Legislative Council,
General Assembly
State of Delaware

Title 19

Labor

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Part I
General Provisions

Chapter 1
Department of Labor

§ 101. Definitions; exclusions.

(a) As used in this chapter:

(1) "Board" means the Industrial Accident Board.

(2) "Department" means the Department of Labor.

(3) "Employer" includes any person, excepting those provided for in subsection (b) of this section, acting directly or indirectly in the interest of any employer in relation to any employee but shall not include the United States or the State or any political subdivision thereof.

(4) "Person" means an individual, partnership, association, corporation, statutory trust, business trust, legal representative or any organized group of persons.

(5) "Secretary" or "Secretary of Labor" shall mean the Secretary of Labor or the Secretary's authorized designee, provided, that any such delegation of authority is consistent with Chapter 85 of Title 29.

(b) Persons in the following occupations, and employers of persons engaged in these occupations to the extent thereof, shall not be within the scope of this chapter and are specifically excepted from all the provisions of this chapter: Baby-sitting, domestic help, agriculture, fishing and hunting.

(19 Del. C. 1953, § 101; 53 Del. Laws, c. 259; 57 Del. Laws, c. 669, § 1A; 70 Del. Laws, c. 186, § 1; 73 Del. Laws, c. 329, § 64.)

§ 102. Office; hearings.

The Department shall keep such suitable office as shall best meet the convenience of the Department and the public. The Department or its authorized representative may hold hearings at any place within the State that the convenience of the Department and of the parties in interest may require.

(19 Del. C. 1953, § 103; 53 Del. Laws, c. 259; 57 Del. Laws, c. 669, § 1B.)

§ 103. Regulation of child labor.

The Secretary of Labor may visit and inspect at any time any establishment in this State to ascertain whether any children are employed therein contrary to Chapter 5 of this title, and the Secretary shall make complaint against and shall prosecute any person violating such chapter.

(19 Del. C. 1953, § 109; 53 Del. Laws, c. 259; 57 Del. Laws, c. 604, § 1; 57 Del. Laws, c. 669, § 1C.)

§ 104. Preparation of certificates, papers and abstracts.

The Department shall formulate and have printed certificates and papers required in the issuing of employment certificates and the abstracts of the law relating to the hours of child labor and conditions and hours of females in this State.

(19 Del. C. 1953, § 111; 53 Del. Laws, c. 259; 70 Del. Laws, c. 186, § 1.)

§ 105. Duties and powers of the Department; fees; Department of Labor Research Fund.

(a) In addition to such other duties and powers which may be conferred upon it by law, the Department may:

(1) Administer all labor laws in this State;

(2) Direct to the attention of the Attorney General of this State, with a request for the necessary enforcement action, all violations under the terms of this chapter;

(3) Collect, compile and analyze statistical information with respect to, and report upon the conditions of, labor generally, and upon all matters relating to the enforcement and effect of this chapter;

(4) Collect fees for research activities it conducts pursuant to this section, the amounts of said fees to approximate and reasonably reflect the costs of such activities;

(5) Propose to the Industrial Accident Board such rules or changes in rules as may be deemed advisable, either procedural or substantive;

(6) Do all in its power to promote the voluntary arbitration, mediation and conciliation of disputes between employers and employees; provided, however, that neither the Department nor any of its representatives shall have the authority, under either this section or §§ 110 and 111 of this title, to make any public recommendation for the settlement of any specific labor dispute, or to make any public statement as to the merits of such dispute, prior to the final settlement thereof;

(7) Promote voluntary apprenticeship through cooperation with the United States Department of Labor;

(8) Make, amend and repeal regulations necessary for the internal administration of the Department, and for the proper conduct of any necessary hearings before the Department or its authorized agents. The members of the Department shall not be bound by technical rules of evidence in the conduct of such hearings.

(b) Any fees collected by the Department of Labor for its research service shall be paid into the State Treasury and the State Treasurer shall deposit the same to the credit of a special fund, entitled "Department of Labor Research Fund," from which necessary expenses of the Department of Labor shall be paid for analyses of labor force, employment, unemployment and occupational and industrial change upon proper vouchers signed by the Secretary of the Department of Labor. The Department of Labor Research Fund shall be a revolving fund and no funds deposited therein shall revert to the General Fund of the State Treasury, except for funds appropriated by the 135th General Assembly to begin said Fund, which funds shall be paid back to the State Treasurer out of the Department of Labor's Research Fund on or before June 30, 1992. The Department of Labor shall annually, on or before January 31, make a report to the Governor of all income and expenditures made from said Fund. A copy of said reports shall be given biennially, on or before January 31, to the members of the General Assembly.

(19 Del. C. 1953, § 112; 53 Del. Laws, c. 259; 67 Del. Laws, c. 448, § 1.)

§ 106. Rules relating to accidents and industrial diseases.

(a) The Department may make, modify and repeal rules for the prevention of accidents or of industrial or occupational diseases in every employment or place of employment or such rules for the construction, repair and maintenance of places of employment as shall render them safe. Such rules when made shall have the force and effect of law and shall be enforced in the same manner as this chapter.

(b) Before any rule is adopted, amended or repealed, there shall be a public hearing thereon, notice of which shall be published at least once, not less than 10 days prior thereto, in such newspaper or newspapers as the Department may prescribe. All rules and all amendments and repeals thereof shall, unless otherwise prescribed by the Department, take effect 30 days after the first publication thereof and shall be filed in the office of the Secretary of State.

(c) Every rule adopted and every amendment or repeal thereof shall be published in such manner as the Department may determine and a copy shall be delivered to every person making application therefor. The text of each rule, or amendment thereto, shall be included in an appendix to the annual report of the Department next following the adoption or amendment of such rule.

(d) If there should be practical difficulties or unnecessary hardship in carrying out a rule of the Department made pursuant to this section, the Department may, after public hearing, make variation from such requirement if the spirit of the rule and law shall be observed. Any person affected by such rule, or that person's agent, may petition the Department for such variation stating the grounds therefor. The Department shall fix a day for a hearing on such petition and give reasonable notice thereof to the petitioner. A properly indexed record of all variations made shall be kept in the office of the Department and shall be open to public inspection.

(e) Any person aggrieved by a rule made pursuant to this section may petition the Department for a review of the reasonableness or validity of such rule. The Department may join in 1 proceeding all petitions alleging invalidity or unreasonableness of the same rule. The Department may order a hearing if necessary to determine the issues raised. Notice of the time and place of hearing shall be given to the petitioner and to such other persons as the Department may determine. The decision of the Department shall be final unless, within 30 days after the decision is filed with the Department, one of the parties commences an action as provided in § 109 of this title.

(f) In the formulation of rules and regulations under this section the Department shall seek the advice of the Industrial Accident Board.

(19 Del. C. 1953, § 113; 53 Del. Laws, c. 259; 70 Del. Laws, c. 186, § 1.)

§ 107. Inspection of records; duty to furnish information.

(a) The members of the Department and its authorized representatives may enter at reasonable times, so as not to unduly hinder the conduct of the business, any place of employment for the purpose of inspecting records and collecting facts and statistics relating to the employment of workers and of making inspections for the proper enforcement of all labor laws of the State. No employer or owner shall refuse to admit the members of the Department, or its authorized representatives, to the employer's or owner's place of employment, provided the admission requested is not at an unreasonable time.

(b) Any person who hinders or delays the members of the Department, or its authorized representatives in the performance of their duties, in the enforcement of this chapter or any law which it is the power or duty of the Department to enforce; or who refuses to admit, at reasonable times, the members of the Department, or its authorized representatives to any place of employment; or who fails to give information lawfully required for the proper enforcement of any law, upon demand of the members of the Department, or its authorized representatives; and any employer who fails or refuses to make records relating to the employment of workers accessible, or who falsifies such records or who refuses to furnish a sworn statement thereof, upon demand of the Department or its authorized representatives, shall be deemed to have violated this section.

(19 Del. C. 1953, § 114; 53 Del. Laws, c. 259; 70 Del. Laws, c. 186, § 1.)

§ 108. Power as to witnesses; seal; evidence; procedure.

The Department, and any officer of the Department designated by the Department, in the performance of any duty or the execution of any power prescribed by law, may administer oaths, certify to official acts, take and cause to be taken depositions of witnesses, issue

subpoenas, compel the attendance of witnesses and the production of papers, books, accounts, payrolls, documents, records and testimony. In case of failure of any person to comply with any subpoena lawfully issued, or on the refusal of any witness to testify to any matter regarding which the witness may be lawfully interrogated, the Department may request the Attorney General of this State to prosecute such person before the Superior Court of this State. If such person shall be found guilty that person shall be deemed to have been in contempt of that Court and shall be punished by that Court in the same fashion as that Court punishes any contempt thereof.

(19 Del. C. 1953, § 115; 53 Del. Laws, c. 259; 57 Del. Laws, c. 669, § 1B; 70 Del. Laws, c. 186, § 1.)

§ 109. Review of rules by Superior Court.

Any person whose interest is affected thereby may commence an action in the Superior Court of this State, in any of the 3 counties against the Department as defendant to determine the reasonableness and validity of any rule made pursuant to § 106 of this title, provided that no such action may be brought except as an appeal from the determination of the Department and within the time for such appeal, both as provided in § 106(e) of this title. Such action and pleadings thereon shall be governed by the laws and rules of practice applicable to other civil actions.

(19 Del. C. 1953, § 116; 53 Del. Laws, c. 259.)

§ 110. Declaration of policy as to labor disputes.

It is declared as the public policy of this State that the best interests of the people of the State are served by the prevention or prompt settlement of labor disputes; that strikes and lockouts and other forms of industrial strife, regardless where the merits of the controversy lie, are forces productive ultimately of economic waste; that the interests and rights of the consumers and the people of the State, while not direct parties thereto, should always be considered, respected and protected; and that the voluntary mediation of such disputes under the guidance and supervision of a governmental agency will tend to promote permanent industrial peace and the health, welfare, comfort and safety of the people of the State. To carry out such policy, the necessity for the enactment of this chapter is declared as a matter of legislative determination.

(19 Del. C. 1953, § 117; 53 Del. Laws, c. 259.)

§ 111. Labor disputes; powers and duties of Secretary.

(a) Upon the Secretary's own motion, in an existing, imminent or threatened labor dispute, the Secretary may, and, upon the request of the parties or either party to the dispute, the Secretary must take such steps as the Secretary may deem expedient to effect a voluntary, amicable and expeditious adjustment and settlement of the differences and issues between employer and employees which have precipitated or culminated in or threaten to precipitate or culminate in such labor dispute. To this end, it shall be the duty of the Secretary to:

(1) Arrange for, hold, adjourn or reconvene a conference or conferences between the disputants or 1 or more of their representatives or any of them;

(2) Invite the disputants or their representatives or any of them to attend such conference and submit, either orally or in writing, the grievances of and differences between the disputants;

(3) Discuss such grievances and differences with the disputants and their representatives; and

(4) Assist in negotiating and drafting agreements for the adjustment in settlement of such grievances and differences and for the termination or avoidance, as the case may be, of the existing or threatened labor dispute.

In carrying out any of its work under this chapter, the Secretary may designate 1 of the members of the Department or an employee of the Department to act in the Secretary's own behalf and may delegate to such designee 1 or more of the Secretary's duties under this section and, for such purpose, such designee shall have all of the powers conferred by this section upon the Secretary in connection with the discharge of the duty or duties so delegated.

(b) The Secretary may also appoint and designate other persons or groups of persons to act for and on the Secretary's behalf and may delegate to such persons or groups of persons any and all of the power conferred upon the Secretary by this chapter so far as it is reasonably necessary to effectuate the purposes of this chapter. Such persons shall serve without compensation but shall be reimbursed for any necessary expenses.

(19 Del. C. 1953, § 120; 53 Del. Laws, c. 259; 57 Del. Laws, c. 669, § 1D; 70 Del. Laws, c. 186, § 1.)

§ 112. Strike rights not to be impeded.

Nothing in this chapter shall be construed to interfere with, impede or diminish in any way the right of employees to strike or engage in other lawful concerted activities.

(19 Del. C. 1953, § 122; 53 Del. Laws, c. 259.)

§ 113. Rules for mediation of labor disputes.

The Secretary may adopt, alter, amend or repeal such rules in connection with the voluntary mediation of labor disputes as may be necessary for the proper administration and enforcement of this chapter.

(19 Del. C. 1953, § 123; 53 Del. Laws, c. 259; 57 Del. Laws, c. 669, § 1D.)

§ 114. Chapter does not diminish constitutional rights.

Nothing contained in this chapter shall be construed as interfering with, impeding or diminishing in any way any right guaranteed by law or by the Constitution of the State or of the United States.

(19 Del. C. 1953, § 124; 53 Del. Laws, c. 259.)

§ 115. Enforcement by Attorney General.

It shall be the duty of the Attorney General of this State upon request of the Department of Labor, or any of its authorized representatives, to prosecute any violation of the law or of any rule which it is made the duty of the Department to enforce; provided the Department may, upon its own initiative, bring all necessary suits and institute such prosecutions as may be necessary properly to enforce this chapter, and shall not be required to give bond for costs or otherwise, in the event of appeal.

(19 Del. C. 1953, § 125; 53 Del. Laws, c. 259; 57 Del. Laws, c. 669, § 1E.)

§ 116. Penalties.

Any person who violates or fails or refuses to comply with §§ 101-115, inclusive, of this title, or any lawful order of the Department or any judgment or decree made by any court in connection with this chapter for which no penalty has been otherwise provided, shall be assessed a civil penalty of not less than $1,000 nor more than $5,000 for each such violation; and each day such violation, omission, failure or refusal continues after notification or entry of the decree of a court shall be deemed a separate violation. A civil penalty claim may be filed in any court of competent jurisdiction.

(19 Del. C. 1953, § 126; 53 Del. Laws, c. 259; 67 Del. Laws, c. 260, § 1; 69 Del. Laws, c. 294, §§ 1, 2.)

§ 117. State and federal cooperation.

The Department may assist and cooperate with the Wage-Hour and Public Contracts Divisions and the United States Department of Labor, in the enforcement within this State of the Fair Labor Standards Act of 1938 [29 U.S.C. § 201 et seq.], approved June 25, 1938, and, subject to the regulations of the Administrator of such Divisions, as the case may be, and the laws of the State applicable to the receipt and expenditures of moneys, may be paid or reimbursed by said Divisions for the reasonable cost of such assistance and cooperation.

(19 Del. C. 1953, § 128; 53 Del. Laws, c. 259.)

Part I
General Provisions
Chapter 2
State Apprentices

§ 201. Declaration of policy.

It is declared to be the policy of this State to:

(1) Encourage the development of an apprenticeship and training system through the voluntary cooperation of management and labor and interested state agencies and in cooperation with other states and the federal government;

(2) Provide for the establishment and furtherance of standards of apprenticeship and training to safeguard the welfare of apprentices and trainees;

(3) Aid in providing maximum opportunities for unemployed and employed persons to improve and modernize their work skills;

(4) Contribute to a healthy economy by aiding in the development and maintenance of a skilled labor force sufficient in numbers and quality to meet the expanding needs of industry and to attract new industry.

(19 Del. C. 1953, § 201; 54 Del. Laws, c. 10.)

§ 202. Powers and duties of Department.

(a) The Department shall carry out the purposes of this chapter and its duties and powers shall include, but shall not be limited to:

(1) Establishing standards for apprenticeship in conformity with this chapter and applicable statutes and regulations of the federal government;

(2) Adopting such rules and regulations as may be necessary to carry out the intent and purpose of this chapter;

(3) Compiling such data on population and employment trends, industrial production, vocational and industrial education and job requirements as may be deemed necessary to carry out the intent and purpose of this chapter;

(4) Studying the effectiveness of apprenticeship programs and making recommendations in accordance with such programs for their improvement and to terminate, cancel or modify any apprenticeship programs in accordance with such programs;

(5) Maintaining close liaison with the Bureau of Apprenticeship and Training, the United States Department of Labor and such other agencies which carry on programs closely related to the purposes of this chapter;

(6) Conducting studies, surveys and investigations of the special problems of retraining or training unemployed or employed persons to improve or modernize work skills and make appropriate recommendations to cooperating agencies described above, local community organizations and local school boards;

(7) Acting as a convening agency in local communities to bring together local representatives of employee organizations, employers, educational agencies and industrial development agencies in order to promote closer local cooperation in establishing better apprenticeship and other training programs including programs for employed persons who wish to improve and modernize their work skills;

(8) Encouragement and promotion of the standards established in accordance with this chapter and with the basic standards of the Bureau of Apprenticeship and Training, United States Department of Labor;

(9) Bringing about the settlement of differences arising out of apprenticeship programs and agreements when the differences cannot be adjusted locally or in accordance with established trade procedure;

(10) Supervision of the execution of agreements and the maintenance of standards;

(11) Registration of apprenticeship programs and agreements;

(12) Keeping a record of apprenticeship agreements and programs and, upon performance thereunder, issuing certificates of completion of apprenticeship;

(13) Encouragement of liaison and cooperation between all private, state and federal agencies concerned with apprenticeship, trade and industrial training;

(14) Promotion of public awareness of apprenticeship and other occupational training;

(15) Keeping a record of the progress of apprenticeship and training programs initiated in accordance with this chapter; and

(16) Performing such other duties as may be necessary to give full effect to this chapter.

(b) No action affecting the status of a program shall be taken by the Department of Labor until an attempt has been made to bring the employees and employer together to settle the problem in conformity with the standards of the Department of Labor.

(19 Del. C. 1953, §§ 204, 206; 54 Del. Laws, c. 10; 57 Del. Laws, c. 669, §§ 7A-7F.)

§ 203. Limitations.

This chapter shall apply only to persons, copartnerships, associations, corporations, political subdivisions, employer associations and organizations or associations of employees as voluntarily elect to conform with its provisions.

(19 Del. C. 1953, § 207; 54 Del. Laws, c. 10.)

§ 204. Training and apprenticeship programs.

(a) The State Department of Labor shall develop and conduct employee training and registered apprenticeship programs, in cooperation with participating appointing authorities and the Department of Human Resources. The Department of Human Resources shall assist appointing authorities in utilizing such programs, and in developing the apprenticeships which are established pursuant to this section.

(b) (1) The Secretary of the Department of Human Resources, in cooperation with the Department of Labor and other participating appointing authorities, shall develop and annually revise a list of employment classifications in the classified service which are appropriate for apprenticeship training by December 31.

(2) For purposes of the craft training requirement under § 6960A of Title 29, the Department of Labor shall maintain a list of crafts for which there are approved and registered craft training programs in this State as follows:

a. An updated list must be published by January 31 each year.

b. At the time of the annual January update, the list must include all of the following:

1. All of the crafts that had 1 or more active Delaware registered apprentices complete their apprenticeship during the previous 2 years.

2. The amount of the payment that satisfies the craft training requirement under § 6960A of Title 29 for each craft. The Secretary of Labor, with the concurrence of the Director of the Office of Management and Budget and the Controller General, shall establish the amount of the payment which shall be the average annual related technical instruction cost. The annual related technical instruction cost is calculated using the cost or tuition for 1 person to attend training for each craft in each adult education division vocational-technical school district offering training for the craft.

(3) The list of approved programs under paragraph (b)(2) of this section may be updated during the year to add craft training programs after a program is approved and registered.

(4) The amount of the payment under paragraph (b)(2)b.2. of this section must be reviewed at least once every 3 years and the review must consider all of the following:

a. The amount of moneys collected.

b. The number of additional programs created.

c. Changes in the cost or tuition for related technical instruction.

d. The number of contractors who have complied with the craft training requirement by making payments.

(c) The Apprenticeship and Training Section of the Department of Labor shall establish procedures for the coordination of programs developed under this section, in cooperation with the Secretary of the Department of Human Resources.

(d) Subject to the approval of the Secretary of the Department of Human Resources and the procedures established by the Apprenticeship and Training Section of the Department of Labor, each participating agency shall determine the location and positions in which apprenticeships are to be established.

(e) The Secretary of Labor shall include in the Secretary's annual report the following:

(1) A review of the development and operation of training and apprenticeship programs.

(2) The current list of apprenticeable classifications.

(3) A summary of the agencies and types of positions involved.

(4) A summary of registered apprenticeships.

(5) The number of persons who applied for apprenticeship positions under this section.

(6) The number of persons who were accepted into the apprenticeship programs established under this section.

(7) The number of persons who successfully completed apprenticeships under this section and the number of persons who failed to complete apprenticeships under this section.

(8) The number of persons who remain employed after successfully completing apprenticeships.

(9) A summary of other training programs established.

(10) A summary of characteristics of applicants and participants in the program deemed pertinent by the Secretary of the Department of Human Resources.

(f) Nothing in this section may operate to invalidate or supersede a collective bargaining agreement of an employee organization and the State.

(g) The recruitment, selection, and training of apprentice trainees during their apprenticeship shall be without discrimination because of race, color, religion, national origin, or sex. The State will take affirmative action to provide equal opportunity in apprenticeship programs and will operate the training program as required under the State plan for equal employment in apprenticeship and training. For purposes of this subsection:

(1) "Protective hairstyle" includes braids, locks, and twists.

(2) "Race" includes traits historically associated with race, including hair texture and a protective hairstyle.

(h) The Department of Labor shall file a report on the development of apprenticeship programs in January, 1986.

(65 Del. Laws, c. 92, § 1; 70 Del. Laws, c. 186, § 1; 75 Del. Laws, c. 88, § 20(5); 81 Del. Laws, c. 66, § 19; 83 Del. Laws, c. 13, § 13; 83 Del. Laws, c. 129, § 1.)

§ 205. Apprenticeship and Training Fund.

(a) A special fund known as the Apprenticeship and Training Fund ("Fund") is established and the State Treasurer shall invest the Fund consistent with the investment policies established by the Cash Management Policy Board. The State Treasurer shall credit interest to the Fund on a monthly basis consistent with the rate established by the Cash Management Policy Board.

(b) The following moneys must be deposited in the Fund:

(1) All payments made under § 6960A of Title 29.

(2) Any other money appropriated or transferred to the Fund by the General Assembly.

(c) The Department of Labor must allocate the money in the Fund at least annually, as follows:

(1) Twenty percent, after administrative costs, to the Apprenticeship and Training Section of the Department of Labor to do any of the following:

a. To promote and increase education and public awareness about registered apprenticeship and other occupational training.

b. To support pre-apprenticeship programs.

(2) Eighty percent, after administrative costs, to the Department of Education to support the related technical instruction of registered apprenticeship programs, including new areas of technical instruction for crafts that are in-demand by employers in this State, and to support pre-apprenticeship programs. The Department of Education shall disperse money from this Fund for the same purposes as other appropriations for adult trade extension and apprenticeship programs.

(3) No more than 15% of the money annually deposited into the Fund may be used for administering this Fund.

(d) Money in the Fund may not be used to supplant existing state funding.

(e) Notwithstanding paragraph (c)(3) of this section, money appropriated by the General Assembly to implement this section may be reimbursed from money received under this section.

(83 Del. Laws, c. 129, § 2.)

Part I
General Provisions

Chapter 4
Union Security Agreements.

§ 401. Statement of policy.

It is the declared policy of the State and the purpose of this chapter to encourage a harmonious and cooperative relationship between employers and their employees by allowing private sector labor organizations and employers to enter into union security agreements to the full extent allowed under the National Labor Relations Act, 29 U.S.C. § 164(b).

(81 Del. Laws, c. 286, § 1.)

§ 402. Definitions.

For the purposes of this chapter:

(1) “Employer” means any person employing employees within the State, but does not include the United States or the State or any political subdivision of the State.

(2) “Labor organization” means as defined in § 710 of this title.

(81 Del. Laws, c. 286, § 1.)

§ 403. Requirement of membership in labor organization as condition of employment.

An employer or labor organization may execute and apply an agreement requiring membership in a labor organization as a condition of employment, to the full extent allowed by federal law.

(81 Del. Laws, c. 286, § 1.)

Part I
General Provisions

Chapter 5
Child Labor

§ 501. Applicability of chapter.

This chapter shall apply to any place, establishment or occupation within this State where work is done for compensation of any kind, to whomever payable, except as otherwise specified in this chapter.

Nothing in this chapter shall prevent children of any age from receiving industrial education furnished by the United States, the State or any city or town in the State, which is duly approved by a school board or committee or other duly constituted public authority.

Nothing in this chapter shall prevent children of any age from performing nonhazardous work as ordered by the Family Court as a condition of probation.

(27 Del. Laws, c. 176, §§ 1-4, 37; Code 1915, §§ 3144, 3170, 3171; 29 Del. Laws, c. 232; 37 Del. Laws, c. 238; Code 1935, §§ 3601, 3628, 3629; 19 Del. C. 1953, § 501; 57 Del. Laws, c. 669, § 6A; 63 Del. Laws, c. 198, § 1; 68 Del. Laws, c. 173, § 1.)

§ 502. Definitions.

As used in this chapter, the following words have the meanings indicated:

(1) "Department" or "Department of Labor" means the Department of Labor of the State.

(2) "Employ," "employed," or "employment" means to suffer or permit to work, but does not include:

a. Farm work performed on a farm in a nonhazardous occupation;

b. Domestic work performed in or about a private home;

c. Work performed in a business owned by a parent or one legally standing in the place of a parent in a nonhazardous occupation;

d. Work performed by nonpaid volunteers in a charitable or non-profit organization with the written consent of a parent or one legally standing in the place of a parent;

e. Work performed for operations primarily devoted to equine activities with the written consent of a parent or one legally standing in the place of a parent;

f. Caddying on a golf course;

g. Delivery of newspapers to the consumer;

h. Employment of a graduate of an accredited school who is employed in a hazardous occupation in which a course of study has been completed but only to the extent that said hazardous occupation would otherwise be prohibited;

i. Hazardous work performed by nonpaid volunteers of a volunteer fire department or company or volunteer rescue squad who have completed or are taking a course of study relating to firefighting or rescue and who are 14 years of age or older; or

j. Any child over the age of 14 years who may be employed, permitted or suffered to work in any nonhazardous occupation in any facility used for the purpose of canning or preserving, or preparation for canning or preserving, perishable fruits and vegetables.

With respect to paragraphs (2) i. and j. of this section, the burden of proving a child's age to be 14 years or over shall be on the employer, who shall be required by the Department of Labor to present documentary proof of the child's age;

(3) "Hazardous occupation" means an occupation declared to be dangerous by this chapter, by the Secretary of Labor of the State or by the Secretary of Labor of the United States pursuant to the provisions of the Fair Labor Standards Act [29 U.S.C. § 201 et seq.]; and

(4) "Minor" means a person under the age of 18 years;

(5) "Secretary" means the Secretary of Labor for the State or the Secretary's authorized representative.

(68 Del. Laws, c. 173, § 1; 70 Del. Laws, c. 186, § 1; 80 Del. Laws, c. 249, § 1.)

§ 503. Powers and duties of Secretary.

(a) The Secretary or the Secretary's authorized representative shall enforce the provisions of this chapter.

(b) The Secretary or the Secretary's authorized representative may enter and inspect, during reasonable business hours, any place of employment and may examine the employment records of any employee and question any employee for the purpose of enforcing the provisions of this chapter.

(c) The Secretary or the Secretary's designee may hold public hearings to determine if additional occupations exist in which employment of minors should be prohibited.

(d) In the event of an emergency or major disaster, the Secretary is authorized, with the consent of the Governor, to suspend temporarily the enforcement of any or all of the provisions of this chapter for the duration of the emergency or major disaster.

(27 Del. Laws, c. 176, § 38; Code 1915, § 3168; 29 Del. Laws, c. 232; Code 1935, § 3626; 19 Del. C. 1953, § 531; 57 Del. Laws, c. 669, § 6B; 66 Del. Laws, c. 117, §§ 1, 2; 68 Del. Laws, c. 173, § 1; 70 Del. Laws, c. 186, § 1.)

§ 504. Employment certificates.

(a) A minor shall not engage in employment unless the employer has in the employer's possession a verified and validated employment certificate for the minor. The employer shall keep the certificate on file at all times and make it accessible to the Department of Labor upon request.

(b) The superintendent of each school district or the superintendent's authorized designee and the Department of Labor shall issue work permits as prescribed by the Secretary. The person designated to do so by each superintendent shall be an employee employed by the school on a 12-month or complete calendar year basis. If the superintendent of a school district fails or refuses to designate some person to issue employment certificates, the Director of the Division of Industrial Affairs shall designate some person to so act. Any designation may be revoked by the Director of the Division of Industrial Affairs at the Director's pleasure.

The Labor Law Enforcement Section of the Department of Labor shall keep a record of all persons who are duly authorized to issue certificates in the various school districts of the State.

(c) The age of a minor shall be verified by a certified copy of a birth certificate, baptismal certificate (showing the date of birth), school record, passport, valid driver's license or any official government document attesting to the age of the minor.

(27 Del. Laws, c. 176, § 7; Code 1915, § 3146; 29 Del. Laws, c. 232; Code 1935, § 3603; 48 Del. Laws, c. 166, § 1; 19 Del. C. 1953, § 541; 51 Del. Laws, c. 39; 57 Del. Laws, c. 669, §§ 6A, 6B; 68 Del. Laws, c. 173, § 1; 70 Del. Laws, c. 186, § 1.)

§ 505. Minors under 14 years of age.

A minor under the age of 14 years shall not be employed or permitted to work.

(68 Del. Laws, c. 173, § 1.)

§ 506. Minors under 16 years of age.

(a) A minor under 16 years of age shall not be employed or permitted to work in, about or in connection with:

(1) Any employment during the prescribed school day;

(2) Any occupation prohibited by the United States Secretary of Labor pursuant to the provisions of the Fair Labor Standards Act [29 U.S.C. § 201 et seq.];

(3) The operation, cleaning or adjusting of any power-driven machinery, appliances or tools, other than office machinery and food or beverage dispensing machines where the moving parts are not exposed to the operator;

(4) Meat slicers;

(5) Deep fat fryers;

(6) Steamers and pressure cookers used in the preparation of food;

(7) Boilers;

(8) Stripping and sorting tobacco;

(9) Construction or demolition projects;

(10) Tunnels or excavations;

(11) Mines, quarries or borrow pits;

(12) Coal breakers or coke ovens; or

(13) Any other occupation which, following a public hearing by the Department of Labor, the Secretary deems to be injurious to the health, safety, welfare or morals of the minor.

(b) Paragraph (a)(1) of this section shall not apply to a minor who has been excused from public school attendance by the public school authorities.

(c) Subsection (a) of this section shall not apply to a minor:

(1) Who is enrolled in a work-study, student-learner or similar program where the employment is an integral part of the course of study, and the employment is procured and supervised by the school district; or

(2) Engaged in the practice of farm labor with adult supervision.

(d) A minor under 16 years of age shall not be employed or permitted to work more than:

(1) Four hours on any day when school is in session;

(2) Eight hours on any day when school is not in session;

(3) Eighteen hours in any week when school is in session for 5 days;

(4) Forty hours in any week when school is not in session; and

(5) Six days in any week.

(e) A minor under 16 years of age shall not be employed or permitted to work before 7:00 a.m. or after 7:00 p.m.; except that a minor under 16 years of age may be employed or permitted to work until 9:00 p.m. during the period each year from June 1 through Labor Day.

(f) The hours worked by a minor enrolled in a bona fide work-study or student-learner program when school is normally in session shall not be counted towards the permissible hours of work prescribed in subsection (d) of this section.

(68 Del. Laws, c. 173, § 1.)

§ 507. Minors under 18 years of age.

(a) A minor under 18 years of age shall not be employed or permitted to work in, about or in connection with:

(1) Any occupation prohibited by the United States Secretary of Labor pursuant to the provisions of the Fair Labor Standards Act [29 U.S.C. § 201 et seq.];

(2) Blast furnaces;

(3) Docks or wharves, other than marinas where pleasure boats are sold or serviced;

(4) Railroads;

(5) The erection and/or repair of electrical wires;

(6) Distilleries where alcoholic beverages are manufactured, bottled, labelled, wrapped or packaged;

(7) The manufacturing of dangerous or toxic chemicals or compounds;

(8) Any other occupation which the Secretary deems injurious to the health, safety, welfare or morals of the minor;

(9) Any occupation as a pilot, firefighter or engineer on any vessel or boat engaged in commerce; or

(10) Any occupation as a messenger for a telegraph, telephone or messenger company in the distribution, delivery, collection or transmission of goods or messages before 6:00 a.m. or after 10:00 p.m. of any day in any town or city having a population of over 20,000 persons.

(b) Subsection (a) of this section shall not apply to a minor under 18 years of age who is enrolled in a work-study, student-learner, apprenticeship or similar program where the employment is an integral part of the course of study, and the employment is procured and supervised by the school system or by a federal or state monitored apprenticeship program.

(c) A minor under 18 years of age shall not spend more than 12 hours in a combination of school hours and work hours per day.

(d) A minor under 18 years of age shall have at least 8 consecutive hours of nonwork, nonschool time each 24-hour day.

(e) A minor under 18 years of age shall not be employed or permitted to work more than 5 hours continuously without a nonworking period of at least one half hour.

(27 Del. Laws, c. 176, §§ 2-5, 8; Code 1915, §§ 3145, 3148; 29 Del. Laws, c. 232; 33 Del. Laws, c. 202; Code 1935, §§ 3602, 3605; 19 Del. C. 1953, § 512; 57 Del. Laws, c. 669, § 6A; 68 Del. Laws, c. 173, § 1; 70 Del. Laws, c. 186, § 1.)

§ 508. Special permit for model, performer or entertainer.

(a) Except as provided in subsection (b) of this section, no child under 16 years of age shall be employed, permitted or suffered to work for compensation of any kind as a model, performer or entertainer upon the stage of any theater or concert hall or in connection with any theatrical performance or other exhibition or show.

(b) The Department of Labor may issue a permit allowing a child under the age of 16 years to be employed as a model, performer or entertainer for a limited period, when, in its opinion, such permit is justified by the evidence presented to it.

(27 Del. Laws, c. 176, § 5; Code 1915, § 3147; 29 Del. Laws, c. 232; Code 1935, § 3604; 19 Del. C. 1953, § 514; 57 Del. Laws, c. 669, § 6B; 68 Del. Laws, c. 173, § 1.)

§ 509. Interference with Department of Labor; employment of minor in violation of this chapter.

(a) It is unlawful to interfere with or hinder the Department of Labor in the performance of its duties under this chapter, or knowingly to give false information to the Department of Labor. Any person who is found to have violated the provisions of this subsection shall be subject to a civil penalty of not less than $1,000 nor more than $5,000 for each such violation.

(b) Any employer who employs or permits a minor to work in violation of any provision of this chapter shall be subject to a civil penalty of up to $10,000 for each such violation.

(c) Any employer who discharges or in any manner discriminates against an employee because the employee:

(1) Has made a complaint or has given information to the Department pursuant to this chapter; or

(2) Has caused to be instituted, or is about to cause to be instituted, any proceeding pursuant to this chapter; or

(3) Has testified, has promised to testify or is about to testify in any proceeding pursuant to this chapter shall be assessed a civil penalty of not less than $1,000 nor more than $5,000 for each violation.

(d) A civil penalty claim may be filed in any court of competent jurisdiction. The Department shall not be required to pay the filing fee or other costs of the action or fees of any nature to file bond or other security of any nature in connection with such action or with proceedings supplementary thereto or as a condition precedent to the availability to the Department of any process in aid of such action or proceedings. The Department shall have the power to join various claimants in 1 preferred claim or lien and, in case of suit, to join them in 1 cause of action.

(27 Del. Laws, c. 176, § 38; Code 1915, § 3168; 29 Del. Laws, c. 232; Code 1935, § 3626; 19 Del. C. 1953, § 531; 57 Del. Laws, c. 669, § 6B; 66 Del. Laws, c. 117, §§ 1, 2; 68 Del. Laws, c. 173, § 1; 69 Del. Laws, c. 294, § 3; 70 Del. Laws, c. 100, §§ 1, 2; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 394, § 1.)

§§ 510-548. [Reserved.]

Part I
General Provisions
Chapter 7
Employment Practices
Subchapter I
General Provisions

§ 701. Order on employer to pay employee's loan carrying excessive interest rate; penalty for payment.

(a) No employer in this State shall knowingly pay any warrant or order due any person for borrowed money where more than the lawful rate of interest has been received or charged for the money borrowed.

(b) Any employer, whether an individual, member of a firm, agent or officer of a corporation, who shall knowingly violate this section shall be subject to a civil penalty of not less than $1,000 nor more than $5,000 for each violation. A civil penalty claim may be filed in any court of competent jurisdiction.

(25 Del. Laws, c. 233, §§ 1-3; Code 1915, § 4129; Code 1935, § 4617; 19 Del. C. 1953, § 702; 57 Del. Laws, c. 137; 67 Del. Laws, c. 260, § 1; 69 Del. Laws, c. 294, § 4.)

§ 702. Payment of wages for railroad employees every 2 weeks.

(a) Every corporation or joint stock association operating a steam, electric or diesel surface railroad or engaged in the sleeping car business and every person carrying on such a business, by lease or otherwise, shall pay to each employee every 2 weeks the wages earned to a day not more than 14 days prior to the date of such payment. This section shall not apply to any person employed in a bona fide executive, administrative or professional capacity.

(b) Every corporation or joint stock association or person carrying on such a business by lease or otherwise who knowingly does not pay the wages of all its or that person's employees in accordance with this section, and the officers of such corporation or joint stock association who knowingly permit a corporation or joint stock association to violate this section by failing to pay the wages of any of its employees, shall be subject to a civil penalty of not less than $1,000 nor more than $5,000 for each violation. A civil penalty claim may be filed in any court of competent jurisdiction.

(19 Del. C. 1953, § 703; 52 Del. Laws, c. 107; 67 Del. Laws, c. 260, § 1; 69 Del. Laws, c. 294, § 5; 70 Del. Laws, c. 186, § 1.)

§ 703. Employment of strike breakers.

(a) It shall be unlawful for any person, firm or corporation, not directly involved in a labor strike or lockout, to recruit any person or persons for employment or to secure or offer to secure for any person or persons any employment, when the purpose of such recruiting, securing or offering to secure employment is to have such persons take the place in employment of employees in an industry where a labor strike or a lockout involving a recognized labor organization exists; provided, that this section shall not apply to the Delaware State Employment Service or the United States Employment Service or to any person, firm or corporation engaged in the production, handling or the processing of agricultural commodities.

(b) Whoever violates this section shall be subject to a civil penalty of not less than $1,000 nor more than $5,000 for each violation. A civil penalty claim may be filed in any court of competent jurisdiction.

(c) No person, firm or corporation recruiting persons for employment shall be subject to the penalties imposed by this section, unless the labor organization involved in said labor strike or lockout gives actual notice to said person, firm or corporation of the existence of said labor strike or lockout.

(19 Del. C. 1953, § 704; 53 Del. Laws, c. 78; 67 Del. Laws, c. 260, § 1; 69 Del. Laws, c. 294, § 6.)

§ 704. Polygraph, lie detector or similar test or examination prohibited as condition of employment or continuation of employment; definitions; jurisdiction; penalty; exclusion.

(a) As used in this section, "person" includes any individual, corporation, partnership, firm, association and the State or any agency or political subdivision thereof, except as noted in subsection (d) of this section.

(b) No person, nor any agent or representative of a person, shall require, request or suggest that any employee or prospective employee take or shall cause, directly or indirectly, any employee or prospective employee to take a polygraph, lie detector or similar test or examination as a condition of employment or continuation of employment.

(c) Whoever violates this section shall be subject to a civil penalty of not less than $1,000 nor more than $5,000 for each violation. A civil penalty claim may be filed in any court of competent jurisdiction.

(d) This section shall not apply to any polygraph, lie detector or similar test or examination administered by any law-enforcement agency in the performance of official duties which shall include police officer applicant background investigations.

(e) As used in this section, the term "lie detector" shall include, but shall not be limited to, any electromechanical device which records or analyzes vocally produced sound frequency variations associated with stress for the purpose of determining the truth of any oral statement.

(f) 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 pursuant to this section, or because the employee has 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 shall be subject to a civil penalty of not less than $1,000 nor more than $5,000 for each violation.

(19 Del. C. 1953, § 705; 55 Del. Laws, c. 357; 62 Del. Laws, c. 95, § 1; 66 Del. Laws, c. 107, §§ 1, 2; 67 Del. Laws, c. 260, § 1; 69 Del. Laws, c. 294, § 7; 70 Del. Laws, c. 186, § 1; 70 Del. Laws, c. 460, § 1.)

§ 705. Notice of monitoring of telephone transmissions, electronic mail and Internet usage.

(a) As used in this section, "employer" includes any individual, corporation, partnership, firm or association with a place of business in Delaware and the State of Delaware or any agency or political subdivision thereof.

(b) No employer, nor any agent or any representative of any employer, shall monitor or otherwise intercept any telephone conversation or transmission, electronic mail or transmission, or Internet access or usage of or by a Delaware employee unless the employer either:

(1) Provides an electronic notice of such monitoring or intercepting policies or activities to the employee at least once during each day the employee accesses the employer-provided e-mail or Internet access services; or

(2) Has first given a 1-time notice to the employee of such monitoring or intercepting activity or policies. The notice required by this paragraph shall be in writing, in an electronic record, or in another electronic form and acknowledged by the employee either in writing or electronically.

The notice required by this subsection shall not apply to activities of any law-enforcement officer acting under the order of a court issued pursuant to Chapter 24 of Title 11.

(c) Whoever violates this section shall be subject to a civil penalty of $100 for each such violation. A civil penalty claim may be filed in any court of competent jurisdiction.

(d) The provisions of this section shall not be deemed to be an exclusive remedy and shall not otherwise limit or bar any person from pursuing any other remedies available under any other law, state or federal statute, or the common law. The violations of this section by an employer shall not be admitted into evidence for the purpose of, or used as, a defense to criminal liability of any person in any Court in this State.

(e) The provisions of this section shall not apply to processes that are designed to manage the type or volume of incoming or outgoing electronic mail or telephone voice mail or Internet usage, that are not targeted to monitor or intercept the electronic mail or telephone voice mail or Internet usage of a particular individual, and that are performed solely for the purpose of computer system maintenance and/or protection.

(73 Del. Laws, c. 148, § 1; 73 Del. Laws, c. 403, §§ 1, 2.)

§ 706. Continuation of labor contracts despite merger or other business combination.

(a) Notwithstanding any other provisions of this Code, no merger, consolidation, sale of assets or business combination shall result in the termination or impairment of the provisions of any labor contract covering persons engaged in employment in this State and negotiated by a labor organization or by a collective bargaining agent or other representative. Notwithstanding such merger, consolidation, sale of assets or business combination, such labor contract shall continue in effect until its termination date or until otherwise agreed by the parties to such contract or their legal successors.

(b) For purposes of this section:

(1) "Business combination" includes any merger, consolidation, joint venture, lease, sale, dividend exchange, mortgage, pledge, transfer or other disposition (in 1 transaction or a series of transactions) whether with a subsidiary or otherwise; and

(2) "Employment" shall have the meaning set forth in § 3302(10)(H) and (I) of this title.

(c) In the event that any such employee is denied or fails to receive wages, benefits or wage supplements as a result of a violation of this section, and in addition to injunctive or other relief provided by law, the provisions of Chapter 11 of this title shall be applicable to secure recovery against the merged or consolidated corporation or the resulting corporation, notwithstanding anything contained therein or elsewhere to the contrary. The remedies provided for herein shall be available against any of the parties to such merger, consolidation, sale of assets or business combination.

(66 Del. Laws, c. 220, § 1.)

§ 707. Meal breaks.

(a) An employer must allow an employee an unpaid meal break of at least 30 consecutive minutes, if the employee works $7^1/_2$ or more consecutive hours. The meal break must be given some time after the first 2 hours of work and before the last 2 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 1 employee may perform the duties of a position;

(3) An employer has fewer than 5 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 the employee 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.

(c) Whoever violates this section shall be subject to a civil penalty of not less than $1,000 nor more than $5,000 for each violation. Jurisdiction of violations of this subchapter shall be in any court of competent jurisdiction.

(68 Del. Laws, c. 357, § 1; 69 Del. Laws, c. 294, §§ 8, 9; 70 Del. Laws, c. 186, § 1.)

§ 708. Special employment practices relating to health care and child care facilities.

(a) *Definitions.* — (1) "Child care facility" means any child care facility which is required to be licensed by the Department of Services for Children, Youth, and Their Families.

(2) "Direct access" means the opportunity to have personal contact with persons receiving care during the course of one's assigned duties.

(3) "Health care facility" means any custodial or residential facility where health, nutritional or personal care is provided for persons, including long-term care facilities as defined in § 1102 of Title 16, hospitals, home health care agencies, and adult day care facilities.

(4) "Person seeking employment" means any person applying for employment in a health care facility or child care facility that affords direct access to persons receiving care at such a facility, or a person applying for licensure to operate a child care facility.

(b) *Service letter.* — (1) No employer who operates a health care facility and/or child care facility, or provides health, nutritional or personal care in such a facility, shall hire any person seeking employment without obtaining 1 or more service letters regarding that person, provided such person has been previously employed. The service letter(s) obtained must include a service letter from the person's current or most recent previous employer. In addition, if a person seeking employment was employed in a health care facility and/or child care facility within the past 5 years, the employer shall also obtain a service letter from such employer(s). If the person seeking employment has not been previously employed, or was self-employed, then the employer must require the person to provide letters of reference from 2 adults who are familiar with the person, but who are not relatives of the person.

(2) For purposes of this subsection, the required "service letter" shall be a form provided by the Department of Labor. The form shall be signed by the current or previous employer and shall contain information about the type of work performed by the employee, the duration of the employment, the nature of the employee's separation from employment and any reasonably substantiated incidents involving violence, threat of violence, abuse, or neglect, by the person seeking employment toward any other person, including any disciplinary action taken as a result of such conduct.

(3) Any employer who is required to obtain a service letter for the purpose stated above shall obtain a statement signed by the person seeking employment wherein the person authorizes a full release for the employer to obtain any and all information pertaining to the facts of the person's current or previous employment.

(4) Any employer who is required to obtain a service letter for the purpose stated above shall obtain a statement signed by the person seeking employment wherein the person attests that the information given in the application represents a full and complete disclosure of the person's current and previous employment and that all information contained in the employment application is true and complete to the best of the knowledge and belief of the person seeking employment. In addition, the application shall contain a written acknowledgment by the person that the person understands that failure to provide a full and complete disclosure of all information required under this section is a violation of paragraph (b)(9) of this section and that such failure shall result in civil penalties of not less than $1,000 nor more than $5,000 for such violation. Full and complete disclosure by a person seeking employment includes listing all current and previous employers contemplated in paragraph (b)(1) of this section. If the person seeking employment was employed by a temporary agency, the person shall list on the employment application the temporary agency and all employers for which the person did temporary work pursuant to such employment. Any employer who does not obtain such signed statements from such person shall be subject to a civil penalty of not less than $1,000 nor more than $5,000 for each violation.

(5) Any employer who receives a written request for a service letter from any other employer for the purpose stated above shall provide that service letter. The service letter shall be provided within 10 business days from the date the request is received. Any employer who fails or refuses to provide such service letter, or who fails to make a full and complete disclosure of information, as required, shall be subject to a civil penalty of not less than $1,000 nor more than $5,000 for such violation.

(6) Notwithstanding the provisions of paragraph (b)(1) of this section, when exigent circumstances exist, and an employer covered under paragraph (b)(1) of this section must fill a position in order to maintain the required level of service, the employer may hire a person seeking employment on a conditional basis pending the receipt of the required service letter(s). The continued employment of

such person pursuant to this subsection shall be contingent upon the receipt of the required service letter(s). In addition, the person hired pursuant to this subsection shall be informed, in writing, and shall acknowledge, in writing, that the person's continued employment is contingent upon the receipt of the required service letter(s).

(7) An employer covered under paragraph (b)(1) of this section shall make a good faith attempt to locate the previous employer(s) identified in the employment application of the person seeking employment and to obtain the service letter(s) from each such employer. The burden of proof to demonstrate a good faith attempt shall rest with the employer. Any such employer who hires a person seeking employment without obtaining the required service letter(s) and/or who has not made a good faith attempt to obtain such service letter(s) shall be subject to a civil penalty of not less than $1,000 nor more than $5,000 for each violation.

(8) Any individual who falsifies such service letter or who fails to make a full and complete disclosure of all required information on the service letter shall be subject to a civil penalty of not less than $1,000 nor more than $5,000 for each violation.

(9) Any individual who fails to make a full and complete disclosure of past employment information on the employment application shall be subject to a civil penalty of not less than $1,000 nor more than $5,000 for each violation.

(10) An employer or any person acting on behalf of an employer who discloses information about a current or former employee pursuant to paragraph (b)(2) of this section is immune from civil liability for such disclosure and its consequences and may not be made the subject of any legal action for libel, slander or defamation by the current or former employee. Further, notwithstanding any provisions to the contrary, no employer or person seeking employment who has made a good faith effort to comply with the requirements of this section shall be deemed to be liable for any violation of said provisions.

(11) The Department of Labor shall be the only party which can seek enforcement of a civil penalty under this section.

(c) *Temporary agencies.* — Any temporary agency responsible for providing temporary employees to a health care facility or child care facility, when such employees qualify as "persons seeking employment" for purposes of paragraph (a)(4) of this section, is considered an employer and is responsible for complying with the requirements of this section.

(71 Del. Laws, c. 200, § 1; 70 Del. Laws, c. 186, § 1; 81 Del. Laws, c. 207, § 6.)

§ 709. Employment information.

(a) An employer or any person employed by the employer who discloses information about a current or former employee's job performance to a prospective employer is presumed to be acting in good faith; and unless lack of good faith is shown, is immune from civil liability for such disclosure or its consequences. For purposes of this section, the presumption of good faith may be rebutted upon a showing that the information disclosed by such employer was knowingly false, was deliberately misleading or was rendered with malicious purpose; or that the information was disclosed in violation of a nondisclosure agreement, or was otherwise confidential according to applicable federal, state or local statute, rule or regulation.

(b) For purposes of this section, the word "information" includes:

(1) Information about an employee's or former employee's job performance or work-related characteristics;

(2) Any act committed by such employee which would constitute a violation of federal, state or local law; or

(3) An evaluation of the ability or lack of ability of such employee or former employee to accomplish or comply with the duties or standards of the position held by such employee or former employee.

(70 Del. Laws, c. 367, § 1; 71 Del. Laws, c. 200, § 1.)

§ 709A. Employer use of social media.

(a) For purposes of this section, the following definitions shall apply:

(1) "Applicant" means a prospective employee applying for employment.

(2) "Electronic communication device" means a cellular telephone, personal digital assistant, electronic device with mobile data access, laptop computer, pager, broadband personal communication device, 2-way messaging device, electronic game, or portable computing device.

(3) "Employee" means any individual employed within the State by an employer. This section does not apply to employees or applicants of the United States government in those capacities.

(4) "Employer" means any person or group of persons acting directly or indirectly in the interest of an employer in relation to an employee or applicant, including the State and any political subdivision or board, department, commission, or school district thereof, and excluding the United States government.

(5) "Personal social media" means an account on a social networking site created and operated by an employee or applicant exclusively for the employee or applicant's personal use. "Personal social media" does not include an account on a social networking site created or operated by an employer and that is operated by an employee as part of their employment.

(6) "Social networking site" means an internet-based, personalized, privacy-protected website or application whether free or commercial that allows users to construct a private or semi-private profile site within a bounded system, create a list of other system users who are granted reciprocal access to the individual's profile site, send and receive e-mail, and share personal content, communications, and contacts.

(b) An employer shall not require or request an employee or applicant to do any of the following:

(1) Disclose a username or password for the purpose of enabling the employer to access personal social media.

(2) Access personal social media in the presence of the employer.

(3) Use personal social media as a condition of employment.

(4) Divulge any personal social media, except as provided in subsection (d) of this section.

(5) Add a person, including the employer, to the list of contacts associated with the employee's or applicant's personal social media, or invite or accept an invitation from any person, including the employer, to join a group associated with the employee's or applicant's personal social media.

(6) Alter the settings on the employee's or applicant's personal social media that affect a third party's ability to view the contents of the personal social media.

(c) Nothing in this section shall affect an employer's rights and obligations under the employer's personnel policies, federal or state law, case law, or other rules or regulations to require or request an employee to disclose a username, password, or social media reasonably believed to be relevant to an investigation of allegations of employee misconduct or employee violation of applicable laws and regulations, provided that the social media is used solely for purposes of that investigation or a related proceeding.

(d) Nothing in this section precludes an employer from requiring or requesting an employee to disclose a username, password, or other method for the purpose of accessing (i) an electronic communication device supplied by or paid for in whole or in part by the employer; or (ii) an account or service provided by the employer, obtained by virtue of the employee's employment relationship with the employer, or used for the employer's business purposes.

(e) Nothing in this section precludes an employer from monitoring, reviewing, accessing, or blocking electronic data stored on an employer's network or on an electronic communications device supplied by or paid for in whole or in part by the employer.

(f) Nothing in this section precludes an employer from complying with a duty to screen employees, or applicants before hiring, or to monitor or retain employee communications:

(1) That is established under federal or state law or by a self-regulatory organization, as defined in the Securities and Exchange Act of 1934, 15 U.S.C. § 78c(a)(26); or

(2) In the course of a law-enforcement employment application or law-enforcement officer conduct investigation performed by a law-enforcement agency.

(g) Nothing in this section precludes an employer from viewing, accessing, or using information about an employee or applicant that is in the public domain.

(h) An employer shall not discharge, discipline, threaten to discharge or discipline, or otherwise retaliate against an employee or applicant for not complying with a request or demand by the employer that violates this section. However, this section does not prohibit an employer from terminating or otherwise taking an adverse action against an employee or applicant if otherwise permitted by law.

(80 Del. Laws, c. 146, § 1.)

§ 709B. Unlawful employment practices; compensation history

(a) *Definitions. —*

For the purposes of this section:

(1) "Applicant" means a prospective employee applying for employment.

(2) "Compensation" includes monetary wages as well as benefits and other forms of compensation.

(b) It shall be an unlawful employment practice for an employer or an employer's agent to:

(1) Screen applicants based on their compensation histories, including by requiring that an applicant's prior compensation satisfy minimum or maximum criteria.

(2) Seek the compensation history of an applicant from the applicant or a current or former employer.

(c) For the purposes of this section, if an employer can demonstrate that the employer's agent, who is not an employee, was informed of the requirements of this section and instructed to comply by the employer, then the employer is not liable for actions taken by the agent in violation of this section.

(d) Nothing in this section prohibits an employer or an employer's agent and an applicant from discussing and negotiating compensation expectations provided that the employer or employer's agent does not request or require the applicant's compensation history.

(e) Nothing in this section prohibits an employer or an employer's agent from seeking the applicant's compensation history after an offer of employment with terms of compensation has been extended to the applicant and accepted, for the sole purpose of confirming the applicant's compensation history.

(f) The Department of Labor shall post the requirements of this section on its website and shall perform outreach as necessary to educate employers of the requirements of this section.

(g) *Enforcement. —*

The Department of Labor has the same powers under this section as given in § 1111 of this title.

(h) *Penalties.* —

(1) Any employer or employer's agent who violates or fails to comply with any requirement of this section shall be deemed in violation of this section and shall be subject to a civil penalty of not less than $1,000 nor more than $5,000 for the first offense and not less than $5,000 nor more than $10,000 for each subsequent violation.

(2) For penalty purposes, any actions by an employer or employer's agent that violate the provisions of paragraph (b)(1) or (b)(2) of this section that pertain to interviewing and hiring for a single position shall constitute a single violation.

(3) A civil penalty claim may be filed in any court of competent jurisdiction.

(81 Del. Laws, c. 41, § 1.)

Subchapter II
Discrimination in Employment

§ 710. Definitions.

For the purposes of this subchapter:

(1) "Age" as used in this subchapter means the age of 40 or more years of age.

(2) "Charging party" means any individual or the Department who initiates proceedings by the filing of a verified charge of discrimination, and who preserves a cause of action in Superior Court by exhausting the administrative remedies pursuant to the provisions of § 714 of this title.

(3) "Conciliation" for the purposes of this chapter refers to a process which requires the appearance of the parties after a full investigation resulting in a final determination of reasonable cause.

(4) "Delaware Right to Sue Notice" for the purposes of this chapter refers to a final acknowledgement of the charging party's exhaustion of the administrative remedies provided herein and written notification to the charging party of a corresponding right to commence a lawsuit in Superior Court.

(5) "Domestic violence" means the same as defined in § 1041 of Title 10, verified by an official document, such as a court order, or by a reliable third-party professional, including a law-enforcement agency or officer, a domestic violence or domestic abuse service provider, or health-care provider.

(6) "Employee" means an individual employed by an employer, but does not include:

a. Any individual employed in agriculture or in the domestic service of any person,

b. Any individual who, as a part of that individual's employment, resides in the personal residence of the employer,

c. Any individual employed by said individual's parents, spouse or child, or

d. Any individual elected to public office in the State or political subdivision by the qualified voters thereof, or any person chosen by such officer to be on such officer's personal staff, or an appointee on the policy making level or an immediate advisor with respect to the exercise of the constitutional or legal powers of the office. The exemption set forth in the preceding sentence shall not include employees subject to the merit service rules or civil service rules of the state government or political subdivision.

(7) "Employer" means any person employing 4 or more employees within the State at the time of the alleged violation, including the State or any political subdivision or board, department, commission or school district thereof. The term "employer" with respect to discriminatory practices based upon sexual orientation or gender identity does not include religious corporations, associations or societies whether supported, in whole or in part, by government appropriations, except where the duties of the employment or employment opportunity pertain solely to activities of the organization that generate unrelated business taxable income subject to taxation under § 511(a) of the Internal Revenue Code of 1986 [26 U.S.C. § 511(a)].

(8) "Employment agency" means any person regularly undertaking with or without compensation to procure employees for an employer or to procure for employees opportunities to work for an employer and includes an agent of such a person.

(9) "Family responsibilities" means the obligations of an employee to care for any family member who would qualify as a covered family member under the Family and Medical Leave Act [26 U.S.C. § 2601 et seq.].

(10) "Gender identity" means a gender-related identity, appearance, expression or behavior of a person, regardless of the person's assigned sex at birth.

(11) "Genetic information" for the purpose of this chapter means the results of a genetic test as defined in § 2317(a)(3) of Title 18.

(12) "Job related and consistent with business necessity" means the condition in question renders the individual unable to perform the essential functions of the position that such individual holds or desires. This includes situations in which the individual poses a direct threat to the health or safety of the individual or others in the workplace.

(13) "Labor organization" includes any organization of any kind, any agency or employee representation committee, group, association or plan so engaged in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours or other terms or conditions of employment, any conference, general committee, joint or system board or joint council so engaged which is subordinate to a national or international labor organization.

(14) “Mediation” for the purposes of this chapter refers to an expedited process for settling employment disputes with the assistance of an impartial third party prior to a full investigation.

(15) “No cause determination” means that the Department has completed its investigation and found that there is no reasonable cause to believe that an unlawful employment practice has occurred or is occurring. A no cause determination is a final determination ending the administrative process and provides the charging party with a corresponding Delaware Right to Sue Notice.

(16) “Person” includes 1 or more individuals, labor unions, partnerships, associations, corporations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in bankruptcy or receivers.

(17) “Pregnancy” means pregnancy, childbirth, or a related condition, including, but not limited to, lactation.

(18) “Protective hairstyle” includes braids, locks, and twists.

(19) “Public employer” means the State of Delaware, its agencies, or political subdivisions.

(20) “Race” includes traits historically associated with race, including hair texture and a protective hairstyle.

(21) “Reasonable accommodation” has the meaning given this term in § 722 of this title, except that all references to disability shall instead be references to known limitations of a person related to pregnancy, childbirth, or a related condition. Accommodations available under this subchapter may include, but are not limited to, acquisition of equipment for sitting, more frequent or longer breaks, periodic rest, assistance with manual labor, job restructuring, light duty assignments, modified work schedules, temporary transfers to less strenuous or hazardous work, time off to recover from childbirth, or break time and appropriate facilities for expressing breast milk.

(22) “Reasonable cause determination” means that the Department has completed its investigation and found reasonable cause to believe that an unlawful employment practice has occurred or is occurring. A reasonable cause determination requires the parties’ good faith efforts in conciliation.

(23) “Religion” as used in this subchapter includes all aspects of religious observance and practice, as well as belief, unless an employer demonstrates that the employer is unable to reasonably accommodate an employee’s or prospective employee’s religious observance or practice without undue hardship on the conduct of the employer’s business.

(24) “Reproductive health decision” means any decision related to the use or intended use of a particular drug, device, or medical service, including the use or intended use of contraception or fertility control or the planned or intended initiation or termination of a pregnancy.

(25) “Respondent” means any person named in the Charge of Discrimination, including but not limited to employers, employment agencies, labor organizations, joint labor-management committees, controlling apprenticeship or other training programs including on-the-job training programs.

(26) “Secretary” means the Secretary of the Department of Labor or the Secretary’s designee.

(27) “Sexual offense” means the same as defined in § 761 of Title 11, verified by an official document, such as a court order, or by a reliable third-party professional, including a law-enforcement agency or officer, a domestic violence or domestic abuse service provider, or health-care provider.

(28) “Sexual orientation” includes heterosexuality, homosexuality, or bisexuality.

(29) “Stalking” means the same as in § 1312 of Title 11, verified by an official document, such as a court order, or by a reliable third-party professional, including a law-enforcement agency or officer, a sexual assault service provider, or health-care provider. It is the sexual assault or stalking victim’s responsibility to provide the reliable statement from the reliable third party.

(30) “Undue hardship” means an action requiring significant difficulty or expense when considered in light of factors such as: the nature and cost of the accommodation; the overall financial resources of the employer; the overall size of the business of the employer with respect to the number of employees, and the number, type and location of its facilities; and the effect on expenses and resources or the impact otherwise of such accommodation upon the operation of the employer.

(19 Del. C. 1953, § 710; 58 Del. Laws, c. 285; 62 Del. Laws, c. 97, § 1; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 457, § 2; 74 Del. Laws, c. 356; 77 Del. Laws, c. 90, §§ 15, 16; 79 Del. Laws, c. 47, §§ 17, 18; 79 Del. Laws, c. 227, § 1; 79 Del. Laws, c. 429, § 1; 80 Del. Laws, c. 57, § 1; 80 Del. Laws, c. 291, § 1; 80 Del. Laws, c. 292, § 1; 83 Del. Laws, c. 13, § 14; 83 Del. Laws, c. 195, § 5.)

§ 711. Unlawful employment practices; employer practices.

(a) *Definitions.* —

As used in this section:

(1) “Certifying body or organization” means an independent body or entity duly accredited to issue a formal certification that an applicant meets specific local, state, or national standards or requirements.

(2) “Licensing body or organization” means an agency, board, association, or other entity that authorizes individuals to practice a profession in the State and issues a license, certificate, permit, or other authorization to the individual which is required to legally conduct business in the State.

(3) “Regulatory body or organization” means a government agency or entity established by legislation to enforce that legislation and to set and enforce standards implementing the legislation.

(b) It shall be an unlawful employment practice for an employer to:

(1) Fail or refuse to hire or to discharge any individual or otherwise to discriminate against any individual with respect to compensation, terms, conditions or privileges of employment because of such individual's race, marital status, genetic information, color, age, religion, sex (including pregnancy), sexual orientation, gender identity, or national origin; or

(2) Limit, segregate or classify employees in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect the individual's status as an employee because of such individual's race, marital status, genetic information, color, age, religion, sex (including pregnancy), sexual orientation, gender identity, or national origin.

(3) a. For any employment-related purpose, fail or refuse to treat an employee or applicant for employment that the employer knows or should know is affected by pregnancy as well as the employer treats or would treat any other employee or applicant not so affected but similar in the ability or inability to work, without regard to the source of any condition affecting the other employee's or applicant's ability or inability to work;

b. Fail or refuse to make reasonable accommodations to the known limitations related to the pregnancy of an applicant for employment or employee, unless the employer can demonstrate that the accommodation would impose an undue hardship on the operation of the business of such employer;

c. Deny employment opportunities to a job applicant or employee, if such denial is based on the need of the employer to make reasonable accommodations to the known limitations related to the pregnancy of an employee or applicant for employment;

d. Require an applicant for employment or employee affected by pregnancy to accept an accommodation that such applicant or employee chooses not to accept, if such applicant or employee does not have a known limitation related to pregnancy or if such accommodation is unnecessary for the applicant or employee to perform the essential duties of her job;

e. Require an employee to take leave under any leave law or policy of the employer if another reasonable accommodation can be provided to the known limitations related to the pregnancy of the employee; or

f. Take adverse action against an employee in the terms, conditions, or privileges of employment for requesting or using a reasonable accommodation to the known limitations related to the pregnancy of the employee.

(c) It shall be an unlawful employment practice for an employment agency to fail or refuse to refer for employment or otherwise to discriminate against any individual because of race, marital status, genetic information, color, age, religion, sex (including pregnancy), sexual orientation, gender identity, or national origin or to classify or refer for employment any individual on the basis of race, marital status, genetic information, color, religion, age, sex (including pregnancy), sexual orientation, gender identity, or national origin.

(d) It shall be an unlawful employment practice for a labor organization to:

(1) Exclude or expel from its membership or otherwise to discriminate against any individual because of race, marital status, genetic information, color, age, religion, sex (including pregnancy), sexual orientation, gender identity, or national origin;

(2) Limit, segregate or classify its membership or to classify or fail or refuse to refer for employment any individual in any way which would deprive or tend to deprive any individual of employment opportunities or would limit such employment opportunities or otherwise adversely affect the individual's status as an employee or as an applicant for employment because of such individual's race, marital status, genetic information, color, age, religion, sex (including pregnancy), sexual orientation, gender identity, or national origin; or

(e) It shall be an unlawful employment practice for any employer, labor organization or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs, to discriminate against any individual because of race, marital status, genetic information, color, age, religion, sex (including pregnancy), sexual orientation, gender identity, or national origin in admission to or employment in any program established to provide apprenticeship or other training.

(f) It shall be an unlawful employment practice for an employer, employment agency, labor union or joint labor-management committee controlling apprenticeship or other training or retraining, including on the job training programs to intentionally collect, directly or indirectly, any genetic information concerning any employee or applicant for employment, or any member of their family, unless:

(1) It can be demonstrated that the information is job-related and consistent with business necessity; or

(2) The information or access to the information is sought in connection with the retirement policy or system of any employer or the underwriting or administration of a bona fide employee welfare or benefit plan.

(g) It shall be an unlawful employment practice for any employer, employment agency, labor organization or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs, to discharge, refuse to hire or otherwise discriminate against any individual or applicant for employment or membership on the basis of such person's race, marital status, color, age, religion, sex (including pregnancy), sexual orientation, gender identity, or national origin, because such person has opposed any practice prohibited by this subchapter or because such person has testified, assisted or participated in any manner in an investigation, proceeding, or hearing to enforce the provisions of this subchapter.

(h) (1) It shall be an unlawful employment practice for any public employer to inquire into or consider the criminal record, criminal history, credit history, or credit score of an applicant for employment during the initial application process, up to and including the first interview.

(2) If an applicant is otherwise qualified, a public employer may inquire into or consider an applicant's criminal record, criminal history, credit history or credit score after the completion of the first interview.

(3) A public employer may disqualify an applicant from employment based on criminal history where the exclusion is job related for the position in question and consistent with business necessity. The public employer shall consider the following factors in its hiring decision:

a. The nature and gravity of the offense or conduct;

b. The time that has passed since the offense or conduct and/or the completion of the sentence; and

c. The nature of the job held or sought.

(4) This subsection does not apply to any state, county or municipal police force, the Department of Correction, the Department of Justice, the Office of Defense Services, the courts, or any position where federal or state statute requires or expressly permits the consideration of an applicant's criminal history.

(i) It shall be an unlawful employment practice for an employer to:

(1) Fail or refuse to hire or to discharge any individual or otherwise to discriminate against any individual with respect to compensation, terms, conditions, or privileges of employment because the individual was the victim of domestic violence, a sexual offense, or stalking; or

(2) Fail or refuse to make reasonable accommodations to the limitations known to the employer and related to domestic violence, a sexual offense, or stalking, unless the employer can demonstrate that the accommodation would impose an undue hardship on the operation of the business of such employer. For purposes of this subsection, "reasonable accommodations" means making reasonable changes in the workplace, including, but not limited to, reasonable changes in the schedules or duties of the job in question that would accommodate the person who was the victim of domestic violence, a sexual offense, or stalking, enabling such person to satisfactorily perform the essential duties of the job in question. Reasonable accommodations include allowing the individual to use accrued leave to address the domestic abuse, sexual offense, or stalking.

(j) It shall be an unlawful employment practice for an employer to:

(1) Require as a condition of employment that an employee refrain from inquiring about, discussing, or disclosing his or her wages or the wages of another employee.

(2) Require an employee to sign a waiver or other document which purports to deny an employee the right to disclose or discuss his or her wages.

(3) Discharge, formally discipline, or otherwise discriminate against an employee for inquiring about, discussing, or disclosing his or her wages or the wages of another employee.

(4) Nothing in this section creates an obligation for an employer or employee to disclose wages.

(k) It shall be an unlawful employment practice for an employer to fail or refuse to hire or to discharge any individual or otherwise to discriminate against any individual with respect to compensation, terms, conditions, or privileges of employment because of a reproductive health decision by the individual.

(*l*) (1) It shall be an unlawful employment practice for an employer to:

a. Fail or refuse to hire or to discharge any individual or otherwise to discriminate against any individual with respect to compensation, terms, conditions, or privileges of employment because of the individual's family responsibilities, except with respect to the employer's attendance and absenteeism standards that are not protected by other applicable law and inasmuch as the employee's performance at work meets satisfactory standards.

b. Limit, segregate or classify employees in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect the individual's status as an employee because of such individual's family responsibilities, except with respect to the employer's attendance and absenteeism standards that are not protected by other applicable law and inasmuch as the employee's performance at work meets satisfactory standards.

(2) This subsection does not create any obligation for an employer to make special accommodations for an employee with family responsibilities, so long as all policies related to leave, scheduling, absenteeism, work performance, and benefits are applied in a nondiscriminatory manner.

(m) It shall be an unlawful employment practice for an employer to request or require a prospective employee's age, date of birth, dates of attendance at or date of graduation from an educational institution on an initial employment application, provided that the provisions of this subsection shall not apply to any employer requesting or requiring such information:

(1) Based on a bona fide occupational qualification or need; or

(2) When such information is required to comply with any provision of state or federal law, or the requirements of any regulatory, licensing, or certifying body or organization.

For age to constitute "a bona fide occupational qualification or need" under this section, an employer must establish that age is an essential component of one's ability to successfully perform a particular job and is necessary to the normal operation of the business.

(n) Notwithstanding any other provision of this subchapter:

(1) It shall not be an unlawful employment practice for an employer to hire and employ employees, for an employment agency to classify or refer for employment any individual, for a labor organization to classify its membership or to classify or refer for employment any individual or for an employer, labor organization or joint labor-management committee controlling apprenticeship or other training or retraining programs to admit or employ any individual in any such program on the basis of religion, genetic information, age, sex (including pregnancy), sexual orientation, gender identity, or national origin in those certain instances where religion, genetic information, age, sex (including pregnancy), sexual orientation, gender identity, or national origin is a bona fide occupational qualification reasonably necessary to the normal operation of that particular business or enterprise; and

(2) It shall not be an unlawful employment practice for a school, college, university or other educational institution or institution of learning to hire and employ employees of a particular religion if such school, college, university or other educational institution or institution of learning is, in whole or in substantial part, owned, supported, controlled or managed by a particular religion or by a particular religious corporation, association or society or if the curriculum of such school, college, university or other educational institution or institution of learning is directed toward the propagation of a particular religion.

(o) Notwithstanding any other provision of this subchapter, it shall not be an unlawful employment practice for an employer to apply different standards of compensation or different terms, conditions or privileges of employment pursuant to a bona fide seniority or merit system or a system which measures earnings by quantity or quality of production or to employees who work in different locations, provided that such differences are not the result of an intention to discriminate because of race, marital status, genetic information, color, age, religion, sex (including pregnancy), sexual orientation, gender identity, or national origin, nor shall it be an unlawful employment practice for an employer to give and to act upon the results of any professionally developed ability test provided that such test, its administration or action upon the results is not designed, intended or used to discriminate because of race, marital status, genetic information, color, religion, age, sex (including pregnancy), sexual orientation, gender identity, or national origin.

(p) Nothing contained in this subchapter as it applies to discrimination because of age or sex shall be interpreted to affect or interfere with the retirement policy or system of any employer or the underwriting or administration of a bona fide employee welfare or benefit plan, provided that such policy, system or plan is not merely a subterfuge to evade the purpose of this subchapter.

(q) (1) Nothing in this subchapter shall be construed to prohibit compulsory retirement of any employee who has attained 65 years of age, and who, for the 2-year period immediately before retirement, is employed in a bona fide executive or a high policy-making position, if such employee is entitled to an immediate nonforfeitable annual retirement benefit from a pension, profit sharing, savings or deferred compensation plan, or any combination of such plans, of the employer of such an employee, which equals, in the aggregate, at least $44,000.

(2) In applying the retirement benefit test of paragraph (q)(1) of this section, if any such retirement benefit is in a form other than a straight life annuity (with no ancillary benefits), or if employees contribute to any such plan or make rollover contributions, such benefit shall be adjusted in accordance with regulations prescribed by the Secretary, United States Department of Labor, pursuant to 29 U.S.C. § 631(c)(2), so that the benefit is the equivalent of a straight life annuity (with no ancillary benefits) under a plan to which employees do not contribute and under which no rollover contributions are made.

(r) Nothing in this subchapter shall be interpreted to require employers to offer health, welfare, pension or other benefits to persons associated with employees on the basis as such benefits are afforded to the spouses of married employees.

(s) Nothing in this subchapter shall affect the ability of an employer to require employees to adhere to reasonable workplace appearance, grooming and dress standards not precluded by other provisions of state or federal law, except that an employer shall allow an employee to appear, groom and dress consistent with the employee's gender identity.

(19 Del. C. 1953, § 711; 58 Del. Laws, c. 285; 62 Del. Laws, c. 97, § 2; 64 Del. Laws, c. 333, § 1; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 457, §§ 3, 4; 74 Del. Laws, c. 356; 77 Del. Laws, c. 90, §§ 17-19; 79 Del. Laws, c. 47, § 19; 79 Del. Laws, c. 227, § 2; 79 Del. Laws, c. 429, § 1; 80 Del. Laws, c. 26, § 6; 80 Del. Laws, c. 57, § 2; 80 Del. Laws, c. 290, § 1; 80 Del. Laws, c. 291, § 2; 80 Del. Laws, c. 292, § 2; 83 Del. Laws, c. 421, § 1.)

§ 711A. Unlawful employment practices; sexual harassment.

(a) *Purpose*. —

The State of Delaware is committed to ensuring that all Delawareans experience a safe and respectful workplace free of sexual harassment. Complaints of sexual harassment will be taken seriously and employers will be held accountable for sexual harassment in the workplace. It is the expectation of the Delaware General Assembly that all employers in the State of Delaware will work to create a workplace where employees are safe and treated with dignity and respect.

(b) *Definitions*. —

As used in this section:

(1) "Applicant" means as defined in § 709B of this title.

(2) "Apprentice" means any individual who is engaged in the learning of any of the licensed practices in Title 24 from a practitioner licensed in the profession the apprentice is studying.

(3) "Department" means Department of Labor.

(4) "Employee" means an individual employed by an employer and includes state employees, unpaid interns, applicants, joint employees and apprentices.

(5) "Employee placed by employment agency" means an employee who performs services for an employer as a result of the employer's contractual agreement with an employment agency.

(6) "Employer" means any person employing 4 or more employees within the State at the time of the alleged violation and includes the State, the General Assembly, state agencies and labor organizations.

(7) "Employment agency" means as defined in § 710 of this title.

(8) "General Assembly" means as defined in § 5831 of Title 29.

(9) "Independent contractor" means as defined in § 3501 of this title.

(10) "Labor organization" means as defined in § 710 of this title.

(11) "Negative employment action" means an action taken by a supervisor that negatively impacts the employment status of an employee.

(12) "State agency" means as defined in § 5831 of Title 29.

(13) "State employee" means as defined in § 5831 of Title 29.

(14) "Supervisor" means an individual that is empowered by the employer to take an action to change the employment status of an employee or who directs an employee's daily work activities.

(c) Sexual harassment of an employee is an unlawful employment practice when the employee is subjected to conduct that includes unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when:

(1) Submission to such conduct is made either explicitly or implicitly a term or condition of an employee's employment;

(2) Submission to or rejection of such conduct is used as the basis for employment decisions affecting an employee; or

(3) Such conduct has the purpose or effect of unreasonably interfering with an employee's work performance or creating an intimidating, hostile, or offensive working environment.

(d) An employer is responsible for sexual harassment of an employee when:

(1) A supervisor's sexual harassment results in a negative employment action of an employee;

(2) The employer knew or should have known of the non-supervisory employee's sexual harassment of an employee and failed to take appropriate corrective measures; or

(3) A negative employment action is taken against an employee in retaliation for the employee filing a discrimination charge, participating in an investigation of sexual harassment, or testifying in any proceeding or lawsuit about the sexual harassment of an employee.

(e) In any action against an employer under paragraph (d)(2) of this section, it is an affirmative defense if the employer proves that:

(1) The employer exercised reasonable care to prevent and correct any harassment promptly; and

(2) The employee unreasonably failed to take advantage of any preventative or corrective opportunities provided by the employer.

(f) *Information sheet*. —

(1) The Department of Labor shall create an information sheet on sexual harassment that the Department shall make available to employers. The information sheet shall be available at each office of the Department, and shall be mailed if the request includes a self-addressed envelope with postage affixed. The Department shall make the information sheet available on its website.

(2) The information sheet shall provide notice to employees of the right to be free from sexual harassment in the workplace. The information sheet must contain all of the following:

a. The illegality of sexual harassment;

b. The definition of sexual harassment under state law using examples;

c. The legal remedies and complaint process available through the Department;

d. Directions on how to contact the Department.

e. The legal prohibition against retaliation.

(3) Every employer shall distribute, physically or electronically, the information sheet to its employees as follows:

a. To new employees at the commencement of employment;

b. To existing employees by July 1, 2019.

(4) A claim that the information sheet required to be distributed under this subsection shall not in and of itself result in liability of any employer to any present or former employee in any action alleging sexual harassment. An employer's compliance with this subsection does not insulate the employer from liability for sexual harassment of any current or former employee or applicant.

(g) *Training requirements for an employer having 50 or more employees in Delaware*. —

(1) An employer shall provide interactive training and education to employees regarding the prevention of sexual harassment.

(2) Such training shall be provided to employees as follows:

a. To new employees within 1 year of the commencement of employment and thereafter every 2 years;

b. To existing employees by January 1, 2020, and thereafter every 2 years.

(3) The training shall include all of the following:

a. The illegality of sexual harassment;

b. The definition of sexual harassment using examples;

c. The legal remedies and complaint process available to the employee.

d. Directions on how to contact the Department.

e. The legal prohibition against retaliation.

(4) *Supervisor training*. —

a. An employer shall provide additional interactive training to all supervisors as follows:

1. To new supervisors within 1 year of the commencement of employment as a supervisor, and thereafter every 2 years;

2. To existing supervisors by January 1, 2020, and thereafter every 2 years.

b. Such training shall include all of the following:

1. The specific responsibilities of a supervisor regarding the prevention and correction of sexual harassment;

2. The legal prohibition against retaliation.

(5) *Training provided prior to January 1, 2019.* — If an employer provided training to employees or supervisors prior to January 1, 2019, that would satisfy the requirements under this subsection, no additional training is required under this subsection until January 1, 2020.

(6) *Numerosity and training requirement*. —

a. Employers do not count applicants or independent contractors towards the numerosity requirement under this subsection.

b. Employers are not required to provide training under this subsection to applicants, independent contractors, or employees employed less than 6 months continuously.

c. Employment agencies are the only employers required to count and provide training to employees placed by employment agency under this subsection.

(h) The Department of Labor shall post the requirements of this section on their website and shall perform outreach as necessary to educate employers of the requirements of this section.

(81 Del. Laws, c. 399, § 1.)

§ 712. Enforcement provisions; powers of the Department; administrative process.

(a) The Department of Labor is empowered, as hereinafter provided, to prevent any person from engaging in any unlawful employment practice as set forth in §§ 711, 711A, 719A, 723 and 724 of this title. In connection with the performance of its duties, the Department may:

(1) Investigate employment practices by permitting the Department to enter any place of employment at reasonable times; inspect and copy records or documents in the possession of the employer, the employment agency or labor organization; administer oaths, certify to official acts, take and cause to be taken depositions of witnesses; issue subpoenas compelling the attendance and testimony of witnesses and the production of papers, books, accounts, payrolls, documents, and records;

(2) Make, revise or rescind such rules or regulations necessary or appropriate to administer or enforce this chapter in accordance with the provisions of § 10161(b) of Title 29;

(3) Commence civil actions in Superior Court for violations of this chapter, any published regulations or for civil penalties provided herein.

(b) The Department shall have jurisdiction over all cases arising under this chapter, affording review and oversight of employment practices in Delaware. The Department shall endeavor to eliminate unlawful discrimination in employment through its administrative process set forth below. This subchapter shall afford the sole remedy for claims alleging a violation of this chapter to the exclusion of all other remedies. Upon termination of the administrative process by the Department, the charging party may institute a civil action in Superior Court of the State of Delaware pursuant to §§ 714 and 715 of this title.

(c) The administrative process requires the following:

(1) *Statute of limitation and filing procedure*. —

Any person claiming to be aggrieved by a violation of this chapter shall first file a charge of discrimination within 300 days of the alleged unlawful employment practice or its discovery, setting forth a concise statement of facts, in writing, verified and signed by the charging party. The Department shall serve a copy of the verified charge of discrimination upon the named respondent by certified mail. The respondent may file an answer within 20 days of its receipt, certifying that a copy of the answer was mailed to the charging party at the address provided.

(2) *Preliminary findings and recommendations.* — The Department shall review the submissions within 60 days from the date of service upon the respondent and issue preliminary findings with recommendations. The preliminary findings may recommend:

a. Dismissing the charge unless additional information is received which warrants further investigation;

b. Referring the case for mediation requiring the parties' appearance; or

c. Referring the case for investigation.

(3) *Final determinations upon completion of investigation.* — After investigation, the Department shall issue a determination of either "reasonable cause" or "no reasonable cause" to believe that a violation has occurred or is occurring. All cases resulting in a "reasonable cause" determination will require the parties to appear for compulsory conciliation. All cases resulting in a "no cause" determination will receive a corresponding Delaware Right to Sue Notice.

(4) *Confidentiality of the Department's process.* — The Department shall not make public the charge of discrimination or information obtained during the investigation of a charge. This provision does not apply to disclosures made to the parties, their counsel, or witnesses where disclosure is deemed necessary or appropriate. Nothing said or done during and as a part of the mediation or conciliation efforts may be made public by the Department, its officers or employees or used by any party as evidence in a subsequent proceeding without the written consent of the persons concerned.

(5) *End of administrative process.* — In all cases where the Department has dismissed the charge, issued a no cause determination or upon the parties failed conciliation efforts, the Department shall issue a Delaware Right to Sue Notice, acknowledging the Department's termination of the administrative process. Once the Department has issued its preliminary findings pursuant to paragraph (c)(2) of this section, the Department, in its discretion, may grant a Delaware Right to Sue Notice to a charging party.

(19 Del. C. 1953, § 712; 58 Del. Laws, c. 285; 66 Del. Laws, c. 337, §§ 3, 4; 67 Del. Laws, c. 260, § 1; 70 Del. Laws, c. 186, § 1; 74 Del. Laws, c. 356; 79 Del. Laws, c. 181, § 2; 80 Del. Laws, c. 313, § 1; 81 Del. Laws, c. 399, § 2.)

§ 713. Civil action by the Attorney General; complaint.

(a) 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 secured by this subchapter or subchapter III of this chapter and that the pattern or practice is of such a nature and is intended to deny the full exercise of the rights herein described, the Attorney General may bring a civil action in the Court of Chancery by filing with it a complaint:

(1) Signed by the Attorney General (or in the Attorney General's absence the Chief Deputy Attorney General);

(2) Setting forth facts pertaining to such pattern or practice; and

(3) Requesting such relief, including an application for a permanent or temporary injunction, restraining order or other order against the person or persons responsible for such pattern or practice, as the Attorney General deems necessary to insure the full enjoyment of the rights herein described.

(b) The Court of Chancery shall have jurisdiction over proceedings brought pursuant to this section.

(19 Del. C. 1953, § 713; 58 Del. Laws, c. 285; 66 Del. Laws, c. 337, § 5; 70 Del. Laws, c. 186, § 1; 74 Del. Laws, c. 356.)

§ 714. Civil action by the charging party; Delaware Right to Sue Notice; election of remedies.

(a) A charging party may file a civil action in Superior Court, after exhausting the administrative remedies provided herein and receipt of a Delaware Right to Sue Notice acknowledging same.

(b) The Delaware Right to Sue Notice shall include authorization for the charging party to bring a civil action under this chapter in Superior Court by instituting suit within 90 days of its receipt or within 90 days of receipt of a federal Right to Sue Notice, whichever is later.

(c) The charging party shall elect a Delaware or federal forum to prosecute the employment discrimination cause of action so as to avoid unnecessary costs, delays and duplicative litigation. A charging party is barred by this election of remedies from filing cases in both Superior Court and the federal forum. If the charging party files in Superior Court and in a federal forum, the respondent may file an application to dismiss the Superior Court action under this election of remedies provision.

(74 Del. Laws, c. 356.)

§ 715. Judicial remedies; civil penalties.

Superior Court shall have jurisdiction over all proceedings brought by the charging party pursuant to § 714 of this title. Superior Court may excuse a charging party who has complied with the compulsory conciliation provisions of this chapter from the compulsory arbitration provisions of Superior Court rule.

(1) Superior Court shall have the authority to provide the following relief, including but not limited to:

a. Order the respondent to cease and desist or modify its existing employment policies;

b. Order the respondent to hire, reinstate or promote the charging party;

c. Order the payment of compensatory damages, including but not limited to general and special damages, punitive damages when appropriate, not to exceed the damage awards allowable under Title VII of the Civil Rights Act of 1964 [42 U.S.C. § 2000e et seq.], as amended, provided that for the purposes of this subchapter, employers with 4-14 employees shall be treated under Title VII's damage award as an employer having under 50 employees; and

d. Order the costs of litigation and reasonable attorney's fees to the prevailing party.

(2) In any action brought by the Department for violation of the retaliation provision of § 711(g) of this title, the Court shall fine the employer not less than $1,000 nor more than $5,000 for each violation, in addition to any liability for damages.

(74 Del. Laws, c. 356; 83 Del. Laws, c. 421, § 1.)

§ 716. Posting of notices; penalties.

(a) Every employer, employment agency and labor organization, as the case may be, shall post and keep posted in conspicuous places upon its premises where notices to employees, and applicants for employment are customarily posted, a notice to be prepared or approved by the Department setting forth excerpts from or summaries of the pertinent provisions of this subchapter and subchapter III of this chapter and information pertinent to the filing of a complaint.

(b) (1) An employer shall provide notice of the right to be free from discrimination in relation to pregnancy, childbirth, and related conditions, including the right to reasonable accommodation to known limitations related to pregnancy, childbirth, and related conditions, pursuant to § 711(b)(3) of this title as follows:

a. In writing to new employees at the commencement of employment;

b. Orally or in writing to existing employees by January 7, 2015; and

c. Orally or in writing to any employee who notifies the employer of her pregnancy within 10 days of such notification.

(2) The notice required by paragraph (b)(1) of this section shall also be conspicuously posted at an employer's place of business in an area accessible to employees.

(c) A wilful violation of this section shall be punishable by a fine of not more than $100 for each separate offense.

(19 Del. C. 1953, § 716; 58 Del. Laws, c. 285; 66 Del. Laws, c. 337, § 8; 74 Del. Laws, c. 356; 79 Del. Laws, c. 429, § 1; 83 Del. Laws, c. 421, § 1.)

§ 717. Veterans' special rights or preference.

Nothing contained in this subchapter or subchapter III of this chapter shall be construed to repeal or modify any state or local law creating special rights or preferences for veterans.

(19 Del. C. 1953, § 717; 58 Del. Laws, c. 285; 66 Del. Laws, c. 337, § 9; 74 Del. Laws, c. 356.)

§ 718. Short title, effective date, savings clause.

(a) This subchapter may be cited as the "Discrimination in Employment Act."

(b) This subchapter shall become effective September 10, 2004.

(c) This subchapter does not affect any cause of action or the remedy provided therefor if such cause of action accrued and suit was instituted thereon prior to September 10, 2004.

(74 Del. Laws, c. 356.)

§ 719. Criminal jurisdiction.

The Superior Court shall have exclusive original jurisdiction over all criminal violations of this subchapter.

(77 Del. Laws, c. 90, § 28.)

§ 719A. Volunteer firefighters, ambulance personnel and ladies auxiliary.

It shall be an unlawful employment practice for an employer to discriminate in the hiring or discharging of an individual because of such individual's membership in a volunteer emergency responder organizer. This section shall not prevent an employer from taking otherwise lawful actions regarding hiring, discharging or requiring attendance of such individual. For purposes of this section "volunteer emergency responder" means a volunteer firefighter, a member of a ladies auxiliary of a volunteer fire company, volunteer emergency medical technician and/or a volunteer fire police officer.

(79 Del. Laws, c. 181, § 1.)

Subchapter III

Persons With Disabilities Employment Protections

§ 720. Short title.

This subchapter may be cited as the "Persons With Disabilities Employment Protections Act."

(66 Del. Laws, c. 337, § 2; 78 Del. Laws, c. 179, § 250.)

§ 721. Statement of purpose and interpretation.

(a) This subchapter is intended to encourage and enable qualified persons with disabilities to engage in remunerative employment which is sought by them in good faith. The General Assembly finds that the practice of employment discrimination based on disability is contrary to the public interest and the principles of freedom and equality of opportunity. Such discrimination also deprives many persons with a disabilities of earnings necessary to maintain or contribute to a decent standard of living and necessitates their resort to public support.

(b) This subchapter shall be liberally construed to promote the full employment opportunity of qualified persons with a disabilities who seek such opportunity in good faith. Furthermore, in defining the scope or extent of any duty imposed by this subchapter, including the duty of reasonable accommodation, higher or more comprehensive obligations established by otherwise applicable federal, state or local enactments may be considered. Nothing in this subchapter, however, shall be construed to impose liability upon any employer for selecting, hiring or promoting in good faith an applicant without disability or employee who is better qualified than another applicant or employee who is a qualified person with a disability.

(66 Del. Laws, c. 337, § 2; 78 Del. Laws, c. 179, §§ 251-253.)

§ 722. Definitions.

As used in this subchapter, unless the context otherwise requires:

(1) The terms "person," "employee," "employment agency," "labor organizations," "Secretary" and "review board" are defined in § 710 of this title.

(2) "Disability" means any condition or characteristic that renders a person a person with a disability as defined in this section.

(3) "Employer" means a person qualifying as an employer under § 710 of this title.

(4) "Person with a disability" means any person who satisfies any 1 of the following:

a. Has a physical or mental impairment which substantially limits 1 or more major life activities.

b. Has a record of such an impairment.

c. Is regarded as having such an impairment. As used in this paragraph:

1. "Major life activities" includes caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working. "Major life activities" also includes the operation of a major bodily function, including functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological brain, respiratory, circulatory, endocrine, and reproductive functions.

2. "Has a record of such impairment" means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits 1 or more major life activities.

3. "Is regarded as having an impairment" means an individual that establishes that the individual subjected to an action prohibited under this chapter because of an actual or perceived physical or mental impairment whether or not the impairment limits or is perceived to limit a major life activity. Such impairment does not include impairments that are transitory and minor.

This term is intended to be interpreted in conformity with the federal Rehabilitation Act of 1973 [29 U.S.C. § 701 et seq.], as amended, and, consistent with § 728 of this title, shall be further defined by the Secretary through regulation to clarify and delimit its scope following adequate public notice and comment.

Enforcement of this subchapter by persons qualifying for protection solely under this paragraph (4)c. of this section shall be deferred until the issuance of the Secretary's final regulation.

4. "Substantially limits" means that the impairment so affects a person as to create a likelihood that such person will experience difficulty in securing, retaining or advancing in employment because of a disability.

5. "Person with a disability" shall not include any individual who is an alcoholic or drug abuser whose current use of alcohol or drugs prevents such individual from performing the duties of the job in question or whose employment, by reason of such current alcohol or drug abuse, would constitute a direct threat to property or the safety of others.

6. "Transitory impairment" means an impairment with an actual or expected duration of 6 months or less.

(5) "Qualified person with a disability" means a person with a disability who, with or without reasonable accommodation, can satisfactorily perform the essential functions of the job in question:

a. Provided that the person with a disability shall not be held to standards of performance of essential job functions different from other employees similarly employed; and

b. Further provided that the disability does not create an unreasonable and demonstrable risk to the safety or health of the person with a disability, other employees, the employer's customers or the public.

(6) "Reasonable accommodation" means making reasonable changes in the work place, including, but not limited to, making facilities accessible, modifying equipment and providing mechanical aids to assist in operating equipment, or making reasonable changes in the schedules or duties of the job in question that would accommodate the known disability of a person with a disability by enabling such person to satisfactorily perform the essential duties of the job in question; provided that "reasonable accommodation," unless otherwise prescribed by applicable law, does not require that an employer:

a. Provide accommodations of a personal nature, including, but not limited to, eyeglasses, hearing aids or prostheses, except under the same terms and conditions as such items are provided to the employer's employees generally;

b. Reassign duties of the job in question to other employees without assigning to the employee with a disability duties that would compensate for those reassigned;

c. Reassign duties of the job in question to 1 or more other employees where such reassignment would significantly increase the skill, effort or responsibility required of such other employees from that required prior to the change in duties;

d. Make changes to accommodate a person with a disability where:

1. For a new employee the cost of such changes would exceed 5 percent of the annual salary or annualized hourly wage of the job in question; or

2. For an existing employee the total cost of the changes would bring the total cost of changes made to accommodate the employee's disabilities since the employee's initial acceptance of employment with the employer to greater than 5 percent of the employee's current salary or current annualized hourly wage; or

e. Make any changes that would impose on the employer an undue hardship, provided that the costs of less than 5 percent of an employee's salary or annualized wage as determined in paragraph (6)d. of this section shall be presumed not to be an undue hardship.

(66 Del. Laws, c. 337, § 2; 70 Del. Laws, c. 572, § 1; 78 Del. Laws, c. 179, §§ 254-260; 79 Del. Laws, c. 381, § 1; 83 Del. Laws, c. 195, § 5.)

§ 723. Reasonable accommodation duties.

(a) A qualified person with a disability requesting a reasonable accommodation in a good-faith effort to seek an employment opportunity must apprise the employer, employment agency or labor organization of the person's disability, submit any necessary medical documentation, make suggestions for such possible accommodations as are known to such person with a disability and cooperate in any ensuing discussion and evaluation aimed at determining possible or feasible accommodations.

(b) Once a qualified person with a disability has requested an accommodation, or if a potential accommodation is obvious in the circumstances, an employer, employment agency or labor organization shall investigate whether there are reasonable accommodations that can be made and make reasonable accommodations as defined in § 722(6) of this title. If affirmatively requested in writing by the employer, employment agency or labor organization, the person with a disability may be required to accept the employment opportunity in writing as a precondition to the initiation of such investigation.

(66 Del. Laws, c. 337, § 2; 70 Del. Laws, c. 186, § 1; 78 Del. Laws, c. 179, §§ 261, 262.)

§ 724. Unlawful employment practices.

(a) *Employer prohibitions.* — It shall be an unlawful employment practice for an employer because of disability to:

(1) Fail or refuse to hire, recruit or promote a qualified person with a disability who seeks such an employment opportunity in good faith;

(2) Discharge or otherwise discriminate against qualified persons with disabilities with respect to compensation, terms, conditions or privileges of employment;

(3) Limit, segregate or classify an employee or applicant for employment in a way which deprives or tends to deprive a qualified person with a disability of employment opportunities or otherwise adversely affects the status as an employee of the qualified person with a disability;

(4) Fail or refuse to hire, recruit or promote a qualified person with a disability who seeks such an employment opportunity in good faith on the basis of physical, mental or other examinations that are not directly related to the essential functions of the job; or

(5) Discharge or take other discriminatory action against a qualified person with disability on the basis of physical, mental or other examinations that are not directly related to the essential functions of the job.

(b) *Employment agency prohibitions.* — It shall be an unlawful employment practice for an employment agency to refuse or fail to accept, register, classify properly, refer for employment or otherwise to discriminate against a qualified person with a disability because of disability.

(c) *Labor organization prohibitions.* — It shall be an unlawful employment practice for a labor organization because of disability to:

(1) Exclude or expel from its membership or otherwise discriminate against any qualified person with a disability;

(2) Limit, segregate or classify its membership or classify or fail to refuse to refer for employment any qualified person with a disability in any way which would deprive or tend to deprive any such person of employment opportunities or would limit such employment opportunities or otherwise adversely affect such person's status as an employee or an applicant for employment;

(3) Cause or attempt to cause an employer to discriminate against a qualified person with a disability in violation of this section; or

(4) Fail to cooperate with an employer's efforts to provide reasonable accommodation to a qualified person with a disability to the extent it controls job structure and other employment conditions.

(d) *Training program prohibitions.* — It shall be an unlawful employment practice for any employer, employment agency, labor organization or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs, to discriminate against any qualified person with a disability because of disability in admission to or employment in any program established to provide apprenticeship or other training.

(e) *Other prohibitions.* — (1) It shall be an unlawful employment practice for an employer or employment agency to require an applicant to identify the applicant's self as a person with a disability prior to a conditional offer of employment; however, any employer may invite an applicant to identify that applicant's self as a person with a disability in order to act affirmatively on that applicant's behalf.

(2) It shall be an unlawful employment practice for an employer, labor organization or employment agency to fail to meet the duties imposed on them by § 723(b) of this title.

(f) *Exceptions.* — It shall not be considered a violation of this section for an employer, employment agency or labor organization:

(1) To make an employment decision on the basis of state and federal laws or regulations imposing physical, mental, health or educational job requirements;

(2) To make preemployment or prepromotional inquiries which are directly related to an applicant's ability to perform essential job-related functions;

(3) To terminate or change the employment status of any person who is unable to adequately perform that person's own essential job functions, or to discriminate among persons on the basis of competence or performance in essential job functions if the employer, employment agency or labor organization has complied with § 723(b) of this title;

(4) To require or request a person to undergo a medical examination, which may include a medical history, for the purpose of determining the person's ability or capacity to safely and satisfactorily perform the duties of available jobs for which the person is otherwise qualified, or to aid in determining possible accommodations for a disability, provided:

a. That an offer of employment has been made on the condition that the person meets the physical and mental requirements of the job with or without reasonable accommodation; and

b. That the examination, unless limited to determining the extent to which a person's disability would interfere with that person's own ability or capacity to safely and satisfactorily perform the duties of the job in question or the possible accommodations for a disability, is required of all persons offered employment for the same position regardless of disability; or

(5) To administer preemployment tests, provided that the tests:

a. Measure only job-related abilities;

b. Are required of all applicants for the same position unless such tests are limited to determining the extent to which a person's disability would interfere with that person's own ability to safely and satisfactorily perform the duties of the job in question or the possible accommodation of the job in question; and

c. Accurately measure the applicant's aptitude, achievement level or whatever factors they purport to measure rather than reflecting the impaired sensory, manual or speaking skills of the person with a disability except when those skills are requirements of the job in question.

(66 Del. Laws, c. 337, § 2; 70 Del. Laws, c. 186, § 1; 78 Del. Laws, c. 179, §§ 263-266.)

§ 725. Affirmative defenses.

In defense of any action to enforce § 724 of this title a respondent may assert affirmative defenses, including, but not limited to, the following:

(1) Despite reasonable accommodation, a person with a disability cannot satisfactorily perform the essential functions of the job in question;

(2) Employment of a person with a disability creates an unreasonable and demonstrable risk to the safety or health of the person with a disability, other employees, the employer's customers or the public;

(3) Any of the enumerated exceptions to reasonable accommodation set forth in § 722(6) of this title, including undue hardship, are applicable.

(66 Del. Laws, c. 337, § 2; 78 Del. Laws, c. 179, § 267.)

§ 726. Retaliation prohibited.

It shall be an unlawful employment practice for any employer to discharge, refuse to hire or otherwise discriminate against any person or applicant for employment, or any employment agency to discriminate against any person or any labor organization to discriminate against any member or applicant for membership because such person has opposed any practice prohibited by this subchapter or because such person has testified, assisted or participated in any manner in proceedings to enforce the provisions of this subchapter.

(66 Del. Laws, c. 337, § 2; 70 Del. Laws, c. 186, § 1.)

§ 727. Enforcement provisions and election remedies.

(a) Enforcement of this subchapter shall be in accordance with the procedures for enforcement of rights secured by subchapter II of this chapter.

(b) Enforcement of this subchapter as authorized by § 712 of this title shall be barred if the complainant has commenced federal judicial or administrative proceedings under § 503 or § 504 of the Rehabilitation Act of 1973 [29 U.S.C. § 793 or § 794], as amended, or regulations promulgated thereunder, based upon substantially common facts. If such federal proceedings are commenced subsequent to the filing of a charge pursuant to this subchapter, any administrative and judicial proceedings authorized by § 712 of this title shall be dismissed upon application of the respondent. Provided, however, that if complainant's federal action is dismissed on jurisdictional

grounds, including the lack of federal contractor status or federal program funding, the Secretary is authorized to accept a charge under § 712 of this title and waive the limitations period of § 712(d) of this title upon a finding that the complainant commenced the complainant's federal action in good faith.

(66 Del. Laws, c. 337, § 2; 70 Del. Laws, c. 186, § 1.)

§ 728. Regulations.

The Secretary shall adopt such rules and regulations as may be necessary and proper to implement the policies of this subchapter.

(66 Del. Laws, c. 337, § 2.)

Subchapter IV

Right to Inspect Personnel Files

§ 730. Short title.

This subchapter may be cited as the "Right to Inspect Personnel Files Act."

(64 Del. Laws, c. 473, § 1; 66 Del. Laws, c. 337, § 1.)

§ 731. Definitions.

As used in this subchapter:

(1) "Employee" means any person currently employed, laid off with reemployment rights or on leave of absence. The term "employee" shall not include applicants for employment or designated agents.

(2) "Employer" shall mean any individual, person, partnership, association, corporation, the State, any of its political subdivisions or any agency, authority, board or commission created by them.

(3) "Personnel file" means, if maintained by the employer, any application for employment, wage or salary information, notices of commendations, warning or discipline, authorization for a deduction or withholding of pay, fringe benefit information, leave records, employment history with the employer, including salary information, job title, dates of changes, retirement record, attendance records, performance evaluations and medical records. The term "personnel file" shall not include records of an employee relating to the investigation of a possible criminal offense, letters of reference, documents which are being developed or prepared for use in civil, criminal or grievance procedures or materials which are used by the employer to plan for future operations or information available to the employee under the Fair Credit Reporting Act [15 U.S.C. §§ 1681-1681t].

(64 Del. Laws, c. 473, § 1; 66 Del. Laws, c. 337, § 1.)

§ 732. Inspection of personnel files.

An employer shall, at a reasonable time, upon request of an employee, permit that employee to inspect that employee's own personnel files used to determine that employee's own qualifications for employment, promotion, additional compensation, termination or disciplinary action. The employer shall make these records available during the regular business hours of the office where these records are usually and ordinarily maintained, when sufficient time is available during the course of a regular business day to inspect the personnel files in question. The employer may require the requesting employee to inspect such records on the free time of the employee. At the employer's discretion, the employee may be required to file a written form to request access to the personnel file. This form is solely for the purpose of identifying the requesting individual to avoid disclosure to ineligible individuals. To assist the employer in providing the correct records to meet the employee's need, the employee shall indicate in the written request either the purpose for which the inspection is requested or the particular parts of the employee's personnel record which the employee wishes to inspect.

(64 Del. Laws, c. 473, § 1; 66 Del. Laws, c. 337, § 1; 70 Del. Laws, c. 186, § 1.)

§ 733. Removal of file; note taking; protection of file; inspection time.

Nothing in this subchapter shall be construed as a requirement that an employee be permitted to remove the employee's own personnel file, any part thereof or a copy of the contents of such file from the place of the employer's premises where it is made available for inspection. The taking of notes by employees is permitted. The employer shall retain the right to protect the employer's files from loss, damage or alteration to insure the integrity of the files. The employer may require inspection of the personnel file in the presence of a designated official. The employer must allow sufficient inspection time, commensurate with the volume content of the file. Except for reasonable cause the employer may limit inspection to once every calendar year.

(64 Del. Laws, c. 473, § 1; 66 Del. Laws, c. 337, § 1; 70 Del. Laws, c. 186, § 1.)

§ 734. Removal or correction of information; employee's explanatory statement.

If upon inspection of the employee's personnel file an employee disagrees with any of the information contained in such file or records, removal or correction of such information may be agreed upon by such employee and the employee's employer. If such employee and employer cannot agree upon such removal or correction then such employee may submit a written statement explaining the employee's

position. Such statement shall be maintained as part of such employee's personnel file or medical records and shall accompany any transmittal or disclosure from such file or records made to a third party.

(64 Del. Laws, c. 473, § 1; 66 Del. Laws, c. 337, § 1; 70 Del. Laws, c. 186, § 1.)

§ 735. Refusing employee access; penalty; jurisdiction of violations.

(a) Any employer who refuses an employee access to personnel files as provided in this subchapter shall be deemed in violation of this subchapter and shall be subject to a civil penalty of not less than $1,000 nor more than $5,000 for each violation. A civil penalty claim may be filed in any court of competent jurisdiction.

(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 pursuant to this subchapter, or because the employee has caused to be instituted or is about to cause to be instituted any proceedings under this subchapter, or has testified or is about to testify in any such proceedings, shall be deemed in violation of this subchapter and shall be subject to a civil penalty of not less than $1,000 nor more than $5,000 for each violation.

(64 Del. Laws, c. 473, § 1; 66 Del. Laws, c. 337, § 1; 69 Del. Laws, c. 294, § 11; 70 Del. Laws, c. 186, § 1; 70 Del. Laws, c. 460, § 3.)

§ 736. Safe destruction of records containing personal identifying information.

(a) *Definitions.* — (1) "Personal identifying information" means an employee's first name or first initial and last name in combination with any 1 of the following data elements that relate to the employee, when either the name or the data elements are not encrypted: Social Security number, passport number, driver's license or state identification card number, insurance policy number, financial services account number, bank account number, credit card number, debit card number, tax or payroll information or confidential health care information.

(2) "Record" means information that is inscribed on a tangible medium, or that is stored in an electronic or other medium and is retrievable in perceivable form on which personal identifying information is recorded or preserved. "Record" does not include publicly available directories or sources containing information an employee has voluntarily consented to have publicly disseminated or listed or which is disseminated as provided for by applicable law or regulation, such as name, address, or telephone number, or other directories or sources as are derived solely from such directories or sources.

(b) In the event that an employer seeks permanently to dispose of records containing employees' personal identifying information within its custody and control, such employer shall take all reasonable steps to destroy or arrange for the destruction of each such record by shredding, erasing, or otherwise destroying or modifying the personal identifying information in those records to make it unreadable or indecipherable.

(c) An employee who incurs actual damages due to a reckless or intentional violation of this section may bring a civil action against the employer.

(79 Del. Laws, c. 423, § 1.)

Subchapter V

Employment First Act

§ 740. Short title.

This subchapter may be known and cited as the "Employment First Act."

(78 Del. Laws, c. 331, § 1.)

§ 741. Statement of purpose.

The General Assembly finds that the benefits of meaningful work have significance and importance to all working-age individuals, including persons with disabilities, which shall include, but not be limited to, veterans with service-connected disabilities. All persons, including persons with disabilities, have a right to the opportunity for competitive employment. In order to achieve meaningful and competitive employment for persons with disabilities, employment opportunities in fully-integrated work settings shall be the first and priority option explored in the service planning for working-age persons with disabilities.

(78 Del. Laws, c. 331, § 1.)

§ 742. Definitions.

As used in this subchapter, unless the context otherwise requires:

(1) "Competitive employment" means work in the competitive labor market that is performed on a full-time or part-time basis in an integrated setting and for which a person with a disability is compensated at or above the minimum wage, but not less than the customary wage and level of benefits paid by the employer for the same or similar work performed by persons without disabilities.

(2) "Disability" means, with respect to an individual:

a. A physical or mental impairment that substantially limits 1 or more major life activities of such individual;

b. A record of such an impairment; or

c. Being regarded as having such an impairment,

as defined in the Americans with Disabilities Act of 1990, as amended [42 U.S.C. § 12101 et seq.].

(3) "Integrated setting" means with respect to an employment outcome, a setting typically found in the community in which persons with disabilities interact with persons without disabilities, other than persons without disabilities who are providing services to those persons with disabilities, to the same extent that persons without disabilities in comparable positions interact with other persons.

(4) "Working age" means 14 years of age or older in accordance with § 505 of this title.

(78 Del. Laws, c. 331, § 1.)

§ 743. Employment first policy.

It is hereby declared to be the policy of this State that competitive employment in an integrated setting shall be considered its first and priority option when offering or providing services to persons with disabilities who are of working age. All state agencies that provide services and support to persons with disabilities shall follow this policy and ensure that it is effectively implemented in their programs and services. Nothing in this subchapter shall be construed to limit or disallow any disability benefits to which a person with a disability who is unable to be employed as contemplated by this subchapter would otherwise be entitled. Nothing in this subchapter shall be construed to require any employer to give preference to hiring persons with disabilities.

(78 Del. Laws, c. 331, § 1.)

§ 744. Implementation of policy by state agencies.

(a) All state agencies shall coordinate efforts and shall collaborate within and among such agencies to ensure that state programs, policies, procedures and funding support competitive employment in integrated settings for persons with disabilities who are of working age. All state agencies shall, whenever feasible, share data and information across systems in order to track progress toward full implementation of this subchapter. All state agencies are encouraged to adopt measurable goals and objectives to promote assessment of progress in implementing this subchapter.

(b) State agencies are authorized to adopt rules and regulations to implement this subchapter.

(78 Del. Laws, c. 331, § 1.)

§ 745. Establishment of Employment First Oversight Commission.

(a) There is hereby established an Employment First Oversight Commission under the purview of the State Council for Persons with Disabilities, which shall facilitate the full, effective and timely implementation of this subchapter.

(b) The Commission shall consist of members, who are residents of this State, or work in the State and whose employment agency shall either represent or advocate for the employment of persons with disabilities.

(1) Four members who are persons with a disability and who are knowledgeable of disability issues whom shall be recommended by the Commission, 1 of whom shall be a veteran and 1 of whom shall be a member of the State Council for Persons with Disabilities, and including all of the following:

a. One shall be appointed by the Speaker of the House of Representatives.

b. One shall be appointed by the Minority Leader of the House of Representatives.

c. One shall be appointed by the President Pro Tempore of the Senate.

d. One shall be appointed by the Minority Leader of the Senate.

(2) One member who is experienced with employment service programs and who is not a state employee and who shall be appointed by the chair of the State Council for Persons with Disabilities.

(3) A representative of the Division of Industrial Affairs, appointed by the Secretary of Labor.

(4) A representative of the Division of Vocational Rehabilitation, appointed by the Secretary of Labor.

(5) The Secretary of Education or a designee appointed by the Secretary.

(6) The Secretary of Health and Social Services or a designee appointed by the Secretary.

(7) The Director of the Division of Developmental Disabilities Services or a designee appointed by the Director.

(8) The Chair of the Developmental Disabilities Council or a designee appointed by the Chair.

(9) The Secretary of the Department of Human Resources or a designee appointed by the Secretary.

(10) The Executive Director of the Delaware Community Legal Aid Society Inc. or a designee appointed by the Executive Director.

(11) The Director of the Division for the Visually Impaired or a designee appointed by the Director.

(12) The Director of the Division of Substance Abuse and Mental Health or a designee appointed by the Director.

(13) Other councils, committees, agencies, organizations and individuals as approved by both the Employment First Oversight Commission and the affected council, committee, agency, organization or individual.

(c)-(e) [Repealed.]

(f) Members of the Commission shall serve without compensation.

(g) Any member, who is absent without adequate reason for 3 consecutive meetings, or who fails to attend at least half of all regular business meetings during any calendar year, shall be subject to suspension or removal from the Commission.

(78 Del. Laws, c. 331, § 1; 70 Del. Laws, c. 186, § 1; 81 Del. Laws, c. 408, § 1; 82 Del. Laws, c. 218, § 1.)

§ 746. Commission organization; meetings; officers; quorum.

(a) The Commission shall hold regularly scheduled business meetings at least once in each quarter, and at such times as the chairperson deems necessary, or at the request of a majority of the members of the Commission.

(b) The Commission shall elect a chairperson and vice-chairperson. Each officer shall serve for a 2–year term. Each officer may be reelected for an additional consecutive term.

(c) A majority of the members shall constitute a quorum for the purpose of transacting business.

(78 Del. Laws, c. 331, § 1; 70 Del. Laws, c. 186, § 1; 82 Del. Laws, c. 218, § 1.)

§ 747. Powers and duties of Commission.

(a) The Commission shall review measurable goals and objectives as submitted to it by each relevant state agency to ensure implementation of this subchapter. The Commission shall track the measurable progress of state agencies in implementing this subchapter. All state agencies shall fully cooperate with and provide data and information to assist the Commission in carrying out its duties.

(b) The Commission shall prepare an annual report as part of, and included in, the annual report submitted by the State Council for Persons with Disabilities to the Governor and members of the General Assembly. The report shall detail progress toward the goals and objectives and full implementation of this subchapter. All state agencies shall cooperate with the Commission on the creation and dissemination of the report. The report also shall identify barriers to achieving the outcomes along with the effective strategies and policies that can help realize the employment first initiative.

(78 Del. Laws, c. 331, § 1.)

Subchapter VI

Jamie Wolfe Employment Act

(83 Del. Laws, c. 254, § 1.)

§ 750. Short title.

This subchapter may be known as the “Jamie Wolfe Employment Act.”

(83 Del. Laws, c. 254, § 1.)

§ 751. Statement of purpose.

The General Assembly finds as follows:

In 1938, § 14(c) of the federal Fair Labor Standards Act (29 U.S.C. § 214(c)) authorized the United States Secretary of Labor to grant special wage certificates to certain entities, allowing those entities to pay individuals with disabilities subminimum wages. § 905 of this title authorizes the Department of Labor to promulgate regulations permitting the employment of persons with disabilities at wages lower than the minimum wage. While the special wage certificate program was considered progressive when initiated, advances in vocational rehabilitation, technology, and training as well as changes in attitudes and laws regarding the ability of, and opportunities for, both students and adults with disabilities to work and live in the community now provide persons with disabilities greater employment opportunities. Persons with disabilities, regardless of their work environment, should be compensated like their peers without disabilities. Competitive employment opportunities as well as meaningful alternatives should be offered to individuals who are currently participating in programs that pay less than the minimum wage. In order to effectuate the purpose of the Employment First Act contained in this chapter, authorization to pay subminimum wages will be phased out and ultimately eliminated.

(83 Del. Laws, c. 254, § 1.)

§ 752. Minimum wage for individuals with a disability.

Commencing January 31, 2024, an employer who is authorized to employ an individual with a disability at a subminimum wage pursuant to a special certificate issued under 29 U.S.C. § 214(c) or under regulations promulgated under § 905 of this title may not employ or agree to employ or otherwise remunerate or compensate an individual with a disability at an hourly rate lower than the effective rate payable under § 902 of this title.

(83 Del. Laws, c. 254, § 1.)

§ 753. Plan.

(a) The Employment First Oversight Commission established under §745 of this title shall oversee the development and implementation of a plan to phase out on or before January 31, 2024, authorizations under §905 of this title to pay an individual with a disability

less than the minimum wage otherwise required under §902 of this title. The plan shall be developed by a task force comprised of representatives appointed by the Commission consisting of representatives from the Commission, the State Council for Persons with Disabilities, the Division of Industrial Affairs, the Division of Vocational Rehabilitation, the Division of Developmental Disabilities Services, the Developmental Disabilities Council, family members and individuals currently being served by sheltered workshops, service providers who have experience in transitioning from providing sheltered workshop services to providing competitive employment in integrated settings for persons with disabilities, current sheltered workshop providers, the Disabilities Law Program of the Community Legal Aid Society, Inc., and a range of national experts on the use of transitioning services out of § 14(c) of the federal Fair Labor Standards Act (29 U.S.C. § 214(c)) in order to determine what model of service might work best for Delaware. The Employment First Oversight Commission plan shall be completed and provided to the General Assembly by January 31, 2024, and include all of the following:

(1) Benchmarks and expected outcomes for each year of the phase-out.

(2) A list of the resources to assist each individual with a disability in receiving supports according to the needs and preferences of the individual in order to be employed in an integrated setting, or participate in a meaningful alternative program, regardless of the nature or severity of the individual's disability,

(3) Federal and state funding programs available to assist an individual with a disability to obtain competitive employment in an integrated setting, and assure adequate funding is available for more intensive services that may be necessary in the future.

(4) Individualized person-centered planning for people currently participating in programs authorized under § 14(c) of the federal Fair Labor Standards Act, 29 U.S.C. § 214(c), during the phase out process designed to address individual wishes and service needs with respect to avoiding disruption of location and relationships with friends where feasible.

(5) A means for tracking the effect of transitioning to integrated and meaningful employment on individuals with disabilities on the basis of the following factors:

a. Wages.

b. Unemployment rates.

c. The number of individuals who move from positions paying subminimum wages to competitive employment in an integrated setting.

d. The number of individuals who move from subminimum wage positions to noncompensated activities including those that may lose a job opportunity as a result of a minimum wage increase.

(6) A means for tracking the effect of transitioning to meaningful alternative programing for those who do not engage in competitive integrated employment. Meaningful alternative employment shall include the following services:

(1) Regular opportunities for community-based recreational, social, educational, cultural, and athletic activities, including community volunteer and training activities.

(2) Regularly occurring nonfacility-based activities of a person's choosing provided in settings which allow individuals with disabilities to interact with individuals without disabilities in a community setting to the fullest extent possible for the individual.

(b) The plan referred to in paragraphs (a)(1)-(a)(5) of this section shall be provided to the State Council for Persons with Disabilities for inclusion in the annual report required by § 8210(b)(8) of Title 29.

(83 Del. Laws, c. 254, § 1.)

§ 754. Regulations.

The Department may promulgate regulations necessary for implementation of the Jamie Wolfe Employment Act.

(83 Del. Laws, c. 254, § 1.)

Part I
General Provisions

Chapter 8
Protection of Employees' Rights

§ 801. Definitions.

As used in this chapter:

(1) "Authority" means the State, any political subdivision thereof, or any board, commission, public agency or instrumentality thereof, which operates or takes over the operation of any mass transportation system within this State.

(2) "Mass transportation system" means transportation of the public by bus, rail or any other means of conveyance serving the general public and moving under prescribed routes.

(19 Del. C. 1953, § 801; 54 Del. Laws, c. 304.)

§ 802. Requirements before any public authority may take over and operate privately owned mass transportation systems.

Before any authority may acquire and operate any property of a privately owned mass transportation system, fair and equitable protective arrangements shall be made as determined by the Department of Labor of this State. Such protective arrangements shall include, without being limited thereto, such provisions as may be necessary to accomplish the following objectives:

(1) The preservation of all existing rights, privileges and benefits of all employees of the mass transportation system so taken over by any authority under the then existing collective bargaining agreements between said mass transportation system and the employee thereof no matter how created or established, including the continuation of all pension rights and benefits of all such employees and their beneficiaries.

(2) The continuation of all collective bargaining in any and all situations wherein it existed at the time of such takeover.

(3) The reasonable protection of all individual employees with respect to their employment, including priorities, seniorities and right to advancement.

(4) The assurances of employment of all the employees of such mass transportation system so acquired by any authority, including the priority of employment.

(5) Training and retraining programs of employees and managing personnel.

(19 Del. C. 1953, § 802; 54 Del. Laws, c. 304; 57 Del. Laws, c. 669, § 9A.)

§ 803. Required contract provisions.

The contract whereby any authority acquires any property of a privately owned mass transportation system shall specify, with particularity, the terms and conditions of all the protective arrangements as set out in § 802 of this title, including all other protective arrangements which may be added thereto by the Department of Labor of this State.

(19 Del. C. 1953, § 803; 54 Del. Laws, c. 304; 57 Del. Laws, c. 669, § 9A.)

§ 804. Determinations; by whom and how made.

The determinations as to be made by the Department of Labor of this State shall be performed by the Secretary of Labor, in accordance with such rules and regulations as said Department may from time to time establish.

(19 Del. C. 1953, § 804; 54 Del. Laws, c. 304; 57 Del. Laws, c. 669, §§ 9A, 9B.)

§ 805. Employee's right to certain inventions.

Any provision in an employment agreement which provides that the employee shall assign or offer to assign any of the employee's rights in an invention to the employee's employer shall not apply to an invention that the employee developed entirely on the employee's own time without using the employer's equipment, supplies, facility or trade secret information, except for those inventions that:

(1) Relate to the employer's business or actual or demonstrably anticipated research or development; or

(2) Result from any work performed by the employee for the employer.

To the extent a provision in an employment agreement purports to apply to the type of invention described, it is against the public policy of this State and is unenforceable. An employer may not require a provision of an employment agreement made unenforceable under this section as a condition of employment or continued employment.

(64 Del. Laws, c. 257, § 1; 70 Del. Laws, c. 186, § 1.)

Part I
General Provisions

Chapter 9
Minimum Wage

§ 901. Definition of terms.

As used in this chapter:

(1) "Department" means the Department of Labor or its authorized representatives.

(2) "Employ" means to suffer or permit to work.

(3) "Employee" includes any individual employed by an employer but shall not include:

a. Any individual employed in agriculture;

b. Any individual employed in domestic service in or about a private home;

c. Any individual employed in a bona fide executive, administrative or professional capacity, or as an outside commission paid salesperson, not route driver, who customarily performs services away from the individual's employer's premises taking orders for goods or services;

d. Any individual employed by the United States;

e. Any individual engaged in the activities of an educational, charitable, religious or nonprofit organization where the employment relationship does not in fact exist or where the services are rendered to such organization gratuitously;

f. Any individual employed in the catching, taking, propagating, harvesting, cultivating or farming of any kind of fish, shellfish, crustacea, sponges, seaweeds or other aquatic forms of animal and vegetable life, or in the first processing, canning or packing such marine products at sea as an incident to or in conjunction with such fishing operations, including the going to and returning from work and loading and unloading when performed by any such employee;

g. Any individual under the age of 18 participating in and employed as a junior counselor or counselor in training (CIT) by a nonprofit organization in a summer camp program.

h. Any inmate in the custody of the Department of Correction and any inmate on work release who participates in the Prison Industries programs or other programs sponsored for inmates by the Department of Correction pursuant to Chapter 65 of Title 11 or other applicable Delaware law, unless said inmate is employed by an employer other than the State or a political subdivision thereof.

(4) "Employer" includes any individual, partnership, association, corporation, statutory trust, business trust or any person or group of persons acting directly or indirectly in the interest of an employer in relation to an employee.

(5) "Gratuities" means voluntary monetary contributions received by an employee from a guest, patron or customer for services rendered.

(6) "Occupation" means any occupation, service, trade, business, industry or branch or group of industries or employment or class of employment in which employees are gainfully employed.

(7) "Wage" means compensation due to an employee by reason of the employee's employment, payable in legal tender of the United States or check or bank convertible into cash on demand at full face value, subject to such deductions, charges or allowances as may be permitted by the regulations of the Department under this chapter.

(19 Del. C. 1953, § 901; 55 Del. Laws, c. 18, § 1; 57 Del. Laws, c. 669, § 10; 66 Del. Laws, c. 75, § 1; 70 Del. Laws, c. 15, § 1; 70 Del. Laws, c. 186, § 1; 73 Del. Laws, c. 329, § 65.)

§ 902. Minimum wage rate [For current federal minimum wage, see 29 U.S.C. § 206(a)(1)(A)].

(a) Except as may otherwise be provided under this chapter, every employer shall pay to every employee in any occupation wages of a rate:

(1) Not less than $9.25 per hour until January 1, 2022;

(2) Not less than $10.50 per hour effective January 1, 2022;

(3) Not less than $11.75 per hour effective January 1, 2023;

(4) Not less than $13.25 per hour effective January 1, 2024;

(5) Not less than $15.00 per hour effective January 1, 2025.

Upon the establishment of a federal minimum wage in excess of the state minimum wage, the minimum wage in this State shall be equal in amount to the federal minimum wage, except as may otherwise be provided under this chapter.

(b) Gratuities received by employees engaged in occupations in which gratuities customarily constitute part of the remuneration may be considered wages for purposes of this chapter in an amount equal to the tip credit percentage, as set by the federal government as of June 15, 2006, of the minimum rate as set forth in subsection (a) of this section. In no event shall the minimum rate, under this subsection, be less than $2.23 per hour.

(c) For purposes of this section:

(1) An employee engaged in an occupation in which gratuities customarily constitute part of the remuneration shall be any worker engaged in an occupation in which workers customarily and regularly receive more than $30 per month in tips or gratuities.

(2) "Gratuities" means monetary contributions received directly or indirectly by an employee from a guest, patron or customer for services rendered where the customer is entirely free to determine whether to make any payment at all and, if so, the amount.

(3) A "primary direct service employee" is one who in a given situation performs the main direct service for a customer and is to be considered the recipient of the gratuity.

(4) A "service charge" is an obligatory sum of money included in the statement of charges. Clear and conspicuous notice must be made on either the menu, placard, the front of the statement of charges or other notice given to the customer indicating that all or part of the service charge is the property of the management. Such notice must be clearly printed, stamped or written in bold type. A service charge assessed to customers, patrons or guests without such notice is the property of the primary direct service employee(s). For the purposes of this section, type which is at least 18 points ($^1/_4$ inch) on the placard, or 10 points ($^1/_8$ inch) or larger on all other notices shall be considered clear and conspicuous.

(d) (1) Any gratuity received by an employee, indicated on any receipt as a gratuity, or deposited in or about a place of business for direct services rendered by an employee is the sole property of the primary direct service employee and may not be taken or retained by the employer except as required by state or federal law.

(2) Employees may establish a system for the sharing or pooling of gratuities among direct service employees, provided that the employer shall not in any fashion require or coerce employees to agree upon such a system. Where more than 1 direct service employee provides personal service to the same customer from whom gratuities are received, the employer may require that such employees establish a tip pooling or sharing system not to exceed 15% of the primary direct service employee's gratuities. The employer shall not, under any circumstances, receive any portion of the gratuities received by the employees.

(3) The Department may require the employer to pay restitution if the employer diverts any gratuities of its employees in the amount of the gratuities diverted. If the records maintained by the employer do not provide sufficient information to determine the exact amount of gratuities diverted, the Department may make a determination of gratuities diverted based on available evidence.

(e) [Repealed.]

(19 Del. C. 1953, § 902; 55 Del. Laws, c. 18, § 1; 56 Del. Laws, c. 134, § 1; 56 Del. Laws, c. 339; 57 Del. Laws, c. 691; 59 Del. Laws, c. 470, § 1; 64 Del. Laws, c. 84, § 1; 65 Del. Laws, c. 436, § 1; 66 Del. Laws, c. 28, § 1; 67 Del. Laws, c. 141, §§ 1, 3, 4; 70 Del. Laws, c. 319, §§ 1, 2; 72 Del. Laws, c. 16, § 1; 75 Del. Laws, c. 314, § 1; 79 Del. Laws, c. 186, § 1; 81 Del. Laws, c. 301, § 1; 81 Del. Laws, c. 302, § 1; 83 Del. Laws, c. 81, § 1; 83 Del. Laws, c. 215, §§ 1, 2.)

§ 903. Powers of the Department.

(a) The Department shall administer and enforce this chapter.

(b) Upon ex parte application of the Department showing reasonable ground to believe that this chapter or any regulation published thereunder has been or is being violated, the Superior Court shall enter an order permitting the Department to:

(1) Enter and inspect, after 1 day's notice to the employer, the premises or place of business or employment and upon demand examine and copy wholly or partly any or all books, registers, payrolls and other records that in any way relate to or have a bearing upon the question of wages, hours and other conditions of employment of any employee, including those required to be made, kept and preserved under this chapter or any regulation published thereunder;

(2) Question any employer, employee or other person in the premises or place of business or employment;

(3) Require from any employer full and correct statements in writing, including sworn statements, upon forms prescribed or approved by the Department, with respect to the payment of wages, hours, names, addresses and such other information pertaining to employees as the Department may deem necessary or appropriate;

(4) Investigate such facts, conditions or matters as the Department may deem necessary or appropriate to determine whether this chapter or any regulation published thereunder has been or is being violated;

(5) Hold hearings, administer oaths and examine witnesses under oath, issue subpoenas, compel the attendance of witnesses and the production of papers, books, accounts, records, payrolls, documents and testimony and to take depositions and affidavits in any proceeding before it, and, in case of failure of any person to comply with any subpoena lawfully issued or on the refusal of any witness to testify to any matters regarding which the witness may be lawfully interrogated, the Superior Court, on application by the Department, shall compel obedience as in the case of disobedience of the requirements of a subpoena issued from such Court or a refusal to testify therein.

(c) The Department may institute actions in the Superior Court for penalties for any violation of this chapter or any regulation published thereunder.

(d) Nothing contained in this chapter shall be deemed a limitation on any power or authority of the Department under any other law of this State which may be otherwise applicable to administer or enforce this chapter.

(19 Del. C. 1953, § 903; 55 Del. Laws, c. 18, § 1; 70 Del. Laws, c. 186, § 1.)

§ 904. Regulations.

(a) The Department, for any occupation, shall have the power to make and revise or rescind such regulations, including the definition of terms, as it may deem necessary or appropriate to preserve or safeguard the minimum wage rate under this chapter, except that prior thereto the Department shall hold public hearing upon reasonable notice at which any person may be heard and shall consult with the members of an advisory board representing the interests of employers, employees and the public in equal numbers totaling not more than 9 in all. The members of the board shall serve at the pleasure of the Department and may be paid by it as compensation for their services a reasonable per diem, in accordance with such regulations as it may prescribe, for each day on which they attend a meeting of the board or for each day they spend in the work of the board and may in addition be reimbursed for their necessary and reasonable traveling expenses. Such regulations may include, but are not limited to: Regulations defining and governing outside salespersons, learners and apprentices, their number, proportion and length of service, part-time pay, bonuses, overtime pay, special pay for special or extra work, permitted charges to employees or allowances for board, lodging, apparel or other facilities or services customarily furnished by employers to employees, allowances for gratuities or allowances for such other special conditions or circumstances which may be usual in a particular employment relationship. Such regulations shall, except as may be otherwise provided by the Department, take effect upon publication.

(b) The Department shall have the power to make and revise or rescind such regulations as it may deem necessary or appropriate to administer or enforce this chapter, and such regulations shall, except as may be otherwise provided by the Department, take effect upon publication.

(19 Del. C. 1953, § 904; 55 Del. Laws, c. 18, § 1; 70 Del. Laws, c. 186, § 1.)

§ 905. Wage rate for handicapped workers [Repealed effective Oct. 21, 2024].

For any occupation, the Department may provide by regulations, after public hearing, upon reasonable notice, at which any person may be heard, for the employment of individuals whose earning capacity is impaired by age or physical or mental deficiency or injury at such wages lower than the minimum wage rate under this chapter as the Department may deem necessary or appropriate to avoid hardship or prevent curtailment of opportunities for employment. No employee shall be employed at wages fixed pursuant to this section except under special license issued under the applicable regulations of the Department. Such regulations shall, except as may be otherwise provided by the Department, take effect upon publication.

(19 Del. C. 1953, § 905; 55 Del. Laws, c. 18, § 1.)

§ 905. Wage rate for handicapped workers [Repealed effective Oct. 21, 2024].

(19 Del. C. 1953, § 905; 55 Del. Laws, c. 18, § 1; repealed by 83 Del. Laws, c. 254, § 2, effective Oct. 21, 2024.)

§ 906. Wage rate for learners and apprentices.

For any occupation, the Department may provide by regulations, after public hearing, upon reasonable notice, at which any person may be heard, for the employment of learners and apprentices at such wages lower than the minimum rate under this chapter as the Department may deem necessary or appropriate to prevent curtailment of opportunities for employment. No employee shall be employed at wages fixed pursuant to this section except under applicable regulations of the Department. Such regulations shall, except as may be otherwise provided by the Department, take effect upon publication.

(19 Del. C. 1953, § 906; 55 Del. Laws, c. 18, § 1; 67 Del. Laws, c. 141, §§ 2, 5; 69 Del. Laws, c. 334, § 1.)

§ 907. Records of employers.

Every employer shall make, keep and preserve for a period of not less than 3 years, in or about the premises or place of business or employment, a record of the name, address and occupation of each employee, the rate of pay and the amount paid each pay period to each employee, the hours worked each day and each work week by each employee and such other information or records as the Department shall deem by regulation to be necessary or appropriate to administer or enforce this chapter.

(19 Del. C. 1953, § 907; 55 Del. Laws, c. 18, § 1.)

§ 908. Posting of laws and regulations.

Every employer shall keep a summary of this chapter, approved by the Department, and of any applicable regulations published thereunder or a summary thereof, approved by the Department, posted in a conspicuous and accessible location in or about the premises or place of employment and where employees normally pass. Employers shall be furnished copies thereof by the Department on request without charge.

(19 Del. C. 1953, § 908; 55 Del. Laws, c. 18, § 1.)

§ 909. Judicial review.

(a) Any interested person in any occupation for which any regulation has been published under this chapter, who has been or may be aggrieved thereby, may obtain a review thereof in the Superior Court by filing in such Court, within 20 days after notice that such regulation will affect the interested person's business operations or employment conditions or compensation, a petition against the Department as

defendant praying that the regulation be modified or revoked. Two copies of the petition shall be served upon the Department by registered mail. Facts determined by the Department, if supported by evidence, shall be conclusive upon the Court. The Court shall determine whether the person has been or may be aggrieved and whether the regulation is in accordance with law. If the Court determines that the person has been or may be aggrieved and that the regulation is not in accordance with law, it shall remand the case to the Department with directions to modify or revoke the regulation.

(b) Proceedings in the Superior Court upon review taken under this section shall be privileged and take precedence over all matters, except matters of the same character. The jurisdiction of the Court shall be exclusive and its judgment and decree shall be final, except that the same shall be subject to review by the Supreme Court at the instance of either party.

(c) The commencement of proceedings under this section shall not, unless specifically ordered by the Superior Court, operate as a stay of any regulation published under this chapter. The Court shall not grant any stay of any regulation unless the person aggrieved shall file in the Court an undertaking with a surety or sureties satisfactory to the Court for the payment to the employees affected by the regulation, in the event it is affirmed, of the amount by which the compensation the employees are entitled to receive under the regulation exceeds the compensation they actually receive while the stay is in effect.

(19 Del. C. 1953, § 909; 55 Del. Laws, c. 18, § 1; 70 Del. Laws, c. 186, § 1.)

§ 910. Penalties.

(a) Any employer who hinders or delays the Department in the performance of its duties or refuses to admit the Department to the premises or place of business or employment in violation of any court order, or fails to make, keep and preserve any books, registers, payrolls or other records or falsifies the same, or refuses to make the same accessible to the Department, or refuses to furnish a sworn statement of the same or any other information, or fails to post a summary of this chapter or of any applicable regulations published thereunder or summary thereof, or pays or agrees to pay wages at a rate less than the rate applicable, or otherwise violates this chapter or any regulation published thereunder shall be subject to a civil penalty of not less than $1,000 nor more than $5,000 for each such violation.

(b) Any employer who discharges or who in any manner discriminates against any employee because that employee made a complaint or gave information to the Department pursuant to this chapter, or caused or is about to cause any proceedings to be instituted under this chapter, or has testified or is about to testify in any such proceedings shall be deemed in violation of this chapter and shall be subject to a civil penalty of not less than $1,000 nor more than $5,000 for each such violation.

(c) A civil penalty claim may be filed in any court of competent jurisdiction.

(19 Del. C. 1953, § 910; 55 Del. Laws, c. 18, § 1; 67 Del. Laws, c. 260, § 1; 69 Del. Laws, c. 294, §§ 12, 13.)

§ 911. Remedies of employees.

(a) Any employer who pays any employee less than the full amount of the wages to which the employee is entitled under this chapter shall be liable to such employee in a civil action for the full amount of such wages less any amount actually paid to such employee by the employer and for the costs of the action, necessary expenses of prosecution and reasonable attorney's fees. Any agreement between such employee and the employer to work for less than the minimum wage rate under this chapter shall be no defense to such action.

(b) Whenever the Department believes that wages, as required under this chapter, have not been paid, the Department may bring any legal action necessary to collect such claim. The Department shall attempt to notify affected employees of its action. Should the Department prevail the employer shall also be liable to pay the costs of the action, necessary expenses of prosecution and reasonable attorney's fees. All expenses and attorney's fees collected by the Department shall be remitted by the Department to the State Treasurer. Any wages collected pursuant to this subsection but not claimed by the employee entitled thereto within 1 year from the date of collection shall be remitted by the Department to the State Treasurer.

(19 Del. C. 1953, § 911; 55 Del. Laws, c. 18, § 1; 65 Del. Laws, c. 369, § 1; 70 Del. Laws, c. 186, § 1.)

§ 912. Relation to other laws.

Any standards relating to minimum wages, maximum hours, overtime compensation or other working conditions in effect under any other law of this State on the effective date of this chapter which are more favorable to employees than those applicable to such employees under this chapter or regulations published thereunder shall not be deemed to be amended, rescinded or otherwise affected by this chapter but shall continue in full force and effect and may be enforced as provided by law. Otherwise, any such standards in effect under any other law of this State on the effective date of this chapter are specifically superseded by standards established under this chapter or regulations published thereunder which are more favorable to such employees.

(19 Del. C. 1953, § 912; 55 Del. Laws, c. 18, § 1.)

§ 913. Right of collective bargaining.

Nothing in this chapter shall be deemed to interfere with, impede or in any way diminish the right of employees to bargain collectively with their employers through representatives of their own choosing in order to establish wages or other conditions of work in excess of the minimum wage rate under this chapter.

(19 Del. C. 1953, § 913; 55 Del. Laws, c. 18, § 1.)

§ 914. Short title.

This chapter shall be known as the “Minimum Wage Act of the State.”

(19 Del. C. 1953, § 914; 55 Del. Laws, c. 18, § 1.)

Part I
General Provisions

Chapter 10
Sheltered Employment

§ 1001. Definitions [Repealed effective Oct. 21, 2024].

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

(1) "Accredited" means a program which has been surveyed and approved by the Commission on Accreditation of Rehabilitation Facilities for not less than a 1-year period.

(2) "Department" means the Department of Labor or its authorized representatives.

(3) "Extended employee" means a severely disabled person who:

a. Shall have completed an accredited program of evaluation and work adjustment training, including a prescribed work services program.

b. Shall have been found, due to the nature and severity of a disability, to be incapable of competing in the open or customary labor market.

(4) "Sheltered workshop" means an accredited occupationally-oriented facility, including a work activities center, operated by a private nonprofit agency, which, except for its administrative and support staff, employs disabled persons certified under special provisions of federal minimum wage laws by the Wage and Hour Division, United States Department of Labor.

(65 Del. Laws, c. 74, § 1.)

§ 1001. Definitions [Repealed effective Oct. 21, 2024].

(65 Del. Laws, c. 74, § 1; repealed by 83 Del. Laws, c. 254, § 3, effective Oct. 21, 2024.)

§ 1002. Eligibility of individuals for participation; client progress standards [Repealed effective Oct. 21, 2024].

(a) The sheltered workshop shall certify the eligibility of individuals for participation in an extended employment program under this chapter immediately upon cessation of third-party sponsorship.

(b) Client progress will be monitored by the Department through the Division of Vocational Rehabilitation on an annual basis under guidelines established by the Department that can simultaneously meet the standards of CARF, United States Department of Labor's Wage and Hour Certificates for Sheltered and Work Activity Employees, United States Department of Education, Rehabilitation Act of 1973 [29 U.S.C. § 701 et seq.] and subsequent amendments, as well as the intent of this bill.

(65 Del. Laws, c. 74, § 1.)

§ 1002. Eligibility of individuals for participation; client progress standards [Repealed effective Oct. 21, 2024].

(65 Del. Laws, c. 74, § 1; repealed by 83 Del. Laws, c. 254, § 3, effective Oct. 21, 2024.)

§ 1003. Financial assistance in extended employment [Repealed effective Oct. 21, 2024].

(a) The Department shall have the authority to enter into a contract with sheltered workshops for the purpose of providing an extended employment program.

(b) The Department shall approve a method for determining the maximum allotment for each eligible sheltered workshop.

(65 Del. Laws, c. 74, § 1.)

§ 1003. Financial assistance in extended employment [Repealed effective Oct. 21, 2024].

(65 Del. Laws, c. 74, § 1; repealed by 83 Del. Laws, c. 254, § 3, effective Oct. 21, 2024.)

§ 1004. Federal grants [Repealed effective Oct. 21, 2024].

The Department is authorized to apply for whatever federal grants may become available from time to time in order to carry out the purposes of this chapter.

(65 Del. Laws, c. 74, § 1.)

§ 1004. Federal grants [Repealed effective Oct. 21, 2024].

(65 Del. Laws, c. 74, § 1; repealed by 83 Del. Laws, c. 254, § 3, effective Oct. 21, 2024.)

§ 1005. Regulations [Repealed effective Oct. 21, 2024].

The Department shall have the power to make and revise and rescind such regulations as it may deem necessary or appropriate to administer and implement this chapter. Such regulations shall, except as may be otherwise provided by the Department, take effect upon publication.

(65 Del. Laws, c. 74, § 1.)

§ 1005. Regulations [Repealed effective Oct. 21, 2024].

(65 Del. Laws, c. 74, § 1; repealed by 83 Del. Laws, c. 254, § 3, effective Oct. 21, 2024.)

Part I
General Provisions

Chapter 11
Wage Payment and Collection

§ 1101. Definition of terms.

(a) For purposes of this chapter:

(1) "Check" means a draft drawn on a bank and payable on demand.

(2) "Department" means the Department of Labor.

(3) "Employ" means to suffer or permit to work.

(4) "Employee" means a person suffered or permitted to work by an employer in this State. This chapter does not apply to any of the following:

a. Employees of the United States government.

b. Employees of the State of Delaware or any political subdivision of this State.

c. Independent contractors.

(5) "Employer" means any individual, partnership, association, joint stock company, trust, corporation, the administrator or executor of the estate of a deceased individual, or the receiver, trustee, or successor of any of the same employing a person. This chapter does not apply to employees of the United States government, the State of Delaware or any political subdivision of this State.

(6) "Independent contractor" means as defined in § 3501 of this title. "Independent contractor" includes any of the following:

a. A person licensed by the Department of Insurance under Title 18.

b. A person registered under Chapter 73 of Title 6 as any of the following:

1. A broker-dealer.

2. An agent.

3. An investment adviser.

4. An investment adviser representative.

c. A person designated as an "independent contractor" by the Department through regulations.

(7) "Secretary" or "Secretary of Labor" means the Secretary of the Department of Labor or the Secretary's authorized designee.

(8) "Wage" means compensation due to an employee by reason of the employee's employment, payable in legal tender of the United States or check or bank draft convertible into cash on demand at full face value, subject to such deductions, charges, or allowances as may be permitted by the regulations of the Department under this title.

(b) For purposes of this chapter, the officers of a corporation and any agents having the management thereof, who knowingly permit a corporation to violate this chapter are deemed to be the employer of the employees of the corporation.

(19 Del. C. 1953, § 1101; 55 Del. Laws, c. 19, § 1; 57 Del. Laws, c. 669, § 11; 70 Del. Laws, c. 103, § 1; 83 Del. Laws, c. 443, § 2.)

§ 1102. Payment of wages on regular paydays.

(a) Every employer shall pay all wages due to the employer's employees on regular paydays designated in advance by the employer, which shall be at least once during each calendar month, and in lawful money of the United States or checks provided suitable arrangements are made by the employer for cashing such checks for the full amount of the wages due at a bank or other business establishment convenient to the place of employment. But upon written request of an employee, an employer may pay such employee all wages due by credit to a bank account designated by the employee.

(b) Every employer shall pay all wages due within 7 days from the close of the pay period in which the wages were earned; provided, that if the regular payday falls on a nonwork day, payment shall be made on the preceding workday. If, however, the regular payday is within the pay period (on or before the final day of the pay period) and the pay period does not exceed 16 days, the employer may delay until the next pay period compensation for the following:

(1) Overtime hours worked by employees;

(2) Employees hired or resuming employment during the pay period; and

(3) Part-time or temporary employees with variable working time.

(c) If an employee is for any reason not present on the regular payday, payment shall be made either by mail if requested by the employee or at the next regular workday that the employee is present or by the credit to the bank account designated by the employee.

(19 Del. C. 1953, § 1102; 55 Del. Laws, c. 19, § 1; 57 Del. Laws, c. 152, §§ 1, 2; 68 Del. Laws, c. 217, § 1; 70 Del. Laws, c. 103, §§ 2, 3; 70 Del. Laws, c. 186, § 1.)

§ 1102A. Wage theft.

(a) An employer may not do any of the following:

(1) Employ an individual without reporting the individual's employment to all appropriate government agencies and paying all applicable taxes and fees for the individual.

(2) Fail to properly withhold state and federal taxes from an employee.

(3) Fail to forward money withheld from an employee's wages to the appropriate state or federal agency within 7 days of the applicable pay period.

(4) Pay an employee wages that are less than the minimum wage established under state and federal law for the work performed.

(5) Misclassify a worker as an independent contractor for purposes of avoiding wage, tax, or workers' compensation obligations under this title.

(6) Knowingly conspire to assist, advise, or facilitate a violation of this section.

(b) Following an investigation in which the Department makes an initial determination that an employer has violated 1 or more provisions of subsection (a) of this section, the Department may make a decision to impose a civil penalty.

(c) The Department shall notify the employer, in writing, of a decision to impose a civil penalty under subsection (b) of this section which must comply with § 10122 of Title 29 and include all of the following:

(1) The action to be taken.

(2) The grounds upon which the determination was made to take the action.

(3) Instructions to request a hearing.

(d) (1) A request for a hearing must be made in writing, addressed to the Director of Industrial Affairs or the Secretary, and made within 10 business days from the date of receipt of the notice under subsection (c) of this section.

(2) If a hearing is not requested under paragraph (d)(1) of this section, the determination made by the Department under subsection (b) of this section is final.

(e) The Director of Industrial Affairs shall review a request for a hearing under paragraph (d)(1) of this section and may schedule an informal settlement conference. The Director of Industrial Affairs shall forward the hearing request to the Secretary to schedule a hearing if no settlement is reached at the informal settlement conference or an informal settlement conference is not held.

(f) The Secretary shall issue a final case decision at the conclusion of a hearing held under this section as required under Chapter 101 of Title 29.

(g) An employer may seek judicial review of the Secretary's final case decision by commencing an action in Superior Court, within 30 days of the date of the final decision under subsection (f) of this section.

(h) Any final decision by a court or administrative agency that contains a finding of fact or conclusion of law that a violation of this section occurred, is conclusive on all parties to an action under this section. For purposes of this subsection, a decision is final if it has been fully determined on appeal to the appropriate court, if all time for filing an appeal of the decision has expired, or if the decision is not subject to judicial review.

(i) An employer who violates subsection (a) of this section shall do all of the following within 30 days of a final decision under subsection (h) of this section:

(1) Pay restitution to or on behalf of the employee.

(2) Come into compliance with all applicable labor laws, including laws governing income tax withholding, unemployment insurance, wage laws, and workers' compensation.

(j) The following penalties apply in addition to restitution required under paragraph (i)(1) of this section:

(1) a. An employer who violates subsection (a) of this section is subject to a civil penalty of not less than $2,000 and not more than $20,000 for each violation.

b. Each instance of a violation of subsection (a) of this section per employee is a separate violation.

(2) An employer is subject to a civil penalty of not less than $20,000 and not more than $50,000 for each violation if the employer discharges or in any manner retaliates or discriminates against an individual because that individual does any of the following under this section:

a. Made a complaint or provided information to the Department.

b. Caused, or is going to cause, an investigation to be instituted.

c. Testified, or is going to testify, in a hearing.

(k) All civil penalties collected under this section are payable to the Department of Labor and must be used for the administration and enforcement of this chapter, which may include expenses incurred by the Department of Justice in connection with activities under this chapter, including prosecutions under § 841D of Title 11.

(*l*) In addition to pursuing penalties under this section, the Department may provide findings, and supporting evidence, from a completed investigation under this section to the Department of Justice for consideration of prosecution under § 841D of Title 11.

(m) Nothing in this section precludes any of the following:

(1) A state or federal agency from pursuing a remedy against an employer for a violation of a different law.

(2) An employee or the Department from pursuing a remedy against an employer under § 1113 of this title.

(83 Del. Laws, c. 443, § 3.)

§ 1103. Employees separated from the payroll before regular payday; damages for failure to pay wages.

(a) (1) Whenever an employee quits, resigns, is discharged, suspended, or laid off, the wages earned by the employee become due and payable by the employer on the later of the following:

a. The next date the wages would be paid through the last day worked under the employer's regular pay cycle as if the employment had not stopped.

b. Three business days after the last day worked.

(2) The employer must make the payment due under paragraph (a)(1) of this section using either of the following methods:

a. The usual pay channels as if the employment had not been suspended or terminated.

b. If requested by the employee, by mail to the address provided in the employee's request or if no address is provided, the most recent address provided to the employer.

(b) (1) Wages paid under subsection (a) of this section must be paid in compliance with the requirements under §§ 1104 and 1107 of this title.

(2) If an employer, without any reasonable grounds for dispute under § 1104 or § 1107 of this title, fails to pay an employee wages as required under this chapter, the employer is also liable to the employee for liquidated damages in the amount of the lower of the following:

a. Ten percent of the unpaid wages for each day, except Sunday and legal holidays, upon which the failure continues after the day upon which payment is required.

b. An amount equal to the unpaid wages.

(3) For purposes of liquidated damages under paragraph (b)(2) of this section, the failure to pay is not deemed to continue after the date of the filing of a petition of bankruptcy with respect to the employer if the employer is adjudicated bankrupt.

(19 Del. C. 1953, § 1103; 55 Del. Laws, c. 19, § 1; 57 Del. Laws, c. 152, § 3; 64 Del. Laws, c. 226, § 1; 70 Del. Laws, c. 186, § 1; 83 Del. Laws, c. 444, § 1.)

§ 1104. Unconditional payment of wages conceded to be due.

(a) In case of a dispute over the amount of wages, the employer shall pay without condition and within the time set by this chapter all wages or parts thereof conceded by the employer to be due, leaving to the employee all remedies the employee might otherwise be entitled to, including those provided under this chapter, as to any balance claimed.

(b) The acceptance by an employee of a payment under this section shall not constitute a release as to the balance of the employee's claim and any release required or obtained by an employer as a condition to payment shall be in violation of this chapter and shall be null and void.

(19 Del. C. 1953, § 1104; 55 Del. Laws, c. 19, § 1; 70 Del. Laws, c. 186, § 1.)

§ 1105. Prime contractor's responsibility for wage payments.

Whenever any person shall contract with another for the performance of any work which the contracting person has undertaken to perform, the person shall become civilly liable to employees engaged in the performance of work under such contract for the payment of wages, exclusive of liquidated damages, as required under this chapter, whenever and to the extent that the employer of such employees fails to pay such wages, and the employer of such employees shall be liable to such person for any wages paid by the employer under this section.

(19 Del. C. 1953, § 1105; 55 Del. Laws, c. 19, § 1; 70 Del. Laws, c. 186, § 1.)

§ 1106. Deceased employees.

(a) In the event of the death of an employee the wages due the employee by an employer not in excess of $300 may, upon proper demand, be paid in the absence of actual notice of the pendency of probate proceedings without requiring letters testamentary or of administration in the following order of preference to decedent's:

(1) Surviving children under 21 years of age, to the parent, guardian or other person having custody of such child, in equal shares;

(2) Surviving spouse;

(3) Surviving children 21 years of age and over, in equal shares;

(4) Parents, in equal shares or survivor.

(b) Payments under this section shall be a release and discharge of the employer to the amount of such payment.

(19 Del. C. 1953, § 1106; 55 Del. Laws, c. 19, § 1; 70 Del. Laws, c. 186, § 1.)

§ 1107. Withholding of wages.

No employer may withhold or divert any portion of an employee's wages unless:

(1) The employer is required or empowered to do so by state or federal law; or

(2) The deductions are for medical, surgical or hospital care or service, without financial benefit to the employer, and are openly, clearly and in due course recorded in the employers' books; or

(3) The employer has a signed authorization by the employee for deductions for a lawful purpose accruing to the benefit of the employee, except that the Department, upon finding that it is acting in the public interest, may, by regulation, prohibit such withholding or diverting for such purpose. If the Department abuses its discretion and acts arbitrarily and without any reasonable ground, any aggrieved person may institute a civil action in the Superior Court to have such regulation declared null and void. The Department, in such action, shall not be liable for costs or fees of any nature.

(19 Del. C. 1953, § 1107; 55 Del. Laws, c. 19, § 1.)

§ 1107A. Differential rate of pay based on gender prohibited.

(a) No employees shall be paid a wage at a rate less than the rate at which an employee of the opposite sex in the same establishment is paid for equal work on a job the performance of which requires equal skill, effort and responsibility, and which is performed under similar working conditions, except where payment is made pursuant to a differential based on:

(1) A seniority system;

(2) A merit system;

(3) A system which measures earnings by quantity or quality of production; or

(4) Any other factor other than sex; provided, that an employer who is paying a wage rate differential in violation of this subsection shall not, in order to comply with this subsection, reduce the wage rate of any employee.

(b) No labor organization, or its agents, representing employees of an employer having employees subject to any provisions of this section shall cause or attempt to cause such an employer to discriminate against an employee in violation of subsection (a) of this section.

(c) For purposes of administration and enforcement, any amounts owing to any employee which are withheld in violation of this section shall be deemed to be unpaid wages under this chapter.

(d) As used in this section, the term "labor organization" means any organization of any kind, or any agency or employee representative committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment or conditions of work.

(64 Del. Laws, c. 132, § 1.)

§ 1108. Duty of employer regarding notification, posting and records.

It shall be the duty of every employer of over 3 employees to:

(1) Notify each employee in writing, at the time of hiring, of the rate of pay and of the day, hour and place of payment;

(2) Notify each employee in writing or through a posted notice maintained in a place accessible to the employees and where they normally pass of any reduction in the regular rate of pay, and day, hour and place of payment prior to the time of such reduction;

(3) Make available to each employee in writing or through a poster notice maintained in a place accessible to the employees and where they normally pass employment practices and policies with regard to vacation pay, sick leave and comparable matters;

(4) Furnish to each employee at the time of payment a statement, either on the check, or by a separate slip, or electronically, so long as the electronic statement is in a form capable of being retained by the employee, showing the wages due, the pay period for which the wages are due and the total amount of deductions, separately specified, which have been made from the wages due, provided such statement shall, for an employee who is paid at an hourly rate, show the total number of hours for the said pay period.

Where the statement is furnished electronically, an employee may request that the statement be provided in written form on a separate slip.

(5) Post and maintain in a place accessible to the employees and where they normally pass a summary of this chapter to be supplied by the Department upon request without charge;

(6) Make, keep and preserve for a period not less than 3 years the records specified in the chapter, including wage and hour records, in or about the premises or place of business or employment or at 1 or more central record keeping offices, and make such reports therefrom to the Department as it shall deem by regulation to be necessary or appropriate to administer or enforce this chapter.

(19 Del. C. 1953, § 1108; 55 Del. Laws, c. 19, § 1; 57 Del. Laws, c. 152, §§ 4-6; 74 Del. Laws, c. 234, § 1.)

§ 1109. Benefits and wage supplements.

(a) Any employer who is party to an agreement to pay or provide benefits or wage supplements to any employee shall pay the amount or amounts necessary to provide such benefits or furnish such supplements within 30 days after such payments are required to be made; provided, however, that this section shall not apply to employers subject to Part I of the Interstate Commerce Act [49 U.S.C. § 10101 et seq.].

(b) As used herein, “benefits or wage supplements” means compensation for employment other than wages, including, but not limited to, reimbursement for expenses, health, welfare or retirement benefits, and vacation, separation or holiday pay, but not including disputed amounts of such compensation subject to handling under dispute procedures established by collective bargaining agreements.

(19 Del. C. 1953, § 1109; 56 Del. Laws, c. 442, § 2.)

§ 1110. Provisions of law may not be waived by agreement.

Except as provided in this chapter, no provision of this chapter may in any way be contravened or set aside by private agreement.

(19 Del. C. 1953, § 1110; 55 Del. Laws, c. 19, § 1; 56 Del. Laws, c. 442, § 1.)

§ 1111. Powers of the Department.

(a) The Department shall administer and enforce this chapter.

(b) Upon ex parte application of the Department, showing reasonable ground to believe that any provision of this chapter or any regulation published thereunder has been or is being violated, the Superior Court shall enter an order permitting the Department to:

(1) Enter and inspect, after 1 day’s notice to the employer, the premises or place of business or employment and upon demand examine and copy, wholly or partly, any or all books, registers, payrolls and other records, including those required to be made, kept and preserved under this chapter or any regulation published thereunder;

(2) Question any employer, employee or other person in the premises or place of business or employment;

(3) Require from any employer full and correct statements in writing, including sworn statements, upon forms prescribed or approved by the Department, with respect to the payment of wages, hours, names, addresses and such other information pertaining to employees as the Department may deem necessary or appropriate;

(4) Investigate such facts, conditions or matters as the Department may deem necessary or appropriate to determine whether this chapter or any regulation published thereunder has been or is being violated;

(5) Hold hearings, administer oaths and examine witnesses under oath, issue subpoenas, compel the attendance of witnesses and the production of papers, books, accounts, records, payrolls, documents and testimony, and to take depositions and affidavits in any proceeding before it, and, in case of failure of any person to comply with any subpoena lawfully issued or on the refusal of any witness to testify to any matter regarding which the witness may be lawfully interrogated, the Superior Court, on application by the Department, shall compel obedience as in the case of disobedience of the requirements of a subpoena issued from such Court or a refusal to testify therein.

(c) The Department may institute actions in the Superior Court for penalties for any violation of this chapter or any regulation published thereunder.

(d) Nothing contained in this chapter shall be deemed a limitation on any power or authority of the Department under any other law of this State which may be otherwise applicable to administer or enforce this chapter.

(19 Del. C. 1953, § 1111; 55 Del. Laws, c. 19, § 1; 56 Del. Laws, c. 442, § 1; 70 Del. Laws, c. 186, § 1.)

§ 1112. Penalties.

(a) Any employer who violates or fails to comply with any requirement of this chapter or any regulation published thereunder shall be deemed in violation of this chapter and shall be subject to a civil penalty of not less than $1,000 nor more than $5,000 for each such violation.

(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 pursuant to this chapter, or because the employee has caused to be instituted or is about to cause to be instituted any proceedings under this chapter, or has testified or is about to testify in any such proceedings shall be subject to a civil penalty of not less than $1,000 nor more than $5,000 for each such violation.

(c) Any employer who falsely makes, utters, draws or delivers any receipt or statement that credit to a bank account of any employee has been made in payment of wages due shall be subject to a civil penalty of not less than $1,000 nor more than $5,000 for each such violation.

(d) A civil penalty claim may be filed in any court of competent jurisdiction.

(19 Del. C. 1953, § 1112; 55 Del. Laws, c. 19, § 1; 56 Del. Laws, c. 442, § 1; 57 Del. Laws, c. 152, § 7; 67 Del. Laws, c. 260, § 1; 69 Del. Laws, c. 294, § 14; 70 Del. Laws, c. 186, § 1.)

§ 1113. Remedies of employees.

(a) A civil action to recover unpaid wages and liquidated damages may be maintained in any court of competent jurisdiction.

(b) Whenever the Department determines that wages, as required under this chapter, have not been paid, the Department may bring any legal action necessary to collect such claim. With the consent of the aggrieved employee, the Department shall have the power to settle and adjust any such claim to the same extent as might the assigning employee.

(c) Any judgment entered for a plaintiff in an action brought under this section shall include an award for the costs of the action, the necessary costs of prosecution and reasonable attorney’s fees, all to be paid by the defendant. In the case of actions brought under this

section by the Department, expenses and attorney's fees shall be remitted by the Department to the State Treasurer. The Department shall not be required to pay the filing fee or other costs of the action or fees of any nature or to file bond or other security of any nature in connection with such action or with proceedings supplementary thereto or as a condition precedent to the availability to the Department of any process in aid of such action or proceedings. The Department shall have the power to join various claimants in 1 preferred claim or lien and, in case of suit, to join them in 1 cause of action.

(19 Del. C. 1953, § 1113; 55 Del. Laws, c. 19, § 1; 56 Del. Laws, c. 442, § 1; 64 Del. Laws, c. 226, §§ 2, 3.)

§ 1114. Regulations.

The Department shall have the power to make and revise or rescind such regulations as it may deem necessary or appropriate to administer or enforce this chapter and such regulations shall, except as may be otherwise provided by the Department, take effect upon publication.

(19 Del. C. 1953, § 1114; 55 Del. Laws, c. 19, § 1; 56 Del. Laws, c. 442, § 1.)

§ 1115. Short title.

This chapter shall be known as the "Wage Payment and Collection Act of the State."

(19 Del. C. 1953, § 1115; 55 Del. Laws, c. 19, § 1; 56 Del. Laws, c. 442, § 1.)

Part I
General Provisions
Chapter 13
Public Employment Relations Act

§ 1301. Statement of policy.

It is the declared policy of the State and the purpose of this chapter to promote harmonious and cooperative relationships between public employers and their employees and to protect the public by assuring the orderly and uninterrupted operations and functions of the public employer. These policies are best effectuated by:

(1) Granting to public employees the right of organization and representation;

(2) Obligating public employers and public employee organizations which have been certified as representing their public employees to enter into collective bargaining negotiations with the willingness to resolve disputes relating to terms and conditions of employment and to reduce to writing any agreements reached through such negotiations; and

(3) Empowering the Public Employment Relations Board to assist in resolving disputes between public employees and public employers and to administer this chapter.

(69 Del. Laws, c. 466, § 1.)

§ 1302. Definitions.

(a) "Appropriate bargaining unit" or "bargaining unit" means a group of public employees designated by the Public Employment Relations Board as appropriate for representation by an employee organization for purposes of collective bargaining.

(b) "Binding interest arbitration" means the procedure by which the Public Employment Relations Board shall make written findings of fact and a decision for final and binding resolution of an impasse arising out of collective bargaining.

(c) "Board" means the Public Employment Relations Board established by § 4006 of Title 14 and made applicable to this chapter by § 1306 of this title.

(d) "Certification" means official recognition by the Board, following a secret-ballot election, that an employee organization is the exclusive representative for all employees in an appropriate bargaining unit.

(e) "Collective bargaining" means the performance of the mutual obligation of a public employer through its designated representatives and the exclusive bargaining representative to confer and negotiate in good faith with respect to terms and conditions of employment, and to execute a written contract incorporating any agreements reached. However, this obligation does not compel either party to agree to a proposal or require the making of a concession.

(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.

(g) "Decertification" means the withdrawal by the Board of an employee organization's official designation as exclusive representative following a decertification election which shows that the exclusive representative no longer has the support of a majority of the members in an appropriate bargaining unit.

(h) "Discretionary subject" means, for the State as an employer only, any subject covered by merit rules which apply pursuant to § 5938(c) of Title 29, and which merit rules have been waived by statute.

(i) "Employee organization" means any organization which admits to membership employees of a public employer and which has as a purpose the representation of such employees in collective bargaining, and includes any person acting as an officer, representative or agent of said organization.

(j) "Exclusive bargaining representative" or "exclusive representative" means the employee organization which as a result of certification by the Board has the right and responsibility to be the collective bargaining agent of all employees in that bargaining unit.

(k) "Fair share fee" means a fee that a nonmember shall be required to pay to the nonmember's exclusive representative to offset the nonmember's pro rata share of the exclusive representative's expenditures. Such fee shall be equal in amount to regular membership dues that a member of the exclusive representative's affiliated organizations, provided that the exclusive representative establishes and maintains a procedure by which any nonmember fee payer may obtain a rebate.

(*l*) "Impasse" means the failure of a public employer and the exclusive bargaining representative to reach agreement in the course of collective bargaining.

(m) "Mediation" means an effort by an impartial third-party confidentially to assist in reconciling an impasse between the public employer and the exclusive bargaining representative regarding terms and conditions of employment.

(n) "Nonmember" means an employee who is not a member of the exclusive representative but whom the exclusive representative is required to represent pursuant to this chapter.

(o) "Public employee" or "employee" means any employee of a public employer except:

(1) Any person elected by popular vote or appointed to office by the Governor;

(2) Any person who is a prisoner or inmate or who is otherwise held in lawful custody by an agency of the State;

(3) Any person appointed to serve on a board or commission;

(4) Any employee, as defined in Chapter 40 of Title 14 of a public school employer, as defined in Chapter 40 of Title 14;

(5) Any police officers and firefighters employed by the State or political subdivisions of the State or any agency thereof, or any municipal corporation, municipality, city or town located within the State or any agency thereof which, upon the affirmative legislative act of its common council or other governing body, has elected to come within Chapter 16 of this title, or which hereafter elects to come within Chapter 16 of this title. Any police officers and firefighters included in this subsection shall be subject to Chapter 16 of this title;

(6) Confidential employees of the public employer; and

(7) Supervisory employees of the public employer, provided however, that any supervisory position in a bargaining unit deemed to be appropriate prior to September 23, 1994, shall so continue, unless said unit is decertified in accordance with § 1311(b) of this title, or is modified in accordance with procedures authorized by § 1310(e) of this title.

(p) "Public employer" or "employer" means the State, any county of the State or any agency thereof, and/or any municipal corporation, municipality, city or town located within the State or any agency thereof, which upon the affirmative legislative act of its common council or other governing body has elected to come within the former Chapter 13 of this title or which hereafter elects to come within this chapter, or which employs 100 or more full-time employees.

(q) "Rebate" means that portion of a nonmember's pro rata share of the expenditures of the exclusive representative which are not made for purposes pertaining to the collective bargaining process, contract administration or pursuit of matters affecting wages, hours and other conditions of employment.

(r) "Strike" means a public employee's failure, in concerted action with others, to report for duty, or a public employee's wilful absence from a public employee's position, or a public employee's stoppage or deliberate slowing down of work, or a public employee's withholding in whole or in part from the full, faithful and proper performance of a public employee's duties of employment, or a public employee's involvement in a concerted interruption of operations of a public employer for the purpose of inducing, influencing or coercing a change in the conditions, compensation rights, privileges or obligations of public employment; however, nothing shall limit or impair the right of any public employee to lawfully express or communicate a complaint or opinion on any matter related to terms and conditions of employment.

(s) "Supervisory employee" means any employee of a public employer who has the authority, in the interest of the public employer, to hire, transfer, suspend, layoff, recall, promote, discharge, assign, reward or discipline other employees, or responsibility to direct them, or to adjust their grievances, or effectively to recommend such actions, if the exercise of such authority is not a merely routine or clerical nature, but requires the use of independent judgment.

(t) "Terms and conditions of employment" means matters concerning or related to wages, salaries, hours, grievance procedures and working conditions; provided however, that such term shall not include those matters determined by this chapter or any other law of the State to be within the exclusive prerogative of the public employer.

(19 Del. C. 1953, § 1301; 55 Del. Laws, c. 126; 57 Del. Laws, c. 669, §§ 2A, 14A; 59 Del. Laws, c. 156, § 1; 65 Del. Laws, c. 477, § 2; 67 Del. Laws, c. 294, § 1; 67 Del. Laws, c. 404, § 6; 69 Del. Laws, c. 466, § 1; 70 Del. Laws, c. 186, § 1; 72 Del. Laws, c. 272, §§ 1, 7; 73 Del. Laws, c. 353, §§ 1-3; 74 Del. Laws, c. 173, § 2; 76 Del. Laws, c. 178, § 2; 82 Del. Laws, c. 26, § 1.)

§ 1303. Public employee rights.

Public employees shall have the right to:

(1) Organize, form, join or assist any employee organization except to the extent that such right may be affected by a collectively bargained agreement requiring the payment of a service fee as a condition of employment.

(2) Negotiate collectively or grieve through representatives of their own choosing.

(3) Engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection insofar as any such activity is not prohibited by this chapter or any other law of the State.

(4) Be represented by their exclusive representative, if any, without discrimination.

(19 Del. C. 1953, §§ 1302, 1303; 55 Del. Laws, c. 126; 69 Del. Laws, c. 466, § 1.)

§ 1304. Employee organization as exclusive representative.

(a) The employee organization designated or selected for the purpose of collective bargaining by the majority of the employees in an appropriate collective bargaining unit shall be the exclusive representative of all the employees in the unit for such purpose and shall have the duty to represent all unit employees without discrimination. Where an exclusive representative has been certified, a public employer shall not bargain in regard to matters covered by this chapter with any employee, group of employees or other employee organization.

(b) Nothing contained in this section shall prevent employees individually, or as a group, from presenting complaints to a public employer and from having such complaints adjusted without the intervention of the exclusive representative for the bargaining unit of which they are a part, as long as the representative is given an opportunity to be present at such adjustment and to make its view known, and as long as the adjustment is not inconsistent with the terms of an agreement between the public employer and the exclusive

representative which is then in effect. The right of the exclusive representative shall not apply where the complaint involves matters of personal, embarrassing and confidential nature, and the complainant specifically requests, in writing, that the exclusive representative not be present.

(c) The public employer shall deduct from the payroll of the public employee the monthly amount of dues or service fee as certified by the secretary of the exclusive bargaining representative and shall deliver the same to the treasurer of the exclusive bargaining representative as follows:

(1) In compliance with § 1319 of this title.

(2) If the collective bargaining agreement does not contain a provision enforceable under § 1319 of this title, upon the written authorization of any public employee within a bargaining unit. Authorization under this paragraph (c)(2) is revocable at the employee's written request as follows:

a. If the revocation period is established by the terms of the authorization, the terms of the authorization must have 1 or more revocation periods annually and authorization may be revoked as follows:

1. In the manner established by the terms of the authorization and effective as provided by the terms of the authorization.

2. If the manner for revocation is not established by the terms of the authorization, by a request to the exclusive bargaining representative.

3. If the effective date of a revocation is not established by the terms of the authorization, the revocation is effective on the employee's anniversary date.

b. If the authorization does not specify a revocation period, by a request to the employer during the period 15 to 30 days before the employee's anniversary date of employment, effective on the employee's anniversary date.

(3) A deduction under subsection (c) of this section commences upon the exclusive representative's written request to the employer. Such right to deduction remains in force for so long as the employee organization remains the exclusive bargaining representative for the employees in the unit.

(d) The public employer is expressly prohibited from any involvement in the collection of fines, penalties, or special assessments levied on members by the exclusive representative.

(19 Del. C. 1953, § 1303; 55 Del. Laws, c. 126; 69 Del. Laws, c. 466, § 1; 81 Del. Laws, c. 240, § 1.)

§ 1305. Public employer rights.

A public employer is not required to engage in collective bargaining on matters of inherent managerial policy, which include, but are not limited to, such areas of discretion or policy as the functions and programs of the public employer, its standards of services, overall budget, utilization of technology, the organizational structure and staffing levels and the selection and direction of personnel.

(69 Del. Laws, c. 466, § 1.)

§ 1306. Public Employment Relations Board.

The Board, established by § 4006 of Title 14, known as the "Public Employment Relations Board," shall be empowered to administer this chapter under the rules and regulations which it shall adopt and publish.

(69 Del. Laws, c. 466, § 1.)

§ 1307. Unfair labor practices.

(a) It is an unfair labor practice for a public employer or its designated representative to do any of the following:

(1) Interfere with, restrain or coerce any employee in or because of the exercise of any right guaranteed under this chapter.

(2) Dominate, interfere with or assist in the formation, existence or administration of any labor organization.

(3) Encourage or discourage membership in any employee organization by discrimination in regard to hiring, tenure or other terms and conditions of employment.

(4) Discharge or otherwise discriminate against an employee because the employee has signed or filed an affidavit, petition or complaint or has given information or testimony under this chapter.

(5) Refuse to bargain collectively in good faith with an employee representative which is the exclusive representative of employees in an appropriate unit, except with respect to a discretionary subject.

(6) Refuse or fail to comply with any provision of this chapter or with rules and regulations established by the Board pursuant to its responsibility to regulate the conduct of collective bargaining under this chapter.

(7) Refuse to reduce an agreement, reached as a result of collective bargaining, to writing and sign the resulting contract.

(8) Refuse to disclose any public record as defined by Chapter 100 of Title 29.

(b) It is unfair labor practice for a public employee or for an employee organization or its designated representative to do any of the following:

(1) Interfere with, restrain or coerce any employee in or because of the exercise of any right guaranteed under this chapter.

(2) Refuse to bargain collectively in good faith with the public employer or its designated representative if the employee organization is an exclusive representative.

(3) Refuse or fail to comply with any provision of this chapter or with rules and regulations established by the Board pursuant to its responsibility to regulate the conduct of collective bargaining under this chapter.

(4) Refuse to reduce an agreement, reached as a result of collective bargaining, to writing and sign the resulting contract.

(5) Distribute organizational literature or otherwise solicit public employees during working hours in areas where the actual work of public employees is being performed in such a way as to hinder or interfere with the operation of the public employer. This paragraph shall not be construed to prohibit the distribution of literature during the employee's meal period or duty-free periods or in such areas not specifically devoted to the performance of the employee's official duties.

(6) Hinder or prevent, by threats, intimidation, force or coercion of any kind the pursuit of any lawful work or employment by any person, or interfere with the entrance to or egress from any place of employment.

(69 Del. Laws, c. 466, § 1.)

§ 1308. Disposition of complaints.

(a) The Board is empowered and directed to prevent any unfair labor practice described in § 1307(a) and (b) of this title and to issue appropriate remedial orders. Whenever it is charged that anyone has engaged or is engaging in any unfair practice as described in § 1307(a) and (b) of this title, the Board or any designated agent thereof shall have authority to issue and cause to be served upon such party a complaint stating the specific unfair practice charge and including a notice of hearing containing the date and place of hearing before the Board or any designated agent thereof. Evidence shall be taken and filed with the Board; provided, that no complaint shall issue based on any unfair labor practice occurring more than 180 days prior to the filing of the charge with the Board.

(b) (1) If, upon all the evidence taken, the Board shall determine that any party charged has engaged or is engaging in any such unfair practice, the Board shall state its findings of fact and conclusions of law and issue and cause to be served on such party an order requiring such party to cease and desist from such unfair practice, and to take such reasonable affirmative action as will effectuate the policies of this chapter, such as payment of damages and/or the reinstatement of an employee; provided however, that the Board shall not issue:

a. Any order providing for binding interest arbitration on any or all issues arising in collective bargaining between the parties involved; or

b. Any order, the effect of which is to compel concessions on any items arising in collective bargaining between the parties involved.

(2) If, upon the evidence taken, the Board shall determine that any party charged has not engaged or is not engaging in any such unfair practice, the Board shall state, in writing, its findings of fact and conclusions of law and issues and dismiss the complaint.

(c) In addition to the powers granted by this section, the Board shall have the power, at any time during proceedings authorized by this section, to issue orders providing such temporary or preliminary relief as the Board deems just and proper subject to the limitations of subsection (b) of this section.

(69 Del. Laws, c. 466, § 1; 72 Del. Laws, c. 144, § 1.)

§ 1309. Appeals; petitions for enforcement.

(a) Any party adversely affected by a decision of the Board under § 1308 or § 1315 of this title may appeal that decision to the Chancery Court of this State. Such an appeal must be filed within 15 days of the date upon which the decision was rendered and shall not automatically act as a stay.

(b) The Board may petition the Chancery Court of this State for enforcement of any order issued under § 1308 or § 1315 of this title.

(69 Del. Laws, c. 466, § 1; 72 Del. Laws, c. 272, §§ 5-7; 74 Del. Laws, c. 173, § 2.)

§ 1310. Bargaining unit determination.

(a) An employee organization desiring to be certified as the exclusive representative shall file a petition with the Board, accompanied by the uncoerced signatures of at least 30 percent of the public employees in the unit claimed to be appropriate, indicating a desire to be represented for the purpose of bargaining collectively with the public employer.

(b) If the Board or its duly authorized designee determines that a petition is properly filed and is accompanied by the requisite number of valid signatures, the Board or its designee shall proceed toward defining the appropriate bargaining unit by setting a date for hearing on the matter. If a petition is not properly filed and/or if it is not accompanied by the requisite number of valid signatures, the Board or its designee shall dismiss the petition.

(c) After holding such hearings as it deems necessary the Board shall determine the appropriate bargaining unit. The Board may, by rule, delegate its unit definition authority to 1 or more of its members or to its executive director, provided that a unit definition order may be subject to review by the Board at the request of any party or upon the Board's own motion in accordance with rules and procedures established by the Board.

(d) In making its determination as to the appropriate bargaining unit, the Board or its designee shall consider community of interests including such factors as the similarity of duties, skills and working conditions of the employees involved; the history and extent of the employee organization; the recommendations of the parties involved; the effect of overfragmentation of bargaining units on the

efficient administration of government; and such other factors as the Board may deem appropriate. The Board or its designee shall exclude supervisory employees from all appropriate units created subsequent to September 23, 1994.

(e) Procedures for redefining or modifying a unit shall be set forth in the rules and procedures established by the Board.

(f) Any bargaining unit designated as appropriate prior to September 23, 1994, for which an exclusive representative has been certified, shall so continue without the requirement of a review and possible redesignation until such time as a question concerning appropriateness is properly raised under this chapter. The appropriateness of the unit may be challenged by the public employer, 30 percent of the members of the unit, an employee organization, or the Board not more than 180 days nor less than 120 days prior to the expiration of any collective bargaining agreement in effect on September 23, 1994. The continued appropriateness of any bargaining unit designated as appropriate prior to September 23, 1994, for which an exclusive representative is not certified, may be challenged by the public employer, 30 percent of the members of the unit, an employee organization, or the Board at any time up until 30 days prior to the holding of an election to determine representation.

(g) (1) Two or more certified exclusive representatives of the same public employer may file a joint petition to transfer certain positions between their units. Said joint petition shall be accompanied by the uncoerced signatures of at least 30 percent of the public employees in the positions sought to be transferred, indicating a desire to be represented by the proposed new representative for the purpose of collective bargaining.

(2) The Board shall make a determination as to the appropriateness of the bargaining unit into which the public employees are to be transferred. If the Board determines that the bargaining unit into which the employees are to be transferred is not appropriate, the joint petition shall be denied and the status quo ante shall remain. If the Board determines that the bargaining unit is appropriate, the Board shall hold an election on such joint petition to transfer in which only the public employees in each position who would be transferred shall be entitled to vote. The election ballot shall contain 2 options:

a. Continue to be represented by the present exclusive bargaining representative; or

b. Transfer to the proposed exclusive bargaining representative, who shall be named.

(3) The exclusive bargaining representative that receives the majority of the votes of those voting in the elections shall be declared the exclusive bargaining representative for those positions.

(19 Del. C. 1953, § 1304; 55 Del. Laws, c. 126; 69 Del. Laws, c. 466, § 1; 71 Del. Laws, c. 164, § 1.)

§ 1311. Determination and certification of exclusive representative.

(a) Any employee organization seeking certification as exclusive representative in a designated appropriate bargaining unit shall file a petition with the Board. The petition must contain the uncoerced signatures of at least 30 percent of the employees within the designated appropriate bargaining unit. If the designated appropriate bargaining unit is sufficiently similar to the bargaining unit claimed to be appropriate in the petition filed pursuant to § 1310(a) of this title, such that the signatures submitted at that time represent 30 percent of the employees within the designated appropriate bargaining unit, those signatures shall be deemed sufficient for the purpose of this subsection. If the designated bargaining unit is not sufficiently similar to the bargaining unit claimed to be appropriate, the employee organization may continue to rely on the previously submitted uncoerced signatures of the employees who are in the designated bargaining unit and must supplement these signatures with uncoerced signatures of other employees within the designated appropriate bargaining unit, such that the signatures submitted represent at least 30 percent of the employees within the designated appropriate bargaining unit. No signature shall be considered valid if it was signed more than 12 months prior to the date on which the petition is filed.

(b) Where an employee organization has been certified as the exclusive representative, a group of employees within the bargaining unit may file a petition with the Board for decertification of the exclusive bargaining representative. The petition must contain the uncoerced signatures of at least 30 percent of the employees within the bargaining unit and allege that the employee organization presently certified is no longer the choice of the majority of the employees in the bargaining unit. If a lawful collective bargaining agreement of no more than 3 years' duration is in effect, no petition shall be entertained unless filed not more than 180 days nor less than 120 days prior to the expiration of such agreement. A decertification petition also may be filed if more than 1 year has elapsed from the date of certification of an exclusive bargaining representative and no collective bargaining agreement has been executed, and the procedures for mediation and fact-finding have been invoked and completed as provided in this chapter.

(c) If the Board determines that a petition is properly supported, timely filed and covers the designated appropriate bargaining unit, the Board shall cause an election of all eligible employees to be held within a reasonable time after the unit determination has been made, in accordance with procedures adopted by the Board, to determine if and by whom the employees wish to be represented. The election ballot shall contain, as choices to be made by the voter, the name of the petitioning employee organization and the certified employee organization, the name or names of any other employee organization showing written proof of at least 10 percent representation of the public employees within the designated appropriate bargaining unit, in accordance with rules and procedures adopted by the Board, and a choice that the public employee does not desire to be represented by any of the named employee organization(s).

(d) The employee organization, if any, which receives the majority of the votes cast in an election shall be certified by the Board as the exclusive representative. In any election where there are more than 2 choices on the ballot and none of the choices receives a majority of the votes cast, a run-off election shall be conducted. The ballot in the run-off election shall contain the 2 choices on the original ballot that received the largest number of votes.

(e) No election shall be held pursuant to this section within 12 months from the date of a preceding valid election.

(19 Del. C. 1953, §§ 1304-1307; 55 Del. Laws, c. 126; 65 Del. Laws, c. 499, § 1; 69 Del. Laws, c. 466, § 1.)

§ 1311A. Collective bargaining in the state service.

(a) Notwithstanding any other provision in this Code, exclusive representatives of the state merit employees, who are in the classified service and not working in higher education, shall collectively bargain in the units as determined pursuant to subsection (b) of this section. The scope of bargaining shall include:

(1) Compensation, which shall be defined as the payment of money in the form of hourly or annual salary, and any cash allowance or items in lieu of a cash allowance to a public employee by reason of said employee's employment by a public employer, as defined in this chapter, whether the amount is fixed or determined by time, task, or other basis of calculations. Position classification, health care and other benefit programs established pursuant to Chapters 52 and 96 of Title 29, workers compensation, disability programs, and pension programs shall not be deemed to be compensation for purposes of this section; and

(2) Any items negotiable for state merit employees pursuant to § 5938 of Title 29.

(b) Each exclusive representative shall bargain for compensation for the members of its exclusive bargaining unit or units in a mutually agreed upon consolidated manner. The exclusive representative shall work with the Secretary of the Department of Human Resources to determine how its exclusive bargaining unit or units shall be consolidated. If the exclusive representative and the Secretary of the Department of Human Resources are unable to reach an agreement regarding the manner in which to consolidate the bargaining unit or units, negotiations will default to the individual bargaining units as certified by the Public Employment Relations Board.

(c) To the extent a finalized agreement on compensation items requires legislative approval or the appropriation of funds, the Governor shall recommend the same to the General Assembly for the ensuing fiscal years and the agreement provision requiring such appropriation shall be contingent on the specific appropriation of funds by the General Assembly. In the event the General Assembly fails to appropriate the funds necessary to implement the provision of an agreement, that provision shall be returned to the parties for negotiation or the provision may be implemented to the extent consistent with or limited by appropriations from the General Assembly, at the discretion of the General Assembly. Contracts shall be timed to become effective in accordance with the State's fiscal year.

(d) The parties may engage in collective bargaining for compensation simultaneously or separately from collective bargaining for terms and conditions.

(e) The negotiation of collective bargaining agreements shall be staggered over a period of time. Such schedule shall be determined by mutual agreement of the Secretary of Human Resources and the exclusive representative of all bargaining units prior to March 1, 2020. Existing collective bargaining agreements regarding compensation will remain in effect until such time as they, by their terms, expire. The grouping of bargaining units in a consolidated manner as contemplated in subsection (b) of this section, above, shall be determined in advance of the expiration of the collective bargaining agreements existing as of May 30, 2019, that were originally authorized through 76 Del Laws c. 178.

(f) Exclusive bargaining representatives may bargain for different pay rate increases for their individual bargaining units, provided, however, that the compensation for any given bargaining unit or units may not exceed the pay ranges for the respective pay grades, as established in the annual appropriations act.

(g) [Repealed.]

(76 Del. Laws, c. 178, § 1; 77 Del. Laws, c. 347, §§ 1, 2; 80 Del. Laws, c. 352, § 1; 81 Del. Laws, c. 124, § 1; 82 Del. Laws, c. 26, § 2.)

§ 1312. Employee organizations required to register and submit annual reports.

Every employee organization which has or seeks recognition as a representative of public employees under this chapter shall file with the Board a registration report, signed by its president or other designated officer. Such report shall be updated on an annual basis by any organization which continues to have or seeks recognition, shall be in a form prescribed by the Board and shall be accompanied by 2 copies of the employee organization's constitution and bylaws. All changes or amendments to such constitutions and bylaws shall be promptly reported to the Board.

(69 Del. Laws, c. 466, § 1.)

§ 1313. Collective bargaining agreements.

(a) Collective bargaining shall commence at least 90 days prior to the expiration date of any current collective bargaining agreement or in the case of a newly certified exclusive representative within a reasonable time after certification.

(b) Negotiating sessions including strategy meetings of public employers, mediation and the deliberative process of binding interest arbitrators shall be exempt from Chapter 100 of Title 29. Hearings conducted by binding interest arbitrators shall be open to the public.

(c) The public employer and the exclusive bargaining representative shall negotiate written grievance procedures by means of which bargaining unit employees, through their collective bargaining representatives, may appeal the interpretation or application of any term or terms of an existing collective bargaining agreement; such grievance procedures shall be included in any agreement entered into between the public employer and the exclusive bargaining representative.

(d) Any contract or agreement reached between a public employer and any exclusive representative organization shall be for a minimum period of 2 years from the effective date of such contract or agreement unless otherwise mutually agreed upon by the public employer and the exclusive representative.

(e) No collective bargaining agreement shall be valid or enforceable if its implementation would be inconsistent with any statutory limitation on the public employer's funds, spending or budget, or would otherwise be contrary to law.

(f) Public employers shall file with the Board a copy of any agreements that have been negotiated with public employee representatives following the consummation of negotiations. The Board shall maintain a current file of all such agreements.

(69 Del. Laws, c. 466, § 1; 72 Del. Laws, c. 272, §§ 2, 7; 74 Del. Laws, c. 173, § 2.)

§ 1314. Mediation.

(a) If, after a reasonable period of negotiations over the terms of an agreement or after a reasonable time following certification of an exclusive representative, no agreement has been signed, the parties may voluntarily submit to mediation. If, however, no agreement is reached between the parties by 90 days prior to the expiration of an existing collective bargaining agreement, or, in the case of a compensation bargaining unit of nonhigher education state employees at least 120 days prior to the expiration date of an existing collective bargaining agreement or in the case of a newly certified representative within 60 days after negotiations have commenced, both parties shall immediately notify the Board of the status of negotiations.

(b) If the parties have not voluntarily agreed to enlist the services of a mediator and less than 75 days remain before the expiration of an existing collective bargaining agreement, or, in the case of a compensation bargaining unit of nonhigher education state employees at least 90 days prior to the expiration date of an existing collective bargaining agreement or in the case of a newly certified representative more than 90 days have elapsed since negotiations began, the Board must appoint a mediator if so requested by the public employer or the exclusive bargaining representative. The mediator shall be chosen from a list of qualified persons maintained by the Board upon mutual agreement of the parties or from the American Arbitration Association, and shall be representative of the public.

(c) If the labor dispute has not been settled within 30 days after mediation has been requested or less than 60 days remain before the expiration of an existing collective bargaining agreement, the parties jointly or individually may petition the Board in writing to initiate binding arbitration. In lieu of a petition, the mediator may inform the Board that further negotiations between the parties, at that time, are unlikely to be productive and recommend that binding arbitration be initiated. The public employer and the exclusive bargaining representative may initiate binding arbitration at any time by mutual agreement. The arbitrator shall be chosen from a list of qualified persons maintained by the Board upon mutual agreement of the parties or from the American Arbitration Association, and shall be representative of the public.

(d) Any costs involved in retaining a mediator to assist the parties in reaching a negotiated agreement shall be paid by the Board.

(69 Del. Laws, c. 466, § 1; 72 Del. Laws, c. 272, §§ 3, 7; 74 Del. Laws, c. 173, § 2; 76 Del. Laws, c. 178, § 3.)

§ 1315. Binding interest arbitration.

(a) Within 7 working days of receipt of a petition or recommendation to initiate binding arbitration, the Board shall make a determination, with or without a formal hearing, as to whether a good faith effort has been made by both parties to resolve their labor dispute through negotiations and mediation and shall certify the parties at impasse and authorize the initiation of binding arbitration procedures except that any discretionary subject shall not be subject to binding arbitration.

(b) Pursuant to § 4006(f) of Title 14, the Board shall appoint the Executive Director or the Executive Director's designee to act as binding interest arbitrator subject to agreement of the parties. Such delegation shall not limit a party's right to appeal to the Board. If the parties do not agree to use the Executive Director as the binding interest arbitrator the parties shall select an arbitrator by mutual agreement. If the parties cannot agree on an arbitrator, either party may request a list of 9 arbitrators from the American Arbitration Association. One arbitrator shall be chosen by the parties by alternately striking names from such list. Who strikes first shall be determined by coin toss. Nothing herein shall prevent the parties from mutually agreeing to alternative methods to achieve a final and binding resolution of any impasse.

(c) The arbitrator shall hold hearings in order to define the area or areas of dispute, to determine facts relating to the dispute, and to render a decision on unresolved contract issues. The hearings shall be held at times, dates and places to be established by the arbitrator. The arbitrator shall be empowered to administer oaths and issue subpoenas on behalf of the parties to the dispute or on the arbitrator's own behalf.

(d) The arbitrator shall make written findings of facts and a decision for the resolution of the dispute; provided, however, that the decision shall be limited to a determination of which of the parties' last, best, final offers shall be accepted in its entirety. In arriving at a determination, the arbitrator shall specify the basis for the arbitrator's findings, taking into consideration, in addition to any other relevant factors, the following:

(1) The interests and welfare of the public.

(2) Comparison of the wages, salaries, benefits, hours and conditions of employment of the employees involved in the arbitration proceedings with the wages, salaries, benefits, hours and conditions of employment of other employees performing the same or similar

services or requiring similar skills under similar working conditions in the same community and in comparable communities and with other employees generally in the same community and in comparable communities.

(3) The overall compensation presently received by the employees inclusive of direct wages, salary, vacations, holidays, excused leaves, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.

(4) Stipulations of the parties.

(5) The lawful authority of the public employer.

(6) The financial ability of the public employer, based on existing revenues, to meet the costs of any proposed settlements; provided that any enhancement to such financial ability derived from savings experienced by such public employer as a result of a strike shall not be considered by the arbitrator.

(7) Such other factors not confined to the foregoing which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, binding arbitration or otherwise between parties, in the public service or in private employment.

In making determinations, the arbitrator shall give due weight to each relevant factor. All of the above factors shall be presumed relevant. If any factor is found not to be relevant, the arbitrator shall detail in the arbitrator's findings the specific reason why that factor is not judged relevant in arriving at the arbitrator's determination. With the exception of paragraph (d)(6) of this section, no single factor in this subsection, shall be dispositive.

(e) Within 30 days after the conclusion of the hearings but not later than 120 days from the day of appointment, the arbitrator shall serve the arbitrator's written determination for resolution of the dispute on the public employer, the certified exclusive representative and the Board. The decision of the arbitrator shall become an order of the Board within 5 business days after it has been served on the parties.

(f) The cost of binding arbitration shall be borne equally by the parties involved in the dispute.

(g) Nothing in this chapter shall be construed to prohibit or otherwise impede a public employer and certified exclusive representative from continuing to bargain in good faith over terms and conditions of employment or from using the services of a mediator at any time during the conduct of collective bargaining. If at any point in the impasse proceedings invoked under this chapter, the parties are able to conclude their labor dispute with a voluntarily reached agreement, the Board shall be so notified, and all impasse resolution proceedings shall be forthwith terminated.

(h) Notwithstanding any language to the contrary, any arbitration results rendered pursuant to this section involving collective bargaining agreements, negotiations or mediations with the State involving § 1311A of this title, shall be contingent upon appropriation by the General Assembly.

(69 Del. Laws, c. 466, § 1; 70 Del. Laws, c. 186, § 1; 72 Del. Laws, c. 272, §§ 4, 7; 74 Del. Laws, c. 173, § 2; 76 Del. Laws, c. 178, § 4.)

§ 1316. Strikes prohibited.

(a) No public employee shall strike while in the performance of official duties.

(b) No public employee shall be entitled to any daily pay, wages, reimbursement of expenses, benefits or any consideration in lieu thereof, for the days on which the employee engaged in a strike.

(c) Where a public employee has lost entitlement to any daily pay or other consideration pursuant to subsection (b) of this section, any agreement between such public employee or employee organization bargaining on the employee's behalf and a public employer which provided for the direct or indirect restoration of such entitlement shall be void as against public policy.

(19 Del. C. 1953, § 1312; 55 Del. Laws, c. 126; 56 Del. Laws, c. 376, § 10; 69 Del. Laws, c. 466, § 1; 70 Del. Laws, c. 186, § 1.)

§ 1317. Injunctions.

(a) Chancery Court is vested with the authority to hear and determine all actions alleging violations of § 1316 of this title. Suits to enjoin violations of § 1316 of this title will have priority over all matters on the Court's docket except other emergency matters.

(b) Where it appears that any public employee, group of employees, employee organizations or any officer or agent thereof, threaten or are about to do, or are doing, any act in violation of § 1316 of this title, the public employer may forthwith apply to the Court of Chancery for an injunction against such violation.

(c) If an order of the Court enjoining or restraining a violation of § 1316 of this title does not receive immediate compliance, the public employer shall apply to the Court for appropriate contempt sanctions against any party in violation of such order. Upon a proper showing that any person or organization has failed to comply with such an order, the Court shall, in addition to any other remedy it deems appropriate, fine such violating party an amount on a daily, weekly or monthly basis without limitation as determined by the Court.

(d) In determining an appropriate amount for fines imposed pursuant to subsection (c) of this section, the Court shall consider and receive evidence of:

(1) The extent and value of services lost due to the violation of § 1316 of this title.

(2) Any unfair labor practices committed by either party during the collective bargaining process.

(3) The extent of the wilful defiance or resistance to the Court's order.

(4) The impact of the strike on the health, safety and welfare of the public.

(69 Del. Laws, c. 466, § 1.)

§ 1318. Status of existing exclusive representative.

An employee organization that has been certified as the exclusive representative of a bargaining unit deemed to be appropriate prior to September 23, 1994, shall so continue without the requirement of an election and certification until such time as a question concerning representation is appropriately raised under this chapter in accordance with § 1311(b) of this title, or until the Board finds the unit not to be appropriate in accordance with § 1310(f) of this title.

(69 Del. Laws, c. 466, § 1.)

§ 1319. Fair share fees.

(a) Where the provisions of a collective bargaining agreement so provide, a public employer shall deduct a fair share fee from each nonmember's salary or wages and promptly transmit this amount to the exclusive representative.

(b) As a precondition to the collection of fair share fees, the exclusive representative shall establish and maintain a procedure that:

(1) Provides nonmembers with an adequate explanation of the basis for the fee and any rebate;

(2) Provides nonmembers with a reasonably prompt opportunity to challenge the amount of the fee and any rebate before an impartial decision maker; and

(3) Provides an escrow for the amounts reasonably in dispute while such challenges are pending.

A public employer shall not refuse to carry out its obligations under subsection (a) of this section on the grounds that the exclusive representative has not satisfied its responsibilities under this subsection.

(c) In order to avoid undue delays in the receipt of and determination of the validity of fair share fees or rebates, any suit challenging a fair share fee or rebate must be filed within 6 months after receipt of the notice described in subsection (b) of this section or within 6 months after the nonmember exhausts the procedure described in subsection (b) of this section, whichever is later.

(73 Del. Laws, c. 353, § 4.)

Part I
General Provisions

Chapter 15
Agricultural Labor

§ 1501. Registered contractors.

(a) If an employer of migratory or seasonal agricultural labor enters into a contract or agreement with an independent farm labor contractor engaging in interstate recruitment of farm labor as defined in the federal Farm Labor Contractor Registration Act, 7 U.S.C. § 2041 et seq., that employer shall enter into such contract or agreement only after making reasonable efforts to assure that such independent farm labor contractor is in possession of a duly issued certificate of registration from the United States Secretary of Labor pursuant to the Farm Labor Contractor Registration Act.

(b) A good faith presentation to an employer of migratory or seasonal agricultural labor of a prima facie valid certificate of registration under the Farm Labor Contractor Registration Act shall satisfy the obligations imposed upon such employer under this section.

(59 Del. Laws, c. 312, § 1.)

Part I
General Provisions

Chapter 16
Police Officers' and Firefighters' Employment Relations Act

Subchapter I
General Provisions

§ 1601. Statement of policy.

It is the declared policy of the State and the purpose of this chapter to promote harmonious and cooperative relationships between public employers and their employees, employed as police officers and firefighters, and to protect the public by assuring the orderly and uninterrupted operations and functions of public safety services. These policies are best effectuated by:

(1) Granting to police officers and firefighters the right of organization and representation;

(2) Obligating public employers and organizations of police officers and firefighters which have been certified as representing their employees to enter into collective bargaining negotiations with the willingness to resolve disputes relating to terms and conditions of employment and to reduce to writing any agreements reached through such negotiations; and

(3) Empowering the Public Employment Relations Board to assist in resolving disputes between police officers or firefighters and their public employers and to administer this chapter.

(65 Del. Laws, c. 477, § 1.)

§ 1602. Definitions [For application of this section, see 83 Del. Laws, c.146, §§ 2, 3].

As used in this chapter:

(1) "Appropriate bargaining unit" or "bargaining unit" means a group of police officers or firefighters designated by the Public Employment Relations Board as appropriate for representation by an employee organization for purposes of collective bargaining.

(2) "Binding interest arbitration" means the procedure by which the Public Employment Relations Board shall make written findings of fact and a decision for final and binding resolution of an impasse arising out of collective bargaining.

(3) "Board" means the Public Employment Relations Board established by § 4006 of Title 14 and made applicable to this chapter by § 1306 of this title.

(4) "Certification" means official recognition by the Board, following a secret-ballot election, that an employee organization is the exclusive representative for all employees in an appropriate bargaining unit.

(5) "Collective bargaining" means the performance of the mutual obligation of a public employer through its designated representatives and the exclusive bargaining representative to confer and negotiate in good faith with respect to terms and conditions of employment, and to execute a written contract incorporating any agreements reached. However, this obligation does not compel either party to agree to a proposal or require the making of a concession.

(6) "Decertification" means the withdrawal by the Board of an employee organization's official designation as exclusive representative following a decertification election which shows that the exclusive representative no longer has the support of a majority of the members in an appropriate bargaining unit.

(7) "Employee organization" means any organization which admits to membership police officers or firefighters employed by a public employer and which has as a purpose the representation of such employees in collective bargaining, and includes any person acting as an officer, representative or agent of said organization.

(8) "Exclusive bargaining representative" or "exclusive representative" means the employee organization which as a result of certification by the Board has the right and responsibility to be the collective bargaining agent of all employees in that bargaining unit.

(9) "Impasse" means the failure of a public employer and the exclusive bargaining representative to reach agreement in the course of collective bargaining.

(10) "Mediation" means an effort by an impartial third-party confidentially to assist in reconciling an impasse between the public employer and the exclusive bargaining representative regarding terms and conditions of employment.

(11) "Police officer" means as defined in § 8401 of Title 11 and includes probation and parole officers of the Department of Correction. "Police officer" does not include any of the following:

a. The Department of Correction's Director of Probation and Parole, correctional officers and similar correctional occupations.

b. Correctional supervisors and nonuniformed correctional employees who are employed in a secure facility operated by the Department of Correction or the Department of Services for Children, Youth and their Families, or who have inmate contact which is composed of correctional lieutenants, staff lieutenants, correctional captains, nonuniformed correctional employees who are employed in a secure Department of Correction facility or who have inmate contact and similar occupations.

c. Persons and officers not included pursuant to § 8401(6)b. of Title 11.

d. The Attorney General and the Attorney General's deputies.

e. Any position at a director or executive level 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. This exclusion applies only to those units not already organized upon September 10, 2021, the effective date of this exclusion.

(12) "Public employee" or "employee" means any police officer or firefighter employed by a public employer except those determined by the Board to be inappropriate for inclusion in the bargaining unit; provided, however, that for the purposes of this chapter with respect to any state employee covered under the State Merit System, position classification, health care and other benefit programs established pursuant to Chapters 52 and 96 of Title 29, workers' compensation, disability programs and pension programs shall not be deemed to be compensation.

(13) a. "Public employer" or "employer" means the State or political subdivisions of the State or any agency thereof, any county, or any agency thereof, or any municipal corporation or municipality, city or town located within the State or any agency thereof, which:

1. Upon the affirmative legislative act of its common council or other governing body has elected to come within Chapter 13 of this title;

2. Hereafter elects to come within this chapter; or

3. Employs 25 or more full-time employees. For the purposes of this paragraph, "employees" shall include each and every person employed by the public employer except:

A. Any person elected by popular vote; and

B. Any person appointed to serve on a board or commission.

b. "Public employer" or "employer" includes the Town of Delmar, Delaware.

(14) "Strike" means a public employee's failure, in concerted action with others, to report for duty, or the public employee's wilful absence from the public employee's position, or the public employee's stoppage or deliberate slowing down of work, or the public employee's withholding in whole or in part from the full, faithful and proper performance of the public employee's duties of employment, or the public employee's involvement in a concerted interruption of operations of a public employer for the purpose of inducing, influencing or coercing a change in the conditions, compensation rights, privileges or obligations of public employment; however, nothing shall limit or impair the right of any public employee to lawfully express or communicate a complaint or opinion on any matter related to terms and conditions of employment.

(15) "Terms and conditions of employment" means matters concerning or related to wages, salaries, hours, grievance procedures and working conditions; provided, however, that such term shall not include those matters determined by this chapter or any other law of the State to be within the exclusive prerogative of the public employer.

(65 Del. Laws, c. 477, § 1; 70 Del. Laws, c. 163, § 1; 70 Del. Laws, c. 186, § 1; 70 Del. Laws, c. 466, § 1; 72 Del. Laws, c. 271, §§ 1, 8; 74 Del. Laws, c. 173, § 1; 83 Del. Laws, c. 127, § 1; 83 Del. Laws, c. 146, § 1.)

§ 1603. Employee rights.

Employees shall have the right to:

(1) Organize, form, join or assist any employee organization, provided that membership in, or an obligation to pay any dues, fees, assessments or other charges to, an employee organization shall not be required as a condition of employment.

(2) Negotiate collectively or grieve through representatives of their own choosing.

(3) Engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection insofar as any such activity is not prohibited by this chapter or any other law of the State.

(4) Be represented by their exclusive representative, if any, without discrimination.

(65 Del. Laws, c. 477, § 1.)

§ 1604. Employee organization as exclusive representative.

(a) The employee organization designated or selected for the purpose of collective bargaining by the majority of the employees in an appropriate collective bargaining unit shall be the exclusive representative of all the employees in the unit for such purpose and shall have the duty to represent all unit employees without discrimination. Where an exclusive representative has been certified, a public employer shall not bargain in regard to matters covered by this chapter with any employee, group of employees or other employee organization.

(b) Nothing contained in this section shall prevent employees individually, or as a group, from presenting complaints to a public employer and from having such complaints adjusted without the intervention of the exclusive representative for the bargaining unit of which they are a part, as long as the representative is given an opportunity to be present at such adjustment and to make its view known, and as long as the adjustment is not inconsistent with the terms of an agreement between the public employer and the exclusive representative which is then in effect. The right of the exclusive representative shall not apply where the complaint involves matters of personal, embarrassing and confidential nature, and the complainant specifically requests, in writing, that the exclusive representative not be present.

(c) Any employee organization which has been certified as an exclusive representative shall have the right to have its dues deducted and collected by the employer from the salaries of those employees within the bargaining unit who authorize, in writing, the deduction of said dues. Such authorization is revocable at the employee's written request. Said deductions shall commence upon the exclusive representative's written request to the employer. Such right to deduction shall be in force for so long as the employee organization remains the exclusive bargaining representative for the employees in the unit. The public employer is expressly prohibited from any involvement in the collection of fines, penalties or special assessments levied on members by the exclusive representative.

(65 Del. Laws, c. 477, § 1.)

§ 1605. Employer rights.

A public employer is not required to engage in collective bargaining on matters of inherent managerial policy which include, but are not limited to, such areas of discretion or policy as the functions and programs of the public employer, its standards of services, overall budget, utilization of technology, the organizational structure and the staffing levels, selection and direction of personnel.

(65 Del. Laws, c. 477, § 1.)

§ 1606. Public Employment Relations Board.

The Board, established by § 4006 of Title 14, known as the "Public Employment Relations Board," shall be empowered to administer this chapter under rules and regulations which it shall adopt and publish.

(65 Del. Laws, c. 477, § 1.)

§ 1607. Unfair labor practices — Enumerated.

(a) It is an unfair labor practice for a public employer or its designated representative to do any of the following:

(1) Interfere with, restrain or coerce any employee in or because of the exercise of any right guaranteed under this chapter.

(2) Dominate, interfere with or assist in the formation, existence or administration of any labor organization.

(3) Encourage or discourage membership in any employee organization by discrimination in regard to hiring, tenure or other terms and conditions of employment.

(4) Discharge or otherwise discriminate against an employee because the employee has signed or filed an affidavit, petition or complaint, or has given information or testimony under this chapter.

(5) Refuse to bargain collectively in good faith with an employee representative which is the exclusive representative of employees in an appropriate unit.

(6) Refuse or fail to comply with any provision of this chapter or with rules and regulations established by the Board pursuant to its responsibility to regulate the conduct of collective bargaining under this chapter.

(7) Refuse to reduce an agreement, reached as a result of collective bargaining, to writing and sign the resulting contract.

(8) Refuse to disclose any public record as defined by Chapter 100 of Title 29.

(b) It is an unfair labor practice for a public employee or for an employee organization or its designated representative to do any of the following:

(1) Interfere with, restrain or coerce any employee in or because of the exercise of any right guaranteed under this chapter.

(2) Refuse to bargain collectively in good faith with the public employer or its designated representative if the employee organization is an exclusive representative.

(3) Refuse or fail to comply with any provision of this chapter or with rules and regulations established by the Board pursuant to its responsibility to regulate the conduct of collective bargaining under this chapter.

(4) Refuse to reduce an agreement reached as a result of collective bargaining to writing and sign the resulting contract.

(5) Distribute organizational literature or otherwise solicit public employees during working hours in areas where the actual work of public employees is being performed in such a way as to hinder or interfere with the operation of the public employer. This paragraph shall not be construed to prohibit the distribution of literature during the employee's designated meal period or in such areas not specifically devoted to the performance of the employee's official duties.

(6) Hinder or prevent (by threats, intimidation, force or coercion of any kind) the pursuit of any lawful work or employment by any person, or unreasonably interfere with the entrance to or egress from any place of employment.

(65 Del. Laws, c. 477, § 1.)

§ 1608. Unfair labor practices — Disposition of complaints.

(a) The Public Employment Relations Board is empowered and directed to prevent any unfair labor practice described in § 1607(a) and (b) of this title and to issue appropriate remedial orders. Whenever it is charged that anyone has engaged or is engaging in any unfair practice described in § 1607(a) and (b) of this title, the Board or any designated agent thereof shall have authority to issue and cause to be served upon such party a complaint stating the specific unfair practice charge and including a notice of hearing containing the date and place of hearing before the Board or any designated agent thereof. Evidence shall be taken and filed with the Board; provided, that no complaint shall issue based on any unfair labor practice occurring more than 180 days prior to the filing of the charge with the Board.

(b) (1) If, upon all the evidence taken, the Board shall determine that any party charged has engaged or is engaging in any such unfair practice, the Board shall state its findings of fact and conclusions of law and issue and cause to be served on such party an order requiring such party to cease and desist from such unfair practice, and to take such reasonable affirmative action as will effectuate the policies of this chapter, such as payment of damages and/or the reinstatement of employee; provided, however, that the Board shall not issue:

a. Any order providing for binding interest arbitration or any or all issues arising in collective bargaining between the parties involved; or

b. Any order, the effect of which is to compel concessions on any items arising in collective bargaining between the parties involved.

(2) If, upon the evidence taken, the Board shall determine that any party charged has not engaged or is not engaging in any such unfair practice, the Board shall state, in writing, its findings of fact and the conclusions of law and issues and dismiss the complaint.

(c) In addition to the powers granted by this section, the Board shall have the power, at any time during proceedings authorized by this section, to issue orders providing such temporary or preliminary relief as the Board deems just and proper, subject to the limitations of subsection (b) of this section.

(65 Del. Laws, c. 477, § 1; 72 Del. Laws, c. 145, § 1.)

§ 1609. Unfair labor practices — Appeals; petitions for enforcement.

(a) Any person or party adversely affected by a decision of the Board under § 1608 or § 1615 of this title may appeal that decision to the Chancery Court of this State. Such an appeal must be filed within 15 days of the date upon which the decision was rendered and shall not automatically act as a stay.

(b) The Board may petition the Chancery Court of this State for enforcement of any order issued under § 1608 or § 1615 of this title.

(65 Del. Laws, c. 477, § 1; 72 Del. Laws, c. 271, §§ 5-8; 74 Del. Laws, c. 173, § 1.)

§ 1610. Bargaining unit determination.

(a) An employee organization desiring to be certified as the exclusive representative shall file a petition with the Board, accompanied by the uncoerced signatures of at least 30 percent of the public employees in the unit claimed to be appropriate, indicating a desire to be represented for the purpose of bargaining collectively with the public employer.

(b) If the Board or its duly authorized designee determines that a petition is properly filed and is accompanied by the requisite number of valid signatures, the Board or its designee shall proceed toward defining the appropriate bargaining unit by setting a date for hearing on the matter. If a petition is not properly filed and/or if it is not accompanied by the requisite number of valid signatures, the Board or its designee shall dismiss the petition.

(c) After holding such hearings as it deems necessary, the Board shall determine the appropriate bargaining unit. The Board may, by rule, delegate its unit definition authority to one or more of its members or to its Executive Director, provided that a unit definition order may be subject to review by the Board at the request of any party or upon the Board's own motion in accordance with rules and procedures established by the Board.

(d) In making its determination as to the appropriate bargaining unit, the Board or its designee shall consider such factors as the similarity of duties, skills and working conditions of the employees involved; the history and extent of the employee organization; the recommendations of the parties involved; the effect of overfragmentation of bargaining units on the efficient administration of government; and such other factors as the Board may deem appropriate.

(e) Procedures for redefining or modifying a unit shall be set forth in the rules and procedures established by the Board.

(f) Any bargaining unit designated as appropriate prior to the effective date of this chapter, for which an exclusive representative has been certified, shall so continue without the requirement of a review and possible redesignation until such time as a question concerning appropriateness is properly raised under this chapter. The appropriateness of the unit may be challenged by the public employer, 30 percent of the members of the unit, an employee organization, or the Board not more than 180 days nor less than 120 days prior to the expiration of any collective bargaining agreement in effect on the date of the passage of this chapter. The continued appropriateness of any bargaining unit designated as appropriate prior to the effective date of this chapter, for which an exclusive representative is not certified, may be challenged by the public employer, 30 percent of the members of the unit, an employee organization or the Board at any time up until 30 days prior to the holding of an election to determine representation.

(65 Del. Laws, c. 477, § 1.)

§ 1611. Determination and certification of exclusive representative.

(a) Any employee organization seeking certification as exclusive representative in a designated appropriate bargaining unit shall file a petition with the Board. The petition must contain the uncoerced signatures of at least 30 percent of the employees within the designated appropriate bargaining unit. If the designated appropriate bargaining unit is sufficiently similar to the bargaining unit claimed to be appropriate in the petition filed pursuant to § 1610(a) of this title, such that the signatures submitted at that time represent at least 30 percent of the employees within the designated appropriate bargaining unit, those signatures shall be deemed sufficient for the purpose of

this subsection. If the designated bargaining unit is not sufficiently similar to the bargaining unit claimed to be appropriate, the employee organization may continue to rely on the previously submitted uncoerced signatures of the employees who are in the designated bargaining unit and must supplement these signatures with uncoerced signatures of the employees who are in the designated bargaining unit and must supplement these signatures with uncoerced signatures of other employees within the designated appropriate bargaining unit, such that the signatures submitted represent at least 30 percent of the employees within the designated appropriate bargaining unit. No signature shall be considered valid if it was signed more than 12 months prior to the date on which the petition is filed.

(b) Where an employee organization has been certified as the exclusive representative, a group of employees within the bargaining unit may file a petition with the Board for decertification of the exclusive bargaining representative. The petition must contain the uncoerced signatures of at least 30 percent of the employees within the bargaining unit and allege that the employee organization presently certified is no longer the choice of the majority of the employees in the bargaining unit. If a lawful collective bargaining agreement of no more than 3 years' duration is in effect, no petition shall be entertained unless filed not more than 180 days nor less than 120 days prior to the expiration of such agreement. A decertification petition also may be filed if more than 1 year has elapsed from the date of certification of an exclusive bargaining representative and no collective bargaining agreement has been executed.

(c) If the Board determines that a petition is properly supported, timely filed and covers the designated appropriate bargaining unit, the Board shall cause an election of all eligible employees to be held within a reasonable time after the unit determination has been made, in accordance with procedures adopted by the Board, to determine if and by whom the employees wish to be represented. The election ballot shall contain, as choices to be made by the voter, the name of the petitioning or certified employee organization, the name or names of any other employee organization showing written proof of at least 10 percent representation of the public employees within the designated appropriate bargaining unit, in accordance with rules and procedures adopted by the Board, and a choice that the public employee does not desire to be represented by any of the named employee organization(s).

(d) The employee organization, if any, which receives the majority of the votes cast in an election shall be certified by the Board as the exclusive representative. In any election where there are more than 2 choices on the ballot and none of the choices receives a majority of the votes cast, a run-off election shall be conducted. The ballot in the run-off election shall contain the 2 choices on the original ballot that received the largest number of votes.

(e) No election shall be held pursuant to this section within 12 months from the date of a preceding valid election.

(65 Del. Laws, c. 477, § 1.)

§ 1612. Employee organizations required to register and submit annual reports.

Every employee organization which has or seeks recognition as a representative of public employees under this chapter, shall file with the Board a registration report signed by its president or other appropriate officer. Such report shall be updated on an annual basis by any organization which continues to have or seeks recognition, shall be in a form prescribed by the Board and shall be accompanied by 2 copies of the employee organization's constitution and bylaws. All changes or amendments to such constitutions and bylaws shall be promptly reported to the Board.

(65 Del. Laws, c. 477, § 1.)

§ 1613. Collective bargaining agreements.

(a) Collective bargaining shall commence at least 90 days prior to the expiration date of any current collective bargaining agreement or, in the case of a newly-certified exclusive representative, within a reasonable time after certification.

(b) Negotiating sessions, including strategy meetings of public employers, mediation and the deliberative process of binding interest arbitrators shall be exempt from Chapter 100 of Title 29. Hearings conducted by binding interest arbitrators shall be open to the public.

(c) The public employer and the exclusive bargaining representatives shall negotiate written grievance procedures by means of which bargaining unit employees, through their collective bargaining representatives, may appeal the interpretation or application of any term or terms of an existing collective bargaining agreement; such grievance procedures shall be included in any agreement entered into between the public employer and the exclusive bargaining representative.

(d) Any contract or agreement reached between a public employer and any exclusive representative shall be for a minimum period of 2 years from the effective date of such contract or agreement, unless otherwise mutually agreed upon by the public employer and the exclusive representative.

(e) No collective bargaining agreement shall be valid or enforceable if its implementation would be inconsistent with any statutory limitation on the public employer's funds, spending or budget, or would otherwise be contrary to law.

(f) Public employers shall file with the Board a copy of any agreements that have been negotiated with employee representatives following the consummation of negotiations. The Board shall maintain a current file of all such agreements.

(65 Del. Laws, c. 477, § 1; 72 Del. Laws, c. 271, §§ 2, 8; 74 Del. Laws, c. 173, § 1.)

§ 1614. Mediation.

(a) If, after a reasonable period of negotiations over the terms of an agreement or after a reasonable time following certification of an exclusive representative, no agreement has been signed, the parties may voluntarily submit to mediation. If, however, no agreement is

reached between the parties by 60 days prior to the expiration date of an existing collective bargaining agreement, or, in the case of a newly-certified exclusive representative, within 60 days after negotiations have commenced, both parties shall immediately notify the Board of the status of negotiations.

(b) If the parties have not voluntarily agreed to enlist the services of a mediator and less than 30 days remain before the expiration date of the existing collective bargaining agreement, or, in the case of a newly-certified exclusive representative, more than 90 days have elapsed since negotiations began, the Board must appoint a mediator if so requested by the public employer or the exclusive bargaining representative. The mediator shall be chosen from a list of qualified persons maintained by the Board, or upon agreement of the parties, from the Federal Mediation and Conciliation Service, and shall be representative of the public.

(c) If the labor dispute has not been settled after a reasonable period of mediation, during which both parties have made a good faith effort to settle their differences, the parties jointly or individually may petition the Board in writing to initiate binding interest arbitration. In lieu of a petition, the mediator may inform the Board that further negotiations between the parties, at that time, are unlikely to be productive and recommend that binding interest arbitration be initiated. The public employer and the exclusive bargaining representative may initiate binding interest arbitration at any time, by mutual agreement.

(d) Any costs involved in retaining a mediator to assist the parties in reaching a negotiated agreement shall be paid by the Board.

(65 Del. Laws, c. 477, § 1; 72 Del. Laws, c. 271, §§ 3, 8; 74 Del. Laws, c. 173, § 1.)

§ 1615. Binding interest arbitration.

(a) Within 7 working days of receipt of a petition or recommendation to initiate binding interest arbitration, the Board shall make a determination, with or without a formal hearing, as to whether a good faith effort has been made by both parties to resolve their labor dispute through negotiations and mediation and as to whether the initiation of binding interest arbitration would be appropriate and in the public interest, except that any discretionary subject shall not be subject to binding interest arbitration.

(b) Pursuant to § 4006(f) of Title 14, the Board shall appoint the Executive Director or his/her designee to act as binding interest arbitrator. Such delegation shall not limit a party's right to appeal to the Board.

(c) The binding interest arbitrator shall hold hearings in order to define the area or areas of dispute, to determine facts relating to the dispute, and to render a decision on unresolved contract issues. The hearings shall be held at times, dates and places to be established by the binding interest arbitrator in accordance with rules promulgated by the Board. The binding interest arbitrator shall be empowered to administer oaths and issue subpoenas on behalf of the parties to the dispute or on the binding interest arbitrator's own behalf.

(d) The binding interest arbitrator shall make written findings of facts and a decision for the resolution of the dispute; provided however, that the decision shall be limited to a determination of which of the parties' last, best, final offers shall be accepted in its entirety. In arriving at a determination, the binding interest arbitrator shall specify the basis for the binding interest arbitrator's findings, taking into consideration, in addition to any other relevant factors, the following:

(1) The interests and welfare of the public.

(2) Comparison of the wages, salaries, benefits, hours and conditions of employment of the employees involved in the binding interest arbitration proceedings with the wages, salaries, benefits, hours and conditions of employment of other employees performing the same or similar services or requiring similar skills under similar working conditions in the same community and in comparable communities and with other employees generally in the same community and in comparable communities.

(3) The overall compensation presently received by the employees inclusive of direct wages, salary, vacations, holidays, excused leaves, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.

(4) Stipulations of the parties.

(5) The lawful authority of the public employer.

(6) The financial ability of the public employer, based on existing revenues, to meet the costs of any proposed settlements; provided that any enhancement to such financial ability derived from savings experienced by such public employer as a result of a strike shall not be considered by the binding interest arbitrator.

(7) Such other factors not confined to the foregoing which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, binding interest arbitration or otherwise between parties, in the public service or in private employment.

In making determinations, the binding interest arbitrator shall give due weight to each relevant factor. All of the above factors shall be presumed relevant. If any factor is found not to be relevant, the binding interest arbitrator shall detail in the binding interest arbitrator's findings the specific reason why that factor is not judged relevant in arriving at the binding interest arbitrator's determination. With the exception of paragraph (d)(6) of this section, no single factor in this subsection shall be dispositive.

(e) Within 30 days after the conclusion of the hearings but not later than 120 days from the day of appointment, the binding interest arbitrator shall serve the binding interest arbitrator's written determination for resolution of the dispute on the public employer, the certified exclusive representative and the Board. The decision of the binding interest arbitrator shall become an order of the Board within 5 business days after it has been served on the parties.

(f) The cost of binding interest arbitration shall be borne equally by the parties involved in the dispute.

(g) Nothing in this chapter shall be construed to prohibit or otherwise impede a public employer and certified exclusive representative from continuing to bargain in good faith over terms and conditions of employment or from using the services of a mediator at any time during the conduct of collective bargaining. If at any point in the impasse proceedings invoked under this chapter, the parties are able to conclude their labor dispute with a voluntarily reached agreement, the Board shall be so notified, and all impasse resolution proceedings shall be forthwith terminated.

(65 Del. Laws, c. 477, § 1; 70 Del. Laws, c. 186, § 1; 72 Del. Laws, c. 271, §§ 4, 8; 74 Del. Laws, c. 173, § 1.)

§ 1616. Strikes prohibited.

(a) No public employee shall strike while in the performance of the public employee's official duties.

(b) No public employee shall be entitled to any daily pay, wages, reimbursement of expenses, benefits or any consideration in lieu thereof, for the days on which the public employee engaged in a strike.

(c) Where a public employee has lost entitlement to any daily pay or other consideration pursuant to subsection (b) of this section, any agreement between such public employee or employee organization bargaining on the public employee's behalf and a public employer which provided for the direct or indirect restoration of such entitlement shall be void as against public policy.

(65 Del. Laws, c. 477, § 1; 70 Del. Laws, c. 186, § 1.)

§ 1617. Injunctions.

(a) Chancery Court is vested with the authority to hear and determine all actions alleging violation of § 1616 of this title. Suits to enjoin violations of § 1616 of this title will have priority over all matters on the Court's docket except other emergency matters.

(b) Where it appears that any public employee, group of employees, employee organizations or any officer or agent thereof, threaten or are about to do, or are doing, any act in violation of § 1616 of this title, the public employer may forthwith apply to the Court of Chancery for an injunction against such violation.

(c) If an order of the Court enjoining or restraining a violation of § 1616 of this title does not receive immediate compliance, the public employer shall apply to the Court for appropriate contempt sanctions against any party in violation of such order. Upon a proper showing that any person or organization has failed to comply with such an order, the Court shall, in addition to any other remedy it deems appropriate, fine such violating party an amount on a daily, weekly or monthly basis without limitation as determined by the Court.

(d) In determining an appropriate amount for fines imposed pursuant to subsection (c) of this section, the Court shall consider and receive evidence of:

(1) The extent and value of services lost due to the violation of § 1616 of this title.

(2) Any unfair labor practices committed by either party during the collective bargaining process.

(3) The extent of the wilful defiance or resistance to the Court's order.

(4) The impact of the strike on the health, safety and welfare of the public.

(65 Del. Laws, c. 477, § 1.)

§ 1618. Status of existing exclusive representative.

An employee organization that has been certified as the exclusive representative of a bargaining unit deemed to be appropriate prior to the effective date of this chapter shall so continue without the requirement of an election and certification until such time as a question concerning representation is appropriately raised under this chapter in accordance with § 1611(b) of this title, or until the Board would find the unit not to be appropriate in accordance with § 1610(f) of this title.

(65 Del. Laws, c. 477, § 1.)

Subchapter II

Volunteer Firefighter and Rescue Squad Worker Protection Act [Effective upon enactment of comparable federal law]

§ 1621. Definitions [Effective upon enactment of comparable federal law].

As used in this subchapter the term "employee" shall not include a firefighter or a member of a rescue squad during the period in which the firefighter or rescue squad member volunteers the firefighter's or member's services at a location where the firefighter or member is either employed or is not then or regularly employed.

(70 Del. Laws, c. 498, § 1.)

§ 1622. Waiver of overtime compensation [Effective upon enactment of comparable federal law].

The employer of a firefighter or member of a rescue squad shall not be required to pay a firefighter or member overtime compensation:

(1) When the firefighter or member volunteered their services to the employer; and

(2) For which the firefighter or member signed a legally binding waiver of such compensation.

(70 Del. Laws, c. 498, § 1.)

§ 1623. Coercion [Effective upon enactment of comparable federal law].

No employer may require directly or indirectly an employee who is a firefighter or member of a rescue squad to volunteer the employee's firefighting or rescue squad services during any period in which such employee would be entitled to receive compensation for overtime employment.

(70 Del. Laws, c. 498, § 1.)

Part I
General Provisions

Chapter 17
Whistleblowers' Protection

§ 1701. Short title.

This chapter may be cited as the "Delaware Whistleblowers' Protection Act."

(74 Del. Laws, c. 361, § 1.)

§ 1702. Definitions.

As used in this chapter:

(1) "Employee" means a person employed full or part-time by any employer, and shall include, but not be limited to, at-will employees, contract employees, independent contractors, and volunteer firefighters as defined in § 6651(c) of Title 16.

(2) "Employer" means any person, partnership, association, sole proprietorship, corporation or other business entity, including any department, agency, commission, committee, board, council, bureau, or authority or any subdivision of them in state, county or municipal government. One shall employ another if services are performed for wages or under any contract of hire, written or oral, express or implied.

(3) "Person" means an individual, sole proprietorship, partnership, corporation, association, or any other legal entity.

(4) "Public body" means all of the following:

a. A state-wide elected official, agency, department, division, bureau, board, commission, council, authority, or other body in the executive branch of state government or employee of them;

b. A legislator or employee of the legislative branch of state government;

c. An elected official of a county, city, or school district or employee of them;

d. A law-enforcement agency or employee of that law-enforcement agency; and

e. A federal agency or employee of that federal agency.

(5) "Supervisor" means any individual to whom an employer has given the authority to direct and control the work performance of the affected employee or any individual who has the authority to take corrective action regarding the violation of a law, rule or regulation about which the employee complains.

(6) "Violation" means an act or omission by an employer, or an agent thereof, that is:

a. Materially inconsistent with, and a serious deviation from, standards implemented pursuant to a law, rule, or regulation promulgated under the laws of this State, a political subdivision of this State, or the United States, to protect employees or other persons from health, safety, or environmental hazards while on the employer's premises or elsewhere; or

b. Materially inconsistent with, and a serious deviation from, financial management or accounting standards implemented pursuant to a rule or regulation promulgated by the employer or a law, rule, or regulation promulgated under the laws of this State, a political subdivision of this State, or the United States, to protect any person from fraud, deceit, or misappropriation of public or private funds or assets under the control of the employer.

(74 Del. Laws, c. 361, § 1.)

§ 1703. Protection.

An employer shall not discharge, threaten, or otherwise discriminate against an employee regarding the employee's compensation, terms, conditions, location, or privileges of employment, including reporting or threatening to report an employee's suspected or actual citizenship or immigration status or the suspected or actual citizenship or immigration status of a family member of the employee to a federal, state, or local agency:

(74 Del. Laws, c. 361, § 1; 79 Del. Laws, c. 344, § 1; 83 Del. Laws, c. 488, § 1.)

§ 1704. Relief and damages.

(a) A person who alleges a violation of this chapter may bring a civil action for appropriate declaratory relief, or actual damages, or both within 3 years after the occurrence of the alleged violation of this chapter.

(b) An action commenced pursuant to subsection (a) of this section may be brought in Superior Court in the county where the alleged violation occurred, the county where the complainant resides, or the county where the person against whom the civil complaint is filed resides or has their principal place of business.

(c) As used in subsection (a) of this section, "damages" means damages for injury or loss caused by each violation of this chapter.

(d) A court, in rendering a judgment in an action brought under this chapter, shall order, as the court considers appropriate, reinstatement of the employee, the payment of back wages, full reinstatement of fringe benefits and seniority rights, expungement of records relating to

the disciplinary action or discharge, actual damages, or any combination of these remedies. A court may also award, as part of a judgment in an action brought under this chapter, all or a portion of the costs of litigation, including attorneys' fees, if the court determines that such an award is appropriate.

(74 Del. Laws, c. 361, § 1.)

§ 1705. Collective bargaining.

This chapter shall not be construed to diminish or impair the rights of a person under any collective bargaining agreement.

(74 Del. Laws, c. 361, § 1.)

§ 1706. Exemption.

This chapter shall not be construed to require an employer to compensate an employee for participation in an investigation, hearing or inquiry held by a public body in accordance with § 1703 of this title.

(74 Del. Laws, c. 361, § 1.)

§ 1707. Notices requirement.

An employer shall post notices and use other appropriate means to keep the employer's employees informed of their protections and obligations under this chapter.

(74 Del. Laws, c. 361, § 1; 70 Del. Laws, c. 186, § 1.)

§ 1708. Burden of proof.

The burden of proof in any action brought under this chapter shall be upon the employee to show that the primary basis for the discharge, threats, or discrimination alleged to be in violation of this chapter was that the employee undertook an act protected pursuant to § 1703 of this title.

(74 Del. Laws, c. 361, § 1.)

Part I
General Provisions

Chapter 18
Volunteer Emergency Responders Job Protection Act

§ 1801. Short title.

This chapter may be known and cited as the "Volunteer Emergency Responders Job Protection Act."

(79 Del. Laws, c. 180, § 1.)

§ 1802. Definitions.

As used in this chapter, unless the context otherwise requires:

(1) "Employer" means any person employing 10 or more employees; and

(2) "Volunteer emergency responder" means a volunteer firefighter, a member of a ladies auxiliary of a volunteer fire company, volunteer emergency medical technician and/or a volunteer fire police officer.

(79 Del. Laws, c. 180, § 1.)

§ 1803. Employer; prohibited acts.

(a) No employer shall terminate, demote or take any other disciplinary action against any employee who is a volunteer emergency responder if:

(1) Such employee, when acting as a volunteer emergency responder, is absent from his or her place of employment in order to respond to a Governor-declared state of emergency lasting up to 7 consecutive days; or

(2) Such employee, when acting as a volunteer emergency responder, is absent from his or her place of employment in order to respond to a President-declared national emergency lasting up to 14 consecutive days; or

(3) Such employee is absent from his or her place of employment due to injury sustained by such employee when acting as a volunteer emergency responder including responding to an emergency.

(b) Paragraphs (a)(1) and (a)(2) of this section shall not apply to:

(1) Essential state employees;

(2) Members of the armed forces;

(3) Members of the National Guard;

(4) Employees of a hospital licensed pursuant to Chapter 10 of Title 16; and

(5) Employees of public utilities or providers of voice over IP service or cellular telephone service who are necessary to maintain the integrity of networks, facilities or assist first responders.

(79 Del. Laws, c. 180, § 1; 70 Del. Laws, c. 186, § 1.)

§ 1804. Employer; adjustments to wages authorized.

An employer may subtract from an employee's earned wages any time such employee is away from his or her place of employment for reason described in § 1803 of this title.

(79 Del. Laws, c. 180, § 1; 70 Del. Laws, c. 186, § 1.)

§ 1805. Employee; duty to notify employer.

An employee shall notify his or her employer, in accordance with the existing policies of the employer if such policy exists, that he or she may be absent from his or her place of employment upon the occurrence of an event described in § 1803 of this title.

(79 Del. Laws, c. 180, § 1; 70 Del. Laws, c. 186, § 1.)

§ 1806. Employee; provide written statement; contents.

(a) At an employer's request, an employee, acting as a volunteer emergency responder, who is absent from his or her place of employment in order to respond to an emergency shall provide his or her employer, within 7 days of such request, a written statement signed by the individual in charge of the volunteer department or another individual authorized to act for such individual that includes the following: That the employee responded to an emergency; the date and time of the emergency; and the date and time such employee completed his or her volunteer emergency activities.

(b) At an employer's request, an employee, who is absent from his or her place of employment due to injury sustained by such employee while responding to an emergency shall provide his or her employer, within 5 days of such request, a written statement signed by the relevant medical professional or another individual authorized to act for such medical professional that includes the following: That the

employee was seen by such medical professional, the date the employee was seen by such medical professional, and the estimated period of partial or total incapacity to perform the employee's job.

(79 Del. Laws, c. 180, § 1; 70 Del. Laws, c. 186, § 1.)

§ 1807. Wrongful termination of employment or disciplinary action; reinstatement; action to enforce act.

An employee who is terminated or against whom any disciplinary action is taken in violation of this chapter shall be immediately reinstated to his or her former position, if wrongfully terminated, without reduction of wages, seniority, or other benefits and shall receive any lost wages or other benefits, if applicable, during any period for which such termination or other disciplinary action was in effect. An action to enforce this chapter may be brought by the employee to recover any lost wages or other benefits, including court costs and reasonable attorney's fees in Superior Court. An action to enforce this chapter shall be commenced within 1 year after the date of violation.

(79 Del. Laws, c. 180, § 1; 70 Del. Laws, c. 186, § 1.)

§ 1808. Substantially similar employment policies.

The provisions of this chapter shall not apply to an employer if such employer has substantially similar policies or rules that provide the same or substantially similar protections as are afforded in this chapter to an employee and provides the opportunity to appeal a decision to a court within the State.

(79 Del. Laws, c. 180, § 1.)

Part I
General Provisions

Chapter 19
Delaware Workplace Adjustment and Retraining

(81 Del. Laws, c. 312, § 1.)

§ 1901. Short title

This chapter shall be known and may be cited as the "Delaware Worker Adjustment and Retraining Notification Act."

(81 Del. Laws, c. 312, § 1.)

§ 1902. Statement of purpose

This chapter is intended to direct employers that meet the qualifications of this chapter to provide at least 60 days' advance notice to the Department of Labor Division of Employment and Training of mass layoffs, plant closings, or relocations. The intent is to provide dislocated workers the rapid response services and benefits that are due to them through the Department of Labor and other service providers. The desire of the Department is to assist dislocated workers to return to work as quickly as possible with minimal disruption to their economic well-being.

(81 Del. Laws, c. 312, § 1.)

§ 1903. Definitions

(a) For purposes of this chapter:

(1) "Affected employees" means employees who may reasonably be expected to experience an employment loss as a consequence of a proposed mass layoff, plant closing or relocation by their employer.

(2) "Days" means calendar days.

(3) "Department" means the Delaware Department of Labor.

(4) "Employer" means:

a. Any business enterprise that employs 100 or more employees, excluding part-time employees, or 100 or more employees that work in the aggregate at least 2,000 hours per week.

b. "Employer" does not include the federal or state government or any of their political subdivisions, including any unit of local government or any school district or charter school.

(5) a. "Employment loss" means any of the following:

1. An employment termination, other than a discharge for cause, voluntary departure, or retirement.

2. A mass layoff exceeding 6 months in duration.

3. A reduction in hours of work of more than 50% during each month of any consecutive 6-month period.

b. The term "employment loss" shall not result under circumstances where a mass layoff or plant closing is the result of the relocation or consolidation of part or all of the employer's business and, before the mass layoff or plant closing, the employer offers to transfer the employee to a different site of employment within a reasonable commuting distance with no more than a 6-month break in employment, or the employer offers to transfer the employee to any other site of employment, regardless of distance, with no more than a 6-month break in employment, and the employee accepts within 30 days of the offer or of the mass layoff or plant closing, whichever is later.

(6) "Mass layoff" means a reduction in workforce which includes all of the following:

a. Is not the result of a plant closing.

b. Results in an employment loss at a single site of employment during any 30-day period for:

1. Fifty or more employees if they make up 33% of the employer's total workforce at the site, excluding part-time employees or

2. Five hundred or more employees.

(7) "Part-time employee" means an employee who is employed for an average of fewer than 20 hours per week or who has been employed for fewer than 6 of the 12 months preceding the date on which notice is required.

(8) "Plant closing" means the permanent or temporary shutdown of a single site of employment, or 1 or more facilities or operating units within a single site of employment, if the shutdown results in an employment loss at the single site of employment during any 30-day period for 50 or more employees (other than part-time employees).

(9) "Relocation" means the removal of all or substantially all of the industrial or commercial operations of an employer to a different location 50 miles or more away.

(10) "Representative" means an exclusive representative within the meaning of § 9(a) or § 8(f) of the National Labor Relations Act (29 U.S.C. §§ 159(a), 158(f)) or § 2 of the Railway Labor Act (45 U.S.C. § 152).

(11) "Secretary" shall mean the Secretary of the Delaware Department of Labor or a designated subordinate of the Secretary.

(12) "WARN Act" shall mean the federal Worker Adjustment and Retraining Notification Act (29 U.S.C. § 2101 et seq.).

(81 Del. Laws, c. 312, § 1.)

§ 1904. Notice

(a) An employer may not order a mass layoff, plant closing, or relocation if the mass layoff, plant closing, or relocation will cause an employment loss unless, at least 60 days before the order takes effect, the employer gives written notice of the order to all of the following:

(1) Affected employees and the representatives of affected employees.

(2) The Delaware Department of Labor Division of Employment and Training, WARN Act Administrator.

(3) The Delaware Workforce Development Board established pursuant to the federal Workforce Innovation Opportunity Act (P.L. 113-128) for the locality in which the mass layoff, plant closing or relocation will occur.

(b) An employer required to give notice of any mass layoff, plant closing or relocation under this chapter shall include in its notice the elements required by the federal Worker Adjustment and Retraining Notification Act (29 U.S.C. § 2101 et seq.). Notice shall include the name, job title, home address, telephone number, and email address of each planned dislocated worker. Notice shall also include general information regarding any payouts, severance packages, job relocation opportunities and retirement options that will be offered to the dislocated workers. Notice shall include whether the employer is self-insured for workers' compensation insurance pursuant to Chapter 23 of this title.

(c) Notwithstanding the requirements of subsection (a) of this section, an employer is not required to provide notice if a mass layoff, plant closing or relocation is necessitated by a physical calamity or an act of terrorism or war.

(d) The mailing of notice to an employee's last known address by either first class or certified mail, the hand delivery of notice to an employee, or the inclusion of notice in an employee's paycheck shall be considered acceptable methods for fulfillment of the employer's obligation to give notice to each affected employee under this chapter.

(e) In the case of a sale of part or all of an employer's business, the seller shall be responsible for providing notice for any mass layoff, plant closing or relocation where any of the above will cause an employment loss, in accordance with this section, up to and including the effective date of the sale. After the effective date of the sale of part or all of an employer's business, the purchaser shall be responsible for providing notice for any mass layoff, plant closing or relocation where any of the above will cause an employment loss, in accordance with this section. Notwithstanding any other provision of this chapter, any person who is an employee of the seller as of the effective date of the sale shall be considered an employee of the purchaser immediately after the effective date of the sale.

(f) Nothing set forth herein shall be read to abridge, abrogate, or restrict the right of any state or local entity to require an employer that is receiving state or local economic development incentives for doing or continuing to do business in this State from being required to provide additional or earlier notice as a condition for the receipt of such incentives.

(g) Nothing set forth herein shall be read to prevent an employer who is not required to comply with the notice requirements of this section, to the extent possible, to provide notice to its employees about a proposal to close a plant or permanently reduce its workforce.

(81 Del. Laws, c. 312, § 1; 82 Del. Laws, c. 141, § 19.)

§ 1905. Exceptions

(a) In the case of a mass layoff, plant closing or relocation, an employer is not required to comply with the notice requirements of this chapter under any of the following circumstances:

(1) a. At the time the notice would have been required, the employer was actively seeking capital or business;

b. The capital or business sought, if obtained, would have enabled the employer to avoid or postpone the relocation or termination; and

c. The employer reasonably and in good faith believed that giving the notice required by this chapter would have precluded the employer from obtaining the needed capital or business.

(2) The mass layoff or plant closing is caused by business circumstances that were not reasonably foreseeable at the time the notice would have been required. A business circumstance that is not reasonably foreseeable may be established by the occurrence of some sudden, dramatic and unexpected action or condition outside of the employer's control. Examples include a principal client's sudden and unexpected termination of a major contract with the employer, a strike at a major supplier of the employer, an unanticipated and dramatic major economic downturn or a government-ordered closing of an employment site that occurs without prior notice. The employer shall exercise commercially reasonable business judgment in determining whether a business circumstance is reasonably foreseeable.

(3) The plant closing is of a temporary facility or the mass layoff or plant closing is the result of the completion of a particular project or undertaking, and the affected employees were hired with the understanding that their employment was limited to the duration of the facility or project or undertaking or a specific portion of such project or undertaking. This includes industries such as construction and their related projects; however, this does not exempt a construction company if they suffer a mass layoff or plant closing not related to a specific project or undertaking.

(4) The mass layoff or plant closing is due to any form of natural disaster, such as a flood, earthquake, or drought.

(5) The mass layoff or plant closing constitutes a strike or constitutes a lockout not intended to evade the requirements of this chapter. Nothing in this chapter shall require an employer to serve written notice when permanently replacing a person who is deemed to be an economic striker under the National Labor Relations Act (29 U.S.C. § 151 et seq.). Nothing in this chapter shall be deemed to validate or invalidate any judicial or administrative ruling relating to the hiring of permanent replacements for economic strikers under the National Labor Relations Act.

(b) An employer unable to provide the notice otherwise required by this chapter in a timely fashion as a result of circumstances described in subsection (a) of this section shall provide as much notice as is practicable and at that time shall provide a brief statement of the basis for reducing the notification period. The failure to provide such notice in as timely a manner as possible shall constitute a violation of this chapter.

(81 Del. Laws, c. 312, § 1.)

§ 1906. Extension of mass layoff period

A mass layoff of more than 6 months which, at its outset, was announced to be a mass layoff of 6 months or less shall be treated as an employment loss under this chapter unless the following:

(1) The extension beyond 6 months is caused by business circumstances (including unforeseeable changes in price or cost) not reasonably foreseeable at the time of the initial mass layoff.

(2) Notice is given at the time it becomes reasonably foreseeable that the extension beyond 6 months will be required.

(81 Del. Laws, c. 312, § 1.)

§ 1907. Determinations with respect to employment loss

An employer must also give notice if the number of employment losses which occur during a 30-day period fails to meet the threshold requirement of a mass layoff or plant closing, but the number of employment losses of 2 or more groups of workers, each of which is less than the minimum number needed to trigger notice, reaches the threshold level during any 90-day period of a mass layoff, plant closing or relocation. Job losses within any 90-day period will count toward WARN Act threshold levels unless the employer demonstrates that the employment losses during the 90-day period are the result of separate and distinct actions and causes.

(81 Del. Laws, c. 312, § 1.)

§ 1908. Powers of the Secretary

(a) The Secretary shall prescribe such rules and regulations as may be necessary to carry out this chapter. The regulations shall, at a minimum, include provisions that allow the parties access to administrative hearings for any actions of the Department under this chapter.

(b) In any investigation or proceeding under this chapter, the Secretary has, in addition to all other powers granted by law, the authority to examine any information of an employer necessary to determine whether a violation of this chapter has occurred, including to determine the validity of any defense.

(c) Except as provided in this section, information obtained through administration of this chapter from an employer subject to this chapter and which is not otherwise obtainable by the Department under other chapters in this title shall be confidential and not be published or open to public inspection.

(1) Notwithstanding any other provisions of this section, the Secretary shall be entitled to use any information and documents received by any employer under this chapter in connection with any investigation or proceeding under this chapter, including in any administrative hearing under this chapter.

(2) Prior to public disclosure of any such information in connection with any court or administrative action or proceeding, the employer shall be given a reasonable opportunity to make application to protect the information's confidentiality during such action or proceeding.

(3) Notwithstanding any other provisions of this section, information obtained by the Department from any notice required by the federal WARN Act or this chapter shall not be considered confidential, except as set forth in paragraph (c)(4) of this section.

(4) Notwithstanding any other provisions of this section, names and personal information, including addresses, phone numbers, email addresses, contact information, and social security numbers, of planned dislocated workers contained in any notice required by the federal WARN Act or this chapter, or otherwise provided to the Department by an employer pursuant to this chapter, shall remain confidential and shall not be published or open to public inspection.

(5) Any information or documents regarding or relating to a potential mass layoff, plant closing, or relocation that is provided by an employer to the Department pursuant to this chapter prior to the Department's receipt of any notice required by the federal WARN Act or this chapter shall be confidential and shall not be published or open to public inspection.

(d) If, after an administrative hearing, it is determined that an employer has violated any of the requirements of this chapter or any rules or regulations promulgated hereunder, the Secretary shall issue an order which shall include any penalties assessed by the Secretary under this chapter. Upon the entry of such order, any party aggrieved thereby may commence a proceeding for the review thereof, which

proceeding must be filed in the Superior Court for the county in which the employer's place of business is located within 30 days after the date the order was mailed to the employer's last known address. In any proceeding under this section the findings of the Secretary as to the facts, if supported by evidence and in the absence of fraud, shall be conclusive and the jurisdiction of the Court shall be confined to questions of law. If such order is not reviewed, or is so reviewed and the final decision is in favor of the Secretary, the Department may file the order of the Secretary containing the amount found to be due with the prothonotary of the Superior Court in the county where the employer resides or has a place of business. The filing of such order shall have the full force and effect of a judgment duly docketed in the office of such prothonotary. The order may be enforced by and in the name of the Secretary in the same manner, and with like effect, as that prescribed by the civil practice law and rules for the enforcement of a money judgment.

(e) The Department shall distribute to all employees entitled to notice under this chapter any back pay and the value of the cost of any benefits recovered by the Department from an employer who did not provide such notice.

(81 Del. Laws, c. 312, § 1.)

§ 1909. Violation; liability

(a) An employer who fails to give notice as required by this chapter before ordering a mass layoff, plant closing, or relocation if any of the above will cause an employment loss is liable to each employee entitled to notice who lost his or her employment for the following:

(1) Back pay at the average regular rate of compensation received by the employee during the last 3 years of his or her employment, or the employee's final rate of compensation, whichever is higher.

(2) The value of the cost of any benefits to which the employee would have been entitled had his or her employment not been lost, including the cost of any medical expenses incurred by the employee that would have been covered under an employee benefit plan.

(b) Back pay and other liability under this section is calculated for the period of the employer's violation, up to a maximum of 60 days, or ½ the number of days that the employee was employed by the employer, whichever period is smaller.

(c) Payments to an employee under this chapter by an employer who has failed to provide the advance notice of a mass layoff, plant closing or relocation that is required by this chapter or the federal Worker Adjustment and Retraining Notification Act (29 U.S.C. § 2101 et seq.) shall not be construed as wages. Unemployment insurance benefits under this title may not be denied or reduced because of the receipt of payments related to an employer's violation of this chapter or the federal Worker Adjustment and Retraining Notification Act.

(d) The amount of an employer's liability under this chapter shall be reduced by the following:

(1) Any wages, except vacation moneys accrued before the period of the employer's violation, paid by the employer to the employee during the period of the employer's violation.

(2) Any voluntary and unconditional payments made by the employer to the employee that were not required to satisfy any legal obligation.

(3) Any payments by the employer to a third party or trustee, such as premiums for health benefits or payments to a defined contribution pension plan, on behalf of and attributable to the employee for the period of the violation.

(4) Any liability paid by the employer under any applicable federal law governing notification of mass layoffs, plant closings, or relocations.

(5) In an administrative proceeding by the Secretary, any liability paid by the employer prior to the Secretary's determination as the result of a civil action brought under this chapter.

(6) In a civil action brought under this chapter, any liability paid by the employer in an administrative proceeding by the Secretary prior to the adjudication of such civil action.

(e) Any liability incurred by an employer under subsection (a) of this section with respect to a defined benefit pension plan may be reduced by crediting the employee with service for all purposes under such a plan for the period of the violation.

(f) If an employer proves to the satisfaction of the Secretary that the act or omission that violated this chapter was in good faith and that the employer had reasonable grounds for believing that the act or omission was not a violation of this chapter, the Secretary may, in his or her discretion, reduce the amount of liability provided for in this section. In determining the amount of such reduction, the Secretary shall consider the following:

(1) The size of the employer.

(2) The hardships imposed on employees by the violation.

(3) Any efforts by the employer to mitigate the violation.

(4) The grounds for the employer's belief.

(g) An aggrieved employee, local government, or an employee representative seeking to establish liability against an employer may bring a civil action on behalf of the person, other persons similarly situated, or both, in any court of competent jurisdiction, within 3 years of the alleged violation of this chapter. The court may award reasonable attorneys' fees as part of costs to any plaintiff who prevails in a civil action brought under this chapter. If the court determines that an employer conducted a reasonable investigation in good faith, and had reasonable grounds to believe that its conduct was not a violation of this chapter, the court may reduce the amount of any penalty it would otherwise impose against the employer under this chapter.

(h) Neither the Secretary nor any court shall have the authority to enjoin a mass layoff, plant closing, or relocation under this chapter.

(81 Del. Laws, c. 312, § 1.)

§ 1910. Civil penalty

(a) An employer who fails to give notice as required by this chapter is subject to a civil penalty of $1,000 per day of violation or $100 per day of violation per dislocated worker, whichever is greater. The employer is not subject to a civil penalty under this section if the employer pays to all applicable employees the amounts for which the employer is liable under this chapter within 3 weeks from the date the employer orders the mass layoff, plant closing, or relocation if any of the above will cause an employment loss. Any penalty received will be deposited into the Employment and Training WARN Account.

(b) The total amount of penalties for which an employer may be liable under this section shall not exceed the maximum amount of penalties for which the employer may be liable under federal law for the same violation.

(c) Any penalty amount paid by the employer under federal law shall be considered a payment made under this chapter.

(d) If an employer proves to the satisfaction of the Secretary that the act or omission that violated this chapter was in good faith and that the employer had reasonable grounds for believing that the act or omission was not a violation of this chapter, the Secretary may in his or her discretion reduce the amount of the penalty provided for in this section. In determining the amount of such reduction, the Secretary shall consider the following:

(1) The size of the employer.

(2) The hardships imposed on employees by the violations.

(3) Any efforts by the employer to mitigate the violation.

(4) The grounds for the employer’s belief.

(81 Del. Laws, c. 312, § 1.)

§ 1911. Other rights

The rights and remedies provided to employees by this chapter are in addition to, and not in lieu of, any other contractual or statutory rights and remedies of the employees, and are not intended to alter or affect such rights and remedies, except that the period of notification required by this chapter shall run concurrently with any period of notification required by contract or by any other state or federal statute.

(81 Del. Laws, c. 312, § 1.)

Part II
Workers' Compensation

Chapter 21
Industrial Accident Board [Repealed].

Subchapter I

General Provisions

§§ 2101-2109. Composition; appointment; term; compensation and travel expenses of Board and assistants; quorum; Chairperson; Secretary and other employees; compensation; seal; receipts and disbursements; office; hours; books and records; removal of members [Repealed].

Repealed by 71 Del. Laws, c. 84, § 1, effective Dec. 24, 1997.

Subchapter II

Powers and Duties; Hearings

§§ 2121-2127. Powers and duties generally; hearings; subpoena of witnesses; oaths; service of process; fees; contempt of Board; medical examination and testimony; physician's fee; witness and mileage fees; costs; approval of fees; attorney's fee [Repealed].

Repealed by 71 Del. Laws, c. 84, § 1, effective Dec. 24, 1997.

Part II
Workers' Compensation
Chapter 23
Workers' Compensation
Subchapter I
General Provisions

§ 2301. Definitions.

As used in this chapter:

(1) "Board" means the Industrial Accident Board.

(2) "Child" includes stepchildren and adopted children and children to whom the deceased stood in loco parentis if members of the decedent's household at the time of the decedent's death, and includes posthumous children but not married children.

(3) "Compensable ionizing radiation injury" means any harmful change in the human organism including damage to or loss of a prosthetic appliance arising out of and in the course of employment and caused by exposure to ionizing radiation which renders the injured party disabled within the meaning of §§ 2324 and 2325 of this title and/or permanently injured within the meaning of § 2326 of this title.

(4) "Compensable occupational diseases" includes all occupational diseases arising out of and in the course of employment only when the exposure stated in connection therewith has occurred during employment.

(5) "Compensation" wherever the context requires it includes surgical, medical and hospital services, medicines and supplies and funeral benefits provided for in this chapter. Nothing in this chapter shall be construed to require a worker who in good faith relies on or is treated by prayer or spiritual means by a duly accredited practitioner of a well-known church to undergo any medical or surgical treatment, nor shall such worker or the worker's dependents be deprived of any compensation payments to which the worker would have been entitled if medical or surgical treatment were employed.

(6) "Death" when mentioned as a cause for compensation under this chapter means death resulting from violence to the physical structure of the body and its resultant effect when reasonably treated and occurring within 285 weeks after the accident, and compensable occupational diseases, as defined in this section, arising out of and in the course of the employment, provided that if death shall occur beyond 285 weeks after the accident, the Board may consider such death as a cause for compensation when the Board has a medical history on the case resulting from the payment of compensation for the injury which is alleged to have caused the death.

(7) "Deductible clause" shall mean a clause in an agreement between an employer and an insurer that the employer shall be liable for a specified initial amount, per occurrence or per employee, of each claim, loss or liability; but that the insurer shall be liable for any excess liability up to and including the maximum amount permitted by law.

(8) "Department" means the Department of Labor.

(9) "Dependent" includes all persons other than the injured employee who are entitled to compensation under the elective schedule set forth in this chapter, and wherever the context requires it, includes the personal representatives and the surviving spouse of the deceased, and guardians of infants or trustees for incompetent persons.

(10) "Employee" means every person in service of any corporation (private, public, municipal or quasi-public), association, firm or person, excepting those employees excluded by this subchapter, under any contract of hire, express or implied, oral or written, or performing services for a valuable consideration, excluding spouse and minor children of a farm employer unless the spouse or minor child is a bona fide employee of a farm employer and is named in an endorsement to the farm employer's contract of insurance, and excluding any person whose employment is casual and not in the regular course of the trade, business, profession or occupation of his or her employer, and not including persons to whom articles or materials are furnished or repaired, or adopted for sale in the worker's own home, or on the premises not under the control or management of the employer. "Casual employment," as used in this paragraph, means employment for not over 2 weeks or a total salary during the employment not to exceed $100 and, subject to the above, repairs and maintenance of employer's regular business shall not be construed as casual employment; except, however, that everyone assigned to work under §§ 901-905 of Title 31 is specifically designated an employee, notwithstanding any provisions of this section to the contrary. Inmates in the custody of the Department of Correction or inmates on work release who participate in the Prison Industries Program or other programs sponsored for inmates by the Department of Correction pursuant to Chapter 65 of Title 11 or other applicable Delaware law shall not be considered employees of the State for purposes of this title or otherwise be eligible for workers' compensation benefits unless said inmate is employed by an employer other than the State or a political subdivision thereof. Any person providing services as a sports official at a sports event in which the players are not compensated shall not be considered employees under this title. For purposes of this title "sports officials" includes an umpire, referee, judge, scorekeeper, timekeeper, organizer, or other person who is a neutral participant in a sports event. This exclusion does not apply to workers' compensation claims against schools, associations of schools or other organizations sponsoring a sports contest where the claimant is a sports official who is a regular employee of such school, association of schools, or other organization sponsoring the sports contest.

(11) "Employer" includes all those who employ others unless they are excluded from the application of this chapter by any provision of this subchapter, and if the employer is insured, the term shall include the insurer as far as practicable; employer shall also include the governing body for which employable relief recipients are assigned work under §§ 901-905 of Title 31.

(12) "Executive officers" means the president, any vice-president, secretary, treasurer or any other executive officer elected and empowered by the board of directors in accordance with the charter and the regularly adopted bylaws of the corporation.

(13) "Health-care provider" shall refer to any health-care provider who is licensed by the State of Delaware to provide health-care services, irrespective of whether the particular services provided under the Delaware workers' compensation system are rendered within or outside the State.

(14) "Hearing officer" means a hearing officer appointed pursuant to § 2301B of this title.

(15) "Immediate family" means a parent, spouse, child or sibling of a sole proprietor or partner.

(16) "Injury" and "personal injury" mean violence to the physical structure of the body, such disease or infection as naturally results directly therefrom when reasonably treated and compensable occupational diseases and compensable ionizing radiation injuries arising out of and in the course of employment.

(17) "Insurance carrier" means any insurance corporation, mutual association or company or interinsurance exchange which insures employers against liability under this chapter or against liability at common law for accidental injuries to employees.

(18) "Ionizing radiation" means any particulate or electromagnetic radiation capable of producing ions directly or indirectly in its passage through matter.

(19) "Personal injury sustained by accident arising out of and in the course of the employment":

a. Shall not cover an employee except while the employee is engaged in, on or about the premises where the employee's services are being performed, which are occupied by, or under the control of, the employer (the employee's presence being required by the nature of the employee's employment), or while the employee is engaged elsewhere in or about the employer's business where the employee's services require the employee's presence as a part of such service at the time of the injury, provided, however, that participation in an approved Travelink Traffic Mitigation Act program, created pursuant to subchapter IV of Chapter 20 of Title 30, shall not be construed as meeting either exception contained in this paragraph; and

b. Shall not include any injury caused by the wilful act of another employee directed against the employee by reasons personal to such employee and not directed against the employee as an employee or because of the employee's employment.

c. Shall, however, cover any personal injury to an off-duty employee of the State who demonstrates by a preponderance of the evidence that the injury was the result of an intentional act by a person associated with the employee in that employee's official capacity who committed the act because of that association. It is an affirmative defense in the case of an off-duty injury that the injured employee initiated the incident that resulted in the injury.

(20) "Services" and "supplies" mean all treatments and apparatus, including glasses, artificial members, shoes and other corrective appliances made necessary by reason of the injuries sustained.

(21) "Wilful self-exposure to occupational diseases" includes:

a. Failure or omission to observe such rules and regulations as may be promulgated and posted in the plant by the employer tending to the prevention of occupational diseases; and

b. Failure or omission to truthfully state to the best of the employee's knowledge, in answer to inquiry made by the employer, the location, duration and nature of previous employment of the employee in which the employee was exposed to any occupational diseases.

(Code 1915, §§ 3193k, 3193w, 3193pp, 3193qq, 3193rr, 3193tt, 3193yy, 3193bbb, 3193ddd, 3193eee, 3193fff; 29 Del. Laws, c. 233; 30 Del. Laws, c. 203, §§ 1, 4, 9; 32 Del. Laws, c. 186, § 4; 33 Del. Laws, c. 206, §§ 1, 2; 35 Del. Laws, c. 193, §§ 1, 2; 37 Del. Laws, c. 44, § 1; Code 1935, §§ 6071, 6081, 6112-6116; 41 Del. Laws, c. 241, § 1; 42 Del. Laws, c. 185, § 1; 43 Del. Laws, c. 269, § 9; 46 Del. Laws, c. 50; 47 Del. Laws, c. 270; 19 Del. C. 1953, § 2301; 49 Del. Laws, c. 429, § 3; 50 Del. Laws, c. 339, § 1; 52 Del. Laws, c. 49, §§ 1, 2; 52 Del. Laws, c. 244, § 1; 55 Del. Laws, c. 83, § 1; 59 Del. Laws, c. 454, § 1; 63 Del. Laws, c. 250, §§ 1, 2; 67 Del. Laws, c. 160, § 5; 69 Del. Laws, c. 196, § 1; 70 Del. Laws, c. 172, §§ 3-5; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 84, §§ 4, 5; 72 Del. Laws, c. 73, § 1; 72 Del. Laws, c. 185, § 1; 75 Del. Laws, c. 272, § 1; 80 Del. Laws, c. 124, § 1.)

§ 2301A. Industrial Accident Board.

(a) The Industrial Accident Board is continued. It shall consist of 10 members, each of whom shall be appointed by the Governor for a term of 6 years and confirmed by the State Senate. The appointments shall be made so that there shall always be on the Board 2 residents of New Castle County outside of the City of Wilmington, 1 resident of the City of Wilmington, 2 residents of Kent County, 2 residents of Sussex County and 3 members-at-large residents of any of the subdivisions of the State, and not more than 6 of said members shall be of the same political party.

(b) Each member of the Board shall receive an annual salary of $24,240, except for the Chairperson, who shall receive an annual salary of $27,270. The members of the Board shall receive from the State their actual and necessary expenses while traveling on the business of the Board, but such expense shall be sworn to by the person who incurred the expense, and any such person falsely making any such report shall be guilty of perjury and punishable accordingly. The salary of the members of the Board shall be paid in the same manner as the salaries of state officers are paid.

(c) A majority of the members of the Board shall constitute a quorum for the exercise of any of the powers or authority conferred on the Board, except for hearings conducted pursuant to this title, in which case, 2 members of the Board shall constitute a quorum and a sufficient panel to decide such hearings. Any disagreement involving a procedural issue arising before or after a hearing may be decided by 1 member of the Board.

(d) The Board, any Board panel or any Board member empowered to decide any matter pursuant to Part II of this title shall act in conformity with applicable provisions of the Administrative Procedures Act set forth in Chapter 101 of Title 29, including, but not limited to, § 10129 of Title 29. Lawyers representing clients before the Board shall act in conformity with applicable provisions of the Delaware Lawyers' Rules of Professional Conduct, including, but not limited to, Rule 3.5 thereof. Disputes regarding prehearing or posthearing matters shall be presented by written motion and decided by written order.

(e) The Governor shall appoint the Board's Chairperson from among the Board's members and the Chairperson shall serve at the Governor's pleasure in such capacity.

(f) The Administrator of the office of Workers' Compensation shall perform all the administrative duties of the Board, including, but not limited to, scheduling the docket, maintaining the Board's records and providing the liaison between the public and the Board members. The Department may employ such clerical and other staff as it deems necessary.

(g) The Board shall have a seal for authentication of its orders, awards and proceedings, upon which shall be inscribed the words — "Industrial Accident Board — Delaware — Seal."

(h) The Governor may, at any time, after notice and hearing, remove any Board member for gross inefficiency, neglect of duty, malfeasance, misfeasance or nonfeasance in office.

(i) The Board shall have jurisdiction over cases arising under Part II of this title and shall hear disputes as to compensation to be paid under Part II of this title. The Board may promulgate its own rules of procedure for carrying out its duties consistent with Part II of this title and the provisions of the Administrative Procedures Act [§ 10101 et seq. of Title 29]. Such rules shall be for the purpose of securing the just, speedy and inexpensive determination of every petition pursuant to Part II of this title. The rules shall not abridge, enlarge or modify any substantive right of any party and they shall preserve the rights of parties as declared by Part II of this title.

(Code 1915, § 3193w; 29 Del. Laws, c. 233; 37 Del. Laws, c. 241, § 1; Code 1935, §§ 373A, 6093; 43 Del. Laws, c. 270, § 1; 48 Del. Laws, c. 150, § 1; 19 Del. C. 1953, §§ 2101-2106, 2121; 51 Del. Laws, c. 285, § 1; 52 Del. Laws, c. 56; 53 Del. Laws, c. 229, § 1; 54 Del. Laws, c. 240; 57 Del. Laws, c. 669, § 12; 58 Del. Laws, c. 531, §§ 1-3; 62 Del. Laws, c. 127, §§ 1, 2; 64 Del. Laws, c. 170, § 1; 65 Del. Laws, c. 469, § 1; 69 Del. Laws, c. 142, §§ 1, 2; 69 Del. Laws, c. 383, § 1; 70 Del. Laws, c. 172, § 2; 70 Del. Laws, c. 186, § 1; 70 Del. Laws, c. 315, § 1; 71 Del. Laws, c. 84, § 2; 75 Del. Laws, c. 89, § 301; 82 Del. Laws, c. 242, § 259; 83 Del. Laws, c. 54, § 271.)

§ 2301B. Hearing officers.

(a) There is hereby created within the Department of Labor the full-time position of hearing officer. With respect to cases arising under Part II of this title, the hearing officers shall have:

(1) All powers and duties conferred or imposed upon such hearing officers by law or by the Rules of Procedure for the Industrial Accident Board;

(2) The power to administer oaths and affirmations;

(3) The power, with consent of the parties, to hear and determine any prehearing matter pending before the Board. In such circumstances, the hearing officer's decision has the same authority as a decision of the Board and is subject to judicial review on the same basis as a decision of the Board;

(4) The power, with consent of the parties, to conduct hearings, including any evidentiary hearings required by Part II of this title, and to issue a final decision determining the outcome of such hearings. In such circumstances, the hearing officer's decision has the same authority as a decision of the Board and is subject to judicial review on the same basis as a decision of the Board;

(5) The hearing officer shall have the responsibility for advising the Board regarding legal issues and writing the Board's decision with respect to any hearing conducted by the Board at which such hearing officer has been assigned by the Department. The hearing officer shall not participate in the deliberations of the Board with respect to the determination of matters before the Board or vote on any matter to be decided by the Board, but may be present during such deliberations for the purpose of providing legal advice;

(6) With respect to any matter to which they are assigned responsibility in accordance with Part II of this title, the same authority as the Board would have to conduct or dispose of such matter in accordance with Part II of this title and the Board's Rules of Procedure. In such circumstances, any reference in Part II of this title or the Board's Rules of Procedure to the Board shall also refer to the hearing officer when such hearing officer is assigned responsibility in accordance with Part II of this title.

(b) Hearing officers shall be appointed by the Secretary of Labor and shall serve for a term of 5 years; provided however, that the initial hearing officers may be appointed to terms shorter than 5 years, but not less than 3 years, to ensure staggered term expirations. Appointees shall be residents of the State, shall be duly admitted to practice law before the Supreme Court of this State and shall not engage in the practice of law nor any business, occupation or employment inconsistent with the expeditious, proper and impartial performance of their duties. The number of hearing officers from 1 major political party shall not exceed a majority of 1. Individuals appointed as hearing officers under this section shall take the oath or affirmation prescribed by article XIV, § 1 of the Delaware Constitution before they enter upon the duties of their office.

(c) Hearing officers shall report to and be supervised by a chief hearing officer, who shall be designated by the Secretary of Labor. Reappointments shall be at the discretion of the Secretary of Labor. The salary of a hearing officer shall not be reduced during the term being served below the salary fixed at the beginning of that term.

(d) The removal of a hearing officer by the Secretary of Labor, after consultation with the Chairperson of the Board, during the term of appointment may be made for just cause. For the purposes of this subsection only, "just cause" shall be defined as including, but not limited to, reduction in force, inefficiency or unsatisfactory performance of duties. The employee may contest the removal and file for binding arbitration and an arbitrator will be appointed jointly by the Chairperson of the Merit Employees Relations Board and the Secretary of the Department of Human Resources to determine the matter.

(Code 1915, § 3193w; 29 Del. Laws, c. 233; Code 1935, § 6093; 19 Del. C. 1953, §§ 2122; 70 Del. Laws, c. 172, § 2; 71 Del. Laws, c. 84, § 2; 75 Del. Laws, c. 88, § 20(5); 81 Del. Laws, c. 66, § 20.)

§ 2301C. Workers' compensation specialist.

There is hereby created within the Department of Labor the classified full-time position of workers' compensation specialist. The specialist shall assist unrepresented injured employees by providing information so that such employees can understand, assert and protect their rights under Part II of this title. In addition, the specialist may assist the Department in expediting the processing of petitions. However, assistance provided under this section shall not include representing claimants in hearings or offering legal advice.

(71 Del. Laws, c. 84, § 2.)

§ 2301D. Annual review of Industrial Accident Board Case management.

(a) The General Assembly intends for the Industrial Accident Board and the hearing officers thereof to manage its caseload in a manner which recognizes the importance of determining matters before the Board in a speedy, efficient and just manner. To that end, the General Assembly intends for the Board and the hearing officers thereof to cooperate closely with the Department of Labor, which is the executive branch agency responsible for the effective administration of the Board's activities, pursuant to Part II of this title, in developing procedures and processes which accomplish that important purpose.

(b) To ensure public accountability for the speedy, efficient and just determination of the matters before the Board, the Department of Labor shall conduct an annual review of the effectiveness of the management of the Board's caseload. Such annual review should be published on or before February 15 of each year and the Board shall be involved in the development of such annual review. The review shall include:

(1) An analysis of the caseload pending before the Board, including, but not limited to, an analysis of dispositional speed, caseload backlog, number of continuances granted and the grounds therefor, number of appeals and the reversal rate of the Board and compliance with hearing and decisional deadlines set forth in Part II of this title or in board rules, to ensure that the performance of the Board as a whole can be evaluated by the General Assembly, the Governor and the public at large;

(2) An analysis of the caseload pending before the Board, particularized as to the individual hearing officers of the Board to ensure that the performance of such hearing officers can be evaluated;

(3) Departmental recommendations regarding methods, including, but not limited to, legislative action and board rule changes, to improve the performance of the Board and Department in ensuring the speedy, efficient and just determination of matters before the Board.

(c) [Repealed.]

(71 Del. Laws, c. 84, § 2; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 410, § 1; 78 Del. Laws, c. 229, § 5.)

§ 2301E. Data Collection Committee [Repealed].

(76 Del. Laws, c. 1, § 4; 79 Del. Laws, c. 55, § 1; repealed by 79 Del. Laws, c. 312, § 2, eff. July 15, 2014.)

§ 2302. Wages; definition and computation; valuation of board and lodging.

(a) "Average weekly wage" means the weekly wage earned by the employee at the time of the employee's injury at the job in which the employee was injured, including overtime pay, gratuities and regularly paid bonuses (other than an employer's gratuity or holiday bonuses) but excluding all fringe or other in-kind employment benefits. The term "average weekly wage" shall include the reasonable value of board, rent, housing or lodging received from the employer, which shall be fixed and determined from the facts in each particular case.

(b) The average weekly wage shall be determined by computing the total wages paid to the employee during the 26 weeks immediately preceding the date of injury and dividing by 26, provided that:

(1) If the employee worked less than 26 weeks, but at least 13 weeks, in the employment in which the employee was injured, the average weekly wage shall be based upon the total wage earned by the employee in the employment in which the employee was injured, divided by the total number of weeks actually worked in that employment;

(2) If an employee sustains a compensable injury before completing that employee's first 13 weeks, the average weekly wage shall be calculated as follows:

a. If the contract was based on hours worked, by determining the number of hours for each week contracted for by the employee multiplied by the employee's hourly rate;

b. If the contract was based on a weekly wage, by determining the weekly salary contracted for by the employee; or

c. If the contract was based on a monthly salary, by multiplying the monthly salary by 12 and dividing that figure by 52; and

d. If the hourly rate of earnings of the employee cannot be ascertained, or if the pay has not been designated for the work required, the average weekly wage, for the purpose of calculating compensation, shall be taken to be the average weekly wage for similar services performed by other employees in like employment for the past 26 weeks.

(3) In any event, the weekly compensation allowed shall not exceed the maximum or be less than the minimum provided by law.

(Code 1915, § 3193uu; 29 Del. Laws, c. 233; 30 Del. Laws, c. 203, § 10; Code 1935, § 6117; 45 Del. Laws, c. 297, § 6; 19 Del. C. 1953, § 2302; 50 Del. Laws, c. 339, §§ 2, 3; 52 Del. Laws, c. 49, § 3; 70 Del. Laws, c. 96, § 1; 70 Del. Laws, c. 172, § 4; 70 Del. Laws, c. 186, § 1; 76 Del. Laws, c. 1, § 5.)

§ 2303. Territorial application of chapter.

(a) If an employee, while working outside the territorial limits of this State, suffers an injury on account of which the employee, or in the event of the employee's death the employee's dependents, would have been entitled to the benefits provided by this chapter had such injury occurred within this State, such employee, or in the event of the employee's death resulting from such injury the employee's dependents, shall be entitled to the benefits provided by this chapter, provided that at the time of such injury:

(1) The employee's employment is principally localized in this State; or

(2) The employee is working under a contract of hire made in this State in employment not principally localized in any state; or

(3) The employee is working under a contract of hire made in this State in employment principally localized in another state whose workers' compensation law is not applicable to the employee's employer; or

(4) The employee is working under a contract of hire made in this State for employment outside the United States and Canada.

(b) The payment or award of benefits under the workers' compensation law of another state, territory, province or foreign nation to an employee or the employee's dependents otherwise entitled on account of such injury or death to the benefits of this chapter shall not be a bar to a claim for benefits under this chapter, provided that claim under this chapter is filed within 2 years after such injury or death. If compensation is paid or awarded under this chapter:

(1) The medical and related benefits furnished or paid for by the employer under such other workers' compensation law on account of such injury or death shall be credited against the medical and related benefits to which the employee would have been entitled under this chapter had claim been made solely under this chapter;

(2) The total amount of all income benefits paid or awarded the employee under such other workers' compensation law shall be credited against the total amount of income benefits which would have been due the employee under this chapter had claim been made solely under this chapter;

(3) The total amount of death benefits paid or awarded under such other workers' compensation law shall be credited against the total amount of death benefits under this chapter.

(c) If an employee is entitled to the benefits of this chapter by reason of an injury sustained in this State in employment by an employer who is domiciled in another state and who has not secured the payment of compensation as required by this chapter, the employer or the employer's carrier may file with the Department a certificate, issued by the commission or agency of such other state having jurisdiction over workers' compensation claims, certifying that such employer has secured the payment of compensation under the workers' compensation law of such other state and that with respect to said injury such employee is entitled to the benefits provided under such law. In such event:

(1) The filing of such certificate shall constitute an appointment by such employer or the employer's carrier of the Department as its agent for acceptance of the service of process in any proceeding brought by such employee or the employee's dependents to enforce the employee's or dependents' rights under this chapter on account of such injury;

(2) The Department shall send to such employer or carrier, by certified mail to the address shown on such certificate, a true copy of any notice of claim or other process served on the Director by the employee or the employee's dependents in any proceeding brought to enforce the employee's or dependents' rights under this chapter;

(3) a. If such employer is a qualified self-insurer under the workers' compensation law of such other state, such employer shall, upon submission of evidence, satisfactory to the Department, of its ability to meet its liability to such employee under this chapter, be deemed to be a qualified self-insurer under this chapter;

b. If such employer's liability under the workers' compensation law of such other state is insured, such employer's carrier, as to such employee or the employee's dependents only, shall be deemed to be an insurer authorized to write insurance under and be subject to this chapter; provided, however, that unless its contract with said employer requires it to pay an amount equivalent to the compensation benefits provided by this chapter, its liability for income benefits or medical and related benefits shall not exceed the amounts of such benefits for which such insurer would have been liable under the workers' compensation law of such other state;

(4) If the total amount for which such employer's insurance is liable under paragraph (c)(3) of this section is less than the total of the compensation benefits to which such employee is entitled under this chapter, the Department may, if it deems it necessary, require the employer to file security, satisfactory to the Department, to secure the payment of benefits due such employee or the employee's dependents under this chapter; and

(5) Upon compliance with the preceding requirements of this subsection, such employer, as to such employee only, shall be deemed to have secured the payment of compensation under this chapter.

(d) As used in this section:

(1) "United States" includes only the states of the United States and the District of Columbia.

(2) "State" includes any state of the United States, the District of Columbia, or any province of Canada.

(3) "Carrier" includes any insurance company licensed to write workers' compensation insurance in any state of the United States or any state or provincial fund which insures employers against their liabilities under a workers' compensation law.

(4) A person's employment is principally localized in this or another state when:

a. A person's employer has a place of business in this or such other state and the person regularly works at or from such place of business; or

b. If paragraph (d)(4)a. of this section is not applicable, the person is domiciled and spends a substantial part of the person's working time in the service of the person's employer in this or such other state.

(5) Any employee whose duties require the employee to travel regularly in the service of the employee's employer in this and 1 or more other states may, by written agreement with the employee's employer, provide that the employee's employment is principally localized in this or another such state, and, unless such other state refuses jurisdiction, such agreement shall be given effect under this chapter.

(6) "Workers' Compensation Law" includes "Occupational Disease Law."

(Code 1915, § 3193a; 29 Del. Laws, c. 233; 30 Del. Laws, c. 203, § 1; Code 1935, § 6071; 42 Del. Laws, c. 185, § 1; 19 Del. C. 1953, § 2303; 59 Del. Laws, c. 454, § 2; 70 Del. Laws, c. 172, §§ 3-5; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 84, § 3; 71 Del. Laws, c. 422, § 1.)

§ 2304. Compensation as exclusive remedy.

Except as expressly excluded in this chapter and except as to uninsured motorist benefits, underinsured motorist benefits, and personal injury protection benefits, every employer and employee, adult and minor, shall be bound by this chapter respectively to pay and to accept compensation for personal injury or death by accident arising out of and in the course of employment, regardless of the question of negligence and to the exclusion of all other rights and remedies.

(Code 1915, § 3193c; 29 Del. Laws, c. 233; Code 1935, § 6073; 43 Del. Laws, c. 269, § 2; 19 Del. C. 1953, § 2304; 80 Del. Laws, c. 420, § 1.)

§ 2305. Exemption from liability prohibited; exception.

No agreement, rule, regulation or other device shall in any manner operate to relieve any employer or employee in whole or in part from any liability created by this chapter, except as specified in this chapter.

(Code 1915, § 3193g; 29 Del. Laws, c. 233; Code 1935, § 6077; 19 Del. C. 1953, § 2305.)

§ 2306. Applicability — Employers.

(a) Except as otherwise indicated, this chapter shall apply to the employer and employee in any employment in which 1 or more employees are engaged.

(b) In all cases where an employer not subject to this chapter carries insurance to insure the payment of compensation to the employees, then in any and all such cases such employer and employees shall come under this chapter, and all of the provisions thereof, with the same force and effect as in cases where an employer is subject to this chapter.

(c) Every employer shall keep a summary of this chapter, approved by the Department, and any applicable regulations published thereunder or a summary thereof, approved by the Department, posted in a conspicuous and accessible location in or about the premises or place of employment and where employees normally pass. Employers shall be furnished copies by the Department on request without charge.

(Code 1915, § 3193vv; 29 Del. Laws, c. 233; 33 Del. Laws, c. 206, § 3; 35 Del. Laws, c. 193, § 3; 36 Del. Laws, c. 253; Code 1935, § 6118; 41 Del. Laws, c. 243; 43 Del. Laws, c. 269, § 11; 19 Del. C. 1953, § 2306; 59 Del. Laws, c. 454, § 3; 70 Del. Laws, c. 172, § 4; 70 Del. Laws, c. 186, § 1; 73 Del. Laws, c. 105, § 3.)

§ 2307. Applicability — Domestic servants and farm laborers.

(a) This chapter shall not apply to any person employed as a household worker in a private home or household who earns less than $750 in cash in any 3-month period from a single private home or household and any person employed as a casual worker in a private home or household who earns less than $750 in cash in any 3-month period from a single private home or household.

(b) This chapter shall not apply to farm laborers or to their respective employers unless such an employer carries insurance to insure the payment of compensation to such employees or their dependents.

(Code 1915, § 3193vv; 29 Del. Laws, c. 233; 33 Del. Laws, c. 206, § 3; 35 Del. Laws, c. 193, § 3; 36 Del. Laws, c. 253; Code 1935, § 6118; 19 Del. C. 1953, § 2307; 52 Del. Laws, c. 244, § 2; 59 Del. Laws, c. 454, § 9; 60 Del. Laws, c. 156, § 1; 71 Del. Laws, c. 84, § 6.)

§ 2308. Applicability — Executive officers; sole proprietors and partners.

(a) Executive officers of covered employers are included within this chapter; provided, however, that as many as 8 officers who are stockholders of a corporation or as many as 4 individuals who are members of a limited liability company may be exempted from this chapter if the corporation and the exempted corporate officers or the limited liability company and the exempted members agree in writing to such an exemption. Anyone or all of the officers who are stockholders of a corporation or anyone or all members of the limited liability company who elect an exemption shall for the purposes of § 2306 of this title be considered employees.

(b) Sole proprietors and partners are not included within this chapter, but such sole proprietor or partner may elect coverage in accordance with § 2306 of this title.

(c) Members of the immediate family of a sole proprietor or partner are included within this chapter; provided, however, that any such person may be exempted from this chapter if that person agrees in writing to such an exemption.

(Code 1915, § 3193qq; 29 Del. Laws, c. 233; 33 Del. Laws, c. 206, § 2; 35 Del. Laws, c. 193, § 2; Code 1935, § 6113; 46 Del. Laws, c. 50, § 1; 19 Del. C. 1953, § 2308; 50 Del. Laws, c. 339, § 4; 64 Del. Laws, c. 92, § 1; 64 Del. Laws, c. 157, § 1; 70 Del. Laws, c. 186, § 1; 72 Del. Laws, c. 184, § 1; 72 Del. Laws, c. 185, § 2; 73 Del. Laws, c. 58, §§ 1, 2; 76 Del. Laws, c. 33, § 1.)

§ 2309. Applicability — State, counties and political subdivisions.

This chapter shall not apply to the State, any governmental agency created by it, each county, city, town, township, incorporated village, school district, sewer district, drainage district, public or quasi-public corporation or any other political subdivision of the State that has 1 or more employees, official or officer, whether elected or appointed unless proper authority is given by an above named entity to elect to be covered by the application of this chapter.

(Code 1915, § 3193vv; 29 Del. Laws, c. 233; 33 Del. Laws, c. 206, § 3; 35 Del. Laws, c. 193, § 3; 36 Del. Laws, c. 118, § 2; 36 Del. Laws, c. 252; 36 Del. Laws, c. 253; 37 Del. Laws, c. 100, § 2; 37 Del. Laws, c. 240, §§ 1, 2; 38 Del. Laws, c. 166, §§ 1, 2; 38 Del. Laws, c. 167, §§ 1, 2; Code 1935, §§ 6118, 6120; 43 Del. Laws, c. 269, § 11; 43 Del. Laws, c. 271, §§ 1, 2; 43 Del. Laws, c. 272, § 2; 43 Del. Laws, c. 273, §§ 1, 2; 48 Del. Laws, c. 165, § 2; 19 Del. C. 1953, § 2309; 59 Del. Laws, c. 454, § 4; 60 Del. Laws, c. 156, § 2.)

§ 2310. Applicability to persons engaged in interstate or foreign commerce.

This chapter shall not apply to employees injured or killed while engaged in interstate or foreign commerce or to their employers whenever the laws of the United States provide for compensation or for liability for such injury or death.

(Code 1915, § 3193ww; 29 Del. Laws, c. 233; Code 1935, § 6119; 19 Del. C. 1953, § 2310.)

§ 2311. Contractors, subcontractors, independent contractors and lessees of motor vehicles transporting passengers for hire as employers.

(a) Notwithstanding any other provisions in this chapter, including but not limited to the definitions of “employer” and “employee” in § 2301 of this title, the following provisions shall apply to persons who are licensed as contractors under Chapter 25 of Title 30 or persons shown to be conducting business in a manner in which they should be so licensed:

(1) Any contractor or subcontractor shall be deemed to be an employer. Any and all rights of compensation of employees of contractors or subcontractors shall be against the employer contractor or subcontractor and not against any other employer.

(2) For purposes of this section, “independent contractor” shall mean any person not excluded from mandatory coverage under provisions of this chapter, who performs work or provides services for a contractor, subcontractor or other “contracting entity” in return for remuneration and/or other valuable considerations but who is not an employee of the contractor subcontractor or other “contracting entity” or any other person or entity with respect to the work performed or the services provided.

(3) For purposes of the section, “contracting entity” shall mean any commercial entity that obtains work or services from a person not excluded from mandatory coverage under provisions of this chapter and who is not an employee of the contracting entity or any other commercial entity with respect to the work performed or services provided.

(4) All independent contractors governed by this subsection shall be covered under this chapter. Independent contractors shall have an option to purchase coverage to satisfy this requirement, or alternatively shall be insured by the general contractor, subcontractor or other contracting entity for which they perform work or provide services. Actual remuneration of the independent contractor will be used to determine premium subject to the executive officer minimum and maximum payrolls approved by the Department of Insurance. Executive officers who are stockholders of a corporation and individuals who are members of a limited liability company may elect to be exempted from the above and this chapter, pursuant to and by complying with § 2308(a) of this title. However, for purposes of this subsection the exemption provided in § 2308(a) of this title for executive officers who are stockholders of a corporation shall be limited to no more than 4 executive officers. Partners and sole proprietors, when working in an independent contractor role, shall be subject to the requirements of this subsection and may not rely upon § 2308(b) and (c) of this title. This subsection applies to insurance policies issued or renewed on or after July 17, 2007.

(5) Any contracting entity shall obtain from an independent contractor or subcontractor and shall retain for 3 years from the date of the contract the following: a notice of exemption of executive officers or limited liability company members and/or a certification of insurance in force under this chapter. If the contracting entity shall fail to do so, the contracting entity shall not be deemed the employer

of any independent contractor or subcontractor or their employees but shall be deemed to insure any workers' compensation claims arising under this chapter.

(b) In all other types of commerce, the determination of employee or independent contractor status shall remain as before the adoption of subsection (a) of this section above and § 2308 of this title and the other provisions defining employees and persons not covered by this chapter shall apply.

(1) No contractor or subcontractor shall receive compensation under this chapter, but shall be deemed to be an employer and all rights of compensation of the employees of any such contractor or subcontractor shall be against their employer and not against any other employer.

(2) Lessees transporting passengers for hire in motor vehicles leased pursuant to written leases shall not receive compensation under this chapter, but shall be deemed to be employers.

(Code 1915, § 3193ii; 29 Del. Laws, c. 233; Code 1935, § 6105; 19 Del. C. 1953, § 2311; 63 Del. Laws, c. 334, §§ 1, 2; 76 Del. Laws, c. 1, § 6; 76 Del. Laws, c. 33, §§ 2, 3.)

§ 2312. Volunteer firefighters treated as State employees; election by volunteer fire companies; revocation; wage as basis for compensation.

(a) For the purposes of this chapter, volunteer firefighters shall be treated as State employees so long as the State elects to be covered by the application of this chapter.

(b) If the State elects not to be covered by the application of this chapter, then any duly organized volunteer fire company of the State may elect to be bound by the compensatory provisions of this chapter, provided that the election receives a majority vote of the members of the company at a duly called meeting of the company, and notice of the election is forwarded in writing to the Department. Any volunteer fire company which elects to be bound by the compensatory provisions of this chapter may, subsequent to the election, revoke the election provided the revocation receives a majority vote of the members of the company at a duly called meeting of the company and notice of the revocation is forwarded in writing to the Department.

(c) The wage of volunteer firefighters on which compensation is based shall be the wage received in the regular employment of such firefighters.

(d) For the purpose of this section, "volunteer fire company" and "volunteer firefighters" shall also include junior members, Auxiliary members, paid employees of volunteer fire companies, volunteer ambulance companies of this State, volunteer ambulance company members, paid employees of volunteer ambulance companies and members of the University of Delaware Emergency Care Unit.

(Code 1915, § 3193vv; 29 Del. Laws, c. 233; 36 Del. Laws, c. 253; Code 1935, § 6118; 44 Del. Laws, c. 202, § 3; 46 Del. Laws, c. 28; 19 Del. C. 1953, § 2312; 64 Del. Laws, c. 412, § 1; 66 Del. Laws, c. 31, § 1; 69 Del. Laws, c. 210, § 1; 70 Del. Laws, c. 172, § 6; 70 Del. Laws, c. 303, § 1; 70 Del. Laws, c. 561, § 1; 71 Del. Laws, c. 84, § 7.)

§ 2313. Record and report of injuries by employers; penalty; admissibility as evidence.

(a) Every employer to whom this chapter applies shall keep a record of all injuries, fatal or otherwise, received by employees in the course of their employment. Within 10 days after knowledge of the occurrence of an accident resulting in personal injury, a report thereof shall be made in writing by the employer to the Department in duplicate on blanks to be procured from the Department for that purpose. The employer shall provide a copy of the report of injury to the employee upon completion of the report. Upon the termination of the disability of the injured employee, the employer shall make a supplemental report to the Department.

(b) The reports shall contain the name and nature of the business of the employer, the location of the employer's establishment or place of work, the name, age, sex and occupation of the injured employee and shall state the time, nature and cause of the injury and such other information as may be required for properly carrying out this chapter. The employee's copy shall contain a summary of the law as provided by the Department.

(c) Whoever, being an employer, refuses or neglects to make a report required by this section shall be fined not less than $100 nor more than $250 for each offense. In the event the employer can show that the failure to make a report required by this section was caused by the refusal of the insurance carrier for the employer to report a reportable injury which the insurance carrier had knowledge of and of which the employer had no knowledge, after written request therefor, the aforementioned fine may be levied against said insurance carrier. The fine shall be assessed by the Industrial Accident Board after the employer and/or the insurance carrier for the employer is given notice and a hearing on the violation. The fine shall be payable to the Workers' Compensation Fund.

(d) Reports made in accordance with this section shall not be evidence against the employer in any proceedings under this chapter or otherwise but shall be exclusively for the information of the Department in securing data to be used in connection with the performance of their duties.

(Code 1915, § 3193x; 29 Del. Laws, c. 233; Code 1935, § 6094; 19 Del. C. 1953, § 2313; 54 Del. Laws, c. 280, § 1; 59 Del. Laws, c. 454, § 5; 70 Del. Laws, c. 95, § 1; 70 Del. Laws, c. 172, § 4; 71 Del. Laws, c. 84, §§ 3, 9, 10; 73 Del. Laws, c. 105, §§ 1, 2.)

§ 2314. Defenses unavailable in action for compensation.

In any action instituted by any person to recover damages for personal injury sustained by an employee by accident arising out of and in the course of employment within this State or for death resulting from injury so sustained, it shall not be a defense that:

(1) The injury or death was caused in whole or in part by the want of ordinary or reasonable care of or by the negligence of a fellow employee; or

(2) The employee had either expressly or impliedly assumed the risk of the injury; or

(3) Injury was caused in any degree by the negligence of such employee.

(Code 1915, § 3193b; 29 Del. Laws, c. 233; Code 1935, § 6072; 43 Del. Laws, c. 269, § 1; 19 Del. C. 1953, § 2314; 70 Del. Laws, c. 172, § 4.)

§ 2315. Compensation to illegally employed minors.

The right to receive compensation under this chapter shall not be affected by the fact that a minor is employed or is permitted to be employed in violation of the laws of the State relating to employment of minors or that the minor obtained employment by misrepresenting the minor's own age.

(19 Del. C. 1953, § 2315; 49 Del. Laws, c. 429, § 2; 70 Del. Laws, c. 172, § 4; 70 Del. Laws, c. 186, § 1.)

§ 2316. Licensed real estate salespersons and licensed associate real estate brokers who are independent contractors.

(a) This chapter shall not apply to licensed real estate salespersons or licensed associate real estate brokers who are affiliated with a licensed real estate broker under a written contract pursuant to which they are remunerated on a commission only basis and are designated as independent contractors and who qualify as independent contractors for federal tax purposes, except that a licensed real estate broker with whom they have such contracts shall have the right to elect to carry insurance to insure the payment of workers' compensation to them or their dependents for part or all of the period of such affiliation.

(b) For the purposes of this section, a licensed real estate broker with whom such licensed real estate salespersons and licensed associate real estate brokers have such independent contract affiliation shall inform in writing such licensed real estate salespersons and such licensed associate real estate brokers whether the licensed real estate broker has elected to carry insurance to insure the payment of workers' compensation to them or their dependents. If a licensed real estate broker intends to change the election concerning workers' compensation, the licensed real estate broker shall notify any licensed real estate salespersons or licensed associate real estate brokers affected thereby at least 30 days prior to the effective date of the change in the election.

(66 Del. Laws, c. 116, § 1; 70 Del. Laws, c. 172, § 3; 70 Del. Laws, c. 186, § 1.)

§ 2317. HAZMAT team members treated as State employees; wage as basis for compensation.

(a) For purposes of this chapter, HAZMAT team members shall be treated as State employees so long as the State elects to be covered by application of this chapter.

(b) The wage of HAZMAT team members on which compensation is based shall be the wage received in the regular employment of such HAZMAT team members.

(c) For purposes of this section, HAZMAT team members shall include all those persons designated as HAZMAT response team members by the Department of Natural Resources and Environmental Control and/or the State Fire School, and shall include personnel currently or previously employed by private industry.

(d) Covered incidents shall include any incident where the HAZMAT team members are notified to respond, including travel to and from the incident, the incident itself, and cleanup after the incident, and any training exercises.

(72 Del. Laws, c. 155, § 1; 77 Del. Laws, c. 380, § 1.)

§ 2320. Subpoena of witnesses; oaths; service of process; medical examination and testimony; various fees.

At the request of any party, subpoenas shall be issued under authority of the Department of Labor. The party requesting the subpoena shall obtain a blank subpoena from the Department and shall complete the necessary information.

(1) Every subpoena shall:

a. State the name of the Industrial Accident Board;

b. State the title of the action and the IAB hearing number;

c. State the last known address of the person(s) to be served;

d. Command each person to whom it is directed to attend and give testimony or to produce and permit inspection and copying of designated books, documents or tangible things in the possession, custody or control of that person, or to permit inspection of premises, at a time and place therein specified;

e. Command each person directed to give testimony to appear at hearing or at deposition at a time and place therein specified;

f. Identify the name, address and phone number of the person issuing the subpoena;

g. State the following in boldface:

"If you object to this subpoena you must immediately contact the Department of Labor, Office of Workers' Compensation and request a hearing to present your objections. Objections may be made if the subpoena (a) fails to allow reasonable time for compliance; (b) requires disclosure of privileged or other protected matter and no exception or waiver applies; or (c) subjects a person to undue burden."

(2) The following shall apply to the service of a subpoena:

a. A party issuing a subpoena shall be responsible for service of the subpoena and shall provide a copy of the completed subpoena to the Department of Labor.

b. A subpoena may be served by the Sheriff or by any person who is not a party and is not less than 18 years of age or by certified/return receipt requested mail to the last known address of the person listed on the subpoena.

c. Proof of service when necessary shall be made by filing with the Department of Labor a statement of the date and manner of service and of the names of the persons served.

d. A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The Board shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(3) Response to subpoena(s):

a. A person commanded to produce and permit inspection and copying may object to the inspection or copying of any or all designated materials or of the premises. If objection is made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel production.

b. If a party objects to a subpoena they must immediately contact the Department of Labor and request a hearing before the Board to present the objection. The Board may quash or modify a subpoena if it:

1. Fails to allow reasonable time for compliance;

2. Requires disclosure of privileged or other protected matter and no exception or waiver applies; or

3. Subjects a person to undue burden.

c. A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

d. When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications or things not produced that is sufficient to enable the demanding party to contest the claim.

(4) The Board may administer oaths in any proceedings and in all other cases where it is necessary in the exercise of its powers and duties. The Board may examine persons as witnesses, take evidence, require production of documents and do all other things conformable to law which are necessary to effectively discharge the duties of office.

(5) Any process or order of the Department or any notice or paper requiring service may be served by any sheriff, deputy sheriff, constable or any employee of the Department and return thereof made to the Department. Such officer shall receive the same fees as are provided by law for like service in civil actions, except that if service is made by an employee of the Department, the employee shall not receive any fee but shall be paid the employee's actual expenses.

(6) If any person, in proceedings before the Board, disobeys or resists any lawful order or process, misbehaves during a hearing or so near the place thereof as to obstruct the hearing, neglects to produce after having been ordered to do so any pertinent document, refuses to appear after having been subpoenaed or, upon appearing, refuses to take the oath as a witness or, after having taken the oath, refuses to be examined according to law, the Board shall certify the facts to any judge of the Superior Court, who shall thereupon hear the evidence as to the acts complained of. If the evidence so warrants, the judge shall punish such person in the same manner and to the same extent as for a contempt committed before the Superior Court or shall commit such person upon the same conditions as if the doing of the forbidden act had occurred with reference to the process of or in the presence of the Superior Court.

(7) The Board may, in any case, upon the application of either party or on its own motion, appoint a disinterested and duly qualified physician to make any necessary medical examination of the employee and testify in respect thereto. Such medical examination shall not be referred to as an "Independent Medical Examination" or "IME" in any proceeding or on any document relating to a matter under this chapter; nor shall any examination, required by the employer, by any other doctor, who is an employee of an insurance company, or who is paid by an insurance company, or who is under contract to an insurance company, be referred to as an "Independent Medical Examination" or "IME." The physician will be allowed a reasonable fee subject to the approval of the Board, which fee shall be taxed as costs. The Board may impose a fine not to exceed $500 for each use of the term "Independent Medical Exam" or "IME" in violation of this subsection.

(8) Witness fees and mileage shall be computed at the rate allowed to witnesses in the Superior Court. Costs legally incurred may be taxed against either party or apportioned between parties at the sound discretion of the Board, as the justice of the case may require.

(9) Fees of physicians for services under Part II of this title shall be subject to the approval of the Board.

(10) *Attorneys' fee.* — a. A reasonable attorneys' fee in an amount not to exceed 30 percent of the award or 10 times the average weekly wage in Delaware as announced by the Secretary of Labor at the time of the award, whichever is smaller, shall be allowed by the Board to any employee awarded compensation under Part II of this title and taxed as costs against a party. In order for the Board to award a fee under this section, counsel for an employee shall submit to the Board an Attorneys' Fee Affidavit in a form prescribed by or substantially in compliance with Board rules, along with a copy of the written fee agreement signed by the employee. Any fee awarded to an employee under this paragraph shall be applied to offset the fees that would otherwise be charged to the employee by that employee's attorney under the fee agreement.

b. In the event an offer to settle an issue pending before the Industrial Accident Board is communicated to the claimant or the claimant's attorney, in writing, at least 30 days prior to the trial date established by the Board on such issue and the offer thus communicated is equal to or greater than the amount ultimately awarded by the Board at the trial on that issue, the provisions of paragraph (10)a. of this section shall have no application. If multiple issues are pending before the Board, said offer of settlement shall address each issue pending and shall state explicitly whether or not the offer on each issue is severable. The written offer shall also unequivocally state whether or not it includes medical witness fees and expenses and/or late cancellation fees relating to such medical witness fees and expenses.

c. Attorneys shall have written fee agreements to represent employees. Fee arrangements shall be governed by the rules of the Supreme Court concerning professional conduct.

d. If the fee agreement provides for a percentage of recovery, the attorney may collect the percentage at the time of payment of lump sums of accrued benefits. Any such fee shall be offset by fees paid by the employer or carrier as a result of agreement or Board order relating to that monetary amount.

e. An attorney shall not collect a fee from ongoing checks issued by the workers' compensation fund while a petition for review is pending.

f. An attorney shall not collect the fee from ongoing weekly benefit checks except in the following circumstance and as approved by the Board in paragraph (10)g. of this section:

1. Where the attorney certifies in an affidavit that the case is not economically viable for an attorney to agree to represent the employee without fees being deducted from ongoing weekly benefits and that the employee is likely to not be able to obtain the services of an attorney without paying a fee in such manner;

2. With the application the attorney shall submit a proposed fee agreement that limits the overall fee in that case to an amount equal to or less than the fee authorized in paragraph (10)a. of this section;

3. The application shall also contain an affidavit of the employee that the employee understands the fee arrangement, wants to be represented, and requests the Board authorize the arrangement, and further states whether and when the employee has been declined representation by other attorneys without approval under this paragraph.

g. When an attorney files an application to collect fees from the ongoing checks of an employee in accordance with the preceding paragraph (10)f. of this section, the designated hearing officer shall, within 10 days of receipt of the written request, respond in writing with an approval or denial. The response of the hearing officer shall be sent to the attorney upon disposition of the request. Upon notice of approval or denial of the request, that decision is a final decision of the Board.

h. Attorneys for employees may take such action as is necessary to comply with domestic support garnishment orders, or any other valid court orders, requiring sums be deducted from ongoing benefit checks.

(11) Except as otherwise provided in Part II of this title, all money or income received by the Department or the Board from taxes, fees and/or operations and all other sources whatsoever, directly or indirectly, shall be deposited to the credit of the State Treasurer and shall be credited to the General Fund of the State.

(71 Del. Laws, c. 84, § 11; 70 Del. Laws, c. 186, § 1; 72 Del. Laws, c. 206, § 1; 72 Del. Laws, c. 399, § 1; 72 Del. Laws, c. 463, §§ 1, 2; 73 Del. Laws, c. 121, § 1; 76 Del. Laws, c. 1, §§ 7, 8.)

Subchapter II

Payments for Injuries or Death and Incidental Benefits

§ 2321. Minimum duration of incapacity.

Permanent injury relating to hearing or vision loss, surgical, medical and hospital services, medicines and supplies, and funeral benefits shall be paid from the first day of injury. Beginning with the fourth day of incapacity, all compensation otherwise provided by law shall be paid. If the incapacity extends to 7 days or more, including the day of injury, the employee shall receive all compensation otherwise provided by law from the first day of injury.

(Code 1915, § 3193h; 29 Del. Laws, c. 233; 30 Del. Laws, c. 203, § 2; 32 Del. Laws, c. 186, § 1; 37 Del. Laws, c. 239, § 1; Code 1935, § 6078; 43 Del. Laws, c. 269, § 6; 19 Del. C. 1953, § 2321; 49 Del. Laws, c. 429, § 1; 70 Del. Laws, c. 205, § 1; 70 Del. Laws, c. 532, § 1.)

§ 2322. Medical and other services, and supplies as furnished by employer.

(a) During the period of disability the employer shall furnish reasonable surgical, medical, dental, optometric, chiropractic and hospital services, medicine and supplies, including repairing damage to or replacing false dentures, false eyes or eye glasses and providing hearing aids, as and when needed, unless the employee refuses to allow them to be furnished by the employer.

(b) If the employer, upon application made to the employer, refuses to furnish the services, medicines and supplies mentioned in subsection (a) of this section, the employee may procure the same and shall receive from the employer the reasonable cost thereof within the above limitations.

(c) Upon application made to the Board by the injured employee or someone in the injured employee's behalf, the Board may, at its discretion, require the employer to furnish additional services, medicines and supplies of the kind mentioned in subsection (a) of this section, as and when needed, for such further period as it shall deem right and proper. The charges for such additional services, medicines

and supplies shall not exceed the rates regularly charged to other individuals for like services and supplies, provided, however, that the Board shall at all times have jurisdiction to determine and shall determine the character of services and supplies to be furnished.

(d) An employee, at any time after a claim for compensation is made, shall have the right, upon application to the employee's employer, to inspect, copy and reproduce any medical records pertaining to said employee in the possession of the employee's employer or the employee's insurance carrier. Medical records, as used in this subsection, shall include physician's reports, hospital reports, diagnostic reports, treatment reports, X-rays and X-ray reports.

(e) The fees of medical witnesses testifying at hearings before the Industrial Accident Board in behalf of an injured employee shall be taxed as a cost to the employer or the employer's insurance carrier in the event the injured employee receives an award.

(f) Every insurance carrier or self-insurer shall be required to replace or renew a defective or worn out prosthesis for the life of the injured person without such replacement or renewal constituting a new claim period.

(g) An employee shall be entitled to mileage reimbursement in an amount equal to the State specified mileage allowance rate in effect at the time of travel, for travel to obtain:

(1) Reasonable surgical, medical, dental, optometric, chiropractic and hospital services; and

(2) Medicine and supplies, including repairing and replacing damaged dentures, false eyes or eyeglasses, and providing hearing aids and prosthetic devices.

(h) An employer or insurance carrier may pay any health care invoice or indemnity benefit without prejudice to the employer's or insurance carrier's right to contest the compensability of the underlying claim or the appropriateness of future payments of health care or indemnity benefits. In order for any provision or payment of health care services to constitute a payment without prejudice, the employer or insurance carrier shall provide to the health care provider and the employee a clear and concise explanation of the payment, including the specific expenses that are being paid, the date on which such charges are paid, and the following statement, which shall be conspicuously displayed on the explanation in at least 14-point type:

This claim is IN DISPUTE and payment is being made without prejudice to the Employer's right to dispute the compensability of the workers' compensation claim generally or the Employer's obligation to pay this bill in particular.

(1) Partial payment of the uncontested portion of a partially contested health care invoice shall be considered a payment without prejudice to the right to contest the unpaid portion of a health care invoice, provided the above notice requirements are met.

(2) No payment without prejudice made under a reservation of rights pursuant to this subsection shall be subject to return, recapture or offset, absent a showing that the claim for payment was fraudulent.

(3) No payment without prejudice that complies with the above is admissible as evidence to establish that the claim is compensable.

(4) No payment without prejudice that complies with the above shall extend the statute of limitations unless the claim is otherwise determined by agreement or the Board to be compensable.

(i) Availability of vocational rehabilitation services.

(1) *Statement of intent.* — The General Assembly realizes that despite the best efforts of all concerned, some injured workers may not be able to return to their pre-injury employment and may benefit from vocational rehabilitation.

(2) To the extent assistance may be required in this regard, resources are available to employees including, but not limited to, from the following organizations:

a. Delaware Division of Vocational Rehabilitation;

b. First State Project with Industry; and

c. One Stop Centers.

(3) Nothing in this section is intended to change the existing rights and responsibilities of injured employees or employers regarding vocational rehabilitation services.

(Code 1915, § 3193h; 29 Del. Laws, c. 233; 30 Del. Laws, c. 203, § 2; 32 Del. Laws, c. 186, § 1; 37 Del. Laws, c. 239, § 1; Code 1935, § 6078; 43 Del. Laws, c. 269, § 6; 46 Del. Laws, c. 27; 48 Del. Laws, c. 229; 19 Del. C. 1953, § 2322; 50 Del. Laws, c. 267, § 1; 50 Del. Laws, c. 339, § 5; 53 Del. Laws, c. 126; 61 Del. Laws, c. 505, § 1; 65 Del. Laws, c. 469, § 1; 70 Del. Laws, c. 172, § 4; 70 Del. Laws, c. 186, § 1; 72 Del. Laws, c. 85, § 1; 76 Del. Laws, c. 1, § 9.)

§ 2322A. Workers' Compensation Oversight Panel.

(a) *Membership; terms.* — The Workers' Compensation Oversight Panel shall consist of 24 members. Members serving by virtue of position may appoint a designee to serve at their pleasure in their stead. The Governor shall appoint the 13 nonprovider members who are not serving by virtue of position. The Governor appointed members shall be appointed for a term up to 3 years to allow that no more than 5 Governor appointed members' terms shall expire in any year. The provider members shall be appointed by the appointing authority and for a term of 3 years.

(b) *Representation.* — The Workers' Compensation Oversight Panel shall include: 2 representatives of insurance carriers providing coverage pursuant to this chapter; 2 representatives of employers; 2 representatives of employees; 2 attorneys licensed to practice law, 1 who regularly represents employees and 1 who regularly represents employers in matters arising under this chapter; the Secretary of Labor; the Insurance Commissioner; 1 representative of Delaware insurance agents; 4 public members; and 9 provider members. A public member: may not be nor may ever have been certified, licensed, or registered in any health-related field; may not be the spouse of

someone certified, licensed, or registered in any health-related field; at the time of appointment may not be a member of the immediate family of someone certified, licensed, or registered in any health-related field; may not be employed by a company engaged in a directly health-related business; and may not have a material financial interest in providing goods or services to persons engaged in the practice of medicine. The 9 provider members appointed to the Workers' Compensation Oversight Panel shall include a diverse group of health-care providers (or provider representatives) who are most representative of those providing medical care to employees pursuant to this chapter. The provider members shall consist of the following:

(1) The President of the Medical Society of Delaware shall appoint 4 Delaware-licensed physicians which shall include 1 in the field of primary care, 1 in the field of neurosurgery, and 2 at large representatives;

(2) The President of the Delaware Society of Orthopaedic Surgeons shall appoint a Delaware-licensed orthopedic surgeon;

(3) The President of the Delaware Academy of Physical Medicine and Rehabilitation shall appoint 1 representative;

(4) The President of the Delaware Healthcare Association shall appoint 1 representative;

(5) The President of the Delaware Chiropractic Association shall appoint a Delaware-licensed chiropractor; and

(6) The President of the Delaware Physical Therapy Association shall appoint a Delaware-licensed physical therapist.

In addition to their ability to represent the perspective of their profession, provider members shall be selected for their ability to represent the interests of the community at large. The Department of Labor, Office of Workers' Compensation shall provide staff support to the Panel.

(c) Members of the former Health Care Advisory Panel shall, absent contrary action by the Governor, serve the remainder of their terms for which they were appointed to the Health Care Advisory Panel as members of the Workers Compensation Oversight Panel.

(d) A Chair and Vice Chair shall be selected by the Governor. The Chair and Vice Chair of the Workers' Compensation Oversight Panel shall set an agenda for each meeting, shall preside at meetings, and shall forward recommendations, opinions and other communications of the Panel to the Governor and General Assembly.

(e) *Data collection.* — It is the intent of the General Assembly that, among its other duties, the Workers' Compensation Oversight Panel be provided with data enabling it to conduct studies to evaluate the workers' compensation system in the State, identify systemic cost drivers, provide objective information to guide policy formulation and identify carrier specific cost drivers. To that end, the Panel is authorized to collect data concerning reports of industrial injuries and occupational disease, the cost of benefits associated with such injuries and diseases, and compliance with the mandatory workers' compensation insurance requirement. The Panel is also charged with ensuring compliance by individual carriers with their responsibilities relating to medical cost control. On at least a quarterly basis, the Insurance Commissioner shall collect and provide to the Panel data sufficient for the Panel to carry out the duties described in this subsection. In addition, the Panel or its designee shall have the authority to demand directly from any person or entity providing health-care services under this chapter data sufficient for the Panel to carry out the duties described in this subsection. The advisory organization designated pursuant to § 2607 of Title 18 shall also on an annual basis provide the Panel with carrier-specific medical cost data for each workers' compensation carrier having a market share in Delaware of 1% or greater over the 12 preceding months. If, after reviewing said data and making necessary inquiries with individual carriers, the Panel determines that there is a well-founded concern that an individual carrier is not sufficiently scrutinizing medical payments, the Panel may direct the Insurance Commissioner to conduct a formal examination of a carrier to determine compliance with applicable laws and regulations regarding medical reimbursements. The Department of Insurance may exercise its authority granted under Title 18 to address legitimate competitive, trade secret, or health-privacy concerns that arise in connection with its responsibilities under this section, provided that the Department's exercise of this authority shall not interfere with the Panel's ability to fulfill its statutory obligations. The Secretary of Labor shall have authority to address legitimate competitive, trade secret, or health-privacy concerns that arise in connection with the Panel's collection of data directly from persons or entities providing health care services under this chapter, provided that the Secretary's exercise of this authority shall not interfere with the Panel's ability to fulfill its statutory obligations.

(79 Del. Laws, c. 312, § 2.)

§ 2322B. Procedures and requirements for promulgation of health-care payment system.

The health-care payment system developed pursuant to this section shall be subject to the following procedures and requirements:

(1) The intent of the General Assembly in authorizing a health-care payment system is to reduce overall medical expenditures for the treatment of workers' compensation-related injuries by 33% by January 31, 2017, and to reduce said expenditures by 20% by January 31, 2015.

(2) The health-care payment system shall include payment rates, instructions, guidelines, and payment guides and policies regarding application of the payment system. When completed, the payment system shall be published on the Internet at no charge to the user via a link from the Office of Workers' Compensation website at , or a successor website. The payment system shall also be made available in written form at the Office of Workers' Compensation during regular business hours.

(3) The maximum allowable payment for health-care-related payments covered under this chapter shall be the lesser of the health-care provider's actual charges or the fee set by the payment system.

a. The Workers' Compensation Oversight Panel shall, by October 1, 2014, establish a fee schedule for all Delaware workers' compensation funded procedures, treatments, and services based on the Resource Based Relative Value Scale (RBRVS), Medical

Severity Diagnosis Related Group (MS-DRG), Ambulatory Payment Classification (APC), or equivalent scale used by the Centers for Medicare and Medicaid Services. The RBRVS, MS-DRG, APC, or other equivalent factor shall be multiplied by a Delaware-specific geographically-adjusted factor to ensure adequate participation by providers. The fee schedule and other savings from the health-care payment system shall result in a reduction of 20% in aggregate workers' compensation medical expenses by the year beginning January 31, 2015, an additional reduction of 5% of 2014 expenses by the year beginning January 31, 2016, and an additional reduction of 8% of 2014 expenses by the year beginning January 31, 2017. The aggregate workers' compensation medical expenses required by this paragraph shall be attained through reimbursement reductions of equal percentages among hospitals, ambulatory surgical centers, and other health-care providers; therefore, by January 31, 2015, the fee schedule and other savings from the health-care payment system shall reflect a reduction of 20% in workers' compensation medical expenses paid to hospitals, a reduction of 20% in workers' compensation medical expenses paid to ambulatory surgical centers, and a reduction of 20% in workers' compensation medical expenses paid to other health-care providers. This formula shall also be used for the 5% reduction required by January 31, 2016, and the 8% reduction required by January 31, 2017.

b. In addition, by January 31, 2017, no individual procedure in Delaware paid for through the workers' compensation system (as identified by HCPCS level 1 or level 2 code) shall be reimbursed at a rate greater than 200% of that reimbursed by the federal Medicare system, provided that radiology services may be reimbursed at up to 250% of the federal Medicare reimbursement and surgery services may be reimbursed at up to 300% of the federal Medicare reimbursement.

c. The Workers' Compensation Oversight Panel shall report to the Governor and General Assembly by January 31, 2016, with respect to medical savings recognized as a result of this paragraph (3) and possible unforeseen consequences of the procedure-specific caps required by paragraphs (3)b. and (5) of this section, and the General Assembly may at that time reconsider the specific percentage caps required by paragraphs (3)b. and (5) of this section. The cost reductions required by paragraph (3)a. of this section shall be permanent, with the exception of inflation increases beginning in 2018 as permitted by paragraph (5) of this section.

(4) An independent actuary appointed by the Secretary of Labor shall verify for the Secretary that the fee schedule developed by the Workers' Compensation Oversight Panel under paragraph (3) of this section complies with its requirements. If the fee schedule does not comply with its requirements, or is not completed by October 1, 2014, the Secretary of Labor shall promulgate a fee schedule meeting the requirements of paragraph (3) of this section by regulation.

(5) Beginning on January 1, 2018, the payment system will be adjusted yearly based on percentage changes to the Consumer Price Index-Urban, U.S. City Average, All Items, as published by the United States Bureau of Labor Statistics. Notwithstanding the annual CPI-Urban increase permitted by this paragraph, no individual procedure in Delaware paid for through the workers' compensation system (as identified by HCPCS level 1 or level 2 code) shall be reimbursed at a rate greater than 200% of that reimbursed by the federal Medicare system, provided that radiology services may be reimbursed at up to 250% of the federal Medicare reimbursement and surgery services may be reimbursed at up to 300% of the federal Medicare reimbursement. The Workers' Compensation Oversight Panel may, without consent of the General Assembly and Governor, reduce reimbursements for any procedures it deems appropriate, but cannot increase reimbursements beyond the amounts permitted by this chapter.

(6) Upon adoption of the health-care payment system, an employer and/or insurance carrier shall pay the lesser of the rate set forth by the payment system or the health-care provider's actual charge. If an employer or insurance carrier contracts with a provider for the purpose of providing services under this chapter, the rate negotiated in any such contract shall prevail.

(7) The health-care payment system shall include provisions for health-care treatment and procedures performed outside the State of Delaware. Any health-care provider who is not licensed by the State of Delaware to provide medical services but is licensed in another state, and who is not certified under § 2322D of this title, may provide medical services without having to seek and obtain preauthorization for services that are reasonable, necessary and related to the employee's work related injury or condition and have those services reimbursed at the lesser of:

a. The health-care provider's usual and customary fee;

b. The maximum allowable fee pursuant to the Delaware workers' compensation health-care payment system adopted pursuant to this section;

c. The maximum allowable fee pursuant to any workers' compensation health-care payment system in the state in which the services at issue were rendered; or

d. If an employer or insurance carrier contracts with a provider for the purpose of providing services under this chapter, the rate negotiated to any such contract.

(8) Fees for nonclinical services, such as retrieving, copying and transmitting medical reports and records, testimony by affidavit, deposition or live testimony at any hearing or proceeding, or completion and transmission of any required report, form or documentation, and associated regulations and procedures for the determination of and verification of containment of fees, shall be developed and proposed by the Workers' Compensation Oversight Panel, and adopted as part of the health-care payment system. Such fees shall be revised periodically on the recommendation of the Panel to reflect changes in the cost of providing such services. Following the adoption of the initial health-care payment system, adjustments to fees for nonclinical services shall be adopted by regulation of the Department of Labor pursuant to Chapter 101 of Title 29. The nonclinical service fees adopted pursuant to this paragraph shall apply to all services provided after the effective date of the regulation, regardless of the date of injury.

(9) As part of the health-care payment system, the Workers' Compensation Oversight Panel shall adopt, recommend, and maintain a formulary and fee methodology for pharmacy services, prescription drugs and other pharmaceuticals. The formulary and fee methodology system developed by the Workers' Compensation Oversight Panel for pharmacy services, prescription drugs and other pharmaceuticals shall include a mandated discount from average wholesale price that shall be defined by the State, a ban on repackaging fees, and adoption of a preferred drug list.

(10) The Workers' Compensation Oversight Panel shall have the authority to adopt rules to require electronic medical billing and payment processes, to standardize the necessary medical documentation for billing adjudication, to provide for effective dates and compliance, and for further implementation of this section.

(76 Del. Laws, c. 1, § 11; 76 Del. Laws, c. 143, §§ 1, 2; 77 Del. Laws, c. 94, §§ 1-4; 78 Del. Laws, c. 186, § 1; 78 Del. Laws, c. 391, § 1; 79 Del. Laws, c. 55, § 2; 79 Del. Laws, c. 312, § 2; 80 Del. Laws, c. 124, § 2.)

§ 2322C. Development of health-care practice guidelines.

Health care practice guidelines shall be developed in accordance with the following provisions:

(1) The Workers' Compensation Oversight Panel shall adopt, recommend and maintain a coordinated set of health-care practice guidelines and associated procedures to guide utilization of health-care treatments in workers' compensation, including but not limited to care provided for the treatment of employees by or under the supervision of a licensed health-care provider, prescription drug utilization, inpatient hospitalization and length of stay, diagnostic testing, physical therapy, chiropractic care and palliative care.

(2) The guidelines shall be, to the extent permitted by the most current medical science or other applicable science, based on well-documented scientific research concerning efficacious treatment for injuries and occupational disease. To the extent that well-documented scientific research concerning efficacious treatment is not available at the time of adoption or revision of the guidelines, the guidelines shall be based upon the best available information concerning national consensus regarding best health care practices in the relevant health care community.

(3) The guidelines shall, to the extent practical consistent with this section, address treatment of those physical conditions which occur with the greatest frequency (for services compensable under this chapter), or which require the most expensive treatments (for services compensable under this chapter), based upon currently available Delaware data.

(4) The guidelines shall contain a section guiding the utilization of prescription medications.

(5) Health-care practice guidelines may be based upon an existing model, already in use, to guide treatment of medical care for workers' compensation. Additional guidelines may be initially adopted, pursuant to the same criteria, to obtain coverage of areas or issues of treatment not included in other adopted guidelines. In no event shall multiple guidelines covering the same aspects of the same medical condition be simultaneously in force.

(6) Services rendered by any health-care provider certified to provide treatment services for employees shall be presumed, in the absence of contrary evidence, to be reasonable and necessary if such services conform to the most current version of the Delaware health-care practice guidelines. Services provided by health-care providers that are not certified shall not be presumed reasonable and necessary unless such services are preauthorized by the employer or insurance carrier, subject to the exception set forth in § 2322D(b) of this title. It is intended that these guidelines will be recommended to the Panel by Panel subcommittees in coordination with a qualified contractor with expertise in establishing treatment guidelines, developing the rules that define the use of such guidelines, and disseminating the guidelines in a manner that streamlines the delivery of health care.

(7) Health-care practice guidelines shall be subject to review and revision by the Workers' Compensation Oversight Panel on at least an annual basis. It is the intent of the General Assembly that the development of health-care guidelines will be recommended by a predominantly medical or other health-professional subcommittee, recognizing that health-care professionals are best equipped to determine appropriate treatment. It is further intended that subcommittees comprised of representatives from appropriate specialties will make comment and offer recommendations to the Workers' Compensation Oversight Panel.

(76 Del. Laws, c. 1, § 12; 79 Del. Laws, c. 312, § 2.)

§ 2322D. Certification of health-care providers.

(a) (1) Certification shall be required for a health-care provider to provide treatment to an employee, pursuant to this chapter, without the requirement that the health-care provider first preauthorize each health-care procedure, office visit or health-care service to be provided to the employee with the employer or insurance carrier. Any health-care provider who is not licensed by the State of Delaware to provide medical services may elect to become certified under this section, and thereby obtain the same rights and obligations under this chapter as a certified health-care provider who is licensed by the State of Delaware to provide health-care services. The provisions of this subsection shall apply to all treatments to employees provided after the effective date of the rule provided by subsection (c) of this section, regardless of the date of injury. A health-care provider shall be certified only upon meeting the following minimum certification requirements:

a. Have a current license to practice, as applicable;

b. Meet other general certification requirements for the specific provider type;

c. Possess a current and valid Drug Enforcement Agency ("DEA") registration, unless not required by the provider's discipline and scope of practice;

d. Have no previous involuntary termination from participation in Medicare, Medicaid or the Delaware workers' compensation system, which shall be determined to be inconsistent with certification under regulations adopted pursuant to subsection (c) of this section;

e. Have no felony convictions in any jurisdiction, under a federal-controlled substance act or for an act involving dishonesty, fraud or misrepresentation, which shall be determined to be inconsistent with certification under regulations adopted pursuant to subsection (c) of this section; and

f. Provide proof of adequate, current professional malpractice and liability insurance.

(2) The certification rules shall require that any health care provider to be certified agree to the following terms and conditions:

a. Compliance with Delaware workers' compensation laws and rules;

b. Maintenance of acceptable malpractice coverage;

c. Completion of State-approved continuing education courses in workers' compensation care every 2 years;

d. Practice in a best-practices environment, complying with practice guidelines and Utilization Review Accreditation Council ("URAC") utilization review determinations;

e. Agreement to bill only for services and items performed or provided, and medically necessary, cost-effective and related to the claim or allowed condition;

f. Agreement to inform an employee of that employee's liability for payment of noncovered services prior to delivery;

g. Acceptance of reimbursement and not unbundled charges into separate procedure codes when a single procedure code is more appropriate; and

h. Agreement not to balance bill any employee or employer. Employees shall not be required to contribute a copayment or meet any deductibles.

(b) Notwithstanding the provisions of this section, any health care provider may provide services during 1 office visit, or other single instance of treatment, without first having obtained prior authorization, and receive reimbursement for reasonable and necessary services directly related to the employee's injury or condition at the health care provider's usual and customary fee, or the maximum allowable fee pursuant to the workers' compensation health care payment system adopted pursuant to § 2322B of this title, whichever is less. The provisions of this subsection are limited to the occasion of the employee's first contact with any health care provider for treatment of the injury, and further limited to instances when the health care provider believes in good faith, after inquiry, that the injury or occupational disease was suffered in the course of the employee's employment. The provisions of this subsection shall apply to all treatments to injured employees provided after the effective date of the rule provided by subsection (c) of this section, regardless of the date of injury.

(c) Subject to the foregoing provisions, complete rules and regulations relating to provider certification shall be approved and proposed by the Workers' Compensation Oversight Panel. Regulations arising from the Panel's work shall be adopted by regulation of the Department of Labor pursuant to Chapter 101 of Title 29.

(76 Del. Laws, c. 1, § 13; 70 Del. Laws, c. 186, § 1; 79 Del. Laws, c. 312, § 2; 80 Del. Laws, c. 124, § 3.)

§ 2322E. Development of consistent forms for health-care providers.

(a) The Workers' Compensation Oversight Panel is authorized and directed to approve, propose and maintain standard forms for the provision of health-care services pursuant to this chapter. Upon recommendation by the Workers' Compensation Oversight Panel, such forms and provisions governing their use shall be adopted by regulation of the Department of Labor, pursuant to Chapter 101 of Title 29. Forms authorized by this section shall provide for prompt initial report of an employee's condition upon the initial occurrence of injury treated pursuant to this chapter and upon reasonable intervals thereafter to report the conditions and limitations of an employee. At a minimum the initial reporting form shall provide for an outline of the physical capabilities of the employee in order to enable and encourage the injured employee to return to work at the highest level of capability.

(b) The health-care provider most responsible for the treatment of the employee's work-related injury shall complete and submit, as expeditiously as possible and not later than 10 days after the date of first evaluation or treatment, a report of employee condition and limitations, on a form adopted for that purpose pursuant to this section, and shall expeditiously provide copies of the report of employee condition and limitations to the employee, the employer and the employer's insurance carrier, if applicable. In the event that an employee is treated and released from the emergency department of a hospital, the health care provider most responsible for follow up care, if applicable, or the emergency room attending physician, shall provide the report of employee condition and limitations to the employee upon release, and the employee shall be responsible for provision of the report to the employer and the employer's insurance carrier, if applicable, within the time period provided by the rules adopted pursuant to this section.

(c) Every health -care provider shall prepare supplemental reports of employee condition and limitations on forms prescribed pursuant to this section, and shall expeditiously provide copies of the report of employee condition and limitations to the employee, the employer and the employer's insurance carrier, if applicable.

(d) Within 14 days of the issuance of an Agreement As To Compensation to an employee for any period of total disability, the employer shall provide to the health-care provider/physician most responsible for the treatment of the employee's work-related injury and to the employer's insurance carrier, if applicable, a report of the modified-duty jobs which may be available to the employee. The insurance carrier for an insured employer shall send to such employer the aforementioned report for completion, and shall be independently

responsible for providing a completed report of modified-duty jobs to the health care provider/physician. The health-care provider portion of the employer's modified duty availability report must be signed and returned by the health-care provider within 14 days of the next date of service after receipt of the form from the employer, but not later than 21 days from the health-care provider's receipt of such form.

(e) Fees for completion, copying and transmission of the forms shall be maintained by the Workers' Compensation Oversight Panel. The employer or the employer's insurance carrier shall be liable for payment of the fee for all such reports of employee condition and limitations, provided however, that the employer or insurance carrier shall not be liable for any such reports, requested by an employee more frequently than once during each 3-month period.

(76 Del. Laws, c. 1, § 14; 77 Del. Laws, c. 94, §§ 5, 6; 78 Del. Laws, c. 186, § 2; 79 Del. Laws, c. 55, § 3; 79 Del. Laws, c. 312, § 2.)

§ 2322F. Billing and payment for health-care services.

(a) Charges for medical evaluation, treatment and therapy, including all drugs, supplies, tests and associated chargeable items and events, shall be submitted to the employer or insurance carrier along with a bill or invoice for such charges, accompanied by records or notes, concerning the treatment or services submitted for payment, documenting the employee's condition and the appropriateness of the evaluation, treatment or therapy, with reference to the health care practice guidelines adopted pursuant to § 2322C of this title, or documenting the preauthorization of such evaluation, treatment or therapy. The initial copy of the supporting notes or records shall be produced without separate or additional charge to the employer, insurance carrier or employee.

(b) Charges for hospital services and items supplied by a hospital, including all drugs, supplies, tests and associated chargeable items and events, shall be submitted to the employer or insurance carrier along with a bill or invoice which shall be documented in a nationally recognized uniform billing code format, in sufficient detail to document the services or items provided, and any preauthorization of the services and items shall also be documented. The initial copy of the supporting medical notes or records shall be produced without separate or additional charge to the employer, insurance carrier or employee. Payment for hospital services, including payment for invoices rendered for emergency department services, shall be made within 30 days of the submission of a "clean claim" accompanied by notes documenting the employee's condition and the appropriateness of the evaluation, treatment or therapy.

(c) Preauthorized evaluations, treatments or therapy shall be paid at the agreed fee within 30 days of the date of submission of the invoice, unless the compliance with the preauthorization is contested, in good faith, pursuant to the utilization review system set forth in subsection (j) of this section below.

(d) Treatments, evaluations and therapy provided by a certified health care provider shall be paid within 30 days of receipt of the health care provider's bill or invoice together with records or notes as provided in this section, unless compliance with the health care payment system or practice guidelines adopted pursuant to § 2322B or § 2322C of this title is contested, in good faith, to the utilization review system set forth in subsection (j) of this section below.

(e) Denial of payment for health care services provided pursuant to this chapter, whether in whole or in part, shall be accompanied with written explanation of reason for denial.

(f) In the event that a portion of a health care invoice is contested pursuant to this section, the uncontested portion shall be paid without prejudice to the right to contest the remainder. The time limits set forth in this section shall apply to payment of all uncontested portions of health care payments.

(g) If, following a hearing, the Industrial Accident Board determines that an employer, an insurance carrier or a health care provider failed in its responsibilities under § 2322B, § 2322C, § 2322D, § 2322E or § 2322F of this title, it shall assess a fine of not less than $1,000 nor more than $5,000 for violations of said sections. Such fines shall be payable to the Workers' Compensation Fund.

(h) *Prompt pay required for nonpreauthorized care.* — An employer or insurance carrier shall be required to pay a health care invoice within 30 days of receipt of the invoice as long as the claim contains substantially all the required data elements necessary to adjudicate the invoice, unless the invoice is contested in good faith. If the contested invoice pertains to an acknowledged compensable claim and the denial is based upon compliance with the health care payment system and/or health care practice guidelines, it shall be referred to utilization review. Any such referral to utilization review shall be made within 15 days of denial. Unpaid invoices shall incur interest at a rate of 1% per month payable to the provider. A provider shall not hold an employee liable for costs related to nondisputed services for a compensable injury and shall not bill or attempt to recover from the employee the difference between the provider's charge and the amount paid by the employer or insurance carrier on a compensable injury.

(i) A health care provider referring an employee to, or encouraging an employee to utilize, any inpatient or outpatient facility or any medical or therapeutic practice, laboratory, diagnostic testing or radiological imaging machinery, equipment, practice or facility shall disclose to the employee any financial interest the health care provider has in such inpatient or outpatient facility, any medical or therapeutic practice, laboratory, diagnostic testing or radiological imaging machinery, equipment, practice or facility. The requirements of this subsection may be met by the prominent placement of a sign or signs in such health care provider's office identifying such affiliated equipment, practices or facilities.

(j) *Utilization review.* — The Workers' Compensation Oversight Panel shall approve, propose and maintain a utilization review program for any health-care provider providing services to injured workers pursuant to this chapter whether the provider is or is not certified under § 2322D of this title. The intent is to provide reference for employers, insurance carriers, and health-care providers for evaluation of

health care and charges. The intended purpose of utilization review services shall be the prompt resolution of issues related to treatment and/or compliance with the health-care payment system or practice guidelines for those claims which have been acknowledged to be compensable. An employer or insurance carrier may engage in utilization review to evaluate the quality, reasonableness and/or necessity of proposed or provided health-care services for acknowledged compensable claims. Any person conducting a utilization review program for workers' compensation shall be required to contract with the Office of Workers' Compensation once every 2 years and certify compliance with Workers' Compensation Utilization Management Standards or Health Utilization Management Standards of Utilization Review Accreditation Council ("URAC") sufficient to achieve URAC accreditation or submit evidence of accreditation by URAC. If a party disagrees with the findings following utilization review, a petition may be filed with the Industrial Accident Board for de novo review. Complete rules and regulations relating to utilization review shall be approved, proposed and maintained by the Workers' Compensation Oversight Panel. Rules recommended by the Panel shall be adopted by regulation of the Department of Labor pursuant to Chapter 101 of Title 29.

(k) *Coordination of health care payments.* — (1) Upon notification to an employer that an employee is exercising that employee's rights under § 2304 of this title with respect to an injury or condition, the employer shall be exclusively responsible for treatment of that injury or condition to the extent that the employer is obliged to provide treatment under this chapter.

(2) An employee, as part of a notification that an employee will exercise rights under § 2304 of this title, shall notify the employer of all health insurance benefits that could compensate the employee for treatment of the injury or condition in question in the absence of coverage under this chapter. Such notification to the employer is intended to facilitate the notice provided for in paragraph (k)(4) of this section; the failure of an employee to provide such notice shall not waive or defeat any rights the employee may have under this chapter.

(3) An employee whose health care treatment for an injury or condition is being paid for pursuant to this chapter shall not be entitled to seek compensation from any other health insurance carrier for the same treatment. A health care provider who is being paid for treating an injury or condition pursuant to this chapter shall not seek compensation from any other health insurance carrier for the same treatment.

(4) At any time that a final determination is made that an employee is not entitled to health care treatment pursuant to this chapter, the employer shall notify any health insurance carrier of which it is aware pursuant to paragraph (k)(2) of this section of such a final determination.

(5) Notwithstanding any other provision of this chapter, if a final determination is made that an employee is not entitled to health care treatment pursuant to this chapter, the employee and/or the health care provider who provided said treatment may seek payment for such treatment from a health insurance carrier from which the employee had coverage applicable at the time of the injury or condition.

(6) Any time restrictions imposed upon an employee with respect to making claims against that employee's health insurance coverage for an injury or condition for which that employee initially sought treatment under this chapter shall be tolled until notification of the health insurance carrier under paragraph (k)(4) of this section.

(7) No requirements for preauthorization of treatment in any health insurance policy shall be the basis for denying payment of a claim submitted under paragraph (k)(5) of this section.

(8) With respect to claims submitted by an employee pursuant to paragraph (k)(5) of this section for treatment provided by a health care provider that had a contract with the health insurance carrier at the time of the treatment, reimbursement shall be at the contract rate.

(9) With respect to claims submitted by an employee pursuant to paragraph (k)(5) of this section for treatment provided by a health care provider that did not have a contract with the health insurance carrier at the time of the treatment, reimbursement shall be at the health insurance carrier's average contract rate for the same treatment with health care providers with whom it does have a contract.

(10) All claims submitted pursuant to paragraph (k)(5) of this section shall be entitled to treatment under Insurance Department Regulation 1310 [18 Del. Code Regs. § 1310] or any successor regulation relating to the prompt payment of health care claims by health insurance carriers.

(11) A health insurance carrier may deny payment of claims submitted under paragraph (k)(5) of this section for health care that it determines was not reasonable or necessary. However, an employee shall have the right to immediate appeal to an Independent Utilization Review organization under § 6416 of Title 18 for all such denials of treatment, with the cost of such appeal being borne by the health insurance carrier.

(12) A health care provider may not balance bill an employee for treatment for which the health care provider has been compensated under paragraph (k)(8) or (9) of this section.

(*l*) *Balance billing prohibited.* — (1) Any health care provider rendering services under this chapter shall be prohibited from billing or invoicing an employee, employer or insurance carrier for charges or expenses other than those authorized by this chapter and the health care payment system provided for herein. No health care provider rendering treatment or services under this chapter shall seek payment for charges from an employee except as authorized by this section.

(2) Billing procedures where compensability under this chapter is contested.

a. A provider may seek payment of the actual charges from the employee if the employer or insurance carrier notifies the provider that it does not consider the illness or injury to be compensable. If an employer notifies a provider that it will pay only a portion of a bill, the provider may seek payment of the unpaid portion from the employee up to the lesser of the actual charge, the negotiated rate, or the rate authorized by the payment system.

b. If an employee informs the health care provider that a claim is on file at the Department, the provider shall cease all efforts to collect payment from the employee.

c. While a claim concerning compensability is pending with the Department, a provider may notify an employee that the employee will be responsible for payment of unpaid invoices when the claim has been determined not to be compensable and the provider is able to resume collection efforts. Any such notice or reminder made under this subsection shall not be disclosed or otherwise provided to any credit agency. The provider may request information about the Department claim, and if the employee fails to respond or provide the information within 90 days, the provider shall be entitled to resume collection efforts directly and the employee may be determined liable for invoices as otherwise provided by law.

(3) Upon final award or settlement, a provider may resume efforts to collect payment from the employee and the employee shall be responsible for payment of any outstanding bills without regard to this section and as otherwise provided or authorized by law. If the service is found compensable, the provider shall not require a payment rate, excluding interest, greater than the lesser of the actual charge or payment level set by the payment system. The employee shall be responsible for payment for services found not covered or compensable unless agreed otherwise by the provider and employee. Services not covered or not compensable shall not be subject to the payment system.

(76 Del. Laws, c. 1, § 15; 70 Del. Laws, c. 186, § 1; 77 Del. Laws, c. 94, §§ 7, 8; 79 Del. Laws, c. 312, § 2; 80 Del. Laws, c. 124, § 4.)

§ 2323. Selection of physician, surgeon, dentist, optometrist or chiropractor by employee.

Any employee who alleges an industrial injury shall have the right to employ a physician, surgeon, dentist, optometrist or chiropractor of the employee's own choosing. Notice of the employee's intention to employ medical aid as aforesaid shall be given to the employee's employer or its insurance carrier or to the Board. Notice that medical aid was employed as aforesaid shall be given within 30 days thereafter to the employer or its insurance carrier in writing. If the alleged injury is subsequently held to be compensable, the employer shall be liable for the reasonable cost of the services of any physician, surgeon, dentist, optometrist or chiropractor whose employment was utilized by the employee provided notice of said employment was given to the employer or its insurance carrier.

(Code 1915, § 3193h; 29 Del. Laws, c. 233; 30 Del. Laws, c. 203, § 2; 32 Del. Laws, c. 186, § 1; Code 1935, § 6078; 44 Del. Laws, c. 201; 19 Del. C. 1953, § 2323; 50 Del. Laws, c. 267, § 2; 53 Del. Laws, c. 126, § 3; 55 Del. Laws, c. 83, § 2; 70 Del. Laws, c. 172, § 4; 70 Del. Laws, c. 186, § 1.)

§ 2324. Compensation for total disability.

For injuries resulting in total disability occurring after July 1, 1975, the compensation to be paid during the continuance of total disability shall be $66^2/_3$% of the wages of the injured employee, as defined by this chapter, but the compensation shall not be more than $66^2/_3$% of the average weekly wage per week as announced by the Secretary of the Department of Labor for the last calendar year for which a determination of the average weekly wage has been made, nor less than $22^2/_9$% of the average weekly wage per week. If at the time of the injury the employee receives wages of less than $22^2/_9$% of the average weekly wage per week, then the employee shall receive the full amount of such wages per week, as compensation. Nothing in this section shall require the payment of compensation after disability ceases.

(Code 1915, § 3193j; 29 Del. Laws, c. 233; 30 Del. Laws, c. 203, § 3; 32 Del. Laws, c. 186, § 2; 35 Del. Laws, c. 192, § 1; 37 Del. Laws, c. 239, § 2; Code 1935, § 6080; 43 Del. Laws, c. 269, § 8; 45 Del. Laws, c. 297, § 1; 46 Del. Laws, c. 29; 47 Del. Laws, c. 160, § 1; 48 Del. Laws, c. 190, § 1; 19 Del. C. 1953, § 2324; 50 Del. Laws, c. 339, § 6; 50 Del. Laws, c. 465, § 2; 52 Del. Laws, c. 27; 57 Del. Laws, c. 520, § 1; 59 Del. Laws, c. 454, § 10; 70 Del. Laws, c. 172, § 4; 70 Del. Laws, c. 186, § 1.)

§ 2325. Compensation during partial disability.

For injuries resulting in partial disability for work, except the particular cases mentioned in § 2326(a)-(g) of this title, the compensation to be paid shall be $66^2/_3$ percent of the difference between the wages received by the injured employee before the injury and the earning power of the employee thereafter; but such compensation shall not be more than $66^2/_3$ percent of the average weekly wage per week as announced by the Secretary of Labor for the last calendar year for which a determination of the average weekly wage has been made. This compensation shall be paid during the period of such partial disability for work, not, however, beyond 300 weeks. In construing the words "earning power of the employee thereafter" as those words appear in this section, the Board shall take into consideration the value of gratuities, board, lodging and similar advantages received by the employee in subsequent employment.

(Code 1915, §§ 139A, 3193j, 3193tt; 29 Del. Laws, c. 233; 30 Del. Laws, c. 203, § 3; 32 Del. Laws, c. 186, §§ 2, 4; 35 Del. Laws, c. 192, § 1; 37 Del. Laws, c. 239, § 2; Code 1935, § 6080; 43 Del. Laws, c. 269, § 8; 45 Del. Laws, c. 297, § 2; 47 Del. Laws, c. 160, § 2; 48 Del. Laws, c. 190, § 2; 19 Del. C. 1953, § 2325; 50 Del. Laws, c. 339, § 7; 52 Del. Laws, c. 45, § 1; 57 Del. Laws, c. 520, § 2; 61 Del. Laws, c. 515, § 1.)

§ 2326. Compensation for certain permanent injuries.

(a) For all permanent injuries of the following classes, the compensation to be paid regardless of the earning power of the injured employee after the injury shall be as follows:

For the loss of a hand, $66^2/_3$ percent of wages during 220 weeks;

For the loss of an arm, $66^2/_3$ percent of wages during 250 weeks;

For the loss of a foot, $66^2/_3$ percent of wages during 160 weeks;

For the loss of a leg, $66^2/_3$ percent of wages during 250 weeks;

For the loss of 2 or more of such members, not constituting total disability, $66^2/_3$ percent of wages during the aggregate of the period specified for each;

For the loss of a thumb, $66^2/_3$ percent of wages during 75 weeks;

For the loss of a first finger, commonly called index finger, $66^2/_3$ percent of wages during 50 weeks;

For the loss of a second finger, $66^2/_3$ percent of wages during 40 weeks;

For the loss of a third finger, $66^2/_3$ percent of wages during 30 weeks;

For the loss of a fourth finger, commonly called little finger, $66^2/_3$ percent of wages during 20 weeks;

The loss of the first phalange of the thumb or any finger shall be considered to be equal to the loss of one half of such thumb or finger and compensation shall be for one half of the period, and compensation for the loss of one half of the first phalange shall be for one fourth of the period;

The loss of more phalanges than 1 shall be considered as the loss of the entire finger or thumb, provided, however, that in no case shall the amount received for more than 1 finger exceed the amount provided in this schedule for the loss of a hand;

The loss of 3 fingers or 2 fingers and a thumb of the same hand shall be considered as the loss of one half of the hand, and compensation shall be paid for such loss for a period of 110 weeks, or compensation shall be paid for the loss of 3 fingers or 2 fingers and a thumb of the same hand for the number of weeks stated in the above schedule for such a loss, whichever is greater;

For the loss of a great toe, $66^2/_3$ percent of wages during 40 weeks;

For the loss of 1 of the toes, other than the great toe, $66^2/_3$ percent of wages during 15 weeks;

The loss of the first phalange of any toe shall be considered to be equal to the loss of one half of such toe, and compensation shall be for one half of such period;

The loss of more phalanges than 1 shall be considered as the loss of the entire toe;

For the loss of an eye, $66^2/_3$ percent of wages during 200 weeks;

For the loss of a fractional part of the vision of an eye, the compensation shall be for such percentage of the total number of weeks allowed for the total loss of the use of an eye under this section as the loss suffered bears to the total loss of an eye.

(b) Amputation to the ankle or any part of the foot, not including the toes, shall be considered as the equivalent of the loss of a foot. Amputation above the ankle shall be considered as the loss of a leg.

(c) Total loss of the use of a hand, arm, foot, leg or eye shall be considered as the equivalent of the loss of such hand, arm, foot, leg or eye.

(d) In all other cases of permanent injury of the classes specified in subsection (a) of this section, or when the usefulness of a member or any physical function is permanently impaired, the compensation shall bear such relation to the number of weeks stated in the schedule set forth in subsection (a) of this section as the disabilities bear to those produced by the injury named in the schedule.

(e) Unless the Board otherwise determines from the facts, the loss of both hands, or both arms, or both feet, or both legs, or both eyes, or an injury to the spine resulting in permanent and complete paralysis of both legs, or both arms, or 1 leg and 1 arm, or an injury to the skull resulting in incurable imbecility or insanity, shall constitute total disability for work, to be compensated according to § 2324 of this title.

Amputation between the palmar surface of the hand and the shoulder shall be considered as the loss of an arm, and compensation shall be paid for such injury for a period of 250 weeks. Amputation for 50 percent of the palmar surface of the hand shall be considered as the loss of the hand and compensation shall be paid for a period of 220 weeks.

(f) The Board shall award proper and equitable compensation for serious and permanent disfigurement to any part of the human body up to 150 weeks, provided that such disfigurement is visible and offensive when the body is clothed normally, which shall be paid to the employee at the rate of $66^2/_3$ percent of wages. In the event that the nature of the injury causes both disfigurement to and loss or loss of use of the same part of the human body, the maximum compensation payable under this subsection for that part of the body shall be the higher of either:

(1) The amount of compensation found to be due for disfigurement without regard to compensation for loss of or loss of use; or

(2) The amount of compensation due for loss of or loss of use plus 20 percent thereof for disfigurement.

For the complete loss of hearing of 1 ear, the employee shall receive compensation at the rate of $66^2/_3$ percent of wages for a period of 75 weeks.

For the complete loss of hearing in both ears, the employee shall receive $66^2/_3$ percent of wages for a period of 175 weeks.

For the loss of a fractional part of hearing, the compensation shall be for such percentage of the total loss of weeks allowed for the total loss of hearing under this section as the loss suffered bears to the total loss of hearing.

(g) The Board shall award proper and equitable compensation for the loss of any member or part of the body or loss of use of any member or part of the body up to 300 weeks which shall be paid at the rate of $66^2/_3$ percent of wages, but no compensation shall be awarded when such loss was caused by the loss of or the loss of use of a member of the body for which compensation payments are already provided by the terms of this section.

(h) The compensation provided for in subsections (a)-(g) of this section shall not be more than $66^2/_3$ percent of the average weekly wage per week as announced by the Secretary of Labor for the last calendar year for which a determination of the average weekly wage has been made, nor less than $22^2/_9$ percent of the average weekly wage per week. If at the time of the injury the employee receives wages less than $22^2/_9$ percent of the average weekly wage per week, then the employee shall receive the full amount of such wages per week as compensation.

(i) Subject to subsection (e) of this section, the compensation provided for in subsections (a)-(h) of this section shall be paid in addition to the compensation provided for in §§ 2324 and 2325 of this title.

(Code 1915, § 3193j; 29 Del. Laws, c. 233; 30 Del. Laws, c. 203, § 3; 32 Del. Laws, c. 186, § 2; Code 1935, § 6080; 43 Del. Laws, c. 269, § 8; 44 Del. Laws, c. 202, §§ 2, 4; 45 Del. Laws, c. 298; 48 Del. Laws, c. 190, § 3; 19 Del. C. 1953, § 2326; 50 Del. Laws, c. 339, § 8; 50 Del. Laws, c. 465, § 1; 52 Del. Laws, c. 45, § 2; 54 Del. Laws, c. 280, § 2; 57 Del. Laws, c. 520, § 3; 58 Del. Laws, c. 251, § 1; 61 Del. Laws, c. 515, § 2; 70 Del. Laws, c. 172, §§ 4, 7; 70 Del. Laws, c. 186, § 1.)

§ 2327. Compensation for subsequent permanent injury; special fund for payment.

(a) Whenever a subsequent permanent injury occurs to an employee who has previously sustained a permanent injury, from any cause, whether in line of employment or otherwise, the employer for whom such injured employee was working at the time of such subsequent injury shall be required to pay only that amount of compensation as would be due for such subsequent injury without regard to the effect of the prior injury. Whenever such subsequent permanent injury in connection with a previous permanent injury results in total disability as defined in § 2326 of this title, the employee shall be paid compensation for such total disability, as provided in § 2324 of this title, during the continuance of total disability, such compensation to be paid out of a special fund known as “Workers’ Compensation Fund”; any insurance carrier desiring reimbursement from the Fund shall file a petition for payment, provided all claim for reimbursement shall be forever barred unless the insurance carrier files a petition with the Department for reimbursement for payments under this section within 2 years after the date on which the employee was first paid total disability benefits following the subsequent permanent injury.

(b) This section shall apply only to employers insured by insurance carriers. It shall not apply to self-insured employers who shall be responsible for payment of their own claims under this section and who shall not be eligible for further reimbursement for payments made under this section after the effective date of the Workers’ Compensation Improvement Act of 1997. Awards to self-insureds for reimbursements under this section are revoked as of the effective date of the Workers’ Compensation Improvement Act of 1997.

(Code 1915, § 3193j; 29 Del. Laws, c. 233; 30 Del. Laws, c. 203, § 3; 32 Del. Laws, c. 186, § 2; Code 1935, § 6080; 43 Del. Laws, c. 269, § 8; 45 Del. Laws, c. 299, § 1; 46 Del. Laws, c. 30; 19 Del. C. 1953, § 2327; 58 Del. Laws, c. 531, § 6; 71 Del. Laws, c. 84, §§ 9, 12; 72 Del. Laws, c. 319, § 1.)

§ 2328. Compensation for death or disability from an occupational disease.

The compensation payable for death or disability total in character and permanent in quality resulting from an occupational disease shall be the same in amount and duration and shall be payable in the same manner and to the same persons as would have been entitled thereto had the death or disability been caused by an accident arising out of and in the course of the employment.

In determining the duration of temporary total and/or temporary partial and/or permanent partial disability, and the duration of such payments for the disabilities due to occupational diseases, the same rules and regulations as are applicable to accidents or injuries shall apply.

(Code 1915, § 3193rr; 29 Del. Laws, c. 233; 30 Del. Laws, c. 203, § 9; Code 1935, § 6114; 41 Del. Laws, c. 241, § 1; 19 Del. C. 1953, § 2328.)

§ 2329. Compensation for disability resulting from occupational and other preexisting disease.

Whenever any disability from which any employee is suffering following the contraction of a compensable occupational disease is due in part to such occupational disease and in part to a preexisting disease or infirmity, the Board shall determine the proportion of such disability which is reasonably attributable to the occupational disease and the proportion which is reasonably attributable to the preexisting disease or infirmity and such employee shall be entitled to compensation only for that proportion of the disability which is reasonably attributable solely to the occupational disease.

(Code 1915, § 3193rr; 29 Del. Laws, c. 233; 30 Del. Laws, c. 203, § 9; Code 1935, § 6114; 41 Del. Laws, c. 241, § 1; 19 Del. C. 1953, § 2329; 70 Del. Laws, c. 172, § 4; 70 Del. Laws, c. 186, § 1.)

§ 2330. Compensation for death.

(a) In case of death, compensation shall be computed on the following basis and distributed to the following persons:

(1) To the child or children if there is no surviving spouse entitled to compensation, $66^2/_3$% of the wages of the deceased, with 10% additional for each child in excess of 2, with a maximum of 80% to be paid to their guardian;

(2) To the surviving spouse, if there are no children, $66^2/_3$% of wages provided that the minimum amount payable shall not be less than $15 per week;

(3) To the surviving spouse, if there is 1 child, $66^2/_3$% of wages;

(4) To the surviving spouse, if there are 2 children, 70% of wages;

(5) To the surviving spouse, if there are 3 children, 75% of wages;

(6) To the surviving spouse, if there are 4 or more children, 80% of wages;

(7) If there is no surviving spouse or children, then to the parents, or the survivor of them, if actually dependent upon the employee for at least 50% of their support at the time of the worker's death, 20% of wages;

(8) If there is no surviving spouse, children or dependent parent, then to the siblings, if actually dependent upon the decedent for at least 50% of their support at the time of the worker's death, 15% of wages for 1 sibling, and 5% additional for each additional sibling, with a maximum of 25%, such compensation to be paid to their guardian.

(b) The wages upon which death compensation shall be based shall not in any case be taken to exceed the average weekly wage per week as announced by the Secretary of the Department of Labor for the last calendar year for which a determination of the average weekly wage has been made. However, the minimum amount payable to a surviving spouse entitled to compensation shall not be less than $22^2/_9$% of the said average weekly wage per week. Subject to § 2332 of this title, this compensation shall be paid during 400 weeks and in case of children entitled to compensation under this section, the compensation of each child shall continue after such period of 400 weeks until such child reaches the age of 18 years, or if enrolled as a full-time student in an accredited educational institution, until such child ceases to be so enrolled or reaches the age of 25 years, and in the case of a surviving spouse entitled to compensation under this section the compensation shall continue after such period of 400 weeks until the surviving spouse dies. Children are not entitled to compensation during the period that compensation is payable to their parent, except as provided in this section; provided, however, that the compensation for any child shall not be less than $10 per week unless the total maximum benefits are being paid.

(c) Compensation shall be payable under this section to or on account of any sibling only if and while such sibling is under the age of 18 years. Compensation shall be payable under this section to or on account of any child only if and while such child is under the age of 18 years, or if over 18 years and enrolled as a full-time student, until such time as such child ceases to be so enrolled or reaches the age of 25 years. Compensation shall be payable under this section to or on account of any child beyond the age of 18 years if and while mentally or physically handicapped and actually dependent upon the deceased for at least 50 percent of their support at the time of the worker's death.

(d) Compensation shall be payable under this section to a surviving spouse: (1) If living with deceased at the time of death; (2) if receiving or had the right to receive support at the time of death; (3) if deserted prior to and continued at the time of death; otherwise, compensation shall be distributed to the persons who would be dependents in case there was no surviving spouse.

(e) Compensation payable to the surviving spouse shall be for the use and benefit of such surviving spouse and of the dependent children, and the Board may from time to time apportion such compensation between them in such way as it deems best. The Board may require payments to be made directly to a minor who has been injured and may also require payments to be made to the person caring for any dependent minor, when, in the opinion of the Board, the expense of securing the appointment of a guardian would be disproportionate to the amount of compensation payable to such minor.

(f) If the compensation payable under this section to or on account of any person shall for any cause cease, the compensation of the remaining persons entitled thereunder shall thereafter be computed at the same rate as would have been payable to the remaining persons had they been the only persons entitled to compensation at the time of the death of the deceased, which computation shall be based upon the rates in effect at the time of the death of the deceased.

(g) Should any dependent of a deceased employee die, the right of such dependent to compensation under this section shall cease.

(h) If a surviving spouse is entitled to a benefit under this chapter, and the surviving spouse remarries, the surviving spouse's benefit must be reduced to 90% of the original benefit for the first 10 years after the remarrying and must be reduced to 75% of the original benefit thereafter until the death of the surviving spouse.

(Code 1915, § 3193k; 29 Del. Laws, c. 233; 30 Del. Laws, c. 203, § 4; Code 1935, § 6081; 43 Del. Laws, c. 269, § 9; 45 Del. Laws, c. 297, §§ 4, 5; 47 Del. Laws, c. 340, §§ 1-3; 19 Del. C. 1953, § 2330; 50 Del. Laws, c. 339, §§ 9-11; 56 Del. Laws, c. 385, § 1; 58 Del. Laws, c. 94; 59 Del. Laws, c. 454, § 14; 61 Del. Laws, c. 515, § 3; 70 Del. Laws, c. 172, § 4; 70 Del. Laws, c. 186, § 1; 81 Del. Laws, c. 278, § 1; 83 Del. Laws, c. 235, § 1.)

§ 2331. Burial expenses where death results from injury.

If death results from the injury, the employer shall pay the reasonable burial expenses of an injured employee, not exceeding $3,500, but without deduction of any amount theretofore paid for compensation or medical expense, except that any bill for reasonable funeral expenses resulting from the death of an injured employee contracted for in an amount in excess of $3,500 may be approved by the Industrial Accident Board.

(Code 1915, § 3193i; 29 Del. Laws, c. 233; Code 1935, § 6079; 43 Del. Laws, c. 269, § 7; 44 Del. Laws, c. 202, § 1; 19 Del. C. 1953, § 2331; 49 Del. Laws, c. 429, § 4; 50 Del. Laws, c. 339, § 12; 55 Del. Laws, c. 83, § 3; 70 Del. Laws, c. 141, § 1.)

§ 2332. Death of employee as affecting compensation and other benefits.

Should the employee die as a result of the injury, no reduction shall be made for the amount paid for medical, surgical, dental, optometric, chiropractic or hospital services and medicines nor for the expense of last sickness and burial as provided in this chapter. Should the employee die from some other cause than the injury as herein defined, the claim for compensation shall not abate, but the personal representative of the deceased may be substituted for the employee and prosecute the claim for the benefit of the deceased's dependent or dependents only, but in the event an agreement for compensation or an award has theretofore been made, the full unpaid amount thereof shall be payable to the deceased employee's nearest dependent as indicated by § 2330 of this title and such payments may be made directly to a dependent of full age and on behalf of an infant to the statutory or testamentary guardian of any such infant, provided, however, that no payment or award under § 2324 or § 2325 of this title shall continue or be ordered beyond the date of such injured employee's death.

(Code 1915, §§ 3193j, 3193tt; 29 Del. Laws, c. 233; 30 Del. Laws, c. 203, § 3; 32 Del. Laws, c. 186, § 4; Code 1935, §§ 6080, 6116; 37 Del. Laws, c. 239, § 2; 43 Del. Laws, c. 269, § 8; 19 Del. C. 1953, § 2332; 50 Del. Laws, c. 267, § 3; 54 Del. Laws, c. 280, § 3.)

§ 2333. Compensation of nonresident alien dependents; representation by consular officers.

(a) Compensation under this chapter to alien dependent surviving spouses and children not residents of the United States shall be $^1/_2$ of the amount provided in each case for residents, and the employer may at any time commute all future installments of compensation payable to alien dependents not residents of the United States by paying to such alien dependents the then value thereof, calculated in accordance with § 2358 of this title. Alien parents, siblings not residents of the United States shall not be entitled to any compensation.

(b) Nonresident alien dependents may be officially represented by the consular officers of the nation of which such alien or aliens may be citizens or subjects and in such cases the consular officers may receive for distribution to such nonresident alien dependents all compensation awarded hereunder and the receipt of such consular officers shall be a full discharge of all sums paid to and received by them.

(Code 1915, § 3193s; 29 Del. Laws, c. 233; 30 Del. Laws, c. 203, § 6; Code 1935, § 6089; 19 Del. C. 1953, § 2333; 70 Del. Laws, c. 172, § 8; 70 Del. Laws, c. 186, § 1.)

§ 2334. Benefit adjustment.

(a) Any person with a total disability on or after May 27, 1971, or any surviving spouse or dependent who is receiving benefits under § 2330 of this title, on or after May 27, 1971, shall be entitled to an additional amount of compensation as calculated under subsections (b) and (c) of this section, provided that the total amount to be received shall not exceed the maximum weekly benefit rate in § 2324 of this title effective on July 1, 1975, or the benefit derived from § 2330 of this title as of July 1, 1975.

(b) In any case where a person with a total disability, or a surviving spouse or a dependent is presently receiving the maximum weekly income benefit rate applicable at the time such award was made, the supplemental allowance shall be an amount which when added to such award would equal the maximum weekly benefit rate effective on July 1, 1975, or the benefit derived from § 2330 of this title as of July 1, 1975.

(c) In any case where a person with a total disability, or a surviving spouse or dependent is presently receiving less than the maximum weekly income benefit rate applicable at the time such award was made, the supplemental allowance shall be an amount equal to the difference between the amount the claimant is presently receiving and a percentage of the maximum weekly benefit rate effective on July 1, 1975, or the benefit derived from § 2330 of this title as of July 1, 1975, determined by multiplying it by a fraction, the numerator of which is the claimant's present award and the denominator of which is the maximum weekly rate applicable at the time such award was made.

(19 Del. C. 1953, § 2334; 58 Del. Laws, c. 96, § 1; 58 Del. Laws, c. 311; 70 Del. Laws, c. 172, § 4; 70 Del. Laws, c. 186, § 1; 70 Del. Laws, c. 201, §§ 1, 2; 79 Del. Laws, c. 371, § 15.)

Subchapter III

Determination and Payment of Benefits; Procedure

§ 2341. Notice of injury; time of; and failure to give.

Unless the employer has actual knowledge of the occurrence of the injury or unless the employee, or someone on the employee's behalf, or some of the dependents, or someone on their behalf, gives notice thereof to the employer within 90 days after the accident, no compensation shall be due until such notice is given or knowledge obtained.

(Code 1915, § 3193l; 29 Del. Laws, c. 233; Code 1935, § 6082; 19 Del. C. 1953, § 2341; 50 Del. Laws, c. 339, § 13; 70 Del. Laws, c. 172, § 4; 70 Del. Laws, c. 186, § 1.)

§ 2342. Notice of occupational disease; time of; failure to give.

Unless the employer during the continuance of the employment has actual knowledge that the employee has contracted a compensable occupational disease or unless the employee, or someone in the employee's behalf, or some of the employee's dependents, or someone on their behalf, gives the employer written notice or claim that the employee has contracted 1 of the compensable occupational diseases, which notice to be effective shall be given within a period of 6 months after the date on which the employee first acquired such knowledge

that the disability was, could have been caused or had resulted from the employee's employment, no compensation shall be payable on account of the death or disability by occupational disease of such employee.

(Code 1915, § 3193rr; 29 Del. Laws, c. 233; 30 Del. Laws, c. 203, § 9; Code 1935, § 6114; 41 Del. Laws, c. 241, § 1; 19 Del. C. 1953, § 2342; 50 Del. Laws, c. 339, § 14; 52 Del. Laws, c. 101, § 1; 70 Del. Laws, c. 172, § 4; 70 Del. Laws, c. 186, § 1.)

§ 2343. Physical examination of employee; refusal to submit; communications not privileged.

(a) After an injury, and during the period of resulting disability, the employee, if so requested by the employee's employer or ordered by the Board, shall submit the employee's own self for examination at reasonable times and places and as often as reasonably requested to a physician legally authorized to practice the physician's profession under the laws of such place, who shall be selected and paid by the employer. Such medical examination shall not be referred to as an "Independent Medical Examination" or "IME" in any proceeding or on any document relating to a matter under this chapter; nor shall any examination, required by the employer, by any other doctor, who is an employee of an insurance company, or who is paid by an insurance company, or who is under contract to an insurance company, be referred to as an "Independent Medical Examination" or "IME." If the employee requests, the employee shall be entitled to have a physician, qualified as specified in this section, of the employee's own selection, to be paid by the employee, present to participate in such examination. For all examinations after the first, the employer shall pay the reasonable traveling expenses and loss of wages incurred by the employee in order to submit to such examination. The Board may impose a fine not to exceed $500 for each use of the term "Independent Medical Exam" or "IME" in violation of this subsection.

(b) The refusal of the employee to submit to the examination required by subsection (a) of this section or the employee's obstruction of such examination shall deprive the employee of the right to compensation under this chapter during the continuance of such refusal or obstruction and the period of such refusal or obstruction shall be deducted from the period during which compensation would otherwise be payable.

(c) No fact communicated to or otherwise learned by any physician or surgeon who has attended or examined the employee or who has been present at any examination shall be privileged either in the hearings provided for in this chapter or in any action at law.

(Code 1915, § 3193m; 29 Del. Laws, c. 233; Code 1935, § 6083; 19 Del. C. 1953, § 2343; 70 Del. Laws, c. 172, § 4; 70 Del. Laws, c. 186, § 1; 72 Del. Laws, c. 206, § 2; 72 Del. Laws, c. 399, § 2.)

§ 2344. Agreements on compensation or benefits; filing and approval; conclusiveness.

(a) If the employer and the injured employee, or the employee's dependents in case of the employee's death, reach an agreement in regard to compensation or other benefits in accordance with this chapter, a memorandum of such agreement signed by the parties in interest shall be filed with the Department and, if approved by it, shall be final and binding unless modified as provided in § 2347 of this title. Such agreement shall be approved by the Department only when the terms thereof conform to this chapter. This section shall not apply to deductible clauses.

(b) (1) At the time of agreement, the employer shall obtain from the employee an agreement as to compensation, signed by the parties in interest, in such detail and form as the Department prescribes, stating the eligibility for workers' compensation benefits pursuant to §§ 2324 and 2325 of this title. The agreement as to compensation shall require the employee to indicate any change in employment status which may affect benefits pursuant to §§ 2324 and 2325 of this title. The agreement as to compensation shall include a clear recitation of the legal requirements for eligibility for benefits and shall require the claimant's acknowledgment of and agreement to abide by such requirements. This form, which shall bear a notarized signature of the employee or the signature of a witness, shall accompany the agreement and shall be filed with the Department of Labor for approval.

(2) For all payments of total or partial disability to claimants under this chapter, the insurance carrier or self-insured shall cause to be printed upon the reverse side of the check, above the endorsement, the following language:

"Your acceptance of this check for total or partial disability is a representation by you that you are legally entitled to such payment and a false representation is punishable under federal and state laws."

The negotiation of a check for total or partial disability by an attorney or an agent of the attorney on behalf of a client is a representation that the attorney has printed the language set forth in this subsection for printing on claimant checks on checks distributed by the attorney to the attorney's clients.

(3) Any person who makes a false statement or misrepresentation with regard to that person's eligibility for workers' compensation benefits, or any attorney who makes a false representation pursuant to paragraph (b)(2) of this section is punishable pursuant to Chapter 24 of Title 18 and/or § 913 of Title 11.

(4) If the Department or Board has reason to believe that any person is committing or has committed an act of insurance fraud, the Department or Board shall notify the Fraud Prevention Bureau of the Delaware Insurance Department, which shall review the facts and circumstances of the alleged fraud in order to determine whether administrative, civil, or other proceedings are appropriate, in accordance with Chapter 24 of Title 18.

(5) The provisions of this section shall also apply to workers' compensation payments made pursuant to §§ 2327 and 2347 of this title.

(Code 1915, § 3193n; 29 Del. Laws, c. 233; Code 1935, § 6084; 19 Del. C. 1953, § 2344; 63 Del. Laws, c. 250, § 3; 70 Del. Laws, c. 172, § 4; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 84, §§ 3, 13; 76 Del. Laws, c. 1, § 16.)

§ 2345. Hearing upon disagreement on amount of compensation or benefits.

If the employer and employee, or the employee's dependents in the case of the employee's death, fail to reach agreement in regard to compensation under this chapter, or if after they reach such an agreement the Board shall refuse to approve the same, either party may notify the Department of the facts and the Department shall thereupon notice the time and place of hearing which shall be served on all parties in interest personally, by secure email with an electronic receipt or by certified mail. The Board or a hearing officer with consent of the parties shall hear and determine the matter in accordance with the facts and the law and state its conclusions of fact and rulings of law.

(Code 1915, §§ 3193o, 3193tt; 29 Del. Laws, c. 233; 32 Del. Laws, c. 186, § 4; Code 1935, §§ 6085, 6116; 19 Del. C. 1953, § 2345; 70 Del. Laws, c. 172, § 4; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 84, § 14; 71 Del. Laws, c. 422, § 2; 81 Del. Laws, c. 333.)

§ 2346. Hearing upon disagreement on charges for medical and other services and benefits

If any person charged with the payment of medical and other services and the provider to whom said payment is due fail to reach an agreement in regard to such charges, any interested party may notify the Department of the facts. The Department shall thereupon notice the time and place of hearing sent by certified mail or by secure email with an electronic receipt to all parties in interest. The Board shall hear and determine the matter. No party to the proceedings shall have any liability for the payment of charges in excess of the amount deemed reasonable and necessary; provided, that the provider is subject to the jurisdiction of the Board and made a party to the proceedings. As provided in § 2320(7) of this title, the Board may, in any case, appoint a disinterested and duly-qualified physician to make any necessary medical examination of the employee and testify in respect thereto. Such medical examination shall not be referred to as an "Independent Medical Examination" or "IME" in any proceeding or on any document relating to a matter under this chapter; nor shall any examination, required by the employer, by any other doctor, who is an employee of an insurance company, or who is paid by an insurance company, or who is under contract to an insurance company, be referred to as an "Independent Medical Examination" or "IME." The Board may impose a fine not to exceed $500 for each use of the term "Independent Medical Exam" or "IME" in violation of this section.

(Code 1915, § 3193h; 29 Del. Laws, c. 233; 30 Del. Laws, c. 203, § 2; 32 Del. Laws, c. 186, § 1; Code 1935, § 6078; 19 Del. C. 1953, § 2346; 50 Del. Laws, c. 267, § 4; 70 Del. Laws, c. 534, § 1; 71 Del. Laws, c. 84, § 14; 71 Del. Laws, c. 422, § 2; 72 Del. Laws, c. 206, § 3; 72 Del. Laws, c. 399, § 3; 81 Del. Laws, c. 333.)

§ 2347. Review by Board of agreements or awards; grounds; modification of award.

(a) On the application of any party in interest on the ground that the incapacity of the injured employee has subsequently terminated, increased, diminished, or recurred, or that the status of the dependent has changed, the Board may at any time, but not oftener than once in 26 weeks, review any agreement or award. Each 26-week period is to be calculated so that no 2 hearings to review an agreement or award may be held within 26 weeks of each other. This subsection does not restrict when a party in interest can file a petition to review but rather when the Board can convene to hear the petition to review.

(b) On the review under subsection (a) of this section, the Board may make an award ending, diminishing, increasing, or renewing the compensation previously agreed on or awarded, and designating the persons entitled to the award, subject to this chapter, and shall state its conclusions of facts and rulings of law. The Department shall immediately send to the parties a copy of the award by personal delivery, by secure e-mail with electronic receipt, or by certified mail.

(c) This section does not apply to a commutation of payments under § 2358 of this title.

(d) Compensation payable to an employee, under this chapter, does not terminate until and unless the Board enters an award ending the payment of compensation after a hearing on review of an agreement or award. However, a petition to review, hearing, or an order by the Board is not necessary to terminate compensation if the parties to an award or an agreement consent to the termination.

(e) The Department shall accept a petition to review when it is accompanied by proof of service of the petition as required under subsection (h) of this section and the petitioner has provided all of the following information on the petition's face:

(1) The name of the petitioner and respondent.

(2) The Board file number assigned to the agreement under review.

(3) The date of the industrial accident.

(4) Whether the petitioner is the employee, dependent, employer, or insurer.

(5) The insurance carrier's name and file number, if applicable.

(6) The Social Security number of the employee, if applicable.

(7) On filing of a petition to review based on "failure to sign an agreement or receipt," supporting documents, including the unsigned agreement or receipt at issue, and proof of service of the petition as required under subsection (h) of this section.

(8) Whether the petitioner seeks to review the agreement or award on the ground that employee's disability has terminated, increased, diminished, or recurred; that a dependent's status has changed; or other relief, except for additional medical benefits under § 2322(c) of this title or utilization review appeals under § 2322F(j) of this title for which the Board shall require petitions to determine additional compensation.

(9) For the following petitions under this section, a copy of the medical report must be attached if it is the basis for the petition and in existence at the time of filing:

a. Petitions seeking to terminate or diminish compensation benefits for disability that is total under § 2324 of this title or partial under § 2325 of this title on the ground that the employee is physically able to work, when the basis of the petition is a medical report in existence at the time of the filing of the petition.

b. Petitions seeking to determine whether an employee is entitled to compensation allowable for permanent injury under § 2326 of this title.

(f) Within 5 business days of the date a petition to review has been received, the Department shall notify the petitioner's attorney or, if the petitioner is pro se, the petitioner directly, of whether the petition has been accepted or rejected. If the petition is rejected, the notice must state each reason for the rejection with specificity. The Department shall issue the notice electronically if the petitioner is represented by an attorney. The Department shall serve notice on a pro se petitioner by certified mail, unless the petitioner has elected to receive electronic notice from the Department, in which case the Department shall issue the notice electronically.

(g) The Board may review an issue regarding the scheduling of a hearing under § 2348(c) of this title. The Board may dismiss a petition for insufficient documentation on motion by the opposing party.

(h) A petition to review may be served by any of the following means:

(1) On the other party to the agreement or award by 1 of the following:

a. Certified mail or other private mailing services with evidence of proof of receipt. Proof of receipt is satisfied by signature, rejection, or lack of claim of certified mail or private mail requiring signature by the recipient. Proof of the actual signature, rejection, or lack of claim is not required, only a statement from the mail carrier that the mail was delivered, rejected, or unclaimed, including proof of delivery with printout from the United States Postal Service's or equivalent private mail carrier's website.

b. Anyone authorized to serve a subpoena under § 2320(2)b. of this title. Proof of receipt is satisfied by an affidavit of service by anyone authorized to serve a subpoena under § 2320(2)b. of this title who served the petition.

(2) On the other party's attorney by electronic delivery with acknowledgment from the attorney on the face of the petition that the petition has been accepted.

(i) When both parties are represented by counsel, the Department shall schedule, within 5 days after acceptance of a petition to review, a pretrial conference with notice to each party to schedule the time, date, and place for the hearing on the petition to review.

(j) Whenever a respondent is pro se at the time of the filing of a petition to review, the Department shall schedule, within 5 days after acceptance of the petition, a pretrial conference with notice to each party to schedule the time, date, and place for the hearing on the petition to review. If the pro se respondent does not appear at the pretrial conference, the petition to review must be scheduled for a default hearing on the petition. The Department shall serve notice of the default hearing on all parties. If the pro se respondent does not appear at the default hearing, the Board may grant the petition to review. If the pro se respondent appears at the default hearing, the Board shall decide whether to grant the default judgement or schedule a merit hearing. If the Board determines a merit hearing is necessary, the Department shall schedule the hearing and provide notice of the hearing to all parties.

(k) On an employer's petition to review an agreement for total or partial disability benefit entitlement on the ground that the employee is physically able to return to work, compensation shall be paid from the Workers' Compensation Fund by the Department to the employee on acceptance of the employer's petition to review as follows:

(1) The Department shall initiate compensation retroactive to the date the petition to review was accepted by the Department. The Department shall issue compensation on receipt of a properly completed eligibility certification form, which has been signed and dated by the employee.

(2) If there is an agreement approved by the Board on file, the Workers' Compensation Fund shall pay this compensation to the employee at the compensation rate documented on the face of the agreement approved by the Board that is under review. If an agreement is not on file, the Workers' Compensation Fund shall pay the compensation at the rate the employer had been paying as of the date of the petition until the Board makes a determination that reformation of the rate is appropriate or the Fund is notified by counsel for the employee or the employee of a reduction in the amount owed due to the employee's return to work. If the compensation rate that employer had been paying the employee as of the date of the filing of the petition does not comply with § 2302(b)(3) of this title, the Workers' Compensation Fund shall pay employee wage compensation that complies with § 2302(b)(3) of this title. On notification to the Fund by counsel for the employee or the employee of the employee's return to work, the Fund may cease payment of total disability benefits as of the date of the employee's return. The Fund shall issue any payment for partial disability when the Fund receives pay stubs or other evidence of wage payments from the employee. The employee must continue to submit pay stubs or other evidence of wage payments for the Fund to continue to issue partial disability payments. Unless the employee has returned to work under this section, the Workers' Compensation Fund shall continue to pay the compensation by the terms of the agreement or award under review until the parties to an award or agreement consent to the termination, the petitioner withdraws the petition, or the Board enters an order on an employer's petition to review.

(3) After the parties to an award or agreement consent to the reinstatement of compensation or the employer withdraws its petition, the employer shall repay to the Workers' Compensation Fund the amount paid out by the Department on written request for payment issued by the Workers' Compensation Fund. If the Board orders the employer's petition dismissed, the employer shall reimburse the Workers' Compensation Fund at the rate and during the period ordered by the Board within 30 days of the later of when the award becomes final and conclusive between the parties under § 2349 of this title or on written request for payment issued by the Workers'

Compensation Fund. Every petition to review must be withdrawn whenever the parties to an agreement settle the issues of the petition to review without a hearing before the Board or whenever an employee consents to a termination after a petition to review has been filed with the Board.

(4) If, during the pendency of a petition to review for which the employee is receiving compensation from the Workers' Compensation Fund, the parties agree that a new totally or partially incapacitating event, whether surgical or otherwise, is compensable, the employer shall, within 10 days, notify the Department of the date of the event, the date disability from the event resumed, whether that disability is total or partial in character, and, if applicable, the date disability subsequently terminated. The employer shall provide this notice in 1 of the following ways:

a. By filing 1 or more employer's supplemental report(s) of injury under § 2313(a) of this title to which all protections afforded by § 2313(d) of this title continue to apply.

b. In any other written manner that provides the Department with substantial notice of the date of the event, the date disability from the event resumed, whether that disability is total or partial in character, and, if applicable, the date disability subsequently terminated.

(5) On receipt of a notice under paragraph (k)(4) of this section, the Workers' Compensation Fund is entitled to reimbursement from the employer only for that period during which the notice states that the employer would have provided weekly compensation as a direct result of the incapacitating event without the employer being required to withdraw the petition or waiving any other rights, claims, or defenses of any sort should the parties proceed to hearing on the merits of the remainder of the petition. If, during the pendency of the petition, the notice or a subsequent notice states that the disability from the new incapacitating event terminated before the hearing date scheduled for the Board's review, the Workers' Compensation Fund's responsibility to pay weekly compensation resumes from the date the notice states that the disability terminated until the date that the Board's award, following its review, has become final and conclusive, after which reimbursement to the Workers' Compensation Fund, if any, be ordered by the Board following the hearing, is to be made under paragraph (k)(3) of this section.

(*l*) The provisions of subsection (k) of this section pertaining to payments by the Workers' Compensation Fund only applies to employers insured by insurance carriers and do not apply to self-insured employers. Self-insured employers are responsible for payment of their own claims under this section.

(m) (1) On an order imposed by the Insurance Commissioner under § 2411(e) of Title 18 requiring payment of restitution following a finding of insurance fraud, and after all rights of appeal from the order have been waived or exhausted, the Board shall, on motion of the party to whom restitution was ordered and after hearing and opportunity to be heard, allow a credit against benefits payable under § 2324, § 2325, or § 2326 of this title, for any restitution ordered by the Insurance Commissioner remaining unpaid.

(2) The Board shall review orders establishing a credit under paragraph (m)(1) of this section on motion based on any change in circumstances that may warrant modification or rescission of a prior order.

(Code 1915, § 3193q; 29 Del. Laws, c. 233; Code 1935, § 6086; 19 Del. C. 1953, § 2347; 50 Del. Laws, c. 66, § 1; 58 Del. Laws, c. 529, § 1; 59 Del. Laws, c. 454, § 6; 71 Del. Laws, c. 84, §§ 9, 15; 71 Del. Laws, c. 422, § 2; 76 Del. Laws, c. 1, § 17; 81 Del. Laws, c. 333; 83 Del. Laws, c. 442, § 1.)

§ 2348. Hearings; notice of awards; evidence.

(a) In all hearings before the Board, the Board shall make such inquiries and investigations as it deems necessary. Unless otherwise stipulated by counsel and approved by the Department, the hearings shall be held in the Division of Industrial Affairs office nearest the site where the injury occurred or, if the accident occurred out of the State, in any county designated by the Department as convenient for the parties.

(b) In a controversy as to the responsibility of an employer or the employer's insurance carrier for the payment of compensation and other benefits under Part II of this title, any party in interest may petition the Board in writing for a hearing and award. The petition shall be sent to the Department's offices in Wilmington and shall set forth the reason for requesting the hearing and questions in dispute which the applicant expects to be resolved.

(c) The Department shall schedule a hearing by fixing its time and place, subject to review by the Board upon written objection by a party. The notice shall be given in hand, sent by secure email with an electronic receipt, or by certified mail, return receipt requested. Hearings pursuant to §§ 2324, 2325 and 2347 of this title shall be heard as expeditiously as practicable, but, absent compliance with subsection (h) of this section, in no case more than 120 days from the date of the notice of pretrial conference to be issued by the Department. Unless excused for good cause shown, failure of any or all parties in interest to appear at a duly scheduled hearing or to petition for a continuance shall bar such parties from any further action concerning an adverse decision, a decision by default or a dismissal of a petition for hearing and award.

(d) The Superior Court shall, in accordance with such rules as the Court may make, provide for the obtaining of evidence outside of the State to be used in hearings before the Board. Subject to the approval of a hearing officer, the parties in interest in any cause may agree upon different methods of taking such evidence.

(e) Subpoenas provided for in accordance with this chapter shall be effective throughout the State.

(f) Whenever a cause shall be remanded to the Board for a rehearing, all evidence theretofore taken before the Board in a previous hearing or hearings shall become part of the evidence in the hearing upon remand.

(g) In those instances where an expedited hearing is requested, the petition for hearing shall set forth the facts in sufficient detail to support the request for an expedited hearing. If such a request is uncontested, the request shall be granted by the Department. If such a request is contested, the Board shall determine the matter.

(h) Requests for continuance may be granted only upon good cause shown by the party requesting the continuance. Good cause shall be set forth in the Rules of Procedure of the Industrial Accident Board. A request for continuance may be granted or denied by the Department. If a party objects to the Department's decision or another party's motion, it may, by motion, seek Board review and the Board shall determine the matter.

(1) With respect to any extension of the 120-day hearing deadline established by subsection (c) of this section, a written motion requesting the continuance shall be filed setting forth the basis for a good cause continuance pursuant to the Rules of Procedure of the Industrial Accident Board which, in the movant's opinion, justify such relief. With respect to such an extension request, the Board shall issue a written order specifying that good cause for such an extension exists under a specific Rule of Procedure of the Industrial Accident Board.

(2) With respect to any request for an extension of a hearing beyond 180 days from the date of the petition, the party seeking the continuance must demonstrate that good cause for such an extension exists under a specific rule of the Industrial Accident Board and extraordinary circumstances exist which warrant the award of such continuance in the interests of justice. If such extension is to be granted, the Board's order shall be accompanied by the following:

a. A specific finding stating that good cause for such an extension exists under a Rule of Procedure of the Industrial Accident Board and stating the reasons why a continuance, rather than the use of other case management measures (including, but not limited to, precluding the presentation of certain witnesses or other evidence by the party responsible for the delay), is necessary in the interests of justice;

b. In any instance where such a continuance is sought by the petitioner, a specific finding that the petitioner has demonstrated that the petitioner has prosecuted its petition with due diligence; and

c. With respect to any party whose lack of diligence caused the need for a continuance, an order of such remedial action as is consistent with rules of procedure of the Board and is just under the circumstances.

Where a petitioner's or respondent's lack of diligence has caused the motion for a continuance, to remedy such lack of diligence and to ensure a speedy, efficient and just resolution of the matter, the Board shall consider dismissing the petition or provisionally awarding the relief sought by the petition.

(i) At such hearing, it shall be incumbent upon all parties to present all available evidence and the Board shall give full consideration to all evidence presented. In addition, the Board may examine all witnesses. If either party or the Board seeks to utilize the medical testimony of an expert, it may do so; provided, that prompt and adequate notice to the opposing party or parties is given. Medical testimony of an expert may be presented by: deposition; by live testimony at the hearing; by telephonic testimony at the hearing; or by videotape.

(j) The Board may recess the hearing to a date certain and direct the parties, or any of them, to provide such further information as may be necessary to decide the matter.

(k) No later than 14 days after a hearing, the Board shall render a written decision that succinctly and clearly states its findings of fact and conclusions of law. To that end, where appropriate, the Board may render a decision at the hearing and read such decision into the record for its incorporation in the hearing transcript. Each Board decision shall be filed among the Board's records and a copy thereof shall be served personally on, sent by secure email with an electronic receipt, or sent by certified mail to each of the parties in interest or to the attorneys representing the parties, if such parties are represented by counsel. In any instance where a decision cannot be reached within 14 days, the Board shall provide the parties with a written estimate of when the decision will be rendered. Such additional time shall not exceed an additional 14 days.

(Code 1915, § 3193q; 29 Del. Laws, c. 233; 32 Del. Laws, c. 186, § 3; Code 1935, § 6087; 19 Del. C. 1953, § 2348; 52 Del. Laws, c. 101, § 2; 63 Del. Laws, c. 418, § 1; 69 Del. Laws, c. 382, § 1; 71 Del. Laws, c. 84, § 16; 81 Del. Laws, c. 333.)

§ 2348A. Mediation.

(a) At any time prior to 30 days after the pretrial conference, either party may request mediation. The mediator shall be selected from a list of 3 hearing officers provided by the Department of Labor, and each party may strike 1 hearing officer from the list of potential mediators. The hearing officer serving as the mediator for a claim shall not be the hearing officer assigned to a later hearing on the claim mediated. Mediation shall be conducted within 30 days of the request.

(b) Any mediation under this section shall be nonbinding. No transcription or other verbatim record of the proceedings shall be kept, and no testimonial evidence shall be given. Medical records or other documentary evidence may be considered, at the mediator's discretion, if it will assist the mediation process.

(c) If the parties involved in the mediation conference reach a settlement as to all or any part of the then-pending issues, the agreement shall be reduced to writing and signed by the parties, the parties' counsel, and the mediator. A signed mediation agreement shall be binding on the parties thereto as to those issues on which there is agreement, except that any such agreement shall be subject to review in accordance with § 2347 of this title.

(d) In any hearing before the Board, no evidence shall be permitted regarding the mediation, including evidence regarding any statements or positions taken by any party in the context of the mediation. The Board may admit into evidence any signed mediation agreement, if relevant to any pending issue.

(76 Del. Laws, c. 1, § 18.)

§ 2349. Exceptions.

An award of the Board, in the absence of fraud, shall be final and conclusive between the parties, except as provided in § 2347 of this title, unless within 30 days of the day the notice of the award was mailed to the parties or electronically received by secured email, either party appeals to the Superior Court for the county in which the injury occurred or, if the injury occurred out of the State, to the Superior Court in and for the county in which the hearing was had. Neither the Board nor any member of the Board shall be named as a party to the appeal. Whenever an award shall become final and conclusive pursuant to this section, the prevailing party, at any time after the running of all appeal periods, may, if a proper appeal has not been filed, file with the prothonotary's office, for the county having jurisdiction over the matter, the amount of the award and the date of the award. From the time of such filing, the amount set forth in the award shall thereupon be and constitute a judgment of record in such Court with like force and effect as any other judgment of the Court, except that the renewal provisions of § 4711 of Title 10 shall not be applicable, and a judgment obtained under this section shall automatically continue for a period of 20 years from the date of the award. The prothonotary shall enter all such certificates in the regular judgment docket and index them as soon as they are filed by the prevailing party.

(Code 1915, § 3193r; 29 Del. Laws, c. 233; 30 Del. Laws, c. 203, § 5; Code 1935, § 6088; 19 Del. C. 1953, § 2349; 52 Del. Laws, c. 101, § 3; 71 Del. Laws, c. 413, § 1; 72 Del. Laws, c. 139, §§ 1, 2; 73 Del. Laws, c. 49, §§ 1, 2; 81 Del. Laws, c. 333.)

§ 2350. Jurisdiction, procedure and decision on appeal; review by Board; costs and security.

(a) The Superior Court shall have jurisdiction to hear and determine all appeals taken pursuant to this chapter. The Court may by proper rules prescribe the procedure to be followed in the case of such appeals. The Court shall fix a time for such hearings at the pending or next term of the Court after the date of such appeal and may extend the time for adequate cause shown.

(b) In case of every appeal to the Superior Court the cause shall be determined by the Court from the record, which shall include a typewritten copy of the evidence and the finding and award of the Board, without the aid of a jury, and the Court may reverse, affirm or modify the award of the Board or remand the cause to the Board for a rehearing. In case any cause shall be remanded to the Board for a rehearing, the procedure and the rights of all parties to such cause shall be the same as in the case of the original hearing before the Board.

(c) The decision of the Court shall be in writing and shall show conformity to this chapter. It shall be filed with the prothonotary of the Court and such prothonotary shall file a certified copy thereof with the Board. When any such certified copy of the decision of the Court shall be filed as aforesaid, it shall be subject to § 2347 of this title, and if the Board shall, in accordance with such section, end, diminish, increase or renew the compensation, there shall be the same right of appeal as is provided in § 2349 of this title.

(d) The prothonotary shall not require a deposit or security to cover costs incident to the taking of any appeal under this chapter. Costs may be awarded by the Court at its discretion, and when so awarded, the same costs shall be allowed, taxed and collected as are allowed, taxed and collected for like services in the Court.

(e) If the decision of the Board is affirmed by an appellate court, the employee shall be entitled to all compensation plus interest at the legal rate from the time of the award by the Board.

(f) The Superior Court may at its discretion allow a reasonable fee to claimant's attorney for services on an appeal from the Board to the Superior Court and from the Superior Court to the Supreme Court where the claimant's position in the hearing before the Board is affirmed on appeal. Such fee shall be taxed in the costs and become a part of the final judgment in the cause and may be recovered against the employer and the employer's insurance carrier as provided in this subchapter.

(Code 1915, § 3193r; 29 Del. Laws, c. 233; 30 Del. Laws, c. 203, § 5; Code 1935, § 6088; 19 Del. C. 1953, § 2350; 50 Del. Laws, c. 339, § 15; 52 Del. Laws, c. 101, § 4; 69 Del. Laws, c. 218, § 1; 70 Del. Laws, c. 172, § 4.)

§ 2351. Physical examination of claimant on appeal; other additional evidence.

(a) Upon the hearing of any appeal, the Court may appoint 1 or more impartial physicians or surgeons to examine the injuries of the claimant and to report thereon to the Court. The Court may fix the compensation of such physicians or surgeons, and tax such compensation as a part of the costs of the proceedings. The report shall not be conclusive of the facts therein stated but shall be advisory only.

(b) The Court may, with or without notice to either party, cause testimony to be taken or provide for an inspection of the premises where the injury occurred and may require the time books or the payroll of the employer to be examined.

(Code 1915, §§ 3193r, 3193w; 29 Del. Laws, c. 233; 30 Del. Laws, c. 203, § 5; Code 1935, §§ 6088, 6093; 19 Del. C. 1953, § 2351.)

§ 2352. Persons entitled to institute proceedings for minors; notice to.

Proceedings for compensation may be instituted by the surviving parent, guardian or next friend in the case of minors claiming to be entitled to compensation, and all notices thereafter shall be given in the manner provided in this chapter to such parent, guardian or next friend.

(Code 1915, § 3193tt; 29 Del. Laws, c. 233; 32 Del. Laws, c. 186, § 4; Code 1935, § 6116; 19 Del. C. 1953, § 2352.)

§ 2353. Forfeiture or suspension of right to compensation.

(a) If the employee refuses reasonable surgical, medical and hospital services, medicines and supplies tendered to the employee by the claimant's employer, the claimant shall forfeit all right to compensation for any injury or any increase in the claimant's incapacity shown to have resulted from such refusal. Reasonable medical services shall include, if the Board so finds, vocational rehabilitation services offered by any public or private agency.

Where rehabilitation services require residence at or near the public or private agency away from the employee's customary residence, reasonable costs of board, lodging and travel shall be paid for by the employer. Refusal to accept rehabilitation services pursuant to order of the Board shall result in a loss of compensation for each week of the period of refusal.

(b) If any employee be injured as a result of the employee's own intoxication, because of the employee's deliberate and reckless indifference to danger, because of the employee's wilful intention to bring about the injury or death of the employee or of another, because of the employee's wilful failure or refusal to use a reasonable safety appliance provided for the employee or to perform a duty required by statute, the employee shall not be entitled to recover damages in an action at law or to compensation or medical, dental, optometric, chiropractic or hospital service under the compensatory provisions of this chapter. The burden of proof under this subsection shall be on the employer.

(c) If an injured employee refuses employment procured for the employee and suitable to the employee's capacity, the employee shall not be entitled to any compensation at any time during the continuance of such refusal, unless in the opinion of the Board such refusal was justifiable.

(d) If an employee is receiving benefits, or claims to be eligible for benefits, for total or partial disability under § 2324 or § 2325 of this title, those benefits may be suspended by agreement or order of the Board under the following conditions and for only so long as those conditions apply:

(1) While an employee is incarcerated by the State of Delaware, after an adjudication of guilt;

(2) While an employee is incarcerated by another state or other government subdivision of another state authorized to operate a penal facility, after an adjudication of guilt; or

(3) While an employee is incarcerated by the federal government, after an adjudication of guilt.

(e) If the parties do not agree that a suspension condition applies, the party attempting to cease or begin benefits may file a petition for the matter to be adjudicated. Certified proof of conviction and incarceration as specified above from the responsible government entity, filed with the Board upon opposition to suspension of benefits, shall create a rebuttable presumption that benefits may be suspended unless countered by the filing with the Board of certified proof of release, parole, commutation of sentence or pardon. Work release or similar conditional release will not counter the presumption. The employer may suspend benefits until the hearing once the rebuttable presumption has been raised until countered or the Board adjudicates the matter.

(f) The employee shall give notice to the employer or insurance carrier when a period of suspension agreed to or ordered by the Board ends. At that time the employee shall provide medical certification that the disability continues. If the parties cannot agree to a specific date on which the suspension shall be lifted and benefits are to commence or recommence, either party may file a petition to have the Board adjudicate the issue.

(g) This section shall not prohibit an employee from collecting any other benefits due for other periods or types of benefits. An employee may collect from the Board Fund during a period for which a petition is pending under this section to stop paying benefits unless the above described rebuttable presumption is raised.

(Code 1915, §§ 3193h, 3193jj, 3193nn; 29 Del. Laws, c. 233; 30 Del. Laws, c. 203, § 1; 32 Del. Laws, c. 186, § 1; Code 1935, §§ 6078, 6106, 6110; 19 Del. C. 1953, § 2353; 50 Del. Laws, c. 267, § 5; 58 Del. Laws, c. 529, § 2; 59 Del. Laws, c. 454, § 7; 70 Del. Laws, c. 172, § 4; 70 Del. Laws, c. 186, § 1; 76 Del. Laws, c. 1, § 19.)

§ 2354. Contribution by 2 or more employers.

(a) Whenever any employee, for whose injury or death compensation is payable under this chapter, at the time of the injury is in the joint service of 2 or more employers subject to this chapter, such employers shall contribute to the payment of such compensation in proportion to their wage liability to such employee, regardless of for whom such employee was actually working at the time of the injury.

(b) Whenever a petition to determine benefits is pending and 1 of 2 or more employers or 2 or more insurance carriers shall be liable for undisputed benefits arising under § 2322 or § 2324 of this title, the employer or insurance carrier which paid benefits for the first occurrence shall pay all interim benefits arising under § 2322 of this title and temporary total disability benefits at the lower rate, which may be applicable under § 2324 of this title, without a hearing. When the claim is resolved thereafter by agreement or by award after a hearing, the responsible party shall indemnify the payor for benefits paid.

(Code 1915, § 3193kk; 29 Del. Laws, c. 233; Code 1935, § 6107; 19 Del. C. 1953, § 2354; 70 Del. Laws, c. 542, §§ 1, 2.)

§ 2355. Assignment of compensation prohibited; exemption from creditors' claims; child support exception.

Except for attachments pursuant to child support orders entered under Chapter 4, 5 or 6 of Title 13, claims or payment for compensation due or to become due under this chapter shall not be assignable and all compensation and claims therefor shall be exempt from all claims of creditors.

(Code 1915, § 3193mm; 29 Del. Laws, c. 233; Code 1935, § 6109; 19 Del. C. 1953, § 2355; 70 Del. Laws, c. 288, § 7.)

§ 2356. Priority of compensation claims.

The right of compensation granted by this chapter shall have the same preference or priority for the whole amount thereof against the assets of the employer allowed by law for unpaid wages for labor.

(Code 1915, § 3193mm; 29 Del. Laws, c. 233; Code 1935, § 6109; 19 Del. C. 1953, § 2356.)

§ 2357. Collection of payments in default.

If default is made by the employer for 30 days after demand in the payment of any amount due under this chapter, the amount may be recovered in the same manner as claims for wages are collectible.

(Code 1915, § 3193mm; 29 Del. Laws, c. 233; Code 1935, § 6109; 19 Del. C. 1953, § 2357.)

§ 2358. Commutation of compensation.

(a) Upon application of either party, and on due notice to the other, the compensation contemplated by this chapter may be commuted by the Board at its present value when discounted at 5% interest, with annual rests, disregarding, except in commuting payments due under § 2324 of this title, the probability of the beneficiary's death. Such commutation may be allowed if it appears that it will be for the best interest of the employee or the dependents of the deceased employee, or that it will avoid undue expense or hardship to either party, or that such employee or dependent has removed or is about to remove from the United States or that the employer has sold or otherwise disposed of the whole or the greater part of the injured employee's or the dependents of a deceased employee's business or assets. It shall not be allowed for the purpose of enabling the injured employee or the dependents of a deceased employee to satisfy a debt created before the accident, other than a mortgage upon the injured employee's or the dependents of a deceased employee's or their home or household furniture.

(b) The Board shall not approve a proposed commutation under this section without considering information regarding the amount of attorneys' fees and costs, if any, employee will pay in connection with the proposed commutation. The Board shall not separately approve the attorneys' fees to be paid by the employee, but shall approve or deny the proposed commutation based upon the best interests of the employee in light of the employee's net recovery after fees and expenses are deducted.

(Code 1915, § 3193t; 29 Del. Laws, c. 233; Code 1935, § 6090; 19 Del. C. 1953, § 2358; 50 Del. Laws, c. 339, § 16; 70 Del. Laws, c. 172, § 4; 70 Del. Laws, c. 186, § 1; 76 Del. Laws, c. 1, § 20.)

§ 2359. Payment of award to bank in trust for employee or dependents.

(a) At any time after the entry of the award or after the filing of the agreement for compensation, a sum equal to all future installments of compensation may by leave of the Board where death or the nature of the injury renders the amount of future payments certain be paid by the employer to any savings bank or trust company approved by the Board which is chartered and doing business in this State and has an office in the county in which the award was entered. Such sum, together with all interest arising from the investment thereof, shall thereafter be held in trust for the employee, or the employee's dependents, who shall have no further recourse against the employer.

(b) Payment by the employer pursuant to subsection (a) of this section shall operate as a satisfaction of the award or agreement as to the employer.

(c) Payments from the fund established pursuant to subsection (a) of this section shall be made by the trustee on orders from the Board in the same amounts and at the same periods as are required of the employer by this chapter. If, after liability has ceased, any balance of the fund remains, it shall be returned to the employer who deposited it, on a signed order of the Board.

(Code 1915, § 3193u; 29 Del. Laws, c. 233; 30 Del. Laws, c. 203, § 7; Code 1935, § 6091; 19 Del. C. 1953, § 2359; 70 Del. Laws, c. 172, § 4; 70 Del. Laws, c. 186, § 1.)

§ 2360. Installment payments of compensation.

Except as otherwise provided in this chapter, all compensation, except benefits pursuant to § 2326 of this title, payable under the compensatory provisions of this chapter shall be payable in periodical installments, as the wages of the employee were payable before the accident. The Board may, however, having regard to the welfare of the employee and the convenience of the employer, authorize the monthly or quarterly payment of compensation, instead of weekly.

(Code 1915, § 3193hh; 29 Del. Laws, c. 233; Code 1935, § 6104; 19 Del. C. 1953, § 2360; 75 Del. Laws, c. 34, § 1.)

§ 2361. Limitation periods for claims.

(a) In case of personal injury, all claims for compensation shall be forever barred unless, within 2 years after the accident, the parties have agreed upon the compensation as provided in § 2344 of this title or unless, within 2 years after the accident, 1 or more of the interested parties have appealed to the Board as provided in § 2345 of this title. In cases of death, all claims for compensation shall be forever barred unless, within 2 years after the death, the parties have agreed upon the compensation as provided in § 2344 of this title or unless, within 2 years after the death, 1 or more of the interested parties have appealed to the Board as provided in § 2345 of this title.

(b) Where payments of compensation have been made in any case under an agreement approved by the Board or by an award of the Board, no statute of limitation shall take effect until the expiration of 5 years from the time of the making of the last payment for which a proper receipt has been filed with the Department.

(c) Notwithstanding the above, and in furtherance of and accordance with the provisions of § 2322F(j) of this title regarding utilization review, any utilization review decision issued pursuant to applicable rules and regulations promulgated pursuant to § 2322F(j) of this

title shall be final and conclusive as to any interested party unless within 45 days from the date of receipt of the utilization review decision any interested party files a petition with the Industrial Accident Board for de novo review.

(d) All claims for compensation for compensable occupational disease or for an ionizing radiation injury shall be forever barred unless a petition is filed in duplicate with the Department within 1 year after the date on which the employee first acquired such knowledge that the disability was or could have been caused or had resulted from employment. In case of death, all claims for compensation for compensable occupational disease or for an ionizing radiation injury shall be forever barred unless a petition is filed in duplicate with the Department within 1 year after the date on which the person or persons entitled to file such claims know, or by the exercise of reasonable diligence should know, the possible relationship of the death to the employment.

(Code 1915, §§ 3193v, 3193rr; 29 Del. Laws, c. 233; 30 Del. Laws, c. 203, § 9; 35 Del. Laws, c. 192, § 2; Code 1935, §§ 6114, 6092; 41 Del. Laws, c. 241, § 1; 19 Del. C. 1953, § 2361; 50 Del. Laws, c. 339, §§ 17-19; 59 Del. Laws, c. 454, § 8; 70 Del. Laws, c. 172, § 4; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 84, §§ 17, 18; 79 Del. Laws, c. 55, § 4.)

§ 2362. Notice of denial of liability; penalty for delay in payment of compensation.

(a) An employer or its insurance carrier shall within 15 days after receipt of knowledge of a work-related injury notify the Department and the claimant in writing of: the date the notice of the claimant's alleged industrial accident was received; whether the claim is accepted or denied; if denied, the reason for the denial; or if it cannot accept or deny the claim, the reasons therefor and approximately when a determination will be made.

(b) All medical expenses shall be paid within 30 days after bills and documentation for said expenses are received by the employer or its insurance carrier for payment, unless the carrier or self-insured employer notifies claimant or the claimant's attorney in writing that said expenses are contested or that further verification is required.

(c) In the event that the parties reach a written agreement as to compensation due to claimant, payment of compensation shall commence within 14 days of the date of that agreement. The parties must also file the original agreement, and if applicable, a receipt with the Department of Labor within 14 days of the date of the agreement.

(d) Following an award by the Board, the first payment of compensation shall be paid by the employer or its insurance carrier no later than 14 days after the award becomes final and binding pursuant to § 2349 of this title.

(e) If, following a hearing, the Board determines that the employer or its insurance carrier failed in its responsibilities under subsection (a), (b), (c) or (d) of this section, it shall assess a fine no less than $500 and no more than $2,500. The fine shall be payable to the Workers' Compensation Fund.

(Code 1915, § 3193j; 29 Del. Laws, c. 233; 30 Del. Laws, c. 203, § 3; Code 1935, § 6080; 47 Del. Laws, c. 160, § 4; 19 Del. C. 1953, § 2362; 50 Del. Laws, c. 339, § 20; 58 Del. Laws, c. 531, § 4; 70 Del. Laws, c. 95, § 2; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 84, § 9; 73 Del. Laws, c. 196, § 1.)

§ 2363. Third person liable for injury; right of employee to sue and seek compensation; right of employer and insurer to enforce liability; notice of action; settlement and release of claim and effect thereof; amount of recovery; reimbursement of employer or insurer; expenses of recovery; apportionment; compensation benefits.

(a) Where the injury for which compensation is payable under this chapter was caused under circumstances creating a legal liability in some person other than a natural person in the same employ or the employer to pay damages in respect thereof, the acceptance of compensation benefits or the taking of proceedings to enforce compensation payments shall not act as an election of remedies, but such injured employee or the employee's dependents or their personal representative may also proceed to enforce the liability of such third party for damages in accordance with this section. If the injured employee or the employee's dependents or personal representative does not commence such action within 260 days after the occurrence of the personal injury, then the employer or its compensation insurance carrier may, within the period of time for the commencement of actions prescribed by statute, enforce the liability of such other person in the name of that person. Not less than 30 days before the commencement of suit by any party under this section, such party shall notify, by certified mail at their last known address, the Industrial Accident Board, the injured employee or, in the event of the employee's death, the employee's known dependents or personal representative or the employee's known next of kin, the employee's employer and the workers' compensation insurance carrier. Any party in interest shall have a right to join in said suit.

(b) Prior to the entry of judgment, either the employer or the employer's insurance carrier or the employee or the employee's personal representative may settle their claims as their interest shall appear and may execute releases therefor.

(c) Such settlement and release by the employee shall not be a bar to action by the employer or its compensation insurance carrier to proceed against said third party for any interest or claim it might have, and such settlement and release by the employer or its compensation insurance carrier shall not be a bar to action by the employee to proceed against said third party for any interest or claim the employee may have.

(d) In the event the injured employee or the employee's dependents or personal representative shall settle their claim for injury or death, or commence proceedings thereon against the third party before the payment of workers' compensation, such recovery or commencement of proceedings shall not act as an election of remedies and any moneys so recovered shall be applied as provided in this section.

(e) In an action to enforce the liability of a third party, the plaintiff may recover any amount which the employee or the employee's dependents or personal representative would be entitled to recover in an action in tort. Any recovery against the third party for damages resulting from personal injuries or death only, after deducting expenses of recovery, shall first reimburse the employer or its workers' compensation insurance carrier for any amounts paid or payable under the Workers' Compensation Act to date of recovery, and the balance shall forthwith be paid to the employee or the employee's dependents or personal representative and shall be treated as an advance payment by the employer on account of any future payment of compensation benefits, except that for items of expense which are precluded from being introduced into evidence at trial by § 2118 of Title 21, reimbursement shall be had only from the third-party liability insurer and shall be limited to the maximum amounts of the third party's liability insurance coverage available for the injured party, after the injured party's claim has been settled or otherwise resolved.

(f) Expenses of recovery shall be the reasonable expenditures, including attorney fees, incurred in effecting such recovery. Attorney fees, unless otherwise agreed upon, shall be divided among the attorneys for the plaintiff as directed by the court. The expenses of recovery above mentioned shall be apportioned by the court between the parties as their interests appear at the time of said recovery.

(Code 1915, § 3193ll; 29 Del. Laws, c. 233; Code 1935, § 6108; 19 Del. C. 1953, § 2363; 50 Del. Laws, c. 339, § 21; 50 Del. Laws, c. 465, § 3; 69 Del. Laws, c. 116, § 1; 70 Del. Laws, c. 172, §§ 3, 4; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 422, § 2.)

§ 2364. [Reserved.]

§ 2365. Employee entitled to exercise rights; relief to be granted.

It shall be unlawful for any employer or the duly authorized agent of any employer to discharge or to retaliate or discriminate in any manner against an employee as to the employee's employment because such employee has claimed or attempted to claim workers' compensation benefits from such employer, because such employee reported an employer's noncompliance with a provision of this chapter, or because such employee has testified or is about to testify in any proceeding under this chapter. Any claim of an employee alleging such action by an employer shall be filed with the Superior Court within 2 years of the employer's alleged action. If the Court, after hearing, finds in favor of the employee, the employee shall be restored to employment or to the position, privilege, right or other condition of employment denied by such action and shall be compensated for any loss of compensation and damages caused thereby, as well as for all costs and attorney's fees, as fixed by the Court, except that if the employee shall cease to be qualified to perform the duties of employment, the employee shall not be entitled to such restoration and compensation. An employer who violates this section shall be liable to pay a penalty of not less than $500 and not more than $3,000, as may be determined by the Court and which shall be paid to the Workers' Compensation Fund. Any party shall have the right to appeal as in other cases before the Court, but if the employee's claim ultimately is sustained, the employer also shall be liable for all costs and attorney's fees on appeal.

(69 Del. Laws, c. 370, § 1; 71 Del. Laws, c. 84, § 9.)

Subchapter IV

Compulsory Insurance, Self-Insurance and Substitute Compensation Systems

§ 2371. Insurance of employer's compensation liability.

(a) Every employer to whom this chapter applies shall insure the payment of compensation to the employees, or their dependents, in the manner provided in § 2372 of this title. While such insurance remains in force, the employer shall be liable to any employee, or the employee's dependents, for personal injury or death by accident only to the extent and in the manner specified in this chapter.

(b) Every employer having a primary place of business in another state shall carry Delaware workers' compensation coverage in full for any employees doing substantial work in the State as if they were an employer in Delaware. Every such employer whose employee is injured during the course of employment within the territory of the State shall notify such employee of that employee's rights under this chapter.

(c) Substantial work shall include, but not be limited to:

(1) A construction or contracting business for which a Delaware employer would be required to be licensed under Chapter 25 of Title 30;

(2) A business of any sort in which 1 or more employees is primarily engaged in the business of the employer in the territory of the State of Delaware for more than 5 consecutive work days at a single time; or

(3) Working for a business of any sort in which 1 or more employees is primarily engaged in the business of the employer for more than an aggregate of 3 weeks in any 6-month period. For purposes of this section a week shall consist of 5 consecutive work days.

(d) The insurance required of the above-described employers shall consist of:

(1) An actual Delaware workers' compensation policy covering the activities of the employer for any employee engaged in the employer's business in the territory of the State; or

(2) A written rider on an out-of-state policy of insurance covering the work activities of the employees as fully and completely as an actual Delaware workers' compensation policy would; or

(3) A declaration of self-insurance that would be valid and acceptable if made by a Delaware employer in the territory of the State providing such coverage, filings and surety as is required of Delaware employers to be self-insured for claims for Delaware workers' compensation.

(e) All such employers described in this section shall comply with §§ 2372, 2373 and 2374 of this title.

(f) Every Delaware construction or contracting business employing an out-of-state business for which a Delaware employer would be required to be licensed under Chapter 25 of Title 30 shall verify in any business transaction that the out-of-state construction or contracting business is in compliance with this requirement.

(Code 1915, § 3193y; 29 Del. Laws, c. 233; Code 1935, § 6095; 19 Del. C. 1953, § 2371; 70 Del. Laws, c. 172, § 4; 70 Del. Laws, c. 186, § 1; 76 Del. Laws, c. 1, § 21.)

§ 2372. Duty of employer to carry compensation liability insurance or to qualify as a self-insurer; deposit of security; premiums for certain summer employees.

(a) Every employer to whom this chapter applies shall insure and keep insured the employer's liability for compensation in some corporation, association or organization approved by the Department and authorized to transact the business of workers' compensation insurance in this State or shall furnish to the Department satisfactory proof of the employer's financial ability to pay directly the compensation, in the amount and manner and when due, as provided in this chapter.

(b) In any case, the Department or Board may require the deposit of an acceptable security, indemnity or bond to secure the payment of compensation liabilities as they are incurred. All bonds of insurance carriers or self-insurers deposited to secure their obligations under this chapter shall be deposited with the State Insurance Commissioner.

(c) Every insurer licensed to issue workers' compensation and employers' liability insurance by the Insurance Department pursuant to Title 18, shall offer to write each such policy subject to a deductible applying only to medical reimbursement and death benefits. The insured employer shall be permitted to accept or reject such a deductible at the time the policy is issued or renewed. Any applicable deductible shall be subject to the following provisions:

(1) The deductible shall apply separately to each occurrence during the policy term regardless of the number of employees injured in the occurrence;

(2) The deductible shall be subject to a minimum of $500 and a maximum of $5,000, with intermediate deductible increments of $500;

(3) The premium charged for a deductible form of policy shall be subject to an actuarially sound credit related to the amount of the deductible;

(4) In the event of a claim under a deductible form of policy, the insurer shall administer the claim as though no deductible applied and shall then be entitled to reimbursement from the employer for the amount of said deductible.

(d) Every insurer licensed to issue workers' compensation and employers' liability insurance by the Insurance Department pursuant to Title 18 shall write a policy and base its rates upon the limited term of employment, rather than on an annual basis, for summer employees employed by various civic and nonprofit associations whose wages are funded through grants awarded by the Department of Community Affairs.

(Code 1915, § 3193z; 29 Del. Laws, c. 233; 30 Del. Laws, c. 203, § 8; 37 Del. Laws, c. 239, § 3; Code 1935, § 6096; 47 Del. Laws, c. 174; 48 Del. Laws, c. 24; 19 Del. C. 1953, § 2372; 63 Del. Laws, c. 250, § 4; 64 Del. Laws, c. 171, § 1; 70 Del. Laws, c. 172, §§ 3, 4; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 84, § 3; 74 Del. Laws, c. 390, § 1.)

§ 2373. Payment of compensation by self-insurer.

Whenever an employer who is a self-insurer under this chapter enters into an agreement to pay compensation to an injured employee or the employee's dependents in case of the employee's death or whenever an award is made by the Board in favor of such injured employee or the employee's dependents in case of the employee's death, the employer shall pay the full liability under the agreement or award to a savings bank or trust company in accordance with § 2359 of this title. Such fund, together with all interest arising from the investment thereof, shall be held and paid out in accordance with § 2359 of this title. Failure on the part of a self-insured employer to make such payment within 30 days after the making of an agreement or award shall forthwith terminate the right of such employer to carry the employer's own insurance.

(Code 1915, § 3193z; 29 Del. Laws, c. 233; 30 Del. Laws, c. 203, § 8; 37 Del. Laws, c. 239, § 3; Code 1935, § 6096; 19 Del. C. 1953, § 2373; 70 Del. Laws, c. 172, § 4; 70 Del. Laws, c. 186, § 1.)

§ 2374. Proof of compliance with insurance requirements; liability on failure of compliance; defenses unavailable; injunction.

(a) Every employer to whom this chapter applies shall file with the Department in form prescribed by it, annually or as often as may be required by the Department, evidence of the employer's compliance with §§ 2372 and 2373 of this title and all other sections relating thereto.

(b) Every insurance carrier shall notify the Department of Labor, on forms specified by the Department, within l4 days that an employer's policy for workers' compensation coverage has been canceled, lapsed, or is otherwise terminated, other than for replacement of coverage through a different insurance carrier, with a copy to the employer.

(c) Every employer, upon such notice, or, at the latest, when contacted by the Department of Labor concerning such notice, shall provide proof of insurance within 14 days or establish by proof satisfactory to the Secretary of the Department of Labor that the employer has:

(1) Been granted self-insured status in accordance with all the laws of the State;

(2) Terminated operation;

(3) Terminated or retired any employees and the operators of the business have elected to waive coverage under § 2308 of this title;

(4) Sold the business, been voluntarily or involuntarily liquidated, and/or enjoined by the courts from doing business; or

(5) Otherwise ceased to exist as an entity that requires workers' compensation coverage in Delaware.

(d) Whoever, being an employer, refuses or neglects to comply with the sections referred to in subsection (a) of this section shall be subject to a civil penalty:

(1) For employers previously insured until the default, an amount equal to the premium for the insurance not purchased times 3, based on the last premium rate charged by the carrier providing the coverage before the default for a 1-year period; or

(2) For employers without previous history of coverage, an amount equal to the most expensive policy premium actually charged by any insurance carrier doing business in the State at the time of the assessment for appropriate coverage of the uninsured employer's business times 3 for a 1-year period.

(e) Whoever, being an employer, refuses or neglects to comply with the sections referred to in subsection (a) of this section on a continuing basis after notice by the Department of Labor shall be subject to a civil penalty:

(1) As described in subsection (d) of this section on the fifteenth day after notice to comply with subsection (c) of this section; and

(2) An assessment of $10 per day for each employee in the employer's service at the time when the insurance became due, but not less than $250 for each day of such refusal or neglect and until the same ceases.

(3) The employer shall also be liable to the employer's injured employees during continuance of such neglect or refusal, either for compensation under this chapter or in an action at law for damages. In such action, upon proof that the employer has not complied with this section, it shall not be a defense that the:

a. Employee was negligent; or

b. Employee had assumed the risk of the injury; or

c. Injury was caused by the negligence of a fellow employee.

(f) If any employer is in default under §§ 2372 and 2373 of this title for a period of 30 days, in addition to the above, the employer may be enjoined by the Court of Chancery of this State from carrying on business while such default continues. The Department of Labor shall file such petitions in such cases seeking an order of the court.

(g) When an employer is uninsured for any period and obtains insurance subsequently to comply with notice to provide proof of insurance, for each day that the employer is uninsured, regardless of whether or not a claim arises during that period, the employer shall be assessed the penalty in subsection (d) of this section unless the employer can demonstrate to the satisfaction of the Secretary of Labor that the uninsured status was the fault of some other business entity, in which case the assessment shall be levied upon the business entity at fault for the uninsured status. Before an alternative business entity may be charged with the assessment, it shall be given notice and if the liability is contested, a hearing before the Secretary of Labor.

(h) Any assessment or fine collected under this section will be deposited in the Workers' Compensation Fund and disbursed to pay the claims of any employee affected by the employer's failure to comply with the requirements of insurance imposed by this chapter.

(Code 1915, § 3193aa; 29 Del. Laws, c. 233; Code 1935, § 6097; 19 Del. C. 1953, § 2374; 70 Del. Laws, c. 95, § 3; 70 Del. Laws, c. 172, §§ 4, 9; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 84, § 3; 76 Del. Laws, c. 1, § 22.)

§ 2375. Certificate of self-insurance; revocation.

Whenever an employer has complied with § 2372 of this title relating to self-insurance, the Department shall issue to such employer a certificate which shall remain in force for a period fixed by the Department. The Department may however, upon at least 60 days' notice and a hearing to the employer, revoke the certificate upon presentation of satisfactory evidence for such revocation. After the expiration of 1 year from such revocation, the Department may grant a new certificate to the employer upon the employer's petition.

(Code 1915, § 3193bb; 29 Del. Laws, c. 233; Code 1935, § 6098; 19 Del. C. 1953, § 2375; 70 Del. Laws, c. 172, § 4; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 84, § 3.)

§ 2376. Evidence of compliance with self-insurance requirements.

For the purpose of complying with § 2372 of this title, groups of employers may form mutual insurance associations under the laws of this State, subject to such reasonable conditions and restrictions as may be fixed by the Department. Membership in such mutual insurance associations, so approved, together with evidence of the payment of premium dues, shall be evidence of compliance with § 2372 of this title.

(Code 1915, § 3193cc; 29 Del. Laws, c. 233; Code 1935, § 6099; 19 Del. C. 1953, § 2376; 71 Del. Laws, c. 84, § 3.)

§ 2377. Substitute compensation systems; approval and termination.

(a) Subject to the approval of the Department, any employer may enter into or continue any agreement with employees to provide a system of compensation, benefit or insurance in lieu of the compensation and insurance provided by this chapter.

(b) No such substitute system shall be approved unless it confers benefits upon injured employees at least equivalent to the benefits provided by this chapter, nor, if it requires contribution from the employees, unless it confers benefits in addition to those provided under this chapter at least commensurate with such contributions.

(c) Such substitute system may be terminated by the Department on reasonable notice and hearing to the interested parties, if it is shown that the system is not fairly administered or if its operation discloses latent defects threatening its solvency or if for any substantial reason it fails to accomplish the purposes of this chapter. Upon such termination the Department shall determine upon the proper distribution of all remaining assets, if any, subject to the right of any party in interest to take an appeal to the Superior Court.

(Code 1915, § 3193d; 29 Del. Laws, c. 233; Code 1935, § 6100; 19 Del. C. 1953, § 2377; 70 Del. Laws, c. 172, § 4; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 84, § 3.)

§ 2378. Standard provisions of compensation insurance policies.

(a) All policies insuring the payment of compensation under this chapter shall contain a clause to the effect that as between the employee and the insured the notice to or knowledge of the occurrence of the injury or death on the part of the insured shall be deemed notice or knowledge, as the case may be, on the part of the insurer, that jurisdiction of the insured for the purposes of this chapter shall be jurisdiction of the insurer and that the insurer shall in all things be bound by and subject to the awards, judgments or decisions rendered against such insured.

(b) No policy of insurance against liability arising under this chapter shall be issued unless it contains the agreement of the insurer that it will promptly pay to the person entitled to them all benefits conferred by this chapter and all installments of the compensation that may be awarded or agreed upon and that the obligation shall not be affected by any default of the insured after the injury or by any default in the giving of any notice required by such policy or otherwise. Such agreement shall be construed to be a direct promise by the insurer to the person entitled to compensation enforceable in the person's name.

(c) All policies insuring the payment of compensation under this chapter shall contain a clause to the effect that when an insurer intends not to renew a policy, notice of such nonrenewal shall be given to the named insured, in writing, not less than 60 days prior to the end of the policy period. For the purposes of this subsection, "renew" means the issuance and delivery by an insurer of a policy superseding at the end of the policy period a policy previously issued and delivered by the same insurer, or the issuance and delivery of a certificate or notice extending the term of a policy beyond its policy period or term. Mailing of notice of intention not to renew to the named insured at the insured's address last of record with the insurer shall be by certified mail.

(Code 1915, §§ 3193ff, 3193ee; 29 Del. Laws, c. 233; Code 1935, §§ 6101, 6102; 19 Del. C. 1953, § 2378; 66 Del. Laws, c. 308, § 1; 70 Del. Laws, c. 172, § 4; 70 Del. Laws, c. 186, § 1.)

§ 2379. Workplace safety program.

(a) *Purpose.* — (1) The safety of Delaware workers is of paramount importance to the General Assembly. This program has been developed by the Delaware Department of Insurance to ensure that safety is a priority for everyone in the workplace and to ensure that those who comply with this section are rewarded with a reduction in insurance premiums. To that end, the Industrial Accident Board will review this program annually to determine its effectiveness and to make recommendations which will improve safety in the workplace.

(2) The program is intended to enhance the health and safety of workers in the State of Delaware.

(3) The program is intended to provide lower insurance premiums for qualifying employers who currently pay $3,161 or more (or such other amount set by the Insurance Commissioner by regulation) of annual Delaware workers' compensation premiums and other employers under subsection (i) of this section.

(4) The program establishes both testing and inspection procedures to determine an employer's qualification for a premium credit.

(b) *Administration and scope.* — (1) This section shall be administered by the Insurance Commissioner, who shall adopt such regulations, in accordance with existing law, to implement and administer this section.

(2) All employers who comply with the criteria set forth in this section shall be eligible for participation in the workplace safety program.

(3) Only Delaware work sites will be eligible for this program and safety credit applies to only Delaware premiums in multistate policies.

(c) *Eligibility and premium credit.* — An employer is eligible for the safety program if its annual premium is $3,161 or more. This amount may be adjusted by the Insurance Commissioner by regulation. Workplace safety credit eligibility is based on the most current unit statistical card filing. The Delaware Compensation Rating Bureau, or another qualified entity designated by the Department of Insurance, shall test each employer by taking the most current unit statistical card payroll times current rates times current experience modification to determine the employer's premium size.

(d) *Notice of employer eligibility.* — Employers meeting the premium requirement will be notified by the Delaware Department of Insurance 7 months in advance of their policy renewal date. This notification shall include instructions for qualifying for a safe workplace credit.

(e) *Eligibility period.* — The Department of Insurance shall notify the employer of eligibility, and inform the employer that the employer must elect at least 5 months in advance of the date of policy renewal to participate in the safety program. Failure to notify the Department

of Insurance within this time period of an intent to renew participation may preclude the employer's participation in the program for the next year. Election to participate shall commence by contacting the Delaware Department of Insurance.

(f) *Inspections and cost.* — (1) All inspections shall be made by a representative from an independent safety expert company under contract to the Department of Insurance. The Department of Insurance shall notify the inspector of the employer's request. The inspector, in turn, will then contact the employer to set up the first of 2 inspections. A second unannounced inspection shall be made no later than the expiration date of the policy to which any workplace safety credit based on the inspection will apply to confirm the initial certifications of safety in the workplace. The Department of Insurance shall notify the Delaware Compensation Rating Bureau (or such other organization designated by the Insurance Commissioner) when an employer successfully completes each scheduled and/or nonscheduled inspection. Failure to pass a scheduled inspection shall result in a denial of an employer's eligibility to participate in the workplace safety program. However, an employer, after failing an inspection can request another inspection, after successful completion of which will make the employer eligible for participation in the workplace safety program.

(2) Any application for the workplace safety credit shall include a statement by the applicant as to any workplace injuries that have occurred in the 3 years prior to the application and the outcome of those injuries, including the specific nature of the injuries, any findings or fines relating to workplace safety resulting from the injuries, and any safety measures taken by the employer as a result of the injuries. This information shall be explicitly considered in determining whether an employer should receive the workplace safety credit.

(3) Notwithstanding paragraph (f)(1) of this section, the Department of Insurance shall permit insurance carriers issuing workers compensation insurance in Delaware to submit their own workplace safety inspection procedures for review by the Department. If the Department certifies that an insurer's workplace safety inspection procedures are at least as rigorous as those employed by the Department and its independent safety expert, the Department shall permit that insurer's inspection to satisfy the inspection requirements of paragraph (f)(1) of this section. The Department may require insurers to have their safety inspection procedures recertified on a bi-annual basis to maintain status as an acceptable substitute for the inspection described in paragraph (f)(1) of this section.

(4) Beginning on September 1, 2013, each workplace safety inspection conducted pursuant to paragraph (f)(1) or (3) shall include a determination as to whether the employer has complied with its obligations under § 2322E(d) of this title to provide a list of possible modified-duty jobs assignments for injured workers. Failure to comply with the requirements of § 2322E(d) of this title shall disqualify an employer from receiving the workplace safety credit. The period of review shall extend back to July 1, 2013, and beginning on July 1, 2016, shall be limited to a period of 3 years prior to the date of application for the workplace safety credit.

(5) The cost of each inspection will be borne by the employer. The minimum charge for safety inspection is $150 per location. This amount can be adjusted by the Insurance Commissioner by regulation. Each work location must successfully pass both inspections before an employer is entitled to a premium credit under the program. Inspection fees for large and/or complex employers may be established by the Department of Insurance.

(g) *Renewals and eligibility.* — An employer must apply for the workplace safety program each year. For each year after the initial qualification, the inspection requirement shall consist of 1 unannounced inspection. The Department of Insurance shall maintain a list of inspection charges which shall be sent to interested parties upon request.

(h) *Premium size ranges and corresponding credits.* — Safety credits will be granted according to the following formula:

20% x 1.0000–C

where "C" is the credibility of the qualified employer in the uniform Experience Rating Plan for the policy period expiring immediately prior to the application of the safety credit. If the qualified employer was not experience-rated in the policy period expiring immediately prior to the application of the safety credit, "C" will be set at 0.050. Safety credit packages will be rounded to the nearest whole percent.

(i) *Effect upon mutual rates and schedule rating credits.* — (1) Workers' compensation mutual rates shall be adjusted because of implementation of this program. A Delaware Workplace Safety Program Factor shall be included in loss costs and residual market rates. This factor may offset credits given to qualified employers, so that the workplace safety program will neither increase nor decrease premiums for eligible employers in the aggregate.

(2) Schedule rating plan credits given to policyholders for "competitive" reasons cannot be withdrawn. Schedule credits given for safety reasons may be reduced to offset the workplace safety program premium credit.

(3) A merit rating plan shall be implemented by the Department of Insurance which will provide incentives for employers paying less than $3,161 of annual Delaware workers' compensation premiums to maintain safe workplaces.

(76 Del. Laws, c. 1, § 23; 79 Del. Laws, c. 55, § 5; 81 Del. Laws, c. 79, § 33.)

§§ 2380-2385. [Reserved].

§ 2386. Violations by insurers or self-insurers; penalties.

(a) If any insurance corporation, mutual association or company, interinsurance exchange or self-insurer:

(1) Violates this chapter; or

(2) Neglects or refuses to comply with this chapter; or

(3) Wilfully makes any false or fraudulent statement of its business or condition or a false or fraudulent return,

it shall be fined not less than $100 nor more than $1,000 for each such offense. The fine shall be assessed by the Industrial Accident Board after the insurance corporation, mutual association or company, interinsurance exchange or self-insurer is given notice and a hearing on the violation. The fine shall be payable to the State Treasurer.

(b) Whoever in this State:

(1) Acts or assumes to act as an agent in any capacity whatsoever for any insurance corporation, mutual association or company or interinsurance exchange, which is not authorized to do business in this State, or, if such authority to do business in this State has been suspended, so acts or assumes to act while such suspension is in force; or

(2) Neglects or refuses to comply with any obligatory provisions of this section; or

(3) Wilfully makes any false or fraudulent statement of the business or condition of any such insurance carrier or false or fraudulent return,

shall be fined not less than $100 nor more than $1,000 or imprisoned for not more than 90 days, or both.

(Code 1915, § 3193fff; 30 Del. Laws, c. 204; Code 1935, § 6128; 19 Del. C. 1953, § 2386; 58 Del. Laws, c. 531, § 5.)

Subchapter V

Taxes and Charges Upon Insurance Carriers and Self-Insurers; Workers' Compensation Fund

§ 2391. Taxes on premiums of insurance carriers and payrolls of self-insurers.

(a) For the privilege of carrying on the business of workers' compensation insurance in this State, every insurance carrier shall pay the taxes imposed under the Insurance Code, and every employer carrying the employer's own risk and thereby insuring the employer's own self under this chapter shall pay the taxes imposed by this section.

(b) Every employer carrying the employer's own risk, and thereby insuring the employer's self under this chapter, shall annually on or before January 30 report under oath to the Department the total amount of the employer's payroll for the preceding calendar year, classified in accordance with classifications approved by the Department for the purpose of fixing compensation rates. The Department may verify such classifications and such statement of payroll by inspection and audit at the expense of the employer, and such verification shall be made by the rating bureau or association provided for in § 2607 of Title 18. The charges to self-insurers shall be the same charges which other insurance carriers are required to pay under this chapter. The Department shall assess against such payroll a tax computed by taking 4% of the amount of premium payable upon the payroll so ascertained in accordance with the classifications and premium rates approved by the Department for insurance against liability under this chapter. No employer shall become or continue a self-insurer under this chapter, except upon the payment of the tax for the previous calendar year. The moneys so assessed against and paid by insurers who carry their own risks shall be paid to the Secretary of Finance.

(Code 1915, § 3193eee; 30 Del. Laws, c. 204; Code 1935, § 6127; 42 Del. Laws, c. 55, § 3; 19 Del. C. 1953, § 2391; 57 Del. Laws, c. 741, § 29A; 61 Del. Laws, c. 152, § 1; 66 Del. Laws, c. 382, §§ 8, 9; 67 Del. Laws, c. 260, § 1; 68 Del. Laws, c. 9, §§ 66, 67; 70 Del. Laws, c. 172, §§ 3, 4; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 84, § 3; 73 Del. Laws, c. 266, §§ 2-4.)

§ 2392. Assessments for administrative expenses on insurance carriers.

(a) For the purpose of securing to the State the moneys necessary for paying the salaries and necessary expenses of the State in administering and carrying out Part II of this title relating to worker's compensation, insurance carriers shall pay the assessments imposed by this section.

(b) Semi-annually, on or before September 30 and March 31, every insurance carrier, insuring employees who are or may be liable under this chapter to pay for compensation for personal injuries to or death of their employees, shall report, under oath, or, in the case of a corporation, verified by the affidavit of its president and secretary or other chief officers or agents, to the Secretary of Finance, the amount of all compensation payments and awards actually paid by said carrier during the preceding calendar year, excluding payments made under § 2395 of this title and reimbursements received under § 2396 of this title.

(c) The Division of Industrial Affairs semi-annually as soon as practicable after January 1, 1996 and July 1 shall ascertain and report to the Secretary of Finance the total amount of the following expenses:

(1) 100% of the expenses of the Industrial Accident Board;

(2) 66.6% of all expenses of the inspection function of the Division of Industrial Affairs;

(3) 66.6% of all expenses of the safety function of the Division of Industrial Affairs; and

(4) a. A portion of the Division of Industrial Affairs' administration costs which shall be computed by first adding paragraphs (c)(1), (2) and (3) of this section set forth immediately above; this sum shall then be divided by the amount of all expenses of the Division of Industrial Affairs; the quotient yielded shall be set forth as a percentage rate which shall then be multiplied by the total expenses of the administrative function of the Division of Industrial Affairs, and the product shall be the portion of the Division's administration costs.

b. In determining these expenses, the Division of Industrial Affairs shall include in addition to the direct cost of personal service, the cost of maintenance and operation, the cost of retirement contributions made and workers' compensation premiums paid by the State for and on account of personnel, rentals for space occupied in state-owned or state-leased buildings and all other direct and indirect costs incurred during the preceding calendar year. An itemized statement of the expenses so ascertained shall be open to

public inspection in the office of the Department from January 16 to January 31 and from July 16 to July 31 at which time any insurance carrier may challenge said amount of expenses. An appeal of said expenses must be made in writing and received by the Secretary of Labor within 5 days of the closing date of the inspection period. The Secretary or the Secretary's designee shall render a decision of the appeal in writing.

(d) The Department shall then determine for each insurer the proportion/percentage of the expense determined in subsection (c) of this section that the total compensation or payments made by each insurer bore to the total of such expenses. Using these proportions/percentages, the Department shall then assess each insurer its proportion/percentage of such expenses. The amounts so secured shall be paid to the Department of Labor, Division of Industrial Affairs for the expenses of administering this chapter. Such sums shall not be part of the General Fund of the State.

(Code 1915, § 3193eee; 30 Del. Laws, c. 204; Code 1935, § 6127; 42 Del. Laws, c. 55, § 3; 19 Del. C. 1953, § 2392; 57 Del. Laws, c. 741, §§ 29B-29D; 61 Del. Laws, c. 152, § 2; 65 Del. Laws, c. 260, § 1; 67 Del. Laws, c. 260, § 1; 70 Del. Laws, c. 118, § 244; 70 Del. Laws, c. 172, § 3; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 84, §§ 3, 20; 72 Del. Laws, c. 80, § 1.)

§ 2393. Notice to insurance carrier.

Whenever any officer of the State is required to give any notice to an insurance carrier subject to Part II of this title, it may be given by personal delivery or by mailed certified letter properly addressed and stamped to the principal office or chief agent of such insurance carrier within this State or to its home office or to the secretary, general agent or chief officer thereof in the United States or to the Insurance Commissioner of the State.

(Code 1915, § 3193eee; 30 Del. Laws, c. 204; Code 1935, § 6127; 19 Del. C. 1953, § 2393; 71 Del. Laws, c. 422, § 2.)

§ 2394. Exemption from other taxes upon premiums.

Any insurance carrier liable to pay a tax upon premiums under this subchapter shall not be liable to pay any other or further tax upon such premiums or on account thereof under any other law of this State.

(Code 1915, § 3193eee; 30 Del. Laws, c. 204; Code 1935, § 6127; 19 Del. C. 1953, § 2394.)

§ 2395. Workers' Compensation Fund; payments by insurance carriers.

(a) Every insurance carrier insuring employers who are or may be liable under this chapter to pay for compensation for personal injuries to or death of their employees under this chapter shall pay to the Department annually, on or before March 1 and October 1 of each year, a sum not to exceed 1 percent at each date on all workers' compensation or employer liability premiums received by the carrier during the calendar year next preceding the due date of such payment.

(b) Such sums shall be paid by the Department to the State Treasurer, to be deposited in a special account known as "Workers' Compensation Fund." Such sums shall not be a part of the General Fund of the State. Any balance remaining in such special account at the end of any fiscal year shall not revert to the General Fund.

(c) The amounts paid under this section shall constitute an element of loss for the purpose of establishing workers' compensation premium rates.

(d) Should the Department subsequently determine that the amounts assessed are insufficient to meet the Fund's obligations during a calendar year, it may assess insurance carriers to cover any anticipated deficiency, based upon the allocations for that calendar year as determined pursuant to subsection (a) of this section.

(e) Should the Department subsequently determine that the amounts assessed are sufficient to meet the Fund's obligations during a calendar year, it shall not assess insurance carriers until a deficiency is projected based upon the anticipated expenditures for the next calendar year as determined pursuant to subsection (a) of this section.

(Code 1915, § 3193j; 29 Del. Laws, c. 233; 30 Del. Laws, c. 203, § 3; Code 1935, § 6080; 45 Del. Laws, c. 299, § 1; 46 Del. Laws, c. 26; 19 Del. C. 1953, § 2395; 58 Del. Laws, c. 96, §§ 2, 3; 58 Del. Laws, c. 531, § 6; 59 Del. Laws, c. 554, §§ 1, 2; 70 Del. Laws, c. 172, §§ 3, 4; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 84, §§ 3, 9, 21, 22.)

§ 2396. Workers' Compensation Fund; reimbursement of carriers.

(a) The Workers' Compensation Fund is created for the purpose of making payments under § 2327, § 2334, or § 2347 of this title by any insurance carrier.

(b) The Department shall perform the administrative, ministerial, fiscal and clerical functions of the Workers' Compensation Fund. The Fund shall be a party to and shall be represented by a Deputy Attorney General in any proceeding involving possible reimbursement to or from the Fund, and if the decision is against the Fund, the Fund may secure judicial review thereof by commencing an action in Superior Court in the county in which the hearing was held. Any expenses incurred in defense of the Fund are payable from said Fund.

(c) With respect to payments made subject to reimbursement under subsection (a) of this section, insurance carriers, on or before December 15 and July 1 of each year, shall file with the Department a report setting forth the money expended for said payments during the previous 6 months. Reimbursement to such insurance carrier shall be made on January 15 and August 1 each year.

(Code 1915, § 3193j; 29 Del. Laws, c. 233; 30 Del. Laws, c. 203, § 3; Code 1935, § 6080; 45 Del. Laws, c. 299, § 1; 46 Del. Laws, c. 26; 19 Del. C. 1953, § 2396; 58 Del. Laws, c. 96, § 5; 58 Del. Laws, c. 531, § 6; 71 Del. Laws, c. 84, § 23; 72 Del. Laws, c. 79, § 1.)

§ 2397. [Reserved.]

Part II
Workers' Compensation

Chapter 26
Workmen's Compensation Rating [Transferred].

Part III
Unemployment Compensation

Chapter 31
Unemployment Insurance Appeal Board

Subchapter I
General Provisions

§ 3101. Composition; appointment; term; qualifications; vacancy.

(a) The Employment Security Commission of Delaware, renamed the Unemployment Insurance Appeal Board (hereinafter referred to as the "Board"), is continued. It shall consist of 5 members to be appointed by the Governor, each for a term of 6 years. Two members shall reside in New Castle County, 1 of whom shall reside in the City of Wilmington, 1 member shall reside in Kent County, 1 member shall reside in Sussex County and 1 member to serve in an at large position. Appointed members shall include, but not be limited to representatives from labor, the business community and the public.

(b) During the member's term of membership on the Board, no member shall serve as an officer or committee member of any political party organization and not more than 3 members of the Board shall be members of the same political party.

(c) Any vacancy in the Board occurring during a term shall be filled by appointment by the Governor for the unexpired portion of the term.

(d) Members of the Unemployment Insurance Appeal Board as of June 30, 2012, shall serve out the remaining terms of their appointments as they existed prior to June 30, 2012, and in accordance with the provisions of the statute in existence at the time of their last appointment.

(e) [Repealed.]

(41 Del. Laws, c. 258, § 10; 44 Del. Laws, c. 208, § 1; 19 Del. C. 1953, § 3101; 53 Del. Laws, c. 170; 53 Del. Laws, c. 232, § 1; 57 Del. Laws, c. 669, §§ 4A, 4B; 75 Del. Laws, c. 127, §§ 1, 2; 78 Del. Laws, c. 341, § 1; 82 Del. Laws, c. 284, § 1; 82 Del. Laws, c. 284, § 3.)

§ 3102. Removal of members.

The Governor may at any time, after notice and hearing, remove any Board member for gross inefficiency, neglect of duty, malfeasance, misfeasance or nonfeasance in office. For purposes of this section, any member who is absent without adequate reason for 3 consecutive meetings or fails to attend at least half of all regular business meetings during any calendar year shall be deemed to be in neglect of duty.

(41 Del. Laws, c. 258, § 10; 44 Del. Laws, c. 208, § 1; 19 Del. C. 1953, § 3102; 57 Del. Laws, c. 669, § 4C; 75 Del. Laws, c. 127, § 1; 78 Del. Laws, c. 341, § 2.)

§ 3103. Quorum.

Any 3 Board members shall constitute a quorum. No vacancy shall impair the right of the remaining Board members to exercise all of the powers of the Board.

(41 Del. Laws, c. 258, § 10; 19 Del. C. 1953, § 3103; 57 Del. Laws, c. 669, §§ 4B, 4C; 75 Del. Laws, c. 127, § 1.)

§ 3104. Chairperson; selection and duties.

The Board shall have a Chairperson who shall be designated by the Governor from among its members. Whenever the term of the Chairperson expires or whenever there is a vacancy in such office for any cause, the Governor shall designate a new Chairperson.

(41 Del. Laws, c. 258, § 10; 44 Del. Laws, c. 208, §§ 1, 2; 19 Del. C. 1953, § 3104; 57 Del. Laws, c. 669, §§ 4B, 4D; 70 Del. Laws, c. 186, § 1; 75 Del. Laws, c. 127, § 1.)

§ 3105. Compensation of Chairperson and other Board members.

The Chairperson of the Board shall be paid $ $235 for each meeting attended, not to exceed 80 meetings per year. Each of the other members of the Board shall be paid $185 for each meeting attended, not to exceed 80 meetings per year, and shall devote to the duties of their office such time as is necessary for the satisfactory execution thereof. The compensation of the Chairperson and other Board members shall be paid from the Unemployment Compensation Administration Fund provided for in § 3164 of this title, and not from any funds appropriated by the General Assembly.

(41 Del. Laws, c. 258, § 10; 44 Del. Laws, c. 208, § 1; 45 Del. Laws, c. 269, § 1; 46 Del. Laws, c. 162, § 13; 47 Del. Laws, c. 198, § 1; 48 Del. Laws, c. 179, § 4; 19 Del. C. 1953, § 3105; 50 Del. Laws, c. 586, § 1; 51 Del. Laws, c. 167; 54 Del. Laws, c. 45; 57 Del. Laws, c. 669, §§ 4B, 4C; 65 Del Laws, c. 417, § 1; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 90, §§ 1, 2; 75 Del. Laws, c. 127, § 1; 75 Del. Laws, c. 350, § 317; 78 Del. Laws, c. 341, § 3; 82 Del. Laws, c. 242, § 260; 82 Del. Laws, c. 284, § 1; 82 Del. Laws, c. 284, § 3; 83 Del. Laws, c. 54, § 272.)

§ 3106. Secretary.

The Board may designate a suitable employee to act as Secretary of the Board.

(41 Del. Laws, c. 258, § 10; 44 Del. Laws, c. 208, § 2; 19 Del. C. 1953, § 3106; 57 Del. Laws, c. 669, § 4B; 75 Del. Laws, c. 127, § 1.)

§ 3107. Unemployment Compensation Advisory Council.

(a) There is hereby established the Unemployment Compensation Advisory Council.

(b) The Unemployment Compensation Advisory Council shall serve in an advisory capacity to the Director of Unemployment Insurance and aid the Director in reviewing the unemployment insurance program as to its content, adequacy and effectiveness, and make recommendations for its improvement.

(c) The Unemployment Compensation Advisory Council shall have the following 10 members:

(1) The respective Chairperson of the Labor and Industrial Relations Committee of the State Senate and of the Labor Committee of the State House of Representatives, or a committee member designated by the respective Chairperson; and

(2) The respective Chairperson of the Small Business Committee of the State Senate and of the Business/Corporations/Commerce Committee of the State House of Representatives, or a committee member designated by the respective Chairperson; and

(3) The Secretary of Finance, or an individual designated by the Secretary, shall be a nonvoting member; and

(4) The Secretary of Labor, or an individual designated by the Secretary, shall be a nonvoting member; and

(5) Two persons representing the interests of the labor community to be appointed by the Governor; and

(6) Two persons representing the interests of business employers to be appointed by the Governor.

(d) (1) The term of the elected members of the General Assembly serving the Council shall coincide with their status as members of the designated committees.

(2) The term of the appointed officials serving on the Council shall coincide with their terms as Secretaries of the designated Departments.

(3) The term of the Council members representing the interests of labor and business employers shall be 3 years and all shall be eligible for reappointment.

(e) Members of the Council shall serve without compensation except that they may be reimbursed for reasonable and necessary expenses incident to their duties as members of the Council.

(f) A Chairperson of the Council shall be chosen by the members of the Council and shall serve in that capacity for a term of 1 year and shall be eligible for reelection.

(g) Any appointment pursuant to this section to replace a member of the Council whose position becomes vacant prior to the expiration of the member's term shall be filled by the Governor only for the remainder of that term.

(h) The Council will, on a periodic basis, no less frequently than annually, report its findings and recommendations to the Governor and to the General Assembly.

(19 Del. C. 1953, § 3108; 58 Del. Laws, c. 143, § 1; 64 Del. Laws, c. 91, § 1; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 237, § 1.)

Subchapter II
Powers and Duties; Administrative Provisions

§ 3121. Employment stabilization.

The Department of Labor, hereinafter referred to in this chapter as the "Department", shall take all appropriate steps to:

(1) Reduce and prevent unemployment;

(2) Encourage and assist in the adoption of practical methods of vocational training, retraining and vocational guidance;

(3) Investigate, recommend, advise and assist in the establishment and operation, by municipalities, counties, school districts and the State, of reserves for public works to be used in time of business depression and unemployment;

(4) Promote the reemployment of unemployed workers throughout the State in every other way that may be feasible; and

(5) Carry on and publish the results of investigations and research studies to further these ends.

(41 Del. Laws, c. 258, § 11; 19 Del. C. 1953, § 3122; 57 Del. Laws, c. 669, § 4F.)

§ 3122. General and special rules; regulations.

General and special rules may be adopted, amended or rescinded by the Department only after public hearing or opportunity to be heard thereon, of which proper notice has been given. General rules shall become effective 10 days after filing with the Secretary of State and publication in 1 or more newspapers of general circulation in this State. Special rules shall become effective 10 days after notification to or mailing to the last known address of the individuals or concerns affected thereby. Regulations may be adopted, amended or rescinded by the Department and shall become effective in the manner and at the time prescribed by the Department.

(41 Del. Laws, c. 258, § 11; 19 Del. C. 1953, § 3123; 57 Del. Laws, c. 669, § 4G.)

§ 3123. Recommendations for legislation.

Whenever the Department believes that a change in assessment or benefit rates will become necessary to protect the solvency of the Fund, it shall promptly so inform the Governor and the General Assembly and make recommendations with respect thereto.

(41 Del. Laws, c. 258, § 11; 44 Del. Laws, c. 207, § 12; 19 Del. C. 1953, § 3124; 53 Del. Laws, c. 79, § 1; 57 Del. Laws, c. 669, §§ 4E, 4G.)

§ 3124. Publication and distribution of regulations and rules.

The Department shall cause to be printed for distribution to the public the text of this part, its regulations and general and special rules, its annual reports to the Governor and any other material it deems relevant and suitable and shall furnish the same to any person upon application therefor.

(41 Del. Laws, c. 258, § 11; 19 Del. C. 1953, § 3125; 57 Del. Laws, c. 669, § 4G.)

§ 3125. Records and reports from employing units; disclosure of information; use of information at hearings or on appeal; penalty.

(a) (1) Each employing unit shall keep true and accurate records containing such information as the Department prescribes. Such records shall be open to inspection and subject to be copied by the Department or its authorized representatives at any reasonable time and as often as necessary. The Department may require from any employing unit any sworn or unsworn reports with respect to persons employed by such employing unit which the Department deems necessary for the effective administration of this part. Information thus obtained or obtained from any individual pursuant to the administration of this part shall, except to the extent necessary for the proper presentation of a claim, be held confidential and shall not be published or be open to public inspection other than to a member or employees of agencies as specified in paragraphs (a)(2), (3) and (4) of this section, in any manner revealing the individual's or employing unit's identity, but any claimant, or claimant's legal representative, shall be supplied with information from such records to the extent necessary for the proper presentation of claimant's claim.

(2) The Department shall disclose, upon request, to officers or employees of any state or local child support enforcement agency, any wage information and unemployment compensation claim information with respect to an individual which is contained in its records. For the purposes of this paragraph:

a. The term "state or local child enforcement agency" means any agency of a state or political subdivision thereof operating pursuant to a plan described in § 454 of the Social Security Act [42 U.S.C. § 654], which has been approved by the Secretary of Health and Human Services under part D, Title IV of the Social Security Act [42 U.S.C. § 651 et seq.].

b. The requesting agency shall agree that such information is to be used only for the purpose of establishing and collecting child support obligations which are being enforced pursuant to a plan described in § 454 of the Social Security Act [42 U.S.C. § 654] which has been approved by the Secretary of Health and Human Services under part D, Title IV of the Social Security Act or for the establishment of paternity or the establishment, modification, or enforcement of child support orders pursuant to § 466(c)(1) of the Social Security Act [42 U.S.C. § 666(c)] as amended by § 325(a)(2) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996.

c. The information shall not be released unless the requesting agency agrees to reimburse the costs involved for furnishing such information.

d. In accordance with § 303(c) of the Social Security Act [42 U.S.C. § 503], as amended by § 313(d) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, a state or local child support enforcement agency may disclose to an agent of that agency for purposes of establishing and collecting child support obligations from and locating individuals owing such obligations, the information provided by the Department under this subsection.

e. In addition to the requirements of this paragraph, all other requirements with respect to confidentiality of information obtained in the administration of this section and the sanctions imposed on improper disclosure shall apply to the use of such information by officers of such child support agencies.

(3) The Department shall disclose, upon request to officers and employees of the United States Department of Agriculture and any state food stamp agency, with respect to an identified individual, any of the following information which is contained in its records:

a. Wage information;

b. Whether the individual is receiving, has received or has made application for unemployment compensation and the amount of any compensation being received or to be received by such individual;

c. The current or most recent home address of the individual; and

d. Whether the individual has refused an offer of employment and if so, a description of the employment offered and the terms, conditions and rate of pay therefor; and

e. Provided that, for the purposes of this paragraph:

1. The term "state food stamp agency" means any agency described in § 3(n)(1) of the Food Stamp Act of 1977 [7 U.S.C. § 2012] which administers the food stamp program established under such Act.

2. The requesting agency shall agree that such information shall be used only for purposes of determining the applicant's eligibility for benefits, or the amount of benefits, under the food stamp program established under the Food Stamp Act of 1977 [7 U.S.C. § 2011 et seq.].

3. In addition to the requirements of this paragraph, all other requirements with respect to confidentiality of information obtained in the administration of this section and the sanctions imposed for improper disclosure of information obtained in the administration of this section shall apply to the use of such information by the officers and employees of any food stamp agency or the United States Department of Agriculture.

(4) The Department shall disclose information, the release of which is otherwise prohibited, to officials and employees of governmental agencies in the performance of their official duties, as it may by regulation permit, provided:

a. The regulation specifies the type of information to be released and the uses to which the information may be put, consistent with the administration of the unemployment laws of Delaware and other legitimate governmental interests;

b. The information shall not be released unless the requesting agency agrees to reimburse the costs for furnishing such information;

c. In addition to the requirements of this paragraph, all other requirements with respect to the confidentiality of information obtained in the administration of this section and the sanctions imposed for improper disclosure shall apply to the use of such information by officials and employees of agencies to which information is released pursuant to this paragraph;

d. The regulation specifies that the Secretary of Labor of the United States may obtain all information essential to the performance of the Secretary's official duties without an agreement to reimburse costs.

(b) Any employee of the Department, an appeal tribunal or the Unemployment Insurance Appeal Board who violates any provision of this section shall be fined not less than $23 nor more than $230, or imprisoned not more than 90 days or both.

(c) (1) If any employing unit neglects or refuses to file with the Department a required report with respect to persons employed by the employing unit within 5 days after the report is due, the employing unit is subject to a penalty of 15% of the total amount of contributions paid or payable by the employing unit unless 1 of the following applies:

a. If the penalty calculated under this paragraph (c)(1) is less than $100, the penalty is $100.

b. If the penalty calculated under this paragraph (c)(1) is more than $450, the penalty is $450.

(2) The penalties under paragraph (c)(1) of this section are in addition to any other penalties provided for in this part.

(41 Del. Laws, c. 258, § 11; 43 Del. Laws, c. 280, § 16; 19 Del. C. 1953, § 3126; 57 Del. Laws, c. 669, §§ 4G, 4H, 4I; 58 Del. Laws, c. 522, § 1; 60 Del. Laws, c. 72, § 1; 61 Del. Laws, c. 258, § 1; 61 Del. Laws, c. 426, § 1; 63 Del. Laws, c. 192, §§ 1, 2; 65 Del. Laws, c. 122, §§ 1, 2; 67 Del. Laws, c. 260, § 1; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 26, §§ 1-3; 82 Del. Laws, c. 128, § 1.)

§ 3126. Administering oaths and affirmations, taking depositions, certifying official acts and issuing subpoenas.

In the discharge of the duties imposed by this part, the members of the Department, the chairperson of an appeal tribunal and any duly authorized representative of either of them may administer oaths and affirmations, take depositions, certify to official acts and issue subpoenas to compel the attendance of witnesses and the production of books, papers, correspondence, memoranda and other records deemed necessary as evidence in connection with a disputed claim or the administration of this part.

(41 Del. Laws, c. 258, § 11; 19 Del. C. 1953, § 3127; 57 Del. Laws, c. 669, § 4G; 70 Del. Laws, c. 186, § 1.)

§ 3127. Refusal to obey subpoena; penalty.

(a) In case of contumacy by, or refusal to obey a subpoena issued to, any person, any court of this State within the jurisdiction of which the inquiry is carried on or within the jurisdiction of which the person guilty of contumacy or refusal to obey is found or resides or transacts business, upon application by the Department, a chairperson of an appeal tribunal or any duly authorized representative of either, shall have jurisdiction to issue to such person an order requiring such person to appear before the Department, an appeal tribunal or any duly authorized representative of either, there to produce evidence if so ordered or there to give testimony touching the matter under investigation or in question. Any failure to obey such order of the court may be punished by the court as a contempt thereof.

(b) Whoever without just cause fails or refuses to attend and testify or to answer any lawful inquiry or to produce books, papers, correspondence, memoranda and other records if it is in the person's power so to do in obedience to a subpoena of the Department, a chairperson of an appeal tribunal or any duly authorized representative of either shall be fined not less than $23 nor more than $230 or imprisoned not more than 60 days or both. Each day such violation continues shall be deemed to be a separate offense.

(41 Del. Laws, c. 258, § 11; 19 Del. C. 1953, § 3128; 57 Del. Laws, c. 669, § 4G; 67 Del. Laws, c. 260, § 1; 70 Del. Laws, c. 186, § 1.)

§ 3128. Self-incrimination.

No person shall be excused from attending and testifying or from producing books, papers, correspondence, memoranda and other records before the Department, the chairperson of an appeal tribunal or any duly authorized representative of either of them or in obedience to the subpoena of any of them in any cause or proceeding before the Department or an appeal tribunal on the ground that the testimony or evidence, documentary or otherwise, required of that person may tend to incriminate that person or subject that person to a penalty

or forfeiture, but no individual shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which that person is compelled, after having claimed the privilege against self-incrimination, to testify or produce evidence, documentary or otherwise, except that such individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying.

(41 Del. Laws, c. 258, § 11; 19 Del. C. 1953, § 3129; 57 Del. Laws, c. 669, § 4G; 70 Del. Laws, c. 186, § 1.)

§ 3129. Representation of Department and State in civil and criminal actions.

(a) In any civil action to enforce this part, the Department and the State may be represented by any qualified attorney who is employed by the Department and is designated for this purpose or at the Department's request by the Attorney General.

(b) All criminal actions for violation of any provision of this part or of any rules or regulations issued pursuant thereto shall be prosecuted by the Attorney General of the State or, at the Attorney General's direction, by 1 of the Attorney General's deputies.

(41 Del. Laws, c. 258, § 17; 19 Del. C. 1953, § 3130; 57 Del. Laws, c. 669, § 4G; 70 Del. Laws, c. 186, § 1.)

§ 3130. Cooperation with federal agencies.

In the administration of this part, the Department shall cooperate with the United States Department of Labor to the fullest extent consistent with this part and shall take such action, through the adoption of appropriate rules, regulations, administrative methods and standards, as may be necessary to secure to this State and its citizens all advantages available under the Social Security Act [42 U.S.C. § 301 et seq.] that relate to unemployment compensation, the Federal Unemployment Tax Act [26 U.S.C. § 3301 et seq.], the Wagner-Peyser Act [29 U.S.C. § 49 et seq.] and the Federal-State Extended Unemployment Compensation Act of 1970 [26 U.S.C. § 3304].

In the administration of the provisions in § 3326 of this title, which are enacted to conform with the requirements of the Federal-State Extended Unemployment Compensation Act of 1970, the Department shall take such action as may be necessary to:

(1) Ensure that the provisions are so interpreted and applied as to meet the requirements of such federal act as interpreted by the United States Department of Labor, and

(2) Insure to this State the full reimbursement of the federal share of extended benefits paid under this part that are reimbursable under the federal act.

Upon request therefor the Department shall furnish to any agency of the United States charged with the administration of public works or assistance through public employment the name, address, ordinary occupation and employment status of each recipient of benefits and such recipient's rights to further benefits under this part.

The Department may make its records relating to the administration of this part available to the Railroad Retirement Board established by act of Congress and may furnish to the Board, at the expense of the Board, such copies thereof as the Board deems necessary for its purposes.

The Department may afford reasonable cooperation with every agency of the United States charged with the administration of any unemployment insurance or compensation law.

(41 Del. Laws, c. 258, § 11; 42 Del. Laws, c. 198, § 1; 19 Del. C. 1953, § 3131; 57 Del. Laws, c. 669, §§ 4G, 4H; 58 Del. Laws, c. 143, § 2.)

§ 3131. Reciprocal arrangements with state or federal agencies.

(a) The Department may enter into reciprocal arrangements with appropriate and duly authorized agencies of other states or of the federal government or both whereby:

(1) Services performed by an individual for a single employing unit for which services are customarily performed in more than 1 state shall be deemed to be services performed entirely within any 1 of the states (A) in which any part of such individual's service is performed or (B) in which such individual has residence or (C) in which the employing unit maintains a branch office or its principal place of business, if there is in effect, as to such services, an election, approved by the agency charged with the administration of such state's unemployment compensation law, pursuant to which all the services performed by such individual for such employing unit are deemed to be performed entirely within such state;

(2) Potential rights to benefits accumulated under the unemployment compensation laws of 1 or more states or under 1 or more such laws of the federal government, or both, may constitute the basis for the payment of benefits through a single appropriate agency under terms which the Department finds will be fair and reasonable as to all affected interests and will not result in any substantial loss to the Fund;

(3) The Department shall participate in any arrangement for the payment of compensation on the basis of combining an individual's wages and employment covered under this part with the wages and employment covered under the unemployment compensation laws of other states or of the federal government which are approved by the United States Secretary of Labor in consultation with the state unemployment compensation agencies as reasonably calculated to assure the prompt and full payment of compensation in such situations and which includes provisions for:

a. Applying the base period of a single state law to a claim involving the combining of an individual's wages and employment covered under 2 or more state unemployment compensation laws; and

b. Avoiding the duplicate use of wages and employment by reason of such combining;

(4) Assessments due under this part with respect to wages for insured work shall for the purposes of §§ 3357-3365 of this title be deemed to have been paid to the fund as of the date payment was made as assessments therefor under another state or federal unemployment compensation law but no such arrangement shall be entered into unless it contains provisions for such reimbursement to the fund of such assessments and the actual earnings thereon as the Department finds will be fair and reasonable as to all affected interests.

(b) Reimbursements paid from the Fund pursuant to paragraph (a)(3) of this section shall be deemed to be benefits for the purpose of §§ 3161-3163 and 3313 of this title, but no reimbursement payable from the Fund shall be charged against any employer's account for the purposes of §§ 3345-3356 of this title. The Department may make to other state or federal agencies and receive from such other state or federal agencies reimbursements from or to the Fund, in accordance with arrangements entered into pursuant to subsection (a) of this section.

(c) The administration of this part and of other state and federal unemployment compensation and public employment service laws will be promoted by cooperation between this State and such other states and the appropriate federal agencies in exchanging service and making available facilities and information. The Department may, therefore, make such investigations, secure and transmit such information, make available such services and facilities and exercise such of the other powers provided herein with respect to the administration of this part as it deems necessary or appropriate to facilitate the administration of any such unemployment compensation or public employment service law, and, in like manner, may accept and utilize information, services and facilities made available to this State by the agency charged with the administration of any such other unemployment compensation or public employment service law.

(d) To the extent permissible under the laws and Constitution of the United States, the Department may enter into or cooperate in arrangements whereby facilities and services provided under this part and facilities and services provided under the unemployment compensation law of any foreign government may be utilized for the taking of claims and the payment of benefits under the employment security law of this State or under a similar law of such government.

(41 Del. Laws, c. 258, § 18; 43 Del. Laws, c. 280, § 23; 19 Del. C. 1953, § 3132; 53 Del. Laws, c. 79, § 1; 57 Del. Laws, c. 669, § 4G; 58 Del. Laws, c. 143, § 3; 70 Del. Laws, c. 186, § 1.)

§ 3132. Authority to use federal grants; limitations.

If § 303(a)(5) of Title III of the federal Social Security Act [42 U.S.C. § 503(a)(5)] and § 3304(a)(4) of the Internal Revenue Code [26 U.S.C. § 3304(a)(4)] are amended by the Congress of the United States to permit the Department to use, in financing administrative expenditures incurred in carrying out its employment security functions, some part of the moneys collected or to be collected under this part in partial or complete substitution for grants under Title III of the federal Social Security Act [42 U.S.C. § 501 et seq.], there shall be available to the Department without further appropriation or legislation such portion of the moneys collected or to be collected under this part, as the Department finds necessary for effective administration of this part. In no event shall the funds expended by the Department under this provision in any year be in excess of $^{2}/_{10}$ of 1 percent of the payrolls of employers subject to assessments collected under this part for the previous fiscal year. Such amount shall be determined annually by the Department in conjunction with the Secretary of Finance and shall be transferred to the Administration Fund. Any unexpended portion of this annual allocation shall revert to the Unemployment Compensation Reserve Fund.

(41 Del. Laws, c. 258, § 7; 46 Del. Laws, c. 162, § 12; 19 Del. C. 1953, § 3133; 53 Del. Laws, c. 79, § 1; 57 Del. Laws, c. 669, § 4G; 57 Del. Laws, c. 741, § 36; 58 Del. Laws, c. 143, § 4; 66 Del. Laws, c. 52, § 1.)

§ 3133. Authority to borrow federal funds.

The Department is authorized to enter into such agreement as may be necessary to secure any advance or grant of funds by the Secretary of the Treasury of the United States in accordance with the authority extended under § 1201 of the federal Social Security Act (42 U.S.C. § 1321), as amended, or under any other act of Congress extending such authority.

Any amount transferred to the Unemployment Trust Fund by the Secretary of the Treasury of the United States under the terms of any agreement entered into in accordance with the authority extended in this section shall be repaid to the Secretary of the Treasury of the United States from the Unemployment Trust Fund.

Interest on interest-bearing advances from the federal government for the payment of unemployment compensation benefits shall be paid in a timely manner, as prescribed by the Secretary of Labor of the United States, from the Special Administration Fund for the Department of Labor as provided in § 3166 of this title.

(19 Del. C. 1953, § 3134; 52 Del. Laws, c. 18, § 1; 57 Del. Laws, c. 669, § 4G; 64 Del. Laws, c. 158, § 1; 64 Del. Laws, c. 427, § 1.)

Subchapter III

Delaware State Employment Service

§ 3151. Establishment and purpose; acceptance of Wagner-Peyser Act.

The Delaware State Employment Service is continued under the jurisdiction and as a part of the Department of Labor. The Department, in the conduct of such Service, shall establish and maintain free public employment offices in such number and in such places as are

necessary for the proper administration of this part and for the purposes of performing such functions as are within the purview of the act of Congress entitled "An Act to provide for the establishment of a national employment system and for cooperation with the states in the promotion of such system and for other purposes," approved June 6, 1933, 48 Stat. 113, hereinafter referred to as the "Wagner-Peyser Act" [29 U.S.C. § 49 et seq.]. The provisions of such act of Congress are accepted by this State, and the Department of Labor is designated and constituted the agency of this State for the purposes of such act.

(41 Del. Laws, c. 258, § 12; 45 Del. Laws, c. 267, § 11; 19 Del. C. 1953, § 3151; 53 Del. Laws, c. 232, § 1; 57 Del. Laws, c. 669, § 4G.)

§ 3152. Administration of funds received under Wagner-Peyser Act; power of Department to enter into agreements and to accept contributions or reimbursement.

All moneys received by this State under the Wagner-Peyser Act [29 U.S.C. § 49 et seq.] shall be paid into the Unemployment Compensation Administration Fund and shall be expended solely for the maintenance of the state system of public employment offices. For the purposes of establishing and maintaining free public employment offices and promoting the use of their facilities, the Department may enter into agreements with the Railroad Retirement Board or any other agency of the United States, or of this or any other state charged with the administration of any law whose purposes are reasonably related to the purposes of this part, and as a part of such agreements may accept moneys, services or quarters as a contribution to the maintenance of the state system of public employment offices or as reimbursement for services performed. All moneys received for such purposes shall be paid into the Unemployment Compensation Administration Fund.

(41 Del. Laws, c. 258, § 12; 45 Del. Laws, c. 267, § 11; 19 Del. C. 1953, § 3152; 53 Del. Laws, c. 79, § 1; 57 Del. Laws, c. 669, § 4G; 63 Del. Laws, c. 427, § 1.)

§ 3153. General functions and purposes.

The Department, in conducting the employment service, shall promote and develop an employment office or system of employment offices, in order:

(1) That employers seeking workers and the unemployed without cost to either may be referred to each other;

(2) To provide adequate quarters and facilities for the registration of employees and for the receipt of orders from employers;

(3) To provide prior opportunity of employment to citizens of Delaware and of the United States, except when such are unavailable and not qualified;

(4) To cooperate in the administration of unemployment insurance laws;

(5) To provide complete responsible records of all applicants;

(6) To reduce the wageless period between jobs and the resulting drain on savings, credit and social agencies;

(7) To develop and operate a technique by which workers in obsolete or similar occupations may be economically absorbed in a gainful occupation;

(8) To provide facilities by which those in need of rehabilitation or readjustment may be absorbed in private industry with mutual advantage;

(9) To provide information to juniors and those responsible for their training and influence in choosing the proper occupations;

(10) To reduce the cost to industry of procurement, sifting out and turnover;

(11) To provide existing facilities for government and industry in a period of national emergency;

(12) To provide for the clearance of labor to work opportunities between Delaware and the other states; and

(13) To cooperate in the dissemination of employment information and trends and with other public bodies to the end that governmental administration and legislation will have additional, necessary and accurate facts for their guidance.

(36 Del. Laws, c. 108, § 1; 40 Del. Laws, c. 109, § 5; Code 1935, § 2616; 19 Del. C. 1953, § 3153; 57 Del. Laws, c. 669, § 4G; 58 Del. Laws, c. 522, § 2.)

§ 3154. Cooperation with local authorities.

The Department shall cooperate with the counties, cities and towns of the State and shall require such local cooperation as it deems necessary to carry out this subchapter. Any local funds granted for the cooperative maintenance of a local office shall be deposited in the State Treasury and may be withdrawn only by warrants of the Department and only for that purpose.

(36 Del. Laws, c. 108, § 1; 40 Del. Laws, c. 109, § 9; Code 1935, § 2618; 19 Del. C. 1953, § 3154; 57 Del. Laws, c. 669, § 4G.)

§ 3155. [Reserved.]

Subchapter IV
Special Funds

§ 3161. Unemployment Compensation Fund.

There shall be a special fund, separate and apart from all public moneys or funds of this State, to be known as the Unemployment Compensation Fund which shall be administered by the Department exclusively for the purposes of this part.

This Fund shall consist of:

(1) All assessments collected under this part (except the additional emergency assessment required under § 3391 of this title) together with any interest thereon collected prior to October 1, 1967, pursuant to §§ 3357-3365 of this title;

(2) All penalties collected prior to October 1, 1967, pursuant to this part;

(3) Interest earned upon any moneys in the Fund;

(4) Any property or securities acquired through the use of moneys belonging to the Fund; and

(5) All earnings of such property or securities.

All moneys in the Fund shall be mingled and undivided.

(41 Del. Laws, c. 258, § 9; 19 Del. C. 1953, § 3161; 53 Del. Laws, c. 79, § 1; 56 Del. Laws, c. 187, § 2; 57 Del. Laws, c. 669, § 4G; 64 Del. Laws, c. 158, § 2.)

§ 3162. Administration of Unemployment Compensation Fund by State Treasurer.

(a) The State Treasurer shall be ex officio the treasurer and custodian of the Unemployment Compensation Fund. The Treasurer shall administer such Fund in accordance with the directions of the Department and shall issue warrants upon it in accordance with such regulations as the Department prescribes. The Treasurer shall maintain within the Fund 3 separate accounts:

(1) A clearing account;

(2) An unemployment trust fund account; and

(3) A benefit account.

All moneys payable to the Fund, upon receipt thereof by the Department, shall be forwarded to the State Treasurer, who shall immediately deposit them in the clearing account. Refunds payable pursuant to § 3365 of this title shall be paid in accordance with that section and may be paid from the clearing account upon warrants issued by the State Treasurer under the direction of the Department.

Notwithstanding any provisions of law in this State relating to the deposit, administration, release or disbursement of moneys in the possession or custody of this State, after clearance thereof, all moneys in the clearing account derived from assessments (except the additional emergency assessment required under § 3391 of this title) shall be immediately deposited with the Secretary of the Treasury of the United States to the credit of the account of this State in the Unemployment Trust Fund established and maintained pursuant to § 904 of the federal Social Security Act, as amended (42 U.S.C. § 1104), and all moneys derived from the additional emergency assessment required under § 3391 of this title, interest and penalties shall be deposited in the Special Administration Fund of the Department of Labor established and maintained pursuant to § 3166 of this title. The benefit account shall consist of all moneys requisitioned from this State's account in the Unemployment Trust Fund. Except as herein otherwise provided, moneys in the clearing and benefit accounts may be deposited by the State Treasurer, under the direction of the Department, in any bank or public depository in which general funds of the State may be deposited, but no public deposit insurance charge or premium shall be paid out of the Fund.

(b) The State Treasurer shall be liable on official bond for the faithful performance of duties in connection with the Unemployment Compensation Fund provided for under this part. Such liability on the official bond shall exist in addition to the liability upon any separate bond given by the State Treasurer.

(41 Del. Laws, c. 258, § 9; 45 Del. Laws, c. 267, § 9; 19 Del. C. 1953, § 3162; 56 Del. Laws, c. 187, § 3; 57 Del. Laws, c. 669, § 4G; 57 Del. Laws, c. 741, § 36; 58 Del. Laws, c. 522, § 4; 61 Del. Laws, c. 427, § 1; 61 Del. Laws, c. 468, § 7; 64 Del. Laws, c. 158, § 3; 70 Del. Laws, c. 186, § 1.)

§ 3163. Requisitions for payment of benefits; disposition of unclaimed or unpaid money.

Moneys shall be requisitioned from this State's account in the Unemployment Trust Fund solely for the payment of benefits and/or self-employment assistance allowances and in accordance with regulations prescribed by the Department. The Department shall from time to time requisition from the Unemployment Trust Fund such amounts, not exceeding the amounts standing to this State's account therein, as it deems necessary for the payment of benefits and/or self-employment assistance allowances for a reasonable future period. Upon receipt thereof the State Treasurer shall deposit such moneys in the benefit account and shall issue warrants for the payment of benefits and/or self-employment assistance allowances solely from such benefit account. Expenditures of such moneys in the benefit account and refunds from the clearing account shall not be subject to any provisions of law requiring specific appropriations or other formal release by state officers of money in their custody. All warrants issued by the State Treasurer for the payment of benefits and/or self-employment assistance allowances and refunds shall bear the signature of the State Treasurer and the countersignature of the Department or its duly authorized agent for that purpose. Any balance of moneys requisitioned from the Unemployment Trust Fund which remains unclaimed or unpaid in the benefit account after the expiration of the period for which such sums were requisitioned shall either be deducted from estimates for and may be utilized for the payment of benefits and/or self-employment assistance allowances during succeeding periods, or, at the discretion of the Department, shall be redeposited with the Secretary of the Treasury of the United States to the credit of this State's account in the Unemployment Trust Fund, as provided in § 3162 of this title.

(41 Del. Laws, c. 258, § 9; 57 Del. Laws, c. 669, § 4G; 57 Del. Laws, c. 741, § 36; 61 Del. Laws, c. 427, § 1; 61 Del. Laws, c. 468, § 7; 70 Del. Laws, c. 43, § 1; 70 Del. Laws, c. 186, § 1.)

§ 3164. Unemployment Compensation Administration Fund.

(a) There shall be in the State Treasury a special fund to be known as the Unemployment Compensation Administration Fund. All moneys which are deposited or paid into this Fund shall be continuously available to the Department for expenditure in accordance with this part and shall not lapse at any time or be transferred to any other fund. All moneys in this Fund which are received from the federal government or any agency thereof or which are appropriated by this State for the purposes described in §§ 3151 and 3152 of this title shall be expended solely for the purposes and in the amounts found necessary by the Secretary of Labor of the United States for the proper and efficient administration of this part. The Administration Fund shall consist of all moneys appropriated by this State, all moneys received from the United States of America, or any agency thereof, including the Secretary of Labor of the United States, and all moneys received from any other source for such purpose, and shall also include any moneys received from any agency of the United States or any other state as compensation for services or facilities supplied to such agency, any amounts received pursuant to any surety bond or insurance policy or from other sources for losses sustained by the Unemployment Compensation Administration Fund or by reason of damage to equipment or supplies purchased from moneys in such Fund and any proceeds realized from the sale or disposition of any such equipment or supplies which may no longer be necessary for the proper administration of this part. All moneys in the Administration Fund shall be deposited, administered and disbursed, in the same manner and under the same conditions and requirements as is provided by law for other special funds in the State Treasury, except that moneys in this Fund shall not be commingled with other state funds, but shall be maintained in a separate account on the books of a depositary bank.

(b) The State Treasurer shall be liable on the Treasurer's official bond for the faithful performance of duties in connection with the Administration Fund provided for under this section. Such liability on the official bond shall exist in addition to any liability upon any separate bond which may be given by the State Treasurer. All sums recovered on any surety bond for losses sustained by the Administration Fund shall be deposited in that Fund.

(41 Del. Laws, c. 258, § 13; 43 Del. Laws, c. 280, § 19; 19 Del. C. 1953, § 3164; 57 Del. Laws, c. 669, §§ 4G, 4H; 57 Del. Laws, c. 741, § 36; 58 Del. Laws, c. 522, § 5; 61 Del. Laws, c. 427, § 1; 61 Del. Laws, c. 468, § 7; 70 Del. Laws, c. 186, § 1.)

§ 3165. Reimbursement of Administration Fund by State.

If any moneys received after June 30, 1941, from the Secretary of Labor of the United States under Title III of the Social Security Act [42 U.S.C. § 501 et seq.] or any unencumbered balances in the Unemployment Compensation Administration Fund as of that date or any moneys granted after that date to this State pursuant to the Wagner-Peyser Act [29 U.S.C. § 49 et seq.] or any moneys made available by this State or its political subdivisions are found by the Secretary of Labor of the United States because of any action or contingency to have been lost or been expended for purposes other than or in amounts in excess of those found necessary by the Secretary of Labor of the United States for the proper administration of this part, it is the policy of this State that such amounts shall be replaced from the moneys in the Special Administration Fund of the Department of Labor. Upon receipt of notice of such a finding by the Secretary of Labor of the United States, the Department shall promptly replace the amount required for such replacement from the Special Administration Fund, or, if the balance in this Fund is insufficient, it shall promptly report the amount required for such replacement to the Governor, and the Governor shall, at the earliest opportunity, submit to the General Assembly the request for the appropriation of such amount. This section and § 3164 of this title shall not be construed to relieve this State of its obligation with respect to funds received prior to July 1, 1941, pursuant to the provisions of Title III of the Social Security Act.

(41 Del. Laws, c. 258, § 13; 43 Del. Laws, c. 280, § 19; 19 Del. C. 1953, § 3165; 56 Del. Laws, c. 187, § 4; 57 Del. Laws, c. 669, §§ 4G, 4H, 4J.)

§ 3166. 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 Department of Labor. This Fund shall consist of:

(1) All interest and penalties collected under this part subsequent to September 30, 1967;

(2) All moneys collected pursuant to § 3391 of this title for the payment of interest on federal advances;

(3) All moneys collected pursuant to § 3401 of this title;

(4) All interest on or profits earned by the said Special Administration Fund.

(b) *Administration.* — All moneys collected pursuant to this section shall be deposited in the clearing account of the Unemployment Compensation Fund for clearance only and shall not become part of such Fund. After clearance, the moneys shall be deposited in the Special Administration Fund of the Department of Labor. 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. The State Treasurer shall be the custodian of and shall be liable on the Treasurer's official bond for the faithful performance of the Treasurer's duties in connection with the Fund. Such liability on the official bond shall exist in addition to the liability upon 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. Balances to the credit of the Fund shall not lapse at any time but shall be continuously available to the Secretary of Labor for expenditures consistent with this section.

(c) *Use.* — The moneys in the Special Administration Fund may be used by the Department for:

(1) The payment of costs of the administration of this part which are not properly and validly chargeable against federal granted funds received for or in the Unemployment Compensation Administration Fund, or where properly and validly chargeable against said funds, but where said funds are depleted or not available;

(2) Replacement, within a reasonable time and subject to § 3165 of this title, of any moneys received by this State in the form of grants from the federal government for administrative expenses which because of any action or contingency have been lost or have been expended for purposes other than or in amounts in excess of those considered by the United States Secretary of Labor to be necessary for the proper and efficient administration of this part;

(3) A revolving fund to cover expenditures for which federal funds have been duly requested but not yet received, subject to the replacement of the amount expended when such funds are received, and refunds of erroneously collected interest and penalties subject to § 3365 of this title;

(4) Refunds of overpayments of this Fund subject to the time limit provisions of § 3365 of this title;

(5) The payment of interest on advances from the federal government for unemployment compensation benefits shall be from moneys collected pursuant to § 3391 of this title;

(6) The payment of the costs of programs to counsel, retrain and place dislocated workers, to assist in school-to-work transition activities, to provide industrial training, to provide career-ladder training for state employees, and the payment of the administrative costs of such programs, shall be from moneys collected pursuant to § 3401 of this title.

(d) *Transfer*. — The Secretary of Labor, whenever the Secretary 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 Unemployment Trust Fund of such amount as the Secretary deems proper.

(19 Del. C. 1953, § 3166; 56 Del. Laws, c. 187, § 1; 57 Del. Laws, c. 669, §§ 4G, 4J, 4L; 57 Del. Laws, c. 741, § 36; 61 Del. Laws, c. 427, § 1; 61 Del. Laws, c. 468, §§ 7, 8; 64 Del. Laws, c. 158, § 4; 64 Del. Laws, c. 460, §§ 7, 8; 65 Del. Laws, c. 415, § 1; 70 Del. Laws, c. 186, § 1.)

Part III
Unemployment Compensation

Chapter 33
Unemployment Compensation

Subchapter I
General Provisions

§ 3301. Declaration of public policy.

As a guide to the interpretation and application of this chapter, the public policy of this State is declared to be as follows: economic insecurity due to unemployment is a serious menace to the health, morals and welfare of the people of this State. Involuntary unemployment is therefore a subject of general interest and concern which requires appropriate action by the General Assembly to prevent its spread and to lighten its burden which now so often falls with crushing force upon the unemployed worker and the worker's family. The achievement of social security requires protection against this greatest hazard of our economic life. This can be accomplished by encouraging employers to provide more stable employment and by the systematic accumulation of funds during periods of employment from which benefits may be paid for periods of unemployment, thus maintaining purchasing power and limiting the serious social consequences of poor relief assistance. The General Assembly therefore declares that in its considered judgment the public good and the general welfare of the citizens of this State require the enactment of this measure, under the police power of the State, for the compulsory setting aside of an unemployment reserve to be used for the benefit of persons unemployed through no fault of their own.

(41 Del. Laws, c. 258; 19 Del. C. 1953, § 3301; 70 Del. Laws, c. 186, § 1.)

§ 3302. Definitions.

As used in this chapter, unless the context clearly requires otherwise, the following terms shall have the meanings designated in this section:

(1) "Assessments" means the money payments to the State Unemployment Compensation Fund required by this chapter.

(2) "Base period" means the first 4 of the last 5 completed calendar quarters immediately preceding the first day of an individual's benefit year. However, if the claimant has earned insufficient wages in the first 4 of the last 5 completed calendar quarters to become eligible for benefits, then such claimant's "base period" shall be the 4 most recent completed calendar quarters immediately preceding the first day of the claimant's benefit year.

(3) "Benefit year" with respect to any individual means the 1-year period beginning with the first day of the first week with respect to which the individual first files a valid claim for benefits, and thereafter the 1-year period beginning with the first day of the first week with respect to which the individual next files a valid claim for benefits after the termination of the worker's last preceding benefit year. Provided that, when the last day of such 1-year period falls within a week with respect to which an individual has met the eligibility requirements of this chapter, the ending date of the benefit year may be extended for a period not to exceed 6 days, and provided further that, for the purpose of filing any subsequent claim for benefits, the extension of the benefit year as provided in this paragraph shall not change the benefit year ending date as established prior to such extension.

As used in this paragraph, a "valid claim" is any claim for benefits made in accordance with § 3317 of this title if the individual has been paid wages for employment required under § 3315(5) of this title.

(4) "Benefits" means the money payments payable to an individual, as provided in this chapter, with respect to the individual's unemployment.

(5) "Regular benefits" means benefits payable to an individual under this chapter or under any other state law (including benefits payable to federal civilian employees and to ex-service persons pursuant to 5 U.S.C. Chapter 85) other than additional and extended benefits.

(6) "Calendar quarter" means the period of 3 consecutive calendar months ending on March 31, June 30, September 30 or December 31, excluding, however, any calendar quarter or portion thereof which occurs prior to January 1, 1938, or the equivalent thereof as the Department may by regulation prescribe.

(7) "Department" means the Department of Labor.

(8) "Employer" means:

(A) (i) Any employing unit which after December 31, 1971,

(I) In any calendar quarter in either the current or preceding calendar year paid for service in employment wages of $1,500 or more, or

(II) For some portion of a day in each of 20 different calendar weeks, whether or not such weeks were consecutive, in either the current or preceding calendar year, had in employment at least 1 individual (irrespective of whether the same individual was in employment in each such day);

(ii) Any employing unit for which agricultural labor as defined in paragraph (11)(A)(vii) of this section is performed after December 31, 1977;

(iii) Any employing unit for which domestic service as defined in paragraph (11)(B) of this section is performed after December 31, 1977;

(iv) (I) In determining whether or not an employing unit for which service other than domestic service is also performed is an employer under paragraphs (8)(A)(i) and (ii) of this section the wages earned or the employment of an employee performing domestic service after December 31, 1977, shall not be taken into account;

(II) In determining whether or not an employing unit for which service other than agricultural labor is also performed is an employer under paragraphs (8)(A)(i) and (iii) of this section, the wages earned or the employment of an employee performing service in agricultural labor after December 31, 1977, shall not be taken into account. If an employing unit is determined an employer of agricultural labor, such employing unit shall be determined an employer for the purposes of paragraph (8)(A)(i) of this section;

(B) Any employing unit for which service in employment as defined in paragraph (10)(B)(iii) of this section is performed;

(C) Any employing unit for which service in employment, as defined in paragraph (10)(C) of this section, is performed after December 31, 1971;

(D) Any employing unit (whether or not an employing unit at the time of acquisition) which acquired the organization, trade or business, or substantially all of the assets thereof, of another employing unit which at the time of such acquisition was an employer subject to this chapter, or which acquired a part of the organization, trade or business of another employing unit which at the time of such acquisition was an employer subject to this chapter;

(E) Any employing unit which acquired the organization, trade or business, or substantially all the assets thereof, of another employing unit (not an employer subject to this chapter) and which would be an employer under paragraph (8)(A) of this section if, subsequent to such acquisition, it were treated as a single unit with such other employing unit;

(F) Any employing unit which, together with 1 or more other employing units, is owned or controlled (by legally enforceable means or otherwise) directly or indirectly by the same interests, or which owns or controls 1 or more other employing units (by legally enforceable means or otherwise), and which if treated as a single unit with such other employing units or interests or both would be an employer under paragraph (8)(A) of this section;

(G) Any employing unit not an employer by reason of any other paragraph of this paragraph (8):

(i) For which, within either the current or preceding calendar year, service is or was performed with respect to which such employing unit is liable for any federal tax against which credit may be taken for assessments required to be paid into a state unemployment fund; or

(ii) Which, as a condition for approval of this part for full tax credit against the tax imposed by the Federal Unemployment Tax Act [26 U.S.C. § 3301 et seq.], is required, pursuant to such Act, to be an "employer" under this part;

(H) Any employing unit which, having become an employer under paragraph (8)(A), (B), (C), (D), (E), (F) or (G) of this section, has not under §§ 3341-3343 of this title ceased to be an employer subject to this chapter; and

(I) For the effective period of its election pursuant to § 3343 of this title, any employing unit which has elected to become subject to this chapter.

(J) For purposes of this paragraph (8), an employee leasing company, a professional employment organization (PEO) or any other similar entity shall not be considered to be the employer of any leased employees. The services performed by leased employees shall be considered to be services performed for the employer client company of the employee leasing company, professional employment organization (PEO) or any similar entity and the employer client company shall be considered to be the employer of its leased employees. An employer client company shall be responsible for reporting the gross wages of its leased employees to the Division of Unemployment Insurance on Form UC-8A (Quarterly Payroll Report) and for paying any assessments due on the taxable wages of its leased employees to the Division of Unemployment Insurance as reported on Form UC-8 (Quarterly Tax Report). The unemployment insurance assessment rate for an employer client company, as determined in accordance with § 3350 of this title, shall include the unemployment insurance claims experience of the employer client company's leased employees. This paragraph does not apply to a temporary help firm as defined in § 3327 of this title unless such temporary help firm provides leased employees to an employer client company. In such cases, the employee leasing segment of the temporary help firm's business shall be subject to this paragraph. For the purpose of this paragraph (8), an "employee leasing company," "professional employment organization (PEO)" or similar entity shall mean an employing unit established to engage in the business of providing leased employees to an employer client company. For the purpose of this paragraph, an "employer client company" shall mean a company who enters into an agreement with an employee leasing company, professional employment organization (PEO) or similar entity to lease any or all of its regular employees.

For purposes of paragraphs (8)(A) and (C) of this section, employment shall include service which would constitute employment but for the fact that such service is deemed to be performed entirely within another state pursuant to an election under an arrangement entered into (in accordance with § 3131 of this title) by the Department and an agency charged with the administration of any other state or federal unemployment compensation law.

For purposes of paragraphs (8)(A)(i)(II) and (C) of this section, if any week includes both December 31 and January 1, the days of that week up to January 1 shall be deemed 1 calendar week and the days beginning January 1 another such week.

(9) (A) "Employing unit" means any individual or type of organization, including any partnership, association, trust, estate, joint stock company, insurance company or corporation, whether domestic or foreign, or the receiver, trustee in bankruptcy, trustee or successor thereof or the legal representative of a deceased person, which has or subsequent to January 1, 1936, had in its employ 1 or more individuals performing services for it within this State. Employing unit also means any governmental entity which has in its employ individuals performing services. All individuals performing services within this State for any employing unit which maintains 2 or more separate establishments within this State shall be deemed to be employed by a single employing unit for all other purposes of this chapter.

(B) Whenever any employing unit contracts with or has under it any contractor or subcontractor for any work which is part of its usual trade, occupation, profession or business, such employing unit shall for all the purposes of this chapter be deemed to employ each individual in the employ of each such contractor or subcontractor for each day during which such individual is engaged in performing such work and shall be liable for the employer assessments with respect to wages paid to such individuals by such contractor or subcontractor, except that any employing unit which becomes liable for and pays assessments with respect to individuals in the employ of any such contractor or subcontractor may recover the same from such contractor or subcontractor. Each individual employed to perform or to assist in performing the work of any agent or employee of an employing unit shall be deemed to be employed by such employing unit for all the purposes of this chapter, whether such individual was hired or paid directly by such employing unit or by such agent or employee, providing the employing unit had actual or constructive knowledge of the work, except as provided in paragraph (11)(A)(vii) of this section.

(10) "Employment" means:

(A) Any service performed prior to January 1, 1978, which was employment as defined in this paragraph prior to such date and, subject to the other provisions of this paragraph, service performed after December 31, 1977, including service in interstate commerce, by

(i) Any officer of a corporation after December 31, 1995.

(ii) Any individual who, under paragraph (10)(K) of this section, has the status of an employee; or

(iii) Any individual other than an individual who is an employee under paragraph (10)(A)(i) or (ii) of this section who performs services for remuneration for any person:

(I) As an agent-driver or commission-driver engaged in distributing meat products, vegetable products, fruit products, bakery products, beverages (other than milk) or laundry or dry cleaning services, for the driver's principal; or

(II) As a traveling or city salesperson, other than as an agent-driver or commission-driver, engaged upon a full-time basis in the solicitation on behalf of, and the transmission to, the person's principal (except for sideline sales activities on behalf of some other person) of orders from wholesalers, retailers, contractors or operators of hotels, restaurants or other similar establishments for merchandise for resale or supplies for use in their business operations;

(III) As a homeworker performing work, according to specifications furnished by the person for whom the services are performed, on materials or goods furnished by such person which are required to be returned to such person or a person designated by such person;

Provided, that for purposes of paragraph (10)(A)(iii) of this section, the term "employment" shall include services described in paragraphs (10)(A)(iii)(I), (II) and (III) of this section, performed after December 31, 1977, only if:

1. The contract of service contemplates that substantially all of the services are to be performed personally by such individual;

2. The individual does not have a substantial investment in facilities used in connection with the performance of the services (other than in facilities for transportation); and

3. The services are not in the nature of a single transaction that is not part of a continuing relationship with the person for whom the services are performed.

(B) (i) Service performed after December 31, 1971, by an individual in the employ of this State or any of its instrumentalities (or in the employ of this State and 1 or more other states or their instrumentalities) for a hospital or institution of higher education located in this State, provided that such service is excluded from "employment" as defined in the Federal Unemployment Tax Act [26 U.S.C. § 3301 et seq.]; or

(ii) Service performed after June 30, 1972, and before January 1, 1978, by an individual in the employ of this State or any of its instrumentalities, provided that such service is classified by the State Personnel Commission. As used in this paragraph, a "classified employee" is a person holding a career job based on a merit system under a specific pay plan in accordance with merit system screening, regulation and law. Coverage is restricted to services of classified employees not employed on a seasonal or temporary basis.

(iii) Service performed after December 31, 1977, in the employ of this State or any of its instrumentalities or any political subdivision thereof or any of its instrumentalities or any instrumentality of more than 1 of the foregoing or any instrumentality of any of the foregoing and 1 or more other states or political subdivisions, provided that such service is excluded from "employment"

as defined in the Federal Unemployment Tax Act by § 3306(c)(7) of that act [26 U.S.C. § 3306(c)(7)] and is not excluded from "employment" under paragraph (10)(D)(iii) of this section.

(C) Service performed after December 31, 1971, by an individual in the employ of a religious, charitable, educational or other organization but only if the following conditions are met:

(i) The service is excluded from "employment" as defined in the Federal Unemployment Tax Act solely by reason of § 3306(c)(8) of that act [26 U.S.C. § 3306(c)(8)]; and

(ii) The organization had 4 or more individuals in employment for some portion of a day in each of 20 different weeks, whether or not such weeks were consecutive, within either the current or preceding calendar year, regardless of whether they were employed at the same moment of time.

(D) For the purposes of paragraphs (10)(B) and (C) of this section, the term "employment" does not apply to service performed:

(i) In the employ of

(I) A church or convention or association of churches; or

(II) An organization which is operated primarily for religious purposes and which is operated, supervised, controlled or principally supported by a church or convention or association of churches; or

(ii) By a duly ordained, commissioned or licensed minister of a church in the exercise of a ministry or by a member of a religious order in the exercise of duties required by such order; or

(iii) Prior to January 1, 1978, in the employ of a school which is not an institution of higher education; after December 31, 1977, in the employ of a governmental entity referred to in paragraph (10)(B)(iii) of this section if such service is performed by an individual in the exercise of duties:

(I) As an elected official;

(II) As a member of a legislative body, or a member of the judiciary, of a state or political subdivision;

(III) As a member of the State National Guard or Air National Guard;

(IV) As an employee serving on a temporary basis in case of fire, storm, snow, earthquake, flood or similar emergency;

(V) In a position which, under or pursuant to the laws of this State, is designated as:

1. A major nontenured policymaking or advisory position, or

2. A policymaking or advisory position the performance of duties of which ordinarily does not require more than 8 hours per week; or

(iv) In a facility conducted for the purpose of carrying out a program of rehabilitation for individuals whose earning capacity is impaired by age or physical or mental deficiency or injury or of providing remunerative work for individuals who because of their impaired physical or mental capacity cannot be readily absorbed in the competitive labor market, such service performed by an individual receiving such rehabilitation or remunerative work; or

(v) As part of an unemployment work-relief or work-training program assisted or financed in whole or in part by any federal agency or an agency of a state or political subdivision thereof by an individual receiving such work relief or work training; or

(vi) Prior to January 1, 1978, for a hospital in a state prison or other state correctional institution and after December 31, 1977, by an inmate of a custodial or penal institution.

(E) The term "employment" shall include the service of an individual who is a citizen of the United States, performed outside the United States after December 31, 1971 (except in Canada, and in the case of the Virgin Islands after December 31, 1971, and prior to January 1 of the year following the year in which the United States Secretary of Labor approves the unemployed compensation law of the Virgin Islands under § 3304(a) [26 U.S.C. § 3304(a)] of the Internal Revenue Code of 1954), in the employ of an American employer (other than service which is deemed "employment" under paragraph (10)(H) or (I) of this section or the parallel provisions of another state's law), if:

(i) The employer's principal place of business in the United States is located in this State; or

(ii) The employer has no place of business in the United States, but

(I) The employer is an individual who is a resident of this State; or

(II) The employer is a corporation which is organized under the laws of this State; or

(III) The employer is a partnership or a trust and the number of partners or trustees who are residents of this State is greater than the number who are residents of any 1 other state; or

(iii) None of the criteria of paragraphs (10)(E)(i) and (ii) of this section is met but the employer has elected coverage in this State or, the employer having failed to elect coverage in any state, the individual has filed a claim for benefits based on such service under the law of this State.

(iv) An "American employer" for purposes of this paragraph means a person who is:

(I) An individual who is a resident of the United States; or

(II) A partnership if $^{2}/_{3}$ or more of the partners are residents of the United States; or

(III) A trust, if all of the trustees are residents of the United States; or

(IV) A corporation organized under the laws of the United States or of any state.

(v) For purposes of this paragraph, the term "United States" includes the states, the District of Columbia and the Commonwealth of Puerto Rico.

(F) Notwithstanding paragraph (10)(H) of this section, all service performed after December 31, 1971, by an officer or member of a crew of an American vessel on or in connection with such vessel if the operating office from which the operation of such vessel operating on navigable waters within, or within and without, the United States is ordinarily and regularly supervised, managed, directed and controlled is within this State.

(G) Notwithstanding any other provisions of this paragraph (10), except as provided in paragraph (10)(A)(i) of this section, service with respect to which a tax is required to be paid under any federal law imposing a tax against which credit may be taken for assessments required to be paid into a state unemployment fund or which as a condition for full tax credit against the tax imposed by the Federal Unemployment Tax Act [26 U.S.C. § 3301 et seq.] is required to be covered under this chapter.

(H) The term "employment" shall include an individual's entire service, performed within, or both within and without, this State if the service is localized in this State. Service shall be deemed to be localized within this State if:

(i) The service is performed entirely within this State; or

(ii) The service is performed both within and without this State but the service performed without this State is incidental to the individual's service within the State, for example, is temporary or transitory in nature or consists of isolated transactions.

(I) The term "employment" shall include an individual's entire service, performed within, or both within or without, this State if the service is not localized in any state but some of the service is performed in this State and

(i) The individual's base of operation is in this State; or

(ii) If there is no base of operations, then the place from which such service is directed or controlled is in this State; or

(iii) The individual's base of operations or place from which such service is directed or controlled is not in any state in which some part of the service is performed, but the individual's residence is in this State.

(J) Service covered by an election pursuant to § 3343 of this title shall be deemed to be employment during the effective period of the election.

(K) Notwithstanding any other provisions of this chapter and irrespective of whether the common-law relationship of employer and employee exists, services performed by an individual for wages, unless and until it is shown to the satisfaction of the Department that:

(i) Such individual has been and will continue to be free from control and direction in connection with the performance of such service, both under the individual's contract for the performance of services and in fact; and

(ii) Such service is performed either outside the usual course of the business for which the service is performed or is performed outside of all the places of business of the enterprise for which the service is performed; and

(iii) Such individual is customarily engaged in an independently established trade, occupation, profession or business of the same nature as that involved in the service performed.

(11) "Employment" does not include:

(A) Service performed by an individual in agricultural labor, except as provided in paragraph (11)(A)(vii) of this section. For purposes of this paragraph, the term "agricultural labor" means any service performed prior to January 1, 1972, which was agricultural labor as defined in this paragraph prior to such date, and remunerated service performed after December 31, 1971:

(i) On a farm, in the employ of any person, in connection with cultivating the soil, or in connection with raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training and management of livestock, bees, poultry and fur-bearing animals and wildlife;

(ii) In the employ of the owner or tenant or other operator of a farm, in connection with the operation, management, conservation, improvement or maintenance of such farm and its tools and equipment or in salvaging timber or clearing land of brush and other debris left by a hurricane, if the major part of such service is performed on a farm;

(iii) In connection with the production or harvesting of any commodity defined as an agricultural commodity in § 15(g) of the Agricultural Marketing Act, as amended [12 U.S.C. § 1141j] or in connection with the ginning of cotton or in connection with the operation or maintenance of ditches, canals, reservoirs or waterways, not owned or operated for profit, used exclusively for supplying and storing water for farming purposes;

(iv) (I) In the employ of the operator of a farm in handling, planting, drying, packing, packaging, processing, freezing, grading, storing or delivering to storage or to market or to a carrier for transportation to market, in its unmanufactured state, any agricultural or horticultural commodity, but only if such operator produced more than $^1/_2$ of the commodity with respect to which such service is performed;

(II) In the employ of a group of operators of farms (or a cooperative organization of which such operators are members) in the performance of service described in paragraph (11)(A)(iv)(I) of this section but only if such operators produced more than $^1/_2$ of the commodity with respect to which such service is performed;

(III) Paragraphs (11)(A)(iv)(I) and (II) of this section shall not be deemed to be applicable with respect to service performed in connection with commercial canning or commercial freezing or in connection with any agricultural or horticultural commodity after its delivery to a terminal market for distribution for consumption; or

(v) On a farm operated for profit if such service is not in the course of the employer's trade or business.

(vi) As used in paragraph (11)(A) of this section the term "farm" includes stock, dairy, poultry, fruit, fur-bearing animals and truck farms, plantations, ranches, nurseries, ranges, greenhouses or other similar structures used primarily for the raising of agricultural or horticultural commodities and orchards.

(vii) The term "employment" shall include service performed after December 31, 1977, by an individual in agricultural labor when:

(I) Such service is performed for a person who:

1. During any calendar quarter in either the current or the preceding calendar year paid remuneration in cash of $20,000 or more to individuals employed in agricultural labor (not taking into account service in agricultural labor performed before January 1, 1980, by an alien referred to in paragraph (11)(A)(vii)(II) of this section, or

2. For some portion of a day in each of 20 different calendar weeks, whether or not such days were consecutive, in either the current or the preceding calendar year, employed in agricultural labor (not taking into account service in agricultural labor performed before January 1, 1980, by an alien referred to in paragraph (11)(A)(vii)(II) of this section) 10 or more individuals, regardless of whether they were employed at the same moment of time.

(II) Such service is not performed in agricultural labor if performed prior to January 1, 1980, by an individual who is an alien admitted to the United States to perform service in agricultural labor pursuant to §§ 214(c) and 101(a)(15)(H) of the Immigration and Nationality Act [8 U.S.C. § 1184(c) and 8 U.S.C. § 1101(a)(15)(H)].

(III) For purposes of this paragraph, any individual who is a member of a crew furnished by a crew leader to perform service in agricultural labor for any other person shall be treated as an employee of such crew leader:

1. If such crew leader holds a valid certificate of registration under the Farm Labor Contractor Registration Act of 1963 [former 7 U.S.C. § 2041 et seq. (See Revisor's note)]; or substantially all the members of such crew operate or maintain tractors, mechanized harvesting or crop dusting equipment or any other mechanized equipment, which is provided by such crew leader; and

2. If such individual is not an employee of such other person within the meaning of paragraph (9)(A) of this section.

(IV) For the purpose of this subparagraph in the case of an individual who is furnished by a crew leader to perform services in agricultural labor for any other person and who is not treated as an employee of such crew leader under paragraph (11)(A)(vii)(III) of this section:

1. Such other person and not the crew leader shall be treated as the employer of such individual; and

2. Such other person shall be treated as having paid cash remuneration to such individual in an amount equal to the amount of cash remuneration paid to such individual by the crew leader (either on the person's own behalf or on behalf of such other person) for the service in agricultural labor performed for such other person.

(V) For the purposes of this subparagraph, the term "crew leader" means an individual who:

1. Furnishes individuals to perform services in agricultural labor for any other person;

2. Pays (either on the person's own behalf or on behalf of such other person) the individuals so furnished by the crew leader for the service in agricultural labor performed by them; and

3. Has not entered into a written agreement with such other person under which such individual is designated as an employee of such other person.

(B) Domestic service in a private home performed prior to January 1, 1978. After December 31, 1977, the term "employment" shall include domestic service in a private home, local college club or local chapter of a college fraternity or sorority performed for a person who paid cash remuneration of $1,000 or more after December 31, 1977, in the current calendar year or the preceding calendar year to individuals employed in such domestic service in any calendar quarter.

(C) Service performed by an individual in the employ of the individual's child or spouse and service performed by a child under the age of 18 in the employ of the child's father or mother.

(D) Service performed after December 31, 1971, in the employ of this State, or of any political subdivision or of any instrumentality of this State or its political subdivision except as provided in paragraph (10)(B) of this section.

(E) Service performed after December 31, 1971, in the employ of a corporation, community chest, fund or foundation organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary or educational purposes or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda or otherwise attempting to influence legislation and which does not participate in, or intervene in (including the publishing or distributing of statements) any political campaign on behalf of any candidate for public office, except as provided in paragraph (10)(C) of this section.

(F) Service with respect to which unemployment compensation is payable under an unemployment compensation system established by an act of Congress. The Department shall enter into agreements with the proper agencies under such act of Congress, which agreements shall become effective 10 days after publication thereof in the manner provided in § 3122 of this title for general rules and shall provide reciprocal treatment to individuals who have, after acquiring potential rights to benefits under this chapter, acquired rights to unemployment compensation under such act of Congress, or who have, after acquiring potential rights to unemployment compensation under such act of Congress, acquired rights to benefits under this chapter.

(G) Service performed by an officer of any building and loan association, fraternal order, society, labor union, political club or political organization service club, alumni association or any corporation, association, society or club organized and operated exclusively for social or civic purposes. The exemptions mentioned in this paragraph shall apply only when the service performed by the officer is a part-time service and only when the remuneration of the officer performing the part-time service does not exceed the sum of $75 in any calendar quarter in any calendar year.

(H) Service performed by an individual for an employer as an insurance agent or real estate agent, or as an insurance solicitor or real estate solicitor, if all such service performed by such individual for such employer is performed for remuneration solely by way of commissions.

(I) Service covered by an arrangement between the Department and the agency charged with the administration of any other state or federal unemployment compensation law pursuant to which all services performed by an individual for an employing unit during the period covered by such employing unit's duly approved election are deemed to be performed entirely within such agency's state.

(J) Service performed after December 31, 1971, in the employ of a school, college or university, if such service is performed by a student who is enrolled and is regularly attending classes at such school, college or university.

(K) Service performed after December 31, 1971, by an individual who is enrolled at a nonprofit or public educational institution which normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where its educational activities are carried on as a student in a full-time program, taken for credit at such institution, which combines academic instruction with work experience, if such service is an integral part of such program and such institution has so certified to the employer, except that this subparagraph shall not apply to service performed in a program established for or on behalf of an employer or a group of employers.

(L) Service performed after December 31, 1971, in the employ of a hospital if such service is performed by a patient of the hospital, as defined in paragraph (14) of this section.

(M) Service performed after June 30, 1972, in the employ of this State or any of its political subdivisions by an elected official, an official appointed by the Governor or an official compensated on a fee basis.

(N) Service performed as a direct seller as defined in § 3508 of the Internal Revenue Code of 1954 [26 U.S.C. § 3508], as amended.

(12) "Employment office" means a free public employment office or branch thereof operated by this State or as a part of a state-controlled system of public employment offices or by a federal agency charged with the administration of an unemployment compensation program or free public employment offices.

(13) "Fund" means the Unemployment Compensation Fund established by this title to which all assessments required and from which all benefits provided under this chapter shall be paid.

(14) "Hospital" means an institution which has been licensed, certified or approved by the Department of Health and Social Services as a hospital.

(15) (A) "Institution of higher education," for the purposes of this section, means an educational institution which:

(i) Admits as regular students only individuals having a certificate of graduation from a high school or the recognized equivalent of such a certificate;

(ii) Is legally authorized in this State to provide a program of education beyond high school;

(iii) Provides an educational program for which it awards a bachelor's or higher degree, or provides a program which is acceptable for full credit toward such a degree, a program of postgraduate or postdoctoral studies or a program of training to prepare students for gainful employment in a recognized occupation; and

(iv) Is a public or other nonprofit institution.

(v) Notwithstanding any of the foregoing provisions of this paragraph (15), all colleges and universities in this State are institutions of higher education for purposes of this section.

(B) "Educational institution" (including an institution of higher education) is:

(i) One in which participants, trainees or students are offered an organized course of study or training designed to transfer to them knowledge, skills, information, doctrines, attitudes or abilities from, by or under the guidance of an instructor or teacher; and

(ii) Approved, licensed or issued a permit to operate as a school by the State Department of Education or other governmental agency that is authorized within the State to approve, license or issue a permit for the operations of a school; and

(iii) The courses of study or training which it offers may be academic, technical, trade or preparation for gainful employment in a recognized occupation.

(16) “States” includes, in addition to the states of the United States of America, the District of Columbia, the Commonwealth of Puerto Rico and Virgin Islands.

(17) “Unemployment” exists and an individual is “unemployed” in any week during which the individual performs no services and with respect to which no wages are payable to the individual, or in any week of less than full-time work if the wages payable to the individual with respect to such week are less than the individual’s weekly benefit amount plus whichever is the greater of $10 or 50% of the individual’s weekly benefit amount. The Department shall prescribe regulations applicable to unemployed individuals making such distinctions in the procedures as to total unemployment, part-total unemployment, partial unemployment of individuals attached to their regular jobs and other forms of short-time work as the Department deems necessary.

(18) “Wages” means all remuneration for personal services, including commissions, bonuses, dismissal payments, holiday pay, back pay awards and the cash value of all remuneration in any medium other than cash.

Gratuities customarily received by an individual in the course of the individual’s work from persons other than the individual’s employing unit shall be treated as wages received from the individual’s employing unit.

The reasonable cash value of remuneration in any medium other than cash and the reasonable amount of gratuities shall be estimated and determined in accordance with rules prescribed by the Department.

(19) “Wages” does not include:

(A) For the purpose of §§ 3345 and 3348 of this title:

(i) After December 31, 1982, that part of the remuneration which, after remuneration equal to $7,200 with respect to employment during any calendar year, is paid to an individual by an employer or the employer’s predecessor during such calendar year; or

(ii) After December 31, 1983, that part of the remuneration which, after remuneration equal to $8,000 (or such greater amount as may be specified as the taxable wage base in the Federal Unemployment Tax Act [26 U.S.C. § 3301 et seq.]) with respect to employment during any calendar year, is paid to an individual by an employer or the employer’s predecessor during such calendar year; or

(iii) After December 31, 1985, that part of the remuneration which, after remuneration equal to $8,250 (or such greater amount as may be specified as the taxable wage base in the Federal Unemployment Tax Act [26 U.S.C. § 3301 et seq.]) with respect to employment during any calendar year, is paid to an individual by an employer or the employer’s predecessor during such calendar year; or

(iv) After December 31, 1986, that part of the remuneration which, after remuneration equal to $8,500 (or such greater amount as may be specified as the taxable wage base in the Federal Unemployment Tax Act [26 U.S.C. § 3301 et seq.]) with respect to employment during any calendar year, is paid to an individual by an employer or the employer’s predecessor during such calendar year; or

(v) After December 31, 2007, that part of the remuneration which, after remuneration equal to $10,500 (or such greater amount as may be specified as the taxable wage base in the Federal Unemployment Tax Act [26 U.S.C. § 3301 et seq.]) with respect to employment during any calendar year, is paid to an individual by an employer or the employer’s predecessor during such calendar year.

(vi) After December 31, 2013, that part of the remuneration which, after remuneration equal to $18,500 (or such greater amount as may be specified as the taxable wage base in the Federal Unemployment Tax Act (26 U.S.C. § 3301 et seq.)) with respect to employment during any calendar year, is paid to an individual by an employer or the employer’s predecessor during such calendar year if the balance in the Unemployment Insurance Trust Fund, as certified by the Director of Unemployment Insurance to the Secretary of Labor, is $125.0 million or less as of the preceding September 30; or that part of the remuneration which, after remuneration equal to $16,500 (or such greater amount as may be specified as the taxable wage base in the Federal Unemployment Tax Act (26 U.S.C. § 3301 et seq.)) with respect to employment during any calendar year, is paid to an individual by an employer or the employer’s predecessor during such calendar year if the balance in the Unemployment Insurance Trust Fund, as certified by the Director of Unemployment Insurance to the Secretary of Labor, is greater than $125.0 million, but less than $175.0 million as of the preceding September 30; or that part of the remuneration which, after remuneration equal to $14,500 (or such greater amount as may be specified as the taxable wage base in the Federal Unemployment Tax Act (26 U.S.C. § 3301 et seq.)) with respect to employment during any calendar year, is paid to an individual by an employer or the employer’s predecessor during such calendar year if the balance in the Unemployment Insurance Trust Fund, as certified by the Director of Unemployment Insurance to the Secretary of Labor, is at least $175.0 million, but no greater than $ 225.0 million as of the preceding September 30; or that part of the remuneration which, after remuneration equal to $12,500 (or such greater amount as may be specified as the taxable wage base in the Federal Unemployment Tax Act (26 U.S.C. § 3301 et seq.)) with respect to employment during any calendar year, is paid to an individual by an employer or the employer’s predecessor during such calendar year if the balance in the Unemployment Insurance Trust Fund, as certified by the Director of Unemployment Insurance to the Secretary of Labor, is greater than $225.0 million, but less than $275.0 million as of the preceding September 30; or that part of the remuneration which, after remuneration equal to $10,500 (or such greater amount as may be specified as the taxable wage base in the Federal Unemployment Tax Act (26 U.S.C. § 3301 et seq.)) with respect to employment during any calendar year, is paid to an individual by an employer or the

employer's predecessor during such calendar year if the balance in the Unemployment Insurance Trust Fund, as certified by the Director of Unemployment Insurance to the Secretary of Labor, is $275.0 million or greater as of the preceding September 30.

(vii) For the purpose of this paragraph, the term "employment" shall include service constituting employment under any unemployment compensation law of another state.

(viii) Notwithstanding any other provisions in this section, from July 1, 2019, to October 29, 2020, "wages" does not include that part of the remuneration which, after remuneration equal to $16,500 (or such greater amount as may be specified as the taxable wage base in the Federal Unemployment Tax Act (26 U.S.C. § 3301 et seq.)) with respect to employment during any calendar year, is paid to an individual by an employer or the employer's predecessor during such calendar year.

(ix) Notwithstanding any other provisions in this section, from January 1, 2022, to December 31, 2022, "wages" does not include that part of the remuneration which, after remuneration equal to $14,500 (or such greater amount as may be specified as the taxable wage base in the Federal Unemployment Tax Act (26 U.S.C. § 3301 et seq.)) with respect to employment during any calendar year, is paid to an individual by an employer or the employer's predecessor during such calendar year.

(B) The amount of any payment with respect to services performed after December 31, 1940, to or on behalf of an individual in its employ under a plan or system established by an employing unit which makes provision for individuals in its employ generally or for a class or classes of such individuals (including any amount paid by an employing unit for insurance or annuities or into a fund to provide for any such payment) on account of:

(i) Retirement; or

(ii) Sickness or accident disability; or

(iii) Medical and hospitalization expenses in connection with sickness or accident disability; or

(iv) Death, provided the individual in its employ:

(I) Has not the option to receive instead of provision for such death benefit any part of such payment or if such death benefit is insured any part of the premiums (or contributions to premiums) paid by the individual's employing unit, and

(II) Has not the right, under the provisions of the plan or system or policy of insurance providing for such death benefit, to assign such benefit or to receive a cash consideration in lieu of such benefit either upon withdrawal from the plan or system providing for such benefit or upon termination of such plan or system or policy of insurance or of the individual's services with such employing unit.

(C) The payment by an employing unit (without deduction from the remuneration of the individual in its employ) of the tax imposed upon an individual in its employ under § 3101 of the Federal Internal Revenue Code [26 U.S.C. § 3101] with respect to services performed after December 31, 1954.

(D) Vacation pay paid during or incident to any period of unemployment.

(E) Any attendance bonus paid during or incident to any period of unemployment.

(F) Payments to an employee under Chapter 19 of this title by an employer who has failed to provide the advance notice of a mass layoff, plant closing or relocation that is required by Chapter 19 of this title or the federal Worker Adjustment and Retraining Notification Act (29 U.S.C. § 2101 et seq.) shall not be construed as wages. Unemployment insurance benefits under this title may not be denied or reduced because of the receipt of payments related to an employer's violation of Chapter 19 of this title or the federal Worker Adjustment and Retraining Notification Act (29 U.S.C. § 2101 et seq.).

(20) [Repealed.]

(21) "Week" means calendar week, ending at midnight Saturday, but all work performed and wages earned during a working shift which starts before midnight Saturday shall be included in the week in which such shift begins. For purposes of partial claims and mass layoff claims, the Department may authorize the employer's payroll week.

(22) "Work" means service, including service in interstate commerce, performed for wages or under any contract of hire, written or oral, express or implied.

(23) "Statewide average weekly wage" shall be the amount computed annually as of July 1 by dividing the aggregate amount of wages irrespective of the limitation on the amount of wages subject to assessment under paragraph (19) of this section for services in employment reported by employers as paid during the first 4 of the last 6 completed calendar quarters immediately preceding the effective date of the computation, by a figure representing 52 times the 12-month average of the number of employees in the pay period containing the twelfth day of each month during the same 4 calendar quarters as reported by such employers. The statewide average weekly wage shall be effective on July 1 of each year computed.

(41 Del. Laws, c. 258, § 2; 42 Del. Laws, c. 196, §§ 1-5; 43 Del. Laws, c. 278; 43 Del. Laws, c. 279; 43 Del. Laws, c. 280, §§ 1, 2; 43 Del. Laws, c. 281, §§ 1, 2; 43 Del. Laws, c. 282, § 1; 44 Del. Laws, c. 207, § 1; 45 Del. Laws, c. 267, §§ 1-4; 46 Del. Laws, c. 162, §§ 1, 2; 19 Del. C. 1953, § 3302; 49 Del. Laws, c. 220, § 19; 50 Del. Laws, c. 115, §§ 1-3; 50 Del. Laws, c. 117, § 1; 50 Del. Laws, c. 559, § 1; 53 Del. Laws, c. 79, § 1; 53 Del. Laws, c. 158; 53 Del. Laws, c. 232, § 1; 57 Del. Laws, c. 521, § 1; 57 Del. Laws, c. 669, §§ 5A, 5B; 58 Del. Laws, c. 143, § 5; 58 Del. Laws, c. 359; 58 Del. Laws, c. 511, § 39; 58 Del. Laws, c. 522, §§ 6-14; 58 Del. Laws, c. 530, §§ 1, 2; 58 Del. Laws, c. 573, §§ 1, 2, 4; 59 Del. Laws, c. 337, § 1; 60 Del. Laws, c. 138, § 1; 61 Del. Laws, c. 186, §§ 1-14(b); 61 Del. Laws, c. 452, § 1; 63 Del. Laws, c. 76, §§ 1, 2, 8; 63 Del. Laws, c. 427, §§ 2-4; 64 Del. Laws, c. 91, §§ 3-6; 64 Del. Laws, c. 114, § 1; 65 Del. Laws, c. 44, § 1; 65 Del. Laws, c. 45, § 1; 65 Del. Laws, c. 367, § 1; 66 Del. Laws,

c. 73, § 1; 66 Del. Laws, c. 380, § 1; 66 Del. Laws, c. 390, § 1; 70 Del. Laws, c. 43, §§ 2, 3; 70 Del. Laws, c. 186, § 1; 70 Del. Laws, c. 229, § 1; 71 Del. Laws, c. 147, § 1; 73 Del. Laws, c. 65, § 20; 73 Del. Laws, c. 271, § 1; 76 Del. Laws, c. 46, §§ 1-3; 77 Del. Laws, c. 71, § 1; 79 Del. Laws, c. 173, §§ 3-5; 81 Del. Laws, c. 312, § 2; 82 Del. Laws, c. 80, § 1; 83 Del. Laws, c. 268, § 4.)

§ 3303. Fraternal benefit societies subject to assessment payments.

Section 6140 of Title 18 [repealed] shall not relieve the fraternal benefit societies mentioned in such § 6140 of Title 18 [repealed from the payment of the assessments required by this chapter.

(41 Del. Laws, c. 258, § 2; 42 Del. Laws, c. 196, § 6; 19 Del. C. 1953, § 3303; 53 Del. Laws, c. 79, § 1.)

§ 3304. Day of filing; computation of time.

When any notice, report or other document is required to be filed under this chapter and the same is forwarded by mail to the Department, the day of mailing shall be deemed to be the day of filing.

When the day, or the last day, for doing any act required to be done falls on Saturday, Sunday or a holiday, the act may be done on the first ensuing day that is not a Saturday, Sunday or holiday.

(41 Del. Laws, c. 258, § 2; 48 Del. Laws, c. 179, § 1; 19 Del. C. 1953, § 3304; 57 Del. Laws, c. 669, § 5B.)

§ 3305. Termination of chapter upon amendment, repeal or declaration of unconstitutionality of federal Social Security Act; disposition of moneys.

This chapter is enacted as part of a national plan of social security in conformity to the federal Social Security Act [42 U.S.C. § 301 et seq.].

In the event that the tax levied under § 3301 of the Federal Unemployment Tax Act [26 U.S.C. § 3301], against which assessments under this chapter may be credited, is amended or repealed by Congress or declared unconstitutional by the Supreme Court of the United States, with the result that no portion of the assessments required under this chapter may be credited against such federal tax, the provisions of this chapter, except those of this section and except as otherwise provided in this chapter, shall become inoperative. Thereupon, all assets standing to the credit of this State in the Unemployment Trust Fund in the United States Treasury shall be promptly requisitioned by the Department of Labor, which is granted continuing authority for the purposes of this section, and, together with all assets in the Unemployment Compensation Fund, shall be refunded to persons required to pay assessments under this chapter in accordance with the regulations prescribed by the Department.

Any interest or earnings of the Fund and any fines or penalties collected pursuant to this chapter shall be available to the Department to pay for the costs of making refunds pursuant to this section.

In the case of the Unemployment Compensation Administration Fund, any moneys therein received from the Secretary of Labor of the United States shall thereafter be dealt with by the Treasurer of this State in accordance with the regulations of the Secretary of Labor of the United States and the conditions of the grant to this State by the Secretary of Labor of the United States. Any assets in the Unemployment Compensation Administration Fund which have been received by this State from the United States employment service or which have been appropriated by the General Assembly for the State Employment Service shall remain available to the State Employment Service, which Service shall continue in existence as if this chapter had not been enacted. The same action shall be taken with respect to assets in the Unemployment Compensation Fund, the Unemployment Trust Fund and the Unemployment Compensation Administration Fund in the event that this chapter is repealed by the General Assembly or finally declared invalid by the Supreme Court of the State or by the Supreme Court of the United States.

(41 Del. Laws, c. 258, § 22; 19 Del. C. 1953, § 3305; 53 Del. Laws, c. 79, § 4; 53 Del. Laws, c. 232, § 1; 57 Del. Laws, c. 669, §§ 5B-5D; 58 Del. Laws, c. 522, § 15; 63 Del. Laws, c. 427, § 5.)

§ 3306. Reservation of power to amend or repeal chapter.

The General Assembly reserves the right to amend or repeal all or any part of this chapter at any time, and there shall be no vested private right of any kind against such amendment or repeal. All the rights, privileges or immunities conferred by this chapter or by acts done pursuant thereto shall exist subject to the power of the General Assembly to amend or repeal this chapter at any time.

(41 Del. Laws, c. 258, § 20; 19 Del. C. 1953, § 3306.)

§ 3307. Required employee background checks.

(a) All prospective employees, contractors, and any subcontractors thereof, of the Department who will have access to federal tax information shall obtain a background check as provided in subsection (c) of this section in order to be considered for employment to ensure compliance by the Department with § 6103(p)(4) of the Internal Revenue Code of 1986 (26 U.S.C. § 6103(p)(4)) and Internal Revenue Service Publication 1075 and any successor statutory provisions or Internal Revenue Service publications.

(b) All current employees, contractors, and any subcontractors thereof, of the Department who have access to federal tax information shall be required to submit to an initial and subsequent background checks as provided in subsection (c) of this section not less frequently than once every 10 years to ensure compliance by the Department with Internal Revenue Service Publication 1075 and any successor Internal Revenue Service publications.

(c) A person required to obtain a background check under this chapter shall submit fingerprints and other necessary information to the State Bureau of Identification in order to obtain all of the following:

(1) A report of the person's entire criminal history record from the State Bureau of Identification or a statement that the State Bureau of Identification Central Repository contains no such information relating to that person.

(2) A report of the person's entire federal criminal history record from the Federal Bureau of Investigation pursuant to Federal Bureau of Investigation appropriation of Title II of Public Law 92-544 (28 U.S.C. § 534) or a statement that the Federal Bureau of Investigation's records contain no such information relating to that person.

(d) The State Bureau of Identification shall be the intermediary for the purpose of subsection (c) of this section and shall forward all information required by subsections (a) and (b) of this section to the Department.

(e) The Department may adopt such standards for screening the background checks required by this section as the Department shall determine appropriate.

(81 Del. Laws, c. 311, § 1.)

Subchapter II

Compensation Benefits; Determination and Payment

§ 3311. Extent of benefits; liability of State or Department.

Benefits shall be due and payable under this chapter only to the extent provided in this chapter and to the extent that moneys are available therefor to the credit of the Unemployment Compensation Fund and neither the State nor the Department shall be liable for any amount in excess of such sums.

(41 Del. Laws, c. 258, § 23; 19 Del. C. 1953, § 3311; 57 Del. Laws, c. 669, § 5B.)

§ 3312. Benefit payments under regulations of Department.

All benefits shall be paid through employment offices, in accordance with such regulations as the Department prescribes.

(41 Del. Laws, c. 258, § 3; 45 Del. Laws, c. 267, § 5; 19 Del. C. 1953, § 3312; 57 Del. Laws, c. 669, § 5B.)

§ 3313. Wages defined; weekly benefit amount; total annual amount of benefits; child support obligations.

(a) As used in this section “wages” means wages for employment by employers for benefit purposes with respect to any benefit year only if such benefit year begins subsequent to the date on which the employer by whom such wages were paid has satisfied the conditions of § 3302(8) of this title or § 3343 of this title with respect to becoming an employer.

(b) An individual’s weekly benefit amount, for claims filed for weeks of unemployment beginning July 1, 1983, shall be an amount equal to $^{1}/_{78}$ of the individual’s total wages for employment by employers paid during the 3 quarters of the individual’s base period in which such wages were highest. If such weekly benefit amount is not an even dollar amount, it shall be rounded down to the next whole dollar. The minimum and maximum weekly benefit amount shall be determined in accordance with the following:

(1) For the period beginning July 1, 1983, and ending June 30, 1985, the amount shall not be less than $20 nor more than $165.

(2) For the period beginning July 1, 1985, and ending June 30, 1986, the amount shall not be less than $20 nor more than $195.

(3) For the period beginning July 1, 1986, and ending June 30, 1987, the amount shall not be less than $20 nor more than $205.

(4) For the period beginning July 1, 1987, and ending December 31, 1987, the amount shall not be less than $20 nor more than $205.

(5) Computations for each increase in the maximum weekly benefit amount shall commence with new claims filed to establish a benefit year commencing on or after the effective date of such increase.

(c) For claims establishing a benefit year beginning January 1, 1988, and thereafter, with respect to which the Unemployment Insurance Trust Fund balance, as certified by the Director of Unemployment Insurance to the Secretary of Labor, is equal to or greater than $90 million as of the preceding September 30, an individual’s weekly benefit amount shall be an amount equal to $^{1}/_{46}$ of the individual’s total wages for employment by employers paid during the 2 quarters of the individual’s base period in which such wages were highest. If such weekly benefit amount is not an even dollar amount, it shall be rounded down to the next whole dollar. The amount shall not be less than $20 nor more than $205. Computations for any change in the maximum weekly benefit amount shall commence with new claims filed to establish a benefit year effective on or after January 1 of each year.

(d) For claims establishing a benefit year beginning January 1, 1988, and thereafter, with respect to which the Unemployment Insurance Trust Fund balance, as certified by the Director of Unemployment Insurance to the Secretary of Labor, is less than $90 million as of the preceding September 30, and individual’s weekly benefit amount shall be an amount equal to $^{1}/_{52}$ of the individual’s total wages for employment by employers paid during the 2 quarters of the individual’s base period in which such wages were highest. If such weekly benefit amount is not an even amount, it shall be rounded down to the next whole dollar. The amount shall not be less than $20 nor more than $205. Computations for any change in the maximum weekly benefit amount shall commence with new claims filed to establish a benefit year effective on or after January 1 of each year.

(e) For claims establishing a benefit year beginning January 1, 1990, and thereafter, an individual’s weekly benefit amount shall be determined in accordance with subsection (c) or subsection (d) of this section as determined by the balance in the Unemployment Insurance Trust Fund. However, for such claims, the minimum and maximum weekly benefit amount shall not be less than $20 nor more than $225

unless the Unemployment Trust Fund balance, as certified by the Director of Unemployment Insurance to the Secretary of Labor, as of the preceding September 30, is less than $90 million. When the Unemployment Insurance Trust Fund balance is less than $90 million, the maximum weekly benefit amount shall be no more than $205. Computation for any change in the maximum weekly benefit amount shall commence with new claims filed to establish a benefit year on or after January 1 of each year.

(f) For claims establishing a benefit year beginning July 1, 1991, and thereafter, an individual's weekly benefit amount shall be determined in accordance with subsection (c) or subsection (d) of this section as determined by the balance in the Unemployment Insurance Trust Fund. However, for such claims, the minimum and maximum weekly benefit amount shall not be less than $20 nor more than $245 unless the Unemployment Insurance Trust Fund balance, as certified by the Director of Unemployment Insurance to the Secretary of Labor, as of the preceding September 30, is less than $150 million. When the Unemployment Insurance Trust Fund balance is less than $150 million, but equal to or greater than $90 million, the maximum weekly benefit amount shall be no more than $225. And when the Unemployment Insurance Trust Fund balance is less than $90 million, the maximum weekly benefit amount shall be no more than $205. Computation for any change in the maximum weekly benefit amount shall commence with new claims filed to establish a benefit year on or after January 1 of each year.

(g) For claims establishing a benefit year beginning July 1, 1993, and thereafter, an individual's weekly benefit amount shall be determined in accordance with subsection (c) or (d) of this section as determined by the balance in the Unemployment Insurance Trust Fund. However, for such claims, the minimum and maximum weekly benefit amount shall not be less than $20 nor more than $265 unless the Unemployment Insurance Trust Fund balance, as certified by the Director of Unemployment Insurance to the Secretary of Labor, as of the preceding September 30, is less than $165 million. When the Unemployment Insurance Trust Fund balance is less than $165 million, but equal to or greater than $150 million, the maximum weekly benefit amount shall be no more than $245. When the Unemployment Insurance Trust Fund balance is less than $150 million, but equal to or greater than $90 million, the maximum weekly benefit amount shall be no more than $225. When the Unemployment Insurance Trust Fund balance is less than $90 million, the maximum weekly benefit amount shall be no more than $205. Computation of any change in the maximum weekly benefit amount shall commence with new claims filed to establish a benefit year on or after January 1 of each year.

(h) For claims establishing a benefit year beginning July 1, 1995, and thereafter, an individual's weekly benefit amount shall be determined in accordance with subsection (c) or subsection (d) of this section as determined by the balance in the Unemployment Insurance Trust Fund. However, for such claims, the minimum and maximum weekly benefit amount shall not be less than $20 nor more than $300 unless the Unemployment Insurance Trust Fund balance, as certified by the Director of Unemployment Insurance to the Secretary of Labor, as of the preceding September 30, is less than $200 million. When the Unemployment Insurance Trust Fund balance is less than $200 million, but equal to or greater than $165 million, the maximum weekly benefit amount shall be no more than $265. When the Unemployment Insurance Trust Fund balance is less than $165 million, but equal to or greater than $150 million, the maximum weekly benefit amount shall be no more than $245. When the Unemployment Insurance Trust Fund balance is less than $150 million, but equal to or greater than $90 million, the maximum weekly benefit amount shall be no more than $225. When the Unemployment Insurance Trust Fund balance is less than $90 million, the maximum weekly benefit amount shall be no more than $205. Computation for any change in the maximum weekly benefit amount shall commence with new claims filed to establish a benefit year on or after January 1 of each year.

(i) For claims establishing a benefit year beginning July 1, 1999, and thereafter, an individual's weekly benefit amount shall be determined in accordance with subsection (c) or subsection (d) of this section as determined by the balance in the Unemployment Insurance Trust Fund. However, for such claims, the minimum and maximum weekly benefit amount shall not be less than $20 nor more than $315 unless the Unemployment Insurance Trust Fund balance, as certified by the Director of Unemployment Insurance to the Secretary of Labor, as of the preceding September 30, is less than $250 million. When the Unemployment Insurance Trust Fund balance is less than $250 million, but equal to or greater than $200 million, the maximum weekly benefit amount shall be no more than $300. When the Unemployment Insurance Trust Fund balance is less than $200 million, but equal to or greater than $165 million, the maximum weekly benefit amount shall be no more than $265. When the Unemployment Insurance Trust Fund balance is less than $165 million, but equal to or greater than $150 million, the maximum weekly benefit amount shall be no more than $245. When the Unemployment Insurance Trust Fund balance is less than $150 million, but equal to or greater than $90 million, the maximum weekly benefit amount shall be no more than $225. When the Unemployment Insurance Trust Fund balance is less than $90 million, the maximum weekly benefit amount shall be no more than $205. Computation for any change in the maximum weekly benefit amount shall commence with new claims filed to establish a benefit year on or after January 1 of each year.

(j) For claims establishing a benefit year beginning January 1, 2002, and thereafter, an individual's weekly benefit amount shall be determined in accordance with subsection (c) or subsection (d) of this section as determined by the balance in the Unemployment Insurance Trust Fund. However, for such claims, the minimum and maximum weekly benefit amount shall not be less than $20 nor more than $330 unless the Unemployment Insurance Trust Fund balance, as certified by the Director of Unemployment Insurance to the Secretary of Labor, as of the preceding September 30, is less than $275 million. When the Unemployment Insurance Trust Fund is less than $275 million, but equal to or greater than $250 million, the maximum weekly benefit amount shall be no more than $315. When the Unemployment Insurance Trust Fund balance is less than $250 million, but equal to or greater than $200 million, the maximum weekly benefit amount shall be no more than $300. When the Unemployment Insurance Trust Fund balance is less than $200 million, but equal to or greater than $165 million, the maximum weekly benefit amount shall be no more than $265. When the Unemployment Insurance Trust Fund balance is less than $165 million, but equal to or greater than $150 million, the maximum weekly benefit amount shall be no more than $245.

When the Unemployment Insurance Trust Fund balance is less than $150 million, but equal to or greater than $90 million, the maximum weekly benefit amount shall be no more than $225. When the Unemployment Insurance Trust Fund balance is less than $90 million, the maximum weekly benefit amount shall be no more than $205. Computation for any change in the maximum weekly benefit amount shall commence with new claims filed to establish a benefit year on or after January 1 of each year.

(k) For claims establishing a benefit year beginning January 1, 2004, and thereafter, an individual's weekly benefit amount shall be an amount equal to $^{1}/_{46}$ of the individual's total wages for employment by employers paid during the 2 quarters of the individual's base period in which such wages were highest. If such weekly benefit amount is not an even dollar amount, it shall be rounded down to the next whole dollar. The amount shall not be less than $20 nor more than $330.

(*l*) The Unemployment Compensation Advisory Council as defined in § 3107 of this title shall meet not less than every 2 years to review and make recommendations regarding the maximum weekly benefit amount. The Council's final recommendations shall be submitted to the Director of Unemployment Insurance by May 15 of the year in which the Council has met.

(m) Each eligible individual who is unemployed in any week shall be paid with respect to such week a sum equal to the individual's weekly benefit amount less that part of the wages (if any) payable to the individual with respect to such week which exceeds whichever is the greater of $10 or 50 percent of the individual's weekly benefit amount. Such sum, if not an even dollar, shall be rounded down to the next whole dollar. Wages do not have to be paid to be considered payable.

(n) Any eligible individual who filed a claim for benefits for weeks of unemployment prior to July 1975 shall be entitled during any benefit year to a total amount of benefits equal to whichever is the lesser of (i) 26 times the individual's weekly benefit amount, or (ii) 47 percent of the individual's wages for employment by employers paid during the individual's base period. If such amount is not an even dollar, it shall be raised to the next whole dollar. In no event shall the maximum total amount be less than 11 times the weekly benefit amount.

(o) Any eligible individual who files a claim for benefits for weeks of unemployment beginning July, 1975, and thereafter shall be entitled during any benefit year to a total amount of benefits equal to whichever is the lesser of (i) 26 times the individual's weekly benefit amount or (ii) 50 percent of the individual's wages for employment by employers paid during the individual's base period. If such amount is not an even dollar, it shall be rounded down to the next whole dollar.

(p) Any otherwise eligible individuals shall be paid with respect to any week a benefit amount equal to the individual's weekly benefit amount less that part of a retirement pension or annuity, if any, received by the individual or for which the individual is eligible under a private pension plan which is financed entirely by a base period employer of such employee, and which is in excess of the weekly benefit amount for which the individual is eligible under this chapter. If there is employee participation in financing a pension plan, such deduction shall be reduced in the same proportion as the employee's contribution to the pension bears to the total pension amount. If such retirement pension or annuity payment deductible under this subsection is received on other than a weekly basis, the amount thereof shall be allocated and prorated in accordance with such regulation as the Department shall prescribe. This subsection shall apply only to any new claim filed after August 9, 1961.

The weekly benefit amount payable to an individual for any week which begins after March 31, 1980, and which begins in a period with respect to which such individual is receiving or is eligible to receive a governmental or other pension, retirement or retired pay, annuity or any other similar periodic payment which is based on the previous work of such individual or which begins in a period with respect to which such individual is receiving or is eligible for sickness disability or workers' compensation benefits shall be reduced (but not below 0) by the sum of the prorated weekly amount of such pension, retirement or retired pay, annuity or other payment and the prorated weekly amount of such disability or worker's compensation benefits payment which is reasonably attributable to such work; provided that, in the case of the pension retirement or retired pay, annuity or other payment, if the provisions of the Federal Unemployment Tax Act [26 U.S.C. § 3301 et seq.] permit:

(1) The requirements of this paragraph shall only apply in the case of a pension, retirement or retired pay, annuity or other similar periodic payment under a plan maintained (or contributed to) by a base period or chargeable employer (as determined under this chapter);

(2) The amount of any such reduction shall be determined taking into account contributions made by the individual for the pension, retirement or retired pay, annuity or other similar periodic payment;

(3) In the case of a payment in the form of a pension, annuity, retirement or retired payment paid to an individual under the Social Security Act [42 U.S.C. § 301 et seq.] or the Railroad Retirement Act of 1974 [45 U.S.C. § 231 et seq.], the individual's contribution shall be taken into consideration and the weekly benefit amount payable to said individual for any week which begins after July 1, 1997, shall be reduced by 25 percent of the individual's weekly benefit amount under the Social Security Act or the Railroad Retirement Act of 1974;

(4) In the case of a payment in the form of a pension, annuity, retirement or retired payment paid to an individual under the Social Security Act (42 U.S.C. § 301 et seq.), or the Railroad Retirement Act of 1974 (45 U.S.C. § 231 et seq.), the individual's contribution shall be taken into consideration and the weekly benefit amount payable to said individual for any week which begins after January 1, 1999, shall not be reduced.

(5) Any overpayment which may result from the retroactive application of this paragraph may, at the discretion of the Secretary of Labor, be waived.

(q) (1) An individual filing a new claim for unemployment compensation shall, at the time of filing such claim, disclose whether or not the individual owes child support obligations as defined under paragraph (q)(7) of this section. If any such individual discloses that the individual owes child support obligations, and is determined to be eligible for unemployment compensation, the Department shall notify the state or local child support enforcement agency enforcing such obligation that the individual has been determined to be eligible for unemployment compensation.

(2) The Department shall deduct and withhold from any unemployment compensation payable to an individual that owes child support obligations as defined under paragraph (q)(7) of this section:

a. The amount specified by the individual to the Department to be deducted and withheld under this paragraph, if neither paragraph (q)(2)b. nor c. of this section is applicable;

b. The amount (if any) determined pursuant to an agreement submitted to the Department under § 454(19)(B)(i) of the Social Security Act [42 U.S.C. § 654(19)(B)(i)] by the state or local child support enforcement agency, unless paragraph (q)(2)c. of this section is applicable; or

c. Any amount otherwise required to be so deducted and withheld from such unemployment compensation pursuant to legal process (as that term is defined in § 459(i)(5) of the Social Security Act [42 U.S.C. § 659(i)(5)]) properly served upon the Department.

(3) Any amount deducted and withheld under paragraph (q)(2) of this section shall be paid by the Department to the appropriate state or local child support enforcement agency.

(4) Any amount deducted and withheld under paragraph (q)(2) of this section shall for all purposes be treated as if it were paid to the individual as unemployment compensation and paid by such individual to the state or local child support enforcement agency in satisfaction of the individual's child support obligations.

(5) For purposes of paragraphs (q)(1) through (4) of this section, the term "unemployment compensation" means any compensation payable under this chapter (including amounts payable by the Department pursuant to an agreement under any federal law providing for compensation, assistance or allowances with respect to unemployment).

(6) This subsection applies only if appropriate arrangements have been made for reimbursement by the state or local child support enforcement agency for the administrative costs incurred by the Department under this subsection which are attributable to child support obligations being enforced by the state or local child support enforcement agency.

(7) The term "child support obligation" is defined for purposes of these provisions as including only obligations which are being enforced pursuant to a plan described in § 454 of the Social Security Act [42 U.S.C. § 654] which has been approved by the Secretary of Health and Human Services under Part D of Title IV of the Social Security Act [42 U.S.C. § 651 et seq.].

(8) The term "state or local child support enforcement agency" as used in these provisions means any agency of a state or a political subdivision thereof operating pursuant to a plan described in paragraph (q)(7) of this section.

(r) (1) An individual filing a new claim for unemployment compensation shall, at the time of filing such claims, disclose whether or not that individual owes an uncollected overissuance (as defined in § 13(c)(1) of the Food Stamp Act of 1977 [7 U.S.C. § 2022]) of food stamp coupons. The Department shall notify the state food stamp agency enforcing such obligation of any individual who discloses that the individual owes a food stamp coupon obligation and who is determined to be eligible for unemployment compensation.

(2) The Department shall deduct and withhold from any unemployment compensation payable to an individual who owes an uncollected overissuance of food stamp coupons:

a. The amount specified by the individual to the Department to be deducted and withheld under this paragraph, if neither paragraph (r)(2)b. nor c. of this section is applicable;

b. The amount (if any) determined pursuant to an agreement submitted to the Department by the state food stamp agency under § 13(c)(3)(A) of the Food Stamp Act of 1977 [7 U.S.C. § 2022], unless paragraph (r)(2)c. of this section is applicable; or

c. Any amount otherwise required to be deducted and withheld from unemployment compensation pursuant to § 13(c)(3)(B) of the Food Stamp Act of 1977 [7 U.S.C. § 2022].

(3) Any amount deducted and withheld under paragraph (r)(2) of this section shall be paid by the Department to the appropriate state food stamp agency.

(4) Any amount deducted and withheld under paragraph (r)(2) of this section shall for all purposes be treated as if it were paid to the individual as unemployment compensation and paid by such individual to the state food stamp agency as repayment of the individual's uncollected overissuance of food stamp coupons.

(5) For purposes of paragraphs (r)(1) through (4) of this section, the term "unemployment compensation" means any compensation payable under this chapter, including amounts payable by the Department pursuant to an agreement under any federal law providing for compensation, assistance or allowances with respect to unemployment.

(6) This subsection applies only if arrangements have been made for reimbursement by the state food stamp agency for the administrative costs incurred by the Department under this subsection which are attributable to the repayment of uncollected overissuance of food stamp coupons to the state food stamp agency.

(7) The term "state food stamp agency," as used in these provisions, means any agency described in § 3(n)(1) of the Food Stamp Act of 1977 [7 U.S.C. § 2012] which administers the food stamp program established under such act.

(s) Notwithstanding any other provisions in this section, for claims establishing a benefit year beginning June 30, 2019, and thereafter, an individual's weekly benefit amount shall be an amount equal to $^{1}/_{46}$ of the individual's total wages for employment by employers paid during the 2 quarters of the individual's base period in which such wages were highest. If the weekly benefit amount is not an even dollar amount, it will be rounded down to the next whole dollar. The amount shall not be less than $20 nor more than $400.

(41 Del. Laws, c. 258, § 3; 42 Del. Laws, c. 196, §§ 7-9; 43 Del. Laws, c. 281, § 3; 44 Del. Laws, c. 207, § 2; 45 Del. Laws, c. 267, § 5; 47 Del. Laws, c. 185, §§ 1, 2; 19 Del. C. 1953, § 3313; 50 Del. Laws, c. 117, §§ 2, 3; 51 Del. Laws, c. 343; 53 Del. Laws, c. 158, §§ 2-4; 55 Del. Laws, c. 358, § 1; 57 Del. Laws, c. 521, §§ 2-4; 57 Del. Laws, c. 669, § 5B; 59 Del. Laws, c. 162, § 1; 60 Del. Laws, c. 138, § 2; 61 Del. Laws, c. 186, §§ 15, 33; 62 Del. Laws, c. 163, § 1; 62 Del. Laws, c. 287, § 1; 63 Del. Laws, c. 76, § 3; 63 Del. Laws, c. 427, § 6; 64 Del. Laws, c. 91, § 7; 64 Del. Laws, c. 114, §§ 2, 3; 64 Del. Laws, c. 272, § 1; 65 Del. Laws, c. 45, § 2; 65 Del. Laws, c. 179, § 1; 66 Del. Laws, c. 72, §§ 2-7; 67 Del. Laws, c. 119, §§ 3, 4; 68 Del. Laws, c. 104, §§ 1, 2; 69 Del. Laws, c. 89, §§ 1, 2; 70 Del. Laws, c. 46, §§ 5, 6; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 28, § 1; 71 Del. Laws, c. 146, §§ 1, 2; 71 Del. Laws, c. 147, § 2; 71 Del. Laws, c. 392, §§ 1, 2; 71 Del. Laws, c. 404, §§ 1, 2; 72 Del. Laws, c. 103, §§ 1, 2; 73 Del. Laws, c. 209, §§ 1, 2; 74 Del. Laws, c. 143, §§ 1, 2; 82 Del. Laws, c. 80, § 2.)

§ 3314. Disqualification for benefits.

An individual shall be disqualified for benefits:

(1) For the week in which the individual left work voluntarily without good cause attributable to such work and for each week thereafter until the individual has been employed in each of 4 subsequent weeks (whether or not consecutive) and has earned wages in covered employment equal to not less than 4 times the weekly benefit amount. However, if an individual has left work involuntarily because of illness, no disqualification shall prevail after the individual becomes able to work and available for work and meets all other requirements under this title, but the Department shall require a doctor's certificate to establish such availability or if an individual has left work due to circumstances directly resulting from the individual's experience of domestic violence, as that term is defined in § 703A(a) of Title 13, no disqualification shall prevail. An individual's leaving work shall be treated as due to circumstances directly resulting from the individual's experience of domestic violence if the leaving work resulted from:

a. The individual's reasonable fear of future domestic violence at or en route to or from the individual's place of employment;

b. The individual's wish to relocate to another geographic area in order to avoid future domestic violence against the individual or the individual's spouse, child under the age of 18, or parent; or

c. Any other circumstance in which domestic violence causes the individual to reasonably believe that leaving work is necessary for the future safety of the individual or the individual's spouse, child under the age of 18, or parent.

When determining whether an individual has experienced domestic violence for compensation purposes, the Division shall require the individual to provide documentation to the Division of the domestic violence involved, such as a police or court record, or documentation of the domestic violence from a shelter worker, attorney, member of the clergy or medical or other professional from whom the employee has sought assistance in addressing domestic violence and its effects. All evidence of domestic violence experienced by an individual, including the individual's statement and any corroborating evidence shall not be disclosed by the Division of Unemployment Insurance unless consent for disclosure is given by the individual. Wage credits earned in such work, if from employment under this title in the employ of any employer liable for assessments under § 3348 of this title, shall not constitute employer's benefit wages in connection with §§ 3349-3356 of this title. Any employer liable for reimbursement payments in lieu of assessments shall reimburse the Unemployment Compensation Fund in accordance with § 3345 of this title when an individual becomes eligible for benefits upon separation from a subsequent employer. 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.

An individual who, pursuant to an option provided under a collective bargaining agreement or written employer plan which permits the waiver of the right to retain employment when there is a temporary layoff due to lack of work, has elected to be separated for a temporary period not to exceed 30 calendar days and the employer has consented thereto will not be considered to have left work voluntarily without good cause attributable to such work.

An individual, who quits work in order to accompany that individual's spouse to a place from which it is impractical for such individual to commute and due to a change in location of that individual's spouse's employment, will not be considered to have left work voluntarily without good cause attributable to such work. Wage credits earned in such work, if from employment under this title in the employ of any employer liable for assessments under § 3348 of this title, shall not constitute employer's benefits wages in connection with §§ 3349-3356 of this title. Any employer liable for reimbursement payments in lieu of assessments shall reimburse the Unemployment Compensation Fund in accordance with § 3345 of this title when an individual becomes eligible for benefits upon separation from a subsequent employer.

An individual, who quits work to care for that individual's spouse, child under the age of 18, or parent with a verified illness or disability, will not be considered to have left work voluntarily without good cause attributable to such work. For the purposes of this paragraph, a "verified illness or disability" is defined as one that necessitates the care of the individual's ill or disabled spouse, child under the age of 18, or parent that lasts longer than the individual's employer is willing to grant leave for. Wage credits earned in such

work, if from employment under this title in the employ of any employer liable for assessments under § 3348 of this title, shall not constitute employer's benefits wages in connection with §§ 3349-3356 of this title. Any employer liable for reimbursement payments in lieu of assessments shall reimburse the Unemployment Compensation Fund in accordance with § 3345 of this title when an individual becomes eligible for benefits upon separation from a subsequent employer.

(2) For the week in which the individual was discharged from the individual's work for just cause in connection with the individual's work and for each week thereafter until the individual has been employed in each of 4 subsequent weeks (whether or not consecutive) and has earned wages in covered employment equal to not less than 4 times the weekly benefit amount. Wage credits earned in such work, if from employment under this title in the employ of any employer liable for assessments under § 3348 of this title, shall not constitute employer's benefits wages in connection with §§ 3349-3356 of this title. Any employer liable for reimbursement payments in lieu of assessments shall reimburse the Unemployment Compensation Fund in accordance with § 3345 of this title when an individual becomes eligible for benefits upon separation from a subsequent employer.

An individual, who is discharged from work because the individual has provided notice to that individual's employer of the intent to quit work to accompany that individual's spouse to a place from which it is impractical for such individual to commute and due to a change in location of the individual's spouse's employment, will not be considered to have been discharged from work for good cause attributable to such work. Wage credits earned in such work, if from employment under this title in the employ of any employer liable for assessments under § 3348 of this title, shall constitute employer's benefits wages in connection with §§ 3349-3356 of this title. Any employer liable for reimbursement payments in lieu of assessments shall reimburse the Unemployment Compensation Fund in accordance with § 3345 of this title.

An individual, who is discharged from work because the individual is providing care for that individual's spouse, child under the age of 18, or parent with a verified illness or disability, will not be considered to have been discharged from work for good cause attributable to such work. For the purposes of this paragraph, a "verified illness or disability" is defined as one that necessitates the care of the individual's ill or disabled spouse, child under the age of 18, or parent that lasts longer than the individual's employer is willing to grant leave for. Wage credits earned in such work, if from employment under this title in the employ of any employer liable for assessments under § 3348 of this title, shall constitute employer's benefits wages in connection with §§ 3349-3356 of this title. Any employer liable for reimbursement payments in lieu of assessments shall reimburse the Unemployment Compensation Fund in accordance with § 3345 of this title.

An individual, who is discharged from work due to circumstances directly resulting from the individual's experience of domestic violence, as that term is defined in § 703A (a) of Title 13, will not be considered to have been discharged from work for good cause attributable to such work. An individual's discharge from work shall be treated as due to circumstances directly resulting from the individual's experience of domestic violence if:

a. The individual had reasonable fear of future domestic violence at or en route to or from the individual's place of employment;

b. The individual relocated to another geographic area in order to avoid future domestic violence against the individual or the individual's spouse, child under the age of 18, or parent; or

c. Any other circumstance in which domestic violence causes the individual to reasonably believe that absence from work is necessary for the future safety of the individual or the individual's spouse, child under the age of 18, or parent.

When determining whether an individual has experienced domestic violence for compensation purposes, the Division shall require the individual to provide documentation to the Division of the domestic violence involved, such as a police or court record, or documentation of the domestic violence from a shelter worker, attorney, member of the clergy or medical or other professional from whom the employee has sought assistance in addressing domestic violence and its effects. All evidence of domestic violence experienced by an individual, including the individual's statement and any corroborating evidence shall not be disclosed by the Division of Unemployment Insurance unless consent for disclosure is given by the individual. Wage credits earned in such work, if from employment under this title in the employ of any employer liable for assessments under § 3348 of this title, shall constitute employer's benefits wages in connection with §§ 3349-3356 of this title. Any employer liable for reimbursement payments in lieu of assessments shall reimburse the Unemployment Compensation Fund in accordance with § 3345 of this title.

(3) If the individual has refused to accept an offer of work for which the individual is reasonably fitted or has refused to accept a referral to a job opportunity when directed to do so by a local employment office of this State or another state, and the disqualification shall begin with the week in which the refusal occurred and shall continue for each week thereafter until the individual has been employed in each of 4 subsequent weeks (whether or not consecutive) and has earned wages in covered employment equal to not less than 4 times the weekly benefit amount; provided that no individual shall be disqualified under this paragraph for refusing to accept an offer of work or a referral while the individual is attending a vocational training course approved by the Department if the acceptance of such offer or referral would prevent the individual from completing the course. No individual otherwise qualified to receive benefits shall lose the right to benefits by reason of a refusal to accept a referral or new work if:

a. As a condition of being so employed, the individual would be required by the employer to join a company union or would be required by the employer to resign from or refrain from joining any bona fide labor organization or would be denied the right by the employer to retain membership in and observe the lawful rules of any such organization;

b. The position offered is vacant due directly to a strike, lockout or other labor dispute;

c. The work is at an unreasonable distance from the individual's residence, having regard to the character of the work the individual has been accustomed to do, and travel to the place of work involves expenses substantially greater than that required for the individual's former work;

d. The remuneration, hours or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality; or

e. The referral or offer was for full-time work and the individual is permitted to seek only part-time work under the provisions of § 3315(3) of this title.

(4) For any week with respect to which the Department finds that the individual's total or partial unemployment is due to a stoppage of work which exists because of a labor dispute (other than a lockout) at the factory, establishment or other premises at which the individual is or was last employed. For purposes of this paragraph, 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;

b. The individual, through a bona fide labor organization, has offered to continue working for a reasonable time under the preexisting 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.

(5) For any week with respect to which or a part of which the individual has received or is seeking unemployment benefits under an unemployment compensation law of another state or of the United States, but if the appropriate agency of such other state or of the United States finally determines that the individual is not entitled to such unemployment benefits, this disqualification shall not apply.

(6) If the Department determines such individual has made a false statement or representation knowing it to be false or knowingly has failed to disclose a material fact to obtain benefits to which the individual was not lawfully entitled, and such disqualification shall be for a period of 1 year beginning with the date on which the first false statement, false representation or failure to disclose a material fact occurred. A disqualification issued pursuant to this subsection shall be considered a disqualification due to fraud.

(7) For any week with respect to which the Department finds that the individual has become unemployed by reason of commitment upon conviction and sentencing to any penal institution and for each week thereafter until the individual has been employed in each of 4 subsequent weeks (whether or not consecutive) and has earned wages in covered employment equal to not less than 4 times the weekly benefit amount. Wage credits earned in the individual's most recent employment prior to such commitment, if from employment under this title in the employ of any employer liable for assessments under § 3348 of this title, shall not constitute employer's benefit wages in connection with §§ 3349-3356 of this title. Any employer liable for reimbursement payments in lieu of assessments shall reimburse the Unemployment Compensation Fund in accordance with § 3345 of this title when an individual becomes eligible for benefits upon separation from a subsequent employer.

(8) If it shall be determined by the Department that total or partial unemployment is due to the individual's inability to work. Such disqualification to terminate when the individual becomes able to work and available for work as determined by a doctor's certificate and meets all other requirements under this title.

(9) Benefits shall not be paid to any individual on the basis of any services, substantially all of which consist of participating in sports or athletic events or training or preparing to so participate, for any week which commences during the period between 2 successive sport seasons (or similar periods) if such individual performed such services in the first of such seasons (or similar periods) and there is a reasonable assurance that such individual will perform such services in the latter of such seasons (or similar periods).

(10) a. Benefits shall not be paid on the basis of services performed by an alien unless such alien is an individual who was lawfully admitted for permanent residence at the time such services were performed, was lawfully present for purposes of performing such services or was permanently residing in the United States under color of law at the time such services were performed, including an alien who was lawfully present in the United States as a result of the application of § 212(d)(5) [8 U.S.C. § 1182(d)(5)] of the Immigration and Nationality Act.

b. Any data or information required of individuals applying for benefits to determine whether benefits are not payable to them because of their alien status shall be uniformly required from all applicants for benefits.

c. In the case of an individual whose application for benefits would otherwise be approved, no determination that benefits to such individual are not payable because of the individual's alien status shall be made except upon a preponderance of the evidence.

(11) a. Notwithstanding any other provisions of this chapter, no otherwise eligible individual shall be denied benefits for any week because the individual is in training, approved under § 236(a)(1) of the Trade Act of 1974 [19 U.S.C. § 2296(a)(1)], nor shall such individual be denied benefits by reason of leaving work to enter such training, provided the work left is not suitable employment, or because of the application to any such week in training of provisions in this law (or any applicable federal unemployment compensation law), relating to availability for work, active search for work or refusal to accept work.

b. For purposes of this paragraph (11), the term "suitable employment" means, with respect to an individual, work of a substantially equal or higher skill level than the individual's past adversely affected employment (as defined for purposes of the Trade Act of

1974), and wages for such work at not less than 80 percent of the individual's average wage as determined for the purposes of the Trade Act of 1974.

(41 Del. Laws, c. 258, § 5; 42 Del. Laws, c. 196, §§ 13-16; 43 Del. Laws, c. 280, §§ 6-9; 44 Del. Laws, c. 207, § 6; 46 Del. Laws, c. 162, §§ 4-7; 19 Del. C. 1953, § 3315; 50 Del. Laws, c. 49, § 1; 50 Del. Laws, c. 115, §§ 5, 6; 53 Del. Laws, c. 32, §§ 1, 2; 53 Del. Laws, c. 79, § 1; 53 Del. Laws, c. 357, § 2; 57 Del. Laws, c. 669, § 5B; 58 Del. Laws, c. 518; 61 Del. Laws, c. 186, §§ 18-20; 61 Del. Laws, c. 452, § 6; 63 Del. Laws, c. 427, § 7; 65 Del. Laws, c. 514, §§ 1-5; 66 Del. Laws, c. 389, § 1; 67 Del. Laws, c. 318, § 1; 67 Del. Laws, c. 435, § 1; 68 Del. Laws, c. 143, § 1; 68 Del. Laws, c. 247, §§ 1-3; 68 Del. Laws, c. 421, § 1; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 311, § 1; 72 Del. Laws, c. 361, § 1; 74 Del. Laws, c. 306, §§ 1, 2; 77 Del. Laws, c. 71, §§ 2-8.)

§ 3315. Eligibility for benefits.

An unemployed individual shall be eligible to receive benefits with respect to any week only if the Department finds that the individual:

(1) Has registered for work at and thereafter continued to report at an employment office in accordance with such regulations as the Department prescribes, except that the Department may, by regulation, waive or alter either or both of the requirements of this paragraph as to individuals attached to regular jobs and as to such other types of cases or situations with respect to which it finds that compliance with such requirements would be oppressive or would be inconsistent with the purposes of this chapter, but no such regulation shall conflict with § 3312 of this title;

(2) Has made a claim for benefits with respect to such week in accordance with such regulations as the Department prescribes;

(3) Is able to work and is available for work and is actively seeking work; provided, however, that an employee, not otherwise disqualified or ineligible for benefits under the chapter, who is temporarily laid off for a period of not more than 45 calendar days following the last day the employee worked, except that the period for those employees of employers who close down for annual model changes or retooling shall be 63 calendar days, shall, during said period, be deemed to be available for work, except that said employee shall be available to return to work upon 3 days' notice of the employee's employer, and actively seeking work if the employee's employer notified the Department in writing or the Department otherwise determines that such layoff is temporary and that work is reasonably expected to be available for said employee within said period or within a lesser period estimated by the employer, and the Department may, by regulation, waive or alter the requirements that such individual be able to work, available for work and actively seeking work as to such types of cases or situations with respect to which it finds that compliance with such requirements would be oppressive or would be inconsistent with the purpose of this chapter. Provided further than an individual who has been involuntarily retired shall be entitled to receive benefits, and the individual shall be required to be available only for the kind or type of work which is suitable for the individual in view of individual's age, physical condition and other circumstances; but no claimant shall be considered ineligible in any week of unemployment for failure to comply with this paragraph (3) if such failure is due to an illness or disability which occurs after the claimant has registered for work and no work which would have been considered suitable at the time of the claimant's initial registration has been offered after the beginning of such illness or disability. The Department shall require the submission of a doctor's certificate to establish the existence of such illness or disability, and, thereafter, the Department shall require a doctor's certificate not less than once every 4 weeks to establish any continuation of such illness or disability. Provided that no unemployed individual shall become ineligible for benefits solely because the individual regularly attends a vocational training course which the Department has approved and which it continues from time to time to approve for the individual. The Department may approve such course for an individual only if:

a. Reasonable employment opportunities for which the individual is fitted by training and experience do not exist in the locality or are severely curtailed;

b. The training course relates to an occupation or skill for which there are expected to be in the immediate future reasonable employment opportunities in the locality;

c. The training course is determined by the Department to be reasonably calculated to meet the purposes of this paragraph (3); and

d. The individual, in the judgment of the Department, has the required qualifications and aptitudes to complete the course successfully.

No individual shall be determined ineligible for the receipt of unemployment insurance benefits for any week in which they are available for and seek only part-time work, if the majority of weeks of work in their base period were in part-time employment. For purposes of this paragraph, "seeking only part-time work" is work meeting any 1 of the following conditions: (i) the individual is willing to work at least 20 hours per week; (ii) the individual is available for a number of hours per week that are comparable to the individual's part-time work in the base period; or (iii) the individual is available for hours that are comparable to the individual's work at the time of the most recent separation from employment.

(4) Participates in reemployment services, such as job search assistance services, if the individual has been determined to be likely to exhaust regular benefits and need reemployment services pursuant to a profiling system established by the Department, unless the Department determines that:

a. The individual has completed such services; or

b. There is justifiable cause for the claimant's failure to participate in such services.

(5) No week shall be counted as a week of unemployment for the purposes of this paragraph:

a. Unless it occurs within the benefit year which includes the week with respect to which the individual claims payment of benefits;

b. [Repealed.]

c. Unless the individual was eligible for benefits with respect thereto as provided in this section and § 3314 of this title, except for the requirements of paragraph (5) of this section and § 3314(5) of this title;

(6) a. Has, during the individual's base period, been paid wages for employment equal to not less than 36 times the individual's weekly benefit amount, and, as used in this paragraph (6), "wages" means wages for employment by employers for benefit purposes with respect to any benefit year only if such benefit year begins subsequent to the date on which the employing unit by which such wages were paid has satisfied the conditions of § 3302(8) or § 3343 of this title with respect to becoming an employer.

Any other provision of this paragraph notwithstanding, any otherwise eligible individual, the total amount of those wages paid to the individual during the individual's base period is less than the amount required to have been received under this paragraph, may be eligible to receive benefits if the difference between 36 times the individual's weekly benefit amount and the total amount of the individual's wages during the individual's base period does not exceed $180, but the amount of the individual's weekly benefit shall be reduced by $1.00 for each $36 or major fraction thereof by which the total amount of the individual's base period wages is less than 36 times the individual's weekly benefit amount. In no event shall any such individual be eligible for benefits if the total amount of wages paid to the individual during the individual's base period was less than $360; however, for claims filed for weeks of unemployment beginning July 1, 1975, no such individual shall be eligible for benefits if the total amount of wages paid the individual during the individual's base period was less than $720.

b. Wages paid to an individual prior to the date on which the individual filed a valid claim for benefits, but not paid until after the base period for such claim, may be considered as wages in a subsequent base period, relating to a new benefit year, only if subsequent to the date on which the individual filed such earlier valid claim such individual had become newly employed and had been paid wages in such new employment equal to not less than 10 times the individual's new weekly benefit amount. This paragraph shall apply to any new claim filed after August 9, 1961.

(7) Benefits based on service in employment defined in § 3302(10)(B)(iii) and (C) of this title shall be payable in the same amount, on the same terms and subject to the same conditions as benefits payable on the basis of other service subject to this title, except that:

a. With respect to weeks of unemployment beginning after December 31, 1977, benefits shall not be paid based on services in an instructional, research or principal administrative capacity for an educational institution for any week of unemployment commencing during the period between successive academic years or terms (or, when an agreement provides instead for a similar period between 2 regular but not successive terms, during such period) to any individual if such individual performs such services in the first of such academic years (or terms) and if there is a contract or a reasonable assurance that such individual will perform service in any such capacity for any educational institution in the second of such academic years or terms.

b. With respect to weeks of unemployment beginning or ending after September 3, 1982, benefits shall not be paid on the basis of services in any other capacity for an educational institution to any individual for any week which commences during a period between 2 successive academic years or terms if such individual performs such services in the first of such academic years or terms and there is a reasonable assurance that such individual will perform such services in the second of such academic years or terms, except that if compensation is denied to any individual under this paragraph and such individual was not offered an opportunity to perform such services for the educational institution for the second of such academic years or terms, such individual shall be entitled to a retroactive payment of compensation for each week of unemployment beginning after September 3, 1982, for which the individual filed a timely claim for compensation and for which compensation was denied solely by reason of this paragraph.

c. With respect to any services described in paragraphs (7)a. and b. of this section, compensation payable on the basis of such services shall be denied to any individual for any week which commences during an established and customary vacation period or holiday recess if such individual performs such services in the period immediately before such vacation period or holiday recess and there is a reasonable assurance that such individual will perform such services in the period immediately following such vacation period or holiday recess.

d. With respect to any services described in paragraphs (7)a. and b. of this section, compensation shall be denied as specified in paragraphs (7)a., b. and c. of this section to any individual who performed such services in an educational institution while in the employ of an educational service agency. For purposes of this paragraph the term "educational service agency" means a governmental agency or governmental entity which is established and operated exclusively for the purpose of providing such services to 1 or more educational institutions.

e. If the provisions of the Federal Unemployment Tax Act [26 U.S.C. §§ 3301-3311] permit, paragraphs (7)a., b., c. and d. of this section shall apply to the minimum extent consistent with the Federal Unemployment Tax Act, and such application shall be prescribed in regulations by the Secretary of Labor.

(41 Del. Laws, c. 258, § 4; 42 Del. Laws, c. 196, § 12; 43 Del. Laws, c. 280, §§ 4, 5; 43 Del. Laws, c. 281, § 5; 44 Del. Laws, c. 207, § 5; 45 Del. Laws, c. 267, § 6; 46 Del. Laws, c. 162, § 3; 19 Del. C. 1953, § 3314; 50 Del. Laws, c. 50, § 1; 50 Del. Laws, c. 115, § 4; 53 Del. Laws, c. 158, § 5; 53 Del. Laws, c. 357, § 1; 54 Del. Laws, c. 79, § 1; 55 Del. Laws, c. 222; 55 Del. Laws, c. 358, § 2; 55 Del. Laws, c. 436; 58 Del. Laws, c. 143, § 6; 58 Del. Laws, c. 209; 58 Del. Laws, c. 522, §§ 16-18; 60 Del. Laws, c. 138, § 3; 61 Del. Laws, c. 186, §§ 16, 17; 61 Del. Laws, c. 452, §§ 2-5; 63 Del. Laws, c. 76, § 6; 64 Del. Laws, c. 114, § 4; 64 Del.

Laws, c. 427, §§ 2, 3; 69 Del. Laws, c. 273, §§ 1, 2; 70 Del. Laws, c. 186, § 1; 74 Del. Laws, c. 306, § 3; 77 Del. Laws, c. 71, § 9; 79 Del. Laws, c. 173, §§ 1, 2.)

§ 3316. Seasonal employment; benefit requirements.

(a) In the case of a claimant whose base period earnings represent 75 percent or more earnings received for seasonal employment, benefits shall be payable in any benefit year in any given calendar month only if the claimant had been employed in the corresponding month of the claim base period.

(b) As used in this section, "seasonal employment" means employment in a seasonal industry by an individual who has been engaged in such industry during the claim base period and who, during the portion or portions of the year when such industry was not in operation, was not engaged in any other work. No occupation or industry shall be deemed to provide seasonal employment that is not part of the first processing of agricultural products and/or seafood products.

(c) For the purposes of this section, a week shall be considered to fall within a month if 4 or more days of the week fall within such month. The limitations of this section shall not apply to the payment of benefits for partial employment.

(66 Del. Laws, c. 392, § 1.)

§ 3317. Filing of claim for benefit; regulations of Department; posting [For application of this section, see 79 Del. Laws, c. 82, § 2].

(a) Claims for benefits shall be made in accordance with such regulations as the Department prescribes. Each employer shall post and maintain printed statements of such regulations in places readily accessible to individuals in the employer's service and shall make available to each such individual at the time the individual becomes unemployed a printed statement of such regulations. Such printed statements shall be supplied by the Department to each employer without cost to the employer.

(b) Whenever an individual files a claim for benefits, the Department shall forward to the employer by whom the claimant was most recently employed, hereafter the "last employer," or to the last employer's agent and to each base period employer or to each base period employer's agent relating to the individual's claim a separation notice. The last and base period employer(s) or agent(s) of the last and base period employer(s) shall return such notices completed, indicating the reason for the claimant's separation from work with them and the individual claimant's last date of work with them, within 7 days of the date contained on the separation notice. Any last or base period employer or any last or base period employer's agent who fails to timely return a separation notice or who fails to complete a separation notice or responds inadequately (which, for the purposes of this subsection, shall mean providing the Department insufficient information to make a determination of eligibility for the receipt of unemployment insurance benefits) within the period prescribed above shall be barred from claiming subsequently that the individual claimant to whom such separation notice applied shall be disqualified under any provisions of § 3314 of this title and shall be barred from seeking relief from benefit wage charges to its experience merit rating account under §§ 3349-3356 of this title unless the Department for reasons found to constitute good cause, shall release such employer or the employer's agent from the default. If the last or base period employer or the last or base period employer's agent fails to timely submit a completed separation notice, the Department shall not be required to issue a determination on said claim or to make an examination of said claim or be required to follow the remaining procedures as set forth in §§ 3318-3320 of this title.

(c) Upon receipt by the Department of a timely submitted and completed separation notice from the last or base period employer or the last or base period employer's agent, and if said employer's or employer agent's statement on the separation notice does not contest the claimant's entitlement to benefits by raising a potentially disqualifying issue as the reason for the claimant's separation or indicates that the claimant was laid off due to lack of work, the employer shall be subject to benefit wage charges to its experience merit rating account in accordance with §§ 3349-3356 of this title; and such employer and employer's agent shall not be entitled to any further appeal or relief of benefit wage charges on the basis of such claim. In such cases, the Department shall not be required to make an examination of said claim or of benefit wage charges to the employer's experience merit rating account, nor shall the Department be required to issue or send a determination to the last or base period employer or to the last or base period employer's agent or to the claimant on such claim for benefits, nor shall the Department be required to follow the remaining procedures for determination of such claims as set forth in §§ 3318-3320 of this title. In addition, in such cases, benefits shall be paid unless it is later determined by the Division that such claimant is not otherwise qualified or eligible for benefits, but in no event, shall such employer or the employer's agent be entitled to be a party to such later determination or be entitled to benefit wage charge relief on such claim.

(41 Del. Laws, c. 258, § 6; 19 Del. C. 1953, § 3317; 57 Del. Laws, c. 669, § 5B; 70 Del. Laws, c. 121, §§ 1, 2; 70 Del. Laws, c. 186, § 1; 79 Del. Laws, c. 82, § 1.)

§ 3318. Decision on claim by deputy; notice; appeal.

(a) If the last employer timely files a completed separation notice in accordance with § 3317 of this title and the employer's statement on the separation notice does raise a potentially disqualifying issue as to the reason for the claimant's separation, the claim shall be referred to a representative of the Department, hereinafter referred to as a Claims Deputy, who shall examine the claim and on the basis of the facts found by the Claims Deputy shall initially determine the individual's qualification and nonmonetary eligibility for benefits, and issue a determination in which it is determined whether or not such claim is valid. If valid, the Claims Deputy shall further determine the week

with respect to which benefits shall commence. In lieu of making a determination, the Claims Deputy may elect to refer such claim or any question involved therein to an appeal tribunal which shall make its decision with respect thereto in accordance with the procedure described in subsection (c) of this section. In either case, the Claims Deputy shall promptly notify the claimant and the last employer of the Deputy's own determination and the reasons therefor. The Claims Deputy may for good cause reconsider a determination and shall promptly notify the claimant and the last employer of the Deputy's amended determination and the reasons therefor, as the case may be. Base period employers who have submitted timely and completed separation notices in accordance with § 3317 of this title may seek relief from benefit wages charged to their experience merit rating accounts in accordance with § 3355 of this title except that for a claim in which the last employer is also a base period employer for such claim, the issue of benefit wage charge relief or such base period employer shall be determined in accordance with the determination on the issue of the claimant's last separation from such employer.

(b) Unless a claimant or a last employer who has submitted a timely and completed separation notice in accordance with § 3317 of this title files an appeal within 10 calendar days after such Claims Deputy's determination was mailed to the claimant's and last employer's last known addresses or otherwise delivered by the Department to the claimant and the last employer, the Claims Deputy's determination shall be final and benefits shall be paid or denied in accordance therewith. If a Claims Deputy's determination awards benefits, such benefits shall be paid promptly in accordance with such determination upon its issuance. If an appeal is filed from a Claims Deputy's determination that awards benefits, benefits shall be paid in accordance with such determination notwithstanding such appeal, but if the appeals tribunal's determination or a determination of the Unemployment Insurance Appeal Board under §§ 3320 through 3322 of this title, or judicial review under § 3323 of this title, modifies or reverses the award of the benefits, the claimant shall be paid benefits for the weeks of unemployment following the issuance of such an appeals tribunal, Unemployment Insurance Appeal Board or judicial review decision only in accordance with such decisions.

(c) Unless the appeal is withdrawn, an appeals tribunal, after affording the parties reasonable opportunity for fair hearing, shall affirm, modify or reverse the decision of the deputy. The parties shall be duly notified of the tribunal's decision, together with its reason therefor, which shall be deemed to be final unless within 10 days after the date of notification or mailing of such decision further appeal is initiated pursuant to § 3320 of this title. If an appeals tribunal decision awards benefits, such benefits shall be paid promptly in accordance with such decision upon its issuance. If an appeal is filed from an appeals tribunal's decision that awards benefits, benefits shall be paid in accordance with such decision notwithstanding such appeal, but if the Unemployment Insurance Appeal Board's decision modifies or reverses the award of benefits, the claimant shall be paid benefits for weeks of unemployment following the issuance of the Unemployment Insurance Appeal Board's decision only in accordance with such decision. Benefits to which the claimant is not entitled under the decision of the appeals tribunal shall not be paid for any week ending after the decision is issued, but any benefits which the claimant is determined to be otherwise entitled to receive shall be paid notwithstanding any further appeal from the decision of the appeals tribunal.

(41 Del. Laws, c. 258, § 6; 43 Del. Laws, c. 280, § 10; 46 Del. Laws, c. 162, § 8; 48 Del. Laws, c. 179, § 2; 19 Del. C. 1953, § 3318; 53 Del. Laws, c. 79, § 1; 57 Del. Laws, c. 669, § 5B; 58 Del. Laws, c. 230, §§ 1, 2; 63 Del. Laws, c. 427, §§ 8, 9; 70 Del. Laws, c. 121, §§ 3, 4; 70 Del. Laws, c. 186, § 1; 75 Del. Laws, c. 127, § 1; 82 Del. Laws, c. 81, § 1.)

§ 3319. Appointment, organization, disqualification and compensation of appeal tribunals.

To hear and decide disputed claims, protests under § 3368(e) of this title, and hearings under § 3369 of this title, the Department shall appoint 1 or more impartial appeal tribunals consisting in each case of either a salaried examiner, to be known as a referee, or a body consisting of 3 members, 1 of whom shall be a referee who shall serve as chairperson, 1 of whom shall be a representative of employers and the other of whom shall be a representative of employees. Each of the latter 2 members shall serve at the pleasure of the Department and be paid a fee of not more than $10 per day of active service on such tribunal plus necessary expenses. No person shall participate on behalf of the Department in any case in which that person is an interested party. The Department may designate alternates to serve in the absence or disqualification of any member of an appeal tribunal. The chairperson shall act alone in the absence or disqualification of any other member and that member's alternates. In no case shall the hearing proceed unless the chairperson of the appeal tribunal is present.

(41 Del. Laws, c. 258, § 6; 19 Del. C. 1953, § 3319; 57 Del. Laws, c. 669, § 5B; 70 Del. Laws, c. 186, § 1; 82 Del. Laws, c. 129, § 1.)

§ 3320. Review.

(a) The Unemployment Insurance Appeal Board [UIAB] may on its own motion, affirm, modify, or reverse any decision of an appeal tribunal on the basis of the evidence previously submitted to the appeal tribunal or it may permit any of the parties to such decision to initiate further appeal before it. The Unemployment UIAB shall remand a case to the appeal tribunal to supplement the existing evidence when it is determined to be insufficient to form a substantial basis for a decision. Appeals to the UIAB may be made by the parties to a disputed unemployment insurance claim, as well as by the claims deputy whose decision is modified or reversed by an appeals tribunal. The UIAB shall promptly notify all interested parties of its findings and decision.

(b) On, or after, July 7, 2005, the UIAB shall schedule and hear any appeal of an Appeals Referee's decision where such appeal, although timely filed, was not scheduled and heard by the UIAB prior to December 31, 2004. Notwithstanding the 10-day appeal period set forth in § 3318(c) of this title, until August 6, 2005, the Unemployment Insurance Appeal Board shall consider as timely, any appeal of an Appeals Referee decision that could not have been accepted after December 31, 2004, and prior to July 7, 2005.

(41 Del. Laws, c. 258, § 6; 19 Del. C. 1953, § 3320; 57 Del. Laws, c. 669, § 5E; 75 Del. Laws, c. 127, §§ 1, 3, 4.)

§ 3321. Procedure on review; record of proceedings.

(a) The manner in which disputed claims shall be presented and the conduct of hearings and appeals shall be in accordance with regulations prescribed by the Unemployment Insurance Appeal Board for determining the rights of the parties, whether or not such regulations conform to common-law or statutory rules of evidence and other technical rules of procedure.

(b) A full and complete record shall be kept of all proceedings in connection with a disputed claim. All testimony at any hearing upon a disputed claim shall be recorded but need not be transcribed unless the disputed claim is further appealed.

(41 Del. Laws, c. 258, § 6; 19 Del. C. 1953, § 3321; 57 Del. Laws, c. 669, § 5F; 75 Del. Laws, c. 127, § 1.)

§ 3322. Finality of Board's decision; duty to exhaust administrative remedies; position of Department in judicial review.

(a) Any decision of the Unemployment Insurance Appeal Board shall become final 10 days after the date of notification or mailing thereof, and judicial review thereof as provided in this subchapter shall be permitted only after any party claiming to be aggrieved thereby has exhausted all administrative remedies as provided by this chapter.

(b) The Department shall be deemed to be a party to any judicial action involving any such decision, and may be represented in any such judicial action by any qualified attorney employed by the Department and designated by it for that purpose or at the Department's request by the Attorney General.

(41 Del. Laws, c. 258, § 6; 19 Del. C. 1953, § 3322; 57 Del. Laws, c. 669, §§ 5B, 5F; 70 Del. Laws, c. 186, § 1; 75 Del. Laws, c. 127, § 1.)

§ 3323. Judicial review; procedure.

(a) Within 10 days after the decision of the Unemployment Insurance Appeal Board has become final, any party aggrieved thereby may secure judicial review thereof by commencing an action in the Superior Court in the county in which the claimant resides or the employer's place of business is located against the Unemployment Insurance Appeal Board for the review of such decision, in which action any other party to the proceeding before the Unemployment Insurance Appeal Board shall be made a defendant. In such action, a petition, which need not be verified, but which shall state the grounds upon which a review is sought, shall be served upon the Unemployment Insurance Appeal Board or upon such person as the Unemployment Insurance Appeal Board may designate and such service shall be deemed completed service on all parties, but there shall be left with the party so served as many copies of the petition as there are defendants and the Unemployment Insurance Appeal Board shall forthwith mail or otherwise deliver through a method authorized by the Department, 1 such copy to each defendant. With its answer the Unemployment Insurance Appeal Board shall certify and file with the Court all documents and papers and a transcript of all testimony taken in the matter together with the Unemployment Insurance Appeal Board's findings of fact and decision therein. The Unemployment Insurance Appeal Board may also certify to the Court questions of law involved in any decision. In any judicial proceeding under this section, the findings of the Unemployment Insurance Appeal Board as to the facts, if supported by evidence and in the absence of fraud, shall be conclusive, and the jurisdiction of the Court shall be confined to questions of law. Such actions and the questions so certified shall be heard in a summary manner and shall be given precedence over all other civil cases except cases arising under this chapter.

(b) An appeal may be taken from the decision of the Superior Court to the Supreme Court of this State in the same manner, but not inconsistent with this chapter, as is provided in civil cases.

(c) It shall not be necessary in any judicial proceeding under this section to enter exceptions to the rulings of the Unemployment Insurance Appeal Board and no bond shall be required for entering such appeal. Upon the final determination of such judicial proceeding, the Unemployment Insurance Appeal Board shall enter an order in accordance with such determination. A petition for judicial review shall not act as a supersedeas or stay, nor shall the Unemployment Insurance Appeal Board or any court enter an order of supersedeas or stay which shall delay the payment of any benefits to which the claimant has been determined to be entitled or delay any determination of claimant's rights to any benefits.

(41 Del. Laws, c. 258, § 6; 19 Del. C. 1953, § 3323; 57 Del. Laws, c. 669, § 5F; 58 Del. Laws, c. 230, § 3; 58 Del. Laws, c. 522, § 19; 75 Del. Laws, c. 127, § 1; 82 Del. Laws, c. 81, § 2.)

§ 3324. Witness fees.

Witnesses subpoenaed pursuant to this subchapter shall be allowed fees at a rate fixed by the Unemployment Insurance Appeal Board. Such fees shall be a part of the expense of administering this chapter.

(41 Del. Laws, c. 258, § 6; 19 Del. C. 1953, § 3324; 57 Del. Laws, c. 669, § 5F; 75 Del. Laws, c. 127, § 1.)

§ 3325. Recoupment of overpayments of benefits.

(a) If it is finally determined that an individual received benefits under this chapter for which the individual was not entitled, the individual shall repay, in cash, the amount of the overpayment to the Department for the Unemployment Compensation Fund. The individual is liable regardless of whether the overpayment was received through fraud or mistake, or whether the individual was legally awarded the payment of benefits at the time but on appeal was subsequently found not to be entitled thereto.

(b) Nonfraud overpayments are collected as follows:

(1) If the person becomes eligible for benefits before the amount of the overpayment is completely repaid, the Department shall deduct the remaining balance of the overpayment from the benefits.

a. The Department has the discretion to elect not to require repayment of the overpayment amount in cash, and elect to only deduct the overpayment amount from subsequently awarded benefits.

b. The deduction from subsequently awarded benefits can be only 50% of the payable weekly benefit amount until the overpayment is completely repaid.

(2) Discretionary decisions by the Department of how or by what means the Department elects to collect nonfraud overpayments, including by cash, deduction from subsequently awarded benefits, or by any other means, are administrative collections decisions made by the executive branch of government and are not subject to review by quasi-judicial or judicial tribunals of this State.

(3) The Department may not collect interest on a nonfraud overpayment.

(c) (1) When the Department determines that a claimant who is liable to repay any overpayment amount committed fraud in order to obtain benefits, the claimant shall be required to repay the overpayment amount due to the Department as well as interest thereon. Benefit overpayments paid to a claimant as the result of fraud shall be repaid with interest at the same rate as provided for past due assessments and reimbursement payments in lieu of assessments under § 3357 of this title and 19 DE Admin. Code § 1202-18. Interest collected pursuant to this section shall be paid into the Special Administration Fund. In addition, a monetary penalty of 15.0% of the amount received by a claimant as the result of fraud shall be assessed. The monetary penalty collected under this section shall be paid into the Unemployment Compensation Fund under § 3161 of this title.

(2) When the Department determines that an individual obtained an overpayment by fraud, in addition to any disqualification under § 3314(6) of this title, the individual is disqualified from receiving benefits for any week of unemployment, including the week in which the determination of fraud is made, until the Department determines that all of the following have occurred:

a. The total amount of the fraud overpayment has been repaid in full.

b. The monetary penalty, including interest, under this subsection has been paid in full.

(3) For fraud overpayments established by final decision before August 29, 2019, paragraph (c)(2) of the section does not apply and the Department may choose to deduct the remaining balance of the fraud overpayment due to the Department from future benefits payable to the individual under this chapter, with 100% of the payable weekly benefit amount being deducted from the subsequent awarded benefits until the fraud overpayment established before August 29, 2019, is completely repaid.

(d) The Department shall issue a notice of overpayment that includes the grounds for the overpayment, and an order for recoupment, before initiating action to collect the overpayment. Unless an individual files an appeal to an Unemployment Insurance appeals referee within 10 days after the order for recoupment was mailed to the individual at the individual's last known address or otherwise delivered to the individual by the Department, the order for recoupment is final and recoupment shall be made in accordance with the order. An appeal from an Unemployment Insurance appeals referee decision to the Unemployment Insurance Appeal Board must be filed within 10 days after such decision was mailed to the individual or otherwise delivered to the individual by the Department. An appeal from the Unemployment Insurance Appeal Board decision to Superior Court may be made in the same fashion as an appeal of the Unemployment Insurance Appeal Board's benefit decisions.

(e) Any employer who makes a deduction from a back wage award to a claimant because of the claimant's receipt of unemployment benefits, for which the claimant has become ineligible by reason of the award, shall be liable to pay into the Unemployment Compensation Fund an amount equal to the amount of the deduction. When the employer has made the payment into the Unemployment Compensation Fund, the amount of the payments shall be considered when determining, if applicable, the employer's entitlement to rehire credit.

(f) (1) The Department may do any of the following when an individual has an overpayment debt:

a. Write off, in whole or in part, an overpayment debt after a period of 3 years, when it has ascertained after investigation and after reasonable attempts at collection that the overpayment debt is wholly or partly uncollectible. The Department may prescribe the appropriate accounting methods by which the uncollected portion of the debt is written off its accounts instead of being carried indefinitely as an uncollected debt.

b. Collect an overpayment of benefits by bringing a civil action in a court of competent jurisdiction against the claimant.

(2) The Department shall credit any payment on account by a claimant on an overpayment, by any means, except the offset of subsequently awarded benefits, against the outstanding indebtedness of the claimant in the following manner:

a. First, principal on fraud overpayments in oldest to newest outstanding indebtedness order.

b. Second, interest on fraud overpayments.

c. Third, monetary penalty on fraud overpayments.

d. Fourth, principal on nonfraud overpayments in oldest to newest outstanding indebtedness order.

e. Fifth, court costs.

(3) The Department shall credit any collection of an overpayment by the offset of subsequently awarded benefits by the Department only against the principal of the outstanding indebtedness of the claimant under § 303(a)(5) of the Social Security Act (42 U.S.C. §

503) and § 3304(a)(4) of the Federal Unemployment Tax Act (26 U.S.C. § 3304). The Department shall credit an offset of subsequently awarded benefits in the following manner:

a. First, to fraud overpayment principal in oldest to newest outstanding indebtedness order.

b. Second, to nonfraud overpayment principal in oldest to newest outstanding indebtedness order.

(g) In addition to the methods of collection authorized under this chapter, the Department may collect overpayments, interest, penalties, and other liabilities due under this chapter as provided in § 545 of Title 30, § 6402 of the Federal Internal Revenue Code (26 U.S.C. § 6402), § 303(m) of the Social Security Act (42 U.S.C. § 503(m)), and any other means available under federal or state law.

(41 Del. Laws, c. 258, § 6; 43 Del. Laws, c. 280, § 11; 19 Del. C. 1953, § 3325; 57 Del. Laws, c. 669, § 5B; 65 Del. Laws, c. 179, § 2; 65 Del. Laws, c. 367, § 2; 67 Del. Laws, c. 3, § 1; 68 Del. Laws, c. 117, § 1; 69 Del. Laws, c. 379, §§ 1, 2; 70 Del. Laws, c. 97, § 1; 70 Del. Laws, c. 186, § 1; 70 Del. Laws, c. 566, § 1; 71 Del. Laws, c. 27, § 1; 72 Del. Laws, c. 100, §§ 1, 2; 75 Del. Laws, c. 127, § 1; 79 Del. Laws, c. 117, § 1; 80 Del. Laws, c. 282, § 1; 81 Del. Laws, c. 78, § 7; 82 Del. Laws, c. 81, § 3; 82 Del. Laws, c. 82, § 1.)

§ 3326. Extended benefits.

(a) As used in this section, unless the context clearly requires otherwise:

(1) "Extended benefit period" means a period which:

a. Begins with the third week after the first week for which there is a state "on" indicator, and

b. Ends with either of the following weeks, whichever occurs later:

1. The third week after the first week for which there is a state "off" indicator, or

2. The thirteenth consecutive week of such period;

provided, that no extended benefit period may begin the fourteenth week following the end of a prior extended benefit period which was in effect with respect to this State.

(2) a. There is a state "on" indicator for a week beginning prior to September 25, 1982, if the rate of insured unemployment under the state law for the period consisting of such week and the immediately preceding 12 weeks:

1. Equaled or exceeded 120 percent of the average of such rates for the corresponding 13-week period ending in each of the preceding 2 calendar years, and

2. Equaled or exceeded 4 percent.

b. There is a state "on" indicator for a week beginning after September 25, 1982, if the rate of insured unemployment under the state law for the period consisting of such week and the immediately preceding 12 weeks:

1. Equaled or exceeded 120 percent of the average of such rates for the corresponding 13-week period ending in each of the preceding 2 calendar years, and

2. Equaled or exceeded 5 percent.

c. There is a state "on" indicator for a week beginning after June 6, 2009, if:

1. The rate of total unemployment (seasonally adjusted), as determined by the United States Secretary of Labor, for the period consisting of the most recent 3 months for which data for all States are published before the close of such week equaled or exceeded 6.5 percent, and

2. The average rate of total unemployment in the State (seasonally adjusted), as determined by the United States Secretary of Labor, for the 3-month period referred to in paragraph (a)(2)c.1. of this section, equals or exceeds 110 percent of such average for either or both of the corresponding 3-month periods ending in the 2 preceding calendar years; however, for weeks of compensation beginning after December 17, 2010, and ending December 31, 2011, or the expiration date set forth in Public Law 111-312 [Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010], whichever is later, the average rate of total unemployment in the State (seasonally adjusted), as determined by the United States Secretary of Labor, for the 3-month period referred to in paragraph (a)(2)c.1. of this section, equals or exceeds 110 percent of such average for any or all of the corresponding 3-month periods ending in the 3 preceding calendar years.

(3) a. There is a state "off" indicator for a week beginning prior to September 25, 1982, if, for the period consisting of such week and the immediately preceding 12 weeks, either paragraph (a)(2)a.1. or paragraph (a)(2)a.2. of this section was not satisfied.

b. There is a state "off" indicator for a week beginning after September 25, 1982, if, for the period consisting of such week and the immediately preceding 12 weeks, either paragraph (a)(2)b.1. or paragraph (a)(2)b.2. of this section was not satisfied.

c. There is a state "off" indicator for a week beginning after June 6, 2009, if, for the period consisting of such week and the immediately preceding 12 weeks, either paragraph (a)(2)c.1. or paragraph (a)(2)c.2. of this section was not satisfied.

(4) "Rate of insured unemployment," for purposes of paragraphs (a)(2) and (3) of this section, means the percentage derived by dividing:

a. The average weekly number of individuals filing claims for regular benefits in this State for weeks of unemployment with respect to the most recent 13-consecutive-week period, as determined by the Department on the basis of its reports to the United States Secretary of Labor, by

b. The average monthly employment covered under this chapter for the first 4 of the most recent 6 completed calendar quarters ending before the end of such 13-week period.

(5) "Regular benefits" means benefits payable to an individual under this chapter or under any other state law (including benefits payable to federal civilian employees and to ex-servicepersons pursuant to 5 U.S.C. Chapter 85) other than extended benefits.

(6) "Extended benefits" means benefits (including benefits payable to federal civilian employees and to ex-servicepersons pursuant to 5 U.S.C. Chapter 85) payable to an individual under this section for weeks of unemployment in the individual's eligibility period.

(7) "Eligibility period" of an individual means the period consisting of the weeks in the individual's benefit year which begin in an extended benefit period and, if the individual's benefit year ends within such extended benefit period, any weeks thereafter which begin in such period.

(8) "Exhaustee" means an individual who, with respect to any week of unemployment in the individual's eligibility period:

a. Has received, prior to such week, all of the regular benefits that were available to the individual under this chapter or any other state law (including dependents' allowances and benefits payable to federal civilian employees and ex-servicepersons under 5 U.S.C. Chapter 85) in the individual's current benefit year that includes such week; provided, that, for the purposes of this paragraph, an individual shall be deemed to have received all of the regular benefits that were available to the individual although:

1. As a result of a pending appeal with respect to wages that were not considered in the original monetary determination in the individual's benefit year, the individual may subsequently be determined to be entitled to added regular benefits; or

2. The individual's benefit year, having expired prior to such week, the individual has no or insufficient wages on the basis of which the individual could establish a new benefit year that would include such week; and

b. Has no right to unemployment benefits or allowances, as the case may be, under the Railroad Unemployment Insurance Act (45 U.S.C. § 351 et seq.) and such other federal laws as are specified in regulations issued by the United States Secretary of Labor; and

c. Has not received and is not seeking unemployment benefits under the unemployment compensation law of Canada but, if the individual is seeking such benefits and the appropriate agency finally determines that the individual is not entitled to benefits under such law, the individual is considered an exhaustee.

d. Notwithstanding any other provisions of this chapter, if the benefit year of any individual ends within an extended benefit period, the remaining balance of extended benefits that such individual would, but for this section, be entitled to receive in that extended benefit period, with respect to weeks of unemployment beginning after the end of the benefit year, shall be reduced (but not below zero) by the product of the number of weeks for which the individual received any amounts as trade adjustment allowances within that benefit year, multiplied by the individual's weekly benefit amount for extended benefits.

(9) "State law" means the unemployment insurance law of any state, approved by the United States Secretary of Labor under § 3304 of the Internal Revenue Code of 1954 (26 U.S.C. § 3304).

(b) Except when the result would be inconsistent with the other provisions of this section, as provided in the regulations of the Department, the provisions of this part which apply to claims for or the payment of regular benefits shall apply to claims for and the payment of extended benefits.

(c) An individual shall be eligible to receive extended benefits with respect to any week of unemployment in the individual's eligibility period only if the Department finds that with respect to such week:

(1) The individual is an "exhaustee" as defined in paragraph (a)(8) of this section.

(2) The individual has satisfied the requirements of this chapter for the receipt of regular benefits that are applicable to individuals claiming extended benefits, including not being subject to a disqualification for the receipt of benefits.

(3) The individual has, during the individual's base period, been paid wages for employment equal to not less than 40 times the individual's weekly benefit amount and, as used in this paragraph, "wages" means wages for employment by employers for benefit purposes with respect to any benefit year only if such benefit year begins subsequent to the date on which the employment unit by which such wages were paid has satisfied the conditions of § 3302(8) of this title or § 3343 of this title with respect to becoming an employer.

(d) The weekly extended benefit amount payable to an individual for a week of total unemployment in the individual's eligibility period shall be an amount equal to the weekly benefit amount payable to the individual during the individual's applicable benefit year. Provided, that for any week during a period in which federal payments to States under § 204 of the Federal-State Extended Unemployment Compensation Act of 1970 (August 10, 1970, Public Law 91-373) are reduced under an order issued under § 252 of the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. § 902), the weekly extended benefit amount payable to an individual for a week of total unemployment in the individual's eligibility period shall be reduced by a percentage equivalent to the percentage of the reduction in the federal payment. Such reduced weekly extended benefit amount, if not a full dollar amount, shall be rounded to the nearest lower dollar amount.

(e) The total extended benefit amount payable to any eligible individual with respect to the individual's applicable benefit year shall be the lesser of the following amounts; provided, however, that during any fiscal year in which federal payments to States under § 204 of the Federal State Extended Unemployment Compensation Act of 1970 (August 10, 1970, Public Law 91-373) are reduced under an order issued under § 252 of the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. § 902), the total extended

benefit amount payable to an individual with respect to the individual's applicable benefit year shall be reduced by an amount equal to the aggregate of the reductions under subsection (d) of this section in the weekly amount paid to the individual:

(1) Fifty percent of the total amount of regular benefits which were payable to the individual under this chapter in the individual's applicable benefit year;

(2) Thirteen times the individual's weekly benefit amount which was payable to the individual under this chapter for a week of total unemployment in the applicable benefit year.

(f) (1) Effective with respect to weeks beginning in a high unemployment period, subsection (e) of this section shall be applied by substituting:

a. "Eighty percent" for "fifty percent" in paragraph (e)(1) of this section, and

b. "Twenty" for "thirteen" in paragraph (e)(2) of this section.

(2) For purposes of paragraph (f)(1) of this section, the term "high unemployment period" means any period during which an extended benefit period would be in effect if paragraph (a)(2)c.1. of this section were applied by substituting "8 percent" for "6.5 percent."

(g) (1) Except as provided in paragraph (g)(2) of this section, an individual shall not be eligible for extended benefits for any week if:

a. Extended benefits are payable for such week pursuant to an interstate claim filed in any state under the interstate benefit payment plan; and

b. No extended benefit period is in effect for such week in such state.

(2) Paragraph (g)(1) of this section shall not apply with respect to the first 2 weeks for which extended benefits are payable, (determined without regard to this subsection), pursuant to an interstate claim filed under the interstate benefit payment plan, to the individual from the extended benefit account established for the individual with respect to the benefit year.

(h) (1) Notwithstanding any other provisions of this chapter, payment of extended benefits shall not be made to any individual for any week of unemployment in the individual's eligibility period if the Department finds that during such period:

a. The individual failed to accept any offer of suitable work (as defined in paragraph (h)(3) of this section) or failed to apply for any suitable work to which the individual was referred by the Department; or

b. The individual failed to actively engage in a systematic and sustained effort to obtain work during such week, and/or failed to furnish tangible evidence that the individual did engage in such effort during such week.

(2) Any individual who has been found ineligible for extended benefits for any week by reason of a failure described in paragraph (h)(1) of this section shall also be denied benefits beginning with the first day of the week following the week in which such failure occurred until the individual has been employed in each of 4 subsequent weeks (whether or not consecutive) and has earned remuneration in covered employment equal to not less than 4 times the extended weekly benefit amount.

(3) For purposes of this subsection, the term "suitable work" means, with respect to any individual, any work which is within such individual's capabilities; provided, however, that the gross average weekly remuneration payable for the work must exceed the sum of:

a. The individual's extended weekly benefit amount as determined under subsection (d) of this section, plus the amount, if any, of supplemental unemployment benefits (as defined in § 501(c)(17)(D) of the Internal Revenue Code of 1954 [26 U.S.C. § 501(c)(17)(D)]) payable to such individual for such week; and further,

b. Pays wages not less than the higher of:

1. The minimum wage provided by § 6(a)(1) of the Fair Labor Standards Act of 1938 [29 U.S.C. § 206(a)(1)], without regard to any exemptions; or

2. The applicable state or local minimum wage;

c. Provided, however, that no individual shall be denied extended benefits for failure to accept an offer or to apply for any job which meets the definition of suitability as described in this subsection if:

1. The position was not offered to such individual in writing or was not listed with the employment service.

2. Such failure would not result in a denial of benefits under the definition of suitable work for regular benefit claimants in § 3314 of this title to the extent that the criteria of suitability in that section are not inconsistent with this paragraph.

3. The individual furnishes satisfactory evidence to the Department that the individual's prospects for obtaining work in the individual's customary occupation within a reasonably short period are good. If such evidence is deemed satisfactory for this purpose, the determination of whether any work is suitable with respect to such individual shall be made in accordance with the definition of suitable work for regular benefit claimants in § 3314 of this title without regard to the definition specified by this paragraph.

(4) Notwithstanding subsection (b) of this section to the contrary, no work shall be deemed to be suitable work for an individual which does not accord with the labor standard provisions required by § 3304(a)(5) of the Internal Revenue Code of 1954 [26 U.S.C. § 3304(a)(5)] and set forth herein under § 3314(3)a., b., c. and d. of this title.

(5) The employment service shall refer any claimant entitled to extended benefits under this title to any suitable work which meets the criteria prescribed in paragraph (h)(3) of this section.

(6) The provisions of paragraphs (h)(1), (2), (3) and (5) of this section shall not apply should at any time these provisions be temporarily or permanently suspended by federal law. If these provisions are suspended by federal law, the provisions of state law which apply to claims for or the payment of regular benefits shall apply to claims for and the payment of extended benefits.

(i) (1) Whenever an extended benefit period is to become effective in this State or an extended benefit period is to be terminated in this State, the Department shall make an appropriate public announcement.

(2) Computations required by paragraph (a)(4) of this section shall be made by the Department, in accordance with regulations prescribed by the United States Secretary of Labor.

(j) The provisions of paragraph (a)(2)c. of this section shall be in effect until the week ending December 5, 2009, or until the week ending 4 weeks prior to the last week for which 100 percent federal sharing is authorized by § 2005(a) of Public Law 111-5, whichever is later.

(k) To the extent that the provisions and definitions of terms in the American Recovery and Reinvestment Act of 2009 (Public Law 111-5) are in conflict with, or supplement the provisions and definitions applicable pursuant to this section, the provisions and definitions of the American Recovery and Reinvestment Act of 2009 shall apply to this section.

(l) Notwithstanding any other provision of this section, the Governor may, if permitted by federal law, suspend the payment of extended duration benefits under this section, to the extent necessary to ensure that otherwise eligible individuals are not denied, in whole or in part, the receipt of emergency unemployment compensation benefits authorized by the federal Supplemental Appropriations Act of 2008 (Public Law 110-252), the Unemployment Compensation Extension Act of 2008 (Public Law 110-449), and the American Recovery and Reinvestment Act of 2009 (Public Law 111-5), and that the state receives maximum reimbursement from the federal government for the payment of those emergency benefits.

(m) [Repealed.]

(n) With respect to determining whether the State is in an extended benefit period beginning on November 1, 2020, through December 31, 2021, the State shall disregard the requirement in paragraph (a)(1) of this section that no extended benefit period may begin before the fourteenth week following the end of a prior extended benefit period which was in effect with respect to this State.

(19 Del. C. 1953, § 3326; 58 Del. Laws, c. 143, § 7; 58 Del. Laws, c. 522, §§ 20, 21; 60 Del. Laws, c. 2, §§ 1-4; 61 Del. Laws, c. 186, §§ 21-24; 63 Del. Laws, c. 192, § 3; 63 Del. Laws, c. 427, §§ 10-14, 20; 65 Del. Laws, c. 414, §§ 1, 2; 65 Del. Laws, c. 514, §§ 6-11; 69 Del. Laws, c. 1, § 1; 70 Del. Laws, c. 186, § 1; 77 Del. Laws, c. 52, § 1; 78 Del. Laws, c. 4, § 1; 82 Del. Laws, c. 284, § 2; 82 Del. Laws, c. 284, § 3; 83 Del. Laws, c. 2, § 1.)

§ 3327. Employment by a temporary help firm.

(a) For the purposes of this section, “temporary help firm” means a firm that hires its own employees and assigns them to clients to support or supplement the client’s work force in work situations such as employee absences, temporary skill shortages, seasonal workloads and special assignments and projects. “Temporary employee” means an employee assigned to work for the clients of a temporary help firm.

(b) A temporary employee of a temporary help firm will be deemed to have voluntarily quit employment if the employee does not contact the temporary help firm for reassignment upon completion of an assignment. Failure to contact the temporary help firm will not be deemed a voluntary quit unless the claimant has been advised of the obligation to contact the firm upon completion of assignments and that unemployment benefits may be denied for failure to do so.

(69 Del. Laws, c. 357, § 1.)

§ 3328. Self-Employment Assistance Program.

(a) As used in this section:

(1) “Self-employment assistance activities” means activities (including entrepreneurial training, business counseling and technical assistance) approved by the Secretary of Labor or the Secretary’s designee in which an individual identified through a worker profiling system as likely to exhaust regular benefits participates for the purpose of establishing a business and becoming self-employed.

(2) “Self-employment assistance allowance” means an allowance, payable in lieu of regular benefits and from the Unemployment Compensation Fund established under § 3161 of this title, to an individual participating in self-employment assistance activities who meets the requirements of this section.

(3) “Full-time basis” means that the individual is devoting such amount of time as is determined by the Department to be necessary to establish a business which will serve as a full-time occupation for that individual.

(b) The weekly allowance payable under this section to an individual will be equal to the weekly benefit amount for regular benefits payable under § 3313 of this title. The sum of (1) the allowance paid under this section and (2) regular benefits paid under this chapter with respect to any benefit year shall not exceed the maximum benefit amount as established by § 3313(k) of this title with respect to such benefit year.

(c) The allowance described in subsection (a) of this section shall be payable to an individual at the same interval, on the same terms, and subject to the same conditions as regular benefits under this chapter, except that:

(1) The requirements of §§ 3315(1), (3), and 3314(3) of this title relating to availability for work active search for work and refusal to accept work are not applicable to such individual;

(2) The reduction provided in § 3313(i) of this title relating to wages paid is not applicable to income earned from self-employment by such individual;

(3) An individual who meets the requirements of this section shall be considered to be unemployed under § 3302(17) of this title; and

(4) An individual who fails to participate in self-employment assistance activities or who fails to actively engage on a full-time basis in activities (which may include training) relating to the establishment of a business and becoming self-employed shall be disqualified for the week such failure occurs.

(d) The aggregate number of individuals receiving the self-employment assistance allowance under this section at any time shall not exceed 5 percent of the number of individuals receiving regular benefits for such week. The Secretary of Labor shall prescribe such actions as are necessary to assure the requirements of this subsection are met.

(e) Self-employment assistance allowances paid under this section shall be charged to employers as provided under the provisions of this chapter relating to the charging of regular benefits. Benefits shall be noncharged as provided under § 3314 of this title.

(f) The provisions of this section will apply to weeks beginning after the date of enactment or weeks beginning after any plan required by the United States. Department of Labor is approved by said Department, whichever date is later. The authority provided by this section shall terminate as of the end of the week preceding the date when federal law no longer authorizes the provisions of this section, unless such date is a Saturday in which case the authority shall terminate as of such date.

(70 Del. Laws, c. 43, § 4; 70 Del. Laws, c. 186, § 1.)

§ 3329. Voluntary withholding of federal income tax from benefits.

(a) An individual filing a new claim for unemployment insurance benefits shall, at the time of filing such claim, be advised that:

(1) Unemployment insurance benefits are subject to federal, state and local income tax;

(2) Requirements exist pertaining to estimated tax payments;

(3) The individual may elect to have federal income tax deducted and withheld from the individual's payment of unemployment insurance benefits at the amount specified in the federal Internal Revenue Service Code; and

(4) The individual shall be permitted to change a previously elected withholding status no more than once during a claim benefit year.

(b) Amounts deducted and withheld from unemployment insurance benefits shall remain in the Unemployment Insurance Trust Fund until transferred to the federal taxing authority as a payment of income tax.

(c) The Director of Unemployment Insurance shall follow all procedures specified by the United States Department of Labor and the federal Internal Revenue Service pertaining to the deducting and withholding of income tax.

(d) Amounts deducted and withheld from unemployment insurance benefits for federal income tax shall be deducted and withheld only after amounts are deducted and withheld in the deduction priority established by the Director of Unemployment Insurance for any overpayments, child support obligations, food stamp over-issuances or any other amounts required to be deducted and withheld under this title.

(e) The provisions of this section relating to the voluntary deduction and withholding of federal income tax from unemployment insurance benefits shall apply to benefit payments made on or after January 1, 1997.

(70 Del. Laws, c. 574, § 1.)

Subchapter III

Employer's Coverage and Assessments

§ 3341. Period of employer's coverage.

Any employing unit which is or becomes an employer subject to this chapter within any calendar year shall be subject to this chapter during the whole of such calendar year.

(41 Del. Laws, c. 258, § 8; 19 Del. C. 1953, § 3341.)

§ 3342. Termination of employer's coverage.

Except as otherwise provided in § 3343 of this title, an employing unit shall cease to be an employer subject to this chapter only as of January 1 of any calendar year if it files with the Department, prior to January 5 of such year, a written application for termination of coverage and the Department finds that there was no employment as defined in §§ 3302(8)(A) and (10)(C) of this title performed for an employing unit within the preceding calendar year.

For purposes of this section, the 2 or more employing units mentioned in § 3302(8)(D), (8)(E) or (8)(F) of this title shall be treated as a single employing unit.

(41 Del. Laws, c. 258, § 8; 19 Del. C. 1953, § 3342; 57 Del. Laws, c. 669, § 5B; 58 Del. Laws, c. 143, § 8; 58 Del. Laws, c. 522, § 22.)

§ 3343. Election of employer to be covered by this chapter.

(a) An employing unit, not otherwise subject to this chapter, which files with the Department its written election to become an employer subject to this chapter for not less than 2 calendar years, shall, with the written approval of such election by the Department, become an

employer subject to this chapter to the same extent as all other employers, as of the date stated in such approval, and shall cease to be subject to this chapter as of January 1 of any calendar year subsequent to such 2 calendar years, if, at least 30 days prior to such January 1, it has filed with the Department a written notice to that effect.

(b) Any employing unit for which services that do not constitute employment as defined in this chapter are performed may file with the Department a written election that all such services performed by individuals in its employ in 1 or more distinct establishments or places of business shall be deemed to constitute employment for all purposes of this chapter for not less than 2 calendar years. Upon the written approval of such election by the Department, such services shall be deemed to constitute employment subject to this chapter from and after the date stated in such approval. Such services shall cease to be deemed employment subject to this chapter as of January 1 of any calendar year subsequent to such 2 calendar years, if at least 30 days prior to such January 1 such employing unit has filed with the Department a written notice to that effect.

(41 Del. Laws, c. 258, § 8; 19 Del. C. 1953, § 3343; 54 Del. Laws, c. 328, § 1; 57 Del. Laws, c. 669, § 5B; 58 Del. Laws, c. 143, §§ 9, 10; 58 Del. Laws, c. 522, § 23; 58 Del. Laws, c. 530, § 3; 63 Del. Laws, c. 427, § 15.)

§ 3344. Determination of liability of employer for assessments; administrative and judicial review; time limits.

(a) The Department may delegate to a suitable employee of the Department the power to make preliminary determinations on all questions relating to the liability of employing units for the assessments mentioned in this subchapter, but such administrative rulings shall be subject to the review of the Unemployment Insurance Appeal Board. An appeal may be taken by an employing unit within 15 days from the date of the administrative ruling. The person taking the appeal shall be designated as the complainant. The Board shall hear such appeals within a reasonable time.

(b) Formal hearings shall be conducted according to the rules prescribed by the Unemployment Insurance Appeal Board and a record of such hearings shall be made and kept by the Unemployment Insurance Appeal Board. The record shall include the evidence, the Unemployment Insurance Appeal Board's findings of fact and the Unemployment Insurance Appeal Board's decision together with a brief statement of the reasons therefor. It shall show the manner in which the Unemployment Insurance Appeal Board construed the law and applied it to the facts.

(c) The Unemployment Insurance Appeal Board's decision shall be final and conclusive as to the liability of the employing unit unless, within 10 days after mailing or other authorized delivery method thereof the complainant or the Department appeals to the Superior Court for the county in which the complainant resides. The Department may be represented in any such appeal by any qualified attorney employed by the Department and designated by it for that purpose or, at the Department's request, by the Attorney General. In every such appeal the cause shall be decided by the Court from the record, without the aid of a jury, and the Court may affirm, reverse or modify the Unemployment Insurance Appeal Board's decision. The Unemployment Insurance Appeal Board's findings of fact shall not be set aside unless the Court determines that the record contains no substantial evidence that would reasonably support the findings. If the Court finds that additional evidence should be taken, the Court shall remand the case to the Unemployment Insurance Appeal Board for completion of the record. If the Court finds that the Unemployment Insurance Appeal Board has made an error of law, the Court shall reverse or modify the Unemployment Insurance Appeal Board's decision and render an appropriate judgment.

(d) In every such appeal the cause shall be decided by the Court from the record without the aid of a jury, and the Court may affirm, reverse or modify the Unemployment Insurance Appeal Board's decision. The Unemployment Insurance Appeal Board's findings of fact shall not be set aside if the Court finds the record contains substantial evidence to reasonably support the findings. If the Court finds that additional evidence should be taken, the Court shall remand the case to the Unemployment Insurance Appeal Board for completion of the record. If the Court finds that the Unemployment Insurance Appeal Board has made an error of law, the Court shall reverse or modify the Unemployment Insurance Appeal Board's decision and render an appropriate judgment.

(e) The Superior Courts for the several counties of this State shall have jurisdiction to hear and determine all appeals taken pursuant to this chapter and by appropriate rules shall prescribe the procedure in such appeals.

(f) The decision of the Court shall be in writing and the Prothonotary shall file a certified copy thereof with the Unemployment Insurance Appeal Board.

(g) Costs may be awarded by the Court and, when so awarded, the same amount of costs shall be allowed, taxed and collected as are allowed, taxed and collected for like services in the Superior Court.

(41 Del. Laws, c. 258, § 11; 43 Del. Laws, c. 280, § 17; 44 Del. Laws, c. 208, § 4; 46 Del. Laws, c. 162, § 14; 19 Del. C. 1953, § 3344; 53 Del. Laws, c. 79, § 1; 57 Del. Laws, c. 669, §§ 5G(1), 5G(2); 72 Del. Laws, c. 315, §§ 1-3; 75 Del. Laws, c. 127, § 1; 82 Del. Laws, c. 81, § 4.)

§ 3345. Payment of employer's assessments.

(a) Assessments shall accrue and become payable by each employer for each calendar year in which the employer is subject to this chapter, with respect to wages for employment. Such assessments shall become due and be paid by each employer to the Department for the Fund in accordance with such regulations as the Department prescribes. Except in the case of a false or fraudulent report with intent to evade tax, the amount of assessments imposed by this chapter shall be assessed within 4 years after the date of the filing of the

report required by this chapter with respect to such assessments and no civil action or other proceeding to enforce the payment of such assessments shall be commenced more than 4 years after the date of the filing of such report.

(b) Liability for assessments and election of reimbursement:

(1) In lieu of assessments required of employers under § 3348 of this title, liable public employers defined in § 3302(8)(B) of this title shall pay into the Unemployment Compensation Fund an amount equal to the amount of the regular benefits and the extended benefits paid (whether paid due to immediate eligibility or eligibility upon separation from a subsequent employer) that is attributable to service in the employ of such liable public employer to individuals for weeks of unemployment which begin during the effective period of such election.

(2) For purposes of this section, employing units covered under § 3302(8)(B) of this title are considered liable public employers and shall be liable for reimbursement payments in lieu of assessments. Paragraphs (b)(4)a., b., c., d., e., f. and g. of this section shall apply to any liable public employer.

(3) Any nonprofit organization or group of organizations, described in § 501(c)(3) of the Internal Revenue Code [26 U.S.C. § 501(c)(3)] which is exempt from income tax under § 501(a) of such Code [26 U.S.C. § 501(a)], which, pursuant to § 3302(8)(C) of this title, is or becomes subject to this chapter on or after January 1, 1972, shall pay assessments under subsection (a) of this section and § 3348 of this title unless it elects, in accordance with this subsection, to pay to the Department for the Unemployment Compensation Fund an amount equal to the amount of the regular benefits and the first week of extended benefits paid and one half of the extended benefits paid in subsequent weeks (whether paid due to immediate eligibility or eligibility upon separation from a subsequent employer), that is attributable to service in the employ of such nonprofit organization, to individuals for weeks of unemployment which begin during the effective period of such election.

a. Any nonprofit organization which is or becomes subject to this chapter on January 1, 1972, may elect to become liable for reimbursement payments in lieu of assessments for a period of not less than 1 taxable year beginning with January 1, 1972, provided it files with the Department a written notice of its election within the 30-day period immediately following such date.

b. Any nonprofit organization which becomes subject to this chapter after January 1, 1972, may elect to become liable for reimbursement payments in lieu of assessments for a period of not less than 12 months beginning with the date on which such subjectivity begins by filing a written notice of its election with this Department not later than 30 days immediately following the date of the determination of such subjectivity.

c. Any nonprofit organization which makes an election in accordance with paragraph (b)(3)a. or b. of this section will continue to be liable for reimbursement payments in lieu of assessments until it files with the Department a written notice terminating its election of reimbursement payments not later than 30 days prior to the beginning of the taxable year for which such termination shall first be effective.

The term “reimbursement payments in lieu of assessments” means the money payments to the State Unemployment Compensation Fund in lieu of assessments (required under § 3348 of this title) by:

1. Nonprofit organizations, which are equivalent to the amount of regular benefits and the first week of extended benefits paid and $^1/_2$ of the extended benefits paid in subsequent weeks, which are attributable to service in the employ of such employers; and

2. Liable public employers, which are equivalent to the amount of regular benefits and extended benefits paid, which are attributable to service in the employ of such employers.

d. Any nonprofit organization which has been paying assessments under this chapter for a period subsequent to January 1, 1972, may change to a reimbursable basis by filing with the Department, not later than 30 days prior to the beginning of any taxable year, a written notice of election to become liable for reimbursement payments in lieu of assessments. Such election shall not be terminable by the organization for that and the next year.

e. The Department may for good cause extend the period within which a notice of election or a notice of termination must be filed and may permit an election to be retroactive, but not any earlier than with respect to benefits paid after December 31, 1969.

f. The Department, in accordance with such regulations as it may prescribe, shall notify each nonprofit organization of any determination which the Department may make of the status of such nonprofit organization as an employer and of the effective date of any election which it makes and of any termination of such election. Such determinations shall be subject to reconsideration, appeal and review in accordance with § 3344 of this title.

(4) a. If benefits paid an individual are based on wages paid by 1 or more employers that are liable for reimbursement payments in lieu of assessments and on wages paid by 1 or more employers liable for assessments under § 3348 of this title, the amount of benefits reimbursable by each employer liable for reimbursement payments to the Fund shall be the amount which bears the same ratio to the total benefits paid to the individual as the total base period wages paid to the individual by such employer bear to the total base period wages paid to the individual by all the individual’s base period employers.

b. If benefits paid an individual are based on wages paid by 2 or more employers liable for reimbursement payments in lieu of assessments, the amount of benefits reimbursable by each such employer to the Fund shall be an amount which bears the same ratio to the total benefits paid to the individual as the total base period wages paid to the individual by such employer bear to the total base period wages paid to the individual by all the individual’s base period employers.

c. At the end of each calendar quarter, or at the end of any other period as determined by the Department, the Department shall bill each nonprofit organization (or group of such organizations) which has elected to make payments in lieu of assessments for an amount equal to the full amount of regular benefits and the first week of extended benefits paid plus $^1/_2$ of the amount of extended benefits paid in subsequent weeks during such quarter or other prescribed period that is attributable to service in the employ of such organization.

d. Payment of any bill rendered under paragraph (b)(4)c. of this section shall be made not later than 30 days after such bill was mailed to the last known address of the nonprofit organization or was otherwise delivered to it, unless there has been an application for review and redetermination in accordance with paragraph (b)(4)f. of this section.

e. Payments made by any nonprofit organization under this paragraph shall not be deducted or deductible, in whole or in part, from the remuneration of individuals in the employ of the organization.

f. The amount due specified in any bill from the Department shall be conclusive on the organization unless, not later than 15 days after the bill was mailed to its last known address or otherwise delivered to it, the organization files an application for redetermination setting forth the grounds for such application. The Department shall promptly review and reconsider the amount due specified in the bill and shall thereafter issue a redetermination in any case in which such application for redetermination has been filed. Any such redetermination shall be conclusive on the organization unless, not later than 15 days after the redetermination was mailed to its last known address or otherwise delivered to it, the organization files an appeal to the Board setting forth the grounds for appeal. Proceedings on appeal to the Board from the amount of a bill rendered under this subsection or a redetermination of such amount shall be in accordance with § 3344(b) of this title and the decision of the Board shall be subject to § 3344(c) of this title.

g. Past due reimbursement payments in lieu of assessments shall be subject to the same interest and penalties that, pursuant to § 3357 of this title, apply to past due assessments.

(5) Notwithstanding any other provisions of paragraph (b)(3) of this section, any nonprofit organization that, prior to January 1, 1969, paid assessments required by subsection (a) of this section and pursuant to paragraph (b)(3) of this section elects, within 30 days after June 21, 1971, to make payments in lieu of assessments shall not be required to make such payment on account of any regular or extended benefits paid, on the basis of wages paid by such organization to individuals for weeks of unemployment which began on or after the effective date of such election until the total amount of such benefits equals the amount:

a. By which the assessments paid by such organization with respect to the 2-year period before the effective date of the election under paragraph (b)(3) of this section exceed

b. The total amount of unemployment benefits paid for the same period under this chapter on the basis of wages paid for employment by such organization.

(6) *Group accounts.* — Two or more employers that have become liable for payments in lieu of assessments, in accordance with this subsection of this section, may file a joint application to the Department for the establishment of a group account for the purpose of sharing the cost of benefits paid that are attributable to service in the employ of such employers. Each such application shall identify and authorize a group representative to act as the group's agent for the purposes of this paragraph. Upon its approval of the application, the Department shall establish a group account for such employers effective as of the beginning of the calendar quarter in which the Department receives the application and shall notify the group's representative of the effective date of the account. Such account shall remain in effect for not less than 2 years and thereafter until terminated at the discretion of the Department or upon application by the group. Upon establishment of the account, each member of the group shall be liable for payments in lieu of assessments with respect to each calendar quarter in the amount that bears the same ratio to the total benefits paid in such quarter that are attributable to service performed in the employ of all members of the group as the total wages paid for service in employment by such member in such quarter bear to the total wages paid during such quarter for service performed in the employ of all members of the group. The Department shall prescribe such regulations as it deems necessary with respect to applications for establishment, maintenance and termination of group accounts that are authorized by this paragraph for addition of new members to and withdrawal of active members from such accounts and for the determination of the amounts that are payable under this paragraph by members of the group and the time and manner of such payments.

(7) a. Notwithstanding any other provisions of the Unemployment Compensation Law for the payment of assessments, any governmental entity or instrumentality may, as an alternative to financing benefits by payment in lieu of assessments, elect to pay assessments beginning with the date on which subjectivity begins by filing written notice of its election with the Department no later than 120 days after such subjectivity begins; provided that such election shall be effective for at least 2 full calendar years; or it may elect to pay assessments for a period of not less than 2 calendar years beginning January 1 of any year if written notice of such election is filed with the Department not later than February 1 of such year; provided, further, that such governmental entity or instrumentality shall remain liable for payments in lieu of assessments with respect to all benefits paid based on base period wages earned in the employ of such entity or instrumentality in the period during which it financed its benefits in lieu of assessments as provided in paragraph (b)(1) of this section.

b. Any governmental entity or instrumentality may terminate its election to pay assessments as of January 1 of any year by filing written notice with the Department not later than February 1 of any year with respect to which termination is to become effective. It may not revert to an assessment method of financing for at least 2 full calendar years after such termination.

c. Any governmental entity or instrumentality electing the option for assessment financing will report and pay assessments in accordance with subsection (a) of this section and §§ 3348 and 3350 of this title, except that notwithstanding the above sections, the assessment rate shall be 1 percent for the entire calendar year 1978 and the assessment rate for any subsequent calendar years shall be the rate established for such governmental entity or instrumentality under paragraph (b)(7)d. of this section.

d. On or before September 1 of each year beginning with September 1, 1979, the Department shall review the composite benefit cost experience of all governmental entities and instrumentalities and, on the basis of that experience, establish the assessment rate for the next following calendar year which can be expected to yield sufficient revenue to equal or exceed the projected benefit costs for that calendar year.

(41 Del. Laws, c. 258, § 7; 43 Del. Laws, c. 282, § 2; 19 Del. C. 1953, § 3345; 50 Del. Laws, c. 104, § 1; 53 Del. Laws, c. 79, § 1; 54 Del. Laws, c. 328, § 2; 57 Del. Laws, c. 669, §§ 5B, 13B; 58 Del. Laws, c. 143, § 11; 58 Del. Laws, c. 522, §§ 24-27; 58 Del. Laws, c. 530, § 4; 61 Del. Laws, c. 186, §§ 25-31; 63 Del. Laws, c. 76, § 7; 63 Del. Laws, c. 192, §§ 4-7; 63 Del. Laws, c. 427, §§ 16-19; 64 Del. Laws, c. 91, §§ 8-11; 65 Del. Laws, c. 514, §§ 12, 13; 70 Del. Laws, c. 186, § 1.)

§ 3346. Deductibility of employer's assessments from employee's wages.

Assessments payable by the employer under this chapter shall not be deducted by the employer, in whole or in part, from the wages of individuals in such employer's employ.

(41 Del. Laws, c. 258, § 7; 43 Del. Laws, c. 282, § 2; 19 Del. C. 1953, § 3346; 53 Del. Laws, c. 79, § 1.)

§ 3347. Fractions of a cent.

In the payment of any assessments, a fractional part of a cent shall be disregarded unless it amounts to $^1/_2$ cent or more, in which case it shall be increased to 1 cent.

(41 Del. Laws, c. 258, § 7; 43 Del. Laws, c. 282, § 2; 19 Del. C. 1953, § 3347; 53 Del. Laws, c. 79, § 1.)

§ 3348. Average employer assessment rate; average industry assessment rate; average construction industry assessment rate; new employer rate; standard rate of assessment.

(a) On or before December 31 of each year, the Secretary of Labor shall establish an average employer assessment rate for the next succeeding calendar year. The average employer assessment rate shall be computed by multiplying total taxable wages paid by each employer, regardless of industrial classification category as listed in the North American Industry Classification System (NAICS) Manual furnished by the federal government, during the 12 consecutive months ending on June 30 by the employer's assessment rate established for the next calendar year and dividing the aggregate product for all employers by the total of taxable wages paid by all employers during the 12 consecutive months ending on June 30.

(b) On or before December 31 of each year, the Secretary of Labor shall establish an average industry assessment rate for the next succeeding calendar year for industrial classification categories (carried to 6 places) 236, 237 and 238 as listed in the North American Industry Classification System (NAICS) Manual furnished by the federal government. The average industry assessment rate for standard industrial classification categories 236, 237, and 238 shall be computed by multiplying total taxable wages paid by each employer in the industrial classification category during the 12 consecutive months ending on June 30 by the employer's assessment rate established for the next calendar year and dividing the aggregate product for all employers in the industrial classification category by the total of taxable wages paid by all employers in the industrial classification category during the 12 consecutive months ending on June 30.

(c) On or before December 31 of each year, the Secretary of Labor shall establish an average construction industry assessment rate for the next succeeding calendar year for industrial classification categories (carried to 3 places) 236, 237 and 238 as listed in the North American Industry Classification System (NAICS) Manual furnished by the federal government. The average construction industry assessment rate shall be computed by multiplying total taxable wages paid by each employer in the construction industry during the 12 consecutive months ending on June 30 by the employer's assessment rate established for the next calendar year and dividing the aggregate product for all employers by the total of taxable wages paid by all construction industry employers during the 12 consecutive months ending on June 30.

(d) For any employer, excluding those employers in NAICS categories 236, 237 and 238, who first becomes subject to this chapter on or after January 1, 2003, the new employer rate shall be the average employer assessment rate.

(e) For any employer in NAICS categories 236, 237 and 238 who first becomes subject to this chapter on or after January 1, 2003, the new employer rate shall be the average industry assessment rate in the employer's particular NAICS category (carried to 6 places) or the average construction industry assessment rate, whichever is the greater.

(f) The NAICS category assigned to any employer shall be as determined by the Secretary of Labor or the Secretary's designee and shall be reviewable only for abuse of discretion.

(g) Each employer subject to the new employer rate shall pay an assessment in an amount equal to the product of the new employer rate times wages paid by the employer during any calendar year, except as may be otherwise prescribed in this chapter.

(h) The standard rate of assessment shall be $2^7/_{10}$ percent for calendar years prior to 1985 and $5^4/_{10}$ percent for calendar year 1985 and subsequent years.

(i) Notwithstanding the computation of the average employer assessment rate, the average industry assessment rate or the average construction industry assessment rate, no employer assigned an assessment rate under subsection (d) or subsection (e) of this section shall have a rate of less than 1 percent.

(j) Notwithstanding the required computation of the average employer assessment rate, the average industry assessment rate or the average construction industry assessment rate to be established by the Secretary of Labor on or before December 31, 2020 for the next succeeding calendar year pursuant to subsections (a) through (c) of this section, for calendar year 2021, all employers assigned an assessment rate under subsection (d) or (e) of this section shall have the same rate as established by the Secretary of Labor for the calendar year 2020.

(k) Notwithstanding the required computation of the average employer assessment rate, the average industry assessment rate or the average construction industry assessment rate to be established by the Secretary of Labor for the next succeeding calendar year pursuant to subsections (a) through (c) of this section, for calendar year 2022, all employers assigned an assessment rate under subsections (d) or (e) of this section shall have the same rate as established by the Secretary of Labor for the calendar year 2020.

(41 Del. Laws, c. 258, § 7; 43 Del. Laws, c. 280, § 12; 43 Del. Laws, c. 282, § 3; 19 Del. C. 1953, § 3348; 53 Del Laws, c. 79, § 1; 63 Del. Laws, c. 76, § 9; 63 Del. Laws, c. 192, § 8; 64 Del Laws, c. 427, § 4; 65 Del. Laws, c. 513, § 2; 66 Del. Laws, c. 74, § 1; 66 Del. Laws, c. 115, § 1; 70 Del. Laws, c. 186, § 1; 73 Del. Laws, c. 303, §§ 1-7; 83 Del. Laws, c. 2, § 2; 83 Del. Laws, c. 268, § 2.)

§ 3349. General limitations on reduction of new employer rate.

(a) For the purpose of this section:

(1) "Computation date" means October 1 of any year.

(2) "Experience year" means the 4 consecutive calendar quarter periods beginning on July 1 of any year and ending on June 30 of the following year.

(3) "Rated employer" means an employer who has met the requirements of subsection (b), (c) or (d) of this section.

(b) Prior to January 1, 1980, no employer's rate shall be reduced below the standard rate for any calendar year unless and until the employer has had employment in each of the 4 consecutive experience years immediately preceding the computation date, and no employer shall be eligible for a reduced rate if the employer has reported no employment for 5 or more consecutive calendar quarters in such 4 experience years.

(c) After December 31, 1979, no employer's rate shall be reduced below the standard rate for any calendar year unless and until the employer has had employment in each of the 3 consecutive experience years immediately preceding the computation date, and no employer shall be eligible for a reduced rate if the employer has reported no employment for 5 or more consecutive calendar quarters in such 3 experience years.

(d) After July 1, 1986, no employer's rate shall be reduced below the new employer rate for any calendar year unless and until the employer has had employment in each of the 2 consecutive experience years immediately preceding the computation date.

(41 Del. Laws, c. 258, § 7; 43 Del. Laws, c. 280, § 12; 44 Del. Laws, c. 207, § 7; 19 Del. C. 1953, § 3349; 50 Del. Laws, c. 115, § 7; 52 Del. Laws, c. 18, §§ 2, 3; 53 Del. Laws, c. 32, § 3; 62 Del. Laws, c. 163, §§ 2, 3; 63 Del. Laws, c. 192, §§ 9, 10; 65 Del. Laws, c. 513, § 1; 66 Del. Laws, c. 74, §§ 2-4; 70 Del. Laws, c. 186, § 1.)

§ 3350. Variations from new employer rate.

Prior to the calendar year 1954, each employer's rate for any calendar year shall be determined on the basis of the employer's record as of December 31 of the preceding calendar year. For the year 1954 and each calendar year thereafter each employer's rate for any calendar year shall be determined on the basis of the employer's record as of September 30 of the preceding calendar year. Variations from the standard rate of assessments shall be determined in accordance with the following requirements:

(1) When, in any benefit year, an employee is first paid benefits for total or partial unemployment, the employee's wages during the employee's base period shall be termed the "employee's benefit wages" and shall be treated, for the purposes of this paragraph, as though they had been earned in the experience year in which such first benefit is paid, except that wages paid to an employee during the employee's base period for part-time employment by an employer who continues to give the employee employment to the same extent while the employee is receiving benefits as the employee did during the employee's base period shall not be determined to be employee's benefit wages. The employer shall establish the continuation of work to the satisfaction of the Department by submitting such information as the Department may require within 4 business days after the notification or mailing of notice by the Department that the employee has first filed a claim for benefits. Wages paid by any individual employer to an employee during the first 90 days such employee is in employment for the employer shall not be considered in determining benefit wages if the said employee is rated as "disabled" by the United States Veterans Administration or as "handicapped" by the Department of Labor.

(2) The "employer's benefit wages" for any experience year shall be the total of the employee benefit wages of all of such employer's employees or former employees, except for those employee benefit wages of employees who were hired to fill jobs vacated by members of the National Guard or the Reserve Branch of the United States armed services who were called to active duty during the Persian Gulf crisis.

(3) The “benefit wage ratio” of each employer shall be the percentage obtained by dividing the total of the employer’s benefit wages for the most recent 3 completed experience years by the employer’s total payroll subject to assessments for the same 3 experience years as shown on the employer’s assessment reports.

(4) For any calendar year, the “state experience factor” shall be the term used for the total benefits paid from the Fund during the most recent 3 completed experience years, divided by the total of the benefit wages of all employers during the same 3 years. In such computation, any fraction shall be adjusted to the nearest multiple of 1%.

(5) The basic assessment rate for each employer for the current calendar year shall be determined prior to the due date of the first basic assessment for such year in accordance with the following table:

When State Experience Factor is:	If the Employer's Benefit Wage Ratio Does Not Exceed:									
1	10.0	20.0	30.0	40.0	50.0	60.0	70.0	80.0	90.0	100.0
2	5.0	10.0	15.0	20.0	25.0	30.0	35.0	40.0	45.0	50.0
3	3.3	6.7	10.0	13.3	16.7	20.0	23.3	26.7	30.0	33.3
4	2.5	5.0	7.5	10.0	12.5	15.0	17.5	20.0	22.5	25.0
5	2.0	4.0	6.0	8.0	10.0	12.0	14.0	16.0	18.0	20.0
6	1.7	3.3	5.0	6.7	8.3	10.0	11.7	13.3	15.0	16.7
7	1.4	2.9	4.3	5.7	7.1	8.6	10.0	11.4	12.9	14.3
8	1.3	2.5	3.8	5.0	6.3	7.5	8.8	10.0	11.3	12.5
9	1.1	2.2	3.3	4.4	5.6	6.7	7.8	8.9	10.0	11.1
10	1.0	2.0	3.0	4.0	5.0	6.0	7.0	8.0	9.0	10.0
11	0.9	1.8	2.7	3.6	4.5	5.5	6.4	7.3	8.2	9.1
12	0.8	1.7	2.5	3.3	4.2	5.0	5.8	6.7	7.5	8.3
13	0.8	1.5	2.3	3.1	3.8	4.6	5.4	6.2	6.9	7.7
14	0.7	1.4	2.1	2.9	3.6	4.3	5.0	5.7	6.4	7.1
15	0.7	1.3	2.0	2.7	3.3	4.0	4.7	5.3	6.0	6.7
16	0.6	1.3	1.9	2.5	3.1	3.8	4.4	5.0	5.6	6.3
17	0.6	1.2	1.8	2.4	2.9	3.5	4.1	4.7	5.3	5.9
18	0.6	1.1	1.7	2.2	2.8	3.3	3.9	4.4	5.0	5.6
19	0.5	1.1	1.6	2.1	2.6	3.2	3.7	4.2	4.7	5.3
20	0.5	1.0	1.5	2.0	2.5	3.0	3.5	4.0	4.5	5.0
21	0.5	1.0	1.4	1.9	2.4	2.9	3.3	3.8	4.3	4.8
22	0.5	0.9	1.4	1.8	2.3	2.7	3.2	3.6	4.1	4.5
23	0.4	0.9	1.3	1.7	2.2	2.6	3.0	3.5	3.9	4.3
24	0.4	0.8	1.3	1.7	2.1	2.5	2.9	3.3	3.8	4.2
25	0.4	0.8	1.2	1.6	2.0	2.4	2.8	3.2	3.6	4.0
26	0.4	0.8	1.2	1.5	1.9	2.3	2.7	3.1	3.5	3.8
27	0.4	0.7	1.1	1.5	1.9	2.2	2.6	3.0	3.3	3.7
28	0.4	0.7	1.1	1.4	1.8	2.1	2.5	2.9	3.2	3.6
29	0.3	0.7	1.0	1.4	1.7	2.1	2.4	2.8	3.1	3.4
30	0.3	0.7	1.0	1.3	1.7	2.0	2.3	2.7	3.0	3.3
31	0.3	0.6	1.0	1.3	1.6	1.9	2.3	2.6	2.9	3.2
32	0.3	0.6	0.9	1.3	1.6	1.9	2.2	2.5	2.8	3.1
33	0.3	0.6	0.9	1.2	1.5	1.8	2.1	2.4	2.7	3.0
34	0.3	0.6	0.9	1.2	1.5	1.8	2.1	2.4	2.6	2.9
35	0.3	0.6	0.9	1.1	1.4	1.7	2.0	2.3	2.6	2.9
36	0.3	0.6	0.8	1.1	1.4	1.7	1.9	2.2	2.5	2.8
37	0.3	0.5	0.8	1.1	1.4	1.6	1.9	2.2	2.4	2.7
38	0.3	0.5	0.8	1.1	1.3	1.6	1.8	2.1	2.4	2.6
39	0.3	0.5	0.8	1.0	1.3	1.5	1.8	2.1	2.3	2.6
40	0.3	0.5	0.8	1.0	1.3	1.5	1.8	2.0	2.3	2.5
	The Employer's Basic Assessment Rate Shall Be:									
	0.1%	0.20%	0.30%	0.40%	0.50%	0.60%	0.70%	0.80%	0.90%	1.00%

When State Experience Factor is:	If the Employer's Benefit Wage Ratio Does Not Exceed:									
41	0.2	0.5	0.7	1.0	1.2	1.5	1.7	2.0	2.2	2.4
42	0.2	0.5	0.7	1.0	1.2	1.4	1.7	1.9	2.1	2.4
43	0.2	0.5	0.7	0.9	1.2	1.4	1.6	1.9	2.1	2.3
44	0.2	0.5	0.7	0.9	1.1	1.4	1.6	1.8	2.0	2.3
45	0.2	0.4	0.7	0.9	1.1	1.3	1.6	1.8	2.0	2.2
46	0.2	0.4	0.7	0.9	1.1	1.3	1.5	1.7	2.0	2.2
47	0.2	0.4	0.6	0.9	1.1	1.3	1.5	1.7	1.9	2.1
48	0.2	0.4	0.6	0.8	1.0	1.3	1.5	1.7	1.9	2.1
49	0.2	0.4	0.6	0.8	1.0	1.2	1.4	1.6	1.8	2.0
50	0.2	0.4	0.6	0.8	1.0	1.2	1.4	1.6	1.8	2.0
51	0.2	0.4	0.6	0.8	1.0	1.2	1.4	1.6	1.8	2.0
52	0.2	0.4	0.6	0.8	1.0	1.2	1.3	1.5	1.7	1.9
53	0.2	0.4	0.6	0.8	0.9	1.1	1.3	1.5	1.7	1.9
54	0.2	0.4	0.6	0.7	0.9	1.1	1.3	1.5	1.7	1.9
55	0.2	0.4	0.5	0.7	0.9	1.1	1.3	1.5	1.6	1.8
56	0.2	0.4	0.5	0.7	0.9	1.1	1.3	1.4	1.6	1.8
57	0.2	0.4	0.5	0.7	0.9	1.1	1.2	1.4	1.6	1.8
58	0.2	0.3	0.5	0.7	0.9	1.0	1.2	1.4	1.6	1.7
59	0.2	0.3	0.5	0.7	0.8	1.0	1.2	1.4	1.5	1.7
60	0.2	0.3	0.5	0.7	0.8	1.0	1.2	1.3	1.5	1.7
61	0.2	0.3	0.5	0.7	0.8	1.0	1.1	1.3	1.5	1.6
62	0.2	0.3	0.5	0.6	0.8	1.0	1.1	1.3	1.5	1.6
63	0.2	0.3	0.5	0.6	0.8	1.0	1.1	1.3	1.4	1.6
64	0.2	0.3	0.5	0.6	0.8	0.9	1.1	1.3	1.4	1.6
65	0.2	0.3	0.5	0.6	0.8	0.9	1.1	1.2	1.4	1.5
66	0.2	0.3	0.5	0.6	0.8	0.9	1.1	1.2	1.4	1.5
67	0.1	0.3	0.4	0.6	0.7	0.9	1.0	1.2	1.3	1.5
68	0.1	0.3	0.4	0.6	0.7	0.9	1.0	1.2	1.3	1.5
69	0.1	0.3	0.4	0.6	0.7	0.9	1.0	1.2	1.3	1.4
70	0.1	0.3	0.4	0.6	0.7	0.9	1.0	1.1	1.3	1.4
71	0.1	0.3	0.4	0.6	0.7	0.8	1.0	1.1	1.3	1.4
72	0.1	0.3	0.4	0.6	0.7	0.8	1.0	1.1	1.3	1.4
73	0.1	0.3	0.4	0.5	0.7	0.8	1.0	1.1	1.2	1.4
74	0.1	0.3	0.4	0.5	0.7	0.8	0.9	1.1	1.2	1.4
75	0.1	0.3	0.4	0.5	0.7	0.8	0.9	1.1	1.2	1.3
76	0.1	0.3	0.4	0.5	0.7	0.8	0.9	1.1	1.2	1.3
77	0.1	0.3	0.4	0.5	0.6	0.8	0.9	1.0	1.2	1.3
78	0.1	0.3	0.4	0.5	0.6	0.8	0.9	1.0	1.2	1.3
79	0.1	0.3	0.4	0.5	0.6	0.8	0.9	1.0	1.1	1.3
80	0.1	0.3	0.4	0.5	0.6	0.8	0.9	1.0	1.1	1.3
	The Employer's Basic Assessment Rate Shall Be:									
	0.1%	0.20%	0.30%	0.40%	0.50%	0.60%	0.70%	0.80%	0.90%	1.00%

When State Experienced Factor is:	If the Employer's Benefit Wage Ratio Does Not Exceed:									
1	110.0	120.0	130.0	140.0	150.0	160.0	170.0	180.0	190.0	200.0
2	55.0	60.0	65.0	70.0	75.0	80.0	85.0	90.0	95.0	100.0
3	36.7	40.0	43.3	46.7	50.0	53.3	56.7	60.0	63.3	66.7
4	27.5	30.0	32.5	35.0	37.5	40.0	42.5	45.0	47.5	50.0
5	22.0	24.0	26.0	28.0	30.0	32.0	34.0	36.0	38.0	40.0
6	18.3	20.0	21.7	23.3	25.0	26.7	28.3	30.0	31.7	33.3
7	15.7	17.1	18.6	20.0	21.4	22.9	24.3	25.7	27.1	28.6
8	13.8	15.0	16.3	17.5	18.8	20.0	21.3	22.5	23.8	25.0
9	12.2	13.3	14.4	15.6	16.7	17.8	18.9	20.0	21.1	22.2
10	11.0	12.0	13.0	14.0	15.0	16.0	17.0	18.0	19.0	20.0
11	10.0	10.9	11.8	12.7	13.6	14.5	15.5	16.4	17.3	18.2
12	9.2	10.0	10.8	11.7	12.5	13.3	14.2	15.0	15.8	16.7
13	8.5	9.2	10.0	10.8	11.5	12.3	13.1	13.8	14.6	15.4
14	7.9	8.6	9.3	10.0	10.7	11.4	12.1	12.9	13.6	14.3
15	7.3	8.0	8.7	9.3	10.0	10.7	11.3	12.0	12.7	13.3
16	6.9	7.5	8.1	8.8	9.4	10.0	10.6	11.3	11.9	12.5
17	6.5	7.1	7.6	8.2	8.8	9.4	10.0	10.6	11.2	11.8
18	6.1	6.7	7.2	7.8	8.3	8.9	9.4	10.0	10.6	11.1
19	5.8	6.3	6.8	7.4	7.9	8.4	8.9	9.5	10.0	10.5
20	5.5	6.0	6.5	7.0	7.5	8.0	8.5	9.0	9.5	10.0
21	5.2	5.7	6.2	6.7	7.1	7.6	8.1	8.6	9.0	9.5
22	5.0	5.5	5.9	6.4	6.8	7.3	7.7	8.2	8.6	9.1
23	4.8	5.2	5.7	6.1	6.5	7.0	7.4	7.8	8.3	8.7
24	4.6	5.0	5.4	5.8	6.3	6.7	7.1	7.5	7.9	8.3
25	4.4	4.8	5.2	5.6	6.0	6.4	6.8	7.2	7.6	8.0
26	4.2	4.6	5.0	5.4	5.8	6.2	6.5	6.9	7.3	7.7
27	4.1	4.4	4.8	5.2	5.6	5.9	6.3	6.7	7.0	7.4
28	3.9	4.3	4.6	5.0	5.4	5.7	6.1	6.4	6.8	7.1
29	3.8	4.1	4.5	4.8	5.2	5.5	5.9	6.2	6.6	6.9
30	3.7	4.0	4.3	4.7	5.0	5.3	5.7	6.0	6.3	6.7
31	3.5	3.9	4.2	4.5	4.8	5.2	5.5	5.8	6.1	6.5
32	3.4	3.8	4.1	4.4	4.7	5.0	5.3	5.6	5.9	6.3
33	3.3	3.6	3.9	4.2	4.5	4.8	5.2	5.5	5.8	6.1
34	3.2	3.5	3.8	4.1	4.4	4.7	5.0	5.3	5.6	5.9
35	3.1	3.4	3.7	4.0	4.3	4.6	4.9	5.1	5.4	5.7
36	3.1	3.3	3.6	3.9	4.2	4.4	4.7	5.0	5.3	5.6
37	3.0	3.2	3.5	3.8	4.1	4.3	4.6	4.9	5.1	5.4
38	2.9	3.2	3.4	3.7	3.9	4.2	4.5	4.7	5.0	5.3
39	2.8	3.1	3.3	3.6	3.8	4.1	4.4	4.6	4.9	5.1
40	2.8	3.0	3.3	3.5	3.8	4.0	4.3	4.5	4.8	5.0
	The Employer's Basic Assessment Rate Shall Be:									
	1.10%	1.20%	1.30%	1.40%	1.50%	1.60%	1.70%	1.80%	1.90%	2.00%

When State Experience Factor is:	If the Employer's Benefit Wage Ratio Does Not Exceed:									
41	2.7	2.9	3.2	3.4	3.7	3.9	4.1	4.4	4.6	4.9
42	2.6	2.9	3.1	3.3	3.6	3.8	4.0	4.3	4.5	4.8
43	2.6	2.8	3.0	3.3	3.5	3.7	4.0	4.2	4.4	4.7
44	2.5	2.7	3.0	3.2	3.4	3.6	3.9	4.1	4.3	4.5
45	2.4	2.7	2.9	3.1	3.3	3.6	3.8	4.0	4.2	4.4
46	2.4	2.6	2.8	3.0	3.3	3.5	3.7	3.9	4.1	4.3
47	2.3	2.6	2.8	3.0	3.2	3.4	3.6	3.8	4.0	4.3
48	2.3	2.5	2.7	2.9	3.1	3.3	3.5	3.8	4.0	4.2
49	2.2	2.4	2.7	2.9	3.1	3.3	3.5	3.7	3.9	4.1
50	2.2	2.4	2.6	2.8	3.0	3.2	3.4	3.6	3.8	4.0
51	2.2	2.4	2.5	2.7	2.9	3.1	3.3	3.5	3.7	3.9
52	2.1	2.3	2.5	2.7	2.9	3.1	3.3	3.5	3.7	3.8
53	2.1	2.3	2.5	2.6	2.8	3.0	3.2	3.4	3.6	3.8
54	2.0	2.2	2.4	2.6	2.8	3.0	3.1	3.3	3.5	3.7
55	2.0	2.2	2.4	2.5	2.7	2.9	3.1	3.3	3.5	3.6
56	2.0	2.1	2.3	2.5	2.7	2.9	3.0	3.2	3.4	3.6
57	1.9	2.1	2.3	2.5	2.6	2.8	3.0	3.2	3.3	3.5
58	1.9	2.1	2.2	2.4	2.6	2.8	2.9	3.1	3.3	3.4
59	1.9	2.0	2.2	2.4	2.5	2.7	2.9	3.1	3.2	3.4
60	1.8	2.0	2.2	2.3	2.5	2.7	2.8	3.0	3.2	3.3
61	1.8	2.0	2.1	2.3	2.5	2.6	2.8	3.0	3.1	3.3
62	1.8	1.9	2.1	2.3	2.4	2.6	2.7	2.9	3.1	3.2
63	1.7	1.9	2.1	2.2	2.4	2.5	2.7	2.9	3.0	3.2
64	1.7	1.9	2.0	2.2	2.3	2.5	2.7	2.8	3.0	3.1
65	1.7	1.8	2.0	2.2	2.3	2.5	2.6	2.8	2.9	3.1
66	1.7	1.8	2.0	2.1	2.3	2.4	2.6	2.7	2.9	3.0
67	1.6	1.8	1.9	2.1	2.2	2.4	2.5	2.7	2.8	3.0
68	1.6	1.8	1.9	2.1	2.2	2.4	2.5	2.6	2.8	2.9
69	1.6	1.7	1.9	2.0	2.2	2.3	2.5	2.6	2.8	2.9
70	1.6	1.7	1.9	2.0	2.1	2.3	2.4	2.6	2.7	2.9
71	1.5	1.7	1.8	2.0	2.1	2.3	2.4	2.5	2.7	2.8
72	1.5	1.7	1.8	1.9	2.1	2.2	2.4	2.5	2.6	2.8
73	1.5	1.6	1.8	1.9	2.1	2.2	2.3	2.5	2.6	2.7
74	1.5	1.6	1.8	1.9	2.0	2.2	2.3	2.4	2.6	2.7
75	1.5	1.6	1.7	1.9	2.0	2.1	2.3	2.4	2.5	2.7
76	1.4	1.6	1.7	1.8	2.0	2.1	2.2	2.4	2.5	2.6
77	1.4	1.6	1.7	1.8	1.9	2.1	2.2	2.3	2.5	2.6
78	1.4	1.5	1.7	1.8	1.9	2.1	2.2	2.3	2.4	2.6
79	1.4	1.5	1.6	1.8	1.9	2.0	2.2	2.3	2.4	2.5
80	1.4	1.5	1.6	1.8	1.9	2.0	2.1	2.3	2.4	2.5
	The Employer's Basic Assessment Rate Shall Be:									
	1.10%	1.20%	1.30%	1.40%	1.50%	1.60%	1.70%	1.80%	1.90%	2.00%

When State Experienced Factor is:	If the Employer's Benefit Wage Ratio Does Not Exceed:									
1	210.0	220.0	230.0	240.0	250.0	260.0	270.0	280.0	290.0	300.0
2	105.0	110.0	115.0	120.0	125.0	130.0	135.0	140.0	145.0	150.0
3	70.0	73.3	76.7	80.0	83.3	86.7	90.0	93.3	96.7	100.0
4	52.5	55.0	57.5	60.0	62.5	65.0	67.5	70.0	72.5	75.0
5	42.0	44.0	46.0	48.0	50.0	52.0	54.0	56.0	58.0	60.0
6	35.0	36.7	38.3	40.0	41.7	43.3	45.0	46.7	48.3	50.0
7	30.0	31.4	32.9	34.3	35.7	37.1	38.6	40.0	41.4	42.9
8	26.3	27.5	28.8	30.0	31.3	32.5	33.8	35.0	36.3	37.5
9	23.3	24.4	25.6	26.7	27.8	28.9	30.0	31.1	32.2	33.3
10	21.0	22.0	23.0	24.0	25.0	26.0	27.0	28.0	29.0	30.0
11	19.1	20.0	20.9	21.8	22.7	23.6	24.5	25.5	26.4	27.3
12	17.5	18.3	19.2	20.0	20.8	21.7	22.5	23.3	24.2	25.0
13	16.2	16.9	17.7	18.5	19.2	20.0	20.8	21.5	22.3	23.1
14	15.0	15.7	16.4	17.1	17.9	18.6	19.3	20.0	20.7	21.4
15	14.0	14.7	15.3	16.0	16.7	17.3	18.0	18.7	19.3	20.0
16	13.1	13.8	14.4	15.0	15.6	16.3	16.9	17.5	18.1	18.8
17	12.4	12.9	13.5	14.1	14.7	15.3	15.9	16.5	17.1	17.6
18	11.7	12.2	12.8	13.3	13.9	14.4	15.0	15.6	16.1	16.7
19	11.1	11.6	12.1	12.6	13.2	13.7	14.2	14.7	15.3	15.8
20	10.5	11.0	11.5	12.0	12.5	13.0	13.5	14.0	14.5	15.0
21	10.0	10.5	11.0	11.4	11.9	12.4	12.9	13.3	13.8	14.3
22	9.5	10.0	10.5	10.9	11.4	11.8	12.3	12.7	13.2	13.6
23	9.1	9.6	10.0	10.4	10.9	11.3	11.7	12.2	12.6	13.0
24	8.8	9.2	9.6	10.0	10.4	10.8	11.3	11.7	12.1	12.5
25	8.4	8.8	9.2	9.6	10.0	10.4	10.8	11.2	11.6	12.0
26	8.1	8.5	8.8	9.2	9.6	10.0	10.4	10.8	11.2	11.5
27	7.8	8.1	8.5	8.9	9.3	9.6	10.0	10.4	10.7	11.1
28	7.5	7.9	8.2	8.6	8.9	9.3	9.6	10.0	10.4	10.7
29	7.2	7.6	7.9	8.3	8.6	9.0	9.3	9.7	10.0	10.3
30	7.0	7.3	7.7	8.0	8.3	8.7	9.0	9.3	9.7	10.0
31	6.8	7.1	7.4	7.7	8.1	8.4	8.7	9.0	9.4	9.7
32	6.6	6.9	7.2	7.5	7.8	8.1	8.4	8.8	9.1	9.4
33	6.4	6.7	7.0	7.3	7.6	7.9	8.2	8.5	8.8	9.1
34	6.2	6.5	6.8	7.1	7.4	7.6	7.9	8.2	8.5	8.8
35	6.0	6.3	6.6	6.9	7.1	7.4	7.7	8.0	8.3	8.6
36	5.8	6.1	6.4	6.7	6.9	7.2	7.5	7.8	8.1	8.3
37	5.7	5.9	6.2	6.5	6.8	7.0	7.3	7.6	7.8	8.1
38	5.5	5.8	6.1	6.3	6.6	6.8	7.1	7.4	7.6	7.9
39	5.4	5.6	5.9	6.2	6.4	6.7	6.9	7.2	7.4	7.7
40	5.3	5.5	5.8	6.0	6.3	6.5	6.8	7.0	7.3	7.5
	The Employer's Basic Assessment Rate Shall Be:									
	2.10%	2.20%	2.30%	2.40%	2.50%	2.60%	2.70%	2.80%	2.90%	3.00%

When State Experienced Factor is:	If the Employer's Benefit Wage Ratio Does Not Exceed:									
41	5.1	5.4	5.6	5.9	6.1	6.3	6.6	6.8	7.1	7.3
42	5.0	5.2	5.5	5.7	6.0	6.2	6.4	6.7	6.9	7.1
43	4.9	5.1	5.3	5.6	5.8	6.0	6.3	6.5	6.7	7.0
44	4.8	5.0	5.2	5.5	5.7	5.9	6.1	6.4	6.6	6.8
45	4.7	4.9	5.1	5.3	5.6	5.8	6.0	6.2	6.4	6.7
46	4.6	4.8	5.0	5.2	5.4	5.7	5.9	6.1	6.3	6.5
47	4.5	4.7	4.9	5.1	5.3	5.5	5.7	6.0	6.2	6.4
48	4.4	4.6	4.8	5.0	5.2	5.4	5.6	5.8	6.0	6.3
49	4.3	4.5	4.7	4.9	5.1	5.3	5.5	5.7	5.9	6.1
50	4.2	4.4	4.6	4.8	5.0	5.2	5.4	5.6	5.8	6.0
51	4.1	4.3	4.5	4.7	4.9	5.1	5.3	5.5	5.7	5.9
52	4.0	4.2	4.4	4.6	4.8	5.0	5.2	5.4	5.6	5.8
53	4.0	4.2	4.3	4.5	4.7	4.9	5.1	5.3	5.5	5.7
54	3.9	4.1	4.3	4.4	4.6	4.8	5.0	5.2	5.4	5.6
55	3.8	4.0	4.2	4.4	4.5	4.7	4.9	5.1	5.3	5.5
56	3.8	3.9	4.1	4.3	4.5	4.6	4.8	5.0	5.2	5.4
57	3.7	3.9	4.0	4.2	4.4	4.6	4.7	4.9	5.1	5.3
58	3.6	3.8	4.0	4.1	4.3	4.5	4.7	4.8	5.0	5.2
59	3.6	3.7	3.9	4.1	4.2	4.4	4.6	4.7	4.9	5.1
60	3.5	3.7	3.8	4.0	4.2	4.3	4.5	4.7	4.8	5.0
61	3.4	3.6	3.8	3.9	4.1	4.3	4.4	4.6	4.8	4.9
62	3.4	3.5	3.7	3.9	4.0	4.2	4.4	4.5	4.7	4.8
63	3.3	3.5	3.7	3.8	4.0	4.1	4.3	4.4	4.6	4.8
64	3.3	3.4	3.6	3.8	3.9	4.1	4.2	4.4	4.5	4.7
65	3.2	3.4	3.5	3.7	3.8	4.0	4.2	4.3	4.5	4.6
66	3.2	3.3	3.5	3.6	3.8	3.9	4.1	4.2	4.4	4.5
67	3.1	3.3	3.4	3.6	3.7	3.9	4.0	4.2	4.3	4.5
68	3.1	3.2	3.4	3.5	3.7	3.8	4.0	4.1	4.3	4.4
69	3.0	3.2	3.3	3.5	3.6	3.8	3.9	4.1	4.2	4.3
70	3.0	3.1	3.3	3.4	3.6	3.7	3.9	4.0	4.1	4.3
71	3.0	3.1	3.2	3.4	3.5	3.7	3.8	3.9	4.1	4.2
72	2.9	3.1	3.2	3.3	3.5	3.6	3.8	3.9	4.0	4.2
73	2.9	3.0	3.2	3.3	3.4	3.6	3.7	3.8	4.0	4.1
74	2.8	3.0	3.1	3.2	3.4	3.5	3.6	3.8	3.9	4.1
75	2.8	2.9	3.1	3.2	3.3	3.5	3.6	3.7	3.9	4.0
76	2.8	2.9	3.0	3.2	3.3	3.4	3.6	3.7	3.8	3.9
77	2.7	2.9	3.0	3.1	3.2	3.4	3.5	3.6	3.8	3.9
78	2.7	2.8	2.9	3.1	3.2	3.3	3.5	3.6	3.7	3.8
79	2.7	2.8	2.9	3.0	3.2	3.3	3.4	3.5	3.7	3.8
80	2.6	2.8	2.9	3.0	3.1	3.3	3.4	3.5	3.6	3.8
	The Employer's Basic Assessment Rate Shall Be:									
	2.10%	2.20%	2.30%	2.40%	2.50%	2.60%	2.70%	2.80%	2.90%	3.00%

When State Experienced Factor is:	If the Employer's Benefit Wage Ratio Does Not Exceed:									
1	310.0	320.0	330.0	340.0	350.0	360.0	370.0	380.0	390.0	400.0
2	155.0	160.0	165.0	170.0	175.0	180.0	185.0	190.0	195.0	200.0
3	103.3	106.7	110.0	113.3	116.7	120.0	123.3	126.7	130.0	133.3
4	77.5	80.0	82.5	85.0	87.5	90.0	92.5	95.0	97.5	100.0
5	62.0	64.0	66.0	68.0	70.0	72.0	74.0	76.0	78.0	80.0
6	51.7	53.3	55.0	56.7	58.3	60.0	61.7	63.3	65.0	66.7
7	44.3	45.7	47.1	48.6	50.0	51.4	52.9	54.3	55.7	57.1
8	38.8	40.0	41.3	42.5	43.8	45.0	46.3	47.5	48.8	50.0
9	34.4	35.6	36.7	37.8	38.9	40.0	41.1	42.2	43.3	44.4
10	31.0	32.0	33.0	34.0	35.0	36.0	37.0	38.0	39.0	40.0
11	28.2	29.1	30.0	30.9	31.8	32.7	33.6	34.5	35.5	36.4
12	25.8	26.7	27.5	28.3	29.2	30.0	30.8	31.7	32.5	33.3
13	23.8	24.6	25.4	26.2	26.9	27.7	28.5	29.2	30.0	30.8
14	22.1	22.9	23.6	24.3	25.0	25.7	26.4	27.1	27.9	28.6
15	20.7	21.3	22.0	22.7	23.3	24.0	24.7	25.3	26.0	26.7
16	19.4	20.0	20.6	21.3	21.9	22.5	23.1	23.8	24.4	25.0
17	18.2	18.8	19.4	20.0	20.6	21.2	21.8	22.4	22.9	23.5
18	17.2	17.8	18.3	18.9	19.4	20.0	20.6	21.1	21.7	22.2
19	16.3	16.8	17.4	17.9	18.4	18.9	19.5	20.0	20.5	21.1
20	15.5	16.0	16.5	17.0	17.5	18.0	18.5	19.0	19.5	20.0
21	14.8	15.2	15.7	16.2	16.7	17.1	17.6	18.1	18.6	19.0
22	14.1	14.5	15.0	15.5	15.9	16.4	16.8	17.3	17.7	18.2
23	13.5	13.9	14.3	14.8	15.2	15.7	16.1	16.5	17.0	17.4
24	12.9	13.3	13.8	14.2	14.6	15.0	15.4	15.8	16.3	16.7
25	12.4	12.8	13.2	13.6	14.0	14.4	14.8	15.2	15.6	16.0
26	11.9	12.3	12.7	13.1	13.5	13.8	14.2	14.6	15.0	15.4
27	11.5	11.9	12.2	12.6	13.0	13.3	13.7	14.1	14.4	14.8
28	11.1	11.4	11.8	12.1	12.5	12.9	13.2	13.6	13.9	14.3
29	10.7	11.0	11.4	11.7	12.1	12.4	12.8	13.1	13.4	13.8
30	10.3	10.7	11.0	11.3	11.7	12.0	12.3	12.7	13.0	13.3
31	10.0	10.3	10.6	11.0	11.3	11.6	11.9	12.3	12.6	12.9
32	9.7	10.0	10.3	10.6	10.9	11.3	11.6	11.9	12.2	12.5
33	9.4	9.7	10.0	10.3	10.6	10.9	11.2	11.5	11.8	12.1
34	9.1	9.4	9.7	10.0	10.3	10.6	10.9	11.2	11.5	11.8
35	8.9	9.1	9.4	9.7	10.0	10.3	10.6	10.9	11.1	11.4
36	8.6	8.9	9.2	9.4	9.7	10.0	10.3	10.6	10.8	11.1
37	8.4	8.6	8.9	9.2	9.5	9.7	10.0	10.3	10.5	10.8
38	8.2	8.4	8.7	8.9	9.2	9.5	9.7	10.0	10.3	10.5
39	7.9	8.2	8.5	8.7	9.0	9.2	9.5	9.7	10.0	10.3
40	7.8	8.0	8.3	8.5	8.8	9.0	9.3	9.5	9.8	10.0
	The Employer's Basic Assessment Rate Shall Be:									
	3.10%	3.20%	3.30%	3.40%	3.50%	3.60%	3.70%	3.80%	3.90%	4.00%

When State Experienced Factor is:	If the Employer's Benefit Wage Ratio Does Not Exceed:									
41	7.6	7.8	8.0	8.3	8.5	8.8	9.0	9.3	9.5	9.8
42	7.4	7.6	7.9	8.1	8.3	8.6	8.8	9.0	9.3	9.5
43	7.2	7.4	7.7	7.9	8.1	8.4	8.6	8.8	9.1	9.3
44	7.0	7.3	7.5	7.7	8.0	8.2	8.4	8.6	8.9	9.1
45	6.9	7.1	7.3	7.6	7.8	8.0	8.2	8.4	8.7	8.9
46	6.7	7.0	7.2	7.4	7.6	7.8	8.0	8.3	8.5	8.7
47	6.6	6.8	7.0	7.2	7.4	7.7	7.9	8.1	8.3	8.5
48	6.5	6.7	6.9	7.1	7.3	7.5	7.7	7.9	8.1	8.3
49	6.3	6.5	6.7	6.9	7.1	7.3	7.6	7.8	8.0	8.2
50	6.2	6.4	6.6	6.8	7.0	7.2	7.4	7.6	7.8	8.0
51	6.1	6.3	6.5	6.7	6.9	7.1	7.3	7.5	7.6	7.8
52	6.0	6.2	6.3	6.5	6.7	6.9	7.1	7.3	7.5	7.7
53	5.8	6.0	6.2	6.4	6.6	6.8	7.0	7.2	7.4	7.5
54	5.7	5.9	6.1	6.3	6.5	6.7	6.9	7.0	7.2	7.4
55	5.6	5.8	6.0	6.2	6.4	6.5	6.7	6.9	7.1	7.3
56	5.5	5.7	5.9	6.1	6.3	6.4	6.6	6.8	7.0	7.1
57	5.4	5.6	5.8	6.0	6.1	6.3	6.5	6.7	6.8	7.0
58	5.3	5.5	5.7	5.9	6.0	6.2	6.4	6.6	6.7	6.9
59	5.3	5.4	5.6	5.8	5.9	6.1	6.3	6.4	6.6	6.8
60	5.2	5.3	5.5	5.7	5.8	6.0	6.2	6.3	6.5	6.7
61	5.1	5.2	5.4	5.6	5.7	5.9	6.1	6.2	6.4	6.6
62	5.0	5.2	5.3	5.5	5.6	5.8	6.0	6.1	6.3	6.5
63	4.9	5.1	5.2	5.4	5.6	5.7	5.9	6.0	6.2	6.3
64	4.8	5.0	5.2	5.3	5.5	5.6	5.8	5.9	6.1	6.3
65	4.8	4.9	5.1	5.2	5.4	5.5	5.7	5.8	6.0	6.2
66	4.7	4.8	5.0	5.2	5.3	5.5	5.6	5.8	5.9	6.1
67	4.6	4.8	4.9	5.1	5.2	5.4	5.5	5.7	5.8	6.0
68	4.6	4.7	4.9	5.0	5.1	5.3	5.4	5.6	5.7	5.9
69	4.5	4.6	4.8	4.9	5.1	5.2	5.4	5.5	5.7	5.8
70	4.4	4.6	4.7	4.9	5.0	5.1	5.3	5.4	5.6	5.7
71	4.4	4.5	4.6	4.8	4.9	5.1	5.2	5.4	5.5	5.6
72	4.3	4.4	4.6	4.7	4.9	5.0	5.1	5.3	5.4	5.6
73	4.2	4.4	4.5	4.7	4.8	4.9	5.1	5.2	5.3	5.5
74	4.2	4.3	4.5	4.6	4.7	4.9	5.0	5.1	5.3	5.4
75	4.1	4.3	4.4	4.5	4.7	4.8	4.9	5.1	5.2	5.3
76	4.1	4.2	4.3	4.5	4.6	4.7	4.9	5.0	5.1	5.3
77	4.0	4.2	4.3	4.4	4.5	4.7	4.8	4.9	5.1	5.2
78	4.0	4.1	4.2	4.4	4.5	4.6	4.7	4.9	5.0	5.1
79	3.9	4.1	4.2	4.3	4.4	4.6	4.7	4.8	4.9	5.1
80	3.9	4.0	4.1	4.3	4.4	4.5	4.6	4.8	4.9	5.0
	The Employer's Basic Assessment Rate Shall Be:									
	3.10%	3.20%	3.30%	3.40%	3.50%	3.60%	3.70%	3.80%	3.90%	4.00%

When State Experienced Factor is:	If the Employer's Benefit Wage Ratio Does Not Exceed:									
1	410.0	420.0	430.0	440.0	450.0	460.0	470.0	480.0	490.0	500.0
2	205.0	210.0	215.0	220.0	225.0	230.0	235.0	240.0	245.0	250.0
3	136.7	140.0	143.3	146.7	150.0	153.3	156.7	160.0	163.3	166.7
4	102.5	105.0	107.5	110.0	112.5	115.0	117.5	120.0	122.5	125.0
5	82.0	84.0	86.0	88.0	90.0	92.0	94.0	96.0	98.0	100.0
6	68.3	70.0	71.7	73.3	75.0	76.7	78.3	80.0	81.7	83.3
7	58.6	60.0	61.4	62.9	64.3	65.7	67.1	68.6	70.0	71.4
8	51.3	52.5	53.8	55.0	56.3	57.5	58.8	60.0	61.3	62.5
9	45.6	46.7	47.8	48.9	50.0	51.1	52.2	53.3	54.4	55.6
10	41.0	42.0	43.0	44.0	45.0	46.0	47.0	48.0	49.0	50.0
11	37.3	38.2	39.1	40.0	40.9	41.8	42.7	43.6	44.5	45.5
12	34.2	35.0	35.8	36.7	37.5	38.3	39.2	40.0	40.8	41.7
13	31.5	32.3	33.1	33.8	34.6	35.4	36.2	36.9	37.7	38.5
14	29.3	30.0	30.7	31.4	32.1	32.9	33.6	34.3	35.0	35.7
15	27.3	28.0	28.7	29.3	30.0	30.7	31.3	32.0	32.7	33.3
16	25.6	26.3	26.9	27.5	28.1	28.8	29.4	30.0	30.6	31.3
17	24.1	24.7	25.3	25.9	26.5	27.1	27.6	28.2	28.8	29.4
18	22.8	23.3	23.9	24.4	25.0	25.6	26.1	26.7	27.2	27.8
19	21.6	22.1	22.6	23.2	23.7	24.2	24.7	25.3	25.8	26.3
20	20.5	21.0	21.5	22.0	22.5	23.0	23.5	24.0	24.5	25.0
21	19.5	20.0	20.5	21.0	21.4	21.9	22.4	22.9	23.3	23.8
22	18.6	19.1	19.5	20.0	20.5	20.9	21.4	21.8	22.3	22.7
23	17.8	18.3	18.7	19.1	19.6	20.0	20.4	20.9	21.3	21.7
24	17.1	17.5	17.9	18.3	18.8	19.2	19.6	20.0	20.4	20.8
25	16.4	16.8	17.2	17.6	18.0	18.4	18.8	19.2	19.6	20.0
26	15.8	16.2	16.5	16.9	17.3	17.7	18.1	18.5	18.8	19.2
27	15.2	15.6	15.9	16.3	16.7	17.0	17.4	17.8	18.1	18.5
28	14.6	15.0	15.4	15.7	16.1	16.4	16.8	17.1	17.5	17.9
29	14.1	14.5	14.8	15.2	15.5	15.9	16.2	16.6	16.9	17.2
30	13.7	14.0	14.3	14.7	15.0	15.3	15.7	16.0	16.3	16.7
31	13.2	13.5	13.9	14.2	14.5	14.8	15.2	15.5	15.8	16.1
32	12.8	13.1	13.4	13.8	14.1	14.4	14.7	15.0	15.3	15.6
33	12.4	12.7	13.0	13.3	13.6	13.9	14.2	14.5	14.8	15.2
34	12.1	12.4	12.6	12.9	13.2	13.5	13.8	14.1	14.4	14.7
35	11.7	12.0	12.3	12.6	12.9	13.1	13.4	13.7	14.0	14.3
36	11.4	11.7	11.9	12.2	12.5	12.8	13.1	13.3	13.6	13.9
37	11.1	11.4	11.6	11.9	12.2	12.4	12.7	13.0	13.2	13.5
38	10.8	11.1	11.3	11.6	11.8	12.1	12.4	12.6	12.9	13.2
39	10.5	10.8	11.0	11.3	11.5	11.8	12.1	12.3	12.6	12.8
40	10.3	10.5	10.8	11.0	11.3	11.5	11.8	12.0	12.3	12.5
	The Employer's Basic Assessment Rate Shall Be:									
	4.10%	4.20%	4.30%	4.40%	4.50%	4.60%	4.70%	4.80%	4.90%	5.00%

When State Experienced Factor is:	If the Employer's Benefit Wage Ratio Does Not Exceed:									
41	10.0	10.2	10.5	10.7	11.0	11.2	11.5	11.7	12.0	12.2
42	9.8	10.0	10.2	10.5	10.7	11.0	11.2	11.4	11.7	11.9
43	9.5	9.8	10.0	10.2	10.5	10.7	10.9	11.2	11.4	11.6
44	9.3	9.5	9.8	10.0	10.2	10.5	10.7	10.9	11.1	11.4
45	9.1	9.3	9.6	9.8	10.0	10.2	10.4	10.7	10.9	11.1
46	8.9	9.1	9.3	9.6	9.8	10.0	10.2	10.4	10.7	10.9
47	8.7	8.9	9.1	9.4	9.6	9.8	10.0	10.2	10.4	10.6
48	8.5	8.8	9.0	9.2	9.4	9.6	9.8	10.0	10.2	10.4
49	8.4	8.6	8.8	9.0	9.2	9.4	9.6	9.8	10.0	10.2
50	8.2	8.4	8.6	8.8	9.0	9.2	9.4	9.6	9.8	10.0
51	8.0	8.2	8.4	8.6	8.8	9.0	9.2	9.4	9.6	9.8
52	7.9	8.1	8.3	8.5	8.7	8.8	9.0	9.2	9.4	9.6
53	7.7	7.9	8.1	8.3	8.5	8.7	8.9	9.1	9.2	9.4
54	7.6	7.8	8.0	8.1	8.3	8.5	8.7	8.9	9.1	9.3
55	7.5	7.6	7.8	8.0	8.2	8.4	8.5	8.7	8.9	9.1
56	7.3	7.5	7.7	7.9	8.0	8.2	8.4	8.6	8.8	8.9
57	7.2	7.4	7.5	7.7	7.9	8.1	8.2	8.4	8.6	8.8
58	7.1	7.2	7.4	7.6	7.8	7.9	8.1	8.3	8.4	8.6
59	6.9	7.1	7.3	7.5	7.6	7.8	8.0	8.1	8.3	8.5
60	6.8	7.0	7.2	7.3	7.5	7.7	7.8	8.0	8.2	8.3
61	6.7	6.9	7.0	7.2	7.4	7.5	7.7	7.9	8.0	8.2
62	6.6	6.8	6.9	7.1	7.3	7.4	7.6	7.7	7.9	8.1
63	6.5	6.7	6.8	7.0	7.1	7.3	7.5	7.6	7.8	7.9
64	6.4	6.6	6.7	6.9	7.0	7.2	7.3	7.5	7.7	7.8
65	6.3	6.5	6.6	6.8	6.9	7.1	7.2	7.4	7.5	7.7
66	6.2	6.4	6.5	6.7	6.8	7.0	7.1	7.3	7.4	7.6
67	6.1	6.3	6.4	6.6	6.7	6.9	7.0	7.2	7.3	7.5
68	6.0	6.2	6.3	6.5	6.6	6.8	6.9	7.1	7.2	7.4
69	5.9	6.1	6.2	6.4	6.5	6.7	6.8	7.0	7.1	7.2
70	5.9	6.0	6.1	6.3	6.4	6.6	6.7	6.9	7.0	7.1
71	5.8	5.9	6.1	6.2	6.3	6.5	6.6	6.8	6.9	7.0
72	5.7	5.8	6.0	6.1	6.3	6.4	6.5	6.7	6.8	6.9
73	5.6	5.8	5.9	6.0	6.2	6.3	6.4	6.6	6.7	6.8
74	5.5	5.7	5.8	5.9	6.1	6.2	6.4	6.5	6.6	6.8
75	5.5	5.6	5.7	5.9	6.0	6.1	6.3	6.4	6.5	6.7
76	5.4	5.5	5.7	5.8	5.9	6.1	6.2	6.3	6.4	6.6
77	5.3	5.5	5.6	5.7	5.8	6.0	6.1	6.2	6.4	6.5
78	5.3	5.4	5.5	5.6	5.8	5.9	6.0	6.2	6.3	6.4
79	5.2	5.3	5.4	5.6	5.7	5.8	5.9	6.1	6.2	6.3
80	5.1	5.3	5.4	5.5	5.6	5.8	5.9	6.0	6.1	6.3
	The Employer's Basic Assessment Rate Shall Be:									
	4.10%	4.20%	4.30%	4.40%	4.50%	4.60%	4.70%	4.80%	4.90%	5.00%

When State Experienced Factor is:	If the Employer's Benefit Wage Ratio Does Not Exceed:									
1	510.0	520.0	530.0	540.0	550.0	560.0	570.0	580.0	590.0	600.0
2	255.0	260.0	265.0	270.0	275.0	280.0	285.0	290.0	295.0	300.0
3	170.0	173.3	176.7	180.0	183.3	186.7	190.0	193.3	196.7	200.0
4	127.5	130.0	132.5	135.0	137.5	140.0	142.5	145.0	147.5	150.0
5	102.0	104.0	106.0	108.0	110.0	112.0	114.0	116.0	118.0	120.0
6	85.0	86.7	88.3	90.0	91.7	93.3	95.0	96.7	98.3	100.0
7	72.9	74.3	75.7	77.1	78.6	80.0	81.4	82.9	84.3	85.7
8	63.8	65.0	66.3	67.5	68.8	70.0	71.2	72.5	73.7	75.0
9	56.7	57.8	58.9	60.0	61.1	62.2	63.3	64.4	65.6	66.7
10	51.0	52.0	53.0	54.0	55.0	56.0	57.0	58.0	59.0	60.0
11	46.4	47.3	48.2	49.1	50.0	50.9	51.8	52.7	53.6	54.5
12	42.5	43.3	44.2	45.0	45.8	46.7	47.5	48.3	49.2	50.0
13	39.2	40.0	40.8	41.5	42.3	43.1	43.8	44.6	45.4	46.2
14	36.4	37.1	37.9	38.6	39.3	40.0	40.7	41.4	42.1	42.9
15	34.0	34.7	35.3	36.0	36.7	37.3	38.0	38.7	39.3	40.0
16	31.9	32.5	33.1	33.8	34.4	35.0	35.6	36.3	36.9	37.5
17	30.0	30.6	31.2	31.8	32.4	32.9	33.5	34.1	34.7	35.3
18	28.3	28.9	29.4	30.0	30.6	31.1	31.7	32.2	32.8	33.3
19	26.8	27.4	27.9	28.4	28.9	29.5	30.0	30.5	31.1	31.6
20	25.5	26.0	26.5	27.0	27.5	28.0	28.5	29.0	29.5	30.0
21	24.3	24.8	25.2	25.7	26.2	26.7	27.1	27.6	28.1	28.6
22	23.2	23.6	24.1	24.5	25.0	25.5	25.9	26.4	26.8	27.3
23	22.2	22.6	23.0	23.5	23.9	24.3	24.8	25.2	25.7	26.1
24	21.3	21.7	22.1	22.5	22.9	23.3	23.8	24.2	24.6	25.0
25	20.4	20.8	21.2	21.6	22.0	22.4	22.8	23.2	23.6	24.0
26	19.6	20.0	20.4	20.8	21.2	21.5	21.9	22.3	22.7	23.1
27	18.9	19.3	19.6	20.0	20.4	20.7	21.1	21.5	21.9	22.2
28	18.2	18.6	18.9	19.3	19.6	20.0	20.4	20.7	21.1	21.4
29	17.6	17.9	18.3	18.6	19.0	19.3	19.7	20.0	20.3	20.7
30	17.0	17.3	17.7	18.0	18.3	18.7	19.0	19.3	19.7	20.0
31	16.5	16.8	17.1	17.4	17.7	18.1	18.4	18.7	19.0	19.4
32	15.9	16.3	16.6	16.9	17.2	17.5	17.8	18.1	18.4	18.8
33	15.5	15.8	16.1	16.4	16.7	17.0	17.3	17.6	17.9	18.2
34	15.0	15.3	15.6	15.9	16.2	16.5	16.8	17.1	17.4	17.6
35	14.6	14.9	15.1	15.4	15.7	16.0	16.3	16.6	16.9	17.1
36	14.2	14.4	14.7	15.0	15.3	15.6	15.8	16.1	16.4	16.7
37	13.8	14.1	14.3	14.6	14.9	15.1	15.4	15.7	15.9	16.2
38	13.4	13.7	13.9	14.2	14.5	14.7	15.0	15.3	15.5	15.8
39	13.1	13.3	13.6	13.8	14.1	14.4	14.6	14.9	15.1	15.4
40	12.8	13.0	13.3	13.5	13.8	14.0	14.3	14.5	14.8	15.0
	The Employer's Basic Assessment Rate Shall Be:									
	5.10%	5.20%	5.30%	5.40%	5.50%	5.60%	5.70%	5.80%	5.90%	6.00%

When State Experienced Factor is:	If the Employer's Benefit Wage Ratio Does Not Exceed:									
41	12.4	12.7	12.9	13.2	13.4	13.7	13.9	14.1	14.4	14.6
42	12.1	12.4	12.6	12.9	13.1	13.3	13.6	13.8	14.0	14.3
43	11.9	12.1	12.3	12.6	12.8	13.0	13.3	13.5	13.7	14.0
44	11.6	11.8	12.0	12.3	12.5	12.7	13.0	13.2	13.4	13.6
45	11.3	11.6	11.8	12.0	12.2	12.4	12.7	12.9	13.1	13.3
46	11.1	11.3	11.5	11.7	12.0	12.2	12.4	12.6	12.8	13.0
47	10.9	11.1	11.3	11.5	11.7	11.9	12.1	12.3	12.6	12.8
48	10.6	10.8	11.0	11.3	11.5	11.7	11.9	12.1	12.3	12.5
49	10.4	10.6	10.8	11.0	11.2	11.4	11.6	11.8	12.0	12.2
50	10.2	10.4	10.6	10.8	11.0	11.2	11.4	11.6	11.8	12.0
51	10.0	10.2	10.4	10.6	10.8	11.0	11.2	11.4	11.6	11.8
52	9.8	10.0	10.2	10.4	10.6	10.8	11.0	11.2	11.3	11.5
53	9.6	9.8	10.0	10.2	10.4	10.6	10.8	10.9	11.1	11.3
54	9.4	9.6	9.8	10.0	10.2	10.4	10.6	10.7	10.9	11.1
55	9.3	9.5	9.6	9.8	10.0	10.2	10.4	10.5	10.7	10.9
56	9.1	9.3	9.5	9.6	9.8	10.0	10.2	10.4	10.5	10.7
57	8.9	9.1	9.3	9.5	9.6	9.8	10.0	10.2	10.4	10.5
58	8.8	9.0	9.1	9.3	9.5	9.7	9.8	10.0	10.2	10.3
59	8.6	8.8	9.0	9.2	9.3	9.5	9.7	9.8	10.0	10.2
60	8.5	8.7	8.8	9.0	9.2	9.3	9.5	9.7	9.8	10.0
61	8.4	8.5	8.7	8.9	9.0	9.2	9.3	9.5	9.7	9.8
62	8.2	8.4	8.5	8.7	8.9	9.0	9.2	9.4	9.5	9.7
63	8.1	8.3	8.4	8.6	8.7	8.9	9.0	9.2	9.4	9.5
64	8.0	8.1	8.3	8.4	8.6	8.7	8.9	9.1	9.2	9.4
65	7.8	8.0	8.2	8.3	8.5	8.6	8.8	8.9	9.1	9.2
66	7.7	7.9	8.0	8.2	8.3	8.5	8.6	8.8	8.9	9.1
67	7.6	7.8	7.9	8.1	8.2	8.4	8.5	8.7	8.8	9.0
68	7.5	7.6	7.8	7.9	8.1	8.2	8.4	8.5	8.7	8.8
69	7.4	7.5	7.7	7.8	8.0	8.1	8.3	8.4	8.6	8.7
70	7.3	7.4	7.6	7.7	7.9	8.0	8.1	8.3	8.4	8.6
71	7.2	7.3	7.5	7.6	7.7	7.9	8.0	8.2	8.3	8.5
72	7.1	7.2	7.4	7.5	7.6	7.8	7.9	8.1	8.2	8.3
73	7.0	7.1	7.3	7.4	7.5	7.7	7.8	7.9	8.1	8.2
74	6.9	7.0	7.2	7.3	7.4	7.6	7.7	7.8	8.0	8.1
75	6.8	6.9	7.1	7.2	7.3	7.5	7.6	7.7	7.9	8.0
76	6.7	6.8	7.0	7.1	7.2	7.4	7.5	7.6	7.8	7.9
77	6.6	6.8	6.9	7.0	7.1	7.3	7.4	7.5	7.7	7.8
78	6.5	6.7	6.8	6.9	7.1	7.2	7.3	7.4	7.6	7.7
79	6.5	6.6	6.7	6.8	7.0	7.1	7.2	7.3	7.5	7.6
80	6.4	6.5	6.6	6.8	6.9	7.0	7.1	7.2	7.4	7.5
	The Employer's Basic Assessment Rate Shall Be:									
	5.10%	5.20%	5.30%	5.40%	5.50%	5.60%	5.70%	5.80%	5.90%	6.00%

When State Experienced Factor is:	If the Employer's Benefit Wage Ratio Does Not Exceed:									
1	610.0	620.0	630.0	640.0	650.0	660.0	670.0	680.0	690.0	700.0
2	305.0	310.0	315.0	320.0	325.0	330.0	335.0	340.0	345.0	350.0
3	203.3	206.7	210.0	213.3	216.7	220.0	223.3	226.7	230.0	233.3
4	152.5	155.0	157.5	160.0	162.5	165.0	167.5	170.0	172.5	175.0
5	122.0	124.0	126.0	128.0	130.0	132.0	134.0	136.0	138.0	140.0
6	101.7	103.3	105.0	106.7	108.3	110.0	111.7	113.3	115.0	116.7
7	87.1	88.6	90.0	91.4	92.9	94.3	95.7	97.1	98.6	100.0
8	76.2	77.5	78.7	80.0	81.2	82.5	83.7	85.0	86.2	87.5
9	67.8	68.9	70.0	71.1	72.2	73.3	74.4	75.6	76.7	77.8
10	61.0	62.0	63.0	64.0	65.0	66.0	67.0	68.0	69.0	70.0
11	55.5	56.4	57.3	58.2	59.1	60.0	60.9	61.8	62.7	63.6
12	50.8	51.7	52.5	53.3	54.2	55.0	55.8	56.7	57.5	58.3
13	46.9	47.7	48.5	49.2	50.0	50.8	51.5	52.3	53.1	53.8
14	43.6	44.3	45.0	45.7	46.4	47.1	47.9	48.6	49.3	50.0
15	40.7	41.3	42.0	42.7	43.3	44.0	44.7	45.3	46.0	46.7
16	38.1	38.8	39.4	40.0	40.6	41.3	41.9	42.5	43.1	43.7
17	35.9	36.5	37.1	37.6	38.2	38.8	39.4	40.0	40.6	41.2
18	33.9	34.4	35.0	35.6	36.1	36.7	37.2	37.8	38.3	38.9
19	32.1	32.6	33.2	33.7	34.2	34.7	35.3	35.8	36.3	36.8
20	30.5	31.0	31.5	32.0	32.5	33.0	33.5	34.0	34.5	35.0
21	29.0	29.5	30.0	30.5	31.0	31.4	31.9	32.4	32.9	33.3
22	27.7	28.2	28.6	29.1	29.5	30.0	30.5	30.9	31.4	31.8
23	26.5	27.0	27.4	27.8	28.3	28.7	29.1	29.6	30.0	30.4
24	25.4	25.8	26.3	26.7	27.1	27.5	27.9	28.3	28.8	29.2
25	24.4	24.8	25.2	25.6	26.0	26.4	26.8	27.2	27.6	28.0
26	23.5	23.8	24.2	24.6	25.0	25.4	25.8	26.2	26.5	26.9
27	22.6	23.0	23.3	23.7	24.1	24.4	24.8	25.2	25.6	25.9
28	21.8	22.1	22.5	22.9	23.2	23.6	23.9	24.3	24.6	25.0
29	21.0	21.4	21.7	22.1	22.4	22.8	23.1	23.4	23.8	24.1
30	20.3	20.7	21.0	21.3	21.7	22.0	22.3	22.7	23.0	23.3
31	19.7	20.0	20.3	20.6	21.0	21.3	21.6	21.9	22.3	22.6
32	19.1	19.4	19.7	20.0	20.3	20.6	20.9	21.3	21.6	21.9
33	18.5	18.8	19.1	19.4	19.7	20.0	20.3	20.6	20.9	21.2
34	17.9	18.2	18.5	18.8	19.1	19.4	19.7	20.0	20.3	20.6
35	17.4	17.7	18.0	18.3	18.6	18.9	19.1	19.4	19.7	20.0
36	16.9	17.2	17.5	17.8	18.1	18.3	18.6	18.9	19.2	19.4
37	16.5	16.8	17.0	17.3	17.6	17.8	18.1	18.4	18.6	18.9
38	16.1	16.3	16.6	16.8	17.1	17.4	17.6	17.9	18.2	18.4
39	15.6	15.9	16.2	16.4	16.7	16.9	17.2	17.4	17.7	17.9
40	15.3	15.5	15.8	16.0	16.3	16.5	16.8	17.0	17.3	17.5
	The Employer's Basic Assessment Rate Shall Be:									
	6.10%	6.20%	6.30%	6.40%	6.50%	6.60%	6.70%	6.80%	6.90%	7.00%

When State Experienced Factor is:	If the Employer's Benefit Wage Ratio Does Not Exceed:									
41	14.9	15.1	15.4	15.6	15.9	16.1	16.3	16.6	16.8	17.1
42	14.5	14.8	15.0	15.2	15.5	15.7	16.0	16.2	16.4	16.7
43	14.2	14.4	14.7	14.9	15.1	15.3	15.6	15.8	16.0	16.3
44	13.9	14.1	14.3	14.5	14.8	15.0	15.2	15.5	15.7	15.9
45	13.6	13.8	14.0	14.2	14.4	14.7	14.9	15.1	15.3	15.6
46	13.3	13.5	13.7	13.9	14.1	14.3	14.6	14.8	15.0	15.2
47	13.0	13.2	13.4	13.6	13.8	14.0	14.3	14.5	14.7	14.9
48	12.7	12.9	13.1	13.3	13.5	13.8	14.0	14.2	14.4	14.6
49	12.4	12.7	12.9	13.1	13.3	13.5	13.7	13.9	14.1	14.3
50	12.2	12.4	12.6	12.8	13.0	13.2	13.4	13.6	13.8	14.0
51	12.0	12.2	12.4	12.5	12.7	12.9	13.1	13.3	13.5	13.7
52	11.7	11.9	12.1	12.3	12.5	12.7	12.9	13.1	13.3	13.5
53	11.5	11.7	11.9	12.1	12.3	12.5	12.6	12.8	13.0	13.2
54	11.3	11.5	11.7	11.9	12.0	12.2	12.4	12.6	12.8	13.0
55	11.1	11.3	11.5	11.6	11.8	12.0	12.2	12.4	12.5	12.7
56	10.9	11.1	11.3	11.4	11.6	11.8	12.0	12.1	12.3	12.5
57	10.7	10.9	11.1	11.2	11.4	11.6	11.8	11.9	12.1	12.3
58	10.5	10.7	10.9	11.0	11.2	11.4	11.6	11.7	11.9	12.1
59	10.3	10.5	10.7	10.8	11.0	11.2	11.4	11.5	11.7	11.9
60	10.2	10.3	10.5	10.7	10.8	11.0	11.2	11.3	11.5	11.7
61	10.0	10.2	10.3	10.5	10.7	10.8	11.0	11.1	11.3	11.5
62	9.8	10.0	10.2	10.3	10.5	10.6	10.8	11.0	11.1	11.3
63	9.7	9.8	10.0	10.2	10.3	10.5	10.6	10.8	11.0	11.1
64	9.5	9.7	9.8	10.0	10.2	10.3	10.5	10.6	10.8	10.9
65	9.4	9.5	9.7	9.8	10.0	10.2	10.3	10.5	10.6	10.8
66	9.2	9.4	9.5	9.7	9.8	10.0	10.2	10.3	10.5	10.6
67	9.1	9.3	9.4	9.6	9.7	9.9	10.0	10.1	10.3	10.4
68	9.0	9.1	9.3	9.4	9.6	9.7	9.9	10.0	10.1	10.3
69	8.8	9.0	9.1	9.3	9.4	9.6	9.7	9.9	10.0	10.1
70	8.7	8.9	9.0	9.1	9.3	9.4	9.6	9.7	9.9	10.0
71	8.6	8.7	8.9	9.0	9.2	9.3	9.4	9.6	9.7	9.9
72	8.5	8.6	8.7	8.9	9.0	9.2	9.3	9.4	9.6	9.7
73	8.4	8.5	8.6	8.8	8.9	9.0	9.2	9.3	9.5	9.6
74	8.2	8.4	8.5	8.6	8.8	8.9	9.1	9.2	9.3	9.5
75	8.1	8.3	8.4	8.5	8.7	8.8	8.9	9.1	9.2	9.3
76	8.0	8.2	8.3	8.4	8.6	8.7	8.8	8.9	9.1	9.2
77	7.9	8.1	8.2	8.3	8.4	8.6	8.7	8.8	9.0	9.1
78	7.8	7.9	8.1	8.2	8.3	8.5	8.6	8.7	8.8	9.0
79	7.7	7.8	8.0	8.1	8.2	8.4	8.5	8.6	8.7	8.9
80	7.6	7.7	7.9	8.0	8.1	8.2	8.4	8.5	8.6	8.7
	The Employer's Basic Assessment Rate Shall Be:									
	6.10%	6.20%	6.30%	6.40%	6.50%	6.60%	6.70%	6.80%	6.90%	7.00%

When State Experienced Factor is:	If the Employer's Benefit Wage Ratio Does Not Exceed:								
1	710.0	720.0	730.0	740.0	750.0	760.0	770.0	780.0	790.0
2	355.0	360.0	365.0	370.0	375.0	380.0	385.0	390.0	395.0
3	236.7	240.0	243.3	246.7	250.0	253.3	256.7	260.0	263.3
4	177.5	180.0	182.5	185.0	187.5	190.0	192.5	195.0	197.5
5	142.0	144.0	146.0	148.0	150.0	152.0	154.0	156.0	158.0
6	118.3	120.0	121.7	123.3	125.0	126.7	128.3	130.0	131.7
7	101.4	102.9	104.3	105.7	107.1	108.6	110.0	111.4	112.9
8	88.7	90.0	91.2	92.5	93.7	95.0	96.2	97.5	98.7
9	78.9	80.0	81.1	82.2	83.3	84.4	85.6	86.7	87.8
10	71.0	72.0	73.0	74.0	75.0	76.0	77.0	78.0	79.0
11	64.5	65.5	66.4	67.3	68.2	69.1	70.0	70.9	71.8
12	59.2	60.0	60.8	61.7	62.5	63.3	64.2	65.0	65.8
13	54.6	55.4	56.2	56.9	57.7	58.5	59.2	60.0	60.8
14	50.7	51.4	52.1	52.9	53.6	54.3	55.0	55.7	56.4
15	47.3	48.0	48.7	49.3	50.0	50.7	51.3	52.0	52.7
16	44.4	45.0	45.6	46.2	46.9	47.5	48.1	48.7	49.4
17	41.8	42.4	42.9	43.5	44.1	44.7	45.3	45.9	46.5
18	39.4	40.0	40.6	41.1	41.7	42.2	42.8	43.3	43.9
19	37.4	37.9	38.4	38.9	39.5	40.0	40.5	41.1	41.6
20	35.5	36.0	36.5	37.0	37.5	38.0	38.5	39.0	39.5
21	33.8	34.3	34.8	35.2	35.7	36.2	36.7	37.1	37.6
22	32.3	32.7	33.2	33.6	34.1	34.5	35.0	35.5	35.9
23	30.9	31.3	31.7	32.2	32.6	33.0	33.5	33.9	34.3
24	29.6	30.0	30.4	30.8	31.3	31.7	32.1	32.5	32.9
25	28.4	28.8	29.2	29.6	30.0	30.4	30.8	31.2	31.6
26	27.3	27.7	28.1	28.5	28.8	29.2	29.6	30.0	30.4
27	26.3	26.7	27.0	27.4	27.8	28.1	28.5	28.9	29.3
28	25.4	25.7	26.1	26.4	26.8	27.1	27.5	27.9	28.2
29	24.5	24.8	25.2	25.5	25.9	26.2	26.6	26.9	27.2
30	23.7	24.0	24.3	24.7	25.0	25.3	25.7	26.0	26.3
31	22.9	23.2	23.5	23.9	24.2	24.5	24.8	25.2	25.5
32	22.2	22.5	22.8	23.1	23.4	23.8	24.1	24.4	24.7
33	21.5	21.8	22.1	22.4	22.7	23.0	23.3	23.6	23.9
34	20.9	21.2	21.5	21.8	22.1	22.4	22.6	22.9	23.2
35	20.3	20.6	20.9	21.1	21.4	21.7	22.0	22.3	22.6
36	19.7	20.0	20.3	20.6	20.8	21.1	21.4	21.7	21.9
37	19.2	19.5	19.7	20.0	20.3	20.5	20.8	21.1	21.4
38	18.7	18.9	19.2	19.5	19.7	20.0	20.3	20.5	20.8
39	18.2	18.5	18.7	19.0	19.2	19.5	19.7	20.0	20.3
40	17.8	18.0	18.3	18.5	18.8	19.0	19.3	19.5	19.8
	The Employer's Basic Assessment Rate Shall Be:								
	7.10%	7.20%	7.30%	7.40%	7.50%	7.60%	7.70%	7.80%	7.90%

When State Experienced Factor is:	If the Employer's Benefit Wage Ratio Does Not Exceed:								
41	17.3	17.6	17.8	18.0	18.3	18.5	18.8	19.0	19.3
42	16.9	17.1	17.4	17.6	17.9	18.1	18.3	18.6	18.8
43	16.5	16.7	17.0	17.2	17.4	17.7	17.9	18.1	18.4
44	16.1	16.4	16.6	16.8	17.0	17.3	17.5	17.7	18.0
45	15.8	16.0	16.2	16.4	16.7	16.9	17.1	17.3	17.6
46	15.4	15.7	15.9	16.1	16.3	16.5	16.7	17.0	17.2
47	15.1	15.3	15.5	15.7	16.0	16.2	16.4	16.6	16.8
48	14.8	15.0	15.2	15.4	15.6	15.8	16.0	16.3	16.5
49	14.5	14.7	14.9	15.1	15.3	15.5	15.7	15.9	16.1
50	14.2	14.4	14.6	14.8	15.0	15.2	15.4	15.6	15.8
51	13.9	14.1	14.3	14.5	14.7	14.9	15.1	15.3	15.5
52	13.7	13.8	14.0	14.2	14.4	14.6	14.8	15.0	15.2
53	13.4	13.6	13.8	14.0	14.2	14.3	14.5	14.7	14.9
54	13.1	13.3	13.5	13.7	13.9	14.1	14.3	14.4	14.6
55	12.9	13.1	13.3	13.5	13.6	13.8	14.0	14.2	14.4
56	12.7	12.9	13.0	13.2	13.4	13.6	13.8	13.9	14.1
57	12.5	12.6	12.8	13.0	13.2	13.3	13.5	13.7	13.9
58	12.2	12.4	12.6	12.8	12.9	13.1	13.3	13.4	13.6
59	12.0	12.2	12.4	12.5	12.7	12.9	13.1	13.2	13.4
60	11.8	12.0	12.2	12.3	12.5	12.7	12.8	13.0	13.2
61	11.6	11.8	12.0	12.1	12.3	12.5	12.6	12.8	13.0
62	11.5	11.6	11.8	11.9	12.1	12.3	12.4	12.6	12.7
63	11.3	11.4	11.6	11.7	11.9	12.1	12.2	12.4	12.5
64	11.1	11.3	11.4	11.6	11.7	11.9	12.0	12.2	12.3
65	10.9	11.1	11.2	11.4	11.5	11.7	11.8	12.0	12.2
66	10.8	10.9	11.1	11.2	11.4	11.5	11.7	11.8	12.0
67	10.6	10.7	10.9	11.0	11.2	11.3	11.5	11.6	11.8
68	10.4	10.6	10.7	10.9	11.0	11.2	11.3	11.5	11.6
69	10.3	10.4	10.6	10.7	10.9	11.0	11.2	11.3	11.4
70	10.1	10.3	10.4	10.6	10.7	10.9	11.0	11.1	11.3
71	10.0	10.1	10.3	10.4	10.6	10.7	10.8	11.0	11.1
72	9.9	10.0	10.1	10.3	10.4	10.6	10.7	10.8	11.0
73	9.7	9.9	10.0	10.1	10.3	10.4	10.5	10.7	10.8
74	9.6	9.7	9.9	10.0	10.1	10.3	10.4	10.5	10.7
75	9.5	9.6	9.7	9.9	10.0	10.1	10.3	10.4	10.5
76	9.3	9.5	9.6	9.7	9.9	10.0	10.1	10.3	10.4
77	9.2	9.4	9.5	9.6	9.7	9.9	10.0	10.1	10.3
78	9.1	9.2	9.4	9.5	9.6	9.7	9.9	10.0	10.1
79	9.0	9.1	9.2	9.4	9.5	9.6	9.7	9.9	10.0
80	8.9	9.0	9.1	9.2	9.4	9.5	9.6	9.7	9.9
	The Employer's Basic Assessment Rate Shall Be:								
	7.10%	7.20%	7.30%	7.40%	7.50%	7.60%	7.70%	7.80%	7.90%

If the employer’s benefit wage ratio exceeds the percentage in the last column of the table opposite the State Experience Factor, the employer’s basic contribution rate shall be 8%.

(6) No employer’s basic assessment rate or new employer rate for the period of 12 months commencing January 1 of any calendar year shall be less than $6^{3}/_{10}$% unless all required reports and all assessment due on wages paid for employment for such employer during pay periods ending on or prior to June 30 of the preceding year have been received by the Department on or prior to September 30 of such preceding year. If such required reports and assessments due are received by the Department after September 30 of the preceding year but prior to or on the last day of any calendar quarter of any calendar year, such employer’s basic assessment rate or new employer rate for assessments on wages paid for employment for such employers during pay periods in the said calendar quarter and for wages paid for employment for such employer during pay periods in all succeeding calendar quarters in such calendar year shall be the basic assessment rate as determined for such employer under paragraph (5) of this section or the new employer rate as determined for such employer under § 3348 of this title, whichever the Department determines is applicable.

(7) Effective July 1, 1994, notwithstanding any inconsistent provisions of this chapter, if, after the last day of any claimant's benefit year but within the 90 days next following thereafter, an employer for whom benefit wage charges were made as a consequence of such claimant's receipt of benefits files a written notice in such manner as the Department shall prescribe, stating that the employer had reemployed such claimant within the claimant's benefit year, and the Department finds that such employee received in benefits a total amount aggregating not more than 25% of the maximum benefit payments to which the employee was entitled within such benefit year because of such reemployment, the employer's benefit wage record shall be credited with 75% of the benefit wages previously charged against the employer relating to such claimant's previous employment; or if the Department finds that such employee received in benefits an amount aggregating more than 25% but not more than 50% of the maximum benefits to which the employee was entitled within such benefit year because of such reemployment, the employer's benefit wage record shall be credited with 50% of the benefit wages previously charged against the employer relating to such claimant's previous employment; or if the Department finds that such employee received in benefits a total amount aggregating more than 50% but not more than 75% of the maximum benefits to which the employee was entitled within such benefit year because of such reemployment, the employer's benefit wage record shall be credited with 25% of the benefit wages previously charged against the employer relating to such claimant's previous employment. In computing an employer's assessment rate for any calendar year, credits may be used only in connection with rehires of claimants whose benefit years ended no later than June 30 of the calendar year immediately preceding. Rehire credits shall be applied to the employer's benefit wage record in the calendar year and quarter in which the claimant's benefit year exhausted. An employer may apply for rehire credits relating to a claim for benefits, including benefits paid as a consequence of a claim for partial unemployment benefits, regardless of the number of separate periods of unemployment a claimant had during the claimant's benefit year.

Employer "rehire credits" as defined above shall not be used in the calculation of the "state experience factor" as determined in accordance with paragraph (4) of this section.

(8) For the last 3 calendar quarters of 1959, the 4 calendar quarters of 1960 and the first calendar quarter of 1961, every rated employer shall pay, in addition to the assessment set for such employer under paragraph (5) of this section, an additional assessment of $1^1/_2$% of wages paid by the employer in each of the aforesaid calendar quarters.

(9) Supplemental Assessment Rate.

a. For any calendar year beginning January 1, 1988, and thereafter, with respect to which the balance in the Unemployment Insurance Trust Fund, as certified by the Director of Unemployment Insurance to the Secretary of Labor, is equal to or greater than $90 million as of the preceding September 30, each employer's new employer rate or basic assessment rate, whichever shall be applicable to such employer, shall be increased by a "supplemental assessment rate" in accordance with the following table:

New Employer /Basic Assessment Rate	=	Supplemental Assessment Rate
.1 - 3.9%		1.1%
4.0 - 5.9%		1.2%
6.0 - 7.9%		1.3%
8.0%		1.5%

b. For any calendar year beginning January 1, 1988, and thereafter, with respect to which the balance in the Unemployment Insurance Trust Fund, as certified by the Director of Unemployment Insurance to the Secretary of Labor, is less than $90 million as of the preceding September 30, each employer's new employer rate or basic assessment rate, whichever shall be applicable to such employer, shall be increased by a "supplemental assessment rate" in accordance with the following table:

New Employer / Basic Assessment Rate	=	Supplemental Assessment Rate
.1 - 3.9%		1.5%
4.0 - 5.9%		1.8%
6.0 - 7.9%		2.1%
8.0%		2.5%

c. For any calendar year beginning January 1, 1990, and thereafter, with respect to which the balance in the Unemployment Insurance Trust Fund, as certified by the Director of Unemployment Insurance to the Secretary of Labor, is equal to or greater than $130 million as of the preceding September 30, each employer's new employer rate or basic assessment rate, whichever shall be applicable to such employer, shall be increased by a "supplemental assessment rate" in accordance with the following table:

New Employer / Basic Assessment Rate	=	Supplemental Assessment Rate
.1 - 3.9%		.9%
4.0 - 5.9%		1.1%
6.0 - 7.9%		1.2%
8.0%		1.5%

d. For any calendar year beginning January 1, 1996, and thereafter, with respect to which the balance in the Unemployment Insurance Trust Fund, as certified by the Director of Unemployment Insurance to the Secretary of Labor, is equal to or greater than $200 million as of the preceding September 30, each employer's new employer rate or basic assessment rate, whichever shall be applicable to such employer, shall be increased by a "supplemental assessment rate" in accordance with the following table:

New Employer / Basic Assessment Rate	=	Supplemental Assessment Rate
0.1 - 3.9%		.7%
4.0 - 5.9%		.7%
6.0 - 7.9%		.7%
8.0%		.7%

e. For any calendar year beginning January 1, 1998, and thereafter, with respect to which the balance in the Unemployment Insurance Trust Fund, as certified by the Director of Unemployment Insurance to the Secretary of Labor, is equal to or greater than $215 million as of the preceding September 30, each employer's new employer rate or basic assessment rate, whichever shall be applicable to such employer, shall be increased by a "supplemental assessment rate" in accordance with the following table:

New Employer / Basic Assessment Rate	=	Supplemental Assessment Rate
.1 - 3.9%		.5%
4.0 - 5.9%		.5%
6.0 - 7.9%		.5%
8.0%		.5%

f. For any calendar year beginning January 1, 2000, and thereafter, with respect to which the balance in the Unemployment Insurance Trust Fund, as certified by the Director of Unemployment Insurance to the Secretary of Labor, is equal to or greater than $250 million as of the preceding September 30, each employer's new employer rate or basic assessment rate, whichever shall be applicable to such employer, shall be increased by a "supplemental assessment rate" in accordance with the following table:

New Employer / Basic Assessment Rate	=	Supplemental Assessment Rate
0.1 — 3.9%		0.3%
4.0 — 5.9%		0.3%
6.0 — 7.9%		0.3%
8.0%		0.3%

g. For any calendar year beginning January 1, 2002, and thereafter, with respect to which the balance in the Unemployment Insurance Trust Fund, as certified by the Director of Unemployment Insurance to the Secretary of Labor, is equal to or greater than $300 million as of the preceding September 30, each employer's new employer rate or basic assessment rate, whichever shall be applicable to such employer, shall be increased by a "supplemental assessment rate" in accordance with the following table:

New Employer / Basic Assessment Rate	=	Supplemental Assessment Rate
0.1 — 3.9%		0.2%
4.0 — 5.9%		0.2%
6.0 — 7.9%		0.2%
8.0%		0.2%

h. For any calendar year beginning January 1, 1990, and thereafter, with respect to which the balance in the Unemployment Insurance Trust Fund, as certified by the Director of Unemployment Insurance to the Secretary of Labor, is less than $130 million as of the preceding September 30, each employer's new employer rate or basic assessment rate, whichever shall be applicable to such employer, shall be increased by a "supplemental assessment rate" in accordance with the table in paragraph (9)a. or b. of this section as determined by the balance in the Unemployment Insurance Trust Fund.

i. For any calendar year beginning January 1, 1996, and thereafter, with respect to which the balance in the Unemployment Insurance Trust Fund, as certified by the Director of Unemployment Insurance to the Secretary of Labor, is less than $200 million as of the preceding September 30, each employer's new employer rate or basic assessment rate, whichever shall be applicable to such employer, shall be increased by a "supplemental assessment rate" in accordance with the table in paragraph (9)a., b. or c. of this section as determined by the balance in the Unemployment Insurance Trust Fund.

j. For any calendar year beginning January 1, 1998, and thereafter, with respect to which the balance in the Unemployment Insurance Trust Fund, as certified by the Director of Unemployment Insurance to the Secretary of Labor, is less than $215 million as of the preceding September 30, each employer's new employer rate or basic assessment rate, whichever shall be applicable to such employer, shall be increased by a "supplemental assessment rate" in accordance with the table in paragraph (9)a., b., c. or d. of this section as determined by the balance in the Unemployment Insurance Trust Fund.

k. For any calendar year beginning January 1, 2000, and thereafter, with respect to which the balance in the Unemployment Insurance Trust Fund, as certified by the Director of Unemployment Insurance to the Secretary of Labor, is less than $250 million as of the preceding September 30, each employer's new employer rate or basic assessment rate, whichever shall be applicable to such employer, shall be increased by a "supplemental assessment rate" in accordance with the table in paragraph (9)a., b., c., d. or e. of this section as determined by the balance in the Unemployment Insurance Trust Fund.

l. For any calendar year beginning January 1, 2002, and thereafter, with respect to which the balance in the Unemployment Insurance Trust Fund, as certified by the Director of Unemployment Insurance to the Secretary of Labor, is less than $300 million as of the preceding September 30, each employer's new employer rate or basic assessment rate, whichever shall be applicable to such employer, shall be increased by a "supplemental assessment rate" in accordance with the table in paragraph (9)a., b., c., d., e. or f. of this section as determined by the balance in the Unemployment Insurance Trust Fund.

m. Notwithstanding any other provisions in this section, for any calendar year beginning January 1, 2004, and thereafter, each employer's new employer rate or basic assessment rate, whichever shall be applicable to such employer, shall be increased by a "supplemental assessment rate" of 0.2%.

(10) In any benefit year, the employee's "benefit wages" paid by each employer to such employee shall not exceed the "base of assessment" defined in § 3302(19)(A) of this title.

(11) Notwithstanding any other provision of this title to the contrary, no employee benefit wages, as defined in paragraph (1) of this section, for weeks of total or partial unemployment from March 15, 2020, through and including March 21, 2020, and no claims determined by the Department to be COVID-19 related claims, will be included in the employer's benefit wages for purposes of paragraph (2), (3) or (4) of this section, and no benefit payments made from the Unemployment Insurance Trust Fund based on claims filed from March 15, 2020, through and including March 21, 2020, and no benefit payments made from the Unemployment Insurance Trust Fund based on claims determined by the Department to be COVID-19 related claims, shall be included in the state experience factor calculated in paragraph (4) of this section. An employer's or agent of the employer's failure to timely or adequately respond to a separation notice for a claim filed from March 15, 2020, through and including March 21, 2020, and for a claim determined by the Department to be a COVID-19 related claim will not result in benefit wage charges being assessed to such employer's experience merit rating account under § 3317 or § 3318 of this title, unless the Department determines such failure has resulted in an overpayment of benefits and the employer or agent of the employer has established a pattern of failing to respond timely or adequately.

(12) Notwithstanding the required computation of the employer assessment rate to be determined by the Department for the next succeeding calendar year pursuant to this section, for calendar year 2022, employers shall be assigned an assessment rate equal to the lowest of the rate determined by the Department pursuant to this section for the calendar year 2020, 2021, or 2022; except that employers who are determined for calendar year 2022 to have the delinquency rate of assessment pursuant to paragraph (6) of this section shall continue to be assigned the delinquency rate, subject to the administrative authority provided for in paragraph (13) of this section.

(13) Notwithstanding paragraph (6) of this section, the Department shall have the authority in its sole discretion to make changes to the delinquency assessment rate of any employer to take effect on the date determined by the Department, and to provide assessment credits to any employer, as necessary to correct administrative errors or address fraudulent claims charged to employers, except with respect to employers who are charged the delinquency assessment rate because they have not filed any quarterly tax report owed to the Department.

(41 Del. Laws, c. 258, § 7; 42 Del. Laws, c. 197, § 1; 43 Del. Laws, c. 280, §§ 13, 14, 24; 44 Del. Laws, c. 207, §§ 8-10; 45 Del. Laws, c. 267, § 7; 45 Del. Laws, c. 268, § 1; 46 Del. Laws, c. 162, § 9; 47 Del. Laws, c. 392, § 1; 19 Del. C. 1953, § 3350; 50 Del. Laws, c. 115, §§ 8-10; 50 Del. Laws, c. 117, § 4; 52 Del. Laws, c. 18, § 4; 53 Del. Laws, c. 32, §§ 4-7; 53 Del. Laws, c. 79, § 1; 57 Del. Laws, c. 669, §§ 5B, 5H; 58 Del. Laws, c. 522, § 28; 58 Del. Laws, c. 528, § 1; 58 Del. Laws, c. 573, § 3; 59 Del. Laws, c. 578, § 1; 62 Del. Laws, c. 163, §§ 4, 5; 63 Del. Laws, c. 76, §§ 10, 11; 64 Del. Laws, c. 91, § 12; 64 Del. Laws, c. 427, § 5; 65 Del. Laws, c. 45, §§ 3, 4; 65 Del. Laws, c. 514, §§ 14, 15; 66 Del. Laws, c. 72, § 1; 66 Del. Laws, c. 74, §§ 5, 6; 67 Del. Laws, c. 119, §§ 1, 2; 68 Del. Laws, c. 65, § 1; 69 Del. Laws, c. 460, §§ 1-3; 70 Del. Laws, c. 46, §§ 1-4; 70 Del. Laws, c. 110, §§ 1, 2; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 147, §§ 3-5; 72 Del. Laws, c. 107, §§ 1-3; 73 Del. Laws, c. 209, §§ 3-5; 74 Del. Laws, c. 143, § 3; 75 Del. Laws, c. 313, §§ 1, 2; 82 Del. Laws, c. 285, § 1; 83 Del. Laws, c. 268, § 3.)

§ 3351. Assessment rates after termination of employer's military service.

If the Department finds that an employer's business is closed solely because of the entrance of 1 or more of the owners, officers, partners or the majority stockholder into the armed forces of the United States, after January 1, 1950, such employer's experience-rating record shall not be terminated, and, if the business is resumed within 2 years after the discharge or release from active duty in the armed forces of such person or persons, the employer's experience shall be deemed to have been continuous throughout such period. The benefit-wage ratio of any such employer for the calendar year in which the employer resumes business and the 3 calendar years immediately

following shall be a percentage equal to the total of the employer's benefit wages (including any benefit wages resulting from the payment of benefits to any individual during the period the employer was in the armed forces based upon wages paid by the employer prior to the employer's entrance into such forces) for the 3 most recently completed calendar years divided by that part of the employer's total payroll, with respect to which assessments have been paid to the Department, for the 3 most recent calendar years during the whole of which, respectively, such employer has been in business.

(41 Del. Laws, c. 258, § 7; 48 Del. Laws, c. 179, § 3; 19 Del. C. 1953, § 3351; 53 Del. Laws, c. 79, § 1; 57 Del. Laws, c. 669, § 5B; 70 Del. Laws, c. 186, § 1.)

§ 3352. Joint accounts of employers.

The Department may prescribe regulations for the establishment, maintenance and dissolution of joint accounts by 2 or more employers subject to assessments required by § 3345(a) of this title, and shall, in accordance with such regulations and upon application by 2 or more employers to establish such an account or to merge their several individual accounts in a joint account, maintain such joint account as if it constituted a single employer's account.

Group accounts for 20 or more employers that have become liable for payments in lieu of assessments are prescribed in § 3345(b)(6) of this title.

(41 Del. Laws, c. 258, § 7; 42 Del. Laws, c. 197, § 1; 19 Del. C. 1953, § 3352; 57 Del. Laws, c. 669, § 5B; 58 Del. Laws, c. 143, § 12; 64 Del. Laws, c. 91, §§ 13, 14.)

§ 3353. Transfers of experience and assignment of rates.

Notwithstanding any other provision of law, the following shall apply regarding transfers of experience and assignment of rates:

(1) If an employer transfers its trade or business, or a portion thereof, to another employer and, at the time of the transfer, there is any common ownership, management or control of the employers, then the unemployment experience attributable to the transferred trade or business shall be transferred to the employer to whom such business is so transferred. The rates of both employers shall be recalculated and made effective immediately upon the date of the transfer of trade or business.

(2) Whenever a person who is not an employer under this chapter at the time it acquires the trade or business of an employer, the unemployment experience of the acquired business shall not be transferred to such person if the Department finds that such person acquired the business solely or primarily for the purpose of obtaining a lower rate of contributions. Instead, such person shall be assigned the applicable new employer rate under § 3348 of this title. In determining whether the business was acquired solely or primarily for the purpose of obtaining a lower rate of contributions, the Department shall use objective factors which may include the cost of acquiring the business, whether the person continued the business enterprise of the acquired business, how long such business enterprise was continued, or whether new employees were hired for performance of duties unrelated to the business activity conducted prior to acquisition.

(3) a. If a person knowingly violates or attempts to violate paragraphs (1) or (2) of this section or any other provision of this chapter related to determining the assignment of a contribution rate, or if a person knowingly advises another person in a way that results in a violation of such provision, the person shall be subject to the following penalties:

1. If the person is an employer, then such employer shall be assigned the highest rate assignable under this chapter for the rate year during which such violation or attempted violation occurred and the 3 rate years immediately following this rate year. However, if the person's business is already at such highest rate for any year, or if the amount of increase in the person's rate would be less than 2% for such year, then a penalty rate of contributions of 2% of taxable wages shall be imposed for such year.

2. If the person is not an employer, such person shall be subject to a civil monetary penalty of not more than $5,000. Any such penalty shall be deposited in the penalty and interest account established under § 3166 of this title.

b. For purposes of this section, the term "knowingly" means having actual knowledge of, or acting with deliberate ignorance or reckless disregard for, the prohibition involved.

c. For purposes of this section, the term "violates or attempts to violate" includes, but is not limited to, intent to evade, misrepresentation or wilful nondisclosure.

d. In addition to the penalty imposed by paragraph (3)a. of this section, any violation of this section may be prosecuted as a class B misdemeanor under § 4202(a)(2) of Title 11.

(4) The Department shall establish procedures to identify the transfer or acquisition of a business for purposes of this section.

(5) For purposes of this section:

a. "Person" has the meaning given such term by § 7701(a)(1) of the Internal Revenue Code of 1986 [26 U.S.C. § 7701(a)(1)], and

b. "Trade or business" shall include the employer's workforce.

(6) This section shall be interpreted and applied in such a manner as to meet the minimum requirements contained in any guidance or regulations issued by the United States Department of Labor.

(41 Del. Laws, c. 258, § 7; 44 Del. Laws, c. 207, § 11; 45 Del. Laws, c. 267, § 8; 46 Del. Laws, c. 162, § 10; 19 Del. C. 1953, § 3353; 50 Del. Laws, c. 115, § 11; 53 Del. Laws, c. 79, § 1; 57 Del. Laws, c. 669, § 5B; 69 Del. Laws, c. 89, §§ 3-7; 75 Del. Laws, c. 177, § 1.)

§ 3354. Notice of determination of rate of assessments; administrative and judicial review; time limits.

(a) The Department shall promptly notify each employer of the employer's rate of assessments as determined for any calendar year pursuant to this subchapter.

(b) Such determination shall become conclusive and binding upon the employer unless, within 15 days after the mailing of notice thereof to the employer's last known address or in the absence of mailing within 15 days after the delivery of such notice, the employer files an application for review and redetermination setting forth the employer's reasons therefor. If the Department grants such review, the employer shall be promptly notified thereof and shall be granted an opportunity for a fair hearing, but no employer shall have standing, in any proceeding involving the employer's rate of assessments or assessment liability, to contest the chargeability to the employer's account of any benefits paid in accordance with a determination, redetermination or decision pursuant to §§ 3317-3325 or § 3355 of this title except upon the ground that the services on the basis of which such benefits were found to be chargeable did not constitute services performed in employment for the employer and only in the event that the employer was not provided the opportunity, via the issuance of a separation notice by the Department, as required pursuant to § 3317(b) of this title, to be a party to such determination, redetermination or decision or to any other proceedings under this chapter in which the character of such services was determined.

(c) The employer shall be promptly notified of the Department's denial of the employer's application or of the Department's redetermination, both of which shall become final unless, within 15 days after the mailing of notice thereof to the employer's last known address or in the absence of mailing within 15 days after the delivery of such notice, a petition for judicial review is filed in the Superior Court of the county in which the employer's place of business is located. In any proceeding under this section the findings of the Department as to the facts, if supported by evidence and in the absence of fraud, shall be conclusive and the jurisdiction of the Court shall be confined to questions of law. No additional evidence shall be received by the Court but the Court may order additional evidence to be taken before the Department and the Department may, after hearing such additional evidence, modify its determination and file such modified determination, together with a transcript of the additional record, with the Court. Such proceedings shall be heard in a summary manner and shall be given precedence over all other civil cases except cases arising under §§ 3317-3325 of this title and the Workers' Compensation Law, Chapter 23 of this title.

(d) An appeal may be taken from the decision of the Superior Court to the Supreme Court of this State in the same manner, but not inconsistent with this chapter, as is provided in civil cases.

(41 Del. Laws, c. 258, § 7; 43 Del. Laws, c. 280, § 15; 19 Del. C. 1953, § 3354; 53 Del. Laws, c. 79, § 1; 57 Del. Laws, c. 669, § 5B; 70 Del. Laws, c. 121, § 6; 70 Del. Laws, c. 186, § 1.)

§ 3355. Notice to employers of benefits paid and status of accounts; employer applications for review and redetermination of benefit wages charged to their experience merit rating accounts (relief from charges).

(a) The Department shall provide quarterly notification to base period employers of benefit wages charged to their experience merit rating accounts hereafter referred to as "benefit wage charge notices".

(b) Such benefit wage charge notices shall become conclusive and binding upon the base period employer unless, within 15 days after the mailing of the notice thereof to the last known address or in the absence of mailing within 15 days after the delivery of such notice, a base period employer who is subject to tax rate assessments under § 3345(a) of this title files an application for review seeking relief from benefit wages charged to its experience merit rating account. A § 3345(a) of this title base period employer who has filed a timely application for review of its benefit wage charge notice shall be entitled to relief from such benefit wage charges contained in such notice only on the basis that:

(1) The claimant's separation from the base period employer (if such separation was separate from and prior to the claimant's separation from the claimant's last employer and if the base period employer is not also the last employer) was not qualifying under § 3314(1), (2) and (7) of this title; and

(2) The Department administratively erred in calculating the correct amount of certain benefit wages charged to its account.

However, as to paragraphs (b)(1) and (2) of this section above, any such base period or last employer who has failed to return a completed separation notice which is applicable to the benefit wage charge at issue in a timely manner in accordance with § 3317 of this title shall be barred from seeking benefit wage charge relief unless the Department for reasons found to constitute good cause should release the base period or last employer from the default. Regardless, no employer shall have standing to seek benefit wage charge relief pursuant to the procedure established in §§ 3317-3325 of this title.

(c) Applications for review shall be referred to an individual designated by the Department, who shall examine the basis for each request for relief from benefit wage charges made to the employer's experience merit rating account. After such review, the Department's representative shall promptly notify the base period employer and each claimant involved of the representative's decision on the base period employer's request for review, and such decision shall become final unless within 15 days after the mailing of notice thereof to the last known address or in the absence of mailing within 15 days after the delivery of such notice, the base period employer files and application for redetermination with the Department.

(d) Unless the request for redetermination is withdrawn, an appeals tribunal, after affording the base period employer and the claimant, if a claimant is involved, and the Department a reasonable opportunity for fair hearing with regard to each benefit wage charge, shall

affirm, modify or reverse those portions of the benefit wage charge notice challenged by the employer. The base period employer, the Department, and a claimant, if involved, shall be duly notified of the appeal tribunal's decision on each benefit wage charge for which redetermination is requested, together with its reasons therefor, which shall be deemed to be final unless within 15 days after the delivery of such decision, a petition for judicial review is filed in the Superior Court. In any proceeding under this section the findings of the appeals tribunal as to the facts, if supported by evidence and in the absence of fraud, shall be conclusive and the jurisdiction of the Court shall be confined to the questions of law. No additional evidence shall be received by the Court, but the Court may order additional evidence to fee taken before the appeals tribunal or the Department and the Department or appeals tribunal may, after hearing such evidence, modify its redetermination and file such modified redetermination, together with a transcribed copy of the additional record with the Court. Such proceedings shall be heard in a summary manner and shall be given precedence over all other civil cases except cases arising under §§ 3317-3325 of this title and the Workers' Compensation Law, Chapter 23 of this title.

(e) Such redeterminations of benefit wage charge notices which have become final and binding after notice and after providing the opportunity for hearing or appeal, and the findings of fact in connection therewith, may be introduced in any subsequent administrative or judicial proceedings involving the determination of the rate of assessments of any employer for any calendar year and shall be entitled to the same finality as is provided in § 3354 of this title with respect to findings of fact made by the Department and proceedings to redetermine the assessment rate of an employer.

(41 Del. Laws, c. 258, § 7; 43 Del. Laws, c. 280, § 15; 19 Del. C. 1953, § 3355; 53 Del. Laws, c. 79, § 1; 57 Del. Laws, c. 669, § 5B; 70 Del. Laws, c. 121, § 5; 70 Del. Laws, c. 186, § 1.)

§ 3356. Effect of amendment of Federal Unemployment Tax Act.

If the Federal Unemployment Tax Act [26 U.S.C. § 3301 et seq.] is amended by the Congress of the United States to permit a maximum of credit against such federal tax higher than the 90 percent maximum rate of credit now permitted under § 3302(c) of the Internal Revenue Code [26 U.S.C. § 3302(c)] to an employer with respect to this chapter, then for any such employer, liable under the federal statute, the employer's contribution rate under this chapter shall be that determined in § 3350(5) of this title plus the $^{3}/_{10}$ of 1 percent additional offset credit permitted under federal law.

(41 Del. Laws, c. 258, § 7; 46 Del. Laws, c. 162, § 11; 19 Del. C. 1953, § 3356; 58 Del. Laws, c. 522, § 29; 63 Del. Laws, c. 76, § 12; 70 Del. Laws, c. 186, § 1.)

§ 3357. Interest on past-due assessments and reimbursement payments in lieu of assessments.

Assessments and reimbursement payments in lieu of assessments which remain unpaid on the date they are due and payable, as prescribed by the Department, shall bear interest, at a rate determined by regulation by the Secretary of Labor, from and after such due date until payment plus accrued interest is received by the Department. Interest collected pursuant to this section after September 30, 1967, shall be paid into the Special Administration Fund.

The Department may waive the payment of interest for a period of not more than 6 months in cases where it appears to the satisfaction of the Department that the delayed payment was caused by a reasonable doubt as to liability and the employer was not negligent in applying for a determination of the question of liability.

No interest shall be charged in cases where the Department has ascertained that an amount equal to the amount of the delayed payment had previously been paid by the employer into the unemployment trust fund of another state.

(41 Del. Laws, c. 258, § 14; 43 Del. Laws, c. 280, § 20; 19 Del. C. 1953, § 3357; 53 Del. Laws, c. 79, § 1; 56 Del. Laws, c. 187, §§ 5, 6; 57 Del. Laws, c. 669, § 5B; 58 Del. Laws, c. 143, § 13; 61 Del. Laws, c. 426, § 2; 65 Del. Laws, c. 514, § 16.)

§ 3358. Civil actions for collection of assessments and interest.

If, after due notice, any employer defaults in any payment of assessments or interest thereon, the amount due may be collected by civil action in the name of the Department.

The employer adjudged in default shall pay the costs of the action.

Civil actions brought under this section to collect assessments or interest thereon from an employer shall be heard by the court at the earliest possible date and shall be entitled to preference upon the calendar of the court over all other civil actions except petitions for judicial review arising under the Workers' Compensation Law, Chapter 23 of this title.

(41 Del. Laws, c. 258, § 14; 43 Del. Laws, c. 280, § 20; 19 Del. C. 1953, § 3358; 53 Del. Laws, c. 79, § 1; 57 Del. Laws, c. 669, § 5B; 58 Del. Laws, c. 522, § 30; 70 Del. Laws, c. 186, § 1.)

§ 3359. Assessment of employer's liability upon neglect or refusal to make assessment report; protest and hearing.

If any employing unit neglects or refuses to make any assessment report required by the rules and regulations of the Department for a period of 30 days after the date on which the assessment report should have been made or if any assessment report which has been made by an employing unit is deemed by the Department to be incorrect, the Department may make an estimate and determination of the liability of such employing unit from any information which the Department may have or may obtain and, according to such estimate

and determination so made, may assess the employing unit for the assessments, interest and penalties due from the employing unit and may give notice of such assessment and determination by registered mail or other delivery method authorized by the Department and may make demand upon the employing unit for payment. Such assessment and determination shall, based upon administrative determination of the Department, be final and conclusive as to such employing unit's liability and the amount thereof, only until such time as the employing unit submits the required assessment report(s) to the Department, or unless the employing unit shall protest such assessment and determination within 15 days after the mailing or delivery of the notice by other delivery method authorized by the Department. If any employing unit protests the assessment and determination, the employing unit, upon its written request, shall be heard by the Department. Such hearing shall be conducted according to the procedure prescribed by the Department. Immediately after the hearing the Department shall notify the employing unit of its findings and the assessment and determination then made, if any, shall be final and conclusive as to the liability of the employing unit upon the issuance of such notice.

(41 Del. Laws, c. 258, § 14; 43 Del. Laws, c. 280, § 20; 19 Del. C. 1953, § 3359; 53 Del. Laws, c. 79, § 1; 57 Del. Laws, c. 669, § 5B; 66 Del. Laws, c. 74, § 7; 82 Del. Laws, c. 81, § 5.)

§ 3360. Assessments, penalties and interest as debt to Fund; reduction to judgment; other means of collection.

(a) The assessments, penalties and interest due from the employer under this chapter, from the time they become due, shall be a debt of the employer to the Unemployment Compensation Fund and may be reduced to judgment in accordance with §§ 3358 and 3361 of this title, except that the interest and penalty from the employer under this title after September 30, 1967, and the additional emergency assessment required under § 3391 of this title shall be a debt of the employer to the Special Administration Fund of the Department of Labor.

(b) The Department shall collect assessments, penalties, and interest due from an employer under this chapter and the Department may establish the mode or time for the collection of any amount due under this chapter.

(c) In addition to the methods of collection authorized by this chapter, the Department may collect overpayments, interest, penalties, and other liabilities due from any employer under this chapter as provided in § 545 of Title 30, § 6402 of the Federal Internal Revenue Code (26 U.S.C. § 6402), § 303(m) of the Social Security Act (42 U.S.C. § 503(m)),and any other means available under federal or state law.

(41 Del. Laws, c. 258, § 14; 43 Del. Laws, c. 280, § 20; 44 Del. Laws, c. 208, § 5; 19 Del. C. 1953, § 3360; 53 Del. Laws, c. 79, § 1; 56 Del. Laws, c. 187, § 7; 57 Del. Laws, c. 669, § 5C; 64 Del. Laws, c. 158, § 5; 80 Del. Laws, c. 282, § 2; 81 Del. Laws, c. 78, § 8; 82 Del. Laws, c. 129, § 2.)

§ 3361. Special procedure to obtain judgment; notice and lien of judgment; judicial review.

(a) As an additional or alternative remedy the Department may issue, under its seal and the hand of the Secretary of Labor of the State, to the prothonotary of the Superior Court in and for any county of this State a certificate that any employer is indebted under this chapter in an amount which must be stated in such certificate. Thereupon the prothonotary shall immediately enter upon the record of docketed judgments the name of the employer, the name of the Department, the amount of the debt certified, a brief description of the employer's liability under this chapter, and the date of making the entries.

(1) Except as provided under paragraph (a)(2) and subsection (d) of this section, the making of entries under this section have the same force and effect in all respects as the entries of docketed judgments in the office of the prothonotary, and the Department has all the remedies and may take all the proceedings for the collection of the debt which could be had or taken upon a judgment in an action of law upon debt or contract.

(2) Notwithstanding the provisions under §§ 4711 and 4713 of Title 10, the length of a judgment lien obtained under this section is as follows:

a. A judgment lien obtained under this section on or after July 17, 2019, automatically continues for 20 years from the date of the lien's entry.

b. 1. A judgment lien obtained under predecessor provisions of this section by virtue of a certificate filed before July 17, 2019, and that is within the initial 10 year term as provided under § 4711 of Title 10, continues for 20 years from the original date of the judgment lien's entry notwithstanding either of the following:

A. That when the certificate was filed, the predecessor provision may have provided for a period of less than 20 years.

B. The provisions under subsection (c) of this section.

2. The Department shall provide notice to the judgment debtor, at the judgment debtor's last known address, of the length of the judgment lien under paragraph (a)(2)b.1. of this section.

(b) The debt, from the time of the docketing thereof, is a lien on and binds the lands, tenements, and hereditaments of the debtor. Promptly upon the entry of the debt as a judgment the prothonotary shall send by registered letter to the debtor, at the debtor's last known address within this State, notice of the entry of the judgment together with the amount.

(c) Within 10 days from the date of the notice, the debtor may file a petition in the Superior Court to review the legality or validity of the indebtedness, and upon the filing of the petition all proceedings on the judgment shall be stayed until the final determination of the cause. The review under this subsection is limited to the correct amount of the indebtedness or the correct identity of the debtors.

(d) (1) Notwithstanding the provisions under §§ 4711 and 4713 of Title 10, the Department may renew and extend the lien of a judgment for a term of 20 years by filing a renewal certificate under paragraph (d)(2) of this section in the office of the prothonotary of Superior Court of any county of this State, under the Department's seal and the hand of the Secretary, before the expiration of the 20 year term under paragraph (a)(2) of this section.

(2) A renewal certificate under paragraph (d)(1) of this section must contain all of the following:

a. A statement that the employer remains indebted under this chapter in the amount stated in the renewal certificate.

b. The name and last known address of the employer liable for the amount stated in the renewal certificate.

c. The amount due.

d. A statement that 15 days or more before filing the renewal certificate, the Department provided the judgment debtor with notice of the renewal and extension of the lien of a judgment to the judgment debtor's last known address.

e. A statement that the Department has complied with all provisions under this title in preparing the renewal certificate.

(3) The prothonotary of Superior Court shall immediately enter the filed renewal certificate upon the record of docketed judgments.

(4) An entry upon the record of docketed judgments under this subsection has the same force and effect in all respects as other entries of docketed judgments filed in the office of the prothonotary of Superior Court, and the Department has all of the remedies and may take any of the proceedings for collection of the debt entered under this subsection which can be had or taken upon a judgment in an action of law upon debt or contract.

(41 Del. Laws, c. 258, § 14; 43 Del. Laws, c. 280, § 20; 44 Del. Laws, c. 208, § 6; 19 Del. C. 1953, § 3361; 57 Del. Laws, c. 669, §§ 5B, 5I; 70 Del. Laws, c. 186, § 1; 82 Del. Laws, c. 129, § 3.)

§ 3362. Acquisition of business or assets of another employing unit; liability for debt of predecessor.

Whenever any employing unit acquires the organization, trade or business or substantially all the assets thereof of another employing unit which was an employer subject to this chapter, the acquiring employing unit shall give to the Department written notice of the acquisition within 7 days after the date of the transfer. The notice shall specify the acquired assets and state the value as of the date of the transfer. If such notice is not duly given or if the Department within 7 days after the receipt of such notice issues a certificate under § 3361 of this title or notifies the acquiring employing unit of the amount due by its predecessor in interest, the acquiring employing unit shall hold in trust enough of the acquired assets to pay the debt. If it fails to hold such assets in trust, the acquiring employing unit shall become liable for the debt to the extent of the value of the acquired assets.

(41 Del. Laws, c. 258, § 14; 43 Del. Laws, c. 280, § 20; 19 Del. C. 1953, § 3362; 57 Del. Laws, c. 669, § 5B.)

§ 3363. Priority of claim for employer's assessments upon insolvency or other distribution of employer's assets.

In the event of any distribution of an employer's assets pursuant to an order of any court under the laws of this State, including any receivership, assignment for benefit of creditors, adjudicated insolvency, composition or similar proceeding, assessments then due or thereafter falling due shall be paid in full prior to all other claims except taxes due the United States or the State which by statutory provision are prior liens on the assets and claims for wages of not more than $250 to each claimant earned within 6 months of the commencement of the proceeding. In the event of an employer's adjudication in bankruptcy, judicially confirmed extension proposal or composition, under the Bankruptcy Reform Act of 1978 as amended [11 U.S.C. § 101 et seq.], assessments then or thereafter due shall be entitled to such priority as is provided by that Act for taxes due to a state of the United States.

(41 Del. Laws, c. 258, § 14; 43 Del. Laws, c. 280, § 20; 19 Del. C. 1953, § 3363; 53 Del. Laws, c. 79, § 1; 65 Del. Laws, c. 514, § 17.)

§ 3364. Compromise of claims.

The Director of Unemployment Insurance may authorize the compromise of a claim for assessments, interest, and penalties due when the Department has determined that:

(1) The employer is unable to make payment in full of assessments, interest, and penalties imposed under this chapter; or

(2) That it would be inequitable to require the payment in full of assessments, interest, and penalties by the employer; and

(3) That the employer has acted in good faith.

The Department may prescribe the appropriate accounting methods by which the uncollected portion of the employer debt shall be written off its accounts instead of being carried indefinitely as an uncollected delinquent debt.

(41 Del. Laws, c. 258, § 14; 43 Del. Laws, c. 280, § 20; 19 Del. C. 1953, § 3364; 53 Del. Laws, c. 79, § 1; 57 Del. Laws, c. 669, § 5B; 69 Del. Laws, c. 274, § 1.)

§ 3365. Adjustments and refunds.

(a) If not later than 4 years after the date on which any assessments became due an employer who has paid such assessments makes application for an adjustment thereof in connection with subsequent assessment payments or for a refund thereof because such adjustment

cannot be made and the Department determines that such assessments or any portion thereof was erroneously collected, the Department shall allow such employer to make an adjustment thereof in connection with subsequent assessment payments by the employer, or, if such adjustment cannot be made, the Department shall refund the amount from the Fund except that refunds of the additional emergency assessment required under § 3391 of this title shall be from the Special Administration Fund of the Department of Labor. For like cause and within the same period, adjustment or refund may be so made on the Department's own initiative.

(b) If not later than 4 years after the date of payment of any amount of interest or penalty an employing unit which has made such payment determines that it was made erroneously, it may request to have any subsequent amount of interest and penalties which has been or might be assessed against the employing unit adjusted by the amount of the erroneous payment, or, if it appears that such adjustment would not be feasible within a reasonable time, it may request a refund of the erroneous payment. If, upon receipt of such a request, the Department determines that the payment of interest or penalties, or any portion thereof, was erroneous, it shall allow such employing unit to make an adjustment in an amount equal to that erroneously paid, without interest, in connection with any subsequent interest or penalty payment which may be due, or if such adjustment cannot be made, the Department shall refund the amount, without interest, from the Special Administration Fund of the Department of Labor or from the interest and penalty moneys in the clearing account in the Unemployment Compensation Fund. For like cause, within the same period and subject to the same conditions, adjustment or refund of interest or penalty may be so made on the Department's own initiative.

(41 Del. Laws, c. 258, § 14; 43 Del. Laws, c. 280, § 20; 19 Del. C. 1953, § 3365; 53 Del. Laws, c. 79, § 1; 56 Del. Laws, c. 187, § 8; 57 Del. Laws, c. 669, § 5B; 64 Del. Laws, c. 158, §§ 6, 7; 70 Del. Laws, c. 186, § 1.)

§ 3366. Order of crediting payments on account.

Any payment on account by an employer on assessments, interest and penalties due shall be credited against the oldest outstanding indebtedness, in the following order: First, penalties; second, interest; third, assessments.

(19 Del. C. 1953, § 3366; 50 Del. Laws, c. 115, § 12; 53 Del. Laws, c. 79, § 1.)

§ 3367. Jeopardy assessments.

If the Secretary of Labor of the State has reason to believe that the collection of any assessments imposed under this title will be jeopardized in any case in which an employer is delinquent in payment of assessments due under this title or has discontinued or is about to discontinue business in Delaware or such business is of a temporary or seasonal nature, the Secretary of Labor of the State may require reports of wages of workers and of assessments due and payment of such assessments for periods less than calendar quarters and prior to regular stated due dates.

(19 Del. C. 1953, § 3367; 50 Del. Laws, c. 115, § 12; 53 Del. Laws, c. 79, § 1; 57 Del. Laws, c. 669, § 5I.)

§ 3368. Execution of judgments.

(a) *In general.* —

If an employer liable to pay any assessment, interest, or penalty under this title neglects or refuses to pay the amount after a judgment has been obtained under § 3361 of this title, or otherwise, the Department may execute on the judgment.

(b) *Warrants for levy and sale of property.* —

The Department may issue a warrant directed to the sheriff of any county of this State commanding the sheriff to levy on and sell the personal or real property of the employer for the payment of the amount of the judgment and the cost of executing the warrant. The sheriff shall return the warrant to the Department and pay to the Department the money collected by virtue thereof within 60 days after receipt of the warrant. A copy of the warrant must be filed with the prothonotary of Superior Court and noticed on the regular judgment docket. All sales of real and personal property under authority of this section must be made under the provisions of Title 10.

(c) *Garnishment of bank accounts of employers.* —

Notwithstanding § 3502 or § 4913(b) of Title 10, the Department may issue a notice of garnishment directed to a bank, commanding the garnishee to set aside, account for, and pay over to the Department on account of the debt any property owed to or held for the employer debtor by the bank on the date of service of the notice of garnishment. A copy of the notice of garnishment or an abstract thereof must be filed with the prothonotary of Superior Court and the fact of the garnishment noticed on the regular judgment docket.

(d) *Garnishment of wages, salaries, and other amounts due from employers.* —

The Department may issue a notice of garnishment directed to a person owing to or holding for an employer who is a judgment debtor any wages, salaries, money, credits and effects, contract rights, or securities. The notice of garnishment must command the garnishee to set aside, account for, and pay over to the Department on account of the judgment all property then in the garnishee's possession or which may become due to the judgment debtor by the garnishee, until the judgment and costs of execution are paid. A copy of the notice of garnishment or an abstract thereof must be filed with the prothonotary of Superior Court and the fact of the garnishment noticed on the regular judgment docket. The Department shall notify the garnishee in writing when the judgment and costs have been satisfied.

(e) *Duties of garnishee and penalties for failure to garnish.* —

(1) A person receiving a notice of garnishment under subsection (c) or (d) of this section shall respond to the Department within 20 days after service of the notice, not counting the date of service.

(2) A garnishee who knowingly fails to comply with a notice of garnishment after notice and assessment under subsection (d) of this section is liable for a penalty equal to the amount the garnishee was required to set aside, account for, and pay over to the Department.

(3) Within 30 days after the date of mailing of a notice of proposed assessment of a penalty under this subsection, the garnishee may file a written protest against the proposed assessment of penalty with the Department in which the garnishee must set forth the grounds on which the protest is based. If a protest is filed, the Director of the Division of Unemployment Insurance, as designee of the Secretary of Labor, shall reconsider the proposed assessment of penalty and, if requested by the garnishee, shall grant the garnishee an oral hearing before an appeals tribunal under § 3319 of this title. The appeals tribunal decision is final and not subject to further appeal.

(4) A penalty under paragraph (e)(2) of this section becomes final 30 days after the mailing of the notice of proposed assessment of the penalty, except for those amounts for which the garnishee has filed a timely written protest with the Department under paragraph (e)(3) of this section.

(f) Notwithstanding § 3502 of Title 10, property, legal or equitable, wages, salaries, deposits, or moneys in banks, savings institutions, or loan associations, or other property or income of an employer owing tax assessments to the Department is not exempt from execution or attachment process issued on, or from collection of, a judgment obtained under § 3361 of this title.

(82 Del. Laws, c. 129, § 4.)

§ 3369. Professional and occupational licenses; denial or suspension.

(a) *Definitions. —*

As used in this section:

(1) “Debt” means any amount owed for overpayment of benefits, including any interest and penalties, and for unemployment compensation tax assessments, including any interest and penalties, payable under this title that exceeds, in aggregate, $1,000 and that has been reduced to a judgment under § 3325 or § 3361 of this title.

(2) “Debtor” means a person liable for a debt.

(3) “Director of the Division of Professional Regulation” means the Director of the Division of Professional Regulation of the Department of State, or the designee of the Director of the Division of Professional Regulation.

(4) “Director of Unemployment Insurance” means the Director of the Division of Unemployment Insurance of the Department of Labor, or the designee of the Director of Unemployment Insurance.

(5) “License” means a license, permit, certificate, approval, registration, or other similar form of permission or authorization to practice or engage in any profession, occupation, calling, or business issued or renewed by any commission, board, or agency under the authority of the Division of Professional Regulation of the Department of State under § 8735 of Title 29.

(b) *Cooperative agreements for tax assessment enforcement and for the collection of overpayments of benefits. —*

(1) a. To provide for enforcement of the unemployment compensation laws of this State by means of the denial or suspension of licenses issued to or applied for by debtors, the Director of the Division of Professional Regulation shall enter into a cooperative agreement with the Director of Unemployment Insurance to exchange information about any debtor who owes a debt to this State and who applies for or holds a license issued or renewed by any commission, board, or agency under the authority of the Division of Professional Regulation.

b. The specific information and the manner and frequency with which information is made available or otherwise exchanged between the Division of Unemployment Insurance and the Division of Professional Regulation is to be determined by cooperative agreement, but must be made available or otherwise provided no less than 1 time each calendar year.

c. Each cooperative agreement must contain provisions for ensuring the confidentiality of the information to be exchanged under state and federal laws governing confidentiality of unemployment compensation information.

d. Each cooperative agreement must be revised as necessary to effectuate the provisions and purposes of this section.

(2) From the information provided by the Division of Professional Regulation under paragraph (b)(1) of this section, the Division of Unemployment Insurance, at such intervals as it determines, may identify applicants or licensees who are debtors, and undertake enforcement action under this section.

(c) *Notice of intent to deny or suspend license. —*

Subject to the provisions for notice and the right to a hearing under subsections (d) and (e) of this section, the Director of Unemployment Insurance shall give written notice to a debtor that a license issued or renewed by any commission, board, or agency under the authority of the Division of Professional Regulation may be denied, suspended, or will not be issued or renewed.

(d) *Contents of notice. —*

The notice provided under this subsection must be sent by registered or certified mail to the debtor’s last address known to the Division of Unemployment Insurance and must inform the debtor of all of the following:

(1) The nature and amount of the debt.

(2) That the debt has been reduced to judgment under § 3325 or § 3361 of this title.

(3) That a copy of the judgment was provided to the debtor on or before the date of the notice.

(4) That under this section and § 8735 of Title 29, this information will be sent to the Division of Professional Regulation for the purposes of suspending or denying the issue or renewal of the debtor's license unless, within 60 days of the notice, the debtor has done any of the following:

a. Paid the debt in full.

b. Entered into a written agreement with the Director of Unemployment Insurance for payment of the debt with such terms as the Director of Unemployment Insurance may require.

c. Requested a hearing under subsection (e) of this section.

(e) *Request for hearing on proposed suspension or denial of license. —*

If a debtor mails or delivers a written request for hearing to the Director of Unemployment Insurance within 20 days from the date of mailing the notice of intent to deny or suspend a license, an appeals tribunal under § 3319 of this title shall conduct a hearing for the limited purpose of determining if the debt exceeds $1,000 and if the debt was reduced to judgment under § 3325 or § 3361 of this title.

(1) The appeals tribunal shall give written notice of the hearing to the debtor.

(2) The debtor may present evidence, be represented by counsel of debtor's choice and at debtor's expense, and appear personally or by other representative.

(3) The appeals tribunal cannot receive evidence at the hearing regarding the appropriateness or validity of the final assessment of the unemployment compensation tax, including any interest and penalty, or the overpayment of benefits, including any interest and penalty, that has been reduced to judgment under § 3325 or § 3361 of this title.

(4) The appeals tribunal must reach a decision based on the evidence received at the appeals tribunal hearing and issue a decision to the debtor after the hearing. The appeals tribunal decision is final and not subject to further appeal.

(f) *Denial or suspension of professional or occupation license. —*

(1) On certification by the Director of Unemployment Insurance to the Director of the Division of Professional Regulation of compliance with this section, the Director of the Division of Professional Regulation shall immediately suspend all licenses issued to the debtor by any commission, board, or agency; deny any applications to issue or renew any such license or licenses by the debtor; and give written notice of the suspension or denial to the debtor.

(2) The debtor remains ineligible for the issuance, renewal, or reinstatement of any license until the Director of Unemployment Insurance provides written certification to the Director of the Division of Professional Regulation that the grounds for denial or suspension of a license under this section no longer exist.

(3) The Director of Unemployment Insurance shall provide the written certification under paragraph (f)(2) of this section to the Director of the Division of Professional Regulation within 30 days from the time that the grounds for denial or suspension of a license under this section no longer exist.

(4) The Director Unemployment Insurance shall provide notice to the debtor when the written certification under paragraph (f)(2) of this section is provided to the Director of the Division of Professional Regulation.

(g) *Regulations. —*

The Director of Unemployment Insurance may promulgate regulations necessary to implement the provisions of this section.

(h) *Remedies not exclusive. —*

The remedies provided under this section are in addition to any other remedies for the enforcement of tax assessment obligations and the collection of overpayments of benefits.

(82 Del. Laws, c. 129, § 4.)

Subchapter IV

Protection of Employees' Rights and Benefits

§ 3371. Waiver or release of benefits; agreement by employee to pay assessments; penalties.

(a) Any agreement by an individual to waive, release or commute the individual's rights to benefits or any other rights under this chapter shall be void.

(b) Any agreement by any individual in the employ of any person or concern to pay all or any portion of an employer's assessments, required under this chapter from such employer, shall be void.

(c) No employer shall directly or indirectly make or require or accept any deduction from wages to finance the employer's assessments required from the employer, require or accept any waiver of any right hereunder by any individual in the employer's employ, wilfully or intentionally discriminate in regard to the hiring or tenure of work on any term or condition of work of any individual on account of the individual claiming benefits under this chapter or in any manner obstruct or impede the filing of claims for benefits.

(d) Whoever, being an employer or officer or agent of an employer, wilfully or intentionally violates any provision of this section shall, for each offense, be fined not less than $23 nor more than $230 or imprisoned not more than 90 days, or both.

(41 Del. Laws, c. 258, § 15; 43 Del. Laws, c. 280, § 21; 19 Del. C. 1953, § 3371; 53 Del. Laws, c. 79, § 1; 67 Del. Laws, c. 260, § 1; 70 Del. Laws, c. 186, § 1.)

§ 3372. Limitation of fees charged by Department or court; penalties.

(a) No employer or individual claiming benefits shall be charged fees of any kind in any proceeding under this chapter by the Department or its representatives. No individual claiming benefits shall be charged fees of any kind in any proceeding under this chapter by any court or any officer thereof.

(b) Whoever violates this section shall, for each such offense, be fined not less than $23 nor more than $230 or imprisoned not more than 90 days, or both.

(41 Del. Laws, c. 258, § 15; 19 Del. C. 1953, § 3372; 57 Del. Laws, c. 669, § 5B; 67 Del. Laws, c. 260, § 1.)

§ 3373. Right to representation; limitation on fee; penalties.

(a) Any individual claiming benefits in any proceeding before the Department or its representatives or a court may be represented by counsel or other duly authorized agent, but no such counsel or agents shall either charge or receive for such services more than an amount approved by the Department.

(b) Whoever violates this section shall, for each such offense, be fined not less than $23 nor more than $230 or imprisoned not more than 90 days, or both.

(41 Del. Laws, c. 258, § 15; 19 Del. C. 1953, § 3373; 57 Del. Laws, c. 669, § 5B; 67 Del. Laws, c. 260, § 1.)

§ 3374. Assignment, pledge or encumbrance of benefits.

Any assignment, pledge or encumbrance of any rights to benefits which are or may become due or payable under this chapter shall be void. Such rights to benefits shall be exempt from levy, execution, attachment or any other remedy whatsoever provided for the collection of debt. Benefits received by any individual, so long as they are not mingled with other funds of the recipient, shall be exempt from any remedy whatsoever for the collection of all debts except debts incurred for necessaries furnished to such individual or an individual's spouse or dependents during the time when such individual was unemployed, and for child support obligations in accordance with § 3313(n) of this title. Any waiver of any exemption provided for in this section shall be void.

(41 Del. Laws, c. 258, § 15; 19 Del. C. 1953, § 3374; 65 Del. Laws, c. 514, § 18; 70 Del. Laws, c. 186, § 1.)

Subchapter V

Penalties

§ 3381. False statements of employees; jurisdiction; penalty.

(a) Whoever makes a false statement or representation knowing it to be false or knowingly fails to disclose a material fact, to obtain or increase any benefit for that person's own or for any other person, shall be fined not less than $23 nor more than $57.50 or imprisoned not more than 60 days, or both. Each false statement or representation or failure to disclose a material fact shall constitute a separate offense. In cases where any person has obtained money from the Department by reason of such false statement or representation, made knowingly, that person is guilty of obtaining money under false pretenses.

(b) Justices of the peace of this State shall have jurisdiction to hear and determine cases in which the accused shall be charged with violating this section or with obtaining money under false pretenses by reason of such violation, but the jurisdiction of a justice of the peace shall be limited to cases in which the accused is a resident of the hundred in which the justice of the peace has the justice's office or in a hundred immediately adjacent thereto. Nothing in this section herein contained shall affect the rights of the Department as set forth in §§ 3317-3325 and 3357-3365 of this title.

(41 Del. Laws, c. 258, § 16; 43 Del. Laws, c. 280, § 22; 19 Del. C. 1953, § 3381; 57 Del. Laws, c. 669, § 5B; 67 Del. Laws, c. 260, § 1; 70 Del. Laws, c. 186, § 1.)

§ 3382. Violations by employing units; penalties.

Any employing unit or any officer or agent of an employing unit or any other person who makes a false statement or representation knowing it to be false or who knowingly fails to disclose a material fact to prevent or reduce the payment of benefits to any individual entitled thereto or to avoid becoming or remaining subject hereto or to avoid or reduce any assessment or other payment required from an employing unit under this chapter or who wilfully fails or refuses to make any such assessments or other payment or to furnish any reports required hereunder or to produce or permit the inspection or copying of records as required hereunder shall be fined not less than $23 nor more than $230 or imprisoned not more than 60 days, or both. Each such false statement or representation or failure to disclose a material fact and each day of such failure or refusal shall constitute a separate offense.

(41 Del. Laws, c. 258, § 16; 19 Del. C. 1953, § 3382; 53 Del. Laws, c. 79, § 1; 67 Del. Laws, c. 260, § 1.)

§ 3383. Violations of orders, rules or regulations; penalties.

Whoever wilfully violates this chapter or any order, rule or regulation thereunder, the violation of which is made unlawful or the observance of which is required under the terms of this chapter, and for which a penalty is neither prescribed herein nor provided by any other applicable statute shall be fined not less than $23 nor more than $230 or imprisoned not more than 60 days, or both. Each day such violation continues shall be deemed to be a separate offense.

(41 Del. Laws, c. 258, § 16; 19 Del. C. 1953, § 3383; 67 Del. Laws, c. 260, § 1.)

§ 3384. Receipt of benefits by misrepresentation.

Whoever, by reason of the nondisclosure or misrepresentation by that person or by another of a material fact (irrespective of whether such nondisclosure or misrepresentation was known or fraudulent), has received any sum as benefits under this chapter while any conditions for the receipt of benefits imposed by this chapter were not fulfilled in that person's case or while that person was disqualified from receiving benefits shall, in the discretion of the Department, either be liable to have such sum deducted from any future benefits payable to that person under this chapter or shall be liable to repay to the Department for the Unemployment Compensation Fund a sum equal to the amount so received by that person, and such sum shall be collectible in the manner provided in § 3358 of this title for the collection of past-due assessments, or shall be liable to have such sum collected by the Department as provided in § 545 of Title 30, § 6402 of the Federal Internal Revenue Code (26 U.S.C. § 6402), and § 303(m) of the Social Security Act (42 U.S.C. § 503(m)).

(41 Del. Laws, c. 258, § 16; 19 Del. C. 1953, § 3384; 53 Del. Laws, c. 79, § 1; 57 Del. Laws, c. 669, § 5B; 70 Del. Laws, c. 186, § 1; 80 Del. Laws, c. 282, § 3; 81 Del. Laws, c. 78, § 9.)

Subchapter VI

Temporary Emergency Employer Assessment

§ 3391. Payment of interest on federal loans.

(a) In addition to all other assessments due under this chapter if, in any calendar year, the Department has an outstanding balance of interest accrued on advances from the federal government for the payment of benefits, or is projected to have an outstanding balance of accruing interest, such interest cost shall be assessed against each employer subject to experience rating. This assessment shall not apply to any governmental entity or instrumentality nor to those nonprofit organizations that are reimbursable.

(b) The assessment shall be at a rate determined by dividing the interest described in subsection (a) of this section by 95 percent of the total taxable wages paid by all Delaware employers in the preceding calendar year. The percent resulting from this calculation shall contain 4 significant figures. Each employer's assessment shall be the product obtained by multiplying such employer's total taxable wages for the preceding calendar year by the rate specified in this subsection.

(c) Each employer shall be notified of the amount due under this section by June 30 of each year and such amount shall be considered delinquent 30 days thereafter. Interest shall accrue on all unpaid assessments under this section at the same rate as on regular assessments as prescribed in § 3357 of this title and shall be collectible in the same manner. The assessment shall not affect the computation of regular assessments under this chapter.

(d) All amounts collected under this section shall be deposited in the Special Administration Fund of the Department of Labor.

(64 Del. Laws, c. 158, § 8.)

Subchapter VII

Repayment of State Funds

§ 3392. Repayment of state funds loaned to repay loans from the federal government to the Unemployment Insurance Trust Fund.

The Department shall be permitted to borrow funds from the State's General Fund or other state fund sources to pay all or a portion of the principal of any loans extended by the federal government to the Unemployment Insurance Trust Fund. Any state funds that are loaned for the purpose described in this section shall be reimbursed from unemployment insurance tax receipts.

(79 Del. Laws, c. 173, § 6.)

Part III
Unemployment Compensation
Chapter 34
Counseling, Training and Placement Activities

§ 3401. Determination and collection of special assessment.

(a) In addition to all other payments to the State due under this title, each employer liable for assessments under Chapter 33 of this title shall also be liable for a special assessment on all taxable wages as defined in § 3302(19) of this title payable by each such employer. The special assessment shall be levied at the rate indicated below:

(1) .085% when the taxable wage base is $18,500;

(2) .095% when the taxable wage base is $16,500;

(3) .11% when the taxable wage base is $14,500;

(4) .126% when the taxable wage base is $12,500; and

(5) .15% when the taxable wage base is $10,500.

(b) The special assessment levied under this section shall not affect the computation of any other assessments due under this title.

(64 Del. Laws, c. 460, § 9; 65 Del. Laws, c. 45, § 5; 71 Del. Laws, c. 147, §§ 6-8; 75 Del. Laws, c. 81, §§ 1, 2; 79 Del. Laws, c. 173, § 7.)

§ 3402. Disbursement of special assessment funds.

(a) All moneys collected under this chapter shall be deposited in the Special Administration Fund of the Department of Labor and shall be dedicated to the establishment and implementation of programs to provide for the counseling, training and placement of dislocated workers, to assist in school-to-work transition activities such as vocational guidance, training, placement and job development, to provide for industrial training, to provide for career advancement training for state employees and to pay the administrative costs of such programs.

(b) All moneys collected under this chapter shall, in a timely manner after deposit under subsection (a) of this section, be deposited to the following special funds in the following amounts and for the following purposes:

(1) Ten percent of the total amount collected retained by the Division of Unemployment Insurance for costs associated with the collection of the tax.

(2) a. Twenty-five percent of the funds that remain after the cost of collecting the tax has been deducted to a special fund of the State to be administered by the Division of Small Business to be awarded to appropriate subgrantees for industrial training for economic development in accordance with subchapter VIII of Chapter 87A of Title 29.

b. Of this 25 percent sum, not more than $100,000 shall be allocated for subgrants to fund career training for state employees. Appropriate regulations for the granting of these funds shall be developed by the Division of Small Business, in cooperation with the Secretary of the Department of Human Resources and a representative of a public employees' union representing state employees.

c. Of this same 25 percent sum, no more than 10 percent may be retained by the Division of Small Business for the payment of administrative costs.

(3) a. Seventy-five percent of the funds remaining after the cost of collecting the tax has been deducted to a special fund to be administered by the Workforce Development Board ("Board") to be awarded to appropriate subgrantees to provide for services to dislocated workers, to assist in school-to-work transition activities and to underwrite such other innovative training programs as the Board may approve, under regulations promulgated by the Board in coordination with the Department of Labor.

b. Not more than 11% of the 75% sum under paragraph (b)(3)a. of this section may be retained by the administrative entity, the Division of Employment and Training and the Workforce Development Board, for the payment of administrative costs. Of the sum that remains, not more than 1/2 may be used for subgrants for school-to-work transition activities.

(c) The special funds authorized by paragraphs (b)(1), (2) and (3) of this section shall be established pursuant to state accounting standards, and balances on deposit at the end of any fiscal year shall not revert.

(64 Del. Laws, c. 460, § 9; 67 Del. Laws, c. 448, § 1; 69 Del. Laws, c. 458, § 1; 75 Del. Laws, c. 88, §§ 20(5), 25(1); 81 Del. Laws, c. 49, § 17; 81 Del. Laws, c. 66, § 21; 81 Del. Laws, c. 374, § 46; 83 Del. Laws, c. 283, § 33.)

§ 3403. Summer Youth Employment Program.

(a) There is hereby established within the Division of Employment and Training a State Summer Youth Employment Program. Youths chosen for work under the Delaware State Summer Youth Employment 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. The letter shall also release the State and the sponsoring agency from any liability for assignments in the low-risk jobs that will be available.

(b) Preference shall be given to those youths that are members of households whose income does not exceed 200 percent of household poverty. 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 8 applicants qualified on income to 3 applicants considered beyond the income limits.

(c) Any nonprofit 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 that consists of meaningful and productive work experience. The plan or project shall provide such details as the Department shall deem necessary before becoming eligible as a sponsoring agent.

(d) The sponsoring agent shall provide 1 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 the minimum wage and shall work no longer than 8 hours per day, 5 days per week.

(73 Del. Laws, c. 308, § 1.)

§ 3404. Focus on Alternative Skills Training Program [Effective until Sept. 30, 2023].

(a) This section establishes the Focus on Alternative Skills Training Program ("FAST") within the Division of Employment and Training. FAST provides tuition for an eligible individual for an approved nondegree credit certificate program that provides industry-accepted skill training and certification.

(b) An individual must provide proof of all of the following to be eligible for FAST:

(1) That the individual is a resident of Delaware.

(2) That the individual has attained any of the following:

a. A diploma from a Delaware public, charter, or nonpublic high school, or homeschool.

b. A Diploma of Alternate Achievement Standards under § 152 of Title 14.

c. A Delaware secondary credential.

(3) That the individual enrolled in an approved nondegree credit certificate program no later than 24 months after graduating from high school.

(4) If employed, a statement from the individual's employer providing the amount of financial assistance the employer paid toward tuition for the nondegree credit certificate program.

(c) (1) The Workforce Development Board, or its successor, shall maintain a list of nondegree credit certificate programs approved for FAST. The list of nondegree credit certificate programs approved for FAST must be updated annually.

(2) The Workforce Development Board must include the following criteria in the decision to approve a nondegree credit certificate program for FAST:

a. The skill requirements of employers in the State, including the skill needs of an in-demand industry sector or occupation in the State.

b. The job-placement rate for graduates.

(d) A FAST payment under this section must be made as follows:

(1) The total amount of FAST payments for each eligible individual may not exceed $10,000.

(2) A FAST payment may not pay an individual's tuition for longer than 12 months, but multiple tuition payments may be made on behalf of an individual.

(3) The FAST payment is equal to the difference between the full amount of tuition charged by the nondegree credit certificate program and any financial assistance the individual received.

(4) FAST payments must be paid on a first-come, first-served basis.

(5) The FAST program is subject to the availability of funds appropriated for this specific purpose. This subsection does not create a right or entitlement in an individual to receive a monetary payment under the compensation program.

(e) The Department of Labor may adopt policies and procedures to implement this section.

(83 Del. Laws, c. 211, § 1.)

§ 3405. Elevate Delaware.

(a) For purposes of this section:

(1) "Auxiliary expenses" means basic living expenses or supplies necessary for the eligible program or employment upon completion of the eligible program.

(2) "Eligible employer" means a person who has under 51 employees and a physical location in Delaware.

(3) "Eligible program" means a noncredit certificate program approved under subsection (d) of this section for Elevate Delaware.

(b) (1) This section establishes Elevate Delaware within the Division of Employment and Training. Elevate Delaware provides tuition for an eligible individual to attend an approved noncredit certificate program that provides industry-accepted skill training and certification.

(2) Elevate Delaware is intended to do all of the following:

a. Preserve jobs for Delaware residents and small businesses.

b. Assist Delaware residents who need skills for promotion or to obtain higher paid employment.

c. Assist small businesses in Delaware who need employees that have obtained certification for specific skills.

(3) The Department of Labor may recoup the amount of Elevate Delaware payments made on behalf of an individual if an individual or employer acts in bad faith when providing the proof for eligibility under subsection (c) of this section.

(c) An individual must provide proof of all of the following to be eligible for Elevate Delaware:

(1) The individual is employed by a person who employs under 51 employees.

(2) The individual has been accepted for enrollment in an eligible program.

(3) a. At the time of enrollment, the individual is subject to Delaware income tax, either as a resident of Delaware or an employee of an eligible employer.

b. If an individual is not a Delaware resident and is eligible as an employee of an eligible employer, both of the following:

1. A statement from the individual's employer that the employer intends to retain the individual as an employee for at least 1 year following the individual's completion of the eligible program.

2. A statement from the individual that the individual intends to work in Delaware for at least 1 year following the individual's completion of the eligible program.

(4) A statement that provides the amount of financial assistance, if any, the individual will receive towards attending the eligible program, from all of the following:

a. The individual's employer.

b. The eligible program.

(d) (1) The Workforce Development Board, or its successor, shall maintain a list of noncredit certificate programs approved as eligible programs for Elevate Delaware.

a. The Workforce Development Board may utilize the Eligible Training Provider List for all, or part, of the certificate programs approved as eligible programs.

b. The list of eligible programs must be updated annually.

(2) The Workforce Development Board must consider all of the following when deciding which noncredit certificate programs are eligible or priorities for Elevate Delaware:

a. The skill requirements of employers in the State, including the skill needs of an in-demand industry sector or occupation in the State,

b. That Elevate Delaware supports individuals and employers throughout the State, based upon the population of each county.

(e) (1) Elevate Delaware may make a tuition payment to an eligible program, on behalf of an eligible individual, of not more than $10,000.

(2) The Elevate Delaware tuition payment cannot exceed the difference between the full amount of tuition charged by the eligible program and any financial assistance the individual received.

(f) (1) The Department of Labor may provide Elevate Delaware payments to individuals for whom an Elevate Delaware tuition payment is made, to assist with auxiliary expenses while the individual attends the eligible program and for no more than 90 days following completion of the eligible program.

(2) The amount that an individual receives for auxiliary expenses may not exceed the difference between the amount of the tuition payment that the individual receives and the maximum reimbursement amount under paragraph (e)(1) of this section.

(g) (1) Elevate Delaware payments must be paid on a first-come, first-served basis to eligible individuals based upon the priorities established by the Workforce Development Board.

(2) Elevate Delaware is subject to the availability of funds appropriated for this specific purpose.

(3) This section does not create a right or entitlement in an individual to receive a payment under this section.

(h) The Department of Labor may adopt policies and procedures to implement this section.

(83 Del. Laws, c. 244, § 1.)

Part IV
Workplace Fraud Act

Chapter 35
Workplace Fraud Act

§ 3501. Definitions.

(a) As used in this chapter:

(1) "Construction services" includes, without limitation, all building or work on buildings, structures, and improvements of all types such as bridges, dams, plants, highways, parkways, streets, tunnels, sewers, mains, power lines, pumping stations, heaving generators, railways, airports, terminals, docks, piers, wharves, buoys, jetties, breakwaters, levees, canals, dredging, shoring, rehabilitation and reactivation of plants, scaffolding, drilling, blasting, excavating, clearing and landscaping.

(2) "Contractor" means a person, partnership, association, joint stock company, trust, corporation, limited liability company, or other legal business entity or successor or subsidiary thereof that engages in construction services or maintenance under an express or implied contract on behalf of another entity or individual for profit within the State, and includes any subcontractor or lower tier subcontractor of a contractor.

(3) "Debarment" means that no public construction contract in this State shall be bid on, awarded to or received by any employer or any person, firm, partnership or corporation in which such employer has an interest who, within 2 years after entry of a judgment pursuant to this chapter, is adjudicated in violation of this chapter in a subsequent proceeding, until 3 years have elapsed from the date of the subsequent penalty judgment.

(4) "Department" shall have the meaning set forth in § 101(a)(2) of this title.

(5) "Employee" means any person or entity directly hired by, or directly permitted to work by an employer in the State, for work to be performed wholly or partly therein. This chapter does not apply to employees of the United States government, the State or any political subdivision thereof.

(6) "Employer" means any individual, partnership, association, joint stock company, trust, corporation, the administrator or executor of the estate of a deceased individual or the receiver, trustee or successor of any of the same employing any person excepting those provided for in subsection (b) of this section. This chapter does not apply to employees of the United States government, the State or any political subdivision thereof.

(7) "Exempt person" means any individual who:

a. Performs services in a personal capacity and who employs no individuals other than a spouse, child, or immediate family member of the individual;

b. Performs services free from direction and control over the means and manner of providing the services, subject only to the right of the person or entity for whom services are provided to specify the desired result;

c. Furnishes the tools and equipment necessary to provide the services; and

d. Operates a business that is considered inseparable from the individual for purposes of taxes, profits, and liabilities, in which the individual:

1. Owns all of the assets and profits of the business; and

2. Has sole, unlimited, personal liability for all of the debts and liabilities of the business; or alternatively, if the business is organized as a single-person corporate entity, to which sole, unlimited personal liability does not apply, the individual must be the sole member of said single-person corporate entity; and

3. For which the individual does not pay taxes for the business separately but reports business income on the individual's personal income tax return; and

e. Exercises complete control over the management and operations of the business.

(8) "General contractor" and "construction manager" means an entity or individual who has primary responsibility for providing labor and other services necessary for the construction services in a contract. "General contractor" and "construction manager" also means a higher tier contractor of a subcontractor.

(9) "Independent contractor" means an individual or entity who meets all of the following:

a. Performs the work free from the employer's control and direction over the performance of the employee's services.

b. Is customarily engaged in an independently established trade, occupation, profession, or business.

c. Performs work which is either of the following:

1. Outside of the usual course of business of the employer for whom the work is performed.

2. Performed by a registered contractor under Chapter 36 of this title outside of any place of business of the employer for whom the work is performed.

(10) "Knowingly" means having actual knowledge of, or acting with deliberate ignorance, or reckless disregard for the prohibition involved.

(11) "Labor broker" means an entity or individual that hires employees and sells the services of the employees to another employer in need of temporary employees.

(12) "Outside of the usual course of business" means work an individual performs for an employer that is any of the following:

a. At a location that is not the employer's place of business.

b. Not integrated into the employer's operation.

c. Unrelated to the employer's business.

(13) "Place of business" means the principal office or headquarters of the employer, but does not mean a work site at which the employer has been contracted to perform services.

(14) "Public body" means:

a. The State;

b. A unit of state government or an instrumentality of the State; or

c. Any political subdivision, agency, person or entity that is a party to a contract for which the State appropriated any part of the funds to be used for payment.

(15) "Secretary" or "Secretary of Labor" shall have the meaning set forth in § 101(a)(5) of this title.

(16) "Stop work order" means written notice from the Secretary to an employer to cease or hold work until the employer is given notice by the Secretary to resume work.

(17) "Subcontractor" means a lower tier contractor of a contractor, including owner operators or independent contractors.

(18) "Violate" or "attempts to violate" includes, but is not limited to, any intent to evade, misrepresent or wilfully nondisclose.

(b) For the purposes of this chapter the officers of a corporation and any agents having the management thereof who knowingly permit the corporation to violate this chapter shall be deemed to be the employers of the employees of the corporation.

(77 Del. Laws, c. 192, § 1; 82 Del. Laws, c. 168, § 1; 82 Del. Laws, c. 291, § 1.)

§ 3502. Application.

This chapter applies only to the construction services industry.

(77 Del. Laws, c. 192, § 1.)

§ 3503. Acts prohibited.

(a) An employer must not act as a labor broker by improperly classifying an individual who performs work for remuneration provided by an employer as an independent contractor.

(b) An employer has improperly classified an individual when an employer-employee relationship exists, as determined under subsection (c) of this section, but the employer has not classified the individual as an employee.

(c) (1) An "employer-employee" relationship is presumed to exist when work is performed by an individual for remuneration paid by an employer, unless the employer demonstrates, to the satisfaction of the Department, that the individual is an exempt person or independent contractor.

(2) By contract, a general contractor or subcontractor may engage an independent contractor registered under Chapter 36 of this title, to do the same type of work in which the general contractor or subcontractor engages, at the same location where the general contractor or subcontractor is working, without establishing an employer-employee relationship between the multiple contracting parties.

(3) There is a rebuttable presumption that an entity or individual who acts as a labor broker in providing construction services has engaged in a knowing violation of this chapter.

(d) A person must not knowingly incorporate or form, or assist in the incorporation or formation of, a corporation, partnership, limited liability corporation, or other entity, or pay or collect a fee for use of a foreign or domestic corporation, partnership, limited liability corporation, or other entity for the purpose of facilitating, or evading detection of, a violation under this section.

(e) A person must not knowingly conspire with, aid and abet, assist, advise, or facilitate an employer with the intent of violating the provisions of this chapter.

(f) The Department shall adopt regulations to further explain and provide specific examples of subsections (c), (d), and (e) of this section.

(77 Del. Laws, c. 192, § 1; 82 Del. Laws, c. 168, § 2; 82 Del. Laws, c. 291, § 2.)

§ 3504. Duties of the Department.

(a) The Department shall administer and enforce this chapter.

(b) The Department shall investigate, as necessary, to determine compliance with this chapter.

(c) As part of the Department's investigation, the Department is permitted to:

(1) Enter and inspect the premises or place of business, employment, or work site, and upon demand examine and copy, wholly or partly, any or all books, registers, payrolls, and other records, including those required to be made, kept and preserved under this chapter or any regulation published thereunder;

(2) Question an employer, employee, or other person in the premises, place of business or employment, or work site;

(3) Require from any employer full and correct statements in writing, including sworn statements, upon forms prescribed or approved by the Department, with respect to the payment of wages, hours, names, addresses, and such other information pertaining to remuneration pertaining to employees, or require from any employer complete and accurate copies of written notices pertaining to independent contractors, which are maintained by the employer pursuant to § 3511(c) of this title;

(4) Investigate such facts, conditions, or matters as the Department may deem necessary or appropriate to determine whether a provision of this chapter or any regulation published thereunder has been or is being violated; and

(5) Administer oaths and examine witnesses under oath, issue subpoenas, compel the attendance of witnesses and the production of papers, books, accounts, records, payrolls, documents and testimony, and to take depositions and affidavits in any proceeding before it, and, in case of failure of any person or entity to comply with any subpoena lawfully issued, or on the refusal of any witness to testify to any matter regarding which the witness may be lawfully interrogated, the Superior Court, on application by the Department, shall compel obedience as in the case of disobedience of the requirements of a subpoena issued from such Court or a refusal to testify therein.

(d) Following an investigation in which the Department makes an initial determination that an employer has violated 1 or more of the provisions of this chapter or any regulation published hereunder, the Department shall notify an employer of such initial determination and shall provide the employer with an opportunity to appeal the Department's determination in accordance with the Administrative Procedures Act [Chapter 101 of Title 29]. Following notification of the employer and the opportunity for an administrative appeal of the Department's initial determination, the Department may institute actions in the Superior Court for penalties for any violation of this chapter or any regulation published hereunder.

(e) Nothing contained in this chapter shall be deemed a limitation on any power or authority of the Department under any law of this State which may be otherwise applicable to the Department's ability to administer or enforce the provisions of this chapter.

(77 Del. Laws, c. 192, § 1.)

§ 3505. Penalties.

(a) Any employer who violates or fails to comply with § 3503 of this title or any regulation published thereunder is in violation of § 3503 of this title, and is subject to a civil penalty of not less than $5,000, and not more than $20,000, for each violation. Each employee who is not properly classified in violation of § 3503 of this title is a separate violation under this section.

(b) An employer that fails to produce to the Department the books and records requested pursuant to § 3504(c) of this title within 30 days of the employer's receipt of a written request sent to the employer via federal express or certified mail from the Department, in the course of an investigation to determine whether the employer is in compliance with the provisions of this chapter, may be subject to a stop work order, and may be subject to an administrative penalty, not to exceed $500 per day, for each day that the requested records are not produced after the date on which the employer receives the written request from the Department.

(c) An employer who discharges or in any manner discriminates against a person because that person has made a complaint or has given information to the Department under this chapter, or because the person has caused to be instituted or is about to cause to be instituted any proceedings under this chapter, or has testified or is about to testify in any such proceedings, is subject to a civil penalty of not less than $20,000, and not more than $50,000, for each violation.

(d) A person who knowingly incorporates or forms, or assists in the incorporation or formation of, a corporation, partnership, limited liability corporation, or other entity, or pay or collect a fee for use of a foreign or domestic corporation, partnership, limited liability corporation, or other entity for the purpose of facilitating, or evading detection of, a violation of this chapter, shall be subject to a civil penalty not to exceed $20,000.

(e) A person who knowingly conspires with, aids and abets, assists, advises, or facilitates an employer with the intent of violating this chapter shall be subject to a civil penalty not to exceed $20,000.

(f) In addition to the penalties and procedures enumerated in subsections (a) through (e) of this section, an employer may be subject to a stop-work order, and may be ordered to make restitution, pay any interest due and otherwise comply with all applicable laws and regulations by multiple final determinations of the Department or orders of a courts, including but not limited to, the Division of Unemployment Insurance, the Department of Insurance, the Office of Workers' Compensation, the Division of Revenue, the Office of the Attorney General, or any other agency, department or division of the State.

(g) Notwithstanding subsections (a) through (e) of this section, an employer found by any court or the Department to be in violation of this chapter shall be required, within 30 days of the final order:

(1) To pay restitution to or on behalf of any individual not properly classified; and

(2) To otherwise come into compliance with all applicable labor laws, including those related to income tax withholding, unemployment insurance, wage laws, and workers' compensation.

(h) Notwithstanding subsections (a) through (e) of this section, an employer who has been found by a final order of a court or the Department to have violated this chapter twice in a 2-year period:

(1) Shall be assessed an administrative penalty of $20,000 for each employee that was not properly classified, and may be debarred for 5 years; and

(2) Notwithstanding paragraph (h)(1) of this section, an employer that is fined or debarred in accordance with this section may be ordered to make restitution, pay any interest due, and otherwise comply with all applicable laws and regulations by orders of a court and all relevant departments, agencies and divisions, including the Division of Unemployment Insurance, the Department of Insurance, the Office of Workers' Compensation, the Division of Revenue, and the Office of the Attorney General.

(i) Any penalty issued under this section against an employer shall be in effect against any successor corporation or business entity that:

(1) Has 1 or more of the same principals or officers as the employer against whom the penalty was assessed; and

(2) Is engaged in the same or equivalent trade or activity, with the intent to violate 1 or more of the provisions of this chapter.

(77 Del. Laws, c. 192, § 1; 82 Del. Laws, c. 168, § 3; 82 Del. Laws, c. 291, § 3.)

§ 3506. Provisions of law may not be waived by agreement.

Except as provided in this chapter, no provision of this chapter may in any way be contravened or set aside by private agreement.

(77 Del. Laws, c. 192, § 1.)

§ 3507. Department collaboration with other state agencies.

As authorized by state and federal law, divisions within the Department, the Division of Unemployment Insurance, the Office of Workers' Compensation, the Department of Insurance, the Office of the Attorney General, the Division of Revenue and other departments, agencies, or divisions of the State shall cooperate and share information concerning any suspected failure to properly classify an individual as an employee.

(77 Del. Laws, c. 192, § 1.)

§ 3508. Cause of action by employees or other individuals for violations of certain provisions of this chapter.

(a) An employee or other individual who alleges a violation of § 3503 or § 3509 of this title must first notify the Department in writing and request an investigation by the Department, pursuant to § 3504 or § 3509(b)(2) of this title, as applicable, of the alleged violation. If the Department fails to investigate or fails to commence an action in the Superior Court pursuant to § 3504(d) or § 3509(b)(2) of this title, within 90 days of receipt of written notice of an alleged violation of § 3503 or § 3509 of this title, the person alleging a violation of said section may bring a civil action for appropriate declaratory relief, or actual damages, or both. A civil action pursuant to this section must be brought within 3 years after the occurrence of the alleged violation of the applicable provision or provisions of this chapter.

(b) An action commenced pursuant to subsection (a) of this section may be brought in the Superior Court in the county where the alleged violation occurred, the county where the complainant resides, or the county where the employer against whom the civil complaint is filed resides or where the employer's principal place of business is located.

(c) As used in subsection (a) of this section, "damages" means treble damages for lost wages or benefits caused by each violation of this chapter. "Damages" also includes the payment of back wages, fringe benefits, seniority rights, actual damages, litigation costs and attorneys' fees, or any combination of these remedies.

(77 Del. Laws, c. 192, § 1.)

§ 3509. Retaliation prohibited.

(a) An employer may not discriminate in any manner or take adverse action against any person because the person:

(1) Files a complaint with the employer or the Department alleging that the employer violated any provision of this chapter or any regulation adopted under this chapter;

(2) Brings an action under this chapter or a proceeding involving a violation of this chapter;

(3) Testifies in an action authorized under this chapter or a proceeding involving a violation of the provisions of this chapter or any regulation adopted by this chapter; or

(4) Assists in an investigation by providing information to a litigant in a civil action, the Department or another state agency in proceedings as provided by this chapter.

(b) A person who believes that an employer has discriminated in any manner or taken adverse action against the person in violation of subsection (a) of this section:

(1) May submit to the Department a written verified complaint that alleges the discrimination and that includes the signature of the complainant; and

(2) Upon receipt of a complaint pursuant to this section, the Department will determine if an investigation is warranted.

(77 Del. Laws, c. 192, § 1.)

§ 3510. Provisions relating to contracts with public bodies.

(a) Where, after investigation, the Department determines that an employer engaged in work on a public works project is in violation of this chapter or regulations adopted pursuant to this chapter, the Department shall promptly notify the public body.

(b) The public body shall:

(1) On notification of the violation pursuant to subsection (a) of this section, withhold from payment due the employer an amount that is sufficient to:

a. Pay restitution to each employee for the full amount of wages due; and

b. Pay any benefits, taxes, or other contributions that are required by law to be paid on behalf of the employee.

(2) Release:

a. On issuance of a final order of a court or the Department, the full amount of the withheld funds; and

b. On an adverse final order of a court or the Department, the balance of the withheld funds after all obligations are satisfied pursuant to paragraph (b)(1) of this section.

(c) Subject to the process set forth in this section:

(1) An employer found to be in violation of this chapter more than twice in a 2-year period may be subject to debarment.

(2) The Department shall file with the Office of Management and Budget, the Division of Revenue, the Division of Unemployment Insurance, the Department of Insurance, the Office of Workers' Compensation, and the Office of the Attorney General, a list of employers who are subject to debarment.

A debarment under this section shall be in effect against any successor corporation or business entity that:

a. Has 1 or more of the same principals or officers as the employer against whom the debarment was imposed; and

b. Is engaged in the same or equivalent trade or activity.

(77 Del. Laws, c. 192, § 1.)

§ 3511. Employer record-keeping requirements.

(a) An employer shall keep, for at least 3 years, in or about its place of business, records of the employer containing the following information:

(1) The name, address, occupation, and classification of each employee or independent contractor;

(2) The rate of pay of each employee or method of payment for the independent contractor;

(3) The amount that is paid each pay period to each employee;

(4) The hours that each employee works each day and each work week;

(5) For all individuals who are not classified as employees, evidence including the written notice required by subsection (c) of this section and any other evidence in the employer's possession which the employer believes is relevant to determine whether each individual is an exempt person, an independent contractor or an employee; and

(b) An employer shall provide each individual classified as an independent contractor or exempt person with written notice of such classification at the time the individual is hired.

(c) The written notice shall:

(1) Include an explanation of the implications of the individual's classification as an independent contractor or exempt person rather than as an employee;

(2) Include contact information for the Department;

(3) Be provided in English and Spanish; and

(4) Be signed by both the employer and the independent contractor or by the employer and the exempt person, as the case may be.

(d) Failure to comply with the written notice requirement in subsection (c) of this section shall be evidence of a knowing violation by the employer of § 3503 of this title. The employer shall be liable for an administrative penalty of $500 for each individual that the employer failed to notify.

(e) An employer who complies with the written notice requirement in subsection (c) of this section shall be presumed to have acted in good faith in determining whether to classify an individual as an employee, an independent contractor or an exempt person pursuant to § 3503 of this title.

(f) The Department shall adopt regulations establishing specific requirements for the content and form of the notice by October 29, 2010, and, notwithstanding the provisions of subsection (b) of this section, the adoption of such regulations shall be a prerequisite to an employer's obligation to furnish the notice.

(77 Del. Laws, c. 192, § 1.)

§ 3512. Regulations.

The Department shall have the power to make and revise or rescind such regulations as it may deem necessary or appropriate to administer or enforce the provisions of this chapter and any such regulations shall, except as may be otherwise provided by the Department, take effect upon publication.

(77 Del. Laws, c. 192, § 1.)

§ 3513. Distribution of proceeds from civil penalties obtained pursuant to this chapter.

All civil penalties and other revenue collected pursuant to this chapter shall be paid to the General Fund of the State.

(77 Del. Laws, c. 192, § 1.)

§ 3514. Public posting of violators.

The Department shall post, on its website, a list of employers who are the subject of a final determination or decision, including all appeals, that such employer has violated this chapter. The name of an employer who violates this chapter shall remain on the Department's website for a period of 3 years from the date the final determination or decision was issued.

(78 Del. Laws, c. 320, § 1.)

§ 3515. Short title.

This chapter shall be known as the "Workplace Fraud Act."

(77 Del. Laws, c. 192, § 1; 78 Del. Laws, c. 320, § 1.)

Part IV
Workplace Fraud Act

Chapter 36
Delaware Contractor Registration Act

(82 Del. Laws, c. 168, § 4; 82 Del. Laws, c. 291, § 2.)

§ 3601. Short title.

This chapter may be known and cited as the "Delaware Contractor Registration Act."

(82 Del. Laws, c. 168, § 4; 82 Del. Laws, c. 291, § 2.)

§ 3602. Definitions.

For purposes of this chapter:

(1) "Contractor" means a person, partnership, association, joint stock company, trust, corporation, limited liability company, or other legal business entity or successor or subsidiary thereof that engages in construction services or maintenance under an express or implied contract on behalf of another entity or individual for profit within the State, and includes any subcontractor or lower tier subcontractor of a contractor.

(2) "Construction services" includes all building or work on a building, structure, or improvement of any type, including bridges, dams, plants, highways, parkways, streets, tunnels, sewers, mains, power lines, pumping stations, heaving generators, railways, airports, terminals, docks, piers, wharves, buoys, jetties, breakwaters, levees, canals, dredging, shoring, rehabilitation and reactivation of plants, scaffolding, drilling, blasting, excavating, clearing and landscaping, including tree cutting.

(3) "Custom fabrication" means the fabrication of plumbing, heating, cooling, ventilation, or exhaust duct systems and mechanical insulation.

(4) "Department" means the Department of Labor.

(5) "Knowing" means having actual knowledge of or acting with deliberate ignorance or reckless disregard for the prohibition involved.

(6) "Maintenance" means the repair of existing facilities when the size, type, or extent of such facilities is not changed or increased.

(7) "Public works contract" means a construction contract under Chapter 69 of Title 29.

(8) "Secretary" means the Secretary of Labor, or the Secretary's authorized designee.

(9) "Subcontractor" means a lower tier contractor of a contractor, including owner operators or independent contractors.

(10) "Violation" means a project or contract where work is done by a contractor who is not registered under this chapter.

(11) "Worker" means a laborer, mechanic, skilled, or semi-skilled laborer and apprentices or helpers employed by any contractor or subcontractor and engaged in the performance of construction services or maintenance in the State, regardless of whether the work becomes a component part of the construction or maintenance. "Worker" does not mean a material supplier or employees of a material supplier. A contractor or subcontractor engaged in custom fabrication is not a material supplier for purposes of this section.

(82 Del. Laws, c. 168, § 4; 82 Del. Laws, c. 291, § 2.)

§ 3603. Administration and enforcement.

The Office of Contractor Registration in the Department shall administer and enforce this chapter, using the rules and procedures of the Administrative Procedures Act, Chapter 101 of Title 29.

(82 Del. Laws, c. 168, § 4; 82 Del. Laws, c. 291, § 2.)

§ 3604. Registration required.

A contractor must register under this chapter before performing construction services or maintenance.

(82 Del. Laws, c. 168, § 4; 82 Del. Laws, c. 291, § 2.)

§ 3605. Registration requirements.

(a) To register under this chapter, a contractor shall submit all required forms, information, and fees to the Department.

(b) A contractor must apply for a registration certificate by submitting a complete application on the form provided by the Department, which must include all of the following information regarding the contractor, if applicable:

(1) Name, principal business address, telephone number, fax number, and e-mail address.

(2) Type of business entity, including corporation, partnership, or sole proprietorship.

(3) If the principal business address is not within the State, the name and address of the custodian of records and agent for service of process in the State.

(4) The name of the person, the date and nature of the violation, conviction, or judgment, and all additional information requested by the Department if the contractor or a person holding a financial interest in the contractor's business has ever done any of the following:

a. Held a financial interest in a licensed entity that was cited by the Department for a violation of a labor law.

b. Been convicted of home improvement fraud under § 916 of Title 11 or new home construction fraud under § 917 of Title 11.

c. Been found to have engaged in an unlawful practice under § 2513 of Title 6.

(5) The federal employer identification number, the state taxpayer identification number, individual tax identification number, or other tax identification number.

(6) Proof of Delaware worker's compensation insurance.

(7) Proof of a state business license.

(8) A safety plan that is compliant with the requirements established by the Occupational Safety and Health Administration.

(c) (1) a. A contractor who has a state contract under subchapter IV of Chapter 69 of Title 29 must pay an initial annual nonrefundable registration fee of $300 to the Department with the application under this section.

b. The nonrefundable registration fee for the second annual registration is $300.

c. Upon successful completion of 2 consecutive years of registration, a contractor may register for a 2-year period and pay a nonrefundable registration fee of $500. The Department may only grant a 2-year registration if the contractor has not violated this chapter or any other labor laws during the registration period that is expiring.

d. A contractor who is performing public work on July 1, 2021, shall submit the registration application form and fee to the Department no later than August 1, 2021.

(2) a. A contractor who does not have a state contract under subchapter IV of Chapter 69 of Title 29 must pay an initial annual nonrefundable registration fee of $200 to the Department with the application under this section.

b. The nonrefundable registration fee for the second annual registration is $200.

c. Upon successful completion of 2 consecutive years of registration, a contractor may register for a 2-year period and pay a nonrefundable registration fee of $300. The Department may only grant a 2-year registration if the contractor has not violated this chapter or any other labor laws during the registration period that is expiring.

(d) The Department may enter into cooperative agreements with other state agencies, including the Department of Finance and the Department of State, to share information required under this chapter and to streamline the process of contractor registration.

(e) Information under subsection (a), (b), or (d) of this section is not public information under Chapter 100 of Title 29.

(82 Del. Laws, c. 168, § 4; 82 Del. Laws, c. 291, § 1; 82 Del. Laws, c. 291, § 2.)

§ 3606. Issuance and term of a certificate of registration.

(a) Except as provided under § 3607 of this title, upon receipt of a completed, accurate, application and fee under § 3605 of this title, the Department shall issue a certificate of registration to the contractor. A certificate of registration is valid as follows:

(1) For 1 year from the date of registration.

(2) For a period that ends 2 years from the date of registration, if the contractor successfully completes 2 years of registration.

(3) A certificate of registration must be renewed no less than 30 days before the expiration date of a certificate of registration. The Department may deny the certificate of registration if the contractor has violated this chapter or any law under § 3605(b)(4) of this title during the registration period that is expiring.

(b) A certificate of registration is not transferable.

(c) A registered contractor who allows the contractor's certificate of registration to expire before applying to renew the certificate must subsequently apply for a registration certificate as if for the first time.

(82 Del. Laws, c. 168, § 4; 82 Del. Laws, c. 291, § 2.)

§ 3607. Denial, suspension, or revocation of certificate of registration.

(a) The Department may deny, suspend, or revoke a certificate of registration if the contractor or an officer, partner, director, stockholder, or agent of the contractor does any of the following under this chapter:

(1) Fails to comply with any requirement of this chapter.

(2) Wilfully makes a misstatement or omits a material fact in an application for or renewal of a certificate of registration.

(3) Fails to provide all information, including records, forms, or documents, requested by the Department under this chapter.

(4) Performs work without full compliance with this chapter.

(5) Contracts with or uses a subcontractor who is not registered under this chapter in the completion of a public works contract.

(6) Fails to cooperate or interferes with an investigation by the Department.

(7) Violates a criminal or civil law or regulation related to the ability of the contractor to comply with the labor laws of this State.

(b) (1) The Department shall reject an application that is incomplete or contains inaccurate information.

(2) If a contractor knowingly supplies incomplete or inaccurate information to the Department under this section, all of the following apply:

a. The application for registration must be rejected.

b. The contractor may not apply for registration until 1 year from the date of the notice of disqualification.

c. The contractor is subject to other applicable penalties, including under Chapter 12 of Title 6.

(c) (1) The Secretary shall exercise reasonable discretion in deciding whether to deny, suspend, or revoke a certificate of registration under subsection (a) or (b) of this section.

(2) The Secretary may not revoke or suspend a certificate of registration for longer than 5 years. The Secretary shall consider the following criteria to determine the length of time that a certificate of registration is denied, revoked, or suspended:

a. The contractor's record of previous violations of any civil or criminal law related to the fitness of the contractor to bid on or engage in construction services or maintenance including this chapter and the prevailing wage law, § 6960 of Title 29.

b. If the contractor should reasonably have known that a subcontractor to a contract did not have a certificate of registration, had a lapsed certificate of registration, or had a certificate of registration revoked or suspended.

c. The total number of unregistered subcontractors at a work site and the size and scope of the project on which the unregistered subcontractor worked.

d. If the contractor in contract with a subcontractor who is not registered under this chapter obeyed the Department's directive to remove the unregistered subcontractor from the work site to cure the violation of this chapter.

(d) (1) The Department may require as a condition of initial or continued registration that a contractor who has violated either this chapter or the prevailing wage law, § 6960 of Title 29, must provide a surety bond payable to the Department.

(2) The Department shall require a surety bond if there is a pending investigation or litigation of a violation of a state or federal labor law alleged against the contractor which the Secretary finds would constitute a knowing violation of this chapter.

(3) The surety bond must be in the amount and form that the Secretary deems necessary for the protection of the contractor's workers, but must not exceed $10,000 per worker.

(4) The surety bond must be released upon a final adjudication of the investigation or litigation under paragraph (d)(2) of this section if the final adjudication is in favor of the contractor.

(82 Del. Laws, c. 168, § 4; 82 Del. Laws, c. 291, § 2.)

§ 3608. Appeals.

(a) Following an investigation in which the Department makes an initial determination that a contractor has violated 1 or more provisions of this chapter, the Department may make a decision to do 1 or more of the following:

(1) Deny, suspend, or revoke a certificate of registration.

(2) Require the posting of a surety bond.

(3) Impose an administrative penalty.

(b) The Department shall notify the contractor, in writing, of a decision to take an action taken under subsection (a) of this section which must comply with § 10122 of Title 29 and include all of the following:

(1) The action to be taken.

(2) The grounds upon which the determination was made to take the action.

(3) Instructions to request a hearing under § 102 of this title.

(c) (1) A request for a hearing must be made in writing, addressed to the Secretary, and made within 10 business days from the date of receipt of the notice under subsection (b) of this section.

(2) If a hearing is not requested under paragraph (c)(1) of this section, the determination made by the Department under subsection (a) of this section is final.

(d) The Office of Contractor Registration shall review a request for hearing under paragraph (c)(1) of this section to determine if the dispute can be resolved at an informal settlement conference. If the Office of Contractor Registration holds an informal settlement conference and a settlement is not reached, the Office of Contractor Registration shall forward the hearing request to the Secretary to schedule a hearing.

(e) The Secretary shall issue a final case decision at the conclusion of a hearing held under this section as required under Chapter 101 of Title 29.

(f) A contractor may seek judicial review of the Secretary's final case decision by commencing an action in Superior Court, within 30 days of the date of the final decision under subsection (e) of this section.

(g) When a determination to suspend or revoke a certificate of registration is final, the holder of a certificate of registration shall surrender the certificate of registration within 20 days of the later of the date of the notice under subsection (b) of this section or the final decision under subsection (d) of this section by sending the certificate of registration to the Secretary by certified mail.

(h) If a contractor's application for a certificate of registration is denied or a contractor's certificate of registration is suspended or revoked, the contractor cannot perform work for which a bid has been submitted and which is under review.

(82 Del. Laws, c. 168, § 4; 82 Del. Laws, c. 291, § 2.)

§ 3609. Penalties.

(a) A knowing violation of this chapter is subject to a civil penalty of not less than $5,000 and not more than $85,000 per violation.

(b) A violation that is not a knowing violation may be subject to a civil penalty of not more than $1,000 per violation.

(82 Del. Laws, c. 168, § 4; 82 Del. Laws, c. 291, § 2.)

§ 3610. Enforcement.

(a) The Department may bring a civil action to enforce this chapter, including an action for injunctive relief in the Court of Chancery to enjoin work by an unregistered contractor.

(b) The Department is not required to post a bond or filing fee in connection with an action under this section.

(c) Any finding of fact or conclusion of law in any court in this State or any administrative agency in this State finding that construction services or maintenance occurred must be conclusive on all parties to an action under this section. For purposes of the preceding sentence, a finding or conclusion is final if it has been fully determined on appeal to the appropriate court, if all time for filing such appeal with respect to the finding or conclusion has expired, or if the finding or conclusion is not subject to judicial review.

(82 Del. Laws, c. 168, § 4; 82 Del. Laws, c. 291, § 2.)

§ 3611. Distribution of proceeds from fees and civil penalties.

(a) The Department shall retain all application fees collected under § 3605 of this title for enforcement purposes.

(b) All civil penalties collected under this chapter must be paid to the General Fund of this State.

(82 Del. Laws, c. 168, § 4; 82 Del. Laws, c. 291, § 2.)

Part V
Miscellaneous Programs
Chapter 37
Family and Medical Leave Insurance Program

§ 3701. Definitions.

For purposes of this chapter:

(1) "Application year" means the 12-month period as defined in the FMLA.

(2) "Child" means "son or daughter" as defined in the FMLA.

(3) "Covered individual" means an individual who meets all of the following:

a. Has been employed for at least 12 months by the employer with respect to whom leave is requested.

b. Has been employed for at least 1,250 hours of service with the employer during the previous 12-month period. For purposes of determining whether an individual meets the service hours requirement under this paragraph (3)b., the legal standards established under the FMLA apply.

c. The administrative requirements under this chapter.

d. Has submitted an application under this chapter.

(4) "Covered leave" means leave provided under this chapter.

(5) "Department" means the Department of Labor.

(6) a. "Employee" means an individual employed by an employer. For the purposes of this chapter, individuals primarily reporting for work at a worksite in this State are employees unless otherwise excluded. Individuals primarily reporting for work at a worksite outside of this State are not considered employees under this chapter unless the employer elects to classify them as such. Employers may reclassify an employee as primarily reporting for work at a worksite in another state for the purposes of this chapter through the duration of that individual's tenure at the out-of-state worksite.

b. "Employee" does not include an individual covered under § 5903(17)a. of Title 29, an individual employed by entities in Title 14 in a position that would be covered under § 5903(17)a. of Title 29, or an individual in an equivalent position with an entity covered by State employee benefits.

(7) a. "Employer" means all those who employ employees working anywhere in this State.

1. Employers with 10 to 24 employees during the previous 12 months shall be subject to only the parental leave provisions of this chapter. For purposes of this paragraph (7)a.1., "employees" includes those who meet the requirements of a covered individual under paragraphs (3)a. and (3)b. of this section or are reasonably expected to meet the requirements of a covered individual under paragraphs (3)a. and (3)b. of this section during the previous 12 months.

2. Employers with 25 or more employees during the previous 12 months shall be subject to all parental, family caregiving, and medical leave provisions of this chapter. For purposes of this paragraph (7)a.2., "employees" includes those who meet the requirements of a covered individual under paragraphs (3)a. and (3)b. of this section or are reasonably expected to meet the requirements of a covered individual under paragraphs (3)a. and (3)b. of this section during the previous 12 months.

b. "Employer" does not include any of the following:

1. Anyone who employs less than 10 employees in this State during the previous 12 months.

2. The federal government.

3. Any business that is closed in its entirety for 30 consecutive days or more per year.

(8) "Family and medical leave benefits" means benefits provided under this chapter.

(9) "Family caregiving leave" includes leave under § 3702(a)(2) and (a)(4) of this title.

(10) "Family caregiving leave benefits" means benefits paid under § 3704 of this title and provided under § 3702(a) of this title to a covered individual while the covered individual is on family leave.

(11) "Family member" means all of the following:

a. A parent, as defined under the FMLA.

b. A child.

c. A spouse, as defined under the FMLA.

(12) "FMLA" means the Family and Medical Leave Act, 29 U.S.C. Chapter 28.

(13) "Fund" means the Family and Medical Leave Insurance Account Fund created under this chapter.

(14) "Health care provider" means as defined under the FMLA.

(15) "Medical leave" includes leave under § 3702(a)(3) of this title.

(16) "Medical leave benefits" means benefits paid under § 3704 of this title and provided under § 3702(a) of this title to a covered individual while the covered individual is on medical leave.

(17) "Parental leave" includes leave under § 3702(a)(1) of this title.

(18) "Parental leave benefits" means benefits paid under § 3704 of this title and provided under § 3702(a) of this title to a covered individual while the covered individual is on parental leave.

(19) "Qualifying exigency" means as defined under the FMLA.

(20) a. "Retaliatory personnel action" means an adverse action against an employee for the exercise of, or good faith attempt to exercise, a right guaranteed under this chapter, including any threat, discharge, suspension, demotion, or reduction of hours, or report or threat to report an employee's suspected citizenship or immigration status or the suspected citizenship or immigration status of a family member of the employee to a federal, state, or local agency.

b. "Retaliatory personnel action" includes interference with or punishment for participating or assisting, in any manner, in an investigation, proceeding, or hearing under this chapter.

(21) "Secretary" means the Secretary of the Department.

(22) "Serious health condition" means as defined under the FMLA.

(23) "Small business" means all of the following:

a. For purposes of parental leave, all those that employ 9 or less employees working anywhere in this State.

b. For purposes of family caregiving leave and medical leave, all those that employ 24 or less employees working anywhere in this State.

(24) "Wages" means remuneration for employment as determined for purposes of old-age, survivors, and disability insurance for employees and employers under the Federal Insurance Contribution Act, 26 U.S.C. Chapter 21.

(83 Del. Laws, c. 301, § 1.)

§ 3702. Eligibility for benefits; serious health condition; certification or documentation of leave.

(a) Beginning 1 year after the start of contributions under § 3705 of this title, and subject to subsection (c) of this section, family and medical leave benefits are payable to a covered individual who meets 1 of the following:

(1) Because of a birth, adoption, or placement through foster care of a child, is caring for the child during the first year after the birth, adoption, or placement of the child.

(2) Is caring for a family member with a serious health condition.

(3) Has a serious health condition that makes the covered individual unable to perform the functions of the covered individual's position.

(4) Has a qualifying exigency.

(b) In applying and construing serious health condition, consideration must be given to the application and construction given to serious health condition under the FMLA.

(c) (1) An employer or an approved private plan under § 3716 of this title shall collect and retain information from covered individuals verifying parental leave status, serious health condition, or qualifying exigency when a covered individual submits an application under this chapter. An employer shall require that a request for leave based on a serious health condition under paragraph (a)(2) or (a)(3) of this section be supported by a certification issued by the health care provider of the covered individual or of the family member of the covered individual, as appropriate. The covered individual shall provide, in a timely manner, a copy of the certification to the employer or an approved private plan under § 3716 of this title.

(2) A certification required under paragraph (c)(1) of this section is sufficient if it includes all of the following:

a. The date on which the serious health condition commenced.

b. The probable duration of the condition.

c. The appropriate medical facts within the knowledge of the health care provider regarding the condition.

d. A statement of the following, as appropriate:

1. For purposes of leave under paragraph (a)(2) of this section, a statement that the covered individual is needed to care for the family member who has a serious health condition and an estimate of the time that the covered individual needs to care for the family member.

2. For purposes of leave under paragraph (a)(3) of this section, a statement that the covered individual is unable to perform the functions of the covered individual's position.

e. If the leave is to be taken intermittently or on a reduced leave schedule under § 3706 of this title for planned medical treatment, the dates on which the medical treatment is expected to be given and the duration of the medical treatment.

f. If the leave is to be taken intermittently or on a reduced leave schedule under § 3706 of this title for purposes of leave under paragraph (a)(2) of this section, a statement that the covered individual's intermittent leave or leave on a reduced leave schedule is necessary for the care of the family member who has the serious health condition, or will assist in the family member's recovery, and the expected duration and schedule of the intermittent leave or reduced leave schedule.

g. If the leave is to be taken intermittently or on a reduced leave schedule under § 3706 of this title for purposes of leave under paragraph (a)(3) of this section, a statement of the medical necessity of the intermittent leave or leave on a reduced leave schedule and the expected duration of the intermittent leave or reduced leave schedule.

(3) a. If the employer or an approved private plan under § 3716 of this title has reason to doubt the validity of a certification provided under this subsection, the employer or private plan may require, at the expense of the employer or private plan, that the covered individual obtain the opinion of a second health care provider designated or approved by the employer or private plan concerning any information certified under this subsection. A health care provider designated under this paragraph (c)(3)a. may not be employed on a regular basis by the employer, Department or private plan.

b. If the second opinion under paragraph (c)(3)a. of this section differs from the opinion in the original certification provided by the covered individual under this subsection, the employer or private plan may require, at the expense of the employer or private plan, that the employee obtain the opinion of a third health care provider designated or approved jointly by the employer or private plan and the covered individual concerning any information certified under this subsection. The third opinion is final and binding on the employer or private plan and the covered individual.

(4) a. The employer or an approved private plan under § 3716 of this title may require that the covered individual obtain subsequent recertifications on a reasonable basis.

b. The standards for determining what constitutes a reasonable basis for recertification may be governed by a collective bargaining agreement between the employer or private plan and a labor organization which is the collective bargaining representative of the unit of which the covered individual is a part if such a collective bargaining agreement is in effect.

c. Unless otherwise required by the covered individual's health care provider, the employer or private plan may not require recertification more than once during a 30-day period and, in any case, may not unreasonably require recertification.

d. The employer or an approved private plan under § 3716 of this title shall pay for any recertification that is not covered by the covered individual's health insurance.

(d) The employer or an approved private plan under § 3716 of this title shall require that a request for leave based on a serious health condition under paragraph (a)(2) of this section of a family member be supported by documentation demonstrating the nature and extent of the relationship.

(83 Del. Laws, c. 301, § 1.)

§ 3703. Duration of benefits.

(a) A covered individual is eligible for a maximum of 12 weeks of family and medical leave benefits in an application year.

(1) The maximum number of weeks during which parental leave benefits are payable under § 3702(a)(1) of this title in an application year is 12 weeks.

(2) The maximum aggregate number of weeks during which medical leave and family caregiving leave benefits are payable under § 3702(a)(2), (a)(3), and (a)(4) of this title in an application year is 6 weeks in any 24-month period.

(b) If 2 parents are entitled to leave under § 3702(a)(1), (a)(2), or (a)(4) of this title and are employed by the same employer, the aggregate number of weeks of leave to which both may be entitled may be limited by the employer to 12 weeks during any 12-month period. The Department may adopt regulations limiting aggregate family caregiving leave claimed by multiple family members for the same qualifying event under § 3702(a) of this title.

(c) Except for parental leave benefits, and as permitted under § 3706 of this title, a covered individual is eligible for benefits under this chapter not more than once in a 24-month period.

(d) An employer must approve or deny an application for benefits under this section within 5 business days of receipt of a completed application that includes documentation necessary to review the claim. If the claim is denied, the employer shall notify the covered individual of the reason for the denial.

(e) The employer must notify the Department, in a manner determined by the Department, within 3 business days of a claim being approved under this chapter. The first payment of benefits to a covered individual must be made within 30 days after the employer has notified the Department of the approved claim. Subsequent payments must be made every 2 weeks.

(f) An employer with less than 25 employees may elect, with notice to the Department and employees, for each employee to exercise not less than half of the employee's parental leave for 5 years from the start of benefits under § 3702 of this title.

(83 Del. Laws, c. 301, § 1.)

§ 3704. Amount of benefits.

(a) The amount of family and medical leave benefits is to be determined as follows:

(1) The weekly benefit must be 80% of the covered individual's average weekly wages rounded up to the nearest even $1.00 increment during the 12 months preceding submission of the application.

(2) The minimum weekly benefit may not be less than $100 a week, except that if the covered individual's average weekly wage is less than $100 a week, the weekly benefit must be the covered individual's full wage.

(3) The maximum weekly benefit in 2026 and 2027 must be $900. In each year after 2027, the maximum weekly benefit must increase in proportion to the annual average increase, if any, in the Consumer Price Index for All Urban Consumers, Philadelphia-Camden-Wilmington Metropolitan area that is published by the Bureau of Labor Statistics of the United States Department of Labor. In each year after 2027, the period of change must be calculated from October 2026 to the October before the start of the calendar year. When the Department determines a maximum weekly benefit amount using the Consumer Price Index under this paragraph (a)(3), the amount must be rounded to the nearest even $5.00 increment as determined in the discretion of the Secretary.

(b) Family and medical leave benefits are not payable for less than 1 work day of covered leave taken in 1 work week.

(c) The Department shall determine, by regulation, how benefits are to be calculated for covered individuals with more than 1 source of wages and when 12 months of wages preceding the submission of application for benefits are not available to the Department.

(83 Del. Laws, c. 301, § 1.)

§ 3705. Contributions.

(a) Payroll contributions are authorized to finance the payment of benefits under this chapter. The Department shall regulate the deduction, withholding, and payment of the contribution.

(b) Beginning on January 1, 2025, for each employee, an employer shall quarterly, or more frequently as regulated by the Department, remit to the Fund contributions in the form and manner determined by the Department.

(1) The contribution rate for medical leave benefits is as follows:

a. For 2025 and 2026, the contribution rate for medical leave benefits as a percentage of wages is 0.4%.

b. For 2027, and each calendar year after 2027, the Department shall set the contribution rate for medical leave benefits as a percentage of wages based on sound actuarial principles. The Department may not set the contribution rate higher than the rate necessary to obtain a total amount of contributions equal to 125% of the medical leave benefits paid during the immediately preceding calendar year plus an amount equal to 125% of the cost of administration of the payment of those benefits during the immediately preceding calendar year, less the amount of net assets remaining in the Fund as of December 31 of the immediately preceding calendar year.

(2) The contribution rate for family caregiving leave benefits is as follows:

a. For 2025 and 2026, the contribution rate for family caregiving leave benefits as a percentage of wages is 0.08%.

b. For 2027, and each calendar year after 2027, the Department shall set the contribution rate for family caregiving leave benefits based as a percentage of wages on sound actuarial principles. The Department may not set the contribution rate higher than the rate necessary to obtain a total amount of contributions equal to 125% of the family caregiving leave benefits paid during the immediately preceding calendar year plus an amount equal to 125% of the cost of administration of the payment of those benefits during the immediately preceding calendar year, less the amount of net assets remaining in the Fund as of December 31 of the immediately preceding calendar year.

(3) The contribution rate for parental leave benefits is as follows:

a. For 2025 and 2026, the contribution rate for parental leave benefits as a percentage of wages is 0.32%.

b. For 2027, and each calendar year after 2027, the Department shall set the contribution rate for parental leave benefits as a percentage of wages based on sound actuarial principles. The Department may not set the contribution rate higher than the rate necessary to obtain a total amount of contributions equal to 125% of the parental leave benefits paid during the immediately preceding calendar year plus an amount equal to 125% of the cost of administration of the payment of those benefits during the immediately preceding calendar year, less the amount of net assets remaining in the Fund as of December 31 of the immediately preceding calendar year.

(c) *Limitation on benefits and contribution rates; evidentiary standard.—*

(1) *General.—*

Notwithstanding a provision of this chapter to the contrary, this subsection controls with respect to benefits available under, and contributions required by, this chapter.

(2) *Contribution rate; limitation. —*

a. For purposes of this subsection, “contribution rate” means the sum of the contribution rate for medical, family caregiving, and parental leave benefits.

b. If, after using the actuarial principles under subsection (b) of this section, the Department determines that the contribution rate would exceed 1.00%, paragraph (c)(3) of this section applies.

(3) *Contribution redetermination; benefits reduction.—*

If, under paragraph (c)(2)b. of this section, the Department determines that the contribution rate effective as of the first day beginning on the next calendar year would exceed 1.00%, effective as of and for such calendar year the Department shall reduce the percentage of average weekly wages for employees from 80% to the lowest percentage of average weekly wages for employees as necessary to compute a contribution rate that does not exceed 1.00%.

(4) *Preservation of Fund balance.—*

Notwithstanding anything in this chapter to the contrary, after using the actuarial principles under subsection (b) of this section and considering other information deemed appropriate under the circumstances by the Secretary, the Secretary may at any time reduce the percentage of average weekly wages for employees to the lowest percentage of average weekly wages for employees as necessary to attempt to prevent the projected balance of the Fund during the ensuing 12 month period from falling below a specific balance or other actuarially sound measure adopted by the Department.

(5) *Evidentiary standard.—*

An allegation of abuse in the exercise of the discretion authorized by this section must be established by clear and convincing evidence of actual abuse of discretion in the court then having primary jurisdiction.

(d) From the wages of an employee for whom a contribution is required under paragraph (b)(1) of this section, an employer shall deduct not greater than 50% of the contribution required for the employee. However, an employer may elect to pay all or any portion of the employee's share of the contribution listed in paragraph (b)(1) of this section.

(e) From the wages of an employee for whom a contribution is required under paragraph (b)(2) of this section, an employer shall deduct not greater than 50% of the contribution required for the employee. However, an employer may elect to pay all or any portion of the employee's share of the contribution listed in paragraph (b)(2) of this section.

(f) From the wages of an employee for whom a contribution is required under paragraph (b)(3) of this section, an employer shall deduct not greater than 50% of the contribution required for the employee. However, an employer may elect to pay all or any portion of the employee's share of the contribution listed in paragraph (b)(3) of this section.

(g) An employer's deduction from an employee's wages under this section may only be made concurrent with, and proportionate to, the liability incurred by the employer and the payment of wages to the employee. The employer is liable for the contribution at the time that wages are paid and shall remit the total contribution required under subsection (b) of this section to the Fund. If the employer fails to deduct wages of an employee when the wages are paid, the employer remains liable for the full amount of the contribution, including that amount not deducted from an employee's wages.

(h) A contribution that remains unpaid on the date it is due and payable, as determined by the Department, accrues interest, at a rate determined by the Department by regulation, from and after the due date until payment plus the accrued interest is received by the Fund. Interest collected under this section must be paid into the Fund.

(i) (1) An employer with an approved private plan under § 3716 of this title for medical leave benefits may not be required to remit the contributions required under paragraph (b)(1) of this section.

(2) An employer with an approved private plan under § 3716 of this title for family caregiving leave benefits may not be required to remit the contributions required under paragraph (b)(2) of this section.

(3) An employer with an approved private plan under § 3716 of this title for parental leave benefits may not be required to remit the contributions required under paragraph (b)(3) of this section.

(j) The Department may require from an employer a sworn or unsworn report with respect to employees of the employer which the Department deems necessary for the effective administration of this chapter. Information provided to the Department in the report must be held confidential and must not be published or be open to public inspection, other than to employees of the Department, in a manner that reveals an employee's or employer's identity. However, an employer or employer's legal representative must be supplied with information from the report for purposes related to this chapter, and an employee or employee's legal representative must be supplied with information from the report that relates only to the employee for purposes related to this chapter.

(k) An employee and employer may opt to file a waiver of the payroll contributions required under this section when an employee's work schedule or length of employment with the employer is not expected to meet the requirements for eligibility for family and medical leave benefits.

(1) The employer shall provide notice to the employee that employee's work schedule or length of employment with the employer is not expected to meet the requirements for eligibility for family and medical leave benefits.

(2) The employee shall sign, and the employer shall submit to the Department, a form waiving the payroll contributions required under this section because employee's work schedule or length of employment with the employer is not expected to meet the requirements for eligibility for family and medical leave benefits.

(3) If, after an employee signs a waiver under paragraph (k)(2) of this section, the employee becomes eligible for family and medical leave benefits, the employee shall sign, and the employer shall submit to the Department, a form revoking the waiver under paragraph (k)(2) of this section. Deductions from wages may not begin until a waiver is revoked.

(4) The Department shall adopt a form for the waiver under paragraph (k)(2) of this section and the revocation of the waiver under paragraph (k)(3) of this section.

(83 Del. Laws, c. 301, § 1.)

§ 3706. Reduced leave schedule.

(a) A covered individual may take covered leave on an intermittent or reduced leave schedule in which all of the leave authorized under this chapter is not taken sequentially. Intermittent or reduced leave may be taken only when medically necessary and supported by

documentation as required by the certification requirements under § 3702 of this title. Family and medical leave benefits for intermittent or reduced leave schedules must be prorated.

(b) The covered individual shall provide the employer with prior notice of the schedule on which the covered individual will take the covered leave, to the extent practicable. Covered leave taken under this section may not result in a reduction of the total amount of leave to which an employee is entitled beyond the amount of leave actually taken.

(c) Nothing in this section is to be construed to entitle a covered individual to more leave than required under § 3703 of this this title.

(83 Del. Laws, c. 301, § 1.)

§ 3707. Leave and employment protection.

(a) A covered individual who exercises the covered individual's right to family and medical leave benefits shall, on the expiration of the covered leave, be entitled to be restored by the employer to the position held by the covered individual when the covered leave commenced, or to a position with equivalent seniority, status, employment benefits, pay, and other terms and conditions of employment, including fringe benefits and service credits, which the covered individual had been entitled to at the commencement of the covered leave.

(b) During covered leave, the employer shall maintain any health care benefits the covered individual had before taking the leave for the duration of the leave as if the covered individual had continued in employment continuously from the date the covered individual commenced the leave until the date the family and medical leave benefits terminate. The covered individual shall continue to pay the covered individual's share of the cost of health care benefits as required before the commencement of the leave.

(c) An employer who violates this section or § 3708 of this title is liable to an employee affected for all of the following:

(1) Damages equal to all of the following:

a. The amount of any of the following:

1. Any wages or employment benefits denied or lost to the employee by reason of the violation.

2. In an action in which wages or employment benefits have not been denied or lost to the employee, any actual monetary losses sustained by the employee as a direct result of the violation, such as the cost of providing care, up to a sum equal to 12 weeks of wages or employment benefits for the employee.

b. Interest on the amount under paragraph (c)(1)a. of this section, calculated at the legal rate.

c. An additional amount as liquidated damages equal to the sum of the amount described in paragraph (c)(1)a. of this section and the interest under paragraph (c)(1)b. of this section. If an employer who has violated this section or § 3708 of this title proves to the satisfaction of the court that the act or omission that violated this section or § 3708 of this title was in good faith and that the employer had reasonable grounds for believing that the act or omission was not a violation of this section or § 3708 of this title, the court may reduce the amount of the liability to the amount and interest determined under paragraphs (c)(1)a. and (c)(1)b. of this section, respectively.

(2) For equitable relief as may be appropriate, including employment, reinstatement, and promotion.

(d) An action under subsection (c) of this section may be maintained against an employer in a court of competent jurisdiction in this State by any 1 or more employees for and on behalf of the employees or the employees and other employees similarly situated.

(e) (1) The court in an action under subsection (c) of this section may, in addition to any judgment awarded to the plaintiff, award reasonable attorneys' fees, reasonable expert witness fees, and other costs of the action to be paid by the defendant.

(2) The court in an action under subsection (c) of this section shall award reasonable attorneys' fees to a defendant if the court finds the action was brought in bad faith.

(f) Except as provided under subsection (g) of this section, an action may be brought for a violation of this section or § 3708 of this title not later than 2 years after the date of the last event constituting the alleged violation for which the action is brought.

(g) In an action brought for a wilful violation of this section or § 3708 of this title, the action may be brought not later than 3 years after the date of the last event constituting the alleged violation for which the action is brought.

(83 Del. Laws, c. 301, § 1.)

§ 3708. Retaliatory personnel actions prohibited.

(a) It is unlawful for an employer or any other person to interfere with, restrain, or deny the exercise of, or the attempt to exercise, any right protected under this chapter.

(b) An employer, temporary help company, employment agency, employee organization, or other person may not take a retaliatory personnel action or otherwise discriminate against an individual because the individual exercised rights protected under this chapter.

(c) Rights protected under this chapter include the following:

(1) The right to request, file for, apply for, or use family and medical leave benefits or covered leave.

(2) The right to communicate to the employer or any other person or entity an intent to file a claim, a complaint with the Department or courts, or an appeal, or testify or prepare to testify or assist in any investigation, hearing, or proceeding under this chapter, at any time, including during the period in which the individual receives family and medical leave benefits under this chapter.

(3) The right to inform a person about an employer's alleged violation of this chapter.

(4) The right to inform an individual of the individual's rights under this chapter.

(d) It is unlawful for an employer's absence control policy to count covered leave taken under this chapter as an absence that may lead to or result in discipline, discharge, demotion, suspension, or any other adverse action.

(e) Protections of this section apply to an individual who mistakenly but in good faith alleges violations of this chapter.

(f) This section is to be enforced as provided in § 3707(c) through (g) of this title.

(g) This section applies only to an employee who has been employed by the employer for at least 90 days.

(83 Del. Laws, c. 301, § 1.)

§ 3709. Coordination of benefits.

(a) (1) Covered leave that also qualifies as leave under the FMLA runs concurrently with leave taken under the FMLA and may not be taken in addition to leave under the FMLA.

(2) An employer may require that payment made under this chapter be made concurrently or otherwise coordinated with payment made or leave allowed under the terms of disability or family care leave under a collective bargaining agreement or employer policy. The employer shall give employees written notice of this requirement.

(3) An employer may require the use of unused accrued paid time off before accessing family and medical leave benefits, and the use of accrued paid time off may count toward the total length of leave provided under this chapter, if the employee is not required to exhaust all paid time off. For purposes of this paragraph (a)(3) of this section, "paid time off" includes an employer's provision of vacation and sick leave.

(4) A covered individual may not access family and medical leave benefits if the use of family and medical leave benefits results in the covered individual receiving more than 100% of the covered individual's weekly wages.

(b) (1) This chapter does not diminish an employer's obligation to comply with any of the following that provide more generous leave:

a. A collective bargaining agreement.

b. An employer policy.

c. Any other law.

(2) An individual's right to covered leave may not be diminished by a collective bargaining agreement entered into or renewed, or an employer policy adopted or retained, after July 1, 2022.

(3) An agreement by an individual to waive the individual's rights under this chapter is void as against public policy.

(83 Del. Laws, c. 301, § 1.)

§ 3710. Notice.

(a) An employer shall provide written notice to each employee that includes all of the following:

(1) The employee's right to family and medical leave benefits under this chapter and the terms under which it may be used.

(2) The amount of family and medical leave benefits.

(3) The procedure for filing a claim for family and medical leave benefits.

(4) The right to job protection and benefits continuation under § 3707 of this title.

(5) That discrimination and retaliatory personnel actions against the employee for requesting, applying for, or using family and medical leave benefits is prohibited under § 3708 of this title.

(6) That the employee has a right to file a complaint for violations of this chapter.

(7) Whether family and medical leave benefits are available to the employee through the State or an approved private plan under § 3716 of this title.

(b) An employer shall provide the notice required under subsection (a) of this section as follows:

(1) On hiring of the employee.

(2) When the employee requests covered leave or when the employer acquires knowledge that an employee's leave may be for a qualifying event under § 3702(a) of this title.

(c) An employer shall display and maintain a poster in a conspicuous place accessible to employees at the employer's place of business that contains the information required under subsection (a) of this section in English, Spanish, and any language that is the first language spoken by at least 5% of the employer's workforce, if the poster has been provided by the Department.

(d) The Department may adopt regulations to establish additional requirements concerning the means by which employers shall provide notice of this chapter.

(e) An employee shall provide notice of the employee's intention to take covered leave to the employee's employer 30 days in advance, if known, or as soon as practicable.

(83 Del. Laws, c. 301, § 1.)

§ 3711. Appeal.

(a) The process for review of a denial of family and medical leave benefits is as follows:

(1) On a determination of an individual's claim for family and medical leave benefits under this chapter by the employer, the individual may request review of the determination by the Department within 60 days of the issuance of the determination. The Department shall review the denial and issue a determination to the individual in a time and manner determined by the Department.

(2) On determination by the Department under paragraph (a)(1) of this subsection or final determination by a private plan under § 3716 of this title, an individual may appeal the determination to the Family and Medical Leave Insurance Appeal Board established under subsection (b) of this section within 30 days of the issuance of the determination.

(b) (1) There is established a Family and Medical Leave Insurance Appeal Board ("Board").

(2) The Board consists of 3 members, appointed by the Governor for a term of 6 years.

(3) The Governor shall fill a vacancy on the Board during a member's term for the unexpired portion of the term.

(4) The Governor may, at any time, after notice and hearing, remove any Board member for gross inefficiency, neglect of duty, malfeasance, misfeasance, or nonfeasance in office. For purposes of this section, a member who is absent without adequate reason for 3 consecutive meetings or fails to attend at least half of all regular meetings during any calendar year is deemed to be in neglect of duty.

(5) Two members of the Board constitute a quorum. A vacancy does not impair the right of the remaining Board members to exercise all of the powers of the Board.

(6) The Governor shall designate 1 member of the Board as the Chair. If the term of the Chair expires or if the Chair becomes vacant for any cause, the Governor shall designate another member as Chair.

(7) a. The Chair of the Board must be paid $225 for each meeting attended, not to exceed 80 meetings each year.

b. Each of the other members of the Board is to be paid $175 for each meeting attended, not to exceed 80 meetings each year.

c. The members of the Board shall devote to the duties of the members' office the time necessary for the satisfactory execution of the office.

(c) The decision of the Board with respect to an individual's claim for family and medical leave benefits is final and binding on the parties.

(d) The Department shall implement procedures to ensure confidentiality of all information related to a claim filed or an appeal taken, to the maximum extent permitted by applicable laws.

(e) The Board shall conduct hearings under the Administrative Procedures Act, Chapter 101 of Title 29, except that the Board's hearings are exempt from the public meeting requirements of Chapter 100 of Title 29 to protect confidential health and privacy information.

(f) The Board may adopt regulations to implement this section.

(83 Del. Laws, c. 301, § 1.)

§ 3712. Erroneous payments; disqualification for benefits.

(a) A covered individual is disqualified from family and medical leave benefits for 3 years if the covered individual is determined by the Department to have wilfully made a false statement or misrepresentation regarding a material fact, or wilfully failed to report a material fact, to obtain benefits under this chapter.

(b) If family and medical leave benefits are paid erroneously or as a result of wilful misrepresentation, or if a claim for family and medical leave benefits is rejected after benefits are paid, the Department may seek repayment from the recipient of benefits, with interest in an amount to be determined by the Department, consistent with § 3718 of this title. If benefits are paid due to wilful misrepresentation, the Department may seek an additional penalty of up to 50% of the overpayment and a penalty as permitted by § 3719 of this title.

(c) When the Department determines that an individual obtained an overpayment by fraud, in addition to any disqualification under subsection (a) of this section, the individual is disqualified from receiving family and medical leave benefits until the Department determines that all of the following have occurred:

(1) The total amount of the fraud overpayment, with interest, has been repaid in full.

(2) Any monetary penalty under this section has been paid in full.

(83 Del. Laws, c. 301, § 1.)

§ 3713. Family and Medical Leave Insurance Program.

(a) (1) By January 1, 2025, the Department shall establish and administer a family and medical leave insurance program.

(2) By not later than the date specified in § 3702(a) of this title, the Department shall pay family and medical leave benefits as specified under this chapter.

(b) The Department shall establish, and make available to employers, reasonable procedures and forms for filing claims for benefits under this chapter and shall specify the supporting documentation necessary to support a claim for benefits, including any documentation required from a health care provider for proof of a serious health condition.

(c) The Department shall use information sharing and integration technology to facilitate the disclosure of relevant information or records so long as a covered individual consents to the disclosure as required under state law.

(d) Information contained in the files and records pertaining to a covered individual under this chapter is confidential and not open to public inspection, other than to public employees in the performance of their official duties. However, the covered individual, or an authorized representative of the covered individual, may review the records or receive specific information from the records on the presentation of the covered individual's signed authorization.

(83 Del. Laws, c. 301, § 1.)

§ 3714. Federal and state income tax.

The employer or an approved private plan under § 3716 of this title shall advise a covered individual filing a new claim for family and medical leave benefits, at the time of filing the claim, of all of the following:

(1) Family and medical leave benefits may be subject to federal and state income taxes.

(2) Requirements exist pertaining to federal and state estimated tax payments on family and medical leave benefits.

(3) Under regulations established by the Secretary, applicable taxes will be deducted and withheld from the covered individual's payment of family and medical leave benefits.

(83 Del. Laws, c. 301, § 1.)

§ 3715. Family and Medical Leave Insurance Account Fund; establishment and investment.

(a) A special fund designated as the Family and Medical Leave Insurance Fund is created. The Fund holds all revenues collected under this chapter. All moneys credited to the Fund are continuously available for expenditure in accordance with this chapter.

(b) The State Treasurer shall invest the Fund consistent with the investment policies established by the Cash Management Policy Board. The State Treasurer shall credit interest to the Fund on a monthly basis consistent with the rate established by the Cash Management Policy Board. Expenditures from the Fund may be used only for the purposes of the family and medical leave benefits program under this chapter. Only the Secretary or the Secretary's designee may authorize expenditures from the Fund.

(c) The Department may use expenditures from the Fund to pay for the costs associated with administering the provisions of this chapter.

(83 Del. Laws, c. 301, § 1.)

§ 3716. Private plans.

(a) (1) Except as provided under subsection (e) of this section, an employer may apply to the Department for approval to meet the employer's obligations under this chapter through a private plan. To be approved as meeting an employer's obligations under this chapter, a private plan must do all of the following:

a. Provide 1 or more of the following:

1. Family caregiving leave to a covered individual for the reasons under § 3702(a)(2) and (a)(4) of this title for the maximum number of weeks in a benefit year required under § 3703(a)(2) of this title.

2. Medical leave to a covered individual for the reasons under § 3702(a)(3) of this title for the maximum number of weeks in a benefit year required under § 3703(a)(2) of this title.

3. Parental leave to a covered individual for the reasons under § 3702(a)(1) of this title for the maximum number of weeks in a benefit year required under § 3703(a)(1) of this title.

b. Allow a covered individual to take, in the aggregate, the maximum number of weeks of covered leave in a benefit year or 24-month period as required under § 3703(a) and (d) of this title.

c. If family caregiving leave is provided, allow family caregiving leave to be taken for all purposes specified under § 3702(a)(2) and (a)(4) of this title.

d. If family caregiving leave is provided, allow family caregiving leave under § 3702(a)(2) and (a)(4) of this title to be taken to care for any family member.

e. If medical leave is provided, allow medical leave under § 3702(a)(3) of this title to be taken by a covered individual with any serious health condition.

f. Provide a wage replacement rate during all covered leave of at least the amount required under § 3704(a)(1) of this title.

g. Provide a maximum weekly benefit during all covered leave of at least the amount specified under § 3704(a)(3) of this title.

h. Provide a minimum weekly benefit during all covered leave of at least the amount specified under § 3704(a)(2) of this title.

i. Allow covered leave to be taken intermittently or on a reduced schedule as authorized under § 3706 of this title.

j. Impose no additional conditions or restrictions on the use of covered leave beyond those explicitly authorized by this chapter or regulations issued under this chapter.

k. Allow an employee covered under the private plan who is eligible to take covered leave under this chapter to take covered leave under the private plan.

l. Providing that the cost to employees covered by a private plan is not greater than the cost charged to employees under the State program.

m. Provide an internal administrative review process and notice to employees of the option to appeal a final determination of the private plan to the Family and Medical Leave Insurance Appeal, consistent with § 3711 of this title.

(2) For a private plan to be approved as meeting an employer's obligations under this chapter, the private plan must also comply with all of the following:

a. If the private plan is in the form of self-insurance, the employer must furnish a bond running to the State, with a surety company authorized to transact business in this State as surety, in a form as may be approved by the Department and in an amount as may be required by the Department. This paragraph (a)(2)a. does not apply to public employers.

b. Provide for all eligible employees throughout their period of employment.

c. If the private plan provides for insurance, the policy must be issued by an admitted insurer, as defined under § 1904 of Title 18.

d. Submit a certification to the Department, in a form regulated by the Department, certifying that the plan meets the obligations of this chapter

(b) An employer may provide all family and medical leave coverage through an approved private plan or may provide 1 or more of medical leave coverage, family caregiving leave coverage, or parental leave coverage using an approved private plan and provide the remaining coverage not provided through an approved private plan using the State program.

(c) The Department may withdraw approval for an employer's use of a private plan granted under subsection (a) of this section when terms or conditions of the plan have been violated. The Department may withdraw approval for an employer's use of a private plan for any of the following:

(1) Failure to pay approved benefits.

(2) Failure to pay benefits timely and in a manner consistent with the State program.

(3) Failure to maintain an adequate security deposit.

(4) Misuse of private plan trust funds.

(5) Failure to submit reports to the Department as required by regulations adopted by the Department.

(6) Failure to comply with this chapter or the regulations adopted under this chapter.

(d) An employee covered by a private plan approved under this section retains all applicable rights under §§ 3707 and 3708 of this title.

(e) (1) Private benefits in existence on May 10, 2022, that the Department deems to be comparable to the Family and Medical Leave Program under § 3713 of this title qualify as a private plan under this chapter for a period of 5 years from the start of contribution payments under § 3705 of this title if the Department's approval of private plans under this subsection would not adversely impact the solvency of the Fund.

(2) The Department may determine comparable value through consideration of factors including wage replacement, length of leave, interrelated benefits, eligibility criteria, or frequency of allowed leave.

(3) An employer seeking to qualify as a private plan under this subsection must notify the Department before January 1, 2024.

(f) The Department's denial of an employer's application under subsection (a) of this section, withdrawal of approval for an employer's use of a private plan under subsection (c) of this section, and decision under subsection (e) of this section are subject to the appeal process under § 3711 of this title.

(g) An employer that meets the employer's obligations under this chapter through a private plan may provide benefits greater than those required under paragraph (a)(1) of this section.

(83 Del. Laws, c. 301, § 1.)

§ 3717. Small business opt-in.

(a) A small business may opt-in to provide parental leave benefits to its employees who are covered individuals. The small business may opt-in by providing notice to the Department in a manner determined by the Department. After the small business opts-in, the small business must remain opted-in for a period of at least 3 years and may opt-out of coverage for parental leave benefits with 12 months' notice to its employees and the Department, to take effect not sooner than the end of the 3-year period.

(b) A small business may opt-in to provide medical leave benefits to its employees who are covered individuals. The small business may opt-in by providing notice to the Department in a manner determined by the Department. After the small business opts-in, the small business must remain opted-in for a period of at least 3 years and may opt-out of coverage for medical leave benefits with 12 months' notice to its employees and the Department, to take effect not sooner than the end of the 3-year period.

(c) A small business may opt-in to provide family caregiving leave benefits to its employees who are covered individuals. The small business may opt-in by providing notice to the Department in a manner determined by the Department. After the small business opts-in, the small business must remain opted-in for a period of at least 3 years and may opt-out of coverage for family caregiving leave benefits with 12 months' notice to its employees and the Department, to take effect not sooner than the end of the 3-year period.

(83 Del. Laws, c. 301, § 1.)

§ 3718. Powers of the Department.

(a) The Department shall administer and enforce this chapter.

(b) A complaint, on a form created by the Department, may be filed with the Department for noncompliance with this chapter.

(c) (1) The Department may audit employers for compliance with this chapter, as determined by the Department.

(2) Nothing in this chapter limits the Department of Insurance's jurisdiction over an insurer issuing an approved private plan.

(d) The Department may do all of the following under the Department's audit and investigative authority to determine noncompliance with this chapter:

(1) Enter and inspect, after 1 day's notice to the employer, the premises or place of business or employment and, on demand, examine and copy, wholly or partly, any or all books, registers, payrolls, and other records, including those required to be made, kept, and preserved under this chapter.

(2) Question any employer, employee, or other person in the premises or place of business or employment.

(3) Require from an employer full and correct statements in writing, including sworn statements, on forms prescribed or approved by the Department, with respect to the compliance with this chapter, as the Department may deem necessary or appropriate.

(4) Investigate such facts, conditions, or matters as the Department may deem necessary or appropriate to determine whether this chapter has been or is being violated.

(5) Hold hearings, administer oaths, and examine witnesses under oath, issue subpoenas, compel the attendance of witnesses and the production of papers, books, accounts, records, payrolls, documents, and testimony, and take depositions and affidavits in any proceeding before the Department. If a person fails to comply with a subpoena lawfully issued or a witness refuses to testify to a matter that the witness may be lawfully interrogated, the Superior Court, on application by the Department, shall compel obedience as in the case of disobedience of the requirements of a subpoena issued from the Court or a refusal to testify to the Court.

(e) (1) Following an investigation in which the Department makes an initial determination that an employer has violated 1 or more provisions of this chapter, or an initial determination that a covered individual received an overpayment or violated § 3712 of this title, the Department shall notify the employer or covered individual of the initial determination and of any amounts owed and shall provide the employer or covered individual with an opportunity to appeal the Department's determination to the Family and Medical Leave Insurance Appeal Board ("Board"). If the Department finds a violation of this chapter, the Department may issue civil penalties under § 3719 of this title.

(2) An initial determination that is not appealed within 15 days of the date of the notice is deemed a final determination, and the employer or covered individual shall pay any payments or penalties included in the initial determination to the Fund.

(3) If the initial determination is appealed within 15 days from the date of the notice, the Board shall hear the appeal within a reasonable time.

(4) The Board shall conduct a hearing on appeal under the Administrative Procedures Act, Chapter 101 of Title 29, and the regulations adopted by the Board. The decision of the Board is final unless appealed to the Superior Court within 30 days.

(f) The Department may institute an action in a court of competent jurisdiction for overpayments, penalties, unpaid contributions, or violations of this chapter. In an action brought by the Department under this subsection where judgment is entered for the Department, a court may award costs and, when so awarded, the same amount of costs must be allowed, taxed, and collected as are allowed, taxed, and collected for like services in the court.

(g) The Department has exclusive authority to settle any claim related to noncompliance with this.

(h) Nothing in this chapter limits the Department's power or authority under other law of this State which may be otherwise applicable to administer or enforce this chapter.

(i) The Department may not be required to pay the filing fee or other costs of the action or fees of any nature or to file bond or other security of any nature in connection with an action under this chapter or with supplementary proceedings as a condition precedent to the availability of any process in aid of the action or proceedings. The Department may join various claimants in 1 cause of action.

(j) Nothing in this chapter prevents a person from pursuing an action at law or in equity against an employer arising under other applicable law.

(k) In addition to the methods of collection authorized by this chapter, the Department may collect a final determination of liability of an employer or covered individual to the Fund by any manner available under other law of this State, including by any manner that unemployment tax assessments may be collected under Chapter 33 of this title, including §§ 3358, 3360, 3361, 3363, 3368, and 3369 of this title.

(83 Del. Laws, c. 301, § 1.)

§ 3719. Penalties.

(a) An employer who violates or fails to comply with any requirement of this chapter, including failing to file reports as prescribed by the Department, failing to make contributions as required by this chapter, and failing to properly handle and remit wage deductions from employees to the Department, is deemed in violation of this chapter and is subject to a civil penalty of not less than $1,000 nor more than $5,000 for each violation.

(b) An 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 under this chapter, or because the employee has caused to be instituted or is about to cause to be instituted any proceedings under this chapter, or has testified or is about to testify in any proceedings is deemed in violation of this chapter and is subject to a civil penalty of not less than $1,000 nor more than $5,000 for each violation.

(c) A civil penalty claim may be filed in any court of competent jurisdiction.

(d) Funds from any civil penalty under this chapter, including an overpayment penalty as authorized by § 3712 of this title, must be deposited in the Fund.

(83 Del. Laws, c. 301, § 1.)

§ 3720. Regulations.

(a) The Department may adopt regulations as the Department deems necessary or appropriate to administer or enforce this chapter. Except as may be otherwise provided by the Department, a regulation adopted under this section takes effect on publication.

(b) The Department of Insurance may adopt regulations with respect to private plans under § 3716 of this title.

(83 Del. Laws, c. 301, § 1.)

§ 3721. Reports.

Beginning in 2027, the Department shall report to the General Assembly by April 1 of each year on projected and actual program participation by purpose under § 3702(a) of this title, gender of beneficiary, Fund balances, outreach efforts, and total utilization and amounts paid out of the Fund by category.

(83 Del. Laws, c. 301, § 1.)

§ 3722. Public education.

(a) The Department shall conduct a public education campaign to inform employees and employers regarding the availability of family and medical leave benefits.

(b) The Department may use a portion of the funds collected for the family and medical leave benefits program in a given year to pay for the public education program.

(c) Outreach information provided under this section must be available in English, Spanish, and other languages spoken by more than 5% of the state’s population.

(83 Del. Laws, c. 301, § 1.)

§ 3723. Sharing technology.

The Department is encouraged to use Delaware data collection and technology to the extent possible and to integrate the family and medical leave benefits program with existing state policies.

(83 Del. Laws, c. 301, § 1.)

§ 3724. Departmental report.

The Department shall, before July 1, 2029, submit a report to the General Assembly and the Governor on the family and medical leave insurance program. The report shall include information and data on program usage, program efficiency, finances, employee and employer program experience and feedback, program impact on recruitment, retention, cost, operations, worker morale, and productivity, and recommendations for program improvements.

(83 Del. Laws, c. 301, § 1.)

Part V
Miscellaneous Programs

Chapter 38
Delaware Expanding Access for Retirement and Necessary Saving Program [Effective upon fulfillment of 83 Del. Laws, c. 405, § 3]

(83 Del. Laws, c. 405, § 1.)

§ 3801. Establishment; purposes [Effective upon fulfillment of 83 Del. Laws, c. 405, § 3].

There is hereby established the Expanding Access for Retirement and Necessary Saving ("EARNS") Program to serve as a vehicle through which covered employees may, on a voluntary basis, provide for additional retirement security through a state-facilitated retirement saving program in a convenient, cost effective, and portable manner. The Program is designed as a public-private partnership that will encourage, not replace or compete with, employer-sponsored retirement plans.

(83 Del. Laws, c. 405, § 1.)

§ 3802. Definitions [Effective upon fulfillment of 83 Del. Laws, c. 405, § 3].

For purposes of this chapter:

(1) "Board" means the Delaware EARNS Program Board established under § 3803 of this title.

(2) "Covered employee" means an individual who is employed by a covered employer, and who has wages or other compensation allocable to the State. The Board may limit through regulation eligibility for specific categories of employees in order to avoid creating accounts that could increase administrative or management fees associated with available investment options. "Covered employee" does not include:

a. Any individual who is an employee of the federal government, the State or any other state, any county or municipal corporation, or any of the State's or any other state's agencies or instrumentalities.

b. Any employee covered under the federal Railway Labor Act [45 U.S.C. § 151 et seq.].

c. Any employee on whose behalf an employer makes contributions to a Taft-Hartley multiemployer pension plan [29 U.S.C. § 1002(37)].

d. Any employee who is ineligible for covered employee status under regulations promulgated by the Board.

e. Any employee under the age of 18.

(3) "Covered employer" means any person, partnership, limited liability company, corporation, or other entity engaged in a business, industry, profession, trade, or other enterprise in the State, including a nonprofit entity, that employs, and during the previous calendar year employed, at least 5 covered employees, and that has been in business in this State for at least 6 months in the immediately preceding calendar year. "Covered employer" does not include:

a. The federal government, the State, any other state, any county, any municipal corporation, or any of the State's or another state's agencies or instrumentalities.

b. Any employer that maintains a specified tax-favored retirement plan.

(4) "ERISA" means the federal Employee Retirement Income Security Act of 1974 [29 U.S.C. § 1001 et seq.], as amended.

(5) "Internal Revenue Code" means the federal Internal Revenue Code of 1986 [26 U.S.C. § 1 et seq.], as amended, or any successor law, in effect for the calendar year.

(6) "IRA" means a traditional or Roth individual retirement account or individual retirement annuity described in § 408(a), § 408(b), or § 408A of the Internal Revenue Code [26 U.S.C. § 408(a), § 408(b) or § 408A].

(7) "Participant" means any individual who is contributing to, or has a balance credited to, an IRA under the Program.

(8) "Participating employer" means a covered employer that makes the Program available to its employees through payroll deduction IRA arrangements under this chapter.

(9) "Payroll deduction IRA arrangement" means an arrangement by which a participating employer makes payroll deductions authorized by this chapter and remits the amounts deducted as contributions to IRAs on behalf of participants.

(10) "Plans Management Board" means the Board established by § 2722 of Title 29 to manage specified plans and programs created under the laws of this State.

(11) "Program" means the EARNS Program established by this chapter. Except as otherwise specified, references to the Program throughout this chapter also mean the trust, including trust assets, facilities, costs and expenses, receipts, expenditures, activities, operations, administration, and management.

(12) "Program expenses" means all fees, costs, and expenses of the State related to the Program, including administrative expenses, investment expenses, consulting fees, accounting costs, auditing costs, legal fees and costs, marketing expenses, education expenses, and other miscellaneous costs incurred in the implementation and continuation of the Program.

(13) "Roth IRA" means an IRA described in § 408A of the Internal Revenue Code [26 U.S.C. § 408A].

(14) "Specified tax-favored retirement plan" means a retirement plan that is an automatic enrollment payroll deduction IRA applicable to all covered employees and meeting all other qualifications that may be established by the Board, or a retirement plan qualified under, or described in, and in compliance with § 401(a), § 401(k), § 403(b), § 408(k), or § 408(p) of the Internal Revenue Code [26 U.S.C. § 401(a), § 401(k), § 403(b), § 408(k), or § 408(p)].

(15) "Traditional IRA" means an IRA described in § 408(a) or (b) of the Internal Revenue Code [26 U.S.C. § 408(a)].

(16) "Trust" means the trust in which assets of the Program are to be held, including contributions and investment earnings.

(17) "Wages" means any commission, compensation, salary or other remuneration, as defined by § 219(f)(1) of the Internal Revenue Code [26 U.S.C. § 219(f)(1)] received by a participant from a participating employer.

(83 Del. Laws, c. 405, § 1.)

§ 3803. The Delaware EARNS Program Board; establishment; purpose [Effective upon fulfillment of 83 Del. Laws, c. 405, § 3] [Repealed upon fulfillment of the provisons in subsection (h) of this section].

(a) The Delaware EARNS Program Board is hereby established. The Board shall oversee the design, implementation and initial administration of the Program in accordance with this chapter.

(b) The Board shall consist of 7 members comprised of the following:

(1) Four members shall serve by virtue of their office, each of whom may designate a person to serve in their stead and at their pleasure:

a. The State Treasurer.

b. The Secretary of Finance.

c. The Insurance Commissioner.

d. The Secretary of Labor.

(2) One member who is the chairperson of the Plans Management Board, who may designate a member of the Plans Management Board or 1 of its committees to serve in the chairperson's stead and at the pleasure of the chairperson.

(3) Two public members appointed by the Governor who, by reason of education or experience, are qualified to serve. One public member must be an owner of a small business in the State. The other public member must have experience in providing financial advice or assistance to lower- to moderate-income workers or retirees. Public members' initial term shall be for 2 years, subject to earlier termination upon dissolution of the Board as provided in this chapter.

(c) *Board voting, governance and meetings. —*

(1) Each board member shall have 1 vote. The powers of the Board shall be exercised by a majority of all members present at a meeting of the Board, whether in person or remotely. Four members shall constitute the necessary quorum to convene a meeting of the Board and to act on any measure before it.

(2) The Governor shall appoint a board chairperson from between the public members. The chairperson as such shall serve at the pleasure of the Governor.

(3) The Board shall meet at a minimum of 4 times annually. The board chairperson and the State Treasurer are authorized to call and set the agenda for special meetings of the Board.

(4) The Board and its committees may conduct meetings remotely by teleconference or videoconference, including in order to obtain a quorum and to take votes on any measure.

(5) Meetings and documents relating to investment strategy or negotiations concerning investment of program money shall be exempt from Chapter 100 of Title 29.

(d) *Standard of care. —*

(1) The Board, its committees, and each of their members shall discharge their duties with respect to the Program solely in the interest of the participants and beneficiaries of the Program and for the exclusive purpose of providing program benefits to participants and their beneficiaries, including defraying reasonable expenses in administering the Program and in accordance with the trust and other program documents and applicable law.

(2) When investing, managing, or using trust assets, the Board, its committees, and each of the members shall act with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use to attain the purposes of the Program.

(e) *Powers and duties. —*

(1) The Board shall establish, design, develop, implement, maintain, and oversee the Program in accordance with best practices for retirement saving vehicles.

(2) The Board shall, through employer and employee outreach, marketing or education initiatives, or publication of online resources, encourage participation, retirement saving and sound investment practices. The Board shall provide or make available information

regarding the Program, including its applicability and registration requirements, with special emphasis on participation eligibility and the ability of employers at any time to sponsor a specified tax-favored retirement plan that would exempt them from covered employer status.

(3) The Board shall adopt rules or regulations to govern the Program, including rules or regulations governing the following:

a. Employee eligibility and covered employer status.

b. Enrollment and re-enrollment processes.

c. The methods by which covered employees or participants may make and change elections.

d. The means by which covered employees or participants may opt out of participation.

e. Contribution limits, the initial automatic default contribution rate, the automatic annual default escalation rate and the maximum default contribution rate.

The Board may adopt rules or regulations allowing employers that are exempt under this chapter to voluntarily participate in the Program and extending eligibility to participate in the Program to individuals who are not employees, including unemployed individuals, self-employed individuals and other independent contractors.

(4) The Board is authorized to charge and collect reasonable administrative fees from participants and use such fees, as well as appropriations and other funds dedicated to supporting the Program, to defray reasonable program expenses.

(5) The Board may establish committees. Committee membership may include persons who are not members of the full Board.

(6) Subject to applicable procurement requirements, the Board may enter into contracts, agreements, or arrangements for goods and services necessary or desirable for carrying out the purposes of this chapter, including recordkeeping, administrative, consulting, accounting, legal, asset management, and investment advisory services to assist in establishing, maintaining, administering, operating, and implementing the Program. The Board may discuss the opportunity for qualified minority-, woman-, veteran-, and disabled-owned financial firms, or firms with a record of equity, diversity and inclusion within the firm, as a provider of investment advisory services.

(7) The Board may effect this chapter's purpose by creating or entering into, on behalf of the Program, a consortium, alliance, joint venture, partnership, compact, or contract with another state or states or their programs or boards, which may modify the Board's duties under this chapter.

(8) The Board shall establish the trust. The trust shall include a participant fund that shall hold all participant IRA asserts and earnings and an administrative fund that shall hold all fees collected from participants, all administrative penalties recovered under this chapter, and other amounts received from other funding sources, other than appropriations and earnings thereon. Participant contributions shall be allocated to the participant fund and combined solely for investment purposes. Each participant shall own the contributions to and earnings on the participant's account. Program expenses shall be paid from the administrative fund or appropriations. Trust assets shall not be transferred or used by the Board for any purpose not expressly authorized by this chapter and shall not be commingled with state or nonprogram funds.

(9) The Board shall adopt an investment policy statement and select investment options, including default investment options, consistent with the objectives of the Program. The menu of investment options may encompass a range of risk and return opportunities and shall be determined taking into account the following:

a. The nature and objectives of the Program.

b. The diverse needs of participants.

c. The desirability of limiting investment choices under the Program to a reasonable number.

d. The extensive investment choices available to participants if program accounts roll over to an IRA outside of the Program.

(10) The Board shall ensure that the Program is designed and operated in a manner that will not cause it to be subject to or preempted by ERISA.

(11) The Board shall ensure that the Program is designed and operated to:

a. Minimize costs to participants, employers and the Program.

b. Minimize the risk that covered employees will exceed applicable annual contribution limits.

c. Minimize any need for employers that are not covered employers to register with the Program.

d. Facilitate and encourage employer and employee participation in the Program and participant saving.

e. Provide resources to any employer that, as an alternative to the Program, may be interested in adopting a privately-offered tax-favored retirement plan for its employees.

f. Maximize simplicity, including ease of administration for participating employers and ease of use for participants.

g. Maximize portability of participant accounts.

h. Maximize financial security in retirement.

(12) The Board may arrange for collective, common, and pooled investment of assets of the Program, including investments in conjunction with other funds with which program assets are permitted to be collectively invested, with a view to saving costs through efficiencies and economies of scale.

(13) The Board shall arrange for and facilitate compliance with all requirements applicable to the Program under the Internal Revenue Code, including requirements for favorable tax treatment of IRAs, and any other applicable law or regulation.

(14) The Board may accept on behalf of the Program any grants, gifts, appropriation, and other money from any person, governmental, or other entity to defray the costs of administering and operating the Program.

(15) The Board may implement the Program in stages, which may include phasing in the Program based on the size of employers, or other factors. To the extent practicable, the Board shall implement the Program so that covered employees can begin to participate and make contributions by January 1, 2025.

(16) The Board shall approve the annual administrative budget for the Program and oversee the collection and disbursement of money in the administrative fund.

(17) The Board, in the exercise of its sole discretion, and without liability, may remove program funds from any financial institution or investment vehicle at any time, provided that such funds shall at all times remain in the trust and be transferred promptly to an alternative financial institution or investment vehicle under the Program.

(18) The Board shall arrange for an annual financial audit of the Program by an outside auditor which shall be provided to the General Assembly. Notwithstanding § 2906(c) of Title 29, the Board shall have exclusive authority to select and contract with a certified public accounting firm to conduct the audits. Payment for any audit must be approved by the Board.

(19) The Board may enter into intergovernmental agreements or memoranda of understanding with the State and any agency or instrumentality of the State in order to further the successful implementation and operation of the Program through the provision, receipt, or other sharing of data, technical assistance, enforcement, compliance, collection, and other services or assistance to the Program, and all such agencies and instrumentalities shall cooperate with the Board in achieving those ends.

(20) The Board may establish a needs-based small business support grant program for covered employers who require payroll software or similar products or support to implement the Program. The grant program may be funded by appropriations or administrative fees. The grant program shall be subject to the annual administrative budget process. The Board shall prescribe rules and promulgate regulations governing eligibility for grant recipients, the grant application process, and terms and conditions for any award. The Board shall be responsible for providing oversight for the grant program. The Office of the State Treasurer shall administer the grant program and shall report to the Board regarding grant program operations when requested to do so by the Board.

(f) *Compensation; exculpation; indemnification.* —

(1) Members may not receive compensation for serving on the Board or its committees. Except for ex officio members, all members are entitled to reimbursement by the State for travel and other expenses incurred in attending meetings of the Board or a committee. A state employee appointed to the Board is permitted to count the time spent attending or traveling to and from board meetings or board committees, as part of the employee's regular work day and shall not be required to use leave time.

(2) Each board and committee member is entitled to immunity under the provisions of Chapter 40 of Title 10 for civil liability resulting from acts or omissions arising out of and in connection with discretionary actions undertaken as a function of a member's responsibilities under this chapter if that member acted in good faith and in a manner the member reasonably believed to be in the best interest of the State, and without gross or wanton negligence.

a. A board or a committee member is not personally liable for any act or omission made during the member's tenure, or for any loss incurred by any person as a result of participation in the Program.

b. The State shall indemnify each board or committee member who is a party to or is threatened to be made a party to any potential, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, or investigative, arising by reason of such member's participation on the Board or a committee, for any expenses, judgments, fines, costs, and amounts paid in settlement if actually and reasonably incurred in defending against the action, suit or proceeding. Indemnification is conditioned on the member having acted in good faith and in a manner the member reasonably believed to be in the best interest of the State. With respect to indemnification for a criminal matter, the member must also have had no reasonable cause to believe the member's conduct was unlawful.

c. In the event that the Attorney General is precluded from providing legal representation to a member under § 2504(3) of Title 29, the State shall indemnify a member for reasonable and actual attorneys' fees and disbursements a member incurs in defending against the action, suit or proceeding.

d. Any expenses incurred by a board or committee member in defending a civil, administrative, or investigative action, suit, or proceeding arising as a result of the member's activities as a member of the Board may be paid by the State in advance of the final disposition of the action, suit, or proceeding on authorization by a majority of the members of the Board and by the Governor.

(g) The Board and its committees shall receive administrative support from the Office of the State Treasurer. The Office of the State Treasurer is authorized to and shall initiate and manage all procurement and regulatory processes related to the Program and carry out such other program-related functions as may be delegated by the Board.

(h) Unless terminated earlier as provided in this subsection, the Board shall disband and cease to exist, effective as of December 31, 2025, at which point all duties and functions of the Board under this chapter shall be transferred to and assumed by the Plans Management Board. At any time after full implementation of the Program, the Board, by majority vote, may disband and transfer no less than all of

its duties and authority under this chapter to the Plans Management Board provided that the Plans Management Board, by majority vote, agrees to assume all such duties and authority prior to December 31, 2025.

(83 Del. Laws, c. 405, § 1.)

§ 3804. The Program [Effective upon fulfillment of 83 Del. Laws, c. 405, § 3].

The Program shall have such features as the Board in its discretion may adopt, subject to applicable federal law, and the following mandatory provisions:

(1) Each participant may have only 1 account with the Program, and all participating employers shall promptly remit the participant's contributions under the Program to that account.

(2) Employers and nonparticipants may not contribute funds to program accounts.

(3) Employers shall not be fiduciaries with respect to, or be liable for, program design, program-related information, educational materials, or forms or disclosures approved by the Board, or the selection or performance of vendors selected by the Board. No employer, the State or any agency or instrumentality of the State, the Program, its administrator or personnel, shall be responsible for, or obligated to monitor a covered employee's or participant's decision to participate in or opt out of the Program, or for contribution decisions, investment decisions, or failure to comply with the statutory eligibility conditions or limits on IRA contributions. No employer shall guarantee any investment, rate of return, or interest on assets in any participant account or the administrative fund or be liable for any market losses, failure to realize gains, or any other adverse consequences, including the loss of favorable tax treatment or public assistance benefits, incurred by any person as a result of participating in the Program. Nothing in this subsection shall relieve an employer from liability for criminal, fraudulent, tortious or otherwise actionable conduct, including liability related to the failure to remit employee contributions.

(4) When and as required by the Board, covered employers shall:

a. Register with the Program and provide the program administrator relevant information about the employer's employees.

b. Offer or assist the Program in offering all covered employees the choice to either participate in the Program by voluntarily contributing to an IRA under the Program or opt out of the Program.

c. Provide or assist the program administrator in providing program-related information, educational materials, and disclosures to covered employees and participants.

d. Timely remit participant contributions.

e. Perform any other duties or functions the Board may require to facilitate enrollment and administration of the Program.

(5) Covered employees who do not opt out shall be automatically enrolled in the Program at the default rate specified by the Board or at the rate or amount expressly specified by an employee in connection with the payroll deduction IRA arrangements. Participants shall have the right to modify their contribution rates or amounts, or terminate their participation in the Program at any time, subject to such rules as may be adopted by the Board.

(6) The initial automatic default contribution rate shall be established by the Board in its discretion.

a. The automatic default contribution rate may be changed by the Board from time to time. It shall not be less than 3% nor more than 6% of compensation.

b. The Board may determine in its discretion to increase the automatic default contribution rate for all participants based on their years of participation, provided that such increases shall be either 1% or 2% of compensation and shall not occur more frequently than annually.

c. The maximum default contribution rate established by the Board shall not exceed 15%.

d. The initial or subsequent default contribution rates shall apply to all participants who do not affirmatively select a different initial or subsequent contribution rate, or who do not affirmatively opt out of automatic contribution rate increases.

e. All contribution rates are subject to the dollar limits on contributions provided by law.

(7) Except as otherwise provided in this chapter, all IRAs established under the Program shall be Roth IRAs. The Board may authorize participants to utilize traditional IRAs in connection with the Program and allocate contributions between Roth and traditional IRAs, subject in all cases to the IRA contribution and income eligibility limits applicable under the Internal Revenue Code. If the Board authorizes participants to maintain both Roth and traditional IRAs, each shall be deemed to be a sub-account of the participant's single account under the Program consistent with paragraph (1) of this section.

(8) Contributions shall be invested in the default investment option unless the participant affirmatively elects to invest some or all balances in 1 or more approved investment options offered by the Program. A participant shall have the opportunity to change investments for future contributions or existing balances or both, subject to rules adopted by the Board.

(9) A participant's total annual contributions under the Program shall be subject to the limits established under federal law.

(10) A participant's contributions and earnings thereon shall be held in the trust and combined for investment purposes only. Separate records and accounting shall be required for each account. Reports on the status of each participant's account must be provided to each participant at least annually. Participants must have online access to their accounts.

(11) A participant's account shall be portable with respect to any covered or participating employer. A former participant who is either unemployed, or who is employed by a noncovered employer, shall be permitted to contribute to accounts outside of the Program. A participant shall be entitled to maintain an account within the Program regardless of place of employment or to roll over or transfer balances into other IRAs or other retirement plans or accounts that accept such rollovers or transfers.

(12) A participant's and former participant's ability to withdraw or roll over or transfer account balances is subject to all fees, penalties, and taxes under applicable law.

(13) A participant's and former participant's ability to receive distributions of contributions and earnings is subject to applicable law.

(14) Information relating to accounts under the Program, including personally identifiable information, is confidential and shall be maintained as confidential except to the extent disclosure is necessary to administer the Program, authorized by the participant in writing, or permissible or required under other applicable law, regulation, or order.

(83 Del. Laws, c. 405, § 1.)

§ 3805. Compliance [Effective upon fulfillment of 83 Del. Laws, c. 405, § 3].

(a) The Board shall have exclusive authority to ensure compliance with and enforce this chapter or any regulation promulgated under this chapter.

(b) The Board shall establish a process for the submission of employee complaints concerning a covered employer's alleged failure to comply with this chapter. All complaints concerning a covered employer's compliance with this chapter received by any other state agency shall be referred to the Board. The Board may, with or without a complaint, monitor the status of covered employers' compliance with this chapter, including through review of available data and documents.

(c) If the Board determines that a covered employer is not in compliance with this chapter or regulations issued hereunder, the Board shall issue a notice to the employer outlining the nature and extent of the alleged noncompliance, providing instructions for compliance, and specifying the potential administrative penalties for noncompliance.

(d) If the employer does not come into compliance within 90 days of the date the notice was issued, the Board, in its discretion, may initiate enforcement proceedings under subchapter III, Chapter 101 of Title 29. The Board shall not initiate enforcement proceedings against a covered employer until 1 year after the date on which the employer is required to comply with this chapter for the first time.

(e) The Board may, in a final order, impose administrative penalties against a covered employer who fails to comply with this chapter or any regulation promulgated under this chapter, which penalties shall not exceed $250 per employee per year, up to a maximum total penalty of $5,000 per year.

(83 Del. Laws, c. 405, § 1.)