordinances, Regulations, Rules, and By-Laws not contrary to the laws of this State and the United States as the Town Council may deem necessary to carry into effect any of the provisions of this Charter or any other law of the State relating generally to municipal corporations or which they may deem proper and necessary for the order, protection and good government of the Town, the protection and preservation of persons and property, and of the public health and welfare of the Town and its inhabitants; provided, however that any ordinance relating to the public health of the Town and its inhabitants or designed to prevent the introduction or spread of infectious or contagious diseases or to prevent nuisances affecting the same shall apply not only within the corporate limits of the Town but as well to all areas and persons outside the Town within one (1) mile from said limits.

(33) To enact ordinances or resolutions as the Town Council may prescribe for the remission of Town taxes.

(34) To determine what purposes are deemed to be public purposes or deemed to be municipal purposes.

(35) In the preparation and printing of any bonds and the interest coupons therefor now or hereafter authorized by legislative enactment to be issued by the Town of Kenton, where any such bond is signed by the Mayor of the Town of Kenton and by the Treasurer of the Town of Kenton, and Trustee's Certificate on said bond is signed by the Secretary on behalf of the Town Council of the Town of Kenton, the signatures of the Mayor and of the Treasurer of said Town on the interest coupons attached to and belonging with such words may be facsimiles, either engraved or printed or stamped on said coupons.

(36) The Town Council may, by ordinance, establish and collect a realty transfer tax not to exceed the rate of one percent (1%) of the value of the property conveyed in conformance with the definitions and exceptions governing the Delaware State Realty Transfer Tax as

contained within Chapter 54, Title 30 of the Delaware Code, and all amendments heretofore or hereafter adopted.

(c) LIBERAL CONSTRUCTION: MANNER OF EXERCISE:

The powers of the Town of Kenton under this Charter shall be liberally construed in favor of the Town of Kenton, and the enumeration of particular powers by this Charter shall not be held or deemed to be exclusive, but, in addition to the powers enumerated herein, implied hereby, or appropriate to the exercise thereof, the Town of Kenton shall have, and may exercise all powers which, under the Constitution of the State of Delaware, it would be competent for this Charter to specifically enumerate. All powers of the Town of Kenton, whether express or implied, shall be exercised in the manner provided by ordinance or resolution of the Town Council. The Council may, by resolution, do such other act or thing incidental, necessary, or useful in connection with any of the matters in this Act duly authorized.

(d) INTERGOVERNMENTAL COOPERATION:

The Town of Kenton may exercise any of its powers or perform any of its functions and may participate in the financing thereof, jointly or in cooperation, by contract or otherwise, with any one or more states or civil divisions or agencies thereof, or the United States or any agency thereof, except as prohibited or restricted by the Constitution or laws of the State of Delaware or by this Charter.

Section 3. TOWN COUNCIL

(a) QUALIFICATIONS. NOMINATION. TERM OF OFFICE:

(1) Qualifications.

The government of said Town and the exercise of all powers conferred to the Town by this Charter or the laws of the State of Delaware shall be vested in a Town Council composed of five members, all five of which shall be elected at large. Nominees for the offices of members of Council shall be at least twenty-one years of age and no person shall be elected to the office of Council member unless he shall have been a bona fide domiciliary of the Town for at least one year prior to the day of the election. Any person elected to the office of Council member must continue, throughout his term of office, to meet these qualifications or shall forfeit his office.

(2) Nomination.

The members of Council shall be nominated and elected as follows, to-wit: On the first Monday in February of 1992, and on the same day every other year thereafter, nominations shall be filed with any Council member. Such nominations shall be in writing, signed by the nominee or by five other qualified voters of said Town. Each nomination shall be presented to Council at a meeting to be held at its usual meeting place not later than eight o'clock p.m. on the evening of the last day for the filing of such nominations, which date shall be the first Monday in February prior to the date of election.

(3) Term of Office.

The terms of all Council members shall be two years from the day after their respective election and until their respective successors shall be duly elected and qualified.

(b) ELECTIONS:

(1) Voter Qualifications.

Each person, who, on the day of the election:

(a) is eighteen years of age or older, and

(b) has been continuously domiciled in the Town for at least thirty days; and

(c) has not been adjudged an idiot, insane, or incompetent person by a court of competent jurisdiction; and

(d) has not been convicted of a felony or been disenfranchised pursuant to Article V, §3 or §7 of the Constitution of the State of Delaware; and

(e) has properly registered to vote in the Town of Kenton shall be entitled to vote in any regular or special election of the Town;

For purposes of this section, a person is "domiciled" in the Town when he physically resides within the corporate limits of the Town with the actual intent to make that residence his fixed and permanent home; however, any person who is enlisted or engaged in any government service of the United States, which service requires him to reside outside the limits of the Town, shall be considered to be a domiciliary of the Town during the period of his service so long as it remains his actual intention to retain his Kenton residence as his fixed and permanent home.

(2) Date and Time of annual Election.

The Annual Town Election shall be held on the first Monday in March in 1992 and in every other year at the Town Hall of said Town, or at such other convenient place in said Town as shall be appointed by the Council by a majority vote. The polls shall be open from two o'clock p.m. to eight o'clock p.m. or for such other times as determined by a majority vote of Council members. The council shall advertise the place, date, and times of the election at least once a week for three successive weeks immediately prior to said election in a newspaper of general circulation in the Town of Kenton, and post notices containing that information in at least three public places in the Town three weeks prior to the day of the election.

(3) Voting Machines/Ballots.

Council shall make arrangements with the Kent County Department of Elections for the use of an appropriate number of voting machines to be used at any contested election. In the event no contest exists in any election, the official candidate may assume office without the holding of a formal election.

(4) Election Board.

Every election shall be held under the superintendence of an Election Board, the number of persons on said Board to be an uneven number of qualified voters of the said Town and will be determined by the Council upon determination of the number of voting machines to be used and the number of clerks needed to conduct such election. The Election Board shall be appointed by the Council at least twenty days before the date of election, but if at the opening of the polls there shall not be present the Election Board as appointed, or any one of them, in such case the persons entitled to vote and then present at the polls shall appoint, by voice vote, a qualified voter or voters to act on said Election Board. The Election Board holding the election shall pass upon the qualifications of voters and conduct the election, keeping a list of all voters voting and at the close of such election shall announce the vote. The candidates having the highest number of votes for each office shall be declared elected and certificates shall be made out and delivered to the person or persons so elected. In case of a tie, the Election Board holding the election shall, by majority vote decide which of the candidates so tied shall be elected.

(5) Registration of Voters.

The Town Council shall have the authority to enact such ordinances concerning the registration of qualified voters for municipal elections in the Town of Kenton as it deems reasonably necessary to provide for the orderly and efficient conduct of municipal elections; provided that no such ordinances shall alter the qualifications of voters as hereinabove set forth, nor shall any such ordinances unduly impair the right to vote in a municipal election.

(c) COMPENSATION: REIMBURSEMENT:

Each member of Council shall receive such compensation as is set by Council for each regular or special Council meeting attended by such person. The Council Secretary shall receive additional reasonable compensation as fixed by the Council. Any member of Council sitting to hear tax appeals shall also be paid such compensation as is set by Council for each sitting. Payments shall be made quarterly.

The Mayor and members of Council shall be reimbursed for their actual and necessary expenses while out of the said Town on business which has been duly authorized by motion, resolution or order of Council.

(d) PROHIBITIONS:

(1) Holding Other Office.

Except where authorized by law, no Council member shall hold any other Town office or Town employment during the term for which he was elected to Council and no former Council member shall hold any compensated appointed Town Office or employment until one year after the expiration of the term for which he was elected to the Council.

(2) Contracts with the Town.

It shall be unlawful for the Council or the Town's officers, agents, or employees, to make or enter into any contract for materials, supplies, work or labor for the use and benefit of the Town of Kenton with any member of Council or with any partnership in which any member of Council is a partner, or with any corporation in which any member of Council is a director or stockholder or with any firm or company in which any member of Council is pecuniarily interested, except with the unanimous consent of the entire Council, and such contract shall be absolutely null and void without such unanimous consent.

(e) VACANCIES, FORFEITURE OF OFFICE:

(1) Vacancies.

The office of a Council member shall become vacant upon his death, resignation, lawful removal from, or forfeiture of his office.

(2) Forfeiture Proceedings.

A forfeiture of his office shall occur when the Council member:

(i) lacks, at any time during his term of office, any qualification for the office prescribed by this Charter or by law.

(ii) willfully violates any express prohibition of this Charter.

(iii) is convicted of a felony or any crime involving moral turpitude.

(iv) fails to attend three consecutive regular meetings without being excused by Council.

(v) is physically, mentally, or emotionally incapable of performing the functions of his office.

(3) Determinations concerning forfeiture of office shall be made by the Council, but the affected party shall not have a vote in any such decision. Such deliberations may be had in executive session and if the Council determines by a unanimous vote, that a forfeiture has occurred, it shall, within forty-eight hours of that determination, provide him written notice thereof, stating specific reasons. The affected party shall then have ten days in which to make a written demand for a public hearing before the Council, to be held within twenty days of the written demand, at which hearing he may appear with the assistance of counsel and present evidence to the relevant issues. Thereafter, the Council shall hear any other relevant evidence and vote again on the question of forfeiture; and if a

determination of forfeiture is again made by a unanimous vote, the decision shall be final.

(4) Failure of the affected person to make written demand for a public hearing as hereinabove stated shall be an absolute bar to his right to challenge that decision. During, or in connection with, any such proceedings, the Council shall have authority to subpoena witnesses, administer oaths, take testimony, and require the production of documentary or physical evidence, all of which shall be done at the written request of the affected person.

(f) FILLING VACANCIES:

(1) Filling Vacancies on Council.

In case of a vacancy on the Council, the remaining Council members shall elect another qualified person to serve for the remainder of that vacant seat's term.

Section 4. ORGANIZATION OF COUNCIL

(a) ORGANIZATIONAL MEETING:

On the evening of the next meeting following the annual election, Council shall meet and organize by election of a Mayor, Vice-Mayor and Secretary who shall be members of Council. Before entering upon the duties of their offices, the newly elected Mayor, Vice-Mayor and members of Council shall be sworn, by a Notary Public, a Justice of the Peace, or any judge of the State of Delaware to faithfully and impartially perform the duties of their respective offices.

(b) DUTIES AND POWERS OF MAYOR:

(1) The Mayor shall preside at all meetings of Council; shall serve as the head of the Town government for all ceremonial purposes and for purposes of military law; shall appoint all committees, subject to Council confirmation; shall have general superintendence of all municipal affairs, provided, however, that such general superintendency shall in all cases be subordinate to the authority of all committees and appointees as selected by Council for the superintendency or conduct of any specified municipal activity; shall receive complaints of nuisances and all complaints of violations of law or ordinances and present the same to Council at its first meeting thereafter for action of Council.

(2) The Mayor shall sign all warrants on the Treasurer for the payment of any Town money and shall perform such other duties as may prescribed by resolution or ordinance of Council. If the Mayor be incapacitated in the performance of the duties of his office, by reason of death, illness, absence or any other cause, including the institution of forfeiture proceedings, then all powers and duties conferred upon him by this Act and by any other law, and by any ordinance or resolution now or hereafter enacted or adopted by Council, shall during said incapacity be exercised and performed by the Vice-Mayor.

(3) The Mayor shall have the same right as other Council members to vote on all matters and may at any time appoint another Council member to preside if he desires to make a motion, move the adoption of a resolution, second either, or debate any question from the floor, and may thereafter immediately resume his duties as presiding officer. For purposes of establishing a majority vote, the Mayor shall be counted as a member of Council.

(c) DUTIES AND POWERS OF VICE-MAYOR:

The Vice-Mayor shall during the temporary absence or inability of the Mayor, act as the Mayor, and while so acting shall be vested with all the powers, duties, and authority of the Mayor.

(d) SECRETARY:

The duties of the Secretary shall be to keep a true and faithful record of all the proceedings of Council at all meetings and to do and perform

such other matters and things as may be prescribed by this Act, or law or which Council may from time to time prescribe by resolution and ordinance.

(e) MEETINGS OF COUNCIL: REGULAR AND SPECIAL:

(1) Regular Meetings

The Town Council shall meet regularly the first Monday of each month, provided that when any meeting date falls on the day set for Town elections or a Town holiday, that meeting shall be held on the next business day. The time and place of each meeting shall be set by Council at their organizational meeting held the day following the annual election.

(2) Special Meeting; Waiver of Notice.

Special meetings shall be called by the Secretary upon the written request of the Mayor, or upon the written request of any two members of Council, stating the day, hour and place of the special meeting requested and the subject or subjects proposed to be considered. The Secretary shall thereupon give written notice to the Mayor and to each member of Council of the day, hour, and place of such special meeting and of the subject and subjects proposed to be considered. Such notice of the Secretary shall be delivered to the residences of the Mayor and Council members at least twenty-four hours prior to the time set for such special meeting, provided, however, that a written waiver of such notice, signed by the Mayor and all other members of Council prior to or immediately upon the convening of such special meeting shall make twenty-four hour written notice unnecessary and shall authorize and make valid the holding of a special meeting at any time named in such waiver, and the transaction of any other business at the meeting, if the waiver so states. The Town Council of the Town of Kenton shall have the same power and authority to enact all ordinances, adopt all resolutions, pass all motions, make all orders and transact all business at any such special meeting, called as aforesaid, as Council has at a regular meeting. In addition to notifying the members of Council, the Secretary shall also, at least twelve hours before the time of this special meeting, give public notice thereof by posting a copy of the notice and proposed agenda at the Town Hall, and making a reasonable number of copies thereof available to the public upon request.

(f) ACTS OF COUNCIL:

In the general performance of their duties, the acts, doings and determinations of a majority of the entire Council shall be as good as the acts, doings and determinations of all of the members of Council, but if a less number be present at any regular or properly called special meeting, they may adjourn from time to time and compel the attendance of absent members in such manner and under such penalties as may be prescribed by ordinance adopted by a majority of the entire Council. No ordinance, resolution, motion, order or other act of Council, except as immediately hereinabove provided for, shall be valid unless it receives the affirmative vote of a majority of all members elected to Council.

(g) POWERS OF COUNCIL: MANNER OF ACTING:

All powers of the Town shall be vested in the Town Council, except as otherwise provided by law, and the Council shall provide for the exercise thereof and for performance of all duties and obligations imposed on the Town by law. All powers of Council, whether express or implied, shall be exercised in the manner provided by ordinance or resolution of Council.

Section 5. OTHER ELECTIVE OFFICERS

(a) TOWN TREASURER:

(1) The Town shall have a Town Treasurer who shall have the same qualifications as the members of Council. The term of the Town Treasurer shall be two year from the day following his election, or until his successor has been duly elected and qualified.



(2) The Town Treasurer, to be elected, shall be nominated in the same manner and be elected by the same qualified voters, at the same Town elections and by the same regulations as prescribed in Section 3 hereof for the nomination and election of members of Council.

(3) The Town Treasurer, upon entering upon the duties of his office, shall be sworn or affirmed to faithfully and honestly perform the duties of his office, which oath or affirmation shall be administered by any member of the Council, Mayor, or Vice-Mayor.

(4) The Town Treasurer, before entering upon the duties of his office, shall be bonded by the Town with sufficient surety to be approved by Council, in the sum as determined by Council, conditioned on the faithful discharge of the duties of his office and for the payment to his successors in office all sums of money belonging to said Town which may remain in his hands upon the settlement of his accounts, to which bond and condition shall be annexed a warrant of attorney for the confession of judgement for said penalty.

(5) The Treasurer shall be responsible for the collection of Town taxes and other revenue accruing to the Town and shall pay all orders drawn on him by order of said Council and signed by the Mayor and Secretary thereof, out of any monies in his hands belonging to said Town. He shall settle his accounts with said Council annually by the end of the fiscal year, and oftener and at such other times as Council may require.

(b) ASSESSOR:

(1) The Town shall have an Assessor, who shall have the same qualifications as members of Council.

(2) The Assessor, to be elected, shall be nominated in the same manner and shall be elected by the same qualified voters, at the same Town elections and by the same regulations as prescribed in Section 3 hereof for the nomination and election of members of Council. The term of office of the Assessor shall be two years commencing the day following his election and until his successor is duly elected and qualified.

(3) The Assessor, before entering upon the duties of his office, shall be sworn or affirmed by the Mayor or Vice-Mayor to faithfully and impartially perform the duties of his office.

(c) COMPENSATION:

The Town Treasurer and the Assessor shall each receive such reasonable compensation as the Council shall fix.

(d) VACANCIES, FORFEITURE OF OFFICE, FILLING VACANCIES:

(1) Vacancies.

The office of Treasurer or Assessor shall become vacant forthwith upon the death, resignation, lawful removal from, or forfeiture of, the person holding that office.

(2) Forfeiture of Office.

A forfeiture of his office shall occur when the Treasurer or Assessor:

(i) lacks, at any time during his term of office, any qualification for the office prescribed by this Charter or by law; or

(ii) is convicted of any felony or any crime involving moral turpitude; or

(iii) is physically, mentally, or emotionally incapable of performing the functions of his office. Forfeiture proceedings concerning the office of Treasurer or Assessor shall be as provided for the Council members in Section 3, Subsection (d) of this Charter.

### (3) Filling Vacancies.

Where any vacancy occurs in the office of Town Treasurer or Assessor, such vacancy shall be filled by appointment of Council for the residue of that term, provided that the person appointed by Council to fill such vacancy or vacancies shall have the same qualifications as are required of a candidate for the office to be so filled and provided, further, that Council shall have the same powers and limitations of appointment in case of any vacancy in the aforesaid offices for any reason.

## Section 6. APPOINTED OFFICERS

### (a) TOWN MANAGER:

(1) The Council may appoint a Town Manager who shall be the chief administrative officer of the Town of Kenton. He need not when appointed be a resident of the Town of Kenton, or of the State of Delaware but shall, as a condition of his employment, become domiciled within a radius of the Town Hall as determined by Council within six months of his appointment. No member of Council including the Mayor shall, during the term for which elected, be appointed to act as Town Manager. The Town Manager shall be appointed for an indefinite term and shall be removable at the pleasure of the Mayor and Council, subject to his right as an appointed officer as provided in Section 6 (e) of this Charter. In case of the absence, disability or suspension of the Town Manager, the Mayor and Council may designate some other competent person to perform the duties of the office during such absence, disability or suspension.

(2) The Town Manager shall be responsible to the Council for the proper administration of all affairs of the Town placed in his charge, and shall have such powers and duties and as shall be fixed from time to time by resolutions or by ordinances of the Council, provided that no such resolution or ordinance shall conflict with the powers and duties of any other officer of the Town duly elected by the voters thereof, during the time for which such other officer was elected.

(3) It shall be the duty of the Town Manager to collect water and sewer rents or charges for electric service and all other kinds of Town revenue and money from time to time due said Town. The Town Manager shall pay all monies collected by him to the Town Treasurer at least monthly. In addition to any other bond required by the Council, as provided in this Act, the Town Manager, before collecting any charges due the Town, shall be bonded by the Town of Kenton with sufficient surety to be approved by the Council in an amount determined by Council, conditioned for the faithful performance of the duties of his office pertaining to the collection of charges due said Town not later than the last day of each fiscal year, and oftener and at such other times as the Council may require. There shall be included in such bond the usual full warrant of attorney for confession of judgment in favor of the Town of Kenton for said penalty as determined by Council if the form of such bond makes the same expedient, at the discretion of the Council.

(4) The Town Manager shall, when so requested by the Council, submit his recommendations as to all other appointive officers or employees of the Town to be engaged in any branch of municipal activities over which the Town Manager shall then be in charge, and the Council may follow such recommendations or appoint other persons, as the Council deems for the best interest of the Town. All subordinate appointees and employees of the town shall be under the supervision of the Town Manager while engaged in any municipal activity which has been placed in the charge of the Town Manager. Dismissal of all such subordinate appointees and employees of the Town shall be vested in the Council, subject to the provisions of Section 6 (e) of this Charter as to appointed officers, and subject to such personnel policies as adopted by the Town as to other employees.

(5) It shall be the duty of the Town Manager to supervise the administration of the affairs of the Town placed under his charge, to make such recommendations to the Council concerning the affairs of the Town as may seem to him desirable; to keep the Council advised of the financial condition and needs of the Town insofar as his prescribed duties and powers

permit; to prepare and submit to the Council budget estimates at such times as the Council may designate; to prepare and submit to the Council from time to time such reports as they may request, and to perform such other duties as may be prescribed by this Act or by resolutions or ordinances of the Council. The Town Manager shall keep a full and strict account of all Town monies received by him and such accounts shall at all times be open to inspection by the Council, and he may be required to furnish bond at the expense of the Town, in addition to being bonded for the collection of taxes, in such amount and in such form and with such surety as the Council may prescribe and approve.

**(b) CHIEF OF POLICE:**

(1) The Council may appoint a Chief of Police who shall be the chief law enforcement officer of the Town of Kenton. He need not, when appointed, be a resident of the Town or of the State of Delaware, but shall, as a condition of his employment, become domiciled within a radius of the Town Hall as determined by Council, within six months of his appointment. No member of Council, shall during the term of office for which elected, be appointed to act as Chief of Police. The Chief of Police shall be appointed for an indefinite term and shall be removable at the pleasure of the Council, subject to his rights as an appointed officer as provided in Section 6 (e) of this Charter. In case of the absence, disability, or suspension of the Chief of Police, the Council may designate some other competent person to perform the duties of the office during such absence, disability, or suspension.

(2) The Chief of Police shall, with the approval of Council, secure and appoint the required number of competent personnel to properly staff and operate the Police Department of the Town of Kenton, of which he shall be the chief administrative officer.

**(c) DEPUTY TREASURER:**

The Council may appoint a Deputy Treasurer who shall conform in every respect to the Treasurer as regards his qualifications, term of office, oath of office, bond, and warrant of attorney. The Deputy Treasurer shall serve under the direction of the Treasurer and his authority to pay orders shall be limited to the authority specifically delegated to him in writing by the Town Treasurer; provided that whenever the Treasurer is unable to fulfill the duties of his office by reason of disqualification, illness, death, or extended absence from the State, the Deputy Treasurer shall assume all responsibilities and authority of the Treasurer.

**(d) COMPENSATION, REIMBURSEMENT:**

All appointive officers of the Town shall be paid such sums and receive such benefits, as determined by Council. Appointive officers shall be reimbursed for their actual and necessary out-of-pocket expenses as reasonably and necessarily incurred in the furtherance of their duties, subject to approval by the Council.

**(e) REMOVAL OF APPOINTED OFFICERS:**

(1) The Town Council shall have full power and authority, by a majority vote of all members, to remove at any time any of the appointed officers of the Town for cause.

(2) In such event such officer shall be entitled to an appeal and a hearing and final determination by Council. He shall receive a copy of the charges and at such hearing shall have the right to be heard in his own behalf, and may be represented by counsel, and Council shall hear witnesses and evidence as he may desire to present, relating to such charges prior to making a final determination of the case. Any such officer may be immediately suspended, with salary, pending such appeal hearing and the final determination of the case by Council.

(3) "Cause," for purposes of this Section, means one or more specific, articulable reasons which rationally support removal from office, as opposed to whimsical, or arbitrary and capricious motives. "Cause" does not have to rise to gross incompetence, malfeasance, misuse of office,

conviction of a crime, or other serious infraction to justify removal from office if the Town Council so agrees by majority vote.

#### Section 7. ASSESSMENTS: APPEALS

##### (a) ASSESSMENTS:

(1) It shall be the duty of the Assessor, to make a personal inspection of all taxable real property in said Town and to make a true, just and impartial valuation and assessment, at the true market value thereof, at the time the assessment is made.

(2) In addition to the elected Assessor, it shall be within the discretion of the Council to appoint a professional assessor to assist the Assessor in performing the duties of the office to which he was elected, but the assessor shall in all instances be responsible for making the final determination.

(3) The Assessor, in all years, shall make three copies of such assessment and return the same to Council not later than the first Council meeting in April of each year.

##### (b) ADDITIONS TO TAX BILLS:

The Town Council shall annually, prior to the posting of the assessment records, by resolution, list any and all charges, costs or other assessments owed to the Town, which list of charges incurred shall include, but not be limited to, the following: curb and gutter assessments, sewer and water charges and assessments, weed and grass cutting bills, past due electric charges and past due water rents. Said amounts, when adopted and set forth by resolution of the Council, shall be shown on the copies of the assessments posted pursuant to the provisions of Section 7 (c) of the Charter.

##### (c) ASSESSMENT APPEALS:

The Town council shall annually fix the sum to be assessed upon each and every citizen owning taxable real property within the limits of said Town, and the sum so fixed shall be one and the same for every class and description of citizens. The Council shall, after receiving the three copies of assessment from the Assessor as hereinbefore provided, and after assessing the real estate of the Assessor, cause two of the copies of the assessment to be posted in two such public and convenient places, as Council shall designate in said Town, where they shall remain for at least ten days prior to the first Monday in May for public inspection and hold a Court of Appeals, or Appeal Day, which shall be open from four o'clock P.M. until eight o'clock P.M. of said day at the Council's chambers in said Town, or at such other place as may be designated in the two copies of the assessment posted as aforesaid, at which time and place Council shall hear and determine appeals from the said assessment and may make such corrections, authorize such additions to or alterations in said assessment as Council determines to be proper. Council may adjourn the Court of Appeals to the following day if all appeals cannot be heard on the regular Appeal Day. Notice of the posting of said two assessment lists, and also at the same time, notice of the time and place of hearing appeals, shall be given by posting notices in at least three public places in the Town of Kenton and advertising at least once in a newspaper of general circulation in the Town at least ten days prior to the first Monday in May. The determination and decision of Council upon any appeal, or upon any matter relating to such assessment, shall be final and conclusive. No member of Council shall sit to hear his own appeal but such appeal shall be heard and determined by the other members of Council.

#### Section 8. TAXATION AND COLLECTION

##### (a) TAXATION:

###### (1) General Purposes; Bonds.

The Town Council of the Town of Kenton is hereby authorized to levy and collect from the taxable of said Town, according to the terms and provisions of this Act, and any other Acts not hereby repealed or made

inconsistent hereby, such sum of money as may be deemed by Council necessary and proper for the general municipal needs of said Town, which sum shall in no year exceed a sum of money in excess of one percent of the total assessed value of all the real estate subject to taxation in the Town. Provided however, that this limit on taxes for general Town purposes shall not limit or prohibit the council from levying and collection such further and additional taxes or sums of money in any year as may be necessary or expedient to pay the interest on the bonds of the Town of Kenton now outstanding, or authorized by legislative enactment, and such sum or sums deemed by Council to be necessary or expedient to retire such bonds when and as they become due or before they become due, and also such sum or sums deemed by Council necessary or expedient to create an adequate sinking fund reserve for the retiring of Town bonds either before or at the time they become due, and the Town Council is hereby granted full power and authority to levy and collect such additional taxes or sums of money in any year as it deems necessary or expedient for the aforesaid payments of interest on bonds, for the creation of such sinking fund reserves and for the retiring of bonds of said Town, whether such bonds be now outstanding, now authorized but not issued, and/or may be authorized and issued in pursuance of legislative enactment in the future.

(2) Special Tax by Town Meeting

That the citizens of the Town of Kenton may assemble in Town Meeting at the last Council Meeting in January in any year to determine whether any sum or sums additional to those hereinbefore mentioned shall be levied and collected for any specific purpose or purposes during that fiscal year: notice of which meeting, the day and place thereof and the special purpose and purposes for which additional sum or sums are desired to be raised having been published in a newspaper in general circulation in Kent County, in at least two issues preceding the time set for said Town meeting. At said meeting a resolution or resolutions in writing shall be offered, stating explicitly the additional sum or sums needed or desired, and the specific purpose or purposes to which the said sum or sums shall be applied. At said meeting every resident and non-resident taxable of said Town, having paid all taxes assessed to them and due and payable at the time of said Town meeting shall be entitled to vote and shall have one vote for each dollar, or fractional part of a dollar, of taxes paid by him according to the last assessment in the Town.

It shall be the duty of the Town Treasurer to be present at the meeting with the tax and assessment records of his office and to inform the voters and the officers of the meeting the number of votes the respective voters are entitled to cast and his records in this respect shall be official and final. The qualified voters as aforesaid, present at the Town meeting, shall then proceed to vote "yes" or "no" by ballot upon said resolution or resolutions and the result for or against the resolution or resolutions shall be certified to the Secretary of the Town Council within three days after the said Town meeting by the persons chosen by the qualified voters present at the Town Meeting as Chairman and Secretary of the Town meeting and, if a majority of the votes cast at the Town meeting shall be in favor of said resolution or resolutions, then the Town council shall levy and collect said additional sum or sums and apply the same for the purpose specified, the residue shall be carried into the general fund or Treasury of the Town for general Town purposes but if a majority at the Town meeting be against the Resolution or resolutions, the Town Council shall not levy and collect said proposed additional sum or sums. The authority for such additional taxes as above provided for, shall only apply to and be effective for the fiscal year in which the Town meeting is held and the additional taxes are approved. The monies arising from any additional taxes, approved and levied as aforesaid, need not all be expended by Council during the fiscal year they are authorized if the purpose or purposes approved by the Town meeting have not been completed, but the Council must completed the specified works as soon as practicable.

(b) LEVY:

(1) After the said valuations and assessment shall be examined, adjudged and approved by Council as provided in Section 7, all taxes shall be levied, assessed and raised on taxable real property thus valued and assessed, in just and equal proportions and rates.

(2) The Town Council of said Town after having ascertained and determined the sum necessary and proper to be raised from the taxable of said Town, and after having apportioned the same on the assessment and valuation aforesaid, shall annually, not later than the fifteenth day of May in each year, cause to be delivered to the Town Treasurer a list of assessment containing the names of taxables, the name of each taxable, the amount of real estate, and the taxes on the whole valuation and assessment and the rate per hundred dollars thereof. Such list or assessment shall include the list and all charges, costs, or other assessment owed to the Town, including but not limited to curb and gutter assessments, weed and grass cutting bills, past due electric charges, and past due water rents.

(3) The list or assessment, with the warrant for collection of the taxes assessed, shall be approved by Council and shall be signed by the Secretary of Council.

(4) The Town Treasurer immediately after receiving said list and warrant, shall proceed to collect the taxes as written and contained in said list and in collecting the same shall have all of the power conferred by law on the receiver of Taxes in Kent County by virtue of the Laws of Delaware now in force or hereafter enacted. In the collection of said taxes, the Council of said Town shall authorize and order the Town Treasurer to deduct six percentum (6%) from the amount of the tax assessed against property of any taxable who will pay such tax by the first day of June, next following the assessment of the said tax, and to add to the amount of the tax assessed against the property of any taxable to be paid after the last day of September in the year in which the assessment and warrant shall be delivered to him, a penalty at the rate of one and one half (1 1/2) percentum (1 1/2%) per month until same shall be paid, which penalty shall also apply to any additional charges added to the tax bill pursuant to Article 8 (b).

(c) COLLECTION:

(1) Attachment for Taxes

In addition to the powers hereinafter given to the Treasurer for the collection of the Town taxes, it shall be and may be lawful for such Town Treasurer, on and after October first in each year and after demand made by him upon the person against whom the taxes may be assessed, for the payment of the tax assessed, and the failure of said taxable to pay the same on demand, to give written notice to any person or persons residing in the State of Delaware, whom the Treasurer may believe to have in his, her or their possession, goods, chattels, rights, credits, monies or wages belonging to or owing to said taxable, stating the amount of taxes due from said delinquent taxable and if the person served with notice as aforesaid shall refuse or neglect for thirty days after such notice to file a statement with the Treasurer giving in detail the goods, chattels, rights, credits, monies, or wages in his hands belonging to said delinquent taxable, or any he has, or had at the time of such notice, and to deliver the same to the Town Manager, or to pay into the hands of the Town for taxes due and owing to said Town from said delinquent taxable, and all costs incurred in and about the collection of taxes due said Town for said delinquent taxable, the Treasurer may proceed by suit in the name of the Town of Kenton, before any Justice of the Peace in the Town of Kenton, or if there be none in said Town, a Justice of the Peace elsewhere in the state, against any person notified as aforesaid and failing as hereinbefore provided, and may recover against him, her or them a judgement for the amount of the Town taxes due from said delinquent taxable and all costs. The costs shall be fixed by the Justice of the Peace hearing the case and shall conform, as nearly as may be, in amount to fees in cases now cognizable before a Justice of the Peace. The costs for serving the written notice shall be the same as now provided by law in cases of attachment. The oath of the Treasurer shall be sufficient evidence of the demand on the taxable, and the service of notice upon and the refusal or neglect of the person, in

whose hands were supposed to be goods, chattels, rights, credits, monies, or wages of such delinquent taxable.

(2) Tax Lien

The provisions of Title 9, Chapter 87 of the Delaware Code shall be deemed and held to apply to all taxes laid and imposed under the provisions of this Charter except that the lien for Town taxes as prescribed in §8705 (d) of said Chapter 87 shall remain a lien for a period of ten years from the date prescribed by this Charter for the delivery of the assessment or duplicate thereof to the Treasurer.

Section 9. EXEMPTION FROM TAXATION; MANDATORY EXEMPTIONS

(a) EXEMPTION FROM TAXATION:

The Town Council of the Town of Kenton shall have the power and authority to exempt, by ordinance or resolution, such real property from the Town's property tax as, in the opinion of the Council, will best promote the public welfare, including without limitation, the following:

(1) Newly Annexed Territory.

The Town Council of the Town shall have the power by an ordinance or by resolution to relieve, release, exonerate and exempt from taxation or reduce the rate of taxation for all or part of any real property hereinafter annexed as a part of the Town of Kenton; provided however, that the real property so annexed or any part thereof shall be taxed at the established rate for taxation upon the application for and the granting of a building permit and/or transfer of ownership of any lot or lots from any owner or owners at the time of annexation.

(2) Manufacturers Employing Six or More Persons; UtilitiesThe Town Council of said Town Shall have power by an ordinance, or by a resolution, to relieve, release, exonerate and exempt the real property of any person, firm association or corporation used in any manufacturing business within the limits of said Town and employing not less than six persons; and the real property of any person, firm, association or corporation used in the manufacture or distribution or both, of water, gas, electric current or other service or commodity deemed desirable or necessary for the best interests of the inhabitants of said Town, and the real property held, owned, leased or employed by any person, firm, association, or corporation with whom Council may now or in the future have a contract for the furnishing to said Town and its inhabitants of electric current, light, power, heat, water, or any or, all of them, from any assessment of taxes for Town purposes or other taxes over which Council has power or authority and from the payment of the same. No property shall be exempt from taxation under this subsection until such an ordinance is enacted or such a special resolution adopted and the period of such exemption shall be only such as is set forth in said ordinance or resolution, and shall not be in excess of ten years and shall only be revokable upon the breach of a condition contained in such ordinance or resolution.

(b) MANDATORY EXEMPTIONS:

Property belonging to the State of Delaware, or to the United States, or to any County of the State of Delaware, or owned by any municipality of the State of Delaware, and held for public use, or any college or school used for educational or school purposes, or any corporation created for charitable purposes and not held by way of investment, shall not be liable to taxation and assessment.

Section 10. FINANCES

(a) FISCAL YEAR. ANNUAL STATEMENT:

The fiscal year of the said Town shall begin with the first day of January in each year and shall end with the next succeeding thirty-first day of December. The Town Council shall cause a full and correct annual statement of the receipts and disbursements of all Town monies for the

fiscal year next preceding, to be published in a newspaper published in the Town of Kenton, or if there is none, one published in Kent County, at least once not more than two weeks and not less than one week prior to the annual Town election.

(b) USE OF TOWN MONEY:

The Town Council of said Town shall have full power and authority to use the money in the Treasury of said Town, or any portion thereof, from time to time, for the improvement, benefit, protection, ornament and best interests of the said Town, as Council may deem proper, and to use Town money to accomplish and carry into effect all acts and things which it has power to do by virtue of the Laws of Delaware, this Act and all lawful ordinances and resolutions of Council.

(c) TOWN BONDS AND NOTES:

(1) The Town Council of the Town of Kenton shall have full power and authority to borrow, upon the faith and credit of the Town of Kenton, a sum or sums of money not exceeding one and one-half percent (1 1/2%) of the Town's total taxable assessed property value in any one fiscal year, not to exceed a total of six percent (6%) of total assessed value, when in the opinion of the majority of Council the needs of the Town demand it. The Town Council may secure such sum or sums of money by promissory note or notes, or certificates of indebtedness of the Town of Kenton duly authorized by resolution of Council, and signed by the Secretary, and by the Mayor, with or without the corporate seal of the Town affixed in accordance with the request of the persons or corporation advancing the money on said notes or certificates, and no officer or member of council shall be personally liable for the payment of such notes or notes, because of his signature as an officer of the Council, his membership in Council or his approval of the authorizing resolution. Provided, however, that any sum of money borrowed by the Council on the full faith and credit of the Town of Kenton as aforesaid shall be repaid in full, together with all interest and charges thereon, within a period not to exceed ten (10) years and shall be repaid in equal annual installments out of the General Funds of the Town.

(2) This provision in no way shall be interpreted to apply to the right of the Council to submit to the voters for their approval capital improvement projects to be financed by long term bonds issue, the sale of bonds to be in accordance with the established procedures required in connection with same.

Section 11. STREETS:

(a) The Town Council shall have power and authority to ascertain, locate, lay out and open new streets and to widen and to alter existing streets or parts thereof, and to vacate or abandon streets or parts thereof, whenever they shall deem it in the best interests of the said Town. The procedure in every case as aforesaid shall be as follows: The said Council shall, by a majority vote, adopt a resolution favorable to the opening of the new street, or to the widening or altering of a street, or to the vacating or abandoning of a street, or any part thereof, as the case may be and giving a general description of the street to be opened or widened, or altered, or of the street or part thereof to be vacated or abandoned, as the case may be. The said resolution shall also state the day, hour and place when the said Council will sit to hear objections and to award just and reasonable compensation to anyone who will be deprived of property. A copy of such resolution shall be posted in three or more public places in the said Town at least five days before the day fixed for the hearing aforesaid.

(b) At the time and place fixed in the said resolution, the Council shall hear such residents of the Town, or owners of the property affected as shall attend, and Council shall at said meeting, or at a subsequent day, as it shall deem proper, adopt a resolution, by majority vote, to proceed with, or to abandon, as it shall deem in the best interests of the Town, the opening of the new street or streets, or the widening, altering, vacating or abandoning of the existing street or streets, or parts thereof as the case may be. In case the determination of the Council shall be to proceed with the plan contemplated by the resolution Council shall award



just and reasonable compensation to anyone who will be deprived of property in consequence thereof. Such compensation, if any be awarded, shall be paid by the Treasurer of the Town, on a warrant drawn on him by authority of the Council upon delivery of a Deed in fee simple in favor of the Town of Kenton, free and clear of all liens and encumbrances. If anyone who will be deprived of property as aforesaid is dissatisfied with the compensation awarded by the Council he may within (5) days after the award of Council as aforesaid, appeal from such award by serving written notice to that effect on the Secretary of Council. In order to prosecute said appeal such appellant shall within five days, after the expiration of the five days allowed for the appeal as aforesaid, apply to the Superior Court for the State of Delaware in Kent County for the appointment of appraisers to hear and determine the matter of compensation to such appellant for any property of which he will be deprived, and thereupon the Superior Court shall issue a commission directed to three impartial appraisers of Kent County, commanding them to determine and fix the damages which the appellant will sustain by reason of being deprived of any property taking into consideration the benefits or advantages that will enure to the appellant from the new street or otherwise, and to make return of their findings to the Court at a time appointed in the commission. The appraisers shall give notice of the day, hour and place when they will view the premises and to assess the damages, if any. Such notice shall be served upon the appellant personally, and by posting a copy on the premises affected at least five days before the day when they are to view the premises and a copy of such notice shall also be served on the Secretary of Council at least five days before the day of such viewing.

(c) The appraisers named in such commission being first sworn or affirmed on the day and at the hour and place stated in the notice, shall view the premises and hear the appellant and his witnesses and the Council and its witnesses, and shall without delay, determine and fix the damages, if any, which the appellant will sustain by reason of being deprived of any property. Thereupon and without delay the appraisers shall make return in writing of their determination to the Court which shall cause the return to be delivered to the Secretary of Council and such return shall be final and conclusive. The Superior Court shall have power to fill any vacancy among the appraisers. After the amount of damages has been determined by the appraisers, the Council may pay or tender the same to the person or persons entitled thereto, within one month after the same shall be finally ascertained or may deposit the same to his or her credit in any Bank in the Kent County to the credit of the person or persons entitled thereto within thirty (30) days, and thereupon the Council may carry into effect the plan contemplated in their resolutions. If the damages determined by the appraisers exceed the compensation awarded by Council or if Council decides not to take the land, the costs of the appeal shall be paid by the Treasurer of the Town out of Town monies, but if the damages do not exceed the compensation awarded by Council, the costs of the appeal shall be paid by the party appealing. The fees to the appraisers shall be set by the Court and shall be taxed as part of the costs. After the damages are determined by the appraisers, Council shall have the option of paying the damages assessed within thirty (30) days or upon the payment of the costs only, may abandon the proposed improvements.

(d) Whenever the land or included in any street, or part thereof, is vacated or abandoned and is owned by the Town, the Council may, in its discretion, sell such land at public sale and for such consideration as the Council shall deem proper, and shall have the right and power to convey to the purchaser thereof a good and sufficient title thereto for whatever estate the said Town may have therein.

(e) The word "street" shall be deemed to include sidewalks, lanes and alleys for all the purposes of this Section.

## Section 12. PAVING, GUTTERING, CURBING

(a) The Council shall have the power to pave or repave the sidewalks of the Town, or any part or portion thereof, and shall have power to have existing curbs or gutters, or both, repaired or relayed, or new curbs or gutters, or both, constructed, or any part or portion thereof, in the Town. Prior to exercising this power, the Council shall adopt an ordinance or resolution stating that on a date and time certain the Council will meet to consider the question of paving or repaving the sidewalks or repairing

existing curbs or gutters, or both, or altering existing curbs or gutters, or both, according to the stated specifications on a named street in front of the property of named owners, and of assessing the cost thereof against such owners. The ordinance or resolution shall be published at least one week prior to the meeting in a least one issue of a newspaper published in Kent County. The Council shall hold a meeting accordance with the ordinance or resolution and shall hear the owners of property and other residents of the Town on the questions referred to in the ordinance or resolution.

(b) After such hearing, the Council, shall decide whether or not to proceed with the improvements referred to in the ordinance or resolution, and if it shall decide to proceed, it shall determine whether the whole or some specified proportion of the cost of the improvements in front of the real property of the owner or owners named in the ordinance or resolution shall be borne by said owners. If Council shall determine that the whole or the specified proportion of the cost shall be borne by the owners, then and in such case the owners shall be compelled to pay the whole or the specified proportion of the cost be borne by the owners, as the case may be, the amount to be paid by the owner of each parcel of property affected to be determined by the lineal frontage of the parcel on the sidewalk to be paved or repaved, or on the gutter to be repaired or laid, or on the curb to be repaired or constructed of any or all of the improvements, as the case may be.

(c) When the paving or repaving, curbing or recurbing, guttering or reguttering, or any of all of them, have been done and the cost determined, Council shall ascertain the amount that the owner of each parcel of property shall pay and shall give written notice to such owner, or one of the co-owners, by mailing the same to his last known address. If any owner shall fail to pay the specified amount within thirty days after the mailing of such notice, the same may be collected by the sale of his real property. Such sale shall be conducted by the Sheriff of Kent County who shall advertise the parcel of real property for sale in at least two issues of a newspaper published in Kent County, before the day of sale and shall post three such notices in the Town at least ten days before the day of sale. Such advertisements shall give a description of the parcel to be sold, and shall state the day, hour and place in the Town at which the sale will be held.

(d) Unless a sum of money, for the payment of which the said parcel is to be sold, together with the Sheriff's cost and the cost of advertisements of the sale, shall be paid prior to the sale, the real property shall be sold by the Sheriff of Kent County at public sale on the day and at the hour and place named in the advertisements for the sale to the highest and best bidder for the same.

(e) Upon payment to the Sheriff of the price for which the property is sold at sale, a deed of the property shall be executed in the name of the Town of Kenton by the Mayor and attested by the Secretary of Council and bearing an imprint of the corporate seal of the Town of Kenton and delivered to the Purchaser. Such deed shall vest in the purchaser the same estate or interest in the property sold as the owner or owners of the parcel at the time of the sale had, subject to the same liens and encumbrances of record against the property at the date of the first appearance of the newspaper advertisement of its sale.

(f) The money paid to the Town Treasurer by the Sheriff as the price of the property sold shall be distributed as follows:

(g) The Town Treasurer shall first deduct the costs of sale which shall include the cost for the advertisements of the sale, the charges of an auctioneer, and all other expenses incident to the sale and also ten percentum (10%) of the amount that the owner of the property had failed to pay for the cost of the improvements, which ten percentum (10%) shall be paid to the Sheriff as his fee for the sale.

(h) The Town Treasurer shall then deduct the amount that the owner of the property had failed to pay to the Town, and shall pay the same so deducted into the Town Treasury.

(i) Any balance remaining shall be paid by the Town Treasurer to the person or persons who were the owners of the property sold or if this be

not possible for any reason, he shall deposit said balance to their credit in any bank in Kent County.

(j) the word "Owner" as used in this Section shall be deemed to mean the person or persons who owned the property in question at the time of the adoption or passage of the ordinance or resolution first in this Section referred to, and any change of ownership thereafter shall not be deemed or held to affect any of the steps or proceedings mentioned in this Section.

(k) The deed of the property shall recite briefly the amount that the owner had failed to pay to the Town, the advertisements and notice of sale, the holding the sale, the amount of the successful bid, and the amount of costs of the sale.

(l) Council shall have power and authority to pave, repave, gutter or regutter, curb, or recurb, or any or all of such improvements, in the Town at the entire expense of the Town and may use Town money for such purposes, whenever it deems it wise so to do, and in such event no notice to property owners or others shall be required, provided, however, that where the entire cost is to be paid by the Town, the Council shall adopt a resolution authorizing such improvements and particularly stating the specific reasons the Town is to bear the entire cost thereof.

#### Section 13. CONSTRUCTING, PAVING AND REPAIRING OF STREETS

The Town Council of the Town of Kenton shall have full power and authority to regrade, redress and otherwise repair and rebuild all existing streets, lanes, alleys and other public thoroughfares in the Town of Kenton, to construct, build, pave and in any manner improve all new and existing streets, lanes, alleys and other public thoroughfares for public use in the Town, and in so doing shall use such materials and substances and such methods of construction and shall employ such contractors, engineers, inspectors and others as the Council shall deem expedient and may use different materials and different methods of construction on different streets or on different parts of the same street, as Council deems advisable. For the purpose of this Section, Council shall have full power and authority to expend general funds of the Town not otherwise appropriated.

#### Section 14. WATER SYSTEM

The Town Council is hereby vested with full power and authority to provide for the Town of Kenton an ample supply of pure water and to purchase, lease, erect, construct, maintain, operate and control wells, reservoirs, pumping stations, water mains, fire hydrants, and all other instruments for the collection, storage, purification, conveyance and distribution of water on, over, under or through the lands of any person. The Council shall have the power and authority to make contracts for the purchase of water with any responsible persons, firms, or corporations and to distribute the same to users within or without the Town with the same full powers as if such water had been produced by the Town. The Council shall have power to enact ordinances, rules and regulations in regard to the use of public or private purposes of water furnished by the Town, and the amounts to be paid by the users thereof, and to fix fines or penalties, or both, for any wilful or negligent injury or damage to, or interference with the water system of the Town. The Council may, at its option, furnish water from the Town system to places and properties outside the Town limits upon such special terms, charges and conditions as it shall deem wise.

The Council may, by condemnation proceedings, take private land, or the right to use private land, land, under, over or on the surface thereof, for the proper operation or extension of the water system. The proceedings by condemnation under this Section shall be the same as prescribed by Section 11 of this Act for the opening and laying out of new streets, and the resolutions referred to in Section 11 shall be changed and modified to cover the cases contemplated by this present Section.

#### Section 15. SEWER SYSTEM.

The Town Council is hereby vested with full power and authority to provide construct, extend, maintain, manage and control a sewer system and or a sewage treatment and disposal plant and facilities for the health, sanitation and convenience of the inhabitants of the the Town, on, over, under or through the

lands of any person. The Council shall have power to enact ordinances, rules and regulations regarding the sewers and the sewer system of the Town and the use thereof, and the amounts to be paid by the users thereof, and to fix fines or penalties, or both, for any wilful or negligent injury or damage to or interference with the said sewers or sewer system of the Town. The Council may, at its option, furnish sewer facilities to places and properties outside of the Town limits upon such special terms, charges and conditions as it shall deem wise. The Council may require any property in the Town, for which there is an available sewer, to be connected with the sewer system and may compel the owner of such property to pay the cost of such connection and the tapping fee thereof, as provided in Section 12 of this Act. The Council shall have power to make contracts for the maintenance, operation, management and control of the Town's sewer system with any responsible persons, firms, or corporations.

The Council may, by condemnation proceedings, take private land, or the right to use private land, under, over or on the surface thereof for the proper operation or extension of the sewers and sewer system of the Town. The proceedings by condemnation under this Section shall be the same as prescribed by Section 11 of this Act, for the opening and laying out of new streets, and the resolutions referred to in Section 11 shall be changed and modified to cover the cases contemplated by this present Section.

#### Section 16. ELECTRIC CURRENT, POWER PLAN, FRANCHISES

The Town Council of the Town of Kenton shall have full power and authority to erect, construct, equip, maintain and operate a plant or plants for the generating and manufacture of electric current for the use of the inhabitants of the Town and for lighting of streets, squares, lanes, alleys and public buildings of the Town. The Council shall have power to make contracts for the purchase of electric current with any responsible persons, firms or corporations and to distribute the powers as if such electric current had been generated or manufactured by the said Town as herein expressly provided for by this Act. Council shall grant to all persons in the Town the privilege of using the electric current conveyed and distributed by the Town in such manner and on such terms and conditions and at such rates and for such amounts as to the Council may deem just and proper and shall enact ordinances relating to electric current, its generation and distribution in Town and its general management and control as to Council shall from time to time seem most expedient. The Council may at its option transmit electric current from Town to places and properties outside of the Town limits upon such terms, charges and conditions as it shall deem wise.

The Town Council shall also have full power and authority at any regular or special meeting, by a majority vote, to enact ordinances or adopt resolutions granting franchises to any responsible person, firm, association or corporation, and for such terms of years as shall seem wise to Council, to use the present and future streets, squares, alleys and lanes of the Town for purpose of furnishing electric power or current, gas or water, or any or all of them, to Town and to the persons, firms or corporations residing therein and for the purpose of transmitting electric power or current, gas and water, or any or all of them, through, over, across or under said streets, squares, alleys and lanes to points outside of the limits of Town; any such franchise or franchises to contain such restrictions, conditions and stipulations as shall to Council seem wise; and Council, by a majority vote, at any regular or special meeting, shall also have full power and authority to enter into contracts with any responsible persons, firms, associations or corporations for the furnishing of electric power or current, gas or water or any or all of them, or for the furnishing of electric current either at wholesale or retail to Town and to persons, firms and corporations residing therein, or adjacent thereto.

The Council, by a majority vote, is hereby authorized and empowered in its discretion to sell and convey or lease to any responsible persons, firms, associations or corporations any or all real or personal property, or both, now or hereafter owned by the Town and used for generating or furnishing electric power, electric current, or water or any or all of them, and execute to the purchaser proper deed or bills of sale or other legal assurance of title for the same. Provided, however, that before Council sells or conveys any of the real or personal property for any sum in excess of twenty-five thousand dollars now or hereafter owned by the Town and used for generating or furnishing electric power, water or electric current, or any or all of them a

special election shall be held in the same place and in the same manner as other Town elections in the Town. Notice of the election shall be given by advertisements in a newspaper published in Kent County, at least ten days before the election, and by posting notices in at least three public places in the Town at least three days before the election, which advertisement and notices shall state the time and place of the election and a general description of the property proposed to be sold. At the election every taxable paying Town taxes in the Town shall be entitled to vote and shall have one vote for each dollar or fractional part of a dollar of taxes paid by said taxable according to the last assessment in Town. Residence shall not be a qualification to vote at said election.

#### Section 17. DRAINAGE

The Town Council of the Town shall have the full jurisdiction and control within the limits of the Town of the drainage, and the right to alter and change the course and direction of any of the natural water courses, runs or rivulets within the Town, and may pass ordinances for the opening of gutters, drains, and sewers within Town and the regulating and maintaining, cleaning and keeping the same and the natural water courses, runs and rivulets within the the Town open, clean and unobstructed, and for that purpose may authorize the entry upon private lands, and take, condemn and occupy the same in the same manner and by the same condemnation proceedings as hereinbefore provided in case of the water and sewer systems of the Town and as prescribed by Section 11 of this Act for the opening and laying out of new streets. The resolutions referred to in said Section 11 shall be changed and modified to cover the cases contemplated by this present section.

#### Section 18. OBSTRUCTIONS, NUISANCES AND UNSANITARY CONDITIONS

The Town Council shall have power and authority to enact ordinances or adopt resolutions to define, prevent, abate and remove all obstructions, nuisances and unsanitary or unsafe conditions at any time existing whether in the streets, squares, lanes or alleys, or on the sidewalks or in any other public or private place within the Town either on its own inspection or upon the written complaint of any citizen of Town, stating the character and location of the obstruction, nuisance, unsanitary or unsafe condition, and signed by the citizen making the complaint. If a majority of Council, upon inspection, shall determine that such obstruction, nuisance, unsanitary or unsafe condition exists and ought to be removed or abated, Council shall enact an ordinance or adopt a resolution, or both, appropriate to the contemplated or existing condition, or to the person who is responsible for its existence or continuance, to remove or abate the same. If such person refuses or neglects for two days after such notice is received to remove or abate the stated condition, Council shall have power and authority to cause such obstruction, nuisance, unsanitary or unsafe condition to be removed or abated; and for this purpose Council may issue a warrant in the name of the Town of Kenton, under the name of its Mayor, or Vice-Mayor, and the seal of the Town, and directed to any peace officer or building inspector, commanding him forthwith to remove or abate such obstruction, nuisance, unsanitary or unsafe condition, whereupon the officer or inspector to whom said warrant is delivered shall forthwith proceed to remove or abate the same and for such purpose he shall have full power and authority to enter into and upon any lands and premises in the Town and to take with him such assistants, implements, carts, wagons, automobiles, trucks, or other things, as may be necessary and proper and to do and perform all matters and things right, proper and necessary to be done for the removal or abatement of the obstruction, nuisance, unsanitary or unsafe condition. The costs of all the necessary work, labor and proceedings of the Town in the removal or abatement of the obstruction, nuisance, unsanitary or unsafe condition shall be determined by Council upon the completion of the work, and if such amount is not paid to the Treasurer of the Town, by the person causing or responsible for such obstruction, nuisance, unsanitary or unsafe condition, within ten days after a bill stating the amount of such costs is presented to such person at his last known address, then Council may proceed to collect the same out of the goods and chattels, lands and tenements of such person and it shall be the duty of Council to issue a warrant in the name of the Town of Kenton under the hand of the Mayor, and the seal of the Town, directed to a Justice of the Peace, commanding him that of the goods and chattels, lands and tenements of such person he shall cause to be levied and made the amount of such bill together with all costs. It shall be the duty of the Justice of the Peace as soon as convenient thereafter, and after ten days written notice to such

person deposited in the mails and directed to such person at his last known address, and after posting three or more notices of sale in at least three of the most public places in Town at least ten days before the day of sale, to first sell the goods and chattels of such person at public sale in Town, or so much as may be necessary to pay the amount of the bill with all costs. If no goods or chattels of such person or persons can be found in Town, or the goods and chattels found and sold are not sufficient to satisfy the amount of the bill with all costs, then it shall be the duty of the Justice of the Peace, after further notice of ten days, given to said person or persons in the same manner, and after posting three or more notices of sale in at least three of the most public places in said Town, for at least ten days before the day of sale, and after causing the notice of sale to be published once in a newspaper published in Kent County, to sell the lands and tenements of such person, or so much thereof as may be sufficient to satisfy the amount of bill and all costs, and a deed from the Justice of the Peace shall be made and shall convey to the purchaser of such lands and tenements as full and complete title, in fee simple or lesser estate, as if the same were executed by the person or persons whose lands and tenements were sold. The claim for the expense of the Town in removing or abating such obstruction, nuisance, unsanitary or unsafe condition, and all costs, shall be a lien on the premises where such obstruction, nuisance, unsanitary or unsafe condition exists and shall relate back to the time when the first notice to remove or abate shall have been served upon such person or persons and shall have priority over any lien, encumbrance or conveyance made by such person after the mailing of the notice. It shall be the duty of the Justice of the Peace out of the purchase money from the sale of goods and chattels, or lands and tenements, to pay all costs arising from the proceedings and sale to the parties entitled to such costs and to retain and pay to the Town Treasurer, for the use of the Town, the amount of the bill to the Town. The residue of said purchase money, if any, shall at once be deposited in a bank in Kent County to the credit of the owner of said goods and chattels, or lands and tenements. Any notice required by this Section to one co-owner shall be notice to all, and in case no owner shall reside in the town, written notice deposited in the mail in a sealed envelope and addressed to such owner at his last known address shall be deemed proper notice. Council shall have power and authority to enforce, by ordinance, all the requirements of this Section by imposing such fines and penalties as shall in the judgment of Council, be necessary and proper which shall be in addition to the expenses and costs of removal or abatement. For all the purposes of this Section, any property, whether a dwelling, storehouse, or both, or otherwise, which does not have proper connections with the sewer system of the Town, if such sewer connections are available for the property, shall be deemed to be in a unsanitary condition under the meaning of this Section, at the discretion of the Council.

#### Section 19. POLICE AND JAIL

##### (a) Police

The Council may establish a Police Department.

It shall be the duty of the Police Department of the Town of Kenton to execute warrants issued by the Justice of the Peace and to enforce all proper laws of the State of Delaware and all ordinances, resolutions and orders of the Town; to suppress all riotous, turbulent, disorderly, noisy or unauthorized or unlawful assemblages or gathering of persons in or about any streets, lanes, alleys or other public or private places in the Town; to prevent and disperse all gatherings which may interfere with the free and unmolested use of any street, lane, alley or other public place in Town and to do all such lawful things, which are in the scope of the usual authority of a town police department for the preservation of good order, and the protection of the persons and property of all inhabitants of the Town. The Chief of Police appointed by the Council of the Town and each member of the police force of Town, shall be vested with the same power and authority in all cases of breach of the peace or violation of any laws of the State of Delaware or of any ordinance of the Town of Kenton, to preserve order, protect the property of the Town of Kenton and in any lawful manner carry out their duties as police officers at or on any property now owned or hereafter acquired by the Town of Kenton as if such act or acts had taken place within the corporate limits of the Town of Kenton.

##### (b) Jail

The Town Council of the Town shall have full power and authority to build, acquire, improve and maintain in the town a suitable place as a jail and any Justice of the Peace, acting under the provisions of this Act, or carrying into execution any judgment or sentence pronounced under his authority, or the authority of any ordinance or resolution adopted by virtue of the powers herein conferred, may commit to said jail, for any time not exceeding five days, and for want of such suitable jail, or, in the event it is deemed best for any reason in the discretion of the Justice of the Peace, to the Delaware Correctional Center near Smyrna. Council shall have power to pay and shall pay to the State of Delaware Department of Corrections or to such other person or body as is or may be hereafter named by law to receive the same such sums of money as is proper and lawful for the keeping of such Town of Kenton Prisoner in the Correctional Center.

#### Section 20. CONTRACTS TO BE ADVERTISED

(a) All contracts for street improvements, repairs, and extensions, for sewer repairs, extensions, and improvements, for repairs, improvements and extensions to the water system and electric lighting system, when the sum to be expended amounts to more than two thousand five hundred dollars (\$2,500) shall be let only to the lowest responsible bidder, upon and after competitive bidding has been asked by advertisements published at least once in a newspaper published in Kent County. Council shall have the right to reject any and all bids, for reasons which Council shall deem sufficient. Nothing in this Section or this Act shall require Council to submit to bidders nor to advertise any work or contract for labor or material, or both, desirable or necessary for the cleaning or maintenance of the sewer, water or electric systems or the streets of the Town.

(b) The Town Council shall at all times comply with the Delaware Professional Services Negotiation Act (29 Del. C., Chapter 69, Subchapter II) as it may be amended from time to time.

(c) Nothing in this Section shall require the Town Council to submit to bidders or advertise any work or contract for any legal services or for any other professional services not within the scope of the Delaware Professional Services Negotiation Act.

#### Section 21. Transitional Provisions; Separability;

##### (a) Transitional Provisions

The Act entitled "An Act to Incorporate the Town of Kenton" passed at Dover, 18 Del Laws 176, as amended, and the several Acts and parts of Acts therein and thereby repealed, all other Acts and parts of Acts inconsistent with or supplied by this Act are hereby repealed, and made null and void saving and excepting, however, from the effect of such repeal all Acts and the parts of Acts relative to the Town of Kenton, not inconsistent herewith or supplied hereby, and excepting, however, also from the effect of such repeal, and expressly declaring that all the ordinances, resolutions, orders, and regulations of the Town of Kenton, heretofore enacted or adopted, and now in force in pursuance of any law of this State, shall continue in full force and effect until expressly repealed, altered or amended by the Council of Town. All Acts and doings of the Council of said Town, or of any officers of Town, lawfully done or performed under the provisions of any law of this State or of any ordinance of the Council of Town, are hereby ratified and confirmed. All debts, fines or penalties and forfeitures due to the Town of Kenton, and all debts due from the Town of Kenton to any person or to any firm, association or corporation, are hereby declared to be wholly unaffected and unimpaired by this repeal and all laws of this State for the collection and enforcement thereof shall continue in full force until the same shall be fully paid and discharged. All powers conferred by law upon the Town Treasurer for the collection of taxes in the Town heretofore assessed and uncollected shall continue in full force and effect until all taxes shall be fully collected and paid, and the official bonds of Town Treasurer and of all other bonded officers and employees of Town, shall be unaffected and unimpaired by this repeal, and they and their sureties therein shall continue liable for any breaches of any conditions of the bonds. All proceedings heretofore commenced for the collection of any penalty, fine forfeiture or debt due to the Town, under any law or ordinance, shall not be affected or impaired by this repeal, but may be

prosecuted to judgment and execution until the sum be fully paid, liquidated and discharged. Those persons holding an elective office in the Town of Kenton shall continue in office, notwithstanding this repeal, until their successors are duly elected and qualified, and those persons holding an appointive office shall continue in office under the terms of this Act.

Approved July 7, 1992.



## CHAPTER 325

## FORMERLY

## SENATE BILL NO. 151

AS AMENDED BY SENATE AMENDMENT NO. 2 AND HOUSE AMENDMENT NO. 1

AN ACT TO AMEND TITLE 18 DELAWARE CODE TO ADOPT AN INSURANCE HOLDING COMPANY SYSTEM REGISTRATION.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE

Section 1. Amend Title 18 Delaware Code by deleting Chapter 50 in its entirety, substituting the following in lieu thereof:

"Chapter 50. INSURANCE HOLDING COMPANY SYSTEM REGISTRATION

Section 5001. Definitions

As used in this Chapter, the following terms shall have the respective meanings hereinafter set forth, unless the context shall otherwise require:

A. 'Affiliate.' An "affiliate" of, or person "affiliated" with, a specific person, is a person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the person specified.

B. 'Commissioner.' The term 'Commissioner' shall mean the Insurance Commissioner, his deputies, or the Insurance Department, as appropriate.

C. 'Control.' The term 'control' (including the terms 'controlling', 'controlled by' and 'under common control with') means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement services, or otherwise, unless the power is the result of an official position with or corporate office held by the person. Control shall be presumed to exist if any person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing, ten percent or more of the voting securities of any other person. This presumption may be rebutted by a showing made in the manner provided by Section 5004(k) that control does not exist in fact. The Commissioner may determine, after furnishing all persons in interest notice and opportunity to be heard and making specific findings of fact to support such determination, that control exists in fact, notwithstanding the absence of a presumption to that effect.

D. 'Insurance Holding Company System.' An 'insurance holding company system' consists of two or more affiliated persons, one or more of which is an insurer.

E. 'Insurer.' The term 'insurer' shall have the same meaning as set forth in Section 102 of this Title, except that it shall not include agencies, authorities or instrumentalities of the United States, its possessions and territories, the Commonwealth of Puerto Rico, the District of Columbia, or a state or political subdivision of a state.

F. 'Person.' A 'person' is an individual, a corporation, a partnership, an association, a joint stock company, a trust, an unincorporated organization, any similar entity or any combination of the foregoing acting in concert, but shall not include any joint venture partnership exclusively engaged in owning, managing, leasing or developing real or tangible personal property.

G. 'Securityholder.' A 'securityholder' of a specified person is one who owns any security of such person, including common stock, preferred stock, debt obligations and any other security convertible into or evidencing the right to acquire any of the foregoing.

H. 'Subsidiary.' A 'subsidiary' of a specified person is an affiliate controlled by such person directly or indirectly through one or more intermediaries.

I. 'Voting Security.' The term 'voting security' shall include any security convertible into or evidencing a right to acquire a voting security.

#### Section 5002. Subsidiaries of Insurers

A. Authorization. Any domestic insurer, either by itself or in cooperation with one or more persons, may organize or acquire one or more subsidiaries as otherwise permitted under this Title. Such subsidiaries may conduct any kind of business or businesses and their authority to do so shall not be limited by reason of the fact that they are subsidiaries of a domestic insurer.

#### Section 5003. Acquisition of Control of or Merger with Domestic Insurer

A. Filing Requirements. No person other than the issuer shall make a tender offer for or a request or invitation for tenders of, or enter into any agreement to exchange securities or, seek to acquire, or acquire, in the open market or otherwise, any voting security of a domestic insurer if, after the consummation thereof, such person would, directly or indirectly (or by conversion or by exercise of any right to acquire) be in control of such insurer, and no person shall enter into an agreement to merge with or otherwise to acquire control of a domestic insurer or any person controlling a domestic insurer unless, at the time any such offer, request, or invitation is made or any such agreement is entered into, or prior to the acquisition of such securities if no offer or agreement is involved, such person has filed with the Commissioner and has sent to such insurer, a statement containing the information required by this Section and such offer, request, invitation, agreement or acquisition has been approved by the Commissioner in the manner hereinafter prescribed.

(1) For purposes of this Section a domestic insurer shall include any person controlling a domestic insurer unless such person as determined by the Commissioner is either directly or through its affiliates primarily engaged in business other than the business of insurance. However, such person shall file a pre-acquisition notification with the Commissioner containing the information set forth in 5003.1 thirty days prior to the proposed effective date of the acquisition. Failure to file is subject to Section 5003.1. For the purposes of this Section, "person" shall not include any securities broker holding, in the usual and customary brokers function, less than twenty percent of the voting securities of an insurance company or of any person which controls an insurance company.

B. Content of Statement. The statement to be filed with the Commissioner hereunder shall be made under oath or affirmation and shall contain the following information:

(1) The name and address of each person by whom or on whose behalf the merger or other acquisition of control referred to in Subsection (A) is to be effected (hereinafter called 'acquiring party'), and

(a) If such person is an individual, his principal occupation and all offices and positions held during the past five years, and any conviction of crimes other than minor traffic violations during the past ten years;

(b) If such person is not an individual, a report of the nature of its business operations during the past five years or for such lesser period as such person and any predecessors thereof shall have been in existence; an informative description of the business intended to be done by such person and such person's subsidiaries; and a list of all individuals who are or who have been selected to become directors or executive officers of such person, or who perform or will perform functions appropriate to such positions. Such list shall include for each such individual the information required by paragraph (a) of this subsection.

(2) The source, nature and amount of the consideration used or to be used in effecting the merger or other acquisition of control, a description of any transaction wherein funds were or are to be obtained for any such purpose (including any pledge of the insurer's stock, or the stock of any

of its subsidiaries or controlling affiliates), and the identity of persons furnishing such consideration, provided, however, that where a source of such consideration is a loan made in the lender's ordinary course of business, the identity of the lender shall remain confidential, if the person filing such statement so requests.

(3) Fully audited financial information as to the earnings and financial condition of each acquiring party for the preceding five fiscal years of each such acquiring party (or for such lesser period as such acquiring party and any predecessors thereof shall have been in existence), and similar unaudited information as of a date not earlier than ninety days prior to the filing of the statement.

(4) Any plans or proposals which each acquiring party may have to liquidate such insurer, to sell its assets or merge or consolidate it with any person, or to make any other material change in its business or corporate structure or management.

(5) The number of shares of any security referred to in Subsection (A) which each acquiring party proposes to acquire, and the terms of the offer, request, invitation, agreement, or acquisition referred to in Subsection (A), and a statement as to the method by which the fairness of the proposal was arrived at.

(6) The amount of each class of any security referred to in Subsection (A) which is beneficially owned or concerning which there is a right to acquire beneficial ownership by each acquiring party.

(7) A full description of any contracts, arrangements or understandings with respect to any security referred to in Subsection (A) in which any acquiring party is involved, including but not limited to transfer of any of the securities, joint ventures, loan or option arrangements, puts or calls, guarantees of loans, guarantees against loss or guarantees of profits, division of losses or profits, or the giving or withholding of proxies. Such description shall identify the persons with whom such contracts, arrangements or understandings have been entered into.

(8) A description of the purchase of any security referred to in Subsection (A) during the twelve calendar months preceding the filing of the statement, by any acquiring party, including the dates of purchase, names of the purchasers, and consideration paid or agreed to be paid therefore.

(9) A description of any recommendations to purchase any security referred to in Subsection (A) made during the twelve calendar months preceding the filing of the statement, by any acquiring party, or by anyone based upon interviews or at the suggestion of such acquiring party.

(10) Copies of all tender offers for, requests, or invitations for tenders of, exchange offers for, and agreements to acquire or exchange any securities referred to in Subsection (A), and (if distributed) of additional soliciting material relating thereto.

(11) The term of any agreement, contract or understanding made with or proposed to be made with any broker-dealer as to solicitation of securities referred to in Subsection (A) for tender, and the amount of any fees, commissions or other compensation to be paid to broker-dealers with regard thereto.

(12) Such additional information as the Commissioner may by rule or regulation prescribe as necessary or appropriate for the protection of policyholders of the insurer or in the public interest. If the person required to file the statement referred to in Subsection (A) is a partnership, limited partnership, syndicate or other group, the Commissioner may require that the information called for by clauses (1) through (12) shall be given with respect to each partner of such partnership or limited partnership, each member of such syndicate or group, and each person who controls such partner or member. If any such partner, member or person is a corporation or the person required to file the statement referred to in Subsection (a) is a corporation, the Commissioner may require that the information called for by clauses (1) through (12) shall be given with respect to such corporation, each officer and director

of such corporation, and each person who is directly or indirectly the beneficial owner of more than ten percent of the outstanding voting securities of such corporation.

If any material change occurs in the facts set forth in the statement filed with the Commissioner and sent to such insurer pursuant to this Section, an amendment setting forth such change, together with copies of all documents and other material relevant to such change, shall be filed with the Commissioner and sent to such insurer within two business days after the person learns of such change.

C. Alternative Filing Materials. If any offer, request, invitation, agreement or acquisition referred to in Subsection (A) is proposed to be made by means of a registration statement under the Securities Act of 1933 or in circumstances requiring the disclosure of similar information under the Securities Exchange Act of 1934, or under a state law requiring similar registration or disclosure, the person required to file the statement referred to in Subsection (A) may utilize such documents in furnishing the information called for by that statement.

D. Approval by Commissioner: Hearings.

(1) The Commissioner shall approve any merger or other acquisition of control referred to in Subsection (A) unless, after a public hearing thereon, he finds that:

(a) After the change of control, the domestic insurer referred to in Subsection (A) would not be able to satisfy the requirements for the issuance of a license to write the line or lines of insurance for which it is presently licensed;

(b) The effect of the merger or other acquisition of control would be substantially to lessen competition in insurance in this state or tend to create a monopoly therein. In applying the competitive standard in this paragraph:

(1) The informational requirements of Section 5003.1(C)(1) and the standards of Section 5003.1(D)(2) shall apply;

(ii) The merger or other acquisition shall not be disapproved if the Commissioner finds that any of the situations meeting the criteria provided by Section 5003.1(D)(3) exist; and

(iii) The Commissioner may condition the approval of the merger or other acquisition on the removal of the basis of disapproval within a specified period of time;

(c) The financial condition of any acquiring party is such as might jeopardize the financial stability of the insurer, or prejudice the interest of its policyholders;

(d) The plans or proposals which the acquiring party has to liquidate the insurer, sell its assets or consolidate or merge it with any person, or to make any other material change in its business or corporate structure or management, are unfair and unreasonable to policyholders of the insurer and not in the public interest;

(e) The competence, experience and integrity of those persons who would control the operation of the insurer are such that it would not be in the interest of policyholders of the insurer and of the public to permit the merger or other acquisition of control; or

(f) The acquisition is likely to be hazardous or prejudicial to the insurance buying public.

(2) The public hearing referred to in clause (1) shall be held within thirty days after the statement required by Subsection (A) is filed, and at least twenty days notice thereof shall be given by the Commissioner to the person filing the statement.

Not less than seven days notice of such public hearing shall be given by the person filing the statement to the insurer and to such other persons as

may be designated by the Commissioner. The Commissioner shall make a determination within thirty days after the conclusion of such hearing. At such hearing, the person filing the statement, the insurer, any person to whom notice of hearing was sent, and any other person whose interest may be affected thereby shall have the right to present evidence, examine and cross-examine witnesses, and offer oral and written arguments and in connection therewith shall be entitled to conduct discovery proceedings in the same manner as is presently allowed in the Superior Court of this state. All discovery proceedings shall be concluded not later than three days prior to the commencement of the public hearing.

(3) The Commissioner may retain at the acquiring person's expense any attorneys, actuaries, accountants and other experts not otherwise a part of the Commissioner's staff as may be reasonably necessary to assist the Commissioner in reviewing the proposed acquisition of control.

E. Exemptions. The provisions of this section shall not apply to:

(1) Any transaction which is subject to the provisions of Chapter 49 of this Title dealing with the merger or consolidation of two or more insurers.

(2) Any offer, request, invitation, agreement or acquisition which the Commissioner by order shall exempt therefrom as (i) not having been made or entered into for the purpose and not having the effect of changing or influencing the control of a domestic insurer, or (ii) as otherwise not comprehended within the purposes of this Section.

F. Violations. The following shall be violations of this Section:

(1) The failure to file any statement, amendment, or other material required to be filed pursuant to Subsection (A) or (B); or

(2) The effectuation or any attempt to effectuate an acquisition of control of, or merger with, a domestic insurer unless the Commissioner has given his approval thereto.

G. Jurisdiction, Consent to Service of Process. The courts of this State are hereby vested with jurisdiction over every person not resident, domiciled, or authorized to do business in this state who files a statement with the Commissioner under this Section, and over all actions involving such person arising out of violations of this Section, and each such person shall be deemed to have performed acts equivalent to and constituting an appointment by such a person of the Commissioner to be his true and lawful attorney upon whom may be served all lawful process in any action, suit or proceeding arising out of violations of this Section. Copies of all such lawful process shall be served on the Commissioner and transmitted by registered or certified mail by the Commissioner to such person at his last known address.

#### Section 5003.1 Acquisitions Involving Insurers Not Otherwise Covered

A. Definitions. The following definitions shall apply for the purposes of this Section only:

(1) 'Acquisition' means any agreement, arrangement or activity the consummation of which results in a person acquiring directly or indirectly the control of another person, and includes but is not limited to the acquisition of voting securities, the acquisition of assets, bulk reinsurance and mergers.

(2) An 'involved insurer' includes an insurer which either acquires or is acquired, is affiliated with an acquirer or acquired or is the result of a merger.

B. Scope.

(1) Except as exempted in Paragraph (2) of this subsection, this section applies to any acquisition in which there is a change in control of an insurer authorized to do business in this state.

(2) This Section shall not apply to the following:

(a) An acquisition subject to approval or disapproval by the Commissioner pursuant to Section 5003;

(b) A purchase of securities solely for investment purposes so long as such securities are not used by voting or otherwise to cause or attempt to cause the substantial lessening of competition in any insurance market in this state. If a purchase of securities results in a presumption of control under Section 5001(C), it is not solely for investment purposes unless the Commissioner of the insurer's state of domicile accepts a disclaimer of control or affirmatively finds that control does not exist and such disclaimer action or affirmative finding is communicated by the domiciliary Commissioner to the Commissioner of this state;

(c) The acquisition of a person by another person when both persons are neither directly nor through affiliates primarily engaged in the business of insurance, if pre-acquisition notification is filed with the Commissioner in accordance with Subsection 5003.1(C)(1) thirty days prior to the proposed effective date of the acquisition. However, such pre-acquisition notification is not required for exclusion from this Section if the acquisition would otherwise be excluded from this Section by any other subparagraph of Section 5003.1(B)(2);

(d) The acquisition of already affiliated persons;

(e) An acquisition if, as an immediate result of the acquisition,

(i) In no market would the combined market share of the involved insurers exceed five percent of the total market,

(ii) There would be no increase in any market share, or

(iii) In no market would

-The combined market share of the involved insurers exceeds twelve percent of the total market, and

-The market share increases by more than two percent of the total market.

For the purpose of this Subparagraph (2)(e), a market means direct written insurance premium in this state for a line of business as contained in the annual statement required to be filed by insurers licensed to do business in this state;

(f) An acquisition for which a pre-acquisition notification would be required pursuant to this Section due solely to the resulting effect on the ocean marine insurance line of business;

(g) An acquisition of an insurer whose domiciliary Commissioner affirmatively finds that such insurer is in failing condition; there is a lack of feasible alternative to improving such condition; the public benefits of improving such insurer's condition through the acquisition exceed the public benefits that would arise from not lessening competition; and such findings are communicated by the domiciliary Commissioner to the Commissioner of this state.

C. Pre-acquisition Notification, Waiting Period. An acquisition covered by Subsection 5003.1(B) may be subject to an order pursuant to Subsection 5003.1(E) unless the acquiring person files a pre-acquisition notification and the waiting period has expired.

The acquired person may file a pre-acquisition notification. The Commissioner shall give confidential treatment to information submitted under this Subsection in the same manner as provided in Section 5007 of this Chapter.

(1) The pre-acquisition notification shall be in such form and contain such information as prescribed by the National Association of Insurance Commissioners relating to those markets which, under Subsection 5003.1(B)(2)(e), cause the acquisition not to be exempted from the provisions of this Section. The Commissioner may require such additional material and information as he deems necessary to determine whether the proposed acquisition, if consummated, would violate the competitive

standard of Subsection 5003.1(D). The required information may include an opinion of an economist as to the competitive impact of the acquisition in this state accompanied by a summary of the education and experience of such person indicating his or her ability to render an informed opinion.

(2) The waiting period required shall begin on the date of receipt of the Commissioner of a pre-acquisition notification and shall end on the earlier of the thirtieth day after the date of such receipt, or termination of the waiting period by the Commissioner. Prior to the end of the waiting period, the Commissioner on a one-time basis may require the submission of additional needed information relevant to the proposed acquisition, in which event the waiting period shall end on the earlier of the thirtieth day after receipt of such additional information by the Commissioner or termination of the waiting period by the Commissioner.

#### D. Competitive Standard.

(1) The Commissioner may enter an order under Section 5003.1(E)(1) with respect to an acquisition if there is substantial evidence that the effect of the acquisition may be substantially to lessen competition in any line of insurance in this state or tend to create a monopoly therein or if the insurer fails to file adequate information in compliance with Subsection 5003.1(C).

(2) In determining whether a proposed acquisition would violate the competitive standard of Paragraph (1) of this subsection, the Commissioner shall consider the following:

(a) Any acquisition covered under Subsection 5003.1(B) involving two or more insurers competing in the same market is prima facie evidence of violation of the competitive standards

(i) If the market is highly concentrated and the involved insurers possess the following shares of the market:

##### Insurer A Insurer B

4%	4% or more
10%	2% or more
15%	1% or more

(ii) or, if the market is not highly concentrated and the involved insurers possess the following shares of the market:

##### Insurer A Insurer B

5%	5% or more
10%	4% or more
15%	3% or more
19%	1% or more

A highly concentrated market is one in which the share of the four largest insurers is seventy-five percent or more of the market. Percentages not shown in the tables are interpolated proportionately to the percentages that are shown. If more than two insurers are involved, exceeding the total of the two columns in the table is prima facie evidence of violation of the competitive standard in Paragraph (1) of this subsection. For the purpose of this subparagraph, the insurer with the largest share of the market shall be deemed to be Insurer A.

(b) There is a significant trend toward increased concentration when the aggregate market share of any grouping of the largest insurers in the market, from the two largest to the eight largest, has increased by seven percent or more of the market over a period of time extending from any base year five to ten years prior to the acquisition up to the time of the acquisition. Any acquisition or merger covered under Subsection 5003.1(b) involving two or more insurers competing in the same market is prima facie

evidence of violation of the competitive standard in Paragraph (1) of this subsection if:

(1) There is a significant trend toward increased concentration in the market;

(1i) One of the insurers involved is one of the insurers in a grouping of such large insurers showing the requisite increase in the market share; and

(1ii) Another involved insurer's market is two percent or more.

(c) For the purposes of Subsection 5003.1(D)(2):

(1) The term "insurer" includes any company or group of companies under common management, ownership or control;

(1i) The term "market" means the relevant product and geographical markets. In determining the relevant product and geographical markets, the Commissioner shall give due consideration to, among other things, the definitions or guidelines, if any, promulgated by the National Association of Insurance Commissioners and to information, if any, submitted by parties to the acquisition. In the absence of sufficient information to the contrary, the relevant product market is assumed to be the direct written insurance premium for a line of business, such line being that used in the annual statement required to be filed by insurers doing business in this state, and the relevant geographical market is assumed to be this state.

(1ii) The burden of showing prima facie evidence of violation of the competitive standard rests upon the Commissioner.

(d) Even though an acquisition is not prima facie violative of the competitive standard under Subparagraphs (2)(a) and (2)(b) of this subsection, the Commissioner may establish the requisite anticompetitive effect based upon other substantial evidence. Even though an acquisition is prima facie violative of the competitive standard under Subparagraphs (2)(a) and (2)(b) of this subsection, a party may establish the absence of the requisite anticompetitive effect based upon other substantial evidence. Relevant factors in making a determination under this paragraph include, but are not limited to, the following: market shares, volatility of ranking of market leaders, number of competitors, concentration, trend of concentration in the industry, and ease of entry and exit into the market.

(3) An order may not be entered under Section 5003.1(E)(1) if:

(a) The acquisition will yield substantial economies of scale or economies in resource utilization that cannot be feasibly achieved in any other way, and the public benefits which would arise from such economies exceed the public benefits which would arise from not lessening competition; or

(b) The acquisition will substantially increase the availability of insurance, and the public benefits of such increase exceed the public benefits which would arise from not lessening competition.

#### E. Orders and Penalties.

(1)(a) If an acquisition violates the standards of this section, the Commissioner may enter an order

(1) Requiring an involved insurer to cease and desist from doing business in this state with respect to the line or lines of insurance involved in the violation, or

(1i) Denying the application of an acquired or acquiring insurer for a license to do business in this state.

(b) Such an order shall not be entered unless (a) there is a hearing, (b) notice of such hearing is issued prior to the end of the waiting period and not less than fifteen days prior to the hearing, and (c) the hearing is



concluded and the order is issued no later than sixty days after the end of the waiting period. Every order shall be accompanied by a written decision of the Commissioner setting forth his findings of fact and conclusions of law.

(c) An order entered under this paragraph shall not become final earlier than thirty days after it is issued, during which time the involved insurer may submit a plan to remedy the anticompetitive impact of the acquisition within a reasonable time. Based upon such plan or other information, the Commissioner shall specify the conditions, if any, under the time period during which the aspects of the acquisition causing a violation of the standards of this Section would be remedied and the order vacated or modified.

(d) An order pursuant to this paragraph shall not apply if the acquisition is not consummated.

(2) Any person who violates a cease and desist order of the Commissioner under Paragraph (1) and while such order is in effect may, after notice and hearing and upon order of the Commissioner, be subject at the discretion of the Commissioner to any one or more of the following:

(a) A monetary penalty of not more than \$10,000 for every day of violation and/or

(b) Suspension or revocation of such person's license.

(3) Any insurer or other person who fails to make any filing required by this Section, and who also fails to demonstrate a good faith effort to comply with any such filing requirement, shall be subject to a fine of not more than \$50,000.

F. Inapplicable Provisions. Sections 5009(B), (C), and 5011 do not apply to acquisitions covered under Section 5003.1(B).

#### Section 5004. Registration of Insurers

A. Registration. Every insurer which is authorized to do business in this state and which is a member of an insurance holding company system shall register with the Commissioner, except a foreign insurer subject to registration requirements and standards adopted by statute or regulation in the jurisdiction of its domicile which are substantially similar to those contained in: (1) Section 5004, (2) Section 5005(A)(1), (B), (D); and (3) Either 5005(A)(2) or a provision such as the following: Each registered insurer shall keep current the information required to be disclosed in its registration statement by reporting all material changes or additions within fifteen days after the end of the month in which it learns of each such change or addition. Any insurer which is subject to registration under this Section shall register within fifteen days after it becomes subject to registration, and annually thereafter by June 1 of each year for the previous calendar year, unless the Commissioner for good cause shown extends the time for registration, and then within such extended time. The Commissioner may require any insurer authorized to do business in the state which is a member of a holding company system, and which is not subject to registration under this section, to furnish a copy of the registration statement, the summary specified in Section 5004(C) or other information filed by such insurance company with the insurance regulatory authority of domiciliary jurisdiction.

B. Information and Form Required. Every insurer subject to registration shall file the registration statement on a form prescribed by the NAIC, which shall contain the following current information:

(1) The capital structure, general financial condition, ownership and management of the insurer and any person controlling the insurer;

(2) The identity and relationship of every member of the insurance holding company system;

(3) The following agreements in force, and transactions currently outstanding or which have occurred during the last calendar year between such insurer and its affiliates:

(a) Loans, other investments, or purchases, sales or exchanges of securities of the affiliates by the insurer or of the insurer by its affiliates;

(b) Purchases, sales or exchange of assets;

(c) Transactions not in the ordinary course of business;

(d) Guarantees or undertakings for the benefit of an affiliate which result in an actual contingent exposure of the insurer's assets to liability, other than insurance contracts entered into in the ordinary course of the insurer's business;

(e) All management agreements, service contracts and all cost-sharing arrangements;

(f) Reinsurance agreements;

(g) Dividends and other distributions to shareholders; and

(h) Consolidated tax allocation agreements;

(4) Any pledge of the insurer's stock, including stock of any subsidiary or controlling affiliate, for a loan made to any member of the insurance holding company system;

(5) Other matters concerning transactions between registered insurers and any affiliates as may be included from time to time in any registration forms adopted or approved by the Commissioner.

C. Summary of Registration Statement. All registration statements shall contain a summary outlining all items in the current registration statement representing changes from the prior registration statement.

D. Materiality. No information need be disclosed on the registration statement filed pursuant to Section 4(B) if such information is not material for the purposes of this Section. Unless the Commissioner by rule, regulation or order provides otherwise; sales, purchases, exchanges, loans or extensions of credit, investments, or guarantees involving one-half of 1% or less of an insurer's admitted assets as of the 31st day of December next preceding shall not be deemed material for purposes of this Section.

E. Reporting of Dividends to Shareholders. Subject to Subsection (B) of Section 5005, each registered insurer shall report to the Commissioner all dividends and other distributions to shareholders within fifteen business days following the declaration thereof.

F. Information of Insurers. Any person within an insurance holding company system subject to registration shall be required to provide complete and accurate information to an insurer, where such information is reasonably necessary to enable the insurer to comply with the provisions of this Chapter.

G. Termination of Registration. The Commissioner shall terminate the registration of any insurer which demonstrates that it no longer is a member of an insurance holding company system.

H. Consolidated Filing. The Commissioner may require or allow two or more affiliated insurers subject to registration hereunder to file a consolidated registration statement.

I. Alternative Registration. The Commissioner may allow an insurer which is authorized to do business in this state and which is part of an insurance holding company system to register on behalf of any affiliated insurer which is required to register under Subsection (A) and to file all information and material required to be filed under this Section.

J. Exemptions. The provisions of this Section shall not apply to any insurer, information or transaction if and to the extent that the Commissioner by rule, regulation or order shall exempt the same from the provisions of this Section.

K. Disclaimer. Any person may file with the Commissioner a disclaimer of affiliation with any authorized insurer or such a disclaimer may be filed by such insurer or any member of an insurance holding company system. The disclaimer shall fully disclose all material relationships and bases for affiliation between such person and such insurer as well as the basis for disclaiming such affiliation. After a disclaimer has been filed, the insurer shall be relieved of any duty to register or report under this Section which may arise out of the insurer's relationship with such person unless and until the Commissioner disallows such a disclaimer. The Commissioner shall disallow such a disclaimer only after furnishing all parties in interest with notice and opportunity to be heard and after making specific findings of fact to support such disallowance.

L. Violations. The failure to file a registration statement or any summary of the registration statement thereto required by this Section within the time specified for such filing shall be a violation of this Section.

Section 5005. Standards and Management of an Insurer Within a Holding Company System.

A. Transactions Within a Holding Company System.

(1) Transactions within a holding company system to which an insurer subject to registration is a party shall be subject to the following standards:

(a) The terms shall be fair and reasonable;

(b) Charges or fees for services performed shall be reasonable;

(c) Expenses incurred and payment received shall be allocated to the insurer in conformity with customary insurance accounting practices consistently applied;

(d) The books, accounts and records of each party to all such transactions shall be so maintained as to clearly and accurately disclose the nature and details of the transactions including such accounting information as is necessary to support the reasonableness of the charges or fees to the respective parties; and

(e) The insurer's surplus as regards policyholders following any dividends or distributions to shareholder affiliates shall be reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs.

(2) The following transactions involving a domestic insurer and any person in its holding company system may not be entered into unless the insurer has notified the Commissioner in writing of its intention to enter into such transaction at least thirty days prior thereto, or such shorter period as the Commissioner may permit, and the Commissioner has not disapproved it within such period.

(a) Sales, purchases, exchanges, loans or extensions of credit, guarantees, or investments provided such transactions are equal to or exceed: a) with respect to nonlife insurers, the lesser of three percent of the insurer's admitted assets or twenty-five percent of surplus as regards policyholders; b) with respect to life insurers, three percent of the insurer's admitted assets: each as of the 31st day of December next preceding;

(b) Loans or extensions of credit to any person who is not an affiliate, where the insurer makes such loans or extensions of credit with the agreement or understanding that the proceeds of such transactions, in whole or in substantial part, are to be used to make loans or extensions of credit to, to purchase assets of, or to make investments in, any affiliate of the insurer making such loans or extensions of credit provided such

transactions are equal to or exceed: a) with respect to nonlife insurers, the lesser of three percent of the insurer's admitted assets or twenty-five percent of surplus as regards policyholders; b) with respect to life insurers, three percent of the insurer's admitted assets: each as of the 31st day of December next preceding;

(c) Reinsurance agreements or modifications thereto in which the reinsurance premium or a change in the insurer's liabilities equals or exceeds five percent of the insurer's surplus as regards policyholders, as of the 31st day of December next preceding, including those agreements which may require as consideration the transfer of assets from an insurer to a non-affiliate, if an agreement or understanding exists between the insurer and non-affiliate that any portion of such assets will be transferred to one or more affiliates of the insurer;

(d) All management agreements, service contracts and all cost-sharing arrangements; and

(e) Any material transactions, specified by regulation, which the Commissioner determines may adversely affect the interests of the insurer's policyholders.

Nothing herein contained shall be deemed to authorize or permit any transactions which, in the case of an insurer not a member of the same holding company system, would be otherwise contrary to law.

(3) A domestic insurer may not enter into transactions which are part of a plan or series of like transactions with persons within the holding company system if the purpose of those separate transactions is to avoid the statutory threshold amount and thus avoid the review that would occur otherwise. If the Commissioner determines that such separate transactions were entered into over any twelve month period for such purpose, he may exercise his authority under Section 10.

(4) The Commissioner, in reviewing transactions pursuant to Subsection (A) Paragraph 2, shall consider whether the transactions comply with the standards set forth in Subsection (A) Paragraph 1 and whether they may adversely affect the interests of policyholders.

(5) The Commissioner shall be notified within thirty days of any investment of the domestic insurer in any one corporation if the total investment in such corporation by the insurance holding company system exceeds ten percent of such corporation's voting securities.

#### B. Dividends and other Distributions.

No domestic insurer shall pay any extraordinary dividend or make any other extraordinary distribution to its shareholders until (1) thirty days after the Commissioner has received notice of the declaration thereof and has not within such period disapproved such payment, or (2) the Commissioner shall have approved such payment within such thirty-day period.

For purposes of this Section, an extraordinary dividend or distribution includes any dividend or distribution of cash or other property, whose fair market value together with that of other dividends or distributions made within the preceding twelve months exceeds the greater of (1) ten percent of such insurer's surplus as regards policyholders as of the 31st day of December next preceding, or (2) the net gain from operations of such insurer, if such insurer is a life insurer, or the net income, if such insurer is not a life insurer, not including realized capital gains, for the twelve-month period ending the 31st day of December next preceding, but shall not include pro rata distributions of any class of the insurer's own securities. In determining whether a dividend or distribution is extraordinary, an insurer other than a life insurer may carry forward net income from the previous two calendar years that has not already been paid out as dividends. This carry-forward shall be computed by taking the net income from the second and third preceding calendar years, not including realized capital gains, less dividends paid in the second and immediate preceding calendar years. Notwithstanding any other provision of law, an insurer may declare an extraordinary dividend or distribution which is conditional upon the Commissioner's approval thereof, and such a declaration shall confer no rights upon shareholders until (1) the

Commissioner has approved the payment of such a dividend or distribution or (2) the Commissioner has not disapproved such payment within the thirty-day period referred to above.

C. Adequacy of Surplus. For purposes of this Chapter, in determining whether an insurer's surplus as regards policyholders is reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs, the following factors, among others, shall be considered:

(1) The size of the insurer as measured by its assets, capital and surplus, reserves, premium writings, insurance in force and other appropriate criteria;

(2) The extent to which the insurer's business is diversified among the several lines of insurance;

(3) The number and size of risks insured in each line of business;

(4) The extent of the geographical dispersion of the insurer's insured risks;

(5) The nature and extent of the insurer's reinsurance program;

(6) The quality, diversification and liquidity of the insurer's investment portfolio;

(7) The recent past and projected future trend in the size of the insurer's investment portfolio;

(8) The surplus as regards policyholders maintained by other comparable insurers;

(9) The adequacy of the insurer's reserves; and

(10) The quality and liquidity of investments in affiliates. The Commissioner may treat any such investment as a disallowed asset for purposes of determining the adequacy of surplus as regards policyholders whenever in his judgment such investment so warrants.

#### Section 5006. Examination

A. Power of Commissioner. Subject to the limitation contained in this Section and in addition to the powers which the Commissioner has under Chapter 3 relating to the examination of insurers, the Commissioner shall also have the power to order any insurer registered under Section 5004 to produce such records, books, or other information papers in the possession of the insurer or its affiliates as are reasonably necessary to ascertain the financial condition of such insurer or to determine compliance with this Chapter. In the event such insurer fails to comply with such order, the Commissioner shall have the power to examine such affiliates to obtain such information.

B. Use of Consultants. The Commissioner may retain at the registered insurer's expense such attorneys, actuaries, accountants and other experts not otherwise a part of the Commissioner's staff as shall be reasonably necessary to assist in the conduct of the examination under Subsection (A) above. Any persons so retained shall be under the direction and control of the Commissioner and shall act in a purely advisory capacity.

C. Expenses. Each registered insurer producing for examination records, books and papers pursuant to Subsection (A) above shall be liable for and shall pay the expense of such examination in accordance with Section 326 of this Title.

#### Section 5007. Confidential Treatment

All information, documents and copies thereof obtained by or disclosed to the Commissioner or any other person in the course of an examination or investigation made pursuant to Section 5006 and all information reported pursuant to Section 5004 and Section 5005, shall be given confidential treatment and shall not be subject to subpoena and shall not be made public by the Commissioner, the National Association of Insurance Commissioners,

or any other person, except to insurance departments of other states, without the prior written consent of the insurer to which it pertains unless the Commissioner, after giving the insurer and its affiliates who would be affected thereby, notice and opportunity to be heard, determines that the interest of policyholders, shareholders or the public will be served by the publication thereof, in which event he may publish all or any part thereof in such manner as he may deem appropriate.

#### Section 5008. Rules and Regulations

The Commissioner may, upon notice and opportunity for all interested persons to be heard, issue such rules, regulations and orders as shall be necessary to carry out the provisions of this Chapter.

#### Section 5009. Injunctions, Prohibitions Against Voting Securities, Sequestration of Voting Securities.

A. Injunctions. Whenever it appears to the Commissioner that any insurer or any director, officer, employee or agent thereof has committed or is about to commit a violation of this Chapter or of any rule, regulation or order issued by the Commissioner hereunder, the Commissioner may apply to the Chancery Court for an order enjoining such insurer or such director, officer, employee or agent thereof from violating or continuing to violate this Chapter or any such rule, regulation or order, and for such other equitable relief as the nature of the case and the interest of the insurer's policyholders, creditors and shareholders or the public may require.

B. Voting of Securities; When Prohibited. No security which is the subject of any agreement or arrangement regarding acquisition, or which is acquired or to be acquired, in contravention of the provisions of this Chapter or of any rule, regulation or order issued by the Commissioner hereunder may be voted at any shareholder's meeting, or may be counted for quorum purposes, and any action of shareholders requiring the affirmative vote of a percentage of shares may be taken as though such securities were not issued and outstanding; but no action taken at any such meeting shall be invalidated by the voting of such securities, unless the action would materially affect control of the insurer or unless the courts of this State have so ordered. If an insurer or the Commissioner has reason to believe that any security of the insurer has been or is about to be acquired in contravention of the provisions of this Chapter or of any rule, regulation or order issued by the Commissioner hereunder; the insurer or the Commissioner may apply to the Chancery Court to enjoin any offer, request, invitation, agreement or acquisition made in contravention of Section 5003 or any rule, regulation or order issued by the Commissioner thereunder to enjoin the voting of any security so acquired, to void any vote of such security already cast at any meeting of shareholders and for such other equitable relief as the nature of the case and the interest of the insurer's policyholders, creditor and shareholders or the public may require.

C. Sequestration of Voting Securities. In any case where a person has acquired or is proposing to acquire any voting securities in violation of this Chapter or any rule, regulation or order issued by the Commissioner hereunder, the Chancery Court may, on such notice as the court deems appropriate, upon the application of the insurer or the Commissioner seize or sequester any voting securities of the insurer owned directly or indirectly by such person, and issue such order with respect thereto as may be appropriate to effectuate the provisions of this Chapter.

Notwithstanding any other provisions of law, for the purposes of this Chapter the sites of the ownership of the securities of domestic insurers shall be deemed to be in this State.

#### Section 5010. Sanctions

A. Any insurer failing, without just cause, to file any registration statement as required in this Article shall be required, after notice and hearing, to pay a penalty of \$500.00 for each day's delay, to be recovered by the Commissioner of Insurance and the penalty so recovered shall be paid into the General Revenue Fund of this State. The maximum penalty under this section is \$25,000.00. The Commissioner may reduce the penalty if the

insurer demonstrates to the Commissioner that the imposition of the penalty would constitute a financial hardship to the insurer.

B. Every director or officer of an insurance holding company system who knowingly violates, participates in, or assents to, or who knowingly shall permit any of the officers or agents of the insurer to engage in transactions or make investments which have not been properly reported or submitted pursuant to Section 5004(A), 5005(A)(2), or (B), or which violate this Chapter, shall pay, in their individual capacity, a civil forfeiture of not more than \$2,000.00 per violation, after notice and hearing before the Commissioner. In determining the amount of the civil forfeiture, the Commissioner shall take into account the appropriateness of the forfeiture with respect to the gravity of the violation, the history of previous violations, and such other matters as justice may require.

C. Whenever it appears to the Commissioner that any insurer subject to this Act or any director, officer, employee or agent thereof has engaged in any transaction or entered into a contract which is subject to Section 5005 of this Chapter and which would not have been approved had such approval been requested, the Commissioner may order the insurer to cease and desist immediately any further activity under that transaction or contract. After notice and hearing the Commissioner may also order the insurer to void any such contracts and restore the status quo if such action is in the best interest of the policyholders, creditors or the public.

D. Whenever it appears to the Commissioner that any insurer or any director, officer, employee or agent thereof has committed a willful violation of this Chapter, the Commissioner may cause criminal proceedings to be instituted by the Superior Court against such insurer or the responsible director, officer, employee or agent thereof. Any insurer which willfully violates this Chapter may be fined not more than \$50,000 dollars. Any individual who willfully violates this Chapter may be fined in his/her individual capacity not more than \$25,000.00 dollars or, be imprisoned for not more than one to three years or both.

E. Any officer, director, or employee of an insurance holding company system who willfully and knowingly subscribes to or makes or causes to be made any false statements or false reports or false filings with the intent to deceive the Commissioner in the performance of his duties under this Chapter, upon conviction thereof, shall be imprisoned for not more than 2 years or fined \$50,000 dollars or both. Any fines imposed shall be paid by the officer, director, or employee in his/her individual capacity.

#### Section 5011. Receivership

Whenever it appears to the Commissioner that any person has committed a violation of this Chapter which so impairs the financial condition of a domestic insurer as to threaten insolvency or make the further transaction of business by it hazardous to its policyholders, creditors, shareholders or the public, then the Commissioner may proceed as provided in Chapter 59 of this Title to take possessions of the property of such domestic insurer and to conduct the business thereof.

#### Section 5012. Recovery

A. If an order for liquidation or rehabilitation of a domestic insurer has been entered, the receiver appointed under such order shall have a right to recover on behalf of the insurer, (i) from any parent corporation or holding company or person or affiliate who otherwise controlled the insurer, the amount of distributions (other than distributions of shares of the same class of stock) paid by the insurer on its capital stock, or (ii) any payment in the form of a bonus, termination settlement or extraordinary lump sum salary adjustment made by the insurer or its subsidiary(s) to a director, officer or employee, where the distribution or payment pursuant to (i) or (ii) is made at any time during the one year preceding the petition for liquidation, conservation or rehabilitation, as the case may be, subject to the limitations of Subsections (B), (C), and (D) of this section.

B. No such distribution shall be recoverable if the parent or affiliate shows that when paid such distribution was lawful and reasonable, and that the insurer did not know and could not reasonably have known that such

distribution might adversely affect the ability of the insurer to fulfill its contractual obligations.

C. Any person who was a parent corporation or holding company or a person who otherwise controlled the insurer or affiliate at the time such distributions were paid shall be liable up to the amount of distributions or payments under (A) such person received. Any person who otherwise controlled the insurer at the time such distributions were declared shall be liable up to the amount of distributions he would have received if they had been paid immediately. If two or more persons are liable with respect to the same distributions, they shall be jointly and severally liable.

D. The maximum amount recoverable under this subsection shall be the amount needed in excess of all other available assets of the impaired or insolvent insurer to pay the contractual obligations of the impaired or insolvent insurer and to reimburse any guaranty funds.

E. To the extent that any person liable under Subsection (C) of this section is insolvent or otherwise fails to pay claims due from it pursuant to such paragraph, its parent corporation or holding company or person who otherwise controlled it at the time the distribution was paid, shall be jointly and severally liable for any resulting deficiency in the amount recovered from such parent corporation or holding company or person who otherwise controlled it.

#### Section 5013. Revocation, Suspension, or Nonrenewal of Insurer's License

Whenever it appears to the Commissioner that any person has committed a violation of this Chapter which makes the continued operation of an insurer contrary to the interests of policyholders or the public, the Commissioner may, after giving notice and an opportunity to be heard, determine to suspend, revoke or refuse to renew such insurer's license or authority to do business in this State for such period as he finds is required for the protection of policyholders or the public. Any such determination shall be accompanied by specific findings of fact and conclusions of law.

#### Section 5014. Judicial Review, Mandamus

A. Any person aggrieved by any act, determination, rule, regulation, or order or any other action of the Commissioner pursuant to this Chapter may appeal therefrom to the Superior Court. The court shall conduct its review without a jury and by trial de novo, except that if all parties, including the Commissioner, so stipulate, the review shall be confined to the record. Portions of the record may be introduced by stipulation into evidence in a trial de novo as to those parties so stipulated.

B. The filing of an appeal pursuant to this Section shall stay the application of any such rule, regulation, order or other action of the Commissioner to the appealing party unless the court, after giving such party notice and an opportunity to be heard, determines that such a stay would be detrimental to the interest of policyholders, shareholders, creditors or the public.

C. Any person aggrieved by any failure of the Commissioner to act or make a determination required by this Chapter may petition the Superior Court for a writ in the nature of a mandamus or a peremptory mandamus directing the Commissioner to act or make such determination forthwith.

#### Section 5015. Conflict with Other Laws

All laws and parts of laws of this State inconsistent with this Chapter are hereby superseded with respect to matters covered by this Chapter."

#### Section 2. Severability of Provisions

If any provision of this Chapter or the application thereof to any person or circumstances is held invalid, the invalidity shall not affect other provisions or applications of this Chapter which can be given effect without the invalid provisions or application, and for this purpose the provisions of this Chapter are severable.



Section 3. Amend Section 4932, Chapter 49, Title 18, Delaware Code by deleting said Section in its entirety.

Section 4. This Chapter shall become effective 30 days after its adoption.

Approved July 7, 1992.

## CHAPTER 326

## FORMERLY

## SENATE BILL NO. 283

AN ACT TO AMEND TITLE 5, DELAWARE CODE TO ADD A NEW CHAPTER 21 RELATING TO MORTGAGE LOAN BROKERS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Title 5 of the Delaware Code by adding thereto a new Chapter 21 reading as follows:

"Chapter 21. MORTGAGE LOAN BROKERS.

§2101. Definitions.

In this chapter, unless the context otherwise requires:

(1) 'Borrower' means a person obtaining or desiring to obtain a mortgage loan.

(2) 'Commissioner' means the State Bank Commissioner.

(3) 'Licensee', 'licensed mortgage loan broker', or 'person licensed' means any person duly licensed or regulated by the Commissioner pursuant to this chapter.

(4) 'Mortgage loan' means an extension of credit secured by a first or secondary mortgage on any one-to-four family residential owner-occupied property intended for personal, family or household purposes, which is (i) negotiated, offered or otherwise transacted within this State, in whole or in part, (ii) made or extended within this State, or (iii) secured by real property located in this State.

(5) 'Mortgage loan broker' means a person who in the ordinary course of business, for compensation or gain, or in the expectation of compensation or gain, either directly or indirectly, negotiates or offers to negotiate, or arranges or solicits, or offers to arrange or solicit, a mortgage loan on behalf of a borrower, or (i) holds himself out as being able to serve as an agent for any person in an attempt to obtain a mortgage loan; or (ii) holds himself out as being able to serve as an agent or independent contractor to negotiate the terms or conditions of a mortgage loan on behalf of a lender (but who is not a person employed as an employee or agent of the lender).

(6) 'Person' means an individual, corporation, partnership or any other group of individuals however organized.

§2102. License required.

(a) Subject to the provisions of Section 2102(b), every person desiring to transact the business of a mortgage loan broker shall be required to obtain a license under this chapter; provided, however that a person who acts as a mortgage loan broker with respect to 5 or fewer mortgage loans within any twelve-month period shall be deemed not to be transacting the business of a mortgage loan broker. The licensing requirements of this chapter shall not apply to (1) any banking organization, state or federal savings bank or savings and loan association, credit union, licensed lender or insurance company, provided that such person is licensed (or exempt from licensing) by, and is subject to regulation or supervision of, any agency of the United States or this State; or (2) any person licensed to practice law in this State, not actively and principally engaged in the mortgage loan brokerage business, when such person renders services in the course of such person's practice as an attorney at law; (3) any person licensed in this State as a real estate broker or a real estate salesperson, not actively and principally engaged in the mortgage loan brokerage business, when such person renders services in the course of the person's business as a real estate broker or salesperson; (4) any person employed as an employee or agent for a single licensed or exempt mortgage loan broker, provided that any fees paid by

borrowers are paid to the licensed or exempt mortgage loan broker and not to the employee or agent. Any person conducting a mortgage loan brokerage business but exempted from the licensing requirements of this section shall nevertheless be subject to the provisions of Section 2114 of this chapter in the conduct of such business.

(b) The Commissioner shall be authorized to exempt such persons or classes of persons, or such activities, from the licensing or other provisions of this chapter as the Commissioner shall find inappropriate to include within the coverage of this chapter in order to effectuate its purposes.

#### §2103. Application and fees.

(a) Every application for a license shall be in writing in the form prescribed by the Commissioner and shall contain the name and complete address or addresses where the business of the applicant is to be conducted and, if the applicant is a partnership, association, corporation or other form of business organization, the names and complete addresses of each member, director and principal officer thereof. Such application shall also include a description of the activities of the applicant, in such detail and for such periods as the Commissioner may require, as well as such other further information as the Commissioner may require. Such applicant, at the time of making such application, shall pay to the Commissioner as an investigation fee the sum of \$250 which shall not be refundable.

(b) Upon approval, the applicant shall pay an annual license fee of \$250 which shall be payable annually thereafter. No abatement in the amount of said license fee shall be made if the license is issued for less than one year or if the license is surrendered, canceled or revoked prior to the expiration of the period for which such license was issued. Every license issued hereunder shall expire on December 31 of each year.

#### §2104. Issuance of license.

Upon the filing of an application for a license, if the Commissioner shall find that the financial responsibility, experience, character and general fitness of the applicant and of the members thereof (if the applicant is a partnership or association) and of the officers and directors thereof (if the applicant is a corporation) are such as to warrant belief that its business will be operated honestly, fairly and efficiently within the purpose of this chapter, he shall thereupon issue a license to transact business in accordance with this chapter. If the Commissioner shall not so find, he shall not issue such license and he shall notify the applicant of its denial, give notice of the grounds for refusal and notify the applicant of the right to request a hearing. If the applicant requests a hearing, the Commissioner shall hold such hearing under Chapter 101 of Title 29. The Commissioner shall approve or deny every application for license hereunder within 90 days from the date the Commissioner determines that the application as filed with him is complete.

#### §2105. Changes in officers or directors of licensee.

In the event that there shall be any change among the officers, partners or directors of any licensee, the licensee shall forthwith notify the Commissioner of the name, address and occupation of each new officer, partner or director and provide such other information as the Commissioner may require.

#### §2106. License requirements.

A licensee shall obtain a license for each office or other place of business from which its mortgage loan brokerage business is conducted upon payment of the required fees for each office and compliance with all applicable provisions of law. Each license issued under this chapter shall state the address at which the business is to be conducted and shall state fully the name of the licensee and the date and place of its organization or formation, if applicable. Such license shall be posted in a prominent position in the therein designated place of business of the licensee. In the event such location is changed, the Commissioner shall endorse the change of location on the license without charge. If there is a change of

name but no change in corporate or other business structure, the Commissioner shall endorse such name change on the license without charge. Such license shall not otherwise be transferrable or assignable. No licensee shall maintain an office at any other location than that designated in the license.

§2107. Renewal of license.

Every holder of a license or a renewal thereof, as provided for in this section, desiring to continue the transaction of business as provided for in this chapter, shall at least 30 days prior to the expiration of such license or renewal thereof make application to the Commissioner on forms to be provided by the Commissioner for a license renewal. The Commissioner may mandate that applications for renewal shall be treated as new applications if said renewal applications are not on file with the Office of the State Bank Commissioner by January 1 of each year. Licensees who have not complied with supervisory letters or who have not paid any supervisory assessment or examination fees when due may be refused license renewal.

§2108. Surety bond or letter of credit.

Every licensee shall file with the Commissioner a corporate surety bond in the principal sum of \$25,000 in form and substance satisfactory to the Commissioner with surety provided by a corporation authorized to transact a surety business in this State. The bond shall run to the State and shall be conditioned that the licensee will comply with this chapter. The aggregate liability of the surety on the bond shall in no event exceed the amount of such bond. In lieu of requiring the filing of a surety bond, the Commissioner may, at his discretion, accept from a licensee a letter of credit in the amount of \$25,000 running in favor of the State, with draws available by sight drafts thereunder in amounts determined by the Commissioner, up to the aggregate amount of \$25,000, if the licensee shall fail to comply with this chapter. Any such letter of credit shall be issued by a financial institution, and shall be in form and substance, satisfactory to the Commissioner.

§2109. Suspension, revocation or surrender of license.

(a) The Commissioner may revoke any license issued hereunder if he shall find that:

(1) The licensee has violated any provision of this chapter or any rule, regulation or order made by the Commissioner under and within the authority of this chapter or of any other law, rule or regulation of this State;

(2) Any fact or condition exists which, if it had existed at the time of the original application for such license, would have warranted a refusal to originally issue such license on the part of the Commissioner; or

(3) The licensee has engaged in business activities or practices inconsistent with its responsibilities as set forth in §2114 of this chapter.

(b) The Commissioner, may, for cause shown, suspend any license for a period not exceeding 30 days, pending investigation.

(c) Except as provided in subsection (b) of this section, no license shall be revoked or suspended except after notice and a hearing thereon.

(d) Any licensee may surrender any license by delivering to the Commissioner such license together with written notice that it thereby surrenders such license, but such surrender shall not affect such licensee's civil or criminal liability for acts committed prior to such surrender.

(e) No revocation, suspension or surrender of any license shall impair or affect the obligation of any preexisting lawful contract between the licensee and any person.

(f) Every license issued hereunder shall remain in force and effect until the same shall have expired or shall have been surrendered, revoked or suspended in accordance with this chapter.

(g) Whenever the Commissioner shall revoke or suspend a license issued pursuant to this chapter, he shall forthwith execute a written order to that effect. The Commissioner shall forthwith serve the written order upon the licensee. Any such order may be reviewed in the manner provided by Chapter 101 of Title 29.

§2110. Supervision and examination of business by Commissioner.

(a) Each licensee shall be subject to the supervision of the Commissioner and the Commissioner shall visit and examine each licensee as frequently as the Commissioner deems it necessary or expedient. On the occasion of each such visit and examination, the Commissioner shall (in the company of one or more of the officers of such licensee, if requested by such licensee) be given free access to every part of the office or place or places of business and to the assets, securities, books, papers and records of such licensee.

(b) If in the Commissioner's opinion it is necessary or convenient for a proper examination of a licensee, the Commissioner may retain one or more accountants, attorneys, appraisers or other third parties to assist the Commissioner in such examination. Within 10 days after receipt of a statement from the Commissioner, such licensee shall pay or reimburse the fees, costs and expenses of any third parties retained by the Commissioner under this subsection.

(c) Any examination under this section may be made by any person or persons designated by the Commissioner, and in such case all the powers vested in the Commissioner by this section shall be possessed by such person or persons so designated. When any such examination is made without the presence of the Commissioner, the Commissioner shall give written authority to the person or persons conducting such examination, which shall be exhibited, on request, to any person contacted in the course of the investigation.

§2111. Maintenance of books and records by licensee.

(a) Every licensee shall maintain such books, accounts and records relating to its business as will enable the Commissioner to enforce full compliance with this chapter, which books, accounts and records shall be in such form, shall contain such information and shall be kept in such manner as the Commissioner may require. Such records shall be kept at such place and shall be preserved for such length of time as the Commissioner may specify.

(b) A licensee shall file with the Commissioner such reports at such times as the Commissioner may require, which reports shall be in such form and shall contain such information as the Commissioner may specify.

§2112. Regulations.

The Commissioner may adopt such regulations, not inconsistent herewith, as the Commissioner may deem necessary or appropriate in the administration, interpretation and enforcement of this chapter.

§2113. Mortgage or loan broker disclosures.

A licensee may not receive a fee for acting as a mortgage loan broker except pursuant to a written agreement between the mortgage loan broker and the borrower. Such written agreement shall be entered into prior to the time that the mortgage loan broker undertakes to perform mortgage loan brokerage services on behalf of a borrower. A copy of the fully completed written agreement shall be provided to the borrower at the time he signs the agreement. The agreement (1) must describe the services to be provided by the mortgage loan broker and the time period within which such services are to be provided, (2) must specify the amount and terms of the fees that the mortgage loan broker is to receive and (3) shall otherwise contain such information and disclosures, in such format, as the Commissioner by regulation may provide.

#### §2114. Responsibilities of mortgage loan brokers.

A mortgage loan broker shall diligently and in good faith attempt to obtain a mortgage loan for the account of a borrower in accordance with the terms of the agreement for mortgage loan brokerage services. No mortgage loan broker shall make or use any false or misleading representations or omit any material fact in the offer, sale or performance of the services of a mortgage loan broker or engage directly or indirectly in any act that operates as fraud or deception upon any person in connection with the offer, sale or performance of the services of a mortgage loan broker, notwithstanding the absence of reliance by a borrower.

#### §2115. Mortgage loan broker fees.

A licensee may not accept any fee in connection with a mortgage loan, other than an application fee or any credit report fee, property appraisal fee, title examination fee or other bona fide third-party fee actually and reasonably paid or incurred by the licensee on behalf of the borrower, prior to obtaining a written commitment from a qualified lender (setting forth the terms and conditions upon which the lender is willing to make a mortgage loan to the borrower). The amount of fees that may be collected or received by a mortgage loan broker, whether constituting an application fee, a fee payable to a third party, fee payable at the time of written commitment or upon consummation of a mortgage loan or otherwise, shall be subject to such limitations as may be provided by regulation of the Commissioner. A licensee shall be obligated to refund all fees collected by it from a borrower, other than those fees paid by the licensee to a third party, if a written commitment for a mortgage loan from a qualified mortgage lender is not produced within the time specified by the mortgage loan broker and otherwise at the rate, terms and overall costs agreed upon by the borrower or the mortgage loan does not close; provided, however, that a licensee shall not be required to refund fees when the failure to obtain a written commitment for a mortgage loan or the failure of a closing thereunder to occur is due to the substantial fault of the borrower. For purposes of this section, substantial fault of the borrower means that the borrower has (1) failed to provide information or documentation required by the lender or mortgage loan broker in a timely manner, (2) provided information, in the application or subsequently, which upon verification prove to be significantly inaccurate, causing the need for review or further investigation by the lender or mortgage loan broker; (3) failed to produce no later than the date specified by the lender all documentation specified in its mortgage loan commitment or closing instructions as being required for closing; or (4) failed to be ready, willing or able to close the mortgage loan no later than the date specified by the lender. The Commissioner by regulation may provide further definition of the circumstances constituting substantial fault of a borrower, including, without limitation, reasonable time periods for the provision by a borrower of information or documentation or when information will be considered significantly inaccurate."

Section 2. This Act shall take effect immediately upon its enactment into law.

Approved July 7, 1992.

CHAPTER 327

FORMERLY

SENATE BILL NO. 327

AN ACT TO AMEND CHAPTER 12, TITLE 4, OF THE DELAWARE CODE RELATING TO ALCOHOLIC LIQUORS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Title 4, Chapter 12, Section 1203 of the Delaware Code by adding a new subsection (d) to read as follows:

"(d) The Commission may grant a thirty-day exemption from the requirements of subsections (a) and (b) of this section for the purpose of permitting applicants, licensees, and their employees an opportunity to satisfy the training requirements of this section."

Section 2. Amend Title 4, Chapter 12, Section 1208 of the Delaware Code by deleting all references to "Section 554(k) of this title" and substituting in lieu thereof "Section 554(x) of this title."

Approved July 7, 1992.

CHAPTER 328

FORMERLY

SENATE BILL NO. 362

AN ACT TO AMEND DELAWARE CODE, TITLE 14, RELATING TO THE STATEWIDE ASSESSMENT OF STUDENT ACHIEVEMENT.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Delaware Code, Title 14, Subsection 122(b)(17) by striking the fourth sentence in said subsection in its entirety and by substituting in lieu thereof the following:

"The State Board of Education shall conduct an annual assessment of student achievement for all regular pupils in a minimum of at least four grade levels."

Approved July 7, 1992.

## CHAPTER 329

## FORMERLY

SENATE BILL NO. 335  
AS AMENDED BY SENATE AMENDMENT NO. 2

AN ACT TO AMEND TITLE 3 OF THE DELAWARE CODE RELATING TO NURSERIES AND NURSERY STOCK.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (Two-thirds of all members elected to each House thereof concurring therein):

Section 1. Amend §1301 (c), Title 3 of the Delaware Code by deleting said section in its entirety and inserting in lieu thereof the following:

"(c) 'Nursery Dealer.' -Any person who buys, collects, acquires, or handles nursery stock or nursery stock transactions for the purpose of reselling, reshipping, replanting, or redistributing independently of any control of the nurseryman. This does not include the person who acquires plants for personal use."

Section 2. Amend §1301 (d), Title 3 of the Delaware Code by deleting said section in its entirety and inserting in lieu thereof the following:

"(d) 'Nursery Stock.' -(1) All plants, trees, shrubs, vines, grafts, cuttings and buds that may be sold for propagation, whether cultivated or wild, and all viable parts of these plants;

(2) Any other plant or plant part, including cut Christmas trees, whose movement the Department may regulate in order to control any dangerously injurious plant pest;

(3) Any nonhardy plant or plant part to be distributed in another state that requires plant inspection and certification before entering the state."

Section 3. Amend §1302 (a), Title 3 of the Delaware Code by deleting the word "will" where it appears immediately following the word "Agriculture" in the fourth sentence thereof and replacing it with the word "shall" and also by inserting the words "with or without notice to the nurseryman," after the words "deems best" and before the word "all" in the fourth sentence thereof.

Section 4. Amend §1302 (b), Title 3 of the Delaware Code by deleting the ", " after the word "officers" as it appears in the first sentence thereof and replacing it with the word "or" and by deleting the words "or servants" as they appear in the first sentence thereof and by deleting the last sentence and by adding a new sentence therein to read as follows:

"If the owner, owners, or person in charge refuses to comply with a control order, the Department shall seize, destroy or treat the infested or infected stock and the owner or owners shall pay all costs. If the owner or owners refuse or neglect to pay costs, it shall be collected as provided in Chapter 11 of this Title."

Section 5. Amend §1302, Title 3 of the Delaware Code by adding a new subsection (c) to read as follows:

"(c) Failure to comply with the certification requirements of the Department, its officers, or agents shall cause the owner to be subject to a fine of not less than \$100 nor more than \$500 or be imprisoned not less than one (1) month nor more than one (1) year or both."

Section 6. Amend §1303, Title 3 of the Delaware Code by redesignating it as subsection (a) and by adding the words ", nursery dealer," after the word "nursery" and before the words "or orchard" as they appear in the first sentence thereof.

Section 7. Amend §1303, Title 3 of the Delaware Code by adding a new subsection (b) to read as follows:



"(b) Every shipment not labelled in accordance with specifications of this Title shall be subject to a fine of not less than \$100 nor more than \$500 or be imprisoned not less than one (1) month nor more than one (1) year or both."

Section 8. Amend §1309(a), Title 3 of the Delaware Code by deleting the "." at the end of the first sentence as it appears therein and in lieu thereof inserting the words "or retail outlets."

Section 9. Amend §1309(a), Title 3 of the Delaware Code by deleting the word "outlet(s)," as it appears in the third sentence and by inserting in lieu thereof the words "locations or retail outlets,".

Section 10. Amend §1309, Title 3 of the Delaware Code by adding a new subsection (c) to read as follows:

"(c) Failure to comply with the certification requirements of the Department, its officers, or agents shall be subject to penalties as stated in §1302 of this Title."

Section 11. Amend §1311, Title 3 of the Delaware Code by deleting the first sentence as it appears therein and by inserting in lieu thereof the following:

"The Department of Agriculture shall have the authority to make reciprocal agreements with the responsible officials of other states. Nursery stock or plants from any other state may be sold or delivered in Delaware under the same conditions required for sale, delivery, or distribution of Delaware nursery stock or plant material."

Approved July 7, 1992.

## CHAPTER 330

## FORMERLY

## SENATE BILL NO. 417

AN ACT TO AMEND CHAPTER 84, TITLE 11, DELAWARE CODE RELATING TO POLICE TRAINING REQUIREMENTS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Section 8401, Chapter 84, Title 11 of the Delaware Code by deleting sub-paragraphs (4), (5) and (7) in their entirety and redesignating sub-paragraphs (6) as (4) and (8) as (5).

Section 2. Amend Section 8404, Chapter 84, Title 11 of the Delaware Code by deleting sub-section (a)(6) in its entirety and substituting in lieu thereof the following:

"(6) Establish minimum educational and training qualifications for seasonal employment as a police officer."

Section 3. Amend Section 8404, Chapter 84, Title 11 of the Delaware Code by deleting sub-section (a)(15)a in its entirety and substituting in lieu thereof the following:

"(a) The police officer is employed on a seasonal basis; and"

Section 4. Amend Section 8404, Chapter 84, Title 11 of the Delaware Code by deleting sub-section (a)(16) in its entirety and substituting in lieu thereof the following:

"(16) Establish an approved training program for seasonal police officers which shall be required prior to active police duty, and, in addition, if the officer is to be armed that the police officer be certified in the use of firearms at an approved police training school."

Section 5. Amend Section 8405, Chapter 84, Title 11 of the Delaware Code by deleting sub-section (a) in its entirety and substituting in lieu thereof the following:

"(a) Except as provided in sub-section (d) of this section, every municipality or other governmental unit of this State employing or intending to employ police officers shall require their attendance at an approved school. Every such municipality or other governmental unit or the University of Delaware shall require that no person be given or accept an appointment as a police officer unless such person has successfully completed the required police training and education course at an approved school."

Section 6. Amend Section 8406, Chapter 84, Title 11 of the Delaware Code by deleting Section 8406 in its entirety.

Section 7. This Act shall become effective one year from the date of its enactment into law.

Approved July 8, 1992.

## CHAPTER 331

## FORMERLY

## HOUSE BILL NO. 60

AN ACT TO AMEND CHAPTER 21, TITLE 21 OF THE DELAWARE CODE RELATING TO THE REQUIREMENT OF INSURANCE FOR MOTOR VEHICLES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (Two-thirds of all members elected to each House thereof concurring therein):

Section 1. Amend §2118, Chapter 21, Title 21 of the Delaware Code by adding a new Subsection (b) to read as follows and redesignating existing Subsections (b) through (V) as (c) through (W) respectively:

"(b) No owner of a motor vehicle being operated in this State shall operate in this State or authorize any other person to operate such vehicle in this State unless the owner has insurance on such motor vehicle equal to the minimum insurance required by the State or jurisdiction where said vehicle is registered. If the State or jurisdiction of registration requires no minimum insurance coverage then such owner must have insurance on such motor vehicle equal to the minimum insurance coverage required for motor vehicles registered in this State."

Section 2. Amend §2118(f)(3), Chapter 21, Title 21 of the Delaware Code by striking the phrase "subsection (i)" as it appears in the second sentence thereof and substituting in lieu thereof the phrase "subsection (j)".

Section 3. Amend §2118(g), Chapter 21, Title 21 of the Delaware Code by striking the phrase "subsection (f)" as it appears therein and substituting in lieu thereof the phrase "subsection (g)".

Section 4. Amend §2118(r)(1), Chapter 21, Title 21 of the Delaware Code by striking the phrase "subsection (a), (j) or (p)" as it appears in the third sentence thereof and substituting in lieu thereof the phrase "subsection (a), (b), (k) or (q)".

Section 5. The provisions of this Act are severable and any provision held invalid shall not affect or impair any of the remaining provisions of this Act.

Approved July 8, 1992.

## CHAPTER 332

## FORMERLY

## HOUSE BILL NO. 300

AN ACT TO AMEND TITLE 24 OF THE DELAWARE CODE, RELATING TO THE BOARD OF VETERINARY MEDICINE.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Section 3307 (a)(1), Chapter 33, Title 24 of the Delaware Code by striking said paragraph in its entirety and substituting in lieu thereof the following:

"(1) He shall have received a degree of 'Doctor of Veterinary Medicine,' or its equivalent, from a school or college approved by the American Veterinary Medical Association, or is a student enrolled in a school or college approved by the American Veterinary Medical Association and satisfies the following requirements:

a. He is in the final semester of study in a program leading to the award of a degree of 'Doctor of Veterinary Medicine' or its equivalent;

b. He files with the Board a notarized letter from the dean of the school or college certifying his good academic standing and probability of graduation; and

c. He receives a degree of 'Doctor of Veterinary Medicine' or its equivalent within 120 days from the date the Board receives his completed application."

Approved July 8, 1992.

## CHAPTER 333

## FORMERLY

## HOUSE BILL NO. 580

AN ACT TO AMEND CHAPTER 5, TITLE 11 OF THE DELAWARE CODE RELATING TO THE UNAUTHORIZED USE OF A VEHICLE.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (Two-thirds of all members elected to each House thereof concurring therein):

Section 1. Amend §853, Title 11 of the Delaware Code by striking the period (.) at the end of subsection (1), and substituting a semi-colon (;) in lieu thereof; by striking the word "or" at the end of subsection (2); and by striking the period at the end of subsection (3), and substituting "; or" in lieu thereof.

Section 2. Amend §853, Chapter 5, Title 11 of the Delaware Code by adding thereto a new subsection, designated as subsection (4), which new subsection shall read as follows:

"(4) such person obtains possession or control over a vehicle, knowing of the existence of a creditor or creditors who are entitled to receive payments on a debt where such vehicle is the only security or represents the major portion of the creditor's security, and such person transfers or purports to transfer the vehicle and responsibility for making payments on such vehicle to a third party, whether or not such third party continues or resumes payment to the creditor or creditors."

Approved July 8, 1992.

## CHAPTER 334

## FORMERLY

## HOUSE BILL NO. 459

## AN ACT TO AMEND TITLE 18, DELAWARE CODE, RELATING TO STANDARDS FOR BUSINESS TRANSACTED WITH PRODUCER CONTROLLED PROPERTY/CASUALTY INSURER ACT.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Title 18 Del. C. by adding a new Chapter 16A as follows:

"Chapter 16A, Business Transacted with Producer Controlled Insurer Act.

§1650. Definitions.

- (a) "Accredited State" means a state in which the insurance department or regulatory agency has qualified as meeting the minimum financial regulatory standards promulgated and established from time to time by the National Association of Insurance Commissioners (NAIC).
- (b) "Control" or "Controlled" has the meaning ascribed in Chapter 50.
- (c) "Controlled Insurer" means a licensed insurer which is controlled, directly or indirectly, by a producer.
- (d) "Controlling Producer" means a producer who, directly or indirectly, controls an insurer.
- (e) "Licensed Insurer" or "Insurer" means any person, firm, association or corporation duly licensed to transact a property/casualty insurance business in this state. The following, inter alia, are not licensed insurers for the purposes of this Act:
  - (1) All risk retention groups as defined in the Superfund Amendments Reauthorization Act of 1986, Pub. L. No. 99-499, 100 Stat. 1613 (1986) and the Risk Retention Act, 15 U.S.C. Section 3901 et seq. (1982 & Supp. 1986) and Chapter 80;
  - (2) All residual market pools and joint underwriting authorities or associations; and
  - (3) All captive insurers (for the purposes of this Act, captive insurers are insurance companies owned by another organization whose exclusive purpose is to insure risks of the parent organization and affiliated companies or, in the case of groups and associations, insurance organizations owned by the insureds whose exclusive purpose is to insure risks to member organizations and/or group members and their affiliates).
- (f) "Producer" means an insurance broker or brokers or any other person, firm, association or corporation, when, for any compensation, commission or other thing of value, such person, firm, association or corporation acts or aids in any manner in soliciting, negotiating or procuring the making of any insurance contract on behalf of an insured other than the person, firm, association or corporation.

§1651. Applicability.

This Act shall apply to licensed insurers as defined in §1650, whether domiciled in this state or domiciled in a state that is not an accredited state having in effect a substantially similar law. All provisions of the Insurance Holding Company Act, to the extent they are not superseded by this Act, shall continue to apply to all parties within holding company systems subject to this Act.

§1652. Minimum Standards.

- (a) Applicability of section.

(1) The provisions of this Section shall apply if, in any calendar year, the aggregate amount of gross written premium on business placed with a controlled insurer by a controlling producer is equal to or greater than five percent (5%) of the admitted assets of the controlled insurer, as reported in the controlled insurers' quarterly statement filed as of September 30 of the prior year.

(2) Notwithstanding Paragraph (1) of this subsection, the provisions of this section shall not apply if:

a. The controlling producer:

(i) Places insurance only with the controlled insurer, or only with the controlled insurer and a member or members of the controlled insurer's holding company system, or the controlled insurer's parent, affiliate or subsidiary and receives no compensation based upon the amount of premiums written in connection with such insurance; and

(ii) Accepts insurance placements only from non-affiliated subproducers, and not directly from insureds; and

(iii) The controlled insurer, except for insurance business written through a residual market facility such as Assigned Risk Plan, accepts insurance business only from a controlling producer, a producer controlled by the controlled insurer, or a producer that is a subsidiary of the controlled insurer.

(b) Required contract provisions. A controlled insurer shall not accept business from a controlling producer and a controlling producer shall not place business with a controlled insurer unless there is a written contract between the controlling producer and the insurer specifying the responsibilities of each party, which contract has been approved by the board of directors of the insurer and contains the following minimum provisions:

(1) The controlled insurer may terminate the contract for cause, upon written notice to the controlling producer. The controlled insurer shall suspend the authority of the controlling producer to write business during the pendency of any dispute regarding the cause for the termination; and

(2) The controlling producer shall render accounts to the controlled insurer detailing all material transactions, including information necessary to support all commissions, charges and other fees received by, or owing to, the controlling producer; and

(3) The controlling producer shall remit all funds due under the terms of the contract to the controlled insurer on at least a monthly basis. The due date shall be fixed so that premiums or installments thereof collected shall be remitted no later than ninety (90) days after the effective date of any policy placed with the controlled insurer under this contract; and

(4) All funds collected for the controlled insurer's account shall be held by the controlling producer in a fiduciary capacity, in one or more appropriately identified bank accounts in banks that are members of the Federal Reserve System, in accordance with the provisions of the insurance law as applicable. (Funds of a controlling producer not required to be licensed in this state shall be maintained in compliance with the requirements of the controlling producer's domiciliary jurisdiction); and

(5) The controlling producer shall maintain separately identifiable records of business written for the controlled insurer; and

(6) The contract shall not be assigned in whole or in part by the controlling producer; and

(7) The controlled insurer shall provide the controlling producer with its underwriting standards, rules and procedures, manuals setting forth the rates to be charged, and the conditions for the acceptance or rejection of risks. The controlling producer shall adhere to the

standards, rules, procedures, rates and conditions. The standards, rules, procedures, rates and conditions shall be the same as those applicable to comparable business placed with the controlled insurer by a producer other than the controlling producer; and

(8) The rates and terms of the controlling producer's commissions, charges or other fees and the purposes for those charges or fees.

The rates of the commissions, charges and other fees shall be no greater than those applicable to comparable business placed with the controlled insurer by producers other than controlling producers. For purposes of this paragraph and Paragraph (7) of this subsection, examples of "comparable business" includes the same lines of insurance, same kinds of insurance, same kinds of risks, similar policy limits, and similar quality of business; and

(9) If the contract provides that the controlling producer, on insurance business placed with the insurer, is to be compensated contingent upon the insurer's profits on that business, then such compensation shall not be determined and paid until at least five (5) years after the premiums on liability insurance are earned and at least one (1) year after the premiums are earned on any other insurance. In no event shall the commissions be paid until the adequacy of the controlled insurer's reserves on remaining claims has been independently verified pursuant to Subsection (d)(1) of this section; and

(10) A limit on the controlling producer's writings in relation to the controlled insurer's surplus and total writings. The insurer may establish a different limit for each line or sub-line of business. The controlled insurer shall notify the controlling producer when the applicable limit is approached and shall not accept business from the controlling producer if the limit is reached. The controlling producer shall not place business with the controlled insurer if it has been notified by the controlled insurer that the limit has been reached; and

(11) The controlling producer may negotiate but shall not bind reinsurance on behalf of the controlled insurer on business the controlling producer places with the controlled insurer, except that the controlling producer may bind facultative reinsurance contracts pursuant to obligatory facultative agreements if the contract with the controlled insurer contains underwriting guidelines including, for both reinsurance assumed and ceded, a list of reinsurer with which such automatic agreements are in effect, the coverages and amounts or percentages that may be reinsured and commission schedules.

(c) Audit Committee. Every controlled insurer shall have an Audit Committee of the Board of Directors composed of independent directors. The Audit Committee shall annually meet with management, the insurer's independent certified public accountants, and an independent casualty actuary or other independent loss reserve specialist acceptable to the Commissioner to review the adequacy of the insurer's loss reserves.

(d) Reporting requirements.

(1) In addition to any other required loss reserve certification, the controlled insurer shall annually, on April 1 of each year, file with the Commissioner an opinion of an independent casualty actuary or such other independent loss reserve specialist acceptable to the Commissioner reporting loss ratios for each line of business written and attesting to the adequacy of loss reserves established for losses incurred and outstanding as of year-end (including incurred but not reported) on business placed by the producer; and

(2) The controlled insurer shall annually report to the Commissioner the amount of commissions paid to the producer, the percentage such amount represents of the net premiums written and comparable amounts and percentage paid to noncontrolling producers for placements of the same kinds of insurance.

#### §1653. Disclosure.

The producer, prior to the effective date of the policy, shall deliver written notice to the prospective insured disclosing the relationship between he producer and the controlled insurer; except that, if the business is placed through a subproducer who is not a controlling producer, the controlling producer shall retain in his records a signed commitment from the subproducer that the subproducer is aware of the relationship between the insurer and the producer and that the subproducer has or will notify the insured.

#### §1654. Penalties

- (a) (1) If the Commissioner believes that the controlling producer or any other person has not materially complied with this Act, or any regulation or order promulgated hereunder, after notice and opportunity to be heard, the Commissioner may order the controlling producer to cease placing business with the controlled insurer; and
- (2) If it is found that because of such material non-compliance that the controlled insurer or any policyholder thereof has suffered any loss or damage, the Commissioner may maintain a civil action or intervene in an action brought by or on behalf of the insurer or policyholder for recovery of compensatory damages for the benefit of the insurer or policyholder or other appropriate relief.
- (b) If an order for liquidation or rehabilitation of the controlled insurer has been entered pursuant to Chapter 59, and the receiver appointed under that order believes that the controlling producer or any other person has not materially complied with this Act, or any regulation or order promulgated hereunder, and the insurer suffered any loss or damage therefrom, the receiver may maintain a civil action for recovery of damages or other appropriate sanctions for the benefit of the insurer.
- (c) Nothing contained in this section shall affect the right of the Commissioner to impose any other penalties provided for in the Insurance Law.
- (d) Nothing contained in this section is intended to or shall in any manner alter or affect the rights of policyholders, claimants, creditors or other third parties.

#### §1655. Effective Date.

This Act shall take effect on June 30, 1992. Controlled insurers and controlling producers who are not in compliance with §1652 of this Act on its effective date shall have sixty (60) days to come into compliance and shall comply with §1653 beginning with all policies written or renewed on or after August 30, 1992.

Approved July 8, 1992.



CHAPTER 335

FORMERLY

HOUSE BILL NO. 503

AN ACT TO AMEND TITLE 18 , DELAWARE CODE, CHAPTER 80 RELATING TO THE DELAWARE INSURANCE RISK RETENTION ACT.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Title 18, Delaware Code, Chapter 80, Section 8002(7) by deleting this subsection in its entirety and substituting the following in lieu thereof:

"(7) 'Personal risk liability' means liability for damages because of injury to any person, damage to property, or other loss or damage resulting from personal, familial, or household responsibilities or activities, rather than from responsibilities or activities referred to in subparagraph (6) of this Section."

Section 2. Further amend Chapter 80, Title 18, Delaware Code, Section 8002 by deleting §8002(10)b in its entirety and substituting the following in lieu thereof:

"b. Purchases such insurance only for its group members and only to cover their similar or related liability exposure, as described in subparagraph (c)."

Section 3. Further amend Chapter 80, Title 18, Delaware Code, Section 8004(2), by deleting subparagraph d. in its entirety and substituting the following in lieu thereof:

"d. Such information as may be required to verify its continuing qualification as a risk retention group under subsection 8002(11)."

Section 4. Further amend Chapter 80, Title 18, Delaware Code, Section 8005, subsection a. by deleting this subsection in its entirety and substituting the following in lieu thereof:

"a. No risk retention group shall be required or permitted to join or contribute financially to any insurance insolvency guaranty fund, or similar mechanism, in this State, nor shall any risk retention group, or its insureds or claimants against its insureds, receive any benefit from any such fund for claims arising under the insurance policies issued by such risk retention group."

Approved July 8, 1992.

## CHAPTER 336

## FORMERLY

HOUSE BILL NO. 38  
AS AMENDED BY HOUSE AMENDMENT NOS. 1, 2 AND 4

AN ACT TO AMEND TITLE 21 OF THE DELAWARE CODE RELATING TO INSURANCE FOR MOTOR VEHICLES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend §2118(r)(1), Chapter 21, Title 21, Delaware Code by adding at the end of said subsection the following:

"Provided, however, that no person shall be subject to a fine or conviction under this paragraph for driving an uninsured vehicle if said person is insured while operating said vehicle through his or her own insurance coverage. However, where an owner of an uninsured vehicle authorizes another person to operate said vehicle in violation of subsection (a) of this section, it shall be no defense for the owner that the operator is insured while operating said vehicle through his or her own insurance coverage."

Approved July 8, 1992.

## CHAPTER 337

## FORMERLY

SENATE BILL NO. 348

AN ACT TO AMEND CHAPTER 1, TITLE 8 OF THE DELAWARE CODE, RELATING TO THE GENERAL CORPORATION LAW.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Section 251(b)(5), Chapter 1, Title 8, Delaware Code, by adding the words "or entity" following the words "rights or securities of any other corporation" at both places where the words "rights or securities of any other corporation" appear in such Section.

Section 2. Amend Section 252(b)(3), Chapter 1, Title 8, Delaware Code, by adding the words "or entity" following the words "rights or securities of any other corporation" at both places where the words "rights or securities of any other corporation" appear in such Section.

Section 3. Amend Section 262(b)(1), Chapter 1, Title 8, Delaware Code, by adding the words "or designated as a national market system security on an interdealer quotation system by the National Association of Securities Dealers, Inc." following the word "exchange" and before the word "or" in clause (1) thereof.

Section 4. Amend Section 262(b)(2)b., Chapter 1, Title 8, Delaware Code, by adding the phrase "or designated as a national market system security on an interdealer quotation system by the National Association of Securities Dealers, Inc." following the word "exchange" and before the word "or" in such Section.

Section 5. This Bill shall become effective on July 1, 1992, provided that Sections 3 and 4 shall be effective only with respect to mergers or consolidations consummated pursuant to an agreement of merger or consolidation entered into after July 1, 1992.

Approved July 8, 1992.

## CHAPTER 338

## FORMERLY

## HOUSE BILL NO. 210

## AN ACT TO AMEND TITLE 3 OF THE DELAWARE CODE RELATING TO VITICULTURAL ACTIVITIES IN THE STATE OF DELAWARE

## BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Title 3 of the Delaware Code by adding thereto a new Chapter 5 to read as follows:

"Chapter 5. Delaware Viticulture Act.

§501. Short Title.

This Act shall be known and may be cited as the 'Delaware Viticulture Act'.

§502. Declaration of Purpose.

The General Assembly finds and declares it to be in the interest of the general welfare and economic prosperity of the State to have a comprehensive and ongoing program to promote and encourage viticultural activities. The General Assembly further declares viticulture an agricultural activity and that the Department of Agriculture shall coordinate viticultural activities in the State of Delaware.

503. Definitions: As used in this Chapter.

(1) 'Department' means the Department of Agriculture.

(2) 'Commission' means the Alcoholic Beverage Control Commission.

(3) 'Secretary' means the Secretary of the Department of the Department of Agriculture.

(4) 'Viticulture' means the cultivation, production or marketing of any grape variety that is cultivated, produced, or marketed as a cultivated crop in this State.

504. Viticulture Technical Assistance and Marketing Program.

The Department shall develop and implement a technical assistance program to assist the owners and operators of viticultural facilities and to promote Delaware viticulture products. This program will be done in conjunction with, and shall be consistent with, the Department's responsibilities as defined in Section 3 of this Title. The Department's program shall include, but not be limited to the following:

(1) Maintain a complete list of viticulturalists engaged in the production of any viticultural product for the purpose of certifying those viticulturists as bonafide Delaware Viticulture producers.

(2) Develop and administer procedures for possession, processing, sale, delivery, transportation, or exporting of viticulture products that comply with all federal and state laws, except where production of viticulture products into wine is regulated by the Commission.

(3) Encourage the viability and profitability of viticulture operations and to promote the consumption of Delaware grown viticulture products within and outside the State.

§505. Delaware Viticulture Council.

A Delaware Viticulture Council is hereby created for the purposes of assisting the Department with the enhancement and promotion of viticulture activities and operations within the State. Duties of the Council shall include, but not be limited to the following:

(1) Examine the impact of laws and regulations on the viticulture industry and recommend to the Secretary methods to simplify regulatory processes or otherwise enhance the regulatory climate with respect to the efficient siting and operation of viticulture operations;

(2) Examine the viticulture incentive programs used by other states, determine those programs used, determine programs that would best enhance viticulture operations and report to the Secretary on what actions are required to address these needs;

(3) Examine research and educational needs as they relate to the improvement of management and operations of viticulture operations and report to the Secretary on what actions are required to address these needs;

(4) Respond to requests of the Secretary to examine other issues relating to the enhancement of viticulture activities and operations in Delaware.

The Council shall be composed of no less than 12 members. Members shall include:

(1) The Secretary of the Department of Natural Resources and Environmental Control or his designee;

(2) The Director of the Development Office or his designee;

(3) A representative of the University of Delaware to be appointed by the President of the University.

(4) A representative of Delaware State College to be appointed by the President of the College;

(5) A representative of the Delaware Farm Bureau to be appointed by the President of the Delaware Farm Bureau;

(6) Three individuals that are actively involved in commercial viticulture activities or operations to be appointed by the Chairman of the Council;

(7) Three individuals with an interest in viticulture activities to be appointed by the Chairman of the Council. The Secretary shall act as Chairman of the Council, or may appoint his designee."

Approved 8, 1992.

## CHAPTER 339

## FORMERLY

## HOUSE BILL NO. 617

AN ACT TO AMEND CHAPTER 158, VOLUME 36 OF THE LAWS OF DELAWARE, THE CHARTER OF THE CITY OF DOVER, RELATING TO ELECTIONS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (Two-thirds of all members elected to each House thereof concurring therein):

Section 1. Amend Section 6, Chapter 158, Volume 36, Laws of Delaware, as amended by Chapter 147, Volume 61, Laws of Delaware, and Chapter 365, Volume 66, Laws of Delaware, by striking the existing Section 6 in its entirety and substituting in lieu thereof a new Section 6 to read as follows:

"Section 6. Municipal election dates.

Regular municipal elections shall be held each year on the third Tuesday in April and shall be known as regular municipal elections. All other municipal elections that may be held shall be known as special municipal elections. At the regular municipal election to be held on the third Tuesday in April of 1993 and every two (2) years thereafter, five (5) councilmen shall be elected for a term of two (2) years, four (4) of whom shall be elected by district voting from each of the districts as designated by council and one (1) of whom shall be elected by at-large voting by all voters of the city, as provided in Section 5 of this Charter. At the regular municipal election to be held on the third Tuesday in April of 1994 and every two (2) years thereafter, four (4) councilmen shall be elected by district voting from each of the districts as designated by council for a term of two (2) years, and a mayor shall be elected by the voters of the city for a term of two (2) years, as provided in Section 5 of this Charter."

Section 2. Amend Section 8, Chapter 158, Volume 36, Laws of Delaware, as amended by Chapter 318, Volume 49, Laws of Delaware, Chapter 98, Volume 59, Laws of Delaware, Chapter 456, Volume 60, Laws of Delaware, Chapter 147, Volume 61, Laws of Delaware, and Chapter 365, Volume 66, Laws of Delaware, by striking the phrase "on the third Monday of April in the year 1988 and each year thereafter" as it appears in the first sentence of the first paragraph of said Section 8, and substituting in lieu thereof the phrase "on the third Tuesday of April in the year 1993 and each year thereafter"; by striking "11:00 a.m." as it appears in the second sentence of the first paragraph of said Section 8, and substituting in lieu thereof "7:00 a.m."; by striking "11:00 a.m." as it appears in the third sentence of the second paragraph of said Section 8, and substituting in lieu thereof "7:00 a.m."; and by striking the existing fourth paragraph of said Section 8 in its entirety and substituting in lieu thereof a new fourth paragraph of said Section 8 to read as follows:

"Every resident of the City of Dover who shall have reached the age of eighteen (18) years by the time of the election and who is properly registered to vote shall be entitled to vote at all regular or special municipal elections. A voter will be considered properly registered to vote if he is properly registered to vote for state elections in accordance with Title 15 of the Delaware Code as amended."

Section 3. Amend Section 50, Chapter 158, Volume 36, Laws of Delaware, as amended by Chapter 318, Volume 49, Laws of Delaware, Chapter 92, Volume 51, Laws of Delaware, Chapter 112, Volume 52, Laws of Delaware, Chapter 96, Volume 54, Laws of Delaware, and Chapter 143, Volume 64, Laws of Delaware, by striking "11 o'clock A.M." as it appears in the sixth sentence of the fourth paragraph of subsection (d) of said Section 50, and substituting in lieu thereof "7 o'clock A.M."

Approved July 8, 1992.

## CHAPTER 340

## FORMERLY

HOUSE BILL NO. 571  
AS AMENDED BY HOUSE AMENDMENT NOS. 2, 1 AND 3

AN ACT TO AMEND CHAPTER 72, TITLE 18 OF THE DELAWARE CODE RELATING TO HEALTH INSURANCE FOR SMALL EMPLOYERS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Chapter 72, Title 18 by deleting said chapter in its entirety and inserting in lieu thereof the following:

"Chapter 72. Small Employer Health Insurance.

§7201. Purpose

The purpose and intent of this chapter are to promote the availability of health insurance coverage to small employers regardless of their health status or claims experience, to prevent abusive rating practices, to require disclosure of rating practices to purchasers, to establish rules regarding renewability of coverage, to establish limitations on the use of preexisting condition exclusions, to provide for development of "basic" and "standard" health benefit plans to be offered to all small employers, to provide for establishment of a reinsurance program, and to improve the overall fairness and efficiency of the small group health insurance market.

This Chapter is not intended to provide a comprehensive solution to the problem of affordability of health care or health insurance.

§7202. Definitions

As used in this Chapter:

- (a) 'Actuarial certification' means a written statement by a member of the American Academy of Actuaries or other individual acceptable to the commissioner that a small employer carrier is in compliance with the provisions of §7205 of this chapter, based upon an examination and including a review of the appropriate records and the actuarial assumptions and methods used by the small employer carrier in establishing premium rates for applicable health benefit plans.
- (b) 'Affiliate' or 'affiliated' means any entity or person who directly or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, a specified entity or person.
- (c) 'Base premium rate' means, for each class of business as to a rating period, the lowest premium rate charged or that could have been charged under a rating system for that class of business by the small employer carrier to small employers with similar case characteristics for health benefit plans with the same or similar coverage.
- (d) 'Basic health benefit plan' means a lower cost health benefit plan developed pursuant to §7211 of this title.
- (e) 'Board' means the board of directors of the program established pursuant to §7210 of this title.
- (f) 'Carrier' means any entity that provides health insurance in this state. For the purposes of this chapter, carrier includes an insurance company, health service corporation, health maintenance organization, and any other entity providing a plan of health insurance or health benefits subject to state insurance regulation.
- (g) 'Case characteristics' means demographic or other objective characteristics of a small employer that are considered by the small employer carrier in the determination of premium rates for the small employer, provided that claim experience, health status and duration of coverage shall not be case characteristics for the purposes of this

chapter. The small employer carrier shall not use case characteristics other than age, gender, industry, (subject to §7205(a)(6)) geographic area, family composition, unhealthy lifestyle choices, and group size without prior approval of the commissioner.

- (h) 'Class of business' means all of a carrier's business unless more than one class is established pursuant to §7204 of this title.
- (i) 'Commissioner' means the insurance commissioner of this state.
- (j) 'Committee' means the Health Benefit Plan Committee created pursuant to §7211 of this title.
- (k) 'Control' shall be defined in the same manner as in §5002 of this title.
- (l) 'Dependent' means a spouse, an unmarried child under the age of eighteen (18) years, an unmarried child who is a full-time student under the age of twenty-five (25) years and who is financially dependent upon the parent, and an unmarried child of any age who is medically certified as totally disabled and dependent upon the parent.
- (m) 'Eligible employee' means an employee who works on a full-time basis and has a normal work week of thirty (30) or more hours. The term includes a sole proprietor, a partner of a partnership, and an independent contractor, if the sole proprietor, partner or independent contractor is included as an employee under a health benefit plan of a small employer, but does not include an employee who works on a part-time, temporary or substitute basis.
- (n) 'Established geographic service area' means a geographic area, as approved by the commissioner and based on the carrier's certificate of authority to transact insurance in this state, within which the carrier is authorized to provide coverage.
- (o) 'Health benefit plan' means any hospital or medical policy or certificate, health service corporation subscriber contract, or health maintenance organization subscriber contract. Health benefit plan does not include accident-only, credit dental, vision, Medicare supplement, long-term care, or disability income insurance, coverage issued as a supplement to liability insurance, worker's compensation or similar insurance, or automobile medical payment insurance.
- (p) 'Index rate' means, for each class of business as to a rating period for small employers, the arithmetic average of the applicable base premium rate and the corresponding highest premium rate.
- (q) 'Late enrollee' means an eligible employee or dependent who requests enrollment in a health benefit plan of a small employer following the initial enrollment period during which the individual is entitled to enroll under the terms of the health benefit plan, provided that the initial enrollment period is a period of at least thirty (30) days. However, an eligible employee or dependent shall not be considered a late enrollee if:
  - (1) The individual meets each of the following:
    - a. The individual was covered under qualifying previous coverage as defined in subparagraph (x), below, at the time of the initial enrollment;
    - b. The individual lost coverage under qualifying previous coverage as a result of termination of employment or eligibility, the involuntary termination of the qualifying previous coverage, death of a spouse or divorce; and
    - c. the individual requests enrollment within thirty (30) days after termination of the qualifying previous coverage;
  - (2) The individual is employed by an employer which offers multiple health benefit plans and the individual elects a different plan during an open enrollment period; or

(3) A court has ordered coverage be provided for a spouse or minor or dependent child under a covered employee's health benefit plan and request for enrollment is made within thirty (30) days after issuance of the court order.

- (r) 'New business premium rate' means, for each class of business as to a rating period, the lowest premium rate charged or offered or which could have been charged or offered by the small employer carrier to small employers with similar case characteristics for newly issued health benefit plans with the same or similar coverage.
- (s) 'Unhealthy lifestyle choices' means smoking or maintaining excessive weight, blood pressure or cholesterol, other than due to organic causes that are being treated by a physician, as those conditions or actions may be more fully defined by regulation by the commissioner.
- (t) 'Plan of operation' means the plan of operation of the program established pursuant to §7210 of this title.
- (u) 'Premium' means all monies paid by a small employer and eligible employees as a condition of receiving coverage from a small employer carrier, including any fees or other contributions associated with the health benefit plan.
- (v) 'Producer' means agent and/or broker.
- (w) 'Program' means the Delaware Small Employer Reinsurance Program created by §7210 of this title.
- (x) 'Qualifying previous coverage' and 'qualifying existing coverage' mean benefits or coverage provided under:
  - (1) Medicare or Medicaid;
  - (2) An employer-based health insurance or health benefit arrangement that provides benefits similar to or exceeding benefits provided under the basic health benefit plan; or
  - (3) An individual health insurance policy (including coverage issued by a health maintenance organization, health service corporation and fraternal benefit society) that provides benefits similar to or exceeding the benefits provided under the basic health benefit plan, provided that such policy has been in effect for a period of at least one year.
- (y) 'Rating period' means the calendar period for which premium rates established by a small employer carrier are assumed to be in effect.
- (z) 'Reinsuring carrier' means a small employer carrier participating in the reinsurance program pursuant to §7210 of this title.
- (aa) 'Restricted network provision' means any provision of a health benefit plan that conditions the payment of benefits, in whole or in part, on the use of health care providers that have entered into a contractual arrangement with the carrier pursuant to Chapter 64 or otherwise to provide health care services to covered individuals.
- (bb) 'Risk-assuming carrier' means a small employer carrier whose application is approved by the commissioner pursuant to §7209 of this title.
- (cc) 'Small employer' means any person, firm, corporation, partnership or association that is actively engaged in business that, on at least fifty percent (50%) of its working days during the preceding calendar quarter, employed no more than twenty-five (25) eligible employees, the majority of whom were employed within this state. In determining the number of eligible employees, companies that are affiliated companies, or that are eligible to file a combined tax return for purposes of state taxation, shall be considered one employer.



- (dd) 'Small employer carrier' means a carrier that offers health benefit plans covering eligible employees of one or more small employers in this state.

(1) Except as provided in paragraph (2), for the purposes of this chapter, carriers that are affiliated companies or that are eligible to file a consolidated tax return shall be treated as one carrier and any restrictions or limitations imposed by this chapter shall apply as if all health benefit plans delivered or issued for delivery to small employers in this state by such affiliated carriers were issued by one carrier.

(2) An affiliated carrier that is a health maintenance organization having a certificate of authority under Chapter 64 of this title may be considered to be a separate carrier for the purposes of this chapter.

(3) Unless otherwise authorized by the commissioner, a small employer carrier shall not enter into one or more ceding arrangements with respect to health benefit plans delivered or issued for delivery to small employers in this state if such arrangements would result in less than fifty percent (50%) of the insurance obligation or risk for such health benefit plans being retained by the ceding carrier. The provisions of §§910 and 4944 of this title shall apply if a small employer carrier cedes or assumes all of the insurance obligation or risk with respect to one or more health benefit plans delivered or issued for delivery to small employers in this State.

- (ee) 'Standard health benefit plan' means a health benefit plan developed pursuant to §7211 of this title.

#### §7203. Applicability and Scope.

This chapter shall apply to any health benefit plan provided by a small employer which provides coverage to the employees of such small employer in this state.

#### §7204. Establishment of Classes of Business.

(a) A small employer carrier may establish more than one class of business only to reflect substantial differences in expected claims experience or administrative costs related to the following reasons:

(1) The small employer carrier uses more than one type of system for the marketing and sale of health benefit plans to small employers.

(2) The small employer carrier has acquired a class of business from another small employer carrier; or

(3) The small employer carrier provides coverage to one or more association groups that meet the requirements of §3506 of this title.

(b) A small employer carrier may establish no more than nine (9) classes of business under subsection (a) of this section, except as provided for in subsection (d) herein.

(c) The commissioner may establish regulations to provide for periods of transition in order for a small employer carrier to come into compliance with subsections (a) and (b) of this section in the instance of acquisition of a block of business from another small employer carrier.

(d) The commissioner may approve the establishment of more than nine (9) classes of business upon a finding that such action would enhance the efficiency and fairness of the small employer marketplace.

(e) A small employer carrier shall not transfer a small employer involuntarily into or out of a class of business. A small employer carrier shall not offer to transfer a small employer into or out of a class of business unless such offer is made to transfer all small employers in the class of business without regard to case characteristics, claim experience, health status or duration of coverage since issue.

(f) A small employer carrier may establish one or more classes of business, none of which shall be subject to the restrictions of §7205(a)(1) of this chapter, if each such class consists of small employers having fewer than three participants, and is one for which the carrier does not reject and has never rejected, small employers included within the definition of employers eligible for the class of business or otherwise eligible employees and dependents who enroll on a timely basis, based upon their claim experience or health status.

§7205. Restrictions Relating to Premium Rates.

(a) Premium rates for health benefit plans subject to this chapter shall be subject to the following provisions:

(1) The index rate for any class of business shall not exceed the index rate for similar coverage for any other class of business by more than twenty percent (20%) in any rating period.

(2) The premium rates for similar health benefit plans within a class of business shall not vary from the index rate by more than thirty-five percent (35%), with (i) an additional combined variation of no more than ten percent (10%) for gender and geography; and (ii) the actuarially justified adjustment for age and family composition, provided that the small employer carrier shall file a document as prescribed by the Commissioner setting out the age classes and family composition classes used pursuant to this subparagraph, including actuarial certification of these classes.

(3) The percentage increase in the premium rate charged to a small employer for a new rating period may not exceed the sum of the following:

a. The percentage change in the new business premium rate calculated using premium rates on the first day of the prior rating period and the first day of the new rating period. In the case of a health benefit plan into which the small employer carrier is no longer enrolling new small employers, the small employer carrier shall use the percentage change in the new business premium rate for the most similar health benefit plan into which the small employer carrier is actively enrolling new small employers;

b. Any adjustment, not to exceed fifteen percent (15%) annually and adjusted pro rata for rating periods of less than one year, due to the claim experience, health status or duration of coverage of the employees or dependents of the small employer as determined from the small employer carrier's rate manual for the class of business; and

c. Any adjustment due to change in coverage or change in the case characteristics of the small employer as determined from the small employer carrier's rate manual for the class of business.

(4) Adjustments in rates for claim experience, health status and duration of coverage shall not be charged to individual employees or dependents. Any such adjustment shall be applied uniformly to the rates charged for all employees and dependents of the small employer.

(5) Premium rates for health benefit plans shall comply with the requirements of this section notwithstanding any assessments paid or payable by small employer carriers pursuant to §7210 of this title.

(6) A small employer carrier may utilize industry as a case characteristic in establishing premium rates, provided that the highest rate factor associated with any industry classification shall not exceed the lowest rate factor associated with any industry classification by more than fifteen percent (15%).

(7) In the case of health benefit plans delivered or issued for delivery prior to the effective date of this chapter, a premium rate for a rating period may exceed the ranges set forth in subsections (a)(1) and (2) of this section for a period of one (1) year following the effective date of this chapter. In such case, the percentage increase in the premium rate charged to a small employer for a new rating period shall not exceed the sum of the following:

a. The percentage change in the new business premium rate calculated using premium rates on the first day of the prior rating period and the first day of the new rating period. In the case of a health benefit plan into which the small employer carrier is no longer enrolling new small employers, the small employer carrier shall use the percentage change in the new business premium rate for the most similar health benefit plan into which the small employer carrier is actively enrolling new small employers.

b. Any adjustment due to change in coverage or change in the case characteristics of the small employer as determined from the carrier's rate manual for the class of business.

(8) a. Small employer carriers shall apply rating factors, including case characteristics, consistently with respect to all small employers in a class of business. Rating factors shall produce premiums for identical groups which differ only by the amounts attributable to plan design and do not reflect differences due to the nature of the groups assumed to select particular health benefit plans.

b. A small employer carrier shall treat all health benefit plans issued or renewed in the same calendar month as having the same rating period.

(9) For purposes of this subsection, a health benefit plan that utilizes a restricted provider network shall not be considered similar coverage to a health benefit plan that does not utilize such a network, provided that utilization of the restricted provider network results in substantial differences in claims costs.

#### §7206. Renewability of coverage.

(a) A health benefit plan subject to this chapter shall be renewable with respect to all eligible employees or dependents, at the option of the small employer, except in any of the following cases:

(1) Nonpayment of the required premiums;

(2) Fraud or misrepresentation of the small employer or, with respect to coverage of individual insureds, the insureds or their representatives;

(3) Noncompliance with the carrier's minimum participation requirements;

(4) Noncompliance with the carrier's employer contribution requirements;

(5) Repeated misuse of a provider network provision;

(6) The small employer carrier elects to nonrenew all of its health benefit plans delivered or issued for delivery to small employers in this state. In such a case the carrier shall:

a. Provide advance notice of its decision under this paragraph to the commissioner in each state in which it is licensed; and

b. Provide notice of the decision not to renew coverage to all affected small employers and to the commissioner in each state in which an affected insured individual is known to reside at least 180 days prior to the nonrenewal of any health benefit plans by the carrier. Notice to the commissioner under this subparagraph shall be provided at least three (3) working days prior to the notice to the affected small employers; or

(7) The commissioner finds that the continuation of the coverage would:

a. Not be in the best interests of the policyholders or certificate holders;

b. Impair the carrier's ability to meet its contractual obligations.

In such instance the commissioner shall assist affected small employers in finding replacement coverage.

(b) A small employer carrier that elects not to renew a health benefit plan under subsection (a)(6) of this section shall be prohibited from writing new business in the small employer market in this state for a period of five (5) years from the date of notice to the commissioner.

(c) In the case of a small employer carrier doing business in one established geographic service area of the state, the rules set forth in this chapter shall apply only to the carrier's operations in that service area.

§7207. Availability of coverage; preexisting conditions; minimum participation.

(a) (1) Subject to subsection (a)(4) herein, every small employer carrier shall, as a condition of transacting business in this state with small employers, actively offer to small employers at least two (2) health benefit plans. One health benefit plan offered by each small employer carrier shall be a basic health benefit plan and one plan shall be a standard health benefit plan.

(2) a. A small employer carrier shall issue a basic health benefit plan or a standard health benefit plan to any small employer meeting the requirements of subsection (a)(3) herein that applies to either such plan and agrees to make the required premium payments and to satisfy the other reasonable provisions of the health benefit plan not inconsistent with this chapter.

b. In the case of a small employer carrier that establishes more than one class of business pursuant to §7204 of this title, the small employer carrier shall maintain and issue to such small employers at least one basic health benefit plan and at least one standard health benefit plan in each class of business so established. A small employer carrier may apply reasonable criteria in determining whether to accept a small employer into a class of business, provided that:

(i) The criteria are not intended to discourage or prevent acceptance of small employers applying for a basic or standard health benefit plan;

(ii) The criteria are not related to the health status or claim experience of the small employer;

(iii) The criteria are applied consistently to all small employers applying for coverage in the class of business; and

(iv) The small employer carrier provides for the acceptance of all eligible small employers into one or more classes of business.

The provisions of this subparagraph shall not apply to a class of business into which the small employer carrier is no longer enrolling new small businesses.

(3) A small employer is eligible under paragraph (2) of this section if it employed at least two (2) or more eligible employees within this state on at least fifty percent (50%) of its working days during the preceding calendar quarter.

(4) The provisions of this section shall be effective 180 days after the commissioner's and Delaware Health Care Commission's approval of the basic health benefit plan and the standard health benefit plan developed pursuant to §7211 of this title; provided, that if the Small Employer Health Reinsurance Program created pursuant to §7210 of this title is not yet operative on that date, the provisions of this paragraph shall be effective on the date that program begins operation.

(b) (1) A small employer carrier shall file with the commissioner, in a format and manner prescribed by the commissioner, the basic health benefit plans and the standard health benefit plans to be used by the carrier within ninety (90) days after the commissioner establishes the guidelines thereof. A health benefit plan filed pursuant to this paragraph may be used by a small employer carrier beginning thirty (30) days after it is filed unless the commissioner disapproves its use.

(2) The commissioner at any time may, after providing notice and an opportunity for a hearing to the small employer carrier, disapprove the continued use by a small employer carrier of a basic or standard health benefit plan on the grounds that the plan does not meet the requirements of this chapter.

(c) Health benefit plans covering small employers shall comply with the following provisions:

(1) A health benefit plan shall not deny, exclude or limit benefits for a covered individual for losses incurred more than twelve (12) months following the effective date of the individual's coverage due to a preexisting condition. A health benefit plan shall not define a preexisting condition more restrictively than:

a. A condition that would have caused an reasonably prudent person to seek medical advice, diagnosis, care or treatment during the six (6) months immediately preceding the effective date of coverage;

b. A condition for which medical advice, diagnosis, care or treatment was recommended or received during the six (6) months immediately preceding the effective date of coverage; or

c. A pregnancy existing on the effective date of coverage.

(2) A health benefit plan shall waive any time period applicable to a preexisting condition exclusion or limitation period with respect to particular services for the period of time an individual was previously covered by qualifying previous coverage that provided benefits with respect to such services, provided that the qualifying previous coverage was continuous to a date not more than sixty (60) days prior to the effective date of the new coverage, excluding any waiting period applicable to the new plan. This paragraph does not preclude application of any waiting period applicable to all new enrollees under the health benefit plan.

(3) A health benefit plan may either exclude coverage for late enrollees for eighteen (18) months or contain an eighteen-month preexisting condition exclusion; provided that if both a period of exclusion from coverage and a preexisting condition exclusion are applicable to a late enrollee, the combined period shall not exceed eighteen (18) months from the date the individual became eligible to enroll for coverage under the health benefit plan, except as provided in subsection (c)(1) of this section.

(4) a. Except as provided in subsection (d) of this section, requirements used by a small employer carrier in determining whether to provide coverage to a small employer, including requirements for minimum participation of eligible employees shall be applied uniformly among all small employers with the same number of eligible employees applying for coverage or receiving coverage from the small employer carrier.

b. A small employer carrier may vary the application of minimum participation requirements and minimum employer contribution requirements only by the size of the small employer group.

c. An employee who does not participate in the health benefit plan and who presents satisfactory evidence that he or she has coverage through a spouse shall not be counted by a small employer carrier with respect to number or percent participation requirements.

d. A small employer carrier shall not increase any requirement for minimum employee participation or any requirement for minimum employer

contribution applicable to a small employer at any time after the small employer has contracted for coverage.

(5) a. If a small employer carrier offers coverage to a small employer, the small employer carrier shall offer coverage to all of the eligible employees of a small employer and their dependents. A small employer carrier shall not offer coverage to only certain individuals in a small employer group or to only part of the group, except in the case of late enrollees as provided in subsection (c)(3) of this section.

b. A small employer carrier shall not modify a basic or standard health benefit plan with respect to a small employer or any eligible employee or dependent through riders, endorsements or otherwise, to restrict or exclude coverage for certain diseases or medical conditions otherwise covered by the health benefit plan.

(d)(1) A small employer carrier shall not be required to offer coverage or accept applications pursuant to subsection (a) of this section in the case of the following:

a. To a small employer, where the small employer is not physically located in the carrier's established geographic service area;

b. To an employee, when the employee does not work or reside within the carrier's established geographic service area; or

c. Within an area where the small employer carrier reasonably anticipates, and demonstrates to the satisfaction of the commissioner, that it will not have the capacity within its established geographic service area to deliver service adequately to the members of such groups because of its obligations to existing group policyholders and enrollees.

(2) A small employer carrier that cannot offer coverage pursuant to subsection (1)c of this subsection may not offer coverage in the applicable area to new cases of employer groups with more than twenty-five (25) eligible employees or to any small employer groups until the later of 180 days following each such refusal or the date on which the carrier notifies the commissioner that it has regained capacity to deliver services to small employer groups.

(e) A small employer carrier shall not be required to provide coverage to its employers pursuant to subsection (a) of this section for any period of time for which the commissioner determines that requiring the acceptance of small employers in accordance with the provisions of subsection (a) of this section would place the small employer carrier in a financially impaired condition.

#### §7208. Notice of intent to operate as a risk-assuming carrier.

(a) (1) Each small employer carrier desiring to operate as a risk-assuming carrier shall make application to the commissioner within thirty (30) days of the effective date of this chapter to operate as a risk-assuming carrier, pursuant to §7209 of this title.

(2) The commissioner may permit a carrier to modify its status at any time for good cause shown.

(3) The commissioner shall establish an application process for small employer carriers seeking to change their status under this subsection.

(b) A reinsuring carrier that applies and is approved to operate as a risk-assuming carrier shall not be permitted to continue to reinsure any health benefit plan with the program. Such a carrier shall pay a prorated assessment based upon business issued as a reinsuring carrier for any portion of the year that the business was reinsured.

#### §7209. Application to become a risk-assuming carrier.

- (a) A small employer carrier may apply to become a risk-assuming carrier by filing an application with the commissioner in a form and manner prescribed by the commissioner.
  - (b) The commissioner shall consider the following factors in evaluating an application filed under subsection (a):
    - (1) The carrier's financial condition;
    - (2) The carrier's history or rating and underwriting small employer groups;
    - (3) The carrier's commitment to market fairly to all small employers in the state or its established geographic service area, as applicable; and
    - (4) The carrier's experience with managing the risk of small employer groups.
    - (5) The effect of approval and disapproval on the small employer insurance market and the Small Employer Carrier Reinsurance Program pursuant to §7210 of this title.
  - (c) The commissioner shall provide public notice of an application by a small employer carrier to be a risk-assuming carrier and shall provide at least a sixty-day period for public comment prior to making a decision on the application.
  - (d) The commissioner may rescind the approval granted to a risk-assuming carrier under this section if the commissioner finds that:
    - (1) The carrier's financial condition will no longer support the assumption of risk from issuing coverage to small employers in compliance with §7207 without the protection afforded by the program;
    - (2) The carrier has failed to market fairly to all small employers in the state or its established geographic service area, as applicable; or
    - (3) The carrier has failed to provide coverage to eligible small employers as required in §7207 of this title.
  - (e) A small employer carrier electing to be a risk-assuming carrier shall not be subject to the provisions of §7210 of this title.
- §7210. Small employer carrier reinsurance program.
- (a) A reinsuring carrier shall be subject to the provisions of this section.
  - (b) There is hereby created a nonprofit entity to be known as the Delaware Small Employer Health Reinsurance Program.
  - (c) (1) The program shall operate subject to the supervision and control of the board. Subject to the provisions of paragraph (2) of this subsection, the board shall consist of eight (8) members appointed by the Governor, plus the commissioner or his or her designated representative, who shall serve as an ex-officio member of the board. Of the 8 appointed members, at least 1 shall be a resident of each county. No more than 5 of the board members shall be of the same political party.
  - (2) a. In selecting the members of the board, the Governor shall include representatives of small employers and small employer carriers and such other individuals determined to be qualified by the Governor. At least five (5) of the members of the board shall be representatives of reinsuring carriers and shall be selected from individuals nominated by small employer carriers in this state pursuant to procedures and guidelines developed by the commissioner.
  - b. In the event that the program becomes eligible for additional financing pursuant to subsection (1)(3) of this section, the board

shall be expanded to include two (2) additional members who shall be appointed by the Governor. In selecting the additional members of the board, the Governor shall choose individuals who represent carriers who are not small employer carriers. The expansion of the board under this subsection shall continue for the period that the program continues to be eligible for additional financing under subsection (1)(3) of this section.

The initial board members shall be appointed as follows: two (2) of the members to serve a term of (1) year; three (3) of the members to serve a term of two (2) years; and three (3) of the members to serve a term of three (3) years. Subsequent board members shall serve for a term of three (3) years. A board member shall be eligible for reappointment. A board member's term shall continue until his or her successor is appointed.

(4) A vacancy in the board shall be filled by the Governor. A board member may be removed by the Governor for cause.

(d) Within sixty (60) days of the effective date of this chapter, each small employer carrier shall make a filing with the commissioner containing the carrier's net health insurance premium derived from health benefit plans delivered or issued for delivery to small employers in this state in the previous calendar year.

(e) Within 180 days after the appointment of the initial board, the board shall submit to the commissioner a plan of operation and thereafter any amendments thereto necessary or suitable to assure the fair, reasonable and equitable administration of the program. The commissioner may, after notice and hearing, approve the plan of operation if the commissioner determines it to be suitable to assure the fair, reasonable and equitable administration of the program, and to provide for the sharing of program gains or losses on an equitable and proportionate basis in accordance with the provisions of this section. The plan of operation shall become effective upon written approval by the commissioner.

(f) If the board fails to submit a suitable plan of operation within 180 days after its appointment, the commissioner shall, after notice and hearing, adopt and promulgate a temporary plan of operation. The commissioner shall amend or rescind any plan adopted under this subsection at the time a plan of operation is submitted by the board and approved by the commissioner.

(g) The plan of operation shall:

(1) Establish procedures for handling and accounting of program assets and monies and for an annual fiscal reporting to the commissioner;

(2) Establish procedures for selecting an administering contractor and setting forth the powers and duties of the administering contractor;

(3) Establish procedures for reinsuring risks in accordance with the provisions of this section;

(4) Establish procedures for collecting assessments from reinsuring carriers to fund claims and administrative expenses incurred or estimated to be incurred by the program; and

(5) Provide for any additional matters necessary for the implementation and administration of the program.

(h) The program shall have the general powers and authority granted under the laws of this state to insurance companies, health maintenance organizations and health services corporations licensed to transact business, except the power to issue health benefit plans directly to either groups or individuals. In addition thereto, the program shall have the specific authority to:

(1) Enter into contracts as are necessary or proper to carry out the provisions and purposes of this chapter, including the authority, with the approval of the commissioner, to enter into contracts with similar programs of other states for the joint performance of common functions



or with persons or other organizations for the performance of administrative functions;

(2) Sue or be sued, including taking any legal actions necessary or proper to recover any assessments and penalties for, on behalf of, or against the program or any reinsuring carriers;

(3) Take any legal action necessary to avoid the payment of improper claims against the program;

(4) Define the health benefit plans for which reinsurance will be provided, and to issue reinsurance policies, in accordance with the requirements of this chapter;

(5) Establish rules, conditions and procedures for reinsuring risks under the program;

(6) Establish actuarial functions as appropriate for the operation of the program;

(7) Assess reinsuring carriers in accordance with the provisions of subsection (1) of this section, and to make advance interim assessments as may be reasonable and necessary for organizational and interim operating expenses. Any interim assessments shall be credited as offsets against any regular assessments due following the close of the fiscal year;

(8) Appoint appropriate legal, actuarial and other committees as necessary to provide technical assistance in the operation of the program, policy and other contract design, and any other function within the authority of the program;

(9) Borrow money to effect the purposes of the program. Any notes or other evidence of indebtedness of the program not in default shall be legal investments for carriers and may be carried as admitted assets;

(1) A reinsuring carrier may reinsure with the program as provided for in this subsection:

(1) With respect to a basic health benefit plan or a standard health benefit plan, the program shall reinsure the level of coverage provided and, with respect to other plans, the program shall reinsure up to the level of coverage provided in a basic or standard health benefit plan.

(2) A small employer carrier may reinsure an entire employer group within sixty (60) days of the commencement of the group's coverage under a health benefit plan.

(3) A reinsuring carrier may reinsure an eligible employee or dependent within a period of sixty (60) days following the commencement of or next renewal after enactment hereof of coverage with the small employer. A newly eligible employee or dependent of the reinsured small employer may be reinsured within sixty (60) days of the commencement of his or her coverage.

(4) a. The program shall not reimburse a reinsuring carrier with respect to the claims of a reinsured employee or dependent until the carrier has incurred an initial level of claims for such employee or dependent of \$5,000 in a calendar year for benefits covered by the program. In addition, the reinsuring carrier shall be responsible for ten percent (10%) of the next \$50,000 of benefit payments during a calendar year and the program shall reinsure the remainder. A reinsuring carriers' liability under this subparagraph shall not exceed a maximum limit of \$10,000 in any one calendar year with respect to any reinsured individual. Provided, however that the Board may establish higher retention levels, percentages of responsibility, and maximum limits with respect to the claims of a reinsured employee or dependent who was covered by the subject carrier prior to the enactment hereof.

b. The board annually shall adjust the initial level of claims and the maximum limit to be retained by the carrier to reflect increases in costs and utilization within the standard market for health benefit plans within the state. The adjustment shall not be less than the annual change in the medical component of the "Consumer Price Index for All Urban Consumers" of the U.S. Department of Labor, Bureau of Labor Statistics, unless the board proposes and the commissioner approves a lower adjustment factor.

(5) A small employer carrier may terminate reinsurance with the program for one or more of the reinsured employees or dependents of a small employer on any anniversary of the health benefit plan.

(6) Premium rates charged for reinsurance by the program to a health maintenance organization that is federally qualified under 42 U.S.C. §300c(c)(2)(A), and as such is subject to requirements that limit the amount of risk that may be ceded to the program that is more restrictive than those specified in paragraph (4) of this subsection, shall be reduced to reflect that portion of the risk above the amount set forth in paragraph (4) of this subsection, that may not be ceded to the program, if any.

(7) A reinsuring carrier shall apply all managed care and claims handling techniques, including utilization review, individual case management, preferred provider provisions, and other managed care provisions or methods of operation consistently with respect to reinsured and nonreinsured business.

(j) (1) The board, as part of the plan of operation, shall establish a methodology for determining premium rates to be charged by the program for reinsuring small employers and individuals pursuant to this section. The methodology shall include a system for classification of small employers that reflects the types of case characteristics commonly used by small employer carriers in the state. The methodology shall provide for the development of base reinsurance premium rates which shall be multiplied by the factors set forth in paragraph (2) herein to determine the premium rates for the program. The base reinsurance premium rates shall be established by the board, subject to the approval of the commissioner, and shall be set at levels which reasonably approximate gross premiums charged to small employers by small employer carriers for health benefit plans with benefits similar to the standard health benefit plan (adjusted to reflect retention levels required under this chapter).

(2) Premiums for the program shall be as follows:

(a) An entire small employer group may be reinsured for a rate that is one and one-half (1.5) times the base reinsurance premium rate for the group established pursuant to this paragraph, or such rate with respect to groups covered by the subject carrier prior to the enactment hereof as the Board shall determine, but in no event less than the rate set forth above.

(b) An eligible employee or dependent may be reinsured for a rate that is five (5) times the base reinsurance premium rate for the individual established pursuant to this paragraph, or such rate with respect to employees or dependents covered by the subject carrier prior to the enactment herein as the board shall determine, but in no event less than the rate set forth above.

(3) The board periodically shall review the methodology established under paragraph (1) of this subsection, including the system of classification and any rating factors, to assure that it reasonably reflects the claims experience of the program. The board may propose changes to the methodology which shall be subject to the approval of the commissioner.

(4) The board may consider adjustments to the premium rates charged by the program to reflect the use of effective cost containment and managed care arrangements.

(5) Within twenty-four (24) months following enactment of this chapter, the board shall report to the Delaware Health Care Commission concerning the effects of any variation of reinsurance premium rates, retention levels, percentages of responsibility or maximum limits with respect to claims of a reinsured employee, dependent or group who was covered by the subject carrier prior to the enactment hereof. The commission shall report to the General Assembly within 60 days of receipt of such report with its conclusions from such report and recommended changes, if any, to the statutory mechanism provided hereunder.

(k) If a health benefit plan for a small employer is entirely or partially reinsured with the program, the premium charged to the small employer for any rating period for the coverage issued shall meet the requirements relating to premium rates set forth in §7205 of this title.

(1) (1) Prior to March 1 of each year, the board shall determine and report to the commissioner the program net loss for the previous calendar year, taking into account investment income and other appropriate gains and losses.

(2) Any net loss for the year shall be recouped by assessments of reinsuring carriers.

a. The board shall establish, as part of the plan of operation, a formula by which to make assessments against reinsuring carriers. The assessment formula shall be based on:

(i) Each reinsuring carrier's share of the total premiums earned in the preceding calendar year from health benefit plans delivered or issued for delivery to small employers in this state by reinsuring carriers; and

(ii) Each reinsuring carrier's share of the premiums earned in the preceding calendar year from newly issued health benefit plans delivered or issued for delivery during the calendar year to small employers in this state by reinsuring carriers.

b. The formula established pursuant to subparagraph (a) of this subsection shall not result in any reinsuring carrier having an assessment share that is less than fifty percent (50%) nor more than 150 percent of an amount which is based on the proportion of (i) the reinsuring carrier's total premiums earned in the preceding calendar year from health benefit plans delivered or issued for delivery to small employers in this state by reinsuring carriers to (ii) the total premiums earned in the preceding calendar year from health benefit plans delivered or issued for delivery to small employers in this state by all reinsuring carriers.

c. The board may, with approval of the commissioner, change the assessment formula established pursuant to subparagraph (a) of this subsection from time to time as appropriate. The board may provide for the shares of the assessment base attributable to total premium and to the previous year's premium to vary during a transition period.

d. Subject to the approval of the commissioner, the board shall make an adjustment to the assessment formula for reinsuring carriers that are approved health maintenance organizations which are federally qualified under 42 U.S.C. §300, et seq., to the extent, if any, that restrictions are placed on them that are not imposed on other small employer carriers.

e. Premiums earned by a reinsuring carrier that are less than an amount determined by the board to justify the cost of assessment collection shall not be considered for purposes of determining assessments.

(3) a. Prior to March 1 of each year, the board shall determine and file with the commissioner an estimate of the assessments

needed to fund the losses incurred by the program in the previous calendar year.

b. If the board determines that the assessments needed to fund the losses incurred by the program in the previous calendar year will exceed the amount specified in subparagraph c of this subsection, the board shall evaluate the operation of the program and report its findings, including any recommendations for changes to the plan of operation, to the commissioner within ninety (90) days following the end of the calendar year in which the losses were incurred. The evaluation shall include an estimate of future assessments and consideration of the administrative costs of the program, the appropriateness of the premiums charged, the level of insurer retention under the program and costs of coverage for small employers. If the board fails to file a report with the commissioner within ninety (90) days following the end of the applicable calendar year, the commissioner may evaluate the operations of the program and implement such amendments to the plan of operation the commissioner deems necessary to reduce future losses and assessments.

c. For any calendar year, the maximum assessment amount under this subparagraph is five percent (5%) of total premiums earned in the previous calendar year from health benefit plans delivered or issued for delivery to small employers in this state by reinsuring carriers.

d. (1) If assessments in each of two (2) consecutive calendar years exceed the amount specified in subparagraph c of this subsection, the program shall be eligible to receive additional financing as provided in item (11) of this subparagraph.

- (11) The additional funding provided for in item (1) of this subparagraph shall be obtained from assessments of health insurers, health maintenance organizations, and health service corporations as provided for in §707(a) of this title. The amount of additional financing to be provided to the program shall be equal to the amount by which total assessments in the preceding two (2) calendar years exceed five percent (5%) of total premiums earned during that period from small employers from health benefit plans delivered or issued for delivery in this state by reinsuring carriers. If the program has received additional financing in either of the two (2) previous calendar years pursuant to this provision, the amount of additional financing shall be subtracted from the amount of total assessments for the purpose of the calculation in the previous sentence.
- (111) Additional financing received by the program pursuant to this subparagraph shall be distributed to reinsuring carriers in proportion to the assessments paid by such carriers over the previous two (2) calendar years.
- (4) If assessments exceed net losses of the program, the excess may be held at interest and used by the board to offset future losses or to reduce program premiums. As used in this paragraph, 'future losses' includes reserves for incurred but not reported claims.
- (5) Each reinsuring carrier's proportion of the assessment shall be determined annually by the board based on annual statements and other reports deemed necessary by the board and filed by the reinsuring carriers with the board.
- (6) The plan of operation shall provide for the imposition of an interest penalty for late payment of assessments.
- (7) A reinsuring carrier may seek from the commissioner a deferment from all or part of an assessment imposed by the board. The commissioner may defer all or part of the assessment of a reinsuring carrier if the commissioner determines that the payment of the assessment would place the reinsuring carrier in a

financially impaired condition. If all or part of an assessment against a reinsuring carrier is deferred the amount deferred shall be assessed against the other participating carriers in a manner consistent with the basis for assessment set forth in this subsection. The reinsuring carrier receiving the deferment shall remain liable to the program for the amount deferred and may be prohibited by the commissioner from reinsuring any individuals or groups with the program until such time as it pays the assessments, and may be relieved by the commissioner of the requirements of §7205 of this title.

- (m) Neither the participation in the program as reinsuring carriers, the establishment of rates, forms or procedures, nor any other joint or collective action required by this chapter shall be the basis of any legal action, criminal or civil liability, or penalty against the program or any of its reinsuring carriers either jointly or separately.
- (n) The board, as part of the plan of operation, shall develop standards setting forth the manner and levels of compensation to be paid to producers for the sale of basic and standard health benefit plans. In establishing such standards, the board shall take into the consideration the need to assure the broad availability of coverages, the objectives of the program, the time and effort expended in placing the coverage, the need to provide on-going service to the small employer, the levels of compensation currently used in the industry and the overall costs of coverage to small employers selecting these plans.
- (o) The program shall be exempt from any and all state and local taxes.

§7211. Health benefit plan committee.

- (a) The commissioner shall appoint a Health Benefit Plan Committee. The committee shall be composed of representatives of carriers, small employers and employees, health care providers and producers.
- (b) The committee shall recommend the form and level of coverages to be made available by small employer carriers pursuant to §7207 of this title.
- (c) The committee shall recommend benefit levels, cost sharing levels, exclusions and limitations for the basic health benefit plan and the standard health benefit plan. The committee shall also design a basic health benefit plan and a standard health benefit plan which contain benefit and cost sharing levels that are consistent with the basic method of operation and the benefit plans of health maintenance organizations, including any restrictions imposed by federal law.
- (1) The plans recommended by the committee may include cost containment features such as:
  - a. Utilization review of health care services, including review of medical necessity of hospital and physician services;
  - b. Case management;
  - c. Selective contracting with hospitals, physicians and other health care providers;
  - d. Reasonable benefit differentials applicable to providers that participate or do not participate in arrangements using restricted network provisions; and
  - e. Other managed care provisions.
- (2) The committee shall submit the health benefit plans described in subparagraph (1) of this subsection to the commissioner and the Delaware Health Care Commission for approval within 180 days after the appointment of the committee.

§7212. Periodic market evaluation.

The board, in consultation with the committee, shall study and report at least every three (3) years to the commissioner on the effectiveness of this chapter. The report shall analyze the effectiveness of the chapter in promoting rate stability, product availability, and coverage affordability. The report may contain recommendations for actions to improve the overall effectiveness, efficiency and fairness of the small employer group health insurance marketplace. The report shall address whether carriers and producers are fairly and actively marketing or issuing health benefit plans to small employers in fulfillment of the purposes of the chapter. The report may contain recommendations for market conduct or other regulatory standards or action.

§7213. Waiver of certain state laws.

No law requiring the coverage of a health care service or benefit, or requiring the reimbursement, utilization or inclusion of a specific category of licensed health care practitioner, shall apply to a basic health benefit plan delivered or issued for delivery to small employers in this state pursuant to this chapter.

§7214. Administrative procedures.

The commissioner shall issue regulations in accordance with §314 of this title and 29 Del. C. Ch. 101, for the implementation and administration of this chapter.

§7215. Standards to assure fair marketing.

- (a) Each small employer carrier shall actively market health benefit plan coverage, including the basic and standard health benefit plans, to eligible small employers in the state. If a small employer carrier denies coverage to a small employer on the basis of the health status or claims experience of the small employer or its employees or dependents, the small employer carrier shall offer the small employer the opportunity to purchase a basic health benefit plan and a standard health benefit plan.
- (b) (1) Except as provided in paragraph (2) of this subsection, no small employer carrier or producer shall, directly or indirectly, engage in the following activities:
  - a. Encouraging or directing small employers to refrain from filing an application for coverage with the small employer carrier because of the health status, claims experience, industry, occupation or geographic location of the small employer.
  - b. Encouraging or directing small employers to seek coverage from another carrier because of the health status, claims experience, industry, occupation or geographic location of the small employer.
- (2) The provision of paragraph (1) of this subsection, shall not apply with respect to information provided by a small employer carrier or producer to a small employer regarding the established geographic service area or a restricted network provision of a small employer carrier.
- (c) (1) Except as provided in paragraph (2) of this subsection, no small employer carrier shall, directly or indirectly, enter into any contract, agreement or arrangement with a producer that provides for or results in the compensation paid to a producer for the sale of a health benefit plan to be varied because of the health status, claims experience, industry, occupation or geographic area of the small employer.
- (d) A small employer carrier shall provide reasonable compensation, as provided under the plan of operation of the program, to a producer, if any, for the sale of a basic or standard health benefit plan.
- (e) No small employer carrier may terminate, fail to renew or limit its contract or agreement of representation with a producer for any reason related to the health status, claims experience, occupation or

geographic location of the small employers placed by the producer with the small employer carrier.

- (f) No small employer carrier or producer may induce or otherwise encourage a small employer to separate or otherwise exclude an employee from health coverage or benefits provided in connection with the employee's employment.
- (g) Denial by a small employer carrier of an application for coverage from a small employer shall be in writing and shall state the reason or reasons for the denial.
- (h) The commissioner may establish regulations setting forth additional standards to provide for the fair marketing and board availability of health benefit plans to small employers in this state.
- (i) (1) A violation of this section by a small employer carrier or a producer shall be an unfair trade practice under §2303 and §2304 of this title.
  - (2) If a small employer carrier enters into a contract, agreement or other arrangement with a third-party administrator to provide administrative, marketing or other services related to the offering of health benefit plans to small employers in this state, the third-party administrator shall be subject to this section as if it were a small employer carrier.

§7216. Regulations; exceptions.

- (a) The commissioner may establish regulations to implement the provisions of this section and to assure that rating practices used by small employer carriers are consistent with the purposes of this chapter, including regulations that:
  - (1) Assure that differences in rates charged for health benefit plans by small employer carriers are reasonable and reflect objective differences in plan design (not including differences due to the nature of the groups assumed to select particular health benefit plans); and
  - (2) Prescribe the manner in which case characteristics may be used by small employer carriers.
- (b) The commissioner may suspend for a specified period the application of subsection (a)(1) of this section as to the premium rates applicable to one or more small employers included within a class of business of a small employer carrier for one or more rating periods upon a filing by the small employer carrier and a finding by the commissioner either that the suspension is reasonable in light of the financial condition of the small employer carrier or that the suspension would enhance the efficiency and fairness of the marketplace for small employer health insurance.

§7217. Disclosure of rating practices; certification of compliance.

- (a) In connection with the offering for sale of any health benefit plan to a small employer, a small employer carrier shall make a reasonable disclosure, as part of its solicitation and sales materials, of all of the following:
  - (1) The extent to which premium rates for a specified small employer are established or adjusted based upon the actual or expected variation in claims costs or actual or expected variation in health status of the employees of the small employer and their dependents;
  - (2) The provisions of the health benefit plan concerning the small employer carrier's right to change premium rates and the factors, other than claim experience that affect changes in premium rates;
  - (3) The provisions relating to renewability of policies and contract; and
  - (4) The provisions relating to any preexisting condition provision.

- (b) Each small employer carrier shall maintain at its principal place of business a complete and detailed description of its rating practices and renewal underwriting practices, including information and documentation that demonstrate that its rating methods and practices are based upon commonly accepted actuarial assumptions and are in accordance with sound actuarial principles.
- (c) Each small employer carrier shall file with the commissioner annually on or before March 15, an actuarial certification certifying that the carrier is in compliance with this chapter and that the rating methods of the small employer carrier are actuarially sound. Such certification shall be in a form and manner, and shall contain such information, as specified by the commissioner. A copy of the certification shall be retained by the small employer carrier at its principal place of business.
- (d) A small employer carrier shall make information and documentation described in subsection b of this section available to the commissioner upon request. Except in cases of violations of this chapter, the information shall be considered proprietary and trade secret information and shall not be subject to disclosure by the commissioner to persons outside of the Department except as agreed to by the small employer carrier or as ordered by a court of competent jurisdiction."

Section 2. If any provision of this chapter or the application thereof to any person or circumstances is for any reason held to be invalid, the remainder of the chapter and the application of its provisions to other persons or circumstances shall not be affected thereby.

Section 3. This chapter shall be effective on January 4, 1993.

Section 4. §7204(f) of this Title shall sunset and expire 3 years after the effective of this Act.

Approved July 9, 1992.



## CHAPTER 341

## FORMERLY

HOUSE BILL NO. 627  
AS AMENDED BY HOUSE AMENDMENT NO. 1

AN ACT TO AMEND TITLE 16, CHAPTER 99 AND CHAPTER 20 OF THE DELAWARE CODE RELATING TO THE DELAWARE HEALTH CARE COMMISSION, ESTABLISHING A HEALTH CARE COST CONTAINMENT COMMITTEE.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend §9901, Title 16 of the Delaware Code by adding thereto new subsections to read as follows:

"(e) The General Assembly further finds and declares that rational cost containment of health care costs is in the interests of all Delaware citizens.

(f) The General Assembly further finds and declares that since Delaware hospitals provide care to all citizens, regardless of their ability to pay, the costs of providing care to the uninsured and indigent are shifted to those who do pay.

(g) The General Assembly further finds and declares that the majority of Delawareans pay for these shifted costs, primarily through inflated insurance premiums.

(h) The General Assembly further finds and declares that in order for the Delaware Health Care Commission to carry out its duties in compliance with these findings a means of containing health care costs must be developed and implemented."

Section 2. Amend Chapter 99, Title 16 of the Delaware Code by adding a new Section to read as follows:

"§9905. Health Care Cost Containment Committee.

(a) There is hereby established the Health Care Cost Containment Committee, hereinafter referred to as the committee, which is charged with reviewing factors that drive up hospital costs, with the purpose of recommending to the Commission specific means of containing the growth of such costs through voluntary, administrative, legislative, regulatory and other innovative health financing mechanisms. The Committee shall explore creative methods to reduce cost shifting and access appropriate federal funding. Such methods may include review of regulation; establishing ways to reduce the level of uncompensated hospital care thereby reducing the amount of cost shifting by hospitals to those who pay; and establishing standards for dealing with the use of medical technology.

(b) The Committee shall consist of sixteen members, thirteen of whom shall be appointed by the Governor as follows: A representative of the executive branch; a representative of small business designated by the State Chamber of Commerce; two representatives designated by the Delaware Business Roundtable; a representative designated by the Delaware Medical Society; a representative designated by the Health Insurance Association of America; a representative designated by Blue Cross/Blue Shield of Delaware; a representative designated by the Delaware State Bar Association; four representatives designated by the Association of Delaware Hospitals; a representative of the Health Care Commission; and the Chairman of the Health Resources Management Council or his designee. A representative of the Delaware State Senate appointed by the President Pro Tem and a representative of the Delaware State House of Representatives appointed by the Speaker of the House of Representatives shall also be members of the committee. The Chairman shall be appointed by the Chairperson of the Health Care Commission with the concurrence of the Governor.

(c) Notwithstanding the provisions in §§2203 and 2004 of this title to the contrary, the Committee is authorized to receive and review hospital reports and specific data that is compiled by the Health Resources Management Council

and the Bureau of Health Planning and Resources Management. The collection, compilation, data analysis and dissemination of said reports by the Committee shall be done in a manner that protects the privacy of any individual about whom information is given. The Committee shall consider confidential any information that explicitly or implicitly identifies an individual. Raw data shall not be available for public inspection nor is it a public record within the meaning of the Delaware Freedom of Information Act.

(d) All compilations prepared and authorized by the Committee for release and dissemination shall be public records and efforts will be made to assure their accessibility. (67 Del. Laws, c. 143, §1.)

§9906. Committee Reporting Requirements.

The Committee shall report their recommendation(s) to the Health Care Commission, the Governor and the General Assembly on or before December 31, 1993. The Committee and all provisions of §9905 of this title shall sunset December 31, 1993."

Approved July 9, 1992.

CHAPTER 342

FORMERLY

HOUSE BILL NO. 485

AN ACT TO AMEND TITLE 30, CHAPTER 5 OF THE DELAWARE CODE TO ALLOW COURTS AND COURT OFFICES TO RECOVER FINES, COURT COSTS, ASSESSMENTS AND/OR RESTITUTION OWED FROM TAX REFUNDS DUE DEFENDANTS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Title 30, §545(b)(1) by adding a new subparagraph d. thereto which shall read as follows:

"d. Any Court, Office of the Court Clerk, Prothonotary, or Register in Chancery of this State with respect to fines, court costs, assessments and/or restitution."

Approved July 10, 1992.

## CHAPTER 343

## FORMERLY

## HOUSE BILL NO. 601

AN ACT TO AMEND CHAPTER 13, TITLE 18 OF THE DELAWARE CODE RELATING TO INVESTMENTS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Chapter 13, Title 18, §1321 of the Delaware Code by adding a new subsection (c) as follows:

"(c) If such an insurer is not transacting insurance in the United States of America, it may establish one or more separate accounts and sub-accounts thereto in respect to one or more jurisdictions outside the United States relating to insurance business conducted in such jurisdiction outside the United States. The insurer may allocate assets and make deposits thereto in respect of the whole or any part of the insurance business transacted by it in such jurisdiction for the purpose of segregating the insurer's assets for the benefit of policyholders of that jurisdiction, subject to the following:

- (1) All amounts received by an insurer in respect of a class of insurance business written in that jurisdiction, after the establishment of a separate account in respect of that class or classes of business, shall be carried to and become assets of the separate account.

The assets of each separate account shall be kept separate and distinct from other assets of the insurer.

- (2) Sub-accounts may be established within a separate account for classes of insurance business written in that jurisdiction. All amounts received by the insurer with respect to the class of insurance in a sub-account shall be carried to and become assets of such sub-account.

- (3) The income, gains and losses, realized or unrealized, from assets allocated to a separate account or sub-account thereof shall be credited to or charged against such separate account or sub-account, without regard to other income, gains or losses of the insurer.

To the extent that the value of the assets in such separate account or sub-account are in excess of the reserves, other contract liabilities, solvency and other requirements of the jurisdiction in which the separate account or sub-account is established, such excess may be withdrawn by the insurer.

- (4) Amounts allocated to a separate account or sub-account thereof in the exercise of the power granted by this sub-section shall be owned by the insurer and the insurer shall not be, nor hold itself out to be, a trustee with respect to such amounts.

- (5) The assets of a separate account or sub-account shall not be available to meet any liabilities of the insurer other than policyholder liabilities, expenses, taxes and levies, directly related to such separate account or sub-accounts.

The assets of any separate account or sub-account equal to the reserves and other contract liabilities with respect to those accounts are excluded from the insurer's general assets and as such shall not be charged with other liabilities of the insurer which may arise out of any other business which the insurer may conduct other than the separate account or sub-account.

In any dissolution or liquidation of an insurer which has established a separate account or sub-account under this sub-section, the assets of the account shall be available only for meeting the policyholder liabilities of the company attributable

to the business in respect of which such separate account or sub-account was established. Any assets which remain in any such account after the satisfaction of all policyholder liabilities of the account shall be made available to the appointed receiver.

- (6) An insurer shall not mortgage or charge any of the assets of any separate account or sub-account thereof, except for the benefit of such separate account or sub-account.
- (7) Assets of a readily determinable market value maintained in the separate account or sub-account shall be freely exchangeable in the discretion of the insurer at any time for assets of like value.
- (8) Where an insurer wishes to establish a separate account in respect of a part of the insurance business of the insurer, the insurer shall apply to the Commissioner in writing for approval to establish the separate account, and shall indicate the proposed date and the part of the insurance business of the insurer in respect of which the separate account is to be established. The separate account shall take effect upon the approval of the Commissioner.
- (9) A separate account or sub-account established under this sub-section in respect of any part of the insurance business of an insurer shall continue to be maintained in accordance with this sub-section for as long as the insurer has any outstanding obligations or liabilities in respect of that part of its business.
- (10) Negotiation and issuance of insurance on risks situated outside the United States of America, and changes in, and communications concerning, and collection of premiums on insurance so issued shall not be deemed hereunder to be doing business or transacting insurance in the United States of America."

Section 2. This Act shall become effective immediately upon its adoption.

Approved July 10, 1992.

#### CHAPTER 344

#### FORMERLY

#### HOUSE BILL NO. 520

AN ACT TO AMEND CHAPTER 5 OF TITLE 30 OF THE DELAWARE CODE, RELATING TO THE FILING OF TAX RETURNS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend §513 of Title 30 of the Delaware Code by adding at the end thereof the following sentence: "The Director may permit the filing of returns by electronic means and may by rule or regulation specify the form and content of such electronic filing. Nothing in this section however, shall prevent the Director from requiring filing of returns by means of magnetic media."

Approved July 10, 1992.

## CHAPTER 345

## FORMERLY

HOUSE BILL NO. 575  
AS AMENDED BY HOUSE AMENDMENT NO. 1

AN ACT TO AMEND CHAPTER 17, TITLE 24 OF THE DELAWARE CODE RELATING TO PHYSICIAN'S ASSISTANTS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend §1770, Chapter 17, Title 24 of the Delaware Code by adding a new subsection (g) to read as follows:

"(g) Notwithstanding any provision of this section to the contrary, the Board may grant a temporary license to an individual who has graduated from a physician's or surgeon's assistant program which has been accredited by the Committee on Allied Health Education and Accreditation (CAHEA) of the American Medical Association (AMA) and who otherwise meets the qualifications for licensure but who has not sat for a national certifying examination, provided that the individual shall sit for the next scheduled national certifying examination. Any temporary license granted by the Board pursuant to this subsection shall be valid until the results of said examination are available from the certifying agency. In the event that the applicant fails to pass the national certifying examination, any temporary license granted by the Board pursuant to this subsection shall be immediately rescinded until such time as the applicant can successfully qualify for licensure as otherwise provided by this chapter."

Approved July 10, 1992.

## CHAPTER 346

## FORMERLY

HOUSE BILL NO. 393  
AS AMENDED BY SENATE AMENDMENT NO. 1

AN ACT TO AMEND TITLE 23 OF THE DELAWARE CODE RELATING TO NAVIGATION AND WATERS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend §2212, Subchapter II, Chapter 22, Title 23 of the Delaware Code by redesignating §2212(i) and §2212(j) as §2212(j) and §2212(k), respectively.

Section 2. Amend §2212, Subchapter II, Chapter 22, Title 23 of the Delaware Code by adding thereto a new §2212(i) to read as follows:

"(i) On Delaware waters other than the Atlantic Ocean, no person shall operate a personal watercraft at any speed greater than headway speed unless said personal watercraft is least 100 feet from all wharfs, piers, docks, boat launching areas, pilings, bridge structures or abutments, moored, drifting or anchored vessels, all non-motorized vessels, and any shoreline, and at least 300 feet from all people in the water; provided, however, that the provisions of this section shall not apply to the waters of the Nanticoke River."

Approved July 10, 1992.

## CHAPTER 347

## FORMERLY

HOUSE BILL NO. 586  
AS AMENDED BY HOUSE AMENDMENT NO. 1

AN ACT TO AMEND CHAPTER 70, TITLE 7 OF THE DELAWARE CODE TO CLARIFY THE EXPANSION OR EXTENSION OF NONCONFORMING USES IN THE COASTAL ZONE.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend §7004(a), Chapter 70, Title 7, Delaware Code, by deleting the word "manufacturing" from the third sentence thereof and also by combining the second and third sentences of subsection (a) by deleting the period between the two sentences and inserting the word "and" in place of the period and changing the word "All" after said period to "all".

Approved July 10, 1992.

## CHAPTER 348

## FORMERLY

## SENATE BILL NO. 408

AN ACT TO AMEND TITLE 7 OF THE DELAWARE CODE RELATING TO THE AUTHORITY OF THE SECRETARY OF THE DEPARTMENT OF NATURAL RESOURCES TO REDUCE FEES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. AMEND §6003 of Title 7 of the Delaware Code by adding the following as subsection "h":

"(h) The Secretary may reduce the amount of any fee charged for any permit or license issued pursuant to the provisions of Title 7 of the Delaware Code for particular types of permits or classes or categories of permittees."

Approved July 10, 1992.

## CHAPTER 349

## FORMERLY

SENATE BILL NO. 373  
AS AMENDED BY SENATE AMENDMENT NOS. 1 AND 2

AN ACT TO AMEND CHAPTER 21, TITLE 21, OF THE DELAWARE CODE TO ALLOW SPECIAL PLATES FOR DELAWARE FIREMEN, LADIES AUXILIARY, AND VOLUNTEER AMBULANCE OR RESCUE COMPANIES WHO ARE AFFILIATED WITH THE DELAWARE STATE FIREMEN'S ASSOCIATION.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Chapter 21, Title 21, Delaware Code by adding the following new section:

"§2121A. Special License Plates for Members of Delaware Firemen, Ladies Auxiliary, and Volunteer Ambulance or Rescue Companies within the Delaware Firemen's Association.

(a) The owner of any vehicle described in paragraph (1) of this subsection may apply to the Department for the assignment to that vehicle or a special Delaware Fireman number; provided, however, the owner of the vehicle has official documentation which indicates he or she is a bona fide member of or holds membership with a Delaware based fire company, ladies auxiliary of a fire company, or a volunteer ambulance or volunteer rescue company belonging to any county firemen's association or the Delaware State Firemen's Association of the State of Delaware.

(1) This section applies only to:

- a. A private passenger vehicle; or
- b. A truck with a three-fourth ton or smaller manufacturer's rated capacity.
- c. A van with a three-fourth ton or smaller manufacturer's rated capacity.

(b) No fee in addition to the annual registration fee required by this title is required for registration under this section; however, the original application under this section shall be subject to a \$10 administration fee.

(c) The applicant must submit acceptable proof, as required by the Division, that he/she is a member in good standing or is otherwise eligible for the issuance of such special plate.

(d) Only 1 such plate shall be issued to an applicant.

(e) The Department shall reserve sufficient license plates including appropriate letters and numbers consecutively beginning with the number 1 as are required for this section.

(f) The Department upon receipt of any official correspondence from the organization advising that the individual to which a special plate has been issued is no longer affiliated with such organization such special plate shall be forfeited and/or revoked immediately."

Approved July 10, 1992.

## CHAPTER 350

## FORMERLY

SENATE BILL NO. 323  
AS AMENDED BY SENATE AMENDMENT NO. 1

AN ACT TO AMEND TITLE 25 OF THE DELAWARE CODE RELATING TO MORTGAGES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Chapter 21 Title 25 by adding a new section as follows:

"§2119 Insurance requirements for mortgages.

a) The Mortgagee or Obligor of any mortgage or other instrument given for the purpose of creating a lien on real property shall accept as evidence of insurance a written binder issued by any authorized insurer or its agent if the binder includes or is accompanied by: (1) the name and address of the insured borrower; (2) the name and address of the lender as loss payee; (3) a description of the insured real property; (4) a provision that the binder may not be cancelled within the term of the binder unless the lender and the insured borrower receive written notice of the cancellation at least ten (10) days prior to the cancellation; (5) except in the case of a renewal of a policy subsequent to the closing of the loan, a paid receipt for the full amount of the applicable premium; and (6) the amount of insurance coverage. A Mortgagee or Obligor may refuse to honor a binder in cases where the lender receives notice of the cancellation of the binder by the Insurer; or, at the expiration of 30 days of the date the binder was given, the Insurer has failed to issue the policy of Insurance.

b) The Mortgagee or Obligor of any mortgage or other instrument given for the purpose of creating a lien on real property shall not require hazard insurance in an amount which exceeds the greater of (1) the value placed on the improvements by the insurer; or (2) the value placed on the improvements as determined by the lender's appraisal of the real property.

c) In the event that subsection a or b of this section is willfully violated, the original mortgagee or obligor listed upon the original mortgage or other instrument shall be obligated to pay to the mortgagor or obligor:

1) reasonable attorneys' fees; and

2) the greater of the actual damages directly resulting from the violation or 5% of the face amount of the mortgage."

d) A violation of this section shall not affect the validity of the mortgage or other instrument which creates the lien securing the loan."

Approved July 10, 1992.



CHAPTER 351

FORMERLY

SENATE BILL NO. 375

AN ACT TO AMEND CHAPTER 18, TITLE 2, DELAWARE CODE, RELATING TO LIABILITY OF THOSE WHO THROW TRASH, RUBBISH, OR OTHER DANGEROUS OR DETRIMENTAL SUBSTANCE ON RAILROAD RIGHT-OF-WAYS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (Two-thirds of all members elected to each House thereof concurring therein):

Section 1. Amend Chapter 18, Title 2, Delaware Code, by adding thereto a new Section to be designated as §1821 to read as follows:

"§1821. Liability for Trashing Railroad Right-of-Ways: Penalty: Jurisdiction

A person shall be guilty of an offense if he throws, causes to be thrown any waste paper, sweepings, ashes, household waste, glass, metal, tires, refuse, or rubbish, or any dangerous or detrimental substance to be deposited into or upon any railroad right-of-way of this State. Whoever violates this Section shall be fined not less than \$50 nor more than \$300. For each subsequent offense occurring within 3 years of a former offense, he shall be fined not less than \$300 nor more than \$500. The minimum fines for a violation of this Section shall not be subject to suspension. The Justice of the Peace Court system shall have exclusive jurisdiction over any violations of this Section."

Approved July 10, 1992.

## CHAPTER 352

## FORMERLY

## SENATE BILL NO. 418

AN ACT TO AMEND CHAPTER 302, VOLUME 49, LAWS OF DELAWARE, AS AMENDED, ENTITLED "AN ACT TO INCORPORATE THE TOWN OF FENWICK ISLAND, DELAWARE" RELATING TO FISCAL MATTERS, BY STRIKING SECTION 34, AND SUBSTITUTING A NEW SECTION 34, AUTHORIZING THE BORROWING AGAINST ANTICIPATED REVENUE.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (Two-thirds of all members elected to each House thereof concurring therein):

Section 1. Section 34, Chapter 302, Volume 49, Laws of Delaware, as amended, be and the same is hereby amended by striking Section 34 and substituting in lieu thereof a new Section 34 to read as follows:

"Town Council may borrow money in anticipation of revenues on the full faith and credit of the Town of Fenwick Island, Delaware, a sum or sums not exceeding Five Hundred Thousand Dollars (\$500,000.00) in any one year when, in the opinion of the majority of the Town Council of the Town of Fenwick Island, Delaware, the needs of the Town require it. Any sum so borrowed shall be secured by promissory notes of the Town of Fenwick Island, Delaware, duly authorized by resolution adopted by the Town Council of the Town of Fenwick Island, Delaware, and signed by the President of the Town of Fenwick Island, Delaware, and attested by the Secretary of the Town Council with the corporate seal affixed, and no officer or member of the Town Council shall be liable for the payments of such notes because it is signed by them as officers of the Town and is authorized by the Resolution of the Town Council; provided, however, that the total sum outstanding at any one time shall not exceed Five Hundred Thousand Dollars (\$500,000.00) and provided further than any sum of money so borrowed as aforesaid in any fiscal year shall be paid from the general fund of the Town and shall be completely repaid at any time, but must be completely paid at the end of ten (10) fiscal years following the first fiscal year when said sum or sums were borrowed, with interest thereon; and provided that such ad valorem taxes shall be levied as required without regard to any other limitations concerning the maximum rate of taxation and such notes and the interest thereon shall be exempt from all taxation by the State of Delaware or by any political subdivision, agency or subdivision thereof."

Section 2. Paragraph 2, Section 24, Chapter 302, Volume 49, Laws of Delaware, as amended, be and the same is hereby amended by striking out all of said Paragraph 2 and substituting in lieu thereof a new Paragraph 2 to read as follows:

"The Town Council, after determining in its best judgment and knowledge, the total amount necessary to be raised by the Town to meet the fixed and anticipated expenses and obligations of the Town, including reasonable and appropriate reserves, for the then current fiscal year as set forth in the Town Budget for such year plus a reasonable amount to cover anticipated expenses and emergencies, should then proceed to determine, in its sole discretion, from which sources the authorized revenues of the Town announced or determined by them shall be raised and within the limits prescribed by this Charter with respect to any such source the amount to be raised from each such source. They shall then proceed to determine, assess, fix and/or levy as follows:

- (1) The rate of tax on real estate including improvements thereon per One Hundred Dollars (\$100.00) of the assessed value; and/or
- (2) The amount of personal or per capita tax upon each citizen of the Town over the age of eighteen (18) years; and/or
- (3) The rate of tax upon all poles, construction, erections, wires and appliances more particularly mentioned, or intended so to be in this Charter as amended; and/or
- (4) The several license fees to be charged for carrying on or conduction of the several businesses, professions or occupations more particularly mentioned or intended so to be in this Charter, as amended; and/or

(5) The several rates to be charged for furnishing water service, sewer service, electric service, gas service, front footage assessment, other services authorized by Town Council; and/or

(6) The fees or rates to be charged in respect to any other authorized source of revenue sufficient in their judgment and estimation to realize the amount to be raised from each such source determined by them to be used as aforesaid; provided, however, that sources (4) and (5) aforementioned may be determined, fixed, assessed, levied and/or altered or change upon other than a fiscal year basis and at any regular or special meeting of the Town Council as the Town Council, in its proper discretion, shall determine.

(7) The amount to be raised from this source shall not exceed in any one year the sum of five percent (5%) of the total appraised valuation of all taxable real estate and improvements thereon in the Town; and provided also that there shall be no limitation upon the amount which may be raised from the taxation of real estate for the payment of interest on and principal of any bonded indebtedness whether hereinbefore or hereinafter incurred."

Approved July 10, 1992.

#### CHAPTER 353

##### FORMERLY

#### SENATE BILL NO. 445

AN ACT TO AMEND CHAPTER 437, VOLUME 67, LAWS OF DELAWARE RELATING TO IGNITION INTERLOCK DEVICES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Section 7, Chapter 437, Volume 67, Laws of Delaware by striking the words "The provisions of this Act shall not become effective until the first February 1 after the Division of Motor Vehicles has completed a six-month pilot program, which pilot program shall be a six-month implementation of this Act in one county of the State, which shall begin six-months after the Governor has signed this Act," and substituting "The provisions of this Act shall not become effective until the February 1st after the Division of Motor Vehicles has completed a three-year pilot program, which pilot program shall be a three year implementation of this Act in all three counties of the State, which shall begin six months after the Governor has signed this Act."

Approved July 10, 1992.

#### CHAPTER 354

##### FORMERLY

#### SENATE BILL NO. 448

AN ACT TO AMEND CHAPTER 59, VOLUME 63, LAWS OF DELAWARE ENTITLED "AN ACT TO INCORPORATE THE TOWN OF DEWEY BEACH, BY INCREASING THE INDEBTEDNESS LIMIT OF THE TOWN."

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (Two-thirds of all members elected to each House thereof concurring therein):

Section 1. Amend Section 23 (a)(10), Chapter 59, Volume 63 Laws of Delaware, as amended, by striking the words "thirty-five thousand dollars (\$35,000)" as they appear therein and substituting in lieu thereof the words "one million five hundred thousand dollars (\$1,500,000)".

Approved July 10, 1992.

## CHAPTER 355

## FORMERLY

## SENATE BILL NO. 428

AN ACT TO AMEND CHAPTER 138, VOLUME 68, LAWS OF DELAWARE, ENTITLED "AN ACT TO REINCORPORATE THE TOWN OF DAGSBORO", AS AMENDED, TO PROVIDE FOR QUARTERLY ASSESSMENT OF TAXES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (Two-thirds of all members elected to each House thereof concurring therein):

Section 1. Amend Section 24, Subsection (A), Chapter 138, Volume 68, Laws of Delaware, as amended, by adding to the first sentence thereof the words "or other" after the word "annual" so that Subsection (A) shall read as follows:

"(A) The Tax Assessor, after making such annual or other assessment, shall at least ninety (90) days prior to the end of the fiscal year, deliver to the Town Council of the Town of Dagsboro a list containing the names of all persons assessed and the amount of assessment against each. He/she shall also deliver at such time as many copies of said list as the Town Council shall direct.

Section 2. Amend Section 24, Subsection (B), Chapter 138, Volume 68, Laws of Delaware, as amended, by adding to the first sentence thereof the words "or other" after the word "annual" so that Subsection (B) shall read as follows:

"(B) The annual or other assessment shall distinguish the real and personal assessment of each person and shall also be arranged so that the land, the improvements thereon, and the per capita assessment shall appear in separate columns or spaces. In making this assessment, the Tax Assessor shall make its valuation accordingly."

Section 3. Amend Section 24, Subsection (D), Chapter 138, Volume 68, Laws of Delaware, as amended, by adding the words "or other" after the word "annual" so that the first sentence shall read as follows:

"(D) Immediately upon receiving the annual or other assessment list from the Tax Assessor, the Town Council of The Town of Dagsboro shall cause a full and complete copy of the same, containing the amount assessed to each taxable to be hung in a public place in The Town of Dagsboro and there it shall remain for a period of at least ten (10) days for the information or an examination by all concerned."

Section 4. Amend Section 24, Chapter 138, Volume 68, Laws of Delaware, as amended, by adding a new subsection designated as "(F)" as follows:

"(F) The said tax assessor shall, at the option of Town Council, make a supplemental assessment list quarterly in each fiscal year. The first such supplemental assessment list shall be certified on July 1 of each year; the second on October 1 of each year; the third on January 1 of each year; and the fourth on April 1 of each year."

Section 5. Amend Section 24, Chapter 138, Volume 68, Laws of Delaware, as amended, by adding a new subsection designated as "(G)" as follows:

"(G)(1) In addition to the annual assessment provided for herein, the Town Council may, at its option, direct the tax assessor to prepare a quarterly supplemental list for the purpose of adding property not included on the last assessment or increasing the assessed value of property which was included on the last assessment. The supplemental list may be used to correct errors on the prior assessment rolls and to remove or modify any exemption from taxation applicable to the property in the Town.

(2) Such supplemental list shall be prepared quarterly in each fiscal year. The first such supplemental list shall be certified on July 1 of each year; the second on October 1 of each year; the third on January 1 of each year; and the fourth on April 1 of each year.

(3) On the date of certification of a supplemental list, the property owners listed thereon shall be liable to pay taxes equal to the assessed

value of the property multiplied by the tax rates for the then current fiscal year applicable to the property, reduced by 25% where the property is listed on the second supplemental assessment roll; by 50% where the property is listed on the third assessment roll; and by 75% where the property is listed on the fourth supplemental assessment roll; and the amount of such tax shall be and remain a lien on such property from the time of its certification.

(4) Appeals shall be made to the Board of Appeals as provided in Section 24(D). In no case shall the supplemental assessment procedure be employed to impose taxes retroactively."

Section 6. Amend Section 26, Subsection (A), Chapter 138, Volume 68, Laws of Delaware, as amended, by adding the words "or other" after the word "annual" so that Subsection (A) shall read as follows:

"(A) The Tax Collector, as soon as the Town Council shall have placed in his/her hands a duplicate Annual or other Tax List, shall proceed at once to collect the taxes on said duplicate list."

Section 7. Amend Section 26, Subsection (B), Chapter 138, Volume 68, Laws of Delaware, as amended, by adding to the first sentence thereof the words "or other" after the word "annual" so that the first sentence of Subsection (B) shall be as follows:

"(B) All taxes so laid or imposed by The Town of Dagsboro in such Annual or other Tax List shall be and constitute a lien upon all the real estate of the taxable for a period of ten (10) years against or upon whom such taxes are laid or imposed, of which such taxable was seized or possessed any time after such taxes shall have been levied or imposed that is situate within the Town of Dagsboro."

Section 8. Amend Section 26, Subsection (C), Chapter 138, Volume 68, Laws of Delaware, as amended, by adding the words "or other" after the word "annual" so that it reads as follows:

"(C) All taxes, when and as collected by the Tax Collector, shall be paid to The Town of Dagsboro, and all taxes shall be due and payable at and from the time of the delivery of the Annual or other Tax List to the Town Administrator."

Section 9. Amend Section 26, Subsection (E), Chapter 138, Volume 68, Laws of Delaware, as amended, by adding to the first sentence thereof the words "or other" after the word "annual" so that the first sentence of Subsection (E) shall be as follows:

"(E) On all taxes unpaid after thirty (30) days following the delivery of the duplicate Annual or other Tax List to the Tax Collector there shall be added a penalty of Five Percent (5%) for each month or fraction thereof such taxes shall remain unpaid and said penalty shall be collected in the same manner as the original amount of the tax."

Approved July 10, 1992.

## CHAPTER 356

## FORMERLY

## SENATE BILL NO. 454

AN ACT TO AMEND CHAPTER 9, TITLE 10 OF THE DELAWARE CODE RELATING TO COMMISSIONERS OF THE FAMILY COURT.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend §915(a) of Title 10 of the Delaware Code by striking the word "may" in the first sentence thereof, between the words "Governor" and "appoint" and substituting in lieu thereof the word "shall".

Section 2. Amend §915(a) of Title 10 of the Delaware Code by striking the words "advice and" and by striking the words "shall hold office at the pleasure of the Governor and" in the first sentence thereof.

Section 3. Amend §915(a) of Title 10 of the Delaware Code by inserting after the first sentence thereof the following:

"Appointees shall be duly admitted to practice law before the Supreme Court of this State."

Section 4. Amend §915(b) of Title 10 of the Delaware Code by striking the second sentence and substituting in lieu thereof the following:

"Thereafter, the Governor shall appoint, with the consent of the Senate, one Commissioner for each county to fulfill the requirements of the Court.

Section 5. Amend §915(c) of Title 10 of the Delaware Code by striking subsection (c) in its entirety and substituting in lieu thereof the following:

"(c) The Chief Judge of Family Court shall designate the duties which each Commissioner shall undertake. Pursuant to the direction of the Chief Judge, each Commissioner serving under this chapter shall have:

(1) all powers and duties conferred or imposed upon commissioners by law or by the Rules of Criminal and Civil Procedure for the Family Court;

(2) the power to order the issuance of legal process to compel the attendance of necessary parties and witnesses;

(3) the power to administer oaths and affirmations, and take acknowledgements, affidavits and depositions;

(4) the power to examine the parties and witnesses; to pass upon all questions of competency of witnesses and admissibility of evidence; to require the production of all books, papers, writings, vouchers and other documents applicable thereto; to grant adjournments and extensions of time; and generally to do all other acts, and direct all other inquiries and proceedings in the matters before them, which they may deem necessary and proper, including appropriate sections;

(5) The power to conduct juvenile detention hearings pending adjudication and to commit or bind, with or without surety, as a committing magistrate, for appearance at the proper court, persons charged with having violated the law together with material witnesses. A Commissioner shall assess the seriousness of the charge(s), the record, the factors stated in §936A of this title and the best interest of the juvenile in order to determine whether the juvenile shall be detained in secure detention or placed in a non-secure detention alternative or other alternative as stated in §936(b) of this title. If a Commissioner places a juvenile in secure detention, the Commissioner shall state on the record the reasons for said detention;

(6) the power to conduct adult bail hearings and to commit or bind, with or without surety, as a committing magistrate, for appearance at the proper court, persons charged with having violated the law together

with material witnesses and impose conditions pursuant to Title 10, Chapter 9;

(7) the power to conduct all delinquency and criminal proceedings, including but not limited to, amenability hearings, arraignments, preliminary hearings, case reviews and trials;

(8) the power to accept pleas (including, but not limited to, pleas of guilty, not guilty and nolo contendere) to any offense within the jurisdiction of the Family Court and to appoint counsel to represent indigent defendants;

(9) the power to enter sentence or disposition for criminal misdemeanors, criminal violations, criminal violation of probation and criminal contempt of court, whether the person has pleaded guilty to or has been convicted of one or more of the above offenses or whether the person has been adjudicated delinquent as a result of acts which would constitute such offenses if committed by an adult;

(10) the power, with the consent of the parties, to enter sentence for criminal felonies, whether the person has pleaded guilty to or has been convicted of such an offense or whether the person has been adjudicated delinquent as a result of acts which would constitute a felony if committed by an adult;"

Section 6. Amend §915(d) of Title 10 of the Delaware Code by striking subsection (d) in its entirety and substituting in lieu thereof the following:

"(d) The Commissioner shall file his proposed findings and recommendations with the Court and shall mail copies forthwith to all parties."

Section 7. Amend §915 of Title 10 of the Delaware Code by adding thereto a new subsection (e) to read as follows:

"(e) Within 10 days after being served with a copy of the Commissioner's proposed findings and recommendations, any party may serve and file written objections to such proposed findings and recommendations as provided by rules of the Court. A judge of the Court shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made. A judge of the Court may accept, reject, or modify, in whole or in part, the findings or recommendations made by the Commissioner. The judge may also receive further evidence or recommit the matter to the Commissioner with instructions."

Section 8. This act shall become effective upon enactment.

Approved July 10, 1992.

## CHAPTER 357

## FORMERLY

SENATE BILL NO. 143  
AS AMENDED BY SENATE AMENDMENT NO. 1

AN ACT TO AMEND CHAPTER 7, TITLE 19 OF THE DELAWARE CODE RELATING TO MEAL BREAKS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Chapter 7, Title 19, Delaware Code by creating a new section as follows:

"§707(a) Meal Breaks

An employer must allow an employee an unpaid meal break of at least 30 consecutive minutes, if the employee works seven and one half or more consecutive hours. The meal break must be given some time after the first two hours of work and before the last two hours. However, this rule does not apply to any professional employee certified by the state board of education and employed by a local school board to work directly with children. Also, it does not apply where there is a collective bargaining agreement or other written employer-employee agreement providing otherwise. Further, the Secretary of Labor shall issue rules for granting exemptions in cases where:

- (1) compliance would adversely affect public safety;
- (2) only one employee may perform the duties of a position;
- (3) an employer has fewer than five employees on a shift at a single place of business (in which case the exemption applies only to that shift); or
- (4) the continuous nature of an employer's operations, such as chemical production or research experiments, requires employees to respond to urgent or unusual conditions at all times and the employees are compensated for their meal break periods.

(b) Any employer who discharges or in any manner discriminates against an employee because that employee has made a complaint or has given information to the Department of Labor pursuant to a violation of this section, or because he/she caused to be instituted or is about to cause to be instituted any proceedings under this section, or has testified or is about to testify in any such proceedings shall be deemed in violation of this section and be subject to an administrative penalty of not more than \$1,000 for each such violation."

Approved July 10, 1992.



## CHAPTER 358

## FORMERLY

## SENATE BILL NO. 231

AN ACT TO AMEND CHAPTERS 83 AND 88, TITLE 11, CHAPTERS 55, 55A, AND 56, TITLE 29, DELAWARE CODE, RELATIVE TO EMPLOYER PICKUP OF MEMBER/EMPLOYEE PENSION CONTRIBUTIONS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Chapter 55, Title 29, Delaware Code by adding a new Section 5547 to read as follows:

"§5547. Employer Pickup of Employee Contributions

(a) Each participating employer, pursuant to the provisions of §414(h)(2) of the United States Internal Revenue Code, shall pick up and pay the contributions which would otherwise be payable by the employees under §5543 of this Chapter. The contributions so picked up shall be treated as employer contributions for purposes of determining the amounts of federal income taxes to withhold from the employee's compensation.

(b) Employee contributions picked up by the employer shall be paid from the same source of funds used for the payment of compensation to an employee. A deduction shall be made from each employee's compensation equal to the amount of the employee's contributions picked up by the employer. This deduction, however, shall not reduce the employee's compensation for purposes of computing benefits under the retirement system pursuant to this Chapter.

(c) Employee contributions shall be credited to a separate account within the employee's individual account so that the amount contributed prior to the effective date for the pickup of employee contributions may be distinguished from the amounts contributed on or after the effective date.

(d) The contributions, although designated as employee contributions, are being paid by the employer in lieu of the contributions by the employee. The employee will not be given the option of choosing to receive the contributed amounts directly instead of having them paid by the employer to the retirement system."

Section 2. Amend Chapter 55A, Title 29, Delaware Code by adding a new Section 5594 to read as follows:

"§5594. Employer Pickup of Member Contributions

(a) Each participating employer, pursuant to the provisions of §414(h)(2) of the United States Internal Revenue Code, shall pick up and pay the contributions which would otherwise be payable by the members under §5591 of this Chapter. The contributions so picked up shall be treated as employer contributions for purposes of determining the amounts of federal income taxes to withhold from the member's compensation.

(b) Member contributions picked up by the employer shall be paid from the same source of funds used for the payment of compensation to a member. A deduction shall be made from each member's compensation equal to the amount of the member's contributions picked up by the employer. This deduction, however, shall not reduce the member's compensation for purposes of computing benefits under the retirement system pursuant to this Chapter.

(c) Member contributions shall be credited to a separate account within the member's individual account so that the amount contributed prior to the effective date for the pickup of member contributions may be distinguished from the amounts contributed on or after the effective date.

(d) The contributions, although designated as employee contributions, are being paid by the employer in lieu of the contributions by the employee. The employee will not be given the option of choosing to receive the contributed amounts directly instead of having them paid by the employer to the retirement system."

Section 3. Amend Chapter 56, Title 29, Delaware Code by adding a new Section 5618 to read as follows:

§5618. Employer Pickup of Employee Contributions

(a) Each participating employer, pursuant to the provisions of §414(h)(2) of the United States Internal Revenue Code, shall pick up and pay the contributions which would otherwise be payable by the members under §5601 of this Chapter. The contributions so picked up shall be treated as employer contributions for purposes of determining the amounts of federal income taxes to withhold from the member's compensation.

(b) Member contributions picked up by the employer shall be paid from the same source of funds used for the payment of compensation to a member. A deduction shall be made from each member's compensation equal to the amount of the member's contributions picked up by the employer. This deduction, however, shall not reduce the member's compensation for purposes of computing benefits under the retirement system pursuant to this Chapter.

(c) Member contributions shall be credited to a separate account within the member's individual account so that the amount contributed prior to the effective date for the pickup of member contributions may be distinguished from the amounts contributed on or after the effective date.

(d) The contributions, although designated as employee contributions, are being paid by the employer in lieu of the contributions by the employee. The employee will not be given the option of choosing to receive the contributed amounts directly instead of having them paid by the employer to the retirement system."

Section 4. Amend Chapter 83, Title 11, Delaware Code by adding a new Section 8330 to read as follows:

"§8330. Employer Pickup of Employee Contributions

(a) Each participating employer, pursuant to the provisions of §414(h)(2) of the United States Internal Revenue Code, shall pick up and pay the contributions which would otherwise be payable by the members under §8322 of this Chapter. The contributions so picked up shall be treated as employer contributions for purposes of determining the amounts of federal income taxes to withhold from the member's compensation.

(b) Member contributions picked up by the employer shall be paid from the same source of funds used for the payment of compensation to a member. A deduction shall be made from each member's compensation equal to the amount of the member's contributions picked up by the employer. This deduction, however, shall not reduce the member's compensation for purposes of computing benefits under the retirement system pursuant to this Chapter.

(c) Member contributions shall be credited to a separate account within the member's individual account so that the amount contributed prior to the effective date for the pickup of member contributions may be distinguished from the amounts contributed on or after the effective date.

(d) The contributions, although designated as employee contributions, are being paid by the employer in lieu of the contributions by the employee. The employee will not be given the option of choosing to receive the contributed amounts directly instead of having them paid by the employer to the retirement system."

Section 5. Amend Chapter 83, Title 11, Delaware Code by adding a new Section 8394 to read as follows:

"§8394. Employer Pickup of Member Contributions

(a) Each participating employer, pursuant to the provisions of §414(h)(2) of the United States Internal Revenue Code, shall pick up and pay the contributions which would otherwise be payable by the members under §8391 of this Chapter. The contributions so picked up shall be treated as employer contributions for purposes of determining the amounts of federal income taxes to withhold from the member's compensation.

(b) Member contributions picked up by the employer shall be paid from the same source of funds used for the payment of compensation to a member. A deduction shall be made from each member's compensation equal to the amount of the member's contributions picked up by the employer. This deduction, however, shall not reduce the member's compensation for purposes of computing benefits under the retirement system pursuant to this Chapter.

(c) Member contributions shall be credited to a separate account within the member's individual account so that the amount contributed prior to the effective date for the pickup of member contributions may be distinguished from the amounts contributed on or after the effective date.

(d) The contributions, although designated as employee contributions, are being paid by the employer in lieu of the contributions by the employee. The employee will not be given the option of choosing to receive the contributed amounts directly instead of having them paid by the employer to the retirement system."

Section 6. Amend Chapter 88, Title 11, Delaware Code by adding a new Section 8844 to read as follows:

"§8844. Employer Pickup of Member Contributions

(a) Each participating employer, pursuant to the provisions of §414(h)(2) of the United States Internal Revenue Code, shall pick up and pay the contributions which would otherwise be payable by the members under §8841 of this Chapter. The contributions so picked up shall be treated as employer contributions for purposes of determining the amounts of federal income taxes to withhold from the member's compensation.

(b) Member contributions picked up by the employer shall be paid from the same source of funds used for the payment of compensation to a member. A deduction shall be made from each member's compensation equal to the amount of the member's contributions picked up by the employer. This deduction, however, shall not reduce the member's compensation for purposes of computing benefits under the retirement system pursuant to this Chapter.

(c) Member contributions shall be credited to a separate account within the member's individual account so that the amount contributed prior to the effective date for the pickup of member contributions may be distinguished from the amounts contributed on or after the effective date.

(d) The contributions, although designated as employee contributions, are being paid by the employer in lieu of the contributions by the employee. The employee will not be given the option of choosing to receive the contributed amounts directly instead of having them paid by the employer to the retirement system."

Section 7. This Act shall take effect on January 1 of the first calendar year succeeding its enactment.

Approved July 10, 1992.

## CHAPTER 359

## FORMERLY

## SENATE BILL NO. 398

AN ACT TO AUTHORIZE AND APPROVE THE TRANSFER OF CERTAIN REAL PROPERTY IN THE RED CLAY CONSOLIDATED SCHOOL DISTRICT, KNOWN AS THE POPLAR AVENUE ELEMENTARY SCHOOL PROPERTY, TO THE TOWN OF ELSMERE, DELAWARE, WITH CERTAIN PROVISIOES, AND WAIVING THE PROVISIONS OF SECTION 1057 OF CHAPTER 10, TITLE 14, DELAWARE CODE.

WHEREAS, the Poplar Avenue Elementary School, property of the Red Clay Consolidated School District, is no longer being utilized as an educational institution; and

WHEREAS, the Town of Elsmere presently leases the building from the Red Clay Consolidated School District for a Town Hall; and

WHEREAS, the Town of Elsmere has expressed an interest in purchasing said property for the sum of \$40,000; and

WHEREAS, the existing Poplar Avenue Elementary School was originally purchased in five separate parcels; the deeds for these parcels being recorded in Deed Records T-83-754, T-83-756, T-83-762, T-83-775 and M-88-345 in the New Castle County Recorder of Deeds Office; and

WHEREAS, any asbestos abatement that the building may require for health, safety and welfare of the public who may be using the facility will be fully assumed by the Town of Elsmere; and

WHEREAS, before said property can be duly transferred to the Town of Elsmere the Red Clay Consolidated School District Board of Education must, by resolution, authorize the transfer of said property to the Town of Elsmere; and

WHEREAS, under the provisions of Section 1057, Title 14, Delaware Code, the corpus of special funds must be used to either retire bonds issued by the district or to meet the district's local share of construction required by any school construction bond authorization act as defined in Chapter 75, Title 29, Delaware Code; and

WHEREAS, the Red Clay Consolidated School District Board of Education would like to waive the provisions of §1057, Title 14, Delaware Code, thus earmarking and transferring the proceeds of \$40,000 from the sale of said property to the district's local capital funds account or to a special funds account established for a specific educational purpose for capital improvements as may be determined by the Red Clay Consolidated School Board of Education.

NOW, THEREFORE

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (Three-fourths of all members elected to each House thereof concurring therein):

Section 1. Notwithstanding any other provisions of the Delaware Code to the contrary, the Red Clay Consolidated School District Board of Education is hereby authorized and empowered to transfer and convey said property, known as the Poplar Avenue Elementary School, the metes and bounds thereof being more fully set forth in deeds recorded in the New Castle County Recorder of Deeds Office in Deed Records T-83-754, T-83-756, T-83-762, T-83-775, and M-88-345 to the Town of Elsmere, Delaware under the following provisions:

(1) Before said property shall be transferred and conveyed to the Town of Elsmere, Delaware that the Red Clay Consolidated School District Board of Education approve same by official resolution, recorded in the official minutes of the Board meeting.

(2) That any asbestos abatement required of said property for the public's health and safety be fully assumed by the Town of Elsmere.

(3) That the provisions of §1057, Chapter 10, Title 14, Delaware Code, be waived, allowing the \$40,000 proceeds from the sale of said property to be placed into the district's local funds capital account or a special funds account established for a specific educational purpose for capital improvements as may be determined by the Red Clay Consolidated School District Board of Education.

Section 2. The Red Clay Consolidated School District Board of Education is hereby authorized and empowered to execute and deliver to the Town of Elsmere a good and sufficient deed of said property to the Town of Elsmere, contingent upon compliance with all the requirements specifically stipulated in Section 1 of this Act.

Approved July 10, 1992.

#### CHAPTER 360

##### FORMERLY

#### SENATE BILL NO. 252

AN ACT TO AMEND CHAPTER 68, TITLE 16, DELAWARE CODE, RELATING TO NON-PROFIT SPORTS LIABILITY LIMITATION.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Section 6835(2), Chapter 68, Title 16, Delaware Code by adding thereto the following:

"d. An officer or ride leader of a formally organized bicycle club."

Section 2. Amend Section 6835(4)a., Chapter 68, Title 16, Delaware Code by deleting the semi-colon ";" at the end of said subsection and adding thereto the following:

", or is a formally organized non-competitive recreational bicycle club whether recognized by the Amateur Athletic Union or the National Collegiate Athletic Association or not; and"

Approved July 10, 1992.

#### CHAPTER 361

##### FORMERLY

#### SENATE BILL NO. 424

AN ACT TO AMEND CHAPTER 5, TITLE 11, OF THE DELAWARE CODE TO INCREASE THE PENALTY FOR CAUSING SERIOUS PHYSICAL INJURY TO ANOTHER BY NEGLIGENTLY DRIVING WHILE UNDER THE INFLUENCE OF DRUGS OR ALCOHOL AND TO INCREASE THE PENALTY FOR VEHICULAR ASSAULT IN THE FIRST DEGREE.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Section 629, Chapter 5, Title 11 of the Delaware Code by deleting the word "criminally" as it appears therein.

Section 2. Amend Section 629, Chapter 5, Title 11 of the Delaware Code by deleting the last sentence therein and substituting in lieu thereof the following sentence:

"Vehicular assault in the first degree is a class F felony."

Approved July 10, 1992.

## CHAPTER 362

## FORMERLY

SENATE BILL NO. 380  
AS AMENDED BY SENATE AMENDMENT NO. 2

AN ACT TO AMEND CHAPTER 35, TITLE 11, DELAWARE CODE RELATING TO ADMISSIBILITY OF HEARSAY EVIDENCE IN CHILD ABUSE PROSECUTIONS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Chapter 35, Subchapter I, Title 11, Delaware Code by adding a new section 3513 as follows:

"Section 3513. Hearsay Exception for Child Victim's Out-of-Court Statement of Abuse.

(A) An out-of-court statement made by a child under eleven years of age at the time of the proceeding concerning an act that is a material element of the offense relating to sexual abuse, or physical abuse as delineated in Sections 765, 766, 768, 769, 770, 771, 772, 773, 775, 783, 783A, 611, 612, 613 and 1108 of this Title that is not otherwise admissible in evidence is admissible in any judicial proceeding if the requirements of sections B through F are met.

(B) An out-of-court statement may be admitted as provided in Section A if:

(1) The child is present and his or her testimony touches upon the event and is subject to cross-examination rendering such prior statement admissible under Section 3507 of this title; or

(2)(a) the child is found by the court to be unavailable to testify on any of these grounds:

- i) the child's death;
- ii) the child's absence from the jurisdiction;
- iii) the child's total failure of memory;
- iv) the child's persistent refusal to testify despite judicial requests to do so;
- v) the child's physical or mental disability;
- vi) the existence of a privilege involving the child;
- vii) the child's incompetency, including the child's inability to communicate about the offense because of fear or a similar reason; or
- viii) substantial likelihood that the child would suffer severe emotional trauma from testifying at the proceeding or by means of a videotaped deposition or closed-circuit television; and

(b) the child's out-of-court statement is shown to possess particularized guarantees of trustworthiness.

(C) A finding of unavailability under section B(2)(a)(viii) must be supported by expert testimony.

(D) The proponent of the statement must inform the adverse party of the proponent's intention to offer the statement and the content of the statement sufficiently in advance of the proceeding to provide the adverse party with a fair opportunity to prepare a response to the statement before the proceeding at which it is offered.

(E) In determining whether a statement possesses particularized guarantees of trustworthiness under section B(2), the court may consider, but is not limited to, the following factors:

- (1) the child's personal knowledge of the event;

- (2) the age and maturity of the child;
- (3) certainty that the statement was made, including the credibility of the person testifying about the statement;
- (4) any apparent motive the child may have to falsify or distort the event, including bias, corruption, or coercion;
- (5) the timing of the child's statement;
- (6) whether more than one person heard the statement;
- (7) whether the child was suffering pain or distress when making the statement;
- (8) the nature and duration of any alleged abuse;
- (9) whether the child's young age makes it unlikely that the child fabricated a statement that represents a graphic, detailed account beyond the child's knowledge and experience;
- (10) whether the statement has a "ring of verity", has internal consistency or coherence, and uses terminology appropriate to the child's age;
- (11) whether the statement is spontaneous or directly responsive to questions.
- (12) whether the statement is suggestive due to improperly leading questions.
- (13) whether extrinsic evidence exists to show the defendant's opportunity to commit the act complained of in the child's statement.

(F) The court shall support with findings on the record any rulings pertaining to the child's unavailability and the trustworthiness of the out-of-court statement."

Approved July 10, 1992.

## CHAPTER 363

## FORMERLY

## SENATE BILL NO. 442

AN ACT TO AMEND CHAPTER 74, TITLE 7 OF THE DELAWARE CODE RELATING TO DELAWARE UNDERGROUND STORAGE TANK ACT.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Subsection (9) of Section 7402, Title 7 of the Delaware Code by striking the entire Subsection and substituting in lieu thereof the following new Subsection to read as follows:

" 'Operator' means any person in control of, or having responsibility for, the daily operation of the underground storage tank system."

Section 2. Amend Subsection (11) of Section 7402, Title 7 of the Delaware Code by striking all dates in said Subsection and substituting in lieu thereof the date "November 8, 1984".

Section 3. Amend Subsection (12) of Section 7402, Title 7 of the Delaware Code by adding a new sentence to the end of said subsection to read as follows:

" 'Person' also includes a consortium, a joint venture, a commercial entity and the United States Government."

Section 4. Amend Subsection (13)a. of Section 7402, Title 7 of the Delaware Code by striking the phrase "Delaware's Regulations Governing Hazardous Wastes." and substituting in lieu thereof the following:

"hazardous waste under subtitle C of the Resources Conservation and Recovery Act of 1976 as amended."

Section 5. Amend Subsection (20)f. of Section 7402, Title 7 of the Delaware Code by striking the phrase "gas production or gathering operations; or" and substituting in lieu thereof the following:

"gas production and gathering operations; or"

Approved July 10, 1992.



CHAPTER 364

FORMERLY

SENATE BILL NO. 301  
AS AMENDED BY SENATE AMENDMENT NO. 1

AN ACT TO AMEND CHAPTERS 55 AND 55A, TITLE 29, DELAWARE CODE.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend §5526(b), Chapter 55, Title 29, Delaware Code by inserting immediately after the phrase "annual rate of compensation" the following:

" , adjusted annually for any increase in the total 'Median Usual Weekly Earnings' as published by the U.S. Department of Labor,"

Section 2. Amend §5573, Chapter 55A, Title 29, Delaware Code by striking the number "10" as it appears therein and substituting in lieu thereof the number "5".

Section 3. Amend §5576(b), Chapter 55A, Title 29, Delaware Code by striking said subsection in its entirety and substituting in lieu thereof a new subsection "(b)" to read as follows:

"(b) Any disability pensioner who has not attained age 60 shall report to the Board by April 30 each year in a form prescribed by the Board, his total earnings from any gainful occupation or business in the preceding calendar year. The excess of such earnings over one half of the annual rate of compensation, adjusted annually for any increase in the total 'Median Usual Weekly Earnings' as published by the U.S. Department of Labor, received by him before he became disabled shall be deducted from his disability pension during the 12 months beginning in July of the year following the calendar year for which earnings are reported, in a manner determined by the Board. If any person received a disability pension for less than 12 months in the calendar year for which earnings are reported, the deduction, if any, shall be determined on a pro rata basis."

Approved July 13, 1992.

## CHAPTER 365

## FORMERLY

## SENATE BILL NO. 302

AS AMENDED BY SENATE AMENDMENT NOS. 1, 3 AND 4

AN ACT TO AMEND CHAPTER 31, TITLE 15 OF THE DELAWARE CODE RELATING TO PRIMARY ELECTIONS; AND PROVIDING FOR A PRESIDENTIAL PRIMARY ELECTION.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Chapter 31, Title 15 of the Delaware Code by adding thereto a new subchapter to read as follows:

"Subchapter V. Presidential Primary Election

§3181. Primary to be held

(a) Except as provided in subsection (b) of this section, a presidential primary election for all political parties shall be conducted in any year in which a President of the United States is to be elected.

(b) The requirements of this subchapter shall not require a presidential primary election for a political party in any year in which such a primary election would otherwise be required under the provisions of this subchapter, if the Chairman of the political party notifies the State Election Commissioner in writing at least thirty days prior to the deadline set forth in §3183(a) of this subchapter that such political party elects not to be governed by the provisions of this subchapter.

§3182. Conduct of election

Except as otherwise provided in this subchapter, the presidential primary election shall be conducted in accordance with the laws governing statewide office primaries.

§3183. Nomination, withdrawal and primary election dates

(a) Notification of candidacy shall be on or before 12:00 noon of the first Friday in January. In the event the first Friday in January is a legal holiday, then the last day to give notification shall be the next day which is not a Saturday, Sunday or a legal holiday.

(b) Such notification of candidacy may be withdrawn on or before 12:00 noon of the first Friday in February. In the event the first Friday in February is a legal holiday, then the final day to withdraw shall be the next day which is not a Saturday, Sunday or a legal holiday.

(c) The presidential primary election for all political parties shall be conducted on the first Saturday after the presidential primary election conducted by the state of New Hampshire is held in any year in which a President of the United States is to be elected.

§3184. Candidates for presidential election

(a) A candidate shall be eligible for the presidential primary election if:

(1) such candidate is affiliated with a political party recognized pursuant to §3001 of this Title, and has become eligible to receive payments from the Presidential Primary Matching Payment Account of the Internal Revenue Code, or

(2) such candidate files a petition with the State Election Commissioner bearing at least 500 valid signatures of registered voters of this State of the same political party as the candidate.

§3185. Selection of delegates to national conventions: forwarding of rules to State Election Commissioner

Delegates and alternate delegates to a national convention of a political party shall be apportioned, selected and/or elected in such manner as the rules of the party may provide. The Chairman of any political party shall certify and forward to the State Election Commissioner a copy of the party rules at least thirty days prior to the last day on which candidates for the President of the United States must provide notification of their candidacy pursuant to this subchapter.

§3186. Delegate and alternate delegate commitments: authorization required; petitions

(a) Whenever the rules of a party provide that a candidate for delegate or alternate delegate to a National convention of a political party may pledge his/her support to a presidential candidate, he/she shall be committed to support and vote for the nomination of that candidate as President as party rules provide.

(b) No candidate for delegate or alternate delegate shall make a commitment unless he/she has obtained prior authorization to do so from the presidential candidate to whom he/she is pledging support. No candidate for delegate or alternate delegate shall be allowed to commit himself to any presidential candidate unless the presidential candidate forwards notice to the State Election Commissioner upon a form prescribed by the commissioner, that he/she is a candidate for the nomination of President of the United States and that he/she authorizes delegates and alternate delegates to pledge their support and commit themselves to him/her.

(c) Nominations for delegates and alternate delegates committed to a particular presidential candidate shall be made only by the presidential candidate or his/her duly authorized representative who is certified by the State Election Commissioner as being authorized by the candidate to act on his/her behalf.

§3187. Filing fees

A candidate filing for the presidential primary election shall tender a filing fee in the sum of two thousand dollars (\$2,000.00) to the State Election Commissioner, payable to the state committee of the candidate's political party.

§3188. Nomination of delegates and alternate delegates: qualifications

(a) Each candidate for the presidential primary election shall submit to the State Election Commissioner and the state chairman of his or her political party, prior to the deadline established by this subchapter for withdrawal of his/her candidacy, a slate of proposed delegates and alternate delegates to the National Convention of the candidate's party. The number of proposed delegates and alternate delegates submitted by any candidate shall not exceed the number of delegates and alternate delegates to the National Convention authorized by the rules of the candidate's party, excluding any delegates that are preselected under party rules.

(b) Proposed delegates and alternate delegates must be of the same political party as the candidate who submits their names to the State Election Commissioner and eligible to vote in the presidential primary election.

§3189. Voting in presidential primary election: ballots

The name of each presidential candidate in the presidential primary shall appear on the primary ballot. Each voter shall be permitted to vote for one presidential candidate. Delegates and alternate delegates to the National Convention of a political party, excluding any delegates that are preselected under party rules, shall be apportioned based on the popular vote of each presidential candidate and selected by the state committee of the candidate's political party pursuant to that party's rules from the slate of proposed delegates and alternate delegates submitted under §3188 of this Title.

§3190. Polling places: minimum requirement

The Department of Elections shall have at least four polling places open in each Representative District for the presidential primary election."

Approved July 13, 1992.

## CHAPTER 366

### FORMERLY

#### SENATE BILL NO. 325 AS AMENDED BY SENATE AMENDMENT NOS. 1 AND 2

AN ACT TO AMEND CHAPTER 21, TITLE 21 DELAWARE CODE RELATING TO WEIGHTS AND SIZES OF SPECIFIC VEHICLES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (three-fifths of all members elected to each House thereof concurring therein):

Section 2. Amend Section 2105, Chapter 21, Title 21 of the Delaware Code by adding new subsections to read as follows:

"(h) A vehicle registered at a gross weight of 26,000 pounds or greater as a farm truck pursuant to §2113 and §2151 (3) of this title shall be exempt from the provisions of this Section until December 31, 2000.

(i) Effective January 1, 2001 and extending through December 31, 2005, the registered weight for a farm truck applying for a registration renewal shall not exceed the following:

(1) 2 axle truck = 36,000 pounds

(2) 3 axle truck = 65,000 pounds; provided however, that it shall also be lawful to operate such a vehicle containing agricultural products when the gross weight, including the vehicle and load, does not exceed 70,000 lbs.; provided further that a fee of \$100 per vehicle be levied for the use of this extra weight capacity.

(j) Effective January 1, 2006, all motor vehicles registered as farm trucks shall be registered in compliance with Subsections (a) through (g) of this section."

Approved July 13, 1992.

CHAPTER 367

FORMERLY

SENATE BILL NO. 435

AN ACT TO AMEND CHAPTER 21, TITLE 11 OF THE DELAWARE CODE RELATING TO CONDITIONS FOR RELEASE OF PERSONS ACCUSED OF CRIMES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Chapter 21, Title 11, Delaware Code by designating what is now §2108 as §2108(a).

Section 2. Amend Chapter 21, Title 11, Delaware Code by adding a new §2108(b) as follows:

"(b) In connection with either a secured release or an unsecured release of any person charged with any crime involving child sexual abuse or exploitation, the court shall also impose a condition that the person have no contact with children, except upon good cause shown, and as otherwise provided by the court, and that such condition remain in full force and effect until a nolle prosequi is filed, the case is dismissed, or an adjudication of not guilty is returned, whichever shall first occur, or if the person is adjudicated guilty by way of a plea of guilty or a conviction by court or jury, at the time of sentencing, unless further made a condition of probation by the sentencing judge."

Approved July 13, 1992.

CHAPTER 368

FORMERLY

HOUSE BILL NO. 504  
AS AMENDED BY SENATE AMENDMENT NO. 1

AN ACT TO AMEND CHAPTER 87, TITLE 9, DELAWARE CODE RELATING TO COLLECTION OF TAXES BY KENT COUNTY.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend §8711, Chapter 87, Title 9, Delaware Code by adding the words "Kent County" after the words "New Castle County," and before the words "and Sussex County" wherever they appear therein.

Approved July 13, 1992.

## CHAPTER 369

## FORMERLY

## HOUSE BILL NO. 505

AN ACT TO AMEND CHAPTER 44, TITLE 9, DELAWARE CODE RELATING TO REPORTS ON BUILDING PERMITS ISSUED BY INCORPORATED CITIES OR TOWNS IN KENT COUNTY.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend §4403, Chapter 44, Title 9 Delaware Code by striking said section in its entirety and substituting in lieu thereof the following:

"§4403. Reports on permits issued by incorporated cities or towns.

Building Inspectors or other officers authorized by law to issue permits for construction of any buildings, in any incorporated city or town in Kent County, shall report to the Board of Assessment of Kent County, within ten (10) days of the date of finalization and/or date of issuance of a certificate of occupancy, every permit issued by them respectively. Every permit shall specify the estimated cost of the proposed construction, and date the permit was finalized and/or a certificate of occupancy was issued."

Approved July 13, 1992.

## CHAPTER 370

## FORMERLY

## HOUSE BILL NO. 506

AN ACT TO AMEND CHAPTER 46, TITLE 9, DELAWARE CODE RELATING TO KENT COUNTY SEWERS AND SEWER DISTRICTS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend §4612(8), Chapter 46, Title 9, Delaware Code by striking the number "\$500" as it appears therein and substituting in lieu thereof the number "\$1,000".

Approved July 13, 1992.

## CHAPTER 371

## FORMERLY

## HOUSE BILL NO. 630

AN ACT TO AMEND CHAPTER 83, TITLE 9, AND CHAPTER 9, TITLE 3, DELAWARE CODE, TO DIRECT ROLL-BACK TAXES COLLECTED ON CONVERTED AGRICULTURAL LANDS TO THE SCHOOL DISTRICTS, INCLUDING PROVISIONS FOR ADMINISTRATION, ENFORCEMENT AND COLLECTION OF SUCH ROLL-BACK TAXES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Title 9, Delaware Code, §8335(d) by adding a new paragraph (3) to subsection (d) to read as follows:

"(3) Roll-back taxes as provided herein shall become payable when the land is applied to a use other than agricultural, horticultural or forestry. The terms "Applied to a use other than agriculture" and "change in use" for purposes of this subsection (d) shall include any of the following:

- a. The actual use of the land for an activity other than agricultural, horticultural or forestry;
- b. The rezoning of the land to a nonagricultural category;
- c. The subdivision of the land which allows for a nonagricultural usage;
- d. The approval of a site plan or issuance of a certificate of occupancy which allows for a nonagricultural usage; and
- e. The loss of eligibility for valuation under §§8330-8337 of this Title."

Section 2. Amend Title 9, Delaware Code, §8335(d) by adding a new paragraph (4) to subsection (d) to read as follows:

"(4) Roll-back taxes hereunder shall be paid within ninety (90) days of their due date, and payment thereafter shall include a penalty of six percent (6%) of the amount due for the first month thereafter, and one percent (1%) of the amount due for each consecutive month until payment is made. The amount due for roll-back tax shall become a lien on the land which was subject to a change in use or applied to a use other than agriculture as of the due date. The school tax component of the roll-back tax shall be paid to the respective school districts which established the tax rates applicable to the lands through a payment first to the appropriate county receiver of taxes, treasurer, or director of finance, who collects school taxes. The balance of the roll-back tax shall, when collected by the appropriate county receiver of taxes, treasurer, or director of finance, be paid to the Delaware Agricultural Lands Preservation Foundation; provided, however, that seven and a half percent (7-1/2%) of such balance shall be withheld and paid to the county as a charge for administration. For purposes of this paragraph, the due date shall be the earlier of the date following conversion under paragraph (3) above which is established by the respective counties for annual taxes or the date indicated by the county in any special billing for roll-back taxes."

Section 3. Amend Title 9, Delaware Code, §8336(a) by adding a new sentence to the end of subsection (a) to read as follows:

"With respect to new applications, eligibility of the land for valuation, assessment and taxation under this section shall be conditioned upon advance execution by the landowner of a certification, in recordable form, as provided by the Delaware Agricultural Lands Preservation Foundation, which certification indicates that a roll-back tax is due and payable to the school districts and the Foundation under the provisions of 9 Del. C., §8335(d) at such time that the land is subjected to a change in use or applied to a use other than agricultural, horticultural or forestry, as

such terms are defined, and that a failure to pay the roll-back tax when due results in the imposition of a lien on the land for non-payment."

Section 4. Amend Title 3, Delaware Code, §921(c) by deleting subsection (c) in its entirety retroactive to the date of its adoption and substituting in lieu thereof a new subsection (c) to read as follows:

"(c) All monies collected by the respective county receiver of taxes, treasurer or director of finance as the Foundation's share of roll-back taxes under the provisions of 9 Del. C., §8335(d) shall, when collected and after deduction of the seven and a half percent (7-1/2%) administration charge, be transferred to the Foundation for use in carrying out the purposes of this Chapter. The Foundation shall be entitled to adopt and impose procedures and requirements to assure collection of its share of roll-back taxes and the Foundation shall be entitled to notify county taxing authorities of lands subject to the agricultural lands preservation assessment and upon such notification such county taxing authorities shall include the amount due on the property tax statements submitted with respect to the converted lands. Non-payment of the Foundation's share of the roll-back tax, including penalties, shall when payable result in the imposition of a lien on the land for non-payment, which lien shall qualify for all purposes as a lien under the provisions of 25 Del. C., §2901."

Section 5. Amend Title 3, Delaware Code, §921 by adding a new subsection (e) to read as follows:

"(e) All monies directed to the Foundation under this Chapter, either directly or indirectly, shall be for the exclusive benefit of the Foundation in carrying out the purposes of this Chapter. Such funding shall be considered separate and distinct from any other funding authorization, even though the funding amount may be determined on the basis of tax rates, assessments, or by other means used by other entities."

Section 6. Amend Title 3, Delaware Code, §920 by adding a new subsection (d) to read as follows:

"(d) The Foundation shall be entitled to take action, including an action by motion, in any Court of competent jurisdiction to enforce liens and to collect the Foundation's share of roll-back taxes, including penalties, which are due under the provisions of §921(C) of this Chapter. In any such action the Foundation shall be entitled to proceed through its legal counsel, without the need of obtaining any prior approval, and the Foundation shall, if it prevails, be entitled to recover its reasonable costs and expenses, including reasonable attorney's fees. Nothing contained herein shall preclude a county or school district from pursuing legal action to collect, on behalf of the Foundation, the Foundation's share of the roll-back tax through either independent action or as part of another action. Upon collection of the Foundation's share of the roll-back tax through such legal action the amount collected, after deduction of the seven and a half percent (7-1/2%) administration charge, shall be forwarded to the Foundation."

Section 7. Amend Title 3, Delaware Code, §903(a)(5) by deleting the words "three (3) years" as they appear in such paragraph and by substituting in lieu thereof the words "two (2) years"

Approved July 13, 1992.



CHAPTER 372

FORMERLY

HOUSE BILL NO. 534

AN ACT TO AMEND CHAPTER 43, TITLE 11, DELAWARE CODE RELATING TO THE BOARD OF PAROLE.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend §4353 (b), Chapter 43, Title 11 of the Delaware Code by deleting it in its entirety and substituting the following:

"The Department of Correction shall ensure that mental health evaluations required by subsection (a) of this section are available to the Parole Board at the time of the hearing in those cases wherein a favorable recommendation is made by the Department to the Board.

In cases wherein a favorable recommendation is not made by the Department but the Parole Board has determined that the person is otherwise suitable for release on parole, the Parole Board must request a mental health evaluation, pursuant to this section.

Approved July 13, 1992.

CHAPTER 373

FORMERLY

HOUSE BILL NO. 535

AN ACT TO AMEND CHAPTER 43, TITLE 11, DELAWARE CODE RELATING TO THE BOARD OF PAROLE.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend §4347(a), Chapter 43, Title 11 of the Delaware Code by striking the words "90 days" as they currently appear in the first sentence and by inserting in lieu thereof the words "180 days".

Section 2. Amend §4347(a), Chapter 43, Title 11 of the Delaware Code by deleting the phrase "not sooner than one year" as it appears in the last sentence of said subsection and by inserting in lieu thereof the following:

"not sooner than six months for an applicant with a good-time release date of three years or less and not sooner than one year for an applicant with a good-time release date of more than three years."

Approved July 13, 1992.

## CHAPTER 374

## FORMERLY

HOUSE BILL NO. 193  
AS AMENDED BY HOUSE AMENDMENT NO. 3 AND SENATE AMENDMENT NO. 1

AN ACT TO AMEND CHAPTER 9, TITLE 7, DELAWARE CODE RELATING TO FINFISHING IN TIDAL WATERS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Chapter 9, Title 7, Delaware Code by adding thereto a new Section to read as follows:

"§939. Fishing Seasons; Exception.

(a) Unless otherwise provided in this Chapter, regulation or permit issued by the Department, it shall be unlawful for any person to take, brought to shore from any type of water craft, or retain any Tautog, (*Tautoga onitis*) from the tidal waters of this State during the period beginning at 12:01 A.M. on April 1 through and including midnight on June 30 next ensuing except that an individual who free dives without the aid of an underwater mechanical breathing device may take by spear and retain not more than ten (10) Tautog per day during this period.

(b) Each Tautog taken and retained in violation of the provisions in paragraph (a) of this Section shall constitute a separate violation."

Section 2. Amend Title 7 of the Delaware Code Section 938(a) by deleting the number "20" and replacing said number with the number "10".

Approved July 13, 1992.

## CHAPTER 375

## FORMERLY

SENATE BILL NO. 452

AN ACT PROPOSING AN AMENDMENT TO ARTICLE IV, §11 OF THE DELAWARE CONSTITUTION OF 1897, AS AMENDED, RELATING TO CERTIFICATION OF QUESTIONS OF LAW TO THE SUPREME COURT.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (Two-thirds of all members elected to each House thereof concurring therein):

Section 1. Amend Article IV, §11 paragraph (9) of the Delaware Constitution of 1897, as amended, by striking said paragraph (9) in its entirety and substituting in lieu thereof a new paragraph (9) to read as follows:

"(9) To hear and determine questions of law certified to it by other Delaware courts, the Supreme Court of the United States, a Court of Appeals of the United States, a United States District Court, or the highest appellate court of any other state, where it appears to the Supreme Court that there are important and urgent reasons for an immediate determination of such questions by it. The Supreme Court may, by rules, define generally the conditions under which questions may be certified to it and prescribe methods of certification."

Approved June 30, 1992.

## CHAPTER 376

## FORMERLY

HOUSE BILL NO. 515  
AS AMENDED BY HOUSE AMENDMENT NOS. 1 AND 2

AN ACT TO AMEND TITLE 4 OF THE DELAWARE CODE RELATING TO ALCOHOLIC LIQUORS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Subchapter III, Chapter 5, Title 4 of the Delaware Code by adding a new section designated as §546 which shall read as follows:

"§546. Limit on Number of Retail Licenses.

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

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

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

(c) For the purposes of this section, a person shall be deemed to acquire a financial, pecuniary, beneficial, management, supervisory, or other interest in a retail license to purchase and re-sell or dispense alcoholic liquor if such person or person's spouse or child under 21 years of age has either (i) any interest whatsoever, direct or indirect, and however small, as a director, officer, shareholder, partner, associate, employee, or member in any corporation, partnership, association, proprietorship, or other entity engaged in any undertaking, industry, or business which holds a retail license pursuant to this chapter, or (ii) any authority whatsoever to supervise, manage, control, or direct the operation of the licensee's business, or to hire, terminate, or discipline its employees, or to issue any orders, policies, or directives concerning its

business; provided, however, that any person whose relationship with the licensee is, as determined by the Commission, merely that of a bona fide lender, lending institution, secured party, or lienholder, or merely that of a bona fide landlord or lessor of real or personal property, shall not, for the purposes of this section, be deemed to acquire a financial, pecuniary, beneficial, management, supervisory, or other interest in such license.

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

Section 2. Amend §561, Subchapter V, Chapter 5, Title 4 of the Delaware Code by adding a new subsection (e) which shall read as follows:

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

Section 3. If any section, subsection, paragraph, or provision of this Act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other sections, subsections, paragraphs, provisions, or applications of this Act which can be given effect without the invalid section, subsection, paragraph, provision, or application, and to that end the provisions of this Act are declared to be severable.

Approved July 11, 1992.

## CHAPTER 377

## FORMERLY

SENATE BILL NO. 433  
AS AMENDED BY SENATE AMENDMENT NO. 1

AN ACT TO AMEND CHAPTER 80, TITLE 29, DELAWARE CODE TO PROVIDE FOR THE ESTABLISHMENT OF THE DELAWARE COASTAL HERITAGE GREENWAY COUNCIL.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Chapter 80, Title 29, Delaware Code by adding thereto a new section to read as follows:

"§8017A. Delaware Coastal Heritage Greenway Council.

(a) There is hereby established the Delaware Coastal Heritage Greenway Council created for the following purposes:

(1) Evaluate the natural, cultural and historical resources of Delaware's coastline and determine which of these resources should be components of a Delaware Coastal Heritage Greenway;

(2) Promote and encourage public agencies, non-profit organizations, private organizations and individuals to create, where appropriate, physical linkages between components of the Greenway. Such linkages may involve the acquisition or other methods that provide for the permanent protection of open space within the Greenway and establishment of trails, walkways, bicycle routes and/or scenic highways throughout the Greenway.

(b) The Delaware Coastal Heritage Greenway Council shall serve in an advisory capacity to the Secretary of the Department. Duties of the Council shall include, but not be limited to, the following:

(1) Adopt a criteria for the establishment and maintenance of Coastal Greenway links to serve the long-term needs of Delaware's environment and the recreational needs of the citizens of this state;

(2) Establish a program of cooperation and coordination with the governing bodies of the governmental planning departments, counties, municipalities and other units of general government below the State level and with private non-profit or public organizations to assist in the creation and preservation of natural, cultural and historical resources as Greenways throughout this State;

(3) Review and approve applications for the establishment of Coastal Greenway links consistent with the provisions of this section;

(4) Establish a program of education and promotion of the Delaware Coastal Heritage Greenway;

(5) Establish internal committees and/or encourage and promote establishment of new organizations, the purpose of which will be to develop and, where appropriate, implement strategies to link other cultural, historic and natural resources within the State to the Delaware Coastal Heritage Greenway using the Greenway concept.

(c) (1) The Council shall be composed of 17 members. The Governor shall designate one member to serve as Chairperson. Members of the Council shall be:

(2) The Secretary of the Department of Natural Resources and Environmental Control or authorized designee;

(3) The Secretary of the Department of Transportation or authorized designee;

(4) Secretary of the Department of Agriculture or authorized designee;

(5) The Director of the Division of Historic and Cultural Affairs;

(6) The Director of the Tourism Office;

(7) 8 members of the private or non-profit sectors as shall be appointed by the Governor;

(8) One member from the minority party and one member from the majority party of the Delaware House of Representatives appointed by the Speaker of the House;

(9) One member from the minority party and one member from the majority party of the Delaware State Senate appointed by the President Pro Tempore.

(d) Upon the expiration of the terms of the original members having designated terms, the terms of such members positions thereafter shall be 3 years. For the members appointed to the positions indicated in subsection (c)(7), members registered in either major political party shall not exceed the other major political party by more than one.

(e) The members shall not be entitled to compensation for the services they provide to the Council; however, each member shall be entitled to reimbursement for actual and necessary expenses incurred to enable the performance of official duties."

Approved July 14, 1992.

#### CHAPTER 378

#### FORMERLY

#### SENATE BILL NO. 420

AN ACT TO AMEND TITLE 11 OF THE DELAWARE CODE RELATING TO THE DEFINITION OF THE TERMS "DEADLY WEAPON" AND "FIREARM."

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend §222(5), Title 11, Delaware Code by striking the words "any weapon from which a shot may be discharged," and inserting in lieu thereof the following:

"a firearm, as defined in subsection (9) of this section, a bomb,".

Section 2. Amend §222(5), Title 11, Delaware Code by inserting after the words "ice pick" which appear at the end of the first sentence of said subsection, the following:

"or any dangerous instrument, as defined in subsection (4) of this section, which is used, or attempted to be used, to cause death or serious physical injury"

Section 3. Amend §222(9), Title 11, Delaware Code by inserting after the words "operable or unoperable" as they appear in the first sentence of said subsection, the following:

", loaded or unloaded"

Approved July 14, 1992.

## CHAPTER 377

## FORMERLY

SENATE BILL NO. 433  
AS AMENDED BY SENATE AMENDMENT NO. 1

AN ACT TO AMEND CHAPTER 80, TITLE 29, DELAWARE CODE TO PROVIDE FOR THE ESTABLISHMENT OF THE DELAWARE COASTAL HERITAGE GREENWAY COUNCIL.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Chapter 80, Title 29, Delaware Code by adding thereto a new section to read as follows:

"§8017A. Delaware Coastal Heritage Greenway Council.

(a) There is hereby established the Delaware Coastal Heritage Greenway Council created for the following purposes:

(1) Evaluate the natural, cultural and historical resources of Delaware's coastline and determine which of these resources should be components of a Delaware Coastal Heritage Greenway;

(2) Promote and encourage public agencies, non-profit organizations, private organizations and individuals to create, where appropriate, physical linkages between components of the Greenway. Such linkages may involve the acquisition or other methods that provide for the permanent protection of open space within the Greenway and establishment of trails, walkways, bicycle routes and/or scenic highways throughout the Greenway.

(b) The Delaware Coastal Heritage Greenway Council shall serve in an advisory capacity to the Secretary of the Department. Duties of the Council shall include, but not be limited to, the following:

(1) Adopt a criteria for the establishment and maintenance of Coastal Greenway links to serve the long-term needs of Delaware's environment and the recreational needs of the citizens of this state;

(2) Establish a program of cooperation and coordination with the governing bodies of the governmental planning departments, counties, municipalities and other units of general government below the State level and with private non-profit or public organizations to assist in the creation and preservation of natural, cultural and historical resources as Greenways throughout this State;

(3) Review and approve applications for the establishment of Coastal Greenway links consistent with the provisions of this section;

(4) Establish a program of education and promotion of the Delaware Coastal Heritage Greenway;

(5) Establish internal committees and/or encourage and promote establishment of new organizations, the purpose of which will be to develop and, where appropriate, implement strategies to link other cultural, historic and natural resources within the State to the Delaware Coastal Heritage Greenway using the Greenway concept.

(c) (1) The Council shall be composed of 17 members. The Governor shall designate one member to serve as Chairperson. Members of the Council shall be:

(2) The Secretary of the Department of Natural Resources and Environmental Control or authorized designee;

(3) The Secretary of the Department of Transportation or authorized designee;

(4) Secretary of the Department of Agriculture or authorized designee;

(5) The Director of the Division of Historic and Cultural Affairs;

(6) The Director of the Tourism Office;

(7) 8 members of the private or non-profit sectors as shall be appointed by the Governor;

(8) One member from the minority party and one member from the majority party of the Delaware House of Representatives appointed by the Speaker of the House;

(9) One member from the minority party and one member from the majority party of the Delaware State Senate appointed by the President Pro Tempore.

(d) Upon the expiration of the terms of the original members having designated terms, the terms of such members positions thereafter shall be 3 years. For the members appointed to the positions indicated in subsection (c)(7), members registered in either major political party shall not exceed the other major political party by more than one.

(e) The members shall not be entitled to compensation for the services they provide to the Council; however, each member shall be entitled to reimbursement for actual and necessary expenses incurred to enable the performance of official duties."

Approved July 14, 1992.

## CHAPTER 378

### FORMERLY

#### SENATE BILL NO. 420

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BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend §222(5), Title 11, Delaware Code by striking the words "any weapon from which a shot may be discharged," and inserting in lieu thereof the following:

"a firearm, as defined in subsection (9) of this section, a bomb,".

Section 2. Amend §222(5), Title 11, Delaware Code by inserting after the words "ice pick" which appear at the end of the first sentence of said subsection, the following:

"or any dangerous instrument, as defined in subsection (4) of this section, which is used, or attempted to be used, to cause death or serious physical injury"

Section 3. Amend §222(9), Title 11, Delaware Code by inserting after the words "operable or unoperable" as they appear in the first sentence of said subsection, the following:

", loaded or unloaded"

Approved July 14, 1992.



CHAPTER 379

FORMERLY

SENATE BILL NO. 434

AN ACT TO AMEND CHAPTER 5, TITLE 11 OF THE DELAWARE CODE RELATING TO SEXUAL OFFENSES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

SECTION 1. Amend Chapter 5, Title 11 of the Delaware Code by adding a new section to read as follows:

"§776. Sexual extortion; Class E felony.

A person is guilty of sexual extortion when he or she intentionally compels or induces another person to engage in any sexual act involving contact, penetration or intercourse with himself or herself or another or others by means of instilling in him or her a fear that, if such sexual act is not performed, the defendant or another will:

- (1) cause physical injury to anyone; or
- (2) cause damage to property; or
- (3) engage in other conduct constituting a crime; or
- (4) accuse anyone of a crime or cause criminal charges to be instituted against him or her; or
- (5) expose a secret or publicize an asserted fact, whether true or false, intending to subject anyone to hatred, contempt or ridicule; or
- (6) falsely testify or provide information or withhold testimony or information with respect another's legal claim or defense; or
- (7) perform any other act which is calculated to harm another person materially with respect to his or her health, safety, business, calling, career, financial condition, reputation or personal relationships.

Sexual exploitation is a Class E felony."

Approved July 14, 1992.

## CHAPTER 380

## FORMERLY

HOUSE BILL NO. 279  
AS AMENDED BY HOUSE AMENDMENT NO. 2

AN ACT TO AMEND TITLE 31 OF THE DELAWARE CODE RELATING TO THE BRINGING OR SENDING OF NONRESIDENT CHILDREN INTO THE STATE OF DELAWARE.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Amend Subchapter I, Chapter 3, Title 31, Delaware Code by striking Section 307 in its entirety and substituting in lieu thereof the following:

(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 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.

Approved July 14, 1992.

## CHAPTER 381

## FORMERLY

HOUSE BILL NO. 491  
AS AMENDED BY HOUSE AMENDMENT NOS. 1 AND 2

AN ACT TO AMEND CHAPTER 7, TITLE 7 OF THE DELAWARE CODE RELATING TO PROHIBITIONS CONCERNING GAME AND FISH.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Chapter 7, Title 7, §704(f) of the Delaware Code by striking the words "and (3) such rifle is not used for hunting deer during the season established for hunting deer by shotgun".

Section 2. Further amend Chapter 7, Title 7, §704(f) by striking the words "and having nontelescopic metal sights".

Approved July 14, 1992.

## CHAPTER 382

## FORMERLY

SENATE BILL NO. 386  
AS AMENDED BY SENATE AMENDMENT NO. 1

AN ACT TO AMEND CHAPTER 23, TITLE 7, DELAWARE CODE RELATING TO NONCOMMERCIAL CRAB POT IDENTIFICATION, CLOSED SEASON AND LIMITS AND THE ATTENDANCE, ABANDONMENT, CONFISCATION AND FORFEITURE OF CRAB POTS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (Two-thirds of all members elected to each House thereof concurring therein):

Section 1. Amend §2310(c), Chapter 23, Title 7, Delaware Code by striking said subsection in its entirety and substitute in lieu thereof the following:

"(c) It shall be unlawful for any person to place, use, set, or tend any noncommercial crab pot unless said pot is attached to an all white buoy with said persons full name and permanent mailing address inscribed either on the white buoy or on a waterproof tag attached to said buoy that is legible at all times."

Section 2. Amend §2310, Chapter 23, Title 7 of the Delaware Code by adding a new subsection to read as follows:

"(e) Unless otherwise authorized, it shall be unlawful for any person to leave, place, use, set or tend any noncommercial crab pots in the tidal waters of this State between and including the first day of December and the last day of February immediately following."

Section 3. Amend §2310, Chapter 23, Title 7 of the Delaware Code by adding a new subsection to read as follows:

"(f) Unless otherwise authorized, it shall be unlawful for any person who does not have a valid commercial crab pot license to have, place, use, set or tend more than two crab pots in the tidal waters of this State."

Section 4. Amend Chapter 23, Title 7 of the Delaware Code by adding thereto a new section to read as follows:

"§2311. Crab Pot Attendance; Abandonment; Confiscation; Forfeiture.

(a) It shall be unlawful for any person who places, uses, or sets a crab pot in the tidal waters of this state to fail to tend and remove crabs from said crab pot at least once every 72 hours.

(b) Failure to tend and remove crabs from a crab pot in the tidal waters of this state at least 72 hours after said pot is tagged by the Department shall constitute abandonment of said crab pot.

(c) Any employee of the Department authorized to enforce this Chapter shall be authorized to seize and confiscate any crab pot which has been determined to have been abandoned pursuant to subsection (b) of this Section.

(d) Upon a determination that a crab pot has been abandoned and seized by the Department, ownership in said crab pot shall be forfeit to the Department.

(e) Notwithstanding the provisions set forth in subsections (a), (b) and (c) of this Section, any employee of the Department authorized to enforce this Chapter shall be authorized to seize any crab pot which fails to be placed, used or set in compliance with the provisions of this Chapter.

(f) Title to a crab pot seized by the Department and not claimed by the lawful owner after proper notification from the Department within 90 days of said notification shall be forfeit to the Department."

Approved July 14, 1992.

## CHAPTER 383

## FORMERLY

HOUSE BILL NO. 458  
AS AMENDED BY HOUSE AMENDMENT NO. 1

AN ACT TO AMEND CHAPTER 68, TITLE 18 OF THE DELAWARE CODE RELATING TO THE COMPENSATION OF MEDICAL MALPRACTICE REVIEW PANELISTS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Chapter 68, Title 18, of the Delaware Code by striking the existing section and by substituting in lieu thereof the following:

"§6813. Compensation of Panelists.

Each member of the malpractice review panel shall be paid at the rate of \$100 per diem plus actual and necessary expenses incurred in the performance of their official duties, but not to exceed a total of \$700 for both expenses and compensation paid to any one member of the panel for one matter. The member of the Commissioner's staff designated to serve as a panel's ex-officio member shall receive only actual and necessary expenses incurred as compensation. The malpractice review panel shall have the authority to assess such costs, up to a maximum amount of \$1,000, upon the party or parties against whom the majority opinion of the panel is rendered; provided, however, that this power to assess costs shall be discretionary and the panel shall assess such costs only in those cases where they deem it appropriate. In the event that a judgment shall be entered in any Superior Court action on the same matter, the fees and expenses of the panel may be assessed as costs to the extent allowable above and shall follow such judgment."

Approved July 14, 1992.

## CHAPTER 384

## FORMERLY

## SENATE BILL NO. 330

AN ACT TO AMEND §1106(1), TITLE 11 OF THE DELAWARE CODE RELATING TO THE SALE, PURCHASE, AND/OR PROCUREMENT OF TOBACCO PRODUCTS FOR OR TO MINORS BY INCREASING THE AGE FROM LESS THAN 17 YEARS OF AGE TO LESS THAN 18 YEARS OF AGE.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (Two-thirds of all members elected to each House thereof concurring therein):

Section 1. Amend §1106(1), Title 11 of the Delaware Code by striking the figure "17" as the same appears therein and inserting in lieu thereof the figure "18".

Approved July 15, 1992.

## CHAPTER 382

## FORMERLY

SENATE BILL NO. 386  
AS AMENDED BY SENATE AMENDMENT NO. 1

AN ACT TO AMEND CHAPTER 23, TITLE 7, DELAWARE CODE RELATING TO NONCOMMERCIAL CRAB POT IDENTIFICATION, CLOSED SEASON AND LIMITS AND THE ATTENDANCE, ABANDONMENT, CONFISCATION AND FORFEITURE OF CRAB POTS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (Two-thirds of all members elected to each House thereof concurring therein):

Section 1. Amend §2310(c), Chapter 23, Title 7, Delaware Code by striking said subsection in its entirety and substitute in lieu thereof the following:

"(c) It shall be unlawful for any person to place, use, set, or tend any noncommercial crab pot unless said pot is attached to an all white buoy with said persons full name and permanent mailing address inscribed either on the white buoy or on a waterproof tag attached to said buoy that is legible at all times."

Section 2. Amend §2310, Chapter 23, Title 7 of the Delaware Code by adding a new subsection to read as follows:

"(e) Unless otherwise authorized, it shall be unlawful for any person to leave, place, use, set or tend any noncommercial crab pots in the tidal waters of this State between and including the first day of December and the last day of February immediately following."

Section 3. Amend §2310, Chapter 23, Title 7 of the Delaware Code by adding a new subsection to read as follows:

"(f) Unless otherwise authorized, it shall be unlawful for any person who does not have a valid commercial crab pot license to have, place, use, set or tend more than two crab pots in the tidal waters of this State."

Section 4. Amend Chapter 23, Title 7 of the Delaware Code by adding thereto a new section to read as follows:

"§2311. Crab Pot Attendance; Abandonment; Confiscation; Forfeiture.

(a) It shall be unlawful for any person who places, uses, or sets a crab pot in the tidal waters of this state to fail to tend and remove crabs from said crab pot at least once every 72 hours.

(b) Failure to tend and remove crabs from a crab pot in the tidal waters of this state at least 72 hours after said pot is tagged by the Department shall constitute abandonment of said crab pot.

(c) Any employee of the Department authorized to enforce this Chapter shall be authorized to seize and confiscate any crab pot which has been determined to have been abandoned pursuant to subsection (b) of this Section.

(d) Upon a determination that a crab pot has been abandoned and seized by the Department, ownership in said crab pot shall be forfeit to the Department.

(e) Notwithstanding the provisions set forth in subsections (a), (b) and (c) of this Section, any employee of the Department authorized to enforce this Chapter shall be authorized to seize any crab pot which fails to be placed, used or set in compliance with the provisions of this Chapter.

(f) Title to a crab pot seized by the Department and not claimed by the lawful owner after proper notification from the Department within 90 days of said notification shall be forfeit to the Department."

Approved July 14, 1992.

## CHAPTER 383

## FORMERLY

HOUSE BILL NO. 458  
AS AMENDED BY HOUSE AMENDMENT NO. 1

AN ACT TO AMEND CHAPTER 68, TITLE 18 OF THE DELAWARE CODE RELATING TO THE COMPENSATION OF MEDICAL MALPRACTICE REVIEW PANELISTS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Chapter 68, Title 18, of the Delaware Code by striking the existing section and by substituting in lieu thereof the following:

"§6813. Compensation of Panelists.

Each member of the malpractice review panel shall be paid at the rate of \$100 per diem plus actual and necessary expenses incurred in the performance of their official duties, but not to exceed a total of \$700 for both expenses and compensation paid to any one member of the panel for one matter. The member of the Commissioner's staff designated to serve as a panel's ex-officio member shall receive only actual and necessary expenses incurred as compensation. The malpractice review panel shall have the authority to assess such costs, up to a maximum amount of \$1,000, upon the party or parties against whom the majority opinion of the panel is rendered; provided, however, that this power to assess costs shall be discretionary and the panel shall assess such costs only in those cases where they deem it appropriate. In the event that a judgment shall be entered in any Superior Court action on the same matter, the fees and expenses of the panel may be assessed as costs to the extent allowable above and shall follow such judgment."

Approved July 14, 1992.

## CHAPTER 384

## FORMERLY

## SENATE BILL NO. 330

AN ACT TO AMEND §1106(1), TITLE 11 OF THE DELAWARE CODE RELATING TO THE SALE, PURCHASE, AND/OR PROCUREMENT OF TOBACCO PRODUCTS FOR OR TO MINORS BY INCREASING THE AGE FROM LESS THAN 17 YEARS OF AGE TO LESS THAN 18 YEARS OF AGE.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (Two-thirds of all members elected to each House thereof concurring therein):

Section 1. Amend §1106(1), Title 11 of the Delaware Code by striking the figure "17" as the same appears therein and inserting in lieu thereof the figure "18".

Approved July 15, 1992.

## CHAPTER 385

## FORMERLY

HOUSE BILL NO. 591  
AS AMENDED BY SENATE AMENDMENT NO. 1

AN ACT TO AMEND CHAPTER 54, TITLE 30, OF THE DELAWARE CODE RELATING TO REALTY TRANSFER TAX REVENUE BONDS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (Three-quarters of all the members elected to each House thereof concurring therein):

Section 1. Amend §5421(2), Chapter 54, Title 30, Delaware Code to delete "June 30, 1991" where it appears therein and to substitute in its place "June 30, 1990."

Section 2. Amend §5423, Chapter 54, Title 30, Delaware Code to delete paragraph (2) of subsection (e) and to substitute in its place the following:

"(2) All realty transfer tax revenues deposited in the Revenue Account in each fiscal year shall be applied in the following amounts and in the following order of priority:

a. Set aside an amount sufficient to pay debt service on revenue bonds issued pursuant to this subchapter as may be required by the terms of such bonds;

b. Set aside the amount that may be required to satisfy any debt service reserve fund requirement with respect to any such bonds (up to 1 year's maximum annual debt service);

c. The excess, if any, until the amounts set aside under subparagraphs a, b and c hereof equal the Base Amount, shall be paid to the General Fund of the State;

d. Deposit into the Earnings Account from the remainder, if any, such amount as is necessary, when added to the interest earnings from the Endowment Account deposited in the Earnings Account during such fiscal year, to bring the total of such deposits into the Earnings Account for such fiscal year to \$1,000,000;

e. Deposit the remainder, if any, into the Endowment Account provided that, in any fiscal year when the earnings on the Endowment Account equal at least \$1,000,000 said remainder shall be deposited 50% into the Endowment Account, 25% into the Project Account and the balance shall be transferred to the General Fund; and

f. All earnings on realty transfer tax revenues on deposit in the Revenue Account, prior to the time of being set aside to pay debt service or to satisfy debt service reserve requirements or prior to being deposited into the Earnings Account, the Endowment Account or the Project Account, as provided herein, shall be paid to the General Fund."

Section 3. Amend paragraph (3) of §5423(e), Chapter 54, Title 30, Delaware Code to delete the phrase "paragraph (2)a.1." where it appears in two places and substitute in both places the phrase "paragraph (2)a." and to delete the phrase "paragraph (2)a.2. or 3" where it appears therein and substitute in its place the phrase "paragraph (2)b."

Section 4. Amend §5424(a), Chapter 54, Title 30, Delaware Code to delete the last sentence thereof and to substitute in its place the following: "Such revenue bonds shall be subject to the debt limitations of Section 7422 (c) of Title 29."

Section 5. Amend §5424, Chapter 54, Title 30, Delaware Code to delete subsection (j) and to substitute in its place the following:

"(j) It is the intent of the General Assembly that \$50 million of revenue bonds shall be issued for the purposes of this subchapter provided that (1) the total aggregate principal amount of bonds which

may be issued pursuant to this Subchapter may not exceed \$50 million, (2) no more than \$30 million total aggregate principal amount of bonds may be issued before June 30, 1993, (3) after June 30, 1993, no bonds may be issued if the total aggregate principal amount of such bonds when combined with the total aggregate principal amount of other bonds issued during the same or the prior fiscal year combined would exceed \$15 million provided that if the total amount of the bonds authorized but not yet issued hereunder does not exceed \$25 million, the total amount of such unissued bonds may be issued without regard to such \$15 million limitation, and (4) no bonds may be issued if the maximum annual debt service payable in any fiscal year on all bonds outstanding (net of investment earnings on reserves, as estimated by the Secretary of Finance, which are to be applied to pay such debt service) would exceed 20% of the Base Amount."

Section 6. Amend §5424(k)(3), Chapter 54, Title 30, Delaware Code to delete "\$50,000,000 or the" and substitute in its place "debt issuance"

Section 7. Amend §5424(l), Chapter 54, Title 30, Delaware Code to delete the last sentence thereof.

Section 8. This Act shall be effective upon its enactment in accordance with law.

Section 9. Subsequent to the enactment of this Act, One Million Dollars (\$1,000,000) of proceeds from the next sale of Realty Transfer Tax Revenue Bonds as authorized in Section 5424(j) of Chapter 54 of Title 30 of the Delaware Code shall be used as the State match for the purposes set forth in Section 5423(d)(1) of Chapter 54 of Title 30 of the Delaware Code (Earnings Account). When combined with the interest earnings retained therein, the aggregate amount spent from the Earnings Account shall not exceed One Million Dollars (\$1,000,000) in any single year.

Approved July 15, 1992.



## CHAPTER 386

## FORMERLY

HOUSE BILL NO. 590  
AS AMENDED BY HOUSE AMENDMENT NO. 1

AN ACT TO AMEND CHAPTER 6, TITLE 31 OF THE DELAWARE CODE RELATING TO FOOD STAMPS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (two-thirds of all members elected to each House thereof concurring therein):

Section 1. Amend Chapter 6, Title 31 of the Delaware Code by designating §§601, 602 and 603 as "Subchapter I. General Provisions."

Section 2. Amend Chapter 6, Title 31 of the Delaware Code by deleting §604 in its entirety and substituting in lieu thereof the following:

"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 shall 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 eighteen months consecutive to that period of suspension mandated by the federal Food Stamp Act pursuant to 7 U.S.C. §2015(b)(1).

§611. Forfeiture of property involved in illegal food stamp transactions.

(a) The Secretary of the Department of Health and Social Services or his designee may subject to forfeiture and denial of property rights any non-food items, monies, 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 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 his designee.

§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 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 one scheme or course of conduct, whether from one 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."

Approved July 16, 1992.

## CHAPTER 387

## FORMERLY

HOUSE BILL NO. 394

AS AMENDED BY HOUSE AMENDMENT NOS. 1 AND 2 AND SENATE AMENDMENT NO. 1

AN ACT TO AMEND TITLE 16 OF THE DELAWARE CODE RELATING TO MENTAL HEALTH.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Title 16 of the Delaware Code by adding a new Chapter 54 which shall read as follows:

"CHAPTER 54. Mental Health Services Providers.

§3.01. Definitions.

Except where the context indicates otherwise, as used in this chapter:

- (1) 'Licensed psychologist' means 'licensed psychologist' as defined by Chapter 35 of Title 24.
- (2) 'Licensed clinical social worker' means 'licensed clinical social worker' as defined by Chapter 39 of Title 24.
- (3) 'Mental health services provider' means any physician, registered professional nurse, licensed counselor working in the field of mental health, psychologists and licensed clinical social workers as defined in this chapter.
- (4) 'Patient' means any person with whom the mental health services provider has established a patient-care provider relationship.
- (5) 'Physician' means 'physician' as defined by Chapter 17 of Title 24.
- (6) 'licensed counselor working in the field of mental health' means 'licensed counselor working in the field of mental health' as defined by Chapter 30 of Title 24.
- (7) 'Registered professional nurse' means 'registered professional nurse' as defined by Chapter 19 of Title 24.

§5402. Duty of mental health services providers to take precautions against threatened patient violence; duty to warn.

(a) Except as provided in subsection (d) of this section, no cause of action shall lie against a mental health services provider, nor shall legal liability be imposed, for inability to prevent harm to person or property caused by a patient unless:

- (1) The patient has communicated to the mental health services provider an explicit and imminent threat to kill or seriously injure a clearly identified victim or victims, or to commit a specific violent act, or to destroy property under circumstances which could easily lead to serious personal injury or death, and the patient has an apparent intent and ability to carry out the threat; and
- (2) The mental health services provider fails to take the precautions specified in subsection (b) of this section in an attempt to prevent the threatened harm.

(b) Any duty owed by a mental health services provider to take reasonable precautions to prevent harm threatened by a patient is discharged, as a matter of law, if the mental health services provider, in a timely manner:

- (1) Notifies a law enforcement agency near where the potential victim resides, or notifies a law enforcement agency near where the patient resides, and communicates the threat of death or serious bodily injury to the clearly identified victim or victims; or or

(2) Arranges for the patient's immediate voluntary or involuntary hospitalization. or

(c) Whenever a patient has explicitly threatened to cause serious harm to a person or property, or a mental health services provider otherwise concludes that the patient is likely to do so and the mental health services provider, for the purpose of reducing the risk of harm, discloses any confidential communication made by or relating to the patient, no cause of action, either criminal or civil, shall lie against the mental health services provider for making such disclosure.

(d) Whenever a patient within the custodial responsibility of a hospital or other facility has made or makes threats of the kind dealt with in subsection (a) of this section, the mental health services provider and institution, agency, or hospital shall prior to such patient's discharge, consider and evaluate previously made threats made by such patient. Under such circumstances, the mental health services provider may consider it prudent to inform appropriate law enforcement agencies or the previously threatened party as a measure of precaution. Subsections (a) and (c) of this section shall also apply to the hospital or facility.

Approved July 16, 1992.

#### CHAPTER 388

#### FORMERLY

#### HOUSE BILL NO. 318

#### AS AMENDED BY HOUSE AMENDMENT NO. 1

AN ACT TO AMEND CHAPTER 27, TITLE 21 OF THE DELAWARE CODE RELATING TO THE FORWARDING OF TRAFFIC CONVICTIONS TO THE DIVISION OF MOTOR VEHICLES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend §2731(a), Chapter 27, Title 21 of the Delaware Code by inserting the words "within 30 days of the disposition of the case" after the words "of any of such laws" and before the words "and may recommend" as they currently appear.

Section 2. This bill shall have an effective date of July 1, 1992.

Approved July 16, 1992.

CHAPTER 389

FORMERLY

HOUSE BILL NO. 430  
AS AMENDED BY HOUSE AMENDMENT NO. 1

AN ACT TO AMEND CHAPTER 3, TITLE 5 OF THE DELAWARE CODE BY ADDING A NEW SECTION RELATING TO IRREVOCABLE TRUST ACCOUNTS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (Three-fifths of all members elected to each House thereof concurring therein):

Section 1. Amend §302(b), Chapter 3, Title 5, Delaware Code, by inserting the phrase, "Except where payment is made pursuant to §303 or the trust is established in accordance with §304 of this title," at the beginning of the first sentence.

Section 2. Amend §302(c), Chapter 3, Title 5, Delaware Code, by inserting the phrase, "Except as provided in §304 of this title," at the beginning of the first sentence.

Section 3. Amend §303, Chapter 3, Title 5, Delaware Code, by deleting the title of said section, and inserting in lieu thereof, "§303. Revocable Trust Accounts; Refund to Persons Making Payments".

Section 4. Amend §303(a), Chapter 3, Title 5, Delaware Code, by inserting the phrase, "Except as provided in §304 of this title," at the beginning of the first sentence.

Section 5. Amend Chapter 3, Title 5, Delaware Code by inserting a new section to be designated §304, and renumbering the existing §304 and all subsequent sections accordingly:

"§304. Irrevocable trust accounts.

(a) Any person, partnership or corporation who enters into a preneed funeral contract has the option, at any time, to establish an irrevocable trust for all funds or any portion of payments made or to be made under the agreement, contract or plan. At no time shall such funds exceed \$5,000.00.

(b) The trust document establishing an irrevocable trust shall contain such specific provisions as the Commissioner may by regulation require."

Approved July 16, 1992.

## CHAPTER 390

## FORMERLY

## SENATE BILL NO. 453

AN ACT TO AMEND CHAPTER 41, SUBCHAPTER I, TITLE 21 OF THE DELAWARE CODE RELATING TO OBEDIENCE TO AND EFFECT OF TRAFFIC LAWS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Chapter 41, Subchapter I, Title 21, §4101(a) of the Delaware Code by redesignating paragraph (3) as paragraph (4).

Section 2. Amend Chapter 41, Subchapter I, Title 21, §4101(a) of the Delaware Code by inserting a new paragraph (3) as follows:

"(3) That Subchapter VIII and §4164 of this chapter shall apply upon highways and elsewhere throughout the State, except that Subchapter VIII and §4164 shall not apply upon any non-residential, commercial property. For the purposes of this paragraph 'elsewhere' shall mean only those areas regulated by traffic-control devices which have been reviewed and approved as acceptable for the area by the Delaware Department of Transportation."

Section 3. Nothing in this Act shall be construed to direct on-duty police officers or police agencies to patrol in non-highway residential areas. This Act authorizes arrests only where the appropriate owner(s), residents(s) or resident associations(s) have a contract with one or more off-duty police officers, except that arraignments may be made with police agencies for developments during the first three years of their construction. The three year period shall begin the day the first building permit therefore is issued.

Section 4. This Act shall become effective January 1, 1993.

Approved July 16, 1992.

## CHAPTER 391

## FORMERLY

SENATE BILL NO. 228  
AS AMENDED BY SENATE AMENDMENT NO. 1

AN ACT TO AMEND CHAPTER 81, TITLE 10, DELAWARE CODE RELATING TO ACTIONS INVOLVING PUBLIC PETITION AND PARTICIPATION.

WHEREAS, the General Assembly declares it to be the policy of the State that the rights of citizens to participate freely in the public process must be safeguarded with great diligence. The laws of the state must provide the utmost protection for the free exercise of speech, petition and association rights, particularly where such rights are exercised in a public forum with respect to issues of public concern.

WHEREAS, the General Assembly finds that the threat of personal damages and litigation costs can be and have been used as a means of harassing, intimidating or punishing individuals, unincorporated associations, nonprofit organizations, and others who have involved themselves in public affairs.

NOW THEREFORE:

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Chapter 81, Title 10 of the Delaware Code by adding the following new sections to read as follows:

"§8136. Actions involving public petition and participation.

(a) For purposes of this section, the following terms shall have the meaning ascribed herein:

(1) An "action involving public petition and participation" is an action, claim, cross-claim or counterclaim for damages that is brought by a public applicant or permittee, and is materially related to any efforts of the defendant to report on, rule on, challenge or oppose such application or permission.

(2) "Public applicant or permittee" shall mean any person who has applied for or obtained a permit, zoning change, lease, license, certificate or other entitlement for use or permission to act from any government body, or any person with an interest, connection or affiliation with such person that is materially related to such application or permission.

(3) "Communication" shall mean any statement, claim or allegation in a proceeding, decision, protest, writing, argument, contention or other expression.

(4) "Government body" shall mean the State and any county, city, town, village or any other political subdivision of the State; any public improvement or special district, public authority, commission, agency or public benefit corporation; any other separate corporate instrumentality or unit of State or local government; or the federal government.

(b) In an action involving public petition and participation, damages may only be recovered if the plaintiff, in addition to all other necessary elements, shall have established by clear and convincing evidence that any communication which gives rise to the action was made with knowledge of its falsity or with reckless disregard of whether it was false, where the truth or falsity of such communication is material to the cause of action at issue.

(c) Nothing in this section shall be construed to limit any constitutional, statutory or common law protection of defendants to actions involving public petition and participation.

§8137. Standards for motion to dismiss and summary judgment in certain cases involving public petition and participation.

(a) A motion to dismiss in which the moving party has demonstrated that the action, claim, cross-claim or counterclaim subject to the motion is an action involving public petition and participation as defined in §8136(a)(1) of this chapter shall be granted unless the party responding to the motion demonstrates that the cause of action has a substantial basis in law or is supported by a substantial argument for an extension, modification or reversal of existing law. The court shall grant preference in the hearing of such motion.

(b) A motion for summary judgment in which the moving party has demonstrated that the action, claim, cross-claim or counterclaim subject to the action is an action involving public petition and participation as defined in §8136(a)(1) of this chapter shall be granted unless the party responding to the motion demonstrates that the cause of action has a substantial basis in fact and law or is supported by a substantial argument for an extension, modification or reversal of existing law. The court shall grant preference in the hearing of such motion.

§8138. Recovery of damages in actions involving public petition and participation.

(a) A defendant in an action involving public petition and participation, as defined in §8136(a)(1) of this chapter, may maintain an action, claim, cross-claim or counter-claim to recover damages, including costs and attorney's fees, from any person who commenced or continued such action; provided that:

(1) costs, attorney's fees and other compensatory damages may be recovered upon a demonstration that the action involving public petition and participation was commenced or continued without a substantial basis in fact and law and could not be supported by a substantial argument for the extension, modification or reversal of existing law; and

(2) punitive damages may only be recovered upon an additional demonstration that the action involving public petition and participation was commenced or continued for the purpose of harassing, intimidating, punishing or otherwise maliciously inhibiting the free exercise of speech, petition or association rights.

(b) The right to bring an action under this section can be waived only if it is waived specifically.

(c) Nothing in this section shall affect or preclude the right of any party to any recovery otherwise authorized by law."

Approved July 16, 1992.



CHAPTER 392

FORMERLY

HOUSE BILL NO. 492

AN ACT TO AMEND TITLE 24, CHAPTER 17, DELAWARE CODE, RELATING TO THE MEDICAL PRACTICES ACT.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Chapter 17, §1761, Title 24 Delaware Code by adding to the end thereof the following:

"This section shall not apply to a physician who has seen or treated a patient on referral from a physician and who has provided a record of his diagnosis or treatment to another physician, hospital or agency which has provided treatment for the patient."

Approved July 16, 1992.

CHAPTER 393

FORMERLY

HOUSE BILL NO. 455

AN ACT TO AMEND CHAPTER 91 OF TITLE 7 OF THE DELAWARE CODE RELATING TO HAZARDOUS SUBSTANCE CLEANUPS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend §9114 (d), Title 7, of the Delaware Code by deleting the date "April 1, 1992" as it appears therein and by substituting in lieu thereof the date "April 1, 1993".

Approved July 16, 1992.

## CHAPTER 394

## FORMERLY

## SENATE BILL NO. 404

AN ACT TO AMEND CHAPTER 91 OF TITLE 11 OF THE DELAWARE CODE RELATING TO PROFITS OF CRIME.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend §9102(3), Title 11 of the Delaware Code by striking the subsection and substituting therefor a new subsection to read as follows: "(3) 'Person convicted of a crime' shall mean any person convicted of a crime in this state either by entry of a plea of guilty, a plea of nolo contendere, a 'Robinson plea' or by conviction after trial as well as a person found not guilty as a result of the defense of mental disease or defect pursuant to this Title."

Section 2. Amend §9103, Title 11 of the Delaware Code by striking existing section 9103 in its entirety and substituting therefor a new section 9103 to read as follows:

"§9103. Distribution of moneys.

(a) Every person, firm, corporation, partnership, association or other legal entity contracting with any person or the representative or assignee of any person convicted of a crime in this State, with respect to the reenactment of such crime, by way of a movie, book, magazine article, tape recording, phonograph record, radio or television presentation, live entertainment of any kind, or from the expression of such convicted person's thoughts, feelings, opinions or emotions regarding such crime if such expression represents the primary contents of a movie, book, magazine article, tape recording, phonograph record, radio or television presentation, live entertainment, of any kind shall submit a copy of such contract to the Board and pay over to the Board any moneys which would otherwise, by terms of such contract, be owing to the person convicted or his representatives. The Board shall deposit such moneys in an escrow account for the benefit of and payable to any victim or the legal representative of any victim of crimes committed by such convicted person, provided that such victim, or the legal representative of any such victim, within 5 years from the establishment of such escrow account, brings a civil action in a court of competent jurisdiction and recovers a money judgment for damages against such person or his representatives.

(b) The Board, at least once every 6 months for 5 years from the date it receives such moneys, shall cause to have published a legal notice in a newspaper or newspapers of general circulation in the county wherein the crime was committed, and in the county contiguous to such county, advising such victims that such escrow accounts are available to satisfy money judgments pursuant to this chapter. The Board may, in its discretion, provide for such additional notice as it deems necessary.

(c) Upon a showing by any convicted person that 5 years have elapsed from the date of establishment of such escrow account, and further that no actions are pending against such convicted person pursuant to this chapter, the Board shall immediately pay over any moneys in such escrow account to such person or his legal representatives.

(d) Notwithstanding the foregoing provision of this chapter, the Board shall make payments from an escrow account to any person convicted of crime upon order of any court of competent jurisdiction after a showing by such person that such moneys shall be used for the exclusive purpose of retaining legal representation at any stage of the criminal proceeding against such person, including the appeals process. The Board may in its discretion and after notice to victims of the crime make payments from the escrow account to a representative of any person convicted of a crime for the necessary fees and expenses incident to the generation and procurement of the moneys paid into the escrow account, provided the Board finds that such payments would be in the best interest of the victims of the crime and would not be contrary to public policy. The total of all payments made from the escrow account under this subsection shall not exceed one fifth of

the total moneys paid into the escrow account and available to satisfy civil money judgments obtained by victims of the crime.

(e) Any action taken by any person convicted of a crime, whether by way of execution of a power of attorney, creation of corporate entities or otherwise, to defeat the purpose of this chapter, shall be null and void as against the public policy of this State.

(f) For purposes of this chapter, notwithstanding any other provision of the Delaware Code, claims on moneys in the escrow account shall have the following priorities:

(1) Payments ordered by the Board or a court pursuant to subsection (d) of this section.

(2) Judgments obtained by the Division of Revenue, State of Delaware, against the convicted person pursuant to Chapter 5 of Title 30, of the Delaware Code.

(3) Subrogation claims of the State in an amount not to exceed one third of the net amount of the civil judgment obtained by a victim which is payable directly to the victim from the escrow account.

(4) Civil judgments of the crime victims.

(5) Other judgment creditors or persons claiming moneys through the person convicted of a crime who present lawful claims, including local government tax authorities.

(6) The person convicted of the crime.

(g) The Board may bring an action in a court of competent jurisdiction for a declaratory judgment where it cannot determine the priority of claims and the proper distribution of any escrow account.

(h) Moneys in an escrow account shall not be subject to execution, levy, attachment or lien except in accordance with the priority of claims established in this chapter."

Approved July 16, 1992.

## CHAPTER 395

## FORMERLY

## HOUSE BILL NO. 585

AN ACT TO AMEND CHAPTER 83, TITLE 29, DELAWARE CODE, RELATING TO THE STATE PENSION ADVISORY COUNCIL.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Chapter 83, Title 29, Delaware Code by adding the following new subsection:

"§8308A. State Pension Advisory Council.

(a) There is established a State Pension Advisory Council. The purpose of the Advisory Council shall be to advise the State Board of Pension Trustees on administration of pension plans sponsored by the State of Delaware. This shall include, but not be limited to, the establishment of rules, administrative procedures and hearing procedures. Further, the State Pension Advisory Council members will provide for communications between the State Board of Pension Trustees, the State Pension Office and the State employees represented. The State Pension Advisory Council shall make recommendations to the State Board of Pension Trustees, the General Assembly of Delaware and its Committees, the State Pension Office and State employees on all matters the Council deems appropriate.

(b) The State Pension Advisory Council shall develop By-Laws to govern the administration of Chapter 83, Section 8308A, Title 29, Delaware Code.

(c) A chairman, 1st vice chairman and 2nd vice chairman shall be elected in accordance with the By-Laws of the Advisory Council. The elected officers shall act for the Advisory Council as directed by the members of the Council.

(d) The State Pension Advisory Council shall have access to all public meetings of the State Board of Pension Trustees and to all information available to the State Board of Pension Trustees except reports of the Medical Committee and individual personnel files.

(e) The State Pension Advisory Council shall be composed of representatives of the following organizations or their successors:

- (1) American Association of University Professors (AAUP) - Independent Chapters.
- (2) American Federation of State, County and Municipal Employees, Council 81 (AFSCME).
- (3) Judicial branch of government through the administrative office of the Courts.
- (4) Delaware Association of School Administrators (DASA).
- (5) Delaware National Guard (DNG).
- (6) Delaware Nurses Association (DNA).
- (7) Delaware Retired School Personnel Association (DRSPA).
- (8) Delaware State Education Association (DSEA).
- (9) Delaware School Food Service Association (DSFSA).
- (10) Delaware State Troopers Association (DSTA).
- (11) University of Delaware Staff Association (UDSA).
- (12) The State Lodge of the Fraternal Order of Police (FOP).

(f) Representatives of member organizations shall be selected through due process of the by-laws of that organization or, if the employees of a State

agency are not organized, through appointment by the administrative office providing administrative services for those employees.

(g) Each organization represented on the Advisory Council shall notify the Chairman of the State Board of Pension Trustees and the Chairman of the State Pension Advisory Council when a new representative is selected.

(h) Reasonable support services for the State Pension Advisory Council shall be provided by the State Pension Office.

(i) Up to two at-large, Ad Hoc members may be added to the Advisory Council in order to provide expertise needed for Council members to understand matters before the State Board of Pension Trustees.

(j) When a member group or organization fails to send a representative to meetings of the State Pension Advisory Council for a period of one (1) year, the group or organization shall automatically lose its representation on the Advisory Council."

Approved July 16, 1992.

#### CHAPTER 396

#### FORMERLY

#### HOUSE BILL NO. 310

AN ACT TO AMEND CHAPTER 3, TITLE 21 OF THE DELAWARE CODE RELATING TO PENALTY FEES FOR UNCOLLECTIBLE CHECKS ISSUED TO THE DIVISION OF MOTOR VEHICLES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (three-fifths of all members elected to each House thereof concurring therein):

Section 1. Amend §314, Chapter 3, Title 21 of the Delaware Code by striking the figure "\$15" as it appears therein and inserting in lieu thereof the figure "\$25".

Approved July 15, 1992.

## CHAPTER 397

## FORMERLY

SENATE BILL NO. 286  
AS AMENDED BY SENATE AMENDMENT NO. 1

AN ACT TO AMEND CHAPTER 2, SECTION 205 OF TITLE 11 OF THE DELAWARE CODE RELATING TO TIME LIMITATIONS WITHIN WHICH PROSECUTIONS MUST BE COMMENCED.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Chapter 2, Title 11, Delaware Code by redesignating subsections (e)(f)(g) and (h) of Section 205 thereof as subsections (f)(g)(h) and (i) and adding a new subsection (e) thereto to read as follows:

"Section 205(e). If the period prescribed by subsection (b) of this section has expired, a prosecution for any sexual offense in which the accused's acts include or constitute any of those crimes delineated in sections 767 through and including 775 and section 1108 of this Title where the victim of such sexual offense was a child under the age of eighteen at the time of its occurrence, such prosecution may be commenced within 2 years following its initial disclosure to the Delaware Division of Child Protective Services or to an appropriate law enforcement agency."

Section 2. Amend Section 205, Chapter 2, Title 11, Delaware Code by rewording subsection (i) thereof to read as follows:

"§205(i) In any prosecution in which subsection (c)(d)(e) or (h) of this section is sought to be invoked to avoid the limitation period of subsection (b) of this section, the State must allege and prove the applicability of subsection (c)(d)(e) or (h) as an element of the offense."

Approved July 15, 1992.

agency are not organized, through appointment by the administrative office providing administrative services for those employees.

(g) Each organization represented on the Advisory Council shall notify the Chairman of the State Board of Pension Trustees and the Chairman of the State Pension Advisory Council when a new representative is selected.

(h) Reasonable support services for the State Pension Advisory Council shall be provided by the State Pension Office.

(i) Up to two at-large, Ad Hoc members may be added to the Advisory Council in order to provide expertise needed for Council members to understand matters before the State Board of Pension Trustees.

(j) When a member group or organization fails to send a representative to meetings of the State Pension Advisory Council for a period of one (1) year, the group or organization shall automatically lose its representation on the Advisory Council."

Approved July 16, 1992.

#### CHAPTER 396

#### FORMERLY

#### HOUSE BILL NO. 310

AN ACT TO AMEND CHAPTER 3, TITLE 21 OF THE DELAWARE CODE RELATING TO PENALTY FEES FOR UNCOLLECTIBLE CHECKS ISSUED TO THE DIVISION OF MOTOR VEHICLES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (three-fifths of all members elected to each House thereof concurring therein):

Section 1. Amend §314, Chapter 3, Title 21 of the Delaware Code by striking the figure "\$15" as it appears therein and inserting in lieu thereof the figure "\$25".

Approved July 15, 1992.

## CHAPTER 397

## FORMERLY

SENATE BILL NO. 286  
AS AMENDED BY SENATE AMENDMENT NO. 1

AN ACT TO AMEND CHAPTER 2, SECTION 205 OF TITLE 11 OF THE DELAWARE CODE  
RELATING TO TIME LIMITATIONS WITHIN WHICH PROSECUTIONS MUST BE COMMENCED.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Chapter 2, Title 11, Delaware Code by redesignating subsections (e)(f)(g) and (h) of Section 205 thereof as subsections (f)(g)(h) and (i) and adding a new subsection (e) thereto to read as follows:

"Section 205(e). If the period prescribed by subsection (b) of this section has expired, a prosecution for any sexual offense in which the accused's acts include or constitute any of those crimes delineated in sections 767 through and including 775 and section 1108 of this Title where the victim of such sexual offense was a child under the age of eighteen at the time of its occurrence, such prosecution may be commenced within 2 years following its initial disclosure to the Delaware Division of Child Protective Services or to an appropriate law enforcement agency."

Section 2. Amend Section 205, Chapter 2, Title 11, Delaware Code by rewording subsection (i) thereof to read as follows:

"§205(i) In any prosecution in which subsection (c)(d)(e) or (h) of this section is sought to be invoked to avoid the limitation period of subsection (b) of this section, the State must allege and prove the applicability of subsection (c)(d)(e) or (h) as an element of the offense."

Approved July 15, 1992.



## CHAPTER 398

## FORMERLY

## SENATE BILL NO. 410

AN ACT TO AMEND CHAPTER 9, TITLE 26 OF THE DELAWARE CODE RELATING TO TELEGRAPH, TELEPHONE AND ELECTRIC UTILITY CORPORATIONS AND CALLER IDENTIFICATION SERVICES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Chapter 9, Title 26, Delaware Code by redesignating §§901-907 as "Subchapter I. General Provisions."

Section 2. Amend Chapter 9, Title 26, Delaware Code by adding a new Subchapter II to read as follows:

"Subchapter II. Caller Identification Service.

§920. Definitions

(1) The term 'caller identification' means the transmission of information that identifies the originator of a communication to the recipient of the communication via an electronic signal which is decoded by a customer provided display unit which displays, records, or forwards the caller's telephone number or other identifying information. Such term shall not include (i) an internal office system, including but not limited to, a centrex or private branch exchange (PBX) system or virtual private network, (ii) an identification system used for emergencies, such as an emergency telephone line used by a public agency or a 911 emergency telephone service, (iii) any identification service provided with legally sanctioned call tracing or tapping procedures, or (iv) any automatic number identification service or technology.

(2) The term 'automatic number identification service' means an access signaling protocol in common use by common carriers that uses an identifying signal associated with the use of a subscriber's telephone to provide billing information or other information to the local exchange carrier or any other interconnecting carriers; and

(3) The term 'blocking' means a service that allows the originator of a call to prevent or control the transmission of information that identifies the originator to the recipient of the call.

§921. Per line blocking

Every provider of electronic or wire communication services that provides a caller identification service shall provide blocking on a per line basis without charge at the request of an originator that is a victim of domestic violence protected by a court order, a victim's service program, or a battered women's shelter or other organization providing safe haven for victims of domestic violence.

Section 3. This Act shall be effective 60 days after its enactment into law.

Approved July 15, 1992.

## CHAPTER 399

## FORMERLY

## HOUSE BILL NO. 170

AN ACT TO AMEND CHAPTER 31 OF TITLE 16 OF THE DELAWARE CODE TO PROVIDE FOR THE ISSUANCE OF VANITY BIRTH CERTIFICATES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (three-fifths of all members elected to each House thereof concurring therein):

Section 1. Amend §3134, Chapter 31, Title 16 of the Delaware Code by striking from lines 1 and 2 of subsection (d) the phrase:

" , within one year of a child's birth, "

Section 2. Amend §3134, Chapter 31, Title 16 of the Delaware Code by striking from the third sentence the word "child" and substituting in lieu thereof the word "individual".

Approved July 16, 1992.

## CHAPTER 400

## FORMERLY

SENATE BILL NO. 370  
AS AMENDED BY SENATE AMENDMENT NO. 1

AN ACT TO AMEND TITLE 14, DELAWARE CODE, BY ADDING THERETO A NEW CHAPTER 93 TO PROHIBIT THE ACT OF HAZING.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (Two-thirds of all members elected to each House thereof concurring therein):

Section 1. Amend Title 14, Delaware Code, by adding thereto a new Part VII, Chapter 93, to read as follows:

## "PART VII

## CHAPTER 93. ANTI-HAZING LAW

§9301. Short Title.

This Act shall be known and may be cited as the Anti-Hazing Law.

§9302. Definitions.

The following words and phrases when used in this Act shall have the meanings given to them in this section unless the context clearly indicates otherwise:

'Hazing' means any action or situation which recklessly or intentionally endangers the mental or physical health or safety of a student or which willfully destroys or removes public or private property for the purpose of initiation or admission into or affiliation with, or as a condition for continued membership in, any organization operating under the sanction of or recognized as an organization by an institution of higher learning. The term shall include, but not be limited to, any brutality of a physical nature, such as whipping, beating, branding, forced calisthenics, exposure to the elements, forced consumption of any food, liquor, drug, or other substance, or any other forced physical activity which could adversely affect the physical health and safety of the individual, and shall include any activity which would subject the individual to extreme mental stress, such as sleep deprivation, forced exclusion from social contact, forced conduct which could result in embarrassment, or any other forced activity which could adversely affect the mental health or dignity of the individual, or any willful destruction or removal of public or private property. For purposes of this definition, any activity as described in this definition upon which the admission or initiation into or affiliation with or continued membership in an organization is directly or indirectly conditioned shall be presumed to be 'forced' activity, the willingness of an individual to participate in such activity notwithstanding.

§9303. Hazing prohibited.

Any person who causes or participates in hazing commits a Class B Misdemeanor.

§9304. Enforcement by institution.

(a) Anti-hazing policy. Each institution shall adopt a written anti-hazing policy and, pursuant to that policy, shall adopt rules prohibiting students or other persons associated with any organization operating under the sanction of or recognized as an organization by the institution from engaging in any activity which can be described as hazing.

(b) Enforcement and penalties.

(1) Each institution shall provide a program for the enforcement of such rules and shall adopt appropriate penalties for violations of such rules to be administered by the person or agency at the

institution responsible for the sanctioning or recognition of such organizations.

(2) Such penalties may include the imposition of fines, the withholding of diplomas or transcripts pending compliance with the rules or pending payment of fines and the imposition of probation, suspension, or dismissal.

(3) In the case of an organization which authorizes hazing in blatant disregard of such rules, penalties may also include rescission of permission for that organization to operate on campus property or to otherwise operate under the sanction or recognition of the institution.

(4) All penalties imposed under the authority of this section shall be in addition to any penalty imposed for violation of subsection (b)(3) or any of the criminal laws of this State or for violation of any other institutional rule to which the violator may be subject.

(5) Rules adopted pursuant hereto shall apply to acts conducted on or off campus whenever such acts are deemed to constitute hazing."

Approved July 16, 1992.

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(2) Such penalties may include the imposition of fines, the withholding of diplomas or transcripts pending compliance with the rules or pending payment of fines and the imposition of probation, suspension, or dismissal.

(3) In the case of an organization which authorizes hazing in blatant disregard of such rules, penalties may also include rescission of permission for that organization to operate on campus property or to otherwise operate under the sanction or recognition of the institution.

(4) All penalties imposed under the authority of this section shall be in addition to any penalty imposed for violation of subsection (b)(3) or any of the criminal laws of this State or for violation of any other institutional rule to which the violator may be subject.

(5) Rules adopted pursuant hereto shall apply to acts conducted on or off campus whenever such acts are deemed to constitute hazing."

Approved July 16, 1992.

CHAPTER 401  
FORMERLY  
HOUSE SUBSTITUTE NO. 1  
FOR  
HOUSE BILL NO. 570

AN ACT TO AMEND CHAPTER 5, TITLE 22, DELAWARE CODE, RELATING TO THE WILMINGTON PARKING AUTHORITY.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend §510, Chapter 5, Title 22, Delaware Code, by striking subdivision (b) in its entirety and substituting in lieu thereof a new subdivision (b) to read as follows:

"(b). No member of the Board of the Wilmington Parking Authority shall be entitled to vote on any matter before the Board if such member has a direct or indirect financial interest in the outcome of such matter under review. In the event such a financial interest exists, said member shall disclose to the Board the nature of the interest and said member shall refrain from any discussion, deliberation, action and/or vote by the Board on this matter. In situations in which a member or members do not vote by reason of such financial interest, the matter pending before the Board will be decided on the basis of a majority vote of the remaining members present who do not have a financial interest in the matter. A member or members having a financial interest as set forth herein shall be counted for purposes of establishing a quorum, provided such member or members are present at the meeting. The disqualification of a member from voting on a matter before the Board by reason of a financial interest therein shall not affect the validity of any action taken by the Board relative to the matter before it.

Section 2. Amend Chapter 5, Title 22, Delaware Code by adding thereto a new section, Section 516, to read as follows:

"§516. Indemnification.

(a) The Wilmington Parking Authority shall indemnify any member who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit, or proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that he/she is or was a member of the Authority, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by such member in connection with such action, suit or proceeding, if said member acted in good faith and in a manner reasonably believe to be in or not opposed to the best interests of the Authority, and with respect to any criminal proceeding or action, the member had no reasonable cause to believe that his action was unlawful.

(b) Any indemnification under this section shall be made only as authorized in the specific case upon a determination that indemnification of the member is proper under the circumstances because the member has met the applicable standard of conduct as set forth in subsection (a) hereof. Such a determination will be made by the Attorney General or his designee within fifteen days of the date of receipt of a request for such a determination. Such request shall be filed by the member affected and shall set forth in detail the circumstances supporting the claim for indemnification. In the event the Attorney General fails to make the determination within the time frame specified, the requested indemnification shall be deemed as granted.

(c) Expenses (including attorneys' fees) incurred by a member in defending any civil, criminal, administrative or investigative action, suit or proceeding may be paid by the Authority in advance of the final disposition of such action, suit or proceeding, upon receipt of an undertaking by or on behalf of such member to repay such amount if it

shall ultimately be determined that such member is not entitled to be indemnified by the Authority as authorized by this section.

(d) No payment shall be made pursuant to the provisions of this section unless the member seeking such payment shall agree that the State be subrogated, to the extent of any payment, to all rights of recovery of such member, shall agree to execute all papers required and

shall do everything that may be necessary to secure such rights including the execution of such documents necessary to enable the State effectively to bring suit in the name of the State.

### Section 3. Severability.

If any clause, sentence, section, provision or part of this Act shall be adjudged to be unconstitutional or invalid for any reason by any Court of competent jurisdiction, such judgment shall not impair, invalidate or affect the remainder of this Act which shall remain in full force and effect.

### Section 4. Repealing clause.

All laws and parts of laws in conflict herewith are hereby repealed to the extent of such conflict.

### Section 5. Effective date.

This Act shall become effective immediately upon its adoption.

Approved July 16, 1992.

## CHAPTER 402

### FORMERLY

### HOUSE BILL NO. 410

AN ACT AWARDING SPECIAL PENSION BENEFITS TO THELMA R. SAVAGE TRANSFERRING MONIES INTO THE SPECIAL PENSION FUND CREATED BY VOLUME 61, CHAPTER 455, LAWS OF DELAWARE, AND DIRECTING THE BOARD OF PENSION TRUSTEES TO ADMINISTER PAYMENT OF THE PENSION PROVIDED BY THIS ACT AS IF THE AWARD WERE PURSUANT TO CHAPTER 55, TITLE 29, DELAWARE CODE.

WHEREAS, Thelma R. Savage was employed as a cafeteria worker and custodian for the Caesar Rodney School District for 11 years, 10 months; and

WHEREAS, under the statutes and the rules and regulations of the Board of Pension Trustees, Thelma R. Savage will not receive creditable service for her 11 years, 10 months of service since she had a break in employment after being so employed for 8 years, 11 months.

NOW, THEREFORE:

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. The Board of Pension Trustees is hereby authorized and directed to grant Thelma R. Savage a service pension, effective in the amount of \$83.67 per month as if such service were made pursuant to Chapter 55, Title 29 of the Delaware Code.

Section 2. The Budget Director and the Controller General are authorized to transfer the sum of \$10,486.36 from the Budget Office Contingency Appropriation in House Bill No. 350 of the 136th General Assembly for Budget Office Contingency, to the Special Pension Fund authorized by Volume 61, Chapter 455, Laws of Delaware, for the purpose of implementing the provisions of Section 1 of this Act.

Approved July 15, 1992.



CHAPTER 403

FORMERLY

SENATE BILL NO. 446

AN ACT TO AMEND CHAPTER 60, TITLE 7 OF THE DELAWARE CODE RELATING TO MARINE FACILITIES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend §6002, Chapter 60, Title 7 of the Delaware Code by deleting the phrase "and graywater" from Subsection (58).

Section 2. Amend §6002, Chapter 60, Title 7 of the Delaware Code by deleting the phrase "and graywater" from Subsection (51.d) and to rename subsection (51.d) as Subsection (59).

Section 3. Amend §6035, Chapter 60, Title 7 of the Delaware Code by deleting the phrase "and graywater" wherever it appears therein.

Section 4. Amend §6035, Chapter 60, Title 7 of the Delaware Code, Subsection (a) to include the phrase "portable toilet(s) or" between "vessels with a" and "type III marine".

Section 5. Amend §6035, Chapter 60, Title 7 of the Delaware Code, Subsection (b)(2) to add "slip for the purpose of removing sewage from the live-aboard vessel" between "at each live-aboard vessel" and "on a continuous".

Section 6. Amend §6035, Chapter 60, Title 7 of the Delaware Code by deleting subsection (b)(4) in its entirety and substituting the following:

(4) " All vessels while on waters of the State of Delaware shall comply with 33 USC Section 1322, as amended February 4, 1987."

Approved July 15, 1992.

## CHAPTER 404

## FORMERLY

## SENATE BILL NO. 415

AN ACT TO AMEND CHAPTER 5 OF TITLE 25 AND CHAPTER 38 OF TITLE 12 OF THE DELAWARE CODE RELATING TO BUSINESS TRUSTS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend §503(b)(3), Chapter 5, Title 25 of the Delaware Code by deleting the words "and with the Register in Chancery of each county within the state in which such business trust has a place of business or in which a trustee is domiciled or has a principal place of business" currently appearing therein.

Section 2. Amend §3801(a), Chapter 38, Title 12 of the Delaware Code by deleting the word "business" following the words "'Business trust' means an unincorporated", and by adding at the end of present §3801(a) the following:

"A business trust may be organized to carry on any lawful business or activity, whether or not conducted for profit, and/or for any of the purposes referred to in clause (1) of this subsection (a) (including, without limitation, for the purpose of holding or otherwise taking title to property, whether in an active or custodial capacity)."

Section 3. Amend §3801(c), Chapter 38, Title 12 of the Delaware Code by deleting the words "to manage the business and affairs of such business trust" currently appearing therein.

Section 4. Amend §3802, Chapter 38, Title 12 of the Delaware Code by deleting the existing provisions of §3802 in their entirety and by adding a new §3802 to read as follows:

"§3802. Contributions by beneficial owners.

(a) A contribution of a beneficial owner to the business trust may be in cash, property or services rendered, or a promissory note or other obligation to contribute cash or property or to perform services; provided, however, that a person may become a beneficial owner of a business trust and may receive a beneficial interest in a business trust without making a contribution or being obligated to make a contribution to the business trust.

(b) Except as provided in the governing instrument, a beneficial owner is obligated to the business trust to perform any promise to contribute cash, property or to perform services, even if the beneficial owner is unable to perform because of death, disability or any other reason. If a beneficial owner does not make the required contribution of property or services the beneficial owner is obligated at the option of the business trust to contribute cash equal to that portion of the agreed value (as stated in the records of the business trust) of the contribution that has not been made. The foregoing option shall be in addition to, and not in lieu of, any other rights, including the right to specific performance, that the business trust may have against such beneficial owner under the governing instrument of applicable law.

(c) A governing instrument may provide that the interest of any beneficial owner who fails to make any contribution that he is obligated to make shall be subject to specific penalties for, or specified consequences of, such failure. Such penalty or consequence may take the form of reducing or eliminating the defaulting beneficial owner's proportionate interest in the business trust, subordinating his beneficial interest to that of nondefaulting beneficial owners, a forced sale of his beneficial interest, forfeiture of his beneficial interest, the lending by other beneficial owners of the amount necessary to meet his commitment, a fixing of the value of his beneficial interest by appraisal or by formula and redemption or sale of his beneficial interest at such value, or any other penalty or consequence."

Section 5. Amend §3803(a), Chapter 38, Title 12 of the Delaware Code by adding the words "organized under the General Corporation Law of the State of Delaware" after the word "profit" and before the period in said subsection.

Section 6. Amend §3804, Chapter 38, Title 12 of the Delaware Code by designating the current language in said section as subsection (a) and by adding new subsections (b) through (h) to read as follows:

"(b) A trustee of a business trust may be served with process in the manner prescribed in subsection (c) of this section in all civil actions or proceedings brought in the State of Delaware involving or relating to the activities of the business trust or a violation by a trustee of a duty to the business trust, or any beneficial owner, whether or not the trustee is a trustee at the time suit is commenced. Every resident or nonresident of the State of Delaware who accepts election or appointment or serves as a trustee of a business trust shall, by such acceptance or service, be deemed thereby to have consented to the appointment of the Delaware trustee or registered agent of such business trust required by §3807 of this title (or, if there is none, the Secretary of State) as such person's agent upon whom service of process may be made as provided in this section. Such acceptance or service shall signify the consent of such trustee that any process when so served shall be of the same legal force and validity as if served upon such trustee within the State of Delaware and such appointment of such Delaware trustee or registered agent (or, if there is none, the Secretary of State) shall be irrevocable.

(c) Service of process shall be effected by serving the Delaware trustee or registered agent of such business trust required by §3807 of this title (or, if there is none, the Secretary of State) with 1 copy of such process in the manner provided by law for service of writs of summons. In the event service is made under this subsection upon the Secretary of State, the plaintiff shall pay to the Secretary of State the sum of \$50 for the use of the State of Delaware, which sum shall be taxed as part of the costs of the proceeding if the plaintiff shall prevail therein. In addition, the Prothonotary or the Register in Chancery of the court in which the civil action or proceeding is pending shall, within 7 days of such service, deposit in the United States mails, by registered mail, postage prepaid, true and attested copies of the process, together with a statement that service is being made pursuant to this section, addressed to the defendant at his address last known to and furnished by the party desiring to make such service.

(d) In any action in which any such trustee has been served with process as hereinafter provided, the time in which a defendant shall be required to appear and file a responsive pleading shall be computed from the date of mailing by the Prothonotary or the Register in Chancery as provided in subsection (c) of this section; provided, however, the court in which such action has been commenced may order such continuance or continuances as may be necessary to afford such trustee reasonable opportunity to defend the action.

(e) In the governing instrument of the business trust or other writing, a trustee may consent to be subject to the nonexclusive jurisdiction of the courts of, or arbitration in, a specified jurisdiction, or the exclusive jurisdiction of the courts of, or the exclusivity of arbitration in, the State of Delaware, and to be served with legal process in the manner prescribed in such governing instrument of the business trust or other writing.

(f) Nothing herein contained limits or affects the right to serve process in any other manner now or hereafter provided by law. This section is an extension of and not a limitation upon the right otherwise existing of service of legal process upon nonresidents.

(g) The Court of Chancery and the Superior Court may make all necessary rules respecting the form of process, the manner of issuance and return thereof and such other rules which may be necessary to implement this section and are not inconsistent with this section.

(h) A partnership (whether general or limited), corporation or other non-natural person formed or organized under the laws of any foreign country or other foreign jurisdiction or the laws of any state other than

the State of Delaware shall not be deemed to be doing business in the State of Delaware solely be reason of its being a trustee of a business trust."

Section 7. Amend §3805(c), Chapter 38, Title 12 of the Delaware Code by adding a new sentence at the end of subsection (c) to read as follows:

"Except to the extent otherwise provided in the governing instrument of a business trust, a beneficial owner has no interest in specific business trust property."

Section 8. Amend §3805, Chapter 38, Title 12 of the Delaware Code by adding a new subsection (e) to read as follows:

"(e) Except to the extent otherwise provided in the governing instrument of a business trust, at the time a beneficial owner becomes entitled to receive a distribution, he has the status of, and is entitled to all remedies available to, a creditor of the business trust with respect to the distribution. A governing instrument may provide for the establishment of record dates with respect to allocations and distributions by a business trust."

Section 9. Amend §3806, Chapter 38, Title 12 of the Delaware Code by adding a new subsection (c) to read as follows:

"(c) To the extent that, at law or in equity, a trustee has duties (including fiduciary duties) and liabilities relating thereto to a business trust or to a beneficial owner, (1) any such trustee acting under a governing instrument shall not be liable to the business trust or to any such beneficial owner for the trustee's good faith reliance on the provisions of such governing instrument, and (2) the trustee's duties and liabilities may be expanded or restricted by provisions in a governing instrument."

Section 10. Amend §3807(b), Chapter 38, Title 12 of the Delaware Code by deleting the word "the" as it appears immediately preceding the words "issuance of beneficial interests" as currently appearing therein and inserting in lieu thereof the words "or within 180 days following the first".

Section 11. Amend §3812, Chapter 38, Title 12 of the Delaware Code by adding a new subsection (e) to read as follows:

"(e) Any signature on any certificate authorized to be filed with the Secretary of State under any provision of this chapter may be a facsimile. Any such certificate may be filed by telecopy, fax or similar electronic transmission; provided, however, that the Secretary of State shall have no obligation to accept such filing if such certificate is illegible or otherwise unsuitable for processing."

Section 12. Amend §3816, Chapter 38, Title 12 of the Delaware Code by changing the word "Derivation" to the word "Derivative" in the heading of said section.

Section 13. Amend §3816(b), Chapter 38, Title 12 of the Delaware Code by adding the word "and" after the word "action" and before the colon in said subsection.

Section 14. Amend §3816, Chapter 38, Title 12 of the Delaware Code by adding a new subsection (e) to read as follows:

"(e) A beneficial owner's right to bring a derivative action may be subject to such additional standards and restrictions, if any, as are set forth in the governing instrument of the business trust, including, without limitation, the requirement that beneficial owners owning a specified beneficial interest in the business trust join in the bringing of the derivative action."

Section 15. Amend Chapter 38, Title 12 of the Delaware Code by redesignating current §3819 as §3820 and by adding a new §3819 to read as follows:

"§3819. Construction and application of chapter and governing instrument

(a) The rule that statutes in derogation of the common law are to be strictly construed shall have no application to this chapter.

(b) It is the policy of this chapter to give maximum effect to the principle of freedom of contract and to the enforceability of governing instruments."

Approved July 15, 1992.

## CHAPTER 405

## FORMERLY

## HOUSE BILL NO. 652

A BOND AND CAPITAL IMPROVEMENTS ACT OF THE STATE OF DELAWARE AND CERTAIN OF ITS AUTHORITIES FOR THE FISCAL YEAR ENDING JUNE 30, 1993; DEAUTHORIZING STATE GUARANTEED BOND AUTHORIZATIONS AND AUTHORIZING THE ISSUANCE OF GENERAL OBLIGATION BONDS OF THE STATE AND REVENUE BONDS OF THE DELAWARE TRANSPORTATION AUTHORITY; REVERTING AND REPROGRAMMING CERTAIN FUNDS OF THE STATE; CREATING CERTAIN FUNDS OF THE STATE; TRANSFERRING CERTAIN FUNDS WITHIN THE GENERAL FUND; APPROPRIATING FUNDS FROM THE TRANSPORTATION TRUST FUND AND SPECIAL FUNDS OF THE DELAWARE TRANSPORTATION AUTHORITY; SPECIFYING CERTAIN PROCEDURES, CONDITIONS AND LIMITATIONS FOR THE EXPENDITURE OF SUCH FUNDS; AND AMENDING CERTAIN PERTINENT STATUTORY PROVISIONS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (Three-quarters of all members elected to each House thereof concurring therein):

Section 1. Deauthorization of State Guaranteed Bonds.

(a) Amend §5054(d)(2) of Title 29 of the Delaware Code, as amended, by striking the number "\$14,342,315" wherever it appears in said subsection and inserting in lieu thereof the number "\$12,861,415."

(b) Nothing in this Act shall reduce the amount of bonds authorized to be issued by The Delaware Economic Development Authority, or any successor authority, to which may be pledged the full faith and credit of the State below the amount of such bonds issued and unpaid on the effective date of this Act. The provisions of Section 11 of Chapter 387 of Volume 63 of the Laws of Delaware shall apply in this regard.

Section 2. Authorization of Twenty-Year Bonds.

(a) The State hereby authorizes the issuance of Fifty-One Million Eight Hundred Ninety-Six Thousand Five Hundred Dollars (\$51,896,500) of bonds, in addition to Nine Million Eight Hundred Seventeen Thousand One Hundred Eleven Dollars (\$9,817,111) for local share of school bonds, to which the State shall pledge its full faith and credit. Bonds authorized to be used by this Section shall mature not later than twenty (20) years from their date of issuance. The proceeds of such bonds, except for local share of school bonds, are hereby appropriated for a portion of the purposes set forth in the "Fiscal Year 1993 Capital Improvements Project Schedule" attached hereto and made a part hereof and summarized as follows:

<u>Department, Agency, or Instrumentality</u>	<u>Amount</u>		
Budget Office	\$	500,000	
Delaware Development Office		2,998,800	
Department of State		680,000	
Department of Administrative Services		1,200,000	
Department of Health and Social Services		1,900,000	
Department of Services for Children, Youth and Their Families		500,000	
Department of Correction		3,100,000	
Department of Natural Resources and Environmental Control		7,031,400	
State Fire Prevention Commission		50,000	
University of Delaware		7,035,000	
Delaware State College		2,250,000	
Delaware Technical and Community College		2,112,000	
State Board of Education		<u>22,539,300</u>	
<u>Purpose</u>	<u>Maximum State Share</u>	<u>Local Share</u>	<u>Maximum Total Cost</u>
Kent Vo-Tech (80%/20%) - Conv./Constr.	\$ 3,737,300	\$ 934,325	\$ 4,671,625
Sussex Vo-Tech (64%/36%) - Conv./Constr.	2,071,600	1,165,275	3,236,875
Christina (60%/40%) - Roof Replac./Renov./Add.	2,653,400	1,768,933	4,422,333
Milford (65%/35%) - Renov./Add.	2,725,800	1,467,738	4,193,538
Caesar Rodney (80%/20%) - ILC	701,600	175,400	877,000
Appoquinimink (67%/33%) -	837,000	412,254	1,249,254
Red Clay Fire Reconstruction	1,400,000	-0-	1,400,000

Cape Henlopen (60%/40%)	298,100	198,733	496,833
Smyrna (70%/30%)	4,288,900	1,838,100	6,127,000
Woodbridge (70%/30%)	2,915,000	1,249,286	4,164,286
Indian River (60%/40%)	340,600	227,067	567,667
NCCo. Vo-Tech (60%/40%) - Howard Career Center	390,000	260,000	650,000
Red Clay Warner Kindergarten (60%/40%)	<u>180,000</u>	<u>120,000</u>	<u>300,000</u>
<b>Subtotals</b>	<b>\$22,539,300</b>	<b>\$ 9,817,111</b>	<b>\$32,356,411</b>
<b>TOTAL</b>			<b>\$51,896,500</b>

(b) The State hereby authorizes the issuance of Five Million Dollars (\$5,000,000) of bonds on behalf of the Delaware State Housing Authority to which the State shall pledge its full faith and credit.

Section 3. Authorization of Ten-Year Bonds. The State hereby authorizes the issuance of Eleven Million Six Hundred Fifty-Nine Thousand Four Hundred Dollars (\$11,659,400) in bonds, in addition to Two Million Nine Hundred Sixty-Six Thousand Three Hundred Ten Dollars (\$2,966,310) for local share of school bonds, to which the State shall pledge its full faith and credit. Bonds authorized to be issued by this Section shall mature not later than ten (10) years from their date of issuance. The proceeds of such bonds, except for local share of school bonds, are hereby appropriated for a portion of the purposes set forth in the "Fiscal Year 1993 Capital Improvements Project Schedule" attached hereto and made a part hereof and summarized as follows:

<u>Department, Agency, or Instrumentality</u>	<u>Amount</u>		
Delaware Development Office			\$ 125,000
Department of State			322,900
Department of Administrative Services			210,000
Department of Health and Social Services			1,135,000
Department of Services for Children, Youth and Their Families			305,100
Department of Natural Resources and Environmental Control			1,504,100
Department of Public Safety			139,800
Delaware National Guard			243,300
Delaware State College			900,300
Delaware Technical and Community College			822,000
State Board of Education			<u>5,951,900</u>
<u>Purpose</u>	<u>Maximum State Share</u>	<u>Local Share</u>	<u>Maximum Total Cost</u>
Minor Capital Improvements	\$4,260,100	\$2,536,277	\$6,796,377
Annual Maintenance Program	1,046,800	-0-	1,046,800
NCCo. Vo-Tech (60%/40%) - Wilm. Skills Center	125,000	83,333	208,333
Brandywine (60%/40%) Modernization	360,000	240,000	600,000
Architectural Barrier Removal	<u>160,000</u>	<u>106,700</u>	<u>266,700</u>
<b>Subtotals</b>	<b>\$5,951,900</b>	<b>\$2,966,310</b>	<b>\$8,918,210</b>
<b>TOTAL</b>			<b>\$11,659,400</b>

Section 4. Transfers to the State Treasurer's Bond Reversion Account. On the effective date of this Act, the State Treasurer shall transfer the remaining appropriation balances, not in excess of the amounts indicated below in the enumerated project accounts, to the State Treasurer's Bond Reversion Account (12-05-03-8101).

<u>Department, Agency, or Instrumentality</u>	<u>Authorized Ch. &amp; Vol.</u>	<u>Project Appropriation Code</u>	<u>Amount</u>
Department of Administrative Services	385/65	30-05-10-5719	\$ 182.12
Department of Administrative Services	46/67	30-05-10-6017	294.92
Department of Administrative Services	46/67	30-05-10-6022	67.19
Department of Health and Social Services	385/65	35-05-20-5712	2,000.00
Department of Health and Social Services	360/66	35-01-20-5912	256.38
Department of Services for Children, Youth and Their Families	92/66	37-01-10-5812	7,464.29
Department of Services for Children, Youth and Their Families	360/66	37-01-15-5914	51.21
Department of Services for Children, Youth and Their Families	46/67	37-01-15-6005	234.40
Department of Services for Children, Youth and Their Families	46/67	37-01-15-6014	18,568.63
Department of Natural Resources and Environmental Control	385/65	40-05-01-5713	2,175.99

Department of Public Safety	360/66	45-01-01-5912	2.00
Delaware State College	212/65	90-03-01-5614	120.71
Delaware State College	360/66	90-03-01-5913	80.00
<u>TOTAL</u>			<u>\$31,497.84</u>

Section 5. Transfers from the State Treasurer's Bond Reversion Account. Notwithstanding the provisions of other State law, the State Treasurer shall transfer, as funds become available, the sum of Fifty-Two Thousand Five Hundred Dollars (\$52,500) from the State Treasurer's Bond Reversion Account (12-05-03-8101) to the following departments in the following amounts for the purposes set forth in the "Fiscal Year 1993 Capital Improvements Project Schedule, Reversion & Reprogramming Column" attached hereto and made a part hereof.

<u>Department, Agency, or Instrumentality</u>	<u>Amount</u>
Department of Natural Resources and Environmental Control	\$33,700
Department of Health and Social Services	18,800
<u>TOTAL</u>	<u>\$52,500</u>

Section 6. Transfers to the State Treasurer's School Bond Reversion Account. On the effective date of this Act, the State Treasurer shall transfer the remaining appropriation balances, not in excess of the amounts indicated below in the enumerated project accounts, to the State Treasurer's Bond Reversion Account (12-05-03-8102).

<u>Department, Agency, or Instrumentality</u>	<u>Authorized Ch. &amp; Vol.</u>	<u>Project Appropriation Code</u>	<u>Amount</u>
Department of Public Instruction	46/67	95-01-02-6012	\$41,903.08
Department of Public Instruction	360/66	95-10-00-5962	564.56
Department of Public Instruction	46/67	95-10-00-6064	1,728.00
Department of Public Instruction	360/66	95-13-00-5962	4,402.64
Department of Public Instruction	46/67	95-13-00-6030	624.00
Department of Public Instruction	46/67	95-13-00-6063	897.00
Department of Public Instruction	46/67	95-13-00-6064	17.58
Department of Public Instruction	46/67	95-15-00-6064	1,530.00
Department of Public Instruction	360/66	95-17-00-5912	3,367.90
Department of Public Instruction	360/66	95-17-00-5962	9,111.60
Department of Public Instruction	46/67	95-17-00-6012	4,278.61
Department of Public Instruction	360/66	95-29-00-5912	402.62
Department of Public Instruction	46/67	95-29-00-6030	78.54
Department of Public Instruction	360/66	95-31-00-5962	33.44
Department of Public Instruction	360/66	95-32-00-5962	470.58
Department of Public Instruction	360/66	95-33-00-5912	4,088.07
Department of Public Instruction	360/66	95-33-00-5962	14,547.14
Department of Public Instruction	360/66	95-33-00-5964	204.68
Department of Public Instruction	46/67	95-33-00-6062	.23
Department of Public Instruction	360/66	95-38-00-5912	1,407.32
Department of Public Instruction	46/67	95-38-00-6064	.10
Department of Public Instruction	46/67	95-40-00-6064	106.11
Department of Public Instruction	360/66	95-54-00-5962	910.00
<u>TOTAL</u>			<u>\$90,673.80</u>

Section 7. Transfers from the School Bond Reversion Account. Notwithstanding the provisions of any other State law, the State Treasurer shall transfer, as funds become available, the sum of One Hundred Ninety-One Thousand Four Hundred Dollars (\$191,400) on deposit in the School Bond Reversion Account (12-05-03-8102) for the following purposes in the following amounts as set forth in the "Fiscal Year 1993 Capital Improvements Project Schedule, Reversion & Reprogramming Column" attached hereto and made a part hereof.

<u>Department, Agency, or Instrumentality</u>	<u>Amount</u>
State Board of Education	<u>\$191,400</u>

  

<u>Purpose</u>	<u>Maximum State Share</u>	<u>Local Share</u>	<u>Maximum Total Cost</u>
Milford (65%/35%) - Renov./Add.	<u>\$191,400</u>	<u>\$103,062</u>	<u>\$294,462</u>

Section 8. Transfers to the First State Improvement Fund. On the effective date of this Act, the State Treasurer shall transfer the remaining appropriation balances, not in excess of the amounts indicated below in the enumerated projects, to the First State Improvement Fund (12-05-03-9600).

<u>Department, Agency, or Instrumentality</u>	<u>Authorized Ch. &amp; Vol.</u>	<u>Project Appropriation Code</u>	<u>Amount</u>
Delaware Development Office	212/65	10-03-01-9606	\$ .15



Department of Services for Children, Youth and Their Families	92/66	37-01-10-9633	940.00
Department of Natural Resources and Environmental Control	385/65	40-06-01-9657	.60
Department of Public Instruction	92/66	95-17-00-9662	<u>1,637.40</u>
<b>TOTAL</b>			<b><u>\$2,578.15</u></b>

Section 9. Appropriation of First State Improvement Fund. The State hereby authorizes the appropriation of One Hundred Ten Thousand Eight Hundred Dollars (\$110,800) from the First State Improvement Fund for a portion of the purposes set forth in the "Fiscal Year 1993 Capital Improvements Project Schedule" attached hereto and made a part hereof.

<u>Department, Agency, or Instrumentality</u>	<u>Amount</u>
Department of Natural Resources and Environmental Control	<u>\$110,800</u>

Section 10. Transfer of General Funds. It is the intent of the General Assembly that Eight Million Eight Hundred Ninety-Two Thousand One Hundred Dollars (\$8,892,100) be transferred from the Office of the Budget, Contingency and One-Time Items (10-02-04), Contingency - Capital Improvements to the following departments, agencies and instrumentalities of the State and in the following amounts for the purposes set forth in the "Fiscal Year 1993 Capital Improvements Project Schedule" attached hereto and made a part hereof. Any funds remaining unexpended or unencumbered by June 30, 1995, shall revert to the General Fund of the State of Delaware.

<u>Department, Agency, or Instrumentality</u>	<u>Amount</u>
Delaware Development Office	\$ 300,000
Department of State	1,358,600
Department of Natural Resources and Environmental Control	1,751,300
Department of Public Safety	466,800
Department of Agriculture	252,100
State Fire Prevention Commission	30,000
Delaware Technical and Community College	698,900
State Board of Education	<u>4,034,400</u>

<u>Purpose</u>	<u>Maximum State Share</u>	<u>Local Share</u>	<u>Maximum Total Cost</u>
Indian River (60%/40%) - Long Neck Elementary School	\$1,314,400	\$ 876,267	\$ 2,190,667
Indian River (60%/40%) - Georgetown Elementary School	622,300	414,867	1,037,167
Indian River (28%/72%) - Selbyville Middle School	<u>2,097,700</u>	<u>5,394,086</u>	<u>7,491,786</u>
<b>Subtotals</b>	<b><u>\$4,034,400</u></b>	<b><u>\$6,685,220</u></b>	<b><u>\$10,719,620</u></b>

<b>TOTAL</b>	<b><u>\$8,892,100</u></b>
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Section 11. General Fund Reprogramming.

(a) Pursuant to previous years' authorizations by the General Assembly, certain projects have been completed at less than anticipated costs or are unable to be completed. For the fiscal year ending June 30, 1992, the following amounts shall remain as continuing appropriations and shall be transferred in accordance with Subsection (b) of this Section and shall not be subject to reversion until June 30, 1995.

<u>Department, Agency, or Instrumentality</u>	<u>Authorized Ch. &amp; Vol.</u>	<u>Project Appropriation Code</u>	<u>Amount</u>
Department of Services for Children, Youth, and Their Families	46/67	37-01-10-0182	\$ 777.45
Department of Natural Resources and Environmental Control	46/67	40-06-04-0185	17,731.68
Department of Natural Resources and Environmental Control	46/67	40-07-03-0182	650.00
Department of Public Safety	156/68	45-01-01-0181	3,035.00
Delaware State College	46/67	90-03-01-0175	2,583.00
Department of Public Instruction	46/67	95-01-02-0174	<u>590.00</u>
<b>TOTAL</b>			<b><u>\$25,367.13</u></b>

(b) The State Treasurer shall transfer the remaining appropriation balances listed in Subsection (a) above to the following departments in the following amounts for the purposes set forth in the "Fiscal Year 1993 Capital Improvements Project Schedule" attached hereto and made a part hereof.

<u>Department, Agency, or Instrumentality</u>	<u>Amount</u>
Department of Natural Resources and Environmental Control	<u>\$25,300</u>

Section 12. Health Facilities Subsidy Fund. Notwithstanding the provisions of Chapter 90 of Title 16 of the Delaware Code, there is hereby appropriated the sum of Two Million One Hundred Twenty-Seven Thousand Dollars (\$2,127,000) from the Health Facilities Subsidy Fund held by the State Treasurer (92-12-05-03-9400) to the following department in the following amount for the purposes set forth in the "Fiscal Year 1993 Capital Improvements Project Schedule, Reversion & Reprogramming Column" attached hereto and made a part hereof. Any funds remaining unexpended or unencumbered by June 30, 1995, shall revert to the Health Facilities Subsidy Fund.

<u>Department, Agency, or Instrumentality</u>	<u>Amount</u>
Department of Health and Social Services	\$2,127,000
Section 13. <u>Allocation of Stripper Well Funds.</u>	

(a) The State hereby authorizes the Department of Administrative Services to allocate Five Hundred Thousand Dollars (\$500,000) from the proceeds of the Stripper Well Court Case Settlement for eligible projects up to the amounts set forth in the "Fiscal Year 1993 Capital Improvements Project Schedule" attached hereto and made a part hereof. All potentially eligible projects will be submitted to the State Energy Office for review. Eligible projects will be referred to the State Energy Weatherization Committee for consideration for funding from proceeds from the Stripper Well Court Case. For all projects found eligible for Stripper Well funding by the State Energy Weatherization Committee, the Department of Administrative Services shall allocate and release funds in a manner consistent with the Stripper Well Court Case Settlement.

<u>Department, Agency, or Instrumentality</u>	<u>Amount</u>
Department of Administrative Services	\$147,000
Department of Health and Social Services	181,200
Department of Services for Children, Youth and Their Families	25,000
Department of Natural Resources and Environmental Control	146,800
<u>TOTAL</u>	<u>\$500,000</u>

(b) Of the amounts listed above, it is the intent of the General Assembly that the Department of Administrative Services serve as project manager and provide technical oversight of the \$146,800 authorized to the Department of Natural Resources and Environmental Control for energy projects to the Richardson and Robbins building.

Section 14. Continuing Appropriations. For the fiscal year ending June 30, 1992, any sums in the following accounts shall remain as continuing appropriations and shall not be subject to a reversion until June 30, 1993. Those transactions which continued the following general fund appropriations at the end of Fiscal Year 1992 into Fiscal Year 1993 were processed in complete conformance with the intent of the Legislature:

<u>Fiscal Year</u>	<u>Appropriation</u>	<u>Account Codes</u>	<u>Remarks</u>
1988		10-03-01-0180	Harrington Industrial Development
1990		10-03-03-0190	Sussex Airport
1990		10-03-03-0191	Industrial Park Development
1989		10-03-03-0184	Dover Civic Center
1990		10-03-03-9643	Dover Civic Center
1986		20-01-01-9601	Bicentennial Community
1987		20-01-01-9622	Bicentennial Community
1989		20-06-04-5912	Buena Vista MCI
1989		20-06-04-5913	Annual Maintenance & Restoration
1990		20-06-04-6014	Biggs Collection
1991		20-08-01-6212	Hockessin Library
1987		30-05-10-5219	Wilmington Public Building
1987		30-05-10-5414	Family Court
1987		30-05-10-5714	Kent County Family Court
1987		30-05-10-5715	Cooper Building
1989		30-05-10-5913	Minor Capital Improvements & Equip.
1989		30-05-10-5920	Fire Marshal
1990		30-05-10-6019	Legislative Hall
1990		30-05-10-6020	Agriculture Building
1990		30-05-10-6021	Delaware State Fire School
1990		30-05-10-6030	Asbestos Abatement
1989		35-06-30-5913	DSH Steam System
1990		37-01-10-0183	Family Study Center
1990		38-01-40-0181	ACLU Requirements
1989		40-01-01-5912	MCI & Equipment
1990		40-08-01-6012	Water & Wastewater
1990		40-06-04-0184	Park Development - Bellevue

1991	40-09-03-0182	Hazardous Waste Clean Up Fund
1989	95-15-00-5912	Construction/Lake Forest District
1990	95-31-00-6012	P.S. duPont Elementary
1990	55-01-01-0197	Architectural Barrier Removal

Section 15. Exxon Funds. It is the intent of the General Assembly that the monies appropriated in this Act may be used to match Exxon funds for any purpose deemed appropriate by the State Energy Weatherization Committee and so long as the purpose does not contradict the purposes set forth in the "Fiscal Year 1993 Capital Improvements Project Schedule" attached hereto and made a part hereof.

#### OFFICE OF THE BUDGET

Section 16. 800 Megahertz Radio Infrastructure. It is the intent of the General Assembly that Five Hundred Thousand Dollars (\$500,000) appropriated in Section 2 of this Act to the Budget Office be used for 800 Megahertz Radio Infrastructure. The General Assembly also hereby directs the Advisory Committee on Telecommunications, with the help of the Budget Office, to determine the best and most equitable use of future State, local and private funds for the 800 Megahertz system.

Section 17. Advanced Planning and Real Property Acquisition Fund. It is the intent of the General Assembly that the following agencies' balances due the Advanced Planning and Real Property Acquisition Fund (10-02-06-8400) be Zero Dollars (\$0):

<u>Agency</u>	<u>Amount</u>
Brandywine School District	\$ 50,400.00
Christina School District	<u>84,843.24</u>
<u>TOTAL</u>	<u>\$135,243.24</u>

Section 18. Electronic Voting Machines. The Office of the Budget, Office of Information Systems in conjunction with the Office of the Commissioner of Elections is hereby directed to issue request for proposals for the purpose of conducting demonstrations of direct recording electronic voting machines in non-statewide contested elections and/or referenda in 1993. The Request for Proposal shall provide for a single demonstration in which all eligible vendors shall participate or a series of demonstrations in which individual eligible vendors demonstrate their products. Vendors shall be deemed eligible if they meet the recommended design features as determined in the study authorized by House Bill 777, Section 18, of the 135th General Assembly. The results of the demonstrations shall be reported to the Governor and General Assembly by June 1, 1993. The Executive Director of the Office of Information Systems and the Commissioner of Elections shall be assisted in developing the Request for Proposal and assessing the results of the demonstrations by an advisory committee consisting of the following:

A member of the Senate appointed by the President Pro Tem,  
 A member of the House appointed by the Speaker of the House,  
 Chairman, State Democratic Party,  
 Chairman, State Republican Party,  
 New Castle County Department of Elections, Administrative  
 Director,  
 Kent County Department of Elections, Deputy Administrative  
 Director,

Sussex County Department of Elections, Deputy Administrative  
 Director,

Secretary of State, and  
 Controller General.

#### DELAWARE DEVELOPMENT OFFICE

Section 19. First State Center. It is the intent of the General Assembly that Two Million Five Hundred Thousand Dollars (\$2,500,000) appropriated in Section 2 of this Act and funds authorized in Section 3 of Chapter 156 of Volume 68 of the Laws of Delaware for the First State Center cannot be encumbered or expended until the City of Wilmington provides proper documentation and receives written certification by the Director of the Delaware Development Office, the Secretary of Finance and the Controller General that an amount in excess of Twenty Million Dollars (\$20,000,000) non-State funds has been raised and expended by the City of Wilmington for the project. State funds appropriated herein can only be expended for the hard/construction costs of the project not to exceed one-third (1/3) of such costs and cannot be expended for land and/or development right acquisition. In addition, State funds cannot be expended until the Governor appoints at least one-third (1/3) of the members of the appropriate governing body (i.e., Corporation, Board, Commission, Authority, -etc.). The Governor's appointees will be the

Director of the Delaware Development Office, the Secretary of Finance, and any remaining member shall be appointed at the discretion of the Governor.

Section 20. Delaware Economic Development Authority. In order to clarify that bonds heretofore or hereafter issued by the Delaware Economic Development Authority are not subject to the requirements of the Uniform Facsimile Signatures of Public Officials Act, Section 506B of Subchapter IV of Chapter 50 of Title 29 of the Delaware Code is hereby amended by adding the following to the end thereof:

"Facsimile signatures of officers of the Authority and the Council on Development Finance on bonds issued by the Authority shall have the same legal effect as the manual signatures of such officers, whether or not such officer filed with the Secretary of State his manual signature certified by him under oath in accordance with the Uniform Facsimile Signatures of Public Officials Act."

Section 21. Housing Projects for Very Low-Income Families or Persons. It is the intent of the General Assembly that Five Million Dollars (\$5,000,000) appropriated in Section 2(b) of this Act to the Delaware State Housing Authority be used to provide financing for decent, safe and sanitary housing affordable to very low-income families or persons in accordance with the provisions of the FAF Refunding Agreements between the Delaware State Housing Authority and the United States Department of Housing and Urban Development dated September 3, 1991; December 9, 1991; December 9, 1991; and December 9, 1991. Prior to the issuance of any bonds for the above purpose, the State shall enter into an agreement with the Delaware State Housing Authority under which the Authority will secure the payment of the debt service on such bonds by a pledge of its interest to certain excess funds which will become available from time to time under certain of its bond resolutions. No such bonds may be issued unless such excess funds are expected to be sufficient to pay or offset all the debt service payments on such bonds. Any bonds issued for the purposes set forth in this section shall not be deemed to be "tax supported obligations of the State" within the meaning of Section 7422 of Title 29 of the Delaware Code because it is reasonably expected that the debt service thereon will be offset by such excess funds. In a resolution of the Bond Issuing Officers, such officers shall designate the bonds to which such payments of excess funds are allocated.

Section 22. Capital Reserve Fund of the Delaware State Housing Authority.

(a) Amend Chapter 40 of Title 31 of the Delaware Code by revising Subsection (c) of §4057A by deleting the same and substituting in lieu thereof the following:

"§4057A. Capital Reserve Fund

(c) To assure the continued operation and solvency of the Authority 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 the Authority then outstanding. In order further to assure such maintenance of the Capital Reserve Fund, there may be annually appropriated and paid to the Authority for deposit in the Capital Reserve Fund such sum, if any, as shall be certified by the Housing Director to the Governor and Budget Director, 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 the Authority 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 Budget Director 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 the Authority for deposit into the Capital Reserve Fund."

(b) This act shall be effective immediately upon its adoption into law.

Section 23. Delaware Venture Capital Revolving Financing Program.

(a) Amend Section 29(b) of Chapter 360 of Volume 66 of the Laws of Delaware by deleting the first sentence in its entirety and substituting in lieu thereof the following:

"It is the intent of the General Assembly that of the Three Million Dollars (\$3,000,000) appropriated in Section 5 of this Act to the Delaware Development Office ('Office'), One Million Dollars (\$1,000,000) be used for a Delaware Venture Capital Revolving Financing Program to provide financing up to \$100,000 per business

with the State's ownership interest not to exceed 20%. The remaining Two Million Dollars (\$2,000,000) shall be used for Fund activities, as defined in the following paragraphs."

(b) The Delaware Development Office shall adopt and enforce regulations not inconsistent with this legislation establishing requirements and procedures for application for, granting of, utilization of, and repayment of financing provided through this program.

#### DEPARTMENT OF STATE

##### Section 24. Library Fundings.

(a) Amend Section 18 of Chapter 156 of Volume 68 of the Laws of Delaware by deleting the number "347" in line 30 and substituting in lieu thereof the number "412".

(b) It is the intent of the General Assembly that procedures contained in Chapter 412 of Volume 67 of the Laws of Delaware, as amended, shall govern the use of funds appropriated herein for libraries.

Section 25. Bridgeville Public Library. Amend Section 20 of Chapter 156 of Volume 68 of the Laws of Delaware by deleting the number "347" in line 40 and substituting in lieu thereof the number "412".

Section 26. Winterthur Museum Construction-Phase II. It is the intent of the General Assembly that the Five Hundred Thousand Dollars (\$500,000) appropriated in Section 2 of this Act and funds authorized in Section 3 of Chapter 156 of Volume 68 of the Laws of Delaware to the Department of State for construction of the Winterthur Museum cannot be encumbered or spent until such time as the total non-State funds have been raised and expended for this Project. The Secretary of State, Director of the Delaware Development Office and Controller General must be provided proper documentation to this effect prior to any State funds being expended.

##### Section 27. Delaware Public Library Construction Assistance Act.

(a) Amend Subsection 6602A, (4) b. 2. of Chapter 66A of Title 29 of the Delaware Code by deleting the period at the end of said sentence and substituting in lieu thereof the following: "; or".

(b) Amend Subsection 6602A, (4) b. of Chapter 66A of Title 29 of the Delaware Code by adding a new Subsection 3. to read as follows: " 3. An existing facility and/or land currently used as a public library site, including parking lots, to which deed title was conveyed to the public library governing authority after July 1, 1992."

(c) Amend Subsection 6604A of Chapter 66A of Title 29 of the Delaware Code by deleting the subsection in its entirety and substituting in lieu thereof the following:

"The Department of State, upon receipt of a request for state assistance under this chapter, shall refer each proposal to the Division of Libraries and the Delaware Council on Libraries for their comments. The Division of Libraries and the Delaware Council on Libraries shall provide the Department of State with their comments on each such proposal within 30 days of receipt of the proposal. The Department of State shall forward all proposals and comments to the Delaware Development Office. The Delaware Development Office shall review all proposals for funding under this chapter and include all proposals as part of the annual capital budget. This review shall include, but not be limited to, a determination of need of the project, scope of the project, total cost of the project, and the availability of the non-state share."

(d) Amend Subsection 6603A of Chapter 66A of Title 29 of the Delaware Code by adding a new sentence at the end of said Subsection to read as follows: "State funding of library construction may be requested in phases and could be authorized over more than one fiscal year."

Section 28. Archives Records Center. It is the intent of the General Assembly that funds authorized in Section 4 of Chapter 156 of Volume 68 of the Laws of Delaware be used for minor capital improvements to the existing Archives Records Center.

Section 29. Stabilization Endowment for the Arts. It is the intent of the General Assembly that funds authorized in Section 10 of this Act be known as the "Principal" and shall remain intact. Only the interest earned and/or the investment yield from said Principal shall be used for capital related expenses including stabilizing, preserving, rehabilitating or remodeling private, non-profit, art-related facilities. Funds shall

be appropriated to the Delaware Division of the Arts, responsible for the disbursement of said "Principal" for investment by the Trustee of the Community Foundation. Further, the Delaware Division of the Arts shall be responsible for the disposition of interest earnings and shall submit an annual report of investment and expenditure activity to the Director of the Delaware Development Office and Controller General. State funds cannot be expended until a two-for-one (2 for 1) non-state match has been made.

#### **DEPARTMENT OF FINANCE**

Section 30. Bond Issuance Criteria. It is the intent of the General Assembly that the interest on the general obligation bonds which are authorized herein (or which have been authorized in any prior authorization act) to fund certain projects shall be excluded from gross income for purposes of Section 103 of the Internal Revenue Code of 1986. The provisions of this Act authorize the issuance of the State's general obligation bonds to finance the costs of certain capital projects specified herein. Pursuant to the State's budget and financial policies, no funds other than the proceeds of such bonds, are, or are reasonably expected to be, reserved, allocated on a long-term basis, or otherwise set aside by the State to pay the costs of such capital projects. However, prior to the issuance of such bonds, it is expected that non-bond funds in the General Fund or other State funds which are available for such purpose on a temporary basis, may be expended to pay the costs of such projects, with the expectation that such non-bond funds will be reimbursed from the proceeds of the bonds when issued. For the purposes of United States Department of Treasury Regulations §1.103-18, if any such funds are advanced on a temporary basis, the State hereby declares it reasonably expects to issue its bonds to reimburse such funds temporarily advanced to pay the costs of such capital projects. The use of bond proceeds for such reimbursement will occur within one year of the later of the date on which expenditure to be reimbursed is paid or the date on which the property is placed in service. The maximum principal amount of bonds that may be issued for such purposes is the amount of bonds authorized for such capital projects in other provisions of this Act. In any case not covered by the previous sentences of this Section where non-bond funds are applied to pay any costs of a capital project which are expected to be reimbursed from bond proceeds, the Secretary of Finance is authorized by written action to declare the State's intent pursuant to the aforesaid regulation to issue its bonds to reimburse such expenditures. No amounts so reimbursed may be used to create or increase a sinking fund, reserve or replacement fund, or to refund an issue of governmental obligations.

#### **DEPARTMENT OF ADMINISTRATIVE SERVICES**

Section 31. Minor Capital Improvements and Equipment. Of the funds authorized in Section 3 of Chapter 204 of Volume 68 of the Laws of Delaware, Five Thousand Three Hundred Dollars (\$5,300) shall be used to ensure that the State's obligation for architectural and engineering services performed for the Sussex County Courthouse project have been met in full.

Section 32. Legislative Hall Addition/Alterations. Of the funds authorized in Section 2 of this Act, Forty-Eight Thousand Dollars (\$48,000) shall be used to acquire a collator for the Legislative Hall print shop.

Section 33. Sussex County Infrastructure. The Secretary of Administrative Services ("Secretary") has entered into an agreement with the Town of Georgetown ("Town") to provide water service to the Sussex Correctional Institute and Georgetown State Service Center. The State will reimburse the Town for its additional capital costs from funds authorized in Sections 3 and 4 of Chapter 156 of Volume 68, and Section 3 of Chapter 204 of Volume 68, Laws of Delaware. Contracts awarded for this purpose by the Town will be awarded pursuant to appropriate Town bidding requirements and shall be exempt from Chapter 69 of Title 29 of the Delaware Code. The Department of Correction is authorized to convey an existing underground well to the Town as part of the agreement between the Town and the Secretary. This transfer shall be exempt from the provisions of Chapter 94 of Title 29 of the Delaware Code.

Section 34. Redding Middle School. It is the intent of the General Assembly that the Secretary of the Department of Administrative Services reimburse Fifty Thousand Dollars (\$50,000) to the Redding Middle School in the Appoquinimink School District from fund 92-30-05-10-8500 for the replacement of library books damaged by asbestos.

Section 35. Procurement. Amend Title 29, Chapter 69, Section 6903(k), Delaware Code by deleting said section in its entirety and substituting in lieu thereof the following:

"(k) Every state department and agency within the Executive Branch and Judicial Branch of the state government shall procure all materiel, equipment and

nonprofessional services through the statewide contracts administered by the Division of Purchasing, Department of Administrative Services. The operations and programs funded in whole or in part by the Delaware Transportation Authority, the Transportation Trust Fund or the operations funded by Public School Districts or Legislative Branch are specifically excepted from the requirements of this subsection."

#### **DEPARTMENT OF HEALTH AND SOCIAL SERVICES**

Section 36. Georgetown State Service Center Expansion/Renovation. It is the intent of the General Assembly that funds authorized in Section 2 of this Act be used to continue the expansion and renovation of the Georgetown State Service Center. The Department of Administrative Services is herein directed to provide technical assistance to this project and shall review and approve all contracts associated with same.

Section 37. Minor Capital Improvements and Equipment. Section 12 of this Act provides an appropriation for minor capital improvements and equipment for the Department of Health and Social Services ("Department"). The Department shall use a portion of the aforesaid funds to conduct a comprehensive study of the long-term health and social service needs of the Claymont community. To complement that study, the Department shall review and determine the most appropriate location and facility to meet those service needs. No further minor capital improvements and equipment funds shall be expended by the Department within the Claymont Community until the Director of the Delaware Development Office, State Budget Director and Controller General shall have reviewed the proposed expenditure and provided written approval that such expenditure is reasonably related to the improvement or maintenance of facilities utilized by the Department.

#### **DEPARTMENT OF SERVICES FOR CHILDREN, YOUTH AND THEIR FAMILIES**

Section 38. Woodshaven-Kruse School. It is the intent of the General Assembly that the property and buildings known as the Woodshaven-Kruse School, located at 100 Darley Road, Claymont, Delaware, held in trust by the State of Delaware, through the Department of Services for Children, Youth and Their Families as Trustee, be exempt from the Real Property Disposition Act, (Chapter 94 of Title 29 of the Delaware Code) so as to comply with the fair market price requirements of the Trust in any conveyance, sale or transfer of any of the Trust's real property.

Section 39. Ferris Renovations. It is the intent of the General Assembly that the funds authorized in Section 3 and Section 13 of this Act be used for the renovation of Snowden and Mowlds Cottages. The Department of Administrative Services is herein directed to provide technical assistance to this Project and shall review and approve all contracts associated with same.

Section 40. Ferris Restructuring. It is the intent of the General Assembly that funds authorized in Section 2 of this Act shall not be obligated until such time as a final report is completed by the Oversight Committee for Ferris Restructuring Plan as established by SJR 10 of the 136th General Assembly. Such report is expected to define program direction and impact on facilities. The Secretary of the Department of Services for Children, Youth and Their Families shall obtain written approval to expend funds authorized herein from the Director of the Delaware Development Office, Budget Director, and Controller General. Further, it is directed that the Secretary of the Department of Administrative Services provide technical oversight of all facility improvements and/or construction.

#### **DEPARTMENT OF CORRECTION**

Section 41. Minor Capital Improvements and Equipment. Of the funds authorized in Section 3 of Chapter 204 of Volume 68 of the Laws of Delaware, Two Thousand Two Hundred Dollars (\$2,200) shall be used for the acquisition of radio/tone activation equipment for the prison siren located in the Town of Smyrna relating to the Delaware Correctional Center.

#### **DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL**

Section 42. Water/Wastewater State Revolving Loan Fund.

(a) It is the intent of the General Assembly that the State Treasurer establish a special fund to be known as the "Water/Wastewater State Revolving Loan Fund," hereinafter to be known as the "Fund," to be administered by the Division of Water Resources, Department of Natural Resources and Environmental Control.

(b) Repayment of loans made from Federal and State Water/Wastewater State Revolving Fund authorizations shall be deposited into said Fund and shall be invested by the State Treasurer in securities consistent with the policies established by the Cash Management Policy Board.

(c) A portion of said Fund, not to exceed 4% of the repaid funds, shall be identified to cover appropriate administrative related expense(s) and shall be so authorized in subsequent Operating Budget Act(s) as an Appropriated Special Fund (ASF) account.

Section 43. Beach Preservation. The General Assembly hereby appropriates Six Hundred Thousand Dollars (\$600,000) to the Department of Natural Resources and Environmental Control ("Department") in Section 10 of this Act to renourish and preserve the State's beaches. The Department may not encumber the funds appropriated herein for privately-owned ocean beaches. The Department may not encumber the funds appropriated herein for publicly accessible municipal ocean beaches until at least an equal amount of non-State funds are available for such projects. The funds provided for beach preservation as defined in Chapter 61 of Title 30 of the Delaware Code can be used for local match. The availability of the aforementioned non-State matching funds must be approved by the Director of the Delaware Development Office and the Secretary of the Department.

Section 44. Conservation Cost-Sharing Program. It is the intent of the General Assembly that Four Hundred Twenty Thousand Dollars (\$420,000) appropriated to the Department of Natural Resources and Environmental Control ("Department") in Section 10 of this Act be used for the Department's Soil and Water Conservation Program. Of the Four Hundred Twenty Thousand Dollars (\$420,000) appropriated herein, the Department shall spend one-third (One Hundred Forty Thousand Dollars [\$140,000]) for use in each County.

Section 45. Cockeysville Formation. Funds authorized in Section 10 of this Act to the Department of Natural Resources and Environmental Control ("Department") shall be used to continue the evaluation of the Cockeysville Formation in northern New Castle County through groundwater modeling. Funds authorized must be matched by non-State funds before they can be encumbered by the Department.

Section 46. Kent County Wastewater Treatment Facility. Amend Section 43(c) of Chapter 46 of Volume 67 of the Laws of Delaware by striking paragraph (c) in its entirety and substituting in lieu thereof a new paragraph (c) to read as follows:

"(c) of the monies appropriated in Subsection (a) above, One Million Dollars (\$1,000,000) shall be used to fund general capital improvements and related appurtenances at the Kent County Regional Wastewater Treatment Facility near Frederica, as directed by the Department."

Section 47. Resource, Conservation and Development Projects.

(a) It is the intent of the General Assembly that Seven Hundred Eighty-Three Thousand Dollars (\$783,000) authorized in Section 3 of this Act to the Department of Natural Resources and Environmental Control ("Department") be used for the following projects in the following amounts:

<u>Project</u>	<u>Cost</u>
Harmony Woods	\$ 65,000
Woodsdale/Bellevue Drainage	210,000
Carousel Dam	50,000
Carpenter Park - Band Stage	33,000
Bunker Hill Road Drainage	100,000
Assawoman Canal	100,000
Little Mill Flood Abatement	200,000
Pepper's Creek Dredging	25,000
<u>TOTAL</u>	<u>\$783,000</u>

(b) Funds authorized for Bunker Hill Road Drainage may only be used for drainage correction and cannot be used for property acquisition.

Section 48. Churchman's Reservoir Environmental Impact Study (EIS). It is the intent of the General Assembly that the Churchman's EIS Project Management Committee ("Committee") be composed of a representative of Wilmington Suburban Water Corporation; Artesian Water Company; the Department of Natural Resources and Environmental Control; the Delaware Development Office; the Department of Finance, who shall appoint the Chair of the Committee; New Castle County; and the New Castle County Water Resources Agency.



## DEPARTMENT OF TRANSPORTATION

### Section 49. Transportation Trust Fund Authorizations.

(a) There is hereby appropriated One Hundred Fifty Million Eight Hundred Fifty Thousand Dollars (\$150,850,000) from the Transportation Trust Fund for transportation programs as set forth in the "Fiscal Year 1993 Capital Improvements Project Schedule" attached hereto and made a part hereof.

(b) To fund a portion of the amount set forth in (a) above, the Delaware Transportation Authority is hereby authorized to issue bonds in an amount not exceeding One Hundred Seven Million Six Hundred Thousand Dollars (\$107,600,000) pursuant to the provisions of Chapter 14 of Title 2 of the Delaware Code, as amended, of which One Hundred Forty-Five Million Five Hundred Thousand Dollars (\$145,500,000) shall be used for purposes set forth in the "Fiscal Year 1993 Capital Improvements Projects Schedule" attached hereto and made a part hereof, with the remainder of Five Million Three Hundred Fifty Thousand Dollars (\$5,350,000) to be used to fund issuance costs and necessary reserves from the Reserve Account.

### Section 50. Department of Transportation Accounts.

(a) Any funds appropriated from any source to the Department of Transportation ("Department") shall be accounted for by program category as specified in the "Fiscal Year 1993 Capital Improvements Project Schedule" attached hereto and made apart hereof. Amounts indicated for individual projects in the "Supplemental List of Transportation Projects" are the Department's best estimates of cost, but may vary depending on bid results and project designs. The descriptions and limits are general in nature and are to be used only for project identification purposes. It is the intent of the General Assembly that the Department of Transportation make all reasonable efforts to ensure the timely completion of projects subject to the limitation of the total funds available in each program.

(b) The Department is directed to continue inspecting the condition of bridges in the State of Delaware and to use the Bridge Program funds made available by this and previous acts to ensure the bridge repairs and replacements are carried out in an expeditious manner.

(c) It is the intent of the General Assembly that the Capital Budget Committee shall be delegated with the legislative responsibility of approving modifications to the list of projects in the "Paving and Rehabilitation" portion of the "Supplemental List of Transportation Projects," when the Department of Transportation seeks to make such modifications. These changes may be made, subject to the Committee's approval, when the Department [a] has completed or determined that it has sufficient funds on hand to complete projects in that program category, or [b] when projects so listed cannot be constructed in the construction season covered by this Act because of conflicting public works projects in progress or scheduled, or for other compelling reasons, and [c] funds appropriated to the Paving and Rehabilitation program category are thus available for use on additional or other projects fitting within that category. In modifying the list, the Department must substitute the next suitable project(s) from the most recently approved Department of Transportation Capital Improvement Program or from the most recent project priority "Paving and Rehabilitation" listing.

(d) Any funds appropriated from the "Suburban Street Program" (56/00) of the "Supplemental List of Transportation Projects" attached hereto may be designated for Greenways with a transportation component as long as those Greenways will be dedicated to public use. Legislators may designate monies to be appropriated into a general pooled account to be used statewide, or may reserve monies for Greenways projects to be designated at a later time, or may designate specific sums of monies to specific Greenways projects. For the purposes of this Subsection, a project shall be deemed to have a "transportation component" whenever it involves walkways, pathways, bikeways, trails or other routes for the movement of people or goods. Project estimates shall be prepared by the Department of Natural Resources and Environmental Control (DNREC) and processed through the Department of Transportation's (DOT) Suburban Street Program procedure for inclusion in the Bond and Capital Improvement Act by the General Assembly. Funds appropriated through this Act will be funded from the Transportation Trust Fund and transferred to DNREC by DOT. DNREC will be responsible for the design, rights-of-way purchasing, construction and maintenance of such Greenways and establishing a process similar to DOT's process for administering the Suburban Street Program.

(e) As part of the Department of Transportation's efforts to comply with the Clean Air Act, the Department is hereby authorized to explore and/or construct feasible alternatives to traffic signals, including, but not limited to, geometric design changes to intersections or crossovers, in the vicinity of those locations where traffic signals may currently exist or otherwise be considered as warranted.

Section 51. Department of Transportation Administration Building. It is the intent of the General Assembly that funds appropriated in this Act to the Department of Transportation ("Department") and listed in the Engineering and Contingencies Account (57/00) as part of the "Fiscal Year 1993 Capital Improvements Project Schedule" attached hereto and made a part hereof may be expended by the Department for the purpose of making heating, ventilation, air conditioning, electrical, structural and such other improvements (including the rehabilitation of offices to maximize the utilization of space made available when Public Safety relocated to their new building) as may be necessary to the Department of Transportation Administration Building.

Section 52. Amend Section 508(g) of Chapter 5 of Title 17 of the Delaware Code by deleting the phrase "of Chapter 17" appearing therein.

Section 53. Amend Section 56(b) of Volume 67 of Chapter 46 of the Laws of Delaware by striking said subsection in its entirety and substituting in lieu thereof new subsections (b), (c), and (d) which shall read as follows:

"(b) In the event a portion of said funds are not expended in the construction of a taxiway and loading ramp in the vicinity of the Kent County Civil Air Terminal, said portion may be granted to the Kent County Levy Court for use in the expansion of the road system and associated utilities within the Kent County AeroPark. The use of funds identified for aviation-related projects to provide for critical roadways will not jeopardize future requests for funds to support aviation. Additionally, funds from the Suburban Street Program may be used for this purpose when approved by the legislator concerned.

(c) Any funds expended by the Department of Transportation from whatever source shall be conditioned upon satisfaction of the contingency contained in subparagraph (a) hereof and the further contingency that a corporate lessee shall have substantially completed construction of a facility on the leased premises in the judgment of the Secretary of said Department.

(d) If said funds are not expended for the Kent County Civil Air Facility, said sum or portions thereof may be utilized by the Delaware Transportation Authority for the purchase, construction and/or improvements to a public use aviation facility located within Kent County to be used as a general aviation facility operated in accordance with all applicable rules and regulations."

Section 54. Notwithstanding any other provision of the law, the total commitment by the Department of Transportation to the improvements at the Kent County AeroPark shall be limited to One Million Three Hundred and Fifty Thousand Dollars (\$1,350,000) except for funds provided through the Suburban Street Program.

Section 55. Bridgeville Visitors Center. Amend Volume 67 of Chapter 46 of the Laws of Delaware by deleting Section 21 in its entirety and substituting a new section to read as follows:

"It is the intent of the General Assembly that the balance of the Five Hundred Thousand Dollars (\$500,000) appropriated in Section 12 of the 1990 Bond Bill, 67 Laws of Delaware Ch. 46, to the Department of Transportation remaining after said Department's expenses are satisfied to be transferred to a public or private organization to construct a visitors center in proximity to the intersection of Routes 13 and 404 in Bridgeville, Sussex County, Delaware on a suitably located parcel of land to be donated to the State of Delaware for this purpose in accordance with a site plan approved by the Department of Transportation. Funds from the Suburban Street Program may be used to supplement this amount when authorized by a legislator. Prior to conveyance of title deed and said land to the State of Delaware, the current owner of record shall provide adequate utilities and access to the adjacent public roads. Site selection and negotiation of said land shall be subject to joint approval by the Secretary of the Department of Transportation and the Director of the Delaware Development Office."

Section 56. Additional Commuter Railroad Stations. The Delaware Rail Administration is authorized to design and construct three additional railway stations by November 1992 to accommodate expanded commuter service to Newark, Delaware. The Rail Administration is also authorized to rehabilitate the existing Claymont Station to

comply with the Americans With Disabilities Act. Since the fastest and possibly the most economical method of procuring these stations and rehabilitating the Claymont Station is to solicit sealed competitive proposals for one company to both design and build them, the Secretary of Transportation is hereby authorized to solicit sealed competitive proposals and execute contracts to design and build the needed rail facility construction. In order to accomplish the purpose expressed herein, any relevant Delaware law, rule or regulation to the contrary is hereby waived.

Section 57. Authorization is hereby provided to the Department of Transportation to fund in an amount not to exceed One Hundred Seventy-Five Thousand Dollars (\$175,000) in total from appropriated Rail Operation funds one or more congestion mitigation demonstration projects which are intended to make more efficient use of the State's rail facilities or other alternative modes of transportation in order to achieve the goals, objectives and requirements of the Federal Clean Air Act Amendments. The Department will make every effort to pursue federal funding for these demonstration projects as part of the State's efforts to comply with said Clean Air Act Amendments. Prior to authorizing expenditure of any funds for a project or projects which may qualify hereunder, the Department of Transportation must be assured that such expenditure shall be endorsed and recommended by the Governor's Clean Air Task Force, that said funds shall only be used to reimburse one-time operating or capital start-up costs and the Department is reasonably assured that such expenditure shall result in an ongoing, viable entity requiring no further expenditure or investment of State funds and that the venture shall have quantifiable Clean Air benefits helping the State to attain Clean Air Act Amendment goals, objectives and requirements.

Section 58. Amend Section 9302(b) of Chapter 93 of Title 29 of the Delaware Code by deleting the phrase ", except that such payment shall not be less than \$250 nor more than \$850" as it appears at the end of said Subsection.

Section 59. Beginning in the Fiscal Year 1994 Bond and Capital Improvements Act, any funds authorized in the "Suburban Street Program" (56/00) of the "Supplemental List of Transportation Projects" attached to each such bill but not designated to a specific transportation project after a three (3) year period shall revert to the Transportation Trust Fund.

#### **STATE FIRE PREVENTION COMMISSION**

Section 60. Northern Fire Training Center. Funds authorized in Section 2 of this Act shall be used for acquisition of land, planning/design and/or site preparation.

Section 61. Hydraulic Rescue Tools. It is the intent of the General Assembly that Thirty Thousand Dollars (\$30,000) authorized in Section 10 of this Act shall be used to acquire hydraulic rescue tools for the Milford, Claymont, Smyrna and Wilmington Manor fire companies.

#### **DELAWARE STATE COLLEGE**

Section 62. Minor Capital Improvements. It is the intent of the General Assembly that of the Nine Hundred Thousand Three Hundred Dollars (\$900,300) appropriated in Section 3 of this Act to Delaware State College ("College"), an amount not in excess of \$200,000 shall be used to continue repairs and/or replacement of the sanitary and storm sewer system throughout the campus.

#### **DELAWARE TECHNICAL AND COMMUNITY COLLEGE**

Section 63. Educational and Training Building - Stanton. Any funds authorized in Section 2 of this Act, not needed for the completion of said facility, may be used for the Wilmington Campus Parking project.

#### **STATE BOARD OF EDUCATION**

Section 64. Appropriations for Minor Capital Improvements. It is the intent of the General Assembly that the sum of Four Million Two Hundred Sixty Thousand One Hundred Dollars (\$4,260,100) appropriated in Section 3 of this Act to the State Board of Education be used for minor capital improvements to school buildings. This amount shall be paid by the State Board of Education to local districts in the following amounts:

<u>School District</u>	<u>Maximum State Share</u>	<u>Maximum Local Share</u>	<u>Total Cost</u>
Appoquinimink	\$ 99,674	\$ 66,449	\$ 166,123

Brandywine Special	422,750 17,543	281,833 -0-	704,583 17,543
Christina Special	677,920 35,910	451,947 -0-	1,129,867 35,910
Colonial Special	367,650 13,743	245,100 -0-	612,750 13,743
New Castle Vo-Tech	203,490	-0-	203,490
Red Clay Special	532,646 28,057	355,097 -0-	887,743 28,057
Caesar Rodney Special	191,520 7,537	127,680 -0-	319,200 7,537
Capital	237,386	158,257	395,643
Kent Vo-Tech	57,443	-0-	57,443
Lake Forest	127,110	84,740	211,850
Millford	140,828	93,885	234,713
Smyrna	115,596	77,064	192,660
Cape Henlopen Special	144,780 7,663	96,520 -0-	241,300 7,663
Delmar	22,803	15,202	38,005
Indian River Special	247,988 9,880	165,325 -0-	413,313 9,880
Laurel	79,344	52,896	132,240
Seaford Special	132,202 2,407	88,135 -0-	220,337 2,407
Sussex Vo-Tech	72,010	-0-	72,010
Woodbridge	<u>64,220</u>	<u>42,813</u>	<u>107,033</u>
MINOR CAPITAL IMPROVEMENTS	\$4,060,100	\$2,402,943	\$6,463,043
STATE BOARD OF EDUCATION	\$ 115,000	76,667	191,667
VOCATIONAL EQUIPMENT	<u>\$ 85,000</u>	<u>56,667</u>	<u>141,667</u>
<b>TOTAL</b>	<b><u>\$4,260,100</u></b>	<b><u>\$2,536,277</u></b>	<b><u>\$6,796,377</u></b>

Section 65. Appropriation for Architectural Barrier Removal. It is the intent of the General Assembly that the sum of One Hundred Sixty Thousand Dollars (\$160,000) appropriated in Section 3 of this Act to the State Board of Education be used for the State's sixty percent (60%) share of architectural barrier removal projects as defined in Section 7528 of Title 29 of the Delaware Code. Each qualifying school district having approved architectural barrier removal projects shall authorize its forty percent (40%) share. No local school district may participate in the use of these funds without first providing its local share pursuant to the provisions of this Section and other pertinent provisions of Delaware law.

Section 66. MCI Local Share. In order to correct the Local Share ratio for fiscal year 1992 minor capital improvements & equipment, the following amendments should be made to Chapter 156 of Volume 68 of the Laws of Delaware:

Page #	Line #	Section #	Delete	Insert
3	40	4	\$2,616,495	\$2,645,169
3	40	4	\$7,038,695	\$7,067,369
4	7	4	\$3,123,195	\$3,151,869
4	7	4	\$9,308,495	\$9,337,169
34	13	70	\$ 436,415	\$ 465,089

34	13	70	\$1,134,049	\$1,162,723
34	53	70	\$2,483,161	\$2,511,835
34	53	70	\$6,705,361	\$6,734,035
34	59	70	\$2,616,495	\$2,645,169
34	59	70	\$7,038,695	\$7,067,369

Section 67. Red Clay Fire Reconstruction. It is the intent of the General Assembly that funds authorized in Section 2 of this Act be transferred by the State Treasurer to 95-01-02-6282.

Section 68. Brandywine Districtwide Modernization Study. It is the intent of the General Assembly that Three Hundred Sixty Thousand Dollars (\$360,000) authorized in Section 3 of this Act, to be matched with forty percent (40%) local funds, be used for architectural and engineering fees in order to do a long-range modernization study of all facilities owned by the Brandywine School District, except for the Claymont Community Center. The results of such study should include a 5- to 10-year prioritized plan of action to address facility needs and provide cost estimates for same, which shall serve as the basis for future requests for funding.

Section 69. Bond Verification. All bonds issued, or herein before or herein authorized to be issued, by the State are hereby determined to be within all debt and authorization limits of the State.

Section 70. Inconsistency. Insofar as the provisions of this Act are inconsistent with the provisions of any general, special, or local laws, or parts thereof, the provisions of this Act shall be controlling.

Section 71. Severability. If any section, part, phrase, or provision of this Act or the application thereof be held invalid by any court of competent jurisdiction, such judgment shall be confined in its operation to the section, part, phrase, provision, or application directly involved in the controversy in which such judgment shall have been rendered and shall not affect or impair the validity of the remainder of this Act or the application thereof.

Section 72. Effective Date. This Act shall take effect in accordance with the provisions of State law.

Approved July 17, 1992.

## FISCAL YEAR 1993 CAPITAL IMPROVEMENTS PROJECT SCHEDULE

AGENCY/PROJECT	BUDGET UNIT OFS NO.	BOND AUTHOR- IZATIONS	REVERSION & REPRO- GRAMING	STRIPPER WELL	FIRST STATE IMPROVEMENT	GENERAL FUNDS	TRANSPORTATION TRUST FUNDS	TOTAL
BUDGET								
800 Megahertz System	10-02-01	90002RBE	\$500,000	\$0	\$0	\$0	\$0	\$500,000
Subtotal			\$500,000	\$0	\$0	\$0	\$0	\$500,000
DELAWARE DEVELOPMENT OFFICE								
Composites High Technology Park	10-03-03	88004BRC	\$498,800	\$0	\$0	\$0	\$0	\$498,800
First State Center-Wilmington	10-03-03	92001BRC	2,500,000	0	0	0	0	2,500,000
Multi-Purpose Sports Facility	10-03-03	90010BRC	0	0	0	300,000	0	300,000
Rehoboth Convention Center Renovations	10-03-03	93001BRC	125,000 *	0	0	0	0	125,000
Subtotal			\$3,123,800	\$0	\$0	\$300,000	\$0	\$3,423,800
STATE								
Minor Capital Improvements & Equipment	20-06-04	90014BEM	\$232,900 *	\$0	\$0	\$0	\$0	\$232,900
Milford Public Library	20-08-01	91042BEC	0	0	0	170,600	0	170,600
Winterthur Museum Construction-Phase II	20-01-01	92004BRC	500,000	0	0	0	0	500,000
State Library Renovations/Roof	20-08-01	92002BRC	50,000 *	0	0	0	0	50,000
NCCo. Library - Bear Area	20-08-01	93002BRC	100,000	0	0	0	0	100,000
NCCo. Library - Concord Pike Area	20-08-01	93003BRC	0	0	0	80,000	0	80,000
Seymour Library	20-08-01	93004BRC	0	0	0	20,000	0	20,000
Millisboro Library	20-08-01	93005BRC	0	0	0	60,000	0	60,000
Milford Museum Roof and Cupola	20-06-01	92005BRC	40,000 *	0	0	0	0	40,000
Dover Library	20-08-01	93006BRC	0	0	0	28,000	0	28,000
NCCo. Library - Hockessin	20-08-01	91039BRC	80,000	0	0	0	0	80,000
Stabilization Endowment for the Arts	20-07-01	93007BRC	0	0	0	1,000,000	0	1,000,000
Subtotal			\$1,002,900	\$0	\$0	\$1,358,600	\$0	\$2,361,500
*10-Year Bonds								

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## FISCAL YEAR 1993 CAPITAL IMPROVEMENTS PROJECT SCHEDULE

AGENCY/PROJECT	BUDGET UNIT	OPMS NO.	BOND AUTHOR- IZATIONS	REVERSION	STRIPPER WELL	FIRST STATE IMPROVEMENT	GENERAL FUNDS	TRANSPORTATION TRUST FUNDS	TOTAL
				& REPRO- GRAMMING					
ADMINISTRATIVE SERVICES									
Architectural Barrier Removal	30-05-10	910168RM	210,000 *	0	0	0	0	0	210,000
Minor Capital Improvements & Equipment	30-05-10	820218SM		0	147,000	0	0	0	147,000
Legislative Hall Addition/Alterations	30-05-10	900208RC	1,200,000	0	0	0	0	0	1,200,000
Subtotal			\$1,410,000	\$0	\$147,000	\$0	\$0	\$0	\$1,557,000
HEALTH & SOCIAL SERVICES									
Minor Capital Improvements & Equipment	35-01-20	830298RM	\$ 0	\$1,895,800	\$181,200	\$0	\$0	\$0	\$2,077,000
Georgetown Service Center	35-01-20	910208RM	1,900,000	0	0	0	0	0	1,900,000
Campus Renewal	35-01-20	870368RM	1,135,000 *	250,000	0	0	0	0	1,385,000
Subtotal			\$3,035,000	\$2,145,800	\$181,200	\$0	\$0	\$0	\$5,362,000
SERVICES FOR CHILDREN, YOUTH & THEIR FAMILIES									
Ferris Restructuring	37-01-15	930088RC	\$ 500,000	\$0	\$0	\$0	\$0	\$0	\$ 500,000
Ferris Renov.-Phase III/Snowden & Howlds	37-01-15	910248RM	182,600 *	0	25,000	0	0	0	207,600
Minor Capital Improvements & Equipment	37-01-15	860378RM	122,500 *	0	0	0	0	0	122,500
Subtotal			\$ 805,100	\$0	\$25,000	\$0	\$0	\$0	\$ 830,100

\*10-Year Bonds

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## FISCAL YEAR 1993 CAPITAL IMPROVEMENTS PROJECT SCHEDULE

	AGENCY/PROJECT	BUDGET UNIT OFMS NO.	BOND AUTHOR- IZATIONS	REVERSION & REPRO- GRAMMING	STRIPPER WELL	FIRST STATE IMPROVEMENT	GENERAL FUNDS	TRANSPORTATION TRUST FUNDS	TOTAL	
CORRECTION	MPCJF-Gander H111 Expansion	38-04-06	91077RBC	\$3,100,000	\$0	\$0	\$0	\$0	\$3,100,000	
	Subtotal			\$3,100,000	\$0	\$0	\$0	\$0	\$3,100,000	
NATURAL RESOURCES & ENVIRONMENTAL CONTROL	Water/Wastewater-Construction Grant Program	40-08-04	90033RBC	\$2,300,000	\$0	\$0	\$0	\$0	\$2,300,000	
	Water/Wastewater-State Revolving Fund	40-08-04	93009RBC	4,731,400	59,000	0	110,800	98,800	5,000,000	
			93009RBC							
			93009RBC							
	Conservation Cost Sharing Prog.	40-07-04	85033RGO	0	0	0	420,000	0	420,000	
	Park Rehabilitation	40-06-02	81031RBM	500,000 =	0	0	0	0	500,000	
	Minor Capital Improvements & Equipment	40-01-01	90035RBM	221,100 =	0	146,800	0	0	367,900	
			90035RBM							
	Beach Preservation	40-07-03	78032RGO	0	0	0	600,000	0	600,000	
	Tax/Public Utilities	40-07-02	78031RGO	0	0	0	600,000	0	600,000	
	Cockeysville Formation	40-08-01	93010RGP	0	0	0	32,500	0	32,500	
	Resource Conservation & Development Projects	40-07-02	91037RBC	783,000 =	0	0	0	0	783,000	
	Subtotal			\$8,535,500	\$59,000	\$146,800	\$110,800	\$1,751,300	\$10,603,400	
	PUBLIC SAFETY	Automated Fingerprint ID System	45-06-08	87066RGE	\$0	\$0	\$0	\$216,800	\$0	\$216,800
		Helicopter Replacement	45-01-01	90041RGE	0	0	0	250,000	0	250,000
		Minor Capital Improvements & Equipment	45-01-01	83049RBM	139,800 =	0	0	0	0	139,800
		Subtotal			\$139,800	\$0	\$0	\$466,800	\$0	\$606,600
*10-Year Bonds										

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CE/90



## FISCAL YEAR 1993 CAPITAL IMPROVEMENTS PROJECT SCHEDULE

AGENCY/PROJECT	BUDGET UNIT	OPRS NO.	BOND AUTHOR- IZATIONS	REVERSION & REPRO- GRAMMING	STRIPPER WELL	FIRST STATE IMPROVEMENT	GENERAL FUNDS	TRANSPORTATION TRUST FUNDS	TOTAL
TRANSPORTATION									
Corridor/Non-Corridor Program (66/00)	55-05-00	78040RTT	\$0	\$0	\$0	\$0	\$0	\$62,565,000	\$62,565,000
Bridge Replacement/Rehabilitation (65/00)	55-05-00	79034RTT	0	0	0	0	0	8,750,000	8,750,000
Rehabilitation and Reconstruction (64/00)	55-05-00	86074RTT	0	0	0	0	0	10,112,000	10,112,000
Pave & Rehabilitation (64/00)	55-05-00	78042RTT	0	0	0	0	0	14,700,000	14,700,000
Public Transit Improvs. (73/00)	55-05-00	92015RTT	0	0	0	0	0	20,073,000	20,073,000
Turnpike Improvements (73/00)	55-05-00	93011RTT	0	0	0	0	0	1,710,000	1,710,000
Safety and Intersection Impr. (63/00)	55-05-00	81056RTT	0	0	0	0	0	2,900,000	2,900,000
Traffic Control Devices/Hwy. Ltg. (61/00)	55-05-00	78044RTT	0	0	0	0	0	600,000	600,000
Engineering and Contingencies (57/00)	55-05-00	78049RTT	0	0	0	0	0	2,250,000	2,250,000
Advanced Right of Way Program (59/00)	55-05-00	80055RTT	0	0	0	0	0	2,500,000	2,500,000
Advanced Planning Program (60/00)	55-05-00	80056RTT	0	0	0	0	0	990,000	990,000
Suburban Streets (56/00)	55-05-00	78043RTT	0	0	0	0	0	13,950,000	13,950,000
Miscellaneous/Drainage (56/00)	55-05-00	78043RTT	0	0	0	0	0	400,000	400,000
Dirt Roads/Surface Treatment (62/00)	55-05-00	78048RTT	0	0	0	0	0	1,000,000	1,000,000
Municipal Street Aid (71/00)	55-05-00	89034RTT	0	0	0	0	0	3,000,000	3,000,000
Reserve Account	55-05-00	90044RTT	0	0	0	0	0	5,350,000	5,350,000
Subtotal			\$0	\$0	\$0	\$0	\$0	\$150,850,000	\$150,850,000
AGRICULTURE									
Large Capacity Scale Test Truck	65-01-01	93012RGE	\$0	\$0	\$0	\$0	\$132,500	\$0	\$132,500
Horse Arena - Harrington Fair Grounds	65-01-01	93013RGE	0	0	0	0	119,600	0	119,600
Subtotal			\$0	\$0	\$0	\$0	\$252,100	\$0	\$252,100
FIRE									
Northern Fire Training Center	75-02-01	92016R8C	\$50,000	\$0	\$0	\$0	\$	0	\$50,000
Hydraulic Rescue Tools	75-02-01	92017RGE	0	0	0	0	30,000	0	30,000
Subtotal			\$50,000	\$0	\$0	\$0	\$30,000	\$0	\$80,000
10-Year Bonds									

\*10-Year Bonds

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## FISCAL YEAR 1993 CAPITAL IMPROVEMENTS PROJECT SCHEDULE

AGENCY/PROJECT	BUDGET UNIT	OPRS NO.	BOND AUTHOR- IZATIONS	REVERSION & REPRO- GRAMING	STRIPPER WELL	FIRST STATE IMPROVEMENT	GENERAL FUNDS	TRANSPORTATION TRUST FUNDS	TOTAL
DELAWARE NATIONAL GUARD									
Minor Capital Improvements & Equipment	76-01-01	910518RM	\$243,300 *	\$0	\$0	\$0	\$0	\$0	\$243,300
Subtotal			\$243,300						\$243,300
UNIVERSITY OF DELAWARE									
Chem., Biochem., Marine Sci. Bldg.	90-01-01	900548BC	\$5,000,000	\$0	\$0	\$0	\$0	\$0	\$5,000,000
Sports/Convocation Center	90-01-01	900558BC	2,000,000	0	0	0	0	0	2,000,000
Pesticide Storage Fac.-Georgetown Research Ctr.	90-01-01	920168BC	35,000	0	0	0	0	0	35,000
Subtotal			\$7,035,000	\$0	\$0	\$0	\$0	\$0	\$7,035,000
DELAWARE STATE COLLEGE									
Minor Capital Improvements & Equipment	90-03-01	800748RM	\$900,300 *	\$0	\$0	\$0	\$0	\$0	\$900,300
Science Center Annex	90-03-01	910548BC	2,250,000	0	0	0	0	0	2,250,000
Subtotal			\$3,150,300	\$0	\$0	\$0	\$0	\$0	\$3,150,300
DELAWARE TECHNICAL & COMMUNITY COLLEGE									
Education & Training Bldg.-Stanton	90-04-05	910578BC	\$1,912,000	\$0	\$0	\$0	\$0	\$0	\$1,912,000
MCI & Equipment-Southern	90-04-02	920208RM	200,000 *	0	0	0	49,700	0	249,700
MCI & Equipment-Wilmington/Stanton	90-04-04	920198RM	382,000 *	0	0	0	100,000	0	482,000
MCI & Equipment-Terry	90-04-06	920218RM	240,000 *	0	0	0	49,200	0	289,200
Industrial Training Facility-Terry	90-04-06	930148BP	200,000	0	0	0	0	0	200,000
Land Acquisition-Rt 1B & 113-Southern	90-04-02	930158GL	0	0	0	0	100,000	0	100,000
Land Acquisition-Wilmington Campus Parking	90-04-04	930168GL	0	0	0	0	400,000	0	400,000
Subtotal			\$2,934,000	\$0	\$0	\$0	\$698,900	\$0	\$3,632,900

\*10-Year Bonds

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## FISCAL YEAR 1993 CAPITAL IMPROVEMENTS PROJECT SCHEDULE

AGENCY/PROJECT	BUDGET UNIT	DTMS NO.	BOND AUTHOR- & REPRO- GRAMMING	STRIPPER WELL	FIRST STATE IMPROVEMENT	GENERAL FUNDS	TRANSPORTATION TRUST FUNDS	TOTAL
STATE BOARD OF EDUCATION								
Minor Capital Improvements & Equipment	95-01-02	78050RBM	\$4,260,100 "	\$0	\$0	\$0	\$0	\$4,260,100
Annual (Bldg.) Maintenance Program	95-01-02	78051RBM	1,046,800 "	0	0	0	0	1,046,800
Kent Vo-Tech Conversion/Boof Construction	95-39-00	91069RBC	3,737,300	0	0	0	0	3,737,300
Sussex Vo-Tech Conversion Construction	95-40-00	91070RBC	2,071,600	0	0	0	0	2,071,600
Christina, Renovate Kirk Middle	95-33-00	92022RBC	1,274,000	0	0	0	0	1,274,000
Christina, Renov./Convert Shue/Med11 to Middle	95-33-00	92022RBC	438,700	0	0	0	0	438,700
Christina, Renov./Convert Cobbs/Gauger to Middle	95-33-00	92022RBC	940,700	0	0	0	0	940,700
Milford Renov. Middle/Lakeview Elem.	95-18-00	92023RBC	2,194,000	191,400	0	0	0	2,385,400
		92023RBC						
		92023RBC						
Milford, Repl. HVAC, Banneker	95-18-00	92023RBC	531,800	0	0	0	0	531,800
Architectural Barrier Removal	95-01-02	91074RBM	160,000 "	0	0	0	0	160,000
Woodbridge, Add/Renov. Jr. & Sr. High	95-35-00	93017RBC	1,860,000	0	0	0	0	1,860,000
Smyrna, Add/Renov./Repl. Clayton Elem.	95-24-00	93018RBC	2,085,000	0	0	0	0	2,085,000
Caesar Rodney-Intensive Learning Center	95-10-00	93019RBC	701,600	0	0	0	0	701,600
Woodbridge, Renov./Add 6 Rooms-Woodbridge Elem.	95-35-00	93020RBC	1,055,000	0	0	0	0	1,055,000
Smyrna, Renov./Add. Smyrna Elementary	95-24-00	93021RBC	1,070,000	0	0	0	0	1,070,000
Smyrna, Renov./Add to North Smyrna Elem.	95-24-00	93022RBC	983,100	0	0	0	0	983,100
Cape Henlopen, Add 6 Rooms, Shields Elem.	95-17-00	93023RBC	298,100	0	0	0	0	298,100
Smyrna, Convert Kindergarten to Central Offices	95-24-00	93024RBC	150,800	0	0	0	0	150,800
Red Clay Fire Reconstruction	95-01-02	93025RBC	1,400,000	0	0	0	0	1,400,000
Indian River, Long Neck Elementary School	95-36-00	93026RBC	340,600	0	0	1,314,400	0	1,655,000
		93026RBC						
Indian River, Georgetown Elementary School	95-36-00	93027RBC	0	0	0	622,300	0	622,300
Indian River, Selbyville Middle School	95-36-00	93028RBC	0	0	0	2,097,700	0	2,097,700
Appoquinimink, Renovate/Add-Johnsland Elem.	95-29-00	93029RBC	837,000	0	0	0	0	837,000
MCCo. Vo-Tech, Howard Career Center Entrance	95-38-00	93030RBR	390,000	0	0	0	0	390,000
MCCo. Vo-Tech, Wilmington Skills Center	95-38-00	93031RBR	125,000 "	0	0	0	0	125,000
Brandywine Districtwide Modernization Study	95-31-00	93032RBP	360,000 "	0	0	0	0	360,000
Red Clay, Kindergarten Center-Warner Elementary	95-32-00	93033RBC	180,000	0	0	0	0	180,000
Subtotal			\$28,491,200	\$191,400	\$0	\$4,034,400	\$0	\$32,717,000
GRAND TOTAL:								
			\$63,555,900 "	\$2,396,200	\$500,000	\$8,892,100	\$150,850,000	\$76,305,000

\*10-Year Bonds

\*\*Of the \$63,555,900, \$62,075,000 is new tax-supported obligations as reflected on the appended Debt Limit Statement; the remaining \$1,480,900 is from deauthorization of State Guaranteed Bonds as reflected in Section 1 of this Act.

SUPPLEMENTAL LIST OF TRANSPORTATION PROJECTS  
Fiscal Year 1993

I. Corridor/Non-Corridor (66/00)

SR896N of Summit BR to SR4	\$ 105,000
SR273, Newark to New Castle	4,613,000
SR141, Price's Corner to US202	1,500,000
Newark Area Improvement	660,000
SR 1, S. of Dover to Tybouts Corner	36,947,000
Valley Road, Henderson to SR 41	8,500,000
SR1, US13 to PA Line	3,603,000
Metroform Area	550,000
Saulsbury/Denny's Rd/Scarborough Rd	1,780,000
Sussex Corridor Improvements	2,732,000
US 113A, SR10 To US 13	1,575,000
	<u>\$62,565,000</u>

II. Public Transit Improvements (73/00)

Rail Improvements	\$13,100,000
DART Improvements	3,433,000
DAST Improvements	905,000
Commuter Services Improvements	1,305,000
Aeronautic Improvements	1,330,000
	<u>\$20,073,000</u>

III. Rehabilitation/Reconstruction Program (64/00)

MAINT NO.	ROAD NO./NAME	FROM	TO
N 11	Del 2	Rd. 366 (Del 4)	Maryland Line
N 24	N. Market St.	18th Street	Rd. 502 Lea Blvd.
N 32	US 40	Rd. 356 (Del 72)	Maryland Line
N 34	US 13	N. Approach/St Georges Brdg.	Rd. 5 (Del 7)
N 48	Salem Church Rd.	Rd. 32 EB (US 40)	0.38 S. of Rd. 385 Reybold Rd.
N 48	Salem Church Rd.	0.38 N. of Rd. 385	Rd. 336 Old Balt. Pike
N 209	Grubb Rd.	Rd. 17 Naamans Rd.	Sconset Rd.
N 313	New London Rd. (Del 896)	Rd. 309 Cleveland Ave.	Maryland Line
N 359	Terminal Ave. (Del 9-A)	Rd. 19 New Castle Ave.	END
N 1	US 13	Rd. 438 (Del 299)	Hearth Restaurant
K 2	US 13	N. Ent. Dover Mall	Scarborough Rd.
K 5	US 13	Rd. 36 (Del 14)	Rd. 34 (Del 12)
K 15	Del 9	Rd. 66 Whiteoak Rd.	Rd. 334
N 39	US 301	Shallcross Chevrolet	Rd. 15 (Del 896)
K 53	Del 10	Willow Grove	Rd. 228-A, W. of R&R Crossing
K 66	Whiteoak Rd.	Rd. 2 (US 13)	E. Dover City Lts.
S 5	Rd. 5	Rd. 4 SB (US 13)	Rd. 4 SB (US 13)
S 13	Rd. 13 (US 13-A)	Rd. 501	Rd. 64
S 26	Del 26	Assawoman Canal	Rd. 50 (Del 1)
S 28	US 9	Rd. 20 (Del 20) @ Hard- scrabble Rd.	Rd. 113 SB (US 113)
S 30	Rd. 30	Rd. 555	Rd. 18 (Del 18)
S 212	Rd. 212	Rd. 16 (Del 16)	Rd. 230 (Del 30)
S 331	Rd. 331	Rd. 334	Rd. 24 EB
S 326	Rd. 326	Rd. 24 EB	Rd. 24 WB

TOTAL      \$10,112,000

## IV. Paving and Rehabilitation (100% State Funded) (64/00)

CO.	ROAD NO./NAME	FROM	TO
N	Rd. 2-A	Rd. 2 Delaware City Rd.	Dead-End
N	Rd. 8 Pleasant Valley Rd.	Rd. 32 (US 40)	Rd. 26 Old Balt. Pike
N	Rd. 9 12th Street	R & R Underpass	Rd. 501 Hay Rd.
N	Rd. 17 Naamans Rd.	Valley Rd.	Merrybrook Rd.
N	Rd. 24 Philadelphia Pike	Rd. 207 Darley Rd.	Rd. 17 Naaman's Rd.
N	Rd. 29 Walnut Street	0.06 S. of Bridge Approach	R & R Bridge
N	Rd. 48 Porter Rd.	Rd. 356 Wrangle Hill Rd.	R & R Crossing
N	Rd. 48 Salem Church Rd.	0.38 S of Rd. 385 (Rybid Rd)	0.38 N of Reybold Rd.
N	Rd. 50 (US 13)		
N	N.E. Blvd.	Rd. 497 4th Street	Christina River
N	Rd. 209 Grubb Rd.	End Divided	Rd. 24 Phila. Pike
N	Rd. 212 Silverside Rd.	Rd. 23 Marsh Rd.	Stoney Run Drive
N	Rd. 217 Broom Street	Rd. 504 18th Street	Rd. 4 Concord Ave.
N	Rd. 222 Creek Rd.	Rd. 224 Ramsey Rd.	Rd. 221 Beaver Valley Rd.
N	Rd. 225 Thompson Br. Rd.	Rd. 223 Woodland Rd.	Rd. 221 Beaver Valley Rd.
N	Rd. 231 Guyencourt Rd.	Rd. 225 Thompson's Bdrge Rd.	Rd. 232 Rockland Rd.
N	Rd. 232 Rockland Rd.	Rd. 234 Twadell Mill Rd.	Rd. 221 Beaver Valley Rd.
N	Rd. 237 Lancaster Pike	Rd. 272 Centerville Rd.	Rd. 282 Hercules Rd.
N	Rd. 239 Pyles Ford Rd.	Rd. 240 Owls Nest Rd.	Rd. 243 Old Kennett Pike
N	Rd. 262 Healey Rd.	Rd. 242 Dean Rd.	Rd. 269 Hillside Mill
N	Rd. 266 Brecks Lane	Rd. 225 Montchannin Rd.	Bridge
N	Rd. 267 New Bridge Rd.	Bridge	Begin Divided
N	Rd. 271 NB&SB Center Rd.	Rd. 11 Kirkwood Hwy.	Rd. 237 Lancaster Pike
N	Rd. 276 McKennans Church	Rd. 282 Mill Creek Rd.	Del. 41
N	Rd. 282 Mill Creek Rd.	Rd. 283 Mendinghall Mill Rd.	Del. 41
N	Rd. 283 Mermaid Stny Batter	Rd. 31 Limestone Rd.	1000 Ft. beyond Limestone Rd.
N	Rd. 287 Ashland Clntr Sch Rd	Rd. 261 Mt. Cuba Rd.	Rd. 248 Center Mill Rd.
N	Rd. 294 North Star Rd.	Rd. 293 Bridleshire Rd.	Rd. 288 Hendrsn Rd.
N	Rd. 307-A Old Union Rd.	Rd. 307 Union Rd.	Rd. 324 Ebenezer Rd.
N	Rd. 313 New London Rd.	Rd. 11 Main Street	Rd. 309 Cleveind Ave.
N	Rd. 330-A Albertson Blvd.	Rd. 11 Kirkwood Hwy.	Rd. 330 Grn Bank Rd.
N	Rd. 333 Centerville Rd.	Rd. 12 Old Capital Trail	Rd. 334 Boxwood Rd.
N	Rd. 344 School Bell Rd.	Rd. 32 (US 40)	0.90 N. of Rd. 32 (US 40)
N	Rd. 355 Harmony Rd. Rd.	18 (Del 273)	Rd. 358 Stntn-Olgtwn
N	Rd. 356 (Del 72)		
N	Wrangle Hill	R & R Crossing	0.20 N. of Rd. 336
N	Rd. 385 Reybold Rd.	Rd. 48 Salem Church Rd.	Rd. 356 Wrangle Hill
N	Rd. 387 (Del 896)	End Divided (Ent. HoJo Mtl)	Begin Divided
N	Rd. 400 Porter Rd. (patching)	Rd. 387 (SR896)	Rd. 356 (SR72)
N	Rd. 497 4th Street	Rd. 498 Broom Street	Rd. 50 Church Street
N	Rd. 504 18th Street	Rd. 217 Broom Street	Rd. 49 Augustine Cut-Off
N	Rd. 505 Jackson Street	Rd. 237 Lancaster Pike	2nd Street
N	Rd. 1 NB (US 13)	KTLN	1.19 N. of KTLN Rd. 67 (Del 1)
K	Rd. 5 SB (US13)	Rd. 239	Rd. 57 (SR12)
K	Rd. 14 (Del 42)		
	Summit Bdrge	Intersection	Rd. 15 (Del 896)
N	Rd. 30 Paddock Rd.	Rd. 488 Brick Store Ldg. Rd.	Rd. 45 Walker School
K	Rd. 31	Rd. 5 (US 13)	Rd. 33 (Del 15)
K	Rd. 42	Rd. 91	Rd. 2 (US 13)
N	Rd. 47 Vandyke Grnsprng Rd.	Rd. 473 Lloyd Guessford Rd.	Rd. 474 Vandyke Mdline Rd.
N	Rd. 58 (US 301)	Rd. 443 Middletown-Warwick	N. of Rd. 443
K	Rd. 59	MDLN	Rd. 60 (Del 14)
K	Rd. 81	Rd. 60 (Del 14)	Rd. 5 (US 13)
K	Rd. 101	Rd. 100	Rd. 104
K	Rd. 116	Rd. 429 Armstrong Corner Rd.	Rd. 384
K	Rd. 126	Rd. 130	Rd. 471 Blackbird Frst
K	Rd. 155	Rd. 101	Rd. 104
K	Rd. 168	Rd. 170	Rd. 166

CO.	ROAD NO./NAME	FROM	TO
K	Rd. 193	Rd. 190	Rd. 4 (US 13-A)
K	Rd. 196	Rd. 73	Rd. 51 (Del 8)
K	Rd. 240	Rd. 57 (Del 12)	Rd. 241
K	Rd. 341	Sandpit	Rd. 66
K	Rd. 360	Rd. 361	Rd. 29
K	Rd. 366	Rd. 367	Rd. 27 (US 113-A)
K	Rd. 384	Rd. 613	Rd. 116
K	Rd. 428 Shallcross Lake Rd.	Rd. 429 Armstrong Corner Rd.	Rd. 15 Boyds Corner
N	Rd. 455 Blackbird Ldg. Rd.	Blackbird Landing	Rd. 456 Union Church
N	Rd. 455 Blackbird Ldg. Rd.	Rd. 51	Blackbird Landing
N	Rd. 456 Union Church Rd.	Rd. 1 (US 13)	Rd. 455 Blackbird Ldg
N	Rd. 471 Blackbird Frst Rd.	KTLN	Rd. 40 Clayton-Delaney Rd.
K	Rd. 9	Rd. 11 (Del 9)	Rd. 322
K	Rd. 93	MDLN	MDLN
K	Rd. 96	Rd. 93	Rd. 95
K	Rd. 100	Rd. 101	Rd. 164
K	Rd. 103	Rd. 73	Rd. 217
K	Rd. 103	Rd. 182	Rd. 47 (Del 11)
K	Rd. 103	Rd. 219	Rd. 50 (Del 8)
K	Rd. 117	SCLN	Rd. 6 (US 13)
K	Rd. 120	Rd. 8 (US 113)	Rd. 422
K	Rd. 142	Rd. 140	Rd. 94
K	Rd. 182	Rd. 50 (Del 8)	Rd. 103
K	Rd. 207	MDLN	Rd. 212
K	Rd. 214	Rd. 53 (Del 10)	Rd. 207
K	Rd. 222	Rd. 220	Rd. 224
K	Rd. 228	Rd. 228-A	Rd. 52
K	Rd. 230	Rd. 53	Rd. 52
K	Rd. 239	Rd. 108	Rd. 244
K	Rd. 239	Rd. 240	Rd. 5 (US 13)
K	Rd. 245	Rd. 57 (Del 12)	Rd. 243
K	Rd. 246	Rd. 247	Rd. 53 (Del 10)
K	Rd. 274	Rd. 57 (Del 12)	Rd. 271
K	Rd. 284	Rd. 78	Rd. 285
K	Rd. 291	MDLN	Rd. 111
K	Rd. 292	Rd. 111	Rd. 59
K	Rd. 293	Rd. 111	Rd. 59
K	Rd. 309	SCLN	Rd. 61
K	Rd. 319	Rd. 9 (Del 6)	Rd. 82
K	Rd. 372	Rd. 18	Rd. 8 (US 113)
K	Rd. 390	Rd. 35	Rd. 119
K	Rd. 402	Rd. 119	Rd. 8 (US 113)
K	Rd. 407	Rd. 388 (Del 15)	Rd. 8 (US 113)
K	Rd. 432	Rd. 433	Rd. 429
N	Rd. 433 Bethel Church Rd.	MDLN	Rd. 435 Choptank Rd.
K	Rd. 433	Rd. 434	Rd. 6 (US 13)
N	Rd. 435 Choptank Rd.	Rd. 437 Bunker Hill Rd.	Rd. 433 Bethel Church Rd.
N	Rd. 447 St Anns Church Rd.	Rd. 10 Levels Rd.	Rd. 14 (Del 896) Summit Bldg. Rd.
N	Rd. 470 Massey Church Rd.	Rd. 47 Vandyke Greenspring Rd	Rd. 469 Black Diamond
N	Rd. 471 Blackbird Frst Rd.	Rd. 40 Clayton-Delaney Rd.	Rd. 47 VanDyke Greenspring
N	Rd. 488 Brick Store Ldg Rd.	Rd. 485 Smyrna Landing Rd.	END
N	Rd. 503 Tush Rd.	END	Rd. 488 Brick Store
S	Rd. 13	Rd. 485	Rd. 485-A
S	Rd. 13	Rd. 485-A	Rd. 490
S	Rd. 14	Rd. 209-A	KTLN
S	Rd. 18 (Del 18)	Rd. 519	Rd. 28 (US 9)
S	Rd. 18	Rd. 269-A	Rd. 263
S	Rd. 20 (Del 20)	Rd. 2 (US 13)	Rd. 483-A

CO.	RCAO NO./NAME	FROM	TO
S	Rd. 36 (Del 36)	Rd. 113 (US 113)	Rd. 213
S	Rd. 40	Rd. 4 (US 13)	Rd. 591
S	Rd. 197	Rd. 22	Rd. 250
S	Rd. 266	Rd. 14 (Del 1)	Rd. 266-8
S	Rd. 266-8	Rd. 14 (Del 1)	Rd. 266
S	Rd. 326	Rd. 82	Rd. 20 (Del 20)
S	Rd. 370	Rd. 369	Rd. 370-A
S	Rd. 376	Rd. 392	Rd. 54
S	Rd. 376	Rd. 400	Rd. 380
S	Rd. 536	Rd. 78	Rd. 542
S	Rd. 546	Rd. 18 (Del 18)	Rd. 561
S	Rd. 619	Rd. 36 (Del 36)	Rd. 618
S	Rd. 14-C	END	Rd. 14 (Del 1)
S	Rd. 31	Rd. 572	Rd. 573
S	Rd. 38	Rd. 222	Rd. 199
S	Rd. 42	Rd. 609	Rd. 604
S	Rd. 52-8	Rd. 52 (Del 17)	Rd. 52 (Del 17)
S	Rd. 78	Rd. 536	Rd. 80
S	Rd. 92	Rd. 375	Rd. 54
S	Rd. 206	Rd. 209	Rd. 208
S	Rd. 213	Rd. 625	Rd. 211
S	Rd. 224	Rd. 594	Rd. 42
S	Rd. 232	Rd. 232-8	Rd. 226
S	Rd. 241	Rd. 565	Rd. 240-A
S	Rd. 254	Rd. 18 (US 9)	Rd. 248 (Del 30)
S	Rd. 255	Rd. 248 (Del 30)	Rd. 22 (Del 5)
S	Rd. 262	Rd. 18 (US 9)	Rd. 290
S	Rd. 269	Rd. 12	Rd. 276
S	Rd. 273-A	END	Rd. 14 (Del 1)
S	Rd. 277	Rd. 287	Rd. 275
S	Rd. 287	Rd. 288	Rd. 277
S	Rd. 288	Rd. 280-8	Rd. 287
S	Rd. 292	Rd. 47	Rd. 22 (Del 5)
S	Rd. 298	Rd. 299	Rd. 22 (Del 5)
S	Rd. 309	Rd. 24 (Del 24)	Rd. 308
S	Rd. 312	Rd. 297 (Del 5)	Rd. 297-A
S	Rd. 313	Rd. 313-A	Rd. 24 (Del 24)
S	Rd. 318	Rd. 326	Rd. 86
S	Rd. 324	Rd. 321	Rd. 318
S	Rd. 325	Rd. 113 (US 113)	Rd. 326
S	Rd. 329	Rd. 113 (US 113)	Rd. 326
S	Rd. 329	Rd. 28 (US 9)	Rd. 431
S	Rd. 336	Rd. 334 (Del 20)	Rd. 335
S	Rd. 342	Rd. 342-A	END
S	Rd. 378	Rd. 379	Rd. 60 (Del 54)
S	Rd. 381-A	Rd. 382	Rd. 384
S	Rd. 384	Rd. 383	Rd. 381
S	Rd. 387	Rd. 58 (Del 54)	Rd. 392
S	Rd. 397	MDLN	Rd. 58 (Del 54)
S	Rd. 402-A	Rd. 402	Rd. 405
S	Rd. 409	Rd. 408	Rd. 410
S	Rd. 410	Rd. 328	Rd. 433
S	Rd. 413-8	Rd. 26 (Del 26)	Rd. 24 (Del 24)
S	Rd. 415-8	Rd. 26 (Del 26)	Rd. 415-C
S	Rd. 426	Rd. 424	Rd. 26 (Del 26)
S	Rd. 435-A	Rd. 472	Rd. 20 (Del 20)
S	Rd. 451	Rd. 463	Rd. 464
S	Rd. 451-A	Rd. 64	Rd. 451
S	Rd. 458	Rd. 451	Rd. 72
S	Rd. 462	Rd. 72	Rd. 461
S	Rd. 466	Rd. 475	Rd. 446
S	Rd. 467	Rd. 28 (US 9)	Rd. 467-8
S	Rd. 472	Rd. 431	Rd. 432
S	Rd. 488	Rd. 13	Rd. 479
S	Rd. 489	Rd. 468	Rd. 480
S	Rd. 494	Rd. 497	Rd. 24 (Del 24)
S	Rd. 498	Rd. 498-A	Rd. 494
S	Rd. 501	Rd. 503-A	Rd. 511
S	Rd. 510	Rd. 509	Rd. 24 (Del 24)
S	Rd. 513-B	Rd. 513	Rd. 76 (Del 54)

<u>CO.</u>	<u>ROAD NO./NAME</u>	<u>FROM</u>	<u>TO</u>
S	Rd. 514	Rd. 509	Rd. 24 (Del 24)
S	Rd. 537	Rd. 79	Rd. 538
S	Rd. 546	Rd. 18 (Del 18)	Rd. 561
S	Rd. 549	Rd. 551	Rd. 553
S	Rd. 549-8	MDLN	Rd. 549
S	Rd. 573	Rd. 31	Rd. 574
S	Rd. 580	Rd. 404 (Del 404)	Rd. 578
S	Rd. 581	Rd. 34	Rd. 16 (Del 16)
S	Rd. 602	Rd. 611	Rd. 16 (Del 16)
S	Rd. 612	Rd. 4 (US 13)	KTLN
S	Rd. 620	Rd. 36 (Del 36)	Rd. 42
S	Rd. 631	Rd. 16 (Del 16)	Rd. 36 (Del 36)

SUBTOTAL \$13,995,000

Statewide Purchase of Hot-Mix Material \$330,000  
 Statewide Concrete Patching \$375,000

TOTAL \$14,700,000



## V. Suburban Streets Program

Ardencroft - Willow Way from Shady Lane to Veale Road	93-234	39,000
Ashbourne Hills - Melissa Circle and Brenda Circle	93-319	13,000
Autumn Woods-Autumn Wood Dr. Spring Brook Lane, Winter Br. Ct.	93-096	6,650
Belyvidere - Cunard St. from Klamensi Rd. to Newport Gap Pike	93-052	41,600
Bethany Beach - traffic	93-455	26,150
Bon Ayre - Clover Dr. from new hot mix at house #210 to Lantern Ct.	93-264	24,700
Brandywood - Marhill Dr. from Brandywood Dr. to house #2601	91-144	32,500
Breezewood II - Eastwind Court from circle to circle	92-042	31,200
Breezewood II - Timber Dr. from Gender Rd. to Shady Dr. East	92-044	20,800
Brookmeade #1 - Redstart Dr. from Turnstone Dr. to circle	93-357	35,100
Brookmeade #3 - Tanager Drive from Skylark Road to Skylark Road	93-159	57,200
Brookmont Farms - East Plover Drive and West Plover Drive	93-296	79,300
Brookmont Farms - Egret Court from Kemper Drive to end	93-294	61,100
Brookmont Farms - Plover Circle from West Plover Drive to end	93-295	41,600
Brookside Park - Kensington Lane from Harrows Rd to SR 2 (SR 72)	93-292	123,500
Brookside Park - Marlin Dr. from Kensington Lane to N. Kingston Rd.	93-285	53,300
Brookside Park - Meadow Lane from Martindale Dr. to Brookside Blvd.	93-284	41,600
Bryan Park - Maple Dr. and North Drive	93-008	31,200
Carrcroft - Hillside Boulevard from Churchill Dr. to Baynard Blvd.	93-420	16,900
Carriage Lane off Old Mill Road from Pleasant Drive to deadend	93-409	26,600
Castle Hills - Arden Ave. from Roxeter Ave. to Midfield Ave.	93-260	2,000
Castle Hills - Maynard Dr. from Midfield Ave. to Deboran Rd.	93-261	2,000
Chaplecroft (Camden) - Carter Lane from Cambridge Rd. to Chapel Dr.	93-376	17,600
Chaplecroft (Camden) Cambridge Rd. from Chapel Rd. to dead end	93-377	39,650
Chaplecroft (Camden) Chelet Court from Cambridge Rd. to dead end	93-378	7,800
Chelsea Estates - Louise Road from Morris Road to circle	92-332	111,800
Chestnut Hill Estates - Johnson Rd. from Augusta Dr. - 100'	93-298	5,700
Cheswold - School Lane from Road 156 to end	93-317	3,800
Collins Park - Blue Hen Dr. from Single Ave. to South Place	93-288	2,000
Collins Park - Keiser Place from Single Avenue to Blue Hen Road	93-289	2,000
Collins Park - McGinn Place from Deisser Place to May Avenue	93-290	2,000
Collins Park - South Place from May Avenue to Riverview Drive	93-291	2,000
Cranston Heights - Lincoln Ave. from Clayton Ave. to end	93-354	32,500
Crofton - Rivers End -Augustine Place from Providence Dr. to circle	93-359	22,100
Dartmouth Woods - Intersection of Dartmouth Woods Rd. and Ross Rd.	93-030	28,600
Deacons Walk - Harkness Court from Vansant Court to circle	93-252	44,200
Deacons Walk - Vansant Court from Ware Road to circle	93-253	74,100
Deacons Walk - Morral Court from Ware Road to circle	93-254	46,800
DeLaire - Sunset Drive from Philadelphia Pike to end	92-347	18,200
Dover - Bank Lane from Governor's Avenue to the Green	93-312	11,400
Dover - Lakewood from Walker Road to William Street	93-313	53,300
Dover - North Street from Governors' Avenue to Queen Street	93-315	17,100
Dover - North Street from Queen Street to Slaughter Street	93-316	10,700
Dover - North Street from State Street to Governor's Avenue	93-314	18,200
Edgemoor Terrace - Stockwell Road from Van Dyck Drive to Beekman Rd	93-150	24,700
Elmwood - Robert Oakes Dr. from Chancellor Dr. Regal Blvd.	93-230	59,800
Fairthorne - Ashley Court from Fairthorne Avenue to end	93-183	15,600
Fairthorne - Gale Lane from Fairthorne Avenue to end	93-184	15,600
Fouk Woods - Blackwood Road from Fouk Woods Road to Deepwood Dr.	93-026	85,800
Frederica - Darby Street from Franklin Street to Jackson Street	93-203	7,500
Gateway Farms - Gateway Rd. from Waterford Dr. to new hot mix	93-250	11,700
Glasgow Pines - Lockhaven Court from Thornhill Drive to end	93-074	23,400
Glendale - Andrea Rd. from Cassandra Rd. to East Clairmont Dr.	93-265	23,400
Glendale - Croyden Road from Carlo Road to Clairmont Drive	93-220	59,800
Glendale - Cynthia Road from Cassandra Road to Clairmont Drive	93-221	23,400
Glendale - Darwin Rd. from West Clairmont Rd. to Carlo Rd.	93-266	15,600
Glendale - East Clairmont Dr. from Andrea Dr. to end	93-267	22,100
Glendale - West Clairmont Dr. from Croyden Rd. to Andrea Rd.	93-268	14,300
Graylyn Crest South - Pan Drive from Wilson Road to Crestover Road	93-161	42,900
Heritage Farms - Carl Drive from Longfellow Drive to Grendon Drive	93-274	14,300
Hickory Hills - Cabot Dr. from Hemingway Dr. to Erickson Dr.	93-247	44,200
Hickory Woods - Tammier Dr. from Dorothy Dr. to end	93-300	44,200
Highland West - Cavendish Court from Baltimore Lane to circle	93-330	29,900
Highpoint - Langham Road from Washington St. Extension to Weldon Rd	93-144	27,300
Hockessin Hunt - East Bridle Path from House 105 to House 109	93-127	7,800
Hockessin Hunt - Ice Pond Trail from East Bridle Path to circle	93-128	7,200
Holiday Hills - Carlton Lane from Coventry Dr. to Westminster Dr.	93-391	8,000
Holiday Hills - Coventry Dr. from Grubb Rd. to Westminster Dr.	93-392	48,100
Hollyoak - Walnut Street from Penn Avenue to end of State Maintenance	93-410	7,200

Jamestowne - Christie Court from Jamestowne Dr. to circle	93-364	5,200
Jamestowne - Ritchie Dr and Ritchie Court	93-365	23,400
Keen-Wik - Cedar Road - 250' east of Bayberry Road to Oak Road	92-073	41,600
Kent Acres - Edgewood Road from Woodbrook Drive to McDaniel Drive	93-179	26,600
Kent Acres - McDaniel Drive from Road 192 (Webbs Lane) to deadend	93-180	24,200
Kent Acres - Saxton Road from Edgewood Road to deadend	93-181	52,700
Kent Acres - Steele Road from McDaniel Drive to Saxton Road	93-182	19,900
Keystone - E. Keystone, W. Keystone, Clearfield St., Keystone Ave.	93-380	46,800
Klamensl Road - drainage from Cunard Street to Lloyd Street	93-111	23,400
Kimberton-Albion Dr., Elliot St., Fleming St., Gilbert Ct.	93-126	55,900
Kirkwood Gardens - Hartley Place from Owen Dr. to East Eric Dr.	93-251	28,600
Klair Estates - Shady Dr. from Hendry Ave. to Verona Dr.	93-236	37,700
Lakeside Manor - Lakeside Drive from Lewes Drive to Lewes Drive	93-225	3,500
Lazy Lake - all streets	93-350	19,500
Leipsic - Front Street from Lombard Street to Denny Street (SR 9)	93-235	62,850
Liftwood - Dartmoor Drive from Liftwood to end	93-146	48,100
Limestone Acres Addition - Griffin Dr. from Limestone Rd to #4643	93-428	55,200
Limestone Acres Addition - Muggleton Dr. from Griffin to Griffin	93-429	33,400
Limestone Gardens - Twist Lane from Pickwick Drive to circle	93-022	26,000
Lynalia - First Ave. from Augustine St. to Becker Ave.	93-366	45,500
Magnolia - sidewalk replacement	93-238	49,970
McDaniel Heights - Delaware Ave. from Sharpless Dr. to Orchard Dr.	93-414	16,900
Meadowdale - Meadowdale Dr. opposite Whitehaven Court	93-481	11,700
Meadowood - Rockrose Dr. from Sundew Rd. to Cloverleaf Dr.	93-273	42,900
Merion Court - Merion Court from Merion Road to dead end	93-437	8,500
Milford - NE Eighth Street	93-306	20,000
Milford - SW Front Street bridge replacement	93-305	35,000
Milford - Truitt Avenue from NW Third Street to NW Fifth Street	93-307	20,000
Milltown Rd. from House #1208 to House #1214	93-237	9,100
Millville - Millville Fire Department entrance drainage	93-282	11,000
Naaman's Gardens - Greenleaf Dr. from Forestwood to new hot mix	92-013	85,200
Naaman's Manor - Clearview Avenue from Naaman's Road to end	93-386	18,200
Naaman's Manor - Valley Avenue from Naaman's Road to end	93-460	30,000
Naaman's Road and Darley Road intersection	93-422	22,800
New Castle - Van Dyke Village - New Amstel Ave. from 14th to 11th	93-255	67,600
New London Rd. from Country Club Dr. to Corbit	93-471	19,500
North Bowers Beach - Davison Street from Road 18 to deadend	93-172	29,400
North Shore Drive from Road 535 to Road 535	93-443	83,200
North Star - Meteor Lane from Polaris Drive to Mercury Road	93-140	28,600
Northcrest - Chinchilla Drive from Wrexham Road to Walter Drive	93-322	27,300
Northcrest - Wrexham Road from Chinchilla Drive to Marsh Road	93-324	31,200
Northcrest - Wrexham Road from house #210 to Zebley Road	93-323	71,500
Old Newark Road from Cameron Lane to 200' west	93-297	41,250
Penn Acres - Fithian Rd. from Crippen Dr. to E. Roosevelt Ave.	93-239	37,700
Penn Acres - Morrison Rd. from Fithian Rd. to Finney Dr.	93-240	31,200
Penn Acres - Oregon Avenue from Booth Drive to end	93-241	46,800
Penn Drew Manor - St. James Drive from Dunkin Donuts to St. James	93-086	6,800
Radior Green - Hilldale Court in front of House #122	93-480	13,000
Raintree Village - Jonathan drive from Trefoll Drive to house 321	93-207	28,600
Rivers End (Crofton) Christiana Court from Providence to circle	93-373	35,100
Rivers End (Crofton) Little Mill Lane from Providence to Christiana	93-374	20,800
Rivers End (Crofton) Rivers Rd. from Route 7 to Providence Dr.	93-370	32,500
Rivers End (Crofton) Scott Run Circle from Providence to Providence	93-375	41,600
Riverview Estates - Keeler Court from Ruyter Drive deadend	93-131	19,800
Riverview Estates - Lea Avenue from Ruyter Drive to deadend	93-132	27,300
Riverview Estates - Marcel Avenue from Road 380 to Ruyter Drive	93-133	15,900
Riverview Estates - Sandra Court from Ruyter Drive to deadend	93-135	10,400
Road 130 from Road 129 to Road 126	93-269	81,000
Road 155 from Road 104 to Road 156	93-318	62,750
Road 166 from Road 41 to Road 165	93-046	11,800
Road 19 - Cape Henlopen Drive - from railroad crossing to park ent.	93-019	91,000
Road 237D (School House Road) from Lancaster Pike to Old Lancaster	93-223	18,200
Road 25-Caldwell Corner Rd. from east end of Townsend Cemetery west	93-362	8,500
Road 334 from Road 333 to 1,680' east	93-309	10,000
Road 349 from Rte 26 to Rd 351, Rd 351 from Route 26 to end	93-068	1,145
Road 361 (Lochmeath Way) from Road 24 (US 13) to Road 360	93-206	99,700
Road 41 (SR 300) - Senior Center decel lane	93-331	33,800
Road 485 from new hot mix on Road 486 to Road 470	93-363	70,900
Rogers Manor - Meadow Lane from Adair Ave. to Edgewood Dr.	93-262	2,000
SR 9 - Bayview entrance from 400' south to 400' north	93-115	87,500
Sandwich Court - Sandwich Court from Troo Road to dead end	93-438	7,200
Seaford - Stein Highway off ramp from Stein Hwy. to N. Pine St.	93-083	55,100

Selbyville - Road 113 southbound at Cemetary Road	93-084	6,500
Selbyville - Road 52 (Route 17) in front of Phillip Showell School	93-148	8,500
Sherwood Forest - Stallion Dr. from Brownleaf Rd. to Stature Rd.	93-233	28,600
Smyrna - Spruance City drainage study	93-311	50,000
Stirrup Farms - Canter Circle from Stirrup Run to circle	93-138	9,100
Stirrup Farms - Pacer Court from Stirrup Run to circle	93-139	21,500
Surrey Park - Hackney Circle from Coachman Road to Coachman Road	93-109	50,700
Swanwyck Estates - Small Wood Lane from Landers Lane to circle	93-387	2,000
Taylorstowne (Woodland Trails)-Bach Dr. from Verdi Cir to Verdi Cir.	93-327	22,100
Terry Circle - Terry Circle from Woodcrest Drive to dead end	93-440	9,100
The Highlands - Keswick Court from East Riding Drive to circle	93-427	45,500
Thistleberry Farms - Penn Manor Dr. from new hot mix to Fashion Cir.	93-462	93,000
Timbers - Hydrangea Circle from Pin Oak Drive to circle	93-321	7,800
Timbers - Pin Oak Drive from Boxwood Drive to Bittersweet Drive	93-320	13,000
Todd Estates - Anderson Rd. from Lynch Farm Dr. to Garrett Rd.	92-160	44,200
Todd Estates - Garrett Rd. from Pearson Dr. to Lynch Farm Dr.	92-163	28,600
Todd Estates - Garrett Rd. from Todd Lane to Pearson Dr.	92-162	36,400
Todd Estates - Lynch Farm Dr. from Todd Lane to Pearson Dr.	92-186	28,600
Traffic - opticon transmitter for Leipsic Fire Department	93-280	2,400
Tybrook - Angel Drive from House #2311 to existing hot mix sidewalk	93-057	1,700
Valley Road from Church St. to Maryland line	93-469	65,000
Webster Farms - Marcella Dr. from Homewood Dr. to Webster Dr.	93-416	62,400
Weldin Farms - Lombardy Drive from Simon Road to circle	93-118	27,300
Wellington Hills - Jacqueline Drive from Arthur Drive to Arthur Dr.	93-222	37,700
Westgate Farms - Wallasey Road from Old Bury drive to Westgate Dr.	93-113	41,600
White's Village - White Avenue from Elm Avenue to White Avenue	93-466	5,900
Willow Run - Eton Court from Montgomery Road to circle	93-395	16,900
Willow Run - Oxford Court from Brook Lane to circle	93-394	19,500
Wilmington Manor East - James Place from Stahl Avenue to circle	93-385	6,500
Wilmington Manor - Intersection of Pennsylvania & Harrison Avenues	93-121	70,200
Wilton (Cambridge Gardens)-Saybrooke Way from Carleton Ct to Apple	92-071	7,900
Wilton - Saybrook Way from Appleby Road to Berkley Way	93-170	27,300
Windsor Hills - Rockingham Dr. from Windsor Hills Dr. to Warwick Dr.	92-194	80,600
Woodbrook - Country Club Dr. from Dexter Rd. to Rockland Rd.	93-332	61,100
WynnWoods - Patwynn Rd. from Wynwood Rd. to Paulwynn Rd.	93-344	85,800
Wyming - Harrison St. from Front St. to South Dr.	93-360	22,800
Yeatman's Mill - Delpa Dr. from Yeatman's Mill Rd. to Pa. line	93-388	27,300
Yorktowne - Harris Circle from Penn Manor Drive to House 52	93-192	46,800
Cave Colony - N. Aquarius Way, Mercury Lane, Apollo Lane, Gemini Ln.	93-278	25,000
Centreville - Route 52 sidewalks from Owl's Nest Road to 625' south	93-103	10,000
Delaire - Sunset Drive, Stoney Run Road, Park Lane, Woodsway Road	93-218	25,000
Delaview - Delaview Ave. from Marsh Rd. to Veale Rd.	93-343	53,300
Devonshire - N. Rockfield Dr. from Cheshire Rd. to Shipley Rd.	91-438	44,400
Edgemoor Terrace-Van Dyck Dr. from Beekman Rd. to W. Salisbury Rd.	92-047	24,950
Fairfax - Inglewood Rd. from Murphy Rd. to Fairfax Boulevard	93-415	9,350
Fairfax - Potomac Rd. from Julian Rd. to Fairfax Boulevard	93-270	20,000
Heritage Farms - Grendon Dr. from Milltown Rd. to Drayton Dr.	93-275	2,000
Hickory Hills - Pershing Court from Hemingway Dr. to cul-de-sac	93-248	1,000
Iron Gates - Iron Gates Circle from new hot mix to new hot mix	93-263	1,000
Kent County Aero Park	93-202	73,900
Manley - Nathalie Dr. from Millcreek Rd. to House # 19	93-243	1,000
Manley - Robin Drive from Millcreek Road to Nathalie Drive	93-245	1,000
New Castle - Van Dyke Village - Stuyvesant Ave. from 14th to 11th	93-256	5,800
Newark - SR 896 (S College Ave.) from Delaware Ave. to Main Street	93-212	35,000
Oakwood Hills - Valley Brook Dr. from Oakridge Rd. to end of gutter	93-396	1,000
Pigeon Run - Rawlings Drive from Pigeon Run Dr. to Pigeon Run Dr.	93-219	51,900
Richardson Park - Glenrich Avenue from Elsmere St. to Newport St.	93-105	100
Riverview Estates - Ruyter Drive from Marcel Avenue to deadend	93-134	43,950
Riverview Estates - Taber Court from Ruyter Drive to deadend	93-136	6,115
Road 341 from SW corner of Flowers parcel and Rte 300 to catchbasin	93-404	6,850
Road 363 - Church Road from Timberline Dr. to Panorama Dr.	93-041	30,000
Road 381 - bridge #460 from Road 364-A to Road 58	93-122	20,000
Road 469 from Road 470 to Road 484	93-441	38,000
Road 534 from U.S. 13 to Road 543	93-397	73,750
Road 534 from US 13A to Road 543	93-001	163,650
Road 539 - Sussex Avenue, Seaford, from Road 536 to Road 21	93-005	64,700
Schutte Park from Electric St. to parking lot of park complex	93-168	75,000
Sharpley - Brockton Rd. from Whitby Rd. to Halstead Rd.	93-271	76,200
Smyrna - South Street (Rd. 136) from Road 136 to Smyrna town limit	93-423	25,050
Spruance Cir (Smyrna) - Clements St. from Road 39 to Road 136	93-424	14,950

Talley Hill - Talley Hill Lane and Dansfield Drive	93-077	39,650
The Highlands - South Riding Drive from end to end	93-426	18,500
Treetop Valley - Treetop Lane from Brackeville to circle	93-465	1,000
Twin Oaks-Forrestdale Rd. from Simon Rd. to circle, Woodley Circle	92-476	52,200
Vondaway Drive from White Oak Road to end	93-047	41,600
Webster Farms - Webster Drive from Marsh Road to Jan Drive	93-413	4,775
Webster Farms - Webster Drive from Marsh Road to Jan Drive	93-413	22,100
Wyoming - Front, Third, Broad, Pine, East Railroad Avenue	93-408	46,800

6th Senatorial District - Greenways	93-605	22,700
10th Senatorial District - Greenways	93-607	20,000
1st Representative District - Greenways - Brandywine Park	93-602	20,000
11th Representative District - Northern Greenways	93-608	20,000
12th Representative District - Greenways	93-606	5,000
14th Representative District - Greenways	93-609	50,000
20th Representative District - Millcreek Greenways	93-616	45,000
21st Representative District - Greenways	93-618	10,000
23rd Representative District - Greenways	93-615	21,300
27th Representative District - Greenways	93-604	20,000
32nd Representative District - Greenways	93-617	30,000
City of Dover - Greenways	93-614	25,000
City of Milford - Greenways	93-601	25,000
Greenways - Caulfield Tract - Belevue Boulevard	93-603	10,000
Greenways - Kalmar Nyckle	93-610	10,000
Lewes - Greenways	93-611	25,000
Milford (Mispillion) - Greenways	93-612	25,000
Milton - Governor's Walk Greenways	93-613	25,000
1st Senatorial District	93-801	225,000
2nd Senatorial District	93-802	103,150
3rd Senatorial District	93-803	215,000
5th Senatorial District	93-805	2,150
7th Senatorial District	93-807	90,500
8th Senatorial District	93-808	53,950
9th Senatorial District	93-809	118,800
10th Senatorial District	93-810	84,000
12th Senatorial District	93-812	9,500
13th Senatorial District	93-813	102,100
14th Senatorial District	93-814	91,550
15th Senatorial District	93-815	225,000
18th Senatorial District	93-818	140,250
19th Senatorial District	93-819	107,800
20th Senatorial District	93-820	550
1st Representative District - City of Wilmington	93-701	175,000
1st Representative District - tree planting - Wilm. Garden Center	93-915	30,000
2nd Representative District	93-702	225,000
3rd Representative District	93-703	225,000
4th Rep. Dist. - City of Wilmington - street & sidewalk improv.	93-918	50,000
4th Rep. Dist. - Greenways - Brandywine Creek Erosion Project	93-919	20,000
4th Representative District - City of Wilmington - tree planting	93-921	15,000
4th Representative District - miscellaneous street maintenance	93-923	24,150
5th Representative District - City of Wilmington	93-705	225,000
7th Representative District	93-707	2,125
8th Representative District	93-708	225,000
9th Representative District	93-709	20,500
10th Representative District	93-710	60,300
13th Representative District	93-713	96,300
15th Representative District	93-715	64,500
16th Representative District	93-716	209,000
17th Representative District	93-717	30,900
18th Representative District	93-718	90,100
19th Representative District	93-719	223,000
20th Representative District	93-720	46,100
24th Representative District	93-724	6,500
25th Representative District	93-725	16,950
26th Representative District	93-726	7,900
27th Representative District	93-727	84,800
28th Representative District	93-728	72,300
29th Representative District	93-729	25,000
30th Representative District	93-730	192,000
31st Representative District	93-731	89,500

32nd Representative District	93-732	133,300
33rd Representative District	93-733	19,865
35th Representative District	93-735	190,000
36th Representative District	93-736	145,250
37th Representative District	93-737	134,000
38th Representative District	93-738	97,855
39th Representative District	93-739	21,300
40th Representative District	93-740	225,000
Bellefonte - Maple Avenue	93-988	22,100
Broad Acres - United Avenue from state maintained to end (350')	93-960	10,400
Cambridge Apartments - speed humps	93-983	4,800
Chapel Hill - St Regis - speed humps	93-978	3,000
Cherokee Woods - speed humps	93-924	2,000
City of New Castle - various streets	93-903	45,500
City of Wilmington - 14th St. from Walnut to French	93-950	5,450
City of Wilmington - 24th St. from Lamotte to Market	93-955	7,450
City of Wilmington - 25th St. from Tatnall to Market	93-956	7,050
City of Wilmington - 34th St. from West to Market	93-959	16,250
City of Wilmington - 35th St. from Church(1) to Garden Place	93-958	15,700
City of Wilmington - 9th St. from French to Walnut	93-947	6,950
City of Wilmington - 9th St. from Lombard to Pine	93-948	6,600
City of Wilmington - Heald St. from 13th to 14th(1)	93-952	11,600
City of Wilmington - Market St. from 12th to 13th	93-951	9,600
City of Wilmington - Pine St. from 10th to 11th	93-949	7,050
City of Wilmington - Spruce St. from 23rd to 22nd	93-954	7,450
City of Wilmington - Tatnall St. from 27th to 28th	93-957	5,150
City of Wilmington - Jensen Dr. off Claymont St. between 24th & 27th	93-953	15,550
City streets resurfacing program	93-945	34,000
Club Lane	93-961	15,600
Delaware City - Greenways	93-905	21,000
Glasgow Pines - retention pond - Soil Conservation District	93-908	15,000
Goodstay Center - open space restoration	93-922	15,000
Gordon Heights - Lore Avenue - drainage	93-989	3,500
Gordon Heights - Lore Avenue - speed humps	93-982	1,800
Greenwood - various streets	93-987	10,000
Greenwood - various streets	93-990	10,000
Gwinhurst - Garfield - speed humps	93-984	1,800
Haines Street from Delaware Avenue to Lovett Avenue	93-912	20,000
Hillside Road from West Main Street to Barksdale Road	93-914	84,200
Historical markers and signs	93-946	4,000
Hockessin - Old Public Road	93-932	18,000
Intersection of Marrows Road and Scottfield Road	93-936	6,000
Keen-Hik - Roy Creek Lane	93-973	10,000
Kimberton - Old Newark Road at Albion Drive - flashing signal	93-934	5,000
Kimberton - entrance	93-906	10,000
Kimberton - speed humps	93-985	1,200
Limestone Gardens - McCawber - speed humps	93-979	1,200
Limestone Hills - street signs	93-991	2,000
Llangollen Estates - speed humps	93-976	3,600
North Park Drive - Brandywine Park - street lighting & improvements	93-920	50,000
Northminster - speed humps	93-964	2,400
Oak Meadows - Oak Meadows Drive	93-971	11,000
Ocean View - Road 84	93-972	25,000
Ocean View - Road 84	93-910	70,000
Orchard Avenue	93-940	1,000
Pencader Village - speed humps	93-977	4,200
Post Crossing - Job's Lane from Corner Ketch Road to circle	93-917	44,200
Rebuild speed humps on Browns Lane in Christina	93-981	2,400
Rehoboth Beach - 5th and Sussex streets	93-974	15,000
Rehoboth Beach - Rehoboth Ave. (south side, ocean block)	93-975	10,000
Road 289 - Con Agra plant	93-904	23,000
Road 424 from Road 427 to Delaware 24	93-965	225,000
Route 896 - business district exit - flashing signal	93-935	5,000
Salem Village Apartments - speed humps	93-986	2,400
Scottfield - entrance	93-933	10,000
State Line Road	93-962	39,000
Sussex and Vo-Tech Road	93-909	10,000
Tanglewood Lane from Dallam Road to Bent Lane	93-913	20,000
The Cavaliers - Addison Dr. - speed humps	93-980	1,200
Town of Arden	93-925	6,000
Town of Ardencroft	93-926	3,000
Town of Bridgeville - road patching	93-927	25,000
Town of Bridgeville - various streets	93-943	25,000
Town of Elsmere	93-944	20,000
Town of Elsmere - street repair	93-714	125,000

## Chapter 405

1283

Town of Frankford - Reed Street	93-967	60,000
Town of Georgetown - various streets	93-942	25,000
Town of Millsboro - Boulevard Street from US 113 to Mitchell	93-968	6,600
Town of Millsboro - Railroad Street from Wilson St. to Main St.	93-969	7,600
Town of Millsboro - Wharton St. from Dupont Hwy. to Northern Ave.	93-970	1,500
Town of Newport	93-939	1,000
University of Delaware - Clayton Hall Drive	93-937	45,000
Wrangle Hill Estates - Carlotta Dr. from Laramie Dr. to circle	93-916	25,000

Office of Secretary of Finance  
Debt Limit Statement Dated July 14, 1992

This Debt Limit Statement to be attached to  
H.B.652 as required by Section 7422, Title 29, Delaware Code.

- |     |   |                 |
|-----|---|-----------------|
| (1) | Estimated Net General Fund revenue<br>for the fiscal year ending June 30,<br>1993 as per the joint resolution of the<br>House and Senate and signed by the Governor<br>in connection with the adoption of the<br>annual Budget Appropriation Bill for that<br>fiscal year | \$1,241,500.000 |
| (2) | Multiply by 5%  | x .05           |
| (3) | Maximum aggregate principal<br>amount of tax-supported<br>obligations which may be<br>authorized by the State in the<br>fiscal year ending June 30, 1993  | \$ 62,075.000   |
| (4) | Less: Aggregate principal amount of<br>previously authorized tax-supported<br>obligations subject to debt limit   | \$ (0)          |
| (5) | AVAILABLE DEBT LIMIT prior to<br>appended legislation (3-4)   | \$ 62,075.000   |
| (6) | Less: Aggregate principal amount of<br>new tax-supported obligations subject<br>to debt limit to be authorized<br>pursuant to appended legislation  | \$ (62,075.000) |
| (7) | REMAINING DEBT LIMIT (5-6)  | \$ 0            |

Klaus Fied Rogers  
Secretary of Finance

7/13/92  
Date

CHAPTER 406  
FORMERLY  
HOUSE SUBSTITUTE NO. 1  
FOR

HOUSE BILL NO. 428  
AS AMENDED BY HOUSE AMENDMENT NOS. 1, 2, 3 AND 4

AN ACT TO AMEND CHAPTERS 21 AND 27, TITLE 21 OF THE DELAWARE CODE RELATING TO REGISTRATION OF MOTOR VEHICLES AND DRIVER'S LICENSE.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (Two-thirds of all members elected to each House thereof concurring therein):

Section 1. Amend Chapter 21, Title 21 of the Delaware Code by adding a new §2118A to read as follows:

"§2118A. Unlawful Possession or Manufacture of Proof of Insurance, Penalties.

(a) It shall be unlawful for any person to possess, manufacture, sell, distribute or circulate a fictitious insurance identification card or any fictitious proof of insurance. A Fictitious insurance identification card shall be any document not manufactured in compliance with §2118(n) of this Chapter. Fictitious proof of insurance shall be any document not produced in compliance with §2118(O) of this chapter.

(b) It shall also be unlawful for any person to possess, manufacture, sell, distribute or circulate a blank insurance identification card. However, the following shall be exempt from this subsection: Office of the Insurance Commissioner, insurance companies or bonding companies or their employees or agents or employees of such agents in the discharge of their employment duties.

(c) Any person convicted of a violation of subsection (a) or (b) shall be fined for the first offense not less than \$500 nor more than \$1500, or imprisoned not less than 30 days, nor more than 60 days, or both. For each subsequent violation, the person shall be fined not less than \$1000 nor more than \$2000, or be imprisoned not less than 60 days nor more than 6 months, or both."

Section 2. Amend Chapter 27, §2733(a), Title 21, Delaware Code by adding a new paragraph to read as follows:

"(7) Has violated §2118A of this Title."

Approved July 17, 1992.



CHAPTER 407

FORMERLY

SENATE BILL NO. 381  
AS AMENDED BY SENATE AMENDMENT NO. 1

AN ACT TO AMEND CHAPTER 35, TITLE 11, DELAWARE CODE RELATING TO TESTIMONY OF VICTIMS IN CHILD ABUSE CASES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Chapter 35, Title 11 by adding a new Section 3514 as follows:

"Section 3514. Testimony of victim in child abuse case by means of closed circuit television.

(a)(1) In cases of crimes involving sexual or physical abuse as defined in Sections 763 through 775, 611 through 613 and Section 1108 of this title, a court may order that the testimony of a child victim less than eleven (11) years of age be taken outside the courtroom and shown in the courtroom by means of closed circuit television if:

(i) The testimony is taken during the proceeding; and

(ii) The judge determines that testimony by the child victim in the courtroom will result in the child suffering serious emotional distress such that the child cannot reasonably communicate.

(2) Only the prosecuting attorney, the attorney for the defendant, and the judge may question the child.

(3) The operators of the closed circuit television shall make every effort to be unobtrusive.

(b)(1) Only the following persons may be in the room with the child when the child testifies by closed circuit television:

(i) The prosecuting attorney;

(ii) The attorney for the defendant;

(iii) The operators of the closed circuit television equipment; and

(iv) Any person whose presence, in the opinion of the court, contributes to the well-being of the child, including a person who has dealt with the child in a therapeutic setting concerning the abuse.

(2) During the child's testimony by closed circuit television, the judge and the defendant shall be in the courtroom.

(3) The judge and the defendant shall be allowed to communicate with the persons in the room where the child is testifying by any appropriate electronic method.

(c) The provisions of this section do not apply if the defendant is an attorney pro se.

(d) This section may not be interpreted to preclude, for purposes of identification of a defendant, the presence of both the victim and the defendant in the courtroom at the same time."

Section 2. This Act shall not take effect unless and until sufficient funding has been appropriated to implement its provisions.

Approved July 17, 1992.

## CHAPTER 408

## FORMERLY

## HOUSE BILL NO. 493

## AS AMENDED BY HOUSE AMENDMENT NO. 4 AND SENATE AMENDMENT NO. 1

AN ACT TO AMEND CHAPTER 66, TITLE 16, DELAWARE CODE, RELATING TO PLAN REVIEW FEES AND THE FEE STRUCTURE FOR LICENSES, PERMITS, AND CERTIFICATES ISSUED UNDER THE STATE FIRE PREVENTION REGULATIONS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (three-fifths of all members elected to each House thereof concurring therein):

Section 1. Amend §6603, Chapter 66, Title 16, Delaware Code, by striking the third sentence commencing with the words "Wherever" and ending with the word "license" and inserting a new sentence to read as follows:

"Whenever such regulations and amendments require the issuance of permits or licenses, the Commission is authorized to issue such permits or licenses according to the provisions and schedules in §6607 of this Title."

Section 2. Amend §6607, Chapter 66, Title 16, Delaware Code, by redesignating paragraph (g)(5) as paragraph (g)(6) and striking the existing paragraph (g)(6) in its entirety and inserting a new paragraph (g)(5) to read as follows:

"The State Fire Marshal with the approval of the State Fire Prevention Commission, where such regulations or amendments duly promulgated under the authority of the State Fire Prevention Commission, require the issuing of a permit, license or certificate, is authorized to issue such permits, licenses or certificates and to establish a schedule of fees not to exceed the following schedule:

(a) A maximum of \$100 per Fire Alarm Signalling System or Fire Suppression System, where a license is issued under the preceding provision of this section, for wholly owned or Proprietary Fire Alarm Signalling Systems or Fire Suppression Systems, serviced by the system owner.

(b) A maximum of \$50 for a license to service portable unit fire suppression appliances.

(c) The fees as authorized in paragraph (g)(5) shall be the maximum so charged by the State Fire Prevention Commission and every two years shall be reviewed by the Department of Finance, the Controller General and the State Fire Marshal.

(d) All fees associated with the permitting, licensing or certification processes shall be annual fees, payable on a date as scheduled by the State Fire Marshal."

Section 3. Amend §6607(g)(3)a, Chapter 66, Title 16, Delaware Code, by striking the phrase "3/10 of 1%" and inserting in lieu thereof the phrase "4/10 of 1% on July 1, 1992 and 5/10 of 1% on July 1, 1993".

Section 4. Amend §6607(g)(3)b, Chapter 66, Title 16, Delaware Code, by striking the fraction "1/10" and inserting in lieu thereof the fraction "2/10".

Section 5. Amend §6607(g)(3)c, Chapter 66, Title 16, Delaware Code, by redesignating said paragraph c as paragraph d and inserting a new paragraph c to read as follows:

"c With respect to the provisions of paragraph (g)(3)a and (g)(3)b, the minimum fee for any plan review shall be no less than \$100."

Section 6. Amend §6607(g)(4), Chapter 66, Title 16, Delaware Code, by striking said subsection (4) in its entirety and inserting a new subsection (4) to read as follows:

"(4) Subdivision plan review fees shall be set at \$100."

Section 7. Amend §6607(g), Chapter 66, Title 16, Delaware Code, by adding thereto a new paragraph to read as follows:

"(g)(7) The fees as authorized for the Plan Review process shall be the maximum allowed by the State Fire Prevention Commission and will be a cap, that every two years a review shall be conducted by the Department of Finance, the Controller General and the State Fire Marshal, based upon the revenue experience and the anticipated funding needs of the Technical Services Division of the State Fire Marshal's Office, to revise the fees according to the anticipated funding needs of the State Fire Marshal's Office Technical Services Division, incorporating the Plan Review, Licensing and additional consultative services."

Section 8. Amend §6607(g)(2), Title 16, Delaware Code by deleting the "." at the end of said subsection and inserting the following thereto:

", except that no fees shall be charged for projects financed in excess of fifty (50) percent by State funds, and projects financed under Chapters 40 and 45, Title 31, Delaware Code."

Section 9. Amend §6607(g)(6), Title 16, Delaware Code by adding the following after the first sentence of said subdivision:

"Said fees included in this subsection herein shall not be charged for projects financed in excess of fifty (50) percent by State funds, and projects financed under Chapters 40 and 45, Title 31, Delaware Code."

Section 10. Amend §6607(g), Chapter 66, Title 16, Delaware Code, by adding thereto a new paragraph to read as follows:

"(8) The permit, licensing and plan review fee requirements of this chapter shall not apply to municipalities, towns or other subdivisions of this State or to Fire Companies that wish to construct improvements upon their fire stations."

Approved July 17, 1992.

#### CHAPTER 409

#### FORMERLY

#### HOUSE BILL NO. 544

AN ACT TO AMEND CHAPTER 51, TITLE 24 RELATING TO THE OCCUPATIONS OF COSMETOLOGY AND BARBERING.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Chapter 51, §5105(a), Title 24, Delaware Code by striking the sentence "each officer shall serve for 1 year, and shall not succeed himself in the same office" as it appears therein and by substituting in lieu thereof the following:

"Each officer shall serve for a term of one year, and may serve no more than two consecutive terms."

Approved July 17, 1992.

## CHAPTER 410

## FORMERLY

## HOUSE BILL NO. 574

AN ACT TO AMEND SUBCHAPTER VII, SUBPART E OF TITLE 11 RELATING TO LICENSES TO CARRY CONCEALED DEADLY WEAPONS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend §1441(a), Title 11 of the Delaware Code by deleting therefrom subparagraph (4) and inserting in lieu thereof a new subparagraph (4) which shall read as follows:

"4. At the time he files his application he shall pay to the Prothonotary a fee of \$34.50 to the Prothonotary issuing the same.

Section 2. Amend §1441(a), Title 11 of the Delaware Code by deleting therefrom subparagraph (5) and inserting in lieu thereof a new subparagraph (5) which should read as follows:

"5. The license issued upon initial application shall be valid for two years. On or before the date of expiration of such initial license, the licensee without further application may renew the same for the further period of 3 years upon payment to the Prothonotary of a fee of \$34.50, and upon filing with said Prothonotary an affidavit setting forth that the carrying of a concealed deadly weapon by the licensee is necessary for the protection of himself or his property, or both, and that he possesses all the requirements for the issuance of a license and may make like renewal every three years thereafter; provided, however, that the Superior Court upon good cause presented to it may inquire into the renewal request and deny the same for good cause shown. No requirements in addition to those specified in this paragraph may be imposed for the renewal of a license."

Section 3. Amend §1441(f) by deleting in its entirety subparagraph (f) and inserting in lieu thereof a new subparagraph (f) which shall read as follows:

"(f) The Secretary of State shall prepare blank forms of license to carry out the purposes of this section, and shall issue the same as required to the several Prothonotaries of the counties in this State. The Prothonotaries of all the counties shall affix to the license, before lamination, a photographic representation of the licensee."

Approved July 17, 1992.

## CHAPTER 411

FORMERLY

## HOUSE BILL NO. 628

AN ACT TO AMEND AN ACT, BEING CHAPTER 276, VOLUME 65, LAWS OF DELAWARE, AS AMENDED, ENTITLED "AN ACT TO REINCORPORATE THE TOWN OF GEORGETOWN" TO PERMIT QUARTERLY AND SEMI-ANNUAL TAX ASSESSMENTS AND TO INCREASE THE BORROWING POWER OF THE TOWN COUNCIL OF THE TOWN OF GEORGETOWN.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (Two-thirds of all members elected to each House thereof concurring therein):

Section 1. Amend §26, Chapter 276, Volume 65, Laws of Delaware, as amended, by striking the first sentence in its entirety and substituting in lieu thereof a new sentence to read as follows:

"The Tax Assessor shall, within ninety (90) days prior to the beginning of the next fiscal year, make a just, true and impartial annual evaluation within The Town of Georgetown; provided, however, that nothing herein shall prohibit the Tax Assessor from performing such an assessment on a quarterly or semi-annual basis."

Section 2. Amend §30, paragraph 42, Chapter 276, Volume 65, Laws of Delaware, as amended, by striking the words "One Hundred Thousand Dollars (\$100,000.00)" wherever it appears in said paragraph and substituting in lieu thereof "Three Hundred Thousand Dollars (\$300,000.00)".

Approved July 17, 1992.

## CHAPTER 412

FORMERLY

## HOUSE BILL NO. 650

AN ACT TO AMEND CHAPTER 19, PART II, TITLE 7, DELAWARE CODE RELATING TO COMMERCIAL CLAMMING ON SUNDAYS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Subsection 1904(b), Chapter 19, Part II, Title 7 of the Delaware Code by adding the words "and clams" between the words "crabs" and the comma ",,".

Section 2. Amend Subsection 1904(b), Chapter 19, Part II, Title 7 by striking the "." and substituting in lieu thereof the phrase "provided, however, that clams may not be taken for commercial purposes on any Sunday between and including this State's designated Memorial Day and Labor Day, next ensuing."

Approved July 17, 1992.

## CHAPTER 413

## FORMERLY

## HOUSE BILL NO. 644

AN ACT TO AMEND AN ACT, BEING CHAPTER 276, VOLUME 65, LAWS OF DELAWARE, AS AMENDED, ENTITLED "AN ACT TO REINCORPORATE THE TOWN OF GEORGETOWN", TO FURTHER DEFINE THE POWER OF THE TOWN COUNCIL OF THE TOWN OF GEORGETOWN UNDER ITS CHARTER TO LAY OUT, LOCATE, OPEN, WIDEN, ALTER, VACATE, OR ABANDON STREETS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (Two-thirds of all members elected to each House thereof concurring therein):

Section 1. Amend Section 31, paragraph (a), of Chapter 276, Volume 65, Laws of Delaware, as amended, by adding thereto the following language at the end of said paragraph:

"The jurisdiction of the Town Council under this Section shall be concurrent with the jurisdiction of the Superior Court of the State of Delaware to vacate public roads, bridges and all of the right-of-ways, pursuant to Title 17, Chapter 13 of the Delaware Code, or any other similar statutory provision."

Approved July 17, 1992.

## CHAPTER 414

## FORMERLY

SENATE BILL NO. 39  
AS AMENDED BY SENATE AMENDMENT NO. 1

AN ACT TO AMEND CHAPTER 89, TITLE 29, DELAWARE CODE, TO REQUIRE THE COMMISSIONER OF CORRECTIONS TO ADOPT A PLAN OF MANDATORY WEAPONS TRAINING OF PROBATION AND PAROLE COUNSELORS AND THE OPTIONAL ARMING OF SUCH COUNSELORS FOR WORK IN THE FIELD.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend §8903, Chapter 89, Title 29, Delaware Code, by adding thereto a new subsection (12) to read as follows:

"(12) Devise and adopt a plan to provide weapons training to all probation and parole officers. Such plan shall include an option for each such officer to carry a firearm, after successful completion of a course in weapons, during work in the field. Said course of training shall meet or exceed the standards established by the Council on Police Training. Such plan shall be in operation no later than 60 days after the effective date of this Act."

Approved July 17, 1992.

## CHAPTER 415

## FORMERLY

## HOUSE BILL NO. 408

AS AMENDED BY HOUSE AMENDMENT NO. 1 AND SENATE AMENDMENT NOS. 1 AND 2

AN ACT TO AMEND TITLE 16, DELAWARE CODE, RELATING TO NOTIFICATION OF FIRE FIGHTERS, AMBULANCE ATTENDANTS, EMERGENCY MEDICAL TECHNICIANS, CORRECTIONAL OFFICERS, LAW ENFORCEMENT OFFICERS, AND OTHER PERSONNEL OF EXPOSURE TO CONTAGIOUS OR INFECTIOUS DISEASE OR VIRUS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Title 16, Delaware Code, by adding thereto a new Chapter to be designated as Chapter 12A, to read as follows:

"CHAPTER 12A. NOTIFICATION OF EMERGENCY MEDICAL PROVIDERS OF  
PERSONS WITH COMMUNICABLE DISEASES

§1201A. Definitions

As used in this Chapter:

(1) 'Emergency medical care provider' means a fire fighter, law enforcement officer, paramedic, emergency medical technician, or other person who serves as employees or volunteers of an ambulance service and/or provide pre-hospital emergency medical services.

(2) 'Emergency medical service facility' means a licensed hospital or freestanding medical care facility that receives patients cared for by emergency services personnel.

(3) 'Receiving medical facility' means a hospital or similar facility that receives a patient attended by an emergency medical care provider for the purposes of continued medical care.

(4) 'Division' means Division of Public Health, Department of Health and Social Services.

(5) 'Communicable Disease' means human immunodeficiency virus, (HIV, the virus that causes AIDS), and hepatitis B.

(6) 'Universal Precautions' means those precautions, including the appropriate use of hand washing, protective barriers, and care in the use and disposal of needles and other sharp instruments that minimize the risk of transmission of communicable diseases between patients and health care providers.

§1202A. Report of Exposed Emergency Medical Provider

(1) An emergency medical care provider may request notification concerning exposure to a communicable disease under this section if the exposure is of a manner known to transmit a communicable disease.

(2) If an emergency medical care provider desires to be notified under this section the emergency medical care provider shall notify the receiving medical facility within 24 hours after the patient is admitted to or treated by the facility on a form that is prescribed or approved by the State Board of Health.

(3) The emergency medical care provider shall designate on the form required by §1202A(2) of this Chapter to whom notification should be made including the option that notification be made either to the emergency medical care provider directly or to a designated physician.

(4) The emergency medical care provider shall distribute a copy of the completed form to the receiving medical facility.

#### §1203A. Notification of Infection with a Communicable Disease

(1) Each receiving medical facility shall designate an office or individual who shall receive completed forms as specified by §1202A(2) of this Chapter and who shall insure compliance with the requirements of this section.

(2) The receiving medical facility shall notify only the person designated pursuant to §1202A(3) of this Chapter when:

(1) within 10 days after a patient is admitted or treated by the receiving medical facility, the facility obtains information from the patient's records or a finding at the facility indicates that the patient is infected with a communicable disease; and

(11) the emergency medical care provider has complied with §1202A of this Chapter; and

(111) the information as described on the completed form required by §1202A(2) of this Chapter suggests that the exposure was of a manner known to transmit the communicable disease with which the patient is infected.

(3) the notification required by §1203A(2) of this Chapter shall be made within 96 hours after the receiving medical facility determines that a patient is infected with a communicable disease.

(4) The receiving medical facility, or other persons designated by the emergency medical care provider on the form completed pursuant to §1202A(2) of this Chapter and §1202A(3) of this Chapter, shall provide the emergency medical care provider with (1) an explanation about the communicable disease; (2) information about post-exposure treatment which may be appropriate; (3) information about the mode of transmission, and preventive measures which can be taken to reduce the likelihood of transmission to others; and (4) information on associated counseling.

(5) The receiving medical facility shall provide to the Division a copy of each form completed pursuant to §1202A(2) of this Chapter which shall include information about whether or not the patient is infected with a communicable disease, and if exposure to the patient is considered by the receiving medical facility to be in a manner known to transmit that communicable disease.

#### §1204A. Universal Precautions

In recognition of the importance of universal precautions to the control of communicable diseases from a patient to an emergency medical care provider, education and training with respect to universal precautions shall be a mandatory component of any required training and any required continuing education for all emergency medical care providers who have patient contact. Training requirements for this purpose shall be established by the State Board of Health.

#### §1205A. Rules and Regulations

The State Board of Health shall make such rules and regulations as may in its judgment be necessary to carry out the provisions of this section, and may make additions of other communicable diseases which shall be subject to this Chapter.

#### §1206A. Confidentiality of HIV Test Results

A person who has knowledge of the identity of any person upon whom an HIV related test is performed, or the results of such test, in accordance with this Chapter shall maintain the confidentiality of that information pursuant to 16 Del. C. 1203.

#### §1207A. Liability of Receiving Medical Facility: Breach of Confidentiality

A receiving medical care facility acting in good faith to provide notification in accordance with this Chapter shall not be liable in any cause of action related to the breach of patient confidentiality.



§1208A. Failure to Provide Notice

A receiving medical care facility acting in good faith to provide notification in accordance with this Chapter shall not be liable in any cause of action for:

(1) The failure to give the required notice if the emergency medical care provider fails to properly initiate the notification procedures pursuant to §1202A of this Chapter; or

(2) The failure of the person or facility designated pursuant to §1202A(3) of this Chapter to subsequently notify the emergency medical care provider of the possible exposure."

Section 2. Amend §1203(a), Title 16, Delaware Code, by adding thereto a new paragraph as follows:

"(11) Pursuant to Chapter 12A of this Title as it relates to notification of emergency medical care providers."

Approved July 20, 1992.

## CHAPTER 416

## FORMERLY

SENATE BILL NO. 346  
AS AMENDED BY SENATE AMENDMENT NO. 1

AN ACT TO AMEND CHAPTERS 33 AND 35, TITLE 18 OF THE DELAWARE CODE RELATING TO CLAIM FORMS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend §3310, Title 18, Delaware Code by inserting before the close quotation marks at the end thereof, the following:

"The non-hospital claim form to be used under this provision is the Health Care Financing Administration Form-1500 or its successor. This form requirement shall not apply to medical payments made by the Federal Government, prescription drug claims, dental claims, or claims using an electronic paperless submission process."

Section 2. Amend §3521, Title 18, Delaware Code by inserting at the end thereof, the following:

"The non-hospital claim form to be used under this provision is the Health Care Financing Administration Form-1500 or its successor. This form requirement shall not apply to medical payments made by the Federal Government, prescription drug claims, dental claims, or claims using an electronic paperless submission process."

Section 3. This Act shall take effect 120 days after enactment into law.

Approved July 20, 1992.

## CHAPTER 417

## FORMERLY

## HOUSE BILL NO. 15

AN ACT TO AMEND CHAPTER 11, TITLE 17, DELAWARE CODE RELATING TO OUTDOOR ADVERTISING.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (Two-thirds of all members elected to each House thereof concurring therein):

Section 1. Amend Chapter 11, Title 17, Delaware Code by adding a new subchapter to read as follows:

"Subchapter III. Limited Access, State Toll Roads

§1131. Limitations of outdoor advertising along limited access, State toll roads.

The provisions of Subchapter II of this chapter shall be applicable to any limited access, State toll road in this State."

Approved July 20, 1992.

## CHAPTER 418

## FORMERLY

HOUSE BILL NO. 118  
AS AMENDED BY HOUSE AMENDMENT NO. 1

AN ACT TO AMEND CHAPTER 79, TITLE 29, DELAWARE CODE RELATING TO FINANCIAL LIABILITY OF RELATIVES OF PERSONS SERVED BY THE DEPARTMENT OF HEALTH AND SOCIAL SERVICES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Subsection 7940(a), Chapter 79, Title 29 of the Delaware Code by striking the words "spouse, parents or children" as they appear in the first sentence thereof and substituting the words "spouse or parents".

Section 2. Amend Subsection 7940(a), Chapter 79, Title 29 of the Delaware Code by deleting the second sentence in its entirety and substituting in lieu thereof the following: "Notwithstanding any other provision of the Delaware Code, parents and spouses of a patient shall not be required to pay all or part of any of the cost of care of any patient if (i) with respect to parental liability, the patient shall have attained the age of 18 years, or, (ii) with respect to spousal liability, the patient shall have attained the age of 18 years and shall have been a patient in 1 or more of the institutions served by the Department for a period of 5 years.

Section 3. Amend Subsection 7940(c), Chapter 79, Title 29 of the Delaware Code by striking the words "spouse, parents or children" as they appear in the last sentence and substituting the words "spouse or parents" in lieu thereof.

Section 4. Financial liability for services provided by the Department prior to the enactment of this Act which remain unpaid as of the date this Act becomes law and which would not arise henceforth under the provisions of this Act shall also be extinguished.

Approved July 20, 1992.

## CHAPTER 419

## FORMERLY

SENATE BILL NO. 439  
AS AMENDED BY HOUSE AMENDMENT NO. 1

AN ACT TO AMEND TITLE 7 OF THE DELAWARE CODE BY ESTABLISHING A NEW CHAPTER 79 ENTITLED "ENVIRONMENTAL PERMIT APPLICATION BACKGROUND STATEMENT".

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (three-fifths of all members elected to each House thereof concurring therein):

Section 1. Amend Title 7, Delaware Code, by establishing a new Chapter 79 to read as follows:

"Chapter 79. ENVIRONMENTAL PERMIT APPLICATION BACKGROUND STATEMENT.

§7901. FINDINGS; PURPOSE

a) The General Assembly finds that:

(1) The discharge of pollutants to Delaware's air and water, and the management and disposal of solid and hazardous wastes in Delaware's environment can create significant risks to public health and environmental quality;

(2) The protection of Delaware's Coastal Zone and subaqueous lands from environmental degradation is a matter of public trust as demonstrated by the enactment of the Delaware Coastal Zone Act, 7 Del. Code, Chapter 70, and the Delaware Subaqueous Lands Act, 7 Del. Code, Chapter 72;

(3) The public has a right to clean air and water, and otherwise to a healthy environment; and,

(4) Because of the importance of these resources to the health and welfare of Delaware citizens, the state has a right and responsibility to ensure that those persons obtaining permits to discharge pollutants, manage wastes, or make commercial use of the coastal zone and the State's subaqueous lands can be trusted to carry out the responsibilities and conditions of these permits.

b) Purpose. It is the purpose of this chapter to ensure that the state has adequate information about the background of applicants for NPDES, Air, Hazardous Waste, Solid Waste, Commercial Subaqueous, and Coastal Zone permits issued under the authority of 7 Del. C. Chapters 60, 63, 70, and 72 to identify applicants with histories of environmental violations, or criminal activities and/or associations; or applicants who cannot demonstrate the required responsibility, expertise or competence which is necessary for the proper operation or activity permitted by the Department.

§7902. STATEMENT REQUIRED

Applicants for NPDES, Air, Hazardous Waste, Solid Waste, Commercial Subaqueous, and Coastal Zone permits issued under the authority of 7 Del. C. Chapter 60, 63, 70, and 72, except those facilities which have been permitted by the Department for a period of at least five years shall have on file at the Department, a Statement containing the following information:

a) A complete list of all current members of the Board of Directors, all current corporate officers, all persons owning more than 20 percent of the applicant's stock or other resources, all subsidiary companies, parent companies and companies with which the applicant's company shares two or more directors.

b) a description of all notices of violation, criminal citations, arrests, convictions, or civil or administrative penalties assessed against the applicant or any other person identified under subsection 7902 (a) of this Act for the violation of any environmental statute,

regulation, permit, license, approval, or order, regardless of the state in which it occurred, for the five years prior to the date of the application;

c) A description of the disposition of any of the items identified pursuant to subsection 7202 (b) and any actions that have been taken to correct the violations that led to such enforcement actions;

d) A description of any felony or other criminal conviction of any person identified in subsection 7902 (a) that resulted in a fine greater than \$1,000 or a sentence longer than 7 days, regardless of whether such fine or sentence was suspended;

(e) Copies of any and all settlements of environmental claims, whether or not such settlements were based on agreements where the applicant did not admit liability.

#### §7903. CONFIDENTIAL INFORMATION

a) All information provided pursuant to Subsection 7902 (b) shall be considered public information and shall be considered part of the public record pertaining to the permit application.

b) If the applicant can demonstrate that information provided pursuant to subsections 7202 a), c), d), and e) is not a matter of public record at the time of the application, and that the release of such information to the public would constitute an invasion of personal privacy or would seriously affect the applicant's business or competitive situation, the applicant may claim that such information is confidential information.

c) Confidential information shall not be released to the public or made part of the public record and shall only be released to law enforcement personnel performing the background investigation, authorized representatives of the Office of the Attorney General, or sworn law enforcement personnel of other jurisdictions performing similar investigations on the applicant.

#### §7904. PERMIT DENIAL, REVOCATION

The Secretary may reject any permit application or revoke any permit upon a finding that:

1) The applicant withheld or misrepresented any of the information required to be submitted pursuant to §7902 above; or

2) The applicant has operated or has been associated with any company or person whom has operated a facility in a manner which casts substantial doubt on the ability or willingness of the applicant to operate the facility for which a permit is being requested in a manner that will protect the health and welfare of the citizens of Delaware; or

3) The applicant has offered, conferred or proposed to confer any benefit to an employee of the State of Delaware in the expectation that such offer will result in or contribute to a positive action on the permit application.

#### §7905. ADDITIONAL INFORMATION: DUTY TO COOPERATE

1) All applicants and permittees have the continuing duty to provide any assistance or information requested by the Department, and to cooperate in an inquiry or investigation or hearing conducted by the Department.

Approved July 20, 1992.

CHAPTER 420

FORMERLY

SENATE BILL NO. 285

AN ACT AWARDING SPECIAL PENSION BENEFITS TO ELSIE EVERETT, TRANSFERRING MONIES INTO THE STATE EMPLOYEES' PENSION FUND, AND DIRECTING THE BOARD OF PENSION TRUSTEES TO ADMINISTER PAYMENT PROVIDED BY THIS ACT AS IF THE PAYMENT WERE PURSUANT TO CHAPTER 55, TITLE 29, DELAWARE CODE.

WHEREAS, Elsie Everett was employed in the State public schools for 15 years and as a substitute for 3 years; and

WHEREAS, under the statutes and the rules and regulations of the Board of Pension Trustees, Elsie Everett will not receive credit for her three years as a substitute; and

WHEREAS, in July of 1988, Elsie Everett retired from the State and began receiving a pension which erroneously included her service as a substitute; and

WHEREAS, in August 1990, Elsie Everett's pension was amended to correct this error; and

WHEREAS, it is a hardship and is unfair to require her to repay the monies erroneously paid to her almost two years after she began to receive her retirement checks.

NOW, THEREFORE:

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. The Board of Pension Trustees is hereby authorized and directed to waive the amount owed by Elsie Everett as a result of the error made in her original pension award.

Section 2. The Budget Director and the Controller General are authorized to transfer the sum of \$1,069.36 from the Budget Office Contingency Appropriation in House Bill No. 350 of the 136th General Assembly for Budget Office Contingency (10-02-04) to the State Employees' Pension Fund for the purpose of implementing the provisions of Section 1 of this Act.

Approved July 20, 1992.

CHAPTER 421

FORMERLY

HOUSE BILL NO. 450

AN ACT TO AMEND CHAPTER 33, TITLE 19 OF THE DELAWARE CODE RELATING TO UNEMPLOYMENT COMPENSATION.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend §3315(1), Chapter 33, Title 19 of the Delaware Code by deleting the last two sentences of the first paragraph of subsection (1) as they appear therein, and inserting in their place, the following:

"An individual who becomes unemployed solely as the result of completing a period of employment that was of a seasonal, durational, temporary, or casual duration, will not be considered as a matter of law to have left work voluntarily without good cause attributable to such work solely on the basis of the duration of such employment."

Approved July 20, 1992.

## CHAPTER 422

## FORMERLY

## HOUSE BILL NO. 558

AN ACT TO AMEND CHAPTER 5, TITLE 11 OF THE DELAWARE CODE PROVIDING CERTAIN PUNISHMENTS UPON CONVICTION FOR THE CRIME OF POSSESSION OF A DEADLY WEAPON BY A PERSON PROHIBITED AND RELATING TO THE DEFINITION THEREOF.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend §1448, Chapter 5, of Title 11 by deleting present §1448 of Title 11 in its entirety and substituting in lieu thereof, the following:

"§1448. Possession and Purchase of Deadly Weapons by Persons Prohibited; Class F Felony.

(a) Except as otherwise provided herein, the following persons are prohibited from purchasing, owning, possessing, or controlling a deadly weapon within the State of Delaware:

(1) Any person having been convicted in this State or elsewhere of a felony or a crime of violence involving physical injury to another, whether or not armed with or having in his possession any weapon during the commission of such felony or crime of violence;

(2) Any person who has ever been committed for a mental disorder to any hospital, mental institution, or sanitarium, unless he possesses a certificate of a medical doctor or psychiatrist licensed in this State that he is no longer suffering from a mental disorder which interferes or handicaps him from handling deadly weapons;

(3) Any person who has been convicted for the unlawful use, possession or sale of a narcotic, dangerous drug, or central nervous system depressant or stimulant as those terms were defined prior to the effective date of the Uniform Control Substances Act in June 1973 or of a narcotic drug or controlled substance as defined in Chapter 46 or Title 16; or

(4) Any person who, as a juvenile, has been adjudicated as delinquent for conduct which, if committed by an adult, would constitute a felony, unless and until that person has reached his twenty-fifth birthday.

(b) Any prohibited person as set forth in Subsection (a) hereof who knowingly possesses, purchases, owns, or controls a deadly weapon while so prohibited shall be guilty of possession of a deadly weapon by a person prohibited.

(c) Possession of a deadly weapon by a person prohibited is a Class F felony.

(d) Any person who is a prohibited person solely as the result of a conviction for an offense which is not a felony shall not be prohibited from purchasing, owning, possessing, or controlling a deadly weapon if five years has elapsed from the date of conviction."

Approved July 21, 1992.

## CHAPTER 423

## FORMERLY

HOUSE BILL NO. 573  
AS AMENDED BY HOUSE AMENDMENT NO. 1

AN ACT TO AMEND CHAPTERS 11 AND 19 OF TITLE 30 OF THE DELAWARE CODE RELATING TO THE CORPORATE AND PERSONAL INCOME TAX.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (three fifths of all members elected to each house thereof concurring therein):

Section 1. Amend Paragraph (9) of Section 1902(b) of Title 30 of the Delaware Code to read as follows:

"(9) A corporation that is an S corporation for federal income tax purposes for any taxable year beginning on or after January 1, 1961."

Section 2. Amend Section 1124(a)(1) of Title 30 of the Delaware Code by striking the word "and" as it appears between the symbol "," and the numeral "(ii)" and by adding the following phrase to be inserted between the word "title" (the second time such word appears) and the symbol ",:": " , and (iii) his distributive share of the income and deductions of an S corporation".

Section 3. Amend Section 1124(a)(2) of Title 30 of the Delaware Code by adding thereto immediately before the symbol "." the phrase "or as a shareholder of an S corporation".

Section 4. Amend Section 1124(e) of Title 30 of the Delaware Code to read as follows:

"(e) Nonresident shareholders of S corporation. For purposes of subsection (a) of this section, in the case of a nonresident individual who is a shareholder of an S corporation, the rules provided in subsections (a) and (c) of §1145 of this title shall apply in the same manner as if such S corporation were a partnership and such nonresident individual were a nonresident partner."

Section 5. Add a new Section 1158 to Title 30 of the Delaware Code to read as follows:

"§1158. Payment of tax on behalf of nonresident shareholders by S corporation.

(a) Every corporation that is an S corporation for federal income tax purposes for any taxable year beginning on or after January 1, 1992, in which it has any shareholder who is a nonresident individual, shall pay, at the times and in the percentages set forth in §1905 of this title, on behalf of each such nonresident, tax in an amount equal to the highest rate of tax set forth in §1102(a) of this title multiplied by such nonresident's distributive share of the income of such corporation determined in accordance with §1124 of this title.

(b) Any payment of tax under subsection (a) of this section by a corporation shall be considered to have been distributed or advanced by such corporation to the nonresident individual on whose behalf such tax was paid on the date such payment was made by such corporation. Such nonresident shall be credited for purposes of §1169 and §1170 of this title with having made a declaration and payment of estimated tax on the date such payment under subsection (a) of this section was made by such corporation, but such deemed payment of estimated tax shall be taken into account for the taxable year of such nonresident in which such nonresident is required to include in taxable income the distributive share of the income of such corporation for which such payment under said subsection (a) was made.

(c) If an S corporation fails to pay any tax required to be paid by such corporation under subsection (a) of this section, such corporation shall be liable for any penalties, interest and additions to tax applicable to such failure in the same manner as if such tax

were required to be paid by the corporation on its own behalf. Notwithstanding any other provision of this title, a nonresident individual who is a shareholder of an S corporation shall not be liable for any penalties, interest or additions to tax as a result of such nonresident's failure to make any payment of estimated tax otherwise required by §1170 of this title with respect to such nonresident's distributive share of such corporation's income.

(d) Any payment of tax made by a corporation under §1905 of this title with respect to any taxable year of such corporation ending on or before March 31, 1993, for which any payment is required to be made by such corporation under subsection (a) of this section shall be treated as a payment that was made under said subsection (a) for all purposes of this section, and no refund of any part of such payment shall be allowable solely on the basis that such payment was not required by §1905 of this title."

Section 6. Amend Section 1145(a) of Title 30 of the Delaware Code by striking the phrase "§1122 of this title" as it appears therein and substituting therefor the phrase "§1124 of this title".

Section 7. (a) Except as provided in subsection (b) of this section, if any provision of this Act or the application thereof to any person or circumstance is held invalid, this Act shall be considered invalid and void in its entirety from the date of its enactment, and the law shall be as if this Act had never been enacted.

(b) Notwithstanding subsection (a) of this section, if any provision of this Act or the application thereof to any person or circumstance is held invalid with respect only to a certain time or period of time, this Act shall be considered invalid and void in its entirety under subsection (a) of this section only with respect to such time or period of time, but such invalidity shall not affect its validity with respect to other times or periods of time.

Section 8. Amend §1115, Title 30 of the Delaware Code by striking the word "resident" both times said word appears therein and by striking the word "resident's" as it appears therein and substitute in lieu of the word "resident's" the word "shareholder's" and in lieu of the word "resident" (only the second time said word appears in said section) the word "shareholder".

Section 9. This Act shall be effective for taxable years of S corporations beginning on or after January 1, 1992.

Approved July 21, 1992.

#### CHAPTER 424

#### FORMERLY

#### HOUSE BILL NO. 508 AS AMENDED BY HOUSE AMENDMENT NO. 1

AN ACT TO AMEND CHAPTER 68, TITLE 21, DELAWARE CODE RELATING TO OFF-HIGHWAY VEHICLES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (Two-thirds of all members elected to each House thereof concurring therein):

Section 1. Amend Section 6819, Chapter 68, Title 21 Delaware Code by rewording subsection (a) thereof to read as follows:

"(a) A person shall not operate an OHV in a manner to maliciously cause excessive damages or disturbances of the land, wildlife or vegetative resources, or endanger, disturb or annoy other persons or property. Disturbance or annoyance of other persons shall be presumed if the operator has received either verbally or in written form notice of such annoyance or disturbance from the complaining party. However, nothing in this subsection shall be construed as prohibiting the operation of OHV's at a race track designed for the lawful racing of said vehicles."

Approved July 21, 1992.



## CHAPTER 425

## FORMERLY

## HOUSE BILL NO. 509

AN ACT TO AMEND CHAPTER 20 OF TITLE 30, SUBCHAPTER IV, "THE TRAVELINK TRAFFIC MITIGATION ACT" RELATING TO COMPLIANCE WITH THE FEDERAL CLEAN AIR ACT, SPECIFICALLY 42 U.S.C., SECTION 7511a (d)(1)(B).

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Section 2031, Chapter 20, Title 30 of the Delaware Code by adding at the end of said section the following:

"An additional purpose shall be to decrease the number of single occupant vehicles generated by commuting to and from work, through an increase in average vehicle occupancy."

Section 2. Amend Section 2032 (f), Chapter 20, Title 30 of the Delaware Code by deleting the phrase ",employing a minimum of 150 full-time employees or their equivalent" as it appears therein, and by substituting in lieu thereof the phrase "subject to compliance with the Federal Clean Air Act , specifically 42 U.S.C., Section 7511a(d)(1)(B).".

Section 3. Amend Section 2034, Chapter 20, Title 30 of the Delaware Code by adding at the end of said section a new paragraph to read as follows:

"(3) Procedures to require that employers beginning in November 1992, provide to the Department information of the actions taken and plans made to comply with the revised State Implementation Plan required by 42 U.S.C., Section 7511a (d)(1)(B). The procedures may establish a process of plan submission, approval, periodic reporting on target achievement and plan revision to achieve compliance in conformity with 42 U.S.C. 7511a (d)(1)(B) and any applicable guidelines of the Clean Air Act as amended in 1990."

Section 4. Amend Chapter 20 of Title 30 of the Delaware Code by adding thereto a new Section 2036 to read as follows:

"§2036. Department Responsibilities.

(a) The Department is responsible for reviewing and approving any public or private traffic mitigation plan or program including but not limited to clean air compliance programs, TRAVELINK programs, commuter benefit programs, Department-approved incentives contained in any zoning, subdivision or any other land use or development project designed to enhance traffic mitigations, programs approved by county or local government, and any and all other public or private plans designed either in whole or in part to reduce traffic through the use of incentives or disincentives such as but not limited to parking charges, parking preferences, and financial penalties proposed by employers for single occupant vehicles commuting to the work site."

Section 5. Amend Section 2033(b), Chapter 20, Title 30 of the Delaware Code by inserting the phrase "or a pro rata share thereof for a program encompassing less than a full taxable year" after the phrase "for at least 130 days of the applicable taxable year" and before the phrase ";and DC is the employer's allowable direct costs."

Section 6. Amend Chapter 20, Title 30 of the Delaware Code by amending Section 8 of 67 Del. Laws, c. 160, by deleting the phrase "December 31, 1995" and inserting the phrase "December 31, 2010".

Section 7. Amend §2032(c), Chapter 20, Title 30, Delaware Code by adding a new paragraph "(5)" to read as follows:

"(5) Capital costs incurred as part of a Department-certified travelink program."

Approved July 21, 1992.

## CHAPTER 426

## FORMERLY

HOUSE BILL NO. 480  
AS AMENDED BY HOUSE AMENDMENT NO. 1

AN ACT TO AMEND CHAPTER 20 OF TITLE 30 OF THE DELAWARE CODE TO ADD A NEW SUBCHAPTER V TO AUTHORIZE STATE AGENCIES TO PROVIDE COMMUTER BENEFITS TO THEIR EMPLOYEES AND REQUIRE STATE AGENCIES TO DEVELOP AND SUBMIT FOR REVIEW A PLAN TO REDUCE WORK RELATED VEHICLE TRIPS, AND AMEND CHAPTER 51, TITLE 29 RELATING TO EXPENSES ASSOCIATED WITH COMMUTING TO WORK.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1: Amend §5117, Chapter 51, Title 29 of the Delaware Code by adding a new subsection (d) to read as follows:

"(d) Subsection (a) of this section shall not apply to any commuter benefit approved by the Department of Transportation pursuant to 30 Del.C. Chapter 20, Subchapter V."

Section 2. Amend Chapter 20, Title 30 of the Delaware Code by adding a new subchapter V to read as follows:

"Subchapter V - Commuter Benefits For State Employees.

§2041: Declaration of Purpose.

The purpose of this subchapter shall be to mitigate traffic congestion associated with state employees' commuting to and from the work place, and to facilitate compliance with the requirements of the Clean Air Act as amended in 1990.

§2042: Definitions.

(a) "The Department" shall mean the Department of Transportation and its several divisions, agencies, authorities and administrations as appropriate.

(b) "Employee" shall mean an individual employed by a State agency.

(c) "Employer" shall mean a state agency.

(d) "State agency" shall mean any office, department, board, commission, committee, court, school district, board of education and all public bodies existing by virtue of an act of the General Assembly or the Constitution of the State, excepting only political subdivisions of the State, their agencies and other public agencies not specifically included in this definition and which exist by virtue of State law and whose jurisdiction:

(a) Is limited to a political subdivision of the State or to a portion thereof; or

(b) Extends beyond the ordinance of the State.

(e) "The Secretary" shall mean the Secretary of the Department of Transportation or his delegate.

(f) "State" means the State of Delaware.

(g) "Commuter Benefits" means incentives including monetary incentives, provided by the employer to the employee in conjunction with an approved traffic plan.

§2043. Agency Plans.

Each state agency shall develop and submit for review by the Department a plan to reduce work-related vehicle trips and miles traveled by employees. If submitting an individual plan is not practical because of the

state agency's location or number of employees, a state agency may join with another state agency in submitting a plan for review.

§2044. Department Review of Plans.

The Department shall review plans required by §2043 and submitted by state agencies for conformity with the rules and regulations promulgated by the Secretary pursuant to §2045 and any plan required to be submitted by the State to the Federal Government for purposes of the Clean Air Act as amended in 1990.

§2045. Rules and Regulations.

The Secretary shall prescribe such rules and regulations as he may deem necessary to carry out the purpose of this subchapter including but not limited to regulations concerning the submittal of plans, guidelines for reviewing plans by the Department and the amount and nature of commuter benefits not to exceed the amount established in the Internal Revenue Code or Internal Revenue Service Regulations and which qualifies as a tax free benefit to employees.

§2046. Agency Provision Of Commuter Benefits.

A state agency is authorized to grant commuter benefits to agency employees in conjunction with any plan submitted and approved by the Department pursuant to §§2043 and 2044. The state agency shall request each year as part of the budget process, a specific appropriation request sufficient to fund the commuter benefits included in the plan submitted to the Department for review.

§2047. Preemption.

Any other provision of the Delaware Code notwithstanding, a Department approved traffic reduction plan may provide commuter benefits to State employees."

Approved July 21, 1992.

## CHAPTER 427

## FORMERLY

## HOUSE BILL NO. 655

AN ACT TO AMEND AN ACT BEING CHAPTER 504, VOLUME 57, LAWS OF DELAWARE, AS AMENDED, ENTITLED "AN ACT TO REINCORPORATE THE TOWN OF HENLOPEN ACRES" TO CONFER UPON THE COMMISSIONERS OF THE TOWN OF HENLOPEN ACRES CERTAIN POWERS RELATING TO THE TAXATION OF REAL ESTATE AND TO INCREASE THE AMOUNT WHICH CAN BE BORROWED AGAINST ANTICIPATED REVENUES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (Two-thirds of all members elected to each House thereof concurring therein):

Section 1. Amend Chapter 504, Volume 57, Laws of Delaware, as amended, be and the same is hereby further amended by adding a new Section following Section 21 to be designated as Section 21A to read as follows:

"SUPPLEMENTAL ASSESSMENTS

Section 21A.

(a) In addition to the annual assessment provided for in Section 21 of this Charter, the Board of Assessment may, at its option, prepare a quarterly supplemental assessment list for any of the following purposes:

(1) Adding property which was not included on the last annual assessment;

(2) Increasing the assessed value of property which was included in the last assessment;

(3) Correcting errors on the prior annual assessment;

(4) Revising or modifying any exemption from taxation applicable to property within the Town;

(b) The supplemental assessment list shall be prepared quarterly by the Assessor and the first such supplemental assessment shall be certified to the Commissioners on June 1, the second on September 1, the third on December 1, and the fourth on March 1 of each year.

(c) On the date of certification of the supplemental assessment list to the Commissioners by the Board of Assessment each property owner shall be liable for the payment of real estate taxes equal to the assessed value of the property multiplied by the tax rate for the then current fiscal year applicable to the property reduced by twenty-five percent (25%) when the property is listed on the second supplemental assessment list fifty percent (50%) when the property is listed on the third supplemental assessment list and seventy-five percent (75%) when the property is listed on the fourth supplemental assessment list and the amount of such tax, together with any interest, penalty and collection charge shall be a lien for a period of ten (10) years from the date of certification of the supplemental assessment list to the Commissioners by the Board of Assessment and such lien shall have preference and priority to all other liens created or suffered on real estate or upon leaseholds or upon improvements located on land under lease as prescribed in this Charter although such lien or liens be of a date prior to the time of the attaching of such lien for taxes.

(d) Whenever the Board of Assessment places a property on a supplemental assessment list, he shall deposit notice thereof in the regular mail addressed to the owner of the property affected thereby at the address shown on the assessment list, or if the address of such owner does not appear on the assessment list, then to the person occupying the property, or if there is no apparent occupant, such notice shall be posted on the property. Such notice shall be given no later than the date on which the supplemental list on which the property appears is certified to the Commissioners by the Board of Assessment. The certification by the Board of Assessment that the notice required by this Subsection was mailed or posted, as the case may be, shall be conclusive evidence that notice to the property owner was received.

(e) The Board of Assessment shall publish a notice of the place or places where the supplemental assessment list may be inspected together with a notice of the time and place in the Town when the Commissioners, not earlier than ten (10) days from the date of the last publication, shall sit, between the hours of one o'clock in the afternoon, prevailing time, and two o'clock in the afternoon, prevailing time, to hear appeals. Such notice shall appear at least once a week for two (2) consecutive weeks in a newspaper of general circulation in the Town. The decision of the Commissioners sitting as a Board of Appeals, shall be final and conclusive and the said Commissioners shall revise and complete the said supplemental assessment at this sitting. No Commissioner shall sit upon his own appeal but the same shall be held and determined by the other members of the Commissioners.

(f) Pending determination of the appeal, the property owner may either pay the tax imposed by the supplemental assessment and if on appeal the assessment is reduced, the property owner shall be entitled to a refund of the taxes which he has overpaid plus interest thereon at the rate of One Percent (1%) per month for each month or fraction thereof from the date of payment or the property owner may decline to pay the tax imposed by the supplemental assessment in which case, interest and penalties shall accrue at the rate of one percent (1%) per month for each month or fraction thereof that the taxes remain unpaid from the expiration of thirty (30) days following the date of mailing or the posting of the notice, as the case may be, required by this Section.

(g) In the collection of all taxes imposed by the supplemental assessment list, there shall be no deduction nor abatement of the taxes and the Town Clerk shall add an amount equal to one percent (1%) per month for each month or fraction thereof that such taxes remain unpaid following the expiration of thirty (30) days from the date of mailing or posting, as the case may be, of the notice required under this Section.

(h) All taxes imposed by the supplemental assessment list and paid more than thirty (30) days following the date that notice is mailed by the Board of Assessment to the property owner or posted as provided for in this Section shall be delinquent."

Section 2. Amend Paragraph 28, Subsection (a), Section 26, Chapter 504, Volume 57, Laws of Delaware, as amended, be and the same is hereby further amended by striking out the words and figures "Two Hundred Thousand Dollars (\$200,000.00)" as they appear in said paragraph and substituting in lieu thereof the words and figure Five Percent (5%) of the assessed value of all real estate, including improvements thereon, located within the corporate limits of the Town of Henlopen Acres subject to assessment.

Approved July 21, 1992.

#### CHAPTER 428

#### FORMERLY

#### HOUSE BILL NO. 634

AN ACT TO AMEND CHAPTER 29, §2906, TITLE 29, DELAWARE CODE RELATING TO THE DUTIES OF AUDITOR OF ACCOUNTS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend §2906, Chapter 29, Title 29, Delaware Code by adding thereto a new subsection to read as follows:

"(f) The Auditor of Accounts shall conduct postaudits of all agencies, associations and funds created directly or indirectly by the provisions of Title 18 of the Delaware Code or by the Insurance Commissioner.

Approved July 21, 1992.

## CHAPTER 429

## FORMERLY

## HOUSE BILL NO. 621

AN ACT TO AUTHORIZE AND APPROVE THE TRANSFER OF CERTAIN REAL PROPERTY OF DELAWARE TECHNICAL AND COMMUNITY COLLEGE AT GEORGETOWN, DELAWARE, TO THE TOWN OF GEORGETOWN, WAIVING THE PROVISIONS OF CHAPTER 94, TITLE 29 DELAWARE CODE.

WHEREAS, Delaware Technical and Community College at Georgetown is desiring of transferring ownership of its water tower, domestic wells and distribution mains to The Town of Georgetown in order to incorporate the Delaware Technical water system into the water system of The Town; and

WHEREAS, as consideration for the land, tower, wells and water distribution lines, The Town of Georgetown will provide free water to the Delaware Technical Georgetown Campus for a period of twelve years; and

WHEREAS, the parties are desirous of expediting the completion of the aforementioned transaction by having the provisions of Chapter 94, Title 29 Delaware Code waived as they would apply to the transaction.

NOW THEREFORE:

BE IT RESOLVED by the General Assembly of the State of Delaware (three-fourths of all members elected to each House thereof concurring therein):

Section 1. Notwithstanding any provisions of the Delaware Code to the contrary, the transfer and conveyance of the following two (2) described parcels of real property to the Town of Georgetown, Delaware from Delaware Technical and Community College at Georgetown, in consideration of twelve (12) years of free water service to be provided by the Town of Georgetown is hereby specifically approved.

Parcel 1. ALL that certain piece, parcel or tract of land situate, lying and being in Georgetown Hundred, Sussex County, Delaware, more particularly described as follows, to wit:

BEGINNING at a point located on the Easterly right-of-way line of an access road, at 50 feet wide, said beginning point being approximately 1,422.31 feet in a Southerly direction from the Southerly right-of-way line of Route #18; thence with lands now or formerly of Delaware Technical & Community College, the following four (4) courses and distances: (1) South 86 degrees 25 minutes East 98 feet to an iron fence post; (2) South 12 degrees 59 minutes 35 seconds East 161.32 feet to an iron bar; (3) South 71 degrees 29 minutes West 140.00 feet to an iron bar; and (4) North 48 degrees 15 minutes West 63 feet to an iron bar set on the Easterly right-of-way line of said access road; thence with the Easterly right-of-way line of said access road, North 15 degrees 24 minutes East 172 feet, home to the point and place of beginning, containing 0.6026 acres, more or less as will more fully and at large appear upon reference to a survey prepared by Walter R. Todd, Registered Land Surveyor, dated August 7, 1990.

Parcel 2. ALL THAT CERTAIN Piece, parcel or tract of land situate, lying and being in Georgetown Hundred, Sussex County, Delaware, more particularly described as follows, to wit:

BEGINNING at an iron bar set at a point South 40 degrees 13 minutes East 324.68 feet from another iron bar set on the boundary line of a 0.6026 acre, more or less, parcel to be conveyed to the Town of Georgetown by Delaware Technical and Community College; thence with lands now or formerly of Delaware Technical and Community College, the following four (4) courses and distances: (1) North 50 degrees 09 minutes East 30 feet to an iron bar set; (2) South 39 degrees 51 minutes East 30 feet to an iron bar set; (3) South 50 degrees 09 minutes West 30 feet to an iron bar set; and (4) North 39 degrees 51 minutes West 30 feet, home to the point and place of beginning, containing 900 square feet, more or less, as will more fully and at large appear upon reference to a survey prepared by Walter R. Todd, Registered Land Surveyor, dated June 15, 1992.

Section 2. The Delaware Technical and Community College is hereby authorized and empowered to execute and deliver to the Town of Georgetown a good and sufficient deed transferring and conveying the said two parcels of real property together with any necessary and appropriate easements to accomplish the duly transfer of the water tower domestic wells and distribution mains of Delaware Technical and Community College at Georgetown to the Town of Georgetown.

Approved July 21, 1992.

## CHAPTER 430

## FORMERLY

## HOUSE BILL NO. 613

AN ACT TO AMEND TITLE 6 OF THE DELAWARE CODE RELATING TO THE UNIFORM COMMERCIAL CODE; PROVIDING FOR THE CODIFICATION OF THE LAW WITH RESPECT TO FUNDS TRANSFERS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Title 6 of the Delaware Code by adding thereto a new Article, designated as Article 4A, which new Article shall read as follows:

"ARTICLE 4A. FUNDS TRANSFERS

PART 1. SUBJECT MATTER AND DEFINITIONS

§4A-101. SHORT TITLE.

This Article may be cited as Uniform Commercial Code--Funds Transfers.

§4A-102. SUBJECT MATTER.

Except as otherwise provided in Section 4A-108, this Article applies to funds transfers defined in Section 4A-104.

§4A-103. PAYMENT ORDER - DEFINITIONS.

(a) In this Article:

(1) "Payment order" means an instruction of a sender to a receiving bank, transmitted orally, electronically, or in writing, to pay, or to cause another bank to pay, a fixed or determinable amount of money to a beneficiary if:

(i) the instruction does not state a condition to payment to the beneficiary other than time of payment,

(ii) the receiving bank is to be reimbursed by debiting an account of, or otherwise receiving payment from, the sender, and

(iii) the instruction is transmitted by the sender directly to the receiving bank or to an agent, funds-transfer system, or communication system for transmittal to the receiving bank.

(2) "Beneficiary" means the person to be paid by the beneficiary's bank.

(3) "Beneficiary's bank" means the bank identified in a payment order in which an account of the beneficiary is to be credited pursuant to the order or which otherwise is to make payment to the beneficiary if the order does not provide for payment to an account.

(4) "Receiving bank" means the bank to which the sender's instruction is addressed.

(5) "Sender" means the person giving the instruction to the receiving bank.

(b) If an instruction complying with subsection (a)(1) is to make more than one payment to a beneficiary, the instruction is a separate payment order with respect to each payment.

(c) A payment order is issued when it is sent to the receiving bank.

§4A-104. FUNDS TRANSFER - DEFINITIONS.



In this Article:

(a) "Funds transfer" means the series of transactions, beginning with the originator's payment order, made for the purpose of making payment to the beneficiary of the order. The term includes any payment order issued by the originator's bank or an intermediary bank intended to carry out the originator's payment order. A funds transfer is completed by acceptance by the beneficiary's bank of a payment order for the benefit of the beneficiary of the originator's payment order.

(b) "Intermediary bank" means a receiving bank other than the originator's bank or the beneficiary's bank.

(c) "Originator" means the sender of the first payment order in a funds transfer.

(d) "Originator's bank" means (i) the receiving bank to which the payment order of the originator is issued if the originator is not a bank, or (ii) the originator if the originator is a bank.

§4A-105. OTHER DEFINITIONS.

(a) In this Article:

(1) "Authorized account" means a deposit account of a customer in a bank designated by the customer as a source of payment of payment orders issued by the customer to the bank. If a customer does not so designate an account, any account of the customer is an authorized account if payment of a payment order from that account is not inconsistent with a restriction on the use of that account.

(2) "Bank" means a person engaged in the business of banking and includes a savings bank, savings and loan association, credit union, and trust company. A branch or separate office of a bank is a separate bank for purposes of this Article.

(3) "Customer" means a person, including a bank, having an account with a bank or from whom a bank has agreed to receive payment orders.

(4) "Funds-transfer business day" of a receiving bank means the part of a day during which the receiving bank is open for the receipt, processing, and transmittal of payment orders and cancellations and amendments of payment orders.

(5) "Funds-transfer system" means a wire transfer network, automated clearing house, or other communication system of a clearing house or other association of banks through which a payment order by a bank may be transmitted to the bank to which the order is addressed.

(6) "Good faith" means honesty in fact and the observance of reasonable commercial standards of fair dealing.

(7) "Prove" with respect to a fact means to meet the burden of establishing the fact (Section 1-201(8)).

(b) Other definitions applying to this Article and the sections in which they appear are:

"Acceptance"	Section 4A-209
"Beneficiary"	Section 4A-103
"Beneficiary's bank"	Section 4A-103
"Executed"	Section 4A-301
"Execution date"	Section 4A-301
"Funds transfer"	Section 4A-104

"Funds-transfer system rule"	Section 4A-501
"Intermediary bank"	Section 4A-104
"Originator"	Section 4A-104
"Originator's bank"	Section 4A-104
"Payment by beneficiary's bank to beneficiary"	Section 4A-405
"Payment by originator to beneficiary"	Section 4A-406
"Payment by sender to receiving bank"	Section 4A-403
"Payment date"	Section 4A-401
"Payment order"	Section 4A-103
"Receiving bank"	Section 4A-103
"Security procedure"	Section 4A-201
"Sender"	Section 4A-103

(c) The following definitions in Article 4 apply to this Article:

"Clearing house"	Section 4-104
"Item"	Section 4-104
"Suspends payments"	Section 4-104

(d) In addition Article 1 contains general definitions and principles of construction and interpretation applicable throughout this Article.

#### §4A-106. TIME PAYMENT ORDER IS RECEIVED.

(a) The time of receipt of a payment order or communication cancelling or amending a payment order is determined by the rules applicable to receipt of a notice stated in Section 1-201(27). A receiving bank may fix a cut-off time or times on a funds-transfer business day for the receipt and processing of payment orders and communications cancelling or amending payment orders. Different cut-off times may apply to payment orders, cancellations, or amendments, or to different categories of payment orders, cancellations, or amendments. A cut-off time may apply to senders generally or different cut-off times may apply to different senders or categories of payment orders. If a payment order or communication cancelling or amending a payment order is received after the close of a funds-transfer business day or after the appropriate cut-off time on a funds-transfer business day, the receiving bank may treat the payment order or communication as received at the opening of the next funds-transfer business day.

(b) If this Article refers to an execution date or payment date or states a day on which a receiving bank is required to take action, and the date or day does not fall on a funds-transfer business day, the next day that is a funds-transfer business day is treated as the date or day stated, unless the contrary is stated in this Article.

#### §4A-107. FEDERAL RESERVE REGULATIONS AND OPERATING CIRCULARS.

Regulations of the Board of Governors of the Federal Reserve System and operating circulars of the Federal Reserve Banks supersede any inconsistent provision of this Article to the extent of the inconsistency.

#### §4A-108. EXCLUSION OF CONSUMER TRANSACTIONS GOVERNED BY FEDERAL LAW.

This Article does not apply to a funds transfer any part of which is governed by the Electronic Fund Transfer Act of 1978 (Title XX, Public Law 95-630, 92 Stat. 3728, 15 U.S.C. §1693 et seq.) as amended from time to time.

## PART 2. ISSUE AND ACCEPTANCE OF PAYMENT ORDER

### §4A-201. SECURITY PROCEDURE.

"Security procedure" means a procedure established by agreement of a customer and a receiving bank for the purpose of (i) verifying that a payment order or communication amending or cancelling a payment order is that of the customer, or (ii) detecting error in the transmission or the content of the payment order or communication. A security procedure may require the use of algorithms or other codes, identifying words or numbers, encryption, callback procedures, or similar security devices. Comparison of a signature on a payment order or communication with an authorized specimen signature of the customer is not by itself a security procedure.

### §4A-202. AUTHORIZED AND VERIFIED PAYMENT ORDERS.

(a) A payment order received by the receiving bank is the authorized order of the person identified as sender if that person authorized the order or is otherwise bound by it under the law of agency.

(b) If a bank and its customer have agreed that the authenticity of payment orders issued to the bank in the name of the customer as sender will be verified pursuant to a security procedure, a payment order received by the receiving bank is effective as the order of the customer, whether or not authorized, if (i) the security procedure is a commercially reasonable method of providing security against unauthorized payment orders, and (ii) the bank proves that it accepted the payment order in good faith and in compliance with the security procedure and any written agreement or instruction of the customer restricting acceptance of payment orders issued in the name of the customer. The bank is not required to follow an instruction that violates a written agreement with the customer or notice of which is not received at a time and in a manner affording the bank a reasonable opportunity to act on it before the payment order is accepted.

(c) Commercial reasonableness of a security procedure is a question of law to be determined by considering the wishes of the customer expressed to the bank, the circumstances of the customer known to the bank, including the size, type, and frequency of payment orders normally issued by the customer to the bank, alternative security procedures offered to the customer, and security procedures in general use by customers and receiving banks similarly situated. A security procedure is deemed to be commercially reasonable if (i) the security procedure was chosen by the customer after the bank offered, and the customer refused, a security procedure that was commercially reasonable for that customer, and (ii) the customer expressly agreed in writing to be bound by any payment order, whether or not authorized, issued in its name and accepted by the bank in compliance with the security procedure chosen by the customer.

(d) The term "sender" in this Article includes the customer in whose name a payment order is issued if the order is the authorized order of the customer under subsection (a), or it is effective as the order of the customer under subsection (b).

(e) This section applies to amendments and cancellations of payment orders to the same extent it applies to payment orders.

(f) Except as provided in this section and in Section 4A-203(a)(1), rights and obligations arising under this section or Section 4A-203 may not be varied by agreement.

### §4A-203. UNENFORCEABILITY OF CERTAIN VERIFIED PAYMENT ORDERS.

(a) If an accepted payment order is not, under Section 4A-202(a), an authorized order of a customer identified as sender, but is effective as an order of the customer pursuant to Section 4A-202(b), the following rules apply:

(1) By express written agreement, the receiving bank may limit the extent to which it is entitled to enforce or retain payment of the payment order.

(2) The receiving bank is not entitled to enforce or retain payment of the payment order if the customer proves that the order was not caused, directly or indirectly, by a person (i) entrusted at any time with duties to act for the customer with respect to payment orders or the security procedure, or (ii) who obtained access to transmitting facilities of the customer or who obtained, from a source controlled by the customer and without authority of the receiving bank, information facilitating breach of the security procedure, regardless of how the information was obtained or whether the customer was at fault. Information includes any access device, computer software, or the like.

(b) This section applies to amendments of payment orders to the same extent it applies to payment orders.

#### §4A-204. REFUND OF PAYMENT AND DUTY OF CUSTOMER TO REPORT WITH RESPECT TO UNAUTHORIZED PAYMENT ORDER.

(a) If a receiving bank accepts a payment order issued in the name of its customer as sender which is (i) not authorized and not effective as the order of the customer under Section 4A-202, or (ii) not enforceable, in whole or in part, against the customer under Section 4A-203, the bank shall refund any payment of the payment order received from the customer to the extent the bank is not entitled to enforce payment and shall pay interest on the refundable amount calculated from the date the bank received payment to the date of the refund. However, the customer is not entitled to interest from the bank on the amount to be refunded if the customer fails to exercise ordinary care to determine that the order was not authorized by the customer and to notify the bank of the relevant facts within a reasonable time not exceeding 90 days after the date the customer received notification from the bank that the order was accepted or that the customer's account was debited with respect to the order. The bank is not entitled to any recovery from the customer on account of a failure by the customer to give notification as stated in this section.

(b) Reasonable time under subsection (a) may be fixed by agreement as stated in Section 1-204(1), but the obligation of a receiving bank to refund payment as stated in subsection (a) may not otherwise be varied by agreement.

#### §4A-205. ERRONEOUS PAYMENT ORDERS.

(a) If an accepted payment order was transmitted pursuant to a security procedure for the detection of error and the payment order (i) erroneously instructed payment to a beneficiary not intended by the sender, (ii) erroneously instructed payment in an amount greater than the amount intended by the sender, or (iii) was an erroneously transmitted duplicate of a payment order previously sent by the sender, the following rules apply:

(1) If the sender proves that the sender or a person acting on behalf of the sender pursuant to Section 4A-206 complied with the security procedure and that the error would have been detected if the receiving bank had also complied, the sender is not obliged to pay the order to the extent stated in paragraphs (2) and (3).

(2) If the funds transfer is completed on the basis of an erroneous payment order described in clause (i) or (iii) of subsection (a), the sender is not obliged to pay the order and the receiving bank is entitled to recover from the beneficiary any amount paid to the beneficiary to the extent allowed by the law governing mistake and restitution.

(3) If the funds transfer is completed on the basis of a payment order described in clause (ii) of subsection (a), the sender is not obliged to pay the order to the extent the amount received by the beneficiary is greater than the amount intended by the sender. In that case, the receiving bank is entitled to recover from the beneficiary the excess amount received to the extent allowed by the law governing mistake and restitution.

(b) If (i) the sender of an erroneous payment order described in subsection (a) is not obliged to pay all or part of the order, and (ii) the sender receives notification from the receiving bank that the order was accepted by the bank or that the sender's account was debited with respect to the order, the sender has a duty to exercise ordinary care, on the basis of information available to the sender, to discover the error with respect to the order and to advise the bank of the relevant facts within a reasonable time, not exceeding 90 days, after the bank's notification was received by the sender. If the bank proves that the sender failed to perform that duty, the sender is liable to the bank for the loss the bank proves it incurred as a result of the failure, but the liability of the sender may not exceed the amount of the sender's order.

(c) This section applies to amendments to payment orders to the same extent it applies to payment orders.

#### §4A-206. TRANSMISSION OF PAYMENT ORDER THROUGH FUNDS-TRANSFER OR OTHER COMMUNICATION SYSTEM.

(a) If a payment order addressed to a receiving bank is transmitted to a funds-transfer system or other third-party communication system for transmittal to the bank, the system is deemed to be an agent of the sender for the purpose of transmitting the payment order to the bank. If there is a discrepancy between the terms of the payment order transmitted to the system and the terms of the payment order transmitted by the system to the bank, the terms of the payment order of the sender are those transmitted by the system. This section does not apply to a funds-transfer system of the Federal Reserve Banks.

(b) This section applies to cancellations and amendments of payment orders to the same extent it applies to payment orders.

#### §4A-207. MISDESCRIPTION OF BENEFICIARY.

(a) Subject to subsection (b), if, in a payment order received by the beneficiary's bank, the name, bank account number, or other identification of the beneficiary refers to a nonexistent or unidentifiable person or account, no person has rights as a beneficiary of the order and acceptance of the order cannot occur.

(b) If a payment order received by the beneficiary's bank identifies the beneficiary both by name and by an identifying or bank account number and the name and number identify different persons, the following rules apply:

(1) Except as otherwise provided in subsection (c), if the beneficiary's bank does not know that the name and number refer to different persons, it may rely on the number as the proper identification of the beneficiary of the order. The beneficiary's bank need not determine whether the name and number refer to the same person.

(2) If the beneficiary's bank pays the person identified by name or knows that the name and number identify different persons, no person has rights as beneficiary except the person paid by the beneficiary's bank if that person was entitled to receive payment from the originator of the funds transfer. If no person has rights as beneficiary, acceptance of the order cannot occur.

(c) If (i) a payment order described in subsection (b) is accepted, (ii) the originator's payment order described the beneficiary inconsistently by name and number, and (iii) the beneficiary's bank pays the person identified by number as permitted by subsection (b)(1), the following rules apply:

(1) If the originator is a bank, the originator is obliged to pay its order.

(2) If the originator is not a bank and proves that the person identified by number was not entitled to receive payment from the originator, the originator is not obliged to pay its order unless the originator's bank proves that the originator, before acceptance of the originator's order, had notice that payment of a

payment order issued by the originator might be made by the beneficiary's bank on the basis of an identifying or bank account number even if it identifies a person different from the named beneficiary. Proof of notice may be made by any admissible evidence. The originator's bank satisfies the burden of proof if it proves that the originator, before the payment order was accepted, signed a writing stating the information to which the notice relates.

(d) In a case governed by subsection (b)(1), if the beneficiary's bank rightfully pays the person identified by number and that person was not entitled to receive payment from the originator, the amount paid may be recovered from that person to the extent allowed by the law governing mistake and restitution as follows:

(1) If the originator is obliged to pay its payment order as stated in subsection (c), the originator has the right to recover.

(2) If the originator is not a bank and is not obliged to pay its payment order, the originator's bank has the right to recover.

§4A-208. MISDESCRIPTION OF INTERMEDIARY BANK OR BENEFICIARY'S BANK.

(a) This subsection applies to a payment order identifying an intermediary bank or the beneficiary's bank only by an identifying number.

(1) The receiving bank may rely on the number as the proper identification of the intermediary or beneficiary's bank and need not determine whether the number identifies a bank.

(2) The sender is obliged to compensate the receiving bank for any loss and expenses incurred by the receiving bank as a result of its reliance on the number in executing or attempting to execute the order.

(b) This subsection applies to a payment order identifying an intermediary bank or the beneficiary's bank both by name and an identifying number if the name and number identify different persons.

(1) If the sender is a bank, the receiving bank may rely on the number as the proper identification of the intermediary or beneficiary's bank if the receiving bank, when it executes the sender's order, does not know that the name and number identify different persons. The receiving bank need not determine whether the name and number refer to the same person or whether the number refers to a bank. The sender is obliged to compensate the receiving bank for any loss and expenses incurred by the receiving bank as a result of its reliance on the number in executing or attempting to execute the order.

(2) If the sender is not a bank and the receiving bank proves that the sender, before the payment order was accepted, had notice that the receiving bank might rely on the number as the proper identification of the intermediary or beneficiary's bank even if it identifies a person different from the bank identified by name, the rights and obligations of the sender and the receiving bank are governed by subsection (b)(1), as though the sender were a bank. Proof of notice may be made by any admissible evidence. The receiving bank satisfies the burden of proof if it proves that the sender, before the payment order was accepted, signed a writing stating the information to which the notice relates.

(3) Regardless of whether the sender is a bank, the receiving bank may rely on the name as the proper identification of the intermediary or beneficiary's bank if the receiving bank, at the time it executes the sender's order, does not know that the name and number identify different persons. The receiving bank need not determine whether the name and number refer to the same person.

(4) If the receiving bank knows that the name and number identify different persons, reliance on either the name or the number in

executing the sender's payment order is a breach of the obligation stated in Section 4A-302(a)(1).

#### §4A-209. ACCEPTANCE OF PAYMENT ORDER.

(a) Subject to subsection (d), a receiving bank other than the beneficiary's bank accepts a payment order when it executes the order.

(b) Subject to subsections (c) and (d), a beneficiary's bank accepts a payment order at the earliest of the following times:

(1) when the bank (i) pays the beneficiary as stated in Section 4A-405(a) or 4A-405(b), or (ii) notifies the beneficiary of receipt of the order or that the account of the beneficiary has been credited with respect to the order unless the notice indicates that the bank is rejecting the order or that funds with respect to the order may not be withdrawn or used until receipt of payment from the sender of the order;

(2) when the bank receives payment of the entire amount of the sender's order pursuant to Section 4A-403(a)(1) or 4A-403(a)(2); or

(3) the opening of the next funds-transfer business day of the bank following the payment date of the order if, at that time, the amount of the sender's order is fully covered by a withdrawable credit balance in an authorized account of the sender or the bank has otherwise received full payment from the sender, unless the order was rejected before that time or is rejected within (i) one hour after that time, or (ii) one hour after the opening of the next business day of the sender following the payment date if that time is later. If notice of rejection is received by the sender after the payment date and the authorized account of the sender does not bear interest, the bank is obliged to pay interest to the sender on the amount of the order for the number of days elapsing after the payment date to the day the sender receives notice or learns that the order was not accepted, counting that day as an elapsed day. If the withdrawable credit balance during that period falls below the amount of the order, the amount of interest payable is reduced accordingly.

(c) Acceptance of a payment order cannot occur before the order is received by the receiving bank. Acceptance does not occur under subsection (b)(1) or (b)(3) if the beneficiary of the payment order does not have an account with the receiving bank, the account has been closed, or the receiving bank is not permitted by law to receive credits for the beneficiary's account.

(d) A payment order issued to the originator's bank cannot be accepted until the payment date if the bank is the beneficiary's bank, or the execution date if the bank is not the beneficiary's bank. If the originator's bank executes the originator's payment order before the execution date or pays the beneficiary of the originator's payment order before the payment date and the payment order is subsequently canceled pursuant to Section 4A-211(c), the bank may recover from the beneficiary any payment received to the extent allowed by the law governing mistake and restitution.

#### §4A-210. REJECTION OF PAYMENT ORDER.

(a) A payment order is rejected by the receiving bank by a notice of rejection transmitted to the sender orally, electronically, or in writing. A notice of rejection need not use any particular words and is sufficient if it indicates that the receiving bank is rejecting the order or will not execute or pay the order. Rejection is effective when the notice is given if transmission is by a means that is reasonable in the circumstances. If notice of rejection is given by a means that is not reasonable, rejection is effective when the notice is received. If an agreement of the sender and receiving bank establishes the means to be used to reject a payment order, (i) any means complying with the agreement is reasonable and (ii) any means not complying is not reasonable unless no significant delay in receipt of the notice results from the use of the noncomplying means.

(b) This subsection applies if a receiving bank other than the beneficiary's bank fails to execute a payment order despite the existence of

the execution date of a withdrawable credit balance in an authorized account of the sender sufficient to cover the order. If the sender does not receive notice of rejection of the order on the execution date and the authorized account of the sender does not bear interest, the bank is obliged to pay interest to the sender on the amount of the order for the number of days elapsing after the execution date to the earlier of the day the order is canceled pursuant to Section 4A-211(d) or the day the sender receives notice or learns that the order was not executed, counting the final day of the period as an elapsed day. If the withdrawable credit balance during that period falls below the amount of the order, the amount of interest is reduced accordingly.

(c) If a receiving bank suspends payments, all unaccepted payment orders issued to it are deemed rejected at the time the bank suspends payments.

(d) Acceptance of a payment order precludes a later rejection of the order. Rejection of a payment order precludes a later acceptance of the order.

#### §4A-211. CANCELLATION AND AMENDMENT OF PAYMENT ORDER.

(a) A communication of the sender of a payment order cancelling or amending the order may be transmitted to the receiving bank orally, electronically, or in writing. If a security procedure is in effect between the sender and the receiving bank, the communication is not effective to cancel or amend the order unless the communication is verified pursuant to the security procedure or the bank agrees to the cancellation or amendment.

(b) Subject to subsection (a), a communication by the sender cancelling or amending a payment order is effective to cancel or amend the order if notice of the communication is received at a time and in a manner affording the receiving bank a reasonable opportunity to act on the communication before the bank accepts the payment order.

(c) After a payment order has been accepted, cancellation or amendment of the order is not effective unless the receiving bank agrees or a funds-transfer system rule allows cancellation or amendment without agreement of the bank.

(1) With respect to a payment order accepted by a receiving bank other than the beneficiary's bank, cancellation or amendment is not effective unless a conforming cancellation or amendment of the payment order issued by the receiving bank is also made.

(2) With respect to a payment order accepted by the beneficiary's bank, cancellation or amendment is not effective unless the order was issued in execution of an unauthorized payment order, or because of a mistake by a sender in the funds transfer which resulted in the issuance of a payment order (i) that is a duplicate of a payment order previously issued by the sender, (ii) that orders payment to a beneficiary not entitled to receive payment from the originator, or (iii) that orders payment in an amount greater than the amount the beneficiary was entitled to receive from the originator. If the payment order is canceled or amended, the beneficiary's bank is entitled to recover from the beneficiary any amount paid to the beneficiary to the extent allowed by the law governing mistake and restitution.

(d) An unaccepted payment order is canceled by operation of law at the close of the fifth funds-transfer business day of the receiving bank after the execution date or payment date of the order.

(e) A canceled payment order cannot be accepted. If an accepted payment order is canceled, the acceptance is nullified and no person has any right or obligation based on the acceptance. Amendment of a payment order is deemed to be cancellation of the original order at the time of amendment and issue of a new payment order in the amended form at the same time.

(f) Unless otherwise provided in an agreement of the parties or in a funds-transfer system rule, if the receiving bank, after accepting a payment order, agrees to cancellation or amendment of the order by the sender or is bound by a funds-transfer system rule allowing cancellation or amendment without the bank's agreement, the sender, whether or not cancellation or



executing the sender's payment order is a breach of the obligation stated in Section 4A-302(a)(1).

#### §4A-209. ACCEPTANCE OF PAYMENT ORDER.

(a) Subject to subsection (d), a receiving bank other than the beneficiary's bank accepts a payment order when it executes the order.

(b) Subject to subsections (c) and (d), a beneficiary's bank accepts a payment order at the earliest of the following times:

(1) when the bank (i) pays the beneficiary as stated in Section 4A-405(a) or 4A-405(b), or (ii) notifies the beneficiary of receipt of the order or that the account of the beneficiary has been credited with respect to the order unless the notice indicates that the bank is rejecting the order or that funds with respect to the order may not be withdrawn or used until receipt of payment from the sender of the order;

(2) when the bank receives payment of the entire amount of the sender's order pursuant to Section 4A-403(a)(1) or 4A-403(a)(2); or

(3) the opening of the next funds-transfer business day of the bank following the payment date of the order if, at that time, the amount of the sender's order is fully covered by a withdrawable credit balance in an authorized account of the sender or the bank has otherwise received full payment from the sender, unless the order was rejected before that time or is rejected within (i) one hour after that time, or (ii) one hour after the opening of the next business day of the sender following the payment date if that time is later. If notice of rejection is received by the sender after the payment date and the authorized account of the sender does not bear interest, the bank is obliged to pay interest to the sender on the amount of the order for the number of days elapsing after the payment date to the day the sender receives notice or learns that the order was not accepted, counting that day as an elapsed day. If the withdrawable credit balance during that period falls below the amount of the order, the amount of interest payable is reduced accordingly.

(c) Acceptance of a payment order cannot occur before the order is received by the receiving bank. Acceptance does not occur under subsection (b)(2) or (b)(3) if the beneficiary of the payment order does not have an account with the receiving bank, the account has been closed, or the receiving bank is not permitted by law to receive credits for the beneficiary's account.

(d) A payment order issued to the originator's bank cannot be accepted until the payment date if the bank is the beneficiary's bank, or the execution date if the bank is not the beneficiary's bank. If the originator's bank executes the originator's payment order before the execution date or pays the beneficiary of the originator's payment order before the payment date and the payment order is subsequently canceled pursuant to Section 4A-211(b), the bank may recover from the beneficiary any payment received to the extent allowed by the law governing mistake and restitution.

#### §4A-210. REJECTION OF PAYMENT ORDER.

(a) A payment order is rejected by the receiving bank by a notice of rejection transmitted to the sender orally, electronically, or in writing. A notice of rejection need not use any particular words and is sufficient if it indicates that the receiving bank is rejecting the order or will not execute or pay the order. Rejection is effective when the notice is given if transmission is by a means that is reasonable in the circumstances. If notice of rejection is given by a means that is not reasonable, rejection is effective when the notice is received. If an agreement of the sender and receiving bank establishes the means to be used to reject a payment order, (i) any means complying with the agreement is reasonable and (ii) any means not complying is not reasonable unless no significant delay in receipt of the notice resulted from the use of the noncomplying means.

(b) This subsection applies if a receiving bank other than the beneficiary's bank fails to execute a payment order despite the existence on

the execution date of a withdrawable credit balance in an authorized account of the sender sufficient to cover the order. If the sender does not receive notice of rejection of the order on the execution date and the authorized account of the sender does not bear interest, the bank is obliged to pay interest to the sender on the amount of the order for the number of days elapsing after the execution date to the earlier of the day the order is canceled pursuant to Section 4A-211(d) or the day the sender receives notice or learns that the order was not executed, counting the final day of the period as an elapsed day. If the withdrawable credit balance during that period falls below the amount of the order, the amount of interest is reduced accordingly.

(c) If a receiving bank suspends payments, all unaccepted payment orders issued to it are deemed rejected at the time the bank suspends payments.

(d) Acceptance of a payment order precludes a later rejection of the order. Rejection of a payment order precludes a later acceptance of the order.

#### §4A-211. CANCELLATION AND AMENDMENT OF PAYMENT ORDER.

(a) A communication of the sender of a payment order cancelling or amending the order may be transmitted to the receiving bank orally, electronically, or in writing. If a security procedure is in effect between the sender and the receiving bank, the communication is not effective to cancel or amend the order unless the communication is verified pursuant to the security procedure or the bank agrees to the cancellation or amendment.

(b) Subject to subsection (a), a communication by the sender cancelling or amending a payment order is effective to cancel or amend the order if notice of the communication is received at a time and in a manner affording the receiving bank a reasonable opportunity to act on the communication before the bank accepts the payment order.

(c) After a payment order has been accepted, cancellation or amendment of the order is not effective unless the receiving bank agrees or a funds-transfer system rule allows cancellation or amendment without agreement of the bank.

(1) With respect to a payment order accepted by a receiving bank other than the beneficiary's bank, cancellation or amendment is not effective unless a conforming cancellation or amendment of the payment order issued by the receiving bank is also made.

(2) With respect to a payment order accepted by the beneficiary's bank, cancellation or amendment is not effective unless the order was issued in execution of an unauthorized payment order, or because of a mistake by a sender in the funds transfer which resulted in the issuance of a payment order (i) that is a duplicate of a payment order previously issued by the sender, (ii) that orders payment to a beneficiary not entitled to receive payment from the originator, or (iii) that orders payment in an amount greater than the amount the beneficiary was entitled to receive from the originator. If the payment order is canceled or amended, the beneficiary's bank is entitled to recover from the beneficiary any amount paid to the beneficiary to the extent allowed by the law governing mistake and restitution.

(d) An unaccepted payment order is canceled by operation of law at the close of the fifth funds-transfer business day of the receiving bank after the execution date or payment date of the order.

(e) A canceled payment order cannot be accepted. If an accepted payment order is canceled, the acceptance is nullified and no person has any right or obligation based on the acceptance. Amendment of a payment order is deemed to be cancellation of the original order at the time of amendment and issue of a new payment order in the amended form at the same time.

(f) Unless otherwise provided in an agreement of the parties or in a funds-transfer system rule, if the receiving bank, after accepting a payment order, agrees to cancellation or amendment of the order by the sender or is bound by a funds-transfer system rule allowing cancellation or amendment without the bank's agreement, the sender, whether or not cancellation or

amendment is effective, is liable to the bank for any loss and expenses, including reasonable attorney's fees, incurred by the bank as a result of the cancellation or amendment or attempted cancellation or amendment.

(g) A payment order is not revoked by the death or legal incapacity of the sender unless the receiving bank knows of the death or of an adjudication of incapacity by a court of competent jurisdiction and has reasonable opportunity to act before acceptance of the order.

(h) A funds-transfer system rule is not effective to the extent it conflicts with subsection (c)(2).

§4A-212. LIABILITY AND DUTY OF RECEIVING BANK REGARDING UNACCEPTED PAYMENT ORDER.

If a receiving bank fails to accept a payment order that it is obliged by express agreement to accept, the bank is liable for breach of the agreement to the extent provided in the agreement or in this Article, but does not otherwise have any duty to accept a payment order or, before acceptance, to take any action, or refrain from taking action, with respect to the order except as provided in this Article or by express agreement. Liability based on acceptance arises only when acceptance occurs as stated in Section 4A-209, and liability is limited to that provided in this Article. A receiving bank is not the agent of the sender or beneficiary of the payment order it accepts, or of any other party to the funds transfer, and the bank owes no duty to any party to the funds transfer except as provided in this Article or by express agreement.

PART 3. EXECUTION OF SENDER'S PAYMENT ORDER BY RECEIVING BANK

§4A-301. EXECUTION AND EXECUTION DATE.

(a) A payment order is "executed" by the receiving bank when it issues a payment order intended to carry out the payment order received by the bank. A payment order received by the beneficiary's bank can be accepted but cannot be executed.

(b) "Execution date" of a payment order means the day on which the receiving bank may properly issue a payment order in execution of the sender's order. The execution date may be determined by instruction of the sender but cannot be earlier than the day the order is received and, unless otherwise determined, is the day the order is received. If the sender's instruction states a payment date, the execution date is the payment date or an earlier date on which execution is reasonably necessary to allow payment to the beneficiary on the payment date.

§4A-302. OBLIGATIONS OF RECEIVING BANK IN EXECUTION OF PAYMENT ORDER.

(a) Except as provided in subsections (b) through (d), if the receiving bank accepts a payment order pursuant to Section 4A-209 (a), the bank has the following obligations in executing the order:

(1) The receiving bank is obliged to issue, on the execution date, a payment order complying with the sender's order and to follow the sender's instructions concerning (i) any intermediary bank or funds-transfer system to be used in carrying out the funds transfer, or (ii) the means by which payment orders are to be transmitted in the funds transfer. If the originator's bank issues a payment order to an intermediary bank, the originator's bank is obliged to instruct the intermediary bank according to the instruction of the originator. An intermediary bank in the funds transfer is similarly bound by an instruction given to it by the sender of the payment order it accepts.

(2) If the sender's instruction states that the funds transfer is to be carried out telephonically or by wire transfer or otherwise indicates that the funds transfer is to be carried out by the most expeditious means, the receiving bank is obliged to transmit its payment order by the most expeditious available means, and to instruct any intermediary bank accordingly. If a sender's instruction states a payment date, the receiving bank is obliged to transmit its payment order at a time and by means reasonably

necessary to allow payment to the beneficiary on the payment date or as soon thereafter as is feasible.

(b) Unless otherwise instructed, a receiving bank executing a payment order may (i) use any funds-transfer system if use of that system is reasonable in the circumstances, and (ii) issue a payment order to the beneficiary's bank or to an intermediary bank through which a payment order conforming to the sender's order can expeditiously be issued to the beneficiary's bank if the receiving bank exercises ordinary care in the selection of the intermediary bank. A receiving bank is not required to follow an instruction of the sender designating a funds-transfer system to be used in carrying out the funds transfer if the receiving bank, in good faith, determines that it is not feasible to follow the instruction or that following the instruction would unduly delay completion of the funds transfer.

(c) Unless subsection (a)(2) applies or the receiving bank is otherwise instructed, the bank may execute a payment order by transmitting its payment order by first class mail or by any means reasonable in the circumstances. If the receiving bank is instructed to execute the sender's order by transmitting its payment order by a particular means, the receiving bank may issue its payment order by the means stated or by any means as expeditious as the means stated.

(d) Unless instructed by the sender, (i) the receiving bank may not obtain payment of its charges for services and expenses in connection with the execution of the sender's order by issuing a payment order in an amount equal to the amount of the sender's order less the amount of the charges, and (ii) may not instruct a subsequent receiving bank to obtain payment of its charges in the same manner.

#### §4A-303. ERRONEOUS EXECUTION OF PAYMENT ORDER.

(a) A receiving bank that (i) executes the payment order of the sender by issuing a payment order in an amount greater than the amount of the sender's order, or (ii) issues a payment order in execution of the sender's order and then issues a duplicate order, is entitled to payment of the amount of the sender's order under Section 4A-402(c) if that subsection is otherwise satisfied. The bank is entitled to recover from the beneficiary of the erroneous order the excess payment received to the extent allowed by the law governing mistake and restitution.

(b) A receiving bank that executes the payment order of the sender by issuing a payment order in an amount less than the amount of the sender's order is entitled to payment of the amount of the sender's order under Section 4A-402(c) if (i) that subsection is otherwise satisfied and (ii) the bank corrects its mistake by issuing an additional payment order for the benefit of the beneficiary of the sender's order. If the error is not corrected, the issuer of the erroneous order is entitled to receive or retain payment from the sender of the order it accepted only to the extent of the amount of the erroneous order. This subsection does not apply if the receiving bank executes the sender's payment order by issuing a payment order in an amount less than the amount of the sender's order for the purpose of obtaining payment of its charges for services and expenses pursuant to instruction of the sender.

(c) If a receiving bank executes the payment order of the sender by issuing a payment order to a beneficiary different from the beneficiary of the sender's order and the funds transfer is completed on the basis of that error, the sender of the payment order that was erroneously executed and all previous senders in the funds transfer are not obliged to pay the payment orders they issued. The issuer of the erroneous order is entitled to recover from the beneficiary of the order the payment received to the extent allowed by the law governing mistake and restitution.

#### §4A-304. DUTY OF SENDER TO REPORT ERRONEOUSLY EXECUTED PAYMENT ORDER.

If the sender of a payment order that is erroneously executed as stated in Section 4A-303 receives notification from the receiving bank that the order was executed or that the sender's account was debited with respect to the order, the sender has a duty to exercise ordinary care to determine, on the basis of information available to the sender, that the order was erroneously executed and to notify the bank of the relevant facts within a reasonable time

not exceeding 90 days after the notification from the bank was received by the sender. If the sender fails to perform that duty, the bank is not obliged to pay interest on any amount refundable to the sender under Section 4A-402(d) for the period before the bank learns of the execution error. The bank is not entitled to any recovery from the sender on account of a failure by the sender to perform the duty stated in this section.

§4A-305. LIABILITY FOR LATE OR IMPROPER EXECUTION OR FAILURE TO EXECUTE PAYMENT ORDER.

(a) If a funds transfer is completed but execution of a payment order by the receiving bank in breach of Section 4A-302 results in delay in payment to the beneficiary, the bank is obliged to pay interest to either the originator or the beneficiary of the funds transfer for the period of delay caused by the improper execution. Except as provided in subsection (c), additional damages are not recoverable.

(b) If execution of a payment order by a receiving bank in breach of Section 4A-302 results in (i) noncompletion of the funds transfer, (ii) failure to use an intermediary bank designated by the originator, or (iii) issuance of a payment order that does not comply with the terms of the payment order of the originator, the bank is liable to the originator for its expenses in the funds transfer and for incidental expenses and interest losses, to the extent not covered by subsection (a), resulting from the improper execution. Except as provided in subsection (c), additional damages are not recoverable.

(c) In addition to the amounts payable under subsections (a) and (b), damages, including consequential damages, are recoverable to the extent provided in an express written agreement of the receiving bank.

(d) If a receiving bank fails to execute a payment order it was obliged by express agreement to execute, the receiving bank is liable to the sender for its expenses in the transaction and for incidental expenses and interest losses resulting from the failure to execute. Additional damages, including consequential damages, are recoverable to the extent provided in an express written agreement of the receiving bank, but are not otherwise recoverable.

(e) Reasonable attorney's fees are recoverable if demand for compensation under subsection (a) or (b) is made and refused before an action is brought on the claim. If a claim is made for breach of an agreement under subsection (d) and the agreement does not provide for damages, reasonable attorney's fees are recoverable if demand for compensation under subsection (d) is made and refused before an action is brought on the claim.

(f) Except as stated in this section, the liability of a receiving bank under subsections (a) and (b) may not be varied by agreement.

PART 4. PAYMENT

§4A-401. PAYMENT DATE.

"Payment date" of a payment order means the day on which the amount of the order is payable to the beneficiary by the beneficiary's bank. The payment date may be determined by instruction of the sender but cannot be earlier than the day the order is received by the beneficiary's bank and, unless otherwise determined, is the day the order is received by the beneficiary's bank.

§4A-402. OBLIGATION OF SENDER TO PAY RECEIVING BANK.

(a) This section is subject to Sections 4A-205 and 4A-207.

(b) With respect to a payment order issued to the beneficiary's bank, acceptance of the order by the bank obliges the sender to pay the bank the amount of the order, but payment is not due until the payment date of the order.

(c) This subsection is subject to subsection (e) and to Section 4A-303. With respect to a payment order issued to a receiving bank other than the beneficiary's bank, acceptance of the order by the receiving bank obliges the sender to pay the bank the amount of the sender's order. Payment by the

sender is not due until the execution date of the sender's order. The obligation of that sender to pay its payment order is excused if the funds transfer is not completed by acceptance by the beneficiary's bank of a payment order instructing payment to the beneficiary of that sender's payment order.

(d) If the sender of a payment order pays the order and was not obliged to pay all or part of the amount paid, the bank receiving payment is obliged to refund payment to the extent the sender was not obliged to pay. Except as provided in Sections 4A-204 and 4A-304, interest is payable on the refundable amount from the date of payment.

(e) If a funds transfer is not completed as stated in subsection (c) and an intermediary bank is obliged to refund payment as stated in subsection (d) but is unable to do so because not permitted by applicable law or because the bank suspends payments, a sender in the funds transfer that executed a payment order in compliance with an instruction, as stated in Section 4A-302(a)(1), to route the funds transfer through that intermediary bank is entitled to receive or retain payment from the sender of the payment order that it accepted. The first sender in the funds transfer that issued an instruction requiring routing through that intermediary bank is subrogated to the right of the bank that paid the intermediary bank to refund as stated in subsection (d).

(f) The right of the sender of a payment order to be excused from the obligation to pay the order as stated in subsection (c) or to receive refund under subsection (d) may not be varied by agreement.

#### §4A-403. PAYMENT BY SENDER TO RECEIVING BANK.

(a) Payment of the sender's obligation under Section 4A-402 to pay the receiving bank occurs as follows:

(1) If the sender is a bank, payment occurs when the receiving bank receives final settlement of the obligation through a Federal Reserve Bank or through a funds-transfer system.

(2) If the sender is a bank and the sender (i) credited an account of the receiving bank with the sender, or (ii) caused an account of the receiving bank in another bank to be credited, payment occurs when the credit is withdrawn or, if not withdrawn, at midnight of the day on which the credit is withdrawable and the receiving bank learns of that fact.

(3) If the receiving bank debits an account of the sender with the receiving bank, payment occurs when the debit is made to the extent the debit is covered by a withdrawable credit balance in the account.

(b) If the sender and receiving bank are members of a funds-transfer system that nets obligations multilaterally among participants, the receiving bank receives final settlement when settlement is complete in accordance with the rules of the system. The obligation of the sender to pay the amount of a payment order transmitted through the funds-transfer system may be satisfied, to the extent permitted by the rules of the system, by setting off and applying against the sender's obligation the right of the sender to receive payment from the receiving bank of the amount of any other payment order transmitted to the sender by the receiving bank through the funds-transfer system. The aggregate balance of obligations owed by each sender to each receiving bank in the funds-transfer system may be satisfied, to the extent permitted by the rules of the system, by setting off and applying against that balance the aggregate balance of obligations owed to the sender by other members of the system. The aggregate balance is determined after the right of setoff stated in the second sentence of this subsection has been exercised.

(c) If two banks transmit payment orders to each other under an agreement that settlement of the obligations of each bank to the other under Section 4A-402 will be made at the end of the day or other period, the total amount owed with respect to all orders transmitted by one bank shall be set off against the total amount owed with respect to all orders transmitted by the other bank. To the extent of the setoff, each bank has made payment to the other.

(d) In a case not covered by subsection (a), the time when payment of the sender's obligation under Section 4A-402(b) or 4A-402(c) occurs is governed by applicable principles of law that determine when an obligation is satisfied.

**§4A-404. OBLIGATION OF BENEFICIARY'S BANK TO PAY AND GIVE NOTICE TO BENEFICIARY.**

(a) Subject to Sections 4A-211(e), 4A-405(d), and 4A-405(e), if a beneficiary's bank accepts a payment order, the bank is obliged to pay the amount of the order to the beneficiary of the order. Payment is due on the payment date of the order, but if acceptance occurs on the payment date after the close of the funds-transfer business day of the bank, payment is due on the next funds-transfer business day. If the bank refuses to pay after demand by the beneficiary and receipt of notice of particular circumstances that will give rise to consequential damages as a result of nonpayment, the beneficiary may recover damages resulting from the refusal to pay to the extent the bank had notice of the damages, unless the bank proves that it did not pay because of a reasonable doubt concerning the right of the beneficiary to payment.

(b) If a payment order accepted by the beneficiary's bank instructs payment to an account of the beneficiary, the bank is obliged to notify the beneficiary of receipt of the order before midnight of the next funds-transfer business day following the payment date. If the payment order does not instruct payment to an account of the beneficiary, the bank is required to notify the beneficiary only if notice is required by the order. Notice may be given by first class mail or any other means reasonable in the circumstances. If the bank fails to give the required notice, the bank is obliged to pay interest to the beneficiary on the amount of the payment order from the day notice should have been given until the day the beneficiary learned of receipt of the payment order by the bank. No other damages are recoverable. Reasonable attorney's fees are also recoverable if demand for interest is made and refused before an action is brought on the claim.

(c) The right of a beneficiary to receive payment and damages as stated in subsection (a) may not be varied by agreement or a funds-transfer system rule. The right of a beneficiary to be notified as stated in subsection (b) may be varied by agreement of the beneficiary or by a funds-transfer system rule if the beneficiary is notified of the rule before initiation of the funds transfer.

**§4A-405. PAYMENT BY BENEFICIARY'S BANK TO BENEFICIARY.**

(a) If the beneficiary's bank credits an account of the beneficiary of a payment order, payment of the bank's obligation under Section 4A-404(a) occurs when and to the extent (i) the beneficiary is notified of the right to withdraw the credit, (ii) the bank lawfully applies the credit to a debt of the beneficiary, or (iii) funds with respect to the order are otherwise made available to the beneficiary by the bank.

(b) If the beneficiary's bank does not credit an account of the beneficiary of a payment order, the time when payment of the bank's obligation under Section 4A-404(a) occurs is governed by principles of law that determine when an obligation is satisfied.

(c) Except as stated in subsections (d) and (e), if the beneficiary's bank pays the beneficiary of a payment order under a condition to payment or agreement of the beneficiary giving the bank the right to recover payment from the beneficiary if the bank does not receive payment of the order, the condition to payment or agreement is not enforceable.

(d) A funds-transfer system rule may provide that payments made to beneficiaries of funds transfers made through the system are provisional until receipt of payment by the beneficiary's bank of the payment order it accepted. A beneficiary's bank that makes a payment that is provisional under the rule is entitled to refund from the beneficiary if (i) the rule requires that both the beneficiary and the originator be given notice of the provisional nature of the payment before the funds transfer is initiated, (ii) the beneficiary, the beneficiary's bank and the originator's bank agreed to be bound by the rule, and (iii) the beneficiary's bank did not receive payment of the payment order that it accepted. If the beneficiary is obliged to refund payment to the beneficiary's bank, acceptance of the payment order by the

beneficiary's bank is nullified and no payment by the originator of the funds transfer to the beneficiary occurs under Section 4A-406.

(e) This subsection applies to a funds transfer that includes a payment order transmitted over a funds-transfer system that (i) nets obligations multilaterally among participants, and (ii) has in effect a loss-sharing agreement among participants for the purpose of providing funds necessary to complete settlement of the obligations of one or more participants that do not meet their settlement obligations. If the beneficiary's bank in the funds transfer accepts a payment order and the system fails to complete settlement pursuant to its rules with respect to any payment order in the funds transfer, (i) the acceptance by the beneficiary's bank is nullified and no person has any right or obligation based on the acceptance, (ii) the beneficiary's bank is entitled to recover payment from the beneficiary, (iii) no payment by the originator to the beneficiary occurs under Section 4A-406, and (iv) subject to Section 4A-402(e), each sender in the funds transfer is excused from its obligation to pay its payment order under Section 4A-402(c) because the funds transfer has not been completed.

#### §4A-406. PAYMENT BY ORIGINATOR TO BENEFICIARY; DISCHARGE OF UNDERLYING OBLIGATION.

(a) Subject to Sections 4A-211(e), 4A-405(d), and 4A-405(e), the originator of a funds transfer pays the beneficiary of the originator's payment order (i) at the time a payment order for the benefit of the beneficiary is accepted by the beneficiary's bank in the funds transfer and (ii) in an amount equal to the amount of the order accepted by the beneficiary's bank, but not more than the amount of the originator's order.

(b) If payment under subsection (a) is made to satisfy an obligation, the obligation is discharged to the same extent discharge would result from payment to the beneficiary of the same amount in money, unless (i) the payment under subsection (a) was made by a means prohibited by the contract of the beneficiary with respect to the obligation, (ii) the beneficiary, within a reasonable time after receiving notice of receipt of the order by the beneficiary's bank, notified the originator of the beneficiary's refusal of the payment, (iii) funds with respect to the order were not withdrawn by the beneficiary or applied to a debt of the beneficiary, and (iv) the beneficiary would suffer a loss that could reasonably have been avoided if payment had been made by a means complying with the contract. If payment by the originator does not result in discharge under this section, the originator is subrogated to the rights of the beneficiary to receive payment from the beneficiary's bank under Section 4A-404(a).

(c) For the purpose of determining whether discharge of an obligation occurs under subsection (b), if the beneficiary's bank accepts a payment order in an amount equal to the amount of the originator's payment order less charges of one or more receiving banks in the funds transfer, payment to the beneficiary is deemed to be in the amount of the originator's order unless upon demand by the beneficiary the originator does not pay the beneficiary the amount of the deducted charges.

(d) Rights of the originator or of the beneficiary of a funds transfer under this section may be varied only by agreement of the originator and the beneficiary.

### PART 5. MISCELLANEOUS PROVISIONS

#### §4A-501. VARIATION BY AGREEMENT AND EFFECT OF FUNDS-TRANSFER SYSTEM RULE.

(a) Except as otherwise provided in this Article, the rights and obligations of a party to a funds transfer may be varied by agreement of the affected party.

(b) "Funds-transfer system rule" means a rule of an association of banks (i) governing transmission of payment orders by means of a funds-transfer system of the association or rights and obligations with respect to those orders, or (ii) to the extent the rule governs rights and obligations between banks that are parties to a funds transfer in which a Federal Reserve Bank, acting as an intermediary bank, sends a payment order to the beneficiary's bank. Except as otherwise provided in this Article, a



funds-transfer system rule governing rights and obligations between participating banks using the system may be effective even if the rule conflicts with this Article and indirectly affects another party to the funds transfer who does not consent to the rule. A funds-transfer system rule may also govern rights and obligations of parties other than participating banks using the system to the extent stated in Sections 4A-404(c), 4A-405(d), and 4A-507(c).

**§4A-502. CREDITOR PROCESS SERVED ON RECEIVING BANK; SETOFF BY BENEFICIARY'S BANK.**

(a) As used in this section, "creditor process" means levy, attachment, garnishment, notice of lien, sequestration, or similar process issued by or on behalf of a creditor or other claimant with respect to an account.

(b) This subsection applies to creditor process with respect to an authorized account of the sender of a payment order if the creditor process is served on the receiving bank. For the purpose of determining rights with respect to the creditor process, if the receiving bank accepts the payment order the balance in the authorized account is deemed to be reduced by the amount of the payment order to the extent the bank did not otherwise receive payment of the order, unless the creditor process is served at a time and in a manner affording the bank a reasonable opportunity to act on it before the bank accepts the payment order.

(c) If a beneficiary's bank has received a payment order for payment to the beneficiary's account in the bank, the following rules apply:

(1) The bank may credit the beneficiary's account. The amount credited may be set off against an obligation owed by the beneficiary to the bank or may be applied to satisfy creditor process served on the bank with respect to the account.

(2) The bank may credit the beneficiary's account and allow withdrawal of the amount credited unless creditor process with respect to the account is served at a time and in a manner affording the bank a reasonable opportunity to act to prevent withdrawal.

(3) If creditor process with respect to the beneficiary's account has been served and the bank has had a reasonable opportunity to act on it, the bank may not reject the payment order except for a reason unrelated to the service of process.

(d) Creditor process with respect to a payment by the originator to the beneficiary pursuant to a funds transfer may be served only on the beneficiary's bank with respect to the debt owed by that bank to the beneficiary. Any other bank served with the creditor process is not obliged to act with respect to the process.

**§4A-503. INJUNCTION OR RESTRAINING ORDER WITH RESPECT TO FUNDS TRANSFER.**

For proper cause and in compliance with applicable law, a court may restrain (i) a person from issuing a payment order to initiate a funds transfer, (ii) an originator's bank from executing the payment order of the originator, or (iii) the beneficiary's bank from releasing funds to the beneficiary or the beneficiary from withdrawing the funds. A court may not otherwise restrain a person from issuing a payment order, paying or receiving payment of a payment order, or otherwise acting with respect to a funds transfer.

**§4A-504. ORDER IN WHICH ITEMS AND PAYMENT ORDERS MAY BE CHARGED TO ACCOUNT; ORDER OF WITHDRAWALS FROM ACCOUNT.**

(a) If a receiving bank has received more than one payment order of the sender or one or more payment orders and other items that are payable from the sender's account, the bank may charge the sender's account with respect to the various orders and items in any sequence.

(b) In determining whether a credit to an account has been withdrawn by the holder of the account or applied to a debt of the holder of the account, credits first made to the account are first withdrawn or applied.

#### §4A-505. PRECLUSION OF OBJECTION TO DEBIT OF CUSTOMER'S ACCOUNT.

If a receiving bank has received payment from its customer with respect to a payment order issued in the name of the customer as sender and accepted by the bank, and the customer received notification reasonably identifying the order, the customer is precluded from asserting that the bank is not entitled to retain the payment unless the customer notifies the bank of the customer's objection to the payment within one year after the notification was received by the customer.

#### §4A-506. RATE OF INTEREST.

(a) If, under this Article, a receiving bank is obliged to pay interest with respect to a payment order issued to the bank, the amount payable may be determined (i) by agreement of the sender and receiving bank, or (ii) by a funds-transfer system rule if the payment order is transmitted through a funds-transfer system.

(b) If the amount of interest is not determined by an agreement or rule as stated in subsection (a), the amount is calculated by multiplying the applicable Federal Funds rate by the amount on which interest is payable, and then multiplying the product by the number of days for which interest is payable. The applicable Federal Funds rate is the average of the Federal Funds rates published by the Federal Reserve Bank of New York for each of the days for which interest is payable divided by 360. The Federal Funds rate for any day on which a published rate is not available is the same as the published rate for the next preceding day for which there is a published rate. If a receiving bank that accepted a payment order is required to refund payment to the sender of the order because the funds transfer was not completed, but the failure to complete was not due to any fault by the bank, the interest payable is reduced by a percentage equal to the reserve requirement on deposits of the receiving bank.

#### §4A-507. CHOICE OF LAW.

(a) The following rules apply unless the affected parties otherwise agree or subsection (c) applies:

(1) The rights and obligations between the sender of a payment order and the receiving bank are governed by the law of the jurisdiction in which the receiving bank is located.

(2) The rights and obligations between the beneficiary's bank and the beneficiary are governed by the law of the jurisdiction in which the beneficiary's bank is located.

(3) The issue of when payment is made pursuant to a funds transfer by the originator to the beneficiary is governed by the law of the jurisdiction in which the beneficiary's bank is located.

(b) If the parties described in each paragraph of subsection (a) have made an agreement selecting the law of a particular jurisdiction to govern rights and obligations between each other, the law of that jurisdiction governs those rights and obligations, whether or not the payment order or the funds transfer bears a reasonable relation to that jurisdiction.

(c) A funds-transfer system rule may select the law of a particular jurisdiction to govern (i) rights and obligations between participating banks with respect to payment orders transmitted or processed through the system, or (ii) the rights and obligations of some or all parties to a funds transfer any part of which is carried out by means of the system. A choice of law made pursuant to clause (i) is binding on participating banks. A choice of law made pursuant to clause (ii) is binding on the originator, other sender, or a receiving bank having notice that the funds-transfer system might be used in the funds transfer and of the choice of law by the system when the originator, other sender, or receiving bank issued or accepted a payment order. The beneficiary of a funds transfer is bound by the choice of law if, when the funds transfer is initiated, the beneficiary has notice that the funds-transfer system might be used in the funds transfer and of the choice of law by the system. The law of a jurisdiction selected pursuant to this

subsection may govern, whether or not that law bears a reasonable relation to the matter in issue.

(d) In the event of inconsistency between an agreement under subsection (b) and a choice-of-law rule under subsection (c), the agreement under subsection (b) prevails.

(e) If a funds transfer is made by use of more than one funds-transfer system and there is inconsistency between choice-of-law rules of the systems, the matter in issue is governed by the law of the selected jurisdiction that has the most significant relationship to the matter in issue.

Section 2. Amend subsection (2) of Section 1-105, Subtitle I, Title 6 of the Delaware Code by deleting said subsection in its entirety, and inserting in lieu thereof the following:

(2) Where one of the following provisions of this subtitle specifies the applicable law, that provision governs and a contrary agreement is effective only to the extent permitted by the law (including the conflict of laws rules) so specified:

Rights of creditors against sold goods.	Section 2-402.
Applicability of the Article on Bank Deposits and Collections.	Section 4-102.
Governing law in the Article on Funds Transfers.	Section 4A-507.
Bulk transfers subject to the Article on Bulk Transfers.	Section 6-102.
Applicability of the Article on Investment Securities.	Section 8-106.
Policy and scope of the Article on Secured Transactions.	Sections 9-102 and 9-103.

Approved July 21, 1992.

## CHAPTER 431

### FORMERLY

#### HOUSE BILL NO. 653

AN ACT TO AMEND §5303(a)(2), CHAPTER 53, TITLE 29, DELAWARE CODE TO CORRECT A TYPOGRAPHICAL ERROR IN H.B. 88.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend §5303(a)(2), Chapter 53, Title 29, Delaware Code by deleting the phrase "1991" as it appears therein and substituting in lieu thereof the phrase "1992".

Approved July 21, 1992.

## CHAPTER 432

## FORMERLY

## HOUSE BILL NO. 463

AN ACT TO AMEND CHAPTER 35, TITLE 18 OF THE DELAWARE CODE RELATING TO GROUP AND BLANKET HEALTH INSURANCE.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Title 18, Chapter 35, §3552 of the Delaware Code by deleting §3552 in its entirety and substituting in lieu thereof a new §3552 to read as follows:

"§3552. Screening tests.

(a) All group and blanket health insurance policies which are delivered or issued for delivery in this State by any health insurer or health service corporation and which provide benefits for outpatient services shall provide to covered persons residing or having their principal place of employment in this State a benefit for cervical and endometrial cancer screening, commonly known as a 'PAP smear'. Such screening shall be deemed a covered service, notwithstanding policy exclusions or services which are part of or related to annual or routine examinations.

(b) All group and blanket health insurance policies which are delivered or issued for delivery in this State by any health insurer or health service corporation and which provide benefits for outpatient services shall provide to covered persons residing or having their principal place of employment in this State and being age 50 or above a benefit for prostate cancer screening, commonly known as a prostatic specific antigen (PSA) test. Such screening shall be deemed a covered service, notwithstanding policy exclusions or services which are part of or related to annual or routine examinations.

(c) Nothing in this section shall prevent the operation of such policy provisions as deductibles, coinsurance, allowable charge limitations, coordination of benefits or provisions restricting coverage to services by licensed, certified or carrier-approved providers or facilities."

Section 2. This Act shall apply to group and blanket health insurance policies issued or renewed one hundred twenty (120) days after the effective date of this Act.

Approved July 21, 1992.

CHAPTER 433

FORMERLY

SENATE BILL NO. 406  
AS AMENDED BY SENATE AMENDMENT NO. 1

AN ACT TO AMEND CHAPTER 417, VOLUME 67, LAWS OF DELAWARE AND CHAPTER 58, TITLE 29 OF THE DELAWARE CODE RELATING TO THE CODE OF CONDUCT FOR LOCAL GOVERNMENTAL UNITS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (Two-thirds of all members elected to each House thereof concurring therein):

Section 1. Amend Chapter 417, Volume 67, Laws of Delaware by deleting Section 2 in its entirety and by inserting in lieu thereof the following:

"Section 2. It is the desire of the General Assembly that all counties, municipalities and towns adopt code of conduct legislation at least as stringent as this act to apply to their employees and elected and appointed officials. Subchapter I, Chapter 58 of Title 29 shall apply to any county, municipality or town and the employees and elected and appointed officials thereof which has not enacted such legislation by January 23, 1993. No code of conduct legislation shall be deemed sufficient to exempt any county, municipality or town from the purview of Subchapter I, Chapter 58 of Title 29 unless the code of conduct has been submitted to the State Ethics Commission and determined by a majority vote thereof to be at least as stringent as Subchapter I, Chapter 58, Title 29. Any change to an approved code of conduct must similarly be approved by the State Ethics Commission to continue the exemption from Subchapter I, Chapter 58, Title 29."

Approved July 22, 1992.

## CHAPTER 434

## FORMERLY

HOUSE BILL NO. 608  
AS AMENDED BY HOUSE AMENDMENT NO. 1

AN ACT TO AMEND TITLE 6 OF THE DELAWARE CODE BY ADOPTING A NEW CHAPTER RELATING TO THE CREATION, REGULATION AND DISSOLUTION OF DOMESTIC LIMITED LIABILITY COMPANIES, AS WELL AS THE REGULATION OF FOREIGN LIMITED LIABILITY COMPANIES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (three-fifths of all members elected to each house thereof concurring therein):

Section 1. Amend Title 6 of the Delaware Code, by adding thereto new Sections 18-101 through 18-1107, which shall read as follows:

## Limited Liability Company Act

## Subchapter I. General Provisions

## §18-101. Definitions.

As used in this chapter unless the context otherwise requires:

(1) "Bankruptcy" means an event that causes a person to cease to be a member as provided in §18-304 of this chapter.

(2) "Certificate of formation" means the certificate referred to in §18-201 of this chapter, and the certificate as amended.

(3) "Contribution" means any cash, property, services rendered or a promissory note or other obligation to contribute cash or property or to perform services, which a person contributes to a limited liability company in his capacity as a member.

(4) "Foreign limited liability company" means a limited liability company formed under the laws of any state or under the laws of any foreign country or other foreign jurisdiction and denominated as such under the laws of such state or foreign country or other foreign jurisdiction.

(5) "Limited liability company" and "domestic limited liability company" means a limited liability company formed under the laws of the State of Delaware and having 2 or more members.

(6) "Limited liability company agreement" means a written agreement of the members as to the affairs of a limited liability company and the conduct of its business. A limited liability company agreement or another written agreement or writing:

a. May provide that a person shall be admitted as a member of a limited liability company, or shall become an assignee of a limited liability company interest or other rights or powers of a member to the extent assigned, and shall become bound by the limited liability company agreement (i) if such person (or a representative authorized by such person orally, in writing or by other action such as payment for a limited liability company interest) executes the limited liability company agreement or any other writing evidencing the intent of such person to become a member or assignee, or (ii) without such execution, if such person (or a representative authorized by such person orally, in writing or by other action such as payment for a limited liability company interest) complies with the conditions for becoming a member or assignee as set forth in the limited liability company agreement or any other writing and requests (orally, in writing or by other action such as payment for a limited liability company interest) that the records of the limited liability company reflect such admission or assignment; and

b. Shall not be unenforceable by reason of its not having been signed by a person being admitted as a member or becoming an assignee as

provided in paragraph a. of this subdivision, or by reason of its having been signed by a representative as provided in this chapter.

(7) "Limited liability company interest" means a member's share of the profits and losses of a limited liability company and a member's right to receive distributions of the limited liability company's assets.

(8) "Liquidating trustee" means a person carrying out the winding up of a limited liability company.

(9) "Manager" means a person who is named as a manager of a limited liability company in, or designated as a manager of a limited liability company pursuant to, a limited liability company agreement or similar instrument under which the limited liability company is formed.

(10) "Member" means a person who has been admitted to a limited liability company as a member as provided in §18-301 of this chapter or, in the case of a foreign limited liability company, in accordance with the laws of the state or foreign country or other foreign jurisdiction under which the foreign limited liability company is organized.

(11) "Person" means a natural person, partnership (whether general or limited and whether domestic or foreign), limited liability company, foreign limited liability company, trust, estate, association, corporation, custodian, nominee or any other individual or entity in its own or any representative capacity.

(12) "Publicly traded limited liability company interest" means any limited liability company interest that is (a) listed on a national securities exchange, or (b) authorized for quotation on an inter-dealer quotation system of a registered national securities association.

(13) "State" means the District of Columbia or the Commonwealth of Puerto Rico or any state, territory, possession, or other jurisdiction of the United States other than the State of Delaware.

§18-102. Name set forth in certificate.

The name of each limited liability company as set forth in its certificate of formation:

(1) Shall contain the words "Limited Liability Company" or the abbreviation "L.L.C.";

(2) May contain the name of a member or manager;

(3) Must be such as to distinguish it upon the records in the Office of the Secretary of State from the name of any corporation, limited partnership, business trust or limited liability company reserved, registered, formed or organized under the laws of the State of Delaware or qualified to do business or registered as a foreign corporation, foreign limited partnership or foreign limited liability company in the State of Delaware; provided, however, that a limited liability company may register under any name which is not such as to distinguish it upon the records in the Office of the Secretary of State from the name of any domestic or foreign corporation, limited partnership, business trust or limited liability company reserved, registered, formed or organized under the laws of the State of Delaware with the written consent of the other corporation, limited partnership, business trust or limited liability company, which written consent shall be filed with the Secretary of State; and

(4) May contain the following words: "Company", "Association", "Club", "Foundation", "Fund", "Institute", "Society", "Union", "Syndicate", "Limited" or "Trust" (or abbreviations of like import).

§18-103. Reservation of name.

(a) The exclusive right to the use of a name may be reserved by:

(1) Any person intending to organize a limited liability company under this chapter and to adopt that name;

(2) Any domestic limited liability company or any foreign limited liability company registered in the State of Delaware which, in either case, proposes to change its name;

(3) Any foreign limited liability company intending to register in the State of Delaware and adopt that name; and

(4) Any person intending to organize a foreign limited liability company and intending to have it register in the State of Delaware and adopt that name.

(b) The reservation of a specified name shall be made by filing with the Secretary of State an application, executed by the applicant, together with a duplicate copy, which may be either a signed or conformed copy, specifying the name to be reserved and the name and address of the applicant. If the Secretary of State finds that the name is available for use by a domestic or foreign limited liability company, he shall reserve the name for the exclusive use of the applicant for a period of 120 days. Once having so reserved a name, the same applicant may again reserve the same name for successive 120 day periods. The right to the exclusive use of a reserved name may be transferred to any other person by filing in the Office of the Secretary of State a notice of the transfer, executed by the applicant for whom the name was reserved, together with a duplicate copy, which may be either a signed or conformed copy, specifying the name to be transferred and the name and address of the transferee. The reservation of a specified name may be cancelled by filing with the Secretary of State a notice of cancellation, executed by the applicant or transferee, together with a duplicate copy, which may be either a signed or conformed copy, specifying the name reservation to be cancelled and the name and address of the applicant or transferee. Any duplicate copy filed with the Secretary of State as required by this subsection shall be returned by the Secretary of State to the person who filed it or his representative with a notation thereon of the action taken with respect to the original copy thereof by the Secretary of State.

(c) A fee as set forth in §18-1105(a)(1) of this chapter shall be paid at the time of the initial reservation of any name, at the time of the renewal of any such reservation and at the time of the filing of a notice of the transfer or cancellation of any such reservation.

#### §18-104. Registered office; registered agent.

(a) Each limited liability company shall have and maintain in the State of Delaware:

(1) A registered office, which may but need not be a place of its business in the State of Delaware; and

(2) A registered agent for service of process on the limited liability company, which agent may be either an individual resident of the State of Delaware whose business office is identical with the limited liability company's registered office, or a domestic corporation, or a foreign corporation authorized to do business in the State of Delaware having a business office identical with such registered office, or the limited liability company itself.

(b) A registered agent may change the address of the registered office of the limited liability company(ies) for which such registered agent is registered agent to another address in the State of Delaware by paying a fee as set forth in §18-1105(a)(2) of this chapter and filing with the Secretary of State a certificate, executed by such registered agent, setting forth the names of all the limited liability companies represented by such registered agent, and the address at which such registered agent has maintained the registered office for each of such limited liability companies, and further certifying to the new address to which each such registered office will be changed on a given day, and at which new address such registered agent will thereafter maintain the registered office for each of the limited liability companies recited in the certificate. Upon the filing of such certificate, the Secretary of State shall furnish to the registered agent a certified copy of the same under his hand and seal of office, and thereafter, or until further change of address, as authorized by law, the registered office in the State of Delaware of each of the limited liability companies recited in the certificate shall be located at the new address of the registered agent



thereof as given in the certificate. In the event of a change of name of any person acting as a registered agent of a limited liability company, such registered agent shall file with the Secretary of State a certificate, executed by such registered agent, setting forth the new name of such registered agent, the name of such registered agent before it was changed, the names of all the limited liability companies represented by such registered agent, and the address at which such registered agent has maintained the registered office for each of such limited liability companies, and shall pay a fee as set forth in §18-1105(a)(2) of this chapter. Upon the filing of such certificate, the Secretary of State shall furnish to the registered agent a certified copy of the certificate under his hand and seal of office. Filing a certificate under this section shall be deemed to be an amendment of the certificate of formation of each limited liability company affected thereby and each such limited liability company shall not be required to take any further action with respect thereto, to amend its certificate of formation under §18-202 of this chapter. Any registered agent filing a certificate under this section shall promptly, upon such filing, deliver a copy of any such certificate to each limited liability company affected thereby.

(c) The registered agent of 1 or more limited liability companies may resign and appoint a successor registered agent by paying a fee as set forth in §18-1105(a)(2) of this chapter and filing a certificate with the Secretary of State, stating that it resigns and the name and address of the successor registered agent. There shall be attached to such certificate a statement executed by each affected limited liability company ratifying and approving such change of registered agent. Upon such filing, the successor registered agent shall become the registered agent of such limited liability companies as have ratified and approved such substitution and the successor registered agent's address, as stated in such certificate, shall become the address of each such limited liability company's registered office in the State of Delaware. The Secretary of State shall furnish to the successor registered agent a certified copy of the certificate of resignation. Filing of such certificate of resignation shall be deemed to be an amendment of the certificate of formation of each limited liability company affected thereby and each such limited liability company shall not be required to take any further action with respect thereto, to amend its certificate of formation under §18-202 of this chapter.

(d) The registered agent of a limited liability company may resign without appointing a successor registered agent by paying a fee as set forth in §18-1105(a)(2) of this chapter and filing a certificate with the Secretary of State stating that it resigns as registered agent for the limited liability company identified in the certificate, but such resignation shall not become effective until 120 days after the certificate is filed. There shall be attached to such certificate an affidavit of such registered agent, if an individual, or the president, a vice-president or the secretary thereof if a corporation, that at least 30 days prior to and on or about the date of the filing of said certificate, notices were sent by certified or registered mail to the limited liability company for which such registered agent is resigning as registered agent, at the principal office thereof within or outside the State of Delaware, if known to such registered agent or, if not, to the last known address of the attorney or other individual at whose request such registered agent was appointed for such limited liability company, of the resignation of such registered agent. After receipt of the notice of the resignation of its registered agent, the limited liability company for which such registered agent was acting shall obtain and designate a new registered agent, to take the place of the registered agent so resigning. If such limited liability company fails to obtain and designate a new registered agent as aforesaid prior to the expiration of the period of 120 days after the filing by the registered agent of the certificate of resignation, the certificate of formation of such limited liability company shall be deemed to be cancelled. After the resignation of the registered agent shall have become effective as provided in this section and if no new registered agent shall have been obtained and designated in the time and manner aforesaid, service of legal process against the limited liability company for which the resigned registered agent had been acting shall thereafter be upon the Secretary of State in accordance with §18-105 of this chapter.

§18-105. Service of process on domestic limited liability companies.

(a) Service of legal process upon any domestic limited liability company shall be made by delivering a copy personally to any manager of the

limited liability company in the State of Delaware or the registered agent of the limited liability company in the State of Delaware, or by leaving it at the dwelling house or usual place of abode in the State of Delaware of any such manager or registered agent (if the registered agent be an individual), or at the registered office or other place of business of the limited liability company in the State of Delaware. If the registered agent be a corporation, service of process upon it as such may be made by serving, in the State of Delaware, a copy thereof on the president, vice-president, secretary, assistant secretary or any director of the corporate registered agent. Service by copy left at the dwelling house or usual place of abode of a manager or registered agent, or at the registered office or other place of business of the limited liability company in the State of Delaware, to be effective, must be delivered thereat at least 6 days before the return date of the process, and in the presence of an adult person, and the officer serving the process shall distinctly state the manner of service in his return thereto. Process returnable forthwith must be delivered personally to the manager or registered agent.

(b) In case the officer whose duty it is to serve legal process cannot by due diligence serve the process in any manner provided for by subsection (a) of this section, it shall be lawful to serve the process against the limited liability company upon the Secretary of State, and such service shall be as effectual for all intents and purposes as if made in any of the ways provided for in subsection (a) hereof. In the event that service is effected through the Secretary of State in accordance with this subsection, the Secretary of State shall forthwith notify the limited liability company by letter, certified mail, return receipt requested, directed to the limited liability company at its address as it appears on the records relating to such limited liability company on file with the Secretary of State or, if no such address appears, at its last registered office. Such letter shall enclose a copy of the process and any other papers served on the Secretary of State pursuant to this subsection. It shall be the duty of the plaintiff in the event of such service to serve process and any other papers in duplicate, to notify the Secretary of State that service is being effected pursuant to this subsection, and to pay the Secretary of State the sum of \$50 for the use of the State of Delaware, which sum shall be taxed as part of the costs in the proceeding if the plaintiff shall prevail therein. The Secretary of State shall maintain an alphabetical record of any such service setting forth the name of the plaintiff and defendant, the title, docket number and nature of the proceeding in which process has been served upon him, the fact that service has been effected pursuant to this subsection, the return date thereof, and the day and hour when the service was made. The Secretary of State shall not be required to retain such information for a period longer than 5 years from his receipt of the service of process.

§18-106. Nature of business permitted; powers.

(a) A limited liability company may carry on any lawful business, purpose or activity with the exception of the business of granting policies of insurance, or assuming insurance risks or banking as defined in §126 of Title 8.

(b) A limited liability company shall possess and may exercise all the powers and privileges granted by this chapter or by any other law or by its limited liability company agreement, together with any powers incidental thereto, so far as such powers and privileges are necessary or convenient to the conduct, promotion or attainment of the business, purposes or activities of the limited liability company.

§18-107. Business transactions of member or manager with the limited liability company.

Except as provided in a limited liability company agreement, a member or manager may lend money to, borrow money from, act as a surety, guarantor or endorser for, guarantee or assume one or more specific obligations of, provide collateral for, and transact other business with a limited liability company and, subject to other applicable law, has the same rights and obligations with respect to any such matter as a person who is not a member or manager.

§18-108. Indemnification.

Subject to such standards and restrictions, if any, as are set forth in its limited liability company agreement, a limited liability company may, and shall have the power to, indemnify and hold harmless any member or manager or other person from and against any and all claims and demands whatsoever.

§18-109. Service of process on managers and liquidating trustees.

(a) A manager or a liquidating trustee of a limited liability company may be served with process in the manner prescribed in this section in all civil actions or proceedings brought in the State of Delaware involving or relating to the business of the limited liability company or a violation by the manager or the liquidating trustee of a duty to the limited liability company, or any member of the limited liability company, whether or not the manager or the liquidating trustee is a manager or a liquidating trustee at the time suit is commenced. A manager's or a liquidating trustee's serving as such constitutes such person's consent to the appointment of the registered agent of the limited liability company (or, if there is none, the Secretary of State) as such person's agent upon whom service of process may be made as provided in this section. Such service as a manager or a liquidating trustee shall signify the consent of such manager or liquidating trustee that any process when so served shall be of the same legal force and validity as if served upon such manager or liquidating trustee within the State of Delaware and such appointment of the registered agent (or, if there is none, the Secretary of State) shall be irrevocable.

(b) Service of process shall be effected by serving the registered agent (or, if there is none, the Secretary of State) with 1 copy of such process in the manner provided by law for service of writs of summons. In the event service is made under this subsection upon the Secretary of State, the plaintiff shall pay to the Secretary of State the sum of \$50 for the use of the State of Delaware, which sum shall be taxed as part of the costs of the proceeding if the plaintiff shall prevail therein. In addition, the Prothonotary or the Register in Chancery of the court in which the civil action or proceeding is pending shall, within 7 days of such service, deposit in the United States mails, by registered mail, postage prepaid, true and attested copies of the process, together with a statement that service is being made pursuant to this section, addressed to such manager or liquidating trustee at the registered office of the limited liability company and at his address last known to the party desiring to make such service.

(c) In any action in which any such manager or liquidating trustee has been served with process as hereinabove provided, the time in which a defendant shall be required to appear and file a responsive pleading shall be computed from the date of mailing by the Prothonotary or the Register in Chancery as provided in subsection (b) of this section; however, the court in which such action has been commenced may order such continuance or continuances as may be necessary to afford such manager or liquidating trustee reasonable opportunity to defend the action.

(d) In a written limited liability company agreement or other writing, a manager or member may consent to be subject to the nonexclusive jurisdiction of the courts of, or arbitration in, a specified jurisdiction, or the exclusive jurisdiction of the courts of, or the exclusivity of arbitration in, the State of Delaware, and to be served with legal process in the manner prescribed in such limited liability company agreement or other writing.

(e) Nothing herein contained limits or affects the right to serve process in any other manner now or hereafter provided by law. This section is an extension of and not a limitation upon the right otherwise existing of service of legal process upon nonresidents.

(f) The Court of Chancery and the Superior Court may make all necessary rules respecting the form of process, the manner of issuance and return thereof and such other rules which may be necessary to implement this section and are not inconsistent with this section.

Subchapter II. Formation; Certificate of Formation

§18-201. Certificate of formation.

(a) In order to form a limited liability company, 1 or more authorized persons must execute a certificate of formation. The certificate of formation shall be filed in the Office of the Secretary of State and set forth:

- (1) The name of the limited liability company;
- (2) The address of the registered office and the name and address of the registered agent for service of process required to be maintained by §18-104 of this chapter;
- (3) If the limited liability company is to have a specific date of dissolution, the latest date on which the limited liability company is to dissolve; and
- (4) Any other matters the members determine to include therein.

(b) A limited liability company is formed at the time of the filing of the initial certificate of formation in the Office of the Secretary of State or at any later date or time specified in the certificate of formation if, in either case, there has been substantial compliance with the requirements of this section. A limited liability company formed under this chapter shall be a separate legal entity, the existence of which as a separate legal entity shall continue until cancellation of the limited liability company's certificate of formation.

(c) The filing of the certificate of formation in the Office of the Secretary of State shall make it unnecessary to file any other documents under Chapter 31 of this title.

§18-202. Amendment to certificate of formation.

(a) A certificate of formation is amended by filing a certificate of amendment thereto in the Office of the Secretary of State. The certificate of amendment shall set forth:

- (1) The name of the limited liability company; and
  - (2) The amendment to the certificate of formation.
- (b) A manager or, if there is no manager, then any member who becomes aware that any statement in a certificate of formation was false when made, or that any matter described has changed making the certificate of formation false in any material respect, shall promptly amend the certificate of formation.

(c) A certificate of formation may be amended at any time for any other proper purpose.

(d) Unless otherwise provided in this chapter or unless a later effective date or time (which shall be a date or time certain) is provided for in the certificate of amendment, a certificate of amendment shall be effective at the time of its filing with the Secretary of State.

§18-203. Cancellation of certificate.

A certificate of formation shall be cancelled upon the dissolution and the completion of winding up of a limited liability company, or at any other time there are less than 2 members, or as provided in §18-104(d) of this chapter, or upon the filing of a certificate of merger or consolidation if the limited liability company is not the surviving or resulting entity in a merger or consolidation. A certificate of cancellation shall be filed in the Office of the Secretary of State to accomplish the cancellation of a certificate of formation upon the dissolution and the completion of winding up of a limited liability company or at any other time there are not 2 members and shall set forth:

- (1) The name of the limited liability company;
- (2) The date of filing of its certificate of formation;
- (3) The reason for filing the certificate of cancellation;

(4) The future effective date or time (which shall be a date or time certain) of cancellation if it is not to be effective upon the filing of the certificate; and

(5) Any other information the person filing the certificate of cancellation determines.

**§18-204. Execution.**

(a) Each certificate required by this subchapter to be filed in the Office of the Secretary of State shall be executed by 1 or more authorized persons.

(b) Unless otherwise provided in a limited liability company agreement, any person may sign any certificate or amendment thereof or enter into a limited liability company agreement or amendment thereof by an agent, including an attorney-in-fact. An authorization, including a power of attorney, to sign any certificate or amendment thereof or to enter into a limited liability company agreement or amendment thereof need not be in writing, need not be sworn to, verified or acknowledged, and need not be filed in the Office of the Secretary of State, but if in writing, must be retained by the limited liability company.

(c) The execution of a certificate by an authorized person constitutes an oath or affirmation, under the penalties of perjury in the third degree, that, to the best of the authorized person's knowledge and belief, the facts stated therein are true.

**§18-205. Execution, amendment or cancellation by judicial order.**

(a) If a person required to execute a certificate required by this subchapter fails or refuses to do so, any other person who is adversely affected by the failure or refusal may petition the Court of Chancery to direct the execution of the certificate. If the Court finds that the execution of the certificate is proper and that any person so designated has failed or refused to execute the certificate, it shall order the Secretary of State to record an appropriate certificate.

(b) If a person required to execute a limited liability company agreement or amendment thereof fails or refuses to do so, any other person who is adversely affected by the failure or refusal may petition the Court of Chancery to direct the execution of the limited liability company agreement or amendment thereof. If the Court finds that the limited liability company agreement or amendment thereof should be executed and that any person required to execute the limited liability company agreement or amendment thereof has failed or refused to do so, it shall enter an order granting appropriate relief.

**§18-206. Filing.**

(a) The original signed copy of the certificate of formation and of any certificates of amendment or cancellation (or of any judicial decree of amendment or cancellation), and of any certificate of merger or consolidation and of any restated certificate shall be delivered to the Secretary of State. A person who executes a certificate as an agent or fiduciary need not exhibit evidence of his authority as a prerequisite to filing. Any signature on any certificate authorized to be filed with the Secretary of State under any provision of this chapter may be a facsimile. Unless the Secretary of State finds that any certificate does not conform to law, upon receipt of all filing fees required by law he shall:

(1) Certify that the certificate of formation, the certificate of amendment, the certificate of cancellation (or of any judicial decree of amendment or cancellation), the certificate of merger or consolidation or the restated certificate has been filed in his office by endorsing upon the original certificate the word "Filed", and the date and hour of the filing. This endorsement is conclusive of the date and time of its filing in the absence of actual fraud;

(2) File and index the endorsed certificate; and

(3) Prepare and return to the person who filed it or his representative a copy of the original signed instrument, similarly endorsed, and shall certify such copy as a true copy of the original signed instrument.

(b) Upon the filing of a certificate of amendment (or judicial decree of amendment) or restated certificate in the Office of the Secretary of State, or upon the future effective date or time of a certificate of amendment (or judicial decree thereof) or restated certificate, as provided for therein, the certificate of formation shall be amended or restated as set forth therein. Upon the filing of a certificate of cancellation (or a judicial decree thereof), or a certificate of merger or consolidation which acts as a certificate of cancellation, or upon the future effective date or time of a certificate of cancellation (or a judicial decree thereof) or of a certificate of merger or consolidation which acts as a certificate of cancellation, as provided for therein, or as specified in §18-104(d) of this chapter, the certificate of formation is cancelled.

(c) A fee as set forth in §18-1105(a)(3) of this chapter shall be paid at the time of the filing of a certificate of formation, a certificate of amendment, a certificate of cancellation, a certificate of merger or consolidation or a restated certificate.

(d) A fee as set forth in §18-1105(a)(4) of this chapter shall be paid for a certified copy of any paper on file as provided for by this chapter, and a fee as set forth in §18-1105(a)(5) of this chapter shall be paid for each page copied.

#### §18-207. Notice.

The fact that a certificate of formation is on file in the Office of the Secretary of State is notice that the entity formed in connection with the filing of the certificate of formation is a limited liability company formed under the laws of the State of Delaware and is notice of all other facts set forth therein which are required to be set forth in a certificate of formation by §18-201(a)(1) and (2) of this chapter.

#### §18-208. Restated certificate.

(a) A limited liability company may, whenever desired, integrate into a single instrument all of the provisions of its certificate of formation which are then in effect and operative as a result of there having theretofore been filed with the Secretary of State 1 or more certificates or other instruments pursuant to any of the sections referred to in this subchapter and it may at the same time also further amend its certificate of formation by adopting a restated certificate of formation.

(b) If a restated certificate of formation merely restates and integrates but does not further amend the initial certificate of formation, as theretofore amended or supplemented by any instrument that was executed and filed pursuant to any of the sections in this subchapter, it shall be specifically designated in its heading as a "Restated Certificate of Formation" together with such other words as the limited liability company may deem appropriate and shall be executed by an authorized person and filed as provided in §18-206 of this chapter in the Office of the Secretary of State. If a restated certificate restates and integrates and also further amends in any respect the certificate of formation, as theretofore amended or supplemented, it shall be specifically designated in its heading as an "Amended and Restated Certificate of Formation" together with such other words as the limited liability company may deem appropriate and shall be executed by at least 1 authorized person, and filed as provided in §18-206 of this chapter in the Office of the Secretary of State.

(c) A restated certificate of formation shall state, either in its heading or in an introductory paragraph, the limited liability company's present name, and, if it has been changed, the name under which it was originally filed, and the date of filing of its original certificate of formation with the Secretary of State, and the future effective date or time (which shall be a date or time certain) of the restated certificate if it is not to be effective upon the filing of the restated certificate. A restated certificate shall also state that it was duly executed and is being filed in accordance with this section. If a restated certificate only restates and integrates and does not further amend a limited liability company's

certificate of formation as theretofore amended or supplemented and there is no discrepancy between those provisions and the restated certificate, it shall state that fact as well.

(d) Upon the filing of a restated certificate of formation with the Secretary of State, or upon the future effective date or time of a restated certificate of formation as provided for therein, the initial certificate of formation, as theretofore amended or supplemented, shall be superseded; thenceforth, the restated certificate of formation, including any further amendment or changes made thereby, shall be the certificate of formation of the limited liability company, but the original effective date of formation shall remain unchanged.

(e) Any amendment or change effected in connection with the restatement and integration of the certificate of formation shall be subject to any other provision of this chapter, not inconsistent with this section, which would apply if a separate certificate of amendment were filed to effect such amendment or change.

§18-209. Merger and consolidation.

(a) As used in this section, "other business entity" means a corporation, or a business trust or association, a real estate investment trust, a common-law trust, or any other unincorporated business, including a partnership (whether general or limited), and a foreign limited liability company, but excluding a domestic limited liability company.

(b) Pursuant to an agreement of merger or consolidation, a domestic limited liability company may merge or consolidate with or into 1 or more domestic limited liability companies or other business entities formed or organized under the laws of the State of Delaware or any other state or the United States or any foreign country or other foreign jurisdiction, with such domestic limited liability company or other business entity as the agreement shall provide being the surviving or resulting domestic limited liability company or other business entity. Unless otherwise provided in the limited liability company agreement, a merger or consolidation shall be approved by each domestic limited liability company which is to merge or consolidate by the members or, if there is more than one class or group of members, then by each class or group of members, in either case, by members who own more than 50 percent of the then current percentage or other interest in the profits of the domestic limited liability company owned by all of the members or by the members in each class or group, as appropriate. In connection with a merger or consolidation hereunder, rights or securities of, or interests in, a domestic limited liability company or other business entity which is a constituent party to the merger or consolidation may be exchanged for or converted into cash, property, rights or securities of, or interests in, the surviving or resulting domestic limited liability company or other business entity or, in addition to or in lieu thereof, may be exchanged for or converted into cash, property, rights or securities of, or interests in, a domestic limited liability company or other business entity which is not the surviving or resulting limited liability company or other business entity in the merger or consolidation. Notwithstanding prior approval, an agreement of merger or consolidation may be terminated or amended pursuant to a provision for such termination or amendment contained in the agreement of merger or consolidation.

(c) If a domestic limited liability company is merging or consolidating under this section, the domestic limited liability company or other business entity surviving or resulting in or from the merger or consolidation shall file a certificate of merger or consolidation in the Office of the Secretary of State. The certificate of merger or consolidation shall state:

(1) The name and jurisdiction of formation or organization of each of the domestic limited liability companies or other business entities which is to merge or consolidate;

(2) That an agreement of merger or consolidation has been approved and executed by each of the domestic limited liability companies or other business entities which is to merge or consolidate;

(3) The name of the surviving or resulting domestic limited liability company or other business entity;

(4) The future effective date or time (which shall be a date or time certain) of the merger or consolidation if it is not to be effective upon the filing of the certificate of merger or consolidation;

(5) That the agreement of merger or consolidation is on file at a place of business of the surviving or resulting domestic limited liability company or other business entity, and shall state the address thereof;

(6) That a copy of the agreement of merger or consolidation will be furnished by the surviving or resulting domestic limited liability company or other business entity, on request and without cost, to any member of any domestic limited liability company or any person holding an interest in any other business entity which is to merge or consolidate; and

(7) If the surviving or resulting entity is not a domestic limited liability company, or a corporation or limited partnership organized under the laws of the State of Delaware, or a business trust organized under 12 Del.C., Ch. 38, a statement that such surviving or resulting other business entity agrees that it may be served with process in the State of Delaware in any action, suit or proceeding for the enforcement of any obligation of any domestic limited liability company which is to merge or consolidate, irrevocably appointing the Secretary of State as its agent to accept service of process in any such action, suit or proceeding and specifying the address to which a copy of such process shall be mailed to it by the Secretary of State. In the event of service hereunder upon the Secretary of State, the procedures set forth in §18-911(c) of this chapter shall be applicable, except that the plaintiff in any such action, suit or proceeding shall furnish the Secretary of State with the address specified in the certificate of merger or consolidation provided for in this section and any other address which the plaintiff may elect to furnish, together with copies of such process as required by the Secretary of State, and the Secretary of State shall notify such surviving or resulting other business entity at all such addresses furnished by the plaintiff in accordance with the procedures set forth in §18-911(c) of this chapter.

(d) Unless a future effective date or time is provided in a certificate of merger or consolidation, in which event a merger or consolidation shall be effective at any such future effective date or time, a merger or consolidation shall be effective upon the filing in the Office of the Secretary of State of a certificate of merger or consolidation.

(e) A certificate of merger or consolidation shall act as a certificate of cancellation for a domestic limited liability company which is not the surviving or resulting entity in the merger or consolidation.

(f) An agreement of merger or consolidation approved in accordance with subsection (b) of this section may (1) effect any amendment to the limited liability company agreement or (2) effect the adoption of a new limited liability company agreement, for a limited liability company if it is the surviving or resulting limited liability company in the merger or consolidation. Any amendment to a limited liability company agreement or adoption of a new limited liability company agreement made pursuant to the foregoing sentence shall be effective at the effective time or date of the merger or consolidation. The provisions of this subsection shall not be construed to limit the accomplishment of a merger or of any of the matters referred to herein by any other means provided for in a limited liability company agreement or other agreement or as otherwise permitted by law, including that the limited liability company agreement of any constituent limited liability company to the merger or consolidation (including a limited liability company formed for the purpose of consummating a merger or consolidation) shall be the limited liability company agreement of the surviving or resulting limited liability company.

(g) When any merger or consolidation shall have become effective under this section, for all purposes of the laws of the State of Delaware, all of the rights, privileges and powers of each of the domestic limited liability companies and other business entities that have merged or consolidated, and all property, real, personal and mixed, and all debts due to any of said domestic limited liability companies and other business entities, as well as



all other things and causes of action belonging to each of such domestic limited liability companies and other business entities, shall be vested in the surviving or resulting domestic limited liability company or other business entity, and shall thereafter be the property of the surviving or resulting domestic limited liability company or other business entity as they were of each of the domestic limited liability companies and other business entities that have merged or consolidated, and the title to any real property vested by deed or otherwise, under the laws of the State of Delaware, in any of such domestic limited liability companies and other business entities, shall not revert or be in any way impaired by reason of this chapter; but all rights of creditors and all liens upon any property of any of said domestic limited liability companies and other business entities shall be preserved unimpaired, and all debts, liabilities and duties of each of the said domestic limited liability companies and other business entities that have merged or consolidated shall thenceforth attach to the surviving or resulting domestic limited liability company or other business entity, and may be enforced against it to the same extent as if said debts, liabilities and duties had been incurred or contracted by it. Unless otherwise agreed, a merger or consolidation of a domestic limited liability company, including a domestic limited liability company which is not the surviving or resulting entity in the merger or consolidation, shall not require such domestic limited liability company to wind up its affairs under §18-803 of this chapter or pay its liabilities and distribute its assets under §18-804 of this chapter.

### Subchapter III. Members

#### §18-301. Admission of members.

(a) In connection with the formation of a limited liability company, a person acquiring a limited liability company interest is admitted as a member of the limited liability company upon the later to occur of:

(1) The formation of the limited liability company; or

(2) The time provided in and upon compliance with the limited liability company agreement or, if the limited liability company agreement does not so provide, when the person's admission is reflected in the records of the limited liability company.

(b) After the formation of a limited liability company, a person acquiring a limited liability company interest is admitted as a member of the limited liability company:

(1) In the case of a person acquiring a limited liability company interest directly from the limited liability company, at the time provided in and upon compliance with the limited liability company agreement or, if the limited liability company agreement does not so provide, upon the consent of all members and when the person's admission is reflected in the records of the limited liability company; or

(2) In the case of an assignee of a limited liability company interest, as provided in §18-704(a) of this chapter and at the time provided in and upon compliance with the limited liability company agreement or, if the limited liability company agreement does not so provide, when any such person's permitted admission is reflected in the records of the limited liability company.

(c) A person may be admitted to a limited liability company as a member of the limited liability company and may receive a limited liability company interest in the limited liability company without making a contribution or being obligated to make a contribution to the limited liability company.

#### §18-302. Classes and voting.

(a) A limited liability company agreement may provide for classes or groups of members having such relative rights, powers and duties as the limited liability company agreement may provide, and may make provision for the future creation in the manner provided in the limited liability company agreement of additional classes or groups of members having such relative rights, powers and duties as may from time to time be established, including rights, powers and duties senior to existing classes and groups of members. A

limited liability company agreement may provide for the taking of an action, including the amendment of the limited liability company agreement, without the vote or approval of any member or class or group of members, including an action to create under the provisions of the limited liability company agreement a class or group of limited liability company interests that was not previously outstanding.

(b) A limited liability company agreement may grant to all or certain identified members or a specified class or group of the members the right to vote separately or with all or any class or group of the members or managers, on any matter. Voting by members may be on a per capita, number, financial interest, class, group or any other basis.

(c) A limited liability company agreement which grants a right to vote may set forth provisions relating to notice of the time, place or purpose of any meeting at which any matter is to be voted on by any members, waiver of any such notice, action by consent without a meeting, the establishment of a record date, quorum requirements, voting in person or by proxy, or any other matter with respect to the exercise of any such right to vote.

#### §18-303. Liability to third parties.

Except as otherwise provided by this chapter, the debts, obligations and liabilities of a limited liability company, whether arising in contract, tort or otherwise, shall be solely the debts, obligations and liabilities of the limited liability company; and no member or manager of a limited liability company shall be obligated personally for any such debt, obligation or liability of the limited liability company solely by reason of being a member or acting as a manager of the limited liability company.

#### §18-304. Events of bankruptcy.

A person ceases to be a member of a limited liability company upon the happening of any of the following events:

(a) Unless otherwise provided in a limited liability company agreement, or with the written consent of all members, a member:

- (1) Makes an assignment for the benefit of creditors;
- (2) Files a voluntary petition in bankruptcy;
- (3) Is adjudged a bankrupt or insolvent, or has entered against him an order for relief, in any bankruptcy or insolvency proceeding;
- (4) Files a petition or answer seeking for himself any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any statute, law or regulation;
- (5) Files an answer or other pleading admitting or failing to contest the material allegations of a petition filed against him in any proceeding of this nature;
- (6) Seeks, consents to or acquiesces in the appointment of a trustee, receiver or liquidator of the member or of all or any substantial part of his properties; or

(b) Unless otherwise provided in a limited liability company agreement, or with the written consent of all members, 120 days after the commencement of any proceeding against the member seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any statute, law or regulation, if the proceeding has not been dismissed, or if within 90 days after the appointment without his consent or acquiescence of a trustee, receiver or liquidator of the member or of all or any substantial part of his properties, the appointment is not vacated or stayed, or within 90 days after the expiration of any such stay, the appointment is not vacated.

#### §18-305. Access to and confidentiality of information; records.

(a) Each member of a limited liability company has the right, subject to such reasonable standards (including standards governing what information

and documents are to be furnished at what time and location and at whose expense) as may be set forth in a limited liability company agreement or otherwise established by the manager or, if there is no manager, then by the members, to obtain from the limited liability company from time to time upon reasonable demand for any purpose reasonably related to the member's interest as a member of the limited liability company:

(1) True and full information regarding the status of the business and financial condition of the limited liability company;

(2) Promptly after becoming available, a copy of the limited liability company's federal, state and local income tax returns for each year;

(3) A current list of the name and last known business, residence or mailing address of each member and manager;

(4) A copy of any written limited liability company agreement and certificate of formation and all amendments thereto, together with executed copies of any written powers of attorney pursuant to which the limited liability company agreement and any certificate and all amendments thereto have been executed;

(5) True and full information regarding the amount of cash and a description and statement of the agreed value of any other property or services contributed by each member and which each member has agreed to contribute in the future, and the date on which each became a member; and

(6) Other information regarding the affairs of the limited liability company as is just and reasonable.

(b) Each manager shall have the right to examine all of the information described in §18-305(a) of this chapter for a purpose reasonably related to his position as a manager.

(c) The manager of a limited liability company shall have the right to keep confidential from the members, for such period of time as the manager deems reasonable, any information which the manager reasonably believes to be in the nature of trade secrets or other information the disclosure of which the manager in good faith believes is not in the best interest of the limited liability company or could damage the limited liability company or its business or which the limited liability company is required by law or by agreement with a third party to keep confidential.

(d) A limited liability company may maintain its records in other than a written form if such form is capable of conversion into written form within a reasonable time.

(e) Any demand by a member under this section shall be in writing and shall state the purpose of such demand.

(f) Any action to enforce any right arising under this section shall be brought in the Court of Chancery.

§18-306. Remedies for breach of limited liability company agreement by member.

A limited liability company agreement may provide that (1) a member who fails to perform in accordance with, or to comply with the terms and conditions of, the limited liability company agreement shall be subject to specified penalties or specified consequences, and (2) at the time or upon the happening of events specified in the limited liability company agreement, a member shall be subject to specified penalties or specified consequences.

#### Subchapter IV. Managers

§18-401. Admission of managers.

A person may be named or designated as a manager of the limited liability company as provided in §18-101(9) of this chapter.

§18-402. Management of limited liability company.

Unless otherwise provided in a limited liability company agreement, the management of a limited liability company shall be vested in its members in proportion to the then current percentage or other interest of members in the profits of the limited liability company owned by all of the members, the decision of members owning more than 50 percent of the said percentage or other interest in the profits controlling; provided, however, that if a limited liability company agreement provides for the management, in whole or in part, of a limited liability company by a manager, the management of the limited liability company, to the extent so provided, shall be vested in the manager who shall be chosen by the members in the manner provided in the limited liability company agreement. The manager shall also hold the offices and have the responsibilities accorded to him by the members and set forth in a limited liability company agreement. Subject to §18-602 of this chapter, a manager shall cease to be a manager as provided in a limited liability company agreement.

§18-403. Contributions by a manager.

A manager of a limited liability company may make contributions to the limited liability company and share in the profits and losses of, and in distributions from, the limited liability company as a member. A person who is both a manager and a member has the rights and powers, and is subject to the restrictions and liabilities, of a manager and, except as provided in a limited liability company agreement, also has the rights and powers, and is subject to the restrictions and liabilities, of a member to the extent of his participation in the limited liability company as a member.

§18-404. Classes and voting.

(a) A limited liability company agreement may provide for classes or groups of managers having such relative rights, powers and duties as the limited liability company agreement may provide, and may make provision for the future creation in the manner provided in the limited liability company agreement of additional classes or groups of managers having such relative rights, powers and duties as may from time to time be established, including rights, powers and duties senior to existing classes and groups of managers. A limited liability company agreement may provide for the taking of an action, including the amendment of the limited liability company agreement, without the vote or approval of any manager or class or group of managers, including an action to create under the provisions of the limited liability company agreement a class or group of limited liability company interests that was not previously outstanding.

(b) A limited liability company agreement may grant to all or certain identified managers or a specified class or group of the managers the right to vote, separately or with all or any class or group of managers or members, on any matter. Voting by managers may be on a per capita, number, financial interest, class, group or any other basis.

(c) A limited liability company agreement which grants a right to vote may set forth provisions relating to notice of the time, place or purpose of any meeting at which any matter is to be voted on by any manager or class or group of managers, waiver of any such notice, action by consent without a meeting, the establishment of a record date, quorum requirements, voting in person or by proxy, or any other matter with respect to the exercise of any such right to vote.

§18-405. Remedies for breach of limited liability company agreement by manager.

A limited liability company agreement may provide that (1) a manager who fails to perform in accordance with, or to comply with the terms and conditions of, the limited liability company agreement shall be subject to specified penalties or specified consequences, and (2) at the time or upon the happening of events specified in the limited liability company agreement, a manager shall be subject to specified penalties or specified consequences.

§18-406. Reliance on reports and information by member or manager.

A member or manager of a limited liability company shall be fully protected in relying in good faith upon the records of the limited liability company and upon such information, opinions, reports or statements presented

to the limited liability company by any of its other managers, members, officers, employees, or committees of the limited liability company, or by any other person, as to matters the member or manager reasonably believes are within such other person's professional or expert competence and who has been selected with reasonable care by or on behalf of the limited liability company, including information, opinions, reports or statements as to the value and amount of the assets, liabilities, profits or losses of the limited liability company or any other facts pertinent to the existence and amount of assets from which distributions to members might properly be paid.

#### Subchapter V. Finance

##### §18-501. Form of contribution.

The contribution of a member to a limited liability company may be in cash, property or services rendered, or a promissory note or other obligation to contribute cash or property or to perform services.

##### §18-502. Liability for contribution.

(a) Except as provided in a limited liability company agreement, a member is obligated to a limited liability company to perform any promise to contribute cash or property or to perform services, even if he is unable to perform because of death, disability or any other reason. If a member does not make the required contribution of property or services, he is obligated at the option of the limited liability company to contribute cash equal to that portion of the agreed value (as stated in the records of the limited liability company) of the contribution that has not been made. The foregoing option shall be in addition to, and not in lieu of, any other rights, including the right to specific performance, that the limited liability company may have against such member under the limited liability company agreement or applicable law.

(b) Unless otherwise provided in a limited liability company agreement, the obligation of a member to make a contribution or return money or other property paid or distributed in violation of this chapter may be compromised only by consent of all the members. Notwithstanding the compromise, a creditor of a limited liability company who extends credit, after the entering into of a limited liability company agreement or an amendment thereto which, in either case, reflects the obligation, and before the amendment thereof to reflect the compromise, may enforce the original obligation to the extent that, in extending credit, the creditor reasonably relied on the obligation of a member to make a contribution or return. A conditional obligation of a member to make a contribution or return money or other property to a limited liability company may not be enforced unless the conditions of the obligation have been satisfied or waived as to or by such member. Conditional obligations include contributions payable upon a discretionary call of a limited liability company prior to the time the call occurs.

(c) A limited liability company agreement may provide that the interest of any member who fails to make any contribution that he is obligated to make shall be subject to specified penalties for, or specified consequences of, such failure. Such penalty or consequence may take the form of reducing or eliminating the defaulting member's proportionate interest in a limited liability company, subordinating his limited liability company interest to that of nondefaulting members, a forced sale of his limited liability company interest, forfeiture of his limited liability company interest, the lending by other members of the amount necessary to meet his commitment, a fixing of the value of his limited liability company interest by appraisal or by formula and redemption or sale of his limited liability company interest at such value, or other penalty or consequence.

##### §18-503. Allocation of profits and losses.

The profits and losses of a limited liability company shall be allocated among the members, and among classes or groups of members, in the manner provided in a limited liability company agreement. If the limited liability company agreement does not so provide, profits and losses shall be allocated on the basis of the agreed value (as stated in the records of the limited liability company) of the contributions made by each member to the extent they have been received by the limited liability company and have not been returned.

#### §18-504. Allocation of distributions.

Distributions of cash or other assets of a limited liability company shall be allocated among the members, and among classes or groups of members, in the manner provided in a limited liability company agreement. If the limited liability company agreement does not so provide, distributions shall be made on the basis of the agreed value (as stated in the records of the limited liability company) of the contributions made by each member to the extent they have been received by the limited liability company and have not been returned.

### Subchapter VI. Distributions and Resignation

#### §18-601. Interim distributions.

Except as provided in this subchapter, to the extent and at the times or upon the happening of the events specified in a limited liability company agreement, a member is entitled to receive from a limited liability company distributions before his resignation from the limited liability company and before the dissolution and winding up thereof.

#### §18-602. Resignation of manager.

A manager may resign as a manager of a limited liability company at the time or upon the happening of events specified in a limited liability company agreement and in accordance with the limited liability company agreement. A limited liability company agreement may provide that a manager shall not have the right to resign as a manager of a limited liability company. Notwithstanding that a limited liability company agreement provides that a manager does not have the right to resign as a manager of a limited liability company, a manager may resign as a manager of a limited liability company at any time by giving written notice to the members and other managers. If the resignation of a manager violates a limited liability company agreement, in addition to any remedies otherwise available under applicable law, a limited liability company may recover from the resigning manager damages for breach of the limited liability company agreement and offset the damages against the amount otherwise distributable to the resigning manager.

#### §18-603. Resignation of member.

A member may resign from a limited liability company at the time or upon the happening of events specified in a limited liability company agreement and in accordance with the limited liability company agreement. If a limited liability company agreement does not specify the time or the events upon the happening of which a member may resign or a definite time for the dissolution and winding up of a limited liability company, a member may resign upon not less than 6 months' prior written notice to the limited liability company at its registered office as set forth in the certificate of formation filed in the Office of the Secretary of State and to each member and manager at each member's and manager's address as set forth on the records of the limited liability company. Notwithstanding anything to the contrary set forth in this chapter, a limited liability company agreement may provide that a member may not resign from a limited liability company or assign his limited liability company interest prior to the dissolution and winding up of the limited liability company.

#### §18-604. Distribution upon resignation.

Except as provided in this subchapter, upon resignation any resigning member is entitled to receive any distribution to which he is entitled under a limited liability company agreement and, if not otherwise provided in a limited liability company agreement, he is entitled to receive, within a reasonable time after resignation, the fair value of his limited liability company interest as of the date of resignation based upon his right to share in distributions from the limited liability company.

#### §18-605. Distribution in kind.

Except as provided in a limited liability company agreement, a member, regardless of the nature of his contribution, has no right to demand and receive any distribution from a limited liability company in any form other

than cash. Except as provided in a limited liability company agreement, a member may not be compelled to accept a distribution of any asset in kind from a limited liability company to the extent that the percentage of the asset distributed to him exceeds a percentage of that asset which is equal to the percentage in which he shares in distributions from the limited liability company.

§18-606. Right to distribution.

Subject to §§18-607 and 18-804 of this chapter, and unless otherwise provided in a limited liability company agreement, at the time a member becomes entitled to receive a distribution, he has the status of, and is entitled to all remedies available to, a creditor of a limited liability company with respect to the distribution. A limited liability company agreement may provide for the establishment of a record date with respect to allocations and distributions by a limited liability company.

§18-607. Limitations on distribution.

(a) A limited liability company shall not make a distribution to a member to the extent that at the time of the distribution, after giving effect to the distribution, all liabilities of the limited liability company, other than liabilities to members on account of their limited liability company interests and liabilities for which the recourse of creditors is limited to specified property of the limited liability company, exceed the fair value of the assets of the limited liability company, except that the fair value of property that is subject to a liability for which the recourse of creditors is limited shall be included in the assets of the limited liability company only to the extent that the fair value of that property exceeds that liability.

(b) A member who receives a distribution in violation of subsection (a) of this section, and who knew at the time of the distribution that the distribution violated subsection (a) of this section, shall be liable to a limited liability company for the amount of the distribution. A member who receives a distribution in violation of subsection (a) of this section, and who did not know at the time of the distribution that the distribution violated subsection (a) of this section, shall not be liable for the amount of the distribution. Subject to subsection (c) of this section, this subsection (b) shall not affect any obligation or liability of a member under a limited-liability company agreement or other applicable law for the amount of a distribution.

(c) Unless otherwise agreed, a member who receives a distribution from a limited liability company shall have no liability under this chapter or other applicable law for the amount of the distribution after the expiration of three years from the date of the distribution unless an action to recover the distribution from such member is commenced prior to the expiration of the said three year period and an adjudication of liability against such member is made in the said action.

Subchapter VII. Assignment of Limited Liability Company Interests

§18-701. Nature of limited liability company interest.

A limited liability company interest is personal property. A member has no interest in specific limited liability company property.

§18-702. Assignment of limited liability company interest.

(a) A limited liability company interest is assignable in whole or in part except as provided in a limited liability company agreement. The assignee of a member's limited liability company interest shall have no right to participate in the management of the business and affairs of a limited liability company except as provided in a limited liability company agreement and upon:

(1) The approval of all of the members of the limited liability company other than the member assigning his limited liability company interest; or

(2) Compliance with any procedure provided for in the limited liability company agreement.

(b) Unless otherwise provided in a limited liability company agreement:

(1) An assignment entitles the assignee to share in such profits and losses, to receive such distribution or distributions, and to receive such allocation of income, gain, loss, deduction, or credit or similar item to which the assignor was entitled, to the extent assigned; and

(2) A member ceases to be a member and to have the power to exercise any rights or powers of a member upon assignment of all of his limited liability company interest. Unless otherwise provided in a limited liability company agreement, the pledge of, or granting of a security interest, lien or other encumbrance in or against, any or all of the limited liability company interest of a member shall not cause the member to cease to be a member or to have the power to exercise any rights or powers of a member.

(c) A limited liability company agreement may provide that a member's interest in a limited liability company may be evidenced by a certificate of limited liability company interest issued by the limited liability company.

(d) Unless otherwise provided in a limited liability company agreement and except to the extent assumed by agreement, until an assignee of a limited liability company interest becomes a member, the assignee shall have no liability as a member solely as a result of the assignment.

§18-703. Rights of judgment creditor.

On application to a court of competent jurisdiction by any judgment creditor of a member, the court may charge the limited liability company interest of the member with payment of the unsatisfied amount of the judgment with interest. To the extent so charged, the judgment creditor has only the rights of an assignee of the limited liability company interest. This chapter does not deprive any member of the benefit of any exemption laws applicable to his limited liability company interest.

§18-704. Right of assignee to become member.

(a) An assignee of a limited liability company interest may become a member as provided in a limited liability company agreement and upon:

(1) The approval of all of the members of the limited liability company other than the member assigning his limited liability company interest; or

(2) Compliance with any procedure provided for in the limited liability company agreement.

(b) An assignee who has become a member has, to the extent assigned, the rights and powers, and is subject to the restrictions and liabilities, of a member under a limited liability company agreement and this chapter. Notwithstanding the foregoing, unless otherwise provided in a limited liability company agreement, an assignee who becomes a member is liable for the obligations of his assignor to make contributions as provided in §18-502 of this chapter, but shall not be liable for the obligations of his assignor under subchapter VI of this chapter. However, the assignee is not obligated for liabilities, including the obligations of his assignor to make contributions as provided in §18-502 of this chapter, unknown to the assignee at the time he became a member and which could not be ascertained from a limited liability company agreement.

(c) Whether or not an assignee of a limited liability company interest becomes a member, the assignor is not released from his liability to a limited liability company under subchapters V and VI of this chapter.

§18-705. Powers of estate of deceased or incompetent member.

If a member who is an individual dies or a court of competent jurisdiction adjudges him to be incompetent to manage his person or his property, the member's executor, administrator, guardian, conservator or other legal representative may exercise all of the member's rights for the purpose of settling his estate or administering his property, including any power under a limited liability company agreement of an assignee to become a



member. If a member is a corporation, trust or other entity and is dissolved or terminated, the powers of that member may be exercised by its legal representative or successor.

#### Subchapter VIII. Dissolution

##### §18-801. Dissolution.

A limited liability company is dissolved and its affairs shall be wound up upon the first to occur of the following:

(1) At the time specified in a limited liability company agreement, or thirty (30) years from the date of the formation of the limited liability company if no such time is set forth in the limited liability company agreement;

(2) Upon the happening of events specified in a limited liability company agreement;

(3) The written consent of all members;

(4) The death, retirement, resignation, expulsion, bankruptcy or dissolution of a member or the occurrence of any other event which terminates the continued membership of a member in the limited liability company unless the business of the limited liability company is continued either by the consent of all the remaining members within 90 days following the occurrence of any such event or pursuant to a right to continue stated in the limited liability company agreement; or

(5) The entry of a decree of judicial dissolution under §18-802 of this title.

##### §18-802. Judicial dissolution.

(a) On application by or for a member or manager the Court of Chancery may decree dissolution of a limited liability company whenever it is not reasonably practicable to carry on the business in conformity with a limited liability company agreement.

(b) If a limited liability company has any publicly traded limited liability company interests and such limited liability company is treated as a corporation for purposes of United States income taxation, then, on application by or for a member or manager, the Court of Chancery shall grant such relief as may be appropriate to cause the limited liability company not to have any publicly traded limited liability company interests or decree dissolution of the limited liability company.

##### §18-803. Winding up.

(a) Unless otherwise provided in a limited liability company agreement, a manager who has not wrongfully dissolved a limited liability company or, if none, the members or a person approved by the members or, if there is more than one class or group of members, then by each class or group of members, in either case, by members who own more than 50 percent of the then current percentage or other interest in the profits of the limited liability company owned by all of the members or by the members in each class or group, as appropriate, may wind up the limited liability company's affairs; but the Court of Chancery, upon cause shown, may wind up the limited liability company's affairs upon application of any member or manager, his legal representative or assignee, and in connection therewith, may appoint a liquidating trustee.

(b) Upon dissolution of a limited liability company and until the filing of a certificate of cancellation as provided in §18-203 of this chapter, the persons winding up the limited liability company's affairs may, in the name of, and for and on behalf of, the limited liability company, prosecute and defend suits, whether civil, criminal or administrative, gradually settle and close the limited liability company's business, dispose of and convey the limited liability company's property, discharge or make reasonable provision for the limited liability company's liabilities, and distribute to the members any remaining assets of the limited liability

company, all without affecting the liability of members and managers and without imposing liability on a liquidating trustee.

§18-804. Distribution of assets.

(a) Upon the winding up of a limited liability company, the assets shall be distributed as follows:

(1) To creditors, including members and managers who are creditors, to the extent otherwise permitted by law, in satisfaction of liabilities of the limited liability company (whether by payment or the making of reasonable provision for payment thereof) other than liabilities for which reasonable provision for payment has been made and liabilities for distributions to members under §18-601 or §18-604 of this chapter;

(2) Unless otherwise provided in a limited liability company agreement, to members and former members in satisfaction of liabilities for distributions under §18-601 or §18-604 of this chapter; and

(3) Unless otherwise provided in a limited liability company agreement, to members first for the return of their contributions and second respecting their limited liability company interests, in the proportions in which the members share in distributions.

(b) A limited liability company which has dissolved shall pay or make reasonable provision to pay all claims and obligations, including all contingent, conditional or unmatured claims and obligations, known to the limited liability company and all claims and obligations which are known to the limited liability company but for which the identity of the claimant is unknown. If there are sufficient assets, such claims and obligations shall be paid in full and any such provision for payment made shall be made in full. If there are insufficient assets, such claims and obligations shall be paid or provided for according to their priority and, among claims and obligations of equal priority, ratably to the extent of assets available therefor. Unless otherwise provided in a limited liability company agreement, any remaining assets shall be distributed as provided in this chapter. Any liquidating trustee winding up a limited liability company's affairs who has complied with this section shall not be personally liable to the claimants of the dissolved limited liability company by reason of such person's actions in winding up the limited liability company.

Subchapter IX. Foreign Limited Liability Companies

§18-901. Law governing.

(a) Subject to the Constitution of the State of Delaware:

(1) The laws of the State, territory, possession, or other jurisdiction or country under which a foreign limited liability company is organized govern its organization and internal affairs and the liability of its members and managers; and

(2) A foreign limited liability company may not be denied registration by reason of any difference between those laws and the laws of the State of Delaware.

(b) A foreign limited liability company shall be subject to §18-106 of this chapter.

§18-902. Registration required; application.

(a) Before doing business in the State of Delaware, a foreign limited liability company shall register with the Secretary of State. In order to register, a foreign limited liability company shall submit to the Secretary of State:

(1) A copy executed by an authorized person of an application for registration as a foreign limited liability company, setting forth:

a. The name of the foreign limited liability company and, if different, the name under which it proposes to register and do business in the State of Delaware;

b. The state, territory, possession or other jurisdiction or country where formed, the date of its formation and a statement from an authorized person that, as of the date of filing, the foreign limited liability company validly exists as a limited liability company under the laws of the jurisdiction of its formation;

c. The nature of the business or purposes to be conducted or promoted in the State of Delaware;

d. The address of the registered office and the name and address of the registered agent for service of process required to be maintained by §18-904(b) of this chapter;

e. A statement that the Secretary of State is appointed the agent of the foreign limited liability company for service of process under the circumstances set forth in §18-910(b) of this chapter; and

f. The date on which the foreign limited liability company first did, or intends to do, business in the State of Delaware.

(2) A fee as set forth in §18-1105(a)(6) of this chapter shall be paid.

(b) A person shall not be deemed to be doing business in the State of Delaware solely by reason of being a member or manager of a domestic limited liability company or a foreign limited liability company.

#### §18-903. Issuance of registration.

(a) If the Secretary of State finds that an application for registration conforms to law and all requisite fees have been paid, he shall:

(1) Certify that the application has been filed in his office by endorsing upon the original application the word "Filed", and the date and hour of the filing. This endorsement is conclusive of the date and time of its filing in the absence of actual fraud;

(2) File and index the endorsed application.

(b) The duplicate of the application, similarly endorsed, shall be returned to the person who filed the application or his representative.

(c) The filing of the application with the Secretary of State shall make it unnecessary to file any other documents under Chapter 31 of this title.

#### §18-904. Name; registered office; registered agent.

(a) A foreign limited liability company may register with the Secretary of State under any name (whether or not it is the name under which it is registered in the jurisdiction of its formation) that includes the words "Limited Liability Company" or the abbreviation "L.L.C." and that could be registered by a domestic limited liability company; provided, however, that a foreign limited liability company may register under any name which is not such as to distinguish it upon the records in the Office of the Secretary of State from the name of any domestic or foreign corporation, business trust, limited liability company or limited partnership reserved, registered or organized under the laws of the State of Delaware with the written consent of the other corporation, business trust, limited liability company or limited partnership, which written consent shall be filed with the Secretary of State.

(b) Each foreign limited liability company shall have and maintain in the State of Delaware:

(1) A registered office which may but need not be a place of its business in the State of Delaware; and

(2) A registered agent for service of process on the foreign limited liability company, which agent may be either an individual resident of the State of Delaware whose business office is identical

with the foreign limited liability company's registered office, or a domestic corporation or a foreign corporation authorized to do business in the State of Delaware having a business office identical with such registered office.

(c) A registered agent may change the address of the registered office of the foreign limited liability company(s) for which he is registered agent to another address in the State of Delaware by paying a fee as set forth in §18-1105(a)(7) of this chapter and filing with the Secretary of State a certificate, executed by such registered agent, setting forth the names of all the foreign limited liability companies represented by such registered agent, and the address at which such registered agent has maintained the registered office for each of such foreign limited liability companies, and further certifying to the new address to which each such registered office will be changed on a given day, and at which new address such registered agent will thereafter maintain the registered office for each of the foreign limited liability companies recited in the certificate. Upon the filing of such certificate, the Secretary of State shall furnish to the registered agent a certified copy of the same under his hand and seal of office, and thereafter, or until further change of address, as authorized by law, the registered office in the State of Delaware of each of the foreign limited liability companies recited in the certificate shall be located at the new address of the registered agent thereof as given in the certificate. In the event of a change of name of any person acting as a registered agent of a foreign limited liability company, such registered agent shall file with the Secretary of State a certificate, executed by such registered agent, setting forth the new name of such registered agent, the name of such registered agent before it was changed, the names of all the foreign limited liability companies represented by such registered agent, and the address at which such registered agent has maintained the registered office for each of such foreign limited liability companies, and shall pay a fee as set forth in §18-1105(a)(7) of this chapter. Upon the filing of such certificate, the Secretary of State shall furnish to the registered agent a certified copy of the same under his hand and seal of office. Filing a certificate under this section shall be deemed to be an amendment of the application of each foreign limited liability company affected thereby and each foreign limited liability company shall not be required to take any further action with respect thereto, to amend its application under §18-905 of this chapter. Any registered agent filing a certificate under this section shall promptly, upon such filing, deliver a copy of any such certificate to each foreign limited liability company affected thereby.

(d) The registered agent of 1 or more foreign limited liability companies may resign and appoint a successor registered agent by paying a fee as set forth in §18-1105(a)(7) of this chapter and filing a certificate with the Secretary of State, stating that it resigns and the name and address of the successor registered agent. There shall be attached to such certificate a statement executed by each affected foreign limited liability company ratifying and approving such change of registered agent. Upon such filing, the successor registered agent shall become the registered agent of such foreign limited liability company as has ratified and approved such substitution and the successor registered agent's address, as stated in such certificate, shall become the address of each such foreign limited liability company's registered office in the State of Delaware. The Secretary of State shall furnish to the successor registered agent a certified copy of the certificate of resignation. Filing of such certificate of resignation shall be deemed to be an amendment of the application of each foreign limited liability company affected thereby and each such foreign limited liability company shall not be required to take any further action with respect thereto, to amend its application under §18-905 of this chapter.

(e) The registered agent of a foreign limited liability company may resign without appointing a successor registered agent by paying a fee as set forth in §18-1105(a)(7) of this chapter and filing a certificate with the Secretary of State stating that it resigns as registered agent for the foreign limited liability company identified in the certificate, but such resignation shall not become effective until 120 days after the certificate is filed. There shall be attached to such certificate an affidavit of such registered agent, if an individual, or of the president, a vice-president or the secretary thereof if a corporation, that at least 30 days prior to and on or about the date of the filing of said certificate, notices were sent by certified or registered mail to the foreign limited liability companies for which

such registered agent is resigning as registered agent, at the principal office thereof within or outside the State of Delaware, if known to such registered agent or, if not, to the last known address of the attorney or other individual at whose request such registered agent was appointed for such foreign limited liability company, of the resignation of such registered agent. After receipt of the notice of the resignation of its registered agent, the foreign limited liability company for which such registered agent was acting shall obtain and designate a new registered agent, to take the place of the registered agent so resigning. If such foreign limited liability company fails to obtain and designate a new registered agent as aforesaid prior to the expiration of the period of 120 days after the filing by the registered agent of the certificate of resignation, such foreign limited liability company shall not be permitted to do business in the State of Delaware and its registration shall be deemed to be cancelled. After the resignation of the registered agent shall have become effective as provided in this section and if no new registered agent shall have been obtained and designated in the time and manner aforesaid, service of legal process against the foreign limited liability company for which the resigned registered agent had been acting shall thereafter be upon the Secretary of State in accordance with §18-911 of this chapter.

§18-905. Amendments to application.

If any statement in the application for registration of a foreign limited liability company was false when made or any arrangements or other facts described have changed, making the application false in any respect, the foreign limited liability company shall promptly file in the Office of the Secretary of State a certificate, executed by an authorized person, correcting such statement, together with a fee as set forth in §18-1105(a)(6) of this chapter.

§18-906. Cancellation of registration.

A foreign limited liability company may cancel its registration by filing with the Secretary of State a certificate of cancellation, executed by an authorized person, together with a fee as set forth in §18-1105(a)(6) of this chapter. A cancellation does not terminate the authority of the Secretary of State to accept service of process on the foreign limited liability company with respect to causes of action arising out of the doing of business in the State of Delaware.

§18-907. Doing business without registration.

(a) A foreign limited liability company doing business in the State of Delaware may not maintain any action, suit or proceeding in the State of Delaware until it has registered in the State of Delaware, and has paid to the State of Delaware all fees and penalties for the years or parts thereof, during which it did business in the State of Delaware without having registered.

(b) The failure of a foreign limited liability company to register in the State of Delaware does not impair:

(1) The validity of any contract or act of the foreign limited liability company;

(2) The right of any other party to the contract to maintain any action, suit or proceeding on the contract; or

(3) Prevent the foreign limited liability company from defending any action, suit or proceeding in any court of the State of Delaware.

(c) A member or a manager of a foreign limited liability company is not liable for the obligations of the foreign limited liability company solely by reason of the limited liability company's having done business in the State of Delaware without registration.

(d) Any foreign limited liability company doing business in the State of Delaware without first having registered shall be fined and shall pay to the Secretary of State \$200 for each year or part thereof during which the foreign limited liability company failed to register in the State of Delaware.

§18-908. Foreign limited liability companies doing business without having qualified; injunctions.

The Court of Chancery shall have jurisdiction to enjoin any foreign limited liability company, or any agent thereof, from doing any business in the State of Delaware if such foreign limited liability company has failed to register under this subchapter or if such foreign limited liability company has secured a certificate of the Secretary of State under §18-903 of this chapter on the basis of false or misleading representations. The Attorney General shall, upon his own motion or upon the relation of proper parties, proceed for this purpose by complaint in any county in which such foreign limited liability company is doing or has done business.

§18-909. Execution; liability.

Section 18-204(c) of this chapter shall be applicable to foreign limited liability companies as if they were domestic limited liability companies.

§18-910. Service of process on registered foreign limited liability companies.

(a) Service of legal process upon any foreign limited liability company shall be made by delivering a copy personally to any managing or general agent or manager of the foreign limited liability company in the State of Delaware or the registered agent of the foreign limited liability company in the State of Delaware, or by leaving it at the dwelling house or usual place of abode in the State of Delaware of any such managing or general agent, manager or registered agent (if the registered agent be an individual), or at the registered office or other place of business of the foreign limited liability company in the State of Delaware. If the registered agent be a corporation, service of process upon it as such may be made by serving, in the State of Delaware, a copy thereof on the president, vice-president, secretary, assistant secretary or any director of the corporate registered agent. Service by copy left at the dwelling house or usual place of abode of any managing or general agent, manager or registered agent, or at the registered office or other place of business of the foreign limited liability company in the State of Delaware, to be effective must be delivered thereat at least 6 days before the return date of the process, and in the presence of an adult person, and the officer serving the process shall distinctly state the manner of service in his return thereto. Process returnable forthwith must be delivered personally to the managing or general agent, manager or registered agent.

(b) In case the officer whose duty it is to serve legal process cannot by due diligence serve the process in any manner provided for by subsection (a) of this section, it shall be lawful to serve the process against the foreign limited liability company upon the Secretary of State, and such service shall be as effectual for all intents and purposes as if made in any of the ways provided for in subsection (a) hereof. In the event service is effected through the Secretary of State in accordance with this subsection, the Secretary of State shall forthwith notify the foreign limited liability company by letter, certified mail, return receipt requested, directed to the foreign limited liability company at its last registered office. Such letter shall enclose a copy of the process and any other papers served on the Secretary of State pursuant to this subsection. It shall be the duty of the plaintiff in the event of such service to serve process and any other papers in duplicate, to notify the Secretary of State that service is being effected pursuant to this subsection, and to pay to the Secretary of State the sum of \$50 for the use of the State of Delaware, which sum shall be taxed as a part of the costs in the proceeding if the plaintiff shall prevail therein. The Secretary of State shall maintain an alphabetical record of any such service setting forth the name of the plaintiff and defendant, the title, docket number and nature of the proceeding in which process has been served upon him, the fact that service has been effected pursuant to this subsection, the return date thereof and the day and hour when the service was made. The Secretary of State shall not be required to retain such information for a period longer than 5 years from his receipt of the service of process.

§18-911. Service of process on unregistered foreign limited liability companies.

such registered agent is resigning as registered agent, at the principal office thereof within or outside the State of Delaware, if known to such registered agent or, if not, to the last known address of the attorney or other individual at whose request such registered agent was appointed for such foreign limited liability company, of the resignation of such registered agent. After receipt of the notice of the resignation of its registered agent, the foreign limited liability company for which such registered agent was acting shall obtain and designate a new registered agent, to take the place of the registered agent so resigning. If such foreign limited liability company fails to obtain and designate a new registered agent as aforesaid prior to the expiration of the period of 120 days after the filing by the registered agent of the certificate of resignation, such foreign limited liability company shall not be permitted to do business in the State of Delaware and its registration shall be deemed to be cancelled. After the resignation of the registered agent shall have become effective as provided in this section and if no new registered agent shall have been obtained and designated in the time and manner aforesaid, service of legal process against the foreign limited liability company for which the resigned registered agent had been acting shall thereafter be upon the Secretary of State in accordance with §18-911 of this chapter.

§18-905. Amendments to application.

If any statement in the application for registration of a foreign limited liability company was false when made or any arrangements or other facts described have changed, making the application false in any respect, the foreign limited liability company shall promptly file in the Office of the Secretary of State a certificate, executed by an authorized person, correcting such statement, together with a fee as set forth in §18-1105(a)(6) of this chapter.

§18-906. Cancellation of registration.

A foreign limited liability company may cancel its registration by filing with the Secretary of State a certificate of cancellation, executed by an authorized person, together with a fee as set forth in §18-1105(a)(6) of this chapter. A cancellation does not terminate the authority of the Secretary of State to accept service of process on the foreign limited liability company with respect to causes of action arising out of the doing of business in the State of Delaware.

§18-907. Doing business without registration.

(a) A foreign limited liability company doing business in the State of Delaware may not maintain any action, suit or proceeding in the State of Delaware until it has registered in the State of Delaware, and has paid to the State of Delaware all fees and penalties for the years or parts thereof, during which it did business in the State of Delaware without having registered.

(b) The failure of a foreign limited liability company to register in the State of Delaware does not impair:

(1) The validity of any contract or act of the foreign limited liability company;

(2) The right of any other party to the contract to maintain any action, suit or proceeding on the contract; or

(3) Prevent the foreign limited liability company from defending any action, suit or proceeding in any court of the State of Delaware.

(c) A member or a manager of a foreign limited liability company is not liable for the obligations of the foreign limited liability company solely by reason of the limited liability company's having done business in the State of Delaware without registration.

(d) Any foreign limited liability company doing business in the State of Delaware without first having registered shall be fined and shall pay to the Secretary of State \$200 for each year or part thereof during which the foreign limited liability company failed to register in the State of Delaware.

§18-908. Foreign limited liability companies doing business without having qualified; injunctions.

The Court of Chancery shall have jurisdiction to enjoin any foreign limited liability company, or any agent thereof, from doing any business in the State of Delaware if such foreign limited liability company has failed to register under this subchapter or if such foreign limited liability company has secured a certificate of the Secretary of State under §18-903 of this chapter on the basis of false or misleading representations. The Attorney General shall, upon his own motion or upon the relation of proper parties, proceed for this purpose by complaint in any county in which such foreign limited liability company is doing or has done business.

§18-909. Execution; liability.

Section 18-204(c) of this chapter shall be applicable to foreign limited liability companies as if they were domestic limited liability companies.

§18-910. Service of process on registered foreign limited liability companies.

(a) Service of legal process upon any foreign limited liability company shall be made by delivering a copy personally to any managing or general agent or manager of the foreign limited liability company in the State of Delaware or the registered agent of the foreign limited liability company in the State of Delaware, or by leaving it at the dwelling house or usual place of abode in the State of Delaware of any such managing or general agent, manager or registered agent (if the registered agent be an individual), or at the registered office or other place of business of the foreign limited liability company in the State of Delaware. If the registered agent be a corporation, service of process upon it as such may be made by serving, in the State of Delaware, a copy thereof on the president, vice-president, secretary, assistant secretary or any director of the corporate registered agent. Service by copy left at the dwelling house or usual place of abode of any managing or general agent, manager or registered agent, or at the registered office or other place of business of the foreign limited liability company in the State of Delaware, to be effective must be delivered thereat at least 6 days before the return date of the process, and in the presence of an adult person, and the officer serving the process shall distinctly state the manner of service in his return thereto. Process returnable forthwith must be delivered personally to the managing or general agent, manager or registered agent.

(b) In case the officer whose duty it is to serve legal process cannot by due diligence serve the process in any manner provided for by subsection (a) of this section, it shall be lawful to serve the process against the foreign limited liability company upon the Secretary of State, and such service shall be as effectual for all intents and purposes as if made in any of the ways provided for in subsection (a) hereof. In the event service is effected through the Secretary of State in accordance with this subsection, the Secretary of State shall forthwith notify the foreign limited liability company by letter, certified mail, return receipt requested, directed to the foreign limited liability company at its last registered office. Such letter shall enclose a copy of the process and any other papers served on the Secretary of State pursuant to this subsection. It shall be the duty of the plaintiff in the event of such service to serve process and any other papers in duplicate, to notify the Secretary of State that service is being effected pursuant to this subsection, and to pay to the Secretary of State the sum of \$50 for the use of the State of Delaware, which sum shall be taxed as a part of the costs in the proceeding if the plaintiff shall prevail therein. The Secretary of State shall maintain an alphabetical record of any such service setting forth the name of the plaintiff and defendant, the title, docket number and nature of the proceeding in which process has been served upon him, the fact that service has been effected pursuant to this subsection, the return date thereof and the day and hour when the service was made. The Secretary of State shall not be required to retain such information for a period longer than 5 years from his receipt of the service of process.

§18-911. Service of process on unregistered foreign limited liability companies.



(a) Any foreign limited liability company which shall do business in the State of Delaware without having registered under §18-902 of this chapter shall be deemed to have thereby appointed and constituted the Secretary of State of the State of Delaware its agent for the acceptance of legal process in any civil action, suit or proceeding, against it in any State or Federal Court in the State of Delaware arising or growing out of any business done by it within the State of Delaware. The doing of business in the State of Delaware by such foreign limited liability company shall be a signification of the agreement of such foreign limited liability company that any such process when so served shall be of the same legal force and validity as if served upon an authorized manager or agent personally within the State of Delaware.

(b) Whenever the words "doing business", "the doing of business" or "business done in this State", by any such foreign limited liability company are used in this section, they shall mean the course or practice of carrying on any business activities in the State of Delaware, including, without limiting the generality of the foregoing, the solicitation of business or orders in the State of Delaware.

(c) In the event of service upon the Secretary of State in accordance with subsection (a) of this section, the Secretary of State shall forthwith notify the foreign limited liability company thereof by letter, certified mail, return receipt requested, directed to the foreign limited liability company at the address furnished to the Secretary of State by the plaintiff in such action, suit or proceeding. Such letter shall enclose a copy of the process and any other papers served upon the Secretary of State. It shall be the duty of the plaintiff in the event of such service to serve process and any other papers in duplicate, to notify the Secretary of State that service is being made pursuant to this subsection, and to pay to the Secretary of State the sum of \$50 for the use of the State of Delaware, which sum shall be taxed as part of the costs in the proceeding, if the plaintiff shall prevail therein. The Secretary of State shall maintain an alphabetical record of any such process setting forth the name of the plaintiff and defendant, the title, docket number and nature of the proceeding in which process has been served upon him, the return date thereof, and the day and hour when the service was made. The Secretary of State shall not be required to retain such information for a period longer than 5 years from his receipt of the service of process.

#### Subchapter X. Derivative Actions

##### §18-1001. Right to bring action.

A member may bring an action in the Court of Chancery in the right of a limited liability company to recover a judgment in its favor if managers or members with authority to do so have refused to bring the action or if an effort to cause those managers or members to bring the action is not likely to succeed.

##### §18-1002. Proper plaintiff.

In a derivative action, the plaintiff must be a member at the time of bringing the action and:

(1) At the time of the transaction of which he complains; or

(2) His status as a member had devolved upon him by operation of law or pursuant to the terms of a limited liability company agreement from a person who was a member at the time of the transaction.

##### §18-1003. Complaint.

In a derivative action, the complaint shall set forth with particularity the effort, if any, of the plaintiff to secure initiation of the action by a manager or member or the reasons for not making the effort.

##### §18-1004. Expenses.

If a derivative action is successful, in whole or in part, as a result of a judgment, compromise or settlement of any such action, the court may

award the plaintiff reasonable expenses, including reasonable attorney's fees, from any recovery in any such action or from a limited liability company.

#### Subchapter XI. Miscellaneous

§18-1101. Construction and application of chapter and limited liability company agreement.

(a) The rule that statutes in derogation of the common law are to be strictly construed shall have no application to this chapter.

(b) It is the policy of this chapter to give the maximum effect to the principle of freedom of contract and to the enforceability of limited liability company agreements.

(c) To the extent that, at law or in equity, a member or manager has duties (including fiduciary duties) and liabilities relating thereto to a limited liability company or to another member or manager, (1) any such member or manager acting under a limited liability company agreement shall not be liable to the limited liability company or to any such other member or manager for the member's or manager's good faith reliance on the provisions of the limited liability company agreement, and (2) the member's or manager's duties and liabilities may be expanded or restricted by provisions in a limited liability company agreement.

(d) Unless the context otherwise requires, as used herein, the singular shall include the plural and the plural may refer to only the singular. The use of any gender shall be applicable to all genders. The captions contained herein are for purposes of convenience only and shall not control or affect the construction of this chapter.

§18-1102. Short title.

This chapter may be cited as the "Delaware Limited Liability Company Act".

§18-1103. Severability.

If any provision of this chapter or its application to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of the chapter which can be given effect without the invalid provision or application, and to this end, the provisions of this chapter are severable.

§18-1104. Cases not provided for in this chapter.

In any case not provided for in this chapter, the rules of law and equity, including the law merchant, shall govern.

§18-1105. Fees.

(a) No document required to be filed under this chapter shall be effective until the applicable fee required by this section is paid. The following fees shall be paid to and collected by the Secretary of State for the use of the State of Delaware:

(1) Upon the receipt for filing of an application for reservation of name, an application for renewal of reservation or a notice of transfer or cancellation of reservation pursuant to §18-103(b) of this chapter, a fee in the amount of \$10.

(2) Upon the receipt for filing of a certificate under §18-104(b) of this chapter, a fee in the amount of \$50, upon the receipt for filing of a certificate under §18-104(c) of this chapter, a fee in the amount of \$50 and a further fee of \$2 for each limited liability company affected by such certificate, and upon the receipt for filing of a certificate under §18-104(d) of this chapter, a fee in the amount of \$10.

(3) Upon the receipt for filing of a certificate of formation under §18-201 of this chapter, a certificate of amendment under §18-202 of this chapter, a certificate of cancellation under §18-203 of this

chapter, a certificate of merger or consolidation under §18-209 of this chapter or a restated certificate of formation under §18-208 of this chapter, a fee in the amount of \$50.

(4) For certifying copies of any paper on file as provided for by this chapter, a fee in the amount of \$20 for each copy certified.

(5) The Secretary of State may issue photocopies of instruments on file as well as other copies, and for all such copies, whether certified or not, a fee in the amount of \$5 for the first page and \$1 per page thereafter shall be paid.

(6) Upon the receipt for filing of an application for registration as a foreign limited liability company under §18-902 of this chapter, a certificate under §18-905 of this chapter or a certificate of cancellation under §18-906 of this chapter, a fee in the amount of \$50.

(7) Upon the receipt for filing of a certificate under §18-904(c) of this chapter, a fee in the amount of \$50, upon the receipt for filing of a certificate under §18-904(d) of this chapter, a fee in the amount of \$50 and a further fee of \$2 for each foreign limited liability company affected by such certificate, and upon the receipt for filing of a certificate under §18-904(e) of this chapter, a fee in the amount of \$2.50.

(8) For preclearance of any document for filing, a fee in the amount of \$250.

(9) For preparing and providing a written report of a record search, a fee in the amount of \$30.

(10) For issuing any certificate of the Secretary of State, including but not limited to a certificate of good standing, other than a certification of a copy under paragraph (4) of this subsection, a fee in the amount of \$20, except that for issuing any certificate of the Secretary of State that recites all of a limited liability company's filings with the Secretary of State, a fee of \$100 shall be paid for each such certificate.

(11) For receiving and filing and/or indexing any certificate, affidavit, agreement or any other paper provided for by this chapter, for which no different fee is specifically prescribed, a fee in the amount of \$25.

(12) The Secretary of State may in his discretion charge a fee of \$25 for each check received for payment of any fee that is returned due to insufficient funds or the result of a stop payment order.

(b) In addition to those fees charged under subsection (a) of this section, there shall be collected by and paid to the Secretary of State the following:

(1) for all services described in subsection (a) of this section that are requested to be completed within the same day as the day of the request, an additional sum of up to \$200; and

(2) for all services described in subsection (a) of this section that are requested to be completed within a 24-hour period from the time of the request, an additional sum of up to \$100.

The Secretary of State shall establish (and may from time to time amend) a schedule of specific fees payable pursuant to this subsection.

(c) The Secretary of State may in his discretion permit the extension of credit for the fees required by this section upon such terms as he shall deem to be appropriate.

(d) The Secretary of State shall retain from the revenue collected from the fees required by this section a sum sufficient to provide at all times a fund of at least \$500, but not more than \$1,500, from which he may refund any payment made pursuant to this section to the extent that it exceeds

the fees required by this section. The funds shall be deposited in a financial institution which is a legal depository of State of Delaware moneys to the credit of the Secretary of State and shall be disbursable on order of the Secretary of State.

(e) Except as provided in this section, the fees of the Secretary of State shall be as provided in §2315 of Chapter 29.

§18-1106. Reserved power of State of Delaware to alter or repeal chapter.

All provisions of this chapter may be altered from time to time or repealed and all rights of members and managers are subject to this reservation.

§18-1107. Taxation of limited liability companies.

(a) For purposes of taxation under Title 30, a limited liability company formed under this chapter or qualified to do business in the State of Delaware as a foreign limited liability company shall be classified as a partnership unless classified otherwise for federal income tax purposes, in which case the limited liability company shall be classified in the same manner as it is classified for federal income tax purposes. For purposes of taxation under Title 30, a member or an assignee of a member of a limited liability company formed under this chapter or qualified to do business in the State of Delaware as a foreign limited liability company shall be treated as either a resident or nonresident partner unless classified otherwise for federal income tax purposes, in which case the member or assignee of a member shall have the same status as such member or assignee of a member has for federal income tax purposes.

(b) Every domestic limited liability company and every foreign limited liability company registered to do business in the State of Delaware shall pay an annual tax, for the use of the State of Delaware, in the amount of \$100.

(c) The annual tax shall be due and payable on the first day of June following the close of the calendar year or upon the cancellation of a certificate of formation. The Secretary of State shall receive the annual tax and pay over all taxes collected to the Department of Finance of the State of Delaware. If the annual tax remains unpaid after the due date, the tax shall bear interest at the rate of one and one-half percent for each month or portion thereof until fully paid.

(d) The Secretary of State shall, at least 60 days prior to the first day of June of each year, cause to be mailed to each domestic limited liability company and each foreign limited liability company required to comply with the provisions of this section in care of its registered agent in the State of Delaware an annual statement for the tax to be paid hereunder.

(e) In the event of neglect, refusal or failure on the part of any domestic limited liability company or foreign limited liability company to pay the annual tax to be paid hereunder on or before the 1st day of June in any year, such domestic limited liability company or foreign limited liability company shall pay the sum of \$100 to be recovered by adding that amount to the annual tax and such additional sum shall become a part of the tax and shall be collected in the same manner and subject to the same penalties.

(f) In case any domestic limited liability company or foreign limited liability company shall fail to pay the annual tax due within the time required by this section, and in case the agent in charge of the registered office of any domestic limited liability company or foreign limited liability company upon whom process against such domestic limited liability company or foreign limited liability company may be served shall die, resign, refuse to act as such, remove from the State of Delaware or cannot with due diligence be found, it shall be lawful while default continues to serve process against such domestic limited liability company or foreign limited liability company upon the Secretary of State. Such service upon the Secretary of State shall be made in the manner and shall have the effect stated in §18-105 of this title in the case of a domestic limited liability company and §18-910 of this title in the case of a foreign limited liability company and shall be governed in all respects by said sections.

(g) The annual tax shall be a debt due from a domestic limited liability company or foreign limited liability company to the State of Delaware, for which an action at law may be maintained after the same shall have been in arrears for a period of 1 month. The tax shall also be a preferred debt in the case of insolvency.

(h) A domestic limited liability company or foreign limited liability company that neglects, refuses or fails to pay the annual tax when due shall, after written demand therefor, mailed on or before the 1st day of September of the year in which such tax is due, by the Secretary of State to such domestic limited liability company or foreign limited liability company in care of its registered agent, cease to be in good standing as a domestic limited liability company or registered as a foreign limited liability company in the State of Delaware on the 1st day of November of the year in which such tax is due unless such tax and all penalties and interest thereon are paid in full before the 1st day of November of the year in which such tax is due.

(i) A domestic limited liability company that has ceased to be in good standing or a foreign limited liability company that has ceased to be registered by reason of the failure to pay an annual tax shall be restored to and have the status of a domestic limited liability company in good standing or a foreign limited liability company that is registered in the State of Delaware upon the payment of the annual tax and all penalties and interest thereon for each year for which such domestic limited liability company or foreign limited liability company neglected, refused or failed to pay an annual tax, accompanied by a certificate of the limited liability company executed by an authorized person stating that it is paying all sums due hereunder.

(j) The Attorney General, either on his own motion or upon request of the Secretary of State, whenever any annual tax due under this chapter from any domestic limited liability company or foreign limited liability company shall have remained in arrears for a period of 3 months after the tax shall have become payable, may apply to the Court of Chancery, by petition in the name of the State of Delaware, on 5 days' notice to such domestic limited liability company or foreign limited liability company, which notice may be served in such manner as the Court may direct, for an injunction to restrain such domestic limited liability company or foreign limited liability company from the transaction of any business within the State of Delaware or elsewhere, until the payment of the annual tax, and all penalties and interest due thereon and the cost of the application which shall be fixed by the Court. The Court of Chancery may grant the injunction, if a proper case appears, and upon granting and service of the injunction, such domestic limited liability company or foreign limited liability company thereafter shall not transact any business until the injunction shall be dissolved.

(k) A domestic limited liability company that has ceased to be in good standing by reason of its neglect, refusal or failure to pay an annual tax shall remain a domestic limited liability company formed under this chapter. The Secretary of State shall not accept for filing any certificate (except a certificate of resignation of a registered agent when a successor registered agent is not being appointed) required or permitted by this chapter to be filed in respect of any domestic limited liability company or foreign limited liability company with has neglected, refused or failed to pay an annual tax, and shall not issue any certificate of good standing with respect to such domestic limited liability company or foreign limited liability company, unless or until such domestic limited liability company or foreign limited liability company shall have been restored to and have the status of a domestic limited liability company in good standing or a foreign limited liability company duly registered in the State of Delaware.

(l) A domestic limited liability company that has ceased to be in good standing or a foreign limited liability company has ceased to be registered in the State of Delaware by reason of its neglect, refusal or failure to pay an annual tax may not maintain any action, suit or proceeding in any court of the State of Delaware until such domestic limited liability company or foreign limited liability company has been restored to and has the status of a domestic limited liability company or foreign limited liability company in good standing or duly registered in the State of Delaware. An action, suit or proceeding may not be maintained in any court of the State of Delaware by any successor or assignee of such domestic limited liability company or foreign limited liability company on any right, claim or demand arising out the

transaction of business by such domestic limited liability company after it has ceased to be in good standing or a foreign limited liability company that has ceased to be registered in the State of Delaware until such domestic limited liability company or foreign limited liability company, or any person that has acquired all or substantially all of its assets, has paid any annual tax then due and payable, together with penalties and interest thereon.

(m) The neglect, refusal or failure of a domestic limited liability company or foreign limited liability company to pay an annual tax shall not impair the validity on any contract, deed, mortgage, security interest, lien or act or such domestic limited liability company or foreign limited liability company or prevent such domestic limited liability company or foreign limited liability company from defending any action, suit or proceeding with any court of the State of Delaware.

(n) A member or manager of a domestic limited liability company or foreign limited liability company is not liable for the debts, obligations or liabilities of such domestic limited liability company or foreign limited liability company solely by reason of the neglect, refusal or failure of such domestic limited liability company or foreign limited liability company to pay an annual tax or by reason of such domestic limited liability company or foreign limited liability company ceasing to be in good standing or duly registered."

#### Section 2. Effective Date

This Act shall become effective on October 1, 1992.

Approved July 22, 1992.

## CHAPTER 435

## FORMERLY

HOUSE BILL NO. 611  
AS AMENDED BY HOUSE AMENDMENT NO. 1

AN ACT TO AMEND TITLE 9 OF THE DELAWARE CODE, RELATING TO STREET AND HIGHWAY LIGHTING.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (three-fifths of all members elected to each House thereof concurring therein):

Section 1. Amend Title 9, §2101 of the Delaware Code by deleting the following language from the first sentence thereof:

" , filed on or before the first Tuesday in any month in any year, ".

Section 2. Amend the title of Title 9, §2102 of the Delaware Code by deleting the period at the conclusion thereof and adding the following language thereto:

" ; penalty for late payment. "

Section 3. Amend Title 9, §2102 (a) of the Delaware Code by deleting the existing first sentence thereof and adding in lieu thereof the following:

"The County government, for the purpose of providing street and highway lighting pursuant to §2101 of this title, shall levy for the installation and maintenance of such lights an annual tax based on the full annual cost of such lighting, plus up to but not exceeding 10% thereof to cover the actual direct and indirect costs of administration and billing. Such tax shall be levied against all properties within the boundary lines of the communities that have submitted petitions under §2101 of this title. The County government shall establish the method by which such tax shall be computed and shall adopt and levy annual light tax rates that will yield sufficient revenue to cover the full annual cost of all lighting services, plus up to but not exceeding 10% for the actual cost of administration and billing.

Section 4. Amend Title 9, §2102 (b) of the Delaware Code by adding a new sentence at the conclusion thereof, as follows:

"If such taxes are not paid by the date set for the payment of other taxes, penalty shall accrue thereon in the manner and at the rate specified in §8604 (a) of this title.

Section 5. Amend Title 9, §2102 of the Delaware Code by adding thereto a new subsection (c), as follows:

"(c) If the County government receives a petition for street lighting from any community and the contract for such street lighting is entered after the commencement of the County's fiscal year, the Department of Finance may, at the same times established for supplemental assessments in §8339 of this title, levy and bill a supplemental light tax to the property owners within such community, computed in the same manner as all other light tax bills, reduced at the rates specified in §8340 of this title."

Section 6. Amend Title 9, §2102 of the Delaware Code by adding thereto a new subsection (d), as follows:

"(d) All taxes levied under this chapter shall be considered real property taxes and, as provided in Title 25, §2901 (a), shall constitute and remain a statutory lien on such property, together with any penalties that may accrue thereon, until such taxes and penalties are paid in full. Such lien shall enjoy the priority established for governmental liens by Title 25, §2901."

Section 7. Amend Title 9, §2103 of the Delaware Code by deleting the second sentence thereof and inserting in lieu thereof the following:

"The Department shall receive or charge no compensation for the performance of any duty required of it or New Castle County under this chapter, beyond that expressly authorized by §2102 of this title."

Section 8. Amend Title 9, §2104 of the Delaware Code by striking said section in its entirety and substituting in lieu thereof the following:

"Lights installed under the provisions of this chapter shall be removed only by ordinance of County government or upon its direction after receipt of a petition, signed by a majority of the property owners within the bounds any lighted community or village, requesting such removal. No such ordinance or petition shall be considered by County government at any time within three years after the date of the first light tax billing issued after the installation of such lights. After the removal of such lights, no light tax shall be levied against properties within the bounds of the community or village identified in the ordinance or petition. In the event that such lights are removed, County government shall not refund any light tax that has been levied for the fiscal year during which the lights are removed."

Section 9. If any provision of this Act, or its application to any person or circumstance, is held invalid, the remainder of this Act, or the application of the provision to any other person or circumstance, shall remain unaffected.

Approved July 22, 1992.

#### CHAPTER 436

#### FORMERLY

#### HOUSE BILL NO. 612 AS AMENDED BY HOUSE AMENDMENT NO. 1

AN ACT TO AMEND CHAPTER 43, TITLE 15 OF THE DELAWARE CODE RELATING TO PRESIDENTIAL ELECTORS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Chapter 43, Title 15, §4303 of the Delaware Code by designating the existing language therein as subsection "(a)".

Section 2. Amend Chapter 43, Title 15, §4303 by adding a new subsection "(b)" as follows:

"(b) In all cases, the electors chosen or appointed in this State for the election of a President and Vice-President of the United States under this chapter shall be required to cast their individual votes in accordance with the plurality vote of the voters in this State."

Approved July 22, 1992.



CHAPTER 437

FORMERLY

HOUSE BILL NO. 592

AN ACT TO AMEND CHAPTER 66, TITLE 16 OF THE DELAWARE CODE RELATING TO THE STATE FIRE PREVENTION COMMISSION.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Subsection (a)(3), §6619, Chapter 66, Title 16 of the Delaware Code by inserting between the words "authority" and "to" the following:

", acting on behalf of the State, to enter into agreements".

Approved July 22, 1992.

CHAPTER 438

FORMERLY

HOUSE BILL NO. 595

AN ACT TO AMEND TITLE 21, SECTION 4142 OF THE DELAWARE CODE RELATING TO PEDESTRIANS RIGHT OF WAY IN CROSSWALKS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Amend Title 21, §4142(a) of the Delaware Code by inserting after the word "operation" the following:

"or when the operator of a vehicle is making a turn at an intersection,".

Approved July 22, 1992.

## CHAPTER 439

## FORMERLY

HOUSE BILL NO. 596  
AS AMENDED BY SENATE AMENDMENT NOS. 1 AND 2

AN ACT TO AMEND CHAPTER 8, TITLE 29, DELAWARE CODE RELATING TO THE COMPOSITION OF AND REAPPORTIONMENT OF THE GENERAL ASSEMBLY.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend §821(2), Chapter 8, Title 29, Delaware Code by deleting all the words in said subsection after the words "from the Wilmington City boundary" and before the words "continuing along Lea Boulevard" and substituting in lieu thereof the following:

"Thence along the boundary of the City of Wilmington to its second intersection with the center line of the Governor Printz Boulevard, thence in a southwesterly direction along the center line of the Governor Printz Boulevard to a point midway between the Pepsi Cola plant and Delaware Olds European, thence turning right and continuing along an imaginary line running midway between the Pepsi Cola Plant and Delaware Olds European to the point where said imaginary line intersects an imaginary line extending from Locust Street to Colony Boulevard, thence turning right and in a northeasterly direction proceeding along said imaginary line to its intersection with Lea Boulevard at Colony Boulevard, thence turning right and".

Section 2. Amend §821(6), Chapter 8, Title 29, Delaware Code by deleting all the words in said subsection after the words "along Lea Boulevard to its intersection with" and before the words "until its intersection with the boundary of the States of New Jersey and Delaware" and inserting the following:

"Colony Boulevard thence in a southerly and westerly direction along an imaginary line from said intersection in the direction of Locust Street to a point midway between the Pepsi Cola Plant and Delaware Olds European property, thence turning left and proceeding from that point on an imaginary line in a southeasterly direction midway between the Pepsi Cola Plant and Delaware Olds European to its intersection with the center line of the Governor Printz Boulevard, thence in a northeasterly direction along the center line of Governor Printz Boulevard to its intersection with the boundary of the City of Wilmington, thence in a northerly then easterly direction along the boundary of the City of Wilmington".

Section 3. Amend §821(6), Chapter 8, Title 29, Delaware Code by deleting all the words after the words "until its intersection with" and before the words "and turning left onto Philadelphia Pike" and in lieu thereof substitute the following:

"the center line of Perkins Run Extended, thence along the center line of Perkins Run by its various courses to its intersection with".

Section 4. Amend §821(8), Chapter 8, Title 29, Delaware Code by deleting all the words after the words "along Philadelphia Pike and turning right onto" and before the words "extended on an imaginary line" and substituting in lieu thereof the following:

"Perkins Run, thence southeasterly along the centerline of Perkins Run by its various courses and the center line of Perkins Run".

Section 5. Amend §821(12), Chapter 8, Title 29, Delaware Code by adding after the words "along Duncan Road and" and before the words "left onto Newport road" the words "right onto Greenbank and then".

Section 6. Amend §821(13), Chapter 8, Title 29, Delaware Code by deleting all the words after the words "State Highway 141 and turning left onto" and before the words "the Newport Town boundary".

Section 7. Amend §821(13), Chapter 8, Title 29, Delaware Code by deleting after the words "left on an imaginary line" and before the words "turning right onto Newport Pike" the words "intersecting with Newport Pike and Troy Avenue and proceeding between Park Lane and Follies Pond to a point on the B &

O Railroad tracks, thence continuing on said imaginary line and" and substituting in lieu thereof the words "between Park Lane and Follies Pond to the center line of the intersection of Newport Pike and Troy Avenue, thence".

Section 8. Amend §821(19), Chapter 8, Title 29, Delaware Code after the words "on the Red Clay Creek and turning left" and before the words "onto Duncan Road" by inserting the following:

"onto Newport Road then right onto Greenbank Road then left".

Section 9. Amend §821(19), Chapter 8, Title 29, Delaware Code by deleting all the words after the words "left onto the Newport Town limits, thence continuing on the town limits" and before the words "and turning right onto State Highway 141,".

Section 10. Amend §821(28), Chapter 8, Title 29, Delaware Code after the words "thence continuing along U. S. Hwy. 13" and before the words "and turning left onto the unnamed southern tributary to Dyke Branch," by adding the words "and turning left onto County Road 154 thence continuing along County Road 154".

Section 11. Amend §821(30), Chapter 8, Title 29, Delaware Code by striking the phrase "and turning right onto Maryland/Delaware State Boundary, thence continuing along the Maryland/Delaware boundary" as they currently appear after the phrase "along County Road 206" and before the phrase "to the place of beginning".

Section 12. Amend §821(30), Chapter 8, Title 29, Delaware Code by deleting all the words after the words "and turning left onto Rt. 15," and before the words "thence continuing along Rt. 15 and turning left onto County Road 371".

Section 13. Amend §821(33), Chapter 8, Title 29, Delaware Code by deleting all the words after the words "and turning left onto RT 15," and before the words "thence continuing along RT 15 and turning onto County Road 371".

Section 14. Amend §821(34), Chapter 8, Title 29, Delaware code by deleting the words "and turning left on Route 30, thence continuing along Route 30" after the words "thence continuing along Route 29" and before the words "and turning left onto Shade Road".

Section 15. Amend §821(38), Chapter 8, Title 29, Delaware Code by striking the word "right" after the words "County Road 380-A and turning" and before the words "onto County Road 380," and substituting in lieu thereof the word "left".

Section 16. Amend §821(38), Chapter 8, Title 29, Delaware Code, by deleting the number "418" following the words "and County Road 378 to the intersection of County Road" and inserting in lieu thereof the number "417".

Section 17. Amend §821(40), Subchapter II, Chapter 8, Title 29, Delaware Code, by inserting the words "and turning right onto County Road 469, thence continuing on County Road 469" between the words "thence continuing on County 325" and the words "and turning left onto County Road 518".

Section 18. Amend §821(41), Subchapter II, Chapter 8, Title 29, Delaware Code, by inserting the words "and turning right onto County Road 469, thence continuing on County Road 469" between the words "Thence continuing on County Road 325" and the words "and turning left onto County Road 518".

Section 19. Amend §821(41), Subchapter II, Chapter 8, Title 29, Delaware Code, by deleting the word "left" between the words "County Road 622 and turning" and "onto Route 18" and substituting in lieu thereof the word "right".

Section 20. Amend §831(4), Chapter 8, Title 29, Delaware Code by deleting the following:

"center line of Brookfield Avenue, thence along the center line of Brookfield Avenue in a southerly direction to its intersection with the center line of Roseanna Avenue, thence along the center line of Roseanna Avenue in an easterly direction to its intersection with the center line of Shellpot Drive, thence along the center line of Shellpot Drive in a southerly direction to its intersection with the center line of Florence

Avenue, thence along the center line of Florence Avenue in a westerly direction to its intersection with the".

Section 21. Amend §831(6), Chapter 8, Title 29, Delaware Code, by deleting the words "a westerly" as they appear between the words "along the center line of Main Street in" and the words "direction to its intersection with the center line of Del. Route 2" and substituting in lieu thereof the words "an easterly".

Section 22. Amend §831(6), Chapter 8, Title 29, Delaware Code, by deleting the words "to its intersection with the center line of Centre Road, thence in a southwest direction along the center line of Center Road" between the words "the center line of Barley Mill Road" and the words "to its intersection with the center line of Lancaster Pike" and by inserting in lieu thereof the words ", to the point where it becomes Centre Road, thence along the center line of Centre Road to its intersection with Del. Route 141, thence in a southwesterly direction along the center line of Del. Route 141".

Section 23. Amend §831(6), Chapter 8, Title 29, Delaware Code, by deleting the following:

"Florence Avenue, thence in an easterly direction along the center line of Florence Avenue to its intersection with the center line of Shellpot Drive, thence in a north direction along the center line of Shellpot Drive to its intersection with the center line of Roseanna Avenue, thence in a westerly direction along the center line of Roseanna Avenue to its intersection with the center line of Brookfield Avenue, thence in a northerly direction along the center line of Brookfield Avenue to its intersection with the center line of".

Section 24. Amend §831(7), Chapter 8, Title 29, Delaware Code, by inserting the words "Greenbank Road, thence in a southwesterly direction with the center line of Greenbank Road to its intersection with the center line of" between the words "along the center line of Duncan Road in a southeasterly direction to its point of intersection with the center line of" and the words "Newport Road".

Section 25. Amend §831(9), Chapter 8, Title 29, Delaware code, by deleting the words "Christiana-Ogletown Road (Delaware Route 273)" following the words "all that portion of New Castle County bounded by a line beginning at the intersection of the center line of" and inserting in lieu thereof the words "Del. Route 7".

Section 26. Amend §831(9), Chapter 8, Title 29, Delaware Code, by deleting the words "the Christiana-Ogletown Road (Delaware Route 273), thence in a southeasterly direction with the center line of the Christiana-Ogletown Road to" following the words "with the center line of Interstate 95 to its intersection with the center line of" and substituting in lieu thereof the words "Delaware Route 273, thence in an easterly and southerly direction along the center line of Del. Route 273, which becomes Main Street, which becomes Del. Route 7, to".

Section 27. Amend §831(10), Chapter 8, Title 29, Delaware Code, by deleting the words "northeasterly" between the words "and then an easterly direction and then a" and the words "direction, to its intersection with the center line of Broadfield Drive" and substituting in lieu thereof the word "northwesterly".

Section 28. Amend §831(10), Chapter 8, Title 29, Delaware Code, by deleting the word "northwesterly" following the words "Scottfield Turn, thence in a" and inserting in lieu thereof the word "southwesterly".

Section 29. Amend §831(11), Chapter 8, Title 29, Delaware Code, by deleting the words "the Christiana-Ogletown Road, also known as Delaware Route 273, thence in a northwesterly direction along the center line of the Christiana-Ogletown Road to its intersection" and substituting in lieu thereof the words "Del. Route 7, which becomes Main Street, which becomes Del. Route 273, thence in a northwesterly direction along the center line of Del. Route 273 to its intersection".

Section 30. Amend §831(11), Chapter 8, Title 29, Delaware Code, by deleting the words "thence in a southwesterly direction, then an easterly

direction" between the words "the 1990 Census Block Boundary between census blocks 211 and 212 of New Castle County MCD/CCD 91184," and the words "and then a southerly direction along the center line of said census block boundary" and substitute in lieu thereof the words "thence in a southeasterly direction, then a westerly direction".

Section 31. Amend §831(16), Chapter 8, Title 29, Delaware Code after the words "McColley Pond," and before the words "thence meandering in a northeasterly direction" by adding the words "thence continuing along the center line of Browns Branch to its intersection with the Murderkill River,".

Section 32. Amend §831(16), Chapter 8, Title 29, Delaware Code after the words "southerly along said boundary to its intersection with" and before the words "County Road 125," by adding the following words "a boundary line between 1990 census blocks 201 and 209 of Kent County MCD/CCD 90444".

Section 33. Amend §831(17), Chapter 8, Title 29, Delaware Code after the words "U.S. Route 13 to its intersection with" and before the words "County Road 155," by adding the words "County Road 153, thence continuing along the center line of County Road 153 until its intersection with County Road 156, thence continuing along the center line of County Road 156 until its intersection with".

Section 34. Amend §831(18), Chapter 8, Title 29, Delaware Code after the words "McColley Pond," and before the words "thence in a northeasterly direction along the center line of the Murderkill River" by adding the words "thence continuing along the center line of Browns Branch to its intersection with the Murderkill River,".

Section 35. Amend §831(18), Chapter 8, Title 29, Delaware Code by deleting all the words after the words "northeasterly along the center line of County Road 279" and before the words "thence easterly along the center line of County Road 289" and substituting in lieu thereof the words "to its intersection with County Road 78, thence in an easterly direction along the center line of County Road 78 to its intersection with County Road 289;".

Section 36. Amend §831(19), Chapter 8, Title 29, Delaware Code by deleting all the words after the words "intersects with the center line of County Road 544;" and before the words "thence in a southerly direction along the center line of Route 13" and substituting in lieu thereof the words:

"thence along the center line of County Road 544 in an easterly direction to its intersection with the center line of Alternate U.S. Route 13(Route 13A); thence along the center line of Alternate Route 13 in a southerly direction to its intersection with the center line of County Road 544A, thence along the center line of County Road 544A in an east-southeasterly direction to its intersection with the center line of U.S. Route 13;".

Section 37. Amend §831(21), Chapter 8, Title 29, Delaware Code by deleting all the words after "U.S. Route 13 to its intersection with the center line of" and before the words "boundary line between 1990 census blocks 318 on the west" and substituting in lieu thereof the words:

"County Road 544A, thence along the center line of County Road 544A in a west-northwesterly direction to its intersection with the center line of Alternate U.S. Route 13(Route 13A); thence along the center line of Alternate Route 13 in a northerly direction to its intersection with the center line of County Road 544, thence along the center line of County Road 544 in a westerly direction to its point of intersection with the".

Section 38. Amend §831(3), Chapter 8, Title 29, Delaware Code, by inserting the following: "the center line of Delaware Route Two, thence in a northeasterly direction along the center line of Delaware Route Two to its intersection with the western boundary of the City of Wilmington, thence in a southwesterly direction along the boundary of the City of Wilmington to its intersection with the old Reading Railroad opposite the western end of Rodman Road, thence in a southeasterly direction along the railroad by its various courses to its intersection with" between the words "Reading Railroad, thence in a southwesterly direction along the railroad by its several courses to its intersection with" and the words "the southeast boundary of the City of Wilmington,".

Section 39. Amend §831(7), Chapter 8, Title 29, Delaware Code, by inserting between the words "railroad right of way in a northwesterly direction to its point of intersection with the" and "center line of Faulkland Road" the following: "southwestern boundary of the City of Wilmington opposite the northwestern end of Rodman Road, thence in a northerly direction along the western boundary of the City of Wilmington to its intersection with Delaware Route Two, thence in a southwesterly direction along the center line of Delaware Route Two to its intersection with the old Reading Railroad right of way, thence in a northwesterly direction along the center line of the railroad right of way to its point of intersection with the".

Section 40. Amend §831(3), Chapter 8, Title 29, Delaware Code, by deleting the words "Chesnut Run" as they appear in three instances therein and insert in lieu thereof the words "Centre Road".

Section 41. Amend §831(7), Chapter 8, Title 29, Delaware Code, by deleting the words "Chesnut Run, thence along the center line of Chesnut Run in a northerly direction by its various courses to its intersection with Lancaster Pike, thence along the center line of Lancaster Pike in a northwesterly direction to its point of intersection with the center line of"

Section 42. Amend §831(2), Chapter 8, Title 29, Delaware Code, by inserting between the words 'Delaware River shoreline to its intersection with' and the words 'thence northwest along the center line of Edgemoor Road' the following language:

"an imaginary line extending from the northern boundary of the City of Wilmington, thence along said city boundary line by its various courses in a generally northwesterly direction to its second intersection with the center line of Governor Printz Boulevard, thence in a southwesterly direction along the center line of Governor Printz Boulevard to a point midway between the Pepsi Cola Plant and Delaware Olds European, thence running along said imaginary line in a northwesterly direction to the point where said imaginary line intersects with a second imaginary line extending from the end of Locust Street at its center line to the end of Colony Boulevard, thence along said imaginary line between Locust Street and Colony Boulevard in a northeasterly direction to its intersection with the center line of Lea Boulevard at the beginning of Colony Boulevard, thence south and then southeast along the center line of Lea Boulevard to its intersection with the center line of Shellpot Creek, thence in a southerly direction along the center line of Shellpot Creek to its intersection with the center line of Governor Printz Boulevard, thence along the center line of Governor Printz Boulevard in a northeasterly direction to its intersection with Edgemoor Road, "

Section 43. Amend §831(4), Chapter 8, Title 29, Delaware Code, by inserting between the words "center line of Lore Avenue" and the words "intersects with the boundary line between the States of Delaware and New Jersey" the following language:

"to its intersection with the center line of Governor Printz Boulevard, thence along the center line of Governor Printz Boulevard in a southwesterly direction to its intersection with the center line of Shellpot Creek, thence along the center line of Shellpot Creek in a northerly direction to its intersection with the center line of Lea Boulevard, thence along the center line of Lea Boulevard in a northwesterly direction to its intersection with the center line of Colony Boulevard and with an imaginary line running between the end of Colony Boulevard at Lea Boulevard and the center line of Locust Street, thence along said imaginary line in a southwesterly direction to its intersection with a second imaginary line extended midway between the Pepsi Cola Plant and the Delaware Olds European property from the center line of Governor Printz Boulevard, thence running along said second imaginary line in a southeasterly direction to its intersection with the center line of Governor Printz Boulevard, thence northeasterly along the center line of Governor Printz Boulevard to its intersection with the northern boundary line of the City of Wilmington, thence proceeding along the said boundary line and its imaginary extension to the point where it"

Approved July 22, 1992.

## CHAPTER 440

## FORMERLY

SENATE BILL NO. 378  
AS AMENDED BY SENATE AMENDMENT NO. 1

AN ACT TO AMEND CHAPTER 9, TITLE 16 OF THE DELAWARE CODE RELATING TO ABUSE OF CHILDREN.

WHEREAS, child sexual abuse is a large and underreported problem; and

WHEREAS, child sex offenders are often serial offenders who seek legitimate access to children; and

WHEREAS, child sex offenders have often been known to seek employment at facilities and organizations whose primary concern is that of child welfare and care; and

WHEREAS, such child care facilities have a legitimate need to be aware of pending and adjudicated charges relating to the child sex abuse offenses lodged against any of their employees.

NOW THEREFORE:

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section I. Amend Chapter 9, Title 16, Delaware Code by adding a second paragraph to section 901 as follows:

"Section 901. PURPOSE.

\* \* \*

It shall further be the purpose of this chapter to provide for the protection of all children in facilities or organizations required to be licensed under Delaware law whose primary concern is that of child welfare and care by requiring the Attorney General to notify any such facility in cases where an employee of such a facility or any other person associated with such facility has been charged with or convicted of an offense involving child sexual abuse."

Section II. Amend Chapter 9, Title 16, Delaware Code by designating what is now Section 905 subparagraphs (b) and (c) as "(c)" and "(d)" and inserting a new paragraph (b) as follows:

"(b) In the event that a criminal prosecution for child sexual abuse or exploitation is initiated by the Department of Justice against one employed by or associated with a facility or organization required to be licensed or whose staff personnel are required to be licensed under Delaware law whose primary concern is that of child welfare and care, the Attorney General shall notify such employer within 48 hours:

1. Upon the return of an indictment charging such employee with having committed at least one (1) felony offense involving an allegation of child sexual abuse; or

2. Upon an adjudication of guilty for any misdemeanor or violation, when such offense involved sexual abuse, however slight, of a child under the age of 18.

Any violations of this subsection shall be dealt with administratively by the Attorney General and the penalty provisions of Section 909 shall not apply hereto."

Approved July 22, 1992.

## CHAPTER 441

## FORMERLY

SENATE BILL NO. 387  
AS AMENDED BY SENATE AMENDMENT NO. 1  
AND HOUSE AMENDMENT NOS. 1, 2 AND 3

AN ACT TO AMEND CHAPTER 85, TITLE 11 OF THE DELAWARE CODE RELATING TO CHILD SEX ABUSER REGISTRATION AND CRIMINAL BACKGROUND CHECKS FOR CHILD CARE PROVIDERS.

WHEREAS, child sexual abuse is a large and underreported problem; and

WHEREAS, child sex offenders are often serial offenders who seek legitimate access to children; and

WHEREAS, it is the intent of the General Assembly to establish a statewide system through which current, accurate information concerning persons who commit crimes of child sex abuse can be obtained from a central source and used to assist in the prevention of second incidents of child sex abuse by providing information about such persons to organizations whose primary concern is that of child welfare and care.

NOW, THEREFORE:

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Chapter 85, Title 11, Delaware Code by adding two new subchapters to read as follows:

"Subchapter IV. Child Sex Abuse Information Repository

§8550. Definitions

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

- (1) 'child' shall mean any person who is less than 18 years old;
- (2) 'child sex abuse' means any sexual offense or child exploitation in violation of Chapter 5, Subchapter II, Subpart D and Subchapter V of Title 11 of the Delaware Code committed against a child by an adult;
- (3) The term 'child sex abuser information' means the following information concerning a person who has been convicted of a violation of the criminal child sex abuse laws of this State:
  - a. name, social security number, age, race, sex, date of birth, height, weight, hair and eye color, address of legal residence, and a brief description of the crime or crimes committed by the offender;
  - b. a copy of the fingerprints of the offender; and
  - c. any information that the State Bureau of Identification, the Federal Bureau of Investigation or the National Crime Information Center determines may be useful in identifying child sex abusers;
- (4) The term 'criminal child sex abuse laws of this State' means those sections of the Delaware Criminal Code which establish criminal penalties for the commission of child sex abuse by a parent or other family member of a child or by any other person;
- (5) 'National Crime Information Center' means the division of the Federal Bureau of Investigation that serves as a computerized information source on wanted criminals, persons named in arrest warrants, runaways, missing children and stolen property for use by Federal, State, and local law enforcement authorities.

§8551. Establishment of Child Sex Abuse Information Repository



The Child Sex Abuse Information Repository is hereby created within the State Bureau of Identification. The Child Sex Abuse Information Repository is established as a central repository of child sex abuser information.

**§8552. Guidelines**

(a) The Director of the State Bureau of Identification shall coordinate the reporting of child sex abuser information to the Child Sex Abuse Information Repository and shall issue guidelines to all law enforcement agencies in the State to ensure reporting accuracy.

(b) The guidelines established under subsection (a) of this section shall require that all convictions under the criminal child sex abuse laws of this State are reported to the Child Sex Abuse Information Repository.

**§8553. Duties**

The Director of the State Bureau of Identification shall ensure that:

(1) Reports of all convictions under the criminal child sex abuse laws of this State are maintained by the Child Sex Abuse Information Repository;

(2) The Child Sex Abuse Information Repository works closely with schools, daycare centers, and the Department of Services for Children, Youth and Their Families in providing child sex abuser information;

(3) The Child Sex Abuse Information Repository reports child sex abuser information to the National Crime Information Center; and

(4) The Child Sex Abuse Information Repository maintains close liaison with the National Center on Child Abuse and Neglect and the National Center for Missing and Exploited Children for exchange of information.

**Subchapter V. Criminal Background Check for Child Care Providers**

**§8560. Definitions**

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

(1) 'children' means persons who are less than 18 years old;

(2) 'child care provider' means:

a. any public, private or parochial school and includes any board of education, school district, reorganized school district, special school district, and any person acting as an agent thereof; and

b. any child care facility which by law is required to be licensed or any facility registered and eligible for Federal Child Care Development Block Grant funds;

(3) 'child sex abuser information' shall have the meaning prescribed by §8550(3) of this Title;

(4) 'criminal conviction data' shall have the meaning prescribed by §8502(8) of this Title;

(5) 'person seeking employment with a child care provider' means any person seeking employment for compensation with a child care provider or any person who for any reason has regular direct access to children at any facility referred to in subsection (2) of this section, including substitute teachers.

**§8561. Information to be provided to Child Care Providers**

(a) Anything contained in Subchapter I of Chapter 85 of this title to the contrary notwithstanding, the State Bureau of Identification, hereinafter referred to as the 'Bureau' shall furnish information

pertaining to the identification and conviction data of any person seeking employment with a child care provider, provided that the person seeking employment with a child care provider submits to a reasonable procedure established by standards set forth by the Superintendent of State Police to identify the person whose record is sought. Such procedure shall include the fingerprinting of the person seeking employment with a child care provider.

(b) The provisions of subsection (a) of this section shall apply to the dissemination of the identification and criminal conviction data to:

(1) any person seeking employment with a child care provider; and/or

(2) child care providers for the purpose of obtaining such background information relating to the employment requirements for the person whose record is sought; and/or

(3) upon request from the Department of Services for Children, Youth and Their Families for the purpose of determining the suitability for child care facility licensing; and/or

(4) upon request from the Department of Public Instruction for the purpose of determining the suitability of a person seeking licensing.

(c) Any person seeking employment with a child care provider shall as a condition of employment provide to such child care provider prior to employment, his or her identification and conviction data, if any, as the same appears on file with the State Bureau of Identification.

(d) Notwithstanding any provision to the contrary, the information to be furnished by the Bureau shall include child sex abuser information. The Division of State Police shall be the intermediary for purposes of this section.

(e) Costs associated with obtaining said information and child sex abuser information shall be borne by the State.

(f) No person seeking employment with a child care provider shall be hired by the child care provider if such person seeking employment has been convicted of having committed a crime of child sex abuse as defined in §8550(2) of this Title.

(1) Child care providers which are subject to this subchapter may provisionally hire a person seeking employment, pending the furnishing by the Bureau of the information required by this subchapter.

(2) Any person seeking employment with a child care provider who has been the subject of a background check by the State Bureau of Identification pursuant to the terms of this subchapter within the previous five years shall be exempt from the provisions of this subsection.

(g) Any person or organization whose primary concern is that of child welfare and care and which is not otherwise required to do so under the provisions of this subchapter 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. The provisions of §8562 of this subchapter shall not apply to such persons or organizations.

#### §8562. Penalties

(a) Any child care provider or designated agent for a child care provider who fails to obtain the information required by §8561 of this subchapter from a person seeking employment with such child care provider or otherwise violates the provisions of §8561 of this subchapter, shall be guilty of a class A misdemeanor and shall be punished according to Chapter 42 of this Title.

(b) Any person seeking employment with a child care provider who knowingly provides false, incomplete or inaccurate child sex abuser information shall be guilty of a Class G felony and shall be punished according to Chapter 42 of this title.

(c) The Superior Court shall have exclusive jurisdiction of offenses under this subchapter."

Section 2. If any provision of this Act, or the application thereof to any person, thing or circumstances is held invalid, such invalidity shall not affect the provisions or application of this Act that can be given effect without the invalid provisions or application, and to this end the provisions of this Act are declared to be severable.

Section 3. On or before February 1, 1994, the State Bureau of Identification shall submit a report to the General Assembly listing the number of background checks conducted pursuant to the provisions of this Act during the period from January 1, 1993 to December 31, 1993, the total cost to the Bureau for such background checks and the average time necessary to conduct individual background checks. The Bureau shall also make recommendations, if any, to decrease the total costs of background checks conducted pursuant to this Act and/or to decrease the average time necessary to conduct background checks.

Section 4. This Act shall not take effect until six months after sufficient funding has been appropriated to implement its provisions.

Section 5. This Act shall not take effect unless and until sufficient funding has been appropriated to implement its provisions.

Approved July 22, 1992.

## CHAPTER 442

## FORMERLY

SENATE BILL NO. 287  
 AS AMENDED BY SENATE AMENDMENT NOS. 1 AND 2 AND  
 HOUSE AMENDMENT NOS. 1 AND 2

AN ACT TO AMEND CHAPTER 4, TITLE 11 OF THE DELAWARE CODE RELATING TO USE OF FORCE BY PERSONS WITH SPECIAL RESPONSIBILITY FOR CARE, DISCIPLINE OR SAFETY OF OTHERS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend §468, Chapter 4, Title 11 of the Delaware Code by inserting the phrase "it is reasonable and moderate and" after the word "if" and the colon (":") as the same appear in the first sentence therein.

Section 2. Amend §468, Chapter 4, Title 11 of the Delaware Code by striking subsections (1), (2) and (3) in their entirety and substituting in lieu thereof the following:

"(1) The defendant is the parent, guardian, foster parent, legal custodian or other person similarly responsible for the general care and supervision of a child, or a person acting at the request of a parent, guardian, foster parent, legal custodian or other responsible person, and:

a. The force is used for the purpose of safeguarding or promoting the welfare of the child, including the prevention or punishment of his misconduct; and

b. The force used is intended to benefit the child, or for the special purposes listed in subsections (2)a, (3)a, (4)a, (5), (6) and (7) of this section. The size, age, condition of the child, location of the force and the strength and duration of the force shall be factors considered in determining whether the force used is reasonable and moderate; but

c. The force shall not be justified if it includes, but is not limited to, any of the following: throwing the child, kicking, burning, cutting, striking with a closed fist, interfering with breathing, use of or threatened use of a deadly weapon, prolonged deprivation of sustenance or medication, or doing any other act that is likely to cause or does cause physical injury, disfigurement, mental distress, unnecessary degradation or substantial risk of serious physical injury or death; or

(2) The defendant is a teacher or a person otherwise entrusted with the care or supervision of a child for a special purpose, and:

a. The defendant believes the force used is necessary to further the special purpose, including the maintenance of reasonable discipline in a school, class or other group, and that the use of force is consistent with the welfare of the child; and

b. The degree of force, if it had been used by the parent, guardian, foster parent, or legal custodian of the child, would be justifiable under paragraphs a. and b. of subdivision (1) of this section and not enumerated under paragraph c. of subdivision (1) of this section; or

(3) The defendant is the guardian or other person similarly responsible for the general care and supervision of an incompetent person, and:

a. The force is used for the purpose of safeguarding or promoting the welfare of the incompetent person, including the prevention of his misconduct, or, when such incompetent person is in a hospital or other institution for his care and custody, for the maintenance of reasonable discipline in such institution; and

b. The force used is reasonable and moderate; the size, age, condition of the incompetent person, location of the force and the strength and duration of the force shall be factors considered in determining whether the force used is reasonable and moderate; and

(b) Any person seeking employment with a child care provider who knowingly provides false, incomplete or inaccurate child sex abuser information shall be guilty of a Class G felony and shall be punished according to Chapter 42 of this title.

(c) The Superior Court shall have exclusive jurisdiction of offenses under this subchapter."

Section 2. If any provision of this Act, or the application thereof to any person, thing or circumstances is held invalid, such invalidity shall not affect the provisions or application of this Act that can be given effect without the invalid provisions or application, and to this end the provisions of this Act are declared to be severable.

Section 3. On or before February 1, 1994, the State Bureau of Identification shall submit a report to the General Assembly listing the number of background checks conducted pursuant to the provisions of this Act during the period from January 1, 1993 to December 31, 1993, the total cost to the Bureau for such background checks and the average time necessary to conduct individual background checks. The Bureau shall also make recommendations, if any, to decrease the total costs of background checks conducted pursuant to this Act and/or to decrease the average time necessary to conduct background checks.

Section 4. This Act shall not take effect until six months after sufficient funding has been appropriated to implement its provisions.

Section 5. This Act shall not take effect unless and until sufficient funding has been appropriated to implement its provisions.

Approved July 22, 1992.

## CHAPTER 442

## FORMERLY

SENATE BILL NO. 287  
AS AMENDED BY SENATE AMENDMENT NOS. 1 AND 2 AND  
HOUSE AMENDMENT NOS. 1 AND 2

AN ACT TO AMEND CHAPTER 4, TITLE 11 OF THE DELAWARE CODE RELATING TO USE OF FORCE BY PERSONS WITH SPECIAL RESPONSIBILITY FOR CARE, DISCIPLINE OR SAFETY OF OTHERS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend §468, Chapter 4, Title 11 of the Delaware Code by inserting the phrase "it is reasonable and moderate and" after the word "if" and the colon (":") as the same appear in the first sentence therein.

Section 2. Amend §468, Chapter 4, Title 11 of the Delaware Code by striking subsections (1), (2) and (3) in their entirety and substituting in lieu thereof the following:

"(1) The defendant is the parent, guardian, foster parent, legal custodian or other person similarly responsible for the general care and supervision of a child, or a person acting at the request of a parent, guardian, foster parent, legal custodian or other responsible person, and:

a. The force is used for the purpose of safeguarding or promoting the welfare of the child, including the prevention or punishment of his misconduct; and

b. The force used is intended to benefit the child, or for the special purposes listed in subsections (2)a, (3)a, (4)a, (5), (6) and (7) of this section. The size, age, condition of the child, location of the force and the strength and duration of the force shall be factors considered in determining whether the force used is reasonable and moderate; but

c. The force shall not be justified if it includes, but is not limited to, any of the following: throwing the child, kicking, burning, cutting, striking with a closed fist, interfering with breathing, use of or threatened use of a deadly weapon, prolonged deprivation of sustenance or medication, or doing any other act that is likely to cause or does cause physical injury, disfigurement, mental distress, unnecessary degradation or substantial risk of serious physical injury or death; or

(2) The defendant is a teacher or a person otherwise entrusted with the care or supervision of a child for a special purpose, and:

a. The defendant believes the force used is necessary to further the special purpose, including the maintenance of reasonable discipline in a school, class or other group, and that the use of force is consistent with the welfare of the child; and

b. The degree of force, if it had been used by the parent, guardian, foster parent, or legal custodian of the child, would be justifiable under paragraphs a. and b. of subdivision (1) of this section and not enumerated under paragraph c. of subdivision (1) of this section; or

(3) The defendant is the guardian or other person similarly responsible for the general care and supervision of an incompetent person, and:

a. The force is used for the purpose of safeguarding or promoting the welfare of the incompetent person, including the prevention of his misconduct, or, when such incompetent person is in a hospital or other institution for his care and custody, for the maintenance of reasonable discipline in such institution; and

b. The force used is reasonable and moderate; the size, age, condition of the incompetent person, location of the force and the strength and duration of the force shall be factors considered in determining whether the force used is reasonable and moderate; and

c. The force is not enumerated under paragraph c. of subdivision (1); and

d. The force is not proscribed as abuse or mistreatment under Chapter 11 of Title 16; or"

Section 4. Amend §468(5) of Title 11 of the Delaware Code by adding after the words "correctional institution," the words "or a superintendent, administrator or other authorized official of the Division of Youth Rehabilitative Service,".

Approved July 22, 1992.

## CHAPTER 443

## FORMERLY

## HOUSE BILL NO. 588

AN ACT TO AMEND TITLE 16, CHAPTER 48A AND TITLE 11, CHAPTER 65 TO PROVIDE FOR BETTER COORDINATION AND UTILIZATION OF SUBSTANCE ABUSE TREATMENT, EDUCATION, AND REHABILITATION RESOURCES PROVIDED THROUGH CRIMINAL SURCHARGES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Title 16, Chapter 48A by deleting the title thereof and inserting in lieu thereof the following title:

"CHAPTER 48A. SUBSTANCE ABUSE REHABILITATION, TREATMENT, EDUCATION AND PREVENTION FUND."

Section 2. Amend §4801A of Title 16, Chapter 48A by deleting the word "drug" wherever it appears therein and substituting in lieu thereof the words "substance abuse".

Section 3. Amend §4801A of Title 16, Chapter 48A by inserting the words "coordination, prevention" between the words "treatment" and "and" therein.

Section 4. Amend §4802A of Title 16, Chapter 48A by inserting the words "or §4177 of Title 21" between the words "title" and the ",", at line three thereof.

Section 5. Amend §§4802A(b) and 4803A(a) of Title 16, Chapter 48A by deleting the words "Drug Rehabilitation, Treatment and Education Fund." and substituting in lieu thereof the words "Substance Abuse Rehabilitation, Treatment, Education and Prevention Fund."

Section 6. Amend §4803A(b) of Title 16, Chapter 48A by deleting such subsection in its entirety and substituting in lieu thereof the following subsection:

(b) The funds raised by this Chapter shall be used only for the provision of and coordination of substance abuse rehabilitation treatment, education and/or prevention services and shall be administered by the permanent treatment access committee of SENTAC; provided that any expenditures therefrom must be approved by the Delaware State Clearinghouse Committee.

Section 7. Amend Chapter 65, Subchapter X of Title 11 to create a new section thereof which shall read as follows:

"§6582. TREATMENT ACCESS COMMITTEE ESTABLISHED.

(a) There is established a permanent committee of the Sentencing Accountability Commission which shall be known as the Treatment Access Committee.

(b) The Treatment Access Committee shall be comprised of seven voting members which shall include:

(1) The Chairman of SENTAC, ex officio, who shall serve as Chairman of the Committee;

(2) The Secretary of Health and Social Services, ex officio;

(3) The Secretary of the Department of Youth Services, ex officio;

(4) The Commissioner of Corrections, ex officio;

(5) The Chairman of the Board of Parole, ex officio;

(6) Two additional members, one of whom shall represent the President of the Senate and one of whom shall represent the Speaker of the House; and



(7) Such other non-voting members as will assist the Committee in performing its functions as are appointed by the Chairman of SENTAC.

(c) The Treatment Access Committee shall supervise the establishment of a Treatment Access Center for substance abusing offenders. The Treatment Access Center shall be designed in a manner to coordinate the provision of substance abuse evaluation and treatment by public and private providers to criminal defendants and youths adjudicated delinquent or pending such adjudication. The Committee shall have the power through its Chairman to make and enter into any and all contracts, agreements or stipulations; and to seek, accept and receive funds, grants or donations necessary to fulfill the purposes of this section.

(d) The Treatment Access Committee shall supervise the expenditure of funds from the Substance Abuse Rehabilitation, Treatment, Education and Prevention Fund. It shall make grants to the Treatment Access Center, and to other state and local public entities or agencies for substance abuse treatment, rehabilitation, education or prevention activities, subject to the provisions of 16 Del. C. §4803A(b).

(e) The Treatment Access Committee shall report annually to SENTAC and the General Assembly on its activities and the status of substance abuse problems in Delaware."

Section 8. This Act shall take effect upon its signature by the Governor. All funds then in the "Drug Rehabilitation, Treatment and Education Fund" shall be paid over to the "Substance Abuse Rehabilitation, Treatment, Education and Prevention Fund" created hereunder as soon as practical.

Approved July 22, 1992.

## CHAPTER 444

## FORMERLY

HOUSE BILL NO. 265  
AS AMENDED BY HOUSE AMENDMENT NO. 1 AND SENATE AMENDMENT NO. 1

AN ACT TO AMEND CHAPTER 80, TITLE 15, DELAWARE CODE, RELATING TO CAMPAIGN CONTRIBUTIONS AND EXPENDITURES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Chapter 80, Title 15, Delaware Code by striking §8030(b) in its entirety and substituting in lieu thereof the following:

"(b) A reporting period shall begin on the day after the previous reporting period (except that for a newly-formed committee, the reporting period begins on the date the first contribution is received or expenditure made by or on behalf of such committee) and shall end on the following dates:

(1) December 31 of every year, before or after an election, from the time the committee receives its first contribution or makes its first expenditure, until and including the year in which contributions and expenditures are balanced and the political committee terminates;

(2) 30 days before any election (except for committees of candidates not on the ballot at such election);

(3) 8 days before any election (except for committees of candidates not on the ballot at such election)."

Section 2. Amend Chapter 80, Title 15, §8030, Delaware Code by adding subsection (g), to read as follows:

"(g) The report required under subsection (b)(3) of this section may omit the information required under subsection (d)(9) of this section; provided, however, that all such information shall be disclosed in the next report required hereunder."

Section 3. Amend §8030(d)(1), Chapter 8, Title 15, Delaware Code by adding the words "and tangible" after the word "intangible" as it appears therein.

Section 4. Amend §8030(c), Chapter 80, Delaware Code to read as follows:

"(c) Each report required by this Section shall either be:

(1) Filed by the political committee and received by the Commissioner by 4:30 p.m. of the 2nd day after the end of the reporting period which is not a State holiday under Chapter 5 of Title 1; or

(2) Mailed to the Commissioner and postmarked by the political committee by the end of the 2nd day after the end of the reporting period which is not a State holiday under Chapter 5 of Title 1."

Section 5. This Act shall be effective January 15, 1993.

Approved July 23, 1992.

CHAPTER 445  
FORMERLY  
SENATE SUBSTITUTE NO. 1

TO

SENATE BILL NO. 100  
AS AMENDED BY HOUSE AMENDMENT NO. 1

AN ACT TO AMEND PART VI, TITLE 11 OF THE DELAWARE CODE RELATING TO VICTIMS OF CRIMES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Part VI, Title 11 of the Delaware Code by adding the following new chapter:

"CHAPTER 94. VICTIMS' BILL OF RIGHTS.

§9401. Definitions.

As used in this chapter, unless the context otherwise requires:

(a) "Victim" means the person, organization, partnership, business, corporation, agency or governmental entity identified as the victim of a crime (enumerated in §9402) in a police report, a criminal complaint or warrant, an indictment or information, or other charging instrument. Victim shall include a parent, guardian or custodian of a victim who is unable to meaningfully understand or participate in the legal process due to physical, psychological or mental impairment. Victim shall include the following relations of a deceased victim if the relation is not the defendant, co-defendant or conspirator:

- (1) the spouse, and/or
- (2) an adult son, stepson, daughter or stepdaughter, and/or
- (3) a parent, and/or
- (4) a sibling.

(b) "Prosecuting Attorney" means a representative of the Attorney General's Office.

(c) "Court" means the Superior Court, Family Court, Court of Common Pleas, Justice of the Peace Court, and Municipal Court.

§9402. Application.

This Chapter shall only apply to victims of the following offenses defined in the following Sections of Title 11:

OFFENSES AGAINST THE PERSON

601. Offensive touching; unclassified misdemeanor.
602. Menacing; unclassified misdemeanor.
603. Reckless endangering in the second degree; class A misdemeanor.
604. Reckless endangering in the first degree; class E felony.
611. Assault in the third degree; class A misdemeanor.
612. Assault in the second degree; class D felony.
613. Assault in the first degree; class C felony.
621. Terroristic threatening; class A misdemeanor.

- 628. Vehicular assault in the second degree; class B misdemeanor.
- 629. Vehicular assault in the first degree; class A misdemeanor.
- 630. Vehicular homicide in the second degree; class F felony; minimum sentence.
- 630A. Vehicular homicide in the first degree; class E felony; minimum sentence.
- 631. Criminally negligent homicide; class E felony.
- 632. Manslaughter; class C felony.
- 635. Murder in the second degree; class B felony.
- 636. Murder in the first degree; class A felony.
- 645. Promoting suicide; class F felony.
- 764. Indecent exposure in the second degree; unclassified misdemeanor.
- 765. Indecent exposure in the first degree; class A misdemeanor.
- 766. Incest; class A misdemeanor.
- 767. Unlawful sexual contact in the third degree; class A misdemeanor.
- 768. Unlawful sexual contact in the second degree; class G felony.
- 769. Unlawful sexual contact in the first degree; class F felony.
- 770. Unlawful sexual penetration in the third degree; class E felony.
- 771. Unlawful sexual penetration in the second degree; class D felony.
- 772. Unlawful sexual penetration in the first degree; separate charges; class C felony.
- 773. Unlawful sexual intercourse in the third degree; class C felony.
- 774. Unlawful sexual intercourse in the second degree; class B felony.
- 775. Unlawful sexual intercourse in the first degree; class A felony.
- 781. Unlawful imprisonment in the second degree; class A misdemeanor.
- 782. Unlawful imprisonment in the first degree; class G felony.
- 783. Kidnapping in the second degree; class C felony.
- 783A. Kidnapping in the first degree; class B felony.
- 785. Interference with custody; class G felony; class A misdemeanor.

#### OFFENSES INVOLVING PROPERTY

- 801. Arson in the third degree; affirmative defense; class G felony.
- 802. Arson in the second degree; affirmative defense; class D felony.
- 803. Arson in the first degree; class C felony.
- 823. Criminal trespass in the first degree; class A misdemeanor.
- 824. Burglary in the third degree; class F felony.
- 825. Burglary in the second degree; class D felony.

- 826. Burglary in the first degree; class C felony.
- 831. Robbery in the second degree; class E felony.
- 832. Robbery in the first degree.
- 840. Shoplifting; class G felony; class A misdemeanor.
- 841. Theft; class G felony; class A misdemeanor.
- 846. Extortion; class E felony.
- 848. Misapplication of property; class G felony; class A misdemeanor.
- 851. Receiving stolen property; class G felony; class A misdemeanor.
- 861. Forgery; class F felony; class G felony; class A misdemeanor; restitution required.
- 900. Issuing a bad check; class A misdemeanor; class G felony.
- 903. Unlawful use of credit card; class G felony; class A misdemeanor.

#### OFFENSES RELATING TO CHILDREN AND INCOMPETENTS

- 1101. Abandonment of child; class A misdemeanor.
- 1102. Endangering the welfare of a child; class A misdemeanor.
- 1105. Endangering the welfare of an incompetent person; class A misdemeanor.
- 1108. Sexual exploitation of a child; class B felony.

#### OFFENSES RELATING TO JUDICIAL AND SIMILAR PROCEEDING

- 1261. Bribing a witness; class E felony.
- 1263. Tampering with a witness; class E felony.
- 1263A. Interfering with child witness.
- 1264. Bribing a juror; class E felony.
- 1312. Aggravated harassment; class B misdemeanor.

#### OFFENSES AGAINST PUBLIC HEALTH, ORDER AND DECENCY

- 1339. Adulteration; class G felony; class E felony; class A felony.

#### RELEASE OF PERSONS ACCUSED OF CRIMES

- 2113. Penalties for noncompliance with conditions of recognizance; bond or conditions.

#### WITNESS & EVIDENCE

- 3532. Act of intimidation; Class D felony
- 3533. Aggravated Intimidation.

#### §9403. Child victims.

Whenever the victim is a child, any notification required by this chapter shall be provided to the following relations if that relation is not a defendant, co-defendant, or conspirator:

- (1) a parent, guardian or custodian; or
- (2) if (1) does not apply, a grandparent; or

- (3) if (1) and (2) do not apply, an adult sibling; or
- (4) if (1), (2) and (3) do not apply, an adult aunt or uncle; or
- (5) if (1), (2), (3) and (4) do not apply, the adult designated as the child victim's next of kin.

§9404. Law enforcement agencies/police based victim service units responsibilities.

(a) At the initial contact between the victim of a reported crime and the law enforcement agency having the responsibility for investigating that crime, that agency shall provide the victim with a copy of the initial incident report which will include information concerning:

- (1) a referral to the victim service unit within the department or, in the absence of such a unit within that law enforcement agency, the referral shall be made to the Statewide Victim Center;
- (2) information regarding the violent crimes compensation program;
- (3) notice of availability of pretrial release; and
- (4) contact information for the investigating law enforcement agency so that victim may check the status of arrest.

(b) The law enforcement agency having the responsibility for investigating a reported crime shall promptly return to the victim property which is taken in the course of the investigation, unless:

- (1) the property is contraband; or
- (2) the ownership of the property is in dispute; or
- (3) it is a weapon which was used in the commission of a crime; or
- (4) it is evidence deemed necessary for prosecution by the prosecuting attorney.

§9405. Pretrial release information.

It shall be the responsibility of any court arraigning a defendant, setting bail, or setting conditions of release or commitment, including any modification thereof, to provide the following information to the victim:

- (1) procedures the victim may follow to ascertain if the defendant is released from custody;
- (2) notice of the type of bond and any conditions of commitment or release; and
- (3) procedures victims may follow if threatened, intimidated, or if conditions of bail or commitment are violated or breached.

§9406. Victim information and rights - criminal justice proceedings.

(a) The prosecuting attorney's office has the responsibility to provide the following information, in both written and oral form, to victims:

- (1) a statement of the procedural steps in the processing of a criminal case;
- (2) rights under this Chapter;
- (3) procedures if the victim is threatened or harassed;
- (4) victim compensation information when appropriate;
- (5) the right of the victim to confer with the prosecutor prior to trial;

(6) the right of the victim to consult with the prosecuting attorney about the disposition of the case, including the victim's views on dismissal, plea negotiations, or diversion programs;

(7) the right of the victim to be present at trial and sentencing;

(8) a victim notification request form which will be used to notify victims of future criminal case events; and

(9) notice of a reversal upon appeal of a conviction.

When a prosecuting attorney is not assigned to the case, it shall be the responsibility of the court to provide the information required by this subsection.

(b) The court has the responsibility to provide the following information in written form to victims:

(1) scheduling of court proceedings and changes including trial dates, case review, plea negotiation proceedings and sentencing hearings;

(2) notice of conviction and crimes of conviction;

(3) notice of the specifics of any sentencing order (information will be included regarding victim notification rights with respect to Department of Correction and Parole Board activities);

(4) notice of sentence reductions or modification orders; and

(5) in cases where a pre-sentence report is not required, the court shall notify victims of their right to appear and present an impact statement at the time of sentencing.

(c) In cases where a pre-sentence report is ordered, the court has the responsibility to:

(1) provide a Loss/Impact Statement to victims and assist victims with the completion of same; and

(2) notify victims of their right to appear and present an impact statement at the time of sentencing.

(d) The Department of Correction has the responsibility to notify the victim in writing of:

(1) projected prison release date;

(2) release to a community based program, including supervised custody, work release or furlough;

(3) escape - the Department of Correction shall notify the victim by telephone or in person, immediately upon an escape;

(4) "max out" date, if applicable; and

(5) parole board hearing date.

(e) The Board of Parole has the responsibility to inform the victim in writing of:

(1) the right of the victim to address the parole board in writing or in person; and

(2) the decision of the Parole Board.

(f) The Board of Pardons has the responsibility to inform the victim in writing of:

(1) the right of the victim to address the Board of Pardons in writing or in person;

(2) any commutation of sentence that is granted; and

(3) any pardon that is granted.

§9407. Other Rights.

(a) The court shall provide a waiting area for victims separate from defendant, defendant's relatives, and defense witnesses if such an area is available and the use of the area is practical. If a separate waiting area is not available or practical, the court shall provide other safeguards to minimize the victim's contact with the defendant, defendant's relatives, and defense witnesses during court proceedings.

(b) The victim's address and telephone number maintained by a court or law enforcement agency pursuant to this Chapter is exempt from disclosure under the freedom of information act.

(c) Proceedings shall be expedited in cases involving a child victim or witness particularly in child abuse and sexual abuse cases.

(d) Victims shall be protected from employer discipline for required court appearances. The prosecuting attorney shall provide necessary intervention.

(e) Victims may also be entitled to:

- (1) restitution for property damage or loss;
- (2) compensation for innocent victims of violent crime; or
- (3) distribution of monies received as the result of a commission of a crime.

§9408. Failure to comply with this chapter.

Failure to provide a right, privilege, or notice to a victim under this Chapter shall not be grounds for the defendant to seek to have the conviction or sentence set aside.

"§9409. Requirement of State Agencies to File Annual Reports.

All departments affected by this Chapter are required to submit an annual report with related statistics outlining compliance with victim rights legislation. This annual report shall be submitted at the end of each fiscal year to the Governor, the Criminal Justice Council and the Victim Rights Task Force. When the requirements stated in this Act cannot be achieved by an agency or department for any reason, the agency shall so state in the annual report. They shall therein explain in detail the nature of the obstacles in complying with the Act or other causes for the inability to achieve the objectives. The Governor shall advise State agencies of any statutory changes which require an amendment to the Victims' Bill of Rights."

Section 2. Funding to comply with the mandates of this Act shall be contingent upon an appropriation contained in the Annual Appropriations Act of the State of Delaware and will be limited initially to implementation of Sections 9405 and 9406 as they relate to Justice of the Peace Courts and the Delaware Justice Information System. Future funding may be incremental and shall be contingent upon an appropriation in the Annual Appropriations Act of the State of Delaware. This section shall not preclude any agency from offering victims services programs in effect prior to enactment of this legislation.

Approved July 23, 1992.



## CHAPTER 446

## FORMERLY

SENATE BILL NO. 329  
AS AMENDED BY SENATE AMENDMENT NO. 2

AN ACT TO AMEND CHAPTER 50, TITLE 29 OF THE DELAWARE CODE, RELATING TO THE ESTABLISHMENT OF THE HUMAN INVESTMENT AND PARTNERSHIP PROGRAM.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Chapter 50, Title 29 of the Delaware Code, by adding a new Subchapter II-B, which shall read as follows:

"Subchapter II-B. HUMAN INVESTMENT AND PARTNERSHIP PROGRAM.

§5039. Declaration of Policy

The General Assembly of the State of Delaware recognizes that a successful economic development effort is critical to the long term viability of our state. It further recognizes that the majority of the economic development benefits and increases in jobs will come from the businesses that are currently in the state. It is therefore crucial that the state, through its economic development program, meets the needs of those businesses in an ever changing work place. One of the critical needs for business is a well-trained and well-educated work force. As the pool of younger workers shrinks, business must turn more to women, minorities, and senior citizens to fill those jobs. This labor group brings great potential for productivity, but also special needs (such as child care, elder care, flexible work times, and re-training). The General Assembly, therefore, intends through this Subchapter to address this situation by establishing, in the Delaware Development Office, a Human Investment and Partnership Program, whose responsibility will be to assist Delaware businesses to better utilize that work force talent. With the help of businesses who have successfully dealt with many of these issues and others in the community who have facilitated such activities, the Delaware Development Office will provide that assistance to Delaware businesses.

§5040. Establishment of the Human Investment and Partnership Program

There is hereby established a Human Investment and Partnership Program within the Delaware Development Office whose purpose is to provide assistance to Delaware businesses in order for them to better utilize the talent pool of women, minorities, and senior citizens.

§5041. Responsibilities and Functions of the Human Investment and Partnership Program

The Human Investment and Partnership Program shall have the following responsibilities and functions:

(a) Assist Delaware businesses in tapping the work force of women, minorities, and senior citizens;

(b) Work with Delaware businesses and others in the community who have been successful in addressing the issues so crucial to that work force: child care, elder care, flexible work-time, re-training, etc.

(c) Provide training and awareness programs for Delaware businesses on the issues and benefits of bringing women, minorities, and senior citizens into the workplace.

(d) Assist Delaware businesses in overcoming obstacles to fully utilizing the work force of women, minorities, and senior citizens.

§5042. Human Investment and Partnership Council

(a) There is established a Human Investment and Partnership Council;

(b) The Council shall be composed of at least thirteen members (not including the Chairman) who shall be appointed by the Governor. Nine of the members shall be from the community and shall include representatives from: 1) large and small businesses that have had success with programs that are essential for women, minorities, and senior citizens to be part of the work force, such as child care, elder care, flexible work times, and re-training; 2) the legal community who have had experience with work-place issues; and 3) the higher education community who have had experience with economic development activities in the state of Delaware. There shall also be a representative from the Department of Labor, the Division of Social Services, the State Jobs Training Coordinating Council, and the Division of Aging appointed by the Governor to serve on this Council.

(c) The duties of the Council shall include, but not be limited to the following:

1. Assist the Delaware Development Office and Department of Labor in advising other Delaware businesses in the implementation of programs to facilitate the entry of women, minorities, and senior citizens into the work place.

2. Assist the Delaware Development Office and Department of Labor in offering training and awareness programs for Delaware businesses.

(d) The terms of the community members shall be staggered. Of the initial appointments, 3 appointees shall serve for a term of one year, 3 appointees shall serve for a term of two years, and 3 appointees shall serve for a term of 3 years. Subsequent appointees or re-appointees shall serve for a term of 3 years, except that any appointment made to replace an appointee for reasons other than expiration of term shall only be appointed to finish the remainder of the replaced appointee's term. No person shall serve for more than two consecutive terms. Persons serving two consecutive terms are eligible for re-appointment after a one-year absence.

(e) The Chairman of the Council shall be from the Delaware Development Office and be appointed by the Director of the Office.

(f) The Council may invite other representatives from the Community to serve in an advisory role.

#### §5043. Reporting to the Governor and the General Assembly

The Delaware Development Office and Department of Labor shall issue an annual report on progress made by the 30th of December of each calendar year. The Office will report on its progress, the barriers that exist to women, minorities, and senior citizens entering the work force, and what resources, both public and private, are necessary to facilitate the expansion of Delaware's work force."

Approved July 24, 1992.

CHAPTER 447

FORMERLY

HOUSE BILL NO. 379  
AS AMENDED BY SENATE AMENDMENT NO. 1

AN ACT TO AMEND CHAPTER 55, TITLE 29 OF THE DELAWARE CODE RELATING TO APPROVED LEAVES OF ABSENCE.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend §5501(b)(12), Chapter 55, Title 29, Delaware Code by striking said subsection in its entirety and substituting in lieu thereof a new subsection "12" to read as follows:

"(12) Approved leave granted to an employee without pay, for a definite period of time, inclusive of approved extensions, authorized by the head of the employee's department or agency to assume an elected position in an employee organization as defined in Chapter 40 of Title 14, Chapter 13 of Title 19 and Chapter 16 of Title 19 provided that within 15 days following the end of each month that such an employee is on such leave, the employee pays contributions equal to the sum of the employee contributions and employer appropriations that would have been made to the Fund based on the salary that would have been paid to the employee had the employee continued to be employed in the capacity in which such employee was employed immediately prior to such leave by an entity described in §5501(a)(1) during such approved leave of absence."

Section 2. Amend §5501(c), Chapter 55, Title 29, Delaware Code by adding a new sentence immediately at the end thereof to read as follows:

"For those individuals who purchase credited service under §5501(b)(12) 'compensation' shall include the salary, wages, and fees that such individuals would have received had they remained in such employment for the term of the approved leave."

Section 3. This Act shall be effective July 15, 1992.

Approved July 24, 1992.

## CHAPTER 448

## FORMERLY

HOUSE BILL NO. 654  
AS AMENDED BY HOUSE AMENDMENT NO. 1

AN ACT TO AMEND CHAPTER 64, TITLE 16 RELATING TO AMUSEMENT RIDES SAFETY INSPECTION AND INSURANCE.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Chapter 64, Title 16 of the Delaware Code by adding thereto a new section, identified as §6404A which shall read as follows:

§6404A Requirements for Commercial Bungee Jumping Operations.

(a) A person operating a bungee jump for use by paying customers shall file with the office of the State Fire Marshall in the manner required by this chapter, the inspection certificate and insurance policy required by this section, or a photocopy of such a certificate or policy authorized by the Fire Marshall.

(b) Any person operating a bungee jump for use by paying customers which has been registered with the Fire Marshall shall be periodically inspected by a representative of the Office of the State Fire Marshall.

(c) The Office of the State Fire Marshall shall promulgate regulations relating to safety standards for the operation of commercial bungee jumps.

Section 2. Amend §6408, Title 16 of the Delaware Code by deleting the entire section and substituting in lieu thereof the following:

"§6408. Injunctions.

The Attorney General on request of the Fire Marshall or one of his deputies may seek an injunction against any person operating an amusement ride, including bungee jumps, in violation of this chapter, Fire Marshall's regulations, or which are otherwise deemed by the Fire Marshall to present an imminent risk to public health and safety including, but not limited to, the risk to public health and safety posed by the interruption of traffic flow."

Approved July 24, 1992.

CHAPTER 449

FORMERLY

HOUSE BILL NO. 501  
AS AMENDED BY SENATE AMENDMENT NO. 1

AN ACT TO AMEND TITLE 14, CHAPTER 40, DELAWARE CODE, RELATING TO THE  
NEGOTIATIONS OF PUBLIC SCHOOL EMPLOYEES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Chapter 40, Title 14, §4002 of the Delaware Code by deleting subsection (f) and substituting in lieu thereof a new subsection (f) to read as follows:

"(f) 'Confidential employee' means any employee whose essential job function and advanced knowledge about the issues involved in collective bargaining would make it unduly burdensome for the employer to negotiate effectively if the employee were a member of an appropriate bargaining unit."

Approved July 24, 1992.

CHAPTER 450

FORMERLY

HOUSE BILL NO. 566

AN ACT TO AMEND TITLE 29, CHAPTER 69 OF THE DELAWARE CODE RELATING TO RENTAL  
AND PURCHASE OF MOTOR VEHICLES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Title 29, §6902 of the Delaware Code by adding a new subsection (1) as follows:

"(1) The procurement of vehicles by New Castle County Police shall be exempt from the provisions of this Section."

Approved August 5, 1992.

CHAPTER 451  
FORMERLY  
HOUSE BILL NO. 605

AN ACT PROPOSING THE AMENDMENT OF ARTICLE IV OF THE CONSTITUTION OF THE STATE OF DELAWARE BY CREATING THE JUDICIAL OFFICE OF SENIOR JUDGE.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (Two-thirds of all members elected to each House thereof concurring therein):

Section 1. Amend Article IV of the Constitution of the State of Delaware by adding a new §39 as follows:

"§39. Senior Judge.

Any eligible judge of a court established by this amended Article IV of this Constitution or by act of the General Assembly who so elects and who receives certification from the Chief Justice of the Delaware Supreme Court may resign and become a Senior Judge of the court on which he/she was sitting at the time of resignation. An "eligible judge" for purposes of this §39 is one who, at the time of election is a sitting judge and, at a minimum, has served as a judge for the number of years and is of the age required, if any, by the State Judiciary Pension Plan (29 Del. C. Ch. 56) to immediately begin receiving a service pension.

A Senior Judge must perform at least three months of judicial work each year. Satisfactory completion of this requirement, as determined through a recertification process provided by statute, must be established each year in order to continue as a Senior Judge in the following year.

A Senior Judge shall receive all pension benefits that he/she would have been eligible for had he/she retired and, in addition, shall be paid one fourth of the current salary of an active judge on the court from which he/she retired. A Senior Judge may not engage in the practice of law and is subject to the Code of Judicial Conduct. A Senior Judge is subject to censure, removal or retirement by the Court on the Judiciary in accordance with §37 of this Article IV.

Senior Judges shall not be counted for purposes of determining the political representation on any court or on any combination of courts under §3 of Article IV.

A Senior Judge may be designated to sit temporarily on any court to which he/she could be designated under the Constitution and statutes of the State during active service as a judge."

Approved August 3, 1992.

## CHAPTER 452

## FORMERLY

HOUSE JOINT RESOLUTION NO. 7  
AS AMENDED BY  
HOUSE AMENDMENT NO. 1

ESTABLISHING A SPECIAL STUDY TASK FORCE TO EXAMINE THE EXTENT AND SERIOUSNESS OF THE PROBLEMS OF THE HOMELESS AND HOMELESS MENTALLY ILL POPULATIONS IN THE STATE OF DELAWARE, AND TO MAKE RECOMMENDATIONS FOR IMPROVING THE PLIGHT OF THESE INDIVIDUALS.

WHEREAS, nationwide, as many as three quarters of a million people are homeless on a given night and 20 to 40 percent of that population are mentally ill; and

WHEREAS, since the deinstitutionalization of mentally ill patients from hospitals in the 1960s began, the homeless and homeless mentally ill population has steadily increased in the City of Wilmington and across the State; and

WHEREAS, this process was intended to release those patients, many of whom were held against their will, that did not require hospitalization; and

WHEREAS, it was believed that many of these patients could adequately and safely be cared for on an outpatient basis in community based health facilities; and

WHEREAS, it is recognized that many homeless citizens are mentally ill and are not receiving the necessary medical care and housing required for them to lead stable and normal lives; and

WHEREAS, the number of children among the homeless is dramatically increasing nationwide; and

WHEREAS, our communities have not adequately reached out to actively help the homeless and the mentally ill among them by allowing outpatient facilities in their neighborhoods; and

WHEREAS, community based and national services for mentally ill are dwindling due to budget cuts; and

WHEREAS, homelessness and mental illness syphons citizens from all aspects of our society; and

WHEREAS, since Delaware prides itself on being the First State it should take the lead in understanding and helping this segment of its population.  
NOW, THEREFORE:

BE IT RESOLVED by the House of Representatives and the Senate of the 136th General Assembly of the State of Delaware that a special Study Task Force be formed to review available information concerning the homeless and homeless mentally ill in Delaware, to examine the extent and seriousness of the problems of the homeless and homeless mentally ill populations in the State of Delaware to review existing public and institutional policies, practices and administration and make recommendations for any changes deemed necessary, including the practices and effects of deinstitutionalization and the nature and level of community support for the homeless and the homeless mentally ill after deinstitutionalization and to make legislative, policy and administrative recommendations by January 15, 1992 to the Delaware General Assembly in a Task Force Study Report for improving the social, economic and health plight of these individuals.

BE IT FURTHER RESOLVED by the House of Representatives of the 136th General Assembly that said Study Task Force to be appointed by the Governor of the State of Delaware shall include a representative from the House of Representatives, the Senate, Sojourners Place, the Ministry of Caring, the Disabilities Law Program, the New Castle County and City of Wilmington Police Departments, the University of Delaware College of Urban Affairs and Public Policy, the Alliance for the Mentally Ill, the Medical Center of Delaware Emergency Admissions, Community Legal Aid of Delaware, Delaware State

Hospital, Mental Health Association of Delaware, the Young Women's Christian Association and two staff persons from the Division of Alcoholism, Drug Abuse and Mental Health of The Department of Health and Social Services.

Approved July 5, 1991.



## CHAPTER 453

## FORMERLY

## HOUSE JOINT RESOLUTION NO. 8

ESTABLISHING A FRESHWATER WETLANDS PROGRAM DEVELOPMENT AND IMPLEMENTATION COMMITTEE TO CARRY OUT ACTIONS CALLED FOR IN SENATE BILL 169, AND TO PROVIDE AMENDMENTS TO SAID BILL THAT WILL FURTHER DEFINE AND DESCRIBE A STATE-RUN FRESHWATER WETLANDS PROGRAM.

WHEREAS, freshwater wetlands are a critical component to the state's ecological infrastructure and provide important public functions and benefits; and

WHEREAS, freshwater wetlands provide fish and wildlife habitat, flood control, surface and groundwater quality and quantity maintenance; and

WHEREAS, the State continues to lose this resource despite the existence of a wetlands program at the federal level; and

WHEREAS, the federal wetlands program is highly inflexible and obtaining a permit through this program is unduly burdensome and costly to the Delaware citizens; and

WHEREAS, Delaware, through the Governor's Freshwater Wetlands Roundtable and legislation proposed in the 136th Session of the General Assembly, has determined that it is the best interest of both the resource and the citizen's of the State to have wetlands managed by the State as opposed to the federal government.

NOW, THEREFORE:

BE IT RESOLVED by the House of Representatives and the Senate of the 136TH General Assembly of the State of Delaware, with the approval of the Governor, that the Delaware Wetlands Program Development and Implementation Committee is hereby established. This Committee shall begin work on the tasks as called for under Senate Bill 169 of the 136th General Assembly and shall also review and, if necessary, develop revisions to said legislation.

BE IT FURTHER RESOLVED that the Delaware Freshwater Wetlands Program Development and Implementation Committee shall consist of the following ex-officio non-voting members or their designee:

- (1) The Secretary of the Department of Natural Resources and Environmental Control, who shall also serve as Chair of the Committee;
- (2) The Chairman of the House of Representatives Natural Resources Committee;
- (3) The Chairman of the Senate Natural Resources Committee.

BE IT FURTHER RESOLVED that the Delaware Freshwater Wetlands Program Development and Implementation Committee shall consist of the following voting members or their designee:

- (1) President State Farm Bureau;
- (2) President Council of Farm Organizations;
- (3) Master State Grange;
- (4) President Delaware Forestry Association;
- (5) Executive Director Delaware Homebuilders Association;
- (6) Executive Director Delaware Contractors Association;
- (7) President Delaware Association of Realtors;
- (8) President Delmarva Power;

- (9) President Delaware Audubon Society;
- (10) Executive Director Delaware Sierra Club;
- (11) Executive Director Delaware Nature Society;
- (12) Director Nature Conservancy Delaware Office.

BE IT FURTHER RESOLVED that an affirmative vote of nine (9) members of the Committee shall be required for any action or recommendation of the committee to be adopted.

BE IT FURTHER RESOLVED that the Committee shall hold its first meeting on or before August 15, 1991 and shall be called to order by the Chairman.

BE IT FURTHER RESOLVED the Committee shall make a report which shall include, in the form of amendments to Senate Bill 169 which is now pending before the General Assembly, work completed by the Committee as called in said legislation, and other amendments if required. Said report shall be made to the General Assembly on or before January 15, 1992.

BE IT FURTHER RESOLVED that the Department of Natural Resources and Environmental Control shall provide such reasonable staff and resources as may be necessary for the Committee to fulfill this Resolution.

Approved July 3, 1991.

## CHAPTER 454

## FORMERLY

## HOUSE JOINT RESOLUTION NO. 9

ESTABLISHING A WELLHEAD PROTECTION PROGRAM DEVELOPMENT COMMITTEE TO FORMULATE LEGISLATION FOR THE ENACTMENT OF A WELLHEAD PROTECTION PROGRAM IN DELAWARE.

WHEREAS, sixty percent of the residents of the State of Delaware rely on groundwater as their sole source of drinking water; and

WHEREAS, certain land uses and activities can be detrimental to groundwater supplies; and

WHEREAS, the United States Congress has mandated the protection of groundwater supplies through the wellhead protection provisions of the 1986 amendments to the Safe Drinking Water Act; and

WHEREAS, the United States Environmental Protection Agency granted final approval of the State of Delaware's Wellhead Protection Plan on July 31, 1990.

NOW, THEREFORE:

BE IT RESOLVED by the House of Representatives and the Senate of the 136TH General Assembly of the State of Delaware, with the approval of the Governor, that the Delaware Wellhead Protection Program Committee is hereby established.

BE IT FURTHER RESOLVED that the Delaware Wellhead Protection Program Committee shall consist of the following ex-officio non-voting members or their designee:

(1) The Secretary of the Department of Natural Resources and Environmental Control, who shall also serve as Chair of the Committee;

(2) The Chairman of the House of Representatives Natural Resources Committee;

(3) The Chairman of the Senate Natural Resources Committee.

BE IT FURTHER RESOLVED that the Delaware Wellhead Protection Committee shall consist of the following voting members or their designee:

(1) President State Farm Bureau;

(2) President Council of Farm Organizations;

(3) Master State Grange;

(4) Executive Director, Delaware Homebuilders Association;

(5) Executive Director, Delaware Contractors Association;

(6) President, Delaware Association of Realtors;

(7) President, Delaware Audubon Society;

(8) Executive Director, League of Women Voters;

(9) Executive Director, Delaware Nature Society;

(10) Executive Director, Delaware League of Local Governments;

(11) President or Designee of Committee of 100;

(12) President or Designee, Sussex County Association of Towns.

BE IT FURTHER RESOLVED that an affirmative vote of nine (9) members of the Committee shall be required for any action or recommendation of the Committee to be adopted.

BE IT FURTHER RESOLVED that the Committee shall hold its first meeting on or before August 7, 1991 and shall be called to order by the Chairman.

BE IT FURTHER RESOLVED that the Committee shall make a report to the General Assembly. This report shall include draft legislation for a Wellhead Protection Program for the State of Delaware. Said report shall be made to the General Assembly on or before January 15, 1992.

BE IT FURTHER RESOLVED that the Department of Natural Resources and Environmental Control shall provide such reasonable staff and resources as may be necessary for the Committee to fulfill this Resolution.

Approved July 18, 1991.

## CHAPTER 455

## FORMERLY

SENATE JOINT RESOLUTION NO. 3  
AS AMENDED BY  
HOUSE AMENDMENT NOS. 1 AND 2

PROVIDING FOR THE ESTABLISHMENT OF A TASK FORCE TO REVIEW AND MAKE RECOMMENDATIONS ON A NUMBER OF ISSUES RELATING TO SCHOOL TRANSPORTATION.

WHEREAS, 85% of Delaware's public school students ride buses to and from school and the cost of public school transportation accounts for \$1 out of every \$12 state dollars spent on education; and

WHEREAS, nationally the average percentage of public school students transported is about 55%; and

WHEREAS, the basic formulas for the reimbursement of school bus contractors and school districts which operate their own buses have been in place since 1978 and have from time to time been recalibrated and adjusted for inflation; and

WHEREAS, the current reimbursement formulas were developed for gasoline-powered buses and not diesel-powered buses which are becoming increasingly common in Delaware; and

WHEREAS, there has been an increase in the number of bus contracts held by large contractors operating 5 or more routes; and

WHEREAS, the current contracts permit a contractor to terminate service each year within 30 days of final approval of the State's operating budget for that fiscal year, effectively giving schools about 30 days notice that they must replace a contractor who intends to terminate service; and

WHEREAS, current State law permits assignment of school bus contracts without competitive bidding but another statute prohibits State employees or their immediate family members from entering into contracts for services unless those contracts result from competitive bidding; and

WHEREAS, there has from time to time been a shortage of school bus drivers in some parts of the State, a condition which may be further aggravated by the new federal requirements relating to licensing of commercial operators including school bus drivers; and

WHEREAS, in the FY 91 Budget Act, the General Assembly authorized the Department of Public Instruction to begin a project to computerize school bus scheduling so that the utilization of school buses can be optimized thereby reducing the number of school buses that are needed to safely transport Delaware's school children; and

WHEREAS, the State spends approximately \$2.8 million a year to partially defer the costs of transportation incurred by parents of students attending non-public schools.

WHEREAS, unlike public school transportation, the non-public transportation program permits reimbursement to parents whose children are transported by private conveyance as well as those who ride non-public, school-operated buses; and

WHEREAS, school bus safety is a continuing concern of the General Assembly and the Governor of the State of Delaware; and

WHEREAS, parents continue to be concerned about the amount of time some students spend on the buses and about the impact of bus schedules on the starting and closing times of some schools; and

WHEREAS, it is the intent of this resolution to cause a thorough and comprehensive examination of school transportation issues to be undertaken for the purpose of developing recommendations as to how the current levels of funding can be more efficiently and effectively allocated for transportation

services or reallocated for the benefit of classroom education and to assure that transportation related disruptions of the education process are minimized.

NOW, THEREFORE:

BE IT RESOLVED that the Senate and House of Representatives of the 136th General Assembly concludes that the high cost of pupil transportation necessitates that this appropriation be managed in a manner that maximizes the funding available for classroom education without compromising the safety, efficiency, or viability of the transportation system.

BE IT FURTHER RESOLVED by the Senate and the House of Representatives of the 136th General Assembly of the State of Delaware that a Task Force on School Transportation is hereby established to review and make recommendations on the following issues related to school transportation and others that the Task Force may deem appropriate:

1. Formulas or methods of reimbursement of school bus contractors and school districts which operate their own buses including variations that may be considered in order to distinguish between gasoline-powered and diesel-powered buses;
2. Terms of school bus contracts, particularly as they relate to termination of contracts either by the school district or the contractor;
3. Conflicts in current statutes that require bidding if the contract is awarded to a State employee but which exclude school bus contracts from the bid laws;
4. Shortages of school bus drivers and the impact of the new federal commercial driver's license;
5. The possibility that transportation costs could be reduced if a public transit option system was established for older students in areas served by the existing public transportation system;
6. An examination of the policy issues relating to the non-public transportation methodology;
7. School bus safety issues, including unique hazards;
8. School bus scheduling issues;

BE IT FURTHER RESOLVED that the Task Force on School Transportation shall be composed of the following members:

1. A member of the State Board of Education who shall serve as chairperson and who shall be appointed by the President of the State Board of Education;
2. One member of the Senate appointed by the Senate Pro Tempore;
3. One member of the House of Representatives appointed by the Speaker of the House of Representatives;
4. The State Budget Director or a designee appointed by the Budget Director;
5. The Controller General or a designee appointed by the Controller General;
6. A local school district superintendent appointed by the Chief School Officers Association;
7. A representative of the Delaware Administration for Regional Transit, appointed by the Secretary of Transportation.
8. The Director of the Office of Highway Safety;
9. Two public at-large members, appointed by the President of the State Board of Education one of whom shall have experience in fleet

management or transportation issues and one of whom shall have been recommended by the Parent Teachers Association.

10. A representative of the Delaware School Bus Contractors Association.
11. A representative of the Catholic Schools Office appointed by the Diocese of Wilmington Schools, Inc.
12. A representative of the Delaware Association of Independent Schools appointed by the President of that Association.

BE IT FURTHER RESOLVED that the Task Force shall be provided with staff assistance by the Department of Public Instruction; and that the individuals, groups and agencies that could either assist this undertaking or be affected by the Task Force's recommendations are encouraged to cooperate fully with any requests the Task Force makes.

BE IT FURTHER RESOLVED that the chairperson is authorized to organize subcommittees to deal with specific issues or areas, each of which shall be chaired by a member of the task force and whose membership may also include representatives of groups or individuals not listed above in order to assure that the committee, in its deliberations, has had the benefit of all relevant points of view and technical expertise. Any such person or group asked to serve on a subcommittee shall not be considered a voting member of the task force.

BE IT FURTHER RESOLVED that the Task Force complete its deliberations and report its final recommendations to the Governor, the President Pro Tempore, and the Speaker of the House of Representatives and the State Board of Education by January 15, 1992, and that a preliminary progress report be submitted by May 31, 1991.

BE IT FURTHER RESOLVED that a copy of this Resolution be sent to all of the organizations listed herein.

Approved February 8, 1991.

## CHAPTER 456

## FORMERLY

## SENATE JOINT RESOLUTION NO. 10

## CREATING AN OVERSIGHT COMMITTEE FOR A FERRIS RESTRUCTURING PLAN.

WHEREAS, rehabilitation services at Ferris School for Boys have been limited by the lack of adequate programs and the layout of the existing physical plant; and

WHEREAS, actual and projected increases in demand for juvenile correctional services exceed current resources of the Division of Youth Rehabilitation Services; and

WHEREAS, the Delaware Secure Care Planning Study, a study of the projected population, physical plant, programming and costs for the juvenile correction system has recently been completed and made recommendations for change; and

WHEREAS, the Department of Services for Children, Youth and Their Families has undertaken short term actions to improve conditions at Ferris School, including upgraded staff training, increased use of volunteers, and initiation of a search for a new Superintendent; and

WHEREAS, the Department of Services for Children, Youth and Their Families has developed a proposal to restructure the juvenile correction system; and

WHEREAS, the General Assembly wishes to take action to improve services for Delaware's adjudicated youth.

## NOW THEREFORE:

BE IT RESOLVED by the Senate and the House of Representatives of the 136th General Assembly of the State of Delaware, with the approval of the Governor, that an Oversight Committee is hereby established, the membership of which shall consist of the following:

a. Chairman of the Criminal Justice Council to be Chairman of this Committee.

b. One representative from the business community to be appointed by the Governor.

c. The Chief Judge of Family Court or his designee.

d. The New Castle County Police Chief or his designee.

e. The Public Defender or his designee

f. The Attorney General or his designee.

g. Twelve members of organizations concerned with youth rehabilitation services as follows:

1. Joe Dell'Olio, Vice President of Child, Inc.

2. Shirley Cupery, Chair of the Foster Care Review Board.

3. Christine McDermott, Executive Director of Delaware Volunteer Legal Services.

4. Art Boswell, Executive Director of People's Settlement.

5. Tyrone Jones, Director of Project Stayfree.

6. Emperatrix Alaix, Executive Director of the Latin American Community Center.

7. Lori Sitler, Executive Director of the Delaware Council on Crime and Justice.



8. Christine M. Long, Community Legal Aid Society, Sussex County.
9. Myron Steele, Superior Court Judge, Kent County.
10. Don DeVore, Director Montgomery County, Youth Detention Facility.
11. William Jenkins, Volunteer, Family Court New Castle County.
12. Littleton Mitchell, Immediate Past President Delaware State NAACP.

BE IT FURTHER RESOLVED that the Executive Director of the Criminal Justice Council and the Office of State Police shall serve as resources to the Oversight Committee.

BE IT FURTHER RESOLVED that the Oversight Committee shall:

1. Review the Department's proposed restructuring plan and the information and studies on which it is based;
2. Consider modifications to that plan or develop another plan or other options based on the following criteria:
  - a. Effectiveness in rehabilitation;
  - b. Cost;
  - c. Ability to meet the projected demand for locked and nonlocked residential services as well as nonresidential services;
  - d. Ability to match individual youth to appropriate levels of security and treatment;
  - e. Ability to transition youth from residential to community-based programs; and
  - f. Ability to utilize community resources.
3. Report its findings and recommendations to the Governor, Speaker of the House, and President Pro Tempore of the Senate by November 15, 1992 with an interim report to be presented no later than June 1, 1992.
4. Develop and oversee an implementation plan and periodically report to the Governor, Speaker of the House, and President Pro Tempore of the Senate on the progress in executing this plan. And further, oversee existing services for adjudicated youth during the transition period.

Approved April 6, 1992.

## CHAPTER 457

## FORMERLY

SENATE JOINT RESOLUTION NO. 11  
AS AMENDED BY  
SENATE AMENDMENT NO. 1 AND HOUSE AMENDMENT NO. 1  
AND HOUSE AMENDMENT NO. 1 TO HOUSE AMENDMENT NO. 1

ESTABLISHING A CITIZEN TASK FORCE TO STUDY THE FEASIBILITY OF A STATEWIDE UNIFORM CODE OF CONDUCT FOR PUBLIC SCHOOL STUDENTS AND MAKE RECOMMENDATIONS TO THE STATE BOARD OF EDUCATION AND THE GENERAL ASSEMBLY ON A SET OF STANDARD SANCTIONS FOR THOSE WHO VIOLATE SUCH CODE OF CONDUCT.

WHEREAS, the public education system is a costly obligation willingly accepted by the taxpayers of the State of Delaware; and

WHEREAS, citizens of the State of Delaware have demonstrated firm commitment to improve, wherever possible, the public education system in Delaware; and

WHEREAS, members of the Delaware General Assembly and taxpaying citizens recognize and commend public school educators for their efforts to mold, train, and educate all public school children to become law-abiding and productive citizens of our society; and

WHEREAS, despite these efforts, acts of violence, the carrying of deadly weapons, and lack of respect for authority continues to invade our public schools; and

WHEREAS, there is great concern on the part of parents and public policy-makers that administrators and classroom teachers are forced to spend entirely too much time dealing with student conduct and many other social problems, including parental neglect, to the detriment of students who wish to learn; and

WHEREAS, violence and misbehavior in the public schools weakens the learning environment in which successful educational programs thrive; and

WHEREAS, the State Board of Education has been reluctant to impose on all school districts a standard Code of Conduct and uniform enforcement policies until further study has been undertaken.

NOW THEREFORE:

BE IT RESOLVED by the Senate of the 136th General Assembly of the State of Delaware, the House of Representatives and the Governor concurring therein, that a Statewide Task Force on Discipline in the Schools is hereby established to study the feasibility of imposing a standard Code of Conduct in all public schools in Delaware and to recommend implementation of said Code, if feasible, and uniform enforcement policies.

BE IT FURTHER RESOLVED that the Task Force shall be composed of 28 members appointed by the Governor; seven of whom shall be from the City of Wilmington, seven from New Castle County outside the City of Wilmington, seven from Kent County, and seven from Sussex County; one of whom shall be a representative of business or industry appointed by the Governor from the State at large, who shall serve as chairman of the Task Force; one of whom will be the chairman of the Senate Education Committee; and one of whom shall be the chairman of the House Education Committee.

BE IT FURTHER RESOLVED that the seven members from each political subdivision shall include two classroom teachers, two parents of children in the public school system, one representative of a high school student body, 1 principal from a school located in the political subdivision, and one officer of a school Parent-Teacher Association.

BE IT FURTHER RESOLVED that said Task Force shall organize and conduct its first meeting no later than 30 days after the effective date of this Senate Joint Resolution, and shall present its findings and recommendations to the

Governor, the presiding officers of the Senate and House of Representatives, and the State Board of Education no later than March 15, 1993.

BE IT FURTHER RESOLVED that the State Board of Education be requested to establish three committees which shall report to the Task Force no later than February 15, 1993. These committees are to deal, respectively, with the following issues:

1. A statewide code of conduct for students in the public schools.
2. Alternative educational programs and resources which might be offered to students who would otherwise be suspended or expelled.
3. A means of involving other agencies and parents in the process of improving school discipline.

BE IT FURTHER RESOLVED that suitably prepared copies of this Senate Joint Resolution be forwarded to members of the State Board of Education upon its adoption.

Approved July 17, 1992.

## CHAPTER 458

## FORMERLY

## SENATE JOINT RESOLUTION NO. 14

## RELATING TO THE 100TH ANNIVERSARY OF THE NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS.

WHEREAS, the National Conference of Commissioners on Uniform State Laws is celebrating its 100th Anniversary, and it is appropriate upon this auspicious occasion that the achievements of that organization are highlighted and that its role in creating uniformity of the laws of the states, the District of Columbia, Puerto Rico and the U.S. Virgin Islands be applauded; and

WHEREAS, in 1881, the New York legislature authorized the Governor to appoint three commissioners to explore the most effective manner in which to effect uniformity of law to ease problems developing between increasingly interdependent states; and the American Bar Association endorsed New York's action with the result that the first meeting of the "Conference of State Boards of Commissioners on Promoting Uniformity of Law in the U.S." was held in Saratoga Springs, New York, on August 24, 1892, with commissioners attending from Delaware, Georgia, Massachusetts, Michigan, New York, New Jersey and Pennsylvania; and

WHEREAS, the State of Delaware has been a member of the Conference for the 100 years since the Conference's inception; and

WHEREAS, by 1912, every state in the Union had appointed commissioners; and in 1915 the organization officially became the National Conference of Commissioners on Uniform State Laws; and

WHEREAS, the Delaware Uniform Law Commission is an agency of this State; and

WHEREAS, the current Commissioners from Delaware are the Honorable Maurice A. Hartnett, III, the Honorable Battle R. Robinson, Ann E. Conaway Anker, W. Laird Stabler, III, and Thomas A. Shiels; and

WHEREAS, the State of Delaware has adopted over 55 Uniform and Model Acts promulgated by the National Conference of Commissioners on Uniform State Laws, including the Commercial Code, the Anatomical Gift Act, the Child Custody Act, the Reciprocal Enforcement of Support Act, the Arbitration Act, the Controlled Substance Act and the Durable Power of Attorney Act; and

WHEREAS, at the present time, more than 300 practicing lawyers, judges, law professors and government officials serve as Uniform Law Commissioners; and these state-appointed commissioners, selected for their wide range of legal expertise and experience, provide an immeasurable resource for drafting uniform and model laws;

## NOW, THEREFORE:

BE IT RESOLVED by the Senate and House of Representatives of the 136th General Assembly of the State of Delaware, with the approval of the Governor, that the National Conference of Commissioners on Uniform State Laws is hereby commended as it celebrates its 100th Anniversary; and is hereby applauded as a genuine confederation of state interests, and also for the brilliant leadership which it has displayed in effecting uniformity of law, and in providing states with legislation adaptable to their particular needs and concerns; and

BE IT FURTHER RESOLVED, that the sincere appreciation of the Delaware General Assembly is hereby extended to the 36 Delawareans who have served as Commissioners throughout the past 100 years, and who have given unstintingly of their time and expertise as Commissioners.

Approved July 7, 1992.

## CHAPTER 459

## FORMERLY

SENATE JOINT RESOLUTION NO. 18  
AS AMENDED BY

## SENATE AMENDMENT NOS. 1 AND 2 AND HOUSE AMENDMENT NO. 1

ESTABLISHING A DELAWARE WATER AND WASTEWATER INFRASTRUCTURE COMMITTEE TO DEFINE AND DESCRIBE THE NEEDS OF THE STATE'S WATER SUPPLY AND WASTEWATER FACILITIES.

WHEREAS, a need exists to develop an environmentally sound and cost effective plan of action to construct, maintain, repair, replace, expand and upgrade Delaware's water supply and wastewater infrastructure, and

WHEREAS, the Delaware Public Policy Institute sponsored a Water Resources Planning Retreat in March of 1992, to identify the problems of water supply and wastewater infrastructure in the State of Delaware, and

WHEREAS, the fourteen individuals that participated in the Retreat, who represented a cross section of affected public and private interests, produced a list of objectives and a list of action items needed to address the water supply and wastewater infrastructure problems of the State.

## NOW, THEREFORE:

BE IT RESOLVED by the Senate and the House of Representatives of the 136th General Assembly of the State of Delaware, with the approval of the Governor, that the Delaware Water and Wastewater Infrastructure Committee is hereby established. This Committee shall review and address:

(1) gaps and inconsistencies in state, county and local planning for water supply and wastewater management;

(2) methods to encourage cooperation and coordination among state, county, and local jurisdictions with respect to planning, design, and construction of water supply and wastewater facilities;

(3) methods for assisting the economically disadvantaged to afford adequate water supply and wastewater services;

(4) methods to overcome resistance to paying for proper planning and funding of new, expanded, or upgraded facilities;

(5) the financial needs for water supply and wastewater facilities and methods to assure equitable funding for those services;

(6) the institutional framework to administer the Committee's recommendations.

(7) any needed legislation to implement the Committee's recommendations.

BE IT FURTHER RESOLVED that the Delaware Water and Wastewater Infrastructure Committee shall consist of the following voting members or a designee:

(1) Audubon Society, represented by Grace Pierce-Beck;

(2) City of Wilmington, represented by William G. Turner;

(3) Consulting Engineers Council, represented by Stephan Lehm;

(4) Delaware Contractors Association, represented by Joseph J. Corrado, Jr.;

(5) Delaware Development Office, represented by John J. Casey, Jr.;

(6) Delaware Public Policy Institute, represented by James McGinnis, Chairman;

(7) Department of Finance, represented by Debra Chambliss von Kock;

(8) Department of Natural Resources and Environmental Control, represented by Gerard L. Esposito;

(9) Farm Bureau, represented by G. Wallace Caulk, Jr.;

(10) Investor owned wastewater utilities, represented by Lee J. Beetschen;

(11) Investor owned water supply utilities, represented by Peter N. Johnson;

(12) Kent County, represented by Robert S. McLeod;

(13) League of Local Governments, represented by Dr. John Adams;

(14) New Castle County, represented by John C. Carney;

(15) Sussex County, represented by Robert L. Stickels;

(16) Sussex County Association of Towns, represented by John E. Messick;

(17) Delaware Association of Realtors, represented by Donald P. Hearn.

BE IT FURTHER RESOLVED that an affirmative vote of two-thirds of the members of the Committee shall be required for any action or recommendation of the Committee to be adopted.

BE IT FURTHER RESOLVED that the Committee shall hold its first meeting on or before August 1, 1992 and shall be called to order by the Chairman.

BE IT FURTHER RESOLVED that the Committee shall make a full report of its deliberations, findings, conclusions, and recommendations regarding the above listed responsibilities to the General Assembly on or before January 15, 1993.

BE IT FURTHER RESOLVED that the Department of Natural Resources and Environmental Control shall provide such reasonable staff and resources as may be necessary for the Committee to fulfill this resolution.

Approved July 22, 1992.



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