

**Part II**  
**Civil Defense**  
**Chapter 31**  
**Emergency Management**  
**Subchapter I**  
**General Provisions**

**§ 3101 Declaration of policy and purpose.**

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

- (1) Ensure that this State will be adequately prepared to respond and recover from such emergencies or disasters;
- (2) Provide for the common defense and to protect the public peace, health and safety;
- (3) Protect the lives and property of the people of this State and reduce their vulnerability to harm in emergency and disaster situations;
- (4) Authorize and provide for coordination of activities relating to emergency management;
- (5) Confer upon the Governor, state agencies and authorized representatives of this State the broad emergency powers provided in this chapter;
- (6) Provide for the rendering of mutual aid among the political subdivisions of this State and with other states and with the federal government with respect to emergency management.

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

**§ 3102 Definitions.**

As used in this chapter:

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

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

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

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

(5) “Political subdivision” means any town, city or county within the State.

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

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

(8) “State of emergency” means an emergency proclaimed pursuant to an emergency order by the Governor. All emergency orders issued under this chapter shall indicate the nature of the emergency or disaster, the area or areas threatened, and the conditions which

have brought it about and may limit the order to a geographic area or specific resources. Such an emergency order may be issued in writing subsequent to its effect so long as a written log recording the dates and times of such order is maintained by DEMA. Emergency orders shall be filed with the Secretary of State.

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

(48 Del. Laws, c. 189, §§ 3, 8; 20 Del. C. 1953, § 3102; 50 Del. Laws, c. 138, § 1; 56 Del. Laws, c. 118, § 1; 58 Del. Laws, c. 558, § 4; 64 Del. Laws, c. 123, § 3; 69 Del. Laws, c. 78, § 3; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 207, § 1; 76 Del. Laws, c. 180, § 1.)

## Subchapter II

### Delaware Emergency Management Agency

#### § 3105 Creation.

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

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

#### § 3106 Organization.

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

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

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

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

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

#### § 3107 Powers and duties.

DEMA is authorized and directed to:

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

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

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

(4) Apply for, accept, and expend federal, public or private funds, grants, gifts or other forms of financial assistance in order to defray the costs of DEMA directly associated with implementing and maintaining emergency management capabilities, including, but not limited to, expenses connected with retaining personnel and with acquiring and maintaining equipment, supplies and other material to carry out DEMA’s obligations and responsibilities under the plan. All grants or payments of money by the federal government, or by any other public or private source, pursuant to any contract, agreement or otherwise, to the Department of Safety and Homeland Security for emergency management by DEMA shall be appropriated to DEMA for the designated purpose for which the money was

paid and received, and no other. All such money shall be payable to the State Treasurer. The Treasurer shall credit the deposit to the individual appropriation accounts for the designated use;

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

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

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

(8) Supply appropriate state and local agencies, officials and the general public with precautionary notices, watches and warnings relating to actual or potential emergencies or disasters and provide a flow of official information and instructions to the general public before, during and after an emergency or disaster;

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

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

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

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

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

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

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

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

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

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

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

### **§ 3107A The State Emergency Management Fund.**

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

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

### **§ 3108 Radiological Emergency Management Program.**

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

(b) All grants or payments of money by the federal government, or by any other public or private source, pursuant to any contract, agreement or otherwise, to the Department of Safety and Homeland Security for radiological emergency management shall be appropriated to DEMA for the designated purpose, and no other, for which the money was paid and received. All such money shall be payable to

the State Treasurer. The Treasurer shall credit the deposit to a special fund to be known and designated as the "Delaware Radiological Emergency Management Program Account," and any money received for the use of DEMA in connection with its duties under the Delaware Radiological Emergency Management Program shall be paid out of the special account by the State Treasurer upon warrants executed by the Secretary of the Department of Safety and Homeland Security for the designated use, without any further authority from the General Assembly.

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

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

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

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

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

### Subchapter III

### The Governor and Emergency Management

#### § 3115 General authority of the Governor.

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

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

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

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

#### § 3116 Powers.

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

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

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

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

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

(5) Request voluntary restrictions or conservation of water use by public or private users of water in the State. Mandatory restrictions may be imposed by the Governor by emergency order after declaration of a state of emergency. Unless the Governor issues an emergency order finding that it is essential that mandatory conservation measures be implemented without delay, before any mandatory

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

(6) Request federal assistance as deemed necessary;

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

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

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

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

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

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

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

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

(b) During an emergency or disaster, the Governor may:

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

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

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

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

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

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

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

(8) Establish curfews;

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

(10) Request federal emergency or disaster declarations;

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

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

a. Level 3 Driving Ban: A "Level 3 Driving Ban" shall mean that no person shall operate a motor vehicle on Delaware roadways when a Level 3 Driving Ban has been activated, except for those persons designated as first responders and essential personnel, including public utilities as defined in § 102(2) of Title 26 and operators of snow removal equipment employed or contracted by

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

b. Level 2 Driving Restriction: A “Level 2 Driving Restriction” shall mean that no person shall operate a motor vehicle on Delaware roadways when a Level 2 Driving Restriction has been activated, except for persons designated as essential personnel including operators of snow removal equipment employed or contracted by a public or private entity. “Essential personnel” for purposes of this subsection shall mean those employees and/or personnel who are necessary to maintain the core functions of a government body or entity, and to maintain the health and safety of the people in Delaware by providing services provided by public utilities as defined in § 102(2) of Title 26, health-care services, and food and fuel deliveries during a state of emergency, regardless of whether they are employed by a public or private entity. A waiver from a Level 2 Driving Restriction may be granted when a significant safety, health or business necessity is shown for issuing such a waiver. The Secretary of the Department of Safety and Homeland Security shall promulgate rules and regulations necessary to carry out the provisions of this subsection. An employer or entity which has not been granted a waiver shall not terminate, reprimand, discipline, or in any way commit any adverse employment action against an employee who, as a result of the activation of the a Level 2 Driving Restriction, fails or refuses to report to work during the pendency of the driving restriction. Any person or entity who violates an activated level 2 driving restriction under this subsection shall be in violation of § 4176D of Title 21.

c. [Repealed.]

The Governor may issue separate levels of driving restrictions throughout the State based on the severity of conditions in any given area within the State; and

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

(c) During an emergency or disaster:

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

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

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

### **§ 3117 Activation of emergency or disaster response.**

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

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

## **Subchapter IV**

### **Miscellaneous Provisions**

#### **§ 3121 Orders, rules and regulations.**

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

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

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

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

## § 3122 Enforcement.

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

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

## § 3122A Delaware State Police Ready Reserve [Repealed].

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

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

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

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

## § 3124 Political activity.

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

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

## § 3125 Penalties.

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

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

## § 3126 Laws suspended during emergencies or disasters.

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

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

## § 3127 Conflict with other laws.

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

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

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

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

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

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

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

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

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

(1) Acting with the state of mind that is sufficient for commission of the offense, such person causes an innocent or irresponsible person to engage in conduct constituting the offense; or

(2) Intending to promote or facilitate the commission of the offense that person:

a. Solicits, requests, commands, importunes or otherwise attempts to cause the other person to commit it; or

b. Aids, counsels or agrees or attempts to aid the other person in planning or committing it; or

c. Having a legal duty to prevent the commission of the offense, fails to make a proper effort to do so.

(e) In any prosecution for an offense under this section in which the criminal liability of the accused is based upon the conduct of another person pursuant to this section, it is no defense that:

(1) The other person is not guilty of the offense in question because of irresponsibility or other legal incapacity or exemption or because of unawareness of the criminal nature of the conduct in question or of the accused's criminal purpose or because of other factors precluding the mental state required for the commission of the offense; or

(2) The other person has not been prosecuted for or convicted of any offense based on the conduct in question or has previously been acquitted thereof or has been convicted of a different offense or in a different degree or has legal immunity from prosecution for the conduct in question.

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

### **§ 3129 Immunity from civil liability.**

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

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

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

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

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

### **§ 3130 Construction of chapter.**

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

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

## **Subchapter V**

### **Public Health Emergencies**

### **§ 3131 Findings.**

The State finds as follows:

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

- (2) New and emerging dangers, including emergent and resurgent infectious diseases and incidents of civilian mass casualties, pose serious and immediate threats.
  - (3) A renewed focus on the prevention, detection, management and containment of public health emergencies is called for.
  - (4) Emergency health threats, including those caused by bioterrorism and epidemics, require the exercise of extraordinary government functions.
  - (5) Delaware must have the ability to respond, rapidly and effectively, to potential or actual public health emergencies.
  - (6) The exercise of emergency health powers must promote the common good.
  - (7) Emergency health powers must be grounded in a thorough scientific understanding of public health threats and disease transmission.
  - (8) The rights of people to liberty, bodily integrity and privacy must be respected to the fullest extent possible consistent with the overriding importance of the public's health and security.
  - (9) Guided by principles of justice, it is the duty of this State to act with fairness and tolerance towards individuals and groups.
  - (10) This subchapter is necessary to protect the health and safety of the citizens of this State.
- (73 Del. Laws, c. 355, § 13.)

### § 3132 Definitions.

The following terms shall have the indicated meanings when used in this subchapter.

- (1) "Bioterrorism" is the intentional use of any microorganism, virus, infectious substance or biological product that may be engineered as a result of biotechnology or any naturally occurring or bioengineered component of any such microorganism, virus, infectious substance or biological product to cause death, disease or other biological malfunction in a human, an animal, a plant or another living organism in order to influence the conduct of government or to intimidate or coerce a civilian population.
- (2) "Chain of custody" means the methodology of tracking specimens for the purpose of maintaining control and accountability from initial collection to final disposition of the specimens and providing for accountability at each stage of collecting, handling, testing, storing and transporting the specimens and reporting test results.
- (3) "Contagious disease" is an infectious disease that can be transmitted from person to person, animal to person, or insect to person.
- (4) "Health care provider" means any person or entity who provides health care services, including, but not limited to, hospitals, medical clinics and offices, special care facilities, medical laboratories, physicians, pharmacists, dentists, physician assistants, nurse practitioners, registered and other nurses, paramedics, emergency medical or laboratory technicians, and ambulance and emergency medical workers.
- (5) "Infectious disease" is a disease caused by a living organism or other pathogen, including a fungus, bacillus, parasite, protozoan or virus. An infectious disease may or may not be transmissible from person to person, animal to person, or insect to person.
- (6) "Infectious waste" means:
  - a. "Biological waste," which includes blood and blood products, excretions, exudates, secretions, suctioning and other body fluids, and waste materials saturated with blood or body fluids;
  - b. "Cultures and stocks," which includes etiologic agents and associated biologicals, including specimen cultures and dishes and devices used to transfer, inoculate and mix cultures, wastes from production of biologicals and serums, and discarded live and attenuated vaccines;
  - c. "Pathological waste," which includes biopsy materials and all human tissues, anatomical parts that emanate from surgery, obstetrical procedures, autopsy and laboratory procedures, and animal carcasses exposed to pathogens in research and the bedding and other waste from such animals, but does not include teeth or formaldehyde or other preservative agents; and
  - d. "Sharps," which includes needles, IV tubing with needles attached, scalpel blades, lancets, breakable glass tubes, and syringes that have been removed from their original sterile containers.
- (7) "Isolation" is the physical separation and confinement of an individual or group of individuals who are infected or reasonably believed to be infected with a contagious or possibly contagious disease from nonisolated individuals to prevent or limit the transmission of the disease to nonisolated individuals.
- (8) "Mental health support personnel" includes, but is not limited to, psychiatrists, psychologists, social workers and volunteer crisis counseling groups.
- (9) "Protected health information" means any information, whether oral, written, electronic, visual, pictorial, physical or any other form, that relates to an individual's past, present or future physical or mental health status, condition, treatment, service, products purchased, or provision of care and that reveals the identity of the individual whose health care is the subject of the information, or about which there is a reasonable basis to believe such information could be utilized (either alone or with other information that is or should reasonably be known to be available to predictable recipients of such information) to reveal the identity of that individual.
- (10) "Public health authority" means the Secretary of Health and Social Services or such person as the Secretary may designate with the Governor's consent.

- (11) A “public health emergency” is an occurrence or imminent threat of an illness or health condition that:
- a. Is believed to be caused by any of the following:
    1. Bioterrorism;
    2. The appearance of a novel or previously controlled or eradicated infectious agent or biological toxin; or
    3. A chemical attack or accidental release;

and

- b. Poses a high probability of any of the following harms:
  1. A large number of deaths in the affected population;
  2. A large number of serious or long-term disabilities in the affected population; or
  3. Widespread exposure to an infectious or toxic agent that poses a significant risk of substantial future harm to a large number of people in the affected population.

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

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

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

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

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

### **§ 3133 Control of health-care supplies.**

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

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

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

(2) [Repealed.]

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

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

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

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

### **§ 3134 Destruction of property.**

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

(73 Del. Laws, c. 355, § 13.)

### **§ 3135 Medical examination and testing during public health emergency.**

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

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

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

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

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

### § 3136 Isolation and quarantine during public health emergency.

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

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

- a. To establish and maintain places of isolation and quarantine;
- b. To isolate and quarantine individuals subject to the procedures enumerated in this section; and
- c. To require isolation or quarantine of any person by the least restrictive means necessary to protect the public health, subject to the other provisions of this section. All reasonable means shall be taken to prevent the transmission of infection among the isolated or quarantined individuals.

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

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

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

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

c. The health status of isolated and quarantined individuals must be monitored regularly to determine if their status should change.

If a quarantined individual subsequently becomes infected or is reasonably believed to have become infected with a contagious or possibly contagious disease, the individual must promptly be moved to isolation.

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

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

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

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

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

1. The identity of the individual or group of individuals subject to isolation or quarantine;
2. The premises subject to isolation or quarantine;
3. The date and time at which the public safety authority request isolation or quarantine to commence;
4. The suspected contagious disease, if known;
5. A statement of compliance with the conditions and principles for isolation and quarantine; and
6. A statement of the basis upon which isolation or quarantine is justified.
7. A statement of what effort, if any, has been made to give notice of the hearing to the individual or group of individuals to be isolated or quarantined, or the reason supporting the claim that notice should not be required.

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

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

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

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

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

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

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

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

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

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

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

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

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

### **§ 3137 Vaccination and treatment during public health emergency.**

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

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

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

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

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

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

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

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

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

(73 Del. Laws, c. 355, § 13.)

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

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

(1) All specimens shall be clearly marked.

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

(3) Any person authorized to collect specimens or perform tests shall use chain of custody procedures to ensure proper record keeping, handling, labeling and identification of specimens to be tested. This requirement applies to all specimens, including specimens collected using on-site testing kits.

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

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

(73 Del. Laws, c. 355, § 13.)

### **§ 3139 Confidentiality of medical information.**

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

(73 Del. Laws, c. 355, § 13.)

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

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

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

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

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

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

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

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

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

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

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

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

### § 3141 Public Health Emergency Planning Commission.

The Public Health Emergency Planning Commission (“the Commission”) shall consist of the following voting members, or a member’s designee:

- (1) The Governor;
- (2) The Speaker of the House of Representatives;
- (3) The President Pro Tempore of the Senate;
- (4) The Secretary of Health and Social Services;
- (5) The Secretary of Public Safety;
- (6) The Secretary of the Department of Natural Resources and Environmental Control;
- (7) The Secretary of Agriculture;
- (8) The Adjutant General of the Delaware National Guard;
- (9) The Chief Justice of the Delaware Supreme Court;
- (10) The Director of the Delaware Emergency Management Agency;
- (11) The Governor’s Homeland Security Advisor;
- (12) A representative of the Delaware medical community;
- (13) The Attorney General; and
- (14) A physician who is board-certified in emergency medicine and licensed to practice in this State.

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

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

### § 3142 Public health emergency plan.

(a) The Commission shall, by October 3, 2002, deliver to the Governor a plan for responding to a public health emergency that includes provisions for the following:

- (1) A means of notifying and communicating with the population during a state of public health emergency in compliance with this subchapter, including a plan that ensures that 90% of the population is covered by a health alert network;
- (2) Centralized coordination of resources, manpower and services, including coordination of responses by state, local, and federal agencies;
- (3) The location, procurement, storage, transportation, maintenance and distribution of essential materials, including medical supplies, drugs, vaccines, food, shelter and beds, including a plan (with identified personnel to be trained) to receive and distribute critical stockpile items and manage a mass distribution of vaccine and/or antibiotics on a 24 hours a day, 7 days a week basis;
- (4) The continued, effective operation of the judicial system including, if deemed necessary, the identification and training of personnel to serve as emergency judges regarding matters of isolation and quarantine as described in this subchapter;
- (5) The method of evacuating populations and housing and feeding the evacuated populations;
- (6) The identification and training of health care providers to diagnose and treat persons with infectious diseases, including a review of statutes, regulations and ordinances that provide for credentialing, licensure and delegation of authority for executing emergency public health measures;
- (7) Guidelines for the vaccination of persons in compliance with the provisions of this subchapter;
- (8) Guidelines for the treatment of persons who have been exposed to or who are infected with diseases or health conditions caused by bioterrorism, epidemic or pandemic disease, or novel and highly fatal infectious agents or biological toxins that pose a substantial risk of a significant number of fatalities or incidents of permanent or long-term disability. The guidelines should cover, but not be limited to, the following diseases: anthrax, botulism, smallpox, plague, tularemia and viral hemorrhagic fevers;
- (9) Guidelines for the safe disposal of human remains, in compliance with the provisions of this subchapter;
- (10) Guidelines for the safe disposal of infectious waste, in compliance with the provisions of this subchapter;
- (11) Guidelines for the safe and effective management of persons isolated, quarantined, vaccinated or treated during a state of public health emergency;
- (12) Tracking the source and outcomes of infected persons, including a plan to receive and evaluate urgent disease reports from all parts of the State on a 24 hour a day, 7 days a week basis;
- (13) Ensuring that each county and city within the State identifies the following:
  - a. Sites where persons can be isolated or quarantined, with such sites complying with the provisions of this subchapter regarding the least restrictive means for isolation and quarantine and the requirements for the safety, health and maintenance of personal dignity of those isolated or quarantined;

- b. Sites where medical supplies, food and other essentials can be distributed to the population;
  - c. Sites where emergency workers can be housed and fed;
  - d. Routes and means of transportation of people and materials;
  - (14) Coordination with other states and the federal government;
  - (15) Taking into account cultural norms, values and traditions that may be relevant;
  - (16) Distribution of this plan and guidelines to those who will be responsible for implementing the plan;
  - (17) Development of a plan to improve working relationships and communications between Level A (clinical) and Level B/C laboratories (i.e., Laboratory Response Network laboratories) as well as other public health officials;
  - (18) Development of a plan for communication systems that provide for a 24 hour a day, 7 day a week flow of critical health information between hospital emergency departments, state and local health officials, and law enforcement;
  - (19) Development of a plan to enhance risk communication and information dissemination to educate the public regarding exposure risks and effective public response;
  - (20) Locating and procuring all funds, if any, that are available to the State from every federal agency to assist the State in its preparation for a public health emergency; and
  - (21) Other measures necessary to carry out the purposes of this subchapter.
- (b) The Commission shall review its plan for responding to a public health emergency every 2 years.
- (c) The Commission's plan shall serve as a statewide plan and a regional plan with respect to federal bioterrorism requirements.
- (d) Persons responsible for implementing the Commission's plan must receive appropriate and timely training, and the Commission's plan must be tested on a regular basis.
- (e) The Commission shall establish a hospital biopreparedness planning subcommittee, whose composition shall include representation from DEMA, the Department of Health and Social Services, the medical community and local emergency medical services.
- (73 Del. Laws, c. 355, § 13.)

### **§ 3143 Rules and regulations.**

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

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

### **§ 3144 Liability.**

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

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

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

(73 Del. Laws, c. 355, § 13.)

### **§ 3145 Compensation.**

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

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

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

(73 Del. Laws, c. 355, § 13.)

### **§ 3146 Saving clause.**

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

(73 Del. Laws, c. 355, § 13.)

### **§ 3147 Conflicting laws.**

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

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

(73 Del. Laws, c. 355, § 13.)

### **§§ 3148-3150 [Reserved.]**