Legislative Council,
General Assembly
State of Delaware

Title 6

Commerce and Trade

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Subtitle I
Uniform Commercial Code

Article 1
General Provisions

Part 1
General Provisions

§ 1-101 Short titles.

(a) This subtitle may be cited as the Uniform Commercial Code.

(b) This article may be cited as Uniform Commercial Code — General Provisions.

(5A Del. C. 1953, § 1-101; 55 Del. Laws, c. 349; 74 Del. Laws, c. 332, § 1.)

§ 1-102 Scope of article.

This article applies to a transaction to the extent that it is governed by another article of the Uniform Commercial Code.

(74 Del. Laws, c. 332, § 1.)

§ 1-103 Construction of Uniform Commercial Code to promote its purposes and policies; applicability of supplemental principles of law.

(a) The Uniform Commercial Code must be liberally construed and applied to promote its underlying purposes and policies, which are:

(1) To simplify, clarify, and modernize the law governing commercial transactions;

(2) To permit the continued expansion of commercial practices through custom, usage, and agreement of the parties; and

(3) To make uniform the law among the various jurisdictions.

(b) Unless displaced by the particular provisions of the Uniform Commercial Code, the principles of law and equity, including the law merchant and the law relative to capacity to contract, principal and agent, estoppel, fraud, misrepresentation, duress, coercion, mistake, bankruptcy, and other validating or invalidating cause supplement its provisions.

(5A Del. C. 1953, § 1-102; 55 Del. Laws, c. 349; 74 Del. Laws, c. 332, § 1.)

§ 1-104 Construction against implied repeal.

The Uniform Commercial Code being a general act intended as a unified coverage of its subject matter, no part of it shall be deemed to be impliedly repealed by subsequent legislation if such construction can reasonably be avoided.

(74 Del. Laws, c. 332, § 1.)

§ 1-105 Severability.

If any provision or clause of the Uniform Commercial Code or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the Uniform Commercial Code which can be given effect without the invalid provision or application, and to this end the provisions of the Uniform Commercial Code are severable.

(74 Del. Laws, c. 332, § 1.)

§ 1-106 Use of singular and plural; gender.

In the Uniform Commercial Code, unless the statutory context otherwise requires:

(1) Words in the singular number include the plural, and those in the plural include the singular; and

(2) Words of any gender also refer to any other gender.

(74 Del. Laws, c. 332, § 1.)

§ 1-107 Section captions.

Section captions are part of the Uniform Commercial Code.

(74 Del. Laws, c. 332, § 1.)

§ 1-108 Relation to Electronic Signatures in Global and National Commerce Act.

This subtitle modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act, (15 U.S.C. § 7001, et seq.) but does not modify, limit, or supersede § 101(c) of that act (15 U.S.C. § 7001(c)) or authorize electronic delivery of any of the notices described in § 103(b) of that act (15 U.S.C. § 7003(b)).

(74 Del. Laws, c. 332, § 1.)

Part 2
General Definitions and Principles of Interpretation

§ 1-201 General definitions.

(a) Unless the context otherwise requires, words or phrases defined in this section, or in the additional definitions contained in other articles of the Uniform Commercial Code that apply to particular articles or parts thereof, have the meanings stated.

(b) Subject to definitions contained in other articles of the Uniform Commercial Code that apply to particular articles or parts thereof:

(1) "Action", in the sense of a judicial proceeding, includes recoupment, counterclaim, set-off, suit in equity, and any other proceeding in which rights are determined.

(2) "Aggrieved party" means a party entitled to pursue a remedy.

(3) "Agreement", as distinguished from "contract", means the bargain of the parties in fact, as found in their language or inferred from other circumstances, including course of performance, course of dealing, or usage of trade as provided in Section 1-303.

(4) "Bank" means a person engaged in the business of banking and includes a savings bank, savings and loan association, credit union, and trust company.

(5) "Bearer" means a person in control of a negotiable electronic document of title or a person in possession of a negotiable instrument, negotiable tangible document of title, or certificated security that is payable to bearer or indorsed in blank.

(6) "Bill of lading" means a document of title evidencing the receipt of goods for shipment issued by a person engaged in the business of directly or indirectly transporting or forwarding goods. The term does not include a warehouse receipt.

(7) "Branch" includes a separately incorporated foreign branch of a bank.

(8) "Burden of establishing" a fact means the burden of persuading the trier of fact that the existence of the fact is more probable than its nonexistence.

(9) "Buyer in ordinary course of business" means a person that buys goods in good faith, without knowledge that the sale violates the rights of another person in the goods, and in the ordinary course from a person, other than a pawnbroker, in the business of selling goods of that kind. A person buys goods in the ordinary course if the sale to the person comports with the usual or customary practices in the kind of business in which the seller is engaged or with the seller's own usual or customary practices. A person that sells oil, gas, or other minerals at the wellhead or minehead is a person in the business of selling goods of that kind. A buyer in ordinary course of business may buy for cash, by exchange of other property, or on secured or unsecured credit, and may acquire goods or documents of title under a preexisting contract for sale. Only a buyer that takes possession of the goods or has a right to recover the goods from the seller under Article 2 may be a buyer in ordinary course of business. "Buyer in ordinary course of business" does not include a person that acquires goods in a transfer in bulk or as security for or in total or partial satisfaction of a money debt.

(10) "Conspicuous", with reference to a term, means so written, displayed, or presented that a reasonable person against which it is to operate ought to have noticed it. Whether a term is "conspicuous" or not is a decision for the court. Conspicuous terms include the following:

(A) A heading in capitals equal to or greater in size than the surrounding text, or in contrasting type, font, or color to the surrounding text of the same or lesser size; and

(B) Language in the body of a record or display in larger type than the surrounding text, or in contrasting type, font, or color to the surrounding text of the same size, or set off from surrounding text of the same size by symbols or other marks that call attention to the language.

(11) "Consumer" means an individual who enters into a transaction primarily for personal, family, or household purposes

(12) "Contract", as distinguished from "agreement", means the total legal obligation that results from the parties' agreement as determined by the Uniform Commercial Code as supplemented by any other applicable laws.

(13) "Creditor" includes a general creditor, a secured creditor, a lien creditor, and any representative of creditors, including an assignee for the benefit of creditors, a trustee in bankruptcy, a receiver in equity, and an executor or administrator of an insolvent debtor's or assignor's estate.

(14) "Defendant" includes a person in the position of defendant in a counterclaim, cross-claim, or third-party claim.

(15) "Delivery", with respect to an electronic document of title means voluntary transfer of control and with respect to an instrument, a tangible document of title, or chattel paper, means voluntary transfer of possession.

(16) "Document of title" means a record (i) that in the regular course of business or financing is treated as adequately evidencing that the person in possession or control of the record is entitled to receive, control, hold, and dispose of the record and the goods the record covers and (ii) that purports to be issued by or addressed to a bailee and to cover goods in the bailee's possession which are either identified or are fungible portions of an identified mass. The term includes a bill of lading, transport document, dock warrant, dock receipt, warehouse receipt, and order for delivery of goods. An electronic document of title means a document of title evidenced by a record consisting of information stored in an electronic medium. A tangible document of title means a document of title evidenced by a record consisting of information that is inscribed on a tangible medium.

(17) “Fault” means a default, breach, or wrongful act or omission.

(18) “Fungible goods” means:

(A) Goods of which any unit, by nature or usage of trade, is the equivalent of any other like unit; or

(B) Goods that by agreement are treated as equivalent.

(19) “Genuine” means free of forgery or counterfeiting.

(20) “Good faith”, except as otherwise provided in Article 5, means honesty in fact and the observance of reasonable commercial standards of fair dealing.

(21) “Holder” means:

(A) The person in possession of a negotiable instrument that is payable either to bearer or to an identified person that is the person in possession; or

(B) The person in possession of a negotiable tangible document of title if the goods are deliverable either to bearer or to the order of the person in possession; or

(C) The person in control of a negotiable electronic document of title.

(22) “Insolvency proceeding” includes an assignment for the benefit of creditors or other proceeding intended to liquidate or rehabilitate the estate of the person involved.

(23) “Insolvent” means:

(A) Having generally ceased to pay debts in the ordinary course of business other than as a result of bona fide dispute;

(B) Being unable to pay debts as they become due; or

(C) Being insolvent within the meaning of federal bankruptcy law.

(24) “Money” means a medium of exchange currently authorized or adopted by a domestic or foreign government. The term includes a monetary unit of account established by an intergovernmental organization or by agreement between two or more countries.

(25) “Organization” means a person other than an individual.

(26) “Party”, as distinguished from “third party”, means a person that has engaged in a transaction or made an agreement subject to the Uniform Commercial Code.

(27) “Person” means an individual, corporation, business trust, statutory trust, estate, trust, partnership, limited liability company, association, joint venture, government, governmental subdivision, agency, or instrumentality, public corporation, any other legal or commercial entity, or any series of any of the foregoing.

(28) “Present value” means the amount as of a date certain of one or more sums payable in the future, discounted to the date certain by use of either an interest rate specified by the parties if that rate is not manifestly unreasonable at the time the transaction is entered into or, if an interest rate is not so specified, a commercially reasonable rate that takes into account the facts and circumstances at the time the transaction is entered into.

(29) “Purchase” means taking by sale, lease, discount, negotiation, mortgage, pledge, lien, security interest, issue or reissue, gift, or any other voluntary transaction creating an interest in property.

(30) “Purchaser” means a person that takes by purchase.

(31) “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.

(32) “Remedy” means any remedial right to which an aggrieved party is entitled with or without resort to a tribunal.

(33) “Representative” means a person empowered to act for another, including an agent, an officer of a corporation or association, and a trustee, executor, or administrator of an estate.

(34) “Right” includes remedy.

(35) “Security interest” means an interest in personal property or fixtures which secures payment or performance of an obligation. “Security interest” includes any interest of a consignor and a buyer of accounts, chattel paper, a payment intangible, or a promissory note in a transaction that is subject to Article 9. “Security interest” does not include the special property interest of a buyer of goods on identification of those goods to a contract for sale under § 2-401, but a buyer may also acquire a “security interest” by complying with Article 9. Except as otherwise provided in § 2-505, the right of a seller or lessor of goods under Article 2 or 2A to retain or acquire possession of the goods is not a “security interest”, but a seller or lessor may also acquire a “security interest” by complying with Article 9. The retention or reservation of title by a seller of goods notwithstanding shipment or delivery to the buyer under § 2-401 is limited in effect to a reservation of a “security interest.” Whether a transaction in the form of a lease creates a “security interest” is determined pursuant to § 1-203.

(36) “Send” in connection with a writing, record, or notice means:

(A) To deposit in the mail or deliver for transmission by any other usual means of communication with postage or cost of transmission provided for and properly addressed and, in the case of an instrument, to an address specified thereon or otherwise agreed, or if there be none to any address reasonable under the circumstances; or

(B) In any other way to cause to be received any record or notice within the time it would have arrived if properly sent.

(37) "Signed" includes using any symbol executed or adopted with present intention to adopt or accept a writing.

(38) "State" means a State of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(39) "Surety" includes a guarantor or other secondary obligor.

(40) "Term" means a portion of an agreement that relates to a particular matter.

(41) "Unauthorized signature" means a signature made without actual, implied, or apparent authority. The term includes a forgery.

(42) "Warehouse receipt" means a document of title issued by a person engaged in the business of storing goods for hire.

(43) "Writing" includes printing, typewriting, or any other intentional reduction to tangible form. "Written" has a corresponding meaning.

(5A Del. C. 1953, § 1-201; 55 Del. Laws, c. 349; 64 Del. Laws, c. 152, § 2; 68 Del. Laws, c. 249, § 3; 70 Del. Laws, c. 86, § 1; 72 Del. Laws, c. 401, §§ 3-5; 73 Del. Laws, c. 329, § 5; 73 Del. Laws, c. 330, § 2; 74 Del. Laws, c. 332, § 1; 80 Del. Laws, c. 305, § 1; 81 Del. Laws, c. 353, § 1.)

§ 1-202 Notice; knowledge.

(a) Subject to subsection (f), a person has "notice" of a fact if the person:

(1) Has actual knowledge of it;

(2) Has received a notice or notification of it; or

(3) From all the facts and circumstances known to the person at the time in question, has reason to know that it exists.

(b) "Knowledge" means actual knowledge. "Knows" has a corresponding meaning.

(c) "Discover", "learn", or words of similar import refer to knowledge rather than to reason to know.

(d) A person "notifies" or "gives" a notice or notification to another person by taking such steps as may be reasonably required to inform the other person in ordinary course, whether or not the other person actually comes to know of it.

(e) Subject to subsection (f), a person "receives" a notice or notification when:

(1) It comes to that person's attention; or

(2) It is duly delivered in a form reasonable under the circumstances at the place of business through which the contract was made or at another location held out by that person as the place for receipt of such communications.

(f) Notice, knowledge, or a notice or notification received by an organization is effective for a particular transaction from the time it is brought to the attention of the individual conducting that transaction and, in any event, from the time it would have been brought to the individual's attention if the organization had exercised due diligence. An organization exercises due diligence if it maintains reasonable routines for communicating significant information to the person conducting the transaction and there is reasonable compliance with the routines. Due diligence does not require an individual acting for the organization to communicate information unless the communication is part of the individual's regular duties or the individual has reason to know of the transaction and that the transaction would be materially affected by the information.

(5A Del. C. 1953, § 1-201; 55 Del. Laws, c. 349; 64 Del. Laws, c. 152, § 2; 68 Del. Laws, c. 249, § 3; 70 Del. Laws, c. 86, § 1; 72 Del. Laws, c. 401, §§ 3-5; 73 Del. Laws, c. 329, § 5; 73 Del. Laws, c. 330, § 2; 74 Del. Laws, c. 332, § 1.)

§ 1-203 Lease distinguished from security interest.

(a) Whether a transaction in the form of a lease creates a lease or security interest is determined by the facts of each case.

(b) A transaction in the form of a lease creates a security interest if the consideration that the lessee is to pay the lessor for the right to possession and use of the goods is an obligation for the term of the lease and is not subject to termination by the lessee, and:

(1) The original term of the lease is equal to or greater than the remaining economic life of the goods;

(2) The lessee is bound to renew the lease for the remaining economic life of the goods or is bound to become the owner of the goods;

(3) The lessee has an option to renew the lease for the remaining economic life of the goods for no additional consideration or for nominal additional consideration upon compliance with the lease agreement; or

(4) The lessee has an option to become the owner of the goods for no additional consideration or for nominal additional consideration upon compliance with the lease agreement.

(c) A transaction in the form of a lease does not create a security interest merely because:

(1) The present value of the consideration the lessee is obligated to pay the lessor for the right to possession and use of the goods is substantially equal to or is greater than the fair market value of the goods at the time the lease is entered into;

(2) The lessee assumes risk of loss of the goods;

(3) The lessee agrees to pay, with respect to the goods, taxes, insurance, filing, recording, or registration fees, or service or maintenance costs;

(4) The lessee has an option to renew the lease or to become the owner of the goods;

(5) The lessee has an option to renew the lease for a fixed rent that is equal to or greater than the reasonably predictable fair market rent for the use of the goods for the term of the renewal at the time the option is to be performed; or

(6) The lessee has an option to become the owner of the goods for a fixed price that is equal to or greater than the reasonably predictable fair market value of the goods at the time the option is to be performed.

(d) Additional consideration is nominal if it is less than the lessee's reasonably predictable cost of performing under the lease agreement if the option is not exercised. Additional consideration is not nominal if:

(1) When the option to renew the lease is granted to the lessee, the rent is stated to be the fair market rent for the use of the goods for the term of the renewal determined at the time the option is to be performed; or

(2) When the option to become the owner of the goods is granted to the lessee, the price is stated to be the fair market value of the goods determined at the time the option is to be performed.

(e) The "remaining economic life of the goods" and "reasonably predictable" fair market rent, fair market value, or cost of performing under the lease agreement must be determined with reference to the facts and circumstances at the time the transaction is entered into.

(74 Del. Laws, c. 332, § 1.)

§ 1-204 Value.

Except as otherwise provided in Articles 3, 4, and 5, a person gives value for rights if the person acquires them:

(1) In return for a binding commitment to extend credit or for the extension of immediately available credit, whether or not drawn upon and whether or not a charge-back is provided for in the event of difficulties in collection;

(2) As security for, or in total or partial satisfaction of, a preexisting claim;

(3) By accepting delivery under a preexisting contract for purchase; or

(4) In return for any consideration sufficient to support a simple contract.

(74 Del. Laws, c. 332, § 1.)

§ 1-205 Reasonable time; seasonableness.

(a) Whether a time for taking an action required by the Uniform Commercial Code is reasonable depends on the nature, purpose, and circumstances of the action.

(b) An action is taken seasonably if it is taken at or within the time agreed or, if no time is agreed, at or within a reasonable time.

(74 Del. Laws, c. 332, § 1.)

§ 1-206 Presumptions.

Whenever the Uniform Commercial Code creates a "presumption" with respect to a fact, or provides that a fact is "presumed," the trier of fact must find the existence of the fact unless and until evidence is introduced that supports a finding of its nonexistence.

(74 Del. Laws, c. 332, § 1.)

Part 3

Territorial Applicability and General Rules

§ 1-301 Territorial applicability; parties' power to choose applicable law.

(a) Except as otherwise provided in this section, when a transaction bears a reasonable relation to this State and also to another state or nation the parties may agree that the law either of this State or of such other state or nation shall govern their rights and duties.

(b) In the absence of an agreement effective under subsection (a), and except as provided in subsection (c), the Uniform Commercial Code applies to transactions bearing an appropriate relation to this state.

(c) If one of the following provisions of the Uniform Commercial Code specifies the applicable law, that provision governs and a contrary agreement is effective only to the extent permitted by the law so specified:

(1) Section 2-402;

(2) Sections 2A-105 and 2A-106;

(3) Section 4-102;

(4) Section 4A-507;

(5) Section 5-116;

(6) Section 8-110;

(7) Sections 9-301 through 9-307.

(5A Del. C. 1953. § 1-105; 55 Del. Laws, c. 349; 64 Del. Laws, c. 152, § 1; 68 Del. Laws, c. 249, § 2; 68 Del. Laws, c. 430, § 2; 70 Del. Laws, c. 439, § 2; 71 Del. Laws, c. 75, § 16; 71 Del. Laws, c. 393, § 2; 72 Del. Laws, c. 401, § 2; 73 Del. Laws, c. 330, § 1; 74 Del. Laws, c. 332, § 1.)

§ 1-302 Variation by agreement.

(a) Except as otherwise provided in subsection (b) or elsewhere in the Uniform Commercial Code, the effect of provisions of the Uniform Commercial Code may be varied by agreement.

(b) The obligations of good faith, diligence, reasonableness, and care prescribed by the Uniform Commercial Code may not be disclaimed by agreement. The parties, by agreement, may determine the standards by which the performance of those obligations is to be measured if those standards are not manifestly unreasonable. Whenever the Uniform Commercial Code requires an action to be taken within a reasonable time, a time that is not manifestly unreasonable may be fixed by agreement.

(c) The presence in certain provisions of the Uniform Commercial Code of the phrase "unless otherwise agreed", or words of similar import, does not imply that the effect of other provisions may not be varied by agreement under this section.

(74 Del. Laws, c. 332, § 1.)

§ 1-303 Course of performance, course of dealing, and usage of trade.

(a) A "course of performance" is a sequence of conduct between the parties to a particular transaction that exists if:

(1) The agreement of the parties with respect to the transaction involves repeated occasions for performance by a party; and

(2) The other party, with knowledge of the nature of the performance and opportunity for objection to it, accepts the performance or acquiesces in it without objection.

(b) A "course of dealing" is a sequence of conduct concerning previous transactions between the parties to a particular transaction that is fairly to be regarded as establishing a common basis of understanding for interpreting their expressions and other conduct.

(c) A "usage of trade" is any practice or method of dealing having such regularity of observance in a place, vocation, or trade as to justify an expectation that it will be observed with respect to the transaction in question. The existence and scope of such a usage must be proved as facts. If it is established that such a usage is embodied in a trade code or similar record, the interpretation of the record is a question of law.

(d) A course of performance or course of dealing between the parties or usage of trade in the vocation or trade in which they are engaged or of which they are or should be aware is relevant in ascertaining the meaning of the parties' agreement, may give particular meaning to specific terms of the agreement, and may supplement or qualify the terms of the agreement. A usage of trade applicable in the place in which part of the performance under the agreement is to occur may be so utilized as to that part of the performance.

(e) Except as otherwise provided in subsection (f), the express terms of an agreement and any applicable course of performance, course of dealing, or usage of trade must be construed whenever reasonable as consistent with each other. If such a construction is unreasonable:

(1) Express terms prevail over course of performance, course of dealing, and usage of trade;

(2) Course of performance prevails over course of dealing and usage of trade; and

(3) Course of dealing prevails over usage of trade.

(f) Subject to § 2-209, a course of performance is relevant to show a waiver or modification of any term inconsistent with the course of performance.

(g) Evidence of a relevant usage of trade offered by one party is not admissible unless that party has given the other party notice that the court finds sufficient to prevent unfair surprise to the other party.

(5A Del. C. 1953, § 1-205; 55 Del. Laws, c. 349; 74 Del. Laws, c. 332, § 1.)

§ 1-304 Obligation of good faith.

Every contract or duty within the Uniform Commercial Code imposes an obligation of good faith in its performance and enforcement.

(5A Del. C. 1953, § 1-203; 55 Del. Laws, c. 349; 74 Del. Laws, c. 332, § 1.)

§ 1-305 Remedies to be liberally administered.

(a) The remedies provided by the Uniform Commercial Code must be liberally administered to the end that the aggrieved party may be put in as good a position as if the other party had fully performed but neither consequential or special damages nor penal damages may be had except as specifically provided in the Uniform Commercial Code or by other rule of law.

(b) Any right or obligation declared by the Uniform Commercial Code is enforceable by action unless the provision declaring it specifies a different and limited effect.

(5A Del. C. 1953, § 1-106; 55 Del. Laws, c. 349; 74 Del. Laws, c. 332, § 1.)

§ 1-306 Waiver or renunciation of claim or right after breach.

A claim or right arising out of an alleged breach may be discharged in whole or in part without consideration by agreement of the aggrieved party in an authenticated record.

(5A Del. C. 1953, § 1-107; 55 Del. Laws, c. 349; 74 Del. Laws, c. 332, § 1.)

§ 1-307 Prima facie evidence by third-party documents.

A document in due form purporting to be a bill of lading, policy or certificate of insurance, official weigher's or inspector's certificate, consular invoice, or any other document authorized or required by the contract to be issued by a third party is prima facie evidence of its own authenticity and genuineness and of the facts stated in the document by the third party.

(5A Del. C. 1953, § 1-202; 55 Del. Laws, c. 349; 74 Del. Laws, c. 332, § 1.)

§ 1-308 Performance or acceptance under reservation of rights.

(a) A party that with explicit reservation of rights performs or promises performance or assents to performance in a manner demanded or offered by the other party does not thereby prejudice the rights reserved. Such words as “without prejudice,” “under protest,” or the like are sufficient.

(b) Subsection (a) does not apply to an accord and satisfaction.

(5A Del. C. 1953, § 1-207; 55 Del. Laws, c. 349; 70 Del. Laws, c. 86, § 2; 74 Del. Laws, c. 332, § 1.)

§ 1-309 Option to accelerate at will.

A term providing that one party or that party’s successor in interest may accelerate payment or performance or require collateral or additional collateral “at will” or when the party “deems itself insecure,” or words of similar import, means that the party has power to do so only if that party in good faith believes that the prospect of payment or performance is impaired. The burden of establishing lack of good faith is on the party against which the power has been exercised.

(5A Del. C. 1953, § 1-208; 55 Del. Laws, c. 349; 74 Del. Laws, c. 332, § 1.)

§ 1-310 Subordinated obligations.

An obligation may be issued as subordinated to performance of another obligation of the person obligated, or a creditor may subordinate its right to performance of an obligation by agreement with either the person obligated or another creditor of the person obligated. Subordination does not create a security interest as against either the common debtor or a subordinated creditor.

(74 Del. Laws, c. 332, § 1.)

Subtitle I
Uniform Commercial Code
Article 2
Sales
Part 1
Short Title, General Construction and Subject Matter

§ 2-101 Short title.

This Article shall be known and may be cited as Uniform Commercial Code — Sales.

(5A Del. C. 1953, § 2-101; 55 Del. Laws, c. 349.)

§ 2-102 Scope; certain security and other transactions excluded from this article.

Unless the context otherwise requires, this Article applies to transactions in goods; it does not apply to any transaction which although in the form of an unconditional contract to sell or present sale is intended to operate only as a security transaction nor does this Article impair or repeal any statute regulating sales to consumers, farmers or other specified classes of buyers.

(5A Del. C. 1953, § 2-102; 55 Del. Laws, c. 349.)

§ 2-103 Definitions and index of definitions.

(1) In this Article unless the context otherwise requires:

(a) "Buyer" means a person who buys or contracts to buy goods.

(b) [Repealed.]

(c) "Receipt" of goods means taking physical possession of them.

(d) "Seller" means a person who sells or contracts to sell goods.

(2) Other definitions applying to this Article or to specified Parts thereof, and the sections in which they appear are:

"Acceptance". Section 2-606.

"Banker's credit". Section 2-325.

"Between merchants". Section 2-104.

"Cancellation". Section 2-106(4).

"Commercial unit". Section 2-105.

"Confirmed credit". Section 2-325.

"Conforming to contract". Section 2-106.

"Contract for sale". Section 2-106.

"Cover". Section 2-712.

"Entrusting". Section 2-403.

"Financing agency". Section 2-104.

"Future goods". Section 2-105.

"Goods". Section 2-105.

"Identification". Section 2-501.

"Installment contract". Section 2-612.

"Letter of Credit". Section 2-325.

"Lot". Section 2-105.

"Merchant". Section 2-104.

"Overseas". Section 2-323.

"Person in position of seller". Section 2-707.

"Present sale". Section 2-106.

"Sale". Section 2-106.

"Sale on approval". Section 2-326.

"Sale or return". Section 2-326.

"Termination". Section 2-106.

(3) "Control" as provided in § 7-106 and the following definitions in other Articles apply to this Article:

"Check". Section 3-104.

"Consignee". Section 7-102.

"Consignor". Section 7-102.

"Consumer goods". Section 9-102.

"Dishonor". Section 3-502.

"Draft". Section 3-104.

(4) In addition Article 1 contains general definitions and principles of construction and interpretation applicable throughout this Article.

(5A Del. C. 1953, § 2-103; 55 Del. Laws, c. 349; 72 Del. Laws, c. 401, § 6; 74 Del. Laws, c. 332, §§ 2, 3.)

§ 2-104 Definitions: "merchant"; "between merchants"; "financing agency."

(1) "Merchant" means a person who deals in goods of the kind or otherwise by his or her occupation holds himself or herself out as having knowledge or skill peculiar to the practices or goods involved in the transaction or to whom such knowledge or skill may be attributed by his or her employment of an agent or broker or other intermediary who by his occupation holds himself or herself out as having such knowledge or skill.

(2) "Financing agency" means a bank, finance company or other person who in the ordinary course of business makes advances against goods or documents of title or who by arrangement with either the seller or the buyer intervenes in ordinary course to make or collect payment due or claimed under the contract for sale, as by purchasing or paying the seller's draft or making advances against it or by merely taking it for collection whether or not documents of title accompany or are associated with the draft. "Financing agency" includes also a bank or other person who similarly intervenes between persons who are in the position of seller and buyer in respect to the goods (§ 2-707).

(3) "Between merchants" means in any transaction with respect to which both parties are chargeable with the knowledge or skill of merchants.

(5A Del. C. 1953, § 2-104; 55 Del. Laws, c. 349; 70 Del. Laws, c. 186, § 1; 74 Del. Laws, c. 332, § 4.)

§ 2-105 Definitions: transferability; "goods"; "future goods"; "lot"; "commercial unit."

(1) "Goods" means all things (including specially manufactured goods) which are movable at the time of identification to the contract for sale other than the money in which the price is to be paid, investment securities (Article 8) and things in action. "Goods" also includes the unborn young of animals and growing crops and other identified things attached to realty as described in the section on goods to be severed from realty (Section 2-107).

(2) Goods must be both existing and identified before any interest in them can pass. Goods which are not both existing and identified are "future" goods. A purported present sale of future goods or of any interest therein operates as a contract to sell.

(3) There may be a sale of a part interest in existing identified goods.

(4) An undivided share in an identified bulk of fungible goods is sufficiently identified to be sold although the quantity of the bulk is not determined. Any agreed proportion of such a bulk or any quantity thereof agreed upon by number, weight or other measure may to the extent of the seller's interest in the bulk be sold to the buyer who then becomes an owner in common.

(5) "Lot" means a parcel or a single article which is the subject matter of a separate sale or delivery, whether or not it is sufficient to perform the contract.

(6) "Commercial unit" means such a unit of goods as by commercial usage is a single whole for purposes of sale and division of which materially impairs its character or value on the market or in use. A commercial unit may be a single article (as a machine) or a set of articles (as a suite of furniture or an assortment of sizes) or a quantity (as a bale, gross, or carload) or any other unit treated in use or in the relevant market as a single whole.

(5A Del. C. 1953, § 2-105; 55 Del. Laws, c. 349.)

§ 2-106 Definitions: "contract"; "agreement"; "contract for sale"; "sale"; "present sale"; "conforming" to contract; "termination"; "cancellation."

(1) In this Article unless the context otherwise requires "contract" and "agreement" are limited to those relating to the present or future sale of goods. "Contract for sale" includes both a present sale of goods and a contract to sell goods at a future time. A "sale" consists in the passing of title from the seller to the buyer for a price (Section 2-401). A "present sale" means a sale which is accomplished by the making of the contract.

(2) Goods or conduct including any part of a performance are "conforming" or conform to the contract when they are in accordance with the obligations under the contract.

(3) "Termination" occurs when either party pursuant to a power created by agreement or law puts an end to the contract otherwise than for its breach. On "termination" all obligations which are still executory on both sides are discharged but any right based on prior breach or performance survives.

(4) "Cancellation" occurs when either party puts an end to the contract for breach by the other and its effect is the same as that of "termination" except that the cancelling party also retains any remedy for breach of the whole contract or any unperformed balance.

(5A Del. C. 1953, § 2-106; 55 Del. Laws, c. 349.)

§ 2-107 Goods to be severed from realty; recording.

(1) A contract for the sale of minerals or the like (including oil and gas) or a structure or its materials to be removed from realty is a contract for the sale of goods within this Article if they are to be severed by the seller but until severance a purported present sale thereof which is not effective as a transfer of an interest in land is effective only as a contract to sell.

(2) A contract for the sale apart from the land of growing crops or other things attached to realty and capable of severance without material harm thereto but not described in subsection (1) or of timber to be cut is a contract for the sale of goods within this Article whether the subject matter is to be severed by the buyer or by the seller even though it forms part of the realty at the time of contracting, and the parties can by identification effect a present sale before severance.

(3) The provisions of this section are subject to any third party rights provided by the law relating to realty records, and the contract for sale may be executed and recorded as a document transferring an interest in land and shall then constitute notice to third parties of the buyer's rights under the contract for sale.

(5A Del. C. 1953, § 2-107; 55 Del. Laws, c. 349; 64 Del. Laws, c. 152, § 3.)

Part 2

Form, Formation and Readjustment of Contract

§ 2-201 Formal requirements; statute of frauds.

(1) Except as otherwise provided in this section a contract for the sale of goods for the price of $500 or more is not enforceable by way of action or defense unless there is some writing sufficient to indicate that a contract for sale has been made between the parties and signed by the party against whom enforcement is sought or by his or her authorized agent or broker. A writing is not insufficient because it omits or incorrectly states a term agreed upon but the contract is not enforceable under this paragraph beyond the quantity of goods shown in such writing.

(2) Between merchants if within a reasonable time a writing in confirmation of the contract and sufficient against the sender is received and the party receiving it has reason to know its contents, it satisfies the requirements of subsection (1) against such party unless written notice of objection to its contents is given within ten days after it is received.

(3) A contract which does not satisfy the requirements of subsection (1) but which is valid in other respects is enforceable.

(a) if the goods are to be specially manufactured for the buyer and are not suitable for sale to others in the ordinary course of the seller's business and the seller, before notice of repudiation is received and under circumstances which reasonably indicate that the goods are for the buyer, has made either a substantial beginning of their manufacture or commitments for their procurement; or

(b) if the party against whom enforcement is sought admits in his or her pleading, testimony or otherwise in court that a contract for sale was made, but the contract is not enforceable under this provision beyond the quantity of goods admitted; or

(c) with respect to goods for which payment has been made and accepted or which have been received and accepted (Section 2-606).

(5A Del. C. 1953, § 2-201; 55 Del. Laws, c. 349; 70 Del Laws, c. 186, § 1.)

§ 2-202 Final written expression: parol or extrinsic evidence.

Terms with respect to which the confirmatory memoranda of the parties agree or which are otherwise set forth in a writing intended by the parties as a final expression of their agreement with respect to such terms as are included therein may not be contradicted by evidence of any prior agreement or of a contemporaneous oral agreement but may be explained or supplemented

(a) By course of performance, course of dealing, or usage of trade (§ 1-303); and

(b) By evidence of consistent additional terms unless the court finds the writing to have been intended also as a complete and exclusive statement of the terms of the agreement.

(5A Del. C. 1953, § 2-202; 55 Del. Laws, c. 349; 74 Del. Laws, c. 332, § 5.)

§ 2-203 Seals inoperative.

The affixing of a seal to a writing evidencing a contract for sale or an offer to buy or sell goods does not constitute the writing a sealed instrument and the law with respect to sealed instruments does not apply to such a contract or offer.

(5A Del. C. 1953, § 2-203; 55 Del. Laws, c. 349.)

§ 2-204 Formation in general.

(1) A contract for sale of goods may be made in any manner sufficient to show agreement, including conduct by both parties which recognizes the existence of such a contract.

(2) An agreement sufficient to constitute a contract for sale may be found even though the moment of its making is undetermined.

(3) Even though one or more terms are left open a contract for sale does not fail for indefiniteness if the parties have intended to make a contract and there is a reasonably certain basis for giving an appropriate remedy.

(5A Del. C. 1953, § 2-204; 55 Del. Laws, c. 349.)

§ 2-205 Firm offers.

An offer by a merchant to buy or sell goods in a signed writing which by its terms gives assurance that it will be held open is not revocable, for lack of consideration, during the time stated or if no time is stated for a reasonable time, but in no event may such period of irrevocability exceed three months; but any such term of assurance on a form supplied by the offeree must be separately signed by the offeror.

(5A Del. C. 1953, § 2-205; 55 Del. Laws, c. 349.)

§ 2-206 Offer and acceptance in formation of contract.

(1) Unless otherwise unambiguously indicated by the language or circumstances

(a) an offer to make a contract shall be construed as inviting acceptance in any manner and by any medium reasonable in the circumstances;

(b) an order or other offer to buy goods for prompt or current shipment shall be construed as inviting acceptance either by a prompt promise to ship or by the prompt or current shipment of conforming or non-conforming goods, but such a shipment of non-conforming goods does not constitute an acceptance if the seller seasonably notifies the buyer that the shipment is offered only as an accommodation to the buyer.

(2) Where the beginning of a requested performance is a reasonable mode of acceptance an offeror who is not notified of acceptance within a reasonable time may treat the offer as having lapsed before acceptance.

(5A Del. C. 1953, § 2-206; 55 Del. Laws, c. 349.)

§ 2-207 Additional terms in acceptance or confirmation.

(1) A definite and seasonable expression of acceptance or a written confirmation which is sent within a reasonable time operates as an acceptance even though it states terms additional to or different from those offered or agreed upon, unless acceptance is expressly made conditional on assent to the additional or different terms.

(2) The additional terms are to be construed as proposals for addition to the contract. Between merchants such terms become part of the contract unless:

(a) the offer expressly limits acceptance to the terms of the offer;

(b) they materially alter it; or

(c) notification of objection to them has already been given or is given within a reasonable time after notice of them is received.

(3) Conduct by both parties which recognizes the existence of a contract is sufficient to establish a contract for sale although the writings of the parties do not otherwise establish a contract. In such case the terms of the particular contract consist of those terms on which the writings of the parties agree, together with any supplementary terms incorporated under this subtitle.

(5A Del. C. 1953, § 2-207; 55 Del. Laws, c. 349.)

§ 2-208 [Reserved.]

§ 2-209 Modification, rescission and waiver.

(1) An agreement modifying a contract within this Article needs no consideration to be binding.

(2) A signed agreement which excludes modification or rescission except by a signed writing cannot be otherwise modified or rescinded, but except as between merchants such a requirement on a form supplied by the merchant must be separately signed by the other party.

(3) The requirements of the statute of frauds section of this Article (Section 2-201) must be satisfied if the contract as modified is within its provisions.

(4) Although an attempt at modification or rescission does not satisfy the requirements of subsection (2) or (3) it can operate as a waiver.

(5) A party who has made a waiver affecting an executory portion of the contract may retract the waiver by reasonable notification received by the other party that strict performance will be required of any term waived, unless the retraction would be unjust in view of a material change of position in reliance on the waiver.

(5A Del. C. 1953, § 2-209; 55 Del. Laws, c. 349.)

§ 2-210 Delegation of performance; assignment of rights.

(1) A party may perform his or her duty through a delegate unless otherwise agreed or unless the other party has a substantial interest in having his or her original promisor perform or control the acts required by the contract. No delegation of performance relieves the party delegating of any duty to perform or any liability for breach.

(2) Except as otherwise provided in Section 9-406, unless otherwise agreed all rights of either seller or buyer can be assigned except where the assignment would materially change the duty of the other party, or increase materially the burden or risk imposed on him or her by his or her contract, or impair materially his or her chance of obtaining return performance. A right to damages for breach of the whole contract or a right arising out of the assignor's due performance of his or her entire obligation can be assigned despite agreement otherwise.

(3) The creation, attachment, perfection, or enforcement of a security interest in the seller's interest under a contract is not a transfer that materially changes the duty of or increases materially the burden or risk imposed on the buyer or impairs materially the buyer's chance of

obtaining return performance within the purview of subsection (2) unless, and then only to the extent that, enforcement actually results in a delegation of material performance of the seller. Even in that event, the creation, attachment, perfection, and enforcement of the security interest remain effective, but (i) the seller is liable to the buyer for damages caused by the delegation to the extent that the damages could not reasonably be prevented by the buyer, and (ii) a court having jurisdiction may grant other appropriate relief, including cancellation of the contract for sale or an injunction against enforcement of the security interest or consummation of the enforcement.

(4) Unless the circumstances indicate the contrary a prohibition of assignment of "the contract" is to be construed as barring only the delegation to the assignee of the assignor's performance.

(5) An assignment of "the contract" or of "all my rights under the contract" or an assignment in similar general terms is an assignment of rights and unless the language or the circumstances (as in an assignment for security) indicate the contrary, it is a delegation of performance of the duties of the assignor and its acceptance by the assignee constitutes a promise by him or her to perform those duties. This promise is enforceable by either the assignor or the other party to the original contract.

(6) The other party may treat any assignment which delegates performance as creating reasonable grounds for insecurity and may without prejudice to his or her rights against the assignor demand assurances from the assignee (Section 2-609).

(5A Del. C. 1953, § 2-210; 55 Del. Laws, c. 349; 70 Del. Laws, c. 186, § 1; 72 Del. Laws, c. 401, § 7.)

Part 3

General Obligation and Construction of Contract

§ 2-301 General obligations of parties.

The obligation of the seller is to transfer and deliver and that of the buyer is to accept and pay in accordance with the contract.

(5A Del. C. 1953, § 2-301; 55 Del. Laws, c. 349.)

§ 2-302 Unconscionable contract or clause.

(1) If the court as a matter of law finds the contract or any clause of the contract to have been unconscionable at the time it was made the court may refuse to enforce the contract, or it may enforce the remainder of the contract without the unconscionable clause, or it may so limit the application of any unconscionable clause as to avoid any unconscionable result.

(2) When it is claimed or appears to the court that the contract or any clause thereof may be unconscionable the parties shall be afforded a reasonable opportunity to present evidence as to its commercial setting, purpose and effect to aid the court in making the determination.

(5A Del. C. 1953, § 2-302; 55 Del. Laws, c. 349.)

§ 2-303 Allocation or division of risks.

Where this Article allocates a risk or a burden as between the parties "unless otherwise agreed", the agreement may not only shift the allocation but may also divide the risk or burden.

(5A Del. C. 1953, § 2-303; 55 Del. Laws, c. 349.)

§ 2-304 Price payable in money, goods, realty, or otherwise.

(1) The price can be made payable in money or otherwise. If it is payable in whole or in part in goods each party is a seller of the goods which he or she is to transfer.

(2) Even though all or part of the price is payable in an interest in realty the transfer of the goods and the seller's obligations with reference to them are subject to this Article, but not the transfer of the interest in realty or the transferor's obligations in connection therewith.

(5A Del. C. 1953, § 2-304; 55 Del. Laws, c. 349; 70 Del. Laws, c. 186, § 1.)

§ 2-305 Open price term.

(1) The parties if they so intend can conclude a contract for sale even though the price is not settled. In such a case the price is a reasonable price at the time for delivery if

(a) nothing is said as to price; or

(b) the price is left to be agreed by the parties and they fail to agree; or

(c) the price to be fixed in terms of some agreed market or other standard as set or recorded by a third person or agency and it is not so set or recorded.

(2) A price to be fixed by the seller or by the buyer means a price for him or her to fix in good faith.

(3) When a price left to be fixed otherwise than by agreement of the parties fails to be fixed through fault of one party the other may at his or her option treat the contract as cancelled or himself or herself fix a reasonable price.

(4) Where, however, the parties intend not to be bound unless the price be fixed or agreed and it is not fixed or agreed there is no contract. In such a case the buyer must return any goods already received or if unable so to do must pay their reasonable value at the time of delivery and the seller must return any portion of the price paid on account.

(5A Del. C. 1953, § 2-305; 55 Del. Laws, c. 349; 70 Del. Laws, c. 186, § 1.)

§ 2-306 Output, requirements and exclusive dealings.

(1) A term which measures the quantity by the output of the seller or the requirements of the buyer means such actual output or requirements as may occur in good faith, except that no quantity unreasonably disproportionate to any stated estimate or in the absence of a stated estimate to any normal or otherwise comparable prior output or requirements may be tendered or demanded.

(2) A lawful agreement by either the seller or the buyer for exclusive dealing in the kind of goods concerned imposes unless otherwise agreed an obligation by the seller to use best efforts to supply the goods and by the buyer to use best efforts to promote their sale.

(5A Del. C. 1953, § 2-306; 55 Del. Laws, c. 349.)

§ 2-307 Delivery in single lot or several lots.

Unless otherwise agreed all goods called for by a contract for sale must be tendered in a single delivery and payment is due only on such tender but where the circumstances give either party the right to make or demand delivery in lots the price if it can be apportioned may be demanded for each lot.

(5A Del. C. 1953, § 2-307; 55 Del. Laws, c. 349.)

§ 2-308 Absence of specified place for delivery.

Unless otherwise agreed

(a) the place for delivery of goods is the seller's place of business or if he or she has none his or her residence; but

(b) in a contract for sale of identified goods which to the knowledge of the parties at the time of contracting are in some other place, that place is the place for their delivery; and

(c) documents of title may be delivered through customary banking channels.

(5A Del. C. 1953, § 2-308; 55 Del. Laws, c. 349; 70 Del. Laws, c. 186, § 1.)

§ 2-309 Absence of specific time provisions; notice of termination.

(1) The time for shipment or delivery or any other action under a contract if not provided in this Article or agreed upon shall be a reasonable time.

(2) Where the contract provides for successive performances but is indefinite in duration it is valid for a reasonable time but unless otherwise agreed may be terminated at any time by either party.

(3) Termination of a contract by one party except on the happening of an agreed event requires that reasonable notification be received by the other party and an agreement dispensing with notification is invalid if its operation would be unconscionable.

(5A Del. C. 1953, § 2-309; 55 Del. Laws, c. 349.)

§ 2-310 Open time for payment or running of credit; authority to ship under reservation.

Unless otherwise agreed

(a) payment is due at the time and place at which the buyer is to receive the goods even though the place of shipment is the place of delivery; and

(b) if the seller is authorized to send the goods he or she may ship them under reservation, and may tender the documents of title, but the buyer may inspect the goods after their arrival before payment is due unless such inspection is inconsistent with the terms of the contract (Section 2-513); and

(c) if delivery is authorized and made by way of documents of title otherwise than by subsection (b) then payment is due regardless of where the goods are to be received (i) at the time and place at which the buyer is to receive delivery of the tangible documents or (ii) at the time the buyer is to receive delivery of the electronic documents and at the seller's place of business or if none, the seller's residence; and

(d) where the seller is required or authorized to ship the goods on credit the credit period runs from the time of shipment but post-dating the invoice or delaying its dispatch will correspondingly delay the starting of the credit period.

(5A Del. C. 1953, § 2-310; 55 Del. Laws, c. 349; 70 Del. Laws, c. 186, § 1; 74 Del. Laws, c. 332, § 7.)

§ 2-311 Options and cooperation respecting performance.

(1) An agreement for sale which is otherwise sufficiently definite (subsection (3) of Section 2-204) to be a contract is not made invalid by the fact that it leaves particulars of performance to be specified by one of the parties. Any such specification must be made in good faith and within limits set by commercial reasonableness.

(2) Unless otherwise agreed specifications relating to assortment of the goods are at the buyer's option and except as otherwise provided in subsections (1)(c) and (3) of Section 2-319 specifications or arrangements relating to shipment are at the seller's option.

(3) Where such specification would materially affect the other party's performance but is not seasonably made or where one party's cooperation is necessary to the agreed performance of the other but is not seasonably forthcoming, the other party in addition to all other remedies

(a) is excused for any resulting delay in his or her own performance; and

(b) may also either proceed to perform in any reasonable manner or after the time for a material part of his or her own performance treat the failure to specify or to cooperate as a breach by failure to deliver or accept the goods.

(5A Del. C. 1953, § 2-311; 55 Del. Laws, c. 349; 70 Del. Laws, c. 186, § 1.)

§ 2-312 Warranty of title and against infringement; buyer's obligation against infringement.

(1) Subject to subsection (2) there is in a contract for sale a warranty by the seller that

(a) the title conveyed shall be good, and its transfer rightful; and

(b) the goods shall be delivered free from any security interest or other lien or encumbrance of which the buyer at the time of contracting has no knowledge.

(2) A warranty under subsection (1) will be excluded or modified only by specific language or by circumstances which give the buyer reason to know that the person selling does not claim title in himself or herself or that he or she is purporting to sell only such right or title as he or she or a third person may have.

(3) Unless otherwise agreed a seller who is a merchant regularly dealing in goods of the kind warrants that the goods shall be delivered free of the rightful claim of any third person by way of infringement or the like but a buyer who furnishes specifications to the seller must hold the seller harmless against any such claim which arises out of compliance with the specifications.

(5A Del. C. 1953, § 2-312; 55 Del. Laws, c. 349; 70 Del. Laws, c. 186, § 1.)

§ 2-313 Express warranties by affirmation, promise, description, sample.

(1) Express warranties by the seller are created as follows:

(a) Any affirmation of fact or promise made by the seller to the buyer which relates to the goods and becomes part of the basis of the bargain creates an express warranty that the goods shall conform to the affirmation or promise.

(b) Any description of the goods which is made part of the basis of the bargain creates an express warranty that the goods shall conform to the description.

(c) Any sample or model which is made part of the basis of the bargain creates an express warranty that the whole of the goods shall conform to the sample or model.

(2) It is not necessary to the creation of an express warranty that the seller use formal words such as "warrant" or "guarantee" or that he or she have a specific intention to make a warranty, but an affirmation merely of the value of the goods or a statement purporting to be merely the seller's opinion or commendation of the goods does not create a warranty.

(5A Del. C. 1953, § 2-313; 55 Del. Laws, c. 349; 70 Del. Laws, c. 186, § 1.)

§ 2-314 Implied warranty; merchantability; usage of trade.

(1) Unless excluded or modified (Section 2-316), a warranty that the goods shall be merchantable is implied in a contract for their sale if the seller is a merchant with respect to goods of that kind. Under this section the serving for value of food or drink to be consumed either on the premises or elsewhere is a sale.

(2) Goods to be merchantable must be at least such as

(a) pass without objection in the trade under the contract description; and

(b) in the case of fungible goods, are of fair average quality within the description; and

(c) are fit for the ordinary purposes for which such goods are used; and

(d) run, within the variations permitted by the agreement, of even kind, quality and quantity within each unit and among all units involved; and

(e) are adequately contained, packaged, and labeled as the agreement may require; and

(f) conform to the promises or affirmations of fact made on the container or label if any.

(3) Unless excluded or modified (Section 2-316) other implied warranties may arise from course of dealing or usage of trade.

(5A Del. C. 1953, § 2-314; 55 Del. Laws, c. 349.)

§ 2-315 Implied warranty; fitness for particular purpose.

Where the seller at the time of contracting has reason to know any particular purpose for which the goods are required and that the buyer is relying on the seller's skill or judgment to select or furnish suitable goods, there is unless excluded or modified under the next section an implied warranty that the goods shall be fit for such purpose.

(5A Del. C. 1953, § 2-315; 55 Del. Laws, c. 349.)

§ 2-316 Exclusion or modification of warranties.

(1) Words or conduct relevant to the creation of an express warranty and words or conduct tending to negate or limit warranty shall be construed wherever reasonable as consistent with each other; but subject to the provisions of this Article on parol or extrinsic evidence (Section 2-202) negation or limitation is inoperative to the extent that such construction is unreasonable.

(2) Subject to subsection (3), to exclude or modify the implied warranty of merchantability or any part of it the language must mention merchantability and in case of a writing must be conspicuous, and to exclude or modify any implied warranty of fitness the exclusion must be by a writing and conspicuous. Language to exclude all implied warranties of fitness is sufficient if it states, for example, that "There are no warranties which extend beyond the description on the face hereof."

(3) Notwithstanding subsection (2)

(a) unless the circumstances indicate otherwise, all implied warranties are excluded by expressions like "as is", "with all faults" or other language which in common understanding calls the buyer's attention to the exclusion of warranties and makes plain that there is no implied warranty; and

(b) when the buyer before entering into the contract has examined the goods or the sample or model as fully as he or she desired or has refused to examine the goods there is no implied warranty with regard to defects which an examination ought in the circumstances to have revealed to him or her; and

(c) an implied warranty can also be excluded or modified by course of dealing or course of performance or usage of trade.

(4) Remedies for breach of warranty can be limited in accordance with the provisions of this Article on liquidation or limitation of damages and on contractual modification of remedy (Sections 2-718 and 2-719).

(5) The implied warranties of merchantability and fitness shall not be applicable to a contract for the sale of human blood, blood plasma or other human tissue or organs from a blood bank or reservoir of such other tissues or organs. Such blood, blood plasma or tissue or organs shall not for the purposes of this Article be considered commodities or goods subject to sale or barter, but shall be considered as medical services.

(5A Del. C. 1953, § 2-316; 55 Del. Laws, c. 349; 55 Del. Laws, c. 391; 70 Del. Laws, c. 186, § 1.)

§ 2-317 Cumulation and conflict of warranties express or implied.

Warranties whether express or implied shall be construed as consistent with each other and as cumulative, but if such construction is unreasonable the intention of the parties shall determine which warranty is dominant. In ascertaining that intention the following rules apply:

(a) Exact or technical specifications displace an inconsistent sample or model or general language of description.

(b) A sample from an existing bulk displaces inconsistent general language of description.

(c) Express warranties displace inconsistent implied warranties other than an implied warranty of fitness for a particular purpose.

(5A Del. C. 1953, § 2-317; 55 Del. Laws, c. 349.)

§ 2-318 Third party beneficiaries of warranties express or implied.

A seller's warranty whether express or implied extends to any natural person who may reasonably be expected to use, consume or be affected by the goods and who is injured by breach of the warranty. A seller may not exclude or limit the operation of this section.

(5A Del. C. 1953, § 2-318; 55 Del. Laws, c. 349.)

§ 2-319 F.O.B. and F.A.S. terms.

(1) Unless otherwise agreed the term F.O.B. (which means "free on board") at a named place, even though used only in connection with the stated price, is a delivery term under which

(a) when the term is F.O.B. the place of shipment, the seller must at that place ship the goods in the manner provided in this Article (Section 2-504) and bear the expense and risk of putting them into the possession of the carrier; or

(b) when the term is F.O.B. the place of destination, the seller must at his or her own expense and risk transport the goods to that place and there tender delivery of them in the manner provided in this Article (Section 2-503);

(c) when under either (a) or (b) the term is also F.O.B. vessel, car or other vehicle, the seller must in addition at his or her own expense and risk load the goods on board. If the term is F.O.B. vessel the buyer must name the vessel and in an appropriate case the seller must comply with the provisions of this Article on the form of bill of lading (Section 2-323).

(2) Unless otherwise agreed the term F.A.S. vessel (which means "free alongside") at a named port, even though used only in connection with the stated price, is a delivery term under which the seller must

(a) at his or her own expense and risk deliver the goods alongside the vessel in the manner usual in that port or on a dock designated and provided by the buyer; and

(b) obtain and tender a receipt for the goods in exchange for which the carrier is under a duty to issue a bill of lading.

(3) Unless otherwise agreed in any case falling within subsection (1) (a) or (c) or subsection (2) the buyer must seasonably give any needed instructions for making delivery, including when the term is F.A.S. or F.O.B. the loading berth of the vessel and in an appropriate case its name and sailing date. The seller may treat the failure of needed instructions as a failure of cooperation under this Article (Section 2-311). He or she may also at his or her option move the goods in any reasonable manner preparatory to delivery or shipment.

(4) Under the term F.O.B. vessel or F.A.S. unless otherwise agreed the buyer must make payment against tender of the required documents and the seller may not tender nor the buyer demand delivery of the goods in substitution for the documents.

(5A Del. C. 1953, § 2-319; 55 Del. Laws, c. 349; 70 Del. Laws, c. 186, § 1.)

§ 2-320 C.I.F. and C. & F. terms.

(1) The term C.I.F. means that the price includes in a lump sum the cost of the goods and the insurance and freight to the named destination. The term C. & F. or C.F. means that the price so includes cost and freight to the named destination.

(2) Unless otherwise agreed and even though used only in connection with the stated price and destination, the term C.I.F. destination or its equivalent requires the seller at his or her own expense and risk to

(a) put the goods into the possession of a carrier at the port for shipment and obtain a negotiable bill or bills of lading covering the entire transportation to the named destination; and

(b) load the goods and obtain a receipt from the carrier (which may be contained in the bill of lading) showing that the freight has been paid or provided for; and

(c) obtain a policy or certificate of insurance, including any war risk insurance, of a kind and on terms then current at the port of shipment in the usual amount, in the currency of the contract, shown to cover the same goods covered by the bill of lading and providing for payment of loss to the order of the buyer or for the account of whom it may concern; but the seller may add to the price the amount of the premium for any such war risk insurance; and

(d) prepare an invoice of the goods and procure any other documents required to effect shipment or to comply with the contract; and

(e) forward and tender with commercial promptness all the documents in due form and with any indorsement necessary to perfect the buyer's rights.

(3) Unless otherwise agreed the term C. & F. or its equivalent has the same effect and imposes upon the seller the same obligation and risks as a C.I.F. term except the obligation as to insurance.

(4) Under the term C.I.F. or C. & F. unless otherwise agreed the buyer must make payment against tender of the required documents and the seller may not tender nor the buyer demand delivery of the goods in substitution for the documents.

(5A Del. C. 1953, § 2-320; 55 Del. Laws, c. 349; 70 Del. Laws, c. 186, § 1.)

§ 2-321 C.I.F. or C. & F.: "net landed weights"; "payment on arrival"; warranty of condition on arrival.

Under a contract containing a term C.I.F. or C. & F.

(1) Where the price is based on or is to be adjusted according to "net landed weights", "delivered weights", "out turn" quantity or quality or the like, unless otherwise agreed the seller must reasonably estimate the price. The payment due on tender of the documents called for by the contract is the amount so estimated, but after final adjustment of the price a settlement must be made with commercial promptness.

(2) An agreement described in subsection (1) or any warranty of quality or condition of the goods on arrival places upon the seller the risk of ordinary deterioration, shrinkage and the like in transportation but has no effect on the place or time of identification to the contract for sale or delivery or on the passing of the risk of loss.

(3) Unless otherwise agreed where the contract provides for payment on or after arrival of the goods the seller must before payment allow such preliminary inspection as is feasible; but if the goods are lost delivery of the documents and payment are due when the goods should have arrived.

(5A Del. C. 1953, § 2-321; 55 Del. Laws, c. 349.)

§ 2-322 Delivery "ex-ship."

(1) Unless otherwise agreed a term for delivery of goods "ex-ship" (which means from the carrying vessel) or in equivalent language is not restricted to a particular ship and requires delivery from a ship which has reached a place at the named port of destination where goods of the kind are usually discharged.

(2) Under such a term unless otherwise agreed

(a) the seller must discharge all liens arising out of the carriage and furnish the buyer with a direction which puts the carrier under a duty to deliver the goods; and

(b) the risk of loss does not pass to the buyer until the goods leave the ship's tackle or are otherwise properly unloaded.

(5A Del. C. 1953, § 2-322; 55 Del. Laws, c. 349.)

§ 2-323 Form of bill of lading required in overseas shipment; "overseas."

(1) Where the contract contemplates overseas shipment and contains a term C.I.F. or C. & F. or F.O.B. vessel, the seller unless otherwise agreed must obtain negotiable bill of lading stating that the goods have been loaded on board or, in the case of a term C.I.F. or C. & F., received for shipment.

(2) Where in a case within subsection (1) a tangible bill of lading has been issued in a set of parts, unless otherwise agreed if the documents are not to be sent from abroad the buyer may demand tender of the full set; otherwise only one part of the bill of lading need be tendered. Even if the agreement expressly requires a full set

(a) Due tender of a single part is acceptable within the provisions of this Article on cure of improper delivery (subsection (1) of § 2-508); and

(b) Even though the full set is demanded, if the documents are sent from abroad the person tendering an incomplete set may nevertheless require payment upon furnishing an indemnity which the buyer in good faith deems adequate.

(3) A shipment by water or by air or a contract contemplating such shipment is "overseas" insofar as by usage of trade or agreement it is subject to the commercial, financing or shipping practices characteristic of international deep water commerce.

(5A Del. C. 1953, § 2-323; 55 Del. Laws, c. 349; 74 Del. Laws, c. 332, § 8.)

§ 2-324 "No arrival, no sale" term.

Under a term "no arrival, no sale" or terms of like meaning, unless otherwise agreed,

(a) the seller must properly ship conforming goods and if they arrive by any means he or she must tender them on arrival but he or she assumes no obligation that the goods will arrive unless he or she has caused the non-arrival; and

(b) where without fault of the seller the goods are in part lost or have so deteriorated as no longer to conform to the contract or arrive after the contract time, the buyer may proceed as if there had been casualty to identified goods (Section 2-613).

(5A Del. C. 1953, § 2-324; 55 Del. Laws, c. 349; 70 Del. Laws, c. 186, § 1.)

§ 2-325 "Letter of credit" term; "confirmed credit."

(1) Failure of the buyer seasonably to furnish an agreed letter of credit is a breach of the contract for sale.

(2) The delivery to seller of a proper letter of credit suspends the buyer's obligation to pay. If the letter of credit is dishonored, the seller may on seasonable notification to the buyer require payment directly from him or her.

(3) Unless otherwise agreed the term "letter of credit" or "banker's credit" in a contract for sale means an irrevocable credit issued by a financing agency of good repute and, where the shipment is overseas, of good international repute. The term "confirmed credit" means that the credit must also carry the direct obligation of such an agency which does business in the seller's financial market.

(5A Del. C. 1953, § 2-325; 55 Del. Laws, c. 349; 70 Del. Laws, c. 186, § 1.)

§ 2-326 Sale on approval and sale or return; rights of creditors.

(1) Unless otherwise agreed, if delivered goods may be returned by the buyer even though they conform to the contract, the transaction is

(a) a "sale on approval" if the goods are delivered primarily for use, and

(b) a "sale or return" if the goods are delivered primarily for resale.

(2) Goods held on approval are not subject to the claims of the buyer's creditors until acceptance; goods held on sale or return are subject to such claims while in the buyer's possession.

(3) Any "or return" term of a contract for sale is to be treated as a separate contract for sale within the statute of frauds section of this Article (Section 2-201) and as contradicting the sale aspect of the contract within the provisions of this Article on parol or extrinsic evidence (Section 2-202).

(5A Del. C. 1953, § 2-326; 55 Del. Laws, c. 349; 72 Del. Laws, c. 401, § 8.)

§ 2-327 Special incidents of sale on approval and sale or return.

(1) Under a sale on approval unless otherwise agreed

(a) although the goods are identified to the contract the risk of loss and the title do not pass to the buyer until acceptance; and

(b) use of the goods consistent with the purpose of trial is not acceptance but failure seasonably to notify the seller of election to return the goods is acceptance, and if the goods conform to the contract acceptance of any part is acceptance of the whole; and

(c) after due notification of election to return, the return is at the seller's risk and expense but a merchant buyer must follow any reasonable instructions.

(2) Under a sale or return unless otherwise agreed

(a) the option to return extends to the whole or any commercial unit of the goods while in substantially their original condition, but must be exercised seasonably; and

(b) the return is at the buyer's risk and expense.

(5A Del. C. 1953, § 2-327; 55 Del. Laws, c. 349.)

§ 2-328 Sale by auction.

(1) In a sale by auction if goods are put up in lots each lot is the subject of a separate sale.

(2) A sale by auction is complete when the auctioneer so announces by the fall of the hammer or in other customary manner. Where a bid is made while the hammer is falling in acceptance of a prior bid the auctioneer may in his or her discretion reopen the bidding or declare the goods sold under the bid on which the hammer was falling.

(3) Such a sale is with reserve unless the goods are in explicit terms put up without reserve. In an auction with reserve the auctioneer may withdraw the goods at any time until he or she announces completion of the sale. In an auction without reserve, after the auctioneer calls for bids on an article or lot, that article or lot cannot be withdrawn unless no bid is made within a reasonable time. In either case a

bidder may retract his or her bid until the auctioneer's announcement of completion of the sale, but a bidder's retraction does not revive any previous bid.

(4) If the auctioneer knowingly receives a bid on the seller's behalf or the seller makes or procures such a bid, and notice has not been given that liberty for such bidding is reserved, the buyer may at his or her option avoid the sale or take the goods at the price of the last good faith bid prior to the completion of the sale. This subsection shall not apply to any bid at a forced sale.

(5A Del. C. 1953, § 2-328; 55 Del. Laws, c. 349; 70 Del. Laws, c. 186, § 1.)

Part 4

Title, Creditors and Good Faith Purchases

§ 2-401 Passing of title; reservation for security; limited application of this section.

Each provision of this Article with regard to the rights, obligations and remedies of the seller, the buyer, purchasers or other third parties applies irrespective of title to the goods except where the provision refers to such title. Insofar as situations are not covered by the other provisions of this Article and matters concerning title become material the following rules apply:

(1) Title to goods cannot pass under a contract for sale prior to their identification to the contract (Section 2-501), and unless otherwise explicitly agreed the buyer acquires by their identification a special property as limited by this subtitle. Any retention or reservation by the seller of the title (property) in goods shipped or delivered to the buyer is limited in effect to a reservation of a security interest. Subject to these provisions and to the provisions of the Article on Secured Transactions (Article 9), title to goods passes from the seller to the buyer in any manner and on any conditions explicitly agreed on by the parties.

(2) Unless otherwise explicitly agreed title passes to the buyer at the time and place at which the seller completes his or her performance with reference to the physical delivery of the goods, despite any reservation of a security interest and even though a document of title is to be delivered at a different time or place; and in particular and despite any reservation of a security interest by the bill of lading

(a) if the contract requires or authorizes the seller to send the goods to the buyer but does not require him or her to deliver them at destination, title passes to the buyer at the time and place of shipment; but

(b) if the contract requires delivery at destination, title passes on tender there.

(3) Unless otherwise explicitly agreed where delivery is to be made without moving the goods,

(a) if the seller is to deliver a tangible document of title, title passes at the time when and the place where he or she delivers such documents and if the seller is to deliver an electronic document of title, title passes when the seller delivers the document; or

(b) if the goods are at the time of contracting already identified and no documents of title are to be delivered, title passes at the time and place of contracting.

(4) A rejection or other refusal by the buyer to receive or retain the goods, whether or not justified, or a justified revocation of acceptance revests title to the goods in the seller. Such revesting occurs by operation of law and is not a "sale".

(5A Del. C. 1953, § 2-401; 55 Del. Laws, c. 349; 70 Del. Laws, c. 186, § 1; 74 Del. Laws, c. 332, § 9.)

§ 2-402 Rights of seller's creditors against sold goods.

(1) Except as provided in subsections (2) and (3), rights of unsecured creditors of the seller with respect to goods which have been identified to a contract for sale are subject to the buyer's rights to recover the goods under this Article (Sections 2-502 and 2-716).

(2) A creditor of the seller may treat a sale or an identification of goods to a contract for sale as void if as against him or her a retention of possession by the seller is fraudulent under any rule of law of the state where the goods are situated, except that retention of possession in good faith and current course of trade by a merchant-seller for a commercially reasonable time after a sale or identification is not fraudulent.

(3) Nothing in this Article shall be deemed to impair the rights of creditors of the seller

(a) under the provisions of the Article on Secured Transactions (Article 9); or

(b) where identification to the contract or delivery is made not in current course of trade but in satisfaction of or as security for a pre-existing claim for money, security or the like and is made under circumstances which under any rule of law of the state where the goods are situated would apart from this Article constitute the transaction a fraudulent transfer or voidable preference.

(5A Del. C. 1953, § 2-402; 55 Del. Laws, c. 349; 70 Del. Laws, c. 186, § 1.)

§ 2-403 Power to transfer; good faith purchase of goods; "entrusting."

(1) A purchaser of goods acquires all title which his or her transferor had or had power to transfer except that a purchaser of a limited interest acquires rights only to the extent of the interest purchased. A person with voidable title has power to transfer a good title to a good faith purchaser for value. When goods have been delivered under a transaction of purchase the purchaser has such power even though

(a) the transferor was deceived as to the identity of the purchaser, or

(b) the delivery was in exchange for a check which is later dishonored, or

(c) it was agreed that the transaction was to be a "cash sale", or

(d) the delivery was procured through fraud punishable as larcenous under the criminal law.

(2) Any entrusting of possession of goods to a merchant who deals in goods of that kind gives him or her power to transfer all rights of the entruster to a buyer in ordinary course of business.

(3) "Entrusting" includes any delivery and any acquiescence in retention of possession regardless of any condition expressed between the parties to the delivery or acquiescence and regardless of whether the procurement of the entrusting or the possessor's disposition of the goods have been such as to be larcenous under the criminal law.

(4) The rights of other purchasers of goods and of lien creditors are governed by the Articles on Secured Transactions (Article 9) and Documents of Title (Article 7).

(5A Del. C. 1953, § 2-403; 55 Del. Laws, c. 349; 70 Del. Laws, c. 186, § 1; 70 Del. Laws, c. 439, § 3.)

Part 5

Performance

§ 2-501 Insurable interest in goods; manner of identification of goods.

(1) The buyer obtains a special property and an insurable interest in goods by identification of existing goods as goods to which the contract refers even though the goods so identified are non-conforming and he or she has an option to return or reject them. Such identification can be made at any time and in any manner explicitly agreed to by the parties. In the absence of explicit agreement identification occurs

(a) when the contract is made if it is for the sale of goods already existing and identified;

(b) if the contract is for the sale of future goods other than those described in paragraph (c), when goods are shipped, marked or otherwise designated by the seller as goods to which the contract refers;

(c) when the crops are planted or otherwise become growing crops or the young are conceived if the contract is for the sale of unborn young to be born within twelve months after contracting or for the sale of crops to be harvested within twelve months or the next normal harvest season after contracting whichever is longer.

(2) The seller retains an insurable interest in goods so long as title to or any security interest in the goods remains in him or her and where the identification is by the seller alone he or she may until default or insolvency or notification to the buyer that the identification is final substitute other goods for those identified.

(3) Nothing in this section impairs any insurable interest recognized under any other statute or rule of law.

(5A Del. C. 1953, § 2-501; 55 Del. Laws, c. 349; 70 Del. Laws, c. 186, § 1.)

§ 2-502 Buyer's right to goods on seller's repudiation, failure to deliver, or insolvency.

(1) Subject to subsections (2) and (3) and even though the goods have not been shipped, a buyer who has paid a part or all of the price of goods in which he or she has a special property under the provisions of the immediately preceding section may on making and keeping good a tender of any unpaid portion of their price recover them from the seller if:

(a) in the case of goods bought for personal, family, or household purposes, the seller repudiates or fails to deliver as required by the contract; or

(b) in all cases, the seller becomes insolvent within ten days after receipt of the first installment on their price.

(2) The buyer's right to recover the goods under subsection (1)(a) vests upon acquisition of a special property, even if the seller had not then repudiated or failed to deliver.

(3) If the identification creating his or her special property has been made by the buyer he or she acquires the right to recover the goods only if they conform to the contract for sale.

(5A Del. C. 1953, § 2-502; 55 Del. Laws, c. 349; 70 Del. Laws, c. 186, § 1; 72 Del. Laws, c. 401, § 9.)

§ 2-503 Manner of seller's tender of delivery.

(1) Tender of delivery requires that the seller put and hold conforming goods at the buyer's disposition and give the buyer any notification reasonably necessary to enable him or her to take delivery. The manner, time and place for tender are determined by the agreement and this Article, and in particular

(a) tender must be at a reasonable hour, and if it is of goods they must be kept available for the period reasonably necessary to enable the buyer to take possession; but

(b) unless otherwise agreed the buyer must furnish facilities reasonably suited to the receipt of the goods.

(2) Where the case is within the next section respecting shipment tender requires that the seller comply with its provisions.

(3) Where the seller is required to deliver at a particular destination tender requires that he or she comply with subsection (1) and also in any appropriate case tender documents as described in subsections (4) and (5) of this section.

(4) Where goods are in the possession of a bailee and are to be delivered without being moved

(a) tender requires that the seller either tender a negotiable document of title covering such goods or procure acknowledgment by the bailee of the buyer's right to possession of the goods; but

(b) tender to the buyer of a non-negotiable document of title or of a record directing the bailee to deliver is sufficient tender unless the buyer seasonably objects, and except as otherwise provided in Article 9 receipt by the bailee of notification of the buyer's rights fixes those rights as against the bailee and all third persons; but risk of loss of the goods and of any failure by the bailee to honor the non-negotiable document of title or to obey the direction remains on the seller until the buyer has had a reasonable time to present the document or direction, and a refusal by the bailee to honor the document or to obey the direction defeats the tender.

(5) Where the contract requires the seller to deliver documents

(a) he or she must tender all such documents in correct form, except as provided in this Article with respect to bills of lading in a set (subsection (2) of Section 2-323); and

(b) tender through customary banking channels is sufficient and dishonor of a draft accompanying or associated with the documents constitutes non-acceptance or rejection.

(5A Del. C. 1953, § 2-503; 55 Del. Laws, c. 349; 70 Del. Laws, c. 186, § 1; 74 Del. Laws, c. 332, §§ 10, 11.)

§ 2-504 Shipment by seller.

Where the seller is required or authorized to send the goods to the buyer and the contract does not require him or her to deliver them at a particular destination, then unless otherwise agreed he or she must

(a) put the goods in the possession of such a carrier and make such a contract for their transportation as may be reasonable having regard to the nature of the goods and other circumstances of the case; and

(b) obtain and promptly deliver or tender in due form any document necessary to enable the buyer to obtain possession of the goods or otherwise required by the agreement or by usage of trade; and

(c) promptly notify the buyer of the shipment.

Failure to notify the buyer under paragraph (c) or to make a proper contract under paragraph (a) is a ground for rejection only if material delay or loss ensues.

(5A Del. C. 1953, § 2-504; 55 Del. Laws, c. 349; 70 Del. Laws, c. 186, § 1.)

§ 2-505 Seller's shipment under reservation.

(1) Where the seller has identified goods to the contract by or before shipment:

(a) his or her procurement of a negotiable bill of lading to his or her own order or otherwise reserves in him or her a security interest in the goods. His or her procurement of the bill to the order of a financing agency or of the buyer indicates in addition only the seller's expectation of transferring that interest to the person named.

(b) a non-negotiable bill of lading to himself or herself or his or her nominee reserves possession of the goods as security but except in a case of conditional delivery (subsection (2) of § 2-507) a non-negotiable bill of lading naming the buyer as consignee reserves no security interest even though the seller retains possession or control of the bill of lading.

(2) When shipment by the seller with reservation of a security interest is in violation of the contract for sale it constitutes an improper contract for transportation within the preceding section but impairs neither the rights given to the buyer by shipment and identification of the goods to the contract nor the seller's power as a holder of a negotiable document.

(5A Del. C. 1953, § 2-505; 55 Del. Laws, c. 349; 70 Del. Laws, c. 186, § 1; 74 Del. Laws, c. 332, § 12.)

§ 2-506 Rights of financing agency.

(1) A financing agency by paying or purchasing for value a draft which relates to a shipment of goods acquires to the extent of the payment or purchase and in addition to its own rights under the draft and any document of title securing it any rights of the shipper in the goods including the right to stop delivery and the shipper's right to have the draft honored by the buyer.

(2) The right to reimbursement of a financing agency which has in good faith honored or purchased the draft under commitment to or authority from the buyer is not impaired by subsequent discovery of defects with reference to any relevant document which was apparently regular.

(5A Del. C. 1953, § 2-506; 55 Del. Laws, c. 349; 74 Del. Laws, c. 332, § 13.)

§ 2-507 Effect of seller's tender; delivery on condition.

(1) Tender of delivery is a condition to the buyer's duty to accept the goods and, unless otherwise agreed, to his or her duty to pay for them. Tender entitles the seller to acceptance of the goods and to payment according to the contract.

(2) Where payment is due and demanded on the delivery to the buyer of goods or documents of title, his or her right as against the seller to retain or dispose of them is conditional upon his or her making the payment due.

(5A Del. C. 1953, § 2-507; 55 Del. Laws, c. 349; 70 Del. Laws, c. 186, § 1.)

§ 2-508 Cure by seller of improper tender or delivery; replacement.

(1) Where any tender or delivery by the seller is rejected because non-conforming and the time for performance has not yet expired, the seller may seasonably notify the buyer of his or her intention to cure and may then within the contract time make a conforming delivery.

(2) Where the buyer rejects a non-conforming tender which the seller had reasonable grounds to believe would be acceptable with or without money allowance the seller may if he or she seasonably notifies the buyer have a further reasonable time to substitute a conforming tender.

(5A Del. C. 1953, § 2-508; 55 Del. Laws, c. 349; 70 Del. Laws, c. 186, § 1.)

§ 2-509 Risk of loss in the absence of breach.

(1) Where the contract requires or authorizes the seller to ship the goods by carrier

(a) if it does not require him or her to deliver them at a particular destination, the risk of loss passes to the buyer when the goods are duly delivered to the carrier even though the shipment is under reservation (Section 2-505); but

(b) if it does require him or her to deliver them at a particular destination and the goods are there duly tendered while in the possession of the carrier, the risk of loss passes to the buyer when the goods are there duly so tendered as to enable the buyer to take delivery.

(2) Where the goods are held by a bailee to be delivered without being moved, the risk of loss passes to the buyer

(a) on the buyer's receipt of possession or control of a negotiable document of title covering the goods; or

(b) on acknowledgment by the bailee of the buyer's right to possession of the goods; or

(c) after his or her receipt of possession or control of a non-negotiable document of title or other direction to deliver in a record, as provided in subsection (4)(b) of Section 2-503.

(3) In any case not within subsection (1) or (2), the risk of loss passes to the buyer on his or her receipt of the goods if the seller is a merchant; otherwise the risk passes to the buyer on tender of delivery.

(4) The provisions of this section are subject to contrary agreement of the parties and to the provisions of this Article on sale on approval (Section 2-327) and on effect of breach on risk of loss (Section 2-510).

(5A Del. C. 1953, § 2-509; 55 Del. Laws, c. 349; 70 Del. Laws, c. 186, § 1; 74 Del. Laws, c. 332, § 14.)

§ 2-510 Effect of breach on risk of loss.

(1) Where a tender or delivery of goods so fails to conform to the contract as to give a right of rejection the risk of their loss remains on the seller until cure or acceptance.

(2) Where the buyer rightfully revokes acceptance he or she may to the extent of any deficiency in his or her effective insurance coverage treat the risk of loss as having rested on the seller from the beginning.

(3) Where the buyer as to conforming goods already identified to the contract for sale repudiates or is otherwise in breach before risk of their loss has passed to him or her, the seller may to the extent of any deficiency in his or her effective insurance coverage treat the risk of loss as resting on the buyer for a commercially reasonable time.

(5A Del. C. 1953, § 2-510; 55 Del. Laws, c. 349; 70 Del. Laws, c. 186, § 1.)

§ 2-511 Tender of payment by buyer; payment by check.

(1) Unless otherwise agreed tender of payment is a condition to the seller's duty to tender and complete any delivery.

(2) Tender of payment is sufficient when made by any means or in any manner current in the ordinary course of business unless the seller demands payment in legal tender and gives any extension of time reasonably necessary to procure it.

(3) Subject to the provisions of this subtitle on the effect of an instrument on an obligation (Section 3-802 [see now Section 3-310]), payment by check is conditional and is defeated as between the parties by dishonor of the check on due presentment.

(5A Del. C. 1953, § 2-511; 55 Del. Laws, c. 349.)

§ 2-512 Payment by buyer before inspection.

(1) Where the contract requires payment before inspection non-conformity of the goods does not excuse the buyer from so making payment unless

(a) the non-conformity appears without inspection; or

(b) despite tender of the required documents the circumstances would justify injunction against honor under this subtitle (Section 5-109(b)).

(2) Payment pursuant to subsection (1) does not constitute an acceptance of goods or impair the buyer's right to inspect or any of his or her remedies.

(5A Del. C. 1953, § 2-512; 55 Del. Laws, c. 349; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 393, § 3.)

§ 2-513 Buyer's right to inspection of goods.

(1) Unless otherwise agreed and subject to subsection (3), where goods are tendered or delivered or identified to the contract for sale, the buyer has a right before payment or acceptance to inspect them at any reasonable place and time and in any reasonable manner. When the seller is required or authorized to send the goods to the buyer, the inspection may be after their arrival.

(2) Expenses of inspection must be borne by the buyer but may be recovered from the seller if the goods do not conform and are rejected.

(3) Unless otherwise agreed and subject to the provisions of this Article on C.I.F. contracts (subsection (3) of Section 2-321), the buyer is not entitled to inspect the goods before payment of the price when the contract provides

(a) for delivery "C.O.D." or on other like terms; or

(b) for payment against documents of title, except where such payment is due only after the goods are to become available for inspection.

(4) A place or method of inspection fixed by the parties is presumed to be exclusive but unless otherwise expressly agreed it does not postpone identification or shift the place for delivery or for passing the risk of loss. If compliance becomes impossible, inspection shall be as provided in this section unless the place or method fixed was clearly intended as an indispensable condition failure of which avoids the contract.

(5A Del. C. 1953, § 2-513; 55 Del. Laws, c. 349.)

§ 2-514 When documents deliverable on acceptance; when on payment.

Unless otherwise agreed documents against which a draft is drawn are to be delivered to the drawee on acceptance of the draft if it is payable more than three days after presentment; otherwise, only on payment.

(5A Del. C. 1953, § 2-514; 55 Del. Laws, c. 349.)

§ 2-515 Preserving evidence of goods in dispute.

In furtherance of the adjustment of any claim or dispute

(a) either party on reasonable notification to the other and for the purpose of ascertaining the facts and preserving evidence has the right to inspect, test and sample the goods including such of them as may be in the possession or control of the other; and

(b) the parties may agree to a third party inspection or survey to determine the conformity or condition of the goods and may agree that the findings shall be binding upon them in any subsequent litigation or adjustment.

(5A Del. C. 1953, § 2-515; 55 Del. Laws, c. 349.)

Part 6

Breach, Repudiation and Excuse

§ 2-601 Buyer's rights on improper delivery.

Subject to the provisions of this Article on breach in installment contracts (Section 2-612) and unless otherwise agreed under the sections on contractual limitations of remedy (Sections 2-718 and 2-719), if the goods or the tender of delivery fail in any respect to conform to the contract, the buyer may

(a) reject the whole; or

(b) accept the whole; or

(c) accept any commercial unit or units and reject the rest.

(5A Del. C. 1953, § 2-601; 55 Del. Laws, c. 349.)

§ 2-602 Manner and effect of rightful rejection.

(1) Rejection of goods must be within a reasonable time after their delivery or tender. It is ineffective unless the buyer seasonably notifies the seller.

(2) Subject to the provisions of the two following sections on rejected goods (Sections 2-603 and 2-604),

(a) after rejection any exercise of ownership by the buyer with respect to any commercial unit is wrongful as against the seller; and

(b) if the buyer has before rejection taken physical possession of goods in which he or she does not have a security interest under the provisions of this Article (subsection (3) of Section 2-711), he or she is under a duty after rejection to hold them with reasonable care at the seller's disposition for a time sufficient to permit the seller to remove them; but

(c) the buyer has no further obligations with regard to goods rightfully rejected.

(3) The seller's rights with respect to goods wrongfully rejected are governed by the provisions of this Article on Seller's remedies in general (Section 2-703).

(5A Del. C. 1953, § 2-602; 55 Del. Laws, c. 349; 70 Del. Laws, c. 186, § 1.)

§ 2-603 Merchant buyer's duties as to rightfully rejected goods.

(1) Subject to any security interest in the buyer (subsection (3) of Section 2-711), when the seller has no agent or place of business at the market of rejection a merchant buyer is under a duty after rejection of goods in his or her possession or control to follow any reasonable instructions received from the seller with respect to the goods and in the absence of such instructions to make reasonable efforts to sell them for the seller's account if they are perishable or threaten to decline in value speedily. Instructions are not reasonable if on demand indemnity for expenses is not forthcoming.

(2) When the buyer sells goods under subsection (1), he or she is entitled to reimbursement from the seller or out of the proceeds for reasonable expenses of caring for and selling them, and if the expenses include no selling commission then to such commission as is usual in the trade or if there is none to a reasonable sum not exceeding ten per cent on the gross proceeds.

(3) In complying with this section the buyer is held only to good faith and good faith conduct hereunder is neither acceptance nor conversion nor the basis of an action for damages.

(5A Del. C. 1953, § 2-603; 55 Del. Laws, c. 349; 70 Del. Laws, c. 186, § 1.)

§ 2-604 Buyer's options as to salvage of rightfully rejected goods.

Subject to the provisions of the immediately preceding section on perishables, if the seller gives no instructions within a reasonable time after notification of rejection the buyer may store the rejected goods for the seller's account or reship them to him or her or resell them for the seller's account with reimbursement as provided in the preceding section. Such action is not acceptance or conversion.

(5A Del. C. 1953, § 2-604; 55 Del. Laws, c. 349; 70 Del. Laws, c. 186, § 1.)

§ 2-605 Waiver of buyer's objections by failure to particularize.

(1) The buyer's failure to state in connection with rejection a particular defect which is ascertainable by reasonable inspection precludes him or her from relying on the unstated defect to justify rejection or to establish breach

(a) where the seller could have cured it if stated seasonably; or

(b) between merchants when the seller has after rejection made a request in writing for a full and final written statement of all defects on which the buyer proposes to rely.

(2) Payment against documents made without reservation of rights precludes recovery of the payment for defects apparent in the documents.

(5A Del. C. 1953, § 2-605; 55 Del. Laws, c. 349; 70 Del. Laws, c. 186, § 1; 74 Del. Laws, c. 332, § 15.)

§ 2-606 What constitutes acceptance of goods.

(1) Acceptance of goods occurs when the buyer

(a) after a reasonable opportunity to inspect the goods signifies to the seller that the goods are conforming or that he or she will take or retain them in spite of their non-conformity; or

(b) fails to make an effective rejection (subsection (1) of Section 2-602), but such acceptance does not occur until the buyer has had a reasonable opportunity to inspect them; or

(c) does any act inconsistent with the seller's ownership; but if such act is wrongful as against the seller it is an acceptance only if ratified by him or her.

(2) Acceptance of a part of any commercial unit is acceptance of that entire unit.

(5A Del. C. 1953, § 2-606; 55 Del. Laws, c. 349; 70 Del. Laws, c. 186, § 1.)

§ 2-607 Effect of acceptance; notice of breach; burden of establishing breach after acceptance; notice of claim or litigation to person answerable over.

(1) The buyer must pay at the contract rate for any goods accepted.

(2) Acceptance of goods by the buyer precludes rejection of the goods accepted and if made with knowledge of a non-conformity cannot be revoked because of it unless the acceptance was on the reasonable assumption that the non-conformity would be seasonably cured but acceptance does not of itself impair any other remedy provided by this Article for non-conformity.

(3) Where a tender has been accepted

(a) the buyer must within a reasonable time after he or she discovers or should have discovered any breach notify the seller of breach or be barred from any remedy; and

(b) if the claim is one for infringement or the like (subsection (3) of Section 2-312) and the buyer is sued as a result of such a breach he or she must so notify the seller within a reasonable time after he or she receives notice of the litigation or be barred from any remedy over for liability established by the litigation.

(4) The burden is on the buyer to establish any breach with respect to the goods accepted.

(5) Where the buyer is sued for breach of a warranty or other obligation for which his or her seller is answerable over

(a) he or she may give his or her seller written notice of the litigation. If the notice states that the seller may come in and defend and that if the seller does not do so he or she will be bound in any action against him or her by his or her buyer by any determination of fact common to the two litigations, then unless the seller after seasonable receipt of the notice does come in and defend he or she is so bound.

(b) if the claim is one for infringement or the like (subsection (3) of Section 2-312) the original seller may demand in writing that his or her buyer turn over to him or her control of the litigation including settlement or else be barred from any remedy over and if he or she also agrees to bear all expense and to satisfy any adverse judgment, then unless the buyer after seasonable receipt of the demand does turn over control the buyer is so barred.

(6) The provisions of subsections (3), (4) and (5) apply to any obligation of a buyer to hold the seller harmless against infringement or the like (subsection (3) of Section 2-312).

(5A Del. C. 1953, § 2-607; 55 Del. Laws, c. 349; 70 Del. Laws, c. 186, § 1.)

§ 2-608 Revocation of acceptance in whole or in part.

(1) The buyer may revoke his or her acceptance of a lot or commercial unit whose non-conformity substantially impairs its value to him or her if he or she has accepted it

(a) on the reasonable assumption that its non-conformity would be cured and it has not been seasonably cured; or

(b) without discovery of such non-conformity if his or her acceptance was reasonably induced either by the difficulty of discovery before acceptance or by the seller's assurances.

(2) Revocation of acceptance must occur within a reasonable time after the buyer discovers or should have discovered the ground for it and before any substantial change in condition of the goods which is not caused by their own defects. It is not effective until the buyer notifies the seller of it.

(3) A buyer who so revokes has the same rights and duties with regard to the goods involved as if he or she had rejected them.

(5A Del. C. 1953, § 2-608; 55 Del. Laws, c. 349; 70 Del. Laws, c. 186, § 1.)

§ 2-609 Right to adequate assurance of performance.

(1) A contract for sale imposes an obligation on each party that the other's expectation of receiving due performance will not be impaired. When reasonable grounds for insecurity arise with respect to the performance of either party the other may in writing demand adequate assurance of due performance and until he or she receives such assurance may if commercially reasonable suspend any performance for which he or she has not already received the agreed return.

(2) Between merchants the reasonableness of grounds for insecurity and the adequacy of any assurance offered shall be determined according to commercial standards.

(3) Acceptance of any improper delivery or payment does not prejudice the aggrieved party's right to demand adequate assurance of future performance.

(4) After receipt of a justified demand failure to provide within a reasonable time not exceeding thirty days such assurance of due performance as is adequate under the circumstances of the particular case is a repudiation of the contract.

(5A Del. C. 1953, § 2-609; 55 Del. Laws, c. 349; 70 Del. Laws, c. 186, § 1.)

§ 2-610 Anticipatory repudiation.

When either party repudiates the contract with respect to a performance not yet due the loss of which will substantially impair the value of the contract to the other, the aggrieved party may

(a) for a commercially reasonable time await performance by the repudiating party; or

(b) resort to any remedy for breach (Section 2-703 or Section 2-711), even though he or she has notified the repudiating party that he or she would await the latter's performance and has urged retraction; and

(c) in either case suspend his or her own performance or proceed in accordance with the provisions of this Article on the seller's right to identify goods to the contract notwithstanding breach or to salvage unfinished goods (Section 2-704).

(5A Del. C. 1953, § 2-610; 55 Del. Laws, c. 349; 70 Del. Laws, c. 186, § 1.)

§ 2-611 Retraction of anticipatory repudiation.

(1) Until the repudiating party's next performance is due he or she can retract his or her repudiation unless the aggrieved party has since the repudiation cancelled or materially changed his or her position or otherwise indicated that he or she considers the repudiation final.

(2) Retraction may be by any method which clearly indicates to the aggrieved party that the repudiating party intends to perform, but must include any assurance justifiably demanded under the provisions of this Article (Section 2-609).

(3) Retraction reinstates the repudiating party's rights under the contract with due excuse and allowance to the aggrieved party for any delay occasioned by the repudiation.

(5A Del. C. § 2-611; 55 Del. Laws, c. 349; 70 Del. Laws, c. 186, § 1.)

§ 2-612 "Installment contract"; breach.

(1) An "installment contract" is one which requires or authorizes the delivery of goods in separate lots to be separately accepted, even though the contract contains a clause "each delivery is a separate contract" or its equivalent.

(2) The buyer may reject any installment which is non-conforming if the non-conformity substantially impairs the value of that installment and cannot be cured or if the non-conformity is a defect in the required documents; but if the non-conformity does not fall within subsection (3) and the seller gives adequate assurance of its cure the buyer must accept that installment.

(3) Whenever non-conformity or default with respect to one or more installments substantially impairs the value of the whole contract there is a breach of the whole. But the aggrieved party reinstates the contract if he or she accepts a non-conforming installment without seasonably notifying of cancellation or if he or she brings an action with respect only to past installments or demands performance as to future installments.

(5A Del. C. 1953, § 2-612; 55 Del. Laws, c. 349; 70 Del. Laws, c. 186, § 1.)

§ 2-613 Casualty to identified goods.

Where the contract requires for its performance goods identified when the contract is made, and the goods suffer casualty without fault of either party before the risk of loss passes to the buyer, or in a proper case under a "no arrival, no sale" term (Section 2-324) then

(a) if the loss is total the contract is avoided; and

(b) if the loss is partial or the goods have so deteriorated as no longer to conform to the contract the buyer may nevertheless demand inspection and at his or her option either treat the contract as avoided or accept the goods with due allowance from the contract price for the deterioration or the deficiency in quantity but without further right against the seller.

(5A Del. C. 1953, § 2-613; 55 Del. Laws, c. 349; 70 Del. Laws, c. 186, § 1.)

§ 2-614 Substituted performance.

(1) Where without fault of either party the agreed berthing, loading, or unloading facilities fail or an agreed type of carrier becomes unavailable or the agreed manner of delivery otherwise becomes commercially impracticable but a commercially reasonable substitute is available, such substitute performance must be tendered and accepted.

(2) If the agreed means or manner of payment fails because of domestic or foreign governmental regulation, the seller may withhold or stop delivery unless the buyer provides a means or manner of payment which is commercially a substantial equivalent. If delivery has already been taken, payment by the means or in the manner provided by the regulation discharges the buyer's obligation unless the regulation is discriminatory, oppressive or predatory.

(5A Del. C. 1953, § 2-614; 55 Del. Laws, c. 349.)

§ 2-615 Excuse by failure of presupposed conditions.

Except so far as a seller may have assumed a greater obligation and subject to the preceding section on substituted performance:

(a) Delay in delivery or non-delivery in whole or in part by a seller who complies with paragraphs (b) and (c) is not a breach of his or her duty under a contract for sale if performance as agreed has been made impracticable by the occurrence of a contingency the non-occurrence of which was a basic assumption on which the contract was made or by compliance in good faith with any applicable foreign or domestic governmental regulation or order whether or not it later proves to be invalid.

(b) Where the causes mentioned in paragraph (a) affect only a part of the seller's capacity to perform, he or she must allocate production and deliveries among his or her customers but may at his or her option include regular customers not then under contract as well as his or her own requirements for further manufacture. He or she may so allocate in any manner which is fair and reasonable.

(c) The seller must notify the buyer seasonably that there will be delay or non-delivery and, when allocation is required under paragraph (b), of the estimated quota thus made available for the buyer.

(5A Del. C. 1953, § 2-615; 55 Del. Laws, c. 349; 70 Del. Laws, c. 186, § 1.)

§ 2-616 Procedure on notice claiming excuse.

(1) Where the buyer receives notification of a material or indefinite delay or an allocation justified under the preceding section he or she may by written notification to the seller as to any delivery concerned, and where the prospective deficiency substantially impairs the value of the whole contract under the provisions of this Article relating to breach of installment contracts (Section 2-612), then also as to the whole,

(a) terminate and thereby discharge any unexecuted portion of the contract; or

(b) modify the contract by agreeing to take his or her available quota in substitution.

(2) If after receipt of such notification from the seller the buyer fails so to modify the contract within a reasonable time not exceeding thirty days the contract lapses with respect to any deliveries affected.

(3) The provisions of this section may not be negated by agreement except in so far as the seller has assumed a greater obligation under the preceding section.

(5A Del. C. 1953, § 2-616; 55 Del. Laws, c. 349; 70 Del. Laws, c. 186, § 1.)

Part 7

Remedies

§ 2-701 Remedies for breach of collateral contracts not impaired.

Remedies for breach of any obligation or promise collateral or ancillary to a contract for sale are not impaired by the provisions of this Article.

(5A Del. C. 1953, § 2-701; 55 Del. Laws, c. 349.)

§ 2-702 Seller's remedies on discovery of buyer's insolvency.

(1) Where the seller discovers the buyer to be insolvent he or she may refuse delivery except for cash including payment for all goods theretofore delivered under the contract, and stop delivery under this Article (Section 2-705).

(2) Where the seller discovers that the buyer has received goods on credit while insolvent he or she may reclaim the goods upon demand made within ten days after the receipt, but if misrepresentation of solvency has been made to the particular seller in writing within three months before delivery the ten day limitation does not apply. Except as provided in this subsection the seller may not base a right to reclaim goods on the buyer's fraudulent or innocent misrepresentation of solvency or of intent to pay.

(3) The seller's right to reclaim under subsection (2) is subject to the rights of a buyer in ordinary course or other good faith purchaser or lien creditor under this Article (Section 2-403). Successful reclamation of goods excludes all other remedies with respect to them.

(5A Del. C. 1953, § 2-702; 55 Del. Laws, c. 349; 70 Del. Laws, c. 186, § 1.)

§ 2-703 Seller's remedies in general.

Where the buyer wrongfully rejects or revokes acceptance of goods or fails to make a payment due on or before delivery or repudiates with respect to a part or the whole, then with respect to any goods directly affected and, if the breach is of the whole contract (Section 2-612), then also with respect to the whole undelivered balance, the aggrieved seller may

(a) withhold delivery of such goods;

(b) stop delivery by any bailee as hereafter provided (Section 2-705);

(c) proceed under the next section respecting goods still unidentified to the contract;

(d) resell and recover damages as hereafter provided (Section 2-706);

(e) recover damages for non-acceptance (Section 2-708) or in a proper case the price (Section 2-709);

(f) cancel.

(5A Del. C. 1953, § 2-703; 55 Del. Laws, c. 349.)

§ 2-704 Seller's right to identify goods to the contract notwithstanding breach or to salvage unfinished goods.

(1) An aggrieved seller under the preceding section may

(a) identify to the contract conforming goods not already identified if at the time he or she learned of the breach they are in his or her possession or control;

(b) treat as the subject of resale goods which have demonstrably been intended for the particular contract even though those goods are unfinished.

(2) Where the goods are unfinished an aggrieved seller may in the exercise of reasonable commercial judgment for the purposes of avoiding loss and of effective realization either complete the manufacture and wholly identify the goods to the contract or cease manufacture and resale for scrap or salvage value or proceed in any other reasonable manner.

(5A Del. C. 1953, § 2-704; 55 Del. Laws, c. 349; 70 Del. Laws, c. 186, § 1.)

§ 2-705 Seller's stoppage of delivery in transit or otherwise.

(1) The seller may stop delivery of goods in the possession of a carrier or other bailee when he or she discovers the buyer to be insolvent (Section 2-702) and may stop delivery of carload, truckload, planeload or larger shipments of express or freight when the buyer repudiates or fails to make a payment due before delivery or if for any other reason the seller has a right to withhold or reclaim the goods.

(2) As against such buyer the seller may stop delivery until

(a) receipt of the goods by the buyer; or

(b) acknowledgment to the buyer by any bailee of the goods except a carrier that the bailee holds the goods for the buyer; or

(c) such acknowledgment to the buyer by a carrier by reshipment or as a warehouse; or

(d) negotiation to the buyer of any negotiable document of title covering the goods.

(3) (a) To stop delivery the seller must so notify as to enable the bailee by reasonable diligence to prevent delivery of the goods.

(b) After such notification the bailee must hold and deliver the goods according to the directions of the seller but the seller is liable to the bailee for any ensuing charges or damages.

(c) If a negotiable document of title has been issued for goods the bailee is not obliged to obey a notification to stop until surrender of possession or control of the document.

(d) A carrier who has issued a non-negotiable bill of lading is not obliged to obey a notification to stop received from a person other than the consignor.

(5A Del. C. 1953, § 2-705; 55 Del. Laws, c. 349; 70 Del. Laws, c. 186, § 1; 74 Del. Laws, c. 332, §§ 16, 17.)

§ 2-706 Seller's resale including contract for resale.

(1) Under the conditions stated in Section 2-703 on seller's remedies, the seller may resell the goods concerned or the undelivered balance thereof. Where the resale is made in good faith and in a commercially reasonable manner the seller may recover the difference

between the resale price and the contract price together with any incidental damages allowed under the provisions of this Article (Section 2-710), but less expenses saved in consequence of the buyer's breach.

(2) Except as otherwise provided in subsection (3) or unless otherwise agreed resale may be at public or private sale including sale by way of one or more contracts to sell or of identification to an existing contract of the seller. Sale may be as a unit or in parcels and at any time and place and on any terms but every aspect of the sale including the method, manner, time, place and terms must be commercially reasonable. The resale must be reasonably identified as referring to the broken contract, but it is not necessary that the goods be in existence or that any or all of them have been identified to the contract before the breach.

(3) Where the resale is at private sale the seller must give the buyer reasonable notification of his or her intention to resell.

(4) Where the resale is at public sale

(a) only identified goods can be sold except where there is a recognized market for a public sale of futures in goods of the kind; and

(b) it must be made at a usual place or market for public sale if one is reasonably available and except in the case of goods which are perishable or threaten to decline in value speedily the seller must give the buyer reasonable notice of the time and place of the resale; and

(c) if the goods are not to be within the view of those attending the sale the notification of sale must state the place where the goods are located and provide for their reasonable inspection by prospective bidders; and

(d) the seller may buy.

(5) A purchaser who buys in good faith at a resale takes the goods free of any rights of the original buyer even though the seller fails to comply with one or more of the requirements of this section.

(6) The seller is not accountable to the buyer for any profit made on any resale. A person in the position of a seller (Section 2-707) or a buyer who has rightfully rejected or justifiably revoked acceptance must account for any excess over the amount of his or her security interest, as hereinafter defined (subsection (3) of Section 2-711).

(5A Del. C. 1953, § 2-706; 55 Del. Laws, c. 349; 70 Del. Laws, c. 186, § 1.)

§ 2-707 "Person in the position of a seller."

(1) A "person in the position of a seller" includes as against a principal an agent who has paid or become responsible for the price of goods on behalf of his or her principal or anyone who otherwise holds a security interest or other right in goods similar to that of a seller.

(2) A person in the position of a seller may as provided in this Article withhold or stop delivery (Section 2-705) and resell (Section 2-706) and recover incidental damages (Section 2-710).

(5A Del. C. 1953, § 2-707; 55 Del. Laws, c. 349; 70 Del. Laws, c. 186, § 1.)

§ 2-708 Seller's damages for non-acceptance or repudiation.

(1) Subject to subsection (2) and to the provisions of this Article with respect to proof of market price (Section 2-723), the measure of damages for non-acceptance or repudiation by the buyer is the difference between the market price at the time and place for tender and the unpaid contract price together with any incidental damages provided in this Article (Section 2-710), but less expenses saved in consequence of the buyer's breach.

(2) If the measure of damages provided in subsection (1) is inadequate to put the seller in as good a position as performance would have done then the measure of damages is the profit (including reasonable overhead) which the seller would have made from full performance by the buyer, together with any incidental damages provided in this Article (Section 2-710), due allowance for costs reasonably incurred and due credit for payments or proceeds of resale.

(5A Del. C. 1953, § 2-708; 55 Del. Laws, c. 349.)

§ 2-709 Action for the price.

(1) When the buyer fails to pay the price as it becomes due the seller may recover, together with any incidental damages under the next section, the price

(a) of goods accepted or of conforming goods lost or damaged within a commercially reasonable time after risk of their loss has passed to the buyer; and

(b) of goods identified to the contract if the seller is unable after reasonable effort to resell them at a reasonable price or the circumstances reasonably indicate that such effort will be unavailing.

(2) Where the seller sues for the price he or she must hold for the buyer any goods which have been identified to the contract and are still in his or her control except that if resale becomes possible he or she may resell them at any time prior to the collection of the judgment. The net proceeds of any such resale must be credited to the buyer and payment of the judgment entitles him or her to any goods not resold.

(3) After the buyer has wrongfully rejected or revoked acceptance of the goods or has failed to make a payment due or has repudiated (Section 2-610), a seller who is held not entitled to the price under this section shall nevertheless be awarded damages for non-acceptance under the preceding section.

(5A Del. C. 1953, § 2-709; 55 Del. Laws, c. 349; 70 Del. Laws, c. 186, § 1.)

§ 2-710 Seller's incidental damages.

Incidental damages to an aggrieved seller include any commercially reasonable charges, expenses or commissions incurred in stopping delivery, in the transportation, care and custody of goods after the buyer's breach, in connection with return or resale of the goods or otherwise resulting from the breach.

(5A Del. C. 1953, § 2-710; 55 Del. Laws, c. 349.)

§ 2-711 Buyer's remedies in general; buyer's security interest in rejected goods.

(1) Where the seller fails to make delivery or repudiates or the buyer rightfully rejects or justifiably revokes acceptance then with respect to any goods involved, and with respect to the whole if the breach goes to the whole contract (Section 2-612), the buyer may cancel and whether or not he or she has done so may in addition to recovering so much of the price as has been paid

(a) "cover" and have damages under the next section as to all the goods, affected whether or not they have been identified to the contract; or

(b) recover damages for non-delivery as provided in this Article (Section 2-713).

(2) Where the seller fails to deliver or repudiates the buyer may also

(a) if the goods have been identified recover them as provided in this Article (Section 2-502); or

(b) in a proper case obtain specific performance or replevy the goods as provided in this Article (Section 2-716).

(3) On rightful rejection or justifiable revocation of acceptance a buyer has a security interest in goods in his or her possession or control for any payments made on their price and any expenses reasonably incurred in their inspection, receipt, transportation, care and custody and may hold such goods and resell them in like manner as an aggrieved seller (Section 2-706).

(5A Del. C. 1953, § 2-711; 55 Del. Laws, c. 349; 70 Del. Laws, c. 186, § 1.)

§ 2-712 "Cover"; buyer's procurement of substitute goods.

(1) After a breach within the preceding section the buyer may "cover" by making in good faith and without unreasonable delay any reasonable purchase of or contract to purchase goods in substitution for those due from the seller.

(2) The buyer may recover from the seller as damages the difference between the cost of cover and the contract price together with any incidental or consequential damages as hereinafter defined (Section 2-715), but less expenses saved in consequence of the seller's breach.

(3) Failure of the buyer to effect cover within this section does not bar him or her from any other remedy.

(5A Del. C. 1953, § 2-712; 55 Del. Laws, c. 349; 70 Del. Laws, c. 186, § 1.)

§ 2-713 Buyer's damages for non-delivery or repudiation.

(1) Subject to the provisions of this Article with respect to proof of market price (Section 2-723), the measure of damages for non-delivery or repudiation by the seller is the difference between the market price at the time when the buyer learned of the breach and the contract price together with any incidental and consequential damages provided in this Article (Section 2-715), but less expenses saved in consequence of the seller's breach.

(2) Market price is to be determined as of the place for tender or, in cases of rejection after arrival or revocation of acceptance, as of the place of arrival.

(5A Del. C. 1953, § 2-713; 55 Del. Laws, c. 349.)

§ 2-714 Buyer's damages for breach in regard to accepted goods.

(1) Where the buyer has accepted goods and given notification (subsection (3) of Section 2-607) he or she may recover as damages for any non-conformity of tender the loss resulting in the ordinary course of events from the seller's breach as determined in any manner which is reasonable.

(2) The measure of damages for breach of warranty is the difference at the time and place of acceptance between the value of the goods accepted and the value they would have had if they had been as warranted, unless special circumstances show proximate damages of a different amount.

(3) In a proper case any incidental and consequential damages under the next section may also be recovered.

(5A Del. C. 1953, § 2-714; 55 Del. Laws, c. 349; 70 Del. Laws, c. 186, § 1.)

§ 2-715 Buyer's incidental and consequential damages.

(1) Incidental damages resulting from the seller's breach include expenses reasonably incurred in inspection, receipt, transportation and care and custody of goods rightfully rejected, any commercially reasonable charges, expenses or commissions in connection with effecting cover and any other reasonable expense incident to the delay or other breach.

(2) Consequential damages resulting from the seller's breach include

(a) any loss resulting from general or particular requirements and needs of which the seller at the time of contracting had reason to know and which could not reasonably be prevented by cover or otherwise; and

(b) injury to person or property proximately resulting from any breach of warranty.

(5A Del. C. 1953, § 2-715; 55 Del. Laws, c. 349.)

§ 2-716 Buyer's right to specific performance or replevin.

(1) Specific performance may be decreed where the goods are unique or in other proper circumstances.

(2) The decree for specific performance may include such terms and conditions as to payment of the price, damages, or other relief as the court may deem just.

(3) The buyer has a right of replevin for goods identified to the contract if after reasonable effort he or she is unable to effect cover for such goods or the circumstances reasonably indicate that such effort will be unavailing or if the goods have been shipped under reservation and satisfaction of the security interest in them has been made or tendered. In the case of goods bought for personal, family, or household purposes, the buyer's right of replevin vests upon acquisition of a special property, even if the seller had not then repudiated or failed to deliver.

(5A Del. C. 1953, § 2-716; 55 Del. Laws, c. 349; 70 Del. Laws, c. 186, § 1; 72 Del. Laws, c. 401, § 10.)

§ 2-717 Deduction of damages from the price.

The buyer on notifying the seller of his or her intention to do so may deduct all or any part of the damages resulting from any breach of the contract from any part of the price still due under the same contract.

(5A Del. C. 1953, § 2-717; 55 Del. Laws, c. 349; 70 Del. Laws, c. 186, § 1.)

§ 2-718 Liquidation or limitation of damages; deposits.

(1) Damages for breach by either party may be liquidated in the agreement but only at an amount which is reasonable in the light of the anticipated or actual harm caused by the breach, the difficulties of proof of loss, and the inconvenience or nonfeasibility of otherwise obtaining an adequate remedy. A term fixing unreasonably large liquidated damages is void as a penalty.

(2) Where the seller justifiably withholds delivery of goods because of the buyer's breach, the buyer is entitled to restitution of any amount by which the sum of his or her payments exceeds

(a) the amount to which the seller is entitled by virtue of terms liquidating the seller's damages in accordance with subsection (1), or

(b) in the absence of such terms, twenty per cent of the value of the total performance for which the buyer is obligated under the contract or $500, whichever is smaller.

(3) The buyer's right to restitution under subsection (2) is subject to offset to the extent that the seller establishes

(a) a right to recover damages under the provisions of this Article other than subsection (1), and

(b) the amount or value of any benefits received by the buyer directly or indirectly by reason of the contract.

(4) Where a seller has received payment in goods their reasonable value or the proceeds of their resale shall be treated as payments for the purposes of subsection (2); but if the seller has notice of the buyer's breach before reselling goods received in part performance, his or her resale is subject to the conditions laid down in this Article on resale by an aggrieved seller (Section 2-706).

(5A Del. C. 1953, § 2-718; 55 Del. Laws, c. 349; 70 Del. Laws, c. 186, § 1.)

§ 2-719 Contractual modification or limitation of remedy.

(1) Subject to the provisions of subsections (2) and (3) of this section and of the preceding section on liquidation and limitation of damages,

(a) the agreement may provide for remedies in addition to or in substitution for those provided in this Article and may limit or alter the measure of damages recoverable under this Article, as by limiting the buyer's remedies to return of the goods and repayment of the price or to repair and replacement of non-conforming goods or parts; and

(b) resort to a remedy as provided is optional unless the remedy is expressly agreed to be exclusive, in which case it is the sole remedy.

(2) Where circumstances cause an exclusive or limited remedy to fail of its essential purpose, remedy may be had as provided in this title.

(3) Consequential damages may be limited or excluded unless the limitation or exclusion is unconscionable. Limitation of consequential damages for injury to the person in the case of consumer goods is prima facie unconscionable but limitation of damages where the loss is commercial is not.

(5A Del. C. 1953, § 2-719; 55 Del. Laws, c. 349.)

§ 2-720 Effect of "cancellation" or "rescission" on claims for antecedent breach.

Unless the contrary intention clearly appears, expressions of "cancellation" or "rescission" of the contract or the like shall not be construed as a renunciation or discharge of any claim in damages for an antecedent breach.

(5A Del. C. 1953, § 2-720; 55 Del. Laws, c. 349.)

§ 2-721 Remedies for fraud.

Remedies for material misrepresentation or fraud include all remedies available under this Article for non-fraudulent breach. Neither rescission or a claim for rescission of the contract for sale nor rejection or return of the goods shall bar or be deemed inconsistent with a claim for damages or other remedy.

(5A Del. C. 1953, § 2-721; 55 Del. Laws, c. 349.)

§ 2-722 Who can sue third parties for injury to goods.

Where a third party so deals with goods which have been identified to a contract for sale as to cause actionable injury to a party to that contract

(a) a right of action against the third party is in either party to the contract for sale who has title to or a security interest or a special property or an insurable interest in the goods; and if the goods have been destroyed or converted a right of action is also in the party who either bore the risk of loss under the contract for sale or has since the injury assumed that risk as against the other;

(b) if at the time of the injury the party plaintiff did not bear the risk of loss as against the other party to the contract for sale and there is no arrangement between them for disposition of the recovery, his or her suit or settlement is subject to his or her own interest, as a fiduciary for the other party to the contract;

(c) either party may with the consent of the other sue for the benefit of whom it may concern.

(5A Del. C. 1953, § 2-722; 55 Del. Laws, c. 349; 70 Del. Laws, c. 186, § 1.)

§ 2-723 Proof of market price; time and place.

(1) If an action based on anticipatory repudiation comes to trial before the time for performance with respect to some or all of the goods, any damages based on market price (Section 2-708 or Section 2-713) shall be determined according to the price of such goods prevailing at the time when the aggrieved party learned of the repudiation.

(2) If evidence of a price prevailing at the times or places described in this Article is not readily available the price prevailing within any reasonable time before or after the time described or at any other place which in commercial judgment or under usage of trade would serve as a reasonable substitute for the one described may be used, making any proper allowance for the cost of transporting the goods to or from such other place.

(3) Evidence of a relevant price prevailing at a time or place other than the one described in this Article offered by one party is not admissible unless and until he or she has given the other party such notice as the court finds sufficient to prevent unfair surprise.

(5A Del. C. 1953, § 2-723; 55 Del. Laws, c. 349; 70 Del. Laws, c. 186, § 1.)

§ 2-724 Admissibility of market quotations.

Whenever the prevailing price or value of any goods regularly bought and sold in any established commodity market is in issue, reports in official publications or trade journals or in newspapers or periodicals of general circulation published as the reports of such market shall be admissible in evidence. The circumstances of the preparation of such a report may be shown to affect its weight but not its admissibility.

(5A Del. C. 1953, § 2-724; 55 Del. Laws, c. 349.)

§ 2-725 Statute of limitations in contracts for sale.

(1) An action for breach of any contract for sale must be commenced within 4 years after the cause of action has accrued. By the original agreement the parties may reduce the period of limitations to not less than one year but may not extend it.

(2) A cause of action accrues when the breach occurs, regardless of the aggrieved party's lack of knowledge of the breach. A breach of warranty occurs when tender of delivery is made, except that where a warranty explicitly extends to future performance of the goods and discovery of the breach must await the time of such performance the cause of action accrues when the breach is or should have been discovered.

(3) Where an action commenced within the time limited by subsection (1) is so terminated as to leave available a remedy by another action for the same breach such other action may be commenced after the expiration of the time limited and within 6 months after the termination of the first action unless the termination resulted from voluntary discontinuance or from dismissal for failure or neglect to prosecute.

(4) This section does not alter the law on tolling of the statute of limitations nor does it apply to causes of action which have accrued before this subtitle becomes effective.

(5A Del. C. 1953, § 2-725; 55 Del. Laws, c. 349.)

Subtitle I
Uniform Commercial Code

Article 2A
Leases

Part 1
General Provisions

§ 2A-101 Short title.

This Article shall be known and may be cited as the Uniform Commercial Code — Leases.

(68 Del. Laws, c. 249, § 1.)

§ 2A-102 Scope.

This Article applies to any transaction, regardless of form, that creates a lease.

(68 Del. Laws, c. 249, § 1.)

§ 2A-103 Definitions and index of definitions.

(1) In this Article unless the context otherwise requires:

(a) "Buyer in ordinary course of business" means a person who in good faith and without knowledge that the sale to him or her is in violation of the ownership rights or security interest or leasehold interest of a third party in the goods, buys in ordinary course from a person in the business of selling goods of that kind but does not include a pawnbroker. "Buying" may be for cash or by exchange of other property or on secured or unsecured credit and includes acquiring goods or documents of title under a pre-existing contract for sale but does not include a transfer in bulk or as security for or in total or partial satisfaction of a money debt.

(b) "Cancellation" occurs when either party puts an end to the lease contract for default by the other party.

(c) "Commercial unit" means such a unit of goods as by commercial usage is a single whole for purposes of lease and division of which materially impairs its character or value on the market or in use. A commercial unit may be a single article, as a machine, or a set of articles, as a suite of furniture or a line of machinery, or a quantity, as a gross or carload, or any other unit treated in use or in the relevant market as a single whole.

(d) "Conforming" goods or performance under a lease contract means goods or performance that are in accordance with the obligations under the lease contract.

(e) "Consumer lease" means a lease that a lessor regularly engaged in the business of leasing or selling makes to a lessee who is an individual and who takes under the lease primarily for personal, family, or household purposes.

(f) "Fault" means wrongful act, omission, breach, or default.

(g) "Finance lease" means a lease with respect to which:

(i) The lessor does not select, manufacture or supply the goods;

(ii) The lessor acquires the goods or the right to possession and use of the goods in connection with the lease; and

(iii) One of the following occurs:

(A) The lessee receives a copy of the contract by which the lessor acquired the goods or the right to possession and use of the goods before signing the lease contract;

(B) The lessee's approval of the contract by which the lessor acquired the goods or the right to possession and use of the goods is a condition to effectiveness of the lease contract;

(C) The lessee, before signing the lease contract, receives an accurate and complete statement designating the promises and warranties, and any disclaimers of warranties, limitations or modifications of remedies, or liquidated damages, including those of a third party, such as the manufacturer of the goods, provided to the lessor by the person supplying the goods in connection with or as part of the contract by which the lessor acquired the goods or the right to possession and use of the goods; or

(D) If the lease is not a consumer lease, the lessor, before the lessee signs the lease contract, informs the lessee in writing

(1) Of the identity of the person supplying the goods to the lessor, unless the lessee has selected that person and directed the lessor to acquire the goods or the right to possession and use of the goods from that person,

(2) That the lessee is entitled under this Article to the promises and warranties, including those of any third party, provided to the lessor by the person supplying the goods in connection with or as part of the contract by which the lessor acquired the goods or the right to possession and use of the goods, and

(3) That the lessee may communicate with the person supplying the goods to the lessor and receive an accurate and complete statement of those promises and warranties, including any disclaimers and limitations of them or of remedies.

(h) “Goods” means all things that are movable at the time of identification to the lease contract, or are fixtures (Section 2A-309), but the term does not include money, documents, instruments, accounts, chattel paper, general intangibles, or minerals or the like, including oil and gas, before extraction. The term also includes the unborn young of animals.

(i) “Installment lease contract” means a lease contract that authorizes or requires the delivery of goods in separate lots to be separately accepted, even though the lease contract contains a clause “each delivery is a separate lease” or its equivalent.

(j) “Lease” means a transfer of the right to possession and use of goods for a term in return for consideration, but a sale, including a sale on approval or a sale or return, or retention or creation of a security interest is not a lease. Unless the context clearly indicates otherwise, the term includes a sublease.

(k) “Lease agreement” means the bargain, with respect to the lease, of the lessor and the lessee in fact as found in their language or by implication from other circumstances including course of dealing or usage of trade or course of performance as provided in this Article. Unless the context clearly indicates otherwise, the term includes a sublease agreement.

(l) “Lease contract” means the total legal obligation that results from the lease agreement as affected by this Article and any other applicable rules of law. Unless the context clearly indicates otherwise, the term includes a sublease contract.

(m) “Leasehold interest” means the interest of the lessor or the lessee under a lease contract.

(n) “Lessee” means a person who acquires the right to possession and use of goods under a lease. Unless the context clearly indicates otherwise, the term includes a sublessee.

(o) “Lessee in ordinary course of business” means a person who in good faith and without knowledge that the lease to him or her is in violation of the ownership rights or security interest or leasehold interest of a third party in the goods, leases in ordinary course from a person in the business of selling or leasing goods of that kind but does not include a pawnbroker. “Leasing” may be for cash or by exchange of other property or on secured or unsecured credit and includes acquiring goods or documents of title under a pre-existing lease contract but does not include a transfer in bulk or as security for or in total or partial satisfaction of a money debt.

(p) “Lessor” means a person who transfers the right to possession and use of goods under a lease. Unless the context clearly indicates otherwise, the term includes a sublessor.

(q) “Lessor’s residual interest” means the lessor’s interest in the goods after expiration, termination, or cancellation of the lease contract.

(r) “Lien” means a charge against or interest in goods to secure payment of a debt or performance of an obligation, but the term does not include a security interest.

(s) “Lot” means a parcel or a single article that is the subject matter of a separate lease or delivery, whether or not it is sufficient to perform the lease contract.

(t) “Merchant lessee” means a lessee that is a merchant with respect to goods of the kind subject to the lease.

(u) “Present value” means the amount as of a date certain of one or more sums payable in the future, discounted to the date certain. The discount is determined by the interest rate specified by the parties if the rate was not manifestly unreasonable at the time the transaction was entered into; otherwise, the discount is determined by a commercially reasonable rate that takes into account the facts and circumstances of each case at the time the transaction was entered into.

(v) “Purchase” includes taking by sale, lease, mortgage, security interest, pledge, gift, or any other voluntary transaction creating an interest in goods.

(w) “Sublease” means a lease of goods the right to possession and use of which was acquired by the lessor as a lessee under an existing lease.

(x) “Supplier” means a person from whom a lessor buys or leases goods to be leased under a finance lease.

(y) “Supply contract” means a contract under which a lessor buys or leases goods to be leased.

(z) “Termination” occurs when either party pursuant to a power created by agreement or law puts an end to the lease contract otherwise than for default.

(2) Other definitions applying to this Article and the sections in which they appear are:

“Accessions”. Section 2A-310(1).

“Construction mortgage”. Section 2A-309(1)(d).

“Encumbrance”. Section 2A-309(1)(e).

“Fixtures”. Section 2A-309(1)(a).

“Fixture filing”. Section 2A-309(1)(b).

“Purchase money lease”. Section 2A-309(1)(c).

(3) The following definitions in other Articles apply to this Article:

“Account”. Section 9-102(a)(2).

“Between merchants”. Section 2-104(3).

“Buyer”. Section 2-103(1)(a).

"Chattel paper". Section 9-102(a)(11).
"Consumer goods". Section 9-102(a)(23).
"Document". Section 9-102(a)(30).
"Entrusting". Section 2-403(3).
"General intangible". Section 9-102(a)(42).
"Good faith". Section 2-103(1)(b). [Repealed.]
"Instrument". Section 9-102(a)(47).
"Merchant". Section 2-104(1).
"Mortgage". Section 9-102(a)(55).
"Pursuant to commitment". Section 9-102(a)(69).
"Receipt". Section 2-103(1)(c).
"Sale". Section 2-106(1).
"Sale on approval". Section 2-326.
"Sale or return". Section 2-326.
"Seller". Section 2-103(1)(d).

(4) In addition, Article 1 contains general definitions and principles of construction and interpretation applicable throughout this Article.

(68 Del. Laws, c. 249, § 1; 70 Del. Laws, c. 186, § 1; 72 Del. Laws, c. 401, § 11; 74 Del. Laws, c. 332, §§ 18-20; 79 Del. Laws, c. 15, § 29.)

§ 2A-104 Leases subject to other law.

(1) A lease, although subject to this Article, is also subject to any applicable:

(a) Certificate of title statute of this State;

(b) Certificate of title statute of another jurisdiction (Section 2A-105); or

(c) Consumer protection statute of this State, or final consumer protection decision of a court of this State existing on July 19, 1992.

(2) In case of conflict between this Article, other than Sections 2A-105, 2A-304(3) and 2A-305(3), and a statute or decision referred to in subsection (1), the statute or decision controls.

(3) Failure to comply with an applicable law has only the effect specified therein.

(68 Del. Laws, c. 249, § 1.)

§ 2A-105 Territorial application of article to goods covered by certificate of title.

Subject to the provisions of Sections 2A-304(3) and 2A-305(3), with respect to goods covered by a certificate of title issued under a statute of this State or of another jurisdiction, compliance and the effect of compliance or noncompliance with a certificate of title statute are governed by the law (including the conflict of laws rules) of the jurisdiction issuing the certificate until the earlier of (a) surrender of the certificate, or (b) four months after the goods are removed from that jurisdiction and thereafter until a new certificate of title is issued by another jurisdiction.

(68 Del. Laws, c. 249, § 1.)

§ 2A-106 Limitation on power of parties to consumer lease to choose applicable law and judicial forum.

(1) If the law chosen by the parties to a consumer lease is that of a jurisdiction other than a jurisdiction in which the lessee resides at the time the lease agreement becomes enforceable or within 30 days thereafter, or in which the goods are to be used, the choice is not enforceable.

(2) If the judicial forum chosen by the parties to a consumer lease is a forum that would not otherwise have jurisdiction over the lessee, the choice is not enforceable.

(68 Del. Laws, c. 249, § 1.)

§ 2A-107 Waiver or renunciation of claim or right after default.

Any claim or right arising out of an alleged default or breach of warranty may be discharged in whole or in part without consideration by a written waiver or renunciation signed and delivered by the aggrieved party.

(68 Del. Laws, c. 249, § 1.)

§ 2A-108 Unconscionability.

(1) If the court as a matter of law finds a lease contract or any clause of a lease contract to have been unconscionable at the time it was made, the court may refuse to enforce the lease contract, or it may enforce the remainder of the lease contract without the unconscionable clause, or it may so limit the application of any unconscionable clause as to avoid any unconscionable result.

(2) With respect to a consumer lease, if the court as a matter of law finds that a lease contract or any clause of a lease contract has been induced by unconscionable conduct or that unconscionable conduct has occurred in the collection of a claim arising from a lease contract, the court may grant appropriate relief.

(3) Before making a finding of unconscionability under subsection (1) or (2), the court, on its own motion or that of a party, shall afford the parties a reasonable opportunity to present evidence as to the setting, purpose, and effect of the lease contract or clause thereof, or of the conduct.

(4) In an action in which the lessee claims unconscionability with respect to a consumer lease:

(a) If the court finds unconscionability under subsection (1) or (2), the court shall award reasonable attorney's fees to the lessee.

(b) If the court does not find unconscionability and the lessee claiming unconscionability has brought or maintained an action he or she knew to be groundless, the court shall award reasonable attorney's fees to the party against whom the claim is made.

(c) In determining attorney's fees, the amount of the recovery on behalf of the claimant under subsections (1) and (2) is not controlling.

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

§ 2A-109 Option to accelerate at will.

(1) A term providing that 1 party or his or her successor in interest may accelerate payment or performance or require collateral or additional collateral "at will", or "when he or she deems himself or herself insecure" or in words of similar import must be construed to mean that he or she has power to do so only if he or she in good faith believes that the prospect of payment or performance is impaired.

(2) With respect to a consumer lease, the burden of establishing good faith under subsection (1) is on the party who exercised the power; otherwise the burden of establishing lack of good faith is on the party against whom the power has been exercised.

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

Part 2

Formation and Construction of Lease Contract

§ 2A-201 Statute of frauds.

(1) A lease contract is not enforceable by way of action or defense unless:

(a) The total payments to be made under the lease contract, excluding payments for options to renew or buy, are less than $1,000; or

(b) There is a writing, signed by the party against whom enforcement is sought or by that party's authorized agent, sufficient to indicate that a lease contract has been made between the parties and to describe the goods leased and the lease term.

(2) Any description of leased goods or of the lease term is sufficient and satisfies subsection (1)(b), whether or not it is specific, if it reasonably identifies what is described.

(3) A writing is not insufficient because it omits or incorrectly states a term agreed upon, but the lease contract is not enforceable under subsection (1)(b) beyond the lease term and the quantity of goods shown in the writing.

(4) A lease contract that does not satisfy the requirements of subsection (1), but which is valid in other respects, is enforceable:

(a) If the goods are to be specially manufactured or obtained for the lessee and are not suitable for lease or sale to others in the ordinary course of the lessor's business, and the lessor, before notice of repudiation is received and under circumstances that reasonably indicate that the goods are for the lessee, has made either a substantial beginning of their manufacture or commitments for their procurement;

(b) If the party against whom enforcement is sought admits in that party's pleading, testimony or otherwise in court that a lease contract was made, but the lease contract is not enforceable under this provision beyond the quantity of goods admitted; or

(c) With respect to goods that have been received and accepted by the lessee.

(5) The lease term under a lease contract referred to in subsection (4) is:

(a) If there is a writing signed by the party against whom enforcement is sought or by that party's authorized agent specifying the lease term, the term so specified;

(b) If the party against whom enforcement is sought admits in that party's pleading, testimony, or otherwise in court a lease term, the term so admitted; or

(c) A reasonable lease term.

(68 Del. Laws, c. 249, § 1.)

§ 2A-202 Final written expression: Parol or extrinsic evidence.

Terms with respect to which the confirmatory memoranda of the parties agree or which are otherwise set forth in a writing intended by the parties as a final expression of their agreement with respect to such terms as are included therein may not be contradicted by evidence of any prior agreement or of a contemporaneous oral agreement but may be explained or supplemented:

(a) By course of dealing or usage of trade or by course of performance; and

(b) By evidence of consistent additional terms unless the court finds the writing to have been intended also as a complete and exclusive statement of the terms of the agreement.

(68 Del. Laws, c. 249, § 1.)

§ 2A-203 Seals inoperative.

The affixing of a seal to a writing evidencing a lease contract or an offer to enter into a lease contract does not render the writing a sealed instrument and the law with respect to sealed instruments does not apply to the lease contract or offer.

(68 Del. Laws, c. 249, § 1.)

§ 2A-204 Formation in general.

(1) A lease contract may be made in any manner sufficient to show agreement, including conduct by both parties which recognizes the existence of a lease contract.

(2) An agreement sufficient to constitute a lease contract may be found although the moment of its making is undetermined.

(3) Although 1 or more terms are left open, a lease contract does not fail for indefiniteness if the parties have intended to make a lease contract and there is a reasonably certain basis for giving an appropriate remedy.

(68 Del. Laws, c. 249, § 1.)

§ 2A-205 Firm offers.

An offer by a merchant to lease goods to or from another person in a signed writing that by its terms gives assurance it will be held open is not revocable, for lack of consideration, during the time stated or, if no time is stated, for a reasonable time, but in no event may the period of irrevocability exceed 3 months. Any such term of assurance on a form supplied by the offeree must be separately signed by the offeror.

(68 Del. Laws, c. 249, § 1.)

§ 2A-206 Offer and acceptance in formation of lease contract.

(1) Unless otherwise unambiguously indicated by the language or circumstances, an offer to make a lease contract must be construed as inviting acceptance in any manner and by any medium reasonable in the circumstances.

(2) If the beginning of a requested performance is a reasonable mode of acceptance, an offeror who is not notified of acceptance within a reasonable time may treat the offer as having lapsed before acceptance.

(68 Del. Laws, c. 249, § 1.)

§ 2A-207 [Reserved.]

§ 2A-208 Modification, rescission and waiver.

(1) An agreement modifying a lease contract needs no consideration to be binding.

(2) A signed lease agreement that excludes modification or rescission except by a signed writing may not be otherwise modified or rescinded, but, except as between merchants, such a requirement on a form supplied by a merchant must be separately signed by the other party.

(3) Although an attempt at modification or rescission does not satisfy the requirements of subsection (2), it may operate as a waiver.

(4) A party who has made a waiver affecting an executory portion of a lease contract may retract the waiver by reasonable notification received by the other party that strict performance will be required of any term waived, unless the retraction would be unjust in view of a material change of position in reliance on the waiver.

(68 Del. Laws, c. 249, § 1.)

§ 2A-209 Lessee under finance lease as beneficiary of supply contract.

(1) The benefit of a supplier's promises to the lessor under the supply contract and of all warranties, whether express or implied, including those of any third party provided in connection with or as part of the supply contract, extends to the lessee to the extent of the lessee's leasehold interest under a finance lease related to the supply contract, but is subject to the terms of the warranty and of the supply contract and all defenses or claims arising therefrom.

(2) The extension of the benefit of a supplier's promises and of warranties to the lessee (Section 2A-209(1)) does not: (i) modify the rights and obligations of the parties to the supply contract, whether arising therefrom or otherwise, or (ii) impose any duty or liability under the supply contract on the lessee.

(3) Any modification or rescission of the supply contract by the supplier and the lessor is effective between the supplier and the lessee unless, before the modification or rescission, the supplier has received notice that the lessee has entered into a finance lease related to the supply contract. If the modification or rescission is effective between the supplier and the lessee, the lessor is deemed to have assumed, in addition to the obligations of the lessor to the lessee under the lease contract, promises of the supplier to the lessor and warranties that were so modified or rescinded as they existed and were available to the lessee before modification or rescission.

(4) In addition to the extension of the benefit of the supplier's promises and of warranties to the lessee under subsection (1), the lessee retains all rights that the lessee may have against the supplier which arise from an agreement between the lessee and the supplier or under other law.

(68 Del. Laws, c. 249, § 1.)

§ 2A-210 Express warranties.

(1) Express warranties by the lessor are created as follows:

(a) Any affirmation of fact or promise made by the lessor to the lessee which relates to the goods and becomes part of the basis of the bargain creates an express warranty that the goods will conform to the affirmation or promise.

(b) Any description of the goods which is made part of the basis of the bargain creates an express warranty that the goods will conform to the description.

(c) Any sample or model that is made part of the basis of the bargain creates an express warranty that the whole of the goods will conform to the sample or model.

(2) It is not necessary to the creation of an express warranty that the lessor use formal words, such as “warrant” or “guarantee,” or that the lessor have a specific intention to make a warranty, but an affirmation merely of the value of the goods or a statement purporting to be merely the lessor’s opinion or commendation of the goods does not create a warranty.

(68 Del. Laws, c. 249, § 1.)

§ 2A-211 Warranties against interference and against infringement; lessee’s obligation against infringement.

(1) There is in a lease contract a warranty that for the lease term no person holds a claim to or interest in the goods that arose from an act or omission of the lessor, other than a claim by way of infringement or the like, which will interfere with the lessee’s enjoyment of its leasehold interest.

(2) Except in a finance lease, there is in a lease contract by a lessor who is a merchant regularly dealing in goods of the kind a warranty that the goods are delivered free of the rightful claim of any person by way of infringement or the like.

(3) A lessee who furnishes specifications to a lessor or a supplier shall hold the lessor and the supplier harmless against any claim by way of infringement or the like that arises out of compliance with the specifications.

(68 Del. Laws, c. 249, § 1.)

§ 2A-212 Implied warranty of merchantability.

(1) Except in a finance lease, a warranty that the goods will be merchantable is implied in a lease contract if the lessor is a merchant with respect to goods of that kind.

(2) Goods to be merchantable must be at least such as

(a) pass without objection in the trade under the description in the lease agreement;

(b) in the case of fungible goods, are of fair average quality within the description;

(c) are fit for the ordinary purposes for which goods of that type are used;

(d) run, within the variation permitted by the lease agreement, of even kind, quality, and quantity within each unit and among all units involved;

(e) are adequately contained, packaged, and labeled as the lease agreement may require; and

(f) conform to any promises or affirmations of fact made on the container or label.

(3) Other implied warranties may arise from course of dealing or usage of trade.

(68 Del. Laws, c. 249, § 1.)

§ 2A-213 Implied warranty of fitness for particular purpose.

Except in a finance lease, if the lessor at the time the lease contract is made has reason to know of any particular purpose for which the goods are required and that the lessee is relying on the lessor’s skill or judgment to select or furnish suitable goods, there is in the lease contract an implied warranty that the goods will be fit for that purpose.

(68 Del. Laws, c. 249, § 1.)

§ 2A-214 Exclusion or modification of warranties.

(1) Words or conduct relevant to the creation of an express warranty and words or conduct tending to negate or limit a warranty must be construed wherever reasonable as consistent with each other; but, subject to the provisions of Section 2A-202 on parol or extrinsic evidence, negation or limitation is inoperative to the extent that the construction is unreasonable.

(2) Subject to subsection (3), to exclude or modify the implied warranty of merchantability or any part of it the language must mention “merchantability”, be by a writing, and be conspicuous. Subject to subsection (3), to exclude or modify any implied warranty of fitness the exclusion must be by a writing and be conspicuous. Language to exclude all implied warranties of fitness is sufficient if it is in writing, is conspicuous and states, for example, “There is no warranty that the goods will be fit for a particular purpose”.

(3) Notwithstanding subsection (2), but subject to subsection (4),

(a) unless the circumstances indicate otherwise, all implied warranties are excluded by expressions like "as is," or "with all faults," or by other language that in common understanding calls the lessee's attention to the exclusion of warranties and makes plain that there is no implied warranty, if in writing and conspicuous;

(b) if the lessee before entering into the lease contract has examined the goods or the sample or model as fully as desired or has refused to examine the goods, there is no implied warranty with regard to defects that an examination ought in the circumstances to have revealed; and

(c) an implied warranty may also be excluded or modified by course of dealing, course of performance, or usage of trade.

(4) To exclude or modify a warranty against interference or against infringement (Section 2A-211) or any part of it, the language must be specific, be by a writing, and be conspicuous, unless the circumstances, including course of performance, course of dealing, or usage of trade, give the lessee reason to know that the goods are being leased subject to a claim or interest of any person.

(68 Del. Laws, c. 249, § 1.)

§ 2A-215 Cumulation and conflict of warranties express or implied.

Warranties, whether express or implied, must be construed as consistent with each other and as cumulative, but if that construction is unreasonable, the intention of the parties determines which warranty is dominant. In ascertaining that intention the following rules apply:

(a) Exact or technical specifications displace an inconsistent sample or model or general language of description.

(b) A sample from an existing bulk displaces inconsistent general language of description.

(c) Express warranties displace inconsistent implied warranties other than an implied warranty of fitness for a particular purpose.

(68 Del. Laws, c. 249, § 1.)

§ 2A-216 Third-party beneficiaries of express and implied warranties.

A warranty to or for the benefit of a lessee under this Article, whether express or implied, extends to any natural person who may reasonably be expected to use, consume or be affected by the goods and who is injured by breach of the warranty. This section does not displace principles of law and equity that extend a warranty to or for the benefit of a lessee to other persons. The operation of this section may not be excluded, modified, or limited with respect to injury to the person of an individual to whom the warranty extends, but an exclusion, modification, or limitation of the warranty, including any with respect to rights and remedies, effective against the lessee is also effective against any beneficiary designated under this section.

(68 Del. Laws, c. 249, § 1.)

§ 2A-217 Identification.

Identification of goods as goods to which a lease contract refers may be made at any time and in any manner explicitly agreed to by the parties. In the absence of explicit agreement, identification occurs:

(a) When the lease contract is made if the lease contract is for a lease of goods that are existing and identified;

(b) When the goods are shipped, marked, or otherwise designated by the lessor as goods to which the lease contract refers, if the lease contract is for a lease of goods that are not existing and identified; or

(c) When the young are conceived, if the lease contract is for a lease of unborn young of animals.

(68 Del. Laws, c. 249, § 1.)

§ 2A-218 Insurance and proceeds.

(1) A lessee obtains an insurable interest when existing goods are identified to the lease contract even though the goods identified are nonconforming and the lessee has an option to reject them.

(2) If a lessee has an insurable interest only by reason of the lessor's identification of the goods, the lessor, until default or insolvency or notification to the lessee that identification is final, may substitute other goods for those identified.

(3) Notwithstanding a lessee's insurable interest under subsections (1) and (2), the lessor retains an insurable interest until an option to buy has been exercised by the lessee and risk of loss has passed to the lessee.

(4) Nothing in this section impairs any insurable interest recognized under any other statute or rule of law.

(5) The parties by agreement may determine that 1 or more parties have an obligation to obtain and pay for insurance covering the goods and by agreement may determine the beneficiary of the proceeds of the insurance.

(68 Del. Laws, c. 249, § 1.)

§ 2A-219 Risk of loss.

(1) Except in the case of a finance lease, risk of loss is retained by the lessor and does not pass to the lessee. In the case of a finance lease, risk of loss passes to the lessee.

(2) Subject to the provisions of this Article on the effect of default on risk of loss (Section 2A-220), if risk of loss is to pass to the lessee and the time of passage is not stated, the following rules apply:

(a) If the lease contract requires or authorizes the goods to be shipped by carrier

(i) and it does not require delivery at a particular destination, the risk of loss passes to the lessee when the goods are duly delivered to the carrier; but

(ii) if it does require delivery at a particular destination and the goods are there duly tendered while in the possession of the carrier, the risk of loss passes to the lessee when the goods are there duly so tendered as to enable the lessee to take delivery.

(b) If the goods are held by a bailee to be delivered without being moved, the risk of loss passes to the lessee on acknowledgment by the bailee of the lessee's right to possession of the goods.

(c) In any case not within subsection (a) or (b), the risk of loss passes to the lessee on the lessee's receipt of the goods if the lessor, or, in the case of a finance lease, the supplier, is a merchant; otherwise the risk passes to the lessee on tender of delivery.

(68 Del. Laws, c. 249, § 1.)

§ 2A-220 Effect of default on risk of loss.

(1) Where risk of loss is to pass to the lessee and the time of passage is not stated:

(a) If a tender or delivery of goods so fails to conform to the lease contract as to give a right of rejection, the risk of their loss remains with the lessor, or, in the case of a finance lease, the supplier, until cure or acceptance.

(b) If the lessee rightfully revokes acceptance, he or she, to the extent of any deficiency in his or her effective insurance coverage, may treat the risk of loss as having remained with the lessor from the beginning.

(2) Whether or not risk of loss is to pass to the lessee, if the lessee as to conforming goods already identified to a lease contract repudiates or is otherwise in default under the lease contract, the lessor, or, in the case of a finance lease, the supplier, to the extent of any deficiency in his or her effective insurance coverage may treat the risk of loss as resting on the lessee for a commercially reasonable time.

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

§ 2A-221 Casualty to identified goods.

If a lease contract requires goods identified when the lease contract is made, and the goods suffer casualty without fault of the lessee, the lessor or the supplier before delivery, or the goods suffer casualty before risk of loss passes to the lessee pursuant to the lease agreement or Section 2A-219, then:

(a) If the loss is total, the lease contract is avoided; and

(b) If the loss is partial or the goods have so deteriorated as to no longer conform to the lease contract, the lessee may nevertheless demand inspection and at his or her option either treat the lease contract as avoided or, except in a finance lease that is not a consumer lease, accept the goods with due allowance from the rent payable for the balance of the lease term for the deterioration or the deficiency in quantity but without further right against the lessor.

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

Part 3

Effect of Lease Contract

§ 2A-301 Enforceability of lease contract.

Except as otherwise provided in this Article, a lease contract is effective and enforceable according to its terms between the parties, against purchasers of the goods and against creditors of the parties.

(68 Del. Laws, c. 249, § 1.)

§ 2A-302 Title to and possession of goods.

Except as otherwise provided in this Article, each provision of this Article applies whether the lessor or a third party has title to the goods, and whether the lessor, the lessee, or a third party has possession of the goods, notwithstanding any statute or rule of law that possession or the absence of possession is fraudulent.

(68 Del. Laws, c. 249, § 1.)

§ 2A-303 Alienability of party's interest under lease contract or of lessor's residual interest in goods; delegation of performance; transfer of rights.

(1) As used in this section, "creation of a security interest" includes the sale of a lease contract that is subject to Article 9, Secured Transactions, by reason of Section 9-109(a)(3).

(2) Except as provided in subsection (3) and Section 9-407, a provision in a lease agreement which (i) prohibits the voluntary or involuntary transfer, including a transfer by sale, sublease, creation or enforcement of a security interest, or attachment, levy, or other judicial process, of an interest of a party under the lease contract or of the lessor's residual interest in the goods, or (ii) makes such a transfer an event of default, gives rise to the rights and remedies provided in subsection (4), but a transfer that is prohibited or is an event of default under the lease agreement is otherwise effective.

(3) A provision in a lease agreement which (i) prohibits a transfer of a right to damages for default with respect to the whole lease contract or of a right to payment arising out of the transferor's due performance of the transferor's entire obligation, or (ii) makes such a transfer an event of default, is not enforceable, and such a transfer is not a transfer that materially impairs the prospect of obtaining return performance by, materially changes the duty of, or materially increases the burden or risk imposed on, the other party to the lease contract within the purview of subsection (4).

(4) Subject to subsection (3) and Section 9-407:

(a) if a transfer is made which is made an event of default under a lease agreement, the party to the lease contract not making the transfer, unless that party waives the default or otherwise agrees, has the rights and remedies described in Section 2A-501(2);

(b) if paragraph (a) is not applicable and if a transfer is made that (i) is prohibited under a lease agreement or (ii) materially impairs the prospect of obtaining return performance by, materially changes the duty of, or materially increases the burden or risk imposed on, the other party to the lease contract, unless the party not making the transfer agrees at any time to the transfer in the lease contract or otherwise, then, except as limited by contract, (i) the transferor is liable to the party not making the transfer for damages caused by the transfer to the extent that the damages could not reasonably be prevented by the party not making the transfer and (ii) a court having jurisdiction may grant other appropriate relief, including cancellation of the lease contract or an injunction against the transfer.

(5) A transfer of "the lease" or of "all my rights under the lease", or a transfer in similar general terms, is a transfer of rights and, unless the language or the circumstances, as in a transfer for security, indicate the contrary, the transfer is a delegation of duties by the transferor to the transferee. Acceptance by the transferee constitutes a promise by the transferee to perform those duties. The promise is enforceable by either the transferor or the other party to the lease contract.

(6) Unless otherwise agreed by the lessor and the lessee, a delegation of performance does not relieve the transferor as against the other party of any duty to perform or of any liability for default.

(7) In a consumer lease, to prohibit the transfer of an interest of a party under the lease contract or to make a transfer an event of default, the language must be specific, by a writing, and conspicuous.

(68 Del. Laws, c. 249, § 1; 72 Del. Laws, c. 401, § 12.)

§ 2A-304 Subsequent lease of goods by lessor.

(1) Subject to Section 2A-303, a subsequent lessee from a lessor of goods under an existing lease contract obtains, to the extent of the leasehold interest transferred, the leasehold interest in the goods that the lessor had or had power to transfer, and except as provided in subsection (2) and Section 2A-527(4), takes subject to the existing lease contract. A lessor with voidable title has power to transfer a good leasehold interest to a good faith subsequent lessee for value, but only to the extent set forth in the preceding sentence. If goods have been delivered under a transaction of purchase, the lessor has that power even though:

(a) The lessor's transferor was deceived as to the identity of the lessor;

(b) The delivery was in exchange for a check which is later dishonored;

(c) It was agreed that the transaction was to be a "cash sale"; or

(d) The delivery was procured through fraud punishable as larcenous under the criminal law.

(2) A subsequent lessee in the ordinary course of business from a lessor who is a merchant dealing in goods of that kind to whom the goods were entrusted by the existing lessee of that lessor before the interest of the subsequent lessee became enforceable against that lessor obtains, to the extent of the leasehold interest transferred, all of that lessor's and the existing lessee's rights to the goods, and takes free of the existing lease contract.

(3) A subsequent lessee from the lessor of goods that are subject to an existing lease contract and are covered by a certificate of title issued under a statute of this State or of another jurisdiction takes no greater rights than those provided both by this section and by the certificate of title statute.

(68 Del. Laws, c. 249, § 1.)

§ 2A-305 Sale or sublease of goods by lessee.

(1) Subject to the provisions of Section 2A-303, a buyer or sublessee from the lessee of goods under an existing lease contract obtains, to the extent of the interest transferred, the leasehold interest in the goods that the lessee had or had power to transfer, and except as provided in subsection (2) and Section 2A-511(4), takes subject to the existing lease contract. A lessee with a voidable leasehold interest has power to transfer a good leasehold interest to a good faith buyer for value or a good faith sublessee for value, but only to the extent set forth in the preceding sentence. When goods have been delivered under a transaction of lease the lessee has that power even though:

(a) The lessor was deceived as to the identity of the lessee;

(b) The delivery was in exchange for a check which is later dishonored; or

(c) The delivery was procured through fraud punishable as larcenous under the criminal law.

(2) A buyer in the ordinary course of business or a sublessee in the ordinary course of business from a lessee who is a merchant dealing in goods of that kind to whom the goods were entrusted by the lessor obtains, to the extent of the interest transferred, all of the lessor's and lessee's rights to the goods, and takes free of the existing lease contract.

(3) A buyer or sublessee from the lessee of goods that are subject to an existing lease contract and are covered by a certificate of title issued under a statute of this State or of another jurisdiction takes no greater rights than those provided both by this section and by the certificate of title statute.

(68 Del. Laws, c. 249, § 1.)

§ 2A-306 Priority of certain liens arising by operation of law.

If a person in the ordinary course of his or her business furnishes services or materials with respect to goods subject to a lease contract, a lien upon those goods in the possession of that person given by statute or rule of law for those materials or services takes priority over any interest of the lessor or lessee under the lease contract or this Article unless the lien is created by statute and the statute provides otherwise or unless the lien is created by rule of law and the rule of law provides otherwise.

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

§ 2A-307 Priority of liens arising by attachment or levy on, security interests in, and other claims to goods.

(1) Except as otherwise provided in Section 2A-306, a creditor of a lessee takes subject to the lease contract.

(2) Except as otherwise provided in subsection (3) and in Sections 2A-306 and 2A-308, a creditor of a lessor takes subject to the lease contract unless the creditor holds a lien that attached to the goods before the lease contract became enforceable.

(3) Except as otherwise provided in Sections 9-317, 9-321, and 9-323, a lessee takes a leasehold interest subject to a security interest held by a creditor of the lessor.

(68 Del. Laws, c. 249, § 1; 72 Del. Laws, c. 401, § 13.)

§ 2A-308 Special rights of creditors.

(1) A creditor of a lessor in possession of goods subject to a lease contract may treat the lease contract as void if as against the creditor retention of possession by the lessor is fraudulent under any statute or rule of law, but retention of possession in good faith and current course of trade by the lessor for a commercially reasonable time after the lease contract becomes enforceable is not fraudulent.

(2) Nothing in this Article impairs the rights of creditors of a lessor if the lease contract (a) becomes enforceable, not in current course of trade but in satisfaction of or as security for a pre-existing claim for money, security, or the like, and (b) is made under circumstances which under any statute or rule of law apart from this Article would constitute the transaction a fraudulent transfer or voidable preference.

(3) A creditor of a seller may treat a sale or an identification of goods to a contract for sale as void if as against the creditor retention of possession by the seller is fraudulent under any statute or rule of law, but retention of possession of the goods pursuant to a lease contract entered into by the seller as lessee and the buyer as lessor in connection with the sale or identification of the goods is not fraudulent if the buyer bought for value and in good faith.

(68 Del. Laws, c. 249, § 1.)

§ 2A-309 Lessor's and lessee's rights when goods become fixtures.

(1) In this section:

(a) Goods are "fixtures" when they become so related to particular real estate that an interest in them arises under real estate law;

(b) A "fixture filing" is the filing, in the office where a record of a mortgage on the real estate would be filed or recorded, of a financing statement covering goods that are or are to become fixtures and conforming to the requirements of Section 9-502(a) and (b);

(c) A lease is a "purchase money lease" unless the lessee has possession or use of the goods or the right to possession or use of the goods before the lease agreement is enforceable;

(d) A mortgage is a "construction mortgage" to the extent it secures an obligation incurred for the construction of an improvement on land including the acquisition cost of the land, if the recorded writing so indicates; and

(e) "Encumbrance" includes real estate mortgages and other liens on real estate and all other rights in real estate that are not ownership interests.

(2) Under this Article a lease may be of goods that are fixtures or may continue in goods that become fixtures, but no lease exists under this Article of ordinary building materials incorporated into an improvement on land.

(3) This Article does not prevent creation of a lease of fixtures pursuant to real estate law.

(4) The interest of a lessor of fixtures, including the lessor's residual interest, has priority over a conflicting interest of an encumbrancer or owner of the real estate if:

(a) The lease is a purchase money lease, the conflicting interest of the encumbrancer or owner arises before the goods become fixtures, a fixture filing covering the interest of the lessor is made before the goods become fixtures or within 10 days thereafter, and the lessee has an interest of record in the real estate or is in possession of the real estate; or

(b) A fixture filing covering the interest of the lessor is made before the interest of the encumbrancer or owner is of record, the lessor's interest, has priority over any conflicting interest of a predecessor in title of the encumbrancer or owner, and the lessee has an interest of record in the real estate or is in possession of the real estate.

(5) Whether or not a fixture filing covering the fixtures has been made, the interest of a lessor of fixtures, including the lessor's residual interest, has priority over the conflicting interest of an encumbrancer or owner of the real estate if:

(a) The fixtures are readily removable factory or office machines, readily removable equipment that is not primarily used or leased for use in the operation of the real estate, or readily removable replacements of domestic appliances that are goods subject to a consumer lease, and before the goods become fixtures the lease contract is enforceable; or

(b) The conflicting interest is a lien on the real estate obtained by legal or equitable proceedings after the lease contract is enforceable; or

(c) The encumbrancer or owner has consented in writing to the lease or has disclaimed an interest in the goods as fixtures; or

(d) The lessee has a right to remove the goods as against the encumbrancer or owner. If the lessee's right to remove terminates, the priority of the interest of the lessor continues for a reasonable time.

(6) Notwithstanding subsection (4)(a) but otherwise subject to subsections (4) and (5), the interest of a lessor of fixtures, including the lessor's residual interest, is subordinate to the conflicting interest of an encumbrancer of the real estate under a construction mortgage recorded before the goods become fixtures if the goods become fixtures before the completion of the construction. To the extent given to refinance a construction mortgage, the conflicting interest of an encumbrancer of the real estate under a mortgage has this priority to the same extent as the encumbrancer of the real estate under the construction mortgage.

(7) In cases not within the preceding subsections, priority between the interest of a lessor of fixtures, including the lessor's residual interest, and the conflicting interest of an encumbrancer or owner of the real estate who is not the lessee is determined by the priority rules governing conflicting interests in real estate.

(8) If the interest of a lessor of fixtures, including the lessor's residual interest, has priority over all conflicting interests of all owners and encumbrancers of the real estate, the lessor or the lessee may (i) on default, expiration, termination, or cancellation of the lease agreement but subject to the lease agreement and this Article, or (ii) if necessary to enforce other rights and remedies of the lessor or lessee under this Article, remove the goods from the real estate, free and clear of all conflicting interests of all owners and encumbrancers of the real estate, but the lessor or lessee must reimburse any encumbrancer or owner of the real estate who is not the lessee and who has not otherwise agreed for the cost of repair of any physical injury, but not for any diminution in value of the real estate caused by the absence of the goods removed or by any necessity of replacing them. A person entitled to reimbursement may refuse permission to remove until the party seeking removal gives adequate security for the performance of this obligation.

(68 Del. Laws, c. 249, § 1; 72 Del. Laws, c. 401, § 14.)

§ 2A-310 Lessor's and lessee's rights goods become accessions.

(1) Goods are "accessions" when they are installed in or affixed to other goods.

(2) The interest of a lessor or a lessee under a lease contract entered into before the goods became accessions is superior to all interests in the whole except as stated in subsection (4).

(3) The interest of a lessor or a lessee under a lease contract entered into at the time or after the goods became accessions is superior to all subsequently acquired interests in the whole except as stated in subsection (4) but is subordinate to interests in the whole existing at the time the lease contract was made unless the holders of such interests in the whole have in writing consented to the lease or disclaimed an interest in the goods as part of the whole.

(4) The interest of a lessor or a lessee under a lease contract described in subsection (2) or (3) is subordinate to the interest of:

(a) A buyer in the ordinary course of business or a lessee in the ordinary course of business of any interest in the whole acquired after the goods became accessions; or

(b) A creditor with a security interest in the whole perfected before the lease contract was made to the extent that the creditor makes subsequent advances without knowledge of the lease contract.

(5) When under subsections (2) or (3) and (4) a lessor or a lessee of accessions holds an interest that is superior to all interests in the whole, the lessor or the lessee may (a) on default, expiration, termination, or cancellation of the lease contract by the other party but subject to the provisions of the lease contract and this Article, or (b) if necessary to enforce his or her other rights and remedies under this Article, remove the goods from the whole, free and clear of all interests in the whole, but he or she must reimburse any holder of an interest in the whole who is not the lessee and who has not otherwise agreed for the cost of repair of any physical injury but not for any diminution in value of the whole caused by the absence of the goods removed or by any necessity for replacing them. A person entitled to reimbursement may refuse permission to remove until the party seeking removal gives adequate security for the performance of this obligation.

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

§ 2A-311 Priority subject to subordination.

Nothing in this Article prevents subordination by agreement by any person entitled to priority.

(68 Del. Laws, c. 249, § 1.)

Part 4

Performance of Lease Contract: Repudiated, Substituted and Excused

§ 2A-401 Insecurity: adequate assurance of performance.

(1) A lease contract imposes an obligation on each party that the other's expectation of receiving due performance will not be impaired.

(2) If reasonable grounds for insecurity arise with respect to the performance of either party, the insecure party may demand in writing adequate assurance of due performance. Until the insecure party receives that assurance, if commercially reasonable the insecure party may suspend any performance for which he or she has not already received the agreed return.

(3) A repudiation of the lease contract occurs if assurance of due performance adequate under the circumstances of the particular case is not provided to the insecure party within a reasonable time, not to exceed 30 days after receipt of a demand by the other party.

(4) Between merchants, the reasonableness of grounds for insecurity and the adequacy of any assurance offered must be determined according to commercial standards.

(5) Acceptance of any nonconforming delivery or payment does not prejudice the aggrieved party's right to demand adequate assurance of future performance.

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

§ 2A-402 Anticipatory repudiation.

If either party repudiates a lease contract with respect to a performance not yet due under the lease contract, the loss of which performance will substantially impair the value of the lease contract to the other, the aggrieved party may:

(a) For a commercially reasonable time, await retraction of repudiation and performance by the repudiating party;

(b) Make demand pursuant to Section 2A-401 and await assurance of future performance adequate under the circumstances of the particular case; or

(c) Resort to any right or remedy upon default under the lease contract or this Article, even though the aggrieved party has notified the repudiating party that the aggrieved party would await the repudiating party's performance and assurance and has urged retraction. In addition, whether or not the aggrieved party is pursuing one of the foregoing remedies, the aggrieved party may suspend performance or, if the aggrieved party is the lessor, proceed in accordance with the provisions of this Article on the lessor's right to identify goods to the lease contract notwithstanding default or to salvage unfinished goods (Section 2A-524).

(68 Del. Laws, c. 249, § 1.)

§ 2A-403 Retraction of anticipatory repudiation.

(1) Until the repudiating party's next performance is due, the repudiating party can retract the repudiation unless, since the repudiation, the aggrieved party has cancelled the lease contract or materially changed the aggrieved party's position or otherwise indicated that the aggrieved party considers the repudiation final.

(2) Retraction may be by any method that clearly indicates to the aggrieved party that the repudiating party intends to perform under the lease contract and includes any assurance demanded under Section 2A-401.

(3) Retraction reinstates a repudiating party's rights under a lease contract with due excuse and allowance to the aggrieved party for any delay occasioned by the repudiation.

(68 Del. Laws, c. 249, § 1.)

§ 2A-404 Substituted performance.

(1) If without fault of the lessee, the lessor and the supplier, the agreed berthing, loading, or unloading facilities fail or the agreed type of carrier becomes unavailable or the agreed manner of delivery otherwise becomes commercially impracticable, but a commercially reasonable substitute is available, the substitute performance must be tendered and accepted.

(2) If the agreed means or manner of payment fails because of domestic or foreign governmental regulation:

(a) The lessor may withhold or stop delivery or cause the supplier to withhold or stop delivery unless the lessee provides a means or manner of payment that is commercially a substantial equivalent; and

(b) If delivery has already been taken, payment by the means or in the manner provided by the regulation discharges the lessee's obligation unless the regulation is discriminatory, oppressive, or predatory.

(68 Del. Laws, c. 249, § 1.)

§ 2A-405 Excused performance.

Subject to Section 2A-404 on substituted performance, the following rules apply;

(a) Delay in delivery or nondelivery in whole or in part by a lessor or a supplier who complies with paragraphs (b) and (c) is not a default under the lease contract if performance as agreed has been made impracticable by the occurrence of a contingency the nonoccurrence of which was a basic assumption on which the lease contract was made or by compliance in good faith with any applicable foreign or domestic governmental regulation or order, whether or not the regulation or order later proves to be invalid.

(b) If the causes mentioned in paragraph (a) affect only part of the lessor's or the supplier's capacity to perform, he or she shall allocate production and deliveries among his or her customers but at his or her option may include regular customers not then under contract for sale or lease as well as his or her own requirements for further manufacture. He or she may so allocate in any manner that is fair and reasonable.

(c) The lessor seasonably shall notify the lessee and in the case of a finance lease the supplier seasonably shall notify the lessor and the lessee, if known, that there will be delay or nondelivery and, if allocation is required under paragraph (b), of the estimated quota thus made available for the lessee.

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

§ 2A-406 Procedure on excused performance.

(1) If the lessee receives notification of a material or indefinite delay or an allocation justified under Section 2A-405, the lessee may by written notification to the lessor as to any goods involved, and with respect to all of the goods if under an installment lease contract the value of the whole lease contract is substantially impaired (Section 2A-510):

(a) Terminate the lease contract (Section 2A-505(2)); or

(b) Except in a finance lease that is not a consumer lease, modify the lease contract by accepting the available quota in substitution, with due allowance from the rent payable for the balance of the lease term for the deficiency but without further right against the lessor.

(2) If, after receipt of a notification from the lessor under Section 2A-405, the lessee fails so to modify the lease agreement within a reasonable time not exceeding 30 days, the lease contract lapses with respect to any deliveries affected.

(68 Del. Laws, c. 249, § 1.)

§ 2A-407 Irrevocable promises: Finance leases.

(1) In the case of a finance lease that is not a consumer lease the lessee's promises under the lease contract become irrevocable and independent upon the lessee's acceptance of the goods.

(2) A promise that has become irrevocable and independent under subsection (1):

(a) Is effective and enforceable between the parties, and by or against third parties including assignees of the parties, and

(b) Is not subject to cancellation, termination, modification, repudiation, excuse, or substitution without the consent of the party to whom the promise runs.

(3) This section does not affect the validity under any other law of a covenant in any lease contract making the lessee's promises irrevocable and independent upon the lessee's acceptance of the goods.

(68 Del. Laws, c. 249, § 1.)

Part 5
Default

A In General

§ 2A-501 Default: Procedure.

(1) Whether the lessor or the lessee is in default under a lease contract is determined by the lease agreement and this Article.

(2) If the lessor or the lessee is in default under the lease contract, the party seeking enforcement has rights and remedies as provided in this Article and, except as limited by this Article, as provided in the lease agreement.

(3) If the lessor or the lessee is in default under the lease contract, the party seeking enforcement may reduce the party's claim to judgment, or otherwise enforce the lease contract by self-help or any available judicial procedure or nonjudicial procedure, including administrative proceeding, arbitration, or the like, in accordance with this Article.

(4) Except as otherwise provided in Section 1-305(a) of this Article of the lease agreement, the rights and remedies referred to in subsections (2) and (3) are cumulative.

(5) If the lease agreement covers both real property and goods, the party seeking enforcement may proceed under this Part as to the goods, or under other applicable law as to both the real property and the goods in accordance with that party's rights and remedies in respect of the real property, in which case this Part does not apply.

(68 Del. Laws, c. 249, § 1; 74 Del. Laws, c. 332, § 22.)

§ 2A-502 Notice after default.

Except as otherwise provided in this Article or the lease agreement, the lessor or lessee in default under the lease contract is not entitled to notice of default or notice of enforcement from the other party to the lease agreement.

(68 Del. Laws, c. 249, § 1.)

§ 2A-503 Modification or impairment of rights and remedies.

(1) Except as otherwise provided in this Article, the lease agreement may include rights and remedies for default in addition to or in substitution for those provided in this Article and may limit or alter the measure of damages recoverable under this Article.

(2) Resort to a remedy provided under this Article or in the lease agreement is optional unless the remedy is expressly agreed to be exclusive. If circumstances cause an exclusive or limited remedy to fail of its essential purpose, or provision for an exclusive remedy is unconscionable, remedy may be had as provided in this Article.

(3) Consequential damages may be liquidated under Section 2A-504, or may otherwise be limited, altered, or excluded unless the limitation, alteration, or exclusion is unconscionable. Limitation, alteration or exclusion of consequential damages for injury to the person in the case of consumer goods is prima facie unconscionable but limitation, alteration or exclusion of damages where the loss is commercial is not prima facie unconscionable.

(4) Rights and remedies on default by the lessor or the lessee with respect to any obligation or promise collateral or ancillary to the lease contract are not impaired by this Article.

(68 Del. Laws, c. 249, § 1.)

§ 2A-504 Liquidation of damages.

(1) Damages payable by either party for default, or any other act or omission, including indemnity for loss or diminution of anticipated tax benefits or loss or damage to lessor's residual interest, may be liquidated in the lease agreement but only at an amount or by a formula that is reasonable in light of the then anticipated harm caused by the default or other act or omission.

(2) If the lease agreement provides for liquidation of damages, and such provision does not comply with subsection (1), or such provision is an exclusive or limited remedy that circumstances cause to fail of its essential purpose, remedy may be had as provided in this Article.

(3) If the lessor justifiably withholds or stops delivery of goods because of the lessee's default or insolvency (Section 2A-525 or 2A-526), the lessee is entitled to restitution of any amount by which the sum of his or her payments exceeds:

(a) The amount to which the lessor is entitled by virtue of terms liquidating the lessor's damages in accordance with subsection (1); or

(b) In the absence of those terms, 20 percent of the then present value of the total rent the lessee was obligated to pay for the balance of the lease term, or, in the case of a consumer lease, the lesser of such amount or $500.

(4) A lessee's right to restitution under subsection (3) is subject to offset to the extent the lessor establishes:

(a) A right to recover damages under the provisions of this Article other than subsection (1); and

(b) The amount or value of any benefits received by the lessee directly or indirectly by reason of the lease contract.

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

§ 2A-505 Cancellation and termination and effect of cancellation, termination, rescission, or fraud on rights and remedies.

(1) On cancellation of the lease contract, all obligations that are still executory on both sides are discharged, but any right based on prior default or performance survives, and the cancelling party also retains any remedy for default of the whole lease contract or any unperformed balance.

(2) On termination of the lease contract, all obligations that are still executory on both sides are discharged but any right based on prior default or performance survives.

(3) Unless the contrary intention clearly appears, expressions of "cancellation," "rescission," or the like of the lease contract may not be construed as a renunciation or discharge of any claim in damages for an antecedent default.

(4) Rights and remedies for material misrepresentation or fraud include all rights and remedies available under this Article for default.

(5) Neither rescission nor a claim for rescission of the lease contract nor rejection or return of the goods may bar or be deemed inconsistent with a claim for damages or other right or remedy.

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

§ 2A-506 Statute of limitations.

(1) An action for default under a lease contract, including breach of warranty or indemnity, must be commenced within 4 years after the cause of action accrued. In a lease contract that is not a consumer lease, the parties in the original lease contract may reduce the period of limitation to not less than 1 year.

(2) A cause of action for default accrues when the act or omission on which the default or breach of warranty is based is or should have been discovered by the aggrieved party, or when the default occurs, whichever is later. A cause of action for indemnity accrues (a) in the case of an indemnity against liability, when the act or omission on which the claim for indemnity is based is or should have been discovered by the indemnified party, whichever is later, or (b) in the case of an indemnity against loss or damage, when the person indemnified makes payment thereof.

(3) If an action commenced within the time limited by subsection (1) is so terminated as to leave available a remedy by another action for the same default or breach of warranty or indemnity, the other action may be commenced after the expiration of the time limited and within 6 months after the termination of the first action unless the termination resulted from voluntary discontinuance or from dismissal for failure or neglect to prosecute.

(4) This section does not alter the law on tolling of the statute of limitations nor does it apply to causes of action that have accrued before this Article becomes effective.

(68 Del. Laws, c. 249, § 1.)

§ 2A-507 Proof of market rent: Time and place.

(1) Damages based on market rent (Section 2A-519 or 2A-528) are determined according to the rent for the use of the goods concerned for a lease term identical to the remaining lease term of the original lease agreement and prevailing at the times specified in Sections 2A-519 and 2A-528.

(2) If evidence of rent for the use of the goods concerned for a lease term identical to the remaining lease term of the original lease agreement and prevailing at the times or places described in this Article is not readily available, the rent prevailing within any reasonable time before or after the time described or at any other place or for a different lease term which in commercial judgment or under usage of trade would serve as a reasonable substitute for the one described may be used, making any proper allowance for the difference, including the cost of transporting the goods to or from the other place.

(3) Evidence of a relevant rent prevailing at a time or place or for a lease term other than the one described in this Article offered by one party is not admissible unless and until he or she has given the other party notice the court finds sufficient to prevent unfair surprise.

(4) If the prevailing rent or value of any goods regularly leased in any established market is in issue, reports in official publications or trade journals or in newspapers or periodicals of general circulation published as the reports of that market are admissible in evidence. The circumstances of the preparation of the report may be shown to affect its weight but not its admissibility.

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

B Default by Lessor

§ 2A-508 Lessee's remedies.

(1) If a lessor fails to deliver the goods in conformity to the lease contract (Section 2A-509) or repudiates the lease contract (Section 2A-402), or a lessee rightfully rejects the goods (Section 2A-509) or justifiably revokes acceptance of the goods (Section 2A-517), then with respect to any goods involved, and with respect to all of the goods if under an installment lease contract the value of the whole lease contract is substantially impaired (Section 2A-510), the lessor is in default under the lease contract and the lessee may:

(a) Cancel the lease contract (Section 2A-505(1));

(b) Recover so much of the rent and security as has been paid and is just under the circumstances;

(c) Cover and recover damages as to all goods affected whether or not they have been identified to the lease contract (Sections 2A-518 and 2A-520), or recover damages for nondelivery (Sections 2A-519 and 2A-520);

(d) Exercise any other rights or pursue any other remedies provided in the lease contract.

(2) If a lessor fails to deliver the goods in conformity to the lease contract or repudiates the lease contract, the lessee may also:

(a) If the goods have been identified, recover them (Section 2A-522); or

(b) In a proper case, obtain specific performance or replevy the goods (Section 2A-521).

(3) If a lessor is otherwise in default under a lease contract, the lessee may exercise the rights and pursue the remedies provided in the lease contract, which may include a right to cancel the lease, and in Section 2A-519(3).

(4) If a lessor has breached a warranty, whether express or implied, the lessee may recover damages (Section 2A-519(4)).

(5) On rightful rejection or justifiable revocation of acceptance, a lessee has a security interest in goods in the lessee's possession or control for any rent and security that has been paid and any expenses reasonably incurred in their inspection, receipt, transportation, and care and custody and may hold those goods and dispose of them in good faith and in a commercially reasonable manner, subject to Section 2A-527(5).

(6) Subject to the provisions of Section 2A-407, a lessee, on notifying the lessor of the lessee's intention to do so, may deduct all or any part of the damages resulting from any default under the lease contract from any part of the rent still due under the same lease contract.

(68 Del. Laws, c. 249, § 1.)

§ 2A-509 Lessee's rights on improper delivery; rightful rejection.

(1) Subject to the provisions of Section 2A-510 on default in installment lease contracts, if the goods or the tender or delivery fail in any respect to conform to the lease contract, the lessee may reject or accept the goods or accept any commercial unit or units and reject the rest of the goods.

(2) Rejection of goods is ineffective unless it is within a reasonable time after tender or delivery of the goods and the lessee seasonably notifies the lessor.

(68 Del. Laws, c. 249, § 1.)

§ 2A-510 Installment lease contracts: Rejection and default.

(1) Under an installment lease contract a lessee may reject any delivery that is nonconforming if the nonconformity substantially impairs the value of that delivery and cannot be cured or the nonconformity is a defect in the required documents; but if the nonconformity does not fall within subsection (2) and the lessor or the supplier gives adequate assurance of its cure, the lessee must accept that delivery.

(2) Whenever nonconformity or default with respect to 1 or more deliveries substantially impairs the value of the installment lease contract as a whole there is a default with respect to the whole. But, the aggrieved party reinstates the installment lease contract as a whole if the aggrieved party accepts a nonconforming delivery without seasonably notifying of cancellation or brings an action with respect only to past deliveries or demands performance as to future deliveries.

(68 Del. Laws, c. 249, § 1.)

§ 2A-511 Merchant lessee's duties as to rightfully rejected goods.

(1) Subject to any security interest of a lessee (Section 2A-508(5)), if a lessor or a supplier has no agent or place of business at the market of rejection, a merchant lessee, after rejection of goods in his or her possession or control, shall follow any reasonable instructions received from the lessor or the supplier with respect to the goods. In the absence of those instructions, a merchant lessee shall make reasonable efforts to sell, lease, or otherwise dispose of the goods for the lessor's account if they threaten to decline in value speedily. Instructions are not reasonable if on demand indemnity for expenses is not forthcoming.

(2) If a merchant lessee (subsection (1)) or any other lessee (Section 2A-512) disposes of goods, he or she is entitled to reimbursement either from the lessor or the supplier or out of the proceeds for reasonable expenses of caring for and disposing of the goods and, if the expenses include no disposition commission, to such commission as is usual in the trade, or, if there is none, to a reasonable sum not exceeding 10 percent of the gross proceeds.

(3) In complying with this section or Section 2A-512, the lessee is held only to good faith. Good faith conduct hereunder is neither acceptance or conversion nor the basis of an action for damages.

(4) A purchaser who purchases in good faith from a lessee pursuant to this section or Section 2A-512 takes the goods free of any rights of the lessor and the supplier even though the lessee fails to comply with 1 or more of the requirements of this Article.

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

§ 2A-512 Lessee's duties as to rightfully rejected goods.

(1) Except as otherwise provided with respect to goods that threaten to decline in value speedily (Section 2A-511) and subject to any security interest of a lessee (Section 2A-508(5)):

(a) The lessee, after rejection of goods in the lessee's possession, shall hold them with reasonable care at the lessor's or the supplier's disposition for a reasonable time after the lessee's seasonable notification of rejection;

(b) If the lessor or the supplier gives no instructions within a reasonable time after notification of rejection, the lessee may store the rejected goods for the lessor's or the supplier's account or ship them to the lessor or the supplier or dispose of them for the lessor's or the supplier's account with reimbursement in the manner provided in Section 2A-511; but

(c) The lessee has no further obligations with regard to goods rightfully rejected.

(2) Action by the lessee pursuant to subsection (1) is not acceptance or conversion.

(68 Del. Laws, c. 249, § 1.)

§ 2A-513 Cure by lessor of improper tender or delivery; replacement.

(1) If any tender or delivery by the lessor or the supplier is rejected because it is nonconforming and the time for performance has not yet expired, the lessor or the supplier may seasonably notify the lessee of the lessor's or the supplier's intention to cure and may then make a conforming delivery within the time provided in the lease contract.

(2) If the lessee rejects a nonconforming tender that the lessor or the supplier had reasonable grounds to believe would be acceptable with or without money allowance, the lessor or the supplier may have a further reasonable time to substitute a conforming tender if he or she seasonably notifies the lessee.

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

§ 2A-514 Waiver of lessee's objections.

(1) In rejecting goods, a lessee's failure to state a particular defect that is ascertainable by reasonable inspection precludes the lessee from relying on the defect to justify rejection or to establish default:

(a) If, stated seasonably, the lessor or the supplier could have cured it (Section 2A-513); or

(b) Between merchants if the lessor or the supplier after rejection has made a request in writing for a full and final written statement of all defects on which the lessee proposes to rely.

(2) A lessee's failure to reserve rights when paying rent or other consideration against documents precludes recovery of the payment for defects apparent in the documents.

(68 Del. Laws, c. 249, § 1; 74 Del. Laws, c. 332, § 23.)

§ 2A-515 Acceptance of goods.

(1) Acceptance of goods occurs after the lessee has had a reasonable opportunity to inspect the goods and

(a) The lessee signifies or acts with respect to the goods in a manner that signifies to the lessor or the supplier that the goods are conforming or that the lessee will take or retain them in spite of their nonconformity; or

(b) The lessee fails to make an effective rejection of the goods (Section 2A-509(2)).

(2) Acceptance of a part of any commercial unit is acceptance of that entire unit.

(68 Del. Laws, c. 249, § 1.)

§ 2A-516 Effect of acceptance of goods; notice of default; burden of establishing default after acceptance; notice of claim or litigation to person answerable over.

(1) A lessee must pay rent for any goods accepted in accordance with the lease contract, with due allowance for goods rightfully rejected or not delivered.

(2) A lessee's acceptance of goods precludes rejection of the goods accepted. In the case of a finance lease, if made with knowledge of a nonconformity, acceptance cannot be revoked because of it. In any other case, if made with knowledge of a nonconformity, acceptance cannot be revoked because of it unless the acceptance was on the reasonable assumption that the nonconformity would be seasonably cured. Acceptance does not of itself impair any other remedy provided by this Article or the lease agreement for nonconformity.

(3) If a tender has been accepted:

(a) Within a reasonable time after the lessee discovers or should have discovered any default, the lessee shall notify the lessor and the supplier, if any, or be barred from any remedy against the party not notified;

(b) Except in the case of a consumer lease, within a reasonable time after the lessee receives notice of litigation for infringement or the like (Section 2A-211) the lessee shall notify the lessor or be barred from any remedy over for liability established by the litigation; and

(c) The burden is on the lessee to establish any default.

(4) If a lessee is sued for breach of a warranty or other obligation for which a lessor or a supplier is answerable over, the following apply:

(a) The lessee may give the lessor or the supplier, or both, written notice of the litigation. If the notice states that the person notified may come in and defend and that if the person notified does not do so that person will be bound in any action against that person by the lessee by any determination of fact common to the 2 litigations, then unless the person notified after seasonable receipt of the notice does come in and defend that person is so bound.

(b) The lessor or the supplier may demand in writing that the lessee turn over control of the litigation including settlement if the claim is one for infringement or the like (Section 2A-211) or else be barred from any remedy over. If the demand states that the lessor or the supplier agrees to bear all expense and to satisfy any adverse judgment, then unless the lessee after seasonable receipt of the demand does turn over control the lessee is so barred.

(5) Subsections (3) and (4) apply to any obligation of a lessee to hold the lessor or the supplier harmless against infringement or the like (Section 2A-211).

(68 Del. Laws, c. 249, § 1.)

§ 2A-517 Revocation of acceptance of goods.

(1) A lessee may revoke acceptance of a lot or commercial unit whose nonconformity substantially impairs its value to the lessee if the lessee has accepted it:

(a) Except in the case of a finance lease, on the reasonable assumption that its nonconformity would be cured and it has not been seasonably cured; or

(b) Without discovery of the nonconformity if the lessee's acceptance was reasonably induced either by the lessor's assurances or, except in the case of a finance lease, by the difficulty of discovery before acceptance.

(2) Except in the case of a finance lease that is not a consumer lease, a lessee may revoke acceptance of a lot or commercial unit if the lessor defaults under the lease contract and the default substantially impairs the value of that lot or commercial unit to the lessee.

(3) If the lease agreement so provides, the lessee may revoke acceptance of a lot or commercial unit because of other defaults by the lessor.

(4) Revocation of acceptance must occur within a reasonable time after the lessee discovers or should have discovered the ground for it and before any substantial change in condition of the goods which is not caused by the nonconformity. Revocation is not effective until the lessee notifies the lessor.

(5) A lessee who so revokes has the same rights and duties with regard to the goods involved as if the lessee had rejected them.

(68 Del. Laws, c. 249, § 1.)

§ 2A-518 Cover, substitute goods.

(1) After a default by a lessor under the lease contract of the type described in Section 2A-508(1), or, if agreed, after other default by the lessor, the lessee may cover by making any purchase or lease of or contract to purchase or lease goods in substitution for those due from the lessor.

(2) Except as otherwise provided with respect to damages liquidated in the lease agreement (Section 2A-504) or otherwise determined pursuant to agreement of the parties (Sections 1-302 and 2A-503), if a lessee's cover is by a lease agreement substantially similar to the original lease agreement and the new lease agreement is made in good faith and in a commercially reasonable manner, the lessee may recover from the lessor as damages (i) the present value, as of the date of the commencement of the term of the new lease agreement, of the rent under the new lease agreement applicable to that period of the new lease term which is comparable to the then remaining term of the original lease agreement minus the present value as of the same date of the total rent for the then remaining lease term of the original lease agreement, and (ii) any incidental or consequential damages, less expenses saved in consequence of the lessor's default.

(3) If a lessee's cover is by lease agreement that for any reason does not qualify for treatment under subsection (2), or is by purchase or otherwise, the lessee may recover from the lessor as if the lessee had elected not to cover and Section 2A-519 governs.

(68 Del. Laws, c. 249, § 1; 74 Del. Laws, c. 332, § 24.)

§ 2A-519 Lessee's damages for non-delivery, repudiation, default, and breach of warranty in regard to accepted goods.

(1) Except as otherwise provided with respect to damages liquidated in the lease agreement (Section 2A-504) or otherwise determined pursuant to agreement of the parties (Section 1-302 and Section 2A-503), if a lessee elects not to cover or a lessee elects to cover and the cover is by lease agreement that for any reason does not qualify for treatment under Section 2A-518(2), or is by purchase or otherwise, the measure of damages for non-delivery or repudiation by the lessor or for rejection or revocation of acceptance by the lessee is the present value, as of the date of the default, of the then market rent minus the present value as of the same date of the original rent, computed for the remaining lease term of the original lease agreement, together with incidental and consequential damages, less expenses saved in consequence of the lessor's default.

(2) Market rent is to be determined as of the place for tender or, in cases of rejection after arrival or revocation of acceptance, as of the place of arrival.

(3) Except as otherwise agreed, if the lessee has accepted goods and given notification (Section 2A-516(3)), the measure of damages for non-conforming tender or delivery or other default by a lessor is the loss resulting in the ordinary course of events from the lessor's default as determined in any manner that is reasonable together with incidental and consequential damages, less expenses saved in consequence of the lessor's default.

(4) Except as otherwise agreed, the measure of damages for breach of warranty is the present value at the time and place of acceptance of the difference between the value of the use of the goods accepted and the value if they had been as warranted for the lease term, unless special circumstances show proximate damages of a different amount, together with incidental and consequential damages, less expenses saved in consequence of the lessor's default or breach of warranty.

(68 Del. Laws, c. 249, § 1; 74 Del. Laws, c. 332, § 25.)

§ 2A-520 Lessee's incidental and consequential damages.

(1) Incidental damages resulting from a lessor's default include expenses reasonably incurred in inspection, receipt, transportation, and care and custody of goods rightfully rejected or goods the acceptance of which is justifiably revoked, any commercially reasonable charges, expenses, or commissions in connection with effecting cover, and any other reasonable expense incident to the default.

(2) Consequential damages resulting from a lessor's default include:

(a) Any loss resulting from general or particular requirements and needs of which the lessor at the time of contracting had reason to know and which could not reasonably be prevented by cover or otherwise; and

(b) Injury to person or property proximately resulting from any breach of warranty.

(68 Del. Laws, c. 249, § 1.)

§ 2A-521 Lessee's right to specific performance or replevin.

(1) Specific performance may be decreed if the goods are unique or in other proper circumstances.

(2) A decree for specific performance may include any terms and conditions as to payment of the rent, damages, or other relief that the court deems just.

(3) A lessee has a right of replevin, detinue, sequestration, claim and delivery, or the like for goods identified to the lease contract if after reasonable effort the lessee is unable to effect cover for those goods or the circumstances reasonably indicate that the effort will be unavailing.

(68 Del. Laws, c. 249, § 1.)

§ 2A-522 Lessee's right to goods on lessor's insolvency.

(1) Subject to subsection (2) and even though the goods have not been shipped, a lessee who has paid a part or all of the rent and security for goods identified to a lease contract (Section 2A-217) on making and keeping good a tender of any unpaid portion of the rent and security due under the lease contract may recover the goods identified from the lessor if the lessor becomes insolvent within 10 days after receipt of the first installment of rent and security.

(2) A lessee acquires the right to recover goods identified to a lease contract only if they conform to the lease contract.

(68 Del. Laws, c. 249, § 1.)

C Default by Lessee

§ 2A-523 Lessor's remedies.

(1) If a lessee wrongfully rejects or revokes acceptance of goods or fails to make a payment when due or repudiates with respect to a part or the whole, then, with respect to any goods involved, and with respect to all of the goods if under an installment lease contract the value of the whole lease contract is substantially impaired (Section 2A-510), the lessee is in default under the lease contract and the lessor may:

(a) Cancel the lease contract (Section 2A-505(1));

(b) Proceed respecting goods not identified to the lease contract (Section 2A-524);

(c) Withhold delivery of the goods and take possession of goods previously delivered (section 2A-525);

(d) Stop delivery of the goods by any bailee (Section 2A-526);

(e) Dispose of the goods and recover damages (Section 2A-527), or retain the goods and recover damages (Section 2A-528), or in a proper case recover rent (Section 2A-529);

(f) Exercise any other rights or pursue any other remedies provided in the lease contract.

(2) If a lessor does not fully exercise a right or obtain a remedy to which the lessor is entitled under subsection (1), the lessor may recover the loss resulting in the ordinary course of events from the lessee's default as determined in any reasonable manner, together with incidental damages, less expenses saved in consequence of the lessee's default.

(3) If a lessee is otherwise in default under a lease contract, the lessor may exercise the rights and pursue the remedies provided in the lease contract, which may include a right to cancel the lease. In addition, unless otherwise provided in the lease contract:

(a) If the default substantially impairs the value of the lease contract to the lessor, the lessor may exercise the rights and pursue the remedies provided in subsections (1) or (2); or

(b) If the default does not substantially impair the value of the lease contract to the lessor, the lessor may recover as provided in subsection (2).

(68 Del. Laws, c. 249, § 1.)

§ 2A-524 Lessor's right to identify goods to lease contract.

(1) After default by the lessee under the lease contract of the type described in Section 2A-523(1) or Section 2A-523(3)(a) or, if agreed, after other default by the lessee, the lessor may:

(a) Identify to the lease contract conforming goods not already identified if at the time the lessor learned of the default they were in the lessor's or the supplier's possession or control; and

(b) Dispose of goods (Section 2A-527(1)) that demonstrably have been intended for the particular lease contract even though those goods are unfinished.

(2) If the goods are unfinished, in the exercise of reasonable commercial judgment for the purposes of avoiding loss and of effective realization, an aggrieved lessor or the supplier may either complete manufacture and wholly identify the goods to the lease contract or cease manufacture and lease, sell, or otherwise dispose of the goods for scrap or salvage value or proceed in any other reasonable manner.

(68 Del. Laws, c. 249, § 1.)

§ 2A-525 Lessor's right to possession of goods.

(1) If a lessor discovers the lessee to be insolvent, the lessor may refuse to deliver the goods.

(2) After a default by the lessee under the lease contract of the type described in Section 2A-523(1) or 2A-523(3)(a) or, if agreed, after other default by the lessee, the lessor has the right to take possession of the goods. If the lease contract so provides, the lessor may require the lessee to assemble the goods and make them available to the lessor at a place to be designated by the lessor which is reasonably convenient to both parties. Without removal, the lessor may render unusable any goods employed in trade or business, and may dispose of goods on the lessee's premises (Section 2A-527).

(3) The lessor may proceed under subsection (2) without judicial process if it can be done without breach of the peace or the lessor may proceed by action.

(68 Del. Laws, c. 249, § 1.)

§ 2A-526 Lessor's stoppage of delivery in transit or otherwise.

(1) A lessor may stop delivery of goods in the possession of a carrier or other bailee if the lessor discovers the lessee to be insolvent and may stop delivery of carload, truckload, planeload, or larger shipments of express or freight if the lessee repudiates or fails to make a payment due before delivery, whether for rent, security, or otherwise under the lease contract, or for any other reason the lessor has a right to withhold or take possession of the goods.

(2) In pursuing its remedies under subsection (1), the lessor may stop delivery until:

(a) Receipt of the goods by the lessee;

(b) Acknowledgment to the lessee by any bailee of the goods, except a carrier, that the bailee holds the goods for the lessee; or

(c) Such an acknowledgment to the lessee by a carrier via reshipment or as a warehouse.

(3) (a) To stop delivery, a lessor shall so notify as to enable the bailee by reasonable diligence to prevent delivery of the goods.

(b) After notification, the bailee shall hold and deliver the goods according to the directions of the lessor, but the lessor is liable to the bailee for any ensuring charges or damages.

(c) A carrier who has issued a nonnegotiable bill of lading is not obliged to obey a notification to stop received from a person other than the consignor.

(68 Del. Laws, c. 249, § 1; 74 Del. Laws, c. 332, § 26.)

§ 2A-527 Lessor's rights to dispose of goods.

(1) After a default by a lessee under the lease contract of the type described in Section 2A-523(1) or 2A-523(3)(a) or after the lessor refuses to deliver or takes possession of goods (Section 2A-525 or 2A-526), or, if agreed, after other default by a lessee, the lessor may dispose of the goods concerned or the undelivered balance thereof by lease, sale, or otherwise.

(2) Except as otherwise provided with respect to damages liquidated in the lease agreement (Section 2A-504) or otherwise determined pursuant to agreement of the parties (Section 1-302 and Section 2A-503), if the disposition is by lease agreement substantially similar to the original lease agreement and the new lease agreement is made in good faith and in a commercially reasonable manner, the lessor may recover from the lessee as damages (i) accrued and unpaid rent as of the date of the commencement of the term of the new lease agreement, (ii) the present value, as of the same date, of the total rent for the then remaining lease term of the original lease agreement minus the present value, as of the same date, of the rent under the new lease agreement applicable to that period of the new lease term which is comparable to the then remaining term of the original lease agreement, and (iii) any incidental damages allowed under Section 2A-530, less expenses saved in consequence of the lessee's default.

(3) If the lessor's disposition is by lease agreement that for any reason does not qualify for treatment under subsection (2), or is by sale or otherwise, the lessor may recover from the lessee as if the lessor had elected not to dispose of the goods and Section 2A-528 governs.

(4) A subsequent buyer or lessee who buys or leases from the lessor in good faith for value as a result of a disposition under this section takes the goods free of the original lease contract and any rights of the original lessee even though the lessor fails to comply with 1 or more of the requirements of this Article.

(5) The lessor is not accountable to the lessee for any profit made on any disposition. A lessee who has rightfully rejected or justifiably revoked acceptance shall account to the lessor for any excess over the amount of the lessee's security interest (Section 2A-508(5)).

(68 Del. Laws, c. 249, § 1; 74 Del. Laws, c. 332, § 27.)

§ 2A-528 Lessor's damages for non-acceptance, failure to pay, repudiation, or other default.

(1) Except as otherwise provided with respect to damages liquidated in the lease agreement (Section 2A-504) or otherwise determined pursuant to agreement of the parties (Section 1-302 and Section 2A-503), if a lessor elects to retain the goods or a lessor elects to dispose of the goods and the disposition is by lease agreement that for any reason does not qualify for treatment under Section 2A-527(2), or is by sale or otherwise, the lessor may recover from the lessee as damages for a default of the type described in Section 2A-523(1) or 2A-523(3)(a), or, if agreed, for other default of the lessee, (i) accrued and unpaid rent as of the date of default if the lessee has never taken possession of the goods, or, if the lessee has taken possession of the goods, as of the date the lessor repossesses the goods or an earlier date on which the lessee makes a tender of the goods to the lessor, (ii) the present value as of the date determined under clause (i) of the total rent for the then remaining lease term of the original lease agreement minus the present value as of the same date of the market rent at the place where the goods are located computed for the same lease term, and (iii) any incidental damages allowed under Section 2A-530, less expenses saved in consequence of the lessee's default.

(2) If the measure of damages provided in subsection (1) is inadequate to put a lessor in as good a position as performance would have, the measure of damages is the present value of the profit, including reasonable overhead, the lessor would have made from full performance by the lessee, together with any incidental damages allowed under Section 2A-530, due allowance for costs reasonably incurred and due credit for payments or proceeds of disposition.

(68 Del. Laws, c. 249, § 1; 74 Del. Laws, c. 332, § 28.)

§ 2A-529 Lessor's action for the rent.

(1) After default by the lessee under the lease contract of the type described in Section 2A-523(1) or 2A-523(3)(a) or, if agreed, after other default by the lessee, if the lessor complies with subsection (2), the lessor may recover from the lessee as damages:

(a) For goods accepted by the lessee and not repossessed by or tendered to the lessor, and for conforming goods lost or damaged within a commercially reasonable time after risk of loss passes to the lessee (Section 2A-219), (i) accrued and unpaid rent as of the date of entry of judgment in favor of the lessor, (ii) the present value as of the same date of the rent for the then remaining lease term

of the lease agreement, and (iii) any incidental damages allowed under Section 2A-530, less expenses saved in consequence of the lessee's default; and

(b) For goods identified to the lease contract if the lessor is unable after reasonable effort to dispose of them at a reasonable price or the circumstances reasonably indicate that effort will be unavailing, (i) accrued and unpaid rent as of the date of entry of judgment in favor of the lessor, (ii) the present value as of the same date of the rent for the then remaining lease term of the lease agreement, and (iii) any incidental damages allowed under Section 2A-530, less expenses saved in consequence of the lessee's default.

(2) Except as provided in subsection (3), the lessor shall hold for the lessee for the remaining lease term of the lease agreement any goods that have been identified to the lease contract and are in the lessor's control.

(3) The lessor may dispose of the goods at any time before collection of the judgment for damages obtained pursuant to subsection (1). If the disposition is before the end of the remaining lease term of the lease agreement, the lessor's recovery against the lessee for damages is governed by Section 2A-527 or Section 2A-528, and the lessor will cause an appropriate credit to be provided against a judgment for damages to the extent that the amount of the judgment exceeds the recovery available pursuant to Section 2A-527 or 2A-528.

(4) Payment of the judgment for damages obtained pursuant to subsection (1) entitles the lessee to the use and possession of the goods not then disposed of for the remaining lease term of and in accordance with the lease agreement.

(5) After default by the lessee under the lease contract of the type described in Section 2A-523(1) or Section 2A-523(3)(a) or, if agreed, after other default by the lessee, a lessor who is held not entitled to rent under this section must nevertheless by awarded damages for non-acceptance under Section 2A-527 or Section 2A-528.

(68 Del. Laws, c. 249, § 1.)

§ 2A-530 Lessor's incidental damages.

Incidental damages to an aggrieved lessor include any commercially reasonable charges, expenses, or commissions incurred in stopping delivery, in the transportation, care and custody of goods after the lessee's default, in connection with return or disposition of the goods, or otherwise resulting from the default.

(68 Del. Laws, c. 249, § 1.)

§ 2A-531 Standing to sue third parties for injury to goods.

(1) If a third party so deals with goods that have been identified to a lease contract as to cause actionable injury to a party to the lease contract (a) the lessor has a right of action against the third party, and (b) the lessee also has a right of action against the third party if the lessee:

(i) Has a security interest in the goods;

(ii) Has an insurable interest in the goods; or

(iii) Bears the risk of loss under the lease contract or has since the injury assumed that risk as against the lessor and the goods have been converted or destroyed.

(2) If at the time of the injury the party plaintiff did not bear the risk of loss as against the other party to the lease contract and there is no arrangement between them for disposition of the recovery, his or her suit or settlement, subject to his or her own interest, is as a fiduciary for the other party to the lease contract.

(3) Either party with the consent of the other may sue for the benefit of whom it may concern.

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

§ 2A-532 Lessor's rights to residual interest.

In addition to any other recovery permitted by this article or other law, the lessor may recover from the lessee an amount that will fully compensate the lessor for any loss of or damage to the lessor's residual interest in the goods caused by the default of the lessee.

(68 Del. Laws, c. 249, § 1.)

Subtitle I
Uniform Commercial Code
Article 3
Negotiable Instruments
Part 1
General Provisions and Definitions

§ 3-101 Short title.

This Article may be cited as Uniform Commercial Code — Negotiable Instruments.

(5A Del. C. 1953, § 3-101; 55 Del. Laws, c. 349; 70 Del. Laws, c. 86, § 3.)

§ 3-102 Subject matter.

(a) This Article applies to negotiable instruments. It does not apply to money, to payment orders governed by Article 4A, or to securities governed by Article 8.

(b) If there is conflict between this Article and Article 4 or 9, Articles 4 and 9 govern.

(c) Regulations of the Board of Governors of the Federal Reserve System and operating circulars of the Federal Reserve Banks supersede any inconsistent provision of this Article to the extent of the inconsistency.

(5A Del. C. 1953, § 3-103; 55 Del. Laws, c. 349; 70 Del. Laws, c. 86, § 3.)

§ 3-103 Definitions.

(a) In this Article:

(1) "Acceptor" means a drawee who has accepted a draft.

(2) "Drawee" means a person ordered in a draft to make payment.

(3) "Drawer" means a person who signs or is identified in a draft as a person ordering payment.

(4) [Deleted.]

(5) "Maker" means a person who signs or is identified in a note as a person undertaking to pay.

(6) "Order" means a written instruction to pay money signed by the person giving the instruction. The instruction may be addressed to any person, including the person giving the instruction, or to one or more persons jointly or in the alternative but not in succession. An authorization to pay is not an order unless the person authorized to pay is also instructed to pay.

(7) "Ordinary care" in the case of a person engaged in business means observance of reasonable commercial standards, prevailing in the area in which the person is located, with respect to the business in which the person is engaged. In the case of a bank that takes an instrument for processing for collection or payment by automated means, reasonable commercial standards do not require the bank to examine the instrument if the failure to examine does not violate the bank's prescribed procedures and the bank's procedures do not vary unreasonably from general banking usage not disapproved by this Article or Article 4.

(8) "Party" means a party to an instrument.

(9) "Promise" means a written undertaking to pay money signed by the person undertaking to pay. An acknowledgment of an obligation by the obligor is not a promise unless the obligor also undertakes to pay the obligation.

(10) "Prove" with respect to a fact means to meet the burden of establishing the fact (Section 1-201(b)(8)).

(11) "Remitter" means a person who purchases an instrument from its issuer if the instrument is payable to an identified person other than the purchaser.

(b) Other definitions applying to this Article and the sections in which they appear are:

"Acceptance".

Section 3-409.

"Accommodated party".

Section 3-419.

"Accommodation party".

Section 3-419.

"Alteration".

Section 3-407.

“Anomalous indorsement”.

Section 3-205.
“Blank indorsement”.

Section 3-205.
“Cashier’s check”.

Section 3-104.
“Certificate of deposit”.

Section 3-104.
“Certified check”.

Section 3-409.
“Check”.

Section 3-104.
“Consideration”.

Section 3-303.
“Draft”.

Section 3-104.
“Holder in due course”.

Section 3-302.
“Incomplete instrument”.

Section 3-115.
“Indorsement”.

Section 3-204.
“Indorser”.

Section 3-204.
“Instrument”.

Section 3-104.
“Issue”.

Section 3-105.
“Issuer”.

Section 3-105.
“Negotiable instrument”.

Section 3-104.
“Negotiation”.

Section 3-201.
“Note”.

Section 3-104.
“Payable at a definite time”.

Section 3-108.

“Payable on demand”.

Section 3-108.
“Payable to bearer”.

Section 3-109.
“Payable to order”.

Section 3-109.
“Payment”.

Section 3-602.
“Person entitled to enforce”.

Section 3-301.
“Presentment”.

Section 3-501.
“Reacquisition”.

Section 3-207.
“Special indorsement”.

Section 3-205.
“Teller’s check”.

Section 3-104.
“Transfer of instrument”.

Section 3-203.
“Traveler’s check”.

Section 3-104.
“Value”.

Section 3-303.
(c) The following definitions in other Articles apply to this Article:
“Bank”.

Section 4-105.
“Banking day”.

Section 4-104.
“Clearing house”.

Section 4-104.
“Collecting bank”.

Section 4-105.
“Depositary bank”.

Section 4-105.
“Documentary draft”.

Section 4-104.

"Intermediary bank".

Section 4-105.
"Item".

Section 4-104.
"Payor bank".

Section 4-105.
"Suspends payments".

Section 4-104.

(d) In addition, Article 1 contains general definitions and principles of construction and interpretation applicable throughout this Article.

(5A Del. C. 1953, § 3-102; 55 Del. Laws, c. 349; 70 Del. Laws, c. 86, § 3; 74 Del. Laws, c. 332, §§ 29, 30.)

§ 3-104 Negotiable instrument.

(a) Except as provided in subsections (c) and (d), "negotiable instrument" means an unconditional promise or order to pay a fixed amount of money, with or without interest or other charges described in the promise or order, if it:

(1) Is payable to bearer or to order at the time it is issued or first comes into possession of a holder;

(2) Is payable on demand or at a definite time; and

(3) Does not state any other undertaking or instruction by the person promising or ordering payment to do any act in addition to the payment of money, but the promise or order may contain (i) an undertaking or power to give, maintain, or protect collateral to secure payment, (ii) an authorization or power to the holder to confess judgment or realize on or dispose of collateral, or (iii) a waiver of the benefit of any law intended for the advantage or protection of an obligor.

(b) "Instrument" means a negotiable instrument.

(c) An order that meets all of the requirements of subsection (a), except paragraph (1), and otherwise falls within the definition of "check" in subsection (f) is a negotiable instrument and a check.

(d) A promise or order other than a check is not an instrument if, at the time it is issued or first comes into possession of a holder, it contains a conspicuous statement, however expressed, to the effect that the promise or order is not negotiable or is not an instrument governed by this Article.

(e) An instrument is a "note" if it is a promise and is a "draft" if it is an order. If an instrument falls within the definition of both "note" and "draft," a person entitled to enforce the instrument may treat it as either.

(f) "Check" means (i) a draft, other than a documentary draft, payable on demand and drawn on a bank or (ii) a cashier's check or teller's check. An instrument may be a check even though it is described on its face by another term, such as "money order."

(g) "Cashier's check" means a draft with respect to which the drawer and drawee are the same bank or branches of the same bank.

(h) "Teller's check" means a draft drawn by a bank (i) on another bank, or (ii) payable at or through a bank.

(i) "Traveler's check" means an instrument that (i) is payable on demand, (ii) is drawn on or payable at or through a bank, (iii) is designated by the term "traveler's check" or by a substantially similar term, and (iv) requires, as a condition to payment, a countersignature by a person whose specimen signature appears on the instrument.

(j) "Certificate of deposit" means an instrument containing an acknowledgment by a bank that a sum of money has been received by the bank and a promise by the bank to repay the sum of money. A certificate of deposit is a note of the bank.

(5A Del. C. 1953, § 3-104; 55 Del. Laws, c. 349; 70 Del. Laws, c. 86, § 3.)

§ 3-105 Issue of instrument.

(a) "Issue" means the first delivery of an instrument by the maker or drawer, whether to a holder or nonholder, for the purpose of giving rights on the instrument to any person.

(b) An unissued instrument, or an unissued incomplete instrument that is completed, is binding on the maker or drawer, but nonissuance is a defense. An instrument that is conditionally issued or is issued for a special purpose is binding on the maker or drawer, but failure of the condition or special purpose to be fulfilled is a defense.

(c) "Issuer" applies to issued and unissued instruments and means a maker or drawer of an instrument.

(70 Del. Laws, c. 86, § 3.)

§ 3-106 Unconditional promise or order.

(a) Except as provided in this section, for the purposes of Section 3-104(a), a promise or order is unconditional unless it states (i) an express condition to payment, (ii) that the promise or order is subject to or governed by another writing, or (iii) that rights or obligations

with respect to the promise or order are stated in another writing. A reference to another writing does not of itself make the promise or order conditional.

(b) A promise or order is not made conditional (i) by a reference to another writing for a statement of rights with respect to collateral, prepayment, or acceleration, or (ii) because payment is limited to resort to a particular fund or source.

(c) If a promise or order requires, as a condition to payment, a countersignature by a person whose specimen signature appears on the promise or order, the condition does not make the promise or order conditional for the purposes of Section 3-104(a). If the person whose specimen signature appears on an instrument fails to countersign the instrument, the failure to countersign is a defense to the obligation of the issuer, but the failure does not prevent a transferee of the instrument from becoming a holder of the instrument.

(d) If a promise or order at the time it is issued or first comes into possession of a holder contains a statement, required by applicable statutory or administrative law, to the effect that the rights of a holder or transferee are subject to claims or defenses that the issuer could assert against the original payee, the promise or order is not thereby made conditional for the purposes of Section 3-104(a); but if the promise or order is an instrument, there cannot be a holder in due course of the instrument.

(5A Del. C. 1953, § 3-105; 55 Del. Laws, c. 349; 70 Del. Laws, c. 86, § 3.)

§ 3-107 Instrument payable in foreign money.

Unless the instrument otherwise provides, an instrument that states the amount payable in foreign money may be paid in the foreign money or in an equivalent amount in dollars calculated by using the current bank-offered spot rate at the place of payment for the purchase of dollars on the day on which the instrument is paid.

(5A Del. C. 1953, § 3-107; 55 Del. Laws, c. 349; 70 Del. Laws, c. 86, § 3.)

§ 3-108 Payable on demand or at definite time.

(a) A promise or order is "payable on demand" if it (i) states that it is payable on demand or at sight, or otherwise indicates that it is payable at the will of the holder, or (ii) does not state any time of payment.

(b) A promise or order is "payable at a definite time" if it is payable on elapse of a definite period of time after sight or acceptance or at a fixed date or dates or at a time or times readily ascertainable at the time the promise or order is issued, subject to rights of (i) prepayment, (ii) acceleration, (iii) extension at the option of the holder, or (iv) extension to a further definite time at the option of the maker or acceptor or automatically upon or after a specified act or event.

(c) If an instrument, payable at a fixed date, is also payable upon demand made before the fixed date, the instrument is payable on demand until the fixed date and, if demand for payment is not made before that date, becomes payable at a definite time on the fixed date.

(5A Del. C. 1953, § 3-108; 55 Del. Laws, c. 349; 70 Del. Laws, c. 86, § 3.)

§ 3-109 Payable to bearer or to order.

(a) A promise or order is payable to bearer if it:

(1) States that it is payable to bearer or to the order of bearer or otherwise indicates that the person in possession of the promise or order is entitled to payment;

(2) Does not state a payee; or

(3) States that it is payable to or to the order of cash or otherwise indicates that it is not payable to an identified person.

(b) A promise or order that is not payable to bearer is payable to order if it is payable (i) to the order of an identified person or (ii) to an identified person or order. A promise or order that is payable to order is payable to the identified person.

(c) An instrument payable to bearer may become payable to an identified person if it is specially indorsed pursuant to Section 3-205(a). An instrument payable to an identified person may become payable to bearer if it is indorsed in blank pursuant to Section 3-205(b).

(5A Del. C. 1953, § 3-111; 55 Del. Laws, c. 349; 70 Del. Laws, c. 86, § 3.)

§ 3-110 Identification of person to whom instrument is payable.

(a) The person to whom an instrument is initially payable is determined by the intent of the person, whether or not authorized, signing as, or in the name or behalf of, the issuer of the instrument. The instrument is payable to the person intended by the signer even if that person is identified in the instrument by a name or other identification that is not that of the intended person. If more than one person signs in the name or behalf of the issuer of an instrument and all the signers do not intend the same person as payee, the instrument is payable to any person intended by one or more of the signers.

(b) If the signature of the issuer of an instrument is made by automated means, such as a check-writing machine, the payee of the instrument is determined by the intent of the person who supplied the name or identification of the payee, whether or not authorized to do so.

(c) A person to whom an instrument is payable may be identified in any way, including by name, identifying number, office, or account number. For the purpose of determining the holder of an instrument, the following rules apply:

(1) If an instrument is payable to an account and the account is identified only by number, the instrument is payable to the person to whom the account is payable. If an instrument is payable to an account identified by number and by the name of a person, the instrument is payable to the named person, whether or not that person is the owner of the account identified by number.

(2) If an instrument is payable to:

(i) A trust, an estate, or a person described as trustee or representative of a trust or estate, the instrument is payable to the trustee, the representative, or a successor of either, whether or not the beneficiary or estate is also named;

(ii) A person described as agent or similar representative of a named or identified person, the instrument is payable to the represented person, the representative, or a successor of the representative;

(iii) A fund or organization that is not a legal entity, the instrument is payable to a representative of the members of the fund or organization; or

(iv) An office or to a person described as holding an office, the instrument is payable to the named person, the incumbent of the office, or a successor to the incumbent.

(d) If an instrument is payable to two or more persons alternatively, it is payable to any of them and may be negotiated, discharged, or enforced by any or all of them in possession of the instrument. If an instrument is payable to two or more persons not alternatively, it is payable to all of them and may be negotiated, discharged, or enforced only by all of them. If an instrument payable to two or more persons is ambiguous as to whether it is payable to the persons alternatively, the instrument is payable to the persons alternatively.

(5A Del. C. 1953, § 3-110; 55 Del. Laws, c. 349; 70 Del. Laws, c. 86, § 3.)

§ 3-111 Place of payment.

Except as otherwise provided for items in Article 4, an instrument is payable at the place of payment stated in the instrument. If no place of payment is stated, an instrument is payable at the address of the drawee or maker stated in the instrument. If no address is stated, the place of payment is the place of business of the drawee or maker. If a drawee or maker has more than one place of business, the place of payment is any place of business of the drawee or maker chosen by the person entitled to enforce the instrument. If the drawee or maker has no place of business, the place of payment is the residence of the drawee or maker.

(5A Del. C. 1953, § 3-121; 55 Del. Laws, c. 349; 70 Del. Laws, c. 86, § 3.)

§ 3-112 Interest.

(a) Unless otherwise provided in the instrument, (i) an instrument is not payable with interest, and (ii) interest on an interest-bearing instrument is payable from the date of the instrument.

(b) Interest may be stated in an instrument as a fixed or variable amount of money or it may be expressed as a fixed or variable rate or rates. The amount or rate of interest may be stated or described in the instrument in any manner and may require reference to information not contained in the instrument. If an instrument provides for interest, but the amount of interest payable cannot be ascertained from the description, interest is payable at the judgment rate in effect at the place of payment of the instrument and at the time interest first accrues.

(5A Del. C. 1953, § 3-106; 55 Del. Laws, c. 349; 67 Del. Laws, c. 330, § 1; 70 Del. Laws, c. 86, § 3.)

§ 3-113 Date of instrument.

(a) An instrument may be antedated or postdated. The date stated determines the time of payment if the instrument is payable at a fixed period after date. Except as provided in Section 4-401(c), an instrument payable on demand is not payable before the date of the instrument.

(b) If an instrument is undated, its date is the date of its issue or, in the case of an unissued instrument, the date it first comes into possession of a holder.

(5A Del. C. 1953, § 3-114; 55 Del. Laws, c. 349; 70 Del. Laws, c. 86, § 3.)

§ 3-114 Contradictory terms of instrument.

If an instrument contains contradictory terms, typewritten terms prevail over printed terms, handwritten terms prevail over both, and words prevail over numbers.

(5A Del. C. 1953, § 3-118; 55 Del. Laws, c. 349; 70 Del. Laws, c. 86, § 3.)

§ 3-115 Incomplete instrument.

(a) “Incomplete instrument” means a signed writing, whether or not issued by the signer, the contents of which show at the time of signing that it is incomplete but that the signer intended it to be completed by the addition of words or numbers.

(b) Subject to subsection (c), if an incomplete instrument is an instrument under Section 3-104, it may be enforced according to its terms if it is not completed, or according to its terms as augmented by completion. If an incomplete instrument is not an instrument under Section 3-104, but, after completion, the requirements of Section 3-104 are met, the instrument may be enforced according to its terms as augmented by completion.

(c) If words or numbers are added to an incomplete instrument without authority of the signer, there is an alteration of the incomplete instrument under Section 3-407.

(d) The burden of establishing that words or numbers were added to an incomplete instrument without authority of the signer is on the person asserting the lack of authority.

(5A Del. C. 1953, § 3-115; 55 Del. Laws, c. 349; 70 Del. Laws, c. 86, § 3.)

§ 3-116 Joint and several liability; contribution.

(a) Except as otherwise provided in the instrument, two or more persons who have the same liability on an instrument as makers, drawers, acceptors, indorsers who indorse as joint payees, or anomalous indorsers are jointly and severally liable in the capacity in which they sign.

(b) Except as provided in Section 3-419(e) or by agreement of the affected parties, a party having joint and several liability who pays the instrument is entitled to receive from any party having the same joint and several liability contribution in accordance with applicable law.

(c) Discharge of one party having joint and several liability by a person entitled to enforce the instrument does not affect the right under subsection (b) of a party having the same joint and several liability to receive contribution from the party discharged.

(5A Del. C. 1953, § 3-116; 55 Del. Laws, c. 349; 70 Del. Laws, c. 86, § 3.)

§ 3-117 Other agreements affecting instrument.

Subject to applicable law regarding exclusion of proof of contemporaneous or previous agreements, the obligation of a party to an instrument to pay the instrument may be modified, supplemented, or nullified by a separate agreement of the obligor and a person entitled to enforce the instrument, if the instrument is issued or the obligation is incurred in reliance on the agreement or as part of the same transaction giving rise to the agreement. To the extent an obligation is modified, supplemented, or nullified by an agreement under this section, the agreement is a defense to the obligation.

(5A Del. C. 1953, § 3-119; 55 Del. Laws, c. 349; 70 Del. Laws, c. 86, § 3.)

§ 3-118 Statute of limitations.

(a) Except as provided in subsection (e), an action to enforce the obligation of a party to pay a note payable at a definite time must be commenced within six years after the due date or dates stated in the note or, if a due date is accelerated, within six years after the accelerated due date.

(b) Except as provided in subsection (d) or (e), if demand for payment is made to the maker of a note payable on demand, an action to enforce the obligation of a party to pay the note must be commenced within six years after the demand. If no demand for payment is made to the maker, an action to enforce the note is barred if neither principal nor interest on the note has been paid for a continuous period of 10 years.

(c) Except as provided in subsection (d), an action to enforce the obligation of a party to an unaccepted draft to pay the draft must be commenced within three years after dishonor of the draft or 10 years after the date of the draft, whichever period expires first.

(d) An action to enforce the obligation of the acceptor of a certified check or the issuer of a teller's check, cashier's check, or traveler's check must be commenced within three years after demand for payment is made to the acceptor or issuer, as the case may be.

(e) An action to enforce the obligation of a party to a certificate of deposit to pay the instrument must be commenced within six years after demand for payment is made to the maker, but if the instrument states a due date and the maker is not required to pay before that date, the six-year period begins when a demand for payment is in effect and the due date has passed.

(f) An action to enforce the obligation of a party to pay an accepted draft, other than a certified check, must be commenced (i) within six years after the due date or dates stated in the draft or acceptance if the obligation of the acceptor is payable at a definite time, or (ii) within six years after the date of the acceptance if the obligation of the acceptor is payable on demand.

(g) Unless governed by other law regarding claims for indemnity or contribution, an action (i) for conversion of an instrument, for money had and received, or like action based on conversion, (ii) for breach of warranty, or (iii) to enforce an obligation, duty, or right arising under this Article and not governed by this section must be commenced within three years after the [cause of action] accrues.

(h) This section is not intended to affect the common law rule in this State pertaining to instruments under seal.

(5A Del. C. 1953, § 3-122; 55 Del. Laws, c. 349; 70 Del. Laws, c. 86, § 3.)

§ 3-119 Notice of right to defend action.

In an action for breach of an obligation for which a third person is answerable over pursuant to this Article or Article 4, the defendant may give the third person written notice of the litigation, and the person notified may then give similar notice to any other person who is answerable over. If the notice states (i) that the person notified may come in and defend and (ii) that failure to do so will bind the person notified in an action later brought by the person giving the notice as to any determination of fact common to the two litigations, the person notified is so bound unless after seasonable receipt of the notice the person notified does come in and defend.

(70 Del. Laws, c. 86, § 3.)

§§ 3-120 — 3-122

Part 2

Negotiation, Transfer, and Indorsement

§ 3-201 Negotiation.

(a) "Negotiation" means a transfer of possession, whether voluntary or involuntary, or an instrument by a person other than the issuer to a person who thereby becomes its holder.

(b) Except for negotiation by a remitter, if an instrument is payable to an identified person, negotiation requires transfer of possession of the instrument and its indorsement by the holder. If an instrument is payable to bearer, it may be negotiated by transfer of possession alone.

(5A Del. C. 1953, § 3-202; 55 Del. Laws, c. 349; 70 Del. Laws, c. 86, § 3.)

§ 3-202 Negotiation subject to rescission.

(a) Negotiation is effective even if obtained (i) from an infant, a corporation exceeding its powers, or a person without capacity, (ii) by fraud, duress, or mistake, or (iii) in breach of duty or as part of an illegal transaction.

(b) To the extent permitted by other law, negotiation may be rescinded or may be subject to other remedies, but those remedies may not be asserted against a subsequent holder in due course or a person paying the instrument in good faith and without knowledge of facts that are a basis for rescission or other remedy.

(5A Del. C. 1953, § 3-207; 55 Del. Laws, c. 349; 70 Del. Laws, c. 86, § 3.)

§ 3-203 Transfer of instrument; rights acquired by transfer.

(a) An instrument is transferred when it is delivered by a person other than its issuer for the purpose of giving to the person receiving delivery the right to enforce the instrument.

(b) Transfer of an instrument, whether or not the transfer is a negotiation, vests in the transferee any right of the transferor to enforce the instrument, including any right as a holder in due course, but the transferee cannot acquire rights of a holder in due course by a transfer, directly or indirectly, from a holder in due course if the transferee engaged in fraud or illegality affecting the instrument.

(c) Unless otherwise agreed, if an instrument is transferred for value and the transferee does not become a holder because of lack of indorsement by the transferor, the transferee has a specifically enforceable right to the unqualified indorsement of the transferor, but negotiation of the instrument does not occur until the indorsement is made.

(d) If a transferor purports to transfer less than the entire instrument, negotiation of the instrument does not occur. The transferee obtains no rights under this Article and has only the rights of a partial assignee.

(5A Del. C. 1953, § 3-201; 55 Del. Laws, c. 349; 70 Del. Laws, c. 86, § 3.)

§ 3-204 Indorsement.

(a) "Indorsement" means a signature, other than that of a signer as maker, drawer, or acceptor, that alone or accompanied by other words is made on an instrument for the purpose of (i) negotiating the instrument, (ii) restricting payment of the instrument, or (iii) incurring indorser's liability on the instrument, but regardless of the intent of the signer, a signature and its accompanying words are an indorsement unless the accompanying words, terms of the instrument, place of the signature, or other circumstances unambiguously indicate that the signature was made for a purpose other than indorsement. For the purpose of determining whether a signature is made on an instrument, a paper affixed to the instrument is a part of the instrument.

(b) "Indorser" means a person who makes an indorsement.

(c) For the purpose of determining whether the transferee of an instrument is a holder, an indorsement that transfers a security interest in the instrument is effective as an unqualified indorsement of the instrument.

(d) If an instrument is payable to a holder under a name that is not the name of the holder, indorsement may be made by the holder in the name stated in the instrument or in the holder's name or both, but signature in both names may be required by a person paying or taking the instrument for value or collection.

(70 Del. Laws, c. 86, § 3.)

§ 3-205 Special indorsement; blank indorsement; anomalous indorsement.

(a) If an indorsement is made by the holder of an instrument, whether payable to an identified person or payable to bearer, and the indorsement identifies a person to whom it makes the instrument payable, it is a "special indorsement." When specially indorsed, an instrument becomes payable to the identified person and may be negotiated only by the indorsement of that person. The principles stated in Section 3-110 apply to special indorsements.

(b) If an indorsement is made by the holder of an instrument and it is not a special indorsement, it is a "blank indorsement." When indorsed in blank, an instrument becomes payable to bearer and may be negotiated by transfer of possession alone until specially indorsed.

(c) The holder may convert a blank indorsement that consists only of a signature into a special indorsement by writing, above the signature of the indorser, words identifying the person to whom the instrument is made payable.

(d) "Anomalous indorsement" means an indorsement made by a person who is not the holder of the instrument. An anomalous indorsement does not affect the manner in which the instrument may be negotiated.

(5A Del. C. 1953, § 3-204; 55 Del. Laws, c. 349; 70 Del. Laws, c. 86, § 3.)

§ 3-206 Restrictive indorsement.

(a) An indorsement limiting payment to a particular person or otherwise prohibiting further transfer or negotiation of the instrument is not effective to prevent further transfer or negotiation of the instrument.

(b) An indorsement stating a condition to the right of the indorsee to receive payment does not affect the right of the indorsee to enforce the instrument. A person paying the instrument or taking it for value or collection may disregard the condition, and the rights and liabilities of that person are not affected by whether the condition has been fulfilled.

(c) If an instrument bears an indorsement (i) described in Section 4-201(b), or (ii) in blank or to a particular bank using the words "for deposit," "for collection," or other words indicating a purpose of having the instrument collected by a bank for the indorser or for a particular account, the following rules apply:

(1) A person, other than a bank, who purchases the instrument when so indorsed converts the instrument unless the amount paid for the instrument is received by the indorser or applied consistently with the indorsement.

(2) A depositary bank that purchases the instrument or takes it for collection when so indorsed converts the instrument unless the amount paid by the bank with respect to the instrument is received by the indorser or applied consistently with the indorsement.

(3) A payor bank that is also the depositary bank or that takes the instrument for immediate payment over the counter from a person other than a collecting bank converts the instrument unless the proceeds of the instrument are received by the indorser or applied consistently with the indorsement.

(4) Except as otherwise provided in paragraph (3), a payor bank or intermediary bank may disregard the indorsement and is not liable if the proceeds of the instrument are not received by the indorser or applied consistently with the indorsement.

(d) Except for an indorsement covered by subsection (c), if an instrument bears an indorsement using words to the effect that payment is to be made to the indorsee as agent, trustee, or other fiduciary for the benefit of the indorser or another person, the following rules apply:

(1) Unless there is notice of breach of fiduciary duty as provided in Section 3-307, a person who purchases the instrument from the indorsee or takes the instrument from the indorsee for collection or payment may pay the proceeds of payment or the value given for the instrument to the indorsee without regard to whether the indorsee violates a fiduciary duty to the indorser.

(2) A subsequent transferee of the instrument or person who pays the instrument is neither given notice nor otherwise affected by the restriction in the indorsement unless the transferee or payor knows that the fiduciary dealt with the instrument or its proceeds in breach of fiduciary duty.

(e) The presence on an instrument of an indorsement to which this section applies does not prevent a purchaser of the instrument from becoming a holder in due course of the instrument unless the purchaser is a converter under subsection (c) or has notice or knowledge of breach of fiduciary duty as stated in subsection (d).

(f) In an action to enforce the obligation of a party to pay the instrument, the obligor has a defense if payment would violate an indorsement to which this section applies and the payment is not permitted by this section.

(5A Del. C. 1953, § 3-206; 55 Del. Laws, c. 349; 70 Del. Laws, c. 86, § 3.)

§ 3-207 Reacquisition.

Reacquisition of an instrument occurs if it is transferred to a former holder, by negotiation or otherwise. A former holder who reacquires the instrument may cancel indorsements made after the reacquirer first became a holder of the instrument. If the cancellation causes the instrument to be payable to the reacquirer or to bearer, the reacquirer may negotiate the instrument. An indorser whose indorsement is canceled is discharged, and the discharge is effective against any subsequent holder.

(5A Del. C. 1953, § 3-208; 55 Del. Laws, c. 349; 70 Del. Laws, c. 86, § 3.)

§ 3-208

Part 3

Enforcement of Instruments

§ 3-301 Person entitled to enforce instrument.

"Person entitled to enforce" an instrument means (i) the holder of the instrument, (ii) a nonholder in possession of the instrument who has the rights of a holder, or (iii) a person not in possession of the instrument who is entitled to enforce the instrument pursuant to Section 3-309 or 3-418(d). A person may be a person entitled to enforce the instrument even though the person is not the owner of the instrument or is in wrongful possession of the instrument.

(5A Del. C. 1953, § 3-301; 55 Del. Laws, c. 349; 70 Del. Laws, c. 86, § 3.)

§ 3-302 Holder in due course.

(a) Subject to subsection (c) and Section 3-106(d), "holder in due course" means the holder of an instrument if:

(1) The instrument when issued or negotiated to the holder does not bear such apparent evidence of forgery or alteration or is not otherwise so irregular or incomplete as to call into question its authenticity; and

(2) The holder took the instrument (i) for value, (ii) in good faith, (iii) without notice that the instrument is overdue or has been dishonored or that there is an uncured default with respect to payment of another instrument issued as part of the same series, (iv) without

notice that the instrument contains an unauthorized signature or has been altered, (v) without notice of any claim to the instrument described in Section 3-306, and (vi) without notice that any party has a defense or claim in recoupment described in Section 3-305(a).

(b) Notice of discharge of a party, other than discharge in an insolvency proceeding, is not notice of a defense under subsection (a), but discharge is effective against a person who became a holder in due course with notice of the discharge. Public filing or recording of a document does not of itself constitute notice of a defense, claim in recoupment, or claim to the instrument.

(c) Except to the extent a transferor or predecessor in interest has rights as a holder in due course, a person does not acquire rights of a holder in due course of an instrument taken (i) by legal process or by purchase in an execution, bankruptcy, or creditor's sale or similar proceeding, (ii) by purchase as part of a bulk transaction not in ordinary course of business of the transferor, or (iii) as the successor in interest to an estate or other organization.

(d) If, under Section 3-303(a)(1), the promise of performance that is the consideration for an instrument has been partially performed, the holder may assert rights as a holder in due course of the instrument only to the fraction of the amount payable under the instrument equal to the value of the partial performance divided by the value of the promised performance.

(e) If (i) the person entitled to enforce an instrument has only a security interest in the instrument and (ii) the person obliged to pay the instrument has a defense, claim in recoupment, or claim to the instrument that may be asserted against the person who granted the security interest, the person entitled to enforce the instrument may assert rights as a holder in due course only to an amount payable under the instrument which, at the time of enforcement of the instrument, does not exceed the amount of the unpaid obligation secured.

(f) To be effective, notice must be received at a time and in a manner that gives a reasonable opportunity to act on it.

(g) This section is subject to any law limiting status as a holder in due course in particular classes of transactions.

(5A Del. C. 1953, § 3-302; 55 Del. Laws, c. 349; 70 Del. Laws, c. 86, § 3.)

§ 3-303 Value and consideration.

(a) An instrument is issued or transferred for value if:

(1) The instrument is issued or transferred for a promise of performance, to the extent the promise has been performed;

(2) The transferee acquires a security interest or other lien in the instrument other than a lien obtained by judicial proceeding;

(3) The instrument is issued or transferred as payment of, or as security for, an antecedent claim against any person, whether or not the claim is due;

(4) The instrument is issued or transferred in exchange for a negotiable instrument; or

(5) The instrument is issued or transferred in exchange for the incurring of an irrevocable obligation to a third party by the person taking the instrument.

(b) "Consideration" means any consideration sufficient to support a simple contract. The drawer or maker of an instrument has a defense if the instrument is issued without consideration. If an instrument is issued for a promise of performance, the issuer has a defense to the extent performance of the promise is due and the promise has not been performed. If an instrument is issued for value as stated in subsection (a), the instrument is also issued for consideration.

(5A Del. C. 1953, § 3-303; 55 Del. Laws, c. 349; 70 Del. Laws, c. 86, § 3.)

§ 3-304 Overdue instrument.

(a) An instrument payable on demand becomes overdue at the earliest of the following times:

(1) On the day after the day demand for payment is duly made;

(2) If the instrument is a check, 90 days after its date; or

(3) If the instrument is not a check, when the instrument has been outstanding for a period of time after its date which is unreasonably long under the circumstances of the particular case in light of the nature of the instrument and usage of the trade.

(b) With respect to an instrument payable at a definite time the following rules apply:

(1) If the principal is payable in installments and a due date has not been accelerated, the instrument becomes overdue upon default under the instrument for nonpayment of an installment, and the instrument remains overdue until the default is cured.

(2) If the principal is not payable in installments and the due date has not been accelerated, the instrument becomes overdue on the day after the due date.

(3) If a due date with respect to principal has been accelerated, the instrument becomes overdue on the day after the accelerated due date.

(c) Unless the due date of principal has been accelerated, an instrument does not become overdue if there is default in payment of interest but no default in payment of principal.

(70 Del. Laws, c. 86, § 3.)

§ 3-305 Defenses and claims in recoupment.

(a) Except as stated in subsection (b), the right to enforce the obligation of a party to pay an instrument is subject to the following:

(1) A defense of the obligor based on (i) infancy of the obligor to the extent it is a defense to a simple contract, (ii) duress, lack of legal capacity, or illegality of the transaction which, under other law, nullifies the obligation of the obligor, (iii) fraud that induced the obligor to sign the instrument with neither knowledge nor reasonable opportunity to learn of its character or its essential terms, or (iv) discharge of the obligor in insolvency proceedings;

(2) A defense of the obligor stated in another section of this article or a defense of the obligor that would be available if the person entitled to enforce the instrument were enforcing a right to payment under a simple contract; and

(3) A claim in recoupment of the obligor against the original payee of the instrument if the claim arose from the transaction that gave rise to the instrument; but the claim of the obligor may be asserted against a transferee of the instrument only to reduce the amount owing on the instrument at the time the action is brought.

(b) The right of a holder in due course to enforce the obligation of a party to pay the instrument is subject to defenses of the obligor stated in subsection (a)(1), but is not subject to defenses of the obligor stated in subsection (a)(2) or claims in recoupment stated in subsection (a)(3) against a person other than the holder.

(c) Except as stated in subsection (d), in an action to enforce the obligation of a party to pay the instrument, the obligor may not assert against the person entitled to enforce the instrument a defense, claim in recoupment, or claim to the instrument (Section 3-306) of another person, but the other person's claim to the instrument may be asserted by the obligor if the other person is joined in the action and personally asserts the claim against the person entitled to enforce the instrument. An obligor is not obliged to pay the instrument if the person seeking enforcement of the instrument does not have rights of a holder in due course and the obligor proves that the instrument is a lost or stolen instrument.

(d) In an action to enforce the obligation of an accommodation party to pay an instrument, the accommodation party may assert against the person entitled to enforce the instrument any defense or claim in recoupment under subsection (a) that the accommodated party could assert against the person entitled to enforce the instrument, except the defenses of discharge in insolvency proceedings, infancy, and lack of legal capacity.

(5A Del. C. 1953, § 3-305; 55 Del. Laws, c. 349; 70 Del. Laws, c. 86, § 3.)

§ 3-306 Claims to an instrument.

A person taking an instrument, other than a person having rights of a holder in due course, is subject to a claim of a property or possessory right in the instrument or its proceeds, including a claim to rescind a negotiation and to recover the instrument or its proceeds. A person having rights of a holder in due course takes free of the claim to the instrument.

(5A Del. C. 1953, § 3-306; 55 Del. Laws, c. 349; 70 Del. Laws, c. 86, § 3.)

§ 3-307 Notice of breach of fiduciary duty.

(a) In this section:

(1) "Fiduciary" means an agent, trustee, partner, corporate officer or director, or other representative owing a fiduciary duty with respect to an instrument.

(2) "Represented person" means the principal, beneficiary, partnership, corporation, or other person to whom the duty stated in paragraph (1) is owed.

(b) If (i) an instrument is taken from a fiduciary for payment or collection or for value, (ii) the taker has knowledge of the fiduciary status of the fiduciary, and (iii) the represented person makes a claim to the instrument or its proceeds on the basis that the transaction of the fiduciary is a breach of fiduciary duty, the following rules apply:

(1) Notice of breach of fiduciary duty by the fiduciary is notice of the claim of the represented person.

(2) In the case of an instrument payable to the represented person or the fiduciary as such, the taker has notice of the breach of fiduciary duty if the instrument is (i) taken in payment of or as security for a debt known by the taker to be the personal debt of the fiduciary, (ii) taken in a transaction known by the taker to be for the personal benefit of the fiduciary, or (iii) deposited to an account other than an account of the fiduciary, as such, or an account of the represented person.

(3) If an instrument is issued by the represented person or the fiduciary as such, and made payable to the fiduciary personally, the taker does not have notice of the breach of fiduciary duty unless the taker knows of the breach of fiduciary duty.

(4) If an instrument is issued by the represented person or the fiduciary as such, to the taker as payee, the taker has notice of the breach of fiduciary duty if the instrument is (i) taken in payment of or as security for a debt known by the taker to be the personal debt of the fiduciary, (ii) taken in a transaction known by the taker to be for the personal benefit of the fiduciary, or (iii) deposited to an account other than an account of the fiduciary, as such, or an account of the represented person.

(5A Del. C. 1953, § 3-304; 55 Del. Laws, c. 349; 70 Del. Laws, c. 86, § 3.)

§ 3-308 Proof of signatures and status as holder in due course.

(a) In an action with respect to an instrument, the authenticity of, and authority to make, each signature on the instrument is admitted unless specifically denied in the pleadings. If the validity of a signature is denied in the pleadings, the burden of establishing validity is on

the person claiming validity, but the signature is presumed to be authentic and authorized unless the action is to enforce the liability of the purported signer and the signer is dead or incompetent at the time of trial of the issue of validity of the signature. If an action to enforce the instrument is brought against a person as the undisclosed principal of a person who signed the instrument as a party to the instrument, the plaintiff has the burden of establishing that the defendant is liable on the instrument as a represented person under Section 3-402(a).

(b) If the validity of signatures is admitted or proved and there is compliance with subsection (a), a plaintiff producing the instrument is entitled to payment if the plaintiff proves entitlement to enforce the instrument under Section 3-301, unless the defendant proves a defense or claim in recoupment. If a defense or claim in recoupment is proved, the right to payment of the plaintiff is subject to the defense or claim, except to the extent the plaintiff proves that the plaintiff has rights of a holder in due course which are not subject to the defense or claim.

(5A Del. C. 1953, § 3-307; 55 Del. Laws, c. 349; 70 Del. Laws, c. 86, § 3.)

§ 3-309 Enforcement of lost, destroyed, or stolen instrument.

(a) A person not in possession of an instrument is entitled to enforce the instrument if (i) the person was in possession of the instrument and entitled to enforce it when loss of possession occurred, (ii) the loss of possession was not the result of a transfer by the person or a lawful seizure, and (iii) the person cannot reasonably obtain possession of the instrument because the instrument was destroyed, its whereabouts cannot be determined, or it is in the wrongful possession of an unknown person or a person that cannot be found or is not amenable to service of process.

(b) A person seeking enforcement of an instrument under subsection (a) must prove the terms of the instrument and the person's right to enforce the instrument. If that proof is made, Section 3-308 applies to the case as if the person seeking enforcement had produced the instrument. The court may not enter judgment in favor of the person seeking enforcement unless it finds that the person required to pay the instrument is adequately protected against loss that might occur by reason of a claim by another person to enforce the instrument. Adequate protection may be provided by any reasonable means.

(70 Del. Laws, c. 86, § 3.)

§ 3-310 Effect of instrument on obligation for which taken.

(a) Unless otherwise agreed, if a certified check, cashier's check, or teller's check is taken for an obligation, the obligation is discharged to the same extent discharge would result if an amount of money equal to the amount of the instrument were taken in payment of the obligation. Discharge of the obligation does not affect any liability that the obligor may have as an indorser of the instrument.

(b) Unless otherwise agreed and except as provided in subsection (a), if a note or an uncertified check is taken for an obligation, the obligation is suspended to the same extent the obligation would be discharged if an amount of money equal to the amount of the instrument were taken, and the following rules apply:

(1) In the case of an uncertified check, suspension of the obligation continues until dishonor of the check or until it is paid or certified. Payment or certification of the check results in discharge of the obligation to the extent of the amount of the check.

(2) In the case of a note, suspension of the obligation continues until dishonor of the note or until it is paid. Payment of the note results in discharge of the obligation to the extent of the payment.

(3) Except as provided in paragraph (4), if the check or note is dishonored and the obligee of the obligation for which the instrument was taken is the person entitled to enforce the instrument, the obligee may enforce either the instrument or the obligation. In the case of an instrument of a third person which is negotiated to the obligee by the obligor, discharge of the obligor on the instrument also discharges the obligation.

(4) If the person entitled to enforce the instrument taken for an obligation is a person other than the obligee, the obligee may not enforce the obligation to the extent the obligation is suspended. If the obligee is the person entitled to enforce the instrument but no longer has possession of it because it was lost, stolen, or destroyed, the obligation may not be enforced to the extent of the amount payable on the instrument, and to that extent the obligee's rights against the obligor are limited to enforcement of the instrument.

(c) If an instrument other than one described in subsection (a) or (b) is taken for an obligation, the effect is (i) that stated in subsection (a) if the instrument is one on which a bank is liable as maker or acceptor, or (ii) that stated in subsection (b) in any other case.

(70 Del. Laws, c. 86, § 3.)

§ 3-311 Accord and satisfaction by use of instrument.

(a) If a person against whom a claim is asserted proves that (i) that person in good faith tendered an instrument to the claimant as full satisfaction of the claim, (ii) the amount of the claim was unliquidated or subject to a bona fide dispute, and (iii) the claimant obtained payment of the instrument, the following subsections apply.

(b) Unless subsection (c) applies, the claim is discharged if the person against whom the claim is asserted proves that the instrument or an accompanying written communication contained a conspicuous statement to the effect that the instrument was tendered as full satisfaction of the claim.

(c) Subject to subsection (d), a claim is not discharged under subsection (b) if either of the following applies:

(1) The claimant, if an organization, proves that (i) within a reasonable time before the tender, the claimant sent a conspicuous statement to the person against whom the claim is asserted that communications concerning disputed debts, including an instrument

tendered as full satisfaction of a debt, are to be sent to a designated person, office, or place, and (ii) the instrument or accompanying communication was not received by that designated person, office, or place.

(2) The claimant, whether or not an organization, proves that within 90 days after payment of the instrument, the claimant tendered repayment of the amount of the instrument to the person against whom the claim is asserted. This paragraph does not apply if the claimant is an organization that sent a statement complying with paragraph (1)(i).

(d) A claim is discharged if the person against whom the claim is asserted proves that within a reasonable time before collection of the instrument was initiated, the claimant, or an agent of the claimant having direct responsibility with respect to the disputed obligation, knew that the instrument was tendered in full satisfaction of the claim.

(70 Del. Laws, c. 86, § 3.)

§ 3-312 Lost, destroyed, or stolen cashier's check, teller's check, or certified check.

(a) In this section:

(1) "Check" means a cashier's check, teller's check, or certified check.

(2) "Claimant" means a person who claims the right to receive the amount of a cashier's check, teller's check, or certified check that was lost, destroyed, or stolen.

(3) "Declaration of loss" means a written statement, made under penalty of perjury, to the effect that (i) the declarer lost possession of a check, (ii) the declarer is the drawer or payee of the check, in the case of a certified check, or the remitter or payee of the check, in the case of a cashier's check or teller's check, (iii) the loss of possession was not the result of a transfer by the declarer or a lawful seizure, and (iv) the declarer cannot reasonably obtain possession of the check because the check was destroyed, its whereabouts cannot be determined, or it is in the wrongful possession of an unknown person or a person that cannot be found or is not amenable to service of process.

(4) "Obligated bank" means the issuer of a cashier's check or teller's check or the acceptor of a certified check.

(b) A claimant may assert a claim to the amount of a check by a communication to the obligated bank describing the check with reasonable certainty and requesting payment of the amount of the check, if (i) the claimant is the drawer or payee of a certified check or the remitter or payee of a cashier's check or teller's check, (ii) the communication contains or is accompanied by a declaration of loss of the claimant with respect to the check, (iii) the communication is received at a time and in a manner affording the bank a reasonable time to act on it before the check is paid, and (iv) the claimant provides reasonable identification if requested by the obligated bank. Delivery of a declaration of loss is a warranty of the truth of the statements made in the declaration. If a claim is asserted in compliance with this subsection, the following rules apply:

(1) The claim becomes enforceable at the later of (i) the time the claim is asserted, or (ii) the 90th day following the date of the check, in the case of a cashier's check or teller's check, or the 90th day following the date of the acceptance, in the case of a certified check.

(2) Until the claim becomes enforceable, it has no legal effect and the obligated bank may pay the check or, in the case of a teller's check, may permit the drawee to pay the check. Payment to a person entitled to enforce the check discharges all liability of the obligated bank with respect to the check.

(3) If the claim becomes enforceable before the check is presented for payment, the obligated bank is not obliged to pay the check.

(4) When the claim becomes enforceable, the obligated bank becomes obliged to pay the amount of the check to the claimant if payment of the check has not been made to a person entitled to enforce the check. Subject to Section 4-302(a)(1), payment to the claimant discharges all liability of the obligated bank with respect to the check.

(c) If the obligated bank pays the amount of a check to a claimant under subsection (b)(4) and the check is presented for payment by a person having rights of a holder in due course, the claimant is obliged to (i) refund the payment to the obligated bank if the check is paid, or (ii) pay the amount of the check to the person having rights of a holder in due course if the check is dishonored.

(d) If a claimant has the right to assert a claim under subsection (b) and is also a person entitled to enforce a cashier's check, teller's check, or certified check which is lost, destroyed, or stolen, the claimant may assert rights with respect to the check either under this section or Section 3-309.

(70 Del. Laws, c. 86, § 3.)

Part 4

Liability of Parties

§ 3-401 Signature.

(a) A person is not liable on an instrument unless (i) the person signed the instrument, or (ii) the person is represented by an agent or representative who signed the instrument and the signature is binding on the represented person under Section 3-402.

(b) A signature may be made (i) manually or by means of a device or machine, and (ii) by the use of any name, including a trade or assumed name, or by a word, mark, or symbol executed or adopted by a person with present intention to authenticate a writing.

(5A Del. C. 1953, § 3-401; 55 Del. Laws, c. 349; 59 Del. Laws, c. 432, § 1; 70 Del. Laws, c. 86, § 3.)

§ 3-402 Signature by representative.

(a) If a person acting, or purporting to act, as a representative signs an instrument by signing either the name of the represented person or the name of the signer, the represented person is bound by the signature to the same extent the represented person would be bound if the signature were on a simple contract. If the represented person is bound, the signature of the representative is the "authorized signature of the represented person" and the represented person is liable on the instrument, whether or not identified in the instrument.

(b) If a representative signs the name of the representative to an instrument and the signature is an authorized signature of the represented person, the following rules apply:

(1) If the form of the signature shows unambiguously that the signature is made on behalf of the represented person who is identified in the instrument, the representative is not liable on the instrument.

(2) Subject to subsection (c), if (i) the form of the signature does not show unambiguously that the signature is made in a representative capacity or (ii) the represented person is not identified in the instrument, the representative is liable on the instrument to a holder in due course that took the instrument without notice that the representative was not intended to be liable on the instrument. With respect to any other person, the representative is liable on the instrument unless the representative proves that the original parties did not intend the representative to be liable on the instrument.

(c) If a representative signs the name of the representative as drawer of a check without indication of the representative status and the check is payable from an account of the represented person who is identified on the check, the signer is not liable on the check if the signature is an authorized signature of the represented person.

(5A Del. C. 1953, § 3-403; 55 Del. Laws, c. 349; 70 Del. Laws, c. 86, § 3.)

§ 3-403 Unauthorized signature.

(a) Unless otherwise provided in this Article or Article 4, an unauthorized signature is ineffective except as the signature of the unauthorized signer in favor of a person who in good faith pays the instrument or takes it for value. An unauthorized signature may be ratified for all purposes of this Article.

(b) If the signature of more than one person is required to constitute the authorized signature of an organization, the signature of the organization is unauthorized if one of the required signatures is lacking.

(c) The civil or criminal liability of a person who makes an unauthorized signature is not affected by any provision of this Article which makes the unauthorized signature effective for the purposes of this Article.

(5A Del. C. 1953, § 3-404; 55 Del. Laws, c. 349; 70 Del. Laws, c. 86, § 3.)

§ 3-404 Impostors; fictitious payees.

(a) If an impostor, by use of the mails or otherwise, induces the issuer of an instrument to issue the instrument to the impostor, or to a person acting in concert with the impostor, by impersonating the payee of the instrument or a person authorized to act for the payee, an indorsement of the instrument by any person in the name of the payee is effective as the indorsement of the payee in favor of a person who, in good faith, pays the instrument or takes it for value or for collection.

(b) If (i) a person whose intent determines to whom an instrument is payable (Section 3-110(a) or (b)) does not intend the person identified as payee to have any interest in the instrument, or (ii) the person identified as payee of an instrument is a fictitious person, the following rules apply until the instrument is negotiated by special indorsement:

(1) Any person in possession of the instrument is its holder.

(2) An indorsement by any person in the name of the payee stated in the instrument is effective as the indorsement of the payee in favor of a person who, in good faith, pays the instrument or takes it for value or for collection.

(c) Under subsection (a) or (b), an indorsement is made in the name of a payee if (i) it is made in a name substantially similar to that of the payee or (ii) the instrument, whether or not indorsed, is deposited in a depositary bank to an account in a name substantially similar to that of the payee.

(d) With respect to an instrument to which subsection (a) or (b) applies, if a person paying the instrument or taking it for value or for collection fails to exercise ordinary care in paying or taking the instrument and that failure substantially contributes to loss resulting from payment of the instrument, the person bearing the loss may recover from the person failing to exercise ordinary care to the extent the failure to exercise ordinary care contributed to the loss.

(5A Del. C. 1953, § 3-405; 55 Del. Laws, c. 349; 70 Del. Laws, c. 86, § 3.)

§ 3-405 Employer's responsibility for fraudulent indorsement by employee.

(a) In this section:

(1) "Employee" includes an independent contractor and employee of an independent contractor retained by the employer.

(2) "Fraudulent indorsement" means (i) in the case of an instrument payable to the employer, a forged indorsement purporting to be that of the employer, or (ii) in the case of an instrument with respect to which the employer is the issuer, a forged indorsement purporting to be that of the person identified as payee.

(3) "Responsibility" with respect to instruments means authority (i) to sign or indorse instruments on behalf of the employer, (ii) to process instruments received by the employer for bookkeeping purposes, for deposit to an account, or for other disposition, (iii) to prepare or process instruments for issue in the name of the employer, (iv) to supply information determining the names or addresses of payees of instruments to be issued in the name of the employer, (v) to control the disposition of instruments to be issued in the name of the employer, or (vi) to act otherwise with respect to instruments in a responsible capacity. "Responsibility" does not include authority that merely allows an employee to have access to instruments or blank or incomplete instrument forms that are being stored or transported or are part of incoming or outgoing mail, or similar access.

(b) For the purpose of determining the rights and liabilities of a person who, in good faith, pays an instrument or takes it for value or for collection, if an employer entrusted an employee with responsibility with respect to the instrument and the employee or a person acting in concert with the employee makes a fraudulent indorsement of the instrument, the indorsement is effective as the indorsement of the person to whom the instrument is payable if it is made in the name of that person. If the person paying the instrument or taking it for value or for collection fails to exercise ordinary care in paying or taking the instrument and that failure substantially contributes to loss resulting from the fraud, the person bearing the loss may recover from the person failing to exercise ordinary care to the extent the failure to exercise ordinary care contributed to the loss.

(c) Under subsection (b), an indorsement is made in the name of the person to whom an instrument is payable if (i) it is made in a name substantially similar to the name of that person or (ii) the instrument, whether or not indorsed, is deposited in a depositary bank to an account in a name substantially similar to the name of that person.

(70 Del. Laws, c. 86, § 3.)

§ 3-406 Negligence contributing to forged signature or alteration of instrument.

(a) A person whose failure to exercise ordinary care substantially contributes to an alteration of an instrument or to the making of a forged signature on an instrument is precluded from asserting the alteration or the forgery against a person who, in good faith, pays the instrument or takes it for value or for collection.

(b) Under subsection (a), if the person asserting the preclusion fails to exercise ordinary care in paying or taking the instrument and that failure substantially contributes to loss, the loss is allocated between the person precluded and the person asserting the preclusion according to the extent to which the failure of each to exercise ordinary care contributed to the loss.

(c) Under subsection (a), the burden of proving failure to exercise ordinary care is on the person asserting the preclusion. Under subsection (b), the burden of proving failure to exercise ordinary care is on the person precluded.

(5A Del. C. 1953, § 3-406; 55 Del. Laws, c. 349; 70 Del. Laws, c. 86, § 3.)

§ 3-407 Alteration.

(a) "Alteration" means (i) an unauthorized change in an instrument that purports to modify in any respect the obligation of a party, or (ii) an unauthorized addition of words or numbers or other change to an incomplete instrument relating to the obligation of a party.

(b) Except as provided in subsection (c), an alteration fraudulently made discharges a party whose obligation is affected by the alteration unless that party assents or is precluded from asserting the alteration. No other alteration discharges a party, and the instrument may be enforced according to its original terms.

(c) A payor bank or drawee paying a fraudulently altered instrument or a person taking it for value, in good faith and without notice of the alteration, may enforce rights with respect to the instrument (i) according to its original terms, or (ii) in the case of an incomplete instrument altered by unauthorized completion, according to its terms as completed.

(5A Del. C. 1953, § 3-407; 55 Del. Laws, c. 349; 70 Del. Laws, c. 86, § 3.)

§ 3-408 Drawee not liable on unaccepted draft.

A check or other draft does not of itself operate as an assignment of funds in the hands of the drawee available for its payment, and the drawee is not liable on the instrument until the drawee accepts it.

(5A Del. C. 1953, § 3-408; 55 Del. Laws, c. 349; 70 Del. Laws, c. 86, § 3.)

§ 3-409 Acceptance of draft; certified check.

(a) "Acceptance" means the drawee's signed agreement to pay a draft as presented. It must be written on the draft and may consist of the drawee's signature alone. Acceptance may be made at any time and becomes effective when notification pursuant to instructions is given or the accepted draft is delivered for the purpose of giving rights on the acceptance to any person.

(b) A draft may be accepted although it has not been signed by the drawer, is otherwise incomplete, is overdue, or has been dishonored.

(c) If a draft is payable at a fixed period after sight and the acceptor fails to date the acceptance, the holder may complete the acceptance by supplying a date in good faith.

(d) "Certified check" means a check accepted by the bank on which it is drawn. Acceptance may be made as stated in subsection (a) or by a writing on the check which indicates that the check is certified. The drawee of a check has no obligation to certify the check, and refusal to certify is not dishonor of the check.

(5A Del. C. 1953, § 3-410; 55 Del. Laws, c. 349; 70 Del. Laws, c. 86, § 3.)

§ 3-410 Acceptance varying draft.

(a) If the terms of a drawee's acceptance vary from the terms of the draft as presented, the holder may refuse the acceptance and treat the draft as dishonored. In that case, the drawee may cancel the acceptance.

(b) The terms of a draft are not varied by an acceptance to pay at a particular bank or place in the United States, unless the acceptance states that the draft is to be paid only at that bank or place.

(c) If the holder assents to an acceptance varying the terms of a draft, the obligation of each drawer and indorser that does not expressly assent to the acceptance is discharged.

(5A Del. C. 1953, § 3-412; 55 Del. Laws, c. 349; 70 Del. Laws, c. 86, § 3.)

§ 3-411 Refusal to pay cashier's checks, teller's checks, and certified checks.

(a) In this section, "obligated bank" means the acceptor of a certified check or the issuer of a cashier's check or teller's check bought from the issuer.

(b) If the obligated bank wrongfully (i) refuses to pay a cashier's check or certified check, (ii) stops payment of a teller's check, or (iii) refuses to pay a dishonored teller's check, the person asserting the right to enforce the check is entitled to compensation for expenses and loss of interest resulting from the nonpayment and may recover consequential damages if the obligated bank refuses to pay after receiving notice of particular circumstances giving rise to the damages.

(c) Expenses or consequential damages under subsection (b) are not recoverable if the refusal of the obligated bank to pay occurs because (i) the bank suspends payments, (ii) the obligated bank asserts a claim or defense of the bank that it has reasonable grounds to believe is available against the person entitled to enforce the instrument, (iii) the obligated bank has a reasonable doubt whether the person demanding payment is the person entitled to enforce the instrument, or (iv) payment is prohibited by law.

(5A Del. C. 1953, § 3-411; 55 Del. Laws, c. 349; 70 Del. Laws, c. 86, § 3.)

§ 3-412 Obligation of issuer of note or cashier's check.

The issuer of a note or cashier's check or other draft drawn on the drawer is obliged to pay the instrument (i) according to its terms at the time it was issued or, if not issued, at the time it first came into possession of a holder, or (ii) if the issuer signed an incomplete instrument, according to its terms when completed, to the extent stated in Sections 3-115 and 3-407. The obligation is owed to a person entitled to enforce the instrument or to an indorser who paid the instrument under Section 3-415.

(70 Del. Laws, c. 86, § 3.)

§ 3-413 Obligation of acceptor.

(a) The acceptor of a draft is obliged to pay the draft (i) according to its terms at the time it was accepted, even though the acceptance states that the draft is payable "as originally drawn" or equivalent terms, (ii) if the acceptance varies the terms of the draft, according to the terms of the draft as varied, or (iii) if the acceptance is of a draft that is an incomplete instrument, according to its terms when completed, to the extent stated in Sections 3-115 and 3-407. The obligation is owed to a person entitled to enforce the draft or to the drawer or an indorser who paid the draft under Section 3-414 or 3-415.

(b) If the certification of a check or other acceptance of a draft states the amount certified or accepted, the obligation of the acceptor is that amount. If (i) the certification or acceptance does not state an amount, (ii) the amount of the instrument is subsequently raised, and (iii) the instrument is then negotiated to a holder in due course, the obligation of the acceptor is the amount of the instrument at the time it was taken by the holder in due course.

(5A Del. C. 1953, § 3-413; 55 Del. Laws, c. 349; 70 Del. Laws, c. 86, § 3.)

§ 3-414 Obligation of drawer.

(a) This section does not apply to cashier's checks or other drafts drawn on the drawer.

(b) If an unaccepted draft is dishonored, the drawer is obliged to pay the draft (i) according to its terms at the time it was issued or, if not issued, at the time it first came into possession of a holder, or (ii) if the drawer signed an incomplete instrument, according to its terms when completed, to the extent stated in Sections 3-115 and 3-407. The obligation is owed to a person entitled to enforce the draft or to an indorser who paid the draft under Section 3-415.

(c) If a draft is accepted by a bank, the drawer is discharged, regardless of when or by whom acceptance was obtained.

(d) If a draft is accepted and the acceptor is not a bank, the obligation of the drawer to pay the draft if the draft is dishonored by the acceptor is the same as the obligation of an indorser under Section 3-415(a) and (c).

(e) If a draft states that it is drawn "without recourse" or otherwise disclaims liability of the drawer to pay the draft, the drawer is not liable to pay the draft if the draft is not a check. A disclaimer of the liability stated in subsection (b) is not effective if the draft is a check.

(f) If (i) a check is not presented for payment or given to a depositary bank for collection within 30 days after its date, (ii) the drawee suspends payments after expiration of the 30-day period without paying the check, and (iii) because of the suspension of payments, the drawer is deprived of funds maintained with the drawee to cover payment of the check, the drawer to the extent deprived of funds may

discharge its obligation to pay the check by assigning to the person entitled to enforce the check the rights of the drawer against the drawee with respect to the funds.

(70 Del. Laws, c. 86, § 3.)

§ 3-415 Obligation of indorser.

(a) Subject to subsections (b), (c), (d) and (e) and to Section 3-419(d), if an instrument is dishonored, an indorser is obliged to pay the amount due on the instrument (i) according to the terms of the instrument at the time it was indorsed, or (ii) if the indorser indorsed an incomplete instrument, according to its terms when completed, to the extent stated in Sections 3-115 and 3-407. The obligation of the indorser is owed to a person entitled to enforce the instrument or to a subsequent indorser who paid the instrument under this section.

(b) If an indorsement states that it is made "without recourse" or otherwise disclaims liability of the indorser, the indorser is not liable under subsection (a) to pay the instrument.

(c) If notice of dishonor of an instrument is required by Section 3-503 and notice of dishonor complying with that section is not given to an indorser, the liability of the indorser under subsection (a) is discharged.

(d) If a draft is accepted by a bank after an indorsement is made, the liability of the indorser under subsection (a) is discharged.

(e) If an indorser of a check is liable under subsection (a) and the check is not presented for payment, or given to a depositary bank for collection, within 30 days after the day the indorsement was made, the liability of the indorser under subsection (a) is discharged.

(5A Del. C. 1953, § 3-414; 55 Del. Laws, c. 349; 70 Del. Laws, c. 86, § 3.)

§ 3-416 Transfer warranties.

(a) A person who transfers an instrument for consideration warrants to the transferee and, if the transfer is by indorsement, to any subsequent transferee that:

(1) The warrantor is a person entitled to enforce the instrument;

(2) All signatures on the instrument are authentic and authorized;

(3) The instrument has not been altered;

(4) The instrument is not subject to a defense or claim in recoupment of any party which can be asserted against the warrantor; and

(5) The warrantor has no knowledge of any insolvency proceeding commenced with respect to the maker or acceptor or, in the case of an unaccepted draft, the drawer.

(b) A person to whom the warranties under subsection (a) are made and who took the instrument in good faith may recover from the warrantor as damages for breach of warranty an amount equal to the loss suffered as a result of the breach, but not more than the amount of the instrument plus expenses and loss of interest incurred as a result of the breach.

(c) The warranties stated in subsection (a) cannot be disclaimed with respect to checks. Unless notice of a claim for breach of warranty is given to the warrantor within 30 days after the claimant has reason to know of the breach and the identity of the warrantor, the liability of the warrantor under subsection (b) is discharged to the extent of any loss caused by the delay in giving notice of the claim.

(d) A [cause of action] for breach of warranty under this section accrues when the claimant has reason to know of the breach.

(70 Del. Laws, c. 86, § 3.)

§ 3-417 Presentment warranties.

(a) If an unaccepted draft is presented to the drawee for payment or acceptance and the drawee pays or accepts the draft, (i) the person obtaining payment or acceptance, at the time of presentment, and (ii) a previous transferor of the draft, at the time of transfer, warrant to the drawee making payment or accepting the draft in good faith that:

(1) The warrantor is, or was, at the time the warrantor transferred the draft, a person entitled to enforce the draft or authorized to obtain payment or acceptance of the draft on behalf of a person entitled to enforce the draft;

(2) The draft has not been altered; and

(3) The warrantor has no knowledge that the signature of the drawer of the draft is unauthorized.

(b) A drawee making payment may recover from any warrantor damages for breach of warranty equal to the amount paid by the drawee less the amount the drawee received or is entitled to receive from the drawer because of the payment. In addition, the drawee is entitled to compensation for expenses and loss of interest resulting from the breach. The right of the drawee to recover damages under this subsection is not affected by any failure of the drawee to exercise ordinary care in making payment. If the drawee accepts the draft, breach of warranty is a defense to the obligation of the acceptor. If the acceptor makes payment with respect to the draft, the acceptor is entitled to recover from any warrantor for breach of warranty the amounts stated in this subsection.

(c) If a drawee asserts a claim for breach of warranty under subsection (a) based on an unauthorized indorsement of the draft or an alteration of the draft, the warrantor may defend by proving that the indorsement is effective under Section 3-404 or 3-405 or the drawer is precluded under Section 3-406 or 4-406 from asserting against the drawee the unauthorized indorsement or alteration.

(d) If (i) a dishonored draft is presented for payment to the drawer or an indorser or (ii) any other instrument is presented for payment to a party obliged to pay the instrument, and (iii) payment is received, the following rules apply:

(1) The person obtaining payment and a prior transferor of the instrument warrant to the person making payment in good faith that the warrantor is, or was, at the time the warrantor transferred the instrument, a person entitled to enforce the instrument or authorized to obtain payment on behalf of a person entitled to enforce the instrument.

(2) The person making payment may recover from any warrantor for breach of warranty an amount equal to the amount paid plus expenses and loss of interest resulting from the breach.

(e) The warranties stated in subsections (a) and (d) cannot be disclaimed with respect to checks. Unless notice of a claim for breach of warranty is given to the warrantor within 30 days after the claimant has reason to know of the breach and the identity of the warrantor, the liability of the warrantor under subsection (b) or (d) is discharged to the extent of any loss caused by the delay in giving notice of the claim.

(f) A [cause of action] for breach of warranty under this section accrues when the claimant has reason to know of the breach.

(5A Del. C. 1953, § 3-417; 55 Del. Laws, c. 349; 70 Del. Laws, c. 86, § 3.)

§ 3-418 Payment or acceptance by mistake.

(a) Except as provided in subsection (c), if the drawee of a draft pays or accepts the draft and the drawee acted on the mistaken belief that (i) payment of the draft had not been stopped pursuant to Section 4-403 or (ii) the signature of the drawer of the draft was authorized, the drawee may recover the amount of the draft from the person to whom or for whose benefit payment was made or, in the case of acceptance, may revoke the acceptance. Rights of the drawee under this subsection are not affected by failure of the drawee to exercise ordinary care in paying or accepting the draft.

(b) Except as provided in subsection (c), if an instrument has been paid or accepted by mistake and the case is not covered by subsection (a), the person paying or accepting may, to the extent permitted by the law governing mistake and restitution, (i) recover the payment from the person to whom or for whose benefit payment was made or (ii) in the case of acceptance, may revoke the acceptance.

(c) The remedies provided by subsection (a) or (b) may not be asserted against a person who took the instrument in good faith and for value or who in good faith changed position in reliance on the payment or acceptance. This subsection does not limit remedies provided by Section 3-417 or 4-407.

(d) Notwithstanding Section 4-215, if an instrument is paid or accepted by mistake and the payor or acceptor recovers payment or revokes acceptance under subsection (a) or (b), the instrument is deemed not to have been paid or accepted and is treated as dishonored, and the person from whom payment is recovered has rights as a person entitled to enforce the dishonored instrument.

(70 Del. Laws, c. 86, § 3.)

§ 3-419 Instruments signed for accommodation.

(a) If an instrument is issued for value given for the benefit of a party to the instrument ("accommodated party") and another party to the instrument ("accommodation party") signs the instrument for the purpose of incurring liability on the instrument without being a direct beneficiary of the value given for the instrument, the instrument is signed by the accommodation party "for accommodation.

(b) An accommodation party may sign the instrument as maker, drawer, acceptor, or indorser and, subject to subsection (d), is obliged to pay the instrument in the capacity in which the accommodation party signs. The obligation of an accommodation party may be enforced notwithstanding any statute of frauds and whether or not the accommodation party receives consideration for the accommodation.

(c) A person signing an instrument is presumed to be an accommodation party and there is notice that the instrument is signed for accommodation if the signature is an anomalous indorsement or is accompanied by words indicating that the signer is acting as surety or guarantor with respect to the obligation of another party to the instrument. Except as provided in Section 3-605, the obligation of an accommodation party to pay the instrument is not affected by the fact that the person enforcing the obligation had notice when the instrument was taken by that person that the accommodation party signed the instrument for accommodation.

(d) If the signature of a party to an instrument is accompanied by words indicating unambiguously that the party is guaranteeing collection rather than payment of the obligation of another party to the instrument, the signer is obliged to pay the amount due on the instrument to a person entitled to enforce the instrument only if (i) execution of judgment against the other party has been returned unsatisfied, (ii) the other party is insolvent or in an insolvency proceeding, (iii) the other party cannot be served with process, or (iv) it is otherwise apparent that payment cannot be obtained from the other party.

(e) An accommodation party who pays the instrument is entitled to reimbursement from the accommodated party and is entitled to enforce the instrument against the accommodated party. An accommodated party who pays the instrument has no right of recourse against, and is not entitled to contribution from, an accommodation party.

(5A Del. C. 1953, § 3-415; 55 Del. Laws, c. 349; 70 Del. Laws, c. 86, § 3.)

§ 3-420 Conversion of instrument.

(a) The law applicable to conversion of personal property applies to instruments. An instrument is also converted if it is taken by transfer, other than a negotiation, from a person not entitled to enforce the instrument or a bank makes or obtains payment with respect to the instrument for a person not entitled to enforce the instrument or receive payment. An action for conversion of an instrument may not be brought by (i) the issuer or acceptor of the instrument or (ii) a payee or indorsee who did not receive delivery of the instrument either directly or through delivery to an agent or a co-payee.

(b) In an action under subsection (a), the measure of liability is presumed to be the amount payable on the instrument, but recovery may not exceed the amount of the plaintiff's interest in the instrument.

(c) A representative, other than a depositary bank, who has in good faith dealt with an instrument or its proceeds on behalf of one who was not the person entitled to enforce the instrument is not liable in conversion to that person beyond the amount of any proceeds that it has not paid out.

(5A Del. C. 1953, § 3-419; 55 Del. Laws, c. 349; 70 Del. Laws, c. 86, § 3.)

Part 5
Dishonor

§ 3-501 Presentment.

(a) "Presentment" means a demand made by or on behalf of a person entitled to enforce an instrument (i) to pay the instrument made to the drawee or a party obliged to pay the instrument or, in the case of a note or accepted draft payable at a bank, to the bank, or (ii) to accept a draft made to the drawee.

(b) The following rules are subject to Article 4, agreement of the parties, and clearing-house rules and the like:

(1) Presentment may be made at the place of payment of the instrument and must be made at the place of payment if the instrument is payable at a bank in the United States; may be made by any commercially reasonable means, including an oral, written, or electronic communication; is effective when the demand for payment or acceptance is received by the person to whom presentment is made; and is effective if made to any one of two or more makers, acceptors, drawees, or other payors.

(2) Upon demand of the person to whom presentment is made, the person making presentment must (i) exhibit the instrument, (ii) give reasonable identification and, if presentment is made on behalf of another person, reasonable evidence of authority to do so, and (iii) sign a receipt on the instrument for any payment made or surrender the instrument if full payment is made.

(3) Without dishonoring the instrument, the party to whom presentment is made may (i) return the instrument for lack of a necessary indorsement, or (ii) refuse payment or acceptance for failure of the presentment to comply with the terms of the instrument, an agreement of the parties, or other applicable law or rule.

(4) The party to whom presentment is made may treat presentment as occurring on the next business day after the day of presentment if the party to whom presentment is made has established a cut-off hour not earlier than 2 p.m. for the receipt and processing of instruments presented for payment or acceptance and presentment is made after the cut-off hour.

(5A Del. C. 1953, § 3-501; 55 Del. Laws, c. 349; 70 Del. Laws, c. 86, § 3.)

§ 3-502 Dishonor.

(a) Dishonor of a note is governed by the following rules:

(1) If the note is payable on demand, the note is dishonored if presentment is duly made to the maker and the note is not paid on the day of presentment.

(2) If the note is not payable on demand and is payable at or through a bank or the terms of the note require presentment, the note is dishonored if presentment is duly made and the note is not paid on the day it becomes payable or the day of presentment, whichever is later.

(3) If the note is not payable on demand and paragraph (2) does not apply, the note is dishonored if it is not paid on the day it becomes payable.

(b) Dishonor of an unaccepted draft other than a documentary draft is governed by the following rules:

(1) If a check is duly presented for payment to the payor bank otherwise than for immediate payment over the counter, the check is dishonored if the payor bank makes timely return of the check or sends timely notice of dishonor or nonpayment under Section 4-301 or 4-302, or becomes accountable for the amount of the check under Section 4-302.

(2) If a draft is payable on demand and paragraph (1) does not apply, the draft is dishonored if presentment for payment is duly made to the drawee and the draft is not paid on the day of presentment.

(3) If a draft is payable on a date stated in the draft, the draft is dishonored if (i) presentment for payment is duly made to the drawee and payment is not made on the day the draft becomes payable or the day of presentment, whichever is later, or (ii) presentment for acceptance is duly made before the day the draft becomes payable and the draft is not accepted on the day of presentment.

(4) If a draft is payable on elapse of a period of time after sight or acceptance, the draft is dishonored if presentment for acceptance is duly made and the draft is not accepted on the day of presentment.

(c) Dishonor of an unaccepted documentary draft occurs according to the rules stated in subsection (b)(2), (3), and (4), except that payment or acceptance may be delayed without dishonor until no later than the close of the third business day of the drawee following the day on which payment or acceptance is required by those paragraphs.

(d) Dishonor of an accepted draft is governed by the following rules:

(1) If the draft is payable on demand, the draft is dishonored if presentment for payment is duly made to the acceptor and the draft is not paid on the day of presentment.

(2) If the draft is not payable on demand, the draft is dishonored if presentment for payment is duly made to the acceptor and payment is not made on the day it becomes payable or the day of presentment, whichever is later.

(e) In any case in which presentment is otherwise required for dishonor under this section and presentment is excused under Section 3-504, dishonor occurs without presentment if the instrument is not duly accepted or paid.

(f) If a draft is dishonored because timely acceptance of the draft was not made and the person entitled to demand acceptance consents to a late acceptance, from the time of acceptance the draft is treated as never having been dishonored.

(5A Del. C. 1953, § 3-507; 55 Del. Laws, c. 349; 70 Del. Laws, c. 86, § 3.)

§ 3-503 Notice of dishonor.

(a) The obligation of an indorser stated in Section 3-415(a) and the obligation of a drawer stated in Section 3-414(d) may not be enforced unless (i) the indorser or drawer is given notice of dishonor of the instrument complying with this section or (ii) notice of dishonor is excused under Section 3-504(b).

(b) Notice of dishonor may be given by any person; may be given by any commercially reasonable means, including an oral, written, or electronic communication; and is sufficient if it reasonably identifies the instrument and indicates that the instrument has been dishonored or has not been paid or accepted. Return of an instrument given to a bank for collection is sufficient notice of dishonor.

(c) Subject to Section 3-504(c), with respect to an instrument taken for collection by a collecting bank, notice of dishonor must be given (i) by the bank before midnight of the next banking day following the banking day on which the bank receives notice of dishonor of the instrument, or (ii) by any other person within 30 days following the day on which the person receives notice of dishonor. With respect to any other instrument, notice of dishonor must be given within 30 days following the day on which dishonor occurs.

(5A Del. C. 1953, § 3-508; 55 Del. Laws, c. 349; 70 Del. Laws, c. 86, § 3.)

§ 3-504 Excused presentment and notice of dishonor.

(a) Presentment for payment or acceptance of an instrument is excused if (i) the person entitled to present the instrument cannot with reasonable diligence make presentment, (ii) the maker or acceptor has repudiated an obligation to pay the instrument or is dead or in insolvency proceedings, (iii) by the terms of the instrument presentment is not necessary to enforce the obligation of indorsers or the drawer, (iv) the drawer or indorser whose obligation is being enforced has waived presentment or otherwise has no reason to expect or right to require that the instrument be paid or accepted, or (v) the drawer instructed the drawee not to pay or accept the draft or the drawee was not obligated to the drawer to pay the draft.

(b) Notice of dishonor is excused if (i) by the terms of the instrument notice of dishonor is not necessary to enforce the obligation of a party to pay the instrument, or (ii) the party whose obligation is being enforced waived notice of dishonor. A waiver of presentment is also a waiver of notice of dishonor.

(c) Delay in giving notice of dishonor is excused if the delay was caused by circumstances beyond the control of the person giving the notice and the person giving the notice exercised reasonable diligence after the cause of the delay ceased to operate.

(5A Del. C. 1953, § 3-511; 55 Del. Laws, c. 349; 70 Del. Laws, c. 86, § 3.)

§ 3-505 Evidence of dishonor.

(a) The following are admissible as evidence and create a presumption of dishonor and of any notice of dishonor stated:

(1) A document regular in form as provided in subsection (b) which purports to be a protest;

(2) A purported stamp or writing of the drawee, payor bank, or presenting bank on or accompanying the instrument stating that acceptance or payment has been refused unless reasons for the refusal are stated and the reasons are not consistent with dishonor;

(3) A book or record of the drawee, payor bank, or collecting bank, kept in the usual course of business which shows dishonor, even if there is no evidence of who made the entry.

(b) A protest is a certificate of dishonor made by a United States consul or vice consul, or a notary public or other person authorized to administer oaths by the law of the place where dishonor occurs. It may be made upon information satisfactory to that person. The protest must identify the instrument and certify either that presentment has been made or, if not made, the reason why it was not made, and that the instrument has been dishonored by nonacceptance or nonpayment. The protest may also certify that notice of dishonor has been given to some or all parties.

(5A Del. C. 1953, § 3-510; 55 Del. Laws, c. 349; 70 Del. Laws, c. 86, § 3.)

§§ 3-506 — 3-511

Part 6

Discharge

§ 3-601 Discharge and effect of discharge.

(a) The obligation of a party to pay the instrument is discharged as stated in this Article or by an act or agreement with the party which would discharge an obligation to pay money under a simple contract.

(b) Discharge of the obligation of a party is not effective against a person acquiring rights of a holder in due course of the instrument without notice of the discharge.

(5A Del. C. 1953, § 3-601; 55 Del. Laws, c. 349; 70 Del. Laws, c. 86, § 3.)

§ 3-602 Payment.

(a) Subject to subsection (b), an instrument is paid to the extent payment is made (i) by or on behalf of a party obliged to pay the instrument, and (ii) to a person entitled to enforce the instrument. To the extent of the payment, the obligation of the party obliged to pay the instrument is discharged even though payment is made with knowledge of a claim to the instrument under Section 3-306 by another person.

(b) The obligation of a party to pay the instrument is not discharged under subsection (a) if:

(1) A claim to the instrument under Section 3-306 is enforceable against the party receiving payment and (i) payment is made with knowledge by the payor that payment is prohibited by injunction or similar process of a court of competent jurisdiction, or (ii) in the case of an instrument other than a cashier's check, teller's check, or certified check, the party making payment accepted, from the person having a claim to the instrument, indemnity against loss resulting from refusal to pay the person entitled to enforce the instrument; or

(2) The person making payment knows that the instrument is a stolen instrument and pays a person it knows is in wrongful possession of the instrument.

(5A Del. C. 1953, § 3-603; 55 Del. Laws, c. 349; 70 Del. Laws, c. 86, § 3.)

§ 3-603 Tender of payment.

(a) If tender of payment of an obligation to pay an instrument is made to a person entitled to enforce the instrument, the effect of tender is governed by principles of law applicable to tender of payment under a simple contract.

(b) If tender of payment of an obligation to pay an instrument is made to a person entitled to enforce the instrument and the tender is refused, there is discharge, to the extent of the amount of the tender, of the obligation of an indorser or accommodation party having a right of recourse with respect to the obligation to which the tender relates.

(c) If tender of payment of an amount due on an instrument is made to a person entitled to enforce the instrument, the obligation of the obligor to pay subsequent interest on the amount tendered is discharged. If presentment is required with respect to an instrument and the obligor is able and ready to pay on the due date at every place of payment stated in the instrument, the obligor is deemed to have made tender of payment on the due date to the person entitled to enforce the instrument.

(5A Del. C. 1953, § 3-604; 55 Del. Laws, c. 349; 70 Del. Laws, c. 86, § 3.)

§ 3-604 Discharge by cancellation or renunciation.

(a) A person entitled to enforce an instrument, with or without consideration, may discharge the obligation of a party to pay the instrument (i) by an intentional voluntary act, such as surrender of the instrument to the party, destruction, mutilation, or cancellation of the instrument, cancellation or striking out of the party's signature, or the addition of words to the instrument indicating discharge, or (ii) by agreeing not to sue or otherwise renouncing rights against the party by a signed writing.

(b) Cancellation or striking out of an indorsement pursuant to subsection (a) does not affect the status and rights of a party derived from the indorsement.

(5A Del. C. 1953, § 3-605; 55 Del. Laws, c. 349; 70 Del. Laws, c. 86, § 3.)

§ 3-605 Discharge of indorsers and accommodation parties.

(a) In this section, the term "indorser" includes a drawer having the obligation described in Section 3-414(d).

(b) Discharge, under Section 3-604, of the obligation of a party to pay an instrument does not discharge the obligation of an indorser or accommodation party having a right of recourse against the discharged party.

(c) If a person entitled to enforce an instrument agrees, with or without consideration, to an extension of the due date of the obligation of a party to pay the instrument, the extension discharges an indorser or accommodation party having a right of recourse against the party whose obligation is extended to the extent the indorser or accommodation party proves that the extension caused loss to the indorser or accommodation party with respect to the right of recourse.

(d) If a person entitled to enforce an instrument agrees, with or without consideration, to a material modification of the obligation of a party other than an extension of the due date, the modification discharges the obligation of an indorser or accommodation party having a right of recourse against the person whose obligation is modified to the extent the modification causes loss to the indorser or accommodation party with respect to the right of recourse. The loss suffered by the indorser or accommodation party as a result of the modification is equal to the amount of the right of recourse unless the person enforcing the instrument proves that no loss was caused by the modification or that the loss caused by the modification was an amount less than the amount of the right of recourse.

(e) If the obligation of a party to pay an instrument is secured by an interest in collateral and a person entitled to enforce the instrument impairs the value of the interest in collateral, the obligation of an indorser or accommodation party having a right of recourse against the

obligor is discharged to the extent of the impairment. The value of an interest in collateral is impaired to the extent (i) the value of the interest is reduced to an amount less than the amount of the right of recourse of the party asserting discharge, or (ii) the reduction in value of the interest causes an increase in the amount by which the amount of the right of recourse exceeds the value of the interest. The burden of proving impairment is on the party asserting discharge.

(f) If the obligation of a party is secured by an interest in collateral not provided by an accommodation party and a person entitled to enforce the instrument impairs the value of the interest in collateral, the obligation of any party who is jointly and severally liable with respect to the secured obligation is discharged to the extent the impairment causes the party asserting discharge to pay more than that party would have been obliged to pay, taking into account rights of contribution, if impairment had not occurred. If the party asserting discharge is an accommodation party not entitled to discharge under subsection (e), the party is deemed to have a right to contribution based on joint and several liability rather than a right to reimbursement. The burden of proving impairment is on the party asserting discharge.

(g) Under subsection (e) or (f), impairing value of an interest in collateral includes (i) failure to obtain or maintain perfection or recordation of the interest in collateral, (ii) release of collateral without substitution of collateral of equal value, (iii) failure to perform a duty to preserve the value of collateral owed, under Article 9 or other law, to a debtor or surety or other person secondarily liable, or (iv) failure to comply with applicable law in disposing of collateral.

(h) An accommodation party is not discharged under subsection (c), (d), or (e) unless the person entitled to enforce the instrument knows of the accommodation or has notice under Section 3-419(c) that the instrument was signed for accommodation.

(i) A party is not discharged under this section if (i) the party asserting discharge consents to the event or conduct that is the basis of the discharge, or (ii) the instrument or a separate agreement of the party provides for waiver of discharge under this section either specifically or by general language indicating that parties waive defenses based on suretyship or impairment of collateral.

(5A Del. C. 1953, § 3-606; 55 Del. Laws, c. 349; 70 Del. Laws, c. 86, § 3.)

Part 7

Advice of International Sight Draft

Part 8

Miscellaneous

Subtitle I
Uniform Commercial Code
Article 4
Bank Deposits and Collections
Part 1
General Provisions and Definitions

§ 4-101 Short title.

This Article may be cited as Uniform Commercial Code — Bank Deposits and Collections.

(5A Del. C. 1953, § 4-101; 55 Del. Laws, c. 349; 70 Del. Laws, c. 86, § 4.)

§ 4-102 Applicability.

(a) To the extent that items within this Article are also within Articles 3 and 8, they are subject to those Articles. If there is conflict, this Article governs Article 3, but Article 8 governs this Article.

(b) The liability of a bank for action or non-action with respect to an item handled by it for purposes of presentment, payment, or collection is governed by the law of the place where the bank is located. In the case of action or non-action by or at a branch or separate office of a bank, its liability is governed by the law of the place where the branch or separate office is located.

(5A Del. C. 1953, § 4-102; 55 Del. Laws, c. 349; 70 Del. Laws, c. 86, § 4.)

§ 4-103 Variation by agreement; measure of damages; action constituting ordinary care.

(a) The effect of the provisions of this Article may be varied by agreement, but the parties to the agreement cannot disclaim a bank's responsibility for its lack of good faith or failure to exercise ordinary care or limit the measure of damages for the lack or failure. However, the parties may determine by agreement the standards by which the bank's responsibility is to be measured if those standards are not manifestly unreasonable.

(b) Federal Reserve regulations and operating circulars, clearing-house rules, and the like have the effect of agreements under subsection (a), whether or not specifically assented to by all parties interested in items handled.

(c) Action or non-action approved by this Article or pursuant to Federal Reserve regulations or operating circulars is the exercise of ordinary care and, in the absence of special instructions, action or non-action consistent with clearing-house rules and the like or with a general banking usage not disapproved by this Article, is prima facie the exercise of ordinary care.

(d) The specification or approval of certain procedures by this Article is not disapproval of other procedures that may be reasonable under the circumstances.

(e) The measure of damages for failure to exercise ordinary care in handling an item is the amount of the item reduced by an amount that could not have been realized by the exercise of ordinary care. If there is also bad faith it includes any other damages the party suffered as a proximate consequence.

(5A Del. C. 1953, § 4-103; 55 Del. Laws, c. 349; 70 Del. Laws, c. 86, § 4.)

§ 4-104 Definitions and index of definitions.

(a) In this Article, unless the context otherwise requires:

(1) "Account" means any deposit or credit account with a bank, including a demand, time, savings, passbook, share draft, or like account, other than an account evidenced by a certificate of deposit.

(2) "Afternoon" means the period of a day between noon and midnight.

(3) "Banking day" means the part of a day on which a bank is open to the public for carrying on substantially all of its banking functions.

(4) "Clearing house" means an association of banks or other payors regularly clearing items.

(5) "Customer" means a person having an account with a bank or for whom a bank has agreed to collect items, including a bank that maintains an account at another bank.

(6) "Documentary draft" means a draft to be presented for acceptance or payment if specified documents, certificated securities (Section 8-102) or instructions for uncertificated securities (Section 8-102), or other certificates, statements, or the like are to be received by the drawee or other payor before acceptance or payment of the draft.

(7) "Draft" means a draft as defined in Section 3-104 or an item, other than an instrument, that is an order.

(8) "Drawee" means a person ordered in a draft to make payment.

(9) "Item" means an instrument or a promise or order to pay money handled by a bank for collection or payment. The term does not include a payment order governed by Article 4A or a credit or debit card slip.

(10) “Midnight deadline” with respect to a bank is midnight on its next banking day following the banking day on which it receives the relevant item or notice or from which the time for taking action commences to run, whichever is later.

(11) “Settle” means to pay in cash, by clearing-house settlement, in a charge or credit or by remittance, or otherwise as agreed. A settlement may be either provisional or final.

(12) “Suspends payments” with respect to a bank means that it has been closed by order of the supervisory authorities, that a public officer has been appointed to take it over, or that it ceases or refuses to make payments in the ordinary course of business.

(b) Other definitions applying to this Article and the sections in which they appear are:

“Agreement for electronic presentment”. Section 4-110

“Bank”. Section 4-105

“Collecting bank”. Section 4-105

“Depositary bank”. Section 4-105

“Intermediary bank”. Section 4-105

“Payor bank”. Section 4-105

“Presenting bank”. Section 4-105

“Presentment notice”. Section 4-110

(c) “Control” as provided in Section 7-106 and the following definitions in other Articles apply to this Article:

“Acceptance”. Section 3-409

“Alteration”. Section 3-407

“Cashier’s check”. Section 3-104

“Certificate of deposit”. Section 3-104

“Certified check”. Section 3-409

“Check”. Section 3-104

[Repealed.]

“Holder in due course”. Section 3-302

“Instrument”. Section 3-104

“Notice of dishonor”. Section 3-503

“Order”. Section 3-103

“Ordinary care”. Section 3-103

“Person entitled to enforce”. Section 3-301

“Presentment”. Section 3-501

“Promise”. Section 3-103

“Prove”. Section 3-103

“Teller’s check”. Section 3-104

“Unauthorized signature”. Section 3-403

(d) In addition, Article 1 contains general definitions and principles of construction and interpretation applicable throughout this Article.

(5A Del. C. 1953, § 4-104; 55 Del. Laws, c. 349; 70 Del. Laws, c. 86, § 4; 71 Del. Laws, c. 75, § 18; 74 Del. Laws, c. 332, §§ 31, 32.)

§ 4-105 “Bank”; “depositary bank”; “payor bank”; “intermediary bank”; “collecting bank”; “presenting bank”.

In this Article:

(1) “Bank” means a person engaged in the business of banking, including a savings bank, savings and loan association, credit union, or trust company.

(2) “Depositary bank” means the first bank to take an item even though it is also the payor bank, unless the item is presented for immediate payment over the counter.

(3) “Payor bank” means a bank that is the drawee of a draft.

(4) “Intermediary bank” means a bank to which an item is transferred in course of collection except the depositary or payor bank.

(5) “Collecting bank” means a bank handling an item for collection except the payor bank.

(6) “Presenting bank” means a bank presenting an item except a payor bank.

(5A Del. C. 1953, § 4-105; 55 Del. Laws, c. 349; 70 Del. Laws, c. 86, § 4.)

§ 4-106 Payable through or payable at bank; collecting bank.

(a) If an item states that it is “payable through” a bank identified in the item, (i) the item designates the bank as a collecting bank and does not by itself authorize the bank to pay the item, and (ii) the item may be presented for payment only by or through the bank.

(b) If an item states that it is "payable at" a bank identified in the item, (i) the item designates the bank as a collecting bank and does not by itself authorize the bank to pay the item, and (ii) the item may be presented for payment only by or through the bank.

(c) If a draft names a nonbank drawee and it is unclear whether a bank named in the draft is a co-drawee or a collecting bank, the bank is a collecting bank.

(70 Del. Laws, c. 86, § 4.)

§ 4-107 Separate office of bank.

A branch or separate office of a bank is a separate bank for the purpose of computing the time within which and determining the place at or to which action may be taken or notice or orders must be given under this Article and under Article 3.

(5A Del. C. 1953, § 4-106; 55 Del. Laws, c. 349; 70 Del. Laws, c. 86, § 4.)

§ 4-108 Time of receipt of items.

(a) For the purpose of allowing time to process items, prove balances, and make the necessary entries on its books to determine its position for the day, a bank may fix an afternoon hour of 2 P.M. or later as a cutoff hour for the handling of money and items and the making of entries on its books.

(b) An item or deposit of money received on any day after a cutoff hour so fixed or after the close of the banking day may be treated as being received at the opening of the next banking day.

(5A Del. C. 1953, § 4-107; 55 Del. Laws, c. 349; 70 Del. Laws, c. 86, § 4.)

§ 4-109 Delays.

(a) Unless otherwise instructed, a collecting bank in a good faith effort to secure payment of a specific item drawn on a payor other than a bank, and with or without the approval of any person involved, may waive, modify, or extend time limits imposed or permitted by this [Act] for a period not exceeding two additional banking days without discharge of drawers or indorsers or liability to its transferor or a prior party.

(b) Delay by a collecting bank or payor bank beyond time limits prescribed or permitted by this [Act] or by instructions is excused if (i) the delay is caused by interruption of communication or computer facilities, suspension of payments by another bank, war, emergency conditions, failure of equipment, or other circumstances beyond the control of the bank, and (ii) the bank exercises such diligence as the circumstances require.

(5A Del. C. 1953, § 4-108; 55 Del. Laws, c. 349; 67 Del. Laws, c. 330, § 2; 70 Del. Laws, c. 86, § 4.)

§ 4-110 Electronic presentment.

(a) "Agreement for electronic presentment" means an agreement, clearing-house rule, or Federal Reserve regulation or operating circular, providing that presentment of an item may be made by transmission of an image of an item or information describing the item ("presentment notice") rather than delivery of the item itself. The agreement may provide for procedures governing retention, presentment, payment, dishonor, and other matters concerning items subject to the agreement.

(b) Presentment of an item pursuant to an agreement for presentment is made when the presentment notice is received.

(c) If presentment is made by presentment notice, a reference to "item" or "check" in this Article means the presentment notice unless the context otherwise indicates.

(70 Del. Laws, c. 86, § 4.)

§ 4-111 Statute of limitations.

An action to enforce an obligation, duty, or right arising under this Article must be commenced within three years after the [cause of action] accrues.

(70 Del. Laws, c. 86, § 4.)

Part 2

Collection of Items; Depositary and Collecting Banks

§ 4-201 Status of collecting bank as agent and provisional status of credits; applicability of article; item indorsed "pay any bank".

(a) Unless a contrary intent clearly appears and before the time that a settlement given by a collecting bank for an item is or becomes final, the bank, with respect to the item, is an agent or sub-agent of the owner of the item and any settlement given for the item is provisional. This provision applies regardless of the form of indorsement or lack of indorsement and even though credit given for the item is subject to immediate withdrawal as of right or is in fact withdrawn; but the continuance of ownership of an item by its owner and any rights of the owner to proceeds of the item are subject to rights of a collecting bank, such as those resulting from outstanding advances

on the item and rights of recoupment or setoff. If an item is handled by banks for purposes of presentment, payment, collection, or return, the relevant provisions of this Article apply even though action of the parties clearly establishes that a particular bank has purchased the item and is the owner of it.

(b) After an item has been indorsed with the words "pay any bank" or the like, only a bank may acquire the rights of a holder until the item has been:

(1) Returned to the customer initiating collection; or

(2) Specially indorsed by a bank to a person who is not a bank.

(5A Del. C. 1953, § 4-201; 55 Del. Laws, c. 349; 70 Del. Laws, c. 86, § 4.)

§ 4-202 Responsibility for collection or return; when action timely.

(a) A collecting bank must exercise ordinary care in:

(1) Presenting an item or sending it for presentment;

(2) Sending notice of dishonor or nonpayment or returning an item other than a documentary draft to the bank's transferor after learning that the item has not been paid or accepted, as the case may be; and

(3) Settling for an item when the bank receives final settlement; and

(4) Notifying its transferor of any loss or delay in transit within a reasonable time after discovery thereof.

(b) A collecting bank exercises ordinary care under subsection (a) by taking proper action before its midnight deadline following receipt of an item, notice, or settlement. Taking proper action within a reasonably longer time may constitute the exercise of ordinary care, but the bank has the burden of establishing timeliness.

(c) Subject to subsection (a)(1), a bank is not liable for the insolvency, neglect, misconduct, mistake, or default of another bank or person or for loss or destruction of an item in the possession of others or in transit.

(5A Del. C. 1953, § 4-202; 55 Del. Laws, c. 349; 70 Del. Laws, c. 86, § 4.)

§ 4-203 Effect of instructions.

Subject to Article 3 concerning conversion of instruments (Section 3-420) and restrictive indorsements (Section 3-206), only a collecting bank's transferor can give instructions that affect the bank or constitute notice to it, and a collecting bank is not liable to prior parties for any action taken pursuant to the instructions or in accordance with any agreement with its transferor.

(5A Del. C. 1953, § 4-203; 55 Del. Laws, c. 349; 70 Del. Laws, c. 86, § 4.)

§ 4-204 Methods of sending and presenting; sending directly to payor bank.

(a) A collecting bank shall send items by a reasonably prompt method, taking into consideration relevant instructions, the nature of the item, the number of those items on hand, the cost of collection involved, and the method generally used by it or others to present those items.

(b) A collecting bank may send:

(1) An item directly to the payor bank;

(2) An item to a nonbank payor if authorized by its transferor; and

(3) An item other than documentary drafts to a nonbank payor, if authorized by Federal Reserve regulation or operating circular, clearing-house rule, or the like.

(c) Presentment may be made by a presenting bank at a place where the payor bank or other payor has requested that presentment be made.

(5A Del. C. 1953, § 4-204; 55 Del. Laws, c. 349; 70 Del. Laws, c. 86, § 4.)

§ 4-205 Depositary bank holder of unindorsed item.

If a customer delivers an item to a depositary bank for collection:

(1) The depositary bank becomes a holder of the item at the time it receives the item for collection if the customer at the time of delivery was a holder of the item, whether or not the customer indorses the item, and, if the bank satisfies the other requirements of Section 3-302, it is a holder in due course; and

(2) The depositary bank warrants to collecting banks, the payor bank or other payor, and the drawer that the amount of the item was paid to the customer or deposited to the customer's account.

(5A Del. C. 1953, § 4-205; 55 Del. Laws, c. 349; 70 Del. Laws, c. 86, § 4.)

§ 4-206 Transfer between banks.

Any agreed method that identifies the transferor bank is sufficient for the item's further transfer to another bank.

(5A Del. C. 1953, § 4-206; 55 Del. Laws, c. 349; 70 Del. Laws, c. 86, § 4.)

§ 4-207 Transfer warranties.

(a) A customer or collecting bank that transfers an item and receives a settlement or other consideration warrants to the transferee and to any subsequent collecting bank that:

(1) The warrantor is a person entitled to enforce the item;

(2) All signatures on the item are authentic and authorized;

(3) The item has not been altered;

(4) The item is not subject to a defense or claim in recoupment (Section 3-305(a)) of any party that can be asserted against the warrantor; and

(5) The warrantor has no knowledge of any insolvency proceeding commenced with respect to the maker or acceptor or, in the case of an unaccepted draft, the drawer.

(b) If an item is dishonored, a customer or collecting bank transferring the item and receiving settlement or other consideration is obliged to pay the amount due on the item (i) according to the terms of the item at the time it was transferred, or (ii) if the transfer was of an incomplete item, according to its terms when completed as stated in Sections 3-115 and 3-407. The obligation of a transferor is owed to the transferee and to any subsequent collecting bank that takes the item in good faith. A transferor cannot disclaim its obligation under this subsection by an indorsement stating that it is made “without recourse” or otherwise disclaiming liability.

(c) A person to whom the warranties under subsection (a) are made and who took the item in good faith may recover from the warrantor as damages for breach of warranty an amount equal to the loss suffered as a result of the breach, but not more than the amount of the item plus expenses and loss of interest incurred as a result of the breach.

(d) The warranties stated in subsection (a) cannot be disclaimed with respect to checks. Unless notice of a claim for breach of warranty is given to the warrantor within 30 days after the claimant has reason to know of the breach and the identity of the warrantor, the warrantor is discharged to the extent of any loss caused by the delay in giving notice of the claim.

(e) A cause of action for breach of warranty under this section accrues when the claimant has reason to know of the breach.

(5A Del. C. 1953, § 4-207; 55 Del. Laws, c. 349; 70 Del. Laws, c. 86, § 4.)

§ 4-208 Presentment warranties.

(a) If an unaccepted draft is presented to the drawee for payment or acceptance and the drawee pays or accepts the draft, (i) the person obtaining payment or acceptance, at the time of presentment, and (ii) a previous transferor of the draft, at the time of transfer, warrant to the drawee that pays or accepts the draft in good faith that:

(1) The warrantor is, or was, at the time the warrantor transferred the draft, a person entitled to enforce the draft or authorized to obtain payment or acceptance of the draft on behalf of a person entitled to enforce the draft;

(2) The draft has not been altered; and

(3) The warrantor has no knowledge that the signature of the purported drawer of the draft is unauthorized.

(b) A drawee making payment may recover from a warrantor damages for breach of warranty equal to the amount paid by the drawee less the amount the drawee received or is entitled to receive from the drawer because of the payment. In addition, the drawee is entitled to compensation for expenses and loss of interest resulting from the breach. The right of the drawee to recover damages under this subsection is not affected by any failure of the drawee to exercise ordinary care in making payment. If the drawee accepts the draft (i) breach of warranty is a defense to the obligation of the acceptor, and (ii) if the acceptor makes payment with respect to the draft, the acceptor is entitled to recover from a warrantor for breach of warranty the amounts stated in this subsection.

(c) If a drawee asserts a claim for breach of warranty under subsection (a) based on an unauthorized indorsement of the draft or an alteration of the draft, the warrantor may defend by proving that the indorsement is effective under Section 3-404 or 3-405 or the drawer is precluded under Section 3-406 or 4-406 from asserting against the drawee the unauthorized indorsement or alteration.

(d) If (i) a dishonored draft is presented for payment to the drawer or an indorser or (ii) any other item is presented for payment to a party obliged to pay the item, and the item is paid, the person obtaining payment and a prior transferor of the item warrant to the person making payment in good faith that the warrantor is, or was, at the time the warrantor transferred the item, a person entitled to enforce the item or authorized to obtain payment on behalf of a person entitled to enforce the item. The person making payment may recover from any warrantor for breach of warranty an amount equal to the amount paid plus expenses and loss of interest resulting from the breach.

(e) The warranties stated in subsections (a) and (d) cannot be disclaimed with respect to checks. Unless notice of a claim for breach of warranty is given to the warrantor within 30 days after the claimant has reason to know of the breach and the identity of the warrantor, the warrantor is discharged to the extent of any loss caused by the delay in giving notice of the claim.

(f) A cause of action for breach of warranty under this section accrues when the claimant has reason to know of the breach.

(70 Del. Laws, c. 86, § 4.)

§ 4-209 Encoding and retention warranties.

(a) A person who encodes information on or with respect to an item after issue warrants to any subsequent collecting bank and to the payor bank or other payor that the information is correctly encoded. If the customer of a depositary bank encodes, that bank also makes the warranty.

(b) A person who undertakes to retain an item pursuant to an agreement for electronic presentment warrants to any subsequent collecting bank and to the payor bank or other payor that retention and presentment of the item comply with the agreement. If a customer of a depositary bank undertakes to retain an item, that bank also makes this warranty.

(c) A person to whom warranties are made under this section and who took the item in good faith may recover from the warrantor as damages for breach of warranty an amount equal to the loss suffered as a result of the breach, plus expenses and loss of interest incurred as a result of the breach.

(70 Del. Laws, c. 86, § 4.)

§ 4-210 Security interest of collecting bank in items, accompanying documents and proceeds.

(a) A collecting bank has a security interest in an item and any accompanying documents or the proceeds of either:

(1) In case of an item deposited in an account, to the extent to which credit given for the item has been withdrawn or applied;

(2) In case of an item for which it has given credit available for withdrawal as of right, to the extent of the credit given, whether or not the credit is drawn upon or there is a right of charge-back; or

(3) If it makes an advance on or against the item.

(b) If credit given for several items received at one time or pursuant to a single agreement is withdrawn or applied in part, the security interest remains upon all the items, any accompanying documents or the proceeds of either. For the purpose of this section, credits first given are first withdrawn.

(c) Receipt by a collecting bank of a final settlement for an item is a realization on its security interest in the item, accompanying documents, and proceeds. So long as the bank does not receive final settlement for the item or give up possession of the item or possession or control of the accompanying documents for purposes other than collection, the security interest continues to that extent and is subject to Article 9, but:

(1) No security agreement is necessary to make the security interest enforceable (§ 9-203(b)(3)(A));

(2) No filing is required to perfect the security interest; and

(3) The security interest has priority over conflicting perfected security interests in the item, accompanying documents, or proceeds.

(5A Del. C. 1953, § 4-208; 55 Del. Laws, c. 349; 70 Del. Laws, c. 86, § 4; 72 Del. Laws, c. 401, § 15; 74 Del. Laws, c. 332, § 33.)

§ 4-211 When bank gives value for purposes of holder in due course.

For purposes of determining its status as a holder in due course, a bank has given value to the extent it has a security interest in an item, if the bank otherwise complies with the requirements of Section 3-302 on what constitutes a holder in due course.

(5A Del. C. 1953, § 4-209; 55 Del. Laws, c. 349; 70 Del. Laws, c. 86, § 4.)

§ 4-212 Presentment by notice of item not payable by, through, or at bank; liability of drawer or indorser.

(a) Unless otherwise instructed, a collecting bank may present an item not payable by, through, or at a bank by sending to the party to accept or pay a written notice that the bank holds the item for acceptance or payment. The notice must be sent in time to be received on or before the day when presentment is due and the bank must meet any requirement of the party to accept or pay under Section 3-501 by the close of the bank's next banking day after it knows of the requirement.

(b) If presentment is made by notice and payment, acceptance, or request for compliance with a requirement under Section 3-501 is not received by the close of business on the day after maturity or, in the case of demand items, by the close of business on the third banking day after notice was sent, the presenting bank may treat the item as dishonored and charge any drawer or indorser by sending it notice of the facts.

(5A Del. C. 1953, § 4-210; 55 Del. Laws, c. 349; 70 Del. Laws, c. 86, § 4.)

§ 4-213 Medium and time of settlement by bank.

(a) With respect to settlement by a bank, the medium and time of settlement may be prescribed by Federal Reserve regulations or circulars, clearing-house rules, and the like, or agreement. In the absence of such prescription:

(1) The medium of settlement is cash or credit to an account in a Federal Reserve bank of or specified by the person to receive settlement; and

(2) The time of settlement is:

(i) With respect to tender of settlement by cash, a cashier's check, or teller's check, when the cash or check is sent or delivered;

(ii) With respect to tender of settlement by credit in an account in a Federal Reserve Bank, when the credit is made;

(iii) With respect to tender of settlement by a credit or debit to an account in a bank, when the credit or debit is made or, in the case of tender of settlement by authority to charge an account, when the authority is sent or delivered; or

(iv) With respect to tender of settlement by a funds transfer, when payment is made pursuant to Section 4A-406(a) to the person receiving settlement.

(b) If the tender of settlement is not by a medium authorized by subsection (a) or the time of settlement is not fixed by subsection (a), no settlement occurs until the tender of settlement is accepted by the person receiving settlement.

(c) If settlement for an item is made by cashier's check or teller's check and the person receiving settlement before its midnight deadline:

(1) Presents or forwards the check for collection, settlement is final when the check is finally paid; or

(2) Fails to present or forward the check for collection, settlement is final at the midnight deadline of the person receiving settlement.

(d) If settlement for an item is made by giving authority to charge the account of the bank giving settlement in the bank receiving settlement, settlement is final when the charge is made by the bank receiving settlement if there are funds available in the account for the amount of the item.

(5A Del. C. 1953, § 4-211; 55 Del. Laws, c. 349; 70 Del. Laws, c. 86, § 4.)

§ 4-214 Right of charge-back or refund; liability of collecting bank; return of item.

(a) If a collecting bank has made provisional settlement with its customer for an item and fails by reason of dishonor, suspension of payments by a bank, or otherwise to receive settlement for the item which is or becomes final, the bank may revoke the settlement given by it, charge back the amount of any credit given for the item to its customer's account, or obtain refund from its customer, whether or not it is able to return the item, if by its midnight deadline or within a longer reasonable time after it learns the facts it returns the item or sends notification of the facts. If the return or notice is delayed beyond the bank's midnight deadline or a longer reasonable time after it learns the facts, the bank may revoke the settlement, charge back the credit, or obtain refund from its customer, but it is liable for any loss resulting from the delay. These rights to revoke, charge back, and obtain refund terminate if and when a settlement for the item received by the bank is or becomes final.

(b) A collecting bank returns an item when it is sent or delivered to the bank's customer or transferor or pursuant to its instructions.

(c) A depositary bank that is also the payor may charge back the amount of an item to its customer's account or obtain refund in accordance with the section governing return of an item received by a payor bank for credit on its books (Section 4-301).

(d) The right to charge back is not affected by:

(1) Previous use of a credit given for the item; or

(2) Failure by any bank to exercise ordinary care with respect to the item, but a bank so failing remains liable.

(e) A failure to charge back or claim refund does not affect other rights of the bank against the customer or any other party.

(f) If credit is given in dollars as the equivalent of the value of an item payable in foreign money, the dollar amount of any charge-back or refund must be calculated on the basis of the bank-offered spot rate for the foreign money prevailing on the day when the person entitled to the charge-back or refund learns that it will not receive payment in ordinary course.

(5A Del. C. 1953, § 4-212; 55 Del. Laws, c. 349; 70 Del. Laws, c. 86, § 4.)

§ 4-215 Final payment of item by payor bank; when provisional debits and credits become final; when certain credits become available for withdrawal.

(a) An item is finally paid by a payor bank when the bank has first done any of the following:

(1) Paid the item in cash;

(2) Settled for the item without having a right to revoke the settlement under statute, clearing-house rule, or agreement; or

(3) Made a provisional settlement for the item and failed to revoke the settlement in the time and manner permitted by statute, clearing-house rule, or agreement.

(b) If provisional settlement for an item does not become final, the item is not finally paid.

(c) If provisional settlement for an item between the presenting and payor banks is made through a clearing house or by debits or credits in an account between them, then to the extent that provisional debits or credits for the item are entered in accounts between the presenting and payor banks or between the presenting and successive prior collecting banks seriatim, they become final upon final payment of the items by the payor bank.

(d) If a collecting bank receives a settlement for an item which is or becomes final, the bank is accountable to its customer for the amount of the item and any provisional credit given for the item in an account with its customer becomes final.

(e) Subject to (i) applicable law stating a time for availability of funds and (ii) any right of the bank to apply the credit to an obligation of the customer, credit given by a bank for an item in a customer's account becomes available for withdrawal as of right:

(1) If the bank has received a provisional settlement for the item, when the settlement becomes final and the bank has had a reasonable time to receive return of the item and the item has not been received within that time;

(2) If the bank is both the depositary bank and the payor bank, and the item is finally paid, at the opening of the bank's second banking day following receipt of the item.

(f) Subject to applicable law stating a time for availability of funds and any right of a bank to apply a deposit to an obligation of the depositor, a deposit of money becomes available for withdrawal as of right at the opening of the bank's next banking day after receipt of the deposit.

(5A Del. C. 1953, § 4-213; 55 Del. Laws, c. 349; 70 Del. Laws, c. 86, § 4.)

§ 4-216 Insolvency and preference.

(a) If an item is in or comes into the possession of a payor or collecting bank that suspends payment and the item has not been finally paid, the item must be returned by the receiver, trustee, or agent in charge of the closed bank to the presenting bank or the closed bank's customer.

(b) If a payor bank finally pays an item and suspends payments without making a settlement for the item with its customer or the presenting bank which settlement is or becomes final, the owner of the item has a preferred claim against the payor bank.

(c) If a payor bank gives or a collecting bank gives or receives a provisional settlement for an item and thereafter suspends payments, the suspension does not prevent or interfere with the settlement's becoming final if the finality occurs automatically upon the lapse of certain time or the happening of certain events.

(d) If a collecting bank receives from subsequent parties settlement for an item, which settlement is or becomes final and the bank suspends payments without making a settlement for the item with its customer which settlement is or becomes final, the owner of the item has a preferred claim against the collecting bank.

(5A Del. C. 1953, § 4-214; 55 Del. Laws, c. 349; 70 Del. Laws, c. 86, § 4.)

Part 3

Collection of Items: Payor Banks

§ 4-301 Deferred posting; recovery of payment by return of items; time of dishonor; return of items by payor bank.

(a) If a payor bank settles for a demand item other than a documentary draft presented otherwise than for immediate payment over the counter before midnight of the banking day of receipt, the payor bank may revoke the settlement and recover the settlement if, before it has made final payment and before its midnight deadline, it

(1) returns the item; or

(2) sends written notice of dishonor or nonpayment if the item is unavailable for return.

(b) If a demand item is received by a payor bank for credit on its books, it may return the item or send notice of dishonor and may revoke any credit given or recover the amount thereof withdrawn by its customer, if it acts within the time limit and in the manner specified in subsection (a).

(c) Unless previous notice of dishonor has been sent, an item is dishonored at the time when for purposes of dishonor it is returned or notice sent in accordance with this section.

(d) An item is returned:

(1) As to an item presented through a clearing house, when it is delivered to the presenting or last collecting bank or to the clearing house or is sent or delivered in accordance with clearing-house rules; or

(2) In all other cases, when it is sent or delivered to the bank's customer or transferor or pursuant to instructions.

(5A Del. C. 1953, § 4-301; 55 Del. Laws, c. 349; 70 Del. Laws, c. 86, § 4.)

§ 4-302 Payor bank's responsibility for late return of item.

(a) If an item is presented to and received by a payor bank, the bank is accountable for the amount of:

(1) A demand item, other than a documentary draft, whether properly payable or not, if the bank, in any case in which it is not also the depositary bank, retains the item beyond midnight of the banking day of receipt without settling for it or, whether or not it is also the depositary bank, does not pay or return the item or send notice of dishonor until after its midnight deadline; or

(2) Any other properly payable item unless, within the time allowed for acceptance or payment of that item, the bank either accepts or pays the item or returns it and accompanying documents.

(b) The liability of a payor bank to pay an item pursuant to subsection (a) is subject to defenses based on breach of a presentment warranty (Section 4-208) or proof that the person seeking enforcement of the liability presented or transferred the item for the purpose of defrauding the payor bank.

(5A Del. C. 1953, § 4-302; 55 Del. Laws, c. 349; 70 Del. Laws, c. 86, § 4.)

§ 4-303 When items subject to notice, stop-payment order, legal process, or setoff; order in which items may be charged or certified.

(a) Any knowledge, notice, or stop-payment order received by, legal process served upon, or setoff exercised by a payor bank comes too late to terminate, suspend, or modify the bank's right or duty to pay an item or to charge its customer's account for the item if the knowledge, notice, stop-payment order, or legal process is received or served and a reasonable time for the bank to act thereon expires or the setoff is exercised after the earliest of the following:

(1) The bank accepts or certifies the item;

(2) The bank pays the item in cash;

(3) The bank settles for the item without having a right to revoke the settlement under statute, clearing-house rule, or agreement;

(4) The bank becomes accountable for the amount of the item under Section 4-302 dealing with the payor bank's responsibility for late return of items; or

(5) With respect to checks, a cutoff hour no earlier than one hour after the opening of the next banking day after the banking day on which the bank received the check and no later than the close of that next banking day or, if no cutoff hour is fixed, the close of the next banking day after the banking day on which the bank received the check.

(b) Subject to subsection (a), items may be accepted, paid, certified, or charged to the indicated account of its customer in any order.

(5A Del. C. 1953, § 4-303; 55 Del. Laws, c. 349; 70 Del. Laws, c. 86, § 4.)

Part 4

Relationship Between Payor Bank and its Customer

§ 4-401 When bank may charge customer's account.

(a) A bank may charge against the account of a customer an item that is properly payable from that account even though the charge creates an overdraft. An item is properly payable if it is authorized by the customer and is in accordance with any agreement between the customer and bank.

(b) A customer is not liable for the amount of an overdraft if the customer neither signed the item nor benefited from the proceeds of the item.

(c) A bank may charge against the account of a customer a check that is otherwise properly payable from the account, even though payment was made before the date of the check, unless the customer has given notice to the bank of the postdating describing the check with reasonable certainty. The notice is effective for the period stated in Section 4-403(b) for stop-payment orders, and must be received at such time and in such manner as to afford the bank a reasonable opportunity to act on it before the bank takes any action with respect to the check described in Section 4-303. If a bank charges against the account of a customer a check before the date stated in the notice of postdating, the bank is liable for damages for the loss resulting from its act. The loss may include damages for dishonor of subsequent items under Section 4-402.

(d) A bank that in good faith makes payment to a holder may charge the indicated account of its customer according to:

(1) The original terms of the altered item; or

(2) The terms of the completed item, even though the bank knows the item has been completed unless the bank has notice that the completion was improper.

(5A Del. C. 1953, § 4-401; 55 Del. Laws, c. 349; 70 Del. Laws, c. 86, § 4.)

§ 4-402 Bank's liability to customer for wrongful dishonor; time of determining insufficiency of account.

(a) Except as otherwise provided in this Article, a payor bank wrongfully dishonors an item if it dishonors an item that is properly payable, but a bank may dishonor an item that would create an overdraft unless it has agreed to pay the overdraft.

(b) A payor bank is liable to its customer for damages proximately caused by the wrongful dishonor of an item. Liability is limited to actual damages proved and may include damages for an arrest or prosecution of the customer or other consequential damages. Whether any consequential damages are proximately caused by the wrongful dishonor is a question of fact to be determined in each case.

(c) A payor bank's determination of the customer's account balance on which a decision to dishonor for insufficiency of available funds is based may be made at any time between the time the item is received by the payor bank and the time that the payor bank returns the item or gives notice in lieu of return, and no more than one determination need be made. If, at the election of the payor bank, a subsequent balance determination is made for the purpose of reevaluating the bank's decision to dishonor the item, the account balance at that time is determinative of whether a dishonor for insufficiency of available funds is wrongful.

(5A Del. C. 1953, § 4-402; 55 Del. Laws, c. 349; 70 Del. Laws, c. 86, § 4.)

§ 4-403 Customer's right to stop payment; burden of proof of loss.

(a) A customer or any person authorized to draw on the account if there is more than one person may stop payment of any item drawn on the customer's account or close the account by an order to the bank describing the item or account with reasonable certainty received at a time and in a manner that affords the bank a reasonable opportunity to act on it before any action by the bank with respect to the item described in Section 4-303. If the signature of more than one person is required to draw on an account, any of these persons may stop payment or close the account.

(b) A stop-payment order is effective for six months, but it lapses after 14 calendar days if the original order was oral and was not confirmed in writing within that period. A stop-payment order may be renewed for additional six-month periods by a writing given to the bank within a period during which the stop-payment order is effective.

(c) The burden of establishing the fact and amount of loss resulting from the payment of an item contrary to a stop-payment order or order to close an account is on the customer. The loss from payment of an item contrary to a stop-payment order may include damages for dishonor of subsequent items under Section 4-402.

(5A Del. C. 1953, § 4-403; 55 Del. Laws, c. 349; 70 Del. Laws, c. 86, § 4.)

§ 4-404 Bank not obliged to pay check more than six months old.

A bank is under no obligation to a customer having a checking account to pay a check, other than a certified check, which is presented more than six months after its date, but it may charge its customer's account for a payment made thereafter in good faith.

(5A Del. C. 1953, § 4-404; 55 Del. Laws, c. 349; 70 Del. Laws, c. 86, § 4.)

§ 4-405 Death or incompetence of customer.

(a) A payor or collecting bank's authority to accept, pay, or collect an item or to account for proceeds of its collection, if otherwise effective, is not rendered ineffective by incompetence of a customer of either bank existing at the time the item is issued or its collection is undertaken if the bank does not know of an adjudication of incompetence. Neither death nor incompetence of a customer revokes the authority to accept, pay, collect, or account until the bank knows of the fact of death or of an adjudication of incompetence and has reasonable opportunity to act on it.

(b) Even with knowledge, a bank may for 10 days after the date of death pay or certify checks drawn on or before that date unless ordered to stop payment by a person claiming an interest in the account.

(5A Del. C. 1953, § 4-405; 55 Del. Laws, c. 349; 70 Del. Laws, c. 86, § 4.)

§ 4-406 Customer's duty to discover and report unauthorized signature or alteration.

(a) A bank that sends or makes available to a customer a statement of account showing payment of items for the account shall either return or make available to the customer the items paid or provide information in the statement of account sufficient to allow the customer reasonably to identify the items paid. The statement of account provides sufficient information if the item is described by item number, amount, and date of payment.

(b) If the items are not returned to the customer, the person retaining the items shall either retain the items or, if the items are destroyed, maintain the capacity to furnish legible copies of the items until the expiration of seven years after receipt of the items. A customer may request an item from the bank that paid the item, and that bank must provide in a reasonable time either the item or, if the item has been destroyed or is not otherwise obtainable, a legible copy of the item.

(c) If a bank sends or makes available a statement of account or items pursuant to subsection (a), the customer must exercise reasonable promptness in examining the statement or the items to determine whether any payment was not authorized because of an alteration of an item or because a purported signature by or on behalf of the customer was not authorized. If, based on the statement or items provided, the customer should reasonably have discovered the unauthorized payment, the customer must promptly notify the bank of the relevant facts.

(d) If the bank proves that the customer failed, with respect to an item, to comply with the duties imposed on the customer by subsection (c), the customer is precluded from asserting against the bank:

(1) The customer's unauthorized signature or any alteration on the item, if the bank also proves that it suffered a loss by reason of the failure; and

(2) The customer's unauthorized signature or alteration by the same wrongdoer on any other item paid in good faith by the bank if the payment was made before the bank received notice from the customer of the unauthorized signature or alteration and after the customer had been afforded a reasonable period of time, not exceeding 30 days, in which to examine the item or statement of account and notify the bank.

(e) If subsection (d) applies and the customer proves that the bank failed to exercise ordinary care in paying the item and that the failure substantially contributed to loss, the loss is allocated between the customer precluded and the bank asserting the preclusion according to the extent to which the failure of the customer to comply with subsection (c) and the failure of the bank to exercise ordinary care contributed to the loss. If the customer proves that the bank did not pay the item in good faith, the preclusion under subsection (d) does not apply.

(f) Without regard to care or lack of care of either the customer or the bank, a customer who does not within one year after the statement or items are made available to the customer (subsection (a)) discover and report the customer's unauthorized signature on or any alteration on the item is precluded from asserting against the bank the unauthorized signature or alteration. If there is a preclusion under this subsection, the payor bank may not recover for breach of warranty under Section 4-208 with respect to the unauthorized signature or alteration to which the preclusion applies.

(5A Del. C. 1953, § 4-406; 55 Del. Laws, c. 349; 70 Del. Laws, c. 86, § 4.)

§ 4-407 Payor bank's right to subrogation on improper payment.

If a payor bank has paid an item over the order of the drawer or maker to stop payment, or after an account has been closed, or otherwise under circumstances giving a basis for objection by the drawer or maker, to prevent unjust enrichment and only to the extent necessary to prevent loss to the bank by reason of its payment of the item, the payor bank is subrogated to the rights

(1) of any holder in due course on the item against the drawer or maker;

(2) of the payee or any other holder of the item against the drawer or maker either on the item or under the transaction out of which the item arose; and

(3) of the drawer or maker against the payee or any other holder of the item with respect to the transaction out of which the item arose.

(5A Del. C. 1953, § 4-407; 55 Del. Laws, c. 349; 70 Del. Laws, c. 86, § 4.)

Part 5

Collection of Documentary Drafts

§ 4-501 Handling of documentary drafts; duty to send for presentment and to notify customer of dishonor.

A bank that takes a documentary draft for collection shall present or send the draft and accompanying documents for presentment and, upon learning that the draft has not been paid or accepted in due course, shall seasonably notify its customer of the fact even though it may have discounted or bought the draft or extended credit available for withdrawal as of right.

(5A Del. C. 1953, § 4-501; 55 Del. Laws, c. 349; 70 Del. Laws, c. 86, § 4.)

§ 4-502 Presentment of "on arrival" drafts.

If a draft or the relevant instructions require presentment "on arrival", "when goods arrive" or the like, the collecting bank need not present until in its judgment a reasonable time for arrival of the goods has expired. Refusal to pay or accept because the goods have not arrived is not dishonor; the bank must notify its transferor of the refusal but need not present the draft again until it is instructed to do so or learns of the arrival of the goods.

(5A Del. C. 1953, § 4-502; 55 Del. Laws, c. 349; 70 Del. Laws, c. 86, § 4.)

§ 4-503 Responsibility of presenting bank for documents and goods; report of reasons for dishonor; referee in case of need.

Unless otherwise instructed and except as provided in Article 5, a bank presenting a documentary draft:

(1) Must deliver the documents to the drawee on acceptance of the draft if it is payable more than three days after presentment; otherwise, only on payment; and

(2) Upon dishonor, either in the case of presentment for acceptance or presentment for payment, may seek and follow instructions from any referee in case of need designated in the draft or, if the presenting bank does not choose to utilize the referee's services, it must use diligence and good faith to ascertain the reason for dishonor, must notify its transferor of the dishonor and of the results of its effort to ascertain the reasons therefor, and must request instructions.

However the presenting bank is under no obligation with respect to goods represented by the documents except to follow any reasonable instructions seasonably received; it has a right to reimbursement for any expense incurred in following instructions and to prepayment of or indemnity for those expenses.

(5A Del. C. 1953, § 4-503; 55 Del. Laws, c. 349; 70 Del. Laws, c. 86, § 4.)

§ 4-504 Privilege of presenting bank to deal with goods; security interest for expenses.

(a) A presenting bank that, following the dishonor of a documentary draft, has seasonably requested instructions but does not receive them within a reasonable time may store, sell, or otherwise deal with the goods in any reasonable manner.

(b) For its reasonable expenses incurred by action under subsection (a), the presenting bank has a lien upon the goods or their proceeds, which may be foreclosed in the same manner as an unpaid seller's lien.

(5A Del. C. 1953, § 4-504; 55 Del. Laws, c. 349; 70 Del. Laws, c. 86, § 4.)

Subtitle I
Uniform Commercial Code
Article 4A
Funds Transfers
Part 1
Subject Matter and Definitions

§ 4A-101 Short title.

This Article may be cited as Uniform Commercial Code — Funds Transfers.

(68 Del. Laws, c. 430, § 1.)

§ 4A-102 Subject matter.

Except as otherwise provided in Section 4A-108, this Article applies to funds transfers defined in Section 4A-104.

(68 Del. Laws, c. 430, § 1.)

§ 4A-103 Payment order — Definitions.

(a) In this Article:

(1) "Payment order" means an instruction of a sender to a receiving bank, transmitted orally, electronically, or in writing, to pay, or to cause another bank to pay, a fixed or determinable amount of money to a beneficiary if:

(i) the instruction does not state a condition to payment to the beneficiary other than time of payment,

(ii) the receiving bank is to be reimbursed by debiting an account of, or otherwise receiving payment from, the sender, and

(iii) the instruction is transmitted by the sender directly to the receiving bank or to an agent, funds-transfer system, or communication system for transmittal to the receiving bank.

(2) "Beneficiary" means the person to be paid by the beneficiary's bank.

(3) "Beneficiary's bank" means the bank identified in a payment order in which an account of the beneficiary is to be credited pursuant to the order or which otherwise is to make payment to the beneficiary if the order does not provide for payment to an account.

(4) "Receiving bank" means the bank to which the sender's instruction is addressed.

(5) "Sender" means the person giving the instruction to the receiving bank.

(b) If an instruction complying with subsection (a)(1) is to make more than one payment to a beneficiary, the instruction is a separate payment order with respect to each payment.

(c) A payment order is issued when it is sent to the receiving bank.

(68 Del. Laws, c. 430, § 1.)

§ 4A-104 Funds transfer — Definitions.

In this Article:

(a) "Funds transfer" means the series of transactions, beginning with the originator's payment order, made for the purpose of making payment to the beneficiary of the order. The term includes any payment order issued by the originator's bank or an intermediary bank intended to carry out the originator's payment order. A funds transfer is completed by acceptance by the beneficiary's bank of a payment order for the benefit of the beneficiary of the originator's payment order.

(b) "Intermediary bank" means a receiving bank other than the originator's bank or the beneficiary's bank.

(c) "Originator" means the sender of the first payment order in a funds transfer.

(d) "Originator's bank" means (i) the receiving bank to which the payment order of the originator is issued if the originator is not a bank, or (ii) the originator if the originator is a bank.

(68 Del. Laws, c. 430, § 1.)

§ 4A-105 Other definitions.

(a) In this Article:

(1) "Authorized account" means a deposit account of a customer in a bank designated by the customer as a source of payment of payment orders issued by the customer to the bank. If a customer does not so designate an account, any account of the customer is an authorized account if payment of a payment order from that account is not inconsistent with a restriction on the use of that account.

(2) "Bank" means a person engaged in the business of banking and includes a savings bank, savings and loan association, credit union, and trust company. A branch or separate office of a bank is a separate bank for purposes of this Article.

(3) "Customer" means a person, including a bank, having an account with a bank or from whom a bank has agreed to receive payment orders.

(4) "Funds-transfer business day" of a receiving bank means the part of a day during which the receiving bank is open for the receipt, processing, and transmittal of payment orders and cancellations and amendments of payment orders.

(5) “Funds-transfer system” means a wire transfer network, automated clearing house, or other communication system of a clearing house or other association of banks through which a payment order by a bank may be transmitted to the bank to which the order is addressed.

(6) [Reserved.]

(7) “Prove” with respect to a fact means to meet the burden of establishing the fact (Section 1-201(b)(8)).

(b) Other definitions applying to this Article and the sections in which they appear are:

“Acceptance” Section 4A-209

“Beneficiary” Section 4A-103

“Beneficiary’s bank” Section 4A-103

“Executed” Section 4A-301

“Execution date” Section 4A-301

“Funds transfer” Section 4A-104

“Funds-transfer system rule” Section 4A-501

“Intermediary bank” Section 4A-104

“Originator” Section 4A-104

“Originator’s bank” Section 4A-104

“Payment by beneficiary’s bank to beneficiary” Section 4A-405

“Payment by originator to beneficiary” Section 4A-406

“Payment by sender to receiving bank” Section 4A-403

“Payment date” Section 4A-401

“Payment order” Section 4A-103

“Receiving bank” Section 4A-103

"Security procedure"

Section 4A-201
"Sender"

Section 4A-103
(c) The following definitions in Article 4 apply to this Article:
"Clearing house"

Section 4-104
"Item"

Section 4-104
"Suspends payments"

Section 4-104
(d) In addition Article 1 contains general definitions and principles of construction and interpretation applicable throughout this Article.
(68 Del. Laws, c. 430, § 1; 74 Del. Laws, c. 332, §§ 34, 35.)

§ 4A-106 Time payment order is received.

(a) The time of receipt of a payment order or communication cancelling or amending a payment order is determined by the rules applicable to receipt of a notice stated in Section 1-202. A receiving bank may fix a cut-off time or times on a funds-transfer business day for the receipt and processing of payment orders and communications cancelling or amending payment orders. Different cut-off times may apply to payment orders, cancellations, or amendments, or to different categories of payment orders, cancellations, or amendments. A cut-off time may apply to senders generally or different cut-off times may apply to different senders or categories of payment orders. If a payment order or communication cancelling or amending a payment order is received after the close of a funds-transfer business day or after the appropriate cut-off time on a funds-transfer business day, the receiving bank may treat the payment order or communication as received at the opening of the next funds-transfer business day.

(b) If this Article refers to an execution date or payment date or states a day on which a receiving bank is required to take action, and the date or day does not fall on a funds-transfer business day, the next day that is a funds-transfer business day is treated as the date or day stated, unless the contrary is stated in this Article.

(68 Del. Laws, c. 430, § 1; 74 Del. Laws, c. 332, § 36.)

§ 4A-107 Federal Reserve regulations and operating circulars.

Regulations of the Board of Governors of the Federal Reserve System and operating circulars of the Federal Reserve Banks supersede any inconsistent provision of this Article to the extent of the inconsistency.

(68 Del. Laws, c. 430, § 1.)

§ 4A-108 Relationship to Electronic Fund Transfer Act.

(a) Except as provided in subsection (b) of this section, this Article does not apply to a funds transfer any part of which is governed by the Electronic Fund Transfer Act (Title XX, Public Law 95-630, 92 Stat. 3728, 15 U.S.C. § 1693 et seq.).

(b) This Article applies to a funds transfer that is a remittance transfer as defined in the Electronic Fund Transfer Act, 15 U.S.C. § 1693o-1, unless the remittance transfer is an electronic fund transfer as defined in the Electronic Fund Transfer Act, 15 U.S.C. § 1693a.

(c) In a funds transfer to which this Article applies, in the event of an inconsistency between the applicable provisions of this Article and an applicable provision of the Electronic Fund Transfer Act, the provision of the Electronic Fund Transfer Act governs to the extent of the inconsistency.

(68 Del. Laws, c. 430, § 1; 80 Del. Laws, c. 385, § 1.)

Part 2
Issue and Acceptance of Payment Order

§ 4A-201 Security procedure.

"Security procedure" means a procedure established by agreement of a customer and a receiving bank for the purpose of (i) verifying that a payment order or communication amending or cancelling a payment order is that of the customer, or (ii) detecting error in the transmission or the content of the payment order or communication. A security procedure may require the use of algorithms or other codes, identifying words or numbers, encryption, callback procedures, or similar security devices. Comparison of a signature on a payment order or communication with an authorized specimen signature of the customer is not by itself a security procedure.

(68 Del. Laws, c. 430, § 1.)

§ 4A-202 Authorized and verified payment orders.

(a) A payment order received by the receiving bank is the authorized order of the person identified as sender if that person authorized the order or is otherwise bound by it under the law of agency.

(b) If a bank and its customer have agreed that the authenticity of payment orders issued to the bank in the name of the customer as sender will be verified pursuant to a security procedure, a payment order received by the receiving bank is effective as the order of the customer, whether or not authorized, if (i) the security procedure is a commercially reasonable method of providing security against unauthorized payment orders, and (ii) the bank proves that it accepted the payment order in good faith and in compliance with the security procedure and any written agreement or instruction of the customer restricting acceptance of payment orders issued in the name of the customer. The bank is not required to follow an instruction that violates a written agreement with the customer or notice of which is not received at a time and in a manner affording the bank a reasonable opportunity to act on it before the payment order is accepted.

(c) Commercial reasonableness of a security procedure is a question of law to be determined by considering the wishes of the customer expressed to the bank, the circumstances of the customer known to the bank, including the size, type, and frequency of payment orders normally issued by the customer to the bank, alternative security procedures offered to the customer, and security procedures in general use by customers and receiving banks similarly situated. A security procedure is deemed to be commercially reasonable if (i) the security procedure was chosen by the customer after the bank offered, and the customer refused, a security procedure that was commercially reasonable for that customer, and (ii) the customer expressly agreed in writing to be bound by any payment order, whether or not authorized, issued in its name and accepted by the bank in compliance with the security procedure chosen by the customer.

(d) The term “sender” in this Article includes the customer in whose name a payment order is issued if the order is the authorized order of the customer under subsection (a), or it is effective as the order of the customer under subsection (b).

(e) This section applies to amendments and cancellations of payment orders to the same extent it applies to payment orders.

(f) Except as provided in this section and in Section 4A-203(a)(1), rights and obligations arising under this section or Section 4A-203 may not be varied by agreement.

(68 Del. Laws, c. 430, § 1.)

§ 4A-203 Unenforceability of certain verified payment orders.

(a) If an accepted payment order is not, under Section 4A-202(a), an authorized order of a customer identified as sender, but is effective as an order of the customer pursuant to Section 4A-202(b), the following rules apply:

(1) By express written agreement, the receiving bank may limit the extent to which it is entitled to enforce or retain payment of the payment order.

(2) The receiving bank is not entitled to enforce or retain payment of the payment order if the customer proves that the order was not caused, directly or indirectly, by a person (i) entrusted at any time with duties to act for the customer with respect to payment orders or the security procedure, or (ii) who obtained access to transmitting facilities of the customer or who obtained, from a source controlled by the customer and without authority of the receiving bank, information facilitating breach of the security procedure, regardless of how the information was obtained or whether the customer was at fault. Information includes any access device, computer software, or the like.

(b) This section applies to amendments of payment orders to the same extent it applies to payment orders.

(68 Del. Laws, c. 430, § 1.)

§ 4A-204 Refund of payment and duty of customer to report with respect to unauthorized payment order.

(a) If a receiving bank accepts a payment order issued in the name of its customer as sender which is (i) not authorized and not effective as the order of the customer under Section 4A-202, or (ii) not enforceable, in whole or in part, against the customer under Section 4A-203, the bank shall refund any payment of the payment order received from the customer to the extent the bank is not entitled to enforce payment and shall pay interest on the refundable amount calculated from the date the bank received payment to the date of the refund. However, the customer is not entitled to interest from the bank on the amount to be refunded if the customer fails to exercise ordinary care to determine that the order was not authorized by the customer and to notify the bank of the relevant facts within a reasonable time not exceeding 90 days after the date the customer received notification from the bank that the order was accepted or that the customer’s account was debited with respect to the order. The bank is not entitled to any recovery from the customer on account of a failure by the customer to give notification as stated in this section.

(b) Reasonable time under subsection (a) may be fixed by agreement as stated in Section 1-302(b), but the obligation of a receiving bank to refund payment as stated in subsection (a) may not otherwise be varied by agreement.

(68 Del. Laws, c. 430, § 1; 74 Del. Laws, c. 332, § 37.)

§ 4A-205 Erroneous payment orders.

(a) If an accepted payment order was transmitted pursuant to a security procedure for the detection of error and the payment order (i) erroneously instructed payment to a beneficiary not intended by the sender, (ii) erroneously instructed payment in an amount greater than the amount intended by the sender, or (iii) was an erroneously transmitted duplicate of a payment order previously sent by the sender, the following rules apply:

(1) If the sender proves that the sender or a person acting on behalf of the sender pursuant to Section 4A-206 complied with the security procedure and that the error would have been detected if the receiving bank had also complied, the sender is not obliged to pay the order to the extent stated in paragraphs (2) and (3).

(2) If the funds transfer is completed on the basis of an erroneous payment order described in clause (i) or (iii) of subsection (a), the sender is not obliged to pay the order and the receiving bank is entitled to recover from the beneficiary any amount paid to the beneficiary to the extent allowed by the law governing mistake and restitution.

(3) If the funds transfer is completed on the basis of a payment order described in clause (ii) of subsection (a), the sender is not obliged to pay the order to the extent the amount received by the beneficiary is greater than the amount intended by the sender. In that case, the receiving bank is entitled to recover from the beneficiary the excess amount received to the extent allowed by the law governing mistake and restitution.

(b) If (i) the sender of an erroneous payment order described in subsection (a) is not obliged to pay all or part of the order, and (ii) the sender receives notification from the receiving bank that the order was accepted by the bank or that the sender's account was debited with respect to the order, the sender has a duty to exercise ordinary care, on the basis of information available to the sender, to discover the error with respect to the order and to advise the bank of the relevant facts within a reasonable time, not exceeding 90 days, after the bank's notification was received by the sender. If the bank proves that the sender failed to perform that duty, the sender is liable to the bank for the loss the bank proves it incurred as a result of the failure, but the liability of the sender may not exceed the amount of the sender's order.

(c) This section applies to amendments to payment orders to the same extent it applies to payment orders.

(68 Del. Laws, c. 430, § 1.)

§ 4A-206 Transmission of payment order through funds-transfer or other communication system.

(a) If a payment order addressed to a receiving bank is transmitted to a funds-transfer system or other third-party communication system for transmittal to the bank, the system is deemed to be an agent of the sender for the purpose of transmitting the payment order to the bank. If there is a discrepancy between the terms of the payment order transmitted to the system and the terms of the payment order transmitted by the system to the bank, the terms of the payment order of the sender are those transmitted by the system. This section does not apply to a funds-transfer system of the Federal Reserve Banks.

(b) This section applies to cancellations and amendments of payment orders to the same extent it applies to payment orders.

(68 Del. Laws, c. 430, § 1.)

§ 4A-207 Misdescription of beneficiary.

(a) Subject to subsection (b), if, in a payment order received by the beneficiary's bank, the name, bank account number, or other identification of the beneficiary refers to a nonexistent or unidentifiable person or account, no person has rights as a beneficiary of the order and acceptance of the order cannot occur.

(b) If a payment order received by the beneficiary's bank identifies the beneficiary both by name and by an identifying or bank account number and the name and number identify different persons, the following rules apply:

(1) Except as otherwise provided in subsection (c), if the beneficiary's bank does not know that the name and number refer to different persons, it may rely on the number as the proper identification of the beneficiary of the order. The beneficiary's bank need not determine whether the name and number refer to the same person.

(2) If the beneficiary's bank pays the person identified by name or knows that the name and number identify different persons, no person has rights as beneficiary except the person paid by the beneficiary's bank if that person was entitled to receive payment from the originator of the funds transfer. If no person has rights as beneficiary, acceptance of the order cannot occur.

(c) If (i) a payment order described in subsection (b) is accepted, (ii) the originator's payment order described the beneficiary inconsistently by name and number, and (iii) the beneficiary's bank pays the person identified by number as permitted by subsection (b)(1), the following rules apply:

(1) If the originator is a bank, the originator is obliged to pay its order.

(2) If the originator is not a bank and proves that the person identified by number was not entitled to receive payment from the originator, the originator is not obliged to pay its order unless the originator's bank proves that the originator, before acceptance of the originator's order, had notice that payment of a payment order issued by the originator might be made by the beneficiary's bank on the basis of an identifying or bank account number even if it identifies a person different from the named beneficiary. Proof of notice may be made by any admissible evidence. The originator's bank satisfies the burden of proof if it proves that the originator, before the payment order was accepted, signed a writing stating the information to which the notice relates.

(d) In a case governed by subsection (b)(1), if the beneficiary's bank rightfully pays the person identified by number and that person was not entitled to receive payment from the originator, the amount paid may be recovered from that person to the extent allowed by the law governing mistake and restitution as follows:

(1) If the originator is obliged to pay its payment order as stated in subsection (c), the originator has the right to recover.

(2) If the originator is not a bank and is not obliged to pay its payment order, the originator's bank has the right to recover.

(68 Del. Laws, c. 430, § 1.)

§ 4A-208 Misdescription of intermediary bank or beneficiary's bank.

(a) This subsection applies to a payment order identifying an intermediary bank or the beneficiary's bank only by an identifying number.

(1) The receiving bank may rely on the number as the proper identification of the intermediary or beneficiary's bank and need not determine whether the number identifies a bank.

(2) The sender is obliged to compensate the receiving bank for any loss and expenses incurred by the receiving bank as a result of its reliance on the number in executing or attempting to execute the order.

(b) This subsection applies to a payment order identifying an intermediary bank or the beneficiary's bank both by name and an identifying number if the name and number identify different persons.

(1) If the sender is a bank, the receiving bank may rely on the number as the proper identification of the intermediary or beneficiary's bank if the receiving bank, when it executes the sender's order, does not know that the name and number identify different persons. The receiving bank need not determine whether the name and number refer to the same person or whether the number refers to a bank. The sender is obliged to compensate the receiving bank for any loss and expenses incurred by the receiving bank as a result of its reliance on the number in executing or attempting to execute the order.

(2) If the sender is not a bank and the receiving bank proves that the sender, before the payment order was accepted, had notice that the receiving bank might rely on the number as the proper identification of the intermediary or beneficiary's bank even if it identifies a person different from the bank identified by name, the rights and obligations of the sender and the receiving bank are governed by subsection (b)(1), as though the sender were a bank. Proof of notice may be made by any admissible evidence. The receiving bank satisfies the burden of proof if it proves that the sender, before the payment order was accepted, signed a writing stating the information to which the notice relates.

(3) Regardless of whether the sender is a bank, the receiving bank may rely on the name as the proper identification of the intermediary or beneficiary's bank if the receiving bank, at the time it executes the sender's order, does not know that the name and number identify different persons. The receiving bank need not determine whether the name and number refer to the same person.

(4) If the receiving bank knows that the name and number identify different persons, reliance on either the name or the number in executing the sender's payment order is a breach of the obligation stated in Section 4A-302(a)(1).

(68 Del. Laws, c. 430, § 1.)

§ 4A-209 Acceptance of payment order.

(a) Subject to subsection (d), a receiving bank other than the beneficiary's bank accepts a payment order when it executes the order.

(b) Subject to subsections (c) and (d), a beneficiary's bank accepts a payment order at the earliest of the following times:

(1) when the bank (i) pays the beneficiary as stated in Section 4A-405(a) or 4A-405(b), or (ii) notifies the beneficiary of receipt of the order or that the account of the beneficiary has been credited with respect to the order unless the notice indicates that the bank is rejecting the order or that funds with respect to the order may not be withdrawn or used until receipt of payment from the sender of the order;

(2) when the bank receives payment of the entire amount of the sender's order pursuant to Section 4A-403(a)(1) or 4A-403(a)(2); or

(3) the opening of the next funds-transfer business day of the bank following the payment date of the order if, at that time, the amount of the sender's order is fully covered by a withdrawable credit balance in an authorized account of the sender or the bank has otherwise received full payment from the sender, unless the order was rejected before that time or is rejected within (i) one hour after that time, or (ii) one hour after the opening of the next business day of the sender following the payment date if that time is later. If notice of rejection is received by the sender after the payment date and the authorized account of the sender does not bear interest, the bank is obliged to pay interest to the sender on the amount of the order for the number of days elapsing after the payment date to the day the sender receives notice or learns that the order was not accepted, counting that day as an elapsed day. If the withdrawable credit balance during that period falls below the amount of the order, the amount of interest payable is reduced accordingly.

(c) Acceptance of a payment order cannot occur before the order is received by the receiving bank. Acceptance does not occur under subsection (b)(2) or (b)(3) if the beneficiary of the payment order does not have an account with the receiving bank, the account has been closed, or the receiving bank is not permitted by law to receive credits for the beneficiary's account.

(d) A payment order issued to the originator's bank cannot be accepted until the payment date if the bank is the beneficiary's bank, or the execution date if the bank is not the beneficiary's bank. If the originator's bank executes the originator's payment order before the execution date or pays the beneficiary of the originator's payment order before the payment date and the payment order is subsequently canceled pursuant to Section 4A-211(b), the bank may recover from the beneficiary any payment received to the extent allowed by the law governing mistake and restitution.

(68 Del. Laws, c. 430, § 1.)

§ 4A-210 Rejection of payment order.

(a) A payment order is rejected by the receiving bank by a notice of rejection transmitted to the sender orally, electronically, or in writing. A notice of rejection need not use any particular words and is sufficient if it indicates that the receiving bank is rejecting the order or will not execute or pay the order. Rejection is effective when the notice is given if transmission is by a means that is reasonable

in the circumstances. If notice of rejection is given by a means that is not reasonable, rejection is effective when the notice is received. If an agreement of the sender and receiving bank establishes the means to be used to reject a payment order, (i) any means complying with the agreement is reasonable and (ii) any means not complying is not reasonable unless no significant delay in receipt of the notice resulted from the use of the noncomplying means.

(b) This subsection applies if a receiving bank other than the beneficiary's bank fails to execute a payment order despite the existence on the execution date of a withdrawable credit balance in an authorized account of the sender sufficient to cover the order. If the sender does not receive notice of rejection of the order on the execution date and the authorized account of the sender does not bear interest, the bank is obliged to pay interest to the sender on the amount of the order for the number of days elapsing after the execution date to the earlier of the day the order is canceled pursuant to Section 4A-211(d) or the day the sender receives notice or learns that the order was not executed, counting the final day of the period as an elapsed day. If the withdrawable credit balance during that period falls below the amount of the order, the amount of interest is reduced accordingly.

(c) If a receiving bank suspends payments, all unaccepted payment orders issued to it are deemed rejected at the time the bank suspends payments.

(d) Acceptance of a payment order precludes a later rejection of the order. Rejection of a payment order precludes a later acceptance of the order.

(68 Del. Laws, c. 430, § 1.)

§ 4A-211 Cancellation and amendment of payment order.

(a) A communication of the sender of a payment order cancelling or amending the order may be transmitted to the receiving bank orally, electronically, or in writing. If a security procedure is in effect between the sender and the receiving bank, the communication is not effective to cancel or amend the order unless the communication is verified pursuant to the security procedure or the bank agrees to the cancellation or amendment.

(b) Subject to subsection (a), a communication by the sender cancelling or amending a payment order is effective to cancel or amend the order if notice of the communication is received at a time and in a manner affording the receiving bank a reasonable opportunity to act on the communication before the bank accepts the payment order.

(c) After a payment order has been accepted, cancellation or amendment of the order is not effective unless the receiving bank agrees or a funds-transfer system rule allows cancellation or amendment without agreement of the bank.

(1) With respect to a payment order accepted by a receiving bank other than the beneficiary's bank, cancellation or amendment is not effective unless a conforming cancellation or amendment of the payment order issued by the receiving bank is also made.

(2) With respect to a payment order accepted by the beneficiary's bank, cancellation or amendment is not effective unless the order was issued in execution of an unauthorized payment order, or because of a mistake by a sender in the funds transfer which resulted in the issuance of a payment order (i) that is a duplicate of a payment order previously issued by the sender, (ii) that orders payment to a beneficiary not entitled to receive payment from the originator, or (iii) that orders payment in an amount greater than the amount the beneficiary was entitled to receive from the originator. If the payment order is canceled or amended, the beneficiary's bank is entitled to recover from the beneficiary any amount paid to the beneficiary to the extent allowed by the law governing mistake and restitution.

(d) An unaccepted payment order is canceled by operation of law at the close of the fifth funds-transfer business day of the receiving bank after the execution date or payment date of the order.

(e) A canceled payment order cannot be accepted. If an accepted payment order is canceled, the acceptance is nullified and no person has any right or obligation based on the acceptance. Amendment of a payment order is deemed to be cancellation of the original order at the time of amendment and issue of a new payment order in the amended form at the same time.

(f) Unless otherwise provided in an agreement of the parties or in a funds-transfer system rule, if the receiving bank, after accepting a payment order, agrees to cancellation or amendment of the order by the sender or is bound by a funds-transfer system rule allowing cancellation or amendment without the bank's agreement, the sender, whether or not cancellation or amendment is effective, is liable to the bank for any loss and expenses, including reasonable attorney's fees, incurred by the bank as a result of the cancellation or amendment or attempted cancellation or amendment.

(g) A payment order is not revoked by the death or legal incapacity of the sender unless the receiving bank knows of the death or of an adjudication of incapacity by a court of competent jurisdiction and has reasonable opportunity to act before acceptance of the order.

(h) A funds-transfer system rule is not effective to the extent it conflicts with subsection (c)(2).

(68 Del. Laws, c. 430, § 1.)

§ 4A-212 Liability and duty of receiving bank regarding unaccepted payment order.

If a receiving bank fails to accept a payment order that it is obliged by express agreement to accept, the bank is liable for breach of the agreement to the extent provided in the agreement or in this Article, but does not otherwise have any duty to accept a payment order or, before acceptance, to take any action, or refrain from taking action, with respect to the order except as provided in this Article or by express agreement. Liability based on acceptance arises only when acceptance occurs as stated in Section 4A-209, and liability is limited to that provided in this Article. A receiving bank is not the agent of the sender or beneficiary of the payment order it accepts, or

of any other party to the funds transfer, and the bank owes no duty to any party to the funds transfer except as provided in this Article or by express agreement.

(68 Del. Laws, c. 430, § 1.)

Part 3

Execution of Sender's Payment Order by Receiving Bank

§ 4A-301 Execution and execution date.

(a) A payment order is "executed" by the receiving bank when it issues a payment order intended to carry out the payment order received by the bank. A payment order received by the beneficiary's bank can be accepted but cannot be executed.

(b) "Execution date" of a payment order means the day on which the receiving bank may properly issue a payment order in execution of the sender's order. The execution date may be determined by instruction of the sender but cannot be earlier than the day the order is received and, unless otherwise determined, is the day the order is received. If the sender's instruction states a payment date, the execution date is the payment date or an earlier date on which execution is reasonably necessary to allow payment to the beneficiary on the payment date.

(68 Del. Laws, c. 430, § 1.)

§ 4A-302 Obligations of receiving bank in execution of payment order.

(a) Except as provided in subsections (b) through (d), if the receiving bank accepts a payment order pursuant to Section 4A-209(a), the bank has the following obligations in executing the order:

(1) The receiving bank is obliged to issue, on the execution date, a payment order complying with the sender's order and to follow the sender's instructions concerning (i) any intermediary bank or funds-transfer system to be used in carrying out the funds transfer, or (ii) the means by which payment orders are to be transmitted in the funds transfer. If the originator's bank issues a payment order to an intermediary bank, the originator's bank is obliged to instruct the intermediary bank according to the instruction of the originator. An intermediary bank in the funds transfer is similarly bound by an instruction given to it by the sender of the payment order it accepts.

(2) If the sender's instruction states that the funds transfer is to be carried out telephonically or by wire transfer or otherwise indicates that the funds transfer is to be carried out by the most expeditious means, the receiving bank is obliged to transmit its payment order by the most expeditious available means, and to instruct any intermediary bank accordingly. If a sender's instruction states a payment date, the receiving bank is obliged to transmit its payment order at a time and by means reasonably necessary to allow payment to the beneficiary on the payment date or as soon thereafter as is feasible.

(b) Unless otherwise instructed, a receiving bank executing a payment order may (i) use any funds-transfer system if use of that system is reasonable in the circumstances, and (ii) issue a payment order to the beneficiary's bank or to an intermediary bank through which a payment order conforming to the sender's order can expeditiously be issued to the beneficiary's bank if the receiving bank exercises ordinary care in the selection of the intermediary bank. A receiving bank is not required to follow an instruction of the sender designating a funds-transfer system to be used in carrying out the funds transfer if the receiving bank, in good faith, determines that it is not feasible to follow the instruction or that following the instruction would unduly delay completion of the funds transfer.

(c) Unless subsection (a)(2) applies or the receiving bank is otherwise instructed, the bank may execute a payment order by transmitting its payment order by first class mail or by any means reasonable in the circumstances. If the receiving bank is instructed to execute the sender's order by transmitting its payment order by a particular means, the receiving bank may issue its payment order by the means stated or by any means as expeditious as the means stated.

(d) Unless instructed by the sender, (i) the receiving bank may not obtain payment of its charges for services and expenses in connection with the execution of the sender's order by issuing a payment order in an amount equal to the amount of the sender's order less the amount of the charges, and (ii) may not instruct a subsequent receiving bank to obtain payment of its charges in the same manner.

(68 Del. Laws, c. 430, § 1.)

§ 4A-303 Erroneous execution of payment order.

(a) A receiving bank that (i) executes the payment order of the sender by issuing a payment order in an amount greater than the amount of the sender's order, or (ii) issues a payment order in execution of the sender's order and then issues a duplicate order, is entitled to payment of the amount of the sender's order under Section 4A-402(c) if that subsection is otherwise satisfied. The bank is entitled to recover from the beneficiary of the erroneous order the excess payment received to the extent allowed by the law governing mistake and restitution.

(b) A receiving bank that executes the payment order of the sender by issuing a payment order in an amount less than the amount of the sender's order is entitled to payment of the amount of the sender's order under Section 4A-402(c) if (i) that subsection is otherwise satisfied and (ii) the bank corrects its mistake by issuing an additional payment order for the benefit of the beneficiary of the sender's order. If the error is not corrected, the issuer of the erroneous order is entitled to receive or retain payment from the sender of the order it accepted only to the extent of the amount of the erroneous order. This subsection does not apply if the receiving bank executes the sender's payment order by issuing a payment order in an amount less than the amount of the sender's order for the purpose of obtaining payment of its charges for services and expenses pursuant to instruction of the sender.

(c) If a receiving bank executes the payment order of the sender by issuing a payment order to a beneficiary different from the beneficiary of the sender's order and the funds transfer is completed on the basis of that error, the sender of the payment order that was erroneously executed and all previous senders in the funds transfer are not obliged to pay the payment orders they issued. The issuer of the erroneous order is entitled to recover from the beneficiary of the order the payment received to the extent allowed by the law governing mistake and restitution.

(68 Del. Laws, c. 430, § 1.)

§ 4A-304 Duty of sender to report erroneously executed payment order.

If the sender of a payment order that is erroneously executed as stated in Section 4A-303 receives notification from the receiving bank that the order was executed or that the sender's account was debited with respect to the order, the sender has a duty to exercise ordinary care to determine, on the basis of information available to the sender, that the order was erroneously executed and to notify the bank of the relevant facts within a reasonable time not exceeding 90 days after the notification from the bank was received by the sender. If the sender fails to perform that duty, the bank is not obliged to pay interest on any amount refundable to the sender under Section 4A-402(d) for the period before the bank learns of the execution error. The bank is not entitled to any recovery from the sender on account of a failure by the sender to perform the duty stated in this section.

(68 Del. Laws, c. 430, § 1.)

§ 4A-305 Liability for late or improper execution or failure to execute payment order.

(a) If a funds transfer is completed but execution of a payment order by the receiving bank in breach of Section 4A-302 results in delay in payment to the beneficiary, the bank is obliged to pay interest to either the originator or the beneficiary of the funds transfer for the period of delay caused by the improper execution. Except as provided in subsection (c), additional damages are not recoverable.

(b) If execution of a payment order by a receiving bank in breach of Section 4A-302 results in (i) noncompletion of the funds transfer, (ii) failure to use an intermediary bank designated by the originator, or (iii) issuance of a payment order that does not comply with the terms of the payment order of the originator, the bank is liable to the originator for its expenses in the funds transfer and for incidental expenses and interest losses, to the extent not covered by subsection (a), resulting from the improper execution. Except as provided in subsection (c), additional damages are not recoverable.

(c) In addition to the amounts payable under subsections (a) and (b), damages, including consequential damages, are recoverable to the extent provided in an express written agreement of the receiving bank.

(d) If a receiving bank fails to execute a payment order it was obliged by express agreement to execute, the receiving bank is liable to the sender for its expenses in the transaction and for incidental expenses and interest losses resulting from the failure to execute. Additional damages, including consequential damages, are recoverable to the extent provided in an express written agreement of the receiving bank, but are not otherwise recoverable.

(e) Reasonable attorney's fees are recoverable if demand for compensation under subsection (a) or (b) is made and refused before an action is brought on the claim. If a claim is made for breach of an agreement under subsection (d) and the agreement does not provide for damages, reasonable attorney's fees are recoverable if demand for compensation under subsection (d) is made and refused before an action is brought on the claim.

(f) Except as stated in this section, the liability of a receiving bank under subsections (a) and (b) may not be varied by agreement.

(68 Del. Laws, c. 430, § 1.)

Part 4

Payment

§ 4A-401 Payment date.

"Payment date" of a payment order means the day on which the amount of the order is payable to the beneficiary by the beneficiary's bank. The payment date may be determined by instruction of the sender but cannot be earlier than the day the order is received by the beneficiary's bank and, unless otherwise determined, is the day the order is received by the beneficiary's bank.

(68 Del. Laws, c. 430, § 1.)

§ 4A-402 Obligation of sender to pay receiving bank.

(a) This section is subject to Sections 4A-205 and 4A-207.

(b) With respect to a payment order issued to the beneficiary's bank, acceptance of the order by the bank obliges the sender to pay the bank the amount of the order, but payment is not due until the payment date of the order.

(c) This subsection is subject to subsection (e) and to Section 4A-303. With respect to a payment order issued to a receiving bank other than the beneficiary's bank, acceptance of the order by the receiving bank obliges the sender to pay the bank the amount of the sender's order. Payment by the sender is not due until the execution date of the sender's order. The obligation of that sender to pay its payment order is excused if the funds transfer is not completed by acceptance by the beneficiary's bank of a payment order instructing payment to the beneficiary of that sender's payment order.

(d) If the sender of a payment order pays the order and was not obliged to pay all or part of the amount paid, the bank receiving payment is obliged to refund payment to the extent the sender was not obliged to pay. Except as provided in Sections 4A-204 and 4A-304, interest is payable on the refundable amount from the date of payment.

(e) If a funds transfer is not completed as stated in subsection (c) and an intermediary bank is obliged to refund payment as stated in subsection (d) but is unable to do so because not permitted by applicable law or because the bank suspends payments, a sender in the funds transfer that executed a payment order in compliance with an instruction, as stated in Section 4A-302(a)(1), to route the funds transfer through that intermediary bank is entitled to receive or retain payment from the sender of the payment order that it accepted. The first sender in the funds transfer that issued an instruction requiring routing through that intermediary bank is subrogated to the right of the bank that paid the intermediary bank to refund as stated in subsection (d).

(f) The right of the sender of a payment order to be excused from the obligation to pay the order as stated in subsection (c) or to receive refund under subsection (d) may not be varied by agreement.

(68 Del. Laws, c. 430, § 1.)

§ 4A-403 Payment by sender to receiving bank.

(a) Payment of the sender's obligation under Section 4A-402 to pay the receiving bank occurs as follows:

(1) If the sender is a bank, payment occurs when the receiving bank receives final settlement of the obligation through a Federal Reserve Bank or through a funds-transfer system.

(2) If the sender is a bank and the sender (i) credited an account of the receiving bank with the sender, or (ii) caused an account of the receiving bank in another bank to be credited, payment occurs when the credit is withdrawn or, if not withdrawn, at midnight of the day on which the credit is withdrawable and the receiving bank learns of that fact.

(3) If the receiving bank debits an account of the sender with the receiving bank, payment occurs when the debit is made to the extent the debit is covered by a withdrawable credit balance in the account.

(b) If the sender and receiving bank are members of a funds-transfer system that nets obligations multilaterally among participants, the receiving bank receives final settlement when settlement is complete in accordance with the rules of the system. The obligation of the sender to pay the amount of a payment order transmitted through the funds-transfer system may be satisfied, to the extent permitted by the rules of the system, by setting off and applying against the sender's obligation the right of the sender to receive payment from the receiving bank of the amount of any other payment order transmitted to the sender by the receiving bank through the funds-transfer system. The aggregate balance of obligations owed by each sender to each receiving bank in the funds-transfer system may be satisfied, to the extent permitted by the rules of the system, by setting off and applying against that balance the aggregate balance of obligations owed to the sender by other members of the system. The aggregate balance is determined after the right of setoff stated in the second sentence of this subsection has been exercised.

(c) If two banks transmit payment orders to each other under an agreement that settlement of the obligations of each bank to the other under Section 4A-402 will be made at the end of the day or other period, the total amount owed with respect to all orders transmitted by one bank shall be set off against the total amount owed with respect to all orders transmitted by the other bank. To the extent of the setoff, each bank has made payment to the other.

(d) In a case not covered by subsection (a), the time when payment of the sender's obligation under Section 4A-402(b) or 4A-402(c) occurs is governed by applicable principles of law that determine when an obligation is satisfied.

(68 Del. Laws, c. 430, § 1.)

§ 4A-404 Obligation of beneficiary's bank to pay and give notice to beneficiary.

(a) Subject to Sections 4A-211(e), 4A-405(d), and 4A-405(e), if a beneficiary's bank accepts a payment order, the bank is obliged to pay the amount of the order to the beneficiary of the order. Payment is due on the payment date of the order, but if acceptance occurs on the payment date after the close of the funds-transfer business day of the bank, payment is due on the next funds-transfer business day. If the bank refuses to pay after demand by the beneficiary and receipt of notice of particular circumstances that will give rise to consequential damages as a result of nonpayment, the beneficiary may recover damages resulting from the refusal to pay to the extent the bank had notice of the damages, unless the bank proves that it did not pay because of a reasonable doubt concerning the right of the beneficiary to payment.

(b) If a payment order accepted by the beneficiary's bank instructs payment to an account of the beneficiary, the bank is obliged to notify the beneficiary of receipt of the order before midnight of the next funds-transfer business day following the payment date. If the payment order does not instruct payment to an account of the beneficiary, the bank is required to notify the beneficiary only if notice is required by the order. Notice may be given by first class mail or any other means reasonable in the circumstances. If the bank fails to give the required notice, the bank is obliged to pay interest to the beneficiary on the amount of the payment order from the day notice should have been given until the day the beneficiary learned of receipt of the payment order by the bank. No other damages are recoverable. Reasonable attorney's fees are also recoverable if demand for interest is made and refused before an action is brought on the claim.

(c) The right of a beneficiary to receive payment and damages as stated in subsection (a) may not be varied by agreement or a funds-transfer system rule. The right of a beneficiary to be notified as stated in subsection (b) may be varied by agreement of the beneficiary or by a funds-transfer system rule if the beneficiary is notified of the rule before initiation of the funds transfer.

(68 Del. Laws, c. 430, § 1.)

§ 4A-405 Payment by beneficiary's bank to beneficiary.

(a) If the beneficiary's bank credits an account of the beneficiary of a payment order, payment of the bank's obligation under Section 4A-404(a) occurs when and to the extent (i) the beneficiary is notified of the right to withdraw the credit, (ii) the bank lawfully applies the credit to a debt of the beneficiary, or (iii) funds with respect to the order are otherwise made available to the beneficiary by the bank.

(b) If the beneficiary's bank does not credit an account of the beneficiary of a payment order, the time when payment of the bank's obligation under Section 4A-404(a) occurs is governed by principles of law that determine when an obligation is satisfied.

(c) Except as stated in subsections (d) and (e), if the beneficiary's bank pays the beneficiary of a payment order under a condition to payment or agreement of the beneficiary giving the bank the right to recover payment from the beneficiary if the bank does not receive payment of the order, the condition to payment or agreement is not enforceable.

(d) A funds-transfer system rule may provide that payments made to beneficiaries of funds transfers made through the system are provisional until receipt of payment by the beneficiary's bank of the payment order it accepted. A beneficiary's bank that makes a payment that is provisional under the rule is entitled to refund from the beneficiary if (i) the rule requires that both the beneficiary and the originator be given notice of the provisional nature of the payment before the funds transfer is initiated, (ii) the beneficiary, the beneficiary's bank and the originator's bank agreed to be bound by the rule, and (iii) the beneficiary's bank did not receive payment of the payment order that it accepted. If the beneficiary is obliged to refund payment to the beneficiary's bank, acceptance of the payment order by the beneficiary's bank is nullified and no payment by the originator of the funds transfer to the beneficiary occurs under Section 4A-406.

(e) This subsection applies to a funds transfer that includes a payment order transmitted over a funds-transfer system that (i) nets obligations multilaterally among participants, and (ii) has in effect a loss-sharing agreement among participants for the purpose of providing funds necessary to complete settlement of the obligations of one or more participants that do not meet their settlement obligations. If the beneficiary's bank in the funds transfer accepts a payment order and the system fails to complete settlement pursuant to its rules with respect to any payment order in the funds transfer, (i) the acceptance by the beneficiary's bank is nullified and no person has any right or obligation based on the acceptance, (ii) the beneficiary's bank is entitled to recover payment from the beneficiary, (iii) no payment by the originator to the beneficiary occurs under Section 4A-406, and (iv) subject to Section 4A-402(e), each sender in the funds transfer is excused from its obligation to pay its payment order under Section 4A-402(c) because the funds transfer has not been completed.

(68 Del. Laws, c. 430, § 1.)

§ 4A-406 Payment by originator to beneficiary; discharge of underlying obligation.

(a) Subject to Sections 4A-211(e), 4A-405(d), and 4A-405(e), the originator of a funds transfer pays the beneficiary of the originator's payment order (i) at the time a payment order for the benefit of the beneficiary is accepted by the beneficiary's bank in the funds transfer and (ii) in an amount equal to the amount of the order accepted by the beneficiary's bank, but not more than the amount of the originator's order.

(b) If payment under subsection (a) is made to satisfy an obligation, the obligation is discharged to the same extent discharge would result from payment to the beneficiary of the same amount in money, unless (i) the payment under subsection (a) was made by a means prohibited by the contract of the beneficiary with respect to the obligation, (ii) the beneficiary, within a reasonable time after receiving notice of receipt of the order by the beneficiary's bank, notified the originator of the beneficiary's refusal of the payment, (iii) funds with respect to the order were not withdrawn by the beneficiary or applied to a debt of the beneficiary, and (iv) the beneficiary would suffer a loss that could reasonably have been avoided if payment had been made by a means complying with the contract. If payment by the originator does not result in discharge under this section, the originator is subrogated to the rights of the beneficiary to receive payment from the beneficiary's bank under Section 4A-404(a).

(c) For the purpose of determining whether discharge of an obligation occurs under subsection (b), if the beneficiary's bank accepts a payment order in an amount equal to the amount of the originator's payment order less charges of one or more receiving banks in the funds transfer, payment to the beneficiary is deemed to be in the amount of the originator's order unless upon demand by the beneficiary the originator does not pay the beneficiary the amount of the deducted charges.

(d) Rights of the originator or of the beneficiary of a funds transfer under this section may be varied only by agreement of the originator and the beneficiary.

(68 Del. Laws, c. 430, § 1.)

Part 5

Miscellaneous Provisions

§ 4A-501 Variation by agreement and effect of funds-transfer system rule.

(a) Except as otherwise provided in this Article, the rights and obligations of a party to a funds transfer may be varied by agreement of the affected party.

(b) "Funds-transfer system rule" means a rule of an association of banks (i) governing transmission of payment orders by means of a funds-transfer system of the association or rights and obligations with respect to those orders, or (ii) to the extent the rule governs rights

and obligations between banks that are parties to a funds transfer in which a Federal Reserve Bank, acting as an intermediary bank, sends a payment order to the beneficiary's bank. Except as otherwise provided in this Article, a funds-transfer system rule governing rights and obligations between participating banks using the system may be effective even if the rule conflicts with this Article and indirectly affects another party to the funds transfer who does not consent to the rule. A funds-transfer system rule may also govern rights and obligations of parties other than participating banks using the system to the extent stated in Sections 4A-404(c), 4A-405(d), and 4A-507(c).

(68 Del. Laws, c. 430, § 1.)

§ 4A-502 Creditor process served on receiving bank; setoff by beneficiary's bank.

(a) As used in this section, "creditor process" means levy, attachment, garnishment, notice of lien, sequestration, or similar process issued by or on behalf of a creditor or other claimant with respect to an account.

(b) This subsection applies to creditor process with respect to an authorized account of the sender of a payment order if the creditor process is served on the receiving bank. For the purpose of determining rights with respect to the creditor process, if the receiving bank accepts the payment order the balance in the authorized account is deemed to be reduced by the amount of the payment order to the extent the bank did not otherwise receive payment of the order, unless the creditor process is served at a time and in a manner affording the bank a reasonable opportunity to act on it before the bank accepts the payment order.

(c) If a beneficiary's bank has received a payment order for payment to the beneficiary's account in the bank, the following rules apply:

(1) The bank may credit the beneficiary's account. The amount credited may be set off against an obligation owed by the beneficiary to the bank or may be applied to satisfy creditor process served on the bank with respect to the account.

(2) The bank may credit the beneficiary's account and allow withdrawal of the amount credited unless creditor process with respect to the account is served at a time and in a manner affording the bank a reasonable opportunity to act to prevent withdrawal.

(3) If creditor process with respect to the beneficiary's account has been served and the bank has had a reasonable opportunity to act on it, the bank may not reject the payment order except for a reason unrelated to the service of process.

(d) Creditor process with respect to a payment by the originator to the beneficiary pursuant to a funds transfer may be served only on the beneficiary's bank with respect to the debt owed by that bank to the beneficiary. Any other bank served with the creditor process is not obliged to act with respect to the process.

(68 Del. Laws, c. 430, § 1.)

§ 4A-503 Injunction or restraining order with respect to funds transfer.

For proper cause and in compliance with applicable law, a court may restrain (i) a person from issuing a payment order to initiate a funds transfer, (ii) an originator's bank from executing the payment order of the originator, or (iii) the beneficiary's bank from releasing funds to the beneficiary or the beneficiary from withdrawing the funds. A court may not otherwise restrain a person from issuing a payment order, paying or receiving payment of a payment order, or otherwise acting with respect to a funds transfer.

(68 Del. Laws, c. 430, § 1.)

§ 4A-504 Order in which items and payment orders may be charged to account; order of withdrawals from account.

(a) If a receiving bank has received more than one payment order of the sender or one or more payment orders and other items that are payable from the sender's account, the bank may charge the sender's account with respect to the various orders and items in any sequence.

(b) In determining whether a credit to an account has been withdrawn by the holder of the account or applied to a debt of the holder of the account, credits first made to the account are first withdrawn or applied.

(68 Del. Laws, c. 430, § 1.)

§ 4A-505 Preclusion of objection to debit of customer's account.

If a receiving bank has received payment from its customer with respect to a payment order issued in the name of the customer as sender and accepted by the bank, and the customer received notification reasonably identifying the order, the customer is precluded from asserting that the bank is not entitled to retain the payment unless the customer notifies the bank of the customer's objection to the payment within one year after the notification was received by the customer.

(68 Del. Laws, c. 430, § 1.)

§ 4A-506 Rate of interest.

(a) If, under this Article, a receiving bank is obliged to pay interest with respect to a payment order issued to the bank, the amount payable may be determined (i) by agreement of the sender and receiving bank, or (ii) by a funds-transfer system rule if the payment order is transmitted through a funds-transfer system.

(b) If the amount of interest is not determined by an agreement or rule as stated in subsection (a), the amount is calculated by multiplying the applicable Federal Funds rate by the amount on which interest is payable, and then multiplying the product by the number of days for

which interest is payable. The applicable Federal Funds rate is the average of the Federal Funds rates published by the Federal Reserve Bank of New York for each of the days for which interest is payable divided by 360. The Federal Funds rate for any day on which a published rate is not available is the same as the published rate for the next preceding day for which there is a published rate. If a receiving bank that accepted a payment order is required to refund payment to the sender of the order because the funds transfer was not completed, but the failure to complete was not due to any fault by the bank, the interest payable is reduced by a percentage equal to the reserve requirement on deposits of the receiving bank.

(68 Del. Laws, c. 430, § 1.)

§ 4A-507 Choice of law.

(a) The following rules apply unless the affected parties otherwise agree or subsection (c) applies:

(1) The rights and obligations between the sender of a payment order and the receiving bank are governed by the law of the jurisdiction in which the receiving bank is located.

(2) The rights and obligations between the beneficiary's bank and the beneficiary are governed by the law of the jurisdiction in which the beneficiary's bank is located.

(3) The issue of when payment is made pursuant to a funds transfer by the originator to the beneficiary is governed by the law of the jurisdiction in which the beneficiary's bank is located.

(b) If the parties described in each paragraph of subsection (a) have made an agreement selecting the law of a particular jurisdiction to govern rights and obligations between each other, the law of that jurisdiction governs those rights and obligations, whether or not the payment order or the funds transfer bears a reasonable relation to that jurisdiction.

(c) A funds-transfer system rule may select the law of a particular jurisdiction to govern (i) rights and obligations between participating banks with respect to payment orders transmitted or processed through the system, or (ii) the rights and obligations of some or all parties to a funds transfer any part of which is carried out by means of the system. A choice of law made pursuant to clause (i) is binding on participating banks. A choice of law made pursuant to clause (ii) is binding on the originator, other sender, or a receiving bank having notice that the funds-transfer system might be used in the funds transfer and of the choice of law by the system when the originator, other sender, or receiving bank issued or accepted a payment order. The beneficiary of a funds transfer is bound by the choice of law if, when the funds transfer is initiated, the beneficiary has notice that the funds-transfer system might be used in the funds transfer and of the choice of law by the system. The law of a jurisdiction selected pursuant to this subsection may govern, whether or not that law bears a reasonable relation to the matter in issue.

(d) In the event of inconsistency between an agreement under subsection (b) and a choice-of-law rule under subsection (c), the agreement under subsection (b) prevails.

(e) If a funds transfer is made by use of more than one funds-transfer system and there is inconsistency between choice-of-law rules of the systems, the matter in issue is governed by the law of the selected jurisdiction that has the most significant relationship to the matter in issue.

(68 Del. Laws, c. 430, § 1.)

Subtitle I
Uniform Commercial Code

Article 5
Letters of Credit

§ 5-101 Short title.

This Article may be cited as Uniform Commercial Code — Letters of Credit.

(5A Del. C. 1953, § 5-101; 55 Del. Laws, c. 349; 71 Del. Laws, c. 393, § 1.)

§ 5-102 Definitions.

(a) In this Article:

(1) "Adviser" means a person who, at the request of the issuer, a confirmer, or another adviser, notifies or requests another adviser to notify the beneficiary that a letter of credit has been issued, confirmed, or amended.

(2) "Applicant" means a person at whose request or for whose account a letter of credit is issued. The term includes a person who requests an issuer to issue a letter of credit on behalf of another if the person making the request undertakes an obligation to reimburse the issuer.

(3) "Beneficiary" means a person who under the terms of a letter of credit is entitled to have its complying presentation honored. The term includes a person to whom drawing rights have been transferred under a transferable letter of credit.

(4) "Confirmer" means a nominated person who undertakes, at the request or with the consent of the issuer, to honor a presentation under a letter of credit issued by another.

(5) "Dishonor" of a letter of credit means failure timely to honor or to take an interim action, such as acceptance of a draft, that may be required by the letter of credit.

(6) "Document" means a draft or other demand, document of title, investment security, certificate, invoice, or other record, statement, or representation of fact, law, right, or opinion (i) which is presented in a written or other medium permitted by the letter of credit or, unless prohibited by the letter of credit, by the standard practice referred to in Section 5-108(e) and (ii) which is capable of being examined for compliance with the terms and conditions of the letter of credit. A document may not be oral.

(7) "Good faith" means honesty in fact in the conduct or transaction concerned.

(8) "Honor" of a letter of credit means performance of the issuer's undertaking in the letter of credit to pay or deliver an item of value. Unless the letter of credit otherwise provides, "honor" occurs

(i) upon payment,

(ii) if the letter of credit provides for acceptance, upon acceptance of a draft and, at maturity, its payment, or

(iii) if the letter of credit provides for incurring a deferred obligation, upon incurring the obligation and, at maturity, its performance.

(9) "Issuer" means a bank or other person that issues a letter of credit, but does not include an individual who makes an engagement for personal, family, or household purposes.

(10) "Letter of credit" means a definite undertaking that satisfies the requirements of Section 5-104 by an issuer to a beneficiary at the request or for the account of an applicant or, in the case of a financial institution, to itself or for its own account, to honor a documentary presentation by payment or delivery of an item of value.

(11) "Nominated person" means a person whom the issuer (i) designates or authorizes to pay, accept, negotiate, or otherwise give value under a letter of credit and (ii) undertakes by agreement or custom and practice to reimburse.

(12) "Presentation" means delivery of a document to an issuer or nominated person for honor or giving of value under a letter of credit.

(13) "Presenter" means a person making a presentation as or on behalf of a beneficiary or nominated person.

(14) "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.

(15) "Successor of a beneficiary" means a person who succeeds to substantially all of the rights of a beneficiary by operation of law, including a corporation with or into which the beneficiary has been merged or consolidated, an administrator, executor, personal representative, trustee in bankruptcy, debtor in possession, liquidator, and receiver.

(b) Definitions in other Articles applying to this Article and the Sections in which they appear are:

"Accept" or "Acceptance" Section 3-409

"Value" Sections 3-303, 4-211

(c) Article 1 contains certain additional general definitions and principles of construction and interpretation applicable throughout this Article.

(5A Del. C. 1953, § 5-103; 55 Del. Laws, c. 349; 71 Del. Laws, c. 393, § 1.)

§ 5-103 Scope.

(a) This Article applies to letters of credit and to certain rights and obligations arising out of transactions involving letters of credit.

(b) The statement of a rule in this Article does not by itself require, imply, or negate application of the same or a different rule to a situation not provided for, or to a person not specified, in this Article.

(c) With the exception of this subsection, subsections (a) and (d), Sections 5-102(a)(9) and (10), 5-106(d), and 5-114(d), and except to the extent prohibited in Sections 1-302 and 5-117(d), the effect of this Article may be varied by agreement or by a provision stated or incorporated by reference in an undertaking. A term in an agreement or undertaking generally excusing liability or generally limiting remedies for failure to perform obligations is not sufficient to vary obligations prescribed by this Article.

(d) Rights and obligations of an issuer to a beneficiary or a nominated person under a letter of credit are independent of the existence, performance, or nonperformance of a contract or arrangement out of which the letter of credit arises or which underlies it, including contracts or arrangements between the issuer and the applicant and between the applicant and the beneficiary.

(5A Del. C. 1953, § 5-102; 55 Del. Laws, c. 349; 71 Del. Laws, c. 393, § 1; 74 Del. Laws, c. 332, § 38.)

§ 5-104 Formal requirements.

A letter of credit, confirmation, advice, transfer, amendment, or cancellation may be issued in any form that is a record and is authenticated (i) by a signature or (ii) in accordance with the agreement of the parties or the standard practice referred to in Section 5-108(e).

(5A Del. C. 1953, § 5-104; 55 Del. Laws, c. 349; 71 Del. Laws, c. 393, § 1.)

§ 5-105 Consideration.

Consideration is not required to issue, amend, transfer, or cancel a letter of credit, advice, or confirmation.

(5A Del. C. 1953, § 5-105; 55 Del. Laws, c. 349; 71 Del. Laws, c. 393, § 1.)

§ 5-106 Issuance, amendment, cancellation, and duration.

(a) A letter of credit is issued and becomes enforceable according to its terms against the issuer when the issuer sends or otherwise transmits it to the person requested to advise or to the beneficiary. A letter of credit is revocable only if it so provides.

(b) After a letter of credit is issued, rights and obligations of a beneficiary, applicant, confirmer, and issuer are not affected by an amendment or cancellation to which that person has not consented except to the extent the letter of credit provides that it is revocable or that the issuer may amend or cancel the letter of credit without that consent.

(c) If there is no stated expiration date or other provision that determines its duration, a letter of credit expires one year after its stated date of issuance or, if none is stated, after the date on which it is issued.

(d) A letter of credit that states that it is perpetual expires five years after its stated date of issuance, or if none is stated, after the date on which it is issued.

(5A Del. C. 1953, § 5-106; 55 Del. Laws, c. 349; 71 Del. Laws, c. 393, § 1.)

§ 5-107 Confirmer, nominated person, and adviser.

(a) A confirmer is directly obligated on a letter of credit and has the rights and obligations of an issuer to the extent of its confirmation. The confirmer also has rights against and obligations to the issuer as if the issuer were an applicant and the confirmer had issued the letter of credit at the request and for the account of the issuer.

(b) A nominated person who is not a confirmer is not obligated to honor or otherwise give value for a presentation.

(c) A person requested to advise may decline to act as an adviser. An adviser that is not a confirmer is not obligated to honor or give value for a presentation. An adviser undertakes to the issuer and to the beneficiary accurately to advise the terms of the letter of credit, confirmation, amendment, or advice received by that person and undertakes to the beneficiary to check the apparent authenticity of the request to advise. Even if the advice is inaccurate, the letter of credit, confirmation, or amendment is enforceable as issued.

(d) A person who notifies a transferee beneficiary of the terms of a letter of credit, confirmation, amendment, or advice has the rights and obligations of an adviser under subsection (c). The terms in the notice to the transferee beneficiary may differ from the terms in any notice to the transferor beneficiary to the extent permitted by the letter of credit, confirmation, amendment, or advice received by the person who so notifies.

(5A Del. C. 1953, § 5-107; 55 Del. Laws, c. 349; 71 Del. Laws, c. 393, § 1.)

§ 5-108 Issuer's rights and obligations.

(a) Except as otherwise provided in Section 5-109, an issuer shall honor a presentation that, as determined by the standard practice referred to in subsection (e), appears on its face strictly to comply with the terms and conditions of the letter of credit. Except as otherwise provided in Section 5-113 and unless otherwise agreed with the applicant, an issuer shall dishonor a presentation that does not appear so to comply.

(b) An issuer has a reasonable time after presentation, but not beyond the end of the seventh business day of the issuer after the day of its receipt of documents:

(1) to honor,

(2) if the letter of credit provides for honor to be completed more than seven business days after presentation, to accept a draft or incur a deferred obligation, or

(3) to give notice to the presenter of discrepancies in the presentation.

(c) Except as otherwise provided in subsection (d), an issuer is precluded from asserting as a basis for dishonor any discrepancy if timely notice is not given, or any discrepancy not stated in the notice if timely notice is given.

(d) Failure to give the notice specified in subsection (b) or to mention fraud, forgery, or expiration in the notice does not preclude the issuer from asserting as a basis for dishonor fraud or forgery as described in Section 5-109(a) or expiration of the letter of credit before presentation.

(e) An issuer shall observe standard practice of financial institutions that regularly issue letters of credit. Determination of the issuer's observance of the standard practice is a matter of interpretation for the court. The court shall offer the parties a reasonable opportunity to present evidence of the standard practice.

(f) An issuer is not responsible for:

(1) the performance or nonperformance of the underlying contract, arrangement, or transaction,

(2) an act or omission of others, or

(3) observance or knowledge of the usage of a particular trade other than the standard practice referred to in subsection (e).

(g) If an undertaking constituting a letter of credit under Section 5-102(a)(10) contains non-documentary conditions, an issuer shall disregard the non-documentary conditions and treat them as if they were not stated.

(h) An issuer that has dishonored a presentation shall return the documents or hold them at the disposal of, and send advice to that effect to, the presenter.

(i) An issuer that has honored a presentation as permitted or required by this Article:

(1) is entitled to be reimbursed by the applicant in immediately available funds not later than the date of its payment of funds;

(2) takes the documents free of claims of the beneficiary or presenter;

(3) is precluded from asserting a right of recourse on a draft under Sections 3-414 and 3-415;

(4) except as otherwise provided in Sections 5-110 and 5-117, is precluded from restitution of money paid or other value given by mistake to the extent the mistake concerns discrepancies in the documents or tender which are apparent on the face of the presentation; and

(5) is discharged to the extent of its performance under the letter of credit.

(5A Del. C. 1953, § 5-109; 55 Del. Laws, c. 349; 71 Del. Laws, c. 393, § 1.)

§ 5-109 Fraud and forgery.

(a) If a presentation is made that appears on its face strictly to comply with the terms and conditions of the letter of credit, but a required document is forged or materially fraudulent, or honor of the presentation would facilitate a material fraud by the beneficiary on the issuer or applicant:

(1) the issuer shall honor the presentation, if honor is demanded by (i) a nominated person who has given value in good faith and without notice of forgery or material fraud, (ii) a confirmer who has honored its confirmation in good faith, (iii) a holder in due course of a draft drawn under the letter of credit which was taken after acceptance by the issuer or nominated person, or (iv) an assignee of the issuer's or nominated person's deferred obligation that was taken for value and without notice of forgery or material fraud after the obligation was incurred by the issuer or nominated person; and

(2) the issuer, acting in good faith, may honor or dishonor the presentation in any other case.

(b) If an applicant claims that a required document is forged or materially fraudulent or that honor of the presentation would facilitate a material fraud by the beneficiary on the issuer or applicant, a court of competent jurisdiction may temporarily or permanently enjoin the issuer from honoring a presentation or grant similar relief against the issuer or other persons only if the court finds that:

(1) the relief is not prohibited under the law applicable to an accepted draft or deferred obligation incurred by the issuer;

(2) a beneficiary, issuer, or nominated person who may be adversely affected is adequately protected against loss that it may suffer because the relief is granted;

(3) all of the conditions to entitle a person to the relief under the law of this State have been met; and

(4) on the basis of the information submitted to the court, the applicant is more likely than not to succeed under its claim of forgery or material fraud and the person demanding honor does not qualify for protection under subsection (a)(1).

(71 Del. Laws, c. 393, § 1.)

§ 5-110 Warranties.

(a) If its presentation is honored, the beneficiary warrants:

(1) to the issuer, any other person to whom presentation is made, and the applicant that there is no fraud or forgery of the kind described in Section 5-109(a); and

(2) to the applicant that the drawing does not violate any agreement between the applicant and beneficiary or any other agreement intended by them to be augmented by the letter of credit.

(b) The warranties in subsection (a) are in addition to warranties arising under Article 3, 4, 7, and 8 because of the presentation or transfer of documents covered by any of those Articles.

(5A Del. C. 1953, § 5-111; 55 Del. Laws, c. 349; 71 Del. Laws, c. 393, § 1.)

§ 5-111 Remedies.

(a) If an issuer wrongfully dishonors or repudiates its obligation to pay money under a letter of credit before presentation, the beneficiary, successor, or nominated person presenting on its own behalf may recover from the issuer the amount that is the subject of the dishonor or repudiation. If the issuer's obligation under the letter of credit is not for the payment of money, the claimant may obtain specific performance or, at the claimant's election, recover an amount equal to the value of performance from the issuer. In either case, the claimant may also recover incidental but not consequential damages. The claimant is not obligated to take action to avoid damages that might be due from the issuer under this subsection. If, although not obligated to do so, the claimant avoids damages, the claimant's recovery from the issuer must be reduced by the amount of damages avoided. The issuer has the burden of proving the amount of damages avoided. In the case of repudiation the claimant need not present any document.

(b) If an issuer wrongfully dishonors a draft or demand presented under a letter of credit or honors a draft or demand in breach of its obligation to the applicant, the applicant may recover damages resulting from the breach, including incidental but not consequential damages, less any amount saved as a result of the breach.

(c) If an adviser or nominated person other than a confirmer breaches an obligation under this Article or an issuer breaches an obligation not covered in subsection (a) or (b), a person to whom the obligation is owed may recover damages resulting from the breach, including incidental but not consequential damages, less any amount saved as a result of the breach. To the extent of the confirmation, a confirmer has the liability of an issuer specified in this subsection and subsections (a) and (b).

(d) An issuer, nominated person, or adviser who is found liable under subsection (a), (b), or (c) shall pay interest on the amount owed thereunder from the date of wrongful dishonor or other appropriate date.

(e) Reasonable attorney's fees and other expenses of litigation must be awarded to the prevailing party in an action in which a remedy is sought under this article.

(f) Damages that would otherwise be payable by a party for breach of an obligation under this article may be liquidated by agreement or undertaking, but only in an amount or by a formula that is reasonable in light of the harm anticipated.

(5A Del. C. 1953, § 5-115; 55 Del. Laws, c. 349; 71 Del. Laws, c. 393, § 1.)

§ 5-112 Transfer of letter of credit.

(a) Except as otherwise provided in Section 5-113, unless a letter of credit provides that it is transferable, the right of a beneficiary to draw or otherwise demand performance under a letter of credit may not be transferred.

(b) Even if a letter of credit provides that it is transferable, the issuer may refuse to recognize or carry out a transfer if:

(1) the transfer would violate applicable law; or

(2) the transferor or transferee has failed to comply with any requirement stated in the letter of credit or any other requirement relating to transfer imposed by the issuer which is within the standard practice referred to in Section 5-108(e) or is otherwise reasonable under the circumstances.

(5A Del. C. 1953, § 5-116; 55 Del. Laws, c. 349; 64 Del. Laws, c. 152, § 5; 71 Del. Laws, c. 393, § 1.)

§ 5-113 Transfer by operation of law.

(a) A successor of a beneficiary may consent to amendments, sign and present documents, and receive payment or other items of value in the name of the beneficiary without disclosing its status as a successor.

(b) A successor of a beneficiary may consent to amendments, sign and present documents, and receive payment or other items of value in its own name as the disclosed successor of the beneficiary. Except as otherwise provided in subsection (e), an issuer shall recognize a disclosed successor of a beneficiary as beneficiary in full substitution for its predecessor upon compliance with the requirements for recognition by the issuer of a transfer of drawing rights by operation of law under the standard practice referred to in Section 5-108(e) or, in the absence of such a practice, compliance with other reasonable procedures sufficient to protect the issuer.

(c) An issuer is not obliged to determine whether a purported successor is a successor of a beneficiary or whether the signature of a purported successor is genuine or authorized.

(d) Honor of a purported successor's apparently complying presentation under subsection (a) or (b) has the consequences specified in Section 5-108(i) even if the purported successor is not the successor of a beneficiary. Documents signed in the name of the beneficiary or of a disclosed successor by a person who is neither the beneficiary nor the successor of the beneficiary are forged documents for the purposes of Section 5-109.

(e) An issuer whose rights of reimbursement are not covered by subsection (d) or substantially similar law and any confirmer or nominated person may decline to recognize a presentation under subsection (b).

(f) A beneficiary whose name is changed after the issuance of a letter of credit has the same rights and obligations as a successor of a beneficiary under this Section.

(71 Del. Laws, c. 393, § 1.)

§ 5-114 Assignment of proceeds.

(a) In this Section, "proceeds of a letter of credit" means the cash, check, accepted draft, or other item of value paid or delivered upon honor or giving of value by the issuer or any nominated person under the letter of credit. The term does not include a beneficiary's drawing rights or documents presented by the beneficiary.

(b) A beneficiary may assign its right to part or all of the proceeds of a letter of credit. The beneficiary may do so before presentation as a present assignment of its right to receive proceeds contingent upon its compliance with the terms and conditions of the letter of credit.

(c) An issuer or nominated person need not recognize an assignment of proceeds of a letter of credit until it consents to the assignment.

(d) An issuer or nominated person has no obligation to give or withhold its consent to an assignment of proceeds of a letter of credit, but consent may not be unreasonably withheld if the assignee possesses and exhibits the letter of credit and presentation of the letter of credit is a condition to honor.

(e) Rights of a transferee beneficiary or nominated person are independent of the beneficiary's assignment of the proceeds of a letter of credit and are superior to the assignee's right to the proceeds.

(f) Neither the rights recognized by this Section between an assignee and an issuer, transferee beneficiary, or nominated person nor the issuer's or nominated person's payment of proceeds to an assignee or a third person affect the rights between the assignee and any person other than the issuer, transferee beneficiary, or nominated person. The mode of creating and perfecting a security interest in or granting an assignment of a beneficiary's rights to proceeds is governed by Article 9 or other law. Against persons other than the issuer, transferee beneficiary, or nominated person, the rights and obligations arising upon the creation of a security interest or other assignment of a beneficiary's right to proceeds and its perfection are governed by Article 9 or other law.

(71 Del. Laws, c. 393, § 1.)

§ 5-115 Statute of limitations.

An action to enforce a right or obligation arising under this Article must be commenced within one year after the expiration date of the relevant letter of credit or one year after the cause of action accrues, whichever occurs later. A cause of action accrues when the breach occurs, regardless of the aggrieved party's lack of knowledge of the breach.

(71 Del. Laws, c. 393, § 1.)

§ 5-116 Choice of law and forum.

(a) The liability of an issuer, nominated person, or adviser for action or omission is governed by the law of the jurisdiction chosen by an agreement in the form of a record signed or otherwise authenticated by the affected parties in the manner provided in Section 5-104 or by a provision in the person's letter of credit, confirmation, or other undertaking. The jurisdiction whose law is chosen need not bear any relation to the transaction.

(b) Unless subsection (a) applies, the liability of an issuer, nominated person, or adviser for action or omission is governed by the law of the jurisdiction in which the person is located. The person is considered to be located at the address indicated in the person's undertaking. If more than one address is indicated, the person is considered to be located at the address from which the person's undertaking was issued. For the purpose of jurisdiction, choice of law, and recognition of interbranch letters of credit, but not enforcement of a judgment, all branches of a bank are considered separate juridical entities and a bank is considered to be located at the place where its relevant branch is considered to be located under this subsection.

(c) Except as otherwise provided in this subsection, the liability of an issuer, nominated person, or adviser is governed by any rules of custom or practice, such as the Uniform Customs and Practice for Documentary Credits, to which the letter of credit, confirmation, or other undertaking is expressly made subject. If (i) this Article would govern the liability of an issuer, nominated person, or adviser under subsection (a) or (b), (ii) the relevant undertaking incorporates rules of custom or practice, and (iii) there is conflict between this Article and those rules as applied to that undertaking, those rules govern except to the extent of any conflict with the non-variable provisions specified in Section 5-103(c).

(d) If there is conflict between this Article and Article 3, 4, 4A, or 9, this Article governs.

(e) The forum for settling disputes arising out of an undertaking within this Article may be chosen in the manner and with the binding effect that governing law may be chosen in accordance with subsection (a).

(71 Del. Laws, c. 393, § 1.)

§ 5-117 Subrogation of issuer, applicant, and nominated person.

(a) An issuer that honors a beneficiary's presentation is subrogated to the rights of the beneficiary to the same extent as if the issuer were a secondary obligor of the underlying obligation owed to the beneficiary and of the applicant to the same extent as if the issuer were the secondary obligor of the underlying obligation owed to the applicant.

(b) An applicant that reimburses an issuer is subrogated to the rights of the issuer against any beneficiary, presenter, or nominated person to the same extent as if the applicant were the secondary obligor of the obligations owed to the issuer and has the rights of subrogation of the issuer to the rights of the beneficiary stated in subsection (a).

(c) A nominated person who pays or gives value against a draft or demand presented under a letter of credit is subrogated to the rights of:

(1) the issuer against the applicant to the same extent as if the nominated person were a secondary obligor of the obligation owed to the issuer by the applicant;

(2) the beneficiary to the same extent as if the nominated person were a secondary obligor of the underlying obligation owed to the beneficiary; and

(3) the applicant to same extent as if the nominated person were a secondary obligor of the underlying obligation owed to the applicant.

(d) Notwithstanding any agreement or term to the contrary, the rights of subrogation stated in subsections (a) and (b) do not arise until the issuer honors the letter of credit or otherwise pays and the rights in subsection (c) do not arise until the nominated person pays or otherwise gives value. Until then, the issuer, nominated person, and the applicant do not derive under this Section present or prospective rights forming the basis of a claim, defense, or excuse.

(71 Del. Laws, c. 393, § 1.)

§ 5-118 Security interest of issuer or nominated person.

(a) An issuer or nominated person has a security interest in a document presented under a letter of credit to the extent that the issuer or nominated person honors or gives value for the presentation.

(b) So long as and to the extent that an issuer or nominated person has not been reimbursed or has not otherwise recovered the value given with respect to a security interest in a document under subsection (a), the security interest continues and is subject to Article 9, but:

(1) a security agreement is not necessary to make the security interest enforceable under Section 9-203(b)(3);

(2) if the document is presented in a medium other than a written or other tangible medium, the security interest is perfected; and

(3) if the document is presented in a written or other tangible medium and is not a certificated security, chattel paper, a document of title, an instrument, or a letter of credit, the security interest is perfected and has priority over a conflicting security interest in the document so long as the debtor does not have possession of the document.

(72 Del. Laws, c. 401, § 16.)

Subtitle I
Uniform Commercial Code

Article 6

Bulk Transfers [Repealed].

§§ 6-101 — 6-111 Short title; "bulk transfers"; transfers of equipment; enterprises subject to this Article; bulk transfers subject to this Article; transfers excepted from this Article; schedule of property; list of creditors; notice to creditors; application of the proceeds; the notice; auction sales; "auctioneer"; what creditors protected; subsequent transfers; limitation of actions and levies [Repealed].

Repealed by 70 Del. Laws, c. 439, § 1, eff. July 3, 1996.

Subtitle I
Uniform Commercial Code
Article 7
Documents of Title
Part 1
General

§ 7-101 Short title.

This article may be cited as Uniform Commercial Code-Documents of Title.

(5A Del. C. 1953, § 7-101; 55 Del. Laws, c. 349; 74 Del. Laws, c. 332, § 39.)

§ 7-102 Definitions and index of definitions.

(a) In this article, unless the context otherwise requires:

(1) "Bailee" means a person that by a warehouse receipt, bill of lading, or other document of title acknowledges possession of goods and contracts to deliver them.

(2) "Carrier" means a person that issues a bill of lading.

(3) "Consignee" means a person named in a bill of lading to which or to whose order the bill promises delivery.

(4) "Consignor" means a person named in a bill of lading as the person from which the goods have been received for shipment.

(5) "Delivery order" means a record that contains an order to deliver goods directed to a warehouse, carrier, or other person that in the ordinary course of business issues warehouse receipts or bills of lading.

(6) [Reserved.]

(7) "Goods" means all things that are treated as movable for the purposes of a contract for storage or transportation.

(8) "Issuer" means a bailee that issues a document of title or, in the case of an unaccepted delivery order, the person that orders the possessor of goods to deliver. The term includes a person for which an agent or employee purports to act in issuing a document if the agent or employee has real or apparent authority to issue documents, even if the issuer did not receive any goods, the goods were misdescribed, or in any other respect the agent or employee violated the issuer's instructions.

(9) "Person entitled under the document" means the holder, in the case of a negotiable document of title, or the person to which delivery of the goods is to be made by the terms of, or pursuant to instructions in a record under, a nonnegotiable document of title.

(10) [Reserved.]

(11) "Sign" means, with present intent to authenticate or adopt a record:

(A) To execute or adopt a tangible symbol; or

(B) To attach to or logically associate with the record an electronic sound, symbol, or process.

(12) "Shipper" means a person that enters into a contract of transportation with a carrier.

(13) "Warehouse" means a person engaged in the business of storing goods for hire.

(b) Definitions in other articles applying to this article and the sections in which they appear are:

(1) "Contract for sale", § 2-106.

(2) "Lessee in the ordinary course of business", § 2A-103.

(3) "Receipt" of goods, § 2-103.

(c) In addition, Article 1 contains general definitions and principles of construction and interpretation applicable throughout this article.

(5A Del. C. 1953, § 7-102; 55 Del. Laws, c. 349; 74 Del. Laws, c. 332, § 39.)

§ 7-103 Relation of article to treaty or statute.

(a) This article is subject to any treaty or statute of the United States or regulatory statute of this state to the extent the treaty, statute, or regulatory statute is applicable.

(b) This article does not modify or repeal any law prescribing the form or content of a document of title or the services or facilities to be afforded by a bailee, or otherwise regulating a bailee's business in respects not specifically treated in this article. However, violation of such a law does not affect the status of a document of title that otherwise is within the definition of a document of title.

(c) This act (as defined by § 7-701) modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act (15 U.S.C. § 7001, et. seq.) but does not modify, limit, or supersede § 101(c) of that act (15 U.S.C. § 7001(c)) or authorize electronic delivery of any of the notices described in § 103(b) of that act (15 U.S.C. § 7003(b)).

(d) To the extent there is a conflict between the Uniform Electronic Transactions Act [Chapter 12A of this title] and this article, this article governs.

(5A Del. C. 1953, § 7-103; 55 Del. Laws, c. 349; 74 Del. Laws, c. 332, § 39.)

§ 7-104 Negotiable and nonnegotiable document of title.

(a) Except as otherwise provided in subsection (c), a document of title is negotiable if by its terms the goods are to be delivered to bearer or to the order of a named person.

(b) A document of title other than one described in subsection (a) is nonnegotiable. A bill of lading that states that the goods are consigned to a named person is not made negotiable by a provision that the goods are to be delivered only against an order in a record signed by the same or another named person.

(c) A document of title is nonnegotiable if, at the time it is issued, the document has a conspicuous legend, however expressed, that it is nonnegotiable.

(5A Del. C. 1953, § 7-104; 55 Del. Laws, c. 349; 74 Del. Laws, c. 332, § 39.)

§ 7-105 Reissuance in alternative medium.

(a) Upon request of a person entitled under an electronic document of title, the issuer of the electronic document may issue a tangible document of title as a substitute for the electronic document if:

(1) The person entitled under the electronic document surrenders control of the document to the issuer; and

(2) The tangible document when issued contains a statement that it is issued in substitution for the electronic document.

(b) Upon issuance of a tangible document of title in substitution for an electronic document of title in accordance with subsection (a):

(1) The electronic document ceases to have any effect or validity; and

(2) The person that procured issuance of the tangible document warrants to all subsequent persons entitled under the tangible document that the warrantor was a person entitled under the electronic document when the warrantor surrendered control of the electronic document to the issuer.

(c) Upon request of a person entitled under a tangible document of title, the issuer of the tangible document may issue an electronic document of title as a substitute for the tangible document if:

(1) The person entitled under the tangible document surrenders possession of the document to the issuer; and

(2) The electronic document when issued contains a statement that it is issued in substitution for the tangible document.

(d) Upon issuance of an electronic document of title in substitution for a tangible document of title in accordance with subsection (c):

(1) The tangible document ceases to have any effect or validity; and

(2) The person that procured issuance of the electronic document warrants to all subsequent persons entitled under the electronic document that the warrantor was a person entitled under the tangible document when the warrantor surrendered possession of the tangible document to the issuer.

(74 Del. Laws, c. 332, § 39.)

§ 7-106 Control of electronic document of title.

(a) A person has control of an electronic document of title if a system employed for evidencing the transfer of interests in the electronic document reliably establishes that person as the person to which the electronic document was issued or transferred.

(b) A system satisfies subsection (a), and a person is deemed to have control of an electronic document of title, if the document is created, stored, and assigned in such a manner that:

(1) A single authoritative copy of the document exists which is unique, identifiable, and, except as otherwise provided in paragraphs (4), (5), and (6), unalterable;

(2) The authoritative copy identifies the person asserting control as:

(A) The person to which the document was issued; or

(B) If the authoritative copy indicates that the document has been transferred, the person to which the document was most recently transferred;

(3) The authoritative copy is communicated to and maintained by the person asserting control or its designated custodian;

(4) Copies or amendments that add or change an identified assignee of the authoritative copy can be made only with the consent of the person asserting control;

(5) Each copy of the authoritative copy and any copy of a copy is readily identifiable as a copy that is not the authoritative copy; and

(6) Any amendment of the authoritative copy is readily identifiable as authorized or unauthorized.

(74 Del. Laws, c. 332, § 39.)

Part 2

Warehouse Receipts: Special Provisions

§ 7-201 Person that may issue a warehouse receipt; storage under bond.

(a) A warehouse receipt may be issued by any warehouse.

(b) If goods, including distilled spirits and agricultural commodities, are stored under a statute requiring a bond against withdrawal or a license for the issuance of receipts in the nature of warehouse receipts, a receipt issued for the goods is deemed to be a warehouse receipt even if issued by a person that is the owner of the goods and is not a warehouse.

(5A Del. C. 1953, § 7-201; 55 Del. Laws, c. 349; 74 Del. Laws, c. 332, § 39.)

§ 7-202 Form of warehouse receipt; effect of omission.

(a) A warehouse receipt need not be in any particular form.

(b) Unless a warehouse receipt provides for each of the following, the warehouse is liable for damages caused to a person injured by its omission:

(1) A statement of the location of the warehouse facility where the goods are stored;

(2) The date of issue of the receipt;

(3) The unique identification code of the receipt;

(4) A statement whether the goods received will be delivered to the bearer, to a named person, or to a named person or its order;

(5) The rate of storage and handling charges, unless goods are stored under a field warehousing arrangement, in which case a statement of that fact is sufficient on a nonnegotiable receipt;

(6) A description of the goods or the packages containing them;

(7) The signature of the warehouse or its agent;

(8) If the receipt is issued for goods that the warehouse owns, either solely, jointly, or in common with others, a statement of the fact of that ownership; and

(9) A statement of the amount of advances made and of liabilities incurred for which the warehouse claims a lien or security interest, unless the precise amount of advances made or liabilities incurred, at the time of the issue of the receipt, is unknown to the warehouse or to its agent that issued the receipt, in which case a statement of the fact that advances have been made or liabilities incurred and the purpose of the advances or liabilities is sufficient.

(c) A warehouse may insert in its receipt any terms that are not contrary to the Uniform Commercial Code and do not impair its obligation of delivery under § 7-403 or its duty of care under § 7-204. Any contrary provision is ineffective.

(5A Del. C. 1953, § 7-202; 55 Del. Laws, c. 349; 74 Del. Laws, c. 332, § 39.)

§ 7-203 Liability for nonreceipt or misdescription.

A party to or purchaser for value in good faith of a document of title, other than a bill of lading, that relies upon the description of the goods in the document may recover from the issuer damages caused by the nonreceipt or misdescription of the goods, except to the extent that:

(1) The document conspicuously indicates that the issuer does not know whether all or part of the goods in fact were received or conform to the description, such as a case in which the description is in terms of marks or labels or kind, quantity, or condition, or the receipt or description is qualified by “contents, condition, and quality unknown”, “said to contain”, or words of similar import, if the indication is true; or

(2) The party or purchaser otherwise has notice of the nonreceipt or misdescription.

(5A Del. C. 1953, § 7-203; 55 Del. Laws, c. 349; 74 Del. Laws, c. 332, § 39.)

§ 7-204 Duty of care; contractual limitation of warehouse’s liability.

(a) A warehouse is liable for damages for loss of or injury to the goods caused by its failure to exercise care with regard to the goods that a reasonably careful person would exercise under similar circumstances. Unless otherwise agreed, the warehouse is not liable for damages that could not have been avoided by the exercise of that care.

(b) Damages may be limited by a term in the warehouse receipt or storage agreement limiting the amount of liability in case of loss or damage beyond which the warehouse is not liable. Such a limitation is not effective with respect to the warehouse’s liability for conversion to its own use. On request of the bailor in a record at the time of signing the storage agreement or within a reasonable time after receipt of the warehouse receipt, the warehouse’s liability may be increased on part or all of the goods covered by the storage agreement or the warehouse receipt. In this event, increased rates may be charged based on an increased valuation of the goods.

(c) Reasonable provisions as to the time and manner of presenting claims and commencing actions based on the bailment may be included in the warehouse receipt or storage agreement.

(5A Del. C. 1953, § 7-204; 55 Del. Laws, c. 349; 74 Del. Laws, c. 332, § 39.)

§ 7-205 Title under warehouse receipt defeated in certain cases.

A buyer in ordinary course of business of fungible goods sold and delivered by a warehouse that is also in the business of buying and selling such goods takes the goods free of any claim under a warehouse receipt even if the receipt is negotiable and has been duly negotiated.

(5A Del. C. 1953, § 7-205; 55 Del. Laws, c. 349; 74 Del. Laws, c. 332, § 39.)

§ 7-206 Termination of storage at warehouse's option.

(a) A warehouse, by giving notice to the person on whose account the goods are held and any other person known to claim an interest in the goods, may require payment of any charges and removal of the goods from the warehouse at the termination of the period of storage fixed by the document of title or, if a period is not fixed, within a stated period not less than 30 days after the warehouse gives notice. If the goods are not removed before the date specified in the notice, the warehouse may sell them pursuant to § 7-210.

(b) If a warehouse in good faith believes that goods are about to deteriorate or decline in value to less than the amount of its lien within the time provided in subsection (a) and § 7-210, the warehouse may specify in the notice given under subsection (a) any reasonable shorter time for removal of the goods and, if the goods are not removed, may sell them at public sale held not less than one week after a single advertisement or posting.

(c) If, as a result of a quality or condition of the goods of which the warehouse did not have notice at the time of deposit, the goods are a hazard to other property, the warehouse facilities, or other persons, the warehouse may sell the goods at public or private sale without advertisement or posting on reasonable notification to all persons known to claim an interest in the goods. If the warehouse, after a reasonable effort, is unable to sell the goods, it may dispose of them in any lawful manner and does not incur liability by reason of that disposition.

(d) A warehouse shall deliver the goods to any person entitled to them under this article upon due demand made at any time before sale or other disposition under this section.

(e) A warehouse may satisfy its lien from the proceeds of any sale or disposition under this section but shall hold the balance for delivery on the demand of any person to which the warehouse would have been bound to deliver the goods.

(5A Del. C. 1953, § 7-206; 55 Del. Laws, c. 349; 74 Del. Laws, c. 332, § 39.)

§ 7-207 Goods must be kept separate; fungible goods.

(a) Unless the warehouse receipt provides otherwise, a warehouse shall keep separate the goods covered by each receipt so as to permit at all times identification and delivery of those goods. However, different lots of fungible goods may be commingled.

(b) If different lots of fungible goods are commingled, the goods are owned in common by the persons entitled thereto and the warehouse is severally liable to each owner for that owner's share. If, because of overissue, a mass of fungible goods is insufficient to meet all the receipts the warehouse has issued against it, the persons entitled include all holders to which overissued receipts have been duly negotiated.

(5A Del. C. 1953, § 7-207; 55 Del. Laws, c. 349; 74 Del. Laws, c. 332, § 39.)

§ 7-208 Altered warehouse receipts.

If a blank in a negotiable tangible warehouse receipt has been filled in without authority, a good-faith purchaser for value and without notice of the lack of authority may treat the insertion as authorized. Any other unauthorized alteration leaves any tangible or electronic warehouse receipt enforceable against the issuer according to its original tenor.

(5A Del. C. 1953, § 7-208; 55 Del. Laws, c. 349; 74 Del. Laws, c. 332, § 39.)

§ 7-209 Lien of warehouse.

(a) A warehouse has a lien against the bailor on the goods covered by a warehouse receipt or storage agreement or on the proceeds thereof in its possession for charges for storage or transportation, including demurrage and terminal charges, insurance, labor, or other charges, present or future, in relation to the goods, and for expenses necessary for preservation of the goods or reasonably incurred in their sale pursuant to law. If the person on whose account the goods are held is liable for similar charges or expenses in relation to other goods whenever deposited and it is stated in the warehouse receipt or storage agreement that a lien is claimed for charges and expenses in relation to other goods, the warehouse also has a lien against the goods covered by the warehouse receipt or storage agreement or on the proceeds thereof in its possession for those charges and expenses, whether or not the other goods have been delivered by the warehouse. However, as against a person to which a negotiable warehouse receipt is duly negotiated, a warehouse's lien is limited to charges in an amount or at a rate specified in the warehouse receipt or, if no charges are so specified, to a reasonable charge for storage of the specific goods covered by the receipt subsequent to the date of the receipt.

(b) A warehouse may also reserve a security interest against the bailor for the maximum amount specified on the receipt for charges other than those specified in subsection (a), such as for money advanced and interest. The security interest is governed by Article 9.

(c) A warehouse's lien for charges and expenses under subsection (a) or a security interest under subsection (b) is also effective against any person that so entrusted the bailor with possession of the goods that a pledge of them by the bailor to a good-faith purchaser for value would have been valid. However, the lien or security interest is not effective against a person that before issuance of a document of title had a legal interest or a perfected security interest in the goods and that did not:

(1) Deliver or entrust the goods or any document of title covering the goods to the bailor or the bailor's nominee with:

(A) Actual or apparent authority to ship, store, or sell;

(B) Power to obtain delivery under § 7-403; or

(C) Power of disposition under §§ 2-403, 2A-304(2), 2A-305(2), 9-320, or 9-321(c) or other statute or rule of law; or

(2) Acquiesce in the procurement by the bailor or its nominee of any document.

(d) A warehouse's lien on household goods for charges and expenses in relation to the goods under subsection (a) is also effective against all persons if the depositor was the legal possessor of the goods at the time of deposit. In this subsection, "household goods" means furniture, furnishings, or personal effects used by the depositor in a dwelling.

(e) A warehouse loses its lien on any goods that it voluntarily delivers or unjustifiably refuses to deliver.

(5A Del. C. 1953, § 7-209; 55 Del. Laws, c. 349; 74 Del. Laws, c. 332, § 39.)

§ 7-210 Enforcement of warehouse's lien.

(a) Except as otherwise provided in subsection (b), a warehouse's lien may be enforced by public or private sale of the goods, in bulk or in packages, at any time or place and on any terms that are commercially reasonable, after notifying all persons known to claim an interest in the goods. The notification must include a statement of the amount due, the nature of the proposed sale, and the time and place of any public sale. The fact that a better price could have been obtained by a sale at a different time or in a method different from that selected by the warehouse is not of itself sufficient to establish that the sale was not made in a commercially reasonable manner. The warehouse sells in a commercially reasonable manner if the warehouse sells the goods in the usual manner in any recognized market therefore, sells at the price current in that market at the time of the sale, or otherwise sells in conformity with commercially reasonable practices among dealers in the type of goods sold. A sale of more goods than apparently necessary to be offered to ensure satisfaction of the obligation is not commercially reasonable, except in cases covered by the preceding sentence.

(b) A warehouse may enforce its lien on goods, other than goods stored by a merchant in the course of its business, only if the following requirements are satisfied:

(1) All persons known to claim an interest in the goods must be notified.

(2) The notification must include an itemized statement of the claim, a description of the goods subject to the lien, a demand for payment within a specified time not less than 10 days after receipt of the notification, and a conspicuous statement that unless the claim is paid within that time the goods will be advertised for sale and sold by auction at a specified time and place.

(3) The sale must conform to the terms of the notification.

(4) The sale must be held at the nearest suitable place to where the goods are held or stored.

(5) After the expiration of the time given in the notification, an advertisement of the sale must be published once a week for two weeks consecutively in a newspaper of general circulation where the sale is to be held. The advertisement must include a description of the goods, the name of the person on whose account the goods are being held, and the time and place of the sale. The sale must take place at least 15 days after the first publication. If there is no newspaper of general circulation where the sale is to be held, the advertisement must be posted at least 10 days before the sale in not fewer than six conspicuous places in the neighborhood of the proposed sale.

(c) Before any sale pursuant to this section, any person claiming a right in the goods may pay the amount necessary to satisfy the lien and the reasonable expenses incurred in complying with this section. In that event, the goods may not be sold but must be retained by the warehouse subject to the terms of the receipt and this article.

(d) A warehouse may buy at any public sale held pursuant to this section.

(e) A purchaser in good faith of goods sold to enforce a warehouse's lien takes the goods free of any rights of persons against which the lien was valid, despite the warehouse's noncompliance with this section.

(f) A warehouse may satisfy its lien from the proceeds of any sale pursuant to this section but shall hold the balance, if any, for delivery on demand to any person to which the warehouse would have been bound to deliver the goods.

(g) The rights provided by this section are in addition to all other rights allowed by law to a creditor against a debtor.

(h) If a lien is on goods stored by a merchant in the course of its business, the lien may be enforced in accordance with subsection (a) or (b).

(i) A warehouse is liable for damages caused by failure to comply with the requirements for sale under this section and, in case of willful violation, is liable for conversion.

(5A Del. C. 1953, § 7-210; 55 Del. Laws, c. 349; 74 Del. Laws, c. 332, § 39.)

Part 3

Bills of Lading: Special Provisions

§ 7-301 Liability for nonreceipt or misdescription; "said to contain"; "shipper's weight, load, and count"; improper handling.

(a) A consignee of a nonnegotiable bill of lading which has given value in good faith, or a holder to which a negotiable bill has been duly negotiated, relying upon the description of the goods in the bill or upon the date shown in the bill, may recover from the issuer damages caused by the misdating of the bill or the nonreceipt or misdescription of the goods, except to the extent that the bill indicates that the issuer does not know whether any part or all of the goods in fact were received or conform to the description, such as in a case in

which the description is in terms of marks or labels or kind, quantity, or condition or the receipt or description is qualified by "contents or condition of contents of packages unknown", "said to contain", "shipper's weight, load, and count," or words of similar import, if that indication is true.

(b) If goods are loaded by the issuer of a bill of lading;

(1) The issuer shall count the packages of goods if shipped in packages and ascertain the kind and quantity if shipped in bulk; and

(2) Words such as "shipper's weight, load, and count," or words of similar import indicating that the description was made by the shipper are ineffective except as to goods concealed in packages.

(c) If bulk goods are loaded by a shipper that makes available to the issuer of a bill of lading adequate facilities for weighing those goods, the issuer shall ascertain the kind and quantity within a reasonable time after receiving the shipper's request in a record to do so. In that case, "shipper's weight" or words of similar import are ineffective.

(d) The issuer of a bill of lading, by including in the bill the words "shipper's weight, load, and count," or words of similar import, may indicate that the goods were loaded by the shipper, and, if that statement is true, the issuer is not liable for damages caused by the improper loading. However, omission of such words does not imply liability for damages caused by improper loading.

(e) A shipper guarantees to an issuer the accuracy at the time of shipment of the description, marks, labels, number, kind, quantity, condition, and weight, as furnished by the shipper, and the shipper shall indemnify the issuer against damage caused by inaccuracies in those particulars. This right of indemnity does not limit the issuer's responsibility or liability under the contract of carriage to any person other than the shipper.

(5A Del. C. 1953, § 7-301; 55 Del. Laws, c. 349; 74 Del. Laws, c. 332, § 39.)

§ 7-302 Through bills of lading and similar documents of title.

(a) The issuer of a through bill of lading, or other document of title embodying an undertaking to be performed in part by a person acting as its agent or by a performing carrier, is liable to any person entitled to recover on the bill or other document for any breach by the other person or the performing carrier of its obligation under the bill or other document. However, to the extent that the bill or other document covers an undertaking to be performed overseas or in territory not contiguous to the continental United States or an undertaking including matters other than transportation, this liability for breach by the other person or the performing carrier may be varied by agreement of the parties.

(b) If goods covered by a through bill of lading or other document of title embodying an undertaking to be performed in part by a person other than the issuer are received by that person, the person is subject, with respect to its own performance while the goods are in its possession, to the obligation of the issuer. The person's obligation is discharged by delivery of the goods to another person pursuant to the bill or other document and does not include liability for breach by any other person or by the issuer.

(c) The issuer of a through bill of lading or other document of title described in subsection (a) is entitled to recover from the performing carrier, or other person in possession of the goods when the breach of the obligation under the bill or other document occurred:

(1) The amount it may be required to pay to any person entitled to recover on the bill or other document for the breach, as may be evidenced by any receipt, judgment, or transcript of judgment; and

(2) The amount of any expense reasonably incurred by the issuer in defending any action commenced by any person entitled to recover on the bill or other document for the breach.

(5A Del. C. 1953, § 7-302; 55 Del. Laws, c. 349; 74 Del. Laws, c. 332, § 39.)

§ 7-303 Diversion; reconsignment; change of instructions.

(a) Unless the bill of lading otherwise provides, a carrier may deliver the goods to a person or destination other than that stated in the bill or may otherwise dispose of the goods, without liability for misdelivery, on instructions from:

(1) The holder of a negotiable bill;

(2) The consignor on a nonnegotiable bill, even if the consignee has given contrary instructions;

(3) The consignee on a nonnegotiable bill in the absence of contrary instructions from the consignor, if the goods have arrived at the billed destination or if the consignee is in possession of the tangible bill or in control of the electronic bill; or

(4) The consignee on a nonnegotiable bill, if the consignee is entitled as against the consignor to dispose of the goods.

(b) Unless instructions described in subsection (a) are included in a negotiable bill of lading, a person to which the bill is duly negotiated may hold the bailee according to the original terms.

(5A Del. C. 1953, § 7-303; 55 Del. Laws, c. 349; 74 Del. Laws, c. 332, § 39.)

§ 7-304 Tangible bills of lading in a set.

(a) Except as customary in international transportation, a tangible bill of lading may not be issued in a set of parts. The issuer is liable for damages caused by violation of this subsection.

(b) If a tangible bill of lading is lawfully issued in a set of parts, each of which contains an identification code and is expressed to be valid only if the goods have not been delivered against any other part, the whole of the parts constitutes one bill.

(c) If a tangible negotiable bill of lading is lawfully issued in a set of parts and different parts are negotiated to different persons, the title of the holder to which the first due negotiation is made prevails as to both the document of title and the goods even if any later holder may have received the goods from the carrier in good faith and discharged the carrier's obligation by surrendering its part.

(d) A person that negotiates or transfers a single part of a tangible bill of lading issued in a set is liable to holders of that part as if it were the whole set.

(e) The bailee shall deliver in accordance with Part 4 against the first presented part of a tangible bill of lading lawfully issued in a set. Delivery in this manner discharges the bailee's obligation on the whole bill.

(5A Del. C. 1953, § 7-304; 55 Del. Laws, c. 349; 74 Del. Laws, c. 332, § 39.)

§ 7-305 Destination bills.

(a) Instead of issuing a bill of lading to the consignor at the place of shipment, a carrier, at the request of the consignor, may procure the bill to be issued at destination or at any other place designated in the request.

(b) Upon request of any person entitled as against a carrier to control the goods while in transit and on surrender of possession or control of any outstanding bill of lading or other receipt covering the goods, the issuer, subject to § 7-105, may procure a substitute bill to be issued at any place designated in the request.

(5A Del. C. 1953, § 7-305; 55 Del. Laws, c. 349; 74 Del. Laws, c. 332, § 39.)

§ 7-306 Altered bills of lading.

An unauthorized alteration or filling in of a blank in a bill of lading leaves the bill enforceable according to its original tenor.

(5A Del. C. 1953, § 7-306; 55 Del. Laws, c. 349; 74 Del. Laws, c. 332, § 39.)

§ 7-307 Lien of carrier.

(a) A carrier has a lien on the goods covered by a bill of lading or on the proceeds thereof in its possession for charges after the date of the carrier's receipt of the goods for storage or transportation, including demurrage and terminal charges, and for expenses necessary for preservation of the goods incident to their transportation or reasonably incurred in their sale pursuant to law. However, against a purchaser for value of a negotiable bill of lading, a carrier's lien is limited to charges stated in the bill or the applicable tariffs or, if no charges are stated, a reasonable charge.

(b) A lien for charges and expenses under subsection (a) on goods that the carrier was required by law to receive for transportation is effective against the consignor or any person entitled to the goods unless the carrier had notice that the consignor lacked authority to subject the goods to those charges and expenses. Any other lien under subsection (a) is effective against the consignor and any person that permitted the bailor to have control or possession of the goods unless the carrier had notice that the bailor lacked authority.

(c) A carrier loses its lien on any goods that it voluntarily delivers or unjustifiably refuses to deliver.

(5A Del. C. 1953, § 7-307; 55 Del. Laws, c. 349; 74 Del. Laws, c. 332, § 39.)

§ 7-308 Enforcement of carrier's lien.

(a) A carrier's lien on goods may be enforced by public or private sale of the goods, in bulk or in packages, at any time or place and on any terms that are commercially reasonable, after notifying all persons known to claim an interest in the goods. The notification must include a statement of the amount due, the nature of the proposed sale, and the time and place of any public sale. The fact that a better price could have been obtained by a sale at a different time or in a method different from that selected by the carrier is not of itself sufficient to establish that the sale was not made in a commercially reasonable manner. The carrier sells goods in a commercially reasonable manner if the carrier sells the goods in the usual manner in any recognized market therefor, sells at the price current in that market at the time of the sale, or otherwise sells in conformity with commercially reasonable practices among dealers in the type of goods sold. A sale of more goods than apparently necessary to be offered to ensure satisfaction of the obligation is not commercially reasonable, except in cases covered by the preceding sentence.

(b) Before any sale pursuant to this section, any person claiming a right in the goods may pay the amount necessary to satisfy the lien and the reasonable expenses incurred in complying with this section. In that event, the goods may not be sold but must be retained by the carrier, subject to the terms of the bill of lading and this article.

(c) A carrier may buy at any public sale pursuant to this section.

(d) A purchaser in good faith of goods sold to enforce a carrier's lien takes the goods free of any rights of persons against which the lien was valid, despite the carrier's noncompliance with this section.

(e) A carrier may satisfy its lien from the proceeds of any sale pursuant to this section but shall hold the balance, if any, for delivery on demand to any person to which the carrier would have been bound to deliver the goods.

(f) The rights provided by this section are in addition to all other rights allowed by law to a creditor against a debtor.

(g) A carrier's lien may be enforced pursuant to either subsection (a) or the procedure set forth in § 7-210(b).

(h) A carrier is liable for damages caused by failure to comply with the requirements for sale under this section and, in case of willful violation, is liable for conversion.

(5A Del. C. 1953, § 7-308; 55 Del. Laws, c. 349; 74 Del. Laws, c. 332, § 39.)

§ 7-309 Duty of care; contractual limitation of carrier's liability.

(a) A carrier that issues a bill of lading, whether negotiable or nonnegotiable, shall exercise the degree of care in relation to the goods which a reasonably careful person would exercise under similar circumstances. This subsection does not affect any statute, regulation, or rule of law that imposes liability upon a common carrier for damages not caused by its negligence.

(b) Damages may be limited by a term in the bill of lading or in a transportation agreement that the carrier's liability may not exceed a value stated in the bill or transportation agreement if the carrier's rates are dependent upon value and the consignor is afforded an opportunity to declare a higher value and the consignor is advised of the opportunity. However, such a limitation is not effective with respect to the carrier's liability for conversion to its own use.

(c) Reasonable provisions as to the time and manner of presenting claims and commencing actions based on the shipment may be included in a bill of lading or a transportation agreement.

(5A Del. C. 1953, § 7-309; 55 Del. Laws, c. 349; 74 Del. Laws, c. 332, § 39.)

Part 4

Warehouse Receipts and Bills of Lading: General Obligations

§ 7-401 Irregularities in issue of receipt or bill or conduct of issuer.

The obligations imposed by this article on an issuer apply to a document of title even if:

(1) The document does not comply with the requirements of this article or of any other statute, rule, or regulation regarding its issuance, form, or content;

(2) The issuer violated laws regulating the conduct of its business;

(3) The goods covered by the document were owned by the bailee when the document was issued; or

(4) The person issuing the document is not a warehouse but the document purports to be a warehouse receipt.

(5A Del. C. 1953, § 7-401; 55 Del. Laws, c. 349; 74 Del. Laws, c. 332, § 39.)

§ 7-402 Duplicate document of title; overissue.

A duplicate or any other document of title purporting to cover goods already represented by an outstanding document of the same issuer does not confer any right in the goods, except as provided in the case of tangible bills of lading in a set of parts, overissue of documents for fungible goods, substitutes for lost, stolen, or destroyed documents, or substitute documents issued pursuant to § 7-105. The issuer is liable for damages caused by its overissue or failure to identify a duplicate document by a conspicuous notation.

(5A Del. C. 1953, § 7-402; 55 Del. Laws, c. 349; 74 Del. Laws, c. 332, § 39.)

§ 7-403 Obligation of bailee to deliver; excuse.

(a) A bailee shall deliver the goods to a person entitled under a document of title if the person complies with subsections (b) and (c), unless and to the extent that the bailee establishes any of the following:

(1) Delivery of the goods to a person whose receipt was rightful as against the claimant;

(2) Damage to or delay, loss, or destruction of the goods for which the bailee is not liable;

(3) Previous sale or other disposition of the goods in lawful enforcement of a lien or on a warehouse's lawful termination of storage;

(4) The exercise by a seller of its right to stop delivery pursuant to § 2-705 or by a lessor of its right to stop delivery pursuant to § 2A-526;

(5) A diversion, reconsignment, or other disposition pursuant to § 7-303;

(6) Release, satisfaction, or any other personal defense against the claimant; or

(7) Any other lawful excuse.

(b) A person claiming goods covered by a document of title shall satisfy the bailee's lien if the bailee so requests or if the bailee is prohibited by law from delivering the goods until the charges are paid.

(c) Unless a person claiming the goods is a person against which the document of title does not confer a right under § 7-503(a):

(1) The person claiming under a document shall surrender possession or control of any outstanding negotiable document covering the goods for cancellation or indication of partial deliveries; and

(2) The bailee shall cancel the document or conspicuously indicate in the document the partial delivery or the bailee is liable to any person to which the document is duly negotiated.

(5A Del. C. 1953, § 7-403; 55 Del. Laws, c. 349; 74 Del. Laws, c. 332, § 39.)

§ 7-404 No liability for good-faith delivery pursuant to document of title.

A bailee that in good faith has received goods and delivered or otherwise disposed of the goods according to the terms of a document of title or pursuant to this article is not liable for the goods even if:

(1) The person from which the bailee received the goods did not have authority to procure the document or to dispose of the goods; or

(2) The person to which the bailee delivered the goods did not have authority to receive the goods.

(5A Del. C. 1953, § 7-404; 55 Del. Laws, c. 349; 74 Del. Laws, c. 332, § 39.)

Part 5

Warehouse Receipts and Bills of Lading: Negotiation and Transfer

§ 7-501 Form of negotiation and requirements of due negotiation.

(a) The following rules apply to a negotiable tangible document of title:

(1) If the document's original terms run to the order of a named person, the document is negotiated by the named person's indorsement and delivery. After the named person's indorsement in blank or to bearer, any person may negotiate the document by delivery alone.

(2) If the document's original terms run to bearer, it is negotiated by delivery alone.

(3) If the document's original terms run to the order of a named person and it is delivered to the named person, the effect is the same as if the document had been negotiated.

(4) Negotiation of the document after it has been indorsed to a named person requires indorsement by the named person and delivery.

(5) A document is duly negotiated if it is negotiated in the manner stated in this subsection to a holder that purchases it in good faith, without notice of any defense against or claim to it on the part of any person, and for value, unless it is established that the negotiation is not in the regular course of business or financing or involves receiving the document in settlement or payment of a monetary obligation.

(b) The following rules apply to a negotiable electronic document of title:

(1) If the document's original terms run to the order of a named person or to bearer, the document is negotiated by delivery of the document to another person. Indorsement by the named person is not required to negotiate the document.

(2) If the document's original terms run to the order of a named person and the named person has control of the document, the effect is the same as if the document had been negotiated.

(3) A document is duly negotiated if it is negotiated in the manner stated in this subsection to a holder that purchases it in good faith, without notice of any defense against or claim to it on the part of any person, and for value, unless it is established that the negotiation is not in the regular course of business or financing or involves taking delivery of the document in settlement or payment of a monetary obligation.

(c) Indorsement of a nonnegotiable document of title neither makes it negotiable nor adds to the transferee's rights.

(d) The naming in a negotiable bill of lading of a person to be notified of the arrival of the goods does not limit the negotiability of the bill or constitute notice to a purchaser of the bill of any interest of that person in the goods.

(5A Del. C. 1953, § 7-501; 55 Del. Laws, c. 349; 74 Del. Laws, c. 332, § 39.)

§ 7-502 Rights acquired by due negotiation.

(a) Subject to §§ 7-205 and 7-503, a holder to which a negotiable document of title has been duly negotiated acquires thereby:

(1) Title to the document;

(2) Title to the goods;

(3) All rights accruing under the law of agency or estoppel, including rights to goods delivered to the bailee after the document was issued; and

(4) The direct obligation of the issuer to hold or deliver the goods according to the terms of the document free of any defense or claim by the issuer except those arising under the terms of the document or under this article, but in the case of a delivery order, the bailee's obligation accrues only upon the bailee's acceptance of the delivery order and the obligation acquired by the holder is that the issuer and any indorser will procure the acceptance of the bailee.

(b) Subject to § 7-503, title and rights acquired by due negotiation are not defeated by any stoppage of the goods represented by the document of title or by surrender of the goods by the bailee and are not impaired even if:

(1) The due negotiation or any prior due negotiation constituted a breach of duty;

(2) Any person has been deprived of possession of a negotiable tangible document or control of a negotiable electronic document by misrepresentation, fraud, accident, mistake, duress, loss, theft, or conversion; or

(3) A previous sale or other transfer of the goods or document has been made to a third person.

(5A Del. C. 1953, § 7-502; 55 Del. Laws, c. 349; 74 Del. Laws, c. 332, § 39.)

§ 7-503 Document of title to goods defeated in certain cases.

(a) A document of title confers no right in goods against a person that before issuance of the document had a legal interest or a perfected security interest in the goods and that did not:

(1) Deliver or entrust the goods or any document of title covering the goods to the bailor or the bailor's nominee with:

(A) Actual or apparent authority to ship, store, or sell;

(B) Power to obtain delivery under § 7-403; or

(C) Power of disposition under § 2-403, 2A-304(2), 2A-305(2), 9-320, or 9-321(c) or other statute or rule of law; or

(D) Acquiesce in the procurement by the bailor or its nominee of any document.

(b) Title to goods based upon an unaccepted delivery order is subject to the rights of any person to which a negotiable warehouse receipt or bill of lading covering the goods has been duly negotiated. That title may be defeated under § 7-504 to the same extent as the rights of the issuer or a transferee from the issuer.

(c) Title to goods based upon a bill of lading issued to a freight forwarder is subject to the rights of any person to which a bill issued by the freight forwarder is duly negotiated. However, delivery by the carrier in accordance with Part 4 pursuant to its own bill of lading discharges the carrier's obligation to deliver.

(5A Del. C. 1953, § 7-503; 55 Del. Laws, c. 349; 72 Del. Laws, c. 401, § 17; 74 Del. Laws, c. 332, § 39.)

§ 7-504 Rights acquired in absence of due negotiation; effect of diversion; stoppage of delivery.

(a) A transferee of a document of title, whether negotiable or nonnegotiable, to which the document has been delivered but not duly negotiated, acquires the title and rights that its transferor had or had actual authority to convey.

(b) In the case of a transfer of a nonnegotiable document of title, until but not after the bailee receives notice of the transfer, the rights of the transferee may be defeated:

(1) By those creditors of the transferor which could treat the transfer as void under § 2-402 or 2A-308;

(2) By a buyer from the transferor in ordinary course of business if the bailee has delivered the goods to the buyer or received notification of the buyer's rights;

(3) By a lessee from the transferor in ordinary course of business if the bailee has delivered the goods to the lessee or received notification of the lessee's rights; or

(4) As against the bailee, by good-faith dealings of the bailee with the transferor.

(c) A diversion or other change of shipping instructions by the consignor in a nonnegotiable bill of lading which causes the bailee not to deliver the goods to the consignee defeats the consignee's title to the goods if the goods have been delivered to a buyer in ordinary course of business or a lessee in ordinary course of business and, in any event, defeats the consignee's rights against the bailee.

(d) Delivery of the goods pursuant to a nonnegotiable document of title may be stopped by a seller under § 2-705 or a lessor under § 2A-526, subject to the requirements of due notification in those sections. A bailee that honors the seller's or lessor's instructions is entitled to be indemnified by the seller or lessor against any resulting loss or expense.

(5A Del. C. 1953, § 7-504; 55 Del. Laws, c. 349; 74 Del. Laws, c. 332, § 39.)

§ 7-505 Indorser not guarantor for other parties.

The indorsement of a tangible document of title issued by a bailee does not make the indorser liable for any default by the bailee or previous indorsers.

(5A Del. C. 1953, § 7-505; 55 Del. Laws, c. 349; 74 Del. Laws, c. 332, § 39.)

§ 7-506 Delivery without indorsement: right to compel indorsement.

The transferee of a negotiable tangible document of title has a specifically enforceable right to have its transferor supply any necessary indorsement, but the transfer becomes a negotiation only as of the time the indorsement is supplied.

(5A Del. C. 1953, § 7-506; 55 Del. Laws, c. 349; 74 Del. Laws, c. 332, § 39.)

§ 7-507 Warranties on negotiation or delivery of document of title.

If a person negotiates or delivers a document of title for value, otherwise than as a mere intermediary under Section 7-508, unless otherwise agreed, the transferor, in addition to any warranty made in selling or leasing the goods, warrants to its immediate purchaser only that:

(1) The document is genuine;

(2) The transferor does not have knowledge of any fact that would impair the document's validity or worth; and

(3) The negotiation or delivery is rightful and fully effective with respect to the title to the document and the goods it represents.

(5A Del. C. 1953, § 7-507; 55 Del. Laws, c. 349; 74 Del. Laws, c. 332, § 39.)

§ 7-508 Warranties of collecting bank as to documents of title.

A collecting bank or other intermediary known to be entrusted with documents of title on behalf of another or with collection of a draft or other claim against delivery of documents warrants by the delivery of the documents only its own good faith and authority even if the collecting bank or other intermediary has purchased or made advances against the claim or draft to be collected.

(5A Del. C. 1953, § 7-508; 55 Del. Laws, c. 349; 74 Del. Laws, c. 332, § 39.)

§ 7-509 Adequate compliance with commercial contract.

Whether a document of title is adequate to fulfill the obligations of a contract for sale, a contract for lease, or the conditions of a letter of credit is determined by Article 2, 2A, or 5.

(5A Del. C. 1953, § 7-509; 55 Del. Laws, c. 349; 74 Del. Laws, c. 332, § 39.)

Part 6

Warehouse Receipts and Bills of Lading: Miscellaneous Provisions

§ 7-601 Lost, stolen, or destroyed documents of title.

(a) If a document of title is lost, stolen, or destroyed, a court may order delivery of the goods or issuance of a substitute document and the bailee may without liability to any person comply with the order. If the document was negotiable, a court may not order delivery of the goods or issuance of a substitute document without the claimant's posting security unless it finds that any person that may suffer loss as a result of nonsurrender of possession or control of the document is adequately protected against the loss. If the document was nonnegotiable, the court may require security. The court may also order payment of the bailee's reasonable costs and attorney's fees in any action under this subsection.

(b) A bailee that, without a court order, delivers goods to a person claiming under a missing negotiable document of title is liable to any person injured thereby. If the delivery is not in good faith, the bailee is liable for conversion. Delivery in good faith is not conversion if the claimant posts security with the bailee in an amount at least double the value of the goods at the time of posting to indemnify any person injured by the delivery which files a notice of claim within one year after the delivery.

(5A Del. C. 1953, § 7-601; 55 Del. Laws, c. 349; 74 Del. Laws, c. 332, § 39.)

§ 7-602 Judicial process against goods covered by negotiable document of title.

Unless a document of title was originally issued upon delivery of the goods by a person that did not have power to dispose of them, a lien does not attach by virtue of any judicial process to goods in the possession of a bailee for which a negotiable document of title is outstanding unless possession or control of the document is first surrendered to the bailee or the document's negotiation is enjoined. The bailee may not be compelled to deliver the goods pursuant to process until possession or control of the document is surrendered to the bailee or to the court. A purchaser of the document for value without notice of the process or injunction takes free of the lien imposed by judicial process.

(5A Del. C. 1953, § 7-602; 55 Del. Laws, c. 349; 74 Del. Laws, c. 332, § 39.)

§ 7-603 Conflicting claims; interpleader.

If more than one person claims title to or possession of the goods, the bailee is excused from delivery until the bailee has a reasonable time to ascertain the validity of the adverse claims or to commence an action for interpleader. The bailee may assert an interpleader either in defending an action for nondelivery of the goods or by original action.

(5A Del. C. 1953, § 7-603; 55 Del. Laws, c. 349; 74 Del. Laws, c. 332, § 39.)

Part 7

Miscellaneous Provisions

§ 7-701 Applicability.

References in this part to this "act" refer to the legislative enactment by which this part is added to the Uniform Commercial Code. This act applies to a document of title that is issued or a bailment that arises on or after the effective date of this act. This act does not apply to a document of title that is issued or a bailment that arises before the effective date of this act even if the document of title or bailment would be subject to this Act if the document of title had been issued or bailment had arisen on or after the effective date of this act. This act does not apply to a right of action that has accrued before the effective date of this act.

(74 Del. Laws, c. 332, § 39.)

§ 7-702 Savings clause.

A document of title issued or a bailment that arises before the effective date of this act and the rights, obligations, and interests flowing from that document or bailment are governed by any statute or other rule amended or repealed by this Act as if amendment or repeal had not occurred and may be terminated, completed, consummated, or enforced under that statute or other rule.

(74 Del. Laws, c. 332, § 39.)

Subtitle I
Uniform Commercial Code

Article 8
Investment Securities

Part 1
Short Title and General Matters

§ 8-101 Short title.

This Article may be cited as Uniform Commercial Code—Investment Securities.

(5A Del. C. 1953, § 8-101; 55 Del. Laws, c. 349; 64 Del. Laws, c. 152, § 6; 71 Del. Laws, c. 75, § 1.)

§ 8-102 Definitions.

(a) In this Article:

(1) "Adverse claim" means a claim that a claimant has a property interest in a financial asset and that it is a violation of the rights of the claimant for another person to hold, transfer, or deal with the financial asset.

(2) "Bearer form," as applied to a certificated security, means a form in which the security is payable to the bearer of the security certificate according to its terms but not by reason of an endorsement.

(3) "Broker" means a person defined as a broker or dealer under the federal securities laws, but without excluding a bank acting in that capacity.

(4) "Certificated security" means a security that is represented by a certificate.

(5) "Clearing corporation" means:

(i) a person that is registered as a "clearing agency" under the federal securities laws;

(ii) a federal reserve bank; or

(iii) any other person that provides clearance or settlement services with respect to financial assets that would require it to register as a clearing agency under the federal securities laws but for an exclusion or exemption from the registration requirement, if its activities as a clearing corporation, including promulgation of rules, are subject to regulation by a federal or state governmental authority.

(6) "Communicate" means to:

(i) send a signed writing; or

(ii) transmit information by any mechanism agreed upon by the persons transmitting and receiving the information.

(7) "Entitlement holder" means a person identified in the records of a securities intermediary as the person having a security entitlement against the securities intermediary. If a person acquires a security entitlement by virtue of Section 8-501(b)(2) or (3), that person is the entitlement holder.

(8) "Entitlement order" means a notification communicated to a securities intermediary directing transfer or redemption of a financial asset to which the entitlement holder has a security entitlement.

(9) "Financial asset," except as otherwise provided in Section 8-103, means:

(i) a security;

(ii) an obligation of a person or a share, participation, or other interest in a person or in property or an enterprise of a person, which is, or is of a type, dealt in or traded on financial markets, or which is recognized in any area in which it is issued or dealt in as a medium for investment; or

(iii) any property that is held by a securities intermediary for another person in a securities account if the securities intermediary has expressly agreed with the other person that the property is to be treated as a financial asset under this Article.

As context requires, the term means either the interest itself or the means by which a person's claim to it is evidenced, including a certificated or uncertificated security, a security certificate, or a security entitlement.

(10) [Reserved.]

(11) "Endorsement" means a signature that alone or accompanied by other words is made on a security certificate in registered form or on a separate document for the purpose of assigning, transferring, or redeeming the security or granting a power to assign, transfer, or redeem it.

(12) "Instruction" means a notification communicated to the issuer of an uncertificated security which directs that the transfer of the security be registered or that the security be redeemed.

(13) "Registered form," as applied to a certificated security, means a form in which:

(i) the security certificate specifies a person entitled to the security; and

(ii) a transfer of the security may be registered upon books maintained for that purpose by or on behalf of the issuer, or the security certificate so states.

(14) "Securities intermediary" means:

(i) a clearing corporation; or

(ii) a person, including a bank or broker, that in the ordinary course of its business maintains securities accounts for others and is acting in that capacity.

(15) "Security," except as otherwise provided in Section 8-103, means an obligation of an issuer or a share, participation, or other interest in an issuer or in property or an enterprise of an issuer:

(i) which is represented by a security certificate in bearer or registered form, or the transfer of which may be registered upon books maintained for that purpose by or on behalf of the issuer;

(ii) which is one of a class or series or by its terms is divisible into a class or series of shares, participations, interests, or obligations; and

(iii) which:

(A) is, or is of a type, dealt in or traded on securities exchanges or securities markets; or

(B) is a medium for investment and by its terms expressly provides that it is a security governed by this Article.

(16) "Security certificate" means a certificate representing a security.

(17) "Security entitlement" means the rights and property interest of an entitlement holder with respect to a financial asset specified in Part 5.

(18) "Uncertificated security" means a security that is not represented by a certificate.

(b) Other definitions applying to this Article and the sections in which they appear are:

Appropriate		person
Section 8–107		
Control		
Section 8–106		
Delivery		
Section 8–301		
Investment	company	security
Section 8–103		
Issuer		
Section 8–201		
Overissue		
Section 8–210		
Protected		purchaser
Section 8–303		
Securities		account
Section 8–501		

(c) In addition, Article 1 contains general definitions and principles of construction and interpretation applicable throughout this Article.

(d) The characterization of a person, business, or transaction for purposes of this Article does not determine the characterization of the person, business, or transaction for purposes of any other law, regulation, or rule.

(5A Del. C. 1953, § 8-102; 55 Del. Laws, c. 349; 58 Del. Laws, c. 476; 64 Del. Laws, c. 152, § 6; 67 Del. Laws, c. 330, § 3; 68 Del. Laws, c. 296, §§ 1-3; 71 Del. Laws, c. 75, § 1; 74 Del. Laws, c. 332, § 40.)

§ 8-103 Rules for determining whether certain obligations and interests are securities or financial assets.

(a) A share or similar equity interest issued by a corporation, business trust, statutory trust, joint stock company, or similar entity is a security.

(b) An "investment company security" is a security. "Investment company security" means a share or similar equity interest issued by an entity that is registered as an investment company under the federal investment company laws, an interest in a unit investment trust

that is so registered, or a face-amount certificate issued by a face-amount certificate company that is so registered. Investment company security does not include an insurance policy or endowment policy or annuity contract issued by an insurance company.

(c) An interest in a partnership or limited liability company is not a security unless it is dealt in or traded on securities exchanges or in securities markets, its terms expressly provide that it is a security governed by this Article, or it is an investment company security. However, an interest in a partnership or limited liability company is a financial asset if it is held in a securities account.

(d) A writing that is a security certificate is governed by this Article and not by Article 3, even though it also meets the requirements of that Article. However, a negotiable instrument governed by Article 3 is a financial asset if it is held in a securities account.

(e) An option or similar obligation issued by a clearing corporation to its participants is not a security, but is a financial asset.

(f) A commodity contract, as defined in Section 9-102(a)(15), is not a security or a financial asset.

(g) A document of title is not a financial asset unless Section 8-102(a)(9)(iii) applies.

(71 Del. Laws, c. 75, § 1; 72 Del. Laws, c. 401, § 18; 73 Del. Laws, c. 329, § 6; 74 Del. Laws, c. 332, § 41.)

§ 8-104 Acquisition of security or financial asset or interest therein.

(a) A person acquires a security or an interest therein, under this Article, if:

(1) the person is a purchaser to whom a security is delivered pursuant to Section 8-301; or

(2) the person acquires a security entitlement to the security pursuant to Section 8-501.

(b) A person acquires a financial asset, other than a security, or an interest therein, under this Article, if the person acquires a security entitlement to the financial asset.

(c) A person who acquires a security entitlement to a security or other financial asset has the rights specified in Part 5, but is a purchaser of any security, security entitlement, or other financial asset held by the securities intermediary only to the extent provided in Section 8-503.

(d) Unless the context shows that a different meaning is intended, a person who is required by other law, regulation, rule, or agreement to transfer, deliver, present, surrender, exchange, or otherwise put in the possession of another person a security or financial asset satisfies that requirement by causing the other person to acquire an interest in the security or financial asset pursuant to subsection (a) or (b).

(71 Del. Laws, c. 75, § 1.)

§ 8-105 Notice of adverse claim.

(a) A person has notice of an adverse claim if:

(1) the person knows of the adverse claim;

(2) the person is aware of facts sufficient to indicate that there is a significant probability that the adverse claim exists and deliberately avoids information that would establish the existence of the adverse claim; or

(3) the person has a duty, imposed by statute or regulation, to investigate whether an adverse claim exists, and the investigation so required would establish the existence of the adverse claim.

(b) Having knowledge that a financial asset or interest therein is or has been transferred by a representative imposes no duty of inquiry into the rightfulness of a transaction and is not notice of an adverse claim. However, a person who knows that a representative has transferred a financial asset or interest therein in a transaction that is, or whose proceeds are being used, for the individual benefit of the representative or otherwise in breach of duty has notice of an adverse claim.

(c) An act or event that creates a right to immediate performance of the principal obligation represented by a security certificate or sets a date on or after which the certificate is to be presented or surrendered for redemption or exchange does not itself constitute notice of an adverse claim except in the case of a transfer more than:

(1) one year after a date set for presentment or surrender for redemption or exchange; or

(2) six months after a date set for payment of money against presentation or surrender of the certificate, if money was available for payment on that date.

(d) A purchaser of a certificated security has notice of an adverse claim if the security certificate:

(1) whether in bearer or registered form, has been endorsed “for collection” or “for surrender” or for some other purpose not involving transfer; or

(2) is in bearer form and has on it an unambiguous statement that it is the property of a person other than the transferor, but the mere writing of a name on the certificate is not such a statement.

(e) Filing of a financing statement under Article 9 is not notice of an adverse claim to a financial asset.

(5A Del. C. 1953, § 8-304; 55 Del. Laws, c. 349; 64 Del. Laws, c. 152, § 6; 71 Del. Laws, c. 75, § 1.)

§ 8-106 Control.

(a) A purchaser has “control” of a certificated security in bearer form if the certificated security is delivered to the purchaser.

(b) A purchaser has “control” of a certificated security in registered form if the certificated security is delivered to the purchaser, and:

(1) the certificate is endorsed to the purchaser or in blank by an effective endorsement; or

(2) the certificate is registered in the name of the purchaser, upon original issue or registration of transfer by the issuer.

(c) A purchaser has "control" of an uncertificated security if:

(1) the uncertificated security is delivered to the purchaser;

(2) the issuer has agreed that it will comply with instructions originated by the purchaser without further consent by the registered owner; or

(3) the issuer, the registered owner, and the purchaser have authenticated a record that (i) is conspicuously denominated a control agreement, (ii) identifies the uncertificated security in which the purchaser claims an interest, and (iii) contains 1 or more provisions addressing instructions relating to the uncertificated security or the right to originate instructions relating to the uncertificated security.

(d) A purchaser has "control" of a security entitlement if:

(1) the purchaser becomes the entitlement holder;

(2) the securities intermediary has agreed that it will comply with entitlement orders originated by the purchaser without further consent by the entitlement holder;

(3) another person has control of the security entitlement on behalf of the purchaser or, having previously acquired control of the security entitlement, acknowledges that it has control on behalf of the purchaser; or

(4) the securities intermediary, the entitlement holder, and the purchaser have authenticated a record that (i) is conspicuously denominated a control agreement, (ii) identifies the security entitlement in which the purchaser claims an interest, and (iii) contains one or more provisions addressing entitlement orders relating to the security entitlement or the right to originate entitlement orders relating to the security entitlement.

(e) If an interest in a security entitlement is granted by the entitlement holder to the entitlement holder's own securities intermediary, the securities intermediary has control.

(f) A purchaser who has satisfied the requirements of subsection (c) or (d) has control, even if the registered owner in the case of subsection (c) or the entitlement holder in the case of subsection (d) retains the right to make substitutions for the uncertificated security or security entitlement, to originate instructions or entitlement orders to the issuer or securities intermediary, or otherwise to deal with the uncertificated security or security entitlement.

(g) An issuer or a securities intermediary may not enter into an agreement of the kind described in subsection (c)(2), (c)(3), (d)(2), or (d)(4) without the consent of the registered owner or entitlement holder, but an issuer or a securities intermediary is not required to enter into such an agreement even though the registered owner or entitlement holder so directs. An issuer or securities intermediary that has entered into such an agreement is not required to confirm the existence of the agreement to another party unless requested to do so by the registered owner or entitlement holder.

(h) Under subsection (c)(2), (c)(3), (d)(2), or (d)(4), authentication of a record does not impose upon the issuer or securities intermediary any duty not expressly agreed to by the issuer or securities intermediary in the record.

(i) A purchaser has "control" under subsection (c)(2), (c)(3), (d)(2), or (d)(4) even if any duty of the issuer or the securities intermediary to comply with instructions or entitlement orders originated by the purchaser is subject to any condition or conditions (other than further consent by the registered owner or the entitlement holder).

(71 Del. Laws, c. 75, § 1; 72 Del. Laws, c. 401, §§ 19, 20; 76 Del. Laws, c. 92, §§ 4-7.)

§ 8-107 Whether endorsement, instruction, or entitlement order is effective.

(a) "Appropriate person" means:

(1) with respect to an endorsement, the person specified by a security certificate or by an effective special endorsement to be entitled to the security;

(2) with respect to an instruction, the registered owner of an uncertificated security;

(3) with respect to an entitlement order, the entitlement holder;

(4) if the person designated in paragraph (1), (2), or (3) is deceased, the designated person's successor taking under other law or the designated person's personal representative acting for the estate of the decedent; or

(5) if the person designated in paragraph (1), (2), or (3) lacks capacity, the designated person's guardian, conservator, or other similar representative who has power under other law to transfer the security or financial asset.

(b) An endorsement, instruction, or entitlement order is effective if:

(1) it is made by the appropriate person;

(2) it is made by a person who has power under the law of agency to transfer the security or financial asset on behalf of the appropriate person, including, in the case of an instruction or entitlement order, a person who has control under Section 8-106(c)(2) or (d)(2); or

(3) the appropriate person has ratified it or is otherwise precluded from asserting its ineffectiveness.

(c) An endorsement, instruction, or entitlement order made by a representative is effective even if:

(1) the representative has failed to comply with a controlling instrument or with the law of the State having jurisdiction of the representative relationship, including any law requiring the representative to obtain court approval of the transaction; or

(2) the representative's action in making the endorsement, instruction, or entitlement order or using the proceeds of the transaction is otherwise a breach of duty.

(d) If a security is registered in the name of or specially endorsed to a person described as a representative, or if a securities account is maintained in the name of a person described as a representative, an endorsement, instruction, or entitlement order made by the person is effective even though the person is no longer serving in the described capacity.

(e) Effectiveness of an endorsement, instruction, or entitlement order is determined as of the date the endorsement, instruction, or entitlement order is made, and an endorsement, instruction, or entitlement order does not become ineffective by reason of any later change of circumstances.

(71 Del. Laws, c. 75, § 1.)

§ 8-108 Warranties in direct holding.

(a) A person who transfers a certificated security to a purchaser for value warrants to the purchaser, and an endorser, if the transfer is by endorsement, warrants to any subsequent purchaser, that:

(1) the certificate is genuine and has not been materially altered;

(2) the transferor or endorser does not know of any fact that might impair the validity of the security;

(3) there is no adverse claim to the security;

(4) the transfer does not violate any restriction on transfer;

(5) if the transfer is by endorsement, the endorsement is made by an appropriate person, or if the endorsement is by an agent, the agent has actual authority to act on behalf of the appropriate person; and

(6) the transfer is otherwise effective and rightful.

(b) A person who originates an instruction for registration of transfer of an uncertificated security to a purchaser for value warrants to the purchaser that:

(1) the instruction is made by an appropriate person, or if the instruction is by an agent, the agent has actual authority to act on behalf of the appropriate person;

(2) the security is valid;

(3) there is no adverse claim to the security; and

(4) at the time the instruction is presented to the issuer:

(i) the purchaser will be entitled to the registration of transfer;

(ii) the transfer will be registered by the issuer free from all liens, security interests, restrictions, and claims other than those specified in the instruction;

(iii) the transfer will not violate any restriction on transfer; and

(iv) the requested transfer will otherwise be effective and rightful.

(c) A person who transfers an uncertificated security to a purchaser for value and does not originate an instruction in connection with the transfer warrants that:

(1) the uncertificated security is valid;

(2) there is no adverse claim to the security;

(3) the transfer does not violate any restriction on transfer; and

(4) the transfer is otherwise effective and rightful.

(d) A person who endorses a security certificate warrants to the issuer that:

(1) there is no adverse claim to the security; and

(2) the endorsement is effective.

(e) A person who originates an instruction for registration of transfer of an uncertificated security warrants to the issuer that:

(1) the instruction is effective; and

(2) at the time the instruction is presented to the issuer the purchaser will be entitled to the registration of transfer.

(f) A person who presents a certificated security for registration of transfer or for payment or exchange warrants to the issuer that the person is entitled to the registration, payment, or exchange, but a purchaser for value and without notice of adverse claims to whom transfer is registered warrants only that the person has no knowledge of any unauthorized signature in a necessary endorsement.

(g) If a person acts as agent of another in delivering a certificated security to a purchaser, the identity of the principal was known to the person to whom the certificate was delivered, and the certificate delivered by the agent was received by the agent from the principal or received by the agent from another person at the direction of the principal, the person delivering the security certificate warrants only that the delivering person has authority to act for the principal and does not know of any adverse claim to the certificated security.

(h) A secured party who redelivers a security certificate received, or after payment and on order of the debtor delivers the security certificate to another person, makes only the warranties of an agent under subsection (g).

(i) Except as otherwise provided in subsection (g), a broker acting for a customer makes to the issuer and a purchaser the warranties provided in subsections (a) through (f). A broker that delivers a security certificate to its customer, or causes its customer to be registered as the owner of an uncertificated security, makes to the customer the warranties provided in subsection (a) or (b), and has the rights and privileges of a purchaser under this section. The warranties of and in favor of the broker acting as an agent are in addition to applicable warranties given by and in favor of the customer.

(5A Del. C. 1953, § 8-306; 55 Del. Laws, c. 349; 64 Del. Laws, c. 152, § 6; 71 Del. Laws, c. 75, § 1.)

§ 8-109 Warranties in indirect holding.

(a) A person who originates an entitlement order to a securities intermediary warrants to the securities intermediary that:

(1) the entitlement order is made by an appropriate person, or if the entitlement order is by an agent, the agent has actual authority to act on behalf of the appropriate person; and

(2) there is no adverse claim to the security entitlement.

(b) A person who delivers a security certificate to a securities intermediary for credit to a securities account or originates an instruction with respect to an uncertificated security directing that the uncertificated security be credited to a securities account makes to the securities intermediary the warranties specified in Section 8-108(a) or (b).

(c) If a securities intermediary delivers a security certificate to its entitlement holder or causes its entitlement holder to be registered as the owner of an uncertificated security, the securities intermediary makes to the entitlement holder the warranties specified in Section 8-108(a) or (b).

(5A Del. C. 1953, § 8-306; 55 Del. Laws, c. 349; 64 Del. Laws, c. 152, § 6; 71 Del. Laws, c. 75, § 1.)

§ 8-110 Applicability; choice of law.

(a) The local law of the issuer's jurisdiction, as specified in subsection (d), governs:

(1) the validity of a security;

(2) the rights and duties of the issuer with respect to registration of transfer;

(3) the effectiveness of registration of transfer by the issuer;

(4) whether the issuer owes any duties to an adverse claimant to a security;

(5) whether an adverse claim can be asserted against a person to whom transfer of a certificated or uncertificated security is registered or a person who obtains control of an uncertificated security; and

(6) the effectiveness of a restriction on transfer of a security or an interest therein.

(b) The local law of the securities intermediary's jurisdiction, as specified in subsection (e), governs:

(1) acquisition of a security entitlement from the securities intermediary;

(2) the rights and duties of the securities intermediary and entitlement holder arising out of a security entitlement;

(3) whether the securities intermediary owes any duties to an adverse claimant to a security entitlement; and

(4) whether an adverse claim can be asserted against a person who acquires a security entitlement from the securities intermediary or a person who purchases a security entitlement or interest therein from an entitlement holder.

(c) The local law of the jurisdiction in which a security certificate is located at the time of delivery governs whether an adverse claim can be asserted against a person to whom the security certificate is delivered.

(d) "Issuer's jurisdiction" means the jurisdiction under which the issuer of the security is organized or, if permitted by the law of another jurisdiction, the law of this State.

(e) The following rules determine a "securities intermediary's jurisdiction" for purposes of this section:

(1) If an agreement between the securities intermediary and its entitlement holder governing the securities account expressly provides that a particular jurisdiction is the securities intermediary's jurisdiction for purposes of this part, this Article, or this subtitle, that jurisdiction is the securities intermediary's jurisdiction.

(2) If paragraph (1) does not apply and an agreement between the securities intermediary and its entitlement holder governing the securities account expressly provides that the agreement is governed by the law of a particular jurisdiction, that jurisdiction is the securities intermediary's jurisdiction.

(3) If neither paragraph (1) nor paragraph (2) applies and an agreement between the securities intermediary and its entitlement holder governing the securities account expressly provides that the securities account is maintained at an office in a particular jurisdiction, that jurisdiction is the securities intermediary's jurisdiction.

(4) If none of the preceding paragraphs applies, the securities intermediary's jurisdiction is the jurisdiction in which the office identified in an account statement as the office serving the entitlement holder's account is located.

(5) If none of the preceding paragraphs applies, the securities intermediary's jurisdiction is the jurisdiction in which the chief executive office of the securities intermediary is located.

(f) A securities intermediary's jurisdiction is not determined by the physical location of certificates representing financial assets, or by the jurisdiction in which is organized the issuer of the financial asset with respect to which an entitlement holder has a security entitlement, or by the location of facilities for data processing or other record keeping concerning the account.

(5A Del. C. 1953, § 8-106; 55 Del. Laws, c. 349; 64 Del. Laws, c. 152, § 6; 71 Del. Laws, c. 75, § 1; 72 Del. Laws, c. 401, § 21.)

§ 8-111 Clearing corporation rules.

A rule adopted by a clearing corporation governing rights and obligations among the clearing corporation and its participants in the clearing corporation is effective even if the rule conflicts with this subtitle and affects another party who does not consent to the rule.

(71 Del. Laws, c. 75, § 1.)

§ 8-112 Creditor's legal process.

(a) Except to the extent otherwise provided or permitted by §§ 169 and 324 of Title 8, §§ 365, 366 and Chapter 35 of Title 10, and subsection (d) hereof, the interest of a debtor in a certificated security may be reached by a creditor only by actual seizure of the security certificate by the officer making the attachment or levy. However, a certificated security for which the certificate has been surrendered to the issuer may be reached by a creditor by legal process upon the issuer.

(b) Except to the extent otherwise provided or permitted by §§ 169 and 324 of Title 8, §§ 365, 366 and Chapter 35 of Title 10, and subsection (d) hereof, the interest of a debtor in an uncertificated security may be reached by a creditor only by legal process upon the issuer at its chief executive office in the United States.

(c) The interest of a debtor in a security entitlement may be reached by a creditor only by legal process upon the securities intermediary with whom the debtor's securities account is maintained, except as otherwise provided in subsection (d).

(d) The interest of a debtor in a certificated security for which the certificate is in the possession of a secured party, or in an uncertificated security registered in the name of a secured party, or a security entitlement maintained in the name of a secured party, may be reached by a creditor by legal process upon the secured party.

(e) A creditor whose debtor is the owner of a certificated security, uncertificated security, or security entitlement is entitled to aid from a court of competent jurisdiction, by injunction or otherwise, in reaching the certificated security, uncertificated security, or security entitlement or in satisfying the claim by means allowed at law or in equity in regard to property that cannot readily be reached by other legal process.

(5A Del. C. 1953, § 8-317; 55 Del. Laws, c. 349; 64 Del. Laws, c. 152, § 6; 71 Del. Laws, c. 75, § 1.)

§ 8-113 Statute of frauds inapplicable.

A contract or modification of a contract for the sale or purchase of a security is enforceable whether or not there is a writing signed or record authenticated by a party against whom enforcement is sought, even if the contract or modification is not capable of performance within one year of its making.

(5A Del. C. 1953, § 8-319; 55 Del. Laws, c. 349; 64 Del. Laws, c. 152, § 6; 71 Del. Laws, c. 75, § 1.)

§ 8-114 Evidentiary rules concerning certificated securities.

The following rules apply in an action on a certificated security against the issuer:

(1) Unless specifically denied in the pleadings, each signature on a security certificate or in a necessary endorsement is admitted.

(2) If the effectiveness of a signature is put in issue, the burden of establishing effectiveness is on the party claiming under the signature, but the signature is presumed to be genuine or authorized.

(3) If signatures on a security certificate are admitted or established, production of the certificate entitles a holder to recover on it unless the defendant establishes a defense or a defect going to the validity of the security.

(4) If it is shown that a defense or defect exists, the plaintiff has the burden of establishing that the plaintiff or some person under whom the plaintiff claims is a person against whom the defense or defect cannot be asserted.

(71 Del. Laws, c. 75, § 1.)

§ 8-115 Securities intermediary and others not liable to adverse claimant.

A securities intermediary that has transferred a financial asset pursuant to an effective entitlement order, or a broker or other agent or bailee that has dealt with a financial asset at the direction of its customer or principal, is not liable to a person having an adverse claim to the financial asset, unless the securities intermediary, or broker or other agent or bailee:

(1) took the action after it had been served with an injunction, restraining order, or other legal process enjoining it from doing so, issued by a court of competent jurisdiction, and had a reasonable opportunity to act on the injunction, restraining order, or other legal process; or

(2) acted in collusion with the wrongdoer in violating the rights of the adverse claimant; or

(3) in the case of a security certificate that has been stolen, acted with notice of the adverse claim.

(71 Del. Laws, c. 75, § 1.)

§ 8-116 Securities intermediary as purchaser for value.

A securities intermediary that receives a financial asset and establishes a security entitlement to the financial asset in favor of an entitlement holder is a purchaser for value of the financial asset. A securities intermediary that acquires a security entitlement to a financial asset from another securities intermediary acquires the security entitlement for value if the securities intermediary acquiring the security entitlement establishes a security entitlement to the financial asset in favor of an entitlement holder.

(71 Del. Laws, c. 75, § 1.)

Part 2

Issue and Issuer

§ 8-201 Issuer.

(a) With respect to an obligation on or a defense to a security, an "issuer" includes a person that:

(1) places or authorizes the placing of its name on a security certificate, other than as authenticating trustee, registrar, transfer agent, or the like, to evidence a share, participation, or other interest in its property or in an enterprise, or to evidence its duty to perform an obligation represented by the certificate;

(2) creates a share, participation, or other interest in its property or in an enterprise, or undertakes an obligation, that is an uncertificated security;

(3) directly or indirectly creates a fractional interest in its rights or property, if the fractional interest is represented by a security certificate; or

(4) becomes responsible for, or in place of, another person described as an issuer in this section.

(b) With respect to an obligation on or defense to a security, a guarantor is an issuer to the extent of its guaranty, whether or not its obligation is noted on a security certificate.

(c) With respect to a registration of a transfer, issuer means a person on whose behalf transfer books are maintained.

(5A Del. C. 1953, § 8-201; 55 Del. Laws, c. 349; 64 Del. Laws, c. 152, § 6; 71 Del. Laws, c. 75, § 1.)

§ 8-202 Issuer's responsibility and defenses; notice of defect or defense.

(a) Even against a purchaser for value and without notice, the terms of a certificated security include terms stated on the certificate and terms made part of the security by reference on the certificate to another instrument, indenture, or document or to a constitution, statute, ordinance, rule, regulation, order, or the like, to the extent the terms referred to do not conflict with terms stated on the certificate. A reference under this subsection does not of itself charge a purchaser for value with notice of a defect going to the validity of the security, even if the certificate expressly states that a person accepting it admits notice. The terms of an uncertificated security include those stated in any instrument, indenture, or document or in a constitution, statute, ordinance, rule, regulation, order, or the like, pursuant to which the security is issued.

(b) The following rules apply if an issuer asserts that a security is not valid:

(1) A security other than one issued by a government or governmental subdivision, agency, or instrumentality, even though issued with a defect going to its validity, is valid in the hands of a purchaser for value and without notice of the particular defect unless the defect involves a violation of a constitutional provision. In that case, the security is valid in the hands of a purchaser for value and without notice of the defect, other than one who takes by original issue.

(2) Paragraph (1) applies to an issuer that is a government or governmental subdivision, agency, or instrumentality only if there has been substantial compliance with the legal requirements governing the issue or the issuer has received a substantial consideration for the issue as a whole or for the particular security and a stated purpose of the issue is one for which the issuer has power to borrow money or issue the security.

(c) Except as otherwise provided in Section 8-205, lack of genuineness of a certificated security is a complete defense, even against a purchaser for value and without notice.

(d) All other defenses of the issuer of a security, including nondelivery and conditional delivery of a certificated security, are ineffective against a purchaser for value who has taken the certificated security without notice of the particular defense.

(e) This section does not affect the right of a party to cancel a contract for a security "when, as and if issued" or "when distributed" in the event of a material change in the character of the security that is the subject of the contract or in the plan or arrangement pursuant to which the security is to be issued or distributed.

(f) If a security is held by a securities intermediary against whom an entitlement holder has a security entitlement with respect to the security, the issuer may not assert any defense that the issuer could not assert if the entitlement holder held the security directly.

(5A Del. C. 1953, § 8-202; 55 Del. Laws, c. 349; 64 Del. Laws, c. 152, § 6; 71 Del. Laws, c. 75, § 1.)

§ 8-203 Staleness as notice of defect or defense.

After an act or event, other than a call that has been revoked, creating a right to immediate performance of the principal obligation represented by a certificated security or setting a date on or after which the security is to be presented or surrendered for redemption or exchange, a purchaser is charged with notice of any defect in its issue or defense of the issuer, if the act or event:

(1) requires the payment of money, the delivery of a certificated security, the registration of transfer of an uncertificated security, or any of them on presentation or surrender of the security certificate, the money or security is available on the date set for payment or exchange, and the purchaser takes the security more than one year after that date; or

(2) is not covered by paragraph (1) and the purchaser takes the security more than two years after the date set for surrender or presentation or the date on which performance became due.

(5A Del. C. 1953, § 8-203; 55 Del. Laws, c. 349; 64 Del. Laws, c. 152, § 6; 71 Del. Laws, c. 75, § 1.)

§ 8-204 Effect of issuer's restriction on transfer.

A restriction on transfer of a security imposed by the issuer, even if otherwise lawful, is ineffective against a person without knowledge of the restriction unless:

(1) the security is certificated and the restriction is noted conspicuously on the security certificate; or

(2) the security is uncertificated and the registered owner has been notified of the restriction.

(5A Del. C. 1953, § 8-204; 55 Del. Laws, c. 349; 64 Del. Laws, c. 152, § 6; 71 Del. Laws, c. 75, § 1.)

§ 8-205 Effect of unauthorized signature on certificated security.

An unauthorized signature placed on a security certificate before or in the course of issue is ineffective, but the signature is effective in favor of a purchaser for value of the certificated security if the purchaser is without notice of the lack of authority and the signing has been done by:

(1) an authenticating trustee, registrar, transfer agent, or other person entrusted by the issuer with the signing of the security certificate or of similar security certificates, or the immediate preparation for signing of any of them; or

(2) an employee of the issuer, or of any of the persons listed in paragraph (1), entrusted with responsible handling of the security certificate.

(5A Del. C. 1953, § 8-205; 55 Del. Laws, c. 349; 64 Del. Laws, c. 152, § 6; 71 Del. Laws, c. 75, § 1.)

§ 8-206 Completion or alteration of certificated security.

(a) If a security certificate contains the signatures necessary to its issue or transfer but is incomplete in any other respect:

(1) any person may complete it by filling in the blanks as authorized; and

(2) even if the blanks are incorrectly filled in, the security certificate as completed is enforceable by a purchaser who took it for value and without notice of the incorrectness.

(b) A complete security certificate that has been improperly altered, even if fraudulently, remains enforceable, but only according to its original terms.

(5A Del. C. 1953, § 8-206; 55 Del. Laws, c. 349; 64 Del. Laws, c. 152, § 6; 71 Del. Laws, c. 75, § 1.)

§ 8-207 Rights and duties of issuer with respect to registered owners.

(a) Before due presentment for registration of transfer of a certificated security in registered form or of an instruction requesting registration of transfer of an uncertificated security, the issuer or indenture trustee may treat the registered owner as the person exclusively entitled to vote, receive notifications, and otherwise exercise all the rights and powers of an owner.

(b) This Article does not affect the liability of the registered owner of a security for a call, assessment, or the like.

(5A Del. C. 1953, § 8-207; 55 Del. Laws, c. 349; 64 Del. Laws, c. 152, § 6; 71 Del. Laws, c. 75, § 1.)

§ 8-208 Effect of signature of authenticating trustee, registrar, or transfer agent.

(a) A person signing a security certificate as authenticating trustee, registrar, transfer agent, or the like, warrants to a purchaser for value of the certificated security, if the purchaser is without notice of a particular defect, that:

(1) the certificate is genuine;

(2) the person's own participation in the issue of the security is within the person's capacity and within the scope of the authority received by the person from the issuer; and

(3) the person has reasonable grounds to believe that the certificated security is in the form and within the amount the issuer is authorized to issue.

(b) Unless otherwise agreed, a person signing under subsection (a) does not assume responsibility for the validity of the security in other respects.

(5A Del. C. 1953, § 8-208; 55 Del. Laws, c. 349; 64 Del. Laws, c. 152, § 6; 71 Del. Laws, c. 75, § 1.)

§ 8-209 Issuer's lien.

A lien in favor of an issuer upon a certificated security is valid against a purchaser only if the right of the issuer to the lien is noted conspicuously on the security certificate.

(5A Del. C. 1953, § 8-103; 55 Del. Laws, c. 349; 64 Del. Laws, c. 152, § 6; 71 Del. Laws, c. 75, § 1.)

§ 8-210 Overissue.

(a) In this section, "overissue" means the issue of securities in excess of the amount the issuer has corporate power to issue, but an overissue does not occur if appropriate action has cured the overissue.

(b) Except as otherwise provided in subsections (c) and (d), the provisions of this Article which validate a security or compel its issue or reissue do not apply to the extent that validation, issue, or reissue would result in overissue.

(c) If an identical security not constituting an overissue is reasonably available for purchase, a person entitled to issue or validation may compel the issuer to purchase the security and deliver it if certificated or register its transfer if uncertificated, against surrender of any security certificate the person holds.

(d) If a security is not reasonably available for purchase, a person entitled to issue or validation may recover from the issuer the price the person or the last purchaser for value paid for it with interest from the date of the person's demand.

(71 Del. Laws, c. 75, § 1.)

Part 3
Transfer of Certificated and Uncertificated Securities

§ 8-301 Delivery.

(a) Delivery of a certificated security to a purchaser occurs when:

(1) the purchaser acquires possession of the security certificate;

(2) another person, other than a securities intermediary, either acquires possession of the security certificate on behalf of the purchaser or, having previously acquired possession of the certificate, acknowledges that it holds for the purchaser; or

(3) a securities intermediary acting on behalf of the purchaser acquires possession of the security certificate, only if the certificate is in registered form and is (i) registered in the name of the purchaser, (ii) payable to the order of the purchaser, or (iii) specially indorsed to the purchaser by an effective indorsement and has not been indorsed to the securities intermediary or in blank.

(b) Delivery of an uncertificated security to a purchaser occurs when:

(1) the issuer registers the purchaser as the registered owner, upon original issue or registration of transfer; or

(2) another person, other than a securities intermediary, either becomes the registered owner of the uncertificated security on behalf of the purchaser or, having previously become the registered owner, acknowledges that it holds for the purchaser.

(5A Del. C. 1953, § 8-313; 55 Del. Laws, c. 349; 64 Del. Laws, c. 152, § 6; 71 Del. Laws, c. 75, § 1; 72 Del. Laws, c. 401, § 22.)

§ 8-302 Rights of purchaser.

(a) Except as otherwise provided in subsections (b) and (c), a purchaser of a certificated or uncertificated security acquires all rights in the security that the transferor had or had power to transfer.

(b) A purchaser of a limited interest acquires rights only to the extent of the interest purchased.

(c) A purchaser of a certificated security who as a previous holder had notice of an adverse claim does not improve its position by taking from a protected purchaser.

(5A Del. C. 1953, § 8-301; 55 Del. Laws, c. 349; 64 Del. Laws, c. 152, § 6; 71 Del. Laws, c. 75, § 1; 72 Del. Laws, c. 401, § 23; 74 Del. Laws, c. 332, § 42.)

§ 8-303 Protected purchaser.

(a) "Protected purchaser" means a purchaser of a certificated or uncertificated security, or of an interest therein, who:

(1) gives value;

(2) does not have notice of any adverse claim to the security; and

(3) obtains control of the certificated or uncertificated security.

(b) In addition to acquiring the rights of a purchaser, a protected purchaser also acquires its interest in the security free of any adverse claim.

(5A Del. C. 1953, § 8-302; 55 Del. Laws, c. 349; 64 Del. Laws, c. 152, § 6; 71 Del. Laws, c. 75, § 1.)

§ 8-304 Endorsement.

(a) An endorsement may be in blank or special. An endorsement in blank includes an endorsement to bearer. A special endorsement specifies to whom a security is to be transferred or who has power to transfer it. A holder may convert a blank endorsement to a special endorsement.

(b) An endorsement purporting to be only of part of a security certificate representing units intended by the issuer to be separately transferable is effective to the extent of the endorsement.

(c) An endorsement, whether special or in blank, does not constitute a transfer until delivery of the certificate on which it appears or, if the endorsement is on a separate document, until delivery of both the document and the certificate.

(d) If a security certificate in registered form has been delivered to a purchaser without a necessary endorsement, the purchaser may become a protected purchaser only when the endorsement is supplied. However, against a transferor, a transfer is complete upon delivery and the purchaser has a specifically enforceable right to have any necessary endorsement supplied.

(e) An endorsement of a security certificate in bearer form may give notice of an adverse claim to the certificate, but it does not otherwise affect a right to registration that the holder possesses.

(f) Unless otherwise agreed, a person making an endorsement assumes only the obligations provided in Section 8-108 and not an obligation that the security will be honored by the issuer.

(5A Del. C. 1953, § 8-308; 55 Del. Laws, c. 349; 64 Del. Laws, c. 152, § 6; 71 Del. Laws, c. 75, § 1.)

§ 8-305 Instruction.

(a) If an instruction has been originated by an appropriate person but is incomplete in any other respect, any person may complete it as authorized and the issuer may rely on it as completed, even though it has been completed incorrectly.

(b) Unless otherwise agreed, a person initiating an instruction assumes only the obligations imposed by Section 8-108 and not an obligation that the security will be honored by the issuer.

(5A Del. C. 1953, § 8-308; 55 Del. Laws, c. 349; 64 Del. Laws, c. 152, § 6; 71 Del. Laws, c. 75, § 1.)

§ 8-306 Effect of guaranteeing signature, endorsement, or instruction.

(a) A person who guarantees a signature of an endorser of a security certificate warrants that at the time of signing:

(1) the signature was genuine;

(2) the signer was an appropriate person to endorse, or if the signature is by an agent, the agent had actual authority to act on behalf of the appropriate person; and

(3) the signer had legal capacity to sign.

(b) A person who guarantees a signature of the originator of an instruction warrants that at the time of signing:

(1) the signature was genuine;

(2) the signer was an appropriate person to originate the instruction, or if the signature is by an agent, the agent had actual authority to act on behalf of the appropriate person, if the person specified in the instruction as the registered owner was, in fact, the registered owner, as to which fact the signature guarantor does not make a warranty; and

(3) the signer had legal capacity to sign.

(c) A person who specially guarantees the signature of an originator of an instruction makes the warranties of a signature guarantor under subsection (b) and also warrants that at the time the instruction is presented to the issuer:

(1) the person specified in the instruction as the registered owner of the uncertificated security will be the registered owner; and

(2) the transfer of the uncertificated security requested in the instruction will be registered by the issuer free from all liens, security interests, restrictions, and claims other than those specified in the instruction.

(d) A guarantor under subsections (a) and (b) or a special guarantor under subsection (c) does not otherwise warrant the rightfulness of the transfer.

(e) A person who guarantees an endorsement of a security certificate makes the warranties of a signature guarantor under subsection (a) and also warrants the rightfulness of the transfer in all respects.

(f) A person who guarantees an instruction requesting the transfer of an uncertificated security makes the warranties of a special signature guarantor under subsection (c) and also warrants the rightfulness of the transfer in all respects.

(g) An issuer may not require a special guaranty of signature, a guaranty of endorsement, or a guaranty of instruction as a condition to registration of transfer.

(h) The warranties under this section are made to a person taking or dealing with the security in reliance on the guaranty, and the guarantor is liable to the person for loss resulting from their breach. An endorser or originator of an instruction whose signature, endorsement, or instruction has been guaranteed is liable to a guarantor for any loss suffered by the guarantor as a result of breach of the warranties of the guarantor.

(5A Del. C. 1953, § 8-312; 55 Del. Laws, c. 349; 64 Del. Laws, c. 152, § 6; 71 Del. Laws, c. 75, § 1.)

§ 8-307 Purchaser's right to requisites for registration of transfer.

Unless otherwise agreed, the transferor of a security on due demand shall supply the purchaser with proof of authority to transfer or with any other requisite necessary to obtain registration of the transfer of the security, but if the transfer is not for value, a transferor need

not comply unless the purchaser pays the necessary expenses. If the transferor fails within a reasonable time to comply with the demand, the purchaser may reject or rescind the transfer.

(5A Del. C. 1953, § 8-316; 55 Del. Laws, c. 349; 64 Del. Laws, c. 152, § 6; 71 Del. Laws, c. 75, § 1.)

Part 4
Registration

§ 8-401 Duty of issuer to register transfer.

(a) If a certificated security in registered form is presented to an issuer with a request to register transfer or an instruction is presented to an issuer with a request to register transfer of an uncertificated security, the issuer shall register the transfer as requested if:

(1) under the terms of the security the person seeking registration of transfer is eligible to have the security registered in its name;

(2) the endorsement or instruction is made by the appropriate person or by an agent who has actual authority to act on behalf of the appropriate person;

(3) reasonable assurance is given that the endorsement or instruction is genuine and authorized (Section 8-402);

(4) any applicable law relating to the collection of taxes has been complied with;

(5) the transfer does not violate any restriction on transfer imposed by the issuer in accordance with Section 8-204;

(6) a demand that the issuer not register transfer has not become effective under Section 8-403, or the issuer has complied with Section 8-403(b) but no legal process or indemnity bond is obtained as provided in Section 8-403(d); and

(7) the transfer is in fact rightful or is to a protected purchaser.

(b) If an issuer is under a duty to register a transfer of a security, the issuer is liable to a person presenting a certificated security or an instruction for registration or to the person's principal for loss resulting from unreasonable delay in registration or failure or refusal to register the transfer.

(5A Del. C. 1953, § 8-401; 55 Del. Laws, c. 349; 64 Del. Laws, c. 152, § 6; 71 Del. Laws, c. 75, § 1.)

§ 8-402 Assurance that endorsement or instruction is effective.

(a) An issuer may require the following assurance that each necessary endorsement or each instruction is genuine and authorized:

(1) in all cases, a guaranty of the signature of the person making an endorsement or originating an instruction including, in the case of an instruction, reasonable assurance of identity;

(2) if the endorsement is made or the instruction is originated by an agent, appropriate assurance of actual authority to sign;

(3) if the endorsement is made or the instruction is originated by a fiduciary pursuant to Section 8-107(a)(4) or (a)(5), appropriate evidence of appointment or incumbency;

(4) if there is more than one fiduciary, reasonable assurance that all who are required to sign have done so; and

(5) if the endorsement is made or the instruction is originated by a person not covered by another provision of this subsection, assurance appropriate to the case corresponding as nearly as may be to the provisions of this subsection.

(b) An issuer may elect to require reasonable assurance beyond that specified in this section.

(c) In this section:

(1) "Guaranty of the signature" means a guaranty signed by or on behalf of a person reasonably believed by the issuer to be responsible. An issuer may adopt standards with respect to responsibility if they are not manifestly unreasonable.

(2) "Appropriate evidence of appointment or incumbency" means:

(i) in the case of a fiduciary appointed or qualified by a court, a certificate issued by or under the direction or supervision of the court or an officer thereof and dated within 60 days before the date of presentation for transfer; or

(ii) in any other case, a copy of a document showing the appointment or a certificate issued by or on behalf of a person reasonably believed by an issuer to be responsible or, in the absence of that document or certificate, other evidence the issuer reasonably considered appropriate.

(5A Del. C. 1953, § 8-402; 55 Del. Laws, c. 349; 64 Del. Laws, c. 152, § 6; 71 Del. Laws, c. 75, § 1.)

§ 8-403 Demand that issuer not register transfer.

(a) A person who is an appropriate person to make an endorsement or originate an instruction may demand that the issuer not register transfer of a security by communicating to the issuer a notification that identifies the registered owner and the issue of which the security is a part and provides an address for communications directed to the person making the demand. The demand is effective only if it is received by the issuer at a time and in a manner affording the issuer reasonable opportunity to act on it.

(b) If a certificated security in registered form is presented to an issuer with a request to register transfer or an instruction is presented to an issuer with a request to register transfer of an uncertificated security after a demand that the issuer not register transfer has become effective, the issuer shall promptly communicate to (i) the person who initiated the demand at the address provided in the demand and (ii) the person who presented the security for registration of transfer or initiated the instruction requesting registration of transfer a notification stating that:

(1) the certificated security has been presented for registration of transfer or instruction for registration of transfer of uncertificated security has been received;

(2) a demand that the issuer not register transfer had previously been received; and

(3) the issuer will withhold registration of transfer for a period of time stated in the notification in order to provide the person who initiated the demand an opportunity to obtain legal process or an indemnity bond.

(c) The period described in subsection (b)(3) may not exceed 30 days after the date of communication of the notification. A shorter period may be specified by the issuer if it is not manifestly unreasonable.

(d) An issuer is not liable to a person who initiated a demand that the issuer not register transfer for any loss the person suffers as a result of registration of a transfer pursuant to an effective endorsement or instruction if the person who initiated the demand does not, within the time stated in the issuer's communication, either:

(1) obtain an appropriate restraining order, injunction, or other process from a court of competent jurisdiction enjoining the issuer from registering the transfer; or

(2) file with the issuer an indemnity bond, sufficient in the issuer's judgment to protect the issuer and any transfer agent, registrar, or other agent of the issuer involved from any loss it or they may suffer by refusing to register the transfer.

(e) This section does not relieve an issuer from liability for registering transfer pursuant to an endorsement or instruction that was not effective.

(71 Del. Laws, c. 75, § 1.)

§ 8-404 Wrongful registration.

(a) Except as otherwise provided in Section 8-406, an issuer is liable for wrongful registration of transfer if the issuer has registered a transfer of a security to a person not entitled to it, and the transfer was registered:

(1) pursuant to an ineffective endorsement or instruction;

(2) after a demand that the issuer not register transfer became effective under Section 8-403(a) and the issuer did not comply with Section 8-403(b);

(3) after the issuer had been served with an injunction, restraining order, or other legal process enjoining it from registering the transfer, issued by a court of competent jurisdiction, and the issuer had a reasonable opportunity to act on the injunction, restraining order, or other legal process; or

(4) by an issuer acting in collusion with the wrongdoer.

(b) An issuer that is liable for wrongful registration of transfer under subsection (a) on demand shall provide the person entitled to the security with a like certificated or uncertificated security, and any payments or distributions that the person did not receive as a result of the wrongful registration. If an overissue would result, the issuer's liability to provide the person with a like security is governed by Section 8-210.

(c) Except as otherwise provided in subsection (a) or in a law relating to the collection of taxes, an issuer is not liable to an owner or other person suffering loss as a result of the registration of a transfer of a security if registration was made pursuant to an effective endorsement or instruction.

(5A Del. C. 1953, § 8-311; 55 Del. Laws, c. 349; 64 Del. Laws, c. 152, § 6; 71 Del. Laws, c. 75, § 1.)

§ 8-405 Replacement of lost, destroyed, or wrongfully taken security certificate.

(a) If an owner of a certificated security, whether in registered or bearer form, claims that the certificate has been lost, destroyed, or wrongfully taken, the issuer shall issue a new certificate if the owner:

(1) so requests before the issuer has notice that the certificate has been acquired by a protected purchaser;

(2) files with the issuer a sufficient indemnity bond; and

(3) satisfies other reasonable requirements imposed by the issuer.

(b) If, after the issue of a new security certificate, a protected purchaser of the original certificate presents it for registration of transfer, the issuer shall register the transfer unless an overissue would result. In that case, the issuer's liability is governed by Section 8-210. In addition to any rights on the indemnity bond, an issuer may recover the new certificate from a person to whom it was issued or any person taking under that person, except a protected purchaser.

(5A Del. C. 1953, § 8-405; 55 Del. Laws, c. 349; 64 Del. Laws, c. 152, § 6; 71 Del. Laws, c. 75, § 1.)

§ 8-406 Obligation to notify issuer of lost, destroyed, or wrongfully taken security certificate.

If a security certificate has been lost, apparently destroyed, or wrongfully taken, and the owner fails to notify the issuer of that fact within a reasonable time after the owner has notice of it and the issuer registers a transfer of the security before receiving notification, the owner may not assert against the issuer a claim for registering the transfer under Section 8-404 or a claim to a new security certificate under Section 8-405.

(5A Del. C. 1953, § 8-405; 55 Del. Laws, c. 349; 64 Del. Laws, c. 152, § 6; 71 Del. Laws, c. 75, § 1.)

§ 8-407 Authenticating trustee, transfer agent, and registrar.

A person acting as authenticating trustee, transfer agent, registrar, or other agent for an issuer in the registration of a transfer of its securities, in the issue of new security certificates or uncertificated securities, or in the cancellation of surrendered security certificates has the same obligation to the holder or owner of a certificated or uncertificated security with regard to the particular functions performed as the issuer has in regard to those functions.

(5A Del. C. 1953, § 8-208; 55 Del. Laws, c. 349; 64 Del. Laws, c. 152, § 6; 71 Del. Laws, c. 75, § 1.)

Part 5

Security Entitlements

§ 8-501 Securities account; acquisition of security entitlement from securities intermediary.

(a) "Securities account" means an account to which a financial asset is or may be credited in accordance with an agreement under which the person maintaining the account undertakes to treat the person for whom the account is maintained as entitled to exercise the rights that comprise the financial asset.

(b) Except as otherwise provided in subsections (d) and (e), a person acquires a security entitlement if a securities intermediary:

(1) indicates by book entry that a financial asset has been credited to the person's securities account;

(2) receives a financial asset from the person or acquires a financial asset for the person and, in either case, accepts it for credit to the person's securities account; or

(3) becomes obligated under other law, regulation, or rule to credit a financial asset to the person's securities account.

(c) If a condition of subsection (b) has been met, a person has a security entitlement even though the securities intermediary does not itself hold the financial asset.

(d) If a securities intermediary holds a financial asset for another person, and the financial asset is registered in the name of, payable to the order of, or specially endorsed to the other person, and has not been endorsed to the securities intermediary or in blank, the other person is treated as holding the financial asset directly rather than as having a security entitlement with respect to the financial asset.

(e) Issuance of a security is not establishment of a security entitlement.

(71 Del. Laws, c. 75, § 1; 72 Del. Laws, c. 30, § 1.)

§ 8-502 Assertion of adverse claim against entitlement holder.

An action based on an adverse claim to a financial asset, whether framed in conversion, replevin, constructive trust, equitable lien, or other theory, may not be asserted against a person who acquires a security entitlement under Section 8-501 for value and without notice of the adverse claim.

(71 Del. Laws, c. 75, § 1.)

§ 8-503 Property interest of entitlement holder in financial asset held by securities intermediary.

(a) To the extent necessary for a securities intermediary to satisfy all security entitlements with respect to a particular financial asset, all interests in that financial asset held by the securities intermediary are held by the securities intermediary for the entitlement holders, are not property of the securities intermediary, and are not subject to claims of creditors of the securities intermediary, except as otherwise provided in Section 8-511.

(b) An entitlement holder's property interest with respect to a particular financial asset under subsection (a) is a pro rata property interest in all interests in that financial asset held by the securities intermediary, without regard to the time the entitlement holder acquired the security entitlement or the time the securities intermediary acquired the interest in that financial asset.

(c) An entitlement holder's property interest with respect to a particular financial asset under subsection (a) may be enforced against the securities intermediary only by exercise of the entitlement holder's rights under Sections 8-505 through 8-508.

(d) An entitlement holder's property interest with respect to a particular financial asset under subsection (a) may be enforced against a purchaser of the financial asset or interest therein only if:

(1) insolvency proceedings have been initiated by or against the securities intermediary;

(2) the securities intermediary does not have sufficient interests in the financial asset to satisfy the security entitlements of all of its entitlement holders to that financial asset;

(3) the securities intermediary violated its obligations under Section 8-504 by transferring the financial asset or interest therein to the purchaser; and

(4) the purchaser is not protected under subsection (e).

The trustee or other liquidator, acting on behalf of all entitlement holders having security entitlements with respect to a particular financial asset, may recover the financial asset, or interest therein, from the purchaser. If the trustee or other liquidator elects not to pursue that right, an entitlement holder whose security entitlement remains unsatisfied has the right to recover its interest in the financial asset from the purchaser.

(e) An action based on the entitlement holder's property interest with respect to a particular financial asset under subsection (a), whether framed in conversion, replevin, constructive trust, equitable lien, or other theory, may not be asserted against any purchaser of a financial asset or interest therein who gives value, obtains control, and does not act in collusion with the securities intermediary in violating the securities intermediary's obligations under Section 8-504.

(71 Del. Laws, c. 75, § 1.)

§ 8-504 Duty of securities intermediary to maintain financial asset.

(a) A securities intermediary shall promptly obtain and thereafter maintain a financial asset in a quantity corresponding to the aggregate of all security entitlements it has established in favor of its entitlement holders with respect to that financial asset. The securities intermediary may maintain those financial assets directly or through one or more other securities intermediaries.

(b) Except to the extent otherwise agreed by its entitlement holder, a securities intermediary may not grant any security interests in a financial asset it is obligated to maintain pursuant to subsection (a).

(c) A securities intermediary satisfies the duty in subsection (a) if:

(1) the securities intermediary acts with respect to the duty as agreed upon by the entitlement holder and the securities intermediary; or

(2) in the absence of agreement, the securities intermediary exercises due care in accordance with reasonable commercial standards to obtain and maintain the financial asset.

(d) This section does not apply to a clearing corporation that is itself the obligor of an option or similar obligation to which its entitlement holders have security entitlements.

(71 Del. Laws, c. 75, § 1.)

§ 8-505 Duty of securities intermediary with respect to payments and distributions.

(a) A securities intermediary shall take action to obtain a payment or distribution made by the issuer of a financial asset. A securities intermediary satisfies the duty if:

(1) the securities intermediary acts with respect to the duty as agreed upon by the entitlement holder and the securities intermediary; or

(2) in the absence of agreement, the securities intermediary exercises due care in accordance with reasonable commercial standards to attempt to obtain the payment or distribution.

(b) A securities intermediary is obligated to its entitlement holder for a payment or distribution made by the issuer of a financial asset if the payment or distribution is received by the securities intermediary.

(71 Del. Laws, c. 75, § 1.)

§ 8-506 Duty of securities intermediary to exercise rights as directed by entitlement holder.

A securities intermediary shall exercise rights with respect to a financial asset if directed to do so by an entitlement holder. A securities intermediary satisfies the duty if:

(1) the securities intermediary acts with respect to the duty as agreed upon by the entitlement holder and the securities intermediary; or

(2) in the absence of agreement, the securities intermediary either places the entitlement holder in a position to exercise the rights directly or exercises due care in accordance with reasonable commercial standards to follow the direction of the entitlement holder.

(71 Del. Laws, c. 75, § 1.)

§ 8-507 Duty of securities intermediary to comply with entitlement order.

(a) A securities intermediary shall comply with an entitlement order if the entitlement order is originated by the appropriate person, the securities intermediary has had reasonable opportunity to assure itself that the entitlement order is genuine and authorized, and the securities intermediary has had reasonable opportunity to comply with the entitlement order. A securities intermediary satisfies the duty if:

(1) the securities intermediary acts with respect to the duty as agreed upon by the entitlement holder and the securities intermediary; or

(2) in the absence of agreement, the securities intermediary exercises due care in accordance with reasonable commercial standards to comply with the entitlement order.

(b) If a securities intermediary transfers a financial asset pursuant to an ineffective entitlement order, the securities intermediary shall reestablish a security entitlement in favor of the person entitled to it, and pay or credit any payments or distributions that the person did not receive as a result of the wrongful transfer. If the securities intermediary does not reestablish a security entitlement, the securities intermediary is liable to the entitlement holder for damages.

(71 Del. Laws, c. 75, § 1.)

§ 8-508 Duty of securities intermediary to change entitlement holder's position to other form of security holding.

A securities intermediary shall act at the direction of an entitlement holder to change a security entitlement into another available form of holding for which the entitlement holder is eligible, or to cause the financial asset to be transferred to a securities account of the entitlement holder with another securities intermediary. A securities intermediary satisfies the duty if:

(1) the securities intermediary acts as agreed upon by the entitlement holder and the securities intermediary; or

(2) in the absence of agreement, the securities intermediary exercises due care in accordance with reasonable commercial standards to follow the direction of the entitlement holder.

(71 Del. Laws, c. 75, § 1.)

§ 8-509 Specification of duties of securities intermediary by other statute or regulation; manner of performance of duties of securities intermediary and exercise of rights of entitlement holder.

(a) If the substance of a duty imposed upon a securities intermediary by Sections 8-504 through 8-508 is the subject of other statute, regulation, or rule, compliance with that statute, regulation, or rule satisfies the duty.

(b) To the extent that specific standards for the performance of the duties of a securities intermediary or the exercise of the rights of an entitlement holder are not specified by other statute, regulation, or rule or by agreement between the securities intermediary and entitlement holder, the securities intermediary shall perform its duties and the entitlement holder shall exercise its rights in a commercially reasonable manner.

(c) The obligation of a securities intermediary to perform the duties imposed by Sections 8-504 through 8-508 is subject to:

(1) rights of the securities intermediary arising out of a security interest under a security agreement with the entitlement holder or otherwise; and

(2) rights of the securities intermediary under other law, regulation, rule, or agreement to withhold performance of its duties as a result of unfulfilled obligations of the entitlement holder to the securities intermediary.

(d) Sections 8-504 through 8-508 do not require a securities intermediary to take any action that is prohibited by other statute, regulation, or rule.

(71 Del. Laws, c. 75, § 1.)

§ 8-510 Rights of purchaser of security entitlement from entitlement holder.

(a) In a case not covered by the priority rules in Article 9 or the rules stated in subsection (c), an action based on an adverse claim to a financial asset or security entitlement, whether framed in conversion, replevin, constructive trust, equitable lien, or other theory, may not be asserted against a person who purchases a security entitlement, or an interest therein, from an entitlement holder if the purchaser gives value, does not have notice of the adverse claim, and obtains control.

(b) If an adverse claim could not have been asserted against an entitlement holder under Section 8-502, the adverse claim cannot be asserted against a person who purchases a security entitlement, or an interest therein, from the entitlement holder.

(c) In a case not covered by the priority rules in Article 9, a purchaser for value of a security entitlement, or an interest therein, who obtains control has priority over a purchaser of a security entitlement, or an interest therein, who does not obtain control. Except as otherwise provided in subsection (d), purchasers who have control rank according to priority in time of:

(1) the purchaser's becoming the person for whom the securities account, in which the security entitlement is carried, is maintained, if the purchaser obtained control under Section 8-106(d)(1);

(2) the securities intermediary's agreement to comply with the purchaser's entitlement orders with respect to security entitlements carried or to be carried in the securities account in which the security entitlement is carried, if the purchaser obtained control under Section 8-106(d)(2); or

(3) if the purchaser obtained control through another person under Section 8-106(d)(3), the time on which priority would be based under this subsection if the other person were the secured party.

(d) A securities intermediary as purchaser has priority over a conflicting purchaser who has control unless otherwise agreed by the securities intermediary.

(71 Del. Laws, c. 75, § 1; 72 Del. Laws, c. 401, § 24.)

§ 8-511 Priority among security interests and entitlement holders.

(a) Except as otherwise provided in subsections (b) and (c), if a securities intermediary does not have sufficient interests in a particular financial asset to satisfy both its obligations to entitlement holders who have security entitlements to that financial asset and its obligation to a creditor of the securities intermediary who has a security interest in that financial asset, the claims of entitlement holders, other than the creditor, have priority over the claim of the creditor.

(b) A claim of a creditor of a securities intermediary who has a security interest in a financial asset held by a securities intermediary has priority over claims of the securities intermediary's entitlement holders who have security entitlements with respect to that financial asset if the creditor has control over the financial asset.

(c) If a clearing corporation does not have sufficient financial assets to satisfy both its obligations to entitlement holders who have security entitlements with respect to a financial asset and its obligation to a creditor of the clearing corporation who has a security interest in that financial asset, the claim of the creditor has priority over the claims of entitlement holders.

(71 Del. Laws, c. 75, § 1.)

Part 6
Transition Provisions

§ 8-601 Effective date.

This Act takes effect on January 1, 1998.

(71 Del. Laws, c. 75, § 1.)

§ 8-602 Savings clause.

(a) This Act does not affect an action or proceeding commenced before this Act takes effect.

(b) If a security interest in a security is perfected at the date this Act takes effect, and the action by which the security interest was perfected would suffice to perfect a security interest under this Act, no further action is required to continue perfection. Except to the extent otherwise provided or permitted by subsection (d) hereof, if a security interest in a security is perfected at the date this Act takes effect but the action by which the security interest was perfected would not suffice to perfect a security interest under this Act, the security interest remains perfected for a period of one year after the effective date and continues perfected thereafter if appropriate action to perfect under this Act or otherwise under the Uniform Commercial Code is taken within that period. If a security interest is perfected at the date this Act takes effect and the security interest can be perfected by filing under this Act, a financing statement signed by the secured party instead of the debtor may be filed within that period to continue perfection or thereafter to perfect.

(c) Prior to the effective date of this Act, uncertificated interests in general and limited partnerships were not deemed to be securities subject to Article 8 of the Uniform Commercial Code. Security interests with respect to uncertificated interests in general and limited partnerships that are perfected when this Act becomes effective shall remain perfected until they lapse as provided in Article 9 of the Uniform Commercial Code and may be continued as permitted by Article 9 of the Uniform Commercial Code. For such uncertificated interests in general and limited partnerships, Article 9 of the Uniform Commercial Code in effect immediately prior to the effective date of this Act shall apply to any questions of priority if the positions of the parties were fixed prior to the effective date of this Act.

(d) If a security interest is perfected with respect to certificated securities under Article 8 of the Uniform Commercial Code prior to the effective date of this Act, and if the filing of a financing statement would be required for the perfection of the security interest after the effective date of this Act, the security interest remains perfected for a period of three years after the effective date of this Act and continues perfected thereafter if appropriate action to perfect under this Act or otherwise under the Uniform Commercial Code is taken within that period.

(71 Del. Laws, c. 75, § 1.)

Subtitle I
Uniform Commercial Code
Article 9
Secured Transactions
Part 1
General Provisions

1. Short Title, Definitions, and General Concepts

§ 9-101 Short title.

This Article may be cited as Uniform Commercial Code — Secured Transactions.

(72 Del. Laws, c. 401, § 1.)

§ 9-102 Definitions and index of definitions.

(a) *Article 9 definitions.* — In this Article:

(1) "Accession" means goods that are physically united with other goods in such a manner that the identity of the original goods is not lost.

(2) "Account", except as used in "account for", means (i) a right to payment of a monetary obligation, whether or not earned by performance, (A) for property that has been or is to be sold, leased, licensed, assigned, or otherwise disposed of, (B) for services rendered or to be rendered, (C) for a policy of insurance issued or to be issued, (D) for a secondary obligation incurred or to be incurred, (E) for energy provided or to be provided, (F) for the use or hire of a vessel under a charter or other contract, (G) arising out of the use of a credit or charge card or information contained on or for use with the card, or (H) as winnings in a lottery or other game of chance operated or sponsored by a State, governmental unit of a State, or person licensed or authorized to operate the game by a State or governmental unit of a State or (ii) any credit device account. The term includes health-care-insurance receivables. The term does not include (i) rights to payment evidenced by chattel paper or an instrument, (ii) commercial tort claims, (iii) deposit accounts, (iv) investment property, (v) letter-of-credit rights or letters of credit, or (vi) rights to payment for money or funds advanced or sold, other than rights arising out of (A) the use of a credit or charge card or information contained on or for use with the card or (B) a credit device account.

(3) "Account debtor" means a person obligated on an account, chattel paper, or general intangible. The term does not include persons obligated to pay a negotiable instrument, even if the instrument constitutes part of chattel paper.

(4) "Accounting", except as used in "accounting for", means a record:

(A) authenticated by a secured party;

(B) indicating the aggregate unpaid secured obligations as of a date not more than 35 days earlier or 35 days later than the date of the record; and

(C) identifying the components of the obligations in reasonable detail.

(5) "Agricultural lien" means an interest, other than a security interest, in farm products:

(A) which secures payment or performance of an obligation for:

(i) goods or services furnished in connection with a debtor's farming operation; or

(ii) rent on real property leased by a debtor in connection with its farming operation;

(B) which is created by statute in favor of a person that:

(i) in the ordinary course of its business furnished goods or services to a debtor in connection with a debtor's farming operation; or

(ii) leased real property to a debtor in connection with the debtor's farming operation; and

(C) whose effectiveness does not depend on the person's possession of the personal property.

(6) "As-extracted collateral" means:

(A) oil, gas, or other minerals that are subject to a security interest that:

(i) is created by a debtor having an interest in the minerals before extraction; and

(ii) attaches to the minerals as extracted; or

(B) accounts arising out of the sale at the wellhead or minehead of oil, gas, or other minerals in which the debtor had an interest before extraction.

(7) "Authenticate" means:

(A) to sign; or

(B) with present intent to adopt or accept a record, to attach to or logically associate with the record an electronic sound, symbol, or process.

(8) "Bank" means an organization that is engaged in the business of banking. The term includes savings banks, savings and loan associations, credit unions, and trust companies.

(9) "Cash proceeds" means proceeds that are money, checks, deposit accounts, or the like.

(10) “Certificate of title” means a certificate of title with respect to which a statute provides for the security interest in question to be indicated on the certificate as a condition or result of the security interest’s obtaining priority over the rights of a lien creditor with respect to the collateral. The term includes another record maintained as an alternative to a certificate of title by the governmental unit that issues certificates of title if a statute permits the security interest in question to be indicated on the record as a condition or result of the security interest’s obtaining priority over the rights of a lien creditor with respect to the collateral.

(11) “Chattel paper” means a record or records that evidence both a monetary obligation and a security interest in specific goods, a security interest in specific goods and software used in the goods, a security interest in specific goods and license of software used in the goods, a lease of specific goods, or a lease of specific goods and license of software used in the goods. In this paragraph, “monetary obligation” means a monetary obligation secured by the goods or owed under a lease of the goods and includes a monetary obligation with respect to software used in the goods. The term does not include (i) charters or other contracts involving the use or hire of a vessel or (ii) records that evidence a right to payment arising out of the use of a credit or charge card, credit device account, or information contained on or for use with the card or credit device account. If a transaction is evidenced by records that include an instrument or series of instruments, the group of records taken together constitutes chattel paper.

(12) “Collateral” means the property subject to a security interest or agricultural lien. The term includes:

(A) proceeds to which a security interest attaches;

(B) accounts, chattel paper, payment intangibles, and promissory notes that have been sold; and

(C) goods that are the subject of a consignment.

(13) “Commercial tort claim” means a claim arising in tort with respect to which:

(A) the claimant is an organization; or

(B) the claimant is an individual and the claim:

(i) arose in the course of the claimant’s business or profession; and

(ii) does not include damages arising out of personal injury to or the death of an individual.

(14) “Commodity account” means an account maintained by a commodity intermediary in which a commodity contract is carried for a commodity customer.

(15) “Commodity contract” means a commodity futures contract, an option on a commodity futures contract, a commodity option, or another contract if the contract or option is:

(A) traded on or subject to the rules of a board of trade that has been designated as a contract market for such a contract pursuant to federal commodities laws; or

(B) traded on a foreign commodity board of trade, exchange, or market, and is carried on the books of a commodity intermediary for a commodity customer.

(16) “Commodity customer” means a person for which a commodity intermediary carries a commodity contract on its books.

(17) “Commodity intermediary” means a person that:

(A) is registered as a futures commission merchant under federal commodities law; or

(B) in the ordinary course of its business provides clearance or settlement services for a board of trade that has been designated as a contract market pursuant to federal commodities law.

(18) “Communicate” means:

(A) to send a written or other tangible record;

(B) to transmit a record by any means agreed upon by the persons sending and receiving the record; or

(C) in the case of transmission of a record to or by a filing office, to transmit a record by any means prescribed by filing-office rule.

(19) “Consignee” means a merchant to which goods are delivered in a consignment.

(20) “Consignment” means a transaction, regardless of its form, in which a person delivers goods to a merchant for the purpose of sale and:

(A) the merchant:

(i) deals in goods of that kind under a name other than the name of the person making delivery;

(ii) is not an auctioneer; and

(iii) is not generally known by its creditors to be substantially engaged in selling the goods of others;

(B) with respect to each delivery, the aggregate value of the goods is $1,000 or more at the time of delivery;

(C) the goods are not consumer goods immediately before delivery; and

(D) the transaction does not create a security interest that secures an obligation.

(21) “Consignor” means a person that delivers goods to a consignee in a consignment.

(22) “Consumer debtor” means a debtor in a consumer transaction.

(23) “Consumer goods” means goods that are used or bought for use primarily for personal, family, or household purposes.

(24) “Consumer-goods transaction” means a consumer transaction in which:

(A) an individual incurs an obligation primarily for personal, family, or household purposes; and

(B) a security interest in consumer goods secures the obligation.

(25) “Consumer obligor” means an obligor who is an individual and who incurred the obligation as part of a transaction entered into primarily for personal, family, or household purposes.

(26) “Consumer transaction” means a transaction in which (i) an individual incurs an obligation primarily for personal, family, or household purposes, (ii) a security interest secures the obligation, and (iii) the collateral is held or acquired primarily for personal, family, or household purposes. The term includes consumer-goods transactions.

(27) “Continuation statement” means an amendment of a financing statement which:

(A) identifies, by its file number, the initial financing statement to which it relates; and

(B) indicates that it is a continuation statement for, or that it is filed to continue the effectiveness of, the identified financing statement.

(27A) “Credit device account” means any right to payment for money due or to become due under any agreement or plan relating to a credit card, charge card or other similar system, pursuant to which access is provided by a card, check, identification code or other means of identification or access contemplated by such agreement or plan.

(28) “Debtor” means:

(A) a person having an interest, other than a security interest or other lien, in the collateral, whether or not the person is an obligor;

(B) a seller of accounts, chattel paper, payment intangibles, or promissory notes; or

(C) a consignee.

(29) “Deposit account” means a demand, time, savings, passbook, or similar account maintained with a bank. The term does not include investment property or accounts evidenced by an instrument.

(30) “Document” means a document of title or a receipt of the type described in Section 7-201(b).

(31) “Electronic chattel paper” means chattel paper evidenced by a record or records consisting of information stored in an electronic medium.

(32) “Encumbrance” means a right, other than an ownership interest, in real property. The term includes mortgages and other liens on real property.

(33) “Equipment” means goods other than inventory, farm products, or consumer goods.

(34) “Farm products” means goods, other than standing timber, with respect to which the debtor is engaged in a farming operation and which are:

(A) crops grown, growing, or to be grown, including:

(i) crops produced on trees, vines, and bushes; and

(ii) aquatic goods produced in aquacultural operations;

(B) livestock, born or unborn, including aquatic goods produced in aquacultural operations;

(C) supplies used or produced in a farming operation; or

(D) products of crops or livestock in their unmanufactured states.

(35) “Farming operation” means raising, cultivating, propagating, fattening, grazing, or any other farming, livestock, or aquacultural operation.

(36) “File number” means the number assigned to an initial financing statement pursuant to Section 9-519(a).

(37) “Filing office” means an office designated in Section 9-501 as the place to file a financing statement.

(38) “Filing-office rule” means a rule adopted pursuant to Section 9-526.

(39) “Financing statement” means a record or records composed of an initial financing statement and any filed record relating to the initial financing statement.

(40) “Fixture filing” means the filing of a financing statement covering goods that are or are to become fixtures and satisfying Section 9-502(a) and (b). The term includes the filing of a financing statement covering goods of a transmitting utility which are or are to become fixtures.

(41) “Fixtures” means goods that have become so related to particular real property that an interest in them arises under real property law.

(42) “General intangible” means any personal property, including things in action, other than accounts, chattel paper, commercial tort claims, deposit accounts, documents, goods, instruments, investment property, letter-of-credit rights, letters of credit, money, and oil, gas, or other minerals before extraction. The term includes payment intangibles and software.

(43) [Reserved.]

(44) “Goods” means all things that are movable when a security interest attaches. The term includes (i) fixtures, (ii) standing timber that is to be cut and removed under a conveyance or contract for sale, (iii) the unborn young of animals, (iv) crops grown, growing, or to be grown, even if the crops are produced on trees, vines, or bushes, and (v) manufactured homes. The term also includes a computer program embedded in goods and any supporting information provided in connection with a transaction relating to the program if (i) the program is associated with the goods in such a manner that it customarily is considered part of the goods, or (ii) by becoming the owner of the goods, a person acquires a right to use the program in connection with the goods. The term does not include a computer program embedded in goods that consist solely of the medium in which the program is embedded. The term also does not include accounts, chattel paper, commercial tort claims, deposit accounts, documents, general intangibles, instruments, investment property, letter-of-credit rights, letters of credit, money, or oil, gas, or other minerals before extraction.

(45) "Governmental unit" means a subdivision, agency, department, county, parish, municipality, or other unit of the government of the United States, a State, or a foreign country. The term includes an organization having a separate corporate existence if the organization is eligible to issue debt on which interest is exempt from income taxation under the laws of the United States.

(46) "Health-care-insurance receivable" means an interest in or claim under a policy of insurance which is a right to payment of a monetary obligation for health-care goods or services provided.

(47) "Instrument" means a negotiable instrument or any other writing that evidences a right to the payment of a monetary obligation, is not itself a security agreement or lease, and is of a type that in ordinary course of business is transferred by delivery with any necessary indorsement or assignment. The term does not include (i) investment property, (ii) letters of credit, or (iii) writings that evidence a right to payment arising out of the use of a credit or charge card or information contained on or for use with the card.

(48) "Inventory" means goods, other than farm products, which:

(A) are leased by a person as lessor;

(B) are held by a person for sale or lease or to be furnished under a contract of service;

(C) are furnished by a person under a contract of service; or

(D) consist of raw materials, work in process, or materials used or consumed in a business.

(49) "Investment property" means a security, whether certificated or uncertificated, security entitlement, securities account, commodity contract, or commodity account.

(50) "Jurisdiction of organization", with respect to a registered organization, means the jurisdiction under whose law the organization is formed or organized.

(51) "Letter-of-credit right" means a right to payment or performance under a letter of credit, whether or not the beneficiary has demanded or is at the time entitled to demand payment or performance. The term does not include the right of a beneficiary to demand payment or performance under a letter of credit.

(52) "Lien creditor" means:

(A) a creditor that has acquired a lien on the property involved by attachment, levy, or the like;

(B) an assignee for benefit of creditors from the time of assignment;

(C) a trustee in bankruptcy from the date of the filing of the petition; or

(D) a receiver in equity from the time of appointment.

(53) "Manufactured home" means a structure, transportable in one or more sections, which, in the traveling mode, is eight body feet or more in width or 40 body feet or more in length, or, when erected on site, is 320 or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air-conditioning, and electrical systems contained therein. The term includes any structure that meets all of the requirements of this paragraph except the size requirements and with respect to which the manufacturer voluntarily files a certification required by the United States Secretary of Housing and Urban Development and complies with the standards established under Title 42 of the United States Code.

(54) "Manufactured-home transaction" means a secured transaction:

(A) that creates a purchase-money security interest in a manufactured home, other than a manufactured home held as inventory; or

(B) in which a manufactured home, other than a manufactured home held as inventory, is the primary collateral.

(55) "Mortgage" means a consensual interest in real property, including fixtures, which secures payment or performance of an obligation.

(56) "New debtor" means a person that becomes bound as debtor under Section 9-203(d) by a security agreement previously entered into by another person.

(57) "New value" means (i) money, (ii) money's worth in property, services, or new credit, or (iii) release by a transferee of an interest in property previously transferred to the transferee. The term does not include an obligation substituted for another obligation.

(58) "Noncash proceeds" means proceeds other than cash proceeds.

(59) "Obligor" means a person that, with respect to an obligation secured by a security interest in or an agricultural lien on the collateral, (i) owes payment or other performance of the obligation, (ii) has provided property other than the collateral to secure payment or other performance of the obligation, or (iii) is otherwise accountable in whole or in part for payment or other performance of the obligation. The term does not include issuers or nominated persons under a letter of credit.

(60) "Original debtor", except as used in Section 9-310(c), means a person that, as debtor, entered into a security agreement to which a new debtor has become bound under Section 9-203(d).

(61) "Payment intangible" means a general intangible under which the account debtor's principal obligation is a monetary obligation.

(62) "Person related to", with respect to an individual, means:

(A) the spouse of the individual;

(B) a brother, brother-in-law, sister, or sister-in-law of the individual;

(C) an ancestor or lineal descendant of the individual or the individual's spouse; or

(D) any other relative, by blood or marriage, of the individual or the individual's spouse who shares the same home with the individual.

(63) "Person related to", with respect to an organization, means:

(A) a person directly or indirectly controlling, controlled by, or under common control with the organization;

(B) an officer or director of, or a person performing similar functions with respect to, the organization;

(C) an officer or director of, or a person performing similar functions with respect to, a person described in subparagraph (A);

(D) the spouse of an individual described in subparagraph (A), (B), or (C); or

(E) an individual who is related by blood or marriage to an individual described in subparagraph (A), (B), (C), or (D) and shares the same home with the individual.

(64) "Proceeds", except as used in Section 9-609(b), means the following property:

(A) whatever is acquired upon the sale, lease, license, exchange, or other disposition of collateral;

(B) whatever is collected on, or distributed on account of, collateral;

(C) rights arising out of collateral;

(D) to the extent of the value of collateral, claims arising out of the loss, nonconformity, or interference with the use of, defects or infringement of rights in, or damage to, the collateral; or

(E) to the extent of the value of collateral and to the extent payable to the debtor or the secured party, insurance payable by reason of the loss or nonconformity of, defects or infringement of rights in, or damage to, the collateral.

(65) "Promissory note" means an instrument that evidences a promise to pay a monetary obligation, does not evidence an order to pay, and does not contain an acknowledgment by a bank that the bank has received for deposit a sum of money or funds.

(66) "Proposal" means a record authenticated by a secured party which includes the terms on which the secured party is willing to accept collateral in full or partial satisfaction of the obligation it secures pursuant to Sections 9-620, 9-621, and 9-622.

(67) "Public-finance transaction" means a secured transaction in connection with which:

(A) debt securities are issued;

(B) all or a portion of the securities issued have an initial stated maturity of at least 20 years; and

(C) the debtor, obligor, secured party, account debtor or other person obligated on collateral, assignor or assignee of a secured obligation, or assignor or assignee of a security interest is a State or a governmental unit of a State.

(68) "Public organic record" means a record that is available to the public for inspection and is:

(A) a record consisting of the record initially filed with or issued by a State or the United States to form or organize an organization and any record filed with or issued by the State or the United States which amends, restates, or corrects the initial record;

(B) an organic record of a business trust consisting of the record initially filed with a State and any record filed with the State which amends, restates, or corrects the initial record, if a statute of the State governing business trusts requires that the record be filed with the State; or

(C) a record consisting of legislation enacted by the legislature of a State or the Congress of the United States which forms or organizes an organization, any record amending the legislation, and any record filed with or issued by the State or the United States which amends, restates, or corrects the name of the organization.

(69) "Pursuant to commitment", with respect to an advance made or other value given by a secured party, means pursuant to the secured party's obligation, whether or not a subsequent event of default or other event not within the secured party's control has relieved or may relieve the secured party from its obligation.

(70) "Record", except as used in "for record", "of record", "record or legal title", and "record owner", means information that is inscribed on a tangible medium or which is stored in an electronic or other medium and is retrievable in perceivable form.

(71) "Registered organization" means an organization formed or organized solely under the law of a single State or the United States by the filing of a public organic record with, the issuance of a public organic record by, or the enactment of legislation by the State or the United States. The term includes a business trust that is formed or organized under the law of a single State if a statute of the State governing business trusts requires that the business trust's organic record be filed with the State. The term also includes a series of a registered organization if the series is an organization formed or organized under the law of a single State and the statute of the State governing the series requires that the public organic record of the series be filed with the State.

(72) "Secondary obligor" means an obligor to the extent that:

(A) the obligor's obligation is secondary; or

(B) the obligor has a right of recourse with respect to an obligation secured by collateral against the debtor, another obligor, or property of either.

(73) "Secured party" means:

(A) a person in whose favor a security interest is created or provided for under a security agreement, whether or not any obligation to be secured is outstanding;

(B) a person that holds an agricultural lien;

(C) a consignor;

(D) a person to which accounts, chattel paper, payment intangibles, or promissory notes have been sold;

(E) a trustee, indenture trustee, agent, collateral agent, or other representative in whose favor a security interest or agricultural lien is created or provided for; or

(F) a person that holds a security interest arising under Section 2-401, 2-505, 2-711(3), 2A-508(5), 4-210, or 5-118.

(74) "Security agreement" means an agreement that creates or provides for a security interest.

(75) “Send”, in connection with a record or notification, means:

(A) to deposit in the mail, deliver for transmission, or transmit by any other usual means of communication, with postage or cost of transmission provided for, addressed to any address reasonable under the circumstances; or

(B) to cause the record or notification to be received within the time that it would have been received if properly sent under subparagraph (A).

(76) “Software” means a computer program and any supporting information provided in connection with a transaction relating to the program. The term does not include a computer program that is included in the definition of goods.

(77) “State” means a State of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(78) “Supporting obligation” means a letter-of-credit right or secondary obligation that supports the payment or performance of an account, chattel paper, a document, a general intangible, an instrument, or investment property.

(79) “Tangible chattel paper” means chattel paper evidenced by a record or records consisting of information that is inscribed on a tangible medium.

(80) “Termination statement” means an amendment of a financing statement which:

(A) identifies, by its file number, the initial financing statement to which it relates; and

(B) indicates either that it is a termination statement or that the identified financing statement is no longer effective.

(81) “Transmitting utility” means a person primarily engaged in the business of:

(A) operating a railroad, subway, street railway, or trolley bus;

(B) transmitting communications electrically, electromagnetically, or by light;

(C) transmitting goods by pipeline or sewer; or

(D) transmitting or producing and transmitting electricity, steam, gas, or water.

(b) *Definitions in other Articles.* — “Control” as provided in Section 7-106 and the following definitions in other Articles apply to this Article:

"Applicant"	Section 5–102
"Beneficiary"	Section 5–102
"Broker"	Section 8–102
"Certificated security"	Section 8–102
"Check"	Section 3–104
"Clearing corporation"	Section 8–102
"Contract for sale"	Section 2–106
"Customer"	Section 4-104
"Entitlement holder"	Section 8-102
Financial asset"	Section 8-102
"Holder in due course"	Section 3-302
"Issuer" (with respect to a letter of credit or letter-of-credit right)	Section 5-102
"Issuer" (with respect to a security)	Section 8-201
"Issuer" (with respect to documents of title)	Section 7-102
"Lease"	Section 2A-103
"Lease agreement"	Section 2A-103
"Lease contract"	Section 2A-103
"Leasehold interest"	Section 2A-103
"Lessee"	Section 2A-103
"Lessee in ordinary course of business"	Section 2A-103
"Lessor"	Section 2A-103
"Lessor's residual interest"	Section 2A-103
"Letter of credit"	Section 5-102
"Merchant"	Section 2-104
"Negotiable instrument"	Section 3-104
"Nominated person"	Section 5-102
"Note"	Section 3-104
"Proceeds of a letter of credit"	Section 5-114
"Prove"	Section 3-103
"Sale"	Section 2-106
"Securities account"	Section 8-501
"Securities intermediary"	Section 8-102
"Security"	Section 8-102
"Security certificate"	Section 8-102
"Security entitlement"	Section 8-102
"Uncertificated security"	Section 8-102

(c) *Article 1 definitions and principles.* — Article 1 contains general definitions and principles of construction and interpretation applicable throughout this Article.

(72 Del. Laws, c. 401, § 1; 70 Del. Laws, c. 186, § 1; 74 Del. Laws, c. 332, §§ 43-45; 79 Del. Laws, c. 15, §§ 1-4; 81 Del. Laws, c. 353, § 2.)

§ 9-103 Purchase-money security interest; application of payments; burden of establishing.

(a) *Definitions.* — In this section:

(1) "purchase-money collateral" means goods or software that secures a purchase-money obligation incurred with respect to that collateral; and

(2) "purchase-money obligation" means an obligation of an obligor incurred as all or part of the price of the collateral or for value given to enable the debtor to acquire rights in or the use of the collateral if the value is in fact so used.

(b) *Purchase-money security interest in goods.* — A security interest in goods is a purchase-money security interest:

(1) to the extent that the goods are purchase-money collateral with respect to that security interest;

(2) if the security interest is in inventory that is or was purchase-money collateral, also to the extent that the security interest secures a purchase-money obligation incurred with respect to other inventory in which the secured party holds or held a purchase-money security interest; and

(3) also to the extent that the security interest secures a purchase-money obligation incurred with respect to software in which the secured party holds or held a purchase-money security interest.

(c) *Purchase-money security interest in software.* — A security interest in software is a purchase-money security interest to the extent that the security interest also secures a purchase-money obligation incurred with respect to goods in which the secured party holds or held a purchase-money security interest if:

(1) the debtor acquired its interest in the software in an integrated transaction in which it acquired an interest in the goods; and

(2) the debtor acquired its interest in the software for the principal purpose of using the software in the goods.

(d) *Consignor's inventory purchase-money security interest.* — The security interest of a consignor in goods that are the subject of a consignment is a purchase-money security interest in inventory.

(e) *Application of payment in non-consumer-goods transaction.* — In a transaction other than a consumer-goods transaction, if the extent to which a security interest is a purchase-money security interest depends on the application of a payment to a particular obligation, the payment must be applied:

(1) in accordance with any reasonable method of application to which the parties agree;

(2) in the absence of the parties' agreement to a reasonable method, in accordance with any intention of the obligor manifested at or before the time of payment; or

(3) in the absence of an agreement to a reasonable method and a timely manifestation of the obligor's intention, in the following order:

(A) to obligations that are not secured; and

(B) if more than one obligation is secured, to obligations secured by purchase-money security interests in the order in which those obligations were incurred.

(f) *No loss of status of purchase-money security interest in non-consumer-goods transaction.* — In a transaction other than a consumer-goods transaction, a purchase-money security interest does not lose its status as such, even if:

(1) the purchase-money collateral also secures an obligation that is not a purchase-money obligation;

(2) collateral that is not purchase-money collateral also secures the purchase-money obligation; or

(3) the purchase-money obligation has been renewed, refinanced, consolidated, or restructured.

(g) *Burden of proof in non-consumer-goods transaction.* — In a transaction other than a consumer-goods transaction, a secured party claiming a purchase-money security interest has the burden of establishing the extent to which the security interest is a purchase-money security interest.

(h) *Non-consumer-goods transactions; no inference.* — The limitation of the rules in subsections (e), (f), and (g) to transactions other than consumer-goods transactions is intended to leave to the court the determination of the proper rules in consumer-goods transactions. The court may not infer from that limitation the nature of the proper rule in consumer-goods transactions and may continue to apply established approaches.

(72 Del. Laws, c. 401, § 1.)

§ 9-104 Control of deposit account.

(a) *Requirements for control.* — A secured party has control of a deposit account if:

(1) the secured party is the bank with which the deposit account is maintained;

(2) the debtor, secured party, and bank have agreed in an authenticated record that the bank will comply with instructions originated by the secured party directing disposition of the funds in the account without further consent by the debtor;

(3) the secured party becomes the bank's customer with respect to the deposit account;

(4) the debtor, secured party, and bank have authenticated a record that (i) is conspicuously denominated a control agreement, (ii) identifies the specific deposit account in which the secured party claims a security interest, and (iii) contains one or more provisions addressing the disposition of funds in the deposit account or the right to direct the disposition of funds in the deposit account; or

(5) the name on the deposit account is the name of the secured party or indicates that the secured party has a security interest in the deposit account.

(b) *Debtor's right to direct disposition.* — A secured party that has satisfied subsection (a) has control, even if the debtor retains the right to direct the disposition of funds from the deposit account.

(c) *No implied duties of bank.* — The authentication of a record by the bank under subsection (a)(2) or (a)(4) does not impose upon the bank any duty not expressly agreed to by the bank in the record. The naming of the deposit account in the name of the secured party or with an indication that the secured party has a security interest in the deposit account under subsection (a)(5) does not impose upon the bank any duty not expressly agreed to by the bank.

(d) *Conditions not relevant.* — A secured party has control under subsection (a)(2) even if any duty of the bank to comply with instructions originated by the secured party directing disposition of the funds in the deposit account is subject to any condition or conditions (other than further consent by the debtor). A secured party has control under subsection (a)(4) even if the provision or provisions addressing the disposition of funds in the deposit account or the right to direct the disposition of funds in the deposit account are subject to any condition or conditions (other than further consent by the debtor).

(e) *No inferences.* — The procedures and requirements of subsections (a)(4) and (a)(5) available to obtain control shall not be used in interpreting the sufficiency of a secured party's compliance with the procedures and requirements of subsections (a)(1), (a)(2) or (a)(3) to obtain control. The provisions of subsections (a)(4) and (a)(5) shall create no inference regarding the requirements for compliance with subsection (a)(1), (a)(2) or (a)(3).

(72 Del. Laws, c. 401, § 1; 76 Del. Laws, c. 92, §§ 1, 2.)

§ 9-105 Control of electronic chattel paper.

(a) *General rule: control of electronic chattel paper.* — A secured party has control of electronic chattel paper if a system employed for evidencing the transfer of interests in the chattel paper reliably establishes the secured party as the person to which the chattel paper was assigned.

(b) *Specific facts giving control.* — A system satisfies subsection (a) if the record or records comprising the chattel paper are created, stored, and assigned in such a manner that:

(1) a single authoritative copy of the record or records exists which is unique, identifiable, and, except as otherwise provided in paragraphs (4), (5), and (6), unalterable;

(2) the authoritative copy identifies the secured party as the assignee of the record or records;

(3) the authoritative copy is communicated to and maintained by the secured party or its designated custodian;

(4) copies or amendments that add or change an identified assignee of the authoritative copy can be made only with the consent of the secured party;

(5) each copy of the authoritative copy and any copy of a copy is readily identifiable as a copy that is not the authoritative copy; and

(6) any amendment of the authoritative copy is readily identifiable as authorized or unauthorized.

(72 Del. Laws, c. 401, § 1; 79 Del. Laws, c. 15, § 5.)

§ 9-106 Control of investment property.

(a) *Control under Section 8-106.* — A person has control of a certificated security, uncertificated security, or security entitlement as provided in Section 8-106.

(b) *Control of commodity contract.* — A secured party has control of a commodity contract if:

(1) the secured party is the commodity intermediary with which the commodity contract is carried; or

(2) the commodity customer, secured party, and commodity intermediary have agreed that the commodity intermediary will apply any value distributed on account of the commodity contract as directed by the secured party without further consent by the commodity customer.

(c) *Effect of control of securities account or commodity account.* — A secured party having control of all security entitlements or commodity contracts carried in a securities account or commodity account has control over the securities account or commodity account.

(d) *Control of securities account.* — A secured party has control of a securities account if the name on the securities account is the name of the secured party or indicates that the secured party has a security interest in the securities account.

(e) *No implied duties of securities intermediary.* — The naming of the securities account in the name of the secured party or with an indication that the secured party has a security interest in the securities account under subsection (d) does not impose upon the securities intermediary any duty not expressly agreed to by the securities intermediary.

(72 Del. Laws, c. 401, § 1; 76 Del. Laws, c. 92, § 3.)

§ 9-107 Control of letter-of-credit right.

A secured party has control of a letter-of-credit right to the extent of any right to payment or performance by the issuer or any nominated person if the issuer or nominated person has consented to an assignment of proceeds of the letter of credit under Section 5-114(c) or otherwise applicable law or practice.

(72 Del. Laws, c. 401, § 1.)

§ 9-108 Sufficiency of description.

(a) *Sufficiency of description.* — Except as otherwise provided in subsections (c), (d), and (e), a description of personal or real property is sufficient, whether or not it is specific, if it reasonably identifies what is described.

(b) *Examples of reasonable identification.* — Except as otherwise provided in subsection (d), a description of collateral reasonably identifies the collateral if it identifies the collateral by:

(1) specific listing;

(2) category;

(3) except as otherwise provided in subsection (e), a type of collateral defined in the Uniform Commercial Code;

(4) quantity;

(5) computational or allocational formula or procedure; or

(6) except as otherwise provided in subsection (c), any other method, if the identity of the collateral is objectively determinable.

(c) *Supergeneric description not sufficient.* — A description of collateral as “all the debtor’s assets” or “all the debtor’s personal property” or using words of similar import does not reasonably identify the collateral.

(d) *Investment property.* — Except as otherwise provided in subsection (e), a description of a security entitlement, securities account, or commodity account is sufficient if it describes:

(1) the collateral by those terms or as investment property; or

(2) the underlying financial asset or commodity contract.

(e) *When description by type insufficient.* — A description only by type of collateral defined in the Uniform Commercial Code is an insufficient description of:

(1) a commercial tort claim; or

(2) in a consumer transaction, consumer goods, a security entitlement, a securities account, or a commodity account.

(72 Del. Laws, c. 401, § 1.)

2. Applicability of Article

§ 9-109 Scope.

(a) *General scope of Article.* — Except as otherwise provided in subsections (c) and (d), this Article applies to:

(1) a transaction, regardless of its form, that creates a security interest in personal property or fixtures by contract;

(2) an agricultural lien;

(3) a sale of accounts, chattel paper, payment intangibles, or promissory notes;

(4) a consignment;

(5) a security interest arising under Section 2-401, 2-505, 2-711(3), or 2A-508(5), as provided in Section 9-110; and

(6) a security interest arising under Section 4-210 or 5-118.

(b) *Security interest in secured obligation.* — The application of this Article to a security interest in a secured obligation is not affected by the fact that the obligation is itself secured by a transaction or interest to which this Article does not apply.

(c) *Extent to which Article does not apply.* — This Article does not apply to the extent that:

(1) a statute, regulation, or treaty of the United States preempts this Article;

(2) another statute of this State expressly governs the creation, perfection, priority, or enforcement of a security interest created by this State or a governmental unit of this State;

(3) a statute of another State, a foreign country, or a governmental unit of another State or a foreign country, other than a statute generally applicable to security interests, expressly governs creation, perfection, priority, or enforcement of a security interest created by the State, country, or governmental unit; or

(4) the rights of a transferee beneficiary or nominated person under a letter of credit are independent and superior under Section 5-114.

(d) *Inapplicability of Article.* — This Article does not apply to:

(1) a landlord's lien, other than an agricultural lien;

(2) a lien, other than an agricultural lien, given by statute or other rule of law for services or materials, but Section 9-333 applies with respect to priority of the lien;

(3) an assignment of a claim for wages, salary, or other compensation of an employee;

(4) a sale of accounts, chattel paper, payment intangibles, or promissory notes as part of a sale of the business out of which they arose;

(5) an assignment of accounts, chattel paper, payment intangibles, or promissory notes which is for the purpose of collection only;

(6) an assignment of a right to payment under a contract to an assignee that is also obligated to perform under the contract;

(7) an assignment of a single account, payment intangible, or promissory note to an assignee in full or partial satisfaction of a preexisting indebtedness;

(8) a transfer of an interest in or an assignment of a claim under a policy of insurance, other than an assignment by or to a health-care provider of a health-care-insurance receivable and any subsequent assignment of the right to payment, but Sections 9-315 and 9-322 apply with respect to proceeds and priorities in proceeds;

(9) an assignment of a right represented by a judgment, other than a judgment taken on a right to payment that was collateral;

(10) a right of recoupment or set-off, but:

(A) Section 9-340 applies with respect to the effectiveness of rights of recoupment or set-off against deposit accounts; and

(B) Section 9-404 applies with respect to defenses or claims of an account debtor;

(11) the creation or transfer of an interest in or lien on real property, including a lease or rents thereunder, except to the extent that provision is made for:

(A) liens on real property in Sections 9-203 and 9-308;

(B) fixtures in Section 9-334;

(C) fixture filings in Sections 9-501, 9-502, 9-512, 9-516, and 9-519; and

(D) security agreements covering personal and real property in Section 9-604;

(12) an assignment of a claim arising in tort, other than a commercial tort claim, but Sections 9-315 and 9-322 apply with respect to proceeds and priorities in proceeds; or

(13) an assignment of a deposit account in a consumer transaction, but Sections 9-315 and 9-322 apply with respect to proceeds and priorities in proceeds.

(72 Del. Laws, c. 401, § 1.)

§ 9-110 Security interests arising under Article 2 or 2A.

A security interest arising under Section 2-401, 2-505, 2-711(3), or 2A-508(5) is subject to this Article. However, until the debtor obtains possession of the goods:

(1) the security interest is enforceable, even if Section 9-203(b)(3) has not been satisfied;

(2) filing is not required to perfect the security interest;

(3) the rights of the secured party after default by the debtor are governed by Article 2 or 2A; and

(4) the security interest has priority over a conflicting security interest created by the debtor.

(72 Del. Laws, c. 401, § 1.)

§ 9-111 Law governing creation, attachment and enforcement of security interests; characterizations; and certain other rights.

(a) *Law governing classification of collateral and creation, attachment and enforcement of security interests.* — If a security agreement is governed by the Laws of the State of Delaware, then those Laws shall govern, among other things:

(1) The classification of the collateral subject to that agreement; and

(2) The creation, attachment, validity and enforcement of the security interest.

(b) *Law governing characterization of certain transactions.* — If an agreement is governed by the Laws of the State of Delaware, then those Laws shall govern, among other things:

(1) The characterization of a transaction subject to that agreement as (A) an interest in personal property or fixtures that secures payment or performance of an obligation, or (B) a sale, lease, bailment or consignment; and

(2) The characterization of a transaction subject to that agreement as a securitization transaction for purposes of Chapter 27A of this title.

(75 Del. Laws, c. 66, § 1.)

Part 2
Effectiveness of Security Agreement; Attachment of Security Interest; Rights of Parties to Security Agreement

1 Effectiveness and Attachment

§ 9-201 General effectiveness of security agreement.

(a) *General effectiveness.* — Except as otherwise provided in the Uniform Commercial Code, a security agreement is effective according to its terms between the parties, against purchasers of the collateral, and against creditors.

(b) *Applicable consumer laws and other law.* — A transaction subject to this Article is subject to any applicable rule of law which establishes a different rule for consumers, to any other statute or regulation of this State that regulates the rates, charges, agreements and practices for loans, credit sales, or other extensions of credit, and to any consumer-protection statute or regulation of this State.

(c) *Other applicable law controls.* — In case of conflict between this Article and a rule of law, statute, or regulation described in subsection (b), the rule of law, statute, or regulation controls. Failure to comply with a statute or regulation described in subsection (b) has only the effect the statute or regulation specifies.

(d) *Further deference to other applicable law.* — This Article does not:

(1) validate any rate, charge, agreement, or practice that violates a rule of law, statute, or regulation described in subsection (b); or

(2) extend the application of the rule of law, statute, or regulation to a transaction not otherwise subject to it.

(72 Del. Laws, c. 401, § 1.)

§ 9-202 Title to collateral immaterial.

Except as otherwise provided with respect to consignments or sales of accounts, chattel paper, payment intangibles, or promissory notes, the provisions of this Article with regard to rights and obligations apply whether title to collateral is in the secured party or the debtor.

(72 Del. Laws, c. 401, § 1.)

§ 9-203 Attachment and enforceability of security interest; proceeds; supporting obligations; formal requisites.

(a) *Attachment.* — A security interest attaches to collateral when it becomes enforceable against the debtor with respect to the collateral, unless an agreement expressly postpones the time of attachment.

(b) *Enforceability.* — Except as otherwise provided in subsections (c) through (k), a security interest is enforceable against the debtor and third parties with respect to the collateral only if:

(1) value has been given;

(2) the debtor has rights in the collateral or the power to transfer rights in the collateral to a secured party; and

(3) one of the following conditions is met:

(A) the debtor has authenticated a security agreement that provides a description of the collateral and, if the security interest covers timber to be cut, a description of the land concerned;

(B) the collateral is not a certificated security and is in the possession of the secured party under Section 9-313 pursuant to the debtor's security agreement;

(C) the collateral is a certificated security in registered form and the security certificate has been delivered to the secured party under Section 8-301 pursuant to the debtor's security agreement; or

(D) the collateral is deposit accounts, electronic chattel paper, investment property, letter-of-credit rights, or electronic documents, and the secured party has control under Section 7-106, 9-104, 9-105, 9-106, or 9-107 pursuant to the debtor's security agreement.

(c) *Other UCC provisions.* — Subsection (b) is subject to Section 4-210 on the security interest of a collecting bank, Section 5-118 on the security interest of a letter-of-credit issuer or nominated person, Section 9-110 on a security interest arising under Article 2 or 2A, and Section 9-206 on security interests in investment property.

(d) *When person becomes bound by another person's security agreement.* — A person becomes bound as debtor by a security agreement entered into by another person if, by operation of law other than this Article or by contract:

(1) the security agreement becomes effective to create a security interest in the person's property; or

(2) the person becomes generally obligated for the obligations of the other person, including the obligation secured under the security agreement, and acquires or succeeds to all or substantially all of the assets of the other person.

(e) *Effect of new debtor becoming bound.* — If a new debtor becomes bound as debtor by a security agreement entered into by another person:

(1) the agreement satisfies subsection (b)(3) with respect to existing or after-acquired property of the new debtor to the extent the property is described in the agreement; and

(2) another agreement is not necessary to make a security interest in the property enforceable.

(f) *Proceeds and supporting obligations.* — The attachment of a security interest in collateral gives the secured party the rights to proceeds provided by Section 9-315 and is also attachment of a security interest in a supporting obligation for the collateral.

(g) *Lien securing right to payment.* — The attachment of a security interest in a right to payment or performance secured by a security interest or other lien on personal or real property is also attachment of a security interest in the security interest, mortgage, or other lien.

(h) *Security entitlement carried in securities account.* — The attachment of a security interest in a securities account is also attachment of a security interest in the security entitlements carried in the securities account.

(i) *Commodity contracts carried in commodity account.* — The attachment of a security interest in a commodity account is also attachment of a security interest in the commodity contracts carried in the commodity account.

(j) *Authentication of security agreement made by a trust or trustee.* — For purposes of subsection (b)(3)(A), if the debtor is a trust (including a trust that is a registered organization) or a trustee acting with respect to property held in trust, the security agreement is properly authenticated if authenticated in the name of either the trust or the trustee by a person authorized to bind the debtor.

(k) *Creation of security interest by a trust or trustee.* — If the debtor is a trust (including a trust that is a registered organization) or a trustee acting with respect to property held in trust, the debtor's security agreement creates or provides for a security interest whether created or provided for in the name of either the trust or the trustee.

(72 Del. Laws, c. 401, § 1; 74 Del. Laws, c. 332, §§ 46-48.)

§ 9-204 After-acquired property; future advances.

(a) *After-acquired collateral.* — Except as otherwise provided in subsection (b), a security agreement may create or provide for a security interest in after-acquired collateral.

(b) *When after-acquired property clause not effective.* — A security interest does not attach under a term constituting an after-acquired property clause to:

(1) consumer goods, other than an accession when given as additional security, unless the debtor acquires rights in them within 10 days after the secured party gives value; or

(2) a commercial tort claim.

(c) *Future advances and other value.* — A security agreement may provide that collateral secures, or that accounts, chattel paper, payment intangibles, or promissory notes are sold in connection with, future advances or other value, whether or not the advances or value are given pursuant to commitment.

(72 Del. Laws, c. 401, § 1.)

§ 9-205 Use or disposition of collateral permissible.

(a) *When security interest not invalid or fraudulent.* — A security interest is not invalid or fraudulent against creditors solely because:

(1) the debtor has the right or ability to:

(A) use, commingle, or dispose of all or part of the collateral, including returned or repossessed goods;

(B) collect, compromise, enforce, or otherwise deal with collateral;

(C) accept the return of collateral or make repossessions; or

(D) use, commingle, or dispose of proceeds; or

(2) the secured party fails to require the debtor to account for proceeds or replace collateral.

(b) *Requirements of possession not relaxed.* — This section does not relax the requirements of possession if attachment, perfection, or enforcement of a security interest depends upon possession of the collateral by the secured party.

(72 Del. Laws, c. 401, § 1.)

§ 9-206 Security interest arising in purchase or delivery of financial asset.

(a) *Security interest when person buys through securities intermediary.* — A security interest in favor of a securities intermediary attaches to a person's security entitlement if:

(1) the person buys a financial asset through the securities intermediary in a transaction in which the person is obligated to pay the purchase price to the securities intermediary at the time of the purchase; and

(2) the securities intermediary credits the financial asset to the buyer's securities account before the buyer pays the securities intermediary.

(b) *Security interest secures obligation to pay for financial asset.* — The security interest described in subsection (a) secures the person's obligation to pay for the financial asset.

(c) *Security interest in payment against delivery transaction.* — A security interest in favor of a person that delivers a certificated security or other financial asset represented by a writing attaches to the security or other financial asset if:

(1) the security or other financial asset:

(A) in the ordinary course of business is transferred by delivery with any necessary endorsement or assignment; and

(B) is delivered under an agreement between persons in the business of dealing with such securities or financial assets; and

(2) the agreement calls for delivery against payment.

(d) *Security interest secures obligation to pay for delivery.* — The security interest described in subsection (c) secures the obligation to make payment for the delivery.

(72 Del. Laws, c. 401, § 1.)

2 Rights and Duties

§ 9-207 Rights and duties of secured party having possession or control of collateral.

(a) *Duty of care when secured party in possession.* — Except as otherwise provided in subsection (d), a secured party shall use reasonable care in the custody and preservation of collateral in the secured party's possession. In the case of chattel paper or an instrument, reasonable care includes taking necessary steps to preserve rights against prior parties unless otherwise agreed.

(b) *Expenses, risks, duties, and rights when secured party in possession.* — Except as otherwise provided in subsection (d), if a secured party has possession of collateral:

(1) reasonable expenses, including the cost of insurance and payment of taxes or other charges, incurred in the custody, preservation, use, or operation of the collateral are chargeable to the debtor and are secured by the collateral;

(2) the risk of accidental loss or damage is on the debtor to the extent of a deficiency in any effective insurance coverage;

(3) the secured party shall keep the collateral identifiable, but fungible collateral may be commingled; and

(4) the secured party may use or operate the collateral:

(A) for the purpose of preserving the collateral or its value;

(B) as permitted by an order of a court having competent jurisdiction; or

(C) except in the case of consumer goods, in the manner and to the extent agreed by the debtor.

(c) *Duties and rights when secured party in possession or control.* — Except as otherwise provided in subsection (d), a secured party having possession of collateral or control of collateral under Section 7-106, 9-104, 9-105, 9-106, or 9-107:

(1) may hold as additional security any proceeds, except money or funds, received from the collateral;

(2) shall apply money or funds received from the collateral to reduce the secured obligation, unless remitted to the debtor; and

(3) may create a security interest in the collateral.

(d) *Buyer of certain rights to payment.* — If the secured party is a buyer of accounts, chattel paper, payment intangibles, or promissory notes or a consignor:

(1) subsection (a) does not apply unless the secured party is entitled under an agreement:

(A) to charge back uncollected collateral; or

(B) otherwise to full or limited recourse against the debtor or a secondary obligor based on the nonpayment or other default of an account debtor or other obligor on the collateral; and

(2) subsections (b) and (c) do not apply.

(72 Del. Laws, c. 401, § 1; 74 Del. Laws, c. 332, § 49.)

§ 9-208 Additional duties of secured party having control of collateral.

(a) *Applicability of section.* — This section applies to cases in which there is no outstanding secured obligation and the secured party is not committed to make advances, incur obligations, or otherwise give value.

(b) *Duties of secured party after receiving demand from debtor.* — Within 10 days after receiving an authenticated demand by the debtor:

(1) a secured party having control of a deposit account under Section 9-104(a)(2) shall send to the bank with which the deposit account is maintained an authenticated statement that releases the bank from any further obligation to comply with instructions originated by the secured party;

(2) a secured party having control of a deposit account under Section 9-104(a)(3) shall:

(A) pay the debtor the balance on deposit in the deposit account; or

(B) transfer the balance on deposit into a deposit account in the debtor's name;

(3) a secured party, other than a buyer, having control of electronic chattel paper under Section 9-105 shall:

(A) communicate the authoritative copy of the electronic chattel paper to the debtor or its designated custodian;

(B) if the debtor designates a custodian that is the designated custodian with which the authoritative copy of the electronic chattel paper is maintained for the secured party, communicate to the custodian an authenticated record releasing the designated custodian from any further obligation to comply with instructions originated by the secured party and instructing the custodian to comply with instructions originated by the debtor; and

(C) take appropriate action to enable the debtor or its designated custodian to make copies of or revisions to the authoritative copy which add or change an identified assignee of the authoritative copy without the consent of the secured party;

(4) a secured party having control of investment property under Section 8-106(d)(2) or 9-106(b) shall send to the securities intermediary or commodity intermediary with which the security entitlement or commodity contract is maintained an authenticated record that releases the securities intermediary or commodity intermediary from any further obligation to comply with entitlement orders or directions originated by the secured party;

(5) a secured party having control of a letter-of-credit right under Section 9-107 shall send to each person having an unfulfilled obligation to pay or deliver proceeds of the letter of credit to the secured party an authenticated release from any further obligation to pay or deliver proceeds of the letter of credit to the secured party; and

(6) a secured party having control of an electronic document shall:

(A) give control of the electronic document to the debtor or its designated custodian;

(B) if the debtor designates a custodian that is the designated custodian with which the authoritative copy of the electronic document is maintained for the secured party, communicate to the custodian an authenticated record releasing the designated custodian from any further obligation to comply with instructions originated by the secured party and instructing the custodian to comply with instructions originated by the debtor; and

(C) take appropriate action to enable the debtor or its designated custodian to make copies of or revisions to the authoritative copy which add or change an identified assignee of the authoritative copy without the consent of the secured party.

(72 Del. Laws, c. 401, § 1; 74 Del. Laws, c. 332, § 50.)

§ 9-209 Duties of secured party if account debtor has been notified of assignment.

(a) *Applicability of section.* — Except as otherwise provided in subsection (c), this section applies if:

(1) there is no outstanding secured obligation; and

(2) the secured party is not committed to make advances, incur obligations, or otherwise give value.

(b) *Duties of secured party after receiving demand from debtor.* — Within 10 days after receiving an authenticated demand by the debtor, a secured party shall send to an account debtor that has received notification of an assignment to the secured party as assignee under Section 9-406(a) an authenticated record that releases the account debtor from any further obligation to the secured party.

(c) *Inapplicability to sales.* — This section does not apply to an assignment constituting the sale of an account, chattel paper, or payment intangible.

(72 Del. Laws, c. 401, § 1.)

§ 9-210 Request for accounting; request regarding list of collateral or statement of account.

(a) *Definitions.* — In this section:

(1) "Request" means a record of a type described in paragraph (2), (3), or (4).

(2) "Request for an accounting" means a record authenticated by a debtor requesting that the recipient provide an accounting of the unpaid obligations secured by collateral and reasonably identifying the transaction or relationship that is the subject of the request.

(3) "Request regarding a list of collateral" means a record authenticated by a debtor requesting that the recipient approve or correct a list of what the debtor believes to be the collateral securing an obligation and reasonably identifying the transaction or relationship that is the subject of the request.

(4) "Request regarding a statement of account" means a record authenticated by a debtor requesting that the recipient approve or correct a statement indicating what the debtor believes to be the aggregate amount of unpaid obligations secured by collateral as of a specified date and reasonably identifying the transaction or relationship that is the subject of the request.

(b) *Duty to respond to requests.* — Subject to subsections (c), (d), (e), and (f), a secured party, other than a buyer of accounts, chattel paper, payment intangibles, or promissory notes or a consignor, shall comply with a request within 14 days after receipt:

(1) in the case of a request for an accounting, by authenticating and sending to the debtor an accounting; and

(2) in the case of a request regarding a list of collateral or a request regarding a statement of account, by authenticating and sending to the debtor an approval or correction.

(c) *Request regarding list of collateral; statement concerning type of collateral.* — A secured party that claims a security interest in all of a particular type of collateral owned by the debtor may comply with a request regarding a list of collateral by sending to the debtor an authenticated record including a statement to that effect within 14 days after receipt.

(d) *Request regarding list of collateral; no interest claimed.* — A person that receives a request regarding a list of collateral, claims no interest in the collateral when it receives the request, and claimed an interest in the collateral at an earlier time shall comply with the request within 14 days after receipt by sending to the debtor an authenticated record:

(1) disclaiming any interest in the collateral; and

(2) if known to the recipient, providing the name and mailing address of any assignee of or successor to the recipient's interest in the collateral.

(e) *Request for accounting or regarding statement of account; no interest in obligation claimed.* — A person that receives a request for an accounting or a request regarding a statement of account, claims no interest in the obligations when it receives the request, and claimed an interest in the obligations at an earlier time shall comply with the request within 14 days after receipt by sending to the debtor an authenticated record:

(1) disclaiming any interest in the obligations; and

(2) if known to the recipient, providing the name and mailing address of any assignee of or successor to the recipient's interest in the obligations.

(f) *Charges for responses.* — A debtor is entitled without charge to one response to a request under this section during any six-month period. The secured party may require payment of a charge not exceeding $25 for each additional response.

(72 Del. Laws, c. 401, § 1.)

Part 3

Perfection and Priority

1 Law Governing Perfection and Priority

§ 9-301 Law governing perfection and priority of security interests.

Except as otherwise provided in Sections 9-303 through 9-306, the following rules determine the law governing perfection, the effect of perfection or nonperfection, and the priority of a security interest in collateral:

(1) Except as otherwise provided in this section, while a debtor is located in a jurisdiction, the local law of that jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in collateral.

(2) While collateral is located in a jurisdiction, the local law of that jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a possessory security interest in that collateral.

(3) Except as otherwise provided in paragraph (4), while tangible negotiable documents, goods, instruments, money, or tangible chattel paper is located in a jurisdiction, the local law of that jurisdiction governs:

(A) perfection of a security interest in the goods by filing a fixture filing;

(B) perfection of a security interest in timber to be cut; and

(C) the effect of perfection or nonperfection and the priority of a nonpossessory security interest in the collateral.

(4) The local law of the jurisdiction in which the wellhead or minehead is located governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in as-extracted collateral.

(72 Del. Laws, c. 401, § 1; 74 Del. Laws, c. 332, § 51.)

§ 9-302 Law governing perfection and priority of agricultural liens.

While farm products are located in a jurisdiction, the local law of that jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of an agricultural lien on the farm products.

(72 Del. Laws, c. 401, § 1.)

§ 9-303 Law governing perfection and priority of security interests in goods covered by a certificate of title.

(a) *Applicability of section.* — This section applies to goods covered by a certificate of title, even if there is no other relationship between the jurisdiction under whose certificate of title the goods are covered and the goods or the debtor.

(b) *When goods covered by certificate of title.* — Goods become covered by a certificate of title when a valid application for the certificate of title and the applicable fee are delivered to the appropriate authority. Goods cease to be covered by a certificate of title at the earlier of the time the certificate of title ceases to be effective under the law of the issuing jurisdiction or the time the goods become covered subsequently by a certificate of title issued by another jurisdiction.

(c) *Applicable law.* — The local law of the jurisdiction under whose certificate of title the goods are covered governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in goods covered by a certificate of title from the time the goods become covered by the certificate of title until the goods cease to be covered by the certificate of title.

(72 Del. Laws, c. 401, § 1.)

§ 9-304 Law governing perfection and priority of security interests in deposit accounts.

(a) *Law of bank's jurisdiction governs.* — The local law of a bank's jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in a deposit account maintained with that bank.

(b) *Bank's jurisdiction.* — The following rules determine a bank's jurisdiction for purposes of this part:

(1) If an agreement between the bank and the debtor governing the deposit account expressly provides that a particular jurisdiction is the bank's jurisdiction for purposes of this part, this Article, or the Uniform Commercial Code, that jurisdiction is the bank's jurisdiction.

(2) If paragraph (1) does not apply and an agreement between the bank and its customer governing the deposit account expressly provides that the agreement is governed by the law of a particular jurisdiction, that jurisdiction is the bank's jurisdiction.

(3) If neither paragraph (1) nor paragraph (2) applies and an agreement between the bank and its customer governing the deposit account expressly provides that the deposit account is maintained at an office in a particular jurisdiction, that jurisdiction is the bank's jurisdiction.

(4) If none of the preceding paragraphs applies, the bank's jurisdiction is the jurisdiction in which the office identified in an account statement as the office serving the customer's account is located.

(5) If none of the preceding paragraphs applies, the bank's jurisdiction is the jurisdiction in which the chief executive office of the bank is located.

(72 Del. Laws, c. 401, § 1.)

§ 9-305 Law governing perfection and priority of security interests in investment property.

(a) *Governing law: general rules.* — Except as otherwise provided in subsection (c), the following rules apply:

(1) While a security certificate is located in a jurisdiction, the local law of that jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in the certificated security represented thereby.

(2) The local law of the issuer's jurisdiction as specified in Section 8-110(d) governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in an uncertificated security.

(3) The local law of the securities intermediary's jurisdiction as specified in Section 8-110(e) governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in a security entitlement or securities account.

(4) The local law of the commodity intermediary's jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in a commodity contract or commodity account.

(b) *Commodity intermediary's jurisdiction.* — The following rules determine a commodity intermediary's jurisdiction for purposes of this part:

(1) If an agreement between the commodity intermediary and commodity customer governing the commodity account expressly provides that a particular jurisdiction is the commodity intermediary's jurisdiction for purposes of this part, this Article, or the Uniform Commercial Code, that jurisdiction is the commodity intermediary's jurisdiction.

(2) If paragraph (1) does not apply and an agreement between the commodity intermediary and commodity customer governing the commodity account expressly provides that the agreement is governed by the law of a particular jurisdiction, that jurisdiction is the commodity intermediary's jurisdiction.

(3) If neither paragraph (1) nor paragraph (2) applies and an agreement between the commodity intermediary and commodity customer governing the commodity account expressly provides that the commodity account is maintained at an office in a particular jurisdiction, that jurisdiction is the commodity intermediary's jurisdiction.

(4) If none of the preceding paragraphs applies, the commodity intermediary's jurisdiction is the jurisdiction in which the office identified in an account statement as the office serving the commodity customer's account is located.

(5) If none of the preceding paragraphs applies, the commodity intermediary's jurisdiction is the jurisdiction in which the chief executive office of the commodity intermediary is located.

(c) *When perfection governed by law of jurisdiction where debtor located.* — The local law of the jurisdiction in which the debtor is located governs:

(1) perfection of a security interest in investment property by filing;

(2) automatic perfection of a security interest in investment property created by a broker or securities intermediary; and

(3) automatic perfection of a security interest in a commodity contract or commodity account created by a commodity intermediary.

(72 Del. Laws, c. 401, § 1.)

§ 9-306 Law governing perfection and priority of security interests in letter-of-credit rights.

(a) *Governing law: issuer's or nominated person's jurisdiction.* — Subject to subsection (c), the local law of the issuer's jurisdiction or a nominated person's jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in a letter-of-credit right if the issuer's jurisdiction or nominated person's jurisdiction is a State.

(b) *Issuer's or nominated person's jurisdiction.* — For purposes of this part, an issuer's jurisdiction or nominated person's jurisdiction is the jurisdiction whose law governs the liability of the issuer or nominated person with respect to the letter-of-credit right as provided in Section 5-116.

(c) *When section not applicable.* — This section does not apply to a security interest that is perfected only under Section 9-308(d).

(72 Del. Laws, c. 401, § 1.)

§ 9-307 Location of debtor.

(a) *"Place of business."* — In this section, "place of business" means a place where a debtor conducts its affairs.

(b) *Debtor's location: general rules.* — Except as otherwise provided in this section, the following rules determine a debtor's location:

(1) A debtor who is an individual is located at the individual's principal residence.

(2) A debtor that is an organization and has only one place of business is located at its place of business.

(3) A debtor that is an organization and has more than one place of business is located at its chief executive office.

(c) *Limitation of applicability of subsection (b).* — Subsection (b) applies only if a debtor's residence, place of business, or chief executive office, as applicable, is located in a jurisdiction whose law generally requires information concerning the existence of a nonpossessory security interest to be made generally available in a filing, recording, or registration system as a condition or result of the security interest's obtaining priority over the rights of a lien creditor with respect to the collateral. If subsection (b) does not apply, the debtor is located in the District of Columbia.

(d) *Continuation of location: cessation of existence, etc.* — A person that ceases to exist, have a residence, or have a place of business continues to be located in the jurisdiction specified by subsections (b) and (c).

(e) *Location of registered organization organized under State law.* — A registered organization that is organized under the law of a State is located in that State.

(f) *Location of registered organization organized under federal law; bank branches and agencies.* — Except as otherwise provided in subsection (i), a registered organization that is organized under the law of the United States and a branch or agency of a bank that is not organized under the law of the United States or a State are located:

(1) in the State that the law of the United States designates, if the law designates a State of location;

(2) in the State that the registered organization, branch, or agency designates, if the law of the United States authorizes the registered organization, branch, or agency to designate its State of location, including by designating its main office, home office, or other comparable office; or

(3) in the District of Columbia, if neither paragraph (1) nor paragraph (2) applies.

For purposes of paragraph (2) above, if a registered organization designates a main office, a home office, or other comparable office in accordance with the law of the United States, such registered organization is located in the State that such main office, home office, or other comparable office is located.

(g) *Continuation of location: change in status of registered organization.* — A registered organization continues to be located in the jurisdiction specified by subsection (e) or (f) notwithstanding:

(1) the suspension, revocation, forfeiture, or lapse of the registered organization's status as such in its jurisdiction of organization; or

(2) the dissolution, winding up, or cancellation of the existence of the registered organization.

(h) *Location of United States.* — The United States is located in the District of Columbia.

(i) *Location of foreign bank branch or agency if licensed in only one State.* — A branch or agency of a bank that is not organized under the law of the United States or a State is located in the State in which the branch or agency is licensed, if all branches and agencies of the bank are licensed in only one State.

(j) *Location of foreign air carrier.* — A foreign air carrier under the Federal Aviation Act of 1958 [see now 49 U.S.C. § 40101 et seq.], as amended, is located at the designated office of the agent upon which service of process may be made on behalf of the carrier.

(k) *Location of trusts and trustees.* — A debtor that is a trust that is a registered organization is located in the jurisdiction of the trust specified by subsection (e) or (f). A debtor that is a trust that is not a registered organization is located in the jurisdiction of the trust specified by subsection (b)(2) or (b)(3). A debtor that is a trustee acting with respect to property held in trust is located in the jurisdiction of the trustee specified by subsection (b), (e), (f) or (i).

(l) *Section applies only to this part.* — This section applies only for purposes of this part.

(72 Del. Laws, c. 401, § 1; 74 Del. Laws, c. 332, § 52; 79 Del. Laws, c. 15, § 6.)

2 Perfection

§ 9-308 When security interest or agricultural lien is perfected; continuity of perfection.

(a) *Perfection of security interest.* — Except as otherwise provided in this section and Section 9-309, a security interest is perfected if it has attached and all of the applicable requirements for perfection in Sections 9-310 through 9-316 have been satisfied. A security interest is perfected when it attaches if the applicable requirements are satisfied before the security interest attaches.

(b) *Perfection of agricultural lien.* — An agricultural lien is perfected if it has become effective and all of the applicable requirements for perfection in Section 9-310 have been satisfied. An agricultural lien is perfected when it becomes effective if the applicable requirements are satisfied before the agricultural lien becomes effective.

(c) *Continuous perfection; perfection by different methods.* — A security interest or agricultural lien is perfected continuously if it is originally perfected by one method under this Article and is later perfected by another method under this Article, without an intermediate period when it was unperfected.

(d) *Supporting obligation.* — Perfection of a security interest in collateral also perfects a security interest in a supporting obligation for the collateral.

(e) *Lien securing right to payment.* — Perfection of a security interest in a right to payment or performance also perfects a security interest in a security interest, mortgage, or other lien on personal or real property securing the right.

(f) *Security entitlement carried in securities account.* — Perfection of a security interest in a securities account also perfects a security interest in the security entitlements carried in the securities account.

(g) *Commodity contract carried in commodity account.* — Perfection of a security interest in a commodity account also perfects a security interest in the commodity contracts carried in the commodity account.

(72 Del. Laws, c. 401, § 1.)

§ 9-309 Security interest perfected upon attachment.

The following security interests are perfected when they attach:

(1) a purchase-money security interest in consumer goods, except as otherwise provided in Section 9-311(b) with respect to consumer goods that are subject to a statute or treaty described in Section 9-311(a);

(2) an assignment of accounts or payment intangibles which does not by itself or in conjunction with other assignments to the same assignee transfer a significant part of the assignor's outstanding accounts or payment intangibles;

(3) a sale of a payment intangible;

(4) a sale of a promissory note;

(5) a security interest created by the assignment of a health-care-insurance receivable to the provider of the health-care goods or services;

(6) a security interest arising under Section 2-401, 2-505, 2-711(3), or 2A-508(5), until the debtor obtains possession of the collateral;

(7) a security interest of a collecting bank arising under Section 4-210;

(8) a security interest of an issuer or nominated person arising under Section 5-118;

(9) a security interest arising in the delivery of a financial asset under Section 9-206(c);

(10) a security interest in investment property created by a broker or securities intermediary;

(11) a security interest in a commodity contract or a commodity account created by a commodity intermediary;

(12) an assignment for the benefit of all creditors of the transferor and subsequent transfers by the assignee thereunder; and

(13) a security interest created by an assignment of a beneficial interest in a decedent's estate.

(72 Del. Laws, c. 401, § 1.)

§ 9-310 When filing required to perfect security interest or agricultural lien; security interests and agricultural liens to which filing provisions do not apply.

(a) *General rule: perfection by filing.* — Except as otherwise provided in subsection (b) and Section 9-312(b), a financing statement must be filed to perfect all security interests and agricultural liens.

(b) *Exceptions: filing not necessary.* — The filing of a financing statement is not necessary to perfect a security interest:

(1) that is perfected under Section 9-308(d), (e), (f), or (g);

(2) that is perfected under Section 9-309 when it attaches;

(3) in property subject to a statute, regulation, or treaty described in Section 9-311(a);

(4) in goods in possession of a bailee which is perfected under Section 9-312(d)(1) or (2);

(5) in certificated securities, documents, goods, or instruments which is perfected without filing, control, or possession under Section 9-312(e), (f), or (g);

(6) in collateral in the secured party's possession under Section 9-313;

(7) in a certificated security which is perfected by delivery of the security certificate to the secured party under Section 9-313;

(8) in deposit accounts, electronic chattel paper, electronic documents, investment property, or letter-of-credit rights which is perfected by control under Section 9-314;

(9) in proceeds which is perfected under Section 9-315; or

(10) that is perfected under Section 9-316.

(c) *Assignment of perfected security interest.* — If a secured party assigns a perfected security interest or agricultural lien, a filing under this Article is not required to continue the perfected status of the security interest against creditors of and transferees from the original debtor.

(72 Del. Laws, c. 401, § 1; 74 Del. Laws, c. 332, §§ 53, 54.)

§ 9-311 Perfection of security interests in property subject to certain statutes, regulations, and treaties.

(a) *Security interest subject to other law.* — Except as otherwise provided in subsection (d), the filing of a financing statement is not necessary or effective to perfect a security interest in property subject to:

(1) a statute, regulation, or treaty of the United States whose requirements for a security interest's obtaining priority over the rights of a lien creditor with respect to the property preempt Section 9-310(a);

(2) Subchapter II of Chapter 23 of Title 21, relating to the notation of liens and encumbrances on certificates of title for motor vehicles; or

(3) a statute of another jurisdiction which provides for a security interest to be indicated on a certificate of title as a condition or result of the security interest's obtaining priority over the rights of a lien creditor with respect to the property.

(b) *Compliance with other law.* — Compliance with the requirements of a statute, regulation, or treaty described in subsection (a) for obtaining priority over the rights of a lien creditor is equivalent to the filing of a financing statement under this Article. Except as otherwise provided in subsection (d) and Sections 9-313 and 9-316(d) and (e) for goods covered by a certificate of title, a security interest in property subject to a statute, regulation, or treaty described in subsection (a) may be perfected only by compliance with those requirements, and a security interest so perfected remains perfected notwithstanding a change in the use or transfer of possession of the collateral.

(c) *Duration and renewal of perfection.* — Except as otherwise provided in subsection (d) and Section 9-316(d) and (e), duration and renewal of perfection of a security interest perfected by compliance with the requirements prescribed by a statute, regulation, or treaty described in subsection (a) are governed by the statute, regulation, or treaty. In other respects, the security interest is subject to this Article.

(d) *Inapplicability to certain inventory.* — During any period in which collateral subject to a statute specified in subsection (a)(2) is inventory held for sale or lease by a person or leased by that person as lessor and that person is in the business of selling goods of that kind, this section does not apply to a security interest in that collateral created by that person.

(72 Del. Laws, c. 401, § 1; 79 Del. Laws, c. 15, § 7.)

§ 9-312 Perfection of security interests in chattel paper, deposit accounts, documents, goods covered by documents, instruments, investment property, letter-of-credit rights, and money; perfection by permissive filing; temporary perfection without filing or transfer of possession.

(a) *Perfection by filing permitted.* — A security interest in chattel paper, negotiable documents, instruments, or investment property may be perfected by filing.

(b) *Control or possession of certain collateral.* — Except as otherwise provided in Section 9-315(c) and (d) for proceeds:

(1) a security interest in a deposit account may be perfected only by control under Section 9-314;

(2) and except as otherwise provided in Section 9-308(d), a security interest in a letter-of-credit right may be perfected only by control under Section 9-314; and

(3) a security interest in money may be perfected only by the secured party's taking possession under Section 9-313.

(c) *Goods covered by negotiable document.* — While goods are in the possession of a bailee that has issued a negotiable document covering the goods:

(1) a security interest in the goods may be perfected by perfecting a security interest in the document; and

(2) a security interest perfected in the document has priority over any security interest that becomes perfected in the goods by another method during that time.

(d) *Goods covered by nonnegotiable document.* — While goods are in the possession of a bailee that has issued a nonnegotiable document covering the goods, a security interest in the goods may be perfected by:

(1) issuance of a document in the name of the secured party;

(2) the bailee's receipt of notification of the secured party's interest; or

(3) filing as to the goods.

(e) *Temporary perfection: new value.* — A security interest in certificated securities, negotiable documents, or instruments is perfected without filing or the taking of possession or control for a period of 20 days from the time it attaches to the extent that it arises for new value given under an authenticated security agreement.

(f) *Temporary perfection: goods or documents made available to debtor.* — A perfected security interest in a negotiable document or goods in possession of a bailee, other than one that has issued a negotiable document for the goods, remains perfected for 20 days without filing if the secured party makes available to the debtor the goods or documents representing the goods for the purpose of:

(1) ultimate sale or exchange; or

(2) loading, unloading, storing, shipping, transshipping, manufacturing, processing, or otherwise dealing with them in a manner preliminary to their sale or exchange.

(g) *Temporary perfection: delivery of security certificate or instrument to debtor.* — A perfected security interest in a certificated security or instrument remains perfected for 20 days without filing if the secured party delivers the security certificate or instrument to the debtor for the purpose of:

(1) ultimate sale or exchange; or

(2) presentation, collection, enforcement, renewal, or registration of transfer.

(h) *Expiration of temporary perfection.* — After the 20-day period specified in subsection (e), (f), or (g) expires, perfection depends upon compliance with this Article.

(72 Del. Laws, c. 401, § 1; 74 Del. Laws, c. 332, § 55.)

§ 9-313 When possession by or delivery to secured party perfects security interest without filing.

(a) *Perfection by possession or delivery.* — Except as otherwise provided in subsection (b), a secured party may perfect a security interest in tangible negotiable documents, goods, instruments, money, or tangible chattel paper by taking possession of the collateral. A secured party may perfect a security interest in certificated securities by taking delivery of the certificated securities under Section 8-301.

(b) *Goods covered by certificate of title.* — With respect to goods covered by a certificate of title issued by this State, a secured party may perfect a security interest in the goods by taking possession of the goods only in the circumstances described in Section 9-316(d).

(c) *Collateral in possession of person other than debtor.* — With respect to collateral other than certificated securities and goods covered by a document, a secured party takes possession of collateral in the possession of a person other than the debtor, the secured party, or a lessee of the collateral from the debtor in the ordinary course of the debtor's business, when:

(1) the person in possession authenticates a record acknowledging that it holds possession of the collateral for the secured party's benefit; or

(2) the person takes possession of the collateral after having authenticated a record acknowledging that it will hold possession of collateral for the secured party's benefit.

(d) *Time of perfection by possession; continuation of perfection.* — If perfection of a security interest depends upon possession of the collateral by a secured party, perfection occurs no earlier than the time the secured party takes possession and continues only while the secured party retains possession.

(e) *Time of perfection by delivery; continuation of perfection.* — A security interest in a certificated security in registered form is perfected by delivery when delivery of the certificated security occurs under Section 8-301 and remains perfected by delivery until the debtor obtains possession of the security certificate.

(f) *Acknowledgment not required.* — A person in possession of collateral is not required to acknowledge that it holds possession for a secured party's benefit.

(g) *Effectiveness of acknowledgment; no duties or confirmation.* — If a person acknowledges that it holds possession for the secured party's benefit:

(1) the acknowledgment is effective under subsection (c) or Section 8-301(a), even if the acknowledgment violates the rights of a debtor; and

(2) unless the person otherwise agrees or law other than this Article otherwise provides, the person does not owe any duty to the secured party and is not required to confirm the acknowledgment to another person.

(h) *Secured party's delivery to person other than debtor.* — A secured party having possession of collateral does not relinquish possession by delivering the collateral to a person other than the debtor or a lessee of the collateral from the debtor in the ordinary course of the debtor's business if the person was instructed before the delivery or is instructed contemporaneously with the delivery:

(1) to hold possession of the collateral for the secured party's benefit; or

(2) to redeliver the collateral to the secured party.

(i) *Effect of delivery under subsection (h); no duties or confirmation.* — A secured party does not relinquish possession, even if a delivery under subsection (h) violates the rights of a debtor. A person to which collateral is delivered under subsection (h) does not owe any duty to the secured party and is not required to confirm the delivery to another person unless the person otherwise agrees or law other than this Article otherwise provides.

(72 Del. Laws, c. 401, § 1; 74 Del. Laws, c. 332, § 56.)

§ 9-314 Perfection by control.

(a) *Perfection by control.* — A security interest in investment property, deposit accounts, letter-of-credit rights, electronic chattel paper, or electronic documents may be perfected by control of the collateral under Section 7-106, 9-104, 9-105, 9-106, or 9-107.

(b) *Specified collateral: time of perfection by control; continuation of perfection.* — A security interest in deposit accounts, electronic chattel paper, letter-of-credit rights, or electronic documents is perfected by control under Section 7-106, 9-104, 9-105, or 9-107 when the secured party obtains control and remains perfected by control only while the secured party retains control."

(c) *Investment property: time of perfection by control; continuation of perfection.* — A security interest in investment property is perfected by control under Section 9-106 from the time the secured party obtains control and remains perfected by control until:

(1) the secured party does not have control; and

(2) one of the following occurs:

(A) if the collateral is a certificated security, the debtor has or acquires possession of the security certificate;

(B) if the collateral is an uncertificated security, the issuer has registered or registers the debtor as the registered owner; or

(C) if the collateral is a security entitlement, the debtor is or becomes the entitlement holder.

(72 Del. Laws, c. 401, § 1; 74 Del. Laws, c. 332, §§ 57, 58.)

§ 9-315 Secured party's rights on disposition of collateral and in proceeds.

(a) *Disposition of collateral: continuation of security interest or agricultural lien; proceeds.* — Except as otherwise provided in this Article and in Section 2-403(2):

(1) a security interest or agricultural lien continues in collateral notwithstanding sale, lease, license, exchange, or other disposition thereof unless the secured party authorized the disposition free of the security interest or agricultural lien; and

(2) a security interest attaches to any identifiable proceeds of collateral.

(b) *When commingled proceeds identifiable.* — Proceeds that are commingled with other property are identifiable proceeds:

(1) if the proceeds are goods, to the extent provided by Section 9-336; and

(2) if the proceeds are not goods, to the extent that the secured party identifies the proceeds by a method of tracing, including application of equitable principles, that is permitted under law other than this Article with respect to commingled property of the type involved.

(c) *Perfection of security interest in proceeds.* — A security interest in proceeds is a perfected security interest if the security interest in the original collateral was perfected.

(d) *Continuation of perfection.* — A perfected security interest in proceeds becomes unperfected on the 21st day after the security interest attaches to the proceeds unless:

(1) the following conditions are satisfied:

(A) a filed financing statement covers the original collateral;

(B) the proceeds are collateral in which a security interest may be perfected by filing in the office in which the financing statement has been filed; and

(C) the proceeds are not acquired with cash proceeds;

(2) the proceeds are identifiable cash proceeds; or

(3) the security interest in the proceeds is perfected other than under subsection (c) when the security interest attaches to the proceeds or within 20 days thereafter.

(e) *When perfected security interest in proceeds becomes unperfected.* — If a filed financing statement covers the original collateral, a security interest in proceeds which remains perfected under subsection (d)(1) becomes unperfected at the later of:

(1) when the effectiveness of the filed financing statement lapses under Section 9-515 or is terminated under Section 9-513; or

(2) the 21st day after the security interest attaches to the proceeds.

(72 Del. Laws, c. 401, § 1.)

§ 9-316 Effect of change in governing law.

(a) *General rule: effect on perfection of change in governing law.* — A security interest perfected pursuant to the law of the jurisdiction designated in Section 9-301(1) or 9-305(c) remains perfected until the earliest of:

(1) the time perfection would have ceased under the law of that jurisdiction;

(2) the expiration of four months after a change of the debtor's location to another jurisdiction; or

(3) the expiration of one year after a transfer of collateral to a person that thereby becomes a debtor and is located in another jurisdiction.

(b) *Security interest perfected or unperfected under law of new jurisdiction.* — If a security interest described in subsection (a) becomes perfected under the law of the other jurisdiction before the earliest time or event described in that subsection, it remains perfected thereafter. If the security interest does not become perfected under the law of the other jurisdiction before the earliest time or event, it becomes unperfected and is deemed never to have been perfected as against a purchaser of the collateral for value.

(c) *Possessory security interest in collateral moved to new jurisdiction.* — A possessory security interest in collateral, other than goods covered by a certificate of title and as-extracted collateral consisting of goods, remains continuously perfected if:

(1) the collateral is located in one jurisdiction and subject to a security interest perfected under the law of that jurisdiction;

(2) thereafter the collateral is brought into another jurisdiction; and

(3) upon entry into the other jurisdiction, the security interest is perfected under the law of the other jurisdiction.

(d) *Goods covered by certificate of title from this State.* — Except as otherwise provided in subsection (e), a security interest in goods covered by a certificate of title which is perfected by any method under the law of another jurisdiction when the goods become covered

by a certificate of title from this State remains perfected until the security interest would have become unperfected under the law of the other jurisdiction had the goods not become so covered.

(e) *When subsection (d) security interests becomes unperfected against purchasers.* — A security interest described in subsection (d) becomes unperfected as against a purchaser of the goods for value and is deemed never to have been perfected as against a purchaser of the goods for value if the applicable requirements for perfection under Section 9-311(b) or 9-313 are not satisfied before the earlier of:

(1) the time the security interest would have become unperfected under the law of the other jurisdiction had the goods not become covered by a certificate of title from this State; or

(2) the expiration of four months after the goods had become so covered.

(f) *Change in jurisdiction of bank, issuer, nominated person, securities intermediary, or commodity intermediary.* — A security interest in deposit accounts, letter-of-credit rights, or investment property which is perfected under the law of the bank's jurisdiction, the issuer's jurisdiction, a nominated person's jurisdiction, the securities intermediary's jurisdiction, or the commodity intermediary's jurisdiction, as applicable, remains perfected until the earlier of:

(1) the time the security interest would have become unperfected under the law of that jurisdiction; or

(2) the expiration of four months after a change of the applicable jurisdiction to another jurisdiction.

(g) *Subsection (f) security interest perfected or unperfected under law of new jurisdiction.* — If a security interest described in subsection (f) becomes perfected under the law of the other jurisdiction before the earlier of the time or the end of the period described in that subsection, it remains perfected thereafter. If the security interest does not become perfected under the law of the other jurisdiction before the earlier of that time or the end of that period, it becomes unperfected and is deemed never to have been perfected as against a purchaser of the collateral for value.

(h) *Effect on filed financing statement of change in governing law.* — The following rules apply to collateral to which a security interest attaches within four months after the debtor changes its location to another jurisdiction:

(1) A financing statement filed before the change pursuant to the law of the jurisdiction designated in Section 9-301(1) or 9-305(c) is effective to perfect a security interest in the collateral if the financing statement would have been effective to perfect a security interest in the collateral had the debtor not changed its location.

(2) If a security interest perfected by a financing statement that is effective under paragraph (1) becomes perfected under the law of the other jurisdiction before the earlier of the time the financing statement would have become ineffective under the law of the jurisdiction designated in Section 9-301(1) or 9-305(c) or the expiration of the four-month period, it remains perfected thereafter. If the security interest does not become perfected under the law of the other jurisdiction before the earlier time or event, it becomes unperfected and is deemed never to have been perfected as against a purchaser of the collateral for value.

(i) *Effect of change in governing law on financing statement filed against original debtor.* — If a financing statement naming an original debtor is filed pursuant to the law of the jurisdiction designated in Section 9-301(1) or 9-305(c) and the new debtor is located in another jurisdiction, the following rules apply:

(1) The financing statement is effective to perfect a security interest in collateral acquired by the new debtor before, and within four months after, the new debtor becomes bound under Section 9-203(d), if the financing statement would have been effective to perfect a security interest in the collateral had the collateral been acquired by the original debtor.

(2) A security interest perfected by the financing statement and which becomes perfected under the law of the other jurisdiction before the earlier of the time the financing statement would have become ineffective under the law of the jurisdiction designated in Section 9-301(1) or 9-305(c) or the expiration of the four-month period remains perfected thereafter. A security interest that is perfected by the financing statement but which does not become perfected under the law of the other jurisdiction before the earlier time or event becomes unperfected and is deemed never to have been perfected as against a purchaser of the collateral for value.

(72 Del. Laws, c. 401, § 1; 79 Del. Laws, c. 15, §§ 8, 9.)

3. Priority

§ 9-317 Interests that take priority over or take free of security interest or agricultural lien.

(a) *Conflicting security interests and rights of lien creditors.* — A security interest or agricultural lien is subordinate to the rights of:

(1) a person entitled to priority under Section 9-322; and

(2) except as otherwise provided in subsection (e), a person that becomes a lien creditor before the earlier of the time:

(A) the security interest or agricultural lien is perfected; or

(B) one of the conditions specified in Section 9-203(b)(3) is met and a financing statement covering the collateral is filed.

(b) *Buyers that receive delivery.* — Except as otherwise provided in subsection (e), a buyer, other than a secured party, of tangible chattel paper, tangible documents, goods, instruments, or a certificated security takes free of a security interest or agricultural lien if the buyer gives value and receives delivery of the collateral without knowledge of the security interest or agricultural lien and before it is perfected.

(c) *Lessees that receive delivery.* — Except as otherwise provided in subsection (e), a lessee of goods takes free of a security interest or agricultural lien if the lessee gives value and receives delivery of the collateral without knowledge of the security interest or agricultural lien and before it is perfected.

(d) *Licensees and buyers of certain collateral.* — A licensee of a general intangible or a buyer, other than a secured party, of collateral other than tangible chattel paper, tangible documents, goods, instruments, or a certificated security takes free of a security interest if the licensee or buyer gives value without knowledge of the security interest and before it is perfected.

(e) *Purchase-money security interest.* — Except as otherwise provided in Sections 9-320 and 9-321, if a person files a financing statement with respect to a purchase-money security interest before or within 20 days after the debtor receives delivery of the collateral, the security interest takes priority over the rights of a buyer, lessee, or lien creditor which arise between the time the security interest attaches and the time of filing.

(72 Del. Laws, c. 401, § 1; 74 Del. Laws, c. 332, §§ 59, 60; 79 Del. Laws, c. 15, §§ 10, 11.)

§ 9-318 No interest retained in right to payment that is sold; rights and title of seller of account or chattel paper with respect to creditors and purchasers.

(a) *Seller retains no interest.* — A debtor that has sold an account, chattel paper, payment intangible, or promissory note does not retain a legal or equitable interest in the collateral sold.

(b) Deemed rights of debtor if buyer's security interest unperfected. For purposes of determining the rights of creditors of, and purchasers for value of an account or chattel paper from, a debtor that has sold an account or chattel paper, while the buyer's security interest is unperfected, the debtor is deemed to have rights and title to the account or chattel paper identical to those the debtor sold.

(72 Del. Laws, c. 401, § 1.)

§ 9-319 Rights and title of consignee with respect to creditors and purchasers.

(a) *Consignee has consignor's rights.* — Except as otherwise provided in subsection (b), for purposes of determining the rights of creditors of, and purchasers for value of goods from, a consignee, while the goods are in the possession of the consignee, the consignee is deemed to have rights and title to the goods identical to those the consignor had or had power to transfer.

(b) *Applicability of other law.* — For purposes of determining the rights of a creditor of a consignee, law other than this Article determines the rights and title of a consignee while goods are in the consignee's possession if, under this part, a perfected security interest held by the consignor would have priority over the rights of the creditor.

(72 Del. Laws, c. 401, § 1.)

§ 9-320 Buyer of goods.

(a) *Buyer in ordinary course of business.* — Except as otherwise provided in subsection (e), a buyer in ordinary course of business, other than a person buying farm products from a person engaged in farming operations, takes free of a security interest created by the buyer's seller, even if the security interest is perfected and the buyer knows of its existence.

(b) *Buyer of consumer goods.* — Except as otherwise provided in subsection (e), a buyer of goods from a person who used or bought the goods for use primarily for personal, family, or household purposes takes free of a security interest, even if perfected, if the buyer buys:

(1) without knowledge of the security interest;

(2) for value;

(3) primarily for the buyer's personal, family, or household purposes; and

(4) before the filing of a financing statement covering the goods.

(c) *Effectiveness of filing for subsection (b).* — To the extent that it affects the priority of a security interest over a buyer of goods under subsection (b), the period of effectiveness of a filing made in the jurisdiction in which the seller is located is governed by Section 9-316(a) and (b).

(d) *Buyer in ordinary course of business at wellhead or minehead.* — A buyer in ordinary course of business buying oil, gas, or other minerals at the wellhead or minehead or after extraction takes free of an interest arising out of an encumbrance.

(e) *Possessory security interest not affected.* — Subsections (a) and (b) do not affect a security interest in goods in the possession of the secured party under Section 9-313.

(72 Del. Laws, c. 401, § 1.)

§ 9-321 Licensee of general intangible and lessee of goods in ordinary course of business.

(a) *"Licensee in ordinary course of business."* — In this section, "licensee in ordinary course of business" means a person that becomes a licensee of a general intangible in good faith, without knowledge that the license violates the rights of another person in the general intangible, and in the ordinary course from a person in the business of licensing general intangibles of that kind. A person becomes a licensee in the ordinary course if the license to the person comports with the usual or customary practices in the kind of business in which the licensor is engaged or with the licensor's own usual or customary practices.

(b) *Rights of licensee in ordinary course of business.* — A licensee in ordinary course of business takes its rights under a nonexclusive license free of a security interest in the general intangible created by the licensor, even if the security interest is perfected and the licensee knows of its existence.

(c) *Rights of lessee in ordinary course of business.* — A lessee in ordinary course of business takes its leasehold interest free of a security interest in the goods created by the lessor, even if the security interest is perfected and the lessee knows of its existence.

(72 Del. Laws, c. 401, § 1.)

§ 9-322 Priorities among conflicting security interests in and agricultural liens on same collateral.

(a) *General priority rules.* — Except as otherwise provided in this section, priority among conflicting security interests and agricultural liens in the same collateral is determined according to the following rules:

(1) Conflicting perfected security interests and agricultural liens rank according to priority in time of filing or perfection. Priority dates from the earlier of the time a filing covering the collateral is first made or the security interest or agricultural lien is first perfected, if there is no period thereafter when there is neither filing nor perfection.

(2) A perfected security interest or agricultural lien has priority over a conflicting unperfected security interest or agricultural lien.

(3) The first security interest or agricultural lien to attach or become effective has priority if conflicting security interests and agricultural liens are unperfected.

(b) *Time of perfection: proceeds and supporting obligations.* — For the purposes of subsection (a)(1):

(1) the time of filing or perfection as to a security interest in collateral is also the time of filing or perfection as to a security interest in proceeds; and

(2) the time of filing or perfection as to a security interest in collateral supported by a supporting obligation is also the time of filing or perfection as to a security interest in the supporting obligation.

(c) *Special priority rules: proceeds and supporting obligations.* — Except as otherwise provided in subsection (f), a security interest in collateral which qualifies for priority over a conflicting security interest under Section 9-327, 9-328, 9-329, 9-330, or 9-331 also has priority over a conflicting security interest in:

(1) any supporting obligation for the collateral; and

(2) proceeds of the collateral if:

(A) the security interest in proceeds is perfected;

(B) the proceeds are cash proceeds or of the same type as the collateral; and

(C) in the case of proceeds that are proceeds of proceeds, all intervening proceeds are cash proceeds, proceeds of the same type as the collateral, or an account relating to the collateral.

(d) *First-to-file priority rule for certain collateral.* — Subject to subsection (e) and except as otherwise provided in subsection (f), if a security interest in chattel paper, deposit accounts, negotiable documents, instruments, investment property, or letter-of-credit rights is perfected by a method other than filing, conflicting perfected security interests in proceeds of the collateral rank according to priority in time of filing.

(e) *Applicability of subsection (d).* — Subsection (d) applies only if the proceeds of the collateral are not cash proceeds, chattel paper, negotiable documents, instruments, investment property, or letter-of-credit rights.

(f) *Limitations on subsections (a) through (e).* — Subsections (a) through (e) are subject to:

(1) subsection (g) and the other provisions of this part;

(2) Section 4-210 with respect to a security interest of a collecting bank;

(3) Section 5-118 with respect to a security interest of an issuer or nominated person; and

(4) Section 9-110 with respect to a security interest arising under Article 2 or 2A.

(g) *Priority under agricultural lien statute.* — A perfected agricultural lien on collateral has priority over a conflicting security interest in or agricultural lien on the same collateral if the statute creating the agricultural lien so provides.

(72 Del. Laws, c. 401, § 1.)

§ 9-323 Future advances.

(a) *When priority based on time of advance.* — Except as otherwise provided in subsection (c), for purposes of determining the priority of a perfected security interest under Section 9-322(a)(1), perfection of the security interest dates from the time an advance is made to the extent that the security interest secures an advance that:

(1) is made while the security interest is perfected only:

(A) under Section 9-309 when it attaches; or

(B) temporarily under Section 9-312(e), (f), or (g); and

(2) is not made pursuant to a commitment entered into before or while the security interest is perfected by a method other than under Section 9-309 or 9-312(e), (f), or (g).

(b) *Lien creditor.* — Except as otherwise provided in subsection (c), a security interest is subordinate to the rights of a person that becomes a lien creditor to the extent that the security interest secures an advance made more than 45 days after the person becomes a lien creditor unless the advance is made:

(1) without knowledge of the lien; or

(2) pursuant to a commitment entered into without knowledge of the lien.

(c) *Buyer of receivables.* — Subsections (a) and (b) do not apply to a security interest held by a secured party that is a buyer of accounts, chattel paper, payment intangibles, or promissory notes or a consignor.

(d) *Buyer of goods.* — Except as otherwise provided in subsection (e), a buyer of goods other than a buyer in ordinary course of business takes free of a security interest to the extent that it secures advances made after the earlier of:

(1) the time the secured party acquires knowledge of the buyer's purchase; or

(2) 45 days after the purchase.

(e) *Advances made pursuant to commitment: priority of buyer of goods.* — Subsection (d) does not apply if the advance is made pursuant to a commitment entered into without knowledge of the buyer's purchase and before the expiration of the 45-day period.

(f) *Lessee of goods.* — Except as otherwise provided in subsection (g), a lessee of goods, other than a lessee in ordinary course of business, takes the leasehold interest free of a security interest to the extent that it secures advances made after the earlier of:

(1) the time the secured party acquires knowledge of the lease; or

(2) 45 days after the lease contract becomes enforceable.

(g) *Advances made pursuant to commitment: priority of lessee of goods.* — Subsection (f) does not apply if the advance is made pursuant to a commitment entered into without knowledge of the lease and before the expiration of the 45-day period.

(72 Del. Laws, c. 401, § 1.)

§ 9-324 Priority of purchase-money security interests.

(a) *General rule: purchase-money priority.* — Except as otherwise provided in subsection (g), a perfected purchase-money security interest in goods other than inventory or livestock that are farm products has priority over a conflicting security interest in the same goods, and, except as otherwise provided in Section 9-327, a perfected security interest in its identifiable proceeds also has priority, if the purchase-money security interest is perfected when the debtor receives possession of the collateral or within 20 days thereafter.

(b) *Inventory purchase-money priority.* — Subject to subsection (c) and except as otherwise provided in subsection (g), a perfected purchase-money security interest in inventory has priority over a conflicting security interest in the same inventory, has priority over a conflicting security interest in chattel paper or an instrument constituting proceeds of the inventory and in proceeds of the chattel paper, if so provided in Section 9-330, and, except as otherwise provided in Section 9-327, also has priority in identifiable cash proceeds of the inventory to the extent the identifiable cash proceeds are received on or before the delivery of the inventory to a buyer, if:

(1) the purchase-money security interest is perfected when the debtor receives possession of the inventory;

(2) the purchase-money secured party sends an authenticated notification to the holder of the conflicting security interest;

(3) the holder of the conflicting security interest receives the notification within five years before the debtor receives possession of the inventory; and

(4) the notification states that the person sending the notification has or expects to acquire a purchase-money security interest in inventory of the debtor and describes the inventory.

(c) *Holders of conflicting inventory security interests to be notified.* — Subsections (b)(2) through (4) apply only if the holder of the conflicting security interest had filed a financing statement covering the same types of inventory:

(1) if the purchase-money security interest is perfected by filing, before the date of the filing; or

(2) if the purchase-money security interest is temporarily perfected without filing or possession under Section 9-312(e) or (f), before the beginning of the 20-day period thereunder.

(d) *Livestock purchase-money priority.* — Subject to subsection (e) and except as otherwise provided in subsection (g), a perfected purchase-money security interest in livestock that are farm products has priority over a conflicting security interest in the same livestock, and, except as otherwise provided in Section 9-327, a perfected security interest in their identifiable proceeds and identifiable products in their unmanufactured states also has priority, if:

(1) the purchase-money security interest is perfected when the debtor receives possession of the livestock;

(2) the purchase-money secured party sends an authenticated notification to the holder of the conflicting security interest;

(3) the holder of the conflicting security interest receives the notification within six months before the debtor receives possession of the livestock; and

(4) the notification states that the person sending the notification has or expects to acquire a purchase-money security interest in livestock of the debtor and describes the livestock.

(e) *Holders of conflicting livestock security interests to be notified.* — Subsections (d)(2) through (4) apply only if the holder of the conflicting security interest had filed a financing statement covering the same types of livestock:

(1) if the purchase-money security interest is perfected by filing, before the date of the filing; or

(2) if the purchase-money security interest is temporarily perfected without filing or possession under Section 9-312(e) or (f), before the beginning of the 20-day period thereunder.

(f) *Software purchase-money priority.* — Except as otherwise provided in subsection (g), a perfected purchase-money security interest in software has priority over a conflicting security interest in the same collateral, and, except as otherwise provided in Section 9-327, a perfected security interest in its identifiable proceeds also has priority, to the extent that the purchase-money security interest in the goods in which the software was acquired for use has priority in the goods and proceeds of the goods under this section.

(g) *Conflicting purchase-money security interests.* — If more than one security interest qualifies for priority in the same collateral under subsection (a), (b), (d), or (f):

(1) a security interest securing an obligation incurred as all or part of the price of the collateral has priority over a security interest securing an obligation incurred for value given to enable the debtor to acquire rights in or the use of collateral; and

(2) in all other cases, Section 9-322(a) applies to the qualifying security interests.

(72 Del. Laws, c. 401, § 1.)

§ 9-325 Priority of security interests in transferred collateral.

(a) *Subordination of security interest in transferred collateral.* — Except as otherwise provided in subsection (b), a security interest created by a debtor is subordinate to a security interest in the same collateral created by another person if:

(1) the debtor acquired the collateral subject to the security interest created by the other person;

(2) the security interest created by the other person was perfected when the debtor acquired the collateral; and

(3) there is no period thereafter when the security interest is unperfected.

(b) *Limitation of subsection (a) subordination.* — Subsection (a) subordinates a security interest only if the security interest:

(1) otherwise would have priority solely under Section 9-322(a) or 9-324; or

(2) arose solely under Section 2-711(3) or 2A-508(5).

(72 Del. Laws, c. 401, § 1.)

§ 9-326 Priority of security interests created by new debtor.

(a) *Subordination of security interest created by new debtor.* — Subject to subsection (b), a security interest that is created by a new debtor in collateral in which the new debtor has or acquires rights and is perfected solely by a filed financing statement that would be ineffective to perfect the security interest but for the application of Section 9-316(i)(1) or 9-508 is subordinate to a security interest in the same collateral which is perfected other than by such a filed financing statement.

(b) *Priority under other provisions; multiple original debtors.* — The other provisions of this part determine the priority among conflicting security interests in the same collateral perfected by filed financing statements described in subsection (a). However, if the security agreements to which a new debtor became bound as debtor were not entered into by the same original debtor, the conflicting security interests rank according to priority in time of the new debtor's having become bound.

(72 Del. Laws, c. 401, § 1; 79 Del. Laws, c. 15, § 12.)

§ 9-327 Priority of security interests in deposit account.

The following rules govern priority among conflicting security interests in the same deposit account:

(1) A security interest held by a secured party having control of the deposit account under Section 9-104 has priority over a conflicting security interest held by a secured party that does not have control.

(2) Except as otherwise provided in paragraphs (3) and (4), security interests perfected by control under Section 9-314 rank according to priority in time of obtaining control.

(3) Except as otherwise provided in paragraph (4), a security interest held by the bank with which the deposit account is maintained has priority over a conflicting security interest held by another secured party.

(4) A security interest perfected by control under Section 9-104(a)(3) has priority over a security interest held by the bank with which the deposit account is maintained.

(72 Del. Laws, c. 401, § 1.)

§ 9-328 Priority of security interests in investment property.

The following rules govern priority among conflicting security interests in the same investment property:

(1) A security interest held by a secured party having control of investment property under Section 9-106 has priority over a security interest held by a secured party that does not have control of the investment property.

(2) Except as otherwise provided in paragraphs (3) and (4), conflicting security interests held by secured parties each of which has control under Section 9-106 rank according to priority in time of:

(A) if the collateral is a security, obtaining control;

(B) if the collateral is a security entitlement carried in a securities account and:

(i) if the secured party obtained control under Section 8-106(d)(1), the secured party's becoming the person for which the securities account is maintained;

(ii) if the secured party obtained control under Section 8-106(d)(2), the securities intermediary's agreement to comply with the secured party's entitlement orders with respect to security entitlements carried or to be carried in the securities account; or

(iii) if the secured party obtained control through another person under Section 8-106(d)(3), the time on which priority would be based under this paragraph if the other person were the secured party; or

(C) if the collateral is a commodity contract carried with a commodity intermediary, the satisfaction of the requirement for control specified in Section 9-106(b)(2) with respect to commodity contracts carried or to be carried with the commodity intermediary.

(3) A security interest held by a securities intermediary in a security entitlement or a securities account maintained with the securities intermediary has priority over a conflicting security interest held by another secured party.

(4) A security interest held by a commodity intermediary in a commodity contract or a commodity account maintained with the commodity intermediary has priority over a conflicting security interest held by another secured party.

(5) A security interest in a certificated security in registered form which is perfected by taking delivery under Section 9-313(a) and not by control under Section 9-314 has priority over a conflicting security interest perfected by a method other than control.

(6) Conflicting security interests created by a broker, securities intermediary, or commodity intermediary which are perfected without control under Section 9-106 rank equally.

(7) In all other cases, priority among conflicting security interests in investment property is governed by Sections 9-322 and 9-323.

(72 Del. Laws, c. 401, § 1.)

§ 9-329 Priority of security interests in letter-of-credit right.

The following rules govern priority among conflicting security interests in the same letter-of-credit right:

(1) A security interest held by a secured party having control of the letter-of-credit right under Section 9-107 has priority to the extent of its control over a conflicting security interest held by a secured party that does not have control.

(2) Security interests perfected by control under Section 9-314 rank according to priority in time of obtaining control.

(72 Del. Laws, c. 401, § 1.)

§ 9-330 Priority of purchaser of chattel paper or instrument.

(a) *Purchaser's priority: security interest claimed merely as proceeds.* — A purchaser of chattel paper has priority over a security interest in the chattel paper which is claimed merely as proceeds of inventory subject to a security interest if:

(1) in good faith and in the ordinary course of the purchaser's business, the purchaser gives new value and takes possession of the chattel paper or obtains control of the chattel paper under Section 9-105; and

(2) the chattel paper does not indicate that it has been assigned to an identified assignee other than the purchaser.

(b) *Purchaser's priority: other security interests.* — A purchaser of chattel paper has priority over a security interest in the chattel paper which is claimed other than merely as proceeds of inventory subject to a security interest if the purchaser gives new value and takes possession of the chattel paper or obtains control of the chattel paper under Section 9-105 in good faith, in the ordinary course of the purchaser's business, and without knowledge that the purchase violates the rights of the secured party.

(c) *Chattel paper purchaser's priority in proceeds.* — Except as otherwise provided in Section 9-327, a purchaser having priority in chattel paper under subsection (a) or (b) also has priority in proceeds of the chattel paper to the extent that:

(1) Section 9-322 provides for priority in the proceeds; or

(2) the proceeds consist of the specific goods covered by the chattel paper or cash proceeds of the specific goods, even if the purchaser's security interest in the proceeds is unperfected.

(d) *Instrument purchaser's priority.* — Except as otherwise provided in Section 9-331(a), a purchaser of an instrument has priority over a security interest in the instrument perfected by a method other than possession if the purchaser gives value and takes possession of the instrument in good faith and without knowledge that the purchase violates the rights of the secured party.

(e) *Holder of purchase-money security interest gives new value.* — For purposes of subsections (a) and (b), the holder of a purchase-money security interest in inventory gives new value for chattel paper constituting proceeds of the inventory.

(f) *Indication of assignment gives knowledge.* — For purposes of subsections (b) and (d), if chattel paper or an instrument indicates that it has been assigned to an identified secured party other than the purchaser, a purchaser of the chattel paper or instrument has knowledge that the purchase violates the rights of the secured party.

(72 Del. Laws, c. 401, § 1.)

§ 9-331 Priority of rights of purchasers of instruments, documents, and securities under other articles; priority of interests in financial assets and security entitlements under Article 8.

(a) *Rights under Articles 3, 7, and 8 not limited.* — This Article does not limit the rights of a holder in due course of a negotiable instrument, a holder to which a negotiable document of title has been duly negotiated, or a protected purchaser of a security. These holders or purchasers take priority over an earlier security interest, even if perfected, to the extent provided in Articles 3, 7, and 8.

(b) *Protection under Article 8.* — This Article does not limit the rights of or impose liability on a person to the extent that the person is protected against the assertion of an adverse claim under Article 8.

(c) *Filing not notice.* — Filing under this Article does not constitute notice of a claim or defense to the holders, or purchasers, or persons described in subsections (a) and (b).

(72 Del. Laws, c. 401, § 1.)

§ 9-332 Transfer of money; transfer of funds from deposit account.

(a) *Transferee of money.* — A transferee of money takes the money free of a security interest unless the transferee acts in collusion with the debtor in violating the rights of the secured party.

(b) *Transferee of funds from deposit account.* — A transferee of funds from a deposit account takes the funds free of a security interest in the deposit account unless the transferee acts in collusion with the debtor in violating the rights of the secured party.

(72 Del. Laws, c. 401, § 1.)

§ 9-333 Priority of certain liens arising by operation of law.

(a) *"Possessory lien."* — In this section, "possessory lien" means an interest, other than a security interest or an agricultural lien:

(1) which secures payment or performance of an obligation for services or materials furnished with respect to goods by a person in the ordinary course of the person's business;

(2) which is created by statute or rule of law in favor of the person; and

(3) whose effectiveness depends on the person's possession of the goods.

(b) *Priority of possessory lien.* — A possessory lien on goods has priority over a security interest in the goods unless the lien is created by a statute that expressly provides otherwise.

(72 Del. Laws, c. 401, § 1.)

§ 9-334 Priority of security interests in fixtures and crops.

(a) *Security interest in fixtures under this Article.* — A security interest under this Article may be created in goods that are fixtures or may continue in goods that become fixtures. A security interest does not exist under this Article in ordinary building materials incorporated into an improvement on land.

(b) *Security interest in fixtures under real property law.* — This Article does not prevent creation of an encumbrance upon fixtures under real property law.

(c) *General rule: subordination of security interest in fixtures.* — In cases not governed by subsections (d) through (h), a security interest in fixtures is subordinate to a conflicting interest of an encumbrancer or owner of the related real property other than the debtor.

(d) *Fixtures purchase-money priority.* — Except as otherwise provided in subsection (h), a perfected security interest in fixtures has priority over a conflicting interest of an encumbrancer or owner of the real property if the debtor has an interest of record in or is in possession of the real property and:

(1) the security interest is a purchase-money security interest;

(2) the interest of the encumbrancer or owner arises before the goods become fixtures; and

(3) the security interest is perfected by a fixture filing before the goods become fixtures or within 20 days thereafter.

(e) *Priority of security interest in fixtures over interests in real property.* — A perfected security interest in fixtures has priority over a conflicting interest of an encumbrancer or owner of the real property if:

(1) the debtor has an interest of record in the real property or is in possession of the real property and the security interest:

(A) is perfected by a fixture filing before the interest of the encumbrancer or owner is of record; and

(B) has priority over any conflicting interest of a predecessor in title of the encumbrancer or owner;

(2) before the goods become fixtures, the security interest is perfected by any method permitted by this Article and the fixtures are readily removable:

(A) factory or office machines;

(B) equipment that is not primarily used or leased for use in the operation of the real property; or

(C) replacements of domestic appliances that are consumer goods;

(3) the conflicting interest is a lien on the real property obtained by legal or equitable proceedings after the security interest was perfected by any method permitted by this Article; or

(4) the security interest is:

(A) created in a manufactured home in a manufactured-home transaction; and

(B) perfected pursuant to a statute described in Section 9-311(a)(2).

(f) *Priority based on consent, disclaimer, or right to remove.* — A security interest in fixtures, whether or not perfected, has priority over a conflicting interest of an encumbrancer or owner of the real property if:

(1) the encumbrancer or owner has, in an authenticated record, consented to the security interest or disclaimed an interest in the goods as fixtures; or

(2) the debtor has a right to remove the goods as against the encumbrancer or owner.

(g) *Continuation of subsection (f) priority.* — The priority of the security interest under subsection (f) continues for a reasonable time if the debtor's right to remove the goods as against the encumbrancer or owner terminates.

(h) *Priority of construction mortgage.* — A mortgage is a construction mortgage to the extent that it secures an obligation incurred for the construction of an improvement on land, including the acquisition cost of the land, if a recorded record of the mortgage so indicates. Except as otherwise provided in subsections (e) and (f), a security interest in fixtures is subordinate to a construction mortgage if a record of the mortgage is recorded before the goods become fixtures and the goods become fixtures before the completion of the construction. A mortgage has this priority to the same extent as a construction mortgage to the extent that it is given to refinance a construction mortgage.

(i) *Priority of security interest in crops.* — A perfected security interest in crops growing on real property has priority over a conflicting interest of an encumbrancer or owner of the real property if the debtor has an interest of record in or is in possession of the real property.

(72 Del. Laws, c. 401, § 1.)

§ 9-335 Accessions.

(a) *Creation of security interest in accession.* — A security interest may be created in an accession and continues in collateral that becomes an accession.

(b) *Perfection of security interest.* — If a security interest is perfected when the collateral becomes an accession, the security interest remains perfected in the collateral.

(c) *Priority of security interest.* — Except as otherwise provided in subsection (d), the other provisions of this part determine the priority of a security interest in an accession.

(d) *Compliance with certificate-of-title statute.* — A security interest in an accession is subordinate to a security interest in the whole which is perfected by compliance with the requirements of a certificate-of-title statute under Section 9-311(b).

(e) *Removal of accession after default.* — After default, subject to Part 6, a secured party may remove an accession from other goods if the security interest in the accession has priority over the claims of every person having an interest in the whole.

(f) *Reimbursement following removal.* — A secured party that removes an accession from other goods under subsection (e) shall promptly reimburse any holder of a security interest or other lien on, or owner of, the whole or of the other goods, other than the debtor, for the cost of repair of any physical injury to the whole or the other goods. The secured party need not reimburse the holder or owner for any diminution in value of the whole or the other goods caused by the absence of the accession removed or by any necessity for replacing it. A person entitled to reimbursement may refuse permission to remove until the secured party gives adequate assurance for the performance of the obligation to reimburse.

(72 Del. Laws, c. 401, § 1.)

§ 9-336 Commingled goods.

(a) "*Commingled goods.*" — In this section, "commingled goods" means goods that are physically united with other goods in such a manner that their identity is lost in a product or mass.

(b) *No security interest in commingled goods as such.* — A security interest does not exist in commingled goods as such. However, a security interest may attach to a product or mass that results when goods become commingled goods.

(c) *Attachment of security interest to product or mass.* — If collateral becomes commingled goods, a security interest attaches to the product or mass.

(d) *Perfection of security interest.* — If a security interest in collateral is perfected before the collateral becomes commingled goods, the security interest that attaches to the product or mass under subsection (c) is perfected.

(e) *Priority of security interest.* — Except as otherwise provided in subsection (f), the other provisions of this part determine the priority of a security interest that attaches to the product or mass under subsection (c).

(f) *Conflicting security interests in product or mass.* — If more than one security interest attaches to the product or mass under subsection (c), the following rules determine priority:

(1) A security interest that is perfected under subsection (d) has priority over a security interest that is unperfected at the time the collateral becomes commingled goods.

(2) If more than one security interest is perfected under subsection (d), the security interests rank equally in proportion to value of the collateral at the time it became commingled goods.

(72 Del. Laws, c. 401, § 1.)

§ 9-337 Priority of security interests in goods covered by certificate of title.

If, while a security interest in goods is perfected by any method under the law of another jurisdiction, this State issues a certificate of title that does not show that the goods are subject to the security interest or contain a statement that they may be subject to security interests not shown on the certificate:

(1) a buyer of the goods, other than a person in the business of selling goods of that kind, takes free of the security interest if the buyer gives value and receives delivery of the goods after issuance of the certificate and without knowledge of the security interest; and

(2) the security interest is subordinate to a conflicting security interest in the goods that attaches, and is perfected under Section 9-311(b), after issuance of the certificate and without the conflicting secured party's knowledge of the security interest.

(72 Del. Laws, c. 401, § 1.)

§ 9-338 Priority of security interest or agricultural lien perfected by filed financing statement providing certain incorrect information.

If a security interest or agricultural lien is perfected by a filed financing statement providing information described in Section 9-516(b)(5) which is incorrect at the time the financing statement is filed:

(1) the security interest or agricultural lien is subordinate to a conflicting perfected security interest in the collateral to the extent that the holder of the conflicting security interest gives value in reasonable reliance upon the incorrect information; and

(2) a purchaser, other than a secured party, of the collateral takes free of the security interest or agricultural lien to the extent that, in reasonable reliance upon the incorrect information, the purchaser gives value and, in the case of tangible chattel paper, tangible documents, goods, instruments, or a security certificate, receives delivery of the collateral.

(72 Del. Laws, c. 401, § 1; 74 Del. Laws, c. 332, § 61.)

§ 9-339 Priority subject to subordination.

This Article does not preclude subordination by agreement by a person entitled to priority.

(72 Del. Laws, c. 401, § 1.)

4. Rights of Bank

§ 9-340 Effectiveness of right of recoupment or set-off against deposit account.

(a) *Exercise of recoupment or set-off.* — Except as otherwise provided in subsection (c), a bank with which a deposit account is maintained may exercise any right of recoupment or set-off against the deposit account notwithstanding that a secured party holds a security interest in the deposit account.

(b) *Recoupment or setoff not affected by security interest.* — Except as otherwise provided in subsection (c), the application of this Article to a security interest in a deposit account does not affect a right of recoupment or set-off of the secured party as to a deposit account maintained with the secured party.

(c) *When set-off ineffective.* — The exercise by a bank of a set-off against a deposit account is ineffective against a secured party that holds a security interest in the deposit account which is perfected by control under Section 9-104(a)(3), if the set-off is based on a claim against the debtor.

(d) *No creation of set-off or recoupment right and no overriding of limitations or restrictions of other law.* — This section neither creates a right of set-off or recoupment nor is it intended to override any limitations or restrictions that other law imposes on the exercise of those rights.

(72 Del. Laws, c. 401, § 1.)

§ 9-341 Bank's rights and duties with respect to deposit account.

Except as otherwise provided in Section 9-340(c), and unless the bank otherwise agrees in an authenticated record, a bank's rights and duties with respect to a deposit account maintained with the bank are not terminated, suspended, or modified by:

(1) the creation, attachment, or perfection of a security interest in the deposit account;

(2) the bank's knowledge of the security interest; or

(3) the bank's receipt of instructions from the secured party.

(72 Del. Laws, c. 401, § 1.)

§ 9-342 Bank's right to refuse to enter into or disclose existence of control agreement.

This Article does not require a bank to enter into an agreement of the kind described in Section 9-104(a)(2), even if its customer so requests or directs. A bank that has entered into such an agreement is not required to confirm the existence of the agreement to another person unless requested to do so by its customer.

(72 Del. Laws, c. 401, § 1.)

Part 4
Rights of Third Parties

§ 9-401 Alienability of debtor's rights.

(a) *Other law governs alienability; exceptions.* — Except as otherwise provided in subsection (b) and Sections 9-406, 9-407, 9-408, and 9-409, whether a debtor's rights in collateral may be voluntarily or involuntarily transferred is governed by law other than this Article.

(b) *Agreement does not prevent transfer.* — An agreement between the debtor and secured party which prohibits a transfer of the debtor's rights in collateral or makes the transfer a default does not prevent the transfer from taking effect.

(72 Del. Laws, c. 401, § 1.)

§ 9-402 Secured party not obligated on contract of debtor or in tort.

The existence of a security interest, agricultural lien, or authority given to a debtor to dispose of or use collateral, without more, does not subject a secured party to liability in contract, tort or otherwise for the debtor's acts or omissions.

(72 Del. Laws, c. 401, § 1.)

§ 9-403 Agreement not to assert defenses against assignee.

(a) *"Value."* — In this section, "value" has the meaning provided in Section 3-303(a).

(b) *Agreement not to assert claim or defense.* — Except as otherwise provided in this section, an agreement between an account debtor and an assignor not to assert against an assignee any claim or defense that the account debtor may have against the assignor is enforceable by an assignee that takes an assignment:

(1) for value;

(2) in good faith;

(3) without notice of a claim of a property or possessory right to the property assigned; and

(4) without notice of a defense or claim in recoupment of the type that may be asserted against a person entitled to enforce a negotiable instrument under Section 3-305(a).

(c) *When subsection (b) not applicable.* — Subsection (b) does not apply to defenses of a type that may be asserted against a holder in due course of a negotiable instrument under Section 3-305(b).

(d) *Omission of required statement in consumer transaction.* — In a consumer transaction, if (i) a record evidences the account debtor's obligation, (ii) law other than this Article requires that the record include a statement to the effect that the rights of an assignee are subject to claims or defenses that the account debtor could assert against the original obligee, and (iii) the record does not include such a statement:

(1) the record has the same effect as if the record included such a statement; and

(2) the account debtor may assert against an assignee those claims and defenses that would have been available if the record included such a statement.

(e) *Rule for individual under other law.* — This section is subject to law other than this Article which establishes a different rule for an account debtor who is an individual and who incurred the obligation primarily for personal, family, or household purposes.

(f) *Other law not displaced.* — Except as otherwise provided in subsection (d), this section does not displace law other than this Article which gives effect to an agreement by an account debtor not to assert a claim or defense against an assignee.

(72 Del. Laws, c. 401, § 1.)

§ 9-404 Rights acquired by assignee; claims and defenses against assignee.

(a) *Assignee's rights subject to terms, claims, and defenses; exceptions.* — Unless an account debtor has made an enforceable agreement not to assert defenses or claims, and subject to subsections (b) through (e), the rights of an assignee are subject to:

(1) all terms of the agreement between the account debtor and assignor and any defense or claim in recoupment arising from the transaction that gave rise to the contract; and

(2) any other defense or claim of the account debtor against the assignor which accrues before the account debtor receives a notification of the assignment authenticated by the assignor or the assignee.

(b) *Account debtor's claim reduces amount owed to assignee.* — Subject to subsection (c) and except as otherwise provided in subsection (d), the claim of an account debtor against an assignor may be asserted against an assignee under subsection (a) only to reduce the amount the account debtor owes.

(c) *Rule for individual under other law.* — This section is subject to law other than this Article which establishes a different rule for an account debtor who is an individual and who incurred the obligation primarily for personal, family, or household purposes.

(d) *Omission of required statement in consumer transaction.* — In a consumer transaction, if a record evidences the account debtor's obligation, law other than this Article requires that the record include a statement to the effect that the account debtor's recovery against an assignee with respect to claims and defenses against the assignor may not exceed amounts paid by the account debtor under the record, and the record does not include such a statement, the extent to which a claim of an account debtor against the assignor may be asserted against an assignee is determined as if the record included such a statement.

(e) *Inapplicability to health-care-insurance receivable.* — This section does not apply to an assignment of a health-care-insurance receivable.

(72 Del. Laws, c. 401, § 1.)

§ 9-405 Modification of assigned contract.

(a) *Effect of modification on assignee.* — A modification of or substitution for an assigned contract is effective against an assignee if made in good faith. The assignee acquires corresponding rights under the modified or substituted contract. The assignment may provide that the modification or substitution is a breach of contract by the assignor. This subsection is subject to subsections (b) through (d).

(b) *Applicability of subsection (a).* — Subsection (a) applies to the extent that:

(1) the right to payment or a part thereof under an assigned contract has not been fully earned by performance; or

(2) the right to payment or a part thereof has been fully earned by performance and the account debtor has not received notification of the assignment under Section 9-406(a).

(c) *Rule for individual under other law.* — This section is subject to law other than this Article which establishes a different rule for an account debtor who is an individual and who incurred the obligation primarily for personal, family, or household purposes.

(d) *Inapplicability to health-care-insurance receivable.* — This section does not apply to an assignment of a health-care-insurance receivable.

(72 Del. Laws, c. 401, § 1.)

§ 9-406 Discharge of account debtor; notification of assignment; identification and proof of assignment; restrictions on assignment of accounts, chattel paper, payment intangibles, and promissory notes ineffective.

(a) *Discharge of account debtor; effect of notification.* — Subject to subsections (b) through (i), an account debtor on an account, chattel paper, or a payment intangible may discharge its obligation by paying the assignor until, but not after, the account debtor receives a notification, authenticated by the assignor or the assignee, that the amount due or to become due has been assigned and that payment is to be made to the assignee. After receipt of the notification, the account debtor may discharge its obligation by paying the assignee and may not discharge the obligation by paying the assignor.

(b) *When notification ineffective.* — Subject to subsection (h), notification is ineffective under subsection (a):

(1) if it does not reasonably identify the rights assigned;

(2) to the extent that an agreement between an account debtor and a seller of a payment intangible limits the account debtor's duty to pay a person other than the seller and the limitation is effective under law other than this Article; or

(3) at the option of an account debtor, if the notification notifies the account debtor to make less than the full amount of any installment or other periodic payment to the assignee, even if:

(A) only a portion of the account, chattel paper, or payment intangible has been assigned to that assignee;

(B) a portion has been assigned to another assignee; or

(C) the account debtor knows that the assignment to that assignee is limited.

(c) *Proof of assignment.* — Subject to subsection (h), if requested by the account debtor, an assignee shall seasonably furnish reasonable proof that the assignment has been made. Unless the assignee complies, the account debtor may discharge its obligation by paying the assignor, even if the account debtor has received a notification under subsection (a).

(d) *Term restricting assignment generally ineffective.* — Except as otherwise provided in subsection (e) and Sections 2A-303 and 9-407, and subject to subsection (h), a term in an agreement between an account debtor and an assignor or in a promissory note is ineffective to the extent that it:

(1) prohibits, restricts, or requires the consent of the account debtor or person obligated on the promissory note to the assignment or transfer of, or the creation, attachment, perfection, or enforcement of a security interest in, the account, chattel paper, payment intangible, or promissory note; or

(2) provides that the assignment or transfer or the creation, attachment, perfection, or enforcement of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the account, chattel paper, payment intangible, or promissory note.

(e) *Inapplicability of subsection (d) to certain sales.* — Subsection (d) does not apply to the sale of a payment intangible or promissory note, other than a sale pursuant to a disposition under Section 9-610 or an acceptance of collateral under Section 9-620.

(f) *Legal restrictions on assignment generally ineffective.* — Except as otherwise provided in Sections 2A-303 and 9-407 and subject to subsections (h) and (i), a rule of law, statute, or regulation that prohibits, restricts, or requires the consent of a government, governmental body or official, or account debtor to the assignment or transfer of, or creation of a security interest in, an account or chattel paper is ineffective to the extent that the rule of law, statute, or regulation:

(1) prohibits, restricts, or requires the consent of the government, governmental body or official, or account debtor to the assignment or transfer of, or the creation, attachment, perfection, or enforcement of a security interest in, the account or chattel paper; or

(2) provides that the assignment or transfer or the creation, attachment, perfection, or enforcement of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the account or chattel paper.

(g) *Subsection (b)(3) not waivable.* — Subject to subsection (h), an account debtor may not waive or vary its option under subsection (b)(3).

(h) *Rule for individual under other law.* — This section is subject to law other than this Article which establishes a different rule for an account debtor who is an individual and who incurred the obligation primarily for personal, family, or household purposes.

(i) *Inapplicability.* — This section does not apply to:

(1) an assignment of a health-care-insurance receivable;

(2) a claim or right to receive compensation for injuries or sickness as described in 26 U.S.C. § 104(a)(1) or (2), as amended from time to time;

(3) a claim or right to receive benefits under a special needs trust as described in 42 U.S.C. § 1396p(d)(4), as amended from time to time;

(4) an interest in a trust, including any right or power of a beneficiary (including a settlor) or owner of a trust, arising under a governing instrument (as defined in Section 3301(e) of Title 12), Title 12, or other applicable law, to the extent that Delaware law governs such interest; or

(5) an interest in a partnership or limited liability company.

Subsection (f) does not apply to an assignment or transfer of, or the creation, attachment, perfection, or enforcement of, a security interest in, a right the transfer of which is prohibited or restricted by any of the following statutes, to the extent that the statute is inconsistent with

subsection (f): Section 9011 of Title 11 (prohibiting assignment of victim awards and recoveries); Section 4915 of Title 10 (restricting transferability of benefits, rights, privileges or options accruing under certain annuity contracts); Section 6863 of Title 18 (prohibiting assignment of medical negligence compensation claims); Section 2355 of Title 19 (prohibiting assignment of workers' compensation claims or payment for compensation due or to become due); and Section 4808 of Title 29 (prohibiting assignment of lottery prizes).

(j) *Section prevails over inconsistent law.* — Except as otherwise provided in subsection (i), this section prevails over any inconsistent provision of an existing or future statute, rule or regulation of this State unless the provision is contained in a statute of this State, refers expressly to this section and states that the provision prevails over this section.

(72 Del. Laws, c. 401, § 1; 73 Del. Laws, c. 236, §§ 1, 2; 73 Del. Laws, c. 330, §§ 3, 4; 79 Del. Laws, c. 15, § 13; 81 Del. Laws, c. 320, § 7; 82 Del. Laws, c. 141, § 5.)

§ 9-407 Restrictions on creation or enforcement of security interest in leasehold interest or in lessor's residual interest.

(a) *Term restricting assignment generally ineffective.* — Except as otherwise provided in subsection (b), a term in a lease agreement is ineffective to the extent that it:

(1) prohibits, restricts, or requires the consent of a party to the lease to the assignment or transfer of, or the creation, attachment, perfection, or enforcement of a security interest in, an interest of a party under the lease contract or in the lessor's residual interest in the goods; or

(2) provides that the assignment or transfer or the creation, attachment, perfection, or enforcement of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the lease.

(b) *Effectiveness of certain terms.* — Except as otherwise provided in Section 2A-303(7), a term described in subsection (a)(2) is effective to the extent that there is:

(1) a transfer by the lessee of the lessee's right of possession or use of the goods in violation of the term; or

(2) a delegation of a material performance of either party to the lease contract in violation of the term.

(c) *Security interest not material impairment.* — The creation, attachment, perfection, or enforcement of a security interest in the lessor's interest under the lease contract or the lessor's residual interest in the goods is not a transfer that materially impairs the lessee's prospect of obtaining return performance or materially changes the duty of or materially increases the burden or risk imposed on the lessee within the purview of Section 2A-303(4) unless, and then only to the extent that, enforcement actually results in a delegation of material performance of the lessor.

(72 Del. Laws, c. 401, § 1.)

§ 9-408 Restrictions on assignment of promissory notes, health-care-insurance receivables, and certain general intangibles ineffective.

(a) *Term restricting assignment generally ineffective.* — Except as otherwise provided in subsection (b), a term in a promissory note or in an agreement between an account debtor and a debtor which relates to a health-care-insurance receivable or a general intangible, including a contract, permit, license, or franchise, and which term prohibits, restricts, or requires the consent of the person obligated on the promissory note or the account debtor to, the assignment or transfer of, or creation, attachment, or perfection of a security interest in, the promissory note, health-care-insurance receivable, or general intangible, is ineffective to the extent that the term:

(1) would impair the creation, attachment, or perfection of a security interest; or

(2) provides that the assignment or transfer or the creation, attachment, or perfection of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the promissory note, health-care-insurance receivable, or general intangible.

(b) *Applicability of subsection (a) to sales of certain rights to payment.* — Subsection (a) applies to a security interest in a payment intangible or promissory note only if the security interest arises out of a sale of the payment intangible or promissory note, other than a sale pursuant to a disposition under Section 9-610 or an acceptance of collateral under Section 9-620.

(c) *Legal restrictions on assignment generally ineffective.* — A rule of law, statute, or regulation that prohibits, restricts, or requires the consent of a government, governmental body or official, person obligated on a promissory note, or account debtor to the assignment or transfer of, or creation of a security interest in, a promissory note, health-care-insurance receivable, or general intangible, including a contract, permit, license, or franchise between an account debtor and a debtor, is ineffective to the extent that the rule of law, statute, or regulation:

(1) would impair the creation, attachment, or perfection of a security interest; or

(2) provides that the assignment or transfer or the creation, attachment, or perfection of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the promissory note, health-care-insurance receivable, or general intangible.

(d) *Limitation on ineffectiveness under subsections (a) and (c).* — To the extent that a term in a promissory note or in an agreement between an account debtor and a debtor which relates to a health-care-insurance receivable or general intangible or a rule of law, statute,

or regulation described in subsection (c) would be effective under law other than this Article but is ineffective under subsection (a) or (c), the creation, attachment, or perfection of a security interest in the promissory note, health-care-insurance receivable, or general intangible:

(1) is not enforceable against the person obligated on the promissory note or the account debtor;

(2) does not impose a duty or obligation on the person obligated on the promissory note or the account debtor;

(3) does not require the person obligated on the promissory note or the account debtor to recognize the security interest, pay or render performance to the secured party, or accept payment or performance from the secured party;

(4) does not entitle the secured party to use or assign the debtor's rights under the promissory note, health-care-insurance receivable, or general intangible, including any related information or materials furnished to the debtor in the transaction giving rise to the promissory note, health-care-insurance receivable, or general intangible;

(5) does not entitle the secured party to use, assign, possess, or have access to any trade secrets or confidential information of the person obligated on the promissory note or the account debtor; and

(6) does not entitle the secured party to enforce the security interest in the promissory note, health-care-insurance receivable, or general intangible.

(e) *Inapplicability.* — This section does not apply to:

(1) a claim or right to receive compensation for injuries or sickness as described in 26 U.S.C. § 104(a)(1) or (2), as amended from time to time;

(2) a claim or right to receive benefits under a special needs trust as described in 42 U.S.C. § 1396p(d)(4), as amended from time to time;

(3) an interest in a trust, including any right or power of a beneficiary (including the settlor) or owner of a trust, arising under a governing instrument (as defined in Section 3301(e) of Title 12), Title 12, or other applicable law, to the extent that Delaware law governs such interest; or

(4) an interest in a partnership or limited liability company.

Subsection (c) does not apply to an assignment or transfer of, or the creation, attachment, perfection, or enforcement of a security interest in, a right the transfer of which is prohibited or restricted by any of the following statutes, to the extent that the statute is inconsistent with subsection (c): Section 9011 of Title 11 (prohibiting assignment of victim awards and recoveries); Section 4915 of Title 10 (restricting transferability of benefits, rights, privileges or options accruing under certain annuity contracts); Section 6863 of Title 18 (prohibiting assignment of medical negligence compensation claims); Section 2355 of Title 19 (prohibiting assignment of workers' compensation claims or payment for compensation due or to become due); and Section 4808 of Title 29 (prohibiting assignment of lottery prizes).

(f) *Section prevails over inconsistent law.* — Except as otherwise provided in subsection (e), this section prevails over any inconsistent provision of an existing or future statute, rule or regulation of this State unless the provision is contained in a statute of this State, refers expressly to this section and states that the provision prevails over this section.

(72 Del. Laws, c. 401, § 1; 73 Del. Laws, c. 236, §§ 3, 4; 73 Del. Laws, c. 330, §§ 5, 6; 79 Del. Laws, c. 15, § 14; 81 Del. Laws, c. 320, § 7; 82 Del. Laws, c. 141, § 6.)

§ 9-409 Restrictions on assignment of letter-of-credit rights ineffective.

(a) *Term or law restricting assignment generally ineffective.* — A term in a letter of credit or a rule of law, statute, regulation, custom, or practice applicable to the letter of credit which prohibits, restricts, or requires the consent of an applicant, issuer, or nominated person to a beneficiary's assignment of or creation of a security interest in a letter-of-credit right is ineffective to the extent that the term or rule of law, statute, regulation, custom, or practice:

(1) would impair the creation, attachment, or perfection of a security interest in the letter-of-credit right; or

(2) provides that the assignment or the creation, attachment, or perfection of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the letter-of-credit right.

(b) *Limitation on ineffectiveness under subsection (a).* — To the extent that a term in a letter of credit is ineffective under subsection (a) but would be effective under law other than this Article or a custom or practice applicable to the letter of credit, to the transfer of a right to draw or otherwise demand performance under the letter of credit, or to the assignment of a right to proceeds of the letter of credit, the creation, attachment, or perfection of a security interest in the letter-of-credit right:

(1) is not enforceable against the applicant, issuer, nominated person, or transferee beneficiary;

(2) imposes no duties or obligations on the applicant, issuer, nominated person, or transferee beneficiary; and

(3) does not require the applicant, issuer, nominated person, or transferee beneficiary to recognize the security interest, pay or render performance to the secured party, or accept payment or other performance from the secured party.

(72 Del. Laws, c. 401, § 1.)

Part 5

Filing

1 Filing Office; Contents and Effectiveness of Financing Statement

§ 9-501 Filing office.

(a) *Filing offices.* — Except as otherwise provided in subsection (b), if the local law of this State governs perfection of a security interest or agricultural lien, the office in which to file a financing statement to perfect the security interest or agricultural lien is:

(1) the office designated for the filing or recording of a record of a mortgage on the related real property, if:

(A) the collateral is as-extracted collateral or timber to be cut; or

(B) the financing statement is filed as a fixture filing and the collateral is goods that are or are to become fixtures; or

(2) the office of the Secretary of State, in all other cases, including a case in which the collateral is goods that are or are to become fixtures and the financing statement is not filed as a fixture filing.

(b) *Filing office for transmitting utilities.* — The office in which to file a financing statement to perfect a security interest in collateral, including fixtures, of a transmitting utility is the office of the Secretary of State. The financing statement also constitutes a fixture filing as to the collateral indicated in the financing statement which is or is to become fixtures.

(72 Del. Laws, c. 401, § 1.)

§ 9-502 Contents of financing statement; record of mortgage as financing statement; time of filing financing statement.

(a) *Sufficiency of financing statement.* — Subject to subsection (b), a financing statement is sufficient only if it:

(1) provides the name of the debtor;

(2) provides the name of the secured party or a representative of the secured party; and

(3) indicates the collateral covered by the financing statement.

(b) *Real property-related financing statements.* — Except as otherwise provided in Section 9-501(b), to be sufficient, a financing statement that covers as-extracted collateral or timber to be cut, or which is filed as a fixture filing and covers goods that are or are to become fixtures, must satisfy subsection (a) and also:

(1) indicate that it covers this type of collateral;

(2) indicate that it is to be filed in the real property records;

(3) provide a description of the real property to which the collateral is related sufficient to give constructive notice of a mortgage under the law of this State if the description were contained in a record of the mortgage of the real property; and

(4) if the debtor does not have an interest of record in the real property, provide the name of a record owner.

(c) *Record of mortgage as financing statement.* — A record of a mortgage is effective, from the date of recording, as a financing statement filed as a fixture filing or as a financing statement covering as-extracted collateral or timber to be cut only if:

(1) the record indicates the goods or accounts that it covers;

(2) the goods are or are to become fixtures related to the real property described in the record or the collateral is related to the real property described in the record and is as-extracted collateral or timber to be cut;

(3) the record satisfies the requirements for a financing statement in this section, but the record need not indicate that it is to be filed in the real property records; and

(4) the record is duly recorded.

A record of a mortgage is not a financing statement but is effective as a financing statement as provided in § 9-502(c) of this title.

(d) *Filing before security agreement or attachment.* — A financing statement may be filed before a security agreement is made or a security interest otherwise attaches.

(72 Del. Laws, c. 401, § 1; 75 Del. Laws, c. 66, § 2; 79 Del. Laws, c. 15, § 15.)

§ 9-503 Name of debtor and secured party.

(a) *Sufficiency of debtor's name.* — A financing statement sufficiently provides the name of the debtor:

(1) except as otherwise provided in paragraph (3), if the debtor is a registered organization or the collateral is held in a trust that is a registered organization, only if the financing statement provides the name that is stated to be the registered organization's name on the public organic record inclusive of the record most recently filed with or issued or enacted by the registered organization's jurisdiction of organization which purports to state, amend, restate, or correct the registered organization's name;

(2) subject to subsection (f), if the collateral is being administered by the personal representative of a decedent, only if the financing statement provides, as the name of the debtor, the name of the decedent and, in a separate part of the financing statement, indicates that the collateral is being administered by a personal representative;

(3) if the collateral is held in a trust that is not a registered organization, only if the financing statement:

(A) provides, as the name of the debtor:

(i) if the organic record of the trust specifies a name for the trust, the name specified; or

(ii) if the organic record of the trust does not specify a name for the trust, the name of the settlor or testator; and

(B) in a separate part of the financing statement:

(i) if the name is provided in accordance with subparagraph (A)(i), indicates that the collateral is held in trust; or

(ii) if the name is provided in accordance with subparagraph (A)(ii), provides additional information sufficient to distinguish the trust from other trusts having one or more of the same settlors or the same testator and indicates that the collateral is held in a trust, unless the additional information so indicates;

(4) if the debtor is an individual, only if the financing statement:

(A) provides the individual name of the debtor;

(B) provides the surname and first personal name of the debtor; or

(C) subject to subsection (g), provides the name of the individual which is indicated on a driver's license or identification card that this State has issued to the individual and which has not expired; and

(5) in other cases:

(A) if the debtor has a name, only if the financing statement provides the organizational name of the debtor; and

(B) if the debtor does not have a name, only if the financing statement provides the names of the partners, members, associates, or other persons comprising the debtor, in a manner that each name provided would be sufficient if the person named were the debtor.

(b) *Additional debtor-related information.* — A financing statement that provides the name of the debtor in accordance with subsection (a) is not rendered ineffective by the absence of:

(1) a trade name or other name of the debtor; or

(2) unless required under subsection (a)(5)(B), names of partners, members, associates, or other persons comprising the debtor.

(c) *Debtor's trade name insufficient.* — A financing statement that provides only the debtor's trade name does not sufficiently provide the name of the debtor.

(d) *Representative capacity.* — Failure to indicate the representative capacity of a secured party or representative of a secured party does not affect the sufficiency of a financing statement.

(e) *Multiple debtors and secured parties.* — A financing statement may provide the name of more than one debtor and the name of more than one secured party.

(f) *Name of decedent.* — The name of the decedent indicated on the order appointing the personal representative of the decedent issued by the court having jurisdiction over the collateral is sufficient as the "name of the decedent" under subsection (a)(2).

(g) *Multiple driver's licenses or identification cards.* — If this State has issued to an individual more than one driver's license or identification card of a kind described in subsection (a)(4)(C), the one that was issued most recently is the one to which subsection (a)(4)(C) refers.

(h) *Definition.* — In this section, the "name of the settlor or testator" means:

(1) if the settlor is a registered organization, the name that is stated to be the settlor's name on the public organic record inclusive of the record most recently filed with or issued or enacted by the settlor's jurisdiction of organization which purports to state, amend, restate, or correct the settlor's name; or

(2) in other cases, the name of the settlor or testator indicated in the trust's organic record.

(72 Del. Laws, c. 401, § 1; 74 Del. Laws, c. 332, § 62; 79 Del. Laws, c. 15, § 16.)

§ 9-504 Indication of collateral.

A financing statement sufficiently indicates the collateral that it covers if the financing statement provides:

(1) a description of the collateral pursuant to Section 9-108; or

(2) an indication that the financing statement covers all assets or all personal property.

(72 Del. Laws, c. 401, § 1.)

§ 9-504A Indication of collateral that is accounts, chattel paper, instruments or general intangibles.

(a) A financing statement sufficiently indicates the collateral that it covers if the collateral is accounts, chattel paper, instruments or general intangibles and:

(1) The financing statement provides a description of one or more records (such as a computer file, microfiche list, printed list or other record) in the possession or control of the secured party and such record or records identify the specific accounts, chattel paper, instruments or general intangibles constituting the collateral;

(2) The financing statement indicates:

(A) That the items described on the record or records in the possession or control of the secured party are accounts, chattel paper, instruments or general intangibles; or

(B) The nature of the items on the record or records in the possession or control of the secured party by general description or category; and

(3) The record or records in the possession or control of the secured party contain:

(A) Confidential information, such as credit card numbers, loan numbers or taxpayer identification numbers, identifying the specific account debtors or persons obligated on the instruments; or

(B) A description of 100 or more specific accounts, chattel paper, instruments or general intangibles.

(b) Subsection (a) provides an additional method of sufficiently indicating collateral in a financing statement for purposes of this Article. A financing statement not complying with subsection (a) but otherwise complying with § 9-504 shall sufficiently indicate the collateral it covers for purposes of this Article.

(74 Del. Laws, c. 332, § 63.)

§ 9-505 Filing and compliance with other statutes and treaties for consignments, leases, other bailments, and other transactions.

(a) *Use of terms other than "debtor" and "secured party."* — A consignor, lessor, or other bailor of goods, a licensor, or a buyer of a payment intangible or promissory note may file a financing statement, or may comply with a statute or treaty described in Section 9-311(a), using the terms "consignor", "consignee", "lessor", "lessee", "bailor", "bailee", "licensor", "licensee", "owner", "registered owner", "buyer", "seller", or words of similar import, instead of the terms "secured party" and "debtor".

(b) *Effect of financing statement under subsection (a).* — This part applies to the filing of a financing statement under subsection (a) and, as appropriate, to compliance that is equivalent to filing a financing statement under Section 9-311(b), but the filing or compliance is not of itself a factor in determining whether the collateral secures an obligation. If it is determined for another reason that the collateral secures an obligation, a security interest held by the consignor, lessor, bailor, licensor, owner, or buyer which attaches to the collateral is perfected by the filing or compliance.

(72 Del. Laws, c. 401, § 1.)

§ 9-506 Effect of errors or omissions.

(a) *Minor errors and omissions.* — A financing statement substantially satisfying the requirements of this part is effective, even if it has minor errors or omissions, unless the errors or omissions make the financing statement seriously misleading.

(b) *Financing statement seriously misleading.* — Except in the case of individual debtors and as otherwise provided in subsection (c), a financing statement that fails sufficiently to provide the name of the debtor in accordance with Section 9-503(a) is seriously misleading.

(c) *Financing statement not seriously misleading.* — If a search of the records of the filing office under the debtor's correct name, using the filing office's standard search logic, if any, would disclose a financing statement that fails sufficiently to provide the name of the debtor in accordance with Section 9-503(a), the name provided does not make the financing statement seriously misleading.

(d) *"Debtor's correct name."* — For purposes of Section 9-508(b), the "debtor's correct name" in subsection (c) means the correct name of the new debtor.

(72 Del. Laws, c. 401, § 1.)

§ 9-507 Effect of certain events on effectiveness of financing statement.

(a) *Disposition.* — A filed financing statement remains effective with respect to collateral that is sold, exchanged, leased, licensed, or otherwise disposed of and in which a security interest or agricultural lien continues, even if the secured party knows of or consents to the disposition.

(b) *Information becoming seriously misleading.* — Except as otherwise provided in subsection (c) and Section 9-508, a financing statement is not rendered ineffective if, after the financing statement is filed, the information provided in the financing statement becomes seriously misleading under Section 9-506.

(c) *Change in debtor's name.* — If the name that a filed financing statement provides for a debtor becomes insufficient as the name of the debtor under Section 9-503(a) so that the filed financing statement becomes seriously misleading under Section 9-506:

(1) the financing statement is effective to perfect a security interest in collateral acquired by the debtor before, or within four months after, the filed financing statement becomes seriously misleading; and

(2) the financing statement is not effective to perfect a security interest in collateral acquired by the debtor more than four months after the filed financing statement becomes seriously misleading, unless an amendment to the financing statement which renders the financing statement not seriously misleading is filed within four months after the financing statement became seriously misleading.

(72 Del. Laws, c. 401, § 1; 79 Del. Laws, c. 15, § 17.)

§ 9-508 Effectiveness of financing statement if new debtor becomes bound by security agreement.

(a) *Financing statement naming original debtor.* — Except as otherwise provided in this section, a filed financing statement naming an original debtor is effective to perfect a security interest in collateral in which a new debtor has or acquires rights to the extent that the financing statement would have been effective had the original debtor acquired rights in the collateral.

(b) *Financing statement becoming seriously misleading.* — If the difference between the name of the original debtor and that of the new debtor causes a filed financing statement that is effective under subsection (a) to be seriously misleading under Section 9-506:

(1) the financing statement is effective to perfect a security interest in collateral acquired by the new debtor before, and within four months after, the new debtor becomes bound under Section 9-203(d); and

(2) the financing statement is not effective to perfect a security interest in collateral acquired by the new debtor more than four months after the new debtor becomes bound under Section 9-203(d) unless an initial financing statement providing the name of the new debtor is filed before the expiration of that time.

(c) *When section not applicable.* — This section does not apply to collateral as to which a filed financing statement remains effective against the new debtor under Section 9-507(a).

(72 Del. Laws, c. 401, § 1.)

§ 9-509 Persons entitled to file a record.

(a) *Person entitled to file record.* — A person may file an initial financing statement, amendment that adds collateral covered by a financing statement, or amendment that adds a debtor to a financing statement only if:

(1) the debtor authorizes the filing in an authenticated record or pursuant to subsection (b) or (c); or

(2) the person holds an agricultural lien that has become effective at the time of filing and the financing statement covers only collateral in which the person holds an agricultural lien.

(b) *Security agreement as authorization.* — By authenticating or becoming bound as debtor by a security agreement, a debtor or new debtor authorizes the filing of an initial financing statement, and an amendment, covering:

(1) the collateral described in the security agreement; and

(2) property that becomes collateral under Section 9-315(a)(2), whether or not the security agreement expressly covers proceeds.

(c) *Acquisition of collateral as authorization.* — By acquiring collateral in which a security interest or agricultural lien continues under Section 9-315(a)(1), a debtor authorizes the filing of an initial financing statement, and an amendment, covering the collateral and property that becomes collateral under Section 9-315(a)(2).

(d) *Person entitled to file certain amendments.* — A person may file an amendment other than an amendment that adds collateral covered by a financing statement or an amendment that adds a debtor to a financing statement only if:

(1) the secured party of record authorizes the filing; or

(2) the amendment is a termination statement for a financing statement as to which the secured party of record has failed to file or send a termination statement as required by Section 9-513(a) or (c), the debtor authorizes the filing, and the termination statement indicates that the debtor authorized it to be filed.

(e) *Multiple secured parties of record.* — If there is more than one secured party of record for a financing statement, each secured party of record may authorize the filing of an amendment under subsection (d).

(f) *Trusts and trustees.* — If either the debtor or the secured party is a trust (including a trust that is a registered organization) or a trustee acting with respect to property held in trust and is otherwise entitled to file a record pursuant to Section 9-509, authorization by an authorized person in the name of either the trust or the trustee shall be effective.

(72 Del. Laws, c. 401, § 1; 74 Del. Laws, c. 332, § 64.)

§ 9-510 Effectiveness of filed record.

(a) *Filed record effective if authorized.* — A filed record is effective only to the extent that it was filed by a person that may file it under Section 9-509.

(b) *Authorization by one secured party of record.* — A record authorized by one secured party of record does not affect the financing statement with respect to another secured party of record.

(c) *Continuation statement not timely filed.* — A continuation statement that is not filed within the six-month period prescribed by Section 9-515(d) is ineffective.

(72 Del. Laws, c. 401, § 1.)

§ 9-511 Secured party of record.

(a) *Secured party of record.* — A secured party of record with respect to a financing statement is a person whose name is provided as the name of the secured party or a representative of the secured party in an initial financing statement that has been filed. If an initial financing statement is filed under Section 9-514(a), the assignee named in the initial financing statement is the secured party of record with respect to the financing statement.

(b) *Amendment naming secured party of record.* — If an amendment of a financing statement which provides the name of a person as a secured party or a representative of a secured party is filed, the person named in the amendment is a secured party of record. If an amendment is filed under Section 9-514(b), the assignee named in the amendment is a secured party of record.

(c) *Amendment deleting secured party of record.* — A person remains a secured party of record until the filing of an amendment of the financing statement which deletes the person.

(72 Del. Laws, c. 401, § 1.)

§ 9-512 Amendment of financing statement.

(a) *Amendment of information in financing statement.* — Subject to Section 9-509, a person may add or delete collateral covered by, continue or terminate the effectiveness of, or, subject to subsection (e), otherwise amend the information provided in, a financing statement by filing an amendment that:

(1) identifies, by its file number, the initial financing statement to which the amendment relates; and

(2) if the amendment relates to an initial financing statement filed in a filing office described in Section 9-501(a)(1), provides the information specified in Section 9-502(b).

(b) *Period of effectiveness not affected.* — Except as otherwise provided in Section 9-515, the filing of an amendment does not extend the period of effectiveness of the financing statement.

(c) *Effectiveness of amendment adding collateral.* — A financing statement that is amended by an amendment that adds collateral is effective as to the added collateral only from the date of the filing of the amendment.

(d) *Effectiveness of amendment adding debtor.* — A financing statement that is amended by an amendment that adds a debtor is effective as to the added debtor only from the date of the filing of the amendment.

(e) *Certain amendments ineffective.* — An amendment is ineffective to the extent it:

(1) purports to delete all debtors and fails to provide the name of a debtor to be covered by the financing statement; or

(2) purports to delete all secured parties of record and fails to provide the name of a new secured party of record.

(f) *Conversion of debtor.* — Subject to Section 9-316:

(1) If a conversion of a debtor from one type of organization to another results in the converted organization being the same organization by operation of the laws governing such conversion and the name of the debtor changes as a result of such conversion, then such conversion shall constitute a change in such debtor's name for purposes of Section 9-507(c);

(2) If a conversion of a debtor from one type of organization to another results in the converted organization being the same organization by operation of the laws governing such conversion, then such organization shall not constitute a new debtor for purposes of Section 9-508; and

(3) If a conversion of a debtor from one type of organization to another results in the converted organization being a different organization by operation of the laws governing such conversion, then such organization shall constitute a new debtor for purposes of Section 9-508.

(72 Del. Laws, c. 401, § 1; 79 Del. Laws, c. 15, § 18.)

§ 9-513 Termination statement.

(a) *Consumer goods.* — A secured party shall cause the secured party of record for a financing statement to file a termination statement for the financing statement if the financing statement covers consumer goods and:

(1) there is no obligation secured by the collateral covered by the financing statement and no commitment to make an advance, incur an obligation, or otherwise give value; or

(2) the debtor did not authorize the filing of the initial financing statement.

(b) *Time for compliance with subsection (a).* — To comply with subsection (a), a secured party shall cause the secured party of record to file the termination statement:

(1) within one month after there is no obligation secured by the collateral covered by the financing statement and no commitment to make an advance, incur an obligation, or otherwise give value; or

(2) if earlier, within 20 days after the secured party receives an authenticated demand from a debtor.

(c) *Other collateral.* — In cases not governed by subsection (a), within 20 days after a secured party receives an authenticated demand from a debtor, the secured party shall cause the secured party of record for a financing statement to send to the debtor a termination statement for the financing statement or file the termination statement in the filing office if:

(1) except in the case of a financing statement covering accounts or chattel paper that has been sold or goods that are the subject of a consignment, there is no obligation secured by the collateral covered by the financing statement and no commitment to make an advance, incur an obligation, or otherwise give value;

(2) the financing statement covers accounts or chattel paper that has been sold but as to which the account debtor or other person obligated has discharged its obligation;

(3) the financing statement covers goods that were the subject of a consignment to the debtor but are not in the debtor's possession; or

(4) the debtor did not authorize the filing of the initial financing statement.

(d) *Effect of filing termination statement.* — Except as otherwise provided in Section 9-510, upon the filing of a termination statement with the filing office, the financing statement to which the termination statement relates ceases to be effective. Except as otherwise provided in Section 9-510, for purposes of Sections 9-519(g), 9-522(a), and 9-523(c), the filing with the filing office of a termination statement relating to a financing statement that indicates that the debtor is a transmitting utility also causes the effectiveness of the financing statement to lapse.

(72 Del. Laws, c. 401, § 1.)

§ 9-514 Assignment of powers of secured party of record.

(a) *Assignment reflected on initial financing statement.* — Except as otherwise provided in subsection (c), an initial financing statement may reflect an assignment of all of the secured party's power to authorize an amendment to the financing statement by providing the name and mailing address of the assignee as the name and address of the secured party.

(b) *Assignment of filed financing statement.* — Except as otherwise provided in subsection (c), a secured party of record may assign of record all or part of its power to authorize an amendment to a financing statement by filing in the filing office an amendment of the financing statement which:

(1) identifies, by its file number, the initial financing statement to which it relates;

(2) provides the name of the assignor; and

(3) provides the name and mailing address of the assignee.

(c) *Assignment of record of mortgage.* — An assignment of record of a security interest in a fixture covered by a record of a mortgage which is effective as a financing statement filed as a fixture filing under Section 9-502(c) may be made only by an assignment of record of the mortgage in the manner provided by law of this State other than the Uniform Commercial Code.

(72 Del. Laws, c. 401, § 1.)

§ 9-515 Duration and effectiveness of financing statement; effect of lapsed financing statement.

(a) *Five-year effectiveness.* — Except as otherwise provided in subsections (b), (e), (f), and (g), a filed financing statement is effective for a period of five years after the date of filing.

(b) *Public-finance or manufactured-home transaction.* — Except as otherwise provided in subsections (e), (f), and (g), an initial financing statement filed in connection with a public-finance transaction or manufactured-home transaction is effective for a period of 30 years after the date of filing if it indicates that it is filed in connection with a public-finance transaction or manufactured-home transaction.

(c) *Lapse and continuation of financing statement.* — The effectiveness of a filed financing statement lapses on the expiration of the period of its effectiveness unless before the lapse a continuation statement is filed pursuant to subsection (d). Upon lapse, a financing statement ceases to be effective and any security interest or agricultural lien that was perfected by the financing statement becomes unperfected, unless the security interest is perfected otherwise. If the security interest or agricultural lien becomes unperfected upon lapse, it is deemed never to have been perfected as against a purchaser of the collateral for value.

(d) *When continuation statement may be filed.* — A continuation statement may be filed only within six months before the expiration of the five-year period specified in subsection (a) or the 30-year period specified in subsection (b), whichever is applicable.

(e) *Effect of filing continuation statement.* — Except as otherwise provided in Section 9-510, upon timely filing of a continuation statement, the effectiveness of the initial financing statement continues for a period of five years commencing on the day on which the financing statement would have become ineffective in the absence of the filing. Upon the expiration of the five-year period, the financing statement lapses in the same manner as provided in subsection (c), unless, before the lapse, another continuation statement is filed pursuant to subsection (d). Succeeding continuation statements may be filed in the same manner to continue the effectiveness of the initial financing statement.

(f) *Transmitting utility financing statement.* — If a debtor is a transmitting utility and a filed initial financing statement so indicates, the financing statement is effective until a termination statement is filed.

(g) *Record of mortgage as financing statement.* — A record of a mortgage that is effective as a financing statement filed as a fixture filing under Section 9-502(c) remains effective as a financing statement filed as a fixture filing until the mortgage is released or satisfied of record or its effectiveness otherwise terminates as to the real property.

(72 Del. Laws, c. 401, § 1; 79 Del. Laws, c. 15, § 19.)

§ 9-516 What constitutes filing; effectiveness of filing.

(a) *What constitutes filing.* — Except as otherwise provided in subsection (b), communication of a record to a filing office and tender of the filing fee or acceptance of the record by the filing office constitutes filing.

(b) *Refusal to accept record; filing does not occur.* — Filing does not occur with respect to a record that a filing office refuses to accept because:

(1) the record is not communicated by a method or medium of communication authorized by the filing office;

(2) an amount equal to or greater than the applicable filing fee is not tendered;

(3) the filing office is unable to index the record because:

(A) in the case of an initial financing statement, the record does not provide a name for the debtor;

(B) in the case of an amendment or information statement, the record:

(i) does not identify the initial financing statement as required by Section 9-512 or 9-518, as applicable; or

(ii) identifies an initial financing statement whose effectiveness has lapsed under Section 9-515;

(C) in the case of an initial financing statement that provides the name of a debtor identified as an individual or an amendment that provides a name of a debtor identified as an individual which was not previously provided in the financing statement to which the record relates, the record does not identify the debtor's surname; or

(D) in the case of a record filed in the filing office described in Section 9-501(a)(1), the record does not provide a sufficient description of the real property to which it relates;

(4) in the case of an initial financing statement or an amendment that adds a secured party of record, the record does not provide a name and mailing address for the secured party of record;

(5) in the case of an initial financing statement or an amendment that provides a name of a debtor which was not previously provided in the financing statement to which the amendment relates, the record does not:

(A) provide a mailing address for the debtor; or

(B) indicate whether the name provided as the name of the debtor is the name of an individual or an organization;

(C) [Repealed.]

(6) in the case of an assignment reflected in an initial financing statement under Section 9-514(a) or an amendment filed under Section 9-514(b), the record does not provide a name and mailing address for the assignee; or

(7) in the case of a continuation statement, the record is not filed within the six-month period prescribed by Section 9-515(d).

(c) *Rules applicable to subsection (b).* — For purposes of subsection (b):

(1) a record does not provide information if the filing office is unable to read or decipher the information;

(2) a record that does not indicate that it is an amendment or identify an initial financing statement to which it relates, as required by Section 9-512, 9-514, or 9-518, is an initial financing statement;

(3) for an initial financing statement filed in a filing office described in § 9-501(a)(1) of this title, the requirements of § 9605(f) of Title 9 may be satisfied by placing the county tax assessment parcel identification number in item 4 of the form specified in § 9-521(a) of this title or the comparable item on any other form of initial financing statement;

(4) for a financing statement amendment filed in a filing office described in § 9-501(a)(1) of this title, the requirements of § 9605(f) of Title 9 may be satisfied by placing the county tax assessment parcel identification number in item 8 of the form specified in § 9-521(b) of this title or the comparable item on any other form of financing statement amendment;

(5) for an initial financing statement filed in a filing office described in § 9-501(a)(1) of this title, the requirements of § 9605(h) of Title 9 shall be satisfied by including the information required by § 9-502(b) of this title; and

(6) for a financing statement amendment filed in a filing office described in § 9-501(a)(1) of this title, the requirements of § 9605(h) of Title 9 shall be satisfied by including the information required by § 9-512(a) of this title.

(d) *Refusal to accept record; record effective as filed record.* — A record that is communicated to the filing office with tender of the filing fee, but which the filing office refuses to accept for a reason other than one set forth in subsection (b), is effective as a filed record except as against a purchaser of the collateral which gives value in reasonable reliance upon the absence of the record from the files.

(e) *Trusts and trustees.* — If collateral is held in a trust (including a trust that is a registered organization), the information required by subsection (b)(5) with respect to the debtor may be provided with respect to either the trust or the trustee.

(72 Del. Laws, c. 401, § 1; 74 Del. Laws, c. 332, § 65; 75 Del. Laws, c. 66, § 3; 79 Del. Laws, c. 15, §§ 20-22.)

§ 9-517 Effect of indexing errors.

The failure of the filing office to index a record correctly does not affect the effectiveness of the filed record.

(72 Del. Laws, c. 401, § 1.)

§ 9-518 Claim concerning inaccurate or wrongfully filed record.

(a) *Statement with respect to record indexed under person's name.* — A person may file in the filing office an information statement with respect to a record indexed there under the person's name if the person believes that the record is inaccurate or was wrongfully filed.

(b) *Contents of statement under subsection (a).* — An information statement under subsection (a) must:

(1) identify the record to which it relates by:

(A) the file number assigned to the initial financing statement to which the record relates; and

(B) if the information statement relates to a record filed in a filing office described in Section 9-501(a)(1), the date that the initial financing statement was filed and the information specified in Section 9-502(b);

(2) indicate that it is an information statement; and

(3) provide the basis for the person's belief that the record is inaccurate and indicate the manner in which the person believes the record should be amended to cure any inaccuracy or provide the basis for the person's belief that the record was wrongfully filed.

(c) *Statement by secured party of record.* — A person may file in the filing office an information statement with respect to a record filed there if the person is a secured party of record with respect to the financing statement to which the record relates and believes that the person that filed the record was not entitled to do so under Section 9-509(d).

(d) *Contents of statement under subsection (c).* — An information statement under subsection (c) must:

(1) identify the record to which it relates by:

(A) the file number assigned to the initial financing statement to which the record relates; and

(B) if the information statement relates to a record filed in a filing office described in Section 9-501(a)(1), the date that the initial financing statement was filed and the information specified in Section 9-502(b);

(2) indicate that it is an information statement; and

(3) provide the basis for the person's belief that the person that filed the record was not entitled to do so under Section 9-509(d).

(e) *Record not affected by information statement.* — The filing of an information statement does not affect the effectiveness of an initial financing statement or other filed record.

(72 Del. Laws, c. 401, § 1; 79 Del. Laws, c. 15, § 23.)

2 Duties and Operation of Filing Office

§ 9-519 Numbering, maintaining, and indexing records; communicating information provided in records.

(a) *Filing office duties.* — For each record filed in a filing office, the filing office shall:

(1) assign a unique number to the filed record;

(2) create a record that bears the number assigned to the filed record and the date and time of filing;

(3) maintain the filed record for public inspection; and

(4) index the filed record in accordance with subsections (c), (d), and (e).

(b) *File number.* — A file number assigned after January 1, 2002 must include a digit that:

(1) is mathematically derived from or related to the other digits of the file number; and

(2) aids the filing office in determining whether a number communicated as the file number includes a single-digit or transpositional error.

(c) *Indexing: general.* — Except as otherwise provided in subsections (d) and (e), the filing office shall:

(1) index an initial financing statement according to the name of the debtor and index all filed records relating to the initial financing statement in a manner that associates with one another an initial financing statement and all filed records relating to the initial financing statement; and

(2) index a record that provides a name of a debtor which was not previously provided in the financing statement to which the record relates also according to the name that was not previously provided.

(d) *Indexing: real property-related financing statement.* — If a financing statement is filed as a fixture filing or covers as-extracted collateral or timber to be cut, the filing office shall index it:

(1) under the names of the debtor and of each owner of record shown on the financing statement as if they were the mortgagors under a mortgage of the real property described; and

(2) to the extent that the law of this State provides for indexing of records of mortgages under the name of the mortgagee, under the name of the secured party as if the secured party were the mortgagee thereunder, or, if indexing is by description, as if the financing statement were a record of a mortgage of the real property described.

(e) *Indexing: real property-related assignment.* — If a financing statement is filed as a fixture filing or covers as-extracted collateral or timber to be cut, the filing office shall index an assignment filed under Section 9-514(a) or an amendment filed under Section 9-514(b):

(1) under the name of the assignor as grantor; and

(2) to the extent that the law of this State provides for indexing a record of the assignment of a mortgage under the name of the assignee, under the name of the assignee.

(f) *Retrieval and association capability.* — The filing office shall maintain a capability:

(1) to retrieve a record by the name of the debtor and by the file number assigned to the initial financing statement to which the record relates; and

(2) to associate and retrieve with one another an initial financing statement and each filed record relating to the initial financing statement.

(g) *Removal of debtor's name.* — The filing office may not remove a debtor's name from the index until one year after the effectiveness of a financing statement naming the debtor lapses under Section 9-515 with respect to all secured parties of record.

(h) *Timeliness of filing office performance.* — The filing office shall perform the acts required by subsections (a) through (e) at the time and in the manner prescribed by filing-office rule.

(72 Del. Laws, c. 401, § 1.)

§ 9-520 Acceptance and refusal to accept record.

(a) *Mandatory refusal to accept record.* — A filing office shall refuse to accept a record for filing for a reason set forth in Section 9-516(b) and may not refuse to accept a record for filing for any other reason.

(b) *Communication concerning refusal.* — If a filing office refuses to accept a record for filing, it shall communicate to the person that presented the record the fact of and reason for the refusal and the date and time the record would have been filed had the filing office accepted it. The communication must be made at the time and in the manner prescribed by filing-office rule.

(c) *When filed financing statement effective.* — A filed financing statement satisfying Section 9-502(a) and (b) is effective, even if the filing office is required to refuse to accept it for filing under subsection (a). However, Section 9-338 applies to a filed financing statement providing information described in Section 9-516(b)(5) which is incorrect at the time the financing statement is filed.

(d) *Separate application to multiple debtors.* — If a record communicated to a filing office provides information that relates to more than one debtor, this part applies as to each debtor separately.

(72 Del. Laws, c. 401, § 1.)

§ 9-521 Uniform form of written financing statement and amendment.

(a) *Initial financing statement form.* — A filing office that accepts written records may not refuse to accept a written initial financing statement in the following form and format except for a reason set forth in Section 9-516(b):

UCC FINANCING STATEMENT

FOLLOW INSTRUCTIONS

A. NAME & PHONE OF CONTACT AT FILER (optional)

B. E-MAIL CONTACT AT FILER (optional)

C. SEND ACKNOWLEDGMENT TO: (Name and Address)

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1. DEBTOR'S NAME: Provide only one Debtor name (1a or 1b) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name); if any part of the Individual Debtor's name will not fit in line 1b, leave all of item 1 blank, check here ☐ and provide the Individual Debtor information in item 10 of the Financing Statement Addendum (Form UCC1Ad)

	1a. ORGANIZATION'S NAME			
OR	1b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX
1c. MAILING ADDRESS	CITY	STATE	POSTAL CODE	COUNTRY

2. DEBTOR'S NAME: Provide only one Debtor name (2a or 2b) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name); if any part of the Individual Debtor's name will not fit in line 2b, leave all of item 2 blank, check here ☐ and provide the Individual Debtor information in item 10 of the Financing Statement Addendum (Form UCC1Ad)

	2a. ORGANIZATION'S NAME			
OR	2b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX
2c. MAILING ADDRESS	CITY	STATE	POSTAL CODE	COUNTRY

3. SECURED PARTY'S NAME (or NAME of ASSIGNEE of ASSIGNOR SECURED PARTY): Provide only one Secured Party name (3a or 3b)

	3a. ORGANIZATION'S NAME			
OR	3b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX
3c. MAILING ADDRESS	CITY	STATE	POSTAL CODE	COUNTRY

4. COLLATERAL: This financing statement covers the following collateral:

5. Check only if applicable and check only one box: Collateral is ☐ held in a Trust (see UCC1Ad, item 17 and Instructions) ☐ being administered by a Decedent's Personal Representative

6a. Check only if applicable and check only one box: ☐ Public-Finance Transaction ☐ Manufactured-Home Transaction ☐ A Debtor is a Transmitting Utility

6b. Check only if applicable and check only one box: ☐ Agricultural Lien ☐ Non-UCC Filing

7. ALTERNATIVE DESIGNATION (if applicable): ☐ Lessee/Lessor ☐ Consignee/Consignor ☐ Seller/Buyer ☐ Bailee/Bailor ☐ Licensee/Licensor

8. OPTIONAL FILER REFERENCE DATA:

UCC FINANCING STATEMENT (Form UCC1) (Rev. 04/20/11)

UCC FINANCING STATEMENT ADDENDUM

FOLLOW INSTRUCTIONS

9. NAME OF FIRST DEBTOR: Same as line 1a or 1b on Financing Statement; if line 1b was left blank because Individual Debtor name did not fit, check here ☐

9a. ORGANIZATION'S NAME

OR

9b. INDIVIDUAL'S SURNAME

FIRST PERSONAL NAME

ADDITIONAL NAME(S)/INITIAL(S) | SUFFIX

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

10. DEBTOR'S NAME: Provide (10a or 10b) only one additional Debtor name or Debtor name that did not fit in line 1b or 2b of the Financing Statement (Form UCC1) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name) and enter the mailing address in line 10c

10a. ORGANIZATION'S NAME

OR

10b. INDIVIDUAL'S SURNAME

INDIVIDUAL'S FIRST PERSONAL NAME

INDIVIDUAL'S ADDITIONAL NAME(S)/INITIAL(S) | SUFFIX

10c. MAILING ADDRESS	CITY	STATE	POSTAL CODE	COUNTRY

11. ☐ ADDITIONAL SECURED PARTY'S NAME or ☐ ASSIGNOR SECURED PARTY'S NAME: Provide only one name (11a or 11b)

11a. ORGANIZATION'S NAME

OR

11b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX

11c. MAILING ADDRESS	CITY	STATE	POSTAL CODE	COUNTRY

12. ADDITIONAL SPACE FOR ITEM 4 (Collateral):

13. ☐ This FINANCING STATEMENT is to be filed [for record] (or recorded) in the REAL ESTATE RECORDS (if applicable)

14. This FINANCING STATEMENT: ☐ covers timber to be cut ☐ covers as-extracted collateral ☐ is filed as a fixture filing

15. Name and address of a RECORD OWNER of real estate described in item 16 (if Debtor does not have a record interest):

16. Description of real estate:

17. MISCELLANEOUS:

UCC FINANCING STATEMENT ADDENDUM (Form UCC1Ad) (Rev. 04/20/11)

(b) *Amendment form.* — A filing office that accepts written records may not refuse to accept a written record in the following forms and formats except for a reason set forth in § 9-516(b):

UCC FINANCING STATEMENT AMENDMENT

FOLLOW INSTRUCTIONS

A. NAME & PHONE OF CONTACT AT FILER (optional)

B. E-MAIL CONTACT AT FILER (optional)

C. SEND ACKNOWLEDGMENT TO: (Name and Address)

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1a. INITIAL FINANCING STATEMENT FILE NUMBER

1b. ☐ This FINANCING STATEMENT AMENDMENT is to be filed [for record] (or recorded) in the REAL ESTATE RECORDS
Filer: attach Amendment Addendum (Form UCC3Ad) and provide Debtor's name in item 13

2. ☐ TERMINATION: Effectiveness of the Financing Statement identified above is terminated with respect to the security interest(s) of Secured Party authorizing this Termination Statement

3. ☐ ASSIGNMENT (full or partial): Provide name of Assignee in item 7a or 7b, and address of Assignee in item 7c and name of Assignor in item 9
For partial assignment, complete items 7 and 9 and also indicate affected collateral in item 8

4. ☐ CONTINUATION: Effectiveness of the Financing Statement identified above with respect to the security interest(s) of Secured Party authorizing this Continuation Statement is continued for the additional period provided by applicable law

5. ☐ PARTY INFORMATION CHANGE:
Check one of these two boxes: AND Check one of these three boxes to:
This Change affects ☐ Debtor or ☐ Secured Party of record
☐ CHANGE name and/or address: Complete item 6a or 6b; and item 7a or 7b and item 7c
☐ ADD name: Complete item 7a or 7b, and item 7c
☐ DELETE name: Give record name to be deleted in item 6a or 6b

6. CURRENT RECORD INFORMATION: Complete for Party Information Change - provide only one name (6a or 6b)

6a. ORGANIZATION'S NAME

OR

6b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX

7. CHANGED OR ADDED INFORMATION: Complete for Assignment or Party Information Change - provide only one name (7a or 7b) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name)

7a. ORGANIZATION'S NAME

OR

7b. INDIVIDUAL'S SURNAME

INDIVIDUAL'S FIRST PERSONAL NAME

INDIVIDUAL'S ADDITIONAL NAME(S)/INITIAL(S) | SUFFIX

7c. MAILING ADDRESS	CITY	STATE	POSTAL CODE	COUNTRY

8. ☐ COLLATERAL CHANGE: Also check one of these four boxes: ☐ ADD collateral ☐ DELETE collateral ☐ RESTATE covered collateral ☐ ASSIGN collateral

Indicate collateral:

9. NAME OF SECURED PARTY OF RECORD AUTHORIZING THIS AMENDMENT: Provide only one name (9a or 9b) (name of Assignor, if this is an Assignment)
If this is an Amendment authorized by a DEBTOR, check here ☐ and provide name of authorizing Debtor

9a. ORGANIZATION'S NAME

OR

9b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX

10. OPTIONAL FILER REFERENCE DATA:

UCC FINANCING STATEMENT AMENDMENT (Form UCC3) (Rev. 04/20/11)

UCC FINANCING STATEMENT AMENDMENT ADDENDUM

FOLLOW INSTRUCTIONS

11. INITIAL FINANCING STATEMENT FILE NUMBER: Same as item 1a on Amendment form

12. NAME OF PARTY AUTHORIZING THIS AMENDMENT: Same as item 9 on Amendment form

12a. ORGANIZATION'S NAME

OR

12b. INDIVIDUAL'S SURNAME

FIRST PERSONAL NAME

ADDITIONAL NAME(S)/INITIAL(S) | SUFFIX

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

13. Name of DEBTOR on related financing statement (Name of a current Debtor of record required for indexing purposes only in some filing offices - see Instruction item 13): Provide only one Debtor name (13a or 13b) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name); see Instructions if name does not fit

13a. ORGANIZATION'S NAME

OR

13b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX

14. ADDITIONAL SPACE FOR ITEM 8 (Collateral):

15. This FINANCING STATEMENT AMENDMENT:

☐ covers timber to be cut ☐ covers as-extracted collateral ☐ is filed as a fixture filing

16. Name and address of a RECORD OWNER of real estate described in item 17 (if Debtor does not have a record interest):

17. Description of real estate:

18. MISCELLANEOUS:

UCC FINANCING STATEMENT AMENDMENT ADDENDUM (Form UCC3Ad) (Rev. 04/20/11)

UCC FINANCING STATEMENT AMENDMENT

FOLLOW INSTRUCTIONS

A. NAME & PHONE OF CONTACT AT FILER (optional)

B. E-MAIL CONTACT AT FILER (optional)

C. SEND ACKNOWLEDGMENT TO: (Name and Address)

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1a. INITIAL FINANCING STATEMENT FILE NUMBER

1b. ☐ This FINANCING STATEMENT AMENDMENT is to be filed [for record] (or recorded) in the REAL ESTATE RECORDS
Filer: attach Amendment Addendum (Form UCC3Ad) and provide Debtor's name in item 13

2. ☐ TERMINATION: Effectiveness of the Financing Statement identified above is terminated with respect to the security interest(s) of Secured Party authorizing this Termination Statement

3. ☐ ASSIGNMENT (☐ full or ☐ partial): Provide name of Assignee in item 7a or 7b, and address of Assignee in item 7c and name of Assignor in item 9
For partial assignment, complete items 7 and 9 and also indicate affected collateral in item 8

4. ☐ CONTINUATION: Effectiveness of the Financing Statement identified above with respect to the security interest(s) of Secured Party authorizing this Continuation Statement is continued for the additional period provided by applicable law

5. ☐ PARTY INFORMATION CHANGE:
Check one of these two boxes:
This Change affects ☐ Debtor or ☐ Secured Party of record

AND Check one of these three boxes to:
☐ CHANGE name and/or address: Complete item 6a or 6b; and item 7a or 7b and item 7c
☐ ADD name: Complete item 7a or 7b, and item 7c
☐ DELETE name: Give record name to be deleted in item 6a or 6b

6. CURRENT RECORD INFORMATION: Complete for Party Information Change - provide only one name (6a or 6b)

6a. ORGANIZATION'S NAME

OR

6b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX

7. CHANGED OR ADDED INFORMATION: Complete for Assignment or Party Information Change - provide only one name (7a or 7b) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name)

7a. ORGANIZATION'S NAME

OR

7b. INDIVIDUAL'S SURNAME

INDIVIDUAL'S FIRST PERSONAL NAME

INDIVIDUAL'S ADDITIONAL NAME(S)/INITIAL(S) | SUFFIX

7c. MAILING ADDRESS	CITY	STATE	POSTAL CODE	COUNTRY

8. AMENDMENT:

8a. ☐ AMENDMENT (COLLATERAL CHANGE): Also check one of these four boxes:
☐ ADD collateral ☐ DELETE collateral ☐ RESTATE covered collateral ☐ ASSIGN collateral
Indicate collateral:

8b. ☐ AMENDMENT (OTHER): Describe other amendment:

9. NAME OF SECURED PARTY OF RECORD AUTHORIZING THIS AMENDMENT: Provide only one name (9a or 9b) (name of Assignor, if this is an Assignment)
If this is an Amendment authorized by a DEBTOR, check here ☐ and provide name of authorizing Debtor

9a. ORGANIZATION'S NAME

OR

9b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX

10. OPTIONAL FILER REFERENCE DATA:

DELAWARE UCC FINANCING STATEMENT AMENDMENT (Form UCC3-Alt) (Rev. 5/15/12)

UCC FINANCING STATEMENT AMENDMENT ADDENDUM

FOLLOW INSTRUCTIONS

11. INITIAL FINANCING STATEMENT FILE NUMBER: Same as item 1a on Amendment form

12. NAME OF PARTY AUTHORIZING THIS AMENDMENT: Same as item 9 on Amendment form

12a. ORGANIZATION'S NAME

OR

12b. INDIVIDUAL'S SURNAME

FIRST PERSONAL NAME

ADDITIONAL NAME(S)/INITIAL(S) | SUFFIX

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

13. Name of DEBTOR on related financing statement (Name of a current Debtor of record required for indexing purposes only in some filing offices - see Instruction item 13): Provide only one Debtor name (13a or 13b) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name); see Instructions if name does not fit

13a. ORGANIZATION'S NAME

OR

13b. INDIVIDUAL'S SURNAME | FIRST PERSONAL NAME | ADDITIONAL NAME(S)/INITIAL(S) | SUFFIX

14. ADDITIONAL SPACE FOR ITEM 8:

15. This FINANCING STATEMENT AMENDMENT:

☐ covers timber to be cut ☐ covers as-extracted collateral ☐ is filed as a fixture filing

16. Name and address of a RECORD OWNER of real estate described in item 17 (if Debtor does not have a record interest):

17. Description of real estate:

18. MISCELLANEOUS:

DELAWARE UCC FINANCING STATEMENT AMENDMENT ADDENDUM (Form UCC3Ad-Alt) (Rev. 05/15/12)

(72 Del. Laws, c. 401, § 1; 77 Del. Laws, c. 31, §§ 1, 2; 79 Del. Laws, c. 15, §§ 24, 25.)

§ 9-522 Maintenance and destruction of records.

(a) *Post-lapse maintenance and retrieval of information.* — The filing office shall maintain a record of the information provided in a filed financing statement for at least one year after the effectiveness of the financing statement has lapsed under Section 9-515 with

respect to all secured parties of record. The record must be retrievable by using the name of the debtor and by using the file number assigned to the initial financing statement to which the record relates.

(b) *Destruction of written records.* — Except to the extent that a statute governing disposition of public records provides otherwise, the filing office immediately may destroy any written record evidencing a financing statement. However, if the filing office destroys a written record, it shall maintain another record of the financing statement which complies with subsection (a).

(72 Del. Laws, c. 401, § 1.)

§ 9-523 Information from filing office; sale or license of records.

(a) *Acknowledgment of filing written record.* — If a person that files a written record requests an acknowledgment of the filing, the filing office shall send to the person an image of the record showing the number assigned to the record pursuant to Section 9-519(a)(1) and the date and time of the filing of the record. However, if the person furnishes a copy of the record to the filing office, the filing office may instead:

(1) note upon the copy the number assigned to the record pursuant to Section 9-519(a)(1) and the date and time of the filing of the record; and

(2) send the copy to the person.

(b) *Acknowledgment of filing other record.* — If a person files a record other than a written record, the filing office shall communicate to the person an acknowledgment that provides:

(1) the information in the record;

(2) the number assigned to the record pursuant to Section 9-519(a)(1); and

(3) the date and time of the filing of the record.

(c) *Communication of requested information.* — The filing office shall communicate or otherwise make available in a record the following information to any person that requests it:

(1) whether there is on file on a date and time specified by the filing office, but not a date earlier than three business days before the filing office receives the request, any financing statement that:

(A) designates a particular debtor;

(B) has not lapsed under Section 9-515 with respect to all secured parties of record; and

(C) if the request so states, has lapsed under Section 9-515 and a record of which is maintained by the filing office under Section 9-522(a);

(2) the date and time of filing of each financing statement; and

(3) the information provided in each financing statement.

(d) *Medium for communicating information.* — In complying with its duty under subsection (c), the filing office may communicate information in any medium. However, if requested, the filing office shall communicate information by issuing a record that can be admitted into evidence in the courts of this State without extrinsic evidence of its authenticity.

(e) *Timeliness of filing office performance.* — The filing office shall perform the acts required by subsections (a) through (d) at the time and in the manner prescribed by filing-office rule.

(f) *Public availability of records.* — At least weekly, the office of the Secretary of State may offer to sell or license to the public on a nonexclusive basis, in bulk, copies of all records filed in it under this part, in every medium from time to time available to the filing office.

(72 Del. Laws, c. 401, § 1.)

§ 9-524 Delay by filing office.

Delay by the filing office beyond a time limit prescribed by this part is excused if:

(1) the delay is caused by interruption of communication or computer facilities, war, emergency conditions, failure of equipment, or other circumstances beyond control of the filing office; and

(2) the filing office exercises reasonable diligence under the circumstances.

(72 Del. Laws, c. 401, § 1.)

§ 9-525 Fees.

(a) *Initial financing statement or other record; general rule.* — Except as otherwise provided in subsection (e), the fee for filing and indexing a record under this part, other than an initial financing statement of the kind described in subsection (b), is:

(1) The amount specified in subsection (c), if applicable, plus an amount not to exceed $ 125 and an amount of $2 per page for each page in excess of 4 pages if the record is communicated in writing or as an image; or

(2) An amount not to exceed $ 100 if the record is communicated via the Internet or a similar medium authorized by filing office rule, provided that filings complying with such rule shall be exempt from fees described in subsection (c) and paragraph (d)(3) of this section.

(b) *Initial financing statement: public-finance or manufactured-home transaction.* — Except as otherwise provided in subsection (e), the fee for filing and indexing an initial financing statement of the following kind is the amount specified in subsection (a)(and, if applicable, subsection (c)), plus $20 if the financing statement indicates that it is filed in connection with a public-finance transaction or a manufactured-home transaction.

(c) *Number of names.* — Except as otherwise provided in subsection (e), if a record is communicated in writing or as an image, the fee for each name more than two required to be indexed is $25.

(d) *Response to information request and expediting services.* — (1) The fee for responding to a request for information from the filing office, including for communicating whether there is on file any financing statement naming a particular debtor, is:

(A) $25 if the request is communicated in writing; and

(B) $25 if the request is communicated by another medium authorized by filing-office rule.

(2) Upon request the filing office shall provide a copy of any record for a uniform fee of $10 for the first page and $2 for each additional page; provided however, that the office of the Secretary of State may, in its discretion, establish different rate schedules for bulk copies pursuant to § 9-523(f) of this title.

(3) For each service described in this subsection or in Section 9-523(a) that is requested to be completed: (i) within a twenty-four hour period from the time of the request, the Secretary of State shall charge the additional sum of up to $100; (ii) within the same day as the day of the request, the Secretary of State shall charge the additional sum of up to $200; (iii) within a two-hour period from the time of the request, the Secretary of State shall charge the additional sum of up to $500; and (iv) within a one-hour period from the time of the request, the Secretary of State shall charge the additional sum of up to $1,000.

(e) *Record of mortgage.* — This section does not require a fee with respect to a record of a mortgage which is effective as a financing statement filed as a fixture filing or as a financing statement covering as-extracted collateral or timber to be cut under Section 9-502(c). However, the recording and satisfaction fees that otherwise would be applicable to the record of the mortgage apply.

(72 Del. Laws, c. 401, § 1; 73 Del. Laws, c. 384, §§ 1, 2; 74 Del. Laws, c. 52, §§ 1-4; 77 Del. Laws, c. 78, §§ 1, 2; 81 Del. Laws, c. 53, § 1.)

§ 9-526 Filing-office rules.

(a) *Adoption of filing-office rules.* — The Secretary of State shall adopt and publish rules to implement this Article. The filing-office rules must be:

(1) consistent with this Article; and

(2) adopted and published in accordance with Chapter 101 of Title 29 (the Delaware Administrative Procedures Act).

(b) *Harmonization of rules.* — To keep the filing-office rules and practices of the filing office in harmony with the rules and practices of filing offices in other jurisdictions that enact substantially this part, and to keep the technology used by the filing office compatible with the technology used by filing offices in other jurisdictions that enact substantially this part, the office of the Secretary of State, so far as is consistent with the purposes, policies, and provisions of this Article, in adopting, amending, and repealing filing-office rules, shall:

(1) consult with filing offices in other jurisdictions that enact substantially this part; and

(2) consult the most recent version of the Model Rules promulgated by the International Association of Corporate Administrators or any successor organization; and

(3) take into consideration the rules and practices of, and the technology used by, filing offices in other jurisdictions that enact substantially this part.

(72 Del. Laws, c. 401, § 1.)

Part 6
Default

1 Default and Enforcement of Security Interest

§ 9-601 Rights after default; judicial enforcement; consignor or buyer of accounts, chattel paper, payment intangibles, or promissory notes.

(a) *Rights of secured party after default.* — After default, a secured party has the rights provided in this part and, except as otherwise provided in Section 9-602, those provided by agreement of the parties. A secured party:

(1) may reduce a claim to judgment, foreclose, or otherwise enforce the claim, security interest, or agricultural lien by any available judicial procedure; and

(2) if the collateral is documents, may proceed either as to the documents or as to the goods they cover.

(b) *Rights and duties of secured party in possession or control.* — A secured party in possession of collateral or control of collateral under Section 7-106, 9-104, 9-105, 9-106, or 9-107 has the rights and duties provided in Section 9-207.

(c) *Rights cumulative; simultaneous exercise.* — The rights under subsections (a) and (b) are cumulative and may be exercised simultaneously.

(d) *Rights of debtor and obligor.* — Except as otherwise provided in subsection (g) and Section 9-605, after default, a debtor and an obligor have the rights provided in this part and by agreement of the parties.

(e) *Lien of levy after judgment.* — If a secured party has reduced its claim to judgment, the lien of any levy that may be made upon the collateral by virtue of an execution based upon the judgment relates back to the earliest of:

(1) the date of perfection of the security interest or agricultural lien in the collateral;

(2) the date of filing a financing statement covering the collateral; or

(3) any date specified in a statute under which the agricultural lien was created.

(f) *Execution sale.* — A sale pursuant to an execution is a foreclosure of the security interest or agricultural lien by judicial procedure within the meaning of this section. A secured party may purchase at the sale and thereafter hold the collateral free of any other requirements of this Article.

(g) *Consignor or buyer of certain rights to payment.* — Except as otherwise provided in Section 9-607(c), this part imposes no duties upon a secured party that is a consignor or is a buyer of accounts, chattel paper, payment intangibles, or promissory notes.

(72 Del. Laws, c. 401, § 1; 74 Del. Laws, c. 332, § 66.)

§ 9-602 Waiver and variance of rights and duties.

Except as otherwise provided in Section 9-624, to the extent that they give rights to a debtor or obligor and impose duties on a secured party, the debtor or obligor may not waive or vary the rules stated in the following listed sections:

(1) Section 9-207(b)(4)(C), which deals with use and operation of the collateral by the secured party;

(2) Section 9-210, which deals with requests for an accounting and requests concerning a list of collateral and statement of account;

(3) Section 9-607(c), which deals with collection and enforcement of collateral;

(4) Sections 9-608(a) and 9-615(c) to the extent that they deal with application or payment of noncash proceeds of collection, enforcement, or disposition;

(5) Sections 9-608(a) and 9-615(d) to the extent that they require accounting for or payment of surplus proceeds of collateral;

(6) Section 9-609 to the extent that it imposes upon a secured party that takes possession of collateral without judicial process the duty to do so without breach of the peace;

(7) Sections 9-610(b), 9-611, 9-613, and 9-614, which deal with disposition of collateral;

(8) Section 9-615(f), which deals with calculation of a deficiency or surplus when a disposition is made to the secured party, a person related to the secured party, or a secondary obligor;

(9) Section 9-616, which deals with explanation of the calculation of a surplus or deficiency;

(10) Sections 9-620, 9-621, and 9-622, which deal with acceptance of collateral in satisfaction of obligation;

(11) Section 9-623, which deals with redemption of collateral;

(12) Section 9-624, which deals with permissible waivers; and

(13) Sections 9-625 and 9-626, which deal with the secured party's liability for failure to comply with this Article.

(72 Del. Laws, c. 401, § 1.)

§ 9-603 Agreement on standards concerning rights and duties.

(a) *Agreed standards.* — The parties may determine by agreement the standards measuring the fulfillment of the rights of a debtor or obligor and the duties of a secured party under a rule stated in Section 9-602 if the standards are not manifestly unreasonable.

(b) *Agreed standards inapplicable to breach of peace.* — Subsection (a) does not apply to the duty under Section 9-609 to refrain from breaching the peace.

(72 Del. Laws, c. 401, § 1.)

§ 9-604 Procedure if security agreement covers real property or fixtures.

(a) *Enforcement: personal and real property.* — If a security agreement covers both personal and real property, a secured party may proceed:

(1) under this part as to the personal property without prejudicing any rights with respect to the real property; or

(2) as to both the personal property and the real property in accordance with the rights with respect to the real property, in which case the other provisions of this part do not apply.

(b) *Enforcement: fixtures.* — Subject to subsection (c), if a security agreement covers goods that are or become fixtures, a secured party may proceed:

(1) under this part; or

(2) in accordance with the rights with respect to real property, in which case the other provisions of this part do not apply.

(c) *Removal of fixtures.* — Subject to the other provisions of this part, if a secured party holding a security interest in fixtures has priority over all owners and encumbrancers of the real property, the secured party, after default, may remove the collateral from the real property.

(d) *Injury caused by removal.* — A secured party that removes collateral shall promptly reimburse any encumbrancer or owner of the real property, other than the debtor, for the cost of repair of any physical injury caused by the removal. The secured party need not reimburse the encumbrancer or owner for any diminution in value of the real property caused by the absence of the goods removed or by any necessity of replacing them. A person entitled to reimbursement may refuse permission to remove until the secured party gives adequate assurance for the performance of the obligation to reimburse.

(72 Del. Laws, c. 401, § 1.)

§ 9-605 Unknown debtor or secondary obligor.

A secured party does not owe a duty based on its status as secured party:

(1) to a person that is a debtor or obligor, unless the secured party knows:

(A) that the person is a debtor or obligor;

(B) the identity of the person; and

(C) how to communicate with the person; or

(2) to a secured party or lienholder that has filed a financing statement against a person, unless the secured party knows:

(A) that the person is a debtor; and

(B) the identity of the person.

(72 Del. Laws, c. 401, § 1.)

§ 9-606 Time of default for agricultural lien.

For purposes of this part, a default occurs in connection with an agricultural lien at the time the secured party becomes entitled to enforce the lien in accordance with the statute under which it was created.

(72 Del. Laws, c. 401, § 1.)

§ 9-607 Collection and enforcement by secured party.

(a) *Collection and enforcement generally.* — If so agreed, and in any event after default, a secured party:

(1) may notify an account debtor or other person obligated on collateral to make payment or otherwise render performance to or for the benefit of the secured party;

(2) may take any proceeds to which the secured party is entitled under Section 9-315;

(3) may enforce the obligations of an account debtor or other person obligated on collateral and exercise the rights of the debtor with respect to the obligation of the account debtor or other person obligated on collateral to make payment or otherwise render performance to the debtor, and with respect to any property that secures the obligations of the account debtor or other person obligated on the collateral;

(4) if it holds a security interest in a deposit account perfected by control under Section 9-104(a)(1), may apply the balance of the deposit account to the obligation secured by the deposit account; and

(5) if it holds a security interest in a deposit account perfected by control under Section 9-104(a)(2) or (3), may instruct the bank to pay the balance of the deposit account to or for the benefit of the secured party.

(b) *Nonjudicial enforcement of mortgage.* — If necessary to enable a secured party to exercise under subsection (a)(3) the right of a debtor to enforce a mortgage nonjudicially, the secured party may record in the office in which a record of the mortgage is recorded:

(1) a copy of the security agreement that creates or provides for a security interest in the obligation secured by the mortgage; and

(2) the secured party's sworn affidavit in recordable form stating that:

(A) a default has occurred with respect to the obligation secured by the mortgage; and

(B) the secured party is entitled to enforce the mortgage nonjudicially.

(c) *Commercially reasonable collection and enforcement.* — A secured party shall proceed in a commercially reasonable manner if the secured party:

(1) undertakes to collect from or enforce an obligation of an account debtor or other person obligated on collateral; and

(2) is entitled to charge back uncollected collateral or otherwise to full or limited recourse against the debtor or a secondary obligor.

(d) *Expenses of collection and enforcement.* — A secured party may deduct from the collections made pursuant to subsection (c) reasonable expenses of collection and enforcement, including reasonable attorney's fees and legal expenses incurred by the secured party.

(e) *Duties to secured party not affected.* — This section does not determine whether an account debtor, bank, or other person obligated on collateral owes a duty to a secured party.

(72 Del. Laws, c. 401, § 1; 79 Del. Laws, c. 15, § 26.)

§ 9-608 Application of proceeds of collection or enforcement; liability for deficiency and right to surplus.

(a) *Application of proceeds, surplus, and deficiency if obligation secured.* — If a security interest or agricultural lien secures payment or performance of an obligation, the following rules apply:

(1) A secured party shall apply or pay over for application the cash proceeds of collection or enforcement under Section 9-607, reduced by the amounts deducted pursuant to Section 9-607(d), in the following order to:

(A) the reasonable expenses of collection and enforcement and, to the extent provided for by agreement and not prohibited by law, reasonable attorney's fees and legal expenses incurred by the secured party;

(B) the satisfaction of obligations secured by the security interest or agricultural lien under which the collection or enforcement is made; and

(C) the satisfaction of obligations secured by any subordinate security interest in or other lien on the collateral subject to the security interest or agricultural lien under which the collection or enforcement is made if the secured party receives an authenticated demand for proceeds before distribution of the proceeds is completed.

(2) If requested by a secured party, a holder of a subordinate security interest or other lien shall furnish reasonable proof of the interest or lien within a reasonable time. Unless the holder complies, the secured party need not comply with the holder's demand under paragraph (1)(C).

(3) A secured party need not apply or pay over for application noncash proceeds of collection and enforcement under Section 9-607 unless the failure to do so would be commercially unreasonable. A secured party that applies or pays over for application noncash proceeds shall do so in a commercially reasonable manner.

(4) A secured party shall account to and pay a debtor for any surplus, and the obligor is liable for any deficiency.

(b) *No surplus or deficiency in sales of certain rights to payment.* — If the underlying transaction is a sale of accounts, chattel paper, payment intangibles, or promissory notes, the debtor is not entitled to any surplus, and the obligor is not liable for any deficiency.

(72 Del. Laws, c. 401, § 1.)

§ 9-609 Secured party's right to take possession after default.

(a) *Possession; rendering equipment unusable; disposition on debtor's premises.* — After default, a secured party:

(1) may take possession of the collateral; and

(2) without removal, may render equipment unusable and dispose of collateral on a debtor's premises under Section 9-610.

(b) *Judicial and nonjudicial process.* — A secured party may proceed under subsection (a):

(1) pursuant to judicial process; or

(2) without judicial process, if it proceeds without breach of the peace.

(c) *Assembly of collateral.* — If so agreed, and in any event after default, a secured party may require the debtor to assemble the collateral and make it available to the secured party at a place to be designated by the secured party which is reasonably convenient to both parties.

(72 Del. Laws, c. 401, § 1.)

§ 9-610 Disposition of collateral after default.

(a) *Disposition after default.* — After default, a secured party may sell, lease, license, or otherwise dispose of any or all of the collateral in its present condition or following any commercially reasonable preparation or processing.

(b) *Commercially reasonable disposition.* — Every aspect of a disposition of collateral, including the method, manner, time, place, and other terms, must be commercially reasonable. If commercially reasonable, a secured party may dispose of collateral by public or private proceedings, by one or more contracts, as a unit or in parcels, and at any time and place and on any terms.

(c) *Purchase by secured party.* — A secured party may purchase collateral:

(1) at a public disposition; or

(2) at a private disposition only if the collateral is of a kind that is customarily sold on a recognized market or the subject of widely distributed standard price quotations.

(d) *Warranties on disposition.* — A contract for sale, lease, license, or other disposition includes the warranties relating to title, possession, quiet enjoyment, and the like which by operation of law accompany a voluntary disposition of property of the kind subject to the contract.

(e) *Disclaimer of warranties.* — A secured party may disclaim or modify warranties under subsection (d):

(1) in a manner that would be effective to disclaim or modify the warranties in a voluntary disposition of property of the kind subject to the contract of disposition; or

(2) by communicating to the purchaser a record evidencing the contract for disposition and including an express disclaimer or modification of the warranties.

(f) *Record sufficient to disclaim warranties.* — A record is sufficient to disclaim warranties under subsection (e) if it indicates "There is no warranty relating to title, possession, quiet enjoyment, or the like in this disposition" or uses words of similar import.

(72 Del. Laws, c. 401, § 1.)

§ 9-611 Notification before disposition of collateral.

(a) *"Notification date."* — In this section, "notification date" means the earlier of the date on which:

(1) a secured party sends to the debtor and any secondary obligor an authenticated notification of disposition; or

(2) the debtor and any secondary obligor waive the right to notification.

(b) *Notification of disposition required.* — Except as otherwise provided in subsection (d), a secured party that disposes of collateral under Section 9-610 shall send to the persons specified in subsection (c) a reasonable authenticated notification of disposition.

(c) *Persons to be notified.* — To comply with subsection (b), the secured party shall send an authenticated notification of disposition to:

(1) the debtor;

(2) any secondary obligor; and

(3) if the collateral is other than consumer goods:

(A) any other person from which the secured party has received, before the notification date, an authenticated notification of a claim of an interest in the collateral;

(B) any other secured party or lienholder that, 10 days before the notification date, held a security interest in or other lien on the collateral perfected by the filing of a financing statement that:

(i) identified the collateral;

(ii) was indexed under the debtor's name as of that date; and

(iii) was filed in the office in which to file a financing statement against the debtor covering the collateral as of that date; and

(C) any other secured party that, 10 days before the notification date, held a security interest in the collateral perfected by compliance with a statute, regulation, or treaty described in Section 9-311(a).

(d) *Subsection (b) inapplicable: perishable collateral; recognized market.* — Subsection (b) does not apply if the collateral is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market.

(e) *Compliance with subsection (c)(3)(B).* — A secured party complies with the requirement for notification prescribed by subsection (c)(3)(B) if:

(1) not later than 20 days or earlier than 30 days before the notification date, the secured party requests, in a commercially reasonable manner, information concerning financing statements indexed under the debtor's name in the office indicated in subsection (c)(3)(B); and

(2) before the notification date, the secured party:

(A) did not receive a response to the request for information; or

(B) received a response to the request for information and sent an authenticated notification of disposition to each secured party or other lienholder named in that response whose financing statement covered the collateral.

(72 Del. Laws, c. 401, § 1.)

§ 9-612 Timeliness of notification before disposition of collateral.

(a) *Reasonable time is question of fact.* — Except as otherwise provided in subsection (b), whether a notification is sent within a reasonable time is a question of fact.

(b) *10-day period sufficient in non-consumer transaction.* — In a transaction other than a consumer transaction, a notification of disposition sent after default and 10 days or more before the earliest time of disposition set forth in the notification is sent within a reasonable time before the disposition.

(72 Del. Laws, c. 401, § 1.)

§ 9-613 Contents and form of notification before disposition of collateral: general.

Except in a consumer-goods transaction, the following rules apply:

(1) The contents of a notification of disposition are sufficient if the notification:

(A) describes the debtor and the secured party;

(B) describes the collateral that is the subject of the intended disposition;

(C) states the method of intended disposition;

(D) states that the debtor is entitled to an accounting of the unpaid indebtedness and states the charge, if any, for an accounting; and

(E) states the time and place of a public disposition or the time after which any other disposition is to be made.

(2) Whether the contents of a notification that lacks any of the information specified in paragraph (1) are nevertheless sufficient is a question of fact.

(3) The contents of a notification providing substantially the information specified in paragraph (1) are sufficient, even if the notification includes:

(A) information not specified by that paragraph; or

(B) minor errors that are not seriously misleading.

(4) A particular phrasing of the notification is not required.

(5) The following form of notification and the form appearing in Section 9-614(3), when completed, each provides sufficient information:

NOTIFICATION OF DISPOSITION OF COLLATERAL

To: [*Name of debtor, obligor, or other person to which the notification is sent*]

From: [*Name, address, and telephone number of secured party*]

Name of Debtor(s): [*Include only if debtor(s) are not an addressee*]

[*For a public disposition:*]

We will sell [or lease or license, *as applicable*] the [*describe collateral*] [to the highest qualified bidder] in public as follows:

Day and Date: _____

Time: _____

Place: _____

[*For a private disposition:*]

We will sell [or lease or license, *as applicable*] the [*describe collateral*] privately sometime after [*day and date*].

You are entitled to an accounting of the unpaid indebtedness secured by the property that we intend to sell [or lease or license, *as applicable*] [for a charge of $ ____]. You may request an accounting by calling us at [*telephone number*].

[End of Form]

(72 Del. Laws, c. 401, § 1.)

§ 9-614 Contents and form of notification before disposition of collateral: consumer-goods transaction.

In a consumer-goods transaction, the following rules apply:

(1) A notification of disposition must provide the following information:

(A) the information specified in Section 9-613(1);

(B) a description of any liability for a deficiency of the person to which the notification is sent;

(C) a telephone number from which the amount that must be paid to the secured party to redeem the collateral under Section 9-623 is available; and

(D) a telephone number or mailing address from which additional information concerning the disposition and the obligation secured is available.

(2) A particular phrasing of the notification is not required.

(3) The following form of notification, when completed, provides sufficient information:

[*Name and address of secured party*]

[*Date*]

NOTICE OF OUR PLAN TO SELL PROPERTY

[*Name and address of any obligor who is also a debtor*]

Subject: [*Identification of Transaction*]

We have your [*describe collateral*], because you broke promises in our agreement.

[*For a public disposition:*]

We will sell [*describe collateral*] at public sale. A sale could include a lease or license. The sale will be held as follows:

Date: _____

Time: _____

Place: _____

You may attend the sale and bring bidders if you want.

[*For a private disposition:*]

We will sell [*describe collateral*] at private sale sometime after [*date*]. A sale could include a lease or license.

The money that we get from the sale (after paying our costs) will reduce the amount you owe. If we get less money than you owe, you [*will or will not, as applicable*] still owe us the difference. If we get more money than you owe, you will get the extra money, unless we must pay it to someone else.

You can get the property back at any time before we sell it by paying us the full amount you owe (not just the past due payments), including our expenses. To learn the exact amount you must pay, call us at [*telephone number*].

If you want us to explain to you in writing how we have figured the amount that you owe us, you may call us at [*telephone number*] [or write us at [*secured party's address*]] and request a written explanation. [We will charge you $ _____ for the explanation if we sent you another written explanation of the amount you owe us within the last six months.]

If you need more information about the sale call us at [*telephone number*]] [or write us at [*secured party's address*]].

We are sending this notice to the following other people who have an interest in [*describe collateral*] or who owe money under your agreement:

[*Names of all other debtors and obligors, if any*]

[End of Form]

(4) A notification in the form of paragraph (3) is sufficient, even if additional information appears at the end of the form.

(5) A notification in the form of paragraph (3) is sufficient, even if it includes errors in information not required by paragraph (1), unless the error is misleading with respect to rights arising under this Article.

(6) If a notification under this section is not in the form of paragraph (3), law other than this Article determines the effect of including information not required by paragraph (1).

(72 Del. Laws, c. 401, § 1.)

§ 9-615 Application of proceeds of disposition; liability for deficiency and right to surplus.

(a) *Application of proceeds.* — A secured party shall apply or pay over for application the cash proceeds of disposition under Section 9-610 in the following order to:

(1) the reasonable expenses of retaking, holding, preparing for disposition, processing, and disposing, and, to the extent provided for by agreement and not prohibited by law, reasonable attorney's fees and legal expenses incurred by the secured party;

(2) the satisfaction of obligations secured by the security interest or agricultural lien under which the disposition is made;

(3) the satisfaction of obligations secured by any subordinate security interest in or other subordinate lien on the collateral if:

(A) the secured party receives from the holder of the subordinate security interest or other lien an authenticated demand for proceeds before distribution of the proceeds is completed; and

(B) in a case in which a consignor has an interest in the collateral, the subordinate security interest or other lien is senior to the interest of the consignor; and

(4) a secured party that is a consignor of the collateral if the secured party receives from the consignor an authenticated demand for proceeds before distribution of the proceeds is completed.

(b) *Proof of subordinate interest.* — If requested by a secured party, a holder of a subordinate security interest or other lien shall furnish reasonable proof of the interest or lien within a reasonable time. Unless the holder does so, the secured party need not comply with the holder's demand under subsection (a)(3).

(c) *Application of noncash proceeds.* — A secured party need not apply or pay over for application noncash proceeds of disposition under Section 9-610 unless the failure to do so would be commercially unreasonable. A secured party that applies or pays over for application noncash proceeds shall do so in a commercially reasonable manner.

(d) *Surplus or deficiency if obligation secured.* — If the security interest under which a disposition is made secures payment or performance of an obligation, after making the payments and applications required by subsection (a) and permitted by subsection (c):

(1) unless subsection (a)(4) requires the secured party to apply or pay over cash proceeds to a consignor, the secured party shall account to and pay a debtor for any surplus; and

(2) the obligor is liable for any deficiency.

(e) *No surplus or deficiency in sales of certain rights to payment.* — If the underlying transaction is a sale of accounts, chattel paper, payment intangibles, or promissory notes:

(1) the debtor is not entitled to any surplus; and

(2) the obligor is not liable for any deficiency.

(f) *Calculation of surplus or deficiency in disposition to person related to secured party.* — The surplus or deficiency following a disposition is calculated based on the amount of proceeds that would have been realized in a disposition complying with this part to a transferee other than the secured party, a person related to the secured party, or a secondary obligor if:

(1) the transferee in the disposition is the secured party, a person related to the secured party, or a secondary obligor; and

(2) the amount of proceeds of the disposition is significantly below the range of proceeds that a complying disposition to a person other than the secured party, a person related to the secured party, or a secondary obligor would have brought.

(g) *Cash proceeds received by junior secured party.* — A secured party that receives cash proceeds of a disposition in good faith and without knowledge that the receipt violates the rights of the holder of a security interest or other lien that is not subordinate to the security interest or agricultural lien under which the disposition is made:

(1) takes the cash proceeds free of the security interest or other lien;

(2) is not obligated to apply the proceeds of the disposition to the satisfaction of obligations secured by the security interest or other lien; and

(3) is not obligated to account to or pay the holder of the security interest or other lien for any surplus.

(72 Del. Laws, c. 401, § 1.)

§ 9-616 Explanation of calculation of surplus or deficiency.

(a) *Definitions.* — In this section:

(1) "Explanation" means a writing that:

(A) states the amount of the surplus or deficiency;

(B) provides an explanation in accordance with subsection (c) of how the secured party calculated the surplus or deficiency;

(C) states, if applicable, that future debits, credits, charges, including additional credit service charges or interest, rebates, and expenses may affect the amount of the surplus or deficiency; and

(D) provides a telephone number or mailing address from which additional information concerning the transaction is available.

(2) "Request" means a record:

(A) authenticated by a debtor or consumer obligor;

(B) requesting that the recipient provide an explanation; and

(C) sent after disposition of the collateral under Section 9-610.

(b) *Explanation of calculation.* — In a consumer-goods transaction in which the debtor is entitled to a surplus or a consumer obligor is liable for a deficiency under Section 9-615, the secured party shall:

(1) send an explanation to the debtor or consumer obligor, as applicable, after the disposition and:

(A) before or when the secured party accounts to the debtor and pays any surplus or first makes written demand on the consumer obligor after the disposition for payment of the deficiency; and

(B) within 14 days after receipt of a request; or

(2) in the case of a consumer obligor who is liable for a deficiency, within 14 days after receipt of a request, send to the consumer obligor a record waiving the secured party's right to a deficiency.

(c) *Required information.* — To comply with subsection (a)(1)(B), a writing must provide the following information in the following order:

(1) the aggregate amount of obligations secured by the security interest under which the disposition was made, and, if the amount reflects a rebate of unearned interest or credit service charge, an indication of that fact, calculated as of a specified date:

(A) if the secured party takes or receives possession of the collateral after default, not more than 35 days before the secured party takes or receives possession; or

(B) if the secured party takes or receives possession of the collateral before default or does not take possession of the collateral, not more than 35 days before the disposition;

(2) the amount of proceeds of the disposition;

(3) the aggregate amount of the obligations after deducting the amount of proceeds;

(4) the amount, in the aggregate or by type, and types of expenses, including expenses of retaking, holding, preparing for disposition, processing, and disposing of the collateral, and attorney's fees secured by the collateral which are known to the secured party and relate to the current disposition;

(5) the amount, in the aggregate or by type, and types of credits, including rebates of interest or credit service charges, to which the obligor is known to be entitled and which are not reflected in the amount in paragraph (1); and

(6) the amount of the surplus or deficiency.

(d) *Substantial compliance.* — A particular phrasing of the explanation is not required. An explanation complying substantially with the requirements of subsection (a) is sufficient, even if it includes minor errors that are not seriously misleading.

(e) *Charges for responses.* — A debtor or consumer obligor is entitled without charge to one response to a request under this section during any six-month period in which the secured party did not send to the debtor or consumer obligor an explanation pursuant to subsection (b)(1). The secured party may require payment of a charge not exceeding $25 for each additional response.

(72 Del. Laws, c. 401, § 1.)

§ 9-617 Rights of transferee of collateral.

(a) *Effects of disposition.* — A secured party's disposition of collateral after default:

(1) transfers to a transferee for value all of the debtor's rights in the collateral;

(2) discharges the security interest under which the disposition is made; and

(3) discharges any subordinate security interest or other subordinate lien.

(b) *Rights of good-faith transferee.* — A transferee that acts in good faith takes free of the rights and interests described in subsection (a), even if the secured party fails to comply with this Article or the requirements of any judicial proceeding.

(c) *Rights of other transferee.* — If a transferee does not take free of the rights and interests described in subsection (a), the transferee takes the collateral subject to:

(1) the debtor's rights in the collateral;

(2) the security interest or agricultural lien under which the disposition is made; and

(3) any other security interest or other lien.

(72 Del. Laws, c. 401, § 1.)

§ 9-618 Rights and duties of certain secondary obligors.

(a) *Rights and duties of secondary obligor.* — A secondary obligor acquires the rights and becomes obligated to perform the duties of the secured party after the secondary obligor:

(1) receives an assignment of a secured obligation from the secured party;

(2) receives a transfer of collateral from the secured party and agrees to accept the rights and assume the duties of the secured party; or

(3) is subrogated to the rights of a secured party with respect to collateral.

(b) *Effect of assignment, transfer, or subrogation.* — An assignment, transfer, or subrogation described in subsection (a):

(1) is not a disposition of collateral under Section 9-610; and

(2) relieves the secured party of further duties under this Article.

(72 Del. Laws, c. 401, § 1.)

§ 9-619 Transfer of record or legal title.

(a) *"Transfer statement."* — In this section, "transfer statement" means a record authenticated by a secured party stating:

(1) that the debtor has defaulted in connection with an obligation secured by specified collateral;

(2) that the secured party has exercised its post-default remedies with respect to the collateral;

(3) that, by reason of the exercise, a transferee has acquired the rights of the debtor in the collateral; and

(4) the name and mailing address of the secured party, debtor, and transferee.

(b) *Effect of transfer statement.* — A transfer statement entitles the transferee to the transfer of record of all rights of the debtor in the collateral specified in the statement in any official filing, recording, registration, or certificate-of-title system covering the collateral. If a transfer statement is presented with the applicable fee and request form to the official or office responsible for maintaining the system, the official or office shall:

(1) accept the transfer statement;

(2) promptly amend its records to reflect the transfer; and

(3) if applicable, issue a new appropriate certificate of title in the name of the transferee.

(c) *Transfer not a disposition; no relief of secured party's duties.* — A transfer of the record or legal title to collateral to a secured party under subsection (b) or otherwise is not of itself a disposition of collateral under this Article and does not of itself relieve the secured party of its duties under this Article.

(72 Del. Laws, c. 401, § 1.)

§ 9-620 Acceptance of collateral in full or partial satisfaction of obligation; compulsory disposition of collateral.

(a) *Conditions to acceptance in satisfaction.* — Except as otherwise provided in subsection (g), a secured party may accept collateral in full or partial satisfaction of the obligation it secures only if:

(1) the debtor consents to the acceptance under subsection (c);

(2) the secured party does not receive, within the time set forth in subsection (d), a notification of objection to the proposal authenticated by:

(A) a person to which the secured party was required to send a proposal under Section 9-621; or

(B) any other person, other than the debtor, holding an interest in the collateral subordinate to the security interest that is the subject of the proposal;

(3) if the collateral is consumer goods, the collateral is not in the possession of the debtor when the debtor consents to the acceptance; and

(4) subsection (e) does not require the secured party to dispose of the collateral or the debtor waives the requirement pursuant to Section 9-624.

(b) *Purported acceptance ineffective.* — A purported or apparent acceptance of collateral under this section is ineffective unless:

(1) the secured party consents to the acceptance in an authenticated record or sends a proposal to the debtor; and

(2) the conditions of subsection (a) are met.

(c) *Debtor's consent.* — For purposes of this section:

(1) a debtor consents to an acceptance of collateral in partial satisfaction of the obligation it secures only if the debtor agrees to the terms of the acceptance in a record authenticated after default; and

(2) a debtor consents to an acceptance of collateral in full satisfaction of the obligation it secures only if the debtor agrees to the terms of the acceptance in a record authenticated after default or the secured party:

(A) sends to the debtor after default a proposal that is unconditional or subject only to a condition that collateral not in the possession of the secured party be preserved or maintained;

(B) in the proposal, proposes to accept collateral in full satisfaction of the obligation it secures; and

(C) does not receive a notification of objection authenticated by the debtor within 20 days after the proposal is sent.

(d) *Effectiveness of notification.* — To be effective under subsection (a)(2), a notification of objection must be received by the secured party:

(1) in the case of a person to which the proposal was sent pursuant to Section 9-621, within 20 days after notification was sent to that person; and

(2) in other cases:

(A) within 20 days after the last notification was sent pursuant to Section 9-621; or

(B) if a notification was not sent, before the debtor consents to the acceptance under subsection (c).

(e) *Mandatory disposition of consumer goods.* — A secured party that has taken possession of collateral shall dispose of the collateral pursuant to Section 9-610 within the time specified in subsection (f) if:

(1) 60 percent of the cash price has been paid in the case of a purchase-money security interest in consumer goods; or

(2) 60 percent of the principal amount of the obligation secured has been paid in the case of a non-purchase-money security interest in consumer goods.

(f) *Compliance with mandatory disposition requirement.* — To comply with subsection (e), the secured party shall dispose of the collateral:

(1) within 90 days after taking possession; or

(2) within any longer period to which the debtor and all secondary obligors have agreed in an agreement to that effect entered into and authenticated after default.

(g) *No partial satisfaction in consumer transaction.* — In a consumer transaction, a secured party may not accept collateral in partial satisfaction of the obligation it secures.

(72 Del. Laws, c. 401, § 1.)

§ 9-621 Notification of proposal to accept collateral.

(a) *Persons to which proposal to be sent.* — A secured party that desires to accept collateral in full or partial satisfaction of the obligation it secures shall send its proposal to:

(1) any person from which the secured party has received, before the debtor consented to the acceptance, an authenticated notification of a claim of an interest in the collateral;

(2) any other secured party or lienholder that, 10 days before the debtor consented to the acceptance, held a security interest in or other lien on the collateral perfected by the filing of a financing statement that:

(A) identified the collateral;

(B) was indexed under the debtor's name as of that date; and

(C) was filed in the office or offices in which to file a financing statement against the debtor covering the collateral as of that date; and

(3) any other secured party that, 10 days before the debtor consented to the acceptance, held a security interest in the collateral perfected by compliance with a statute, regulation, or treaty described in Section 9-311(a).

(b) *Proposal to be sent to secondary obligor in partial satisfaction.* — A secured party that desires to accept collateral in partial satisfaction of the obligation it secures shall send its proposal to any secondary obligor in addition to the persons described in subsection (a).

(72 Del. Laws, c. 401, § 1.)

§ 9-622 Effect of acceptance of collateral.

(a) *Effect of acceptance.* — A secured party's acceptance of collateral in full or partial satisfaction of the obligation it secures:

(1) discharges the obligation to the extent consented to by the debtor;

(2) transfers to the secured party all of a debtor's rights in the collateral;

(3) discharges the security interest or agricultural lien that is the subject of the debtor's consent and any subordinate security interest or other subordinate lien; and

(4) terminates any other subordinate interest.

(b) *Discharge of subordinate interest notwithstanding noncompliance.* — A subordinate interest is discharged or terminated under subsection (a), even if the secured party fails to comply with this Article.

(72 Del. Laws, c. 401, § 1.)

§ 9-623 Right to redeem collateral.

(a) *Persons that may redeem.* — A debtor, any secondary obligor, or any other secured party or lienholder may redeem collateral.

(b) *Requirements for redemption.* — To redeem collateral, a person shall tender:

(1) fulfillment of all obligations secured by the collateral; and

(2) the reasonable expenses and attorney's fees described in Section 9-615(a)(1).

(c) *When redemption may occur.* — A redemption may occur at any time before a secured party:

(1) has collected collateral under Section 9-607;

(2) has disposed of collateral or entered into a contract for its disposition under Section 9-610; or

(3) has accepted collateral in full or partial satisfaction of the obligation it secures under Section 9-622.

(72 Del. Laws, c. 401, § 1.)

§ 9-624 Waiver.

(a) *Waiver of disposition notification.* — A debtor or secondary obligor may waive the right to notification of disposition of collateral under Section 9-611 only by an agreement to that effect entered into and authenticated after default.

(b) *Waiver of mandatory disposition.* — A debtor may waive the right to require disposition of collateral under Section 9-620(e) only by an agreement to that effect entered into and authenticated after default.

(c) *Waiver of redemption right.* — Except in a consumer-goods transaction, a debtor or secondary obligor may waive the right to redeem collateral under Section 9-623 only by an agreement to that effect entered into and authenticated after default.

(72 Del. Laws, c. 401, § 1.)

2 Noncompliance with Article

§ 9-625 Remedies for secured party's failure to comply with article.

(a) *Judicial orders concerning noncompliance.* — If it is established that a secured party is not proceeding in accordance with this Article, a court may order or restrain collection, enforcement, or disposition of collateral on appropriate terms and conditions.

(b) *Damages for noncompliance.* — Subject to subsections (c), (d), and (f), a person is liable for damages in the amount of any loss caused by a failure to comply with this Article. Loss caused by a failure to comply may include loss resulting from the debtor's inability to obtain, or increased costs of, alternative financing.

(c) *Persons entitled to recover damages; statutory damages if collateral is consumer goods.* — Except as otherwise provided in Section 9-628:

(1) a person that, at the time of the failure, was a debtor, was an obligor, or held a security interest in or other lien on the collateral may recover damages under subsection (b) for its loss; and

(2) if the collateral is consumer goods, a person that was a debtor or a secondary obligor at the time a secured party failed to comply with this part may recover for that failure in any event an amount not less than the credit service charge plus 10 percent of the principal amount of the obligation or the time-price differential plus 10 percent of the cash price.

(d) *Recovery when deficiency eliminated or reduced.* — A debtor whose deficiency is eliminated under Section 9-626 may recover damages for the loss of any surplus. However, a debtor or secondary obligor whose deficiency is eliminated or reduced under Section 9-626

may not otherwise recover under subsection (b) for noncompliance with the provisions of this part relating to collection, enforcement, disposition, or acceptance.

(e) *Statutory damages: noncompliance with specified provisions.* — In addition to any damages recoverable under subsection (b), the debtor, consumer obligor, or person named as a debtor in a filed record, as applicable, may recover $500 in each case from a person that:

(1) fails to comply with Section 9-208;

(2) fails to comply with Section 9-209;

(3) files a record that the person is not entitled to file under Section 9-509(a);

(4) fails to cause the secured party of record to file or send a termination statement as required by Section 9-513(a) or (c);

(5) fails to comply with Section 9-616(b)(1) and whose failure is part of a pattern, or consistent with a practice, of noncompliance; or

(6) fails to comply with Section 9-616(b)(2).

(f) *Statutory damages: noncompliance with Section 9-210.* — A debtor or consumer obligor may recover damages under subsection (b) and, in addition, $500 in each case from a person that, without reasonable cause, fails to comply with a request under Section 9-210. A recipient of a request under Section 9-210 which never claimed an interest in the collateral or obligations that are the subject of a request under that section has a reasonable excuse for failure to comply with the request within the meaning of this subsection.

(g) *Limitation of security interest: noncompliance with Section 9-210.* — If a secured party fails to comply with a request regarding a list of collateral or a statement of account under Section 9-210, the secured party may claim a security interest only as shown in the list or statement included in the request as against a person that is reasonably misled by the failure.

(72 Del. Laws, c. 401, § 1; 79 Del. Laws, c. 15, § 27.)

§ 9-626 Action in which deficiency or surplus is in issue.

(a) *Applicable rules if amount of deficiency or surplus in issue.* — In an action arising from a transaction, other than a consumer transaction, in which the amount of a deficiency or surplus is in issue, the following rules apply:

(1) A secured party need not prove compliance with the provisions of this part relating to collection, enforcement, disposition, or acceptance unless the debtor or a secondary obligor places the secured party's compliance in issue.

(2) If the secured party's compliance is placed in issue, the secured party has the burden of establishing that the collection, enforcement, disposition, or acceptance was conducted in accordance with this part.

(3) Except as otherwise provided in Section 9-628, if a secured party fails to prove that the collection, enforcement, disposition, or acceptance was conducted in accordance with the provisions of this part relating to collection, enforcement, disposition, or acceptance, the liability of a debtor or a secondary obligor for a deficiency is limited to an amount by which the sum of the secured obligation, expenses, and attorney's fees exceeds the greater of:

(A) the proceeds of the collection, enforcement, disposition, or acceptance; or

(B) the amount of proceeds that would have been realized had the noncomplying secured party proceeded in accordance with the provisions of this part relating to collection, enforcement, disposition, or acceptance.

(4) For purposes of paragraph (3)(B), the amount of proceeds that would have been realized is equal to the sum of the secured obligation, expenses, and attorney's fees unless the secured party proves that the amount is less than that sum.

(5) If a deficiency or surplus is calculated under Section 9-615(f), the debtor or obligor has the burden of establishing that the amount of proceeds of the disposition is significantly below the range of prices that a complying disposition to a person other than the secured party, a person related to the secured party, or a secondary obligor would have brought.

(b) *Non-consumer transactions; no inference.* — The limitation of the rules in subsection (a) to transactions other than consumer transactions is intended to leave to the court the determination of the proper rules in consumer transactions. The court may not infer from that limitation the nature of the proper rule in consumer transactions and may continue to apply established approaches.

(72 Del. Laws, c. 401, § 1.)

§ 9-627 Determination of whether conduct was commercially reasonable.

(a) *Greater amount obtainable under other circumstances; no preclusion of commercial reasonableness.* — The fact that a greater amount could have been obtained by a collection, enforcement, disposition, or acceptance at a different time or in a different method from that selected by the secured party is not of itself sufficient to preclude the secured party from establishing that the collection, enforcement, disposition, or acceptance was made in a commercially reasonable manner.

(b) *Dispositions that are commercially reasonable.* — A disposition of collateral is made in a commercially reasonable manner if the disposition is made:

(1) in the usual manner on any recognized market;

(2) at the price current in any recognized market at the time of the disposition; or

(3) otherwise in conformity with reasonable commercial practices among dealers in the type of property that was the subject of the disposition.

(c) *Approval by court or on behalf of creditors.* — A collection, enforcement, disposition, or acceptance is commercially reasonable if it has been approved:

(1) in a judicial proceeding;

(2) by a bona fide creditors' committee;

(3) by a representative of creditors; or

(4) by an assignee for the benefit of creditors.

(d) *Approval under subsection (c) not necessary; absence of approval has no effect.* — Approval under subsection (c) need not be obtained, and lack of approval does not mean that the collection, enforcement, disposition, or acceptance is not commercially reasonable.

(72 Del. Laws, c. 401, § 1.)

§ 9-628 Nonliability and limitation on liability of secured party; liability of secondary obligor.

(a) *Limitation of liability of secured party for noncompliance with Article.* — Unless a secured party knows that a person is a debtor or obligor, knows the identity of the person, and knows how to communicate with the person:

(1) the secured party is not liable to the person, or to a secured party or lienholder that has filed a financing statement against the person, for failure to comply with this Article; and

(2) the secured party's failure to comply with this Article does not affect the liability of the person for a deficiency.

(b) *Limitation of liability based on status as a secured party.* — A secured party is not liable because of its status as secured party:

(1) to a person that is a debtor or obligor, unless the secured party knows:

(A) that the person is a debtor or obligor;

(B) the identity of the person; and

(C) how to communicate with the person; or

(2) to a secured party or lienholder that has filed a financing statement against a person, unless the secured party knows:

(A) that the person is a debtor; and

(B) the identity of the person.

(c) *Limitation of liability if reasonable belief that transaction not a consumer-goods transaction or consumer transaction.* — A secured party is not liable to any person, and a person's liability for a deficiency is not affected, because of any act or omission arising out of the secured party's reasonable belief that a transaction is not a consumer-goods transaction or a consumer transaction or that goods are not consumer goods, if the secured party's belief is based on its reasonable reliance on:

(1) a debtor's representation concerning the purpose for which collateral was to be used, acquired, or held; or

(2) an obligor's representation concerning the purpose for which a secured obligation was incurred.

(d) *Limitation of liability for statutory damages.* — A secured party is not liable to any person under Section 9-625(c)(2) for its failure to comply with Section 9-616.

(e) *Limitation of multiple liability for statutory damages.* — A secured party is not liable under Section 9-625(c)(2) more than once with respect to any one secured obligation.

(72 Del. Laws, c. 401, § 1.)

Part 7

Transition

§ 9-701 Effective date.

This Act takes effect on July 1, 2001. References in this part to "this Act" refer to the legislative enactment by which this part is added to Article 9 of the Uniform Commercial Code. References in this part to "former Article 9" are to Article 9 of the Uniform Commercial Code as in effect immediately before this Act takes effect.

(72 Del. Laws, c. 401, § 1.)

§ 9-702 Savings clause.

(a) *Pre-effective-date transactions or liens.* — Except as otherwise provided in this part, this Act applies to a transaction or lien within its scope, even if the transaction or lien was entered into or created before this Act takes effect.

(b) *Continuing validity.* — Except as otherwise provided in subsection (c) and Sections 9-703 through 9-709:

(1) transactions and liens that were not governed by former Article 9 of the Uniform Commercial Code, were validly entered into or created before this Act takes effect, and would be subject to this Act if they had been entered into or created after this Act takes effect, and the rights, duties, and interests flowing from those transactions and liens remain valid after this Act takes effect; and

(2) the transactions and liens may be terminated, completed, consummated, and enforced as required or permitted by this Act or by the law that otherwise would apply if this Act had not taken effect.

(c) *Pre-effective-date proceedings.* — This Act does not affect an action, case, or proceeding commenced before this Act takes effect.

(72 Del. Laws, c. 401, § 1.)

§ 9-703 Security interest perfected before effective date.

(a) *Continuing priority over lien creditor: perfection requirements satisfied.* — A security interest that is enforceable immediately before this Act takes effect and would have priority over the rights of a person that becomes a lien creditor at that time is a perfected security interest under this Act if, when this Act takes effect, the applicable requirements for enforceability and perfection under this Act are satisfied without further action.

(b) *Continuing priority over lien creditor: perfection requirements not satisfied.* — Except as otherwise provided in Section 9-705, if, immediately before this Act takes effect, a security interest is enforceable and would have priority over the rights of a person that becomes a lien creditor at that time, but the applicable requirements for enforceability or perfection under this Act are not satisfied when this Act takes effect, the security interest:

(1) is a perfected security interest for one year after this Act takes effect;

(2) remains enforceable thereafter only if the security interest becomes enforceable under Section 9-203 before the year expires; and

(3) remains perfected thereafter only if the applicable requirements for perfection under this Act are satisfied before the year expires.

(c) *Special transition provision regarding trusts and trustees.* — If, immediately before this Act takes effect, a security interest against a debtor that is a trust or trustee is enforceable and would have priority over the rights of a person that becomes a lien creditor at that time, but, pursuant to Section 9-503(a)(3) (dealing with the sufficiency of the name of the debtor in the case of trusts and trustees), the financing statement filed in this State prior to the date this Act takes effect naming the trust or trustee as the debtor would be ineffective under this Act solely because it does not sufficiently provide the name of the debtor, the financing statement remains effective to the same extent as under former Article 9 of the Uniform Commercial Code (and shall remain effective by filing continuation statements naming the debtor as in the financing statement to be continued) if (i) the trust is a trust created under the provisions of Chapter 38 of Title 12 (the Delaware Statutory Trust Act), (ii) the trust is a common law business trust, or (iii) a trustee of the trust is a corporation authorized under the laws of this State to exercise corporate trust powers.

(72 Del. Laws, c. 401, § 1; 73 Del. Laws, c. 329, § 7.)

§ 9-704 Security interest unperfected before effective date.

A security interest that is enforceable immediately before this Act takes effect but which would be subordinate to the rights of a person that becomes a lien creditor at that time:

(1) remains an enforceable security interest for one year after this Act takes effect;

(2) remains enforceable thereafter if the security interest becomes enforceable under Section 9-203 when this Act takes effect or within one year thereafter; and

(3) becomes perfected:

(A) without further action, when this Act takes effect if the applicable requirements for perfection under this Act are satisfied before or at that time; or

(B) when the applicable requirements for perfection are satisfied if the requirements are satisfied after that time.

(72 Del. Laws, c. 401, § 1.)

§ 9-705 Effectiveness of action taken before effective date.

(a) *Pre-effective-date action; one-year perfection period unless reperfected.* — If action, other than the filing of a financing statement, is taken before this Act takes effect and the action would have resulted in priority of a security interest over the rights of a person that becomes a lien creditor had the security interest become enforceable before this Act takes effect, the action is effective to perfect a security interest that attaches under this Act within one year after this Act takes effect. An attached security interest becomes unperfected one year after this Act takes effect unless the security interest becomes a perfected security interest under this Act before the expiration of that period.

(b) *Pre-effective-date filing.* — The filing of a financing statement before this Act takes effect is effective to perfect a security interest to the extent the filing would satisfy the applicable requirements for perfection under this Act.

(c) *Pre-effective-date filing in jurisdiction formerly governing perfection.* — This Act does not render ineffective an effective financing statement that, before this Act takes effect, is filed and satisfies the applicable requirements for perfection under the law of the jurisdiction governing perfection as provided in former Section 9-103. However, except as otherwise provided in subsections (d) and (e) and Section 9-706, the financing statement ceases to be effective at the earlier of:

(1) the time the financing statement would have ceased to be effective under the law of the jurisdiction in which it is filed; or

(2) June 30, 2006.

(d) *Continuation statement.* — The filing of a continuation statement after this Act takes effect does not continue the effectiveness of the financing statement filed before this Act takes effect. However, upon the timely filing of a continuation statement after this Act takes effect

and in accordance with the law of the jurisdiction governing perfection as provided in Part 3, the effectiveness of a financing statement filed in the same office in that jurisdiction before this Act takes effect continues for the period provided by the law of that jurisdiction.

(e) *Application of subsection (c)(2) to transmitting utility financing statement.* — Subsection (c)(2) applies to a financing statement that, before this Act takes effect, is filed against a transmitting utility and satisfies the applicable requirements for perfection under the law of the jurisdiction governing perfection as provided in former Section 9-103 of the Uniform Commercial Code only to the extent that Part 3 provides that the law of a jurisdiction other than jurisdiction in which the financing statement is filed governs perfection of a security interest in collateral covered by the financing statement.

(f) *Application of Part 5.* — A financing statement that includes a financing statement filed before this Act takes effect and a continuation statement filed after this Act takes effect is effective only to the extent that it satisfies the requirements of Part 5 for an initial financing statement, except as provided in Section 9-703(c).

(72 Del. Laws, c. 401, § 1.)

§ 9-706 When initial financing statement suffices to continue effectiveness of financing statement.

(a) *Initial financing statement in lieu of continuation statement.* — The filing of an initial financing statement in the office specified in Section 9-501 continues the effectiveness of a financing statement filed before this Act takes effect if:

(1) the filing of an initial financing statement in that office would be effective to perfect a security interest under this Act;

(2) the pre-effective-date financing statement was filed in an office in another State or another office in this State; and

(3) the initial financing statement satisfies subsection (c).

(b) *Period of continued effectiveness.* — The filing of an initial financing statement under subsection (a) continues the effectiveness of the pre-effective-date financing statement:

(1) if the initial financing statement is filed before this Act takes effect, for the period provided in former Section 9-403 with respect to a financing statement; and

(2) if the initial financing statement is filed after this Act takes effect, for the period provided in Section 9-515 with respect to an initial financing statement.

(c) *Requirements for initial financing statement under subsection (a).* — To be effective for purposes of subsection (a), an initial financing statement must:

(1) satisfy the requirements of Part 5 for an initial financing statement;

(2) identify the pre-effective-date financing statement by indicating the office in which the pre-effective-date financing statement was filed and providing the dates of filing and file numbers, if any, of the initial pre-effective-date financing statement and of the most recent continuation statement filed with respect to that financing statement; provided, that if the law of the jurisdiction governing perfection prior to the effective date of this act [June 28, 2005] required the filing of the pre-effective-date financing statement in both a central filing office and a local filing office, then an identification of the filing in the central filing office suffices for purposes of this subsection (c)(2) of this section; and

(3) indicate that the pre-effective-date financing statement remains effective.

(72 Del. Laws, c. 401, § 1; 75 Del. Laws, c. 66, § 4.)

§ 9-707 Amendment of pre-effective-date financing statement.

(a) *Pre-effective-date financing statement.* — In this section, "pre-effective-date financing statement" means a financing statement filed before this Act takes effect.

(b) *Applicable law.* — After this Act takes effect, a person may add or delete collateral covered by, continue or terminate the effectiveness of, or otherwise amend the information provided in, a pre-effective-date financing statement only in accordance with the law of the jurisdiction governing perfection as provided in Part 3. However, the effectiveness of a pre-effective-date financing statement also may be terminated in accordance with the law of the jurisdiction in which the financing statement is filed.

(c) *Method of amending: general rule.* — Except as otherwise provided in subsection (d), if the law of this State governs perfection of a security interest, the information in a pre-effective-date financing statement may be amended after this Act takes effect only if:

(1) the pre-effective-date financing statement and an amendment are filed in the office specified in Section 9-501;

(2) an amendment is filed in the office specified in Section 9-501 concurrently with, or after the filing in that office of, an initial financing statement that satisfies Section 9-706(c); or

(3) an initial financing statement that provides the information as amended and satisfies Section 9-706(c) is filed in the office specified in Section 9-501.

(d) *Method of amending: continuation.* — If the law of this State governs perfection of a security interest, the effectiveness of a pre-effective-date financing statement may be continued only under Section 9-705(d) and (f) or 9-706.

(e) *Method of amending: additional termination rule.* — Whether or not the law of this State governs perfection of a security interest, the effectiveness of a pre-effective-date financing statement filed in this State may be terminated after this Act takes effect by filing a

termination statement in the office in which the pre-effective-date financing statement is filed, unless an initial financing statement that satisfies Section 9-706(c) has been filed in the office specified by the law of the jurisdiction governing perfection as provided in Part 3 as the office in which to file a financing statement.

(72 Del. Laws, c. 401, § 1.)

§ 9-708 Persons entitled to file initial financing statement or continuation statement.

A person may file an initial financing statement or a continuation statement under this part if:

(1) the secured party of record authorizes the filing; and

(2) the filing is necessary under this part:

(A) to continue the effectiveness of a financing statement filed before this Act takes effect; or

(B) to perfect or continue the perfection of a security interest.

(72 Del. Laws, c. 401, § 1.)

§ 9-709 Priority.

(a) *Law governing priority.* — This Act determines the priority of conflicting claims to collateral. However, if the relative priorities of the claims were established before this Act takes effect, former Article 9 of the Uniform Commercial Code determines priority.

(b) *Priority if security interest becomes enforceable under Section 9-203.* — For purposes of Section 9-322(a), the priority of a security interest that becomes enforceable under Section 9-203 of this Act dates from the time this Act takes effect if the security interest is perfected under this Act by the filing of a financing statement before this Act takes effect which would not have been effective to perfect the security interest under former Article 9 of the Uniform Commercial Code. This subsection does not apply to conflicting security interests each of which is perfected by the filing of such a financing statement.

(72 Del. Laws, c. 401, § 1.)

Part 8

Transition for 2010 Amendments

§ 9-801 Effective date.

This Act takes effect on July 1, 2013. References in this part to “this Act” refer to the legislative enactment by which this part is added to Article 9 of the Uniform Commercial Code. References in this part to “former Article 9” are to Article 9 of the Uniform Commercial Code as in effect immediately before this Act takes effect.

(79 Del. Laws, c. 15, § 28.)

§ 9-802 Savings clause.

(a) *Pre-effective-date transactions or liens.* — Except as otherwise provided in this part, this Act applies to a transaction or lien within its scope, even if the transaction or lien was entered into or created before this Act takes effect.

(b) *Pre-effective-date proceedings.* — This Act does not affect an action, case, or proceeding commenced before this Act takes effect.

(79 Del. Laws, c. 15, § 28.)

§ 9-803 Security interest perfected before effective date.

(a) *Continuing perfection: perfection requirements satisfied.* — A security interest that is a perfected security interest immediately before this Act takes effect is a perfected security interest under Article 9 as amended by this Act if, when this Act takes effect, the applicable requirements for attachment and perfection under Article 9 as amended by this Act are satisfied without further action.

(b) *Continuing perfection: perfection requirements not satisfied.* — Except as otherwise provided in Section 9-805, if, immediately before this Act takes effect, a security interest is a perfected security interest, but the applicable requirements for perfection under Article 9 as amended by this Act are not satisfied when this Act takes effect, the security interest remains perfected thereafter only if the applicable requirements for perfection under Article 9 as amended by this Act are satisfied within one year after this Act takes effect.

(c) *Special transition provision regarding trusts and trustees.* — If, immediately before this Act takes effect, a security interest against a debtor that is a trust or trustee is enforceable and would have priority over the rights of a person that becomes a lien creditor at that time, but, pursuant to Section 9-503(a)(3) (dealing with the sufficiency of the name of the debtor if the collateral is held in a trust), the financing statement filed in this State prior to the date this Act takes effect naming the trust or trustee as the debtor would be ineffective under this Act solely because it does not sufficiently provide the name of the debtor, the financing statement remains effective to the same extent as under former Article 9 of the Uniform Commercial Code (and shall remain effective by filing continuation statements naming the debtor as in the financing statement to be continued) if (i) the trust is a trust created under the provisions of Chapter 38 of Title 12 (the Delaware Statutory Trust Act), (ii) the trust is a common law business trust, or (iii) a trustee of the trust is an organization authorized under the laws of this State to exercise corporate trust powers.

(79 Del. Laws, c. 15, § 28.)

§ 9-804 Security interest unperfected before effective date.

A security interest that is an unperfected security interest immediately before this Act takes effect becomes a perfected security interest:

(1) without further action, when this Act takes effect if the applicable requirements for perfection under Article 9 as amended by this Act are satisfied before or at that time; or

(2) when the applicable requirements for perfection are satisfied if the requirements are satisfied after that time.

(79 Del. Laws, c. 15, § 28.)

§ 9-805 Effectiveness of action taken before effective date.

(a) *Pre-effective-date filing effective.* — The filing of a financing statement before this Act takes effect is effective to perfect a security interest to the extent the filing would satisfy the applicable requirements for perfection under Article 9 as amended by this Act.

(b) *When pre-effective-date filing becomes ineffective.* — This Act does not render ineffective an effective financing statement that, before this Act takes effect, is filed and satisfies the applicable requirements for perfection under the law of the jurisdiction governing perfection as provided in former Article 9. However, except as otherwise provided in subsections (c) and (d) and Section 9-806, the financing statement ceases to be effective:

(1) if the financing statement is filed in this State, at the time the financing statement would have ceased to be effective had this Act not taken effect; or

(2) if the financing statement is filed in another jurisdiction, at the earlier of:

(A) the time the financing statement would have ceased to be effective under the law of that jurisdiction; or

(B) June 30, 2018.

(c) *Continuation statement.* — The filing of a continuation statement after this Act takes effect does not continue the effectiveness of the financing statement filed before this Act takes effect. However, upon the timely filing of a continuation statement after this Act takes effect and in accordance with the law of the jurisdiction governing perfection as provided in Article 9 as amended by this Act, the effectiveness of a financing statement filed in the same office in that jurisdiction before this Act takes effect continues for the period provided by the law of that jurisdiction.

(d) *Application of subsection (b)(2)(B) to transmitting utility financing statement.* — Subsection (b)(2)(B) applies to a financing statement that, before this Act takes effect, is filed against a transmitting utility and satisfies the applicable requirements for perfection under the law of the jurisdiction governing perfection as provided in former Article 9, only to the extent that Article 9 as amended by this Act provides that the law of a jurisdiction other than the jurisdiction in which the financing statement is filed governs perfection of a security interest in collateral covered by the financing statement.

(e) *Application of Part 5.* — A financing statement that includes a financing statement filed before this Act takes effect and a continuation statement filed after this Act takes effect is effective only to the extent that it satisfies the requirements of Part 5 as amended by this Act for an initial financing statement, except as provided in Section 9-803(c). A financing statement that indicates that the debtor is a decedent's estate indicates that the collateral is being administered by a personal representative within the meaning of Section 9-503(a)(2) as amended by this Act. A financing statement that indicates that the debtor is a trust or is a trustee acting with respect to property held in a trust indicates that the collateral is held in a trust within the meaning of Section 9-503(a)(3) as amended by this Act.

(79 Del. Laws, c. 15, § 28.)

§ 9-806 When initial financing statement suffices to continue effectiveness of financing statement.

(a) *Initial financing statement in lieu of continuation statement.* — The filing of an initial financing statement in the office specified in Section 9-501 continues the effectiveness of a financing statement filed before this Act takes effect if:

(1) the filing of an initial financing statement in that office would be effective to perfect a security interest under Article 9 as amended by this Act;

(2) the pre-effective-date financing statement was filed in an office in another State; and

(3) the initial financing statement satisfies subsection (c).

(b) *Period of continued effectiveness.* — The filing of an initial financing statement under subsection (a) continues the effectiveness of the pre-effective-date financing statement:

(1) if the initial financing statement is filed before this Act takes effect, for the period provided in Section 9-515 before this Act takes effect, with respect to an initial financing statement; and

(2) if the initial financing statement is filed after this Act takes effect, for the period provided in Section 9-515 as amended by this Act with respect to an initial financing statement.

(c) *Requirements for initial financing statement under subsection (a).* — To be effective for purposes of subsection (a), an initial financing statement must:

(1) satisfy the requirements of Part 5 as amended by this Act for an initial financing statement;

(2) identify the pre-effective-date financing statement by indicating the office in which the pre-effective-date financing statement was filed and providing the dates of filing and file numbers, if any, of the initial pre-effective-date financing statement and of the

most recent continuation statement filed with respect to that financing statement; provided, that if the law of the jurisdiction governing perfection prior to the effective date of this Act required the filing of the pre-effective-date financing statement in both a central filing office and a local filing office, then an identification of the filing in the central filing office suffices for purposes of this subsection (c)(2) of this section; and

(3) indicate that the pre-effective-date financing statement remains effective.

(79 Del. Laws, c. 15, § 28.)

§ 9-807 Amendment of pre-effective-date financing statement.

(a) *Pre-effective-date financing statement.* — In this section, "pre-effective-date financing statement" means a financing statement filed before this Act takes effect.

(b) *Applicable law.* — After this Act takes effect, a person may add or delete collateral covered by, continue or terminate the effectiveness of, or otherwise amend the information provided in, a pre-effective-date financing statement only in accordance with the law of the jurisdiction governing perfection as provided in Article 9 as amended by this Act. However, the effectiveness of a pre-effective-date financing statement also may be terminated in accordance with the law of the jurisdiction in which the financing statement is filed.

(c) *Method of amending: general rule.* — Except as otherwise provided in subsection (d), if the law of this State governs perfection of a security interest, the information in a pre-effective-date financing statement may be amended after this Act takes effect only if:

(1) the pre-effective-date financing statement and an amendment are filed in the office specified in Section 9-501;

(2) an amendment is filed in the office specified in Section 9-501 concurrently with, or after the filing in that office of, an initial financing statement that satisfies Section 9-806(c); or

(3) an initial financing statement that provides the information as amended and satisfies Section 9-806(c) is filed in the office specified in Section 9-501.

(d) *Method of amending: continuation.* — If the law of this State governs perfection of a security interest, the effectiveness of a pre-effective-date financing statement may be continued only under Section 9-805(c) and (e) or 9-806.

(e) *Method of amending: additional termination rule.* — Whether or not the law of this State governs perfection of a security interest, the effectiveness of a pre-effective-date financing statement filed in this State may be terminated after this Act takes effect by filing a termination statement in the office in which the pre-effective-date financing statement is filed, unless an initial financing statement that satisfies Section 9-806(c) has been filed in the office specified by the law of the jurisdiction governing perfection as provided in Article 9 as amended by this Act as the office in which to file a financing statement.

(79 Del. Laws, c. 15, § 28.)

§ 9-808 Person entitled to file initial financing statement or continuation statement.

A person may file an initial financing statement or a continuation statement under this part if:

(1) the secured party of record authorizes the filing; and

(2) the filing is necessary under this part:

(A) to continue the effectiveness of a financing statement filed before this Act takes effect; or

(B) to perfect or continue the perfection of a security interest.

(79 Del. Laws, c. 15, § 28.)

§ 9-809 Priority.

This Act determines the priority of conflicting claims to collateral. However, if the relative priorities of the claims were established before this Act takes effect, former Article 9 of the Uniform Commercial Code determines priority.

(79 Del. Laws, c. 15, § 28.)

Subtitle I
Uniform Commercial Code

Article 10
Effective Date and Repealer

§ 10-101 Effective date.

This subtitle applies to transactions entered into and events occurring after June 30, 1967.

(5A Del. C. 1953, § 10-101; 55 Del. Laws, c. 349.)

§ 10-102 Specific repealer; provision for transition.

(1) The following acts and all other acts and parts of acts inconsistent herewith are hereby repealed:

Uniform Negotiable Instruments Act, Chapter 1 of Title 6.

Uniform Warehouse Receipts Act, Chapter 5 of Title 6.

Uniform Sales Act, Chapter 7 of Title 6.

Uniform Bills of Lading Act, Chapter 3 of Title 6.

Uniform Stock Transfer Act, Subchapter VI, Chapter 1, Title 8.

Uniform Conditional Sales Act, Chapter 9 of Title 6.

Uniform Trust Receipts Act, Chapter 11 of Title 6.

Bulk Sales Act, Chapter 21 of Title 6.

Chattel Mortgages Act, Chapter 23 of Title 25.

Factor's Lien Act, Chapter 33 of Title 25.

Assignment of Accounts Receivable Act, Chapter 18 of Title 6.

Section 925 of Title 5, Delaware Code.

(2) Transactions validly entered into before the effective date specified in Section 10-101 and the rights, duties and interests flowing from them remain valid thereafter and may be terminated, completed, consummated or enforced as required or permitted by any statute or other law amended or repealed by this subtitle as though such repeal or amendment had not occurred.

(5A Del. C. 1953, § 10-102; 55 Del. Laws, c. 349.)

§ 10-103 General repealer.

Except as provided in the following section, all acts and parts of acts inconsistent with this subtitle are repealed.

(5A Del. C. 1953, § 10-103; 55 Del. Laws, c. 349.)

§ 10-104 Laws not repealed [Repealed].

Repealed by 74 Del. Laws, c. 332, § 67, eff. Jan. 1, 2005.

Subtitle I
Uniform Commercial Code
Article 11
Effective Date and Transition Provisions

§ 11-101 Effective date and definitions.

(1) This Act shall become effective on January 1, 1984.

(2) As used in this Article, unless the context otherwise requires:

(a) "Prior Uniform Commercial Code" means the Uniform Commercial Code as in effect prior to the effective date of this Act.

(b) "Revised Uniform Commercial Code" means the Uniform Commercial Code as amended by this Act.

(64 Del. Laws, c. 152, § 8.)

§ 11-102 Preservation of old transition provision.

Article 10 shall continue to apply to the Revised Uniform Commercial Code and for this purpose the Prior Uniform Commercial Code and the Revised Uniform Commercial Code shall be considered 1 continuous statute.

(64 Del. Laws, c. 152, § 8.)

§ 11-103 Transition — General rule.

Transactions validly entered into after June 30, 1967, and before January 1, 1984, and which were subject to the Prior Uniform Commercial Code and which would be subject to the Revised Uniform Commercial Code if they had been entered into after this Act takes effect, and the rights, duties and interests flowing from such transactions, remain valid after this Act takes effect and may be terminated, completed, consummated and enforced as required or permitted by the Revised Uniform Commercial Code. Security interests arising out of such transactions which are perfected when this Act becomes effective shall remain perfected until they lapse as provided in the Revised Uniform Commercial Code, and may be continued as permitted by the Revised Uniform Commercial Code, except as stated in Section 11-105.

(64 Del. Laws, c. 152, § 8.)

§ 11-104 Transition provision on change of requirement of filing.

A security interest for the perfection of which filing or the taking of possession was required under the Prior Uniform Commercial Code and which attached prior to the effective date of this Act but was not perfected shall be deemed perfected on the effective date of this Act if the Revised Uniform Commercial Code permits perfection without filing or authorizes filing in the office or offices where a prior ineffective filing was made, provided all steps required for perfection under the Revised Uniform Commercial Code have been taken.

(64 Del. Laws, c. 152, § 8.)

§ 11-105 Transition provision on change of place of filing.

(1) A financing statement or continuation statement filed prior to January 1, 1984, which shall not have lapsed prior to January 1, 1984, shall remain effective for the period provided in the Prior Uniform Commercial Code, but not less than 5 years after the filing.

(2) With respect to any collateral acquired by the debtor subsequent to this Act becoming effective, any effective financing statement or continuation statement described in this section shall apply only if the filing or filings are in the office or offices that would be appropriate to perfect the security interests in the new collateral under the Revised Uniform Commercial Code.

(3) The effectiveness of any financing statement or continuation statement filed prior to January 1, 1984, may be continued by a continuation statement as permitted by the Revised Uniform Commercial Code, except that:

(a) If the Revised Uniform Commercial Code requires a filing in an office where there was no previous financing statement, a new financing statement conforming to Section 11-106 shall be filed in that office; and

(b) If the financing statement or continuation statement relates to a security interest that cannot be perfected by filing under the Revised Uniform Commercial Code, this subsection shall be inapplicable.

(4) If the recording of a mortgage of real estate would have been effective as a fixture filing of goods described therein if the Revised Uniform Commercial Code had been in effect on the date of recording the mortgage, the recorded mortgage shall be deemed effective as a fixture filing as to such goods under former subsection (6) of Section 9-402 [see now Section 9-502, generally] of the Revised Uniform Commercial Code on the effective date of this Act.

(64 Del. Laws, c. 152, § 8.)

§ 11-106 Required refilings.

(1) If a security interest is perfected or has priority when this Act takes effect as to all persons or as to certain persons without any filing or recording, and if the filing of a financing statement would be required for the perfection or priority of the security interest against those persons under the Revised Uniform Commercial Code, the perfection and priority rights of the security interest continue until 3

years after this Act takes effect. The perfection will then lapse unless a financing statement is filed as provided in subsection (4) or unless the security interest is perfected otherwise than by filing.

(2) If a security interest is perfected when this Act takes effect under a law other than the Uniform Commercial Code which requires no further filing, refiling or recording to continue its perfection, perfection continues until and will lapse 3 years after this Act takes effect, unless a financing statement is filed as provided in subsection (4), unless the security interest is perfected otherwise than by filing, or unless under subsection (3) of former Section 9-302 [see now subsection (a) of Section 9-311] the other law continues to govern filing.

(3) If a security interest is perfected by a filing, refiling or recording under a law repealed by this Act (other than any part of the Prior Uniform Commercial Code) which required further filing, refiling or recording to continue its perfection, perfection continues and will lapse on the date provided by the law so repealed for such further filing, refiling or recording unless before such date a financing statement is filed as provided in subsection (4) or unless before such date the security interest is perfected otherwise than by filing.

(4) A financing statement may be filed within 6 months before the perfection of a security interest would otherwise lapse. Any such financing statement may be signed by either the debtor or the secured party. It must identify the security agreement, statement or notice (however denominated in any statute or other law repealed or modified by this Act), state the office where and the date when the last filing, refiling or recording, if any, was made with respect thereto, and the filing number, if any, or book and page, if any, of recording and further state that the security agreement, statement or notice, however denominated, in another filing office under the Uniform Commercial Code or under any statute or other law repealed or modified by this Act is still effective. Former Section 9-401 and former Section 9-103 determine the proper place to file such a financing statement. Except as specified in this subsection, the provisions of former Section 9-403(3) [see now subsections (d) and (e) of Section 9-515, generally] for continuation statements apply to such a financing statement.

(64 Del. Laws, c. 152, § 8.)

§ 11-107 Transition provisions as to uncertificated securities.

(1) The persons shown on the books of the issuer as the holders of uncertificated securities outstanding when this Act becomes effective shall be deemed to be the registered owners thereof. Prior to the 90th day after this Act takes effect, the issuer of any uncertificated security outstanding when this Act takes effect shall send to the registered owner a written statement containing:

(a) A description of the issue of which the uncertificated security is a part;

(b) The number of shares or other units owned by the registered owner;

(c) The name and address and (if known to the issuer) any taxpayer identification number of the registered owner;

(d) A notation of any liens or restrictions of the issuer and any adverse claims (as to which the issuer has a duty under Section 8-403(d)) to which the uncertificated security is or may be subject at the time when the statement is prepared or a statement that there are no such liens, restrictions or adverse claims; and

(e) The date the statement was prepared.

Statements sent pursuant to this subsection shall be signed by or on behalf of the issuer; shall be identified as “initial transaction statement”; and shall be deemed to be initial transaction statements for the purposes of Article 8 of the Revised Uniform Commercial Code.

(2) If a security interest in an uncertificated security outstanding prior to January 1, 1984, is perfected or has priority as to all persons or as to certain persons when this Act takes effect by virtue of the previous filing of a financing statement, and if other acts would be required for the perfection or priority of the security interest against those persons under the Revised Uniform Commercial Code, the perfection and priority rights of the security interest shall continue and shall lapse on the date provided by the Prior Uniform Commercial Code (whether or not a continuation statement is filed with respect to such security interest) unless the security interest is perfected in accordance with the Revised Uniform Commercial Code.

(3) If an issuer’s lien or restriction on an uncertificated security outstanding prior to January 1, 1984, or a term of such a security is valid and effective against all persons or against certain persons when this Act takes effect, and if the notation of such lien, restriction or term on an initial transaction statement would be required for its validity or effectiveness against those persons under the Revised Uniform Commercial Code, such lien, restriction or term shall remain valid and effective until the earlier of (i) the time when an initial transaction statement is sent by the issuer to the registered owner (after which the validity and effectiveness of the lien, restriction or term shall be governed by the Revised Uniform Commercial Code), or (ii) 3 years from the effective date of this Act. If an initial transaction statement is not sent to the registered owner of an uncertificated security outstanding when this Act takes effect within 3 years after this Act takes effect, any issuer’s lien required to be noted thereon shall cease to be valid, and any restriction or term required to be noted thereon shall cease to be effective except as to those persons against whom an unnoted restriction or term would be effective under Article 8 of the Revised Uniform Commercial Code.

(64 Del. Laws, c. 152, § 8.)

§ 11-108 Transition provisions as to priorities.

Except as otherwise provided in this Article, the Prior Uniform Commercial Code shall apply to any questions of priority if the positions of the parties were fixed prior to January 1, 1984. In other cases questions of priority shall be determined by the Revised Uniform Commercial Code.

(64 Del. Laws, c. 152, § 8.)

§ 11-109 Presumption that rule of law continues unchanged.

Unless a change in law has clearly been made, the Revised Uniform Commercial Code shall be deemed declaratory of the meaning of the Prior Uniform Commercial Code.

(64 Del. Laws, c. 152, § 8.)

Subtitle II
Other Laws Relating to Commerce and Trade
Chapter 12
Delaware False Claims and Reporting Act

§ 1201 Liability for certain acts.

(a) Any person who:

(1) Knowingly presents, or causes to be presented a false or fraudulent claim for payment or approval;

(2) Knowingly makes, uses or causes to be made or used a false record or statement material to a false or fraudulent claim;

(3) Conspires to commit a violation of paragraph (a)(1), (2), (4), (5), (6) or (7) of this section;

(4) Has possession, custody or control of property or money used or to be used by the Government and knowingly delivers or causes to be delivered, less than all of that money or property;

(5) Is authorized to make or deliver a document certifying receipt of property used or to be used by the Government and, intending to defraud the Government, makes or delivers the receipt without completely knowing that the information on the receipt is true;

(6) Knowingly buys, or receives as a pledge of an obligation or debt, public property from an officer or employee of the Government who may not lawfully sell or pledge the property; or

(7) Knowingly makes, uses, or causes to be made or used a false record or statement material to an obligation to pay or transmit money or property to the Government, or knowingly conceals or knowingly and improperly avoids or decreases an obligation to pay or transmit money or property to the Government

shall be liable to the Government for a civil penalty of not less than $10,957 and not more than $21,916, as adjusted by the Federal Civil Penalties Inflation Adjustment Act of 2015 (28 U.S.C. § 2461, note), for each act constituting a violation of this section, plus 3 times the amount of damages which the Government sustains because of the act of that person.

(b) Notwithstanding the foregoing, the court may assess not less than 2 times the amount of damages which the Government sustains because of the act of the person, if:

(1) The person committing the violation of this subsection furnished officials of the Government responsible for investigating false claims violations with all information known to such person about the violation within 30 days after the date on which the defendant first obtained the information;

(2) Such person fully cooperated with any government investigation of such violations; and

(3) At the time such person furnished the Government with the information about the violation, no criminal prosecution, civil action, investigation or administrative action had commenced under this title with respect to such violation, and the person did not have actual knowledge of the existence of an investigation into such violations.

A person violating this subsection shall also be liable for the costs of a civil action brought to recover any such penalty or damages, including payment of reasonable attorney's fees and costs.

(c) The Superior Court shall have jurisdiction of all offenses under this chapter.

(72 Del. Laws, c. 370, § 1; 77 Del. Laws, c. 166, §§ 1-4; 79 Del. Laws, c. 141, § 1; 81 Del. Laws, c. 438, § 1.)

§ 1202 Definitions.

As used in this chapter:

(1) "Claim" means any request or demand, whether under a contract or otherwise, for money or property and whether or not the Government has title to the money or property, that:

a. Is presented to an officer, employee, or agent of the Government; or

b. Is made to a contractor, grantee, or other recipient, if the money or property is to be spent or used on the Government's behalf or to advance a Government program or interest, and if the Government:

1. Provides or has provided any portion of the money or property requested or demanded; or

2. Will reimburse such contractor, grantee, or other recipient for any portion of the money or property which is requested or demanded.

"Claim" does not include requests or demands for money or property that the Government has paid to an individual as compensation for employment with the Government or as an income subsidy with no restrictions on that individual's use of the money or property.

(2) "Government" includes all departments, boards or commissions of the executive branch of the State, all political subdivisions of the State, the Delaware Department of Transportation and all state and municipal authorities, all organizations created by or pursuant to a statute which declares in substance that such organization performs or has for its purpose the performance of an essential governmental function, and all organizations, entities or persons receiving funds of the State where the act complained of pursuant to this chapter relates to the use of such funds of the State.

(3) "Knowing" and "knowingly" mean that a person, with respect to information:

a. Has actual knowledge of the information;

b. Acts in deliberate ignorance of the truth or falsity of the information; or

c. Acts in reckless disregard of the truth or falsity of the information, and no proof of specific intent to defraud is required.

(4) "Material" includes anything having a natural tendency to influence, or be capable of influencing, the payment or receipt of money or property.

(5) "Obligation" includes an established duty, whether or not fixed, arising from an express or implied contractual, grantor-grantee, or licensor-licensee relationship, from a fee-based or similar relationship, from statute or regulation, or from the retention of any overpayment.

(72 Del. Laws, c. 370, § 1; 77 Del. Laws, c. 166, §§ 5, 6; 79 Del. Laws, c. 141, § 1.)

§ 1203 Civil actions for false claims.

(a) *Responsibilities of the Attorney General.* — The Attorney General shall diligently investigate suspected violations under this chapter. If the Attorney General finds that a person has violated or is violating the provisions of this chapter, the Attorney General may bring a civil action under this section against the person.

(b) *Private actions.* — (1) A private civil action may be brought by any person or labor organization as defined by § 1107A(d) of Title 19 (hereinafter "private party" or "party") for a violation of this chapter on behalf of the party bringing suit and for the government. The action shall be brought in the name of the government. The action may be dismissed only if the court and the Department of Justice give written consent to the dismissal and their reasons for consenting.

(2) A copy of the complaint and written disclosure of substantially all material evidence and information the private party possesses shall be served on the Department of Justice pursuant to Rules 4 and 5 of the Superior Court Civil Rules. The complaint shall be filed in camera and shall remain under seal for at least 60 days. The complaint shall not be served on the defendant until the expiration of 60 days or any extension approved under paragraph (b)(3) of this section. Within 60 days after receiving a copy of the complaint, the Department of Justice shall conduct an investigation of the factual allegations and legal contentions made in the complaint. The Department of Justice may elect to intervene and proceed with the action within 60 days after it receives the complaint, the material evidence and information.

(3) The Department of Justice may, for good cause shown, move the court for extensions of the time during which the complaint remains under seal under paragraph (b)(2) of this section. Any such motion may be supported by affidavits or other submissions in camera. The defendant shall not be required to respond to any complaint filed under this section until 20 days after the complaint is unsealed and served upon the defendant pursuant to Rule 4 of the Superior Court Civil Rules.

(4) Before the expiration of the 60-day period or any extensions obtained under paragraph (b)(3) of this section, or within 20 days of being notified by the court that the seal has expired, the Department of Justice shall:

a. Proceed with the action, in which case the action shall be conducted by the Department of Justice; or

b. Notify the court that it declines to take over the action, in which case the private party bringing the action shall have the right to conduct the action.

(5) When a party brings an action under this subsection, no party other than the Department of Justice may intervene or bring a related action based on the facts underlying the pending action.

(72 Del. Laws, c. 370, § 1; 77 Del. Laws, c. 166, §§ 7-12; 79 Del. Laws, c. 141, § 1.)

§ 1204 Rights of the parties to qui tam actions.

(a) If the Department of Justice proceeds with the action, it shall have the primary responsibility for prosecuting the action, and shall not be bound by an act of the party bringing the action. Such party shall have the right to continue as a party to the action, subject to the limitations set forth in subsections (b), (c) and (e) of this section.

(b) The Department of Justice may dismiss the action notwithstanding the objections of the party initiating the action if the party has been notified by the Department of Justice of the filing of the motion and the court has provided the party with an opportunity for a hearing on the motion.

(c) The Department of Justice may settle the action with the defendant notwithstanding the objections of the party initiating the action if the court determines after a hearing that the proposed settlement is fair, adequate and reasonable under all the circumstances. Upon a showing of good cause, such hearing may be held in camera.

(d) If the Department of Justice elects not to proceed with the action, the party who initiated the action shall have the right to conduct the action. If the Department of Justice so requests, it shall be served with copies of the pleadings filed in the action and shall be supplied with copies of all deposition transcripts (at the Department of Justice's expense). When a party proceeds with the action, the court, without limiting the status and rights of the party initiating the action, may nevertheless permit the Department of Justice to intervene at a later date upon a showing of good cause.

(e) Whether or not the Department of Justice proceeds with the action, upon a showing by the Department of Justice that certain actions of discovery by the party initiating the action would interfere with the Department of Justice's investigation or prosecution of a criminal

or civil matter arising out of the same facts, the court may stay such discovery for a period of not more than 60 days. Such a showing shall be conducted in camera. The court may extend the 60-day period upon a further showing in camera that the Department of Justice has pursued the criminal or civil investigation or proceedings with reasonable diligence and any proposed discovery in the civil action will interfere with the ongoing criminal or civil investigation or proceedings.

(f) Notwithstanding § 1203(b) of this title, the Department of Justice may elect to pursue its claim through any available alternate remedy, including any administrative proceeding to determine a civil money penalty. If any such alternate remedy is pursued in another proceeding, the party initiating the action shall have the same rights in such proceeding as such party would have had if the action had continued under this chapter; provided however, that no insurer subject to the insurance fraud provisions of Chapter 24 of Title 18 shall have a cause of action pursuant to this chapter. Any finding of fact or conclusion of law made in such other proceeding that has become final shall be conclusive on all parties to an action under this chapter. 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.

(72 Del. Laws, c. 370, § 1; 77 Del. Laws, c. 166, §§ 13-18.)

§ 1205 Award to qui tam plaintiff.

(a) If the Department of Justice proceeds with an action brought by a party under § 1203(b) of this title, such party shall, subject to the second sentence of this subsection, receive at least 15 percent but not more than 25 percent of the proceeds of the action or settlement of the claim, depending upon the extent to which the party substantially contributed to the prosecution of the action. Where the action is one which the court finds to be based primarily on disclosures of specific information (other than information provided by the party bringing the action) relating to allegations or transactions in a criminal, civil or administrative hearing, or from the news media, the court may award such sums as it considers appropriate, but in no case more than 10 percent of the proceeds, taking into account the significance of the information and the role of the party bringing the action in advancing the case to litigation. Any payment to a party under the first or second sentence of this paragraph shall be made from the proceeds. Any such party shall also receive an amount for reasonable expenses which the court finds to have been necessarily incurred, plus reasonable attorneys' fees and costs. In determining the amount of reasonable attorneys' fees and costs, the court shall consider, without limitation, whether such fees and costs were necessary to the prosecution of the action, were incurred for activities which were duplicative of the activities of the Department of Justice in prosecuting the case, or were repetitious, irrelevant or for purposes of harassment, or caused the defendant undue burden or unnecessary expense. All such expenses, fees and costs shall be awarded against the defendant.

(b) If the Department of Justice does not proceed with an action under this chapter, the party bringing the action or settling the claim shall receive an amount which the court decides is reasonable for collecting the civil penalty and damages. The amount shall be not less than 25 percent and not more than 30 percent of the proceeds of the action or settlement and shall be paid out of such proceeds. Such party shall also receive an amount for reasonable expenses which the court finds to have been necessarily incurred, plus reasonable attorneys' fees and costs. In determining the amount of reasonable attorneys' fees and costs, the court shall consider, without limitation, whether such fees and costs were necessary to the prosecution of the action, were incurred for activities which were repetitious, irrelevant or for purposes of harassment, or caused the defendant undue burden or unnecessary expense. All such expenses, fees, and costs shall be awarded against the defendant.

(c) Whether or not the Department of Justice proceeds with the action, if the court finds that the action was brought by a party who planned and initiated the violation upon which the action was brought, then the court may, to the extent the court considers appropriate, reduce the share of the proceeds of the action which the party would otherwise receive under subsection (a) or (b) of this section, taking into account the role of that party in advancing the case to litigation and any relevant circumstances pertaining to the violation. If the party bringing the action is convicted of criminal conduct arising from that party's own role in the violation of this chapter, that party shall be dismissed from the civil action and shall not receive any share of the proceeds of the action. Such dismissal shall not prejudice the right of the Department of Justice to continue the action on behalf of the government.

(d) If the Department of Justice does not proceed with the action and the person bringing the action conducts the action, the court may award to the defendant its reasonable attorneys' fees and expenses if the defendant prevails in the action and the court finds that the claim of the person bringing the action was clearly frivolous, clearly vexatious, or brought primarily for purposes of harassment.

(72 Del. Laws, c. 370, § 1; 70 Del. Laws, c. 186, § 1; 77 Del. Laws, c. 166, §§ 19-22.)

§ 1206 Certain actions barred.

(a) In no event may a person bring an action under this chapter which is based upon allegations or transactions which are the subject of a civil suit or an administrative proceeding in which the government is already a party.

(b) The court shall dismiss an action or claim under this section, unless opposed by the government, if substantially the same allegations or transactions as alleged in the action or claim were publicly disclosed:

(1) In any criminal, civil, or administrative hearing in which the government or its agent is a party;

(2) In any government-generated report, hearing, audit, or investigation; or

(3) From the news media.

The requirement to dismiss actions or claims as set forth in this subsection shall not apply to actions brought by the Attorney General or where the person bringing the action is an original source of the information.

(c) For purposes of this section, "original source" means an individual who either:

(1) Prior to a public disclosure under subsection (b) of this section, has voluntarily disclosed to the government the information on which allegations or transactions in a claim are based; or

(2) Who has knowledge that is independent of and materially adds to the publicly disclosed allegations or transactions, and who has voluntarily provided the information to the government before filing an action under this section.

(72 Del. Laws, c. 370, § 1; 77 Del. Laws, c. 166, § 23; 79 Del. Laws, c. 141, § 1.)

§ 1207 Government not liable for certain expenses.

No Government shall be liable for expenses which a party incurs in bringing an action under this chapter.

(72 Del. Laws, c. 370, § 1.)

§ 1208 Employee protection.

(a) Any employee, contractor, or agent shall be entitled to all relief necessary to make that employee, contractor, or agent whole, if that employee, contractor, or agent is discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against in the terms and conditions of employment because of lawful acts done by the employee, contractor, agent or associated others in furtherance of an action under this chapter or other efforts to stop 1 or more violations of this chapter.

Such relief shall include reinstatement with the same seniority status that employee, contractor, or agent would have had but for the discrimination, 2 times the amount of back pay, interest on the back pay, and compensation for any special damages sustained as a result of the discrimination, including litigation costs and reasonable attorneys' fees. An action under this subsection may be brought in the Superior Court of the State of Delaware in and for the county where the violation is alleged to have occurred. A civil action under this subsection may not be brought more than 3 years after the date when the alleged retaliation occurred.

(b) It shall be the duty of every employer of more than 15 employees to post and maintain in a place accessible to its employees and where they normally pass a summary of this chapter upon request and without charge. Such summaries shall be provided by the Delaware Department of Justice to the Delaware Department of Labor for distribution. As an alternative to posting, such employer may establish written policies for all employees that provide an explanation of state and federal False Claims Act [this chapter and 31 U.S.C. § 3729 et seq.] provisions and a resource for obtaining additional information about the law.

(72 Del. Laws, c. 370, § 1; 70 Del. Laws, c. 186, § 1; 77 Del. Laws, c. 166, § 24; 79 Del. Laws, c. 141, § 1.)

§ 1209 False claims and reporting procedure.

(a) A civil action under this chapter may not be brought:

(1) More than 6 years after the date on which the violation is committed; or

(2) More than 3 years after the date when facts material to the right of action are known or reasonably should have been known by the official of the Government charged with responsibility to act in the circumstances,

but in no event more than 10 years after the date on which the violation is committed, whichever occurs last.

(b) In any action brought under this chapter, the Department of Justice or the private party shall be required to prove all essential elements of the cause of action, including damages, by a preponderance of the evidence.

(c) Notwithstanding any other provision of law, the Delaware Rules of Criminal Procedure, or the Delaware Rules of Civil Procedure, a final judgment rendered in favor of the Government in any criminal proceeding charging fraud or false statements, whether upon a verdict after trial or upon a plea of guilty, shall estop the defendant from denying the essential elements of the offense in any action which involves the same transaction as in the criminal proceeding and which is brought under this chapter.

(d) Upon motion of the Department of Justice, the court shall have the power to grant other equitable relief, including temporary injunctive relief, as is necessary to prevent the transfer, concealment or dissipation of the illegal proceeds, or to protect the public.

(e) For statute of limitations purposes, any Government pleading shall relate back to the filing date of the complaint of the person who originally brought the action, to the extent that the claim of the Government arises out of the conduct, transactions, or occurrences set forth, or attempted to be set forth, in the prior complaint of that person.

(72 Del. Laws, c. 370, § 1; 77 Del. Laws, c. 166, §§ 25, 26; 79 Del. Laws, c. 141, § 1.)

§ 1210 Annual reporting requirement.

On August 15, 2009, and annually on July 16, the Department of Justice shall submit to the Delaware legislature a report containing the following information:

(1) The number of cases the Department of Justice has filed during the previous calendar year under this chapter;

(2) The number of cases private individuals filed under this chapter during the previous calendar year, including those cases that remain under seal, and specifying:

a. The state or federal courts in which those cases were filed and the number of cases filed in each court;

b. The state program or agency that is involved in each case;

c. The number of cases filed by private individuals who previously had filed an action based on the same or similar transactions or allegations under the federal False Claims Act [31 U.S.C. § 3729 et seq.] or the false claims act of another state; and

d. The amount recovered by the State under this section in settlement, damages, penalties, and litigation costs.

(77 Del. Laws, c. 166, § 27.)

§ 1211 Severability of noncompliant provisions.

Any provision of this chapter that the federal government determines does not comply with the requirements for state false claims acts set forth in the Deficit Reduction Act of 2005 (Pub. L. 109-171, 120 Stat. 4) shall be repealed to the extent that this chapter is inconsistent with the Deficit Reduction Act.

(77 Del. Laws, c. 166, § 28.)

Subtitle II
Other Laws Relating to Commerce and Trade
Chapter 12A
Uniform Electronic Transactions Act

§ 12A-101 Short title.

This chapter may be cited as the "Uniform Electronic Transactions Act."

(72 Del. Laws, c. 457, § 1.)

§ 12A-102 Definitions.

In this chapter:

(1) "Agreement" means the bargain of the parties in fact, as found in their language or inferred from other circumstances and from rules, regulations and procedures given the effect of agreements under laws otherwise applicable to a particular transaction.

(2) "Automated transaction" means a transaction conducted or performed, in whole or in part, by electronic means or electronic records, in which the acts or records of 1 or both parties are not reviewed by an individual in the ordinary course in forming a contract, performing under an existing contract, or fulfilling an obligation required by the transaction.

(3) "Computer program" means a set of statements or instructions to be used directly or indirectly in an information processing system in order to bring about a certain result.

(4) "Contract" means the total legal obligation resulting from the parties" agreement as affected by this chapter and other applicable law.

(5) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic or similar capabilities.

(6) "Electronic agent" means a computer program or an electronic or other automated means used independently to initiate an action or respond to electronic records or performances in whole or in part, without review or action by an individual.

(7) "Electronic postmark certificate" means evidentiary proof provided to the sender or recipient of an electronic record that the electronic record:

a. Was postmarked by a postal authority with a valid electronic postmark on the date and time indicated;

b. Was transmitted in a certain form on a specific date and time; and

c. Was sent by the person indicated, to the person indicated, and on the date and time indicated.

(8) "Electronic record" means a record created, generated, sent, communicated, received or stored by electronic means.

(9) "Electronic signature" means an electronic sound, symbol or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.

(10) "Governmental agency" means an executive, legislative or judicial agency, department, board, commission, authority, institution or instrumentality of the federal government or of a State or of a county, municipality or other political subdivision of a State.

(11) "Information" means data, text, images, sounds, codes, computer programs, software, databases or the like.

(12) "Information processing system" means an electronic system for creating, generating, sending, receiving, storing, displaying or processing information.

(13) "Person" means an individual, corporation, statutory trust, business trust, estate, trust, partnership, limited liability company, association, joint venture, governmental agency, public corporation or any other legal or commercial entity.

(14) "Postal authority" means:

a. The United States Postal Service or other national public or private mail delivery service that provides electronic postmarks; or

b. A public or private entity that has the regulatory authority or legal responsibility for providing electronic postmarks.

(15) "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.

(16) "Security procedure" means a procedure employed for the purpose of verifying that an electronic signature, record or performance is that of a specific person or for detecting changes or errors in the information in an electronic record. The term includes a procedure that requires the use of algorithms or other codes, identifying words or numbers, encryption, or callback or other acknowledgment procedures.

(17) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States. The term includes an Indian tribe or band, or Alaskan native village, which is recognized by federal law or formally acknowledged by a state.

(18) "Transaction" means an action or set of actions occurring between 2 or more persons relating to the conduct of business, commercial, or governmental affairs.

(72 Del. Laws, c. 457, § 1; 73 Del. Laws, c. 329, § 8; 76 Del. Laws, c. 83, § 1; 76 Del. Laws, c. 257, §§ 1, 2.)

§ 12A-103 Scope.

(a) Except as otherwise provided in subsection (b) of this section, this chapter applies to electronic records and electronic signatures relating to a transaction.

(b) This chapter does not apply to a transaction to the extent it is governed by:

(1) A law governing the creation and execution of wills, codicils, or testamentary trusts;

(2) The Uniform Commercial Code other than Sections 1-107 [see now Section 1-306] and 1-206 [former version of Section 1-206, to which this reference referred, has been repealed], Article 2, and Article 2A;

(3) The Uniform Computer Information Transactions Act;

(4) The General Corporation Law of the State [§§ 101 to 398 of Title 8], the Delaware Professional Service Corporation Act [§ 601 et seq. of Title 8], the Delaware Revised Uniform Partnership Act [§ 15-101 et seq. of this title], the Delaware Revised Uniform Limited Partnership Act [§ 17-101 et seq. of this title], the Delaware Limited Liability Company Act [§ 18-101 et seq. of this title], the Delaware Uniform Partnership Law and the Delaware Statutory Trust Act [§ 3801 et seq. of Title 12];

(5) The Corporation Law for State Banks and Trust Companies, Credit Card Institutions and the Corporation Law for State Savings Banks in Chapters 7, 15 and 16, respectively, of Title 5.

(c) This chapter applies to an electronic record or electronic signature otherwise excluded from the application of this chapter under subsection (b) of this section to the extent it is governed by a law other than those specified in subsection (b) of this section.

(d) A transaction subject to this chapter is also subject to other applicable substantive law.

(72 Del. Laws, c. 457, § 1; 73 Del. Laws, c. 329, § 9.)

§ 12A-104 Prospective application.

This chapter applies to any electronic record or electronic signature created, generated, sent, communicated, received, or stored on or after July 14, 2000.

(72 Del. Laws, c. 457, § 1.)

§ 12A-105 Use of electronic records and electronic signatures; variation by agreement.

(a) This chapter does not require a record or signature to be created, generated, sent, communicated, received, stored or otherwise processed or used by electronic means or in electronic form.

(b) This chapter applies only to transactions between parties each of which has agreed to conduct transactions by electronic means. Whether the parties agree to conduct a transaction by electronic means is determined from the context and surrounding circumstances, including the parties' conduct.

(c) A party that agrees to conduct a transaction by electronic means may refuse to conduct other transactions by electronic means. The right granted by this subsection may not be waived by agreement.

(d) Except as otherwise provided in this chapter, the effect of any of its provisions may be varied by agreement. The presence in certain provisions of this chapter of the words "unless otherwise agreed," or words of similar import, does not imply that the effect of other provisions may not be varied by agreement.

(e) Whether an electronic record or electronic signature has legal consequences is determined by this chapter and other applicable law.

(72 Del. Laws, c. 457, § 1.)

§ 12A-106 Construction and application.

This chapter must be construed and applied:

(1) To facilitate electronic transactions consistent with other applicable law;

(2) To be consistent with reasonable practices concerning electronic transactions and with the continued expansion of those practices; and

(3) To effectuate its general purpose to make uniform the law with respect to the subject of this chapter among states enacting it.

(72 Del. Laws, c. 457, § 1.)

§ 12A-107 Legal recognition of electronic records, electronic signatures, and electronic contracts.

(a) A record or signature may not be denied legal effect or enforceability solely because it is in electronic form.

(b) A contract may not be denied legal effect or enforceability solely because an electronic record was used in its formation.

(c) If a law requires a record to be in writing, an electronic record satisfies the law.

(d) If a law requires a signature, an electronic signature satisfies the law.

(72 Del. Laws, c. 457, § 1.)

§ 12A-108 Provision of information in writing; presentation of records.

(a) If parties have agreed to conduct a transaction by electronic means and a law requires a person to provide, send or deliver information in writing to another person, the requirement is satisfied if the information is provided, sent or delivered, as the case may be, in an

electronic record capable of retention by the recipient at the time of receipt. An electronic record is not capable of retention by the recipient if the sender or its information processing system inhibits the ability of the recipient to print or store the electronic record.

(b) If a law other than this chapter requires a record (i) to be posted or displayed in a certain manner, (ii) to be sent, communicated or transmitted by a specified method, or (iii) to contain information that is formatted in a certain manner, the following rules apply:

(1) The record must be posted or displayed in the manner specified in the other law.

(2) Except as otherwise provided in paragraph (d)(2) of this section, the record must be sent, communicated or transmitted by the method specified in the other law.

(3) The record must contain the information formatted in the manner specified in the other law.

(c) If a sender inhibits the ability of a recipient to store or print an electronic record, the electronic record is not enforceable against the recipient.

(d) The requirements of this section may not be varied by agreement, but:

(1) To the extent a law other than this chapter requires information to be provided, sent or delivered in writing but permits that requirement to be varied by agreement, the requirement under subsection (a) of this section that the information be in the form of an electronic record capable of retention may also be varied by agreement;

(2) A requirement under a law other than this chapter to send, communicate or transmit a record by first-class mail, postage prepaid, may be varied by agreement to the extent permitted by the other law; and

(3) A requirement under a law other than under this title to send, communicate, or transmit a record by registered or certified mail, postage prepaid, or by regular mail is satisfied by an electronic record that:

a. Is addressed properly or otherwise directed properly to an information processing system that the recipient has designated; and

b. Provides a contractually obligated reliable and assured delivery to the recipient; and

c. Enters an information processing system that is outside the control of the sender; or

d. Enters a region of an information processing system that is under the control of the recipient; and

e. Is postmarked by a postal authority with an electronic postmark; and

f. Is authenticated by an electronic postmark certificate.

(e) An electronic record is subject to the same legal protections as the United States mail if:

(1) The electronic record meets the requirements of subsection (d) of this section; and

(2) The postal authority that postmarked the electronic record under paragraph (d)(3) of this section is the United States Postal Service.

(f) This section does not authorize the use of an electronic postmark or electronic postmark certificate for the service of a summons, complaint, or other document for the purpose of obtaining jurisdiction over a defendant in a lawsuit.

(g) An electronic postmark may be used only with the mutual consent of both the sender and the recipient.

(72 Del. Laws, c. 457, § 1; 76 Del. Laws, c. 257, § 3.)

§ 12A-109 Attribution and effect of electronic record and electronic signature.

(a) An electronic record or electronic signature is attributable to a person if it was the act of the person. The act of the person may be shown in any manner, including a showing of the efficacy of any security procedure applied to determine the person to which the electronic record or electronic signature was attributable.

(b) The effect of an electronic record or electronic signature attributed to a person under subsection (a) of this section is determined from the context and surrounding circumstances at the time of its creation, execution, or adoption, including the parties' agreement, if any, and otherwise as provided by law.

(72 Del. Laws, c. 457, § 1.)

§ 12A-110 Effect of change or error.

If a change or error in an electronic record occurs in a transmission between parties to a transaction, the following rules apply:

(1) If the parties have agreed to use a security procedure to detect changes or errors and 1 party has conformed to the procedure, but the other party has not, and the nonconforming party would have detected the change or error had that party also conformed, the conforming party may avoid the effect of the changed or erroneous electronic record.

(2) In an automated transaction involving an individual, the individual may avoid the effect of an electronic record that resulted from an error made by the individual in dealing with the electronic agent of another person if the electronic agent did not provide an opportunity for the prevention or correction of the error and, at the time the individual learns of the error, the individual:

a. Promptly notifies the other person of the error and that the individual did not intend to be bound by the electronic record received by the other person;

b. Takes reasonable steps, including steps that conform to the other person's reasonable instructions, to return to the other person or, if instructed by the other person, to destroy the consideration received, if any, as a result of the erroneous electronic record; and

c. Has not used or received any benefit or value from the consideration, if any, received from the other person.

(3) If neither paragraph (1) nor paragraph (2) of this section applies, the change or error has the effect provided by other law, including the law of mistake, and the parties' contract, if any.

(4) Paragraphs (2) and (3) of this section may not be varied by agreement.

(72 Del. Laws, c. 457, § 1.)

§ 12A-111 Notarization and acknowledgment.

If a law requires a signature or record to be notarized, acknowledged, verified or made under oath, the requirement is satisfied if the electronic signature of the person authorized to perform those acts, together with all other information required to be included by other applicable law, is attached to or logically associated with the signature or record.

(72 Del. Laws, c. 457, § 1.)

§ 12A-112 Retention of electronic records; originals.

(a) If a law requires that a record be retained, the requirement is satisfied by retaining an electronic record of the information in the record which:

(1) Accurately reflects the information set forth in the record after it was first generated in its final form as an electronic record or otherwise; and

(2) Remains accessible for later reference.

(b) A requirement to retain a record in accordance with subsection (a) of this section does not apply to any information the sole purpose of which is to enable the record to be sent, communicated or received.

(c) A person may satisfy subsection (a) of this section by using the services of another person if the requirements of that subsection are satisfied.

(d) If a law requires a record to be presented or retained in its original form, or provides consequences if the record is not presented or retained in its original form, that law is satisfied by an electronic record retained in accordance with subsection (a) of this section.

(e) If a law requires retention of a check, that requirement is satisfied by retention of an electronic record of the information on the front and back of the check in accordance with subsection (a) of this section.

(f) A record retained as an electronic record in accordance with subsection (a) of this section satisfies a law requiring a person to retain a record for evidentiary, audit, or like purposes, unless a law enacted after July 14, 2000, specifically prohibits the use of an electronic record for the specified purpose.

(g) This section does not preclude a governmental agency of this State from specifying additional requirements for the retention of a record subject to the agency's jurisdiction.

(72 Del. Laws, c. 457, § 1.)

§ 12A-113 Admissibility in evidence.

In a proceeding, evidence of a record or signature may not be excluded solely because it is in electronic form.

(72 Del. Laws, c. 457, § 1.)

§ 12A-114 Automated transaction.

In an automated transaction, the following rules apply:

(1) A contract may be formed by the interaction of electronic agents of the parties, even if no individual was aware of or reviewed the electronic agents' actions or the resulting terms and agreements.

(2) A contract may be formed by the interaction of an electronic agent and an individual, acting on the individual's own behalf or for another person, including by an interaction in which the individual performs actions that the individual is free to refuse to perform and which the individual knows or has reason to know will cause the electronic agent to complete the transaction or performance.

(3) The terms of the contract are determined by the substantive law applicable to it.

(72 Del. Laws, c. 457, § 1.)

§ 12A-115 Time and place of sending and receipt.

(a) Unless otherwise agreed between the sender and the recipient, an electronic record is sent when it:

(1) Is addressed properly or otherwise directed properly to an information processing system that the recipient has designated or uses for the purpose of receiving electronic records or information of the type sent and from which the recipient is able to retrieve the electronic record;

(2) Is in a form capable of being processed by that system; and

(3) Enters an information processing system outside the control of the sender or of a person that sent the electronic record on behalf of the sender or enters a region of the information processing system designated or used by the recipient which is under the control of the recipient.

(b) Unless otherwise agreed between a sender and the recipient, an electronic record is received when:

(1) It enters an information processing system that the recipient has designated or uses for the purpose of receiving electronic records or information of the type sent and from which the recipient is able to retrieve the electronic record; and

(2) It is in a form capable of being processed by that system.

(c) Subsection (b) of this section applies even if the place the information processing system is located is different from the place the electronic record is deemed to be received under subsection (d) of this section.

(d) Unless otherwise expressly provided in the electronic record or agreed between the sender and the recipient, an electronic record is deemed to be sent from the sender's place of business and to be received at the recipient's place of business. For purposes of this subsection, the following rules apply:

(1) If the sender or recipient has more than 1 place of business, the place of business of that person is the place having the closest relationship to the underlying transaction.

(2) If the sender or the recipient does not have a place of business, the place of business is the sender's or recipient's residence, as the case may be.

(e) An electronic record is received under subsection (b) of this section even if no individual is aware of its receipt.

(f) Receipt of an electronic acknowledgment from an information processing system described in subsection (b) of this section establishes that a record was received but, by itself, does not establish that the content sent corresponds to the content received.

(g) If a person is aware that an electronic record purportedly sent under subsection (a) of this section, or purportedly received under subsection (b) of this section, was not actually sent or received, the legal effect of the sending or receipt is determined by other applicable law. Except to the extent permitted by the other law, the requirements of this subsection may not be varied by agreement.

(72 Del. Laws, c. 457, § 1.)

§ 12A-116 Transferable records.

(a) In this section, "transferable record" means an electronic record that:

(1) Would be a note under Article 3 of this title or a document under Article 7 of this title if the electronic record were in writing; and

(2) The issuer of the electronic record expressly has agreed is a transferable record.

(b) A person has control of a transferable record if a system employed for evidencing the transfer of interests in the transferable record reliably establishes that person as the person to which the transferable record was issued or transferred.

(c) A system satisfies subsection (b) of this section, and a person is deemed to have control of a transferable record, if the transferable record is created, stored and assigned in such a manner that:

(1) A single authoritative copy of the transferable record exists which is unique, identifiable, and, except as otherwise provided in paragraphs (c)(4), (5) and (6) of this section, unalterable;

(2) The authoritative copy identifies the person asserting control as:

(A) The person to which the transferable record was issued; or

(B) If the authoritative copy indicates that the transferable record has been transferred, the person to which the transferable record was most recently transferred;

(3) The authoritative copy is communicated to and maintained by the person asserting control or its designated custodian;

(4) Copies or revisions that add or change an identified assignee of the authoritative copy can be made only with the consent of the person asserting control;

(5) Each copy of the authoritative copy and any copy of a copy is readily identifiable as a copy that is not the authoritative copy; and

(6) Any revision of the authoritative copy is readily identifiable as authorized or unauthorized.

(d) Except as otherwise agreed, a person having control of a transferable record is the holder, as defined in § 1-201(21) of this title, of the transferable record and has the same rights and defenses as a holder of an equivalent record or writing under this title, including, if the applicable statutory requirements under § 3-302(a), 7-501 or 9-308 [former version of § 9-308, to which this reference referred, has been repealed] of this title are satisfied, the rights and defenses of a holder in due course, a holder to which a negotiable document of title has been duly negotiated, or a purchaser, respectively. Delivery, possession and endorsement are not required to obtain or exercise any of the rights under this subsection.

(e) Except as otherwise agreed, an obligor under a transferable record has the same rights and defenses as an equivalent obligor under equivalent records or writings under this title.

(f) If requested by a person against which enforcement is sought, the person seeking to enforce the transferable record shall provide reasonable proof that the person is in control of the transferable record. Proof may include access to the authoritative copy of the transferable record and related business records sufficient to review the terms of the transferable record and to establish the identity of the person having control of the transferable record.

(72 Del. Laws, c. 457, § 1.)

§ 12A-117 Choice of forum.

(a) The parties to an electronic contract may choose an exclusive judicial forum; provided, however, that the provisions of §§ 1-301 and 2708 of this title shall apply to such choice; provided further that if the contract is a consumer contract the choice is not enforceable if such choice is unreasonable and unjust.

(b) A judicial forum specified in an agreement is not exclusive unless the agreement expressly so provides.

(72 Del. Laws, c. 457, § 1.)

Subtitle II
Other Laws Relating to Commerce and Trade

Chapter 12B
Computer Security Breaches

§ 12B-100 Protection of personal information.

Any person who conducts business in this State and owns, licenses, or maintains personal information shall implement and maintain reasonable procedures and practices to prevent the unauthorized acquisition, use, modification, disclosure, or destruction of personal information collected or maintained in the regular course of business.

(81 Del. Laws, c. 129, § 1.)

§ 12B-101 Definitions.

For purposes of this chapter:

(1) "Breach of security" means as follows:

a. The unauthorized acquisition of computerized data that compromises the security, confidentiality, or integrity of personal information. Good faith acquisition of personal information by an employee or agent of any person for the purposes of such person is not a breach of security, provided that the personal information is not used for an unauthorized purpose or subject to further unauthorized disclosure.

b. The unauthorized acquisition of computerized data that compromises the security, confidentiality, or integrity of personal information is not a breach of security to the extent that personal information contained therein is encrypted, unless such unauthorized acquisition includes, or is reasonably believed to include, the encryption key and the person that owns or licenses the encrypted information has a reasonable belief that the encryption key could render that personal information readable or useable.

(2) "Determination of the breach of security" means the point in time at which a person who owns, licenses, or maintains computerized data has sufficient evidence to conclude that a breach of security of such computerized data has taken place.

(3) "Encrypted" means personal information that is rendered unusable, unreadable, or indecipherable through a security technology or methodology generally accepted in the field of information security.

(4) "Encryption key" means the confidential key or process designed to render the encrypted personal information useable, readable, and decipherable.

(5) "Notice" means any of the following:

a. Written notice.

b. Telephonic notice.

c. Electronic notice, if the notice provided is consistent with the provisions regarding electronic records and signatures set forth in § 7001 of Title 15 of the United States Code or if the person's primary means of communication with the resident is by electronic means.

d. Substitute notice, if the person required to provide notice under this chapter demonstrates that the cost of providing notice will exceed $75,000, or that the affected number of Delaware residents to be notified exceeds 100,000 residents, or that the person does not have sufficient contact information to provide notice. Substitute notice consists of all of the following:

1. Electronic notice if the person has email addresses for the members of the affected class of Delaware residents.

2. Conspicuous posting of the notice on a website page of the person if the person maintains 1 or more website pages.

3. Notice to major statewide media, including newspapers, radio, and television and publication on the major social media platforms of the person providing notice.

(6) "Person" means an individual; corporation; business trust; estate trust; partnership; limited liability company; association; joint venture; government; governmental subdivision, agency, or instrumentality; public corporation; or any other legal or commercial entity.

(7) a. "Personal information" means a Delaware resident's first name or first initial and last name in combination with any 1 or more of the following data elements that relate to that individual:

1. Social Security number.

2. Driver's license number or state or federal identification card number.

3. Account number, credit card number, or debit card number, in combination with any required security code, access code, or password that would permit access to a resident's financial account.

4. Passport number.

5. A username or email address, in combination with a password or security question and answer that would permit access to an online account.

6. Medical history, medical treatment by a health-care professional, diagnosis of mental or physical condition by a health care professional, or deoxyribonucleic acid profile.

7. Health insurance policy number, subscriber identification number, or any other unique identifier used by a health insurer to identify the person..

8. Unique biometric data generated from measurements or analysis of human body characteristics for authentication purposes.

9. An individual taxpayer identification number.

b. Personal information'' does not include publicly available information that is lawfully made available to the general public from federal, state, or local government records or widely-distributed media.

(75 Del. Laws, c. 61, § 1; 81 Del. Laws, c. 129, § 1; 81 Del. Laws, c. 425, § 1.)

§ 12B-102 Disclosure of breach of security; notice.

(a) Any person who conducts business in this State and who owns or licenses computerized data that includes personal information shall provide notice of any breach of security following determination of the breach of security to any resident of this State whose personal information was breached or is reasonably believed to have been breached, unless, after an appropriate investigation, the person reasonably determines that the breach of security is unlikely to result in harm to the individuals whose personal information has been breached.

(b) A person that maintains computerized data that includes personal information that the person does not own or license shall give notice to and cooperate with the owner or licensee of the information of any breach of security immediately following determination of the breach of security. For purposes of this subsection, "cooperation" includes sharing with the owner or licensee information relevant to the breach.

(c) Notice required by subsection (a) of this section must be made without unreasonable delay but not later than 60 days after determination of the breach of security, except in the following situations:

(1) A shorter time is required under federal law.

(2) A law-enforcement agency determines that the notice will impede a criminal investigation and such law-enforcement agency has made a request of the person that the notice be delayed. Any such delayed notice must be made after such law-enforcement agency determines that notice will not compromise the criminal investigation and so notifies the person of such determination.

(3) When a person otherwise required by subsection (a) of this section to provide notice, could not, through reasonable diligence, identify within 60 days that the personal information of certain residents of this State was included in a breach of security, such person must provide the notice required by subsection (a) of this section to such residents as soon as practicable after the determination that the breach of security included the personal information of such residents, unless such person provides or has provided substitute notice in accordance with § 12B-101(5)d. of this title.

(d) If the affected number of Delaware residents to be notified exceeds 500 residents, the person required to provide notice shall, not later than the time when notice is provided to the resident, also provide notice of the breach of security to the Attorney General.

(e) If the breach of security includes a Social Security number, the person shall offer to each resident, whose personal information, including Social Security number, was breached or is reasonably believed to have been breached, credit monitoring services at no cost to such resident for a period of 1 year. Such person shall provide all information necessary for such resident to enroll in such services and shall include information on how such resident can place a credit freeze on such resident's credit file. Such services are not required if, after an appropriate investigation, the person reasonably determines that the breach of security is unlikely to result in harm to the individuals whose personal information has been breached.

(f) In the case of a breach of security involving personal information defined in § 12B-101(7)a.5. of this title for login credentials of an email account furnished by the person, the person cannot comply with this section by providing the security breach notification to such email address, but may instead comply with this section by providing notice by another method described in § 12B-101(5) of this title or by clear and conspicuous notice delivered to the resident online when the resident is connected to the online account from an Internet Protocol address or online location from which the person knows the resident customarily accesses the account.

(75 Del. Laws, c. 61, § 1; 81 Del. Laws, c. 129, § 1.)

§ 12B-103 Procedures deemed in compliance with security breach notice requirements.

(a) Under this chapter, a person that maintains its own notice procedures as part of an information security policy for the treatment of personal information, and whose procedures are otherwise consistent with the timing requirements of this chapter is deemed to be in compliance with the notice requirements of this chapter if the person notifies affected Delaware residents in accordance with its policies in the event of a breach of security.

(b) Under this chapter, a person that is regulated by state or federal law, including the Health Insurance Portability and Accountability Act of 1996 (P.L. 104-191, as amended) and the Gramm Leach Bliley Act (15 U.S.C. § 6801 et seq., as amended) and that maintains procedures for a breach of security pursuant to the laws, rules, regulations, guidance, or guidelines established by its primary or functional state or federal regulator is deemed to be in compliance with this chapter if the person notifies affected Delaware residents in accordance with the maintained procedures when a breach of security occurs.

(75 Del. Laws, c. 61, § 1; 81 Del. Laws, c. 129, § 1.)

§ 12B-104 Violations.

(a) Pursuant to the enforcement duties and powers of the Director of Consumer Protection of the Department of Justice under Chapter 25 of Title 29, the Attorney General may bring an action in law or equity to address the violations of this chapter and for other relief that may be appropriate to ensure proper compliance with this chapter or to recover direct economic damages resulting from a violation, or both. The provisions of this chapter are not exclusive and do not relieve a person subject to this chapter from compliance with all other applicable provisions of law.

(b) Nothing in this chapter may be construed to modify any right which a person may have at common law, by statute, or otherwise.

(75 Del. Laws, c. 61, § 1; 77 Del. Laws, c. 282, § 16; 81 Del. Laws, c. 129, § 1.)

(81 Del. Laws, c. 129, § 1.)

Subtitle II
Other Laws Relating to Commerce and Trade
Chapter 12C
Online and Personal Privacy Protection

§ 1201C Short title.

This chapter shall be known and may be cited as the "Delaware Online Privacy and Protection Act."

(80 Del. Laws, c. 148, § 1.)

§ 1202C Definitions.

For purposes of this chapter, the following definitions shall apply:

(1) "Advertising service" means a person who provides, creates, plans, or handles marketing or advertising for another person.

(2) "Book" means paginated or similarly organized content in digital, electronic, printed, audio, or other format, including fiction, nonfiction, academic, or other works of the type normally published in a volume or finite number of volumes, excluding serial publications such as a magazine or newspaper.

(3) "Book service" means a service by which an entity, as its primary purpose, provides individuals with the ability to rent, purchase, borrow, browse, or view books electronically or via the Internet.

(4) "Book service information" means all of the following:

a. Any information that identifies, relates to, describes, or is associated with a particular user.

b. A unique identifier or internet protocol address, when that identifier or address is used to identify, relate to, describe, or be associated with a particular user or book, in whole or in partial form.

c. Any information that relates to, or is capable of being associated with, a particular user's access to or use of a book service or a book, in whole or in partial form.

(5) "Book service provider" means any commercial entity offering a book service to the public, except that a commercial entity that sells a variety of consumer products is not a book service provider if its book service sales do not exceed 2 percent of the entity's total annual gross sales of consumer products sold in the United States.

(6) "Child" or "children" means 1 or more individuals who are under the age of 18 and residents of the State.

(7) "Conspicuously available" means, with respect to a privacy policy required by § 1205C of this title, to make the privacy policy available to an individual via the Internet by any of the following means:

a. A webpage on which the actual privacy policy is posted if the webpage is the homepage or first significant page after entering the website.

b. An icon that hyperlinks to a webpage on which the actual privacy policy is posted, if the icon is located on the homepage or the first significant page after entering the website, and if the icon contains the word "privacy." The icon shall also use a color that contrasts with the background color of the webpage or is otherwise distinguishable.

c. A text link that hyperlinks to a webpage on which the actual privacy policy is posted, if the text link is located on the homepage or first significant page after entering the website, and if the text link includes the word "privacy," is written in capital letters equal to or greater in size than the surrounding text, or is written in larger type than the surrounding text, or in contrasting type, font, or color to the surrounding text of the same size, or set off from the surrounding text of the same size by symbols or other marks that call attention to the language.

d. Any other functional hyperlink that is so displayed that a reasonable individual would notice it.

e. With respect to an internet website, online or cloud computing service, online application, or mobile application that is not a website, any other reasonably accessible and visible means of making the privacy policy available for users of the internet website, online or cloud computing service, online application, or mobile application.

(8) "Content" means information of any kind, including but not limited to text, images, audio, and video.

(9) "Governmental entity" means any entity or instrumentality of the State, or any political subdivision of the State, including but not limited to a law-enforcement entity or any agency, authority, board, bureau, commission, department, or division, or any individual acting or purporting to act on behalf of any such agency, authority, board, bureau, commission, department, or division.

(10) "Internet" means, collectively, the myriad of computer and telecommunications facilities, including equipment and operating software, which comprise the interconnected world-wide network of networks that employ the transmission control protocol/internet protocol, or any predecessor or successor protocols to such protocol, to communicate information of all kinds by wire, radio, or other methods of transmission.

(11) "Internet website, online or cloud computing service, online application, or mobile application directed to children" means any internet website, online or cloud computing service, online application, or mobile application that is targeted or intended to reach an audience that is composed predominantly of children. An internet website, online or cloud computing service, online application,

or mobile application shall not be deemed directed to children solely because it refers or links to another internet website, online or cloud computing service, online application, or mobile application directed to children by using information location tools, including a directory, index, reference, pointer, or hypertext link.

(12) "Law-enforcement entity" means any government agency or any subunit thereof which performs the administration of criminal justice pursuant to statute or executive order, and which allocates a substantial part of its annual budget to the administration of criminal justice, including but not limited to the Delaware State Police, all law-enforcement agencies and police departments of any political subdivision of this State, the Department of Correction, and the Department of Justice.

(13) "Market or advertise" or "marketing or advertising" means making a communication or arranging for a communication to be made, in exchange for compensation, about a product or service the primary purpose of which is to encourage recipients of the communication to purchase or use the product or service.

(14) "Operator" means a person who owns an internet website, online or cloud computing service, online application, or mobile application. It does not include any third party that operates, hosts, or manages, but does not own, an internet website, online or cloud computing service, online application, or mobile application on the owner's behalf or processes information on the owner's behalf.

(15) "Personally identifiable information" means any personally identifiable information about a user of a commercial internet website, online or cloud computing service, online application, or mobile application that is collected online by the operator of that commercial internet website, online service, online application, or mobile application from that user and maintained by the operator in an accessible form, including a first and last name, a physical address, an e-mail address, a telephone number, a Social Security number, or any other identifier that permits the physical or online contacting of the user, and any other information concerning the user collected by the operator of the commercial internet website, online service, online application, or mobile application from the user and maintained in personally identifiable form in combination with any identifier described in this paragraph.

(16) "Post" means to communicate, transmit, or otherwise make available to any other person via the Internet.

(17) "User" means, for purposes of §§ 1204C and 1205C of this title, an individual that uses an internet website, online or cloud computing service, online application, or mobile application or, for purposes of § 1206C of this title, an individual that uses a book service.

(80 Del. Laws, c. 148, § 1.)

§ 1203C Enforcement.

The Consumer Protection Unit of the Department of Justice has enforcement authority over this chapter and may investigate and prosecute violations of this chapter in accordance with the provisions of subchapter II of Chapter 25 of Title 29.

(80 Del. Laws, c. 148, § 1.)

§ 1204C Prohibitions on online marketing or advertising to a child.

(a) An operator of an internet website, online or cloud computing service, online application, or mobile application directed to children may not market or advertise a product or service described in subsection (f) of this section on that internet website, online or cloud computing service, online application, or mobile application.

(b) An operator of an internet website, online or cloud computing service, online application, or mobile application who has actual knowledge that a child is using its internet website, online or cloud computing service, online application, or mobile application, and which user is that child, may not market or advertise a product or service described in subsection (f) of this section to that child, if the marketing or advertising is directed to the child based upon information specific to that child, including the child's profile, activity, address, or location sufficient to establish contact with the child, and excluding internet protocol (IP) address and product identification numbers for the operation of a service. The operator shall be deemed to be in compliance with this subsection if the operator takes reasonable actions in good faith designed to avoid marketing or advertising a product or service described in subsection (f) of this section.

(c) An operator of an internet website, online or cloud computing service, online application, or mobile application directed to children or an operator of an internet website, online or cloud computing service, online application, or mobile application who has actual knowledge that a child is using its internet website, online or cloud computing service, online application, or mobile application shall not knowingly use, disclose, or compile, or allow another person to use, disclose, or compile, the personal information of the child if that operator has actual knowledge that the child's personally identifiable information will be used for the purpose of marketing or advertising to the child a product or service described in subsection (f) of this section.

(d) An operator of an internet website, online or cloud computing service, online application, or mobile application directed to children, in which marketing or advertising is provided by an advertising service, need not comply with subsection (a) of this section with respect to such marketing or advertising and instead shall notify the advertising service, in a manner directed by the advertising service, that the internet website, online or cloud computing service, online application, or mobile application is directed to children.

(e) An advertising service which provides marketing or advertising for an internet website, online or cloud computing service, online application, or mobile application directed to children, and which has received the notice required by subsection (d) of this section, may not market or advertise on the internet website, online or cloud computing service, online application, or mobile application a product or service described in subsection (f) of this section.

(f) The marketing or advertising prohibitions described in this section shall apply to the following products or services:

(1) Alcoholic liquor as defined in § 101 of Title 4.

(2) Tobacco products, smokeless tobacco products, or moist snuff as defined in § 5301 of Title 30.

(3) Tobacco substitutes as defined in § 1115 of Title 11.

(4) Firearm as defined in § 222 of Title 11, or ammunition for a firearm.

(5) Electronic control devices as defined in § 222 of Title 11.

(6) Fireworks as defined in § 6901 of Title 16.

(7) Tanning equipment or device or tanning facility as defined in § 3002D of Title 16.

(8) Dietary supplement products containing ephedrine group alkaloids.

(9) Lottery, internet lottery, internet table games, internet ticket games, internet video lottery, sports lottery, table game, video lottery, or video lottery facility as defined in § 4803 of Title 29.

(10) Salvia divinorum or Salvinorin A, or any substance or material containing Salvia divinorum or Salvinorin A as referenced in § 4714 of Title 16.

(11) Body-piercing as defined in § 1114 of Title 11.

(12) Branding as defined in § 1114 of Title 11.

(13) Tattoos as defined in § 1114 of Title 11.

(14) Drug paraphernalia as defined in § 4701 of Title 16.

(15) Tongue-splitting as defined in § 1114A of Title 11.

(16) Any material, including any book, article, magazine, publication, or written matter of any kind, drawing, etching, painting, photograph, video, film, motion picture, or sound recording, which is sexually-oriented, as defined in § 1602(18) of Title 24, and predominately appeals to the prurient, shameful, or morbid interest of minors, is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable material for minors, and taken as a whole lacks serious literary, artistic, political, social, or scientific value for minors.

(g) This section shall not be construed to require an operator of an internet website, online or cloud computing service, online application, or mobile application to collect age information about users.

(h) The marketing and advertising restrictions described in subsections (a) through (c) of this section shall not apply to the incidental placement of products or services embedded in content if the content is not distributed by or at the direction of the operator primarily for the purposes of marketing and advertising a product or service described in subsection (f) of this section.

(80 Del. Laws, c. 148, § 1; 80 Del. Laws, c. 335, § 1.)

§ 1205C Posting of privacy policy by operators of commercial online sites and services.

(a) An operator of a commercial internet website, online or cloud computing service, online application, or mobile application that collects personally identifiable information through the Internet about individual users residing in Delaware who use or visit the operator's commercial internet website, online or cloud computing service, online application, or mobile application shall make its privacy policy conspicuously available on its internet website, online or cloud computing service, online application, or mobile application. An operator shall be in violation of this subsection only if the operator fails to make its privacy policy conspicuously available within 30 days after being notified of noncompliance.

(b) The privacy policy required by subsection (a) of this section shall do all of the following:

(1) Identify the categories of personally identifiable information that the operator collects through the internet website, online or cloud computing service, online application, or mobile application about users of its commercial internet website, online or cloud computing service, online application, or mobile application and the categories of third-party persons with whom the operator may share that personally identifiable information.

(2) If the operator maintains a process for a user of the internet website, online or cloud computing service, online application, or mobile application to review and request changes to any of that user's personally identifiable information that is collected through the internet website, online or cloud computing service, online application, or mobile application, provide a description of that process.

(3) Describe the process by which the operator notifies users of its commercial internet website, online or cloud computing service, online application, or mobile application of material changes to the operator's privacy policy for that internet website, online or cloud computing service, online application, or mobile application.

(4) Identify the effective date of the privacy policy.

(5) Disclose how the operator responds to web browser "do not track" signals or other mechanisms that provide users the ability to exercise choice regarding the collection of personally identifiable information about a user's online activities over time and across third-party internet websites, online or cloud computing services, online applications, or mobile applications, if the operator engages in that collection.

(6) Disclose whether other parties may collect personally identifiable information about a user's online activities over time and across different internet websites, online or cloud computing services, online applications, or mobile applications when a user uses the operator's internet website, online or cloud computing service, online application, or mobile application.

(7) An operator may satisfy the requirement of paragraph (b)(5) of this section by providing a clear and conspicuous hyperlink in the operator's privacy policy to an online location containing a description, including the effects, of any program or protocol the operator follows that offers the user that choice.

(c) An operator of a commercial internet website, online or cloud computing service, online application, or mobile application that collects personally identifiable information through the internet website, online or cloud computing service, online application, or mobile application from users of its internet website, online or cloud computing service, online application, or mobile application who reside in Delaware shall be in violation of this section if the operator fails to comply with the provisions of this section, rules and regulations promulgated pursuant to subsection (b) of this section, or with the provisions of the operator's posted privacy policy either (i) knowingly and wilfully or (ii) negligently and materially.

(80 Del. Laws, c. 148, § 1.)

§ 1206C Privacy of information regarding book service users.

(a) A book service provider shall not knowingly disclose to any government entity, or be compelled to disclose to any person, private entity, or government entity, any book service information about a user to any person, except under any of the following circumstances:

(1) A book service provider may disclose a user's book service information to a law-enforcement entity pursuant to any lawful method or process by which a law-enforcement entity is permitted to obtain such information.

(2) A book service provider may disclose a user's book service information to a governmental entity other than a law-enforcement entity only pursuant to either (i) a court order issued by a duly authorized court with jurisdiction over a matter that is under investigation by the governmental entity or (ii) a court order in a pending action brought by or against the government entity, and in either situation only if all of the following conditions are met:

a. Prior to issuance of the court order, the governmental entity seeking disclosure gives timely, reasonable, written notice of the proceeding to the book service provider to allow the book service provider the opportunity to appear and contest the issuance of the court order.

b. The book service provider refrains from disclosing a user's book service information pursuant to the court order until it gives timely, reasonable, written notice of the proceeding to the user about the issuance of the order and the ability to appear and quash the order, and the user has been given a minimum of 35 days prior to disclosure of the information within which to appear and quash the order.

(3) A book service provider may disclose a user's book service information to any person who is not a governmental entity only pursuant to a court order in a pending action brought by or against the person, and only if all of the following conditions are met:

a. The court issuing the order finds that the person seeking disclosure has a compelling interest in obtaining the book service information sought.

b. The court issuing the order finds that the book service information sought cannot be obtained by the person seeking disclosure through less intrusive means.

c. Prior to issuance of the court order, the person seeking disclosure provides, in a timely manner, the book service provider with reasonable notice of the proceeding to allow the book service provider the opportunity to appear and contest the issuance of the court order.

d. The book service provider refrains from disclosing a user's book service information pursuant to the court order until it provides, in a timely manner, notice to the user about the issuance of the order and the ability to appear and quash the order, and the user has been given a minimum of 35 days prior to disclosure of the information within which to appear and quash the order.

(4) A book service provider may disclose a user's book service information to a person if the user has given informed, affirmative consent in writing to the specific disclosure to the specific person for a particular purpose.

(5) A book service provider may disclose a user's book service information to a law-enforcement entity if the law-enforcement entity asserts, orally or in writing, that there is an imminent danger of death or serious physical injury requiring the immediate disclosure of the requested user's book service information and there is insufficient time to obtain a court order. Where the user's book service information was sought pursuant to this subsection by a law-enforcement entity in a criminal matter, the relevant law-enforcement entity shall apply for a search warrant within 48 hours. In the event such application for approval is denied or such an application is not made, the contents search shall be treated as having been obtained in violation of this subchapter. Where the law-enforcement entity provided the book service provider only with an oral assertion, the law-enforcement entity seeking the disclosure shall provide the book service provider with a written statement setting forth the facts giving rise to the imminent danger of death or serious physical injury no later than 48 hours after seeking disclosure.

(6) A book service provider may disclose a user's book service information to a law-enforcement entity if the book service provider in good faith believes that the book service information is evidence directly related and relevant to a crime against the book service provider or that user.

(b) A court issuing an order requiring the disclosure of a user's book service information may, in its discretion:

(1) Impose appropriate safeguards against the unauthorized disclosure of book service information by the book service provider and by the person seeking disclosure pursuant to the order.

(2) Modify or rescind a court order in a civil proceeding requiring the disclosure of a user's book service information upon a motion made by the user, the book service provider, or the person seeking disclosure.

(c) A book service provider, upon the written request of a law-enforcement entity, shall take all necessary steps to preserve records and other evidence in the book service provider's possession of a user's book service information related to the use of a book or part of a book, pending receipt of a request or demand for such information pursuant to subsection (a) of this section. The book service provider shall retain the records and evidence for a period of 90 days from the date of the request by the law-enforcement entity, which shall be extended for an additional 90-day period upon a renewed written request by the law-enforcement entity.

(d) *Violations.* — (1) Reasonable reliance by a book service provider on a warrant or court order for the disclosure of a user's book service information, or on any of the enumerated exceptions to the confidentiality of a user's book service information set forth in this section, is a complete defense to any action for a violation of this section.

(2) Except in an action for a violation of this section, no evidence obtained in violation of this section shall be admissible in any civil or administrative proceeding.

(e) *Reporting requirements.* — (1) Unless disclosure of information pertaining to a particular request or set of requests is specifically prohibited by law, a book service provider shall prepare a report including all of the following information, to the extent it can be reasonably determined:

a. The number of federal and state warrants, federal and state grand jury subpoenas, federal and state civil and administrative subpoenas, and federal and state civil and criminal court orders, seeking disclosure of any book service information of a user related to the access or use of a book service or book, received by the book service provider from January 1 to December 31, inclusive, of the previous year.

b. The number of requests for information made with the informed consent of the user as described in paragraph (a)(4) of this section, seeking disclosure of any book service information of a user related to the access or use of a book service or book, received by the book service provider from January 1 to December 31, inclusive, of the previous year.

c. The number of disclosures made by the book service provider pursuant to paragraphs (a)(5) and (6) of this section from January 1 to December 31, inclusive, of the previous year.

d. For each category of demand or disclosure, the book service provider shall include all of the following information:

1. The number of times notice of a court order in a criminal, civil, or administrative action has been provided by the book service provider and the date the notice was provided.

2. The number of times book service information has been disclosed by the book service provider.

3. The number of times no book service information has been disclosed by the book service provider.

4. The number of times the book service provider contested the demand.

5. The number of times the user contested the demand.

6. The number of users whose book service information was disclosed by the book service provider.

7. The type of book service information that was disclosed and the number of times that type of book service information was disclosed.

(2) Notwithstanding paragraph (e)(1) of this section, a book service provider is not required to prepare a report pursuant to this section unless it has disclosed book service information related to the access or use of a book service or book of more than 30 total users consisting of users located in this State or users whose location is unknown and cannot be determined or of both types of users.

(3) The reporting requirements of this subsection shall not apply to information disclosed to a governmental entity that is made by a book service provider serving a postsecondary educational institution when the book service provider is required to disclose the information in order to be reimbursed for the sale or rental of a book that was purchased or rented by a student using book vouchers or other financial aid subsidies for books.

(4) A report prepared pursuant to this subsection shall be made publicly available in an online, searchable format on the book service provider's website or before March 31 of each year. If the book service provider does not have a website, the book service provider shall post the report prominently on its premises or send the report in both paper and electronic format to the Consumer Protection Unit of the Department of Justice on or before March 31 of each year.

(5) On or before March 1 of each year, a book service provider subject to § 1205C of this title shall complete 1 of the following actions:

a. Create a prominent hyperlink to its latest report prepared pursuant to paragraph (e)(1) of this section in the disclosure section of its privacy policy applicable to its book service.

b. Post the report prepared pursuant to paragraph (e)(1) of this section of its website explaining the way in which a user's book service information and privacy issues related to its book service are addressed.

c. State on its website in 1 of the areas described in paragraphs (e)(5)a. and b. of this section that no report prepared pursuant to this subsection is available because the book service provider is exempt from the reporting requirement pursuant to paragraph (e)(2) of this section.

(f) Nothing in this section shall otherwise affect the rights of any person under the Delaware Constitution of 1897 or be construed as conflicting with the federal Privacy Protection Act of 1980 (42 U.S.C. § 2000aa et seq.).

(80 Del. Laws, c. 148, § 1.)

Subtitle II
Other Laws Relating to Commerce and Trade

Chapter 13
Fraudulent Transfers

§ 1301 Definitions.

As used in this chapter:

(1) "Affiliate" means:

a. A person who directly or indirectly owns, controls or holds with power to vote, 20 percent or more of the outstanding voting securities of the debtor, other than a person who holds the securities:

1. As a fiduciary or agent without sole discretionary power to vote the securities; or

2. Solely to secure a debt, if the person has not exercised the power to vote;

b. A corporation, 20 percent or more of whose outstanding voting securities are directly or indirectly owned, controlled or held with power to vote by the debtor or a person who directly or indirectly owns, controls or holds with power to vote 20 percent or more of the outstanding voting securities of the debtor, other than a person who holds the securities:

1. As a fiduciary or agent without sole power to vote the securities; or

2. Solely to secure a debt, if the person has not in fact exercised the power to vote;

c. A person whose business is operated by the debtor under a lease or other agreement or a person substantially all of whose assets are controlled by the debtor; or

d. A person who operates the debtor's business under a lease or other agreement or controls substantially all of the debtor's assets.

(2) "Asset" means property of a debtor, but the term does not include:

a. Property to the extent it is encumbered by a valid lien;

b. Property to the extent it is generally exempt under nonbankruptcy law; or

c. An interest in property held in tenancy by the entireties to the extent it is not subject to process by a creditor holding a claim against only 1 tenant.

(3) "Claim" means a right to payment, whether or not the right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured or unsecured.

(4) "Creditor" means a person who has a claim.

(5) "Debt" means liability on a claim.

(6) "Debtor" means a person who is liable on a claim.

(7) "Insider" includes:

a. If the debtor is an individual:

1. A relative of the debtor or of a general partner of the debtor;

2. A partnership in which the debtor is a general partner;

3. A general partner in a partnership described in paragraph (7)a.2. of this section; or

4. A corporation of which the debtor is a director, officer or person in control;

b. If the debtor is a corporation:

1. A director of the debtor;

2. An officer of the debtor;

3. A person in control of the debtor;

4. A partnership in which the debtor is a general partner;

5. A general partner in a partnership described in paragraph (7)a.2. of this section; or

6. A relative of a general partner, director, officer or person in control of the debtor;

c. If the debtor is a partnership:

1. A general partner in the debtor;

2. A relative of a general partner in, or a general partner of, or a person in control of the debtor;

3. Another partnership in which the debtor is a general partner;

4. A general partner in a partnership described in paragraph (7)c.3. of this section; or

5. A person in control of the debtor;

d. An affiliate or an insider of an affiliate as if the affiliate were the debtor; and

e. A managing agent of the debtor.

(8) "Lien" means a charge against or an interest in property to secure payment of a debt or performance of an obligation, and includes a security interest created by agreement, a judicial lien obtained by legal or equitable process or proceedings, a common-law lien or a statutory lien.

(9) "Person" means an individual, partnership, corporation, association, organization, government or governmental subdivision or agency, statutory trust, business trust, estate, trust or any other legal or commercial entity.

(10) "Property" means anything that may be the subject of ownership.

(11) "Relative" means an individual related by consanguinity within the 3rd degree as determined by the common law, a spouse, or an individual related to a spouse within the 3rd degree as so determined, and includes an individual in an adoptive relationship within the third degree.

(12) "Transfer" means every mode, direct or indirect, absolute or conditional, voluntary or involuntary, of disposing of or parting with an asset or an interest in an asset, and includes payment of money, release, lease and creation of a lien or other encumbrance but excludes, without limitation, any disposition of or parting with property or an interest in property described in paragraph (2) of this section.

(13) "Valid lien" means a lien that is effective against the holder of a judicial lien subsequently obtained by legal or equitable process or proceedings.

(70 Del. Laws, c. 434, § 1; 73 Del. Laws, c. 329, § 10; 77 Del. Laws, c. 98, § 21.)

§ 1302 Insolvency.

(a) A debtor is insolvent if the sum of the debtor's debts is greater than all of the debtor's assets, at a fair valuation.

(b) A debtor who is generally not paying debts as they become due is presumed to be insolvent.

(c) A partnership is insolvent under subsection (a) of this section if the sum of the partnership's debts is greater than the aggregate, at a fair valuation, of all of the partnership's assets and the sum of the excess of the value of each general partner's nonpartnership assets over the partner's nonpartnership debts.

(d) Assets under this section do not include property that has been transferred, concealed or removed with intent to hinder, delay or defraud creditors or that has been transferred in a manner making the transfer voidable under this chapter.

(e) Debts under this section do not include an obligation to the extent it is secured by a valid lien on property of the debtor not included as an asset.

(70 Del. Laws, c. 434, § 1; 70 Del. Laws, c. 186, § 1.)

§ 1303 Value.

(a) Value is given for a transfer or an obligation if, in exchange for the transfer or obligation, property is transferred or an antecedent debt is secured or satisfied, but value does not include an unperformed promise made otherwise than in the ordinary course of the promisor's business to furnish support to the debtor or another person.

(b) For the purposes of §§ 1304(a)(2) and 1305, a person gives a reasonably equivalent value if the person acquires an interest of the debtor in an asset pursuant to a regularly conducted, noncollusive foreclosure sale or execution of a power of sale for the acquisition or disposition of the interest of the debtor upon default under a mortgage, deed of trust or security agreement.

(c) A transfer is made for present value if the exchange between the debtor and the transferee is intended by them to be contemporaneous and is in fact substantially contemporaneous.

(70 Del. Laws, c. 434, § 1.)

§ 1304 Transfers fraudulent as to present and future creditors.

(a) A transfer made or obligation incurred by a debtor is fraudulent as to a creditor, whether the creditor's claim arose before or after the transfer was made or the obligation was incurred, if the debtor made the transfer or incurred the obligation:

(1) With actual intent to hinder, delay or defraud any creditor of the debtor; or

(2) Without receiving a reasonably equivalent value in exchange for the transfer or obligation, and the debtor:

a. Was engaged or was about to engage in a business or a transaction for which the remaining assets of the debtor were unreasonably small in relation to the business or transaction; or

b. Intended to incur, or believed or reasonably should have believed that the debtor would incur, debts beyond the debtor's ability to pay as they became due.

(b) In determining actual intent under paragraph (a)(1) of this section, consideration may be given, among other factors, to whether:

(1) The transfer or obligation was to an insider;

(2) The debtor retained possession or control of the property transferred after the transfer;

(3) The transfer or obligation was disclosed or concealed;

(4) Before the transfer was made or obligation was incurred, the debtor had been sued or threatened with suit;

(5) The transfer was of substantially all the debtor's assets;

(6) The debtor absconded;

(7) The debtor removed or concealed assets;

(8) The value of the consideration received by the debtor was reasonably equivalent to the value of the asset transferred or the amount of the obligation incurred;

(9) The debtor was insolvent or became insolvent shortly after the transfer was made or the obligation was incurred;

(10) The transfer occurred shortly before or shortly after a substantial debt was incurred; and

(11) The debtor transferred the essential assets of the business to a lienor who transferred the assets to an insider of the debtor.

(70 Del. Laws, c. 434, § 1; 70 Del. Laws, c. 186, § 1.)

§ 1305 Transfers fraudulent as to present creditors.

(a) A transfer made or obligation incurred by a debtor is fraudulent as to a creditor whose claim arose before the transfer was made or the obligation was incurred if the debtor made the transfer or incurred the obligation without receiving a reasonably equivalent value in exchange for the transfer or obligation and the debtor was insolvent at that time or the debtor became insolvent as a result of the transfer or obligation.

(b) A transfer made by a debtor is fraudulent as to a creditor whose claim arose before the transfer was made if the transfer was made to an insider for an antecedent debt, the debtor was insolvent at that time and the insider had reasonable cause to believe that the debtor was insolvent.

(70 Del. Laws, c. 434, § 1.)

§ 1306 When transfer is made or obligation is incurred.

For the purposes of this chapter:

(1) A transfer is made:

a. With respect to an asset that is real property other than a fixture, but including the interest of a seller or purchaser under a contract for the sale of the asset, when the transfer is so far perfected that a good-faith purchaser of the asset from the debtor against whom applicable law permits the transfer to be perfected cannot acquire an interest in the asset that is superior to the interest of the transferee; and

b. With respect to an asset that is not real property or that is a fixture, when the transfer is so far perfected that a creditor on a simple contract cannot acquire a judicial lien otherwise than under this chapter that is superior to the interest of the transferee;

(2) If applicable law permits the transfer to be perfected as provided in paragraph (1) of this section and the transfer is not so perfected before the commencement of an action for relief under this chapter, the transfer is deemed made immediately before the commencement of the action;

(3) If applicable law does not permit the transfer to be perfected as provided in paragraph (1) of this section, the transfer is made when it becomes effective between the debtor and the transferee;

(4) A transfer is not made until the debtor has acquired rights in the asset transferred;

(5) An obligation is incurred:

a. If oral, when it becomes effective between the parties; or

b. If evidenced by a writing, when the writing executed by the obligor is delivered to or for the benefit of the obligee.

(70 Del. Laws, c. 434, § 1.)

§ 1307 Remedies of creditors.

(a) In an action for relief against a transfer or obligation under this chapter, a creditor, subject to the limitations in § 1308 of this title, may obtain:

(1) Avoidance of the transfer or obligation to the extent necessary to satisfy the creditor's claim;

(2) An attachment or other provisional remedy against the asset transferred or other property of the transferee in accordance with the procedure prescribed by applicable law;

(3) Subject to applicable principles of equity and in accordance with applicable rules of civil procedure:

a. An injunction against further disposition by the debtor or a transferee, or both, of the asset transferred or of other property;

b. Appointment of a receiver to take charge of the asset transferred or of other property of the transferee; or

c. Any other relief the circumstances may require.

(b) If a creditor has obtained a judgment on a claim against the debtor, the creditor, if the court so orders, may levy execution on the asset transferred or its proceeds.

(c) Notwithstanding any other provision of law or equity, a creditor shall have no right to relief against any trustee, attorney or other advisor who has not acted in bad faith on account of any transfer. For purposes of this subsection, it shall be presumed that the trustee, attorney or other advisor did not act in bad faith merely by counseling or effecting a transfer.

(70 Del. Laws, c. 434, § 1; 72 Del. Laws, c. 226, § 1.)

§ 1308 Defenses, liability and protection of transferee.

(a) A transfer or obligation is not voidable under § 1304(a)(1) of this title against a person who took in good faith and for a reasonably equivalent value or against any subsequent transferee or obligee.

(b) Except as otherwise provided in this section, to the extent a transfer is voidable in an action by a creditor under § 1307(a)(1) of this title, the creditor may recover judgment for the value of the asset transferred, as adjusted under subsection (c) of this section, or the amount necessary to satisfy the creditor's claim, whichever is less. The judgment may be entered against:

(1) The first transferee of the asset or the person for whose benefit the transfer was made; or

(2) Any subsequent transferee other than a good-faith transferee or obligee who took for value or from any subsequent transferee or obligee.

(c) If the judgment under subsection (b) of this section is based upon the value of the asset transferred, the judgment must be for an amount equal to the value of the asset at the time of the transfer, subject to adjustment as the equities may require.

(d) Notwithstanding voidability of a transfer or an obligation under this chapter, a good-faith transferee or obligee is entitled, to the extent of the value given the debtor for the transfer or obligation, to:

(1) A lien on or a right to retain any interest in the asset transferred;

(2) Enforcement of any obligation incurred; or

(3) A reduction in the amount of the liability on the judgment.

(e) A transfer is not voidable under § 1304(a)(2) or § 1305 of this title if the transfer results from:

(1) Termination of a lease upon default by the debtor when the termination is pursuant to the lease and applicable law; or

(2) Enforcement of a security interest in compliance with Article 9 of the Uniform Commercial Code.

(f) A transfer is not voidable under § 1305(b) of this title:

(1) To the extent the insider gave new value to or for the benefit of the debtor after the transfer was made unless the new value was secured by a valid lien;

(2) If made in the ordinary course of business or financial affairs of the debtor and the insider; or

(3) If made pursuant to a good-faith effort to rehabilitate the debtor and the transfer secured present value given for that purpose as well as an antecedent debt of the debtor.

(70 Del. Laws, c. 434, § 1.)

§ 1309 Extinguishment of cause of action.

A cause of action with respect to a fraudulent transfer or obligation under this chapter is extinguished unless action is brought:

(1) Under § 1304(a)(1) of this title, within 4 years after the transfer was made or the obligation was incurred or, if later, within 1 year after the transfer or obligation was or could reasonably have been discovered by the claimant;

(2) Under § 1304(a)(2) or § 1305(a) of this title, within 4 years after the transfer was made or the obligation was incurred; or

(3) Under § 1305(b) of this title, within 1 year after the transfer was made or the obligation was incurred.

(70 Del. Laws, c. 434, § 1.)

§ 1310 Supplementary provisions.

Unless displaced by the provisions of this chapter, the principles of law and equity, including the law merchant and the law relating to principal and agent, estoppel, laches, fraud, misrepresentation, duress, coercion, mistake, insolvency or other validating or invalidating cause, supplement its provisions.

(70 Del. Laws, c. 434, § 1.)

§ 1311 Short title.

This chapter may be cited as the "Uniform Fraudulent Transfer Act."

(70 Del. Laws, c. 434, § 1.)

§ 1312 [Reserved.]

Subtitle II
Other Laws Relating to Commerce and Trade

Chapter 13A
Dishonor of Checks, Drafts or Orders

§ 1301A Actions relating to dishonor of checks, drafts, or orders; damages.

(a) In any action against a drawer of any check, draft, or order for the payment of money that has been duly dishonored for lack of funds or credit to pay the same, or because the drawer has no account with the drawee, the plaintiff may recover from the drawer the amount of the check, draft, or order, plus court costs, damages in the amount of $50 for the first instance of a dishonored check, draft, or order issued to the plaintiff by the drawer within 1 year; for a second or subsequent dishonored check, draft or order for the payment of money issued to the plaintiff by the drawer within 1 year of the issuance of a previous dishonored check, draft, or order, triple the amount of the check, draft or order; not to exceed $250, plus court costs, provided that:

(1) The plaintiff made written demand of the defendant for payment of the amount of the check, draft, or order not less than 30 days before commencing the action; and

(2) The defendant failed to tender to the plaintiff, prior to commencement of the action, an amount of money not less than the amount of the check, plus a fee of $40.

(b) Subsequent to the commencement of an action governed by this section, but prior to the hearing, the defendant may tender to the plaintiff as satisfaction of the claim, an amount of money equal to the sum of the amount of the check, plus $40 and court costs.

(c) Nothing within this section shall be interpreted to prohibit the drawer of a check, draft, or order for the payment of money, and the payee of any of the foregoing, from agreeing in writing to terms that exceed the foregoing limits; provided, however, that no damages may be recovered under this section in any action for the repayment of any short-term consumer loan subject to the provisions of § 978 or § 2235A of Title 5; and

(d) The Justice of the Peace Court shall develop and produce appropriate forms and regulations to ensure efficiency in the application of this statute.

(75 Del. Laws, c. 145, § 1.)

Subtitle II
Other Laws Relating to Commerce and Trade

Chapter 14
Delaware Workers Cooperative Act

§ 1401 Definitions.

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

(1) "Certificate of acceptance" means a certificate of acceptance filed in accordance with § 1407 of this title including, except where the context requires otherwise, any amendments thereto and corrections and restatements thereof.

(2) "Employee" means any person employed by a workers cooperative.

(3) "Member" means any patron of a workers cooperative that has been accepted for membership in such workers cooperative and whose membership has not been terminated.

(4) "Nonvoting stock" means any stock of a workers cooperative that, as of the time of determination, is not voting stock.

(5) "Organizational documents" mean the certificate of incorporation of the workers cooperative, the bylaws of the workers cooperative and agreements among the stockholders and the workers cooperative. Provisions of this chapter setting forth requirements with respect to the organizational documents shall be deemed to be satisfied if such requirements are contained in or implemented through at least 1 of the documents referred to in the preceding sentence.

(6) "Patron" means any person that:

a. Performs (directly or indirectly) services for a workers cooperative; or

b. Receives (directly or indirectly) services from a workers cooperative.

(7) "Patronage" means services (i) performed (directly or indirectly) by a person for a workers cooperative or (ii) received by a person (directly or indirectly) from a workers cooperative.

(8) "Person" means a natural person, partnership (whether limited or general), limited liability company, trust (whether common law or business), estate, association, corporation, custodian, nominee or any other entity.

(9) "Stockholder" means any person that holds stock issued by a workers cooperative.

(10) "Voting stock" means any stock of a workers cooperative that, as of the time of determination, is entitled to vote on any matter submitted to stockholders.

(11) "Voting trust agreement" means an agreement in writing by and among 2 or more stockholders and the workers cooperative with respect to the exercise of the voting rights of the voting stock held by 1 or more of such stockholders.

(12) "Workers cooperative" means any corporation that:

a. Is incorporated under the laws of this State; and

b. Files a certificate of acceptance, which certificate has been accepted for filing by the office of the Secretary of State in accordance with § 1409 of this title and has become effective.

A workers cooperative may be organized for any lawful business or activity.

(13) "Written notice of allocation" means a written instrument that discloses to a member that stated dollar amount of such member's patronage allocation and the terms for payment of that amount by the workers cooperative.

(70 Del. Laws, c. 395, § 1.)

§ 1402 Operating on a cooperative basis.

(a) The organizational documents shall provide that the workers cooperative intends to operate on a cooperative basis and to comply with the requirements of this chapter.

(b) A workers cooperative under this chapter may perform services for and receive services from its patrons, members, stockholders and other persons and engage in such other activities as may be reasonably related to the provision or receipt of such services. In addition, a workers cooperative may engage in any other lawful activity.

(70 Del. Laws, c. 395, § 1.)

§ 1403 Members.

(a) The organizational documents shall establish qualifications and the method of acceptance and termination of members; provided however, that pursuant to the organizational documents, at least a majority of the members of a workers cooperative shall be employees of the workers cooperative.

(b) Except as otherwise provided in the organizational documents, at least a majority of the employees of the workers cooperative shall be members of the workers cooperative.

(70 Del. Laws, c. 395, § 1.)

§ 1404 Ownership of voting and nonvoting stock.

(a) Except as otherwise provided in the organizational documents, all voting stock shall be owned by members; provided however, that pursuant to the organizational documents, at least a majority of each class of voting stock shall be owned by members.

(b) The nonvoting stock of a workers cooperative may be owned by any person.

(70 Del. Laws, c. 395, § 1.)

§ 1405 Voting rights of members and stockholders.

Pursuant to the organizational documents (or voting trust agreements), at least a majority of the board of directors shall be elected by the members on the basis of 1 member, 1 vote.

(70 Del. Laws, c. 395, § 1.)

§ 1406 Allocation of earnings.

(a) The net earnings of a workers cooperative shall be allocated and distributed by the board of directors in accordance with the organizational documents.

(b) Except as otherwise provided in the organizational documents, all of the net earnings of the workers cooperative with respect to a period of time shall be allocated to members on the basis of: (i) patronage during such period of time, (ii) capital contributions, or (iii) some combination of patronage during such period of time and capital contributions; provided, however, that, pursuant to the organizational documents, at least a majority of the allocated earnings of the workers cooperative with respect to a period of time shall be allocated to members on the basis of: (i) patronage during such period of time, (ii) capital contributions, or (iii) some combination of patronage during such period of time and capital contributions.

(c) The allocation, distribution and payment of earnings required by this section may be in cash, credits, written notices of allocation or any other type of tangible or intangible property, including, without limitation, shares of stock issued by the workers cooperative.

(70 Del. Laws, c. 395, § 1.)

§ 1407 Certificate of acceptance; amendment; restatement; cancellation.

(a) In order for a corporation to constitute a workers cooperative, such corporation must execute a certificate of acceptance. The certificate of acceptance shall be filed in the office of the Secretary of State and shall set forth:

(1) The name of the corporation;

(2) A statement that the provisions of §§ 1402 through 1406, inclusive, of this title have been complied with as of the date of such certificate;

(3) The future effective date or time (which shall be a date or time certain) of effectiveness of the certificate if it is not to be effective upon the filing of the certificate; and

(4) Any other information the workers cooperative desires to include therein.

(b) (1) A certificate of acceptance may be amended by filing a certificate of amendment thereto in the office of the Secretary of State. The certificate of amendment shall set forth:

a. The name of the workers cooperative;

b. The amendment to the certificate; and

c. The future effective date or time (which shall be a date or time certain) of effectiveness of the certificate if it is not to be effective upon the filing of the certificate.

(2) A certificate of acceptance may be amended at any time for any purpose as the workers cooperative may determine. A workers cooperative that becomes aware that any statement in a certificate of acceptance was false when made or that any matter described has changed making the certificate false in any material respect, shall promptly file a certificate of amendment.

(c) (1) A certificate of acceptance may be restated by integrating into a single instrument all the provisions of the certificate of acceptance that are then in effect and operative as a result of there having been previously filed 1 or more certificates of amendment pursuant to subsection (b) of this section, and the certificate of acceptance may be amended or further amended by the filing of a restated certificate of acceptance. The restated certificate of acceptance shall be specifically designated as such in its heading and shall set forth:

a. The present name of the workers cooperative and, if the name has been changed, the name of the workers cooperative at the time its original certificate of acceptance was filed under this chapter;

b. The date of filing of the original certificate of acceptance with the Secretary of State;

c. The information required to be included pursuant to subsection (a) of this section; and

d. Any other information the workers cooperative desires to include therein.

(2) A certificate of acceptance may be restated at any time for any purpose as the workers cooperative may determine. A workers cooperative that becomes aware that any statement in a restated certificate of acceptance was false when made or that any matter described has changed making the certificate false in any material respect, shall promptly file a certificate of amendment or restated certificate of acceptance.

(d) (1) A certificate of acceptance shall be canceled by a workers cooperative upon the earlier of:

a. The date on which the workers cooperative shall no longer be continuing as a body corporate pursuant to the first sentence of § 278 of Title 8; and

b. A decision to cancel the certificate of acceptance in accordance with the organizational documents (or voting trust agreements).

(2) In addition to the provisions of paragraph (d)(1) of this section, a workers cooperative that becomes aware that it no longer complies with the requirements of this chapter shall, within 60 days after becoming aware of such noncompliance, either come into compliance or cancel its certificate of acceptance; provided however, that if such noncompliance is corrected within such 60-day period, such noncompliance shall not affect the prior or on-going qualification of such workers cooperative under this chapter.

(3) In order to cancel its certificate of acceptance, a workers cooperative shall file a certificate of cancellation in the office of the Secretary of State, which certificate of cancellation shall set forth:

a. The name of the workers cooperative;

b. The date of filing of its certificate of acceptance;

c. The future effective date or time (which shall be a date or time certain) of effectiveness of the certificate if it is not to be effective upon the filing of the certificate; and

d. Any other information the workers cooperative desires to include therein.

The cancellation of a certificate of acceptance shall not affect the prior qualification of such workers cooperative under this chapter.

(e) Whenever any certificate authorized to be filed with the office of the Secretary of State under any provision of this chapter has been so filed and is an inaccurate record of the action therein referred to or was defectively or erroneously executed, such certificate may be corrected by filing with the office of the Secretary of State a certificate of correction of such certificate which shall be executed and filed in accordance with this chapter. The certificate of correction shall specify the inaccuracy or defect to be corrected and shall set forth the portion of the certificate in corrected form. In lieu of filing a certificate of correction, the certificate may be corrected by filing with the office of the Secretary of State a corrected certificate which shall be executed and filed in accordance with this chapter. The corrected certificate shall be specifically designated as such in its heading, shall specify the inaccuracy or defect to be corrected and shall set forth the entire certificate in corrected form. A certificate corrected in accordance with this section shall be effective as of the date the original certificate was filed, except as to those persons who are substantially and adversely affected by the corrections, and as to those persons the corrected certificate shall be effective from the filing date.

(70 Del. Laws, c. 395, § 1.)

§ 1408 Execution of certificate.

(a) Each certificate required by this chapter to be filed in the office of the Secretary of State shall be executed by an authorized officer of the workers cooperative.

(b) Unless otherwise provided in the organizational documents, any person may sign any certificate or amendment thereof or enter into any organizational document or amendment thereof by any agent, including an attorney-in-fact. An authorization, including a power of attorney, to sign any certificate or amendment thereof or to enter into an organizational document or amendment thereof need not be in writing, need not be sworn to, verified or acknowledged and need not be filed in the office of the Secretary of State, but if in writing, must be retained by the workers cooperative.

(c) The execution of a certificate constitutes an oath or affirmation, under the penalties of perjury in the third degree, that, to the best of the knowledge and belief of the person executing such certificate, the facts stated therein are true.

(70 Del. Laws, c. 395, § 1.)

§ 1409 Filing of certificate.

(a) The certificate of acceptance and any certificates of amendment, correction or cancellation and of any restated certificate shall be delivered to the office of the Secretary of State for filing. A person who executes a certificate as an agent or fiduciary need not exhibit evidence of authority as a prerequisite to filing. Upon receipt of all filing fees required by law, the Secretary of State shall certify that the certificate of acceptance, the certificate of amendment, the certificate of correction, the certificate of cancellation or the restated certificate has been filed in the Secretary's office by endorsing upon the filed certificate the word, "Filed," and the date and hour of the filing. This endorsement is conclusive of the date and time of its filing in the absence of actual fraud. The Secretary of State shall thereupon file and index the endorsed certificate.

(b) Upon the filing of a certificate of acceptance in the office of the Secretary of State or upon the future effective date or time of a certificate of acceptance as provided for therein, the certificate of acceptance shall be effective. Upon the filing of a certificate of amendment, certificate of correction or restated certificate in the office of the Secretary of State or upon the future effective date or time of a certificate of amendment or restated certificate as provided for therein, the certificate of acceptance shall be amended or restated as set forth therein. Upon the filing of a certificate of cancellation or upon the future effective date or time of a certificate of cancellation, the certificate of acceptance shall be canceled.

(c) A fee, as set forth in § 1410(a)(1) of this title, shall be paid at the time of the filing of a certificate of acceptance, a certificate of amendment, a certificate of correction or restated certificate.

(d) A fee, as set forth in § 1410(a)(2) of this title shall be paid for a certified copy of any certificate on file as provided for by this chapter and a fee as set forth in § 1410(a)(3) of this title, shall be paid for each page copied.

(e) Any signature on any certificate authorized to be filed with the Secretary of State under any provision of this chapter may be a facsimile, a conformed signature or an electronically transmitted signature. Any such certificate may be filed by telecopy, fax or similar electronic transmission; provided however, that the Secretary of State shall have no obligation to accept such filing if such certificate is illegible or otherwise unsuitable for processing.

(70 Del. Laws, c. 395, § 1; 70 Del. Laws, c. 186, § 1.)

§ 1410 Fees.

(a) No document required to be filed under this chapter shall be effective until the applicable fee required by this section is paid. The following fees shall be paid to and collected by the Secretary of State for the use of this State:

(1) Upon the receipt for filing of a certificate of acceptance, a certificate of amendment, a certificate of correction or a certificate of cancellation, a fee in the amount of $100.

(2) For certifying copies of any paper on file as provided for by this chapter, a fee in the amount of $20 for each copy certified. In addition, a fee of $1.00 per page shall be paid in each instance where the Secretary of State provides the copies of the document to be certified.

(3) For issuing further noncertified copies, a fee in the amount of $5.00 for the first page and $1.00 for each additional page.

(b) In addition to those fees charged under subsection (a) of this section, there shall be collected by and paid to the Secretary of State the following:

(1) For all services described in subsection (a) of this section that are requested to be completed within 2 hours on the same day as the day of the request, an additional sum of up to $500;

(2) For all services described in subsection (a) of this section that are requested to be completed within the same day as the day of the request, an additional sum of up to $200; and

(3) For all services described in subsection (a) of this section that are requested to be completed within a 24-hour period from the time of the request, an additional sum of up to $100.

The Secretary of State shall establish (and may from time to time alter or amend) a schedule of specific fees payable pursuant to this subsection.

(70 Del. Laws, c. 395, § 1.)

§ 1411 Use of names regulated.

Without limiting the applicability of § 102(a)(1) of Title 8, the name of each workers cooperative may, but need not, contain the words “cooperative,” “workers cooperative,” “worker owned cooperative,” “employees cooperative” or “employee owned cooperative” (or words or abbreviations of like import).

(70 Del. Laws, c. 395, § 1.)

§ 1412 Reserved power of state to amend or repeal chapter.

All provisions of this chapter may be altered from time to time or repealed, and all rights of workers cooperatives, members, patrons and stockholders thereof and other persons are subject to this reservation.

(70 Del. Laws, c. 395, § 1.)

§ 1413 Construction and application of chapter.

(a) The rule that statutes in derogation of the common law are to be strictly construed shall have no application to this chapter.

(b) It is the policy of this chapter to give maximum effect to the principle of freedom of contract and to the enforceability of contractual arrangements between persons.

(c) Nothing in this chapter shall be construed to limit in any way whatsoever the application of any other provision of the laws of this State relating to corporations, including, without limitation and by way of example only, the laws regarding incorporation, mergers and dissolutions.

(d) It is intended that a workers cooperative qualified under this chapter will constitute a “corporation operating on a cooperative basis” and an “eligible worker-owned cooperative” within the meaning of § 1381(a)(2) and § 1042(c)(2), respectively, of the Internal Revenue Code of 1986 [26 U.S.C. §§ 1381(a)(2) and 1042(c)(2)], as amended, or under any successor provisions.

(70 Del. Laws, c. 395, § 1.)

§ 1414 Short title.

This chapter may be cited as the “Delaware Workers Cooperative Act.”

(70 Del. Laws, c. 395, § 1.)

Subtitle II
Other Laws Relating to Commerce and Trade

Chapter 15
Delaware Revised Uniform Partnership Act

Subchapter I
General Provisions

§ 15-101 Definitions.

As used in this chapter unless the context otherwise requires:

(1) "Business" includes every trade, occupation and profession, the holding or ownership of property and any other activity for profit.

(2) "Certificate" means a certificate of conversion to partnership under § 15-901 of this title, a certificate of conversion to a non-Delaware entity under § 15-903 of this title, a certificate of merger or consolidation or a certificate of ownership and merger under § 15-902 of this title, a certificate of partnership domestication under § 15-904 of this title, a certificate of transfer and a certificate of transfer and domestic continuance under § 15-905 of this title, a certificate of correction and a corrected certificate under § 15-118 of this title, and a certificate of termination of a certificate with a future effective date or time and a certificate of amendment of a certificate with a future effective date or time under § 15-105(i) of this title.

(3) "Debtor in bankruptcy" means a person who is the subject of:

(i) An order for relief under Title 11 of the United States Code or a comparable order under a successor statute of general application; or

(ii) A comparable order under State of Delaware federal, state or foreign law governing insolvency.

(4) "Distribution" means a transfer of money or other property from a partnership to a partner in the partner's capacity as a partner or to a transferee of all or a part of a partner's economic interest.

(5) "Document" means (i) any tangible medium on which information is inscribed, and includes handwritten, typed, printed or similar instruments, and copies of such instruments and (ii) an electronic transmission.

(6) "Domestic partnership" means an association of two or more persons formed under § 15-202 of this title or predecessor law to carry on any lawful business, purpose or activity.

(7) "Economic interest" means a partner's share of the profits and losses of a partnership and the partner's right to receive distributions.

(8) "Electronic transmission" means any form of communication not directly involving the physical transmission of paper, including the use of, or participation in, 1 or more electronic networks or databases (including 1 or more distributed electronic networks or databases), that creates a record that may be retained, retrieved and reviewed by a recipient thereof and that may be directly reproduced in paper form by such a recipient through an automated process.

(9) "Foreign limited liability partnership" means a partnership that:

(i) Is formed under laws other than the laws of the State of Delaware; and

(ii) Has the status of a limited liability partnership under those laws.

(10) "Limited liability partnership" means a domestic partnership that has filed a statement of qualification under § 15-1001 of this title.

(11) "Liquidating trustee" means a person, other than a partner, carrying out the winding up of a partnership.

(12) "Partner" means a person who is admitted to a partnership as a partner of the partnership.

(13) "Partnership" means an association of 2 or more persons formed under § 15-202 of this title, predecessor law or comparable law of another jurisdiction to carry on any business, purpose or activity.

(14) "Partnership agreement" means the agreement, whether written, oral or implied, among the partners concerning the partnership, including amendments to the partnership agreement. A partnership is not required to execute its partnership agreement. A partnership is bound by its partnership agreement whether or not the partnership executes the partnership agreement. A partnership agreement is not subject to any statute of frauds (including § 2714 of this title). partnership agreement may provide rights to any person, including a person who is not a party to the partnership agreement, to the extent set forth therein. A partner of a partnership or a transferee of an economic interest is bound by the partnership agreement whether or not the partner or transferee executes the partnership agreement.

(15) "Partnership at will" means a partnership that is not a partnership for a definite term or particular undertaking.

(16) "Partnership for a definite term or particular undertaking" means a partnership in which the partners have agreed to remain partners until the expiration of a definite term or the completion of a particular undertaking.

(17) "Partnership interest" or "partner's interest in the partnership" means all of a partner's interests in the partnership, including the partner's economic interest and all management and other rights.

(18) "Person" means a natural person, partnership (whether general or limited), limited liability company, trust (including a common law trust, business trust, statutory trust, voting trust or any other form of trust), estate, association (including any group, organization, co-tenancy, plan, board, council or committee), corporation, government (including a country, state, county or any other governmental subdivision, agency or instrumentality), custodian, nominee or any other individual or entity (or series thereof) in its own or any representative capacity, in each case, whether domestic or foreign.

(19) "Property" means all property, real, personal or mixed, tangible or intangible, or any interest therein.

(20) "State" means the District of Columbia or the Commonwealth of Puerto Rico or any state, territory, possession or other jurisdiction of the United States other than the State of Delaware.

(21) "Statement" means a statement of partnership existence under § 15-303 of this title, a statement of denial under § 15-304 of this title, a statement of dissociation under § 15-704 of this title, a statement of dissolution under § 15-805 of this title, a statement of qualification under § 15-1001 of this title, a statement of foreign qualification under § 15-1102 of this title, and an amendment or cancellation of any of the foregoing under § 15-105 of this title and a statement of correction and a corrected statement under § 15-118 of this title.

(22) "Transfer" includes an assignment, conveyance, lease, mortgage, deed, and encumbrance.

(72 Del. Laws, c. 151, § 1; 73 Del. Laws, c. 85, §§ 1-3; 73 Del. Laws, c. 296, § 1; 74 Del. Laws, c. 103, § 1; 74 Del. Laws, c. 266, § 1; 75 Del. Laws, c. 50, §§ 1, 2; 75 Del. Laws, c. 416, § 1; 76 Del. Laws, c. 106, §§ 1, 2; 77 Del. Laws, c. 59, § 1; 77 Del. Laws, c. 289, §§ 1, 2; 82 Del. Laws, c. 47, § 1.)

§ 15-102 Knowledge and notice.

(a) A person knows a fact if the person has actual knowledge of it.

(b) A person has notice of a fact:

(1) If the person knows of it;

(2) If the person has received a notification of it;

(3) If the person has reason to know it exists from all of the facts known to the person at the time in question; or

(4) By reason of a filing or recording of a statement or certificate to the extent provided by and subject to the limitations set forth in this chapter.

(c) A person notifies or gives a notification to another by taking steps reasonably required to inform the other person in the ordinary course, whether or not the other person obtains knowledge of it.

(d) A person receives a notification when the notification:

(1) Comes to the person's attention; or

(2) Is received at the person's place of business or at any other place held out by the person as a place for receiving communications.

(e) Except as otherwise provided in subsection (f) of this section, a person other than an individual knows, has notice, or receives a notification of a fact for purposes of a particular transaction when the individual conducting the transaction knows, has notice, or receives a notification of the fact, or in any event when the fact would have been brought to the individual's attention if the person had exercised reasonable diligence. The person exercises reasonable diligence if it maintains reasonable routines for communicating significant information to the individual conducting the transaction and there is reasonable compliance with the routines. Reasonable diligence does not require an individual acting for the person to communicate information unless the communication is part of the individual's regular duties or the individual has reason to know of the transaction and that the transaction would be materially affected by the information.

(f) A partner's knowledge, notice or receipt of a notification of a fact relating to the partnership is effective immediately as knowledge by, notice to or receipt of a notification by the partnership, except in the case of a fraud on the partnership committed by or with the consent of that partner.

(72 Del. Laws, c. 151, § 1.)

§ 15-103 Effect of partnership agreement; nonwaivable provisions.

(a) Except as otherwise provided in subsection (b) of this section, relations among the partners and between the partners and the partnership are governed by the partnership agreement. To the extent the partnership agreement does not otherwise provide, this chapter governs relations among the partners and between the partners and the partnership.

(b) The partnership agreement may not:

(1) Vary the rights and duties under § 15-105 of this title except to eliminate the duty to provide copies of statements to all of the partners;

(2) Restrict a partner's rights to obtain information as provided in § 15-403 of this title, except as permitted by § 15-403(f) of this title;

(3) Eliminate the implied contractual covenant of good faith and fair dealing;

(4) Vary the power to dissociate as a partner under § 15-602(a) of this title, except to require the notice under § 15-601(1) of this title to be in writing;

(5) Vary the right of a court to expel a partner in the events specified in § 15-601(5) of this title;

(6) Vary the requirement to wind up the partnership business in cases specified in § 15-801(4), (5) or (6) of this title;

(7) Vary the law applicable to a limited liability partnership under § 15-106(b) of this title; or

(8) Vary the denial of partnership power to issue a certificate of partnership interest in bearer form under § 15-503(h) of this title.

(c) Notwithstanding anything to the contrary contained in this section, §§ 15-201, 15-203 and 15-501 of this title may be modified only to the extent provided in a statement of partnership existence or a statement of qualification and in a partnership agreement.

(d) It is the policy of this chapter to give maximum effect to the principle of freedom of contract and to the enforceability of partnership agreements.

(e) A partner or other person shall not be liable to a partnership or to another partner or to another person that is a party to or is otherwise bound by a partnership agreement for breach of fiduciary duty for the partner's or other person's good faith reliance on the provisions of the partnership agreement.

(f) A partnership agreement may provide for the limitation or elimination of any and all liabilities for breach of contract and breach of duties (including fiduciary duties) of a partner or other person to a partnership or to another partner or to another person that is a party to or is otherwise bound by a partnership agreement; provided, that a partnership agreement may not limit or eliminate liability for any act or omission that constitutes a bad faith violation of the implied contractual covenant of good faith and fair dealing.

(72 Del. Laws, c. 151, § 1; 72 Del. Laws, c. 390, §§ 1-3; 73 Del. Laws, c. 85, § 4; 74 Del. Laws, c. 266, §§ 2-4; 76 Del. Laws, c. 106, § 3; 77 Del. Laws, c. 59, § 2.)

§ 15-104 Supplemental principles of law.

(a) In any case not provided for in this chapter, the rules of law and equity, including the law merchant, shall govern.

(b) No obligation of a partner to a partnership, or to a partner of a partnership, arising under a partnership agreement or a separate agreement or writing, and no note, instruction or other writing evidencing any such obligation of a partner, shall be subject to the defense of usury, and no partner shall interpose the defense of usury with respect to any such obligation in any action. If an obligation to pay interest arises under this chapter and the rate is not specified, the rate is that specified in § 2301 of this title.

(c) Sections 9-406 and 9-408 of this title do not apply to any interest in a domestic partnership, including all rights, powers and interests arising under a partnership agreement or this chapter. This provision prevails over §§ 9-406 and 9-408 of this title.

(72 Del. Laws, c. 151, § 1; 72 Del. Laws, c. 390, § 4; 73 Del. Laws, c. 223, § 1; 78 Del. Laws, c. 271, § 1.)

§ 15-105 Execution, filing and recording of statements and certificates.

(a) A statement or certificate may be filed with the Secretary of State by delivery to the Secretary of State of the signed copy of the statement or of the certificate. A certified copy of a statement that is filed in an office in another state may be filed with the Secretary of State. Either filing in the State of Delaware has the effect provided in this chapter with respect to partnership property located in or transactions that occur in the State of Delaware.

(b) Only a certified copy of a filed statement recorded in the office for recording transfers of real property has the effect provided for recorded statements in this chapter.

(c) A statement or certificate filed by a partnership must be executed by at least 1 partner or by 1 or more authorized persons. Other statements or certificates must be executed by a partner or 1 or more authorized persons or, in the case of a certificate of conversion to partnership or a certificate of partnership domestication, by any person authorized to execute such certificate on behalf of the other entity or non-United States entity, respectively, except that a certificate of merger or consolidation filed by a surviving or resulting other business entity shall be executed by any person authorized to execute such certificate on behalf of such other business entity. The execution of a statement or certificate by a person who is authorized by this chapter to execute such statement or certificate constitutes an oath or affirmation, under the penalties of perjury in the third degree, that, to the best of such person's knowledge and belief, the facts stated therein are true. A person who executes a statement or a certificate as an agent or fiduciary need not exhibit evidence of his or her authority as a prerequisite to filing. Any signature on any statement or certificate authorized to be filed with the Secretary of State under any provision of this chapter may be a facsimile, a conformed signature or an electronically transmitted signature. Upon delivery of any statement or certificate, the Secretary of State shall record the date and time of its delivery. Unless the Secretary of State finds that any statement or certificate does not conform to law, upon receipt of all filing fees required by law the Secretary of State shall:

(1) Certify that the statement or certificate has been filed with the Secretary of State by endorsing upon the original statement or certificate the word "Filed", and the date and time of the filing. This endorsement is conclusive of the date and time of its filing in the absence of actual fraud. Except as provided in paragraph (c)(5) or (c)(6) of this section, such date and time of filing of a statement or certificate shall be the date and time of delivery of the statement or certificate;

(2) File and index the endorsed statement or certificate;

(3) Prepare and return to the person who filed it or the person's representative a copy of the signed statement or certificate similarly endorsed, and shall certify such copy as a true copy of the signed statement or certificate; and

(4) Cause to be entered such information from the statement or certificate as the Secretary of State deems appropriate into the Delaware Corporation Information System or any system which is a successor thereto in the office of the Secretary of State, and such information and a copy of such statement or certificate shall be permanently maintained as a public record on a suitable medium. The Secretary of State is authorized to grant direct access to such system to registered agents subject to the execution of an operating agreement between the Secretary of State and such registered agent. Any registered agent granted such access shall demonstrate the existence of policies to ensure that information entered into the system accurately reflects the content of statements or certificates in the possession of the registered agent at the time of entry.

(5) Upon request made upon or prior to delivery, the Secretary of State may, to the extent deemed practicable, establish as the date and time of filing of a statement or certificate a date and time after its delivery. If the Secretary of State refuses to file any statement or certificate due to an error, omission or other imperfection, the Secretary of State may hold such statement or certificate in suspension, and in such event, upon delivery of a replacement statement or certificate in proper form for filing and tender of the required fees within 5 business days after notice of such suspension is given to the filer, the Secretary of State shall establish as the date and time of filing of such statement or certificate the date and time that would have been the date and time of filing of the rejected statement or certificate had it been accepted for filing. The Secretary of State shall not issue a certificate of good standing with respect to any partnership with a statement or certificate held in suspension pursuant to this subsection. The Secretary of State may establish as the date and time of filing of a statement or certificate the date and time at which information from such statement or certificate is entered pursuant to paragraph (c)(4) of this section if such statement or certificate is delivered on the same date and within 4 hours after such information is entered.

(6) If:

a. Together with the actual delivery of a statement or certificate and tender of the required fees, there is delivered to the Secretary of State a separate affidavit (which in its heading shall be designated as an affidavit of extraordinary condition) attesting, on the basis of personal knowledge of the affiant or a reliable source of knowledge identified in the affidavit, that an earlier effort to deliver such statement or certificate and tender such fees was made in good faith, specifying the nature, date and time of such good faith effort and requesting that the Secretary of State establish such date and time as the date and time of filing of such statement or certificate; or

b. Upon the actual delivery of a statement or certificate and tender of the required fees, the Secretary of State in his or her discretion provides a written waiver of the requirement for such an affidavit stating that it appears to the Secretary of State that an earlier effort to deliver such statement or certificate and tender such fees was made in good faith and specifying the date and time of such effort; and

c. The Secretary of State determines that an extraordinary condition existed at such date and time, that such earlier effort was unsuccessful as a result of the existence of such extraordinary condition, and that such actual delivery and tender were made within a reasonable period (not to exceed 2 business days) after the cessation of such extraordinary condition, then the Secretary of State may establish such date and time as the date and time of filing of such statement or certificate. No fee shall be paid to the Secretary of State for receiving an affidavit of extraordinary condition. For purposes of this subsection, an extraordinary condition means: any emergency resulting from an attack on, invasion or occupation by foreign military forces of, or disaster, catastrophe, war or other armed conflict, revolution or insurrection or rioting or civil commotion in, the United States or a locality in which the Secretary of State conducts its business or in which the good faith effort to deliver the statement or certificate and tender the required fees is made, or the immediate threat of any of the foregoing; or any malfunction or outage of the electrical or telephone service to the Secretary of State's office, or weather or other condition in or about a locality in which the Secretary of State conducts its business, as a result of which the Secretary of State's office is not open for the purpose of the filing of statements and certificates under this chapter or such filing cannot be effected without extraordinary effort. The Secretary of State may require such proof as it deems necessary to make the determination required under this paragraph (c)(6)c. of this section, and any such determination shall be conclusive in the absence of actual fraud. If the Secretary of State establishes the date and time of filing of a statement or certificate pursuant to this subsection, the date and time of delivery of the affidavit of extraordinary condition or the date and time of the Secretary of State's written waiver of such affidavit shall be endorsed on such affidavit or waiver and such affidavit or waiver, so endorsed, shall be attached to the filed statement or certificate to which it relates. Such filed statement or certificate shall be effective as of the date and time established as the date and time of filing by the Secretary of State pursuant to this subsection, except as to those persons who are substantially and adversely affected by such establishment and, as to those persons, the statement or certificate shall be effective from the date and time endorsed on the affidavit of extraordinary condition or written waiver attached thereto.

(d) (1) A person authorized by this chapter to file a statement or certificate may amend or cancel the statement or certificate by filing an amendment or cancellation that names the partnership, identifies the statement or certificate, and states the substance of the amendment or cancellation. A person authorized by this chapter to file a statement or certificate who becomes aware that such statement or certificate was false when made, or that any matter described in the statement or certificate has changed, making the statement or certificate false in any material respect, shall promptly amend the statement or certificate. Upon the filing of a statement or a certificate amending or correcting a statement or a certificate (or judicial decree of amendment) with the Secretary of State, or upon the future effective date or time of a statement or a certificate amending or correcting a statement or a certificate (or judicial decree thereof), as provided for therein, the statement or the certificate being corrected or amended shall be corrected or amended as set forth therein. Upon the filing of a statement of cancellation of a statement of partnership existence (or judicial decree thereof), or a certificate of merger or consolidation or a certificate of ownership and merger which acts as a statement of cancellation of a statement of partnership existence, or a certificate of

transfer, or a certificate of conversion to a non-Delaware entity, or upon the future effective date or time of a statement of cancellation of a statement of partnership existence (or a judicial decree thereof) or of a certificate of merger or consolidation or a certificate of ownership and merger which acts as a statement of cancellation of a statement of partnership existence, or a certificate of transfer, or a certificate of conversion to a non-Delaware entity, as provided for therein, or as specified in § 15-111(d), § 15-111(i)(4) or § 15-1209(a) of this title, the statement of partnership existence is canceled. Neither the filing of a statement of cancellation to accomplish the cancellation of a statement of qualification nor the revocation of a statement of qualification pursuant to § 15-1003 of this title cancels a statement of partnership existence for such partnership. A statement of partnership existence shall be canceled upon the dissolution and the completion of winding up of the partnership, or as provided in § 15-111(d), § 15-111(i)(4) or § 15-1209(a) of this title, or upon the filing of a certificate of merger or consolidation or a certificate of ownership and merger if the domestic partnership is not the surviving or resulting entity in a merger or consolidation, or upon the filing of a certificate of transfer, or upon the filing of a certificate of conversion to a non-Delaware entity. A statement of cancellation shall be filed with the Secretary of State to accomplish the cancellation of a statement of partnership existence upon the dissolution and the completion of winding up of a domestic partnership and shall set forth:

a. The name of the partnership;

b. The date of filing of its statement of partnership existence; and

c. Any other information the person filing the statement of cancellation determines.

(2) The Secretary of State shall not issue a certificate of good standing with respect to a domestic partnership if its statement of partnership existence is canceled.

(3) Upon the filing of a statement of cancellation of a statement of qualification (or judicial decree thereof), or a certificate of merger or consolidation or a certificate of ownership and merger which acts as a statement of cancellation of a statement of qualification, or a certificate of transfer, or a certificate of conversion to a non-Delaware entity, or upon the future effective date or time of a statement of cancellation of a statement of qualification (or a judicial decree thereof) or of a certificate of merger or consolidation or a certificate of ownership and merger which acts as a statement of cancellation of a statement of qualification, or a certificate of transfer, or a certificate of conversion to a non-Delaware entity, as provided for therein, or as specified in § 15-111(d) or § 15-111(i)(4) of this title, the statement of qualification is canceled. Neither the filing of a statement of cancellation to accomplish the cancellation of a statement of partnership existence nor the cancellation of a statement of partnership existence pursuant to § 15-1209(a) of this title cancels a statement of qualification for such partnership. A statement of qualification shall be canceled upon the dissolution and the completion of winding up of the limited liability partnership, or as provided in § 15-111(d) or § 15-111(i)(4) of this title, or upon the filing of a certificate of merger or consolidation or a certificate of ownership and merger if the limited liability partnership is not the surviving or resulting entity in a merger or consolidation, or upon the filing of a certificate of transfer, or upon the filing of a certificate of conversion to a non-Delaware entity. A statement of cancellation shall be filed with the Secretary of State to accomplish the cancellation of a statement of qualification upon the dissolution and the completion of winding up of a limited liability partnership and shall set forth:

a. The name of the limited liability partnership;

b. The date of filing of its statement of qualification; and

c. Any other information the person filing the statement of cancellation determines.

(4) If a statement of cancellation of a statement of qualification is filed, either a statement of cancellation of the partnership's statement of partnership existence (if any) or an amendment to the partnership's statement of partnership existence (if any) removing the "Limited Liability Partnership", "L.L.P." or "LLP" designation from the name of the partnership shall be filed simultaneously with the filing of such statement of cancellation of the statement of qualification.

(5) Upon the filing of a certificate of partnership domestication, or upon the future effective date or time of a certificate of partnership domestication, the entity filing the certificate of partnership domestication is domesticated as a partnership with the effect provided in § 15-904 of this title. Upon the filing of a certificate of conversion to partnership, or upon the future effective date or time of a certificate of conversion to partnership, the entity filing the certificate of conversion to partnership is converted to a partnership with the effect provided in § 15-901 of this title. Upon the filing of a certificate of transfer and domestic continuance, or upon the future effective date or time of a certificate of transfer and domestic continuance, as provided for therein, the partnership filing the certificate of transfer and domestic continuance shall continue to exist as a partnership of the State of Delaware with the effect provided in § 15-905 of this title.

(e) A person who files a statement or certificate pursuant to this section shall promptly send a copy of the statement or certificate to every nonfiling partner and to any other person named as a partner in the statement or certificate. Failure to send a copy of a statement or certificate to a partner or other person does not limit the effectiveness of the statement or certificate as to a person not a partner.

(f) The filing of a statement of partnership existence under § 15-303 of this title, a statement of qualification under § 15-1001 of this title or a statement of foreign qualification under § 15-1102 of this title with the Secretary of State shall make it unnecessary to file any other document under Chapter 31 of this title.

(g) A statement or certificate filed with the Secretary of State shall be effective if there has been substantial compliance with the requirements of this chapter.

(h) Notwithstanding any other provision of this chapter, any statement or certificate filed under this chapter shall be effective at the time of its filing with the Secretary of State or at any later date or time (not later than a time on the one hundred and eightieth day after the date of its filing if such date of filing is on or after January 1, 2012) specified in the statement or certificate.

(i) If any certificate filed in accordance with this chapter provides for a future effective date or time and if, prior to such future effective date or time set forth in such certificate, the transaction is terminated or its terms are amended to change the future effective date or time or any other matter described in such certificate so as to make such certificate false or inaccurate in any respect, such certificate shall, prior to the future effective date or time set forth in such certificate, be terminated or amended by the filing of a certificate of termination or certificate of amendment of such certificate, executed in the same manner as the certificate being terminated or amended is required to be executed in accordance with this section, which shall identify the certificate which has been terminated or amended and shall state that the certificate has been terminated or the manner in which it has been amended. Upon the filing of a certificate of amendment of a certificate with a future effective date or time, the certificate identified in such certificate of amendment is amended. Upon the filing of a certificate of termination of a certificate with a future effective date or time, the certificate identified in such certificate of termination is terminated.

(j) A fee as set forth in § 15-1207 of this title shall be paid at the time of the filing of a statement or a certificate.

(k) A fee as set forth in § 15-1207 of this title shall be paid for a certified copy of any paper on file as provided for by this chapter, and a fee as set forth in § 15-1207 of this title shall be paid for each page copied.

(l) Notwithstanding any other provision of this chapter, it shall not be necessary for any partnership (including a limited liability partnership) or foreign partnership to amend its statement of partnership existence, its statement of qualification (as applicable), its statement of foreign qualification, or any other document that has been filed with the Secretary of State prior to August 1, 2011, to comply with § 15-111(k) of this title; notwithstanding the foregoing, any statement or other document filed under this chapter on or after August 1, 2011, and changing the address of a registered agent or registered office shall comply with § 15-111(k) of this title.

(72 Del. Laws, c. 151, § 1; 70 Del. Laws, c. 186, § 1; 72 Del. Laws, c. 390, §§ 5-7; 73 Del. Laws, c. 85, §§ 5, 6; 73 Del. Laws, c. 296, § 2; 74 Del. Laws, c. 103, §§ 2-8; 75 Del. Laws, c. 416, § 2; 76 Del. Laws, c. 106, § 4; 77 Del. Laws, c. 59, § 3; 77 Del. Laws, c. 289, § 3; 78 Del. Laws, c. 98, §§ 1-3; 78 Del. Laws, c. 271, § 2.)

§ 15-106 Governing law.

(a) Except as otherwise provided in subsection (b) of this section, the law of the jurisdiction governing a partnership agreement governs relations among the partners and between the partners and the partnership.

(b) The law of the State of Delaware governs relations among the partners and between the partners and the partnership and the liability of partners for an obligation of a limited liability partnership.

(c) If (i) a partnership agreement provides for the application of the laws of the State of Delaware, and (ii) the partnership files with the Secretary of State a statement of partnership existence or a statement of qualification, then the partnership agreement shall be governed by and construed under the laws of the State of Delaware.

(72 Del. Laws, c. 151, § 1; 72 Del. Laws, c. 390, § 8; 77 Del. Laws, c. 59, § 4.)

§ 15-107 Reserved power of State of Delaware to alter or repeal chapter.

All provisions of this chapter may be altered from time to time or repealed and all rights of partners are subject to this reservation. Unless expressly stated to the contrary in this chapter, all amendments of this chapter shall apply to partnerships and partners whether or not existing at the time of the enactment of any such amendment.

(72 Del. Laws, c. 151, § 1.)

§ 15-108 Name of partnership.

(a) The name of a partnership: (i) may contain the name of a partner and (ii) may contain the following words: “Company,” “Association,” “Club,” “Foundation,” “Fund,” “Institute,” “Society,” “Union,” “Syndicate,” “Trust” (or abbreviations of like import).

(b) The name of a limited liability partnership shall contain as the last words or letters of its name the words “Limited Liability Partnership,” the abbreviation “L.L.P.” or the designation “LLP.”

(c) The name of a partnership to be included in the statement of partnership existence, statement of qualification or statement of foreign qualification filed by such partnership must be such as to distinguish it upon the records in the office of the Secretary of State from the name on such records of any corporation, partnership (including a limited liability partnership), limited partnership (including a limited liability limited partnership), statutory trust, limited liability company, registered series of a limited liability company or registered series of a limited partnership organized under the laws of the State of Delaware and reserved, registered, formed or organized with the Secretary of State or qualified to do business and registered as a foreign corporation, foreign limited liability partnership, foreign limited partnership, foreign statutory trust or foreign limited liability company in the State of Delaware; provided, however, that a domestic partnership may be registered under any name which is not such as to distinguish it upon the records of the Secretary of State from the name on such records of any domestic or foreign corporation, limited partnership (including a limited liability limited partnership), statutory trust, limited liability company, registered series of a limited liability company, registered series of a limited partnership, or foreign limited liability partnership reserved, registered, formed or organized under the laws of the State of Delaware with the written consent of the other corporation, limited partnership (including a limited liability limited partnership), statutory trust, limited liability company, registered series of a limited liability company, registered series of a limited partnership, or foreign limited liability partnership which written consent shall be filed with the Secretary of State; provided further, that, if on July 31, 2011, a domestic partnership is registered (with the consent of another domestic partnership) under a name which is not such as to distinguish it upon the records in the office of the Secretary of State from

the name on such records of such other domestic partnership, it shall not be necessary for any such domestic partnership to amend its statement of partnership existence or statement of qualification to comply with this subsection.

(d) The name of a partnership shall not contain the word "bank," or any variation thereof, except for the name of a bank reporting to and under the supervision of the State Bank Commissioner of this State or a subsidiary of a bank or savings association (as those terms are defined in the Federal Deposit Insurance Act, as amended, at 12 U.S.C. § 1813), or a partnership regulated under the Bank Holding Company Act of 1956, as amended, 12 U.S.C. § 1841 et seq., or the Home Owners' Loan Act, as amended, 12 U.S.C. § 1461 et seq.; provided, however, that this section shall not be construed to prevent the use of the word "bank," or any variation thereof, in a context clearly not purporting to refer to a banking business or otherwise likely to mislead the public about the nature of the business of the partnership or to lead to a pattern and practice of abuse that might cause harm to the interests of the public or this State as determined by the Division of Corporations in the Department of State.

(72 Del. Laws, c. 151, § 1; 73 Del. Laws, c. 296, § 3; 73 Del. Laws, c. 329, § 11; 78 Del. Laws, c. 98, § 4; 78 Del. Laws, c. 271, § 3; 81 Del. Laws, c. 87, § 1; 82 Del. Laws, c. 47, § 2; 82 Del. Laws, c. 257, § 1.)

§ 15-109 Reservation of name.

(a) The exclusive right to use of a specified name in a statement using the specified name may be reserved by: (1) any person intending to organize a partnership under this chapter and to adopt that name; (2) any partnership or any foreign limited liability partnership registered in the State of Delaware which, in either case, proposes to change its name; (3) any foreign limited liability partnership intending to register in the State of Delaware and adopt that name; and (4) any person intending to organize a foreign limited liability partnership and intending to have it register in the State of Delaware and adopt that name.

(b) The reservation of a specified name shall be made by filing with the Secretary of State an application, executed by the applicant, specifying the name to be reserved and the name and address of the applicant. If the Secretary of State finds that the name is available for use, the Secretary shall reserve the name for exclusive use of the applicant in a statement using the specified name for a period of 120 days. Once having so reserved a name, the same applicant may again reserve the same name for successive 120-day periods. The right to the exclusive use of a reserved name in a statement using the specified name may be transferred to any other person by filing with the Secretary of State a notice of the transfer, executed by the applicant for whom the name was reserved, specifying the name to be transferred and the name and address of the transferee. The reservation of a specified name may be canceled by filing with the Secretary of State a notice of cancellation, executed by the applicant or transferee, specifying the name reservation to be canceled and the name and address of the applicant or transferee. Unless the Secretary of State finds that any application, notice of transfer or notice of cancellation filed with the Secretary of State as required by this subsection does not conform to law, upon receipt of all filing fees required by law, the Secretary shall prepare and return to the person who filed such instrument a copy of the filed instrument with a notation thereon of the action taken by the Secretary of State.

(c) A fee as set forth in § 15-1207 of this title shall be paid at the time of the initial reservation of any name, at the time of the renewal of any such reservation and at the time of the filing of a notice of the transfer or cancellation of any such reservation.

(72 Del. Laws, c. 151, § 1; 72 Del. Laws, c. 390, § 9.)

§ 15-110 Indemnification.

Subject to such standards and restrictions, if any, as are set forth in its partnership agreement, a partnership may, and shall have the power to, indemnify and hold harmless any partner or other person from and against any and all claims and demands whatsoever.

(72 Del. Laws, c. 151, § 1.)

§ 15-111 Registered office; registered agent.

(a) Each partnership that files a statement of partnership existence, a statement of qualification or a statement of foreign qualification shall have and maintain in the State of Delaware:

(1) A registered office, which may but need not be a place of its business in the State of Delaware; and

(2) A registered agent for service of process on the partnership, having a business office identical with such registered office, which agent may be any of

a. The partnership itself,

b. An individual resident in the State of Delaware,

c. A domestic limited liability company, a domestic corporation, a domestic partnership (other than the partnership itself) (whether general (including a limited liability partnership) or limited (including a limited liability limited partnership)), or a domestic statutory trust, or

d. A foreign corporation, a foreign limited liability partnership, a foreign limited partnership (including a foreign limited liability limited partnership), a foreign limited liability company, or a foreign statutory trust.

(b) A registered agent may change the address of the registered office of the partnership(s) for which it is registered agent to another address in the State of Delaware by paying a fee as set forth in § 15-1207 of this title and filing with the Secretary of State a certificate, executed by such registered agent, setting forth the address at which such registered agent has maintained the registered office for each of the partnerships for which it is a registered agent, and further certifying to the new address to which each such registered office will

be changed on a given day, and at which new address such registered agent will thereafter maintain the registered office for each of the partnerships for which it is a registered agent. Upon the filing of such certificate, until further change of address as authorized by law, the registered office in the State of Delaware of each of the partnerships for which the agent is a registered agent shall be located at the new address of the registered agent thereof as given in the certificate. In the event of a change of name of any person acting as a registered agent of a partnership, such registered agent shall file with the Secretary of State a certificate, executed by such registered agent, setting forth the new name of such registered agent, the name of such registered agent before it was changed and the address at which such registered agent has maintained the registered office for each of the partnerships for which it is a registered agent, and shall pay a fee as set forth in § 15-1207 of this title. A change of name of any person acting as a registered agent of a partnership as a result of (i) a merger or consolidation of the registered agent, with or into another person which succeeds to its assets and liabilities by operation of law, (ii) the conversion of the registered agent into another person, or (iii) a division of the registered agent in which an identified resulting person succeeds to all of the assets and liabilities of the registered agent related to its registered agent business pursuant to the plan of division, as set forth in the certificate of division, shall each be deemed a change of name for purposes of this section. Filing a certificate under this section shall be deemed to be an amendment of the statement of partnership existence, statement of qualification or statement of foreign qualification of each partnership affected thereby and each such partnership shall not be required to take any further action, with respect thereto, to amend its statement of partnership existence, statement of qualification or statement of foreign qualification under § 15-105(d) of this title. Any registered agent filing a certificate under this section shall promptly, upon such filing, deliver a copy of any such certificate to each partnership affected thereby.

(c) The registered agent of 1 or more partnerships may resign and appoint a successor registered agent by paying a fee as set forth in § 15-1207 of this title and filing a certificate with the Secretary of State, stating the name and address of the successor registered agent. There shall be attached to such certificate a statement of each affected partnership ratifying and approving such change of registered agent. Upon such filing, the successor registered agent shall become the registered agent of such partnerships as have ratified and approved such substitution and the successor registered agent's address, as stated in such certificate, shall become the address of each such partnership's registered office in the State of Delaware. Filing of such certificate of resignation shall be deemed to be an amendment of the statement of partnership existence, statement of qualification or statement of foreign qualification of each partnership affected thereby and each such partnership shall not be required to take any further action with respect thereto to amend its statement of partnership existence, statement of qualification or statement of foreign qualification under § 15-105(d) of this title.

(d) The registered agent of a partnership, including a partnership whose statement of partnership existence has been cancelled pursuant to § 15-1209 of this title or whose statement of qualification has been revoked pursuant to § 15-1003 of this title, may resign without appointing a successor registered agent by paying a fee as set forth in § 15-1207 of this title and filing a certificate of resignation with the Secretary of State, but such resignation shall not become effective until 30 days after the certificate is filed. The certificate shall include such information last provided to the registered agent pursuant to subsection (g) of this section for a communications contact for the partnership. Such information regarding the communications contact shall not be deemed public. A certificate filed pursuant to this subsection must be on the form prescribed by the Secretary of State. The certificate shall contain a statement that written notice of resignation was given to the partnership at least 30 days prior to the filing of the certificate by mailing or delivering such notice to the partnership at its address last known to the registered agent and shall set forth the date of such notice. After receipt of the notice of the resignation of its registered agent, the partnership for which such registered agent was acting shall obtain and designate a new registered agent to take the place of the registered agent so resigning. If such partnership fails to obtain and designate a new registered agent as aforesaid prior to the expiration of the period of 30 days after the filing by the registered agent of the certificate of resignation, the statement of partnership existence and statement of qualification (in each case as applicable) or statement of foreign qualification of such partnership shall be canceled. After the resignation of the registered agent shall have become effective as provided in this section and if no new registered agent shall have been obtained and designated in the time and manner aforesaid, service of legal process against the partnership for which the resigned registered agent had been acting shall thereafter be upon the Secretary of State in accordance with § 15-113 of this title.

(e) Every registered agent shall:

(1) If an entity, maintain a business office in the State of Delaware which is generally open, or if an individual, be generally present at a designated location in the State of Delaware, at sufficiently frequent times to accept service of process and otherwise perform the functions of a registered agent;

(2) If a foreign entity, be authorized to transact business in the State of Delaware;

(3) Accept service of process and other communications directed to the partnerships for which it serves as registered agent and forward same to the partnership to which the service or communication is directed;

(4) Forward to the partnerships for which it serves as registered agent the statement for the annual tax described in § 15-1208 of this title or an electronic notification of same in a form satisfactory to the Secretary of State; and

(5) Satisfy and adhere to regulations established by the Secretary regarding the verification of both the identity of the entity's contacts and individuals for which the registered agent maintains a record for the reduction of risk of unlawful business purposes.

(f) Any registered agent who at any time serves as registered agent for more than 50 entities (a "commercial registered agent"), whether domestic or foreign, shall satisfy and comply with the following qualifications.

(1) A natural person serving as a commercial registered agent shall:

a. Maintain a principal residence or a principal place of business in the State of Delaware;

b. Maintain a Delaware business license;

c. Be generally present at a designated location within the State of Delaware during normal business hours to accept service of process and otherwise perform the functions of a registered agent as specified in subsection (e) of this section;

d. Provide the Secretary of State upon request with such information identifying and enabling communication with such commercial registered agent as the Secretary of State shall require; and

e. Satisfy and adhere to regulations established by the Secretary regarding the verification of both the identity of the entity's contacts and individuals for which the natural person maintains a record for the reduction of risk of unlawful business purposes.

(2) A domestic or foreign corporation, a domestic partnership (whether general (including a limited liability partnership) or limited (including a limited liability limited partnership)), a foreign limited liability partnership, a domestic or foreign limited liability company, or a domestic or foreign statutory trust serving as a commercial registered agent shall:

a. Have a business office within the State of Delaware which is generally open during normal business hours to accept service of process and otherwise perform the functions of a registered agent as specified in subsection (e) of this section;

b. Maintain a Delaware business license;

c. Have generally present at such office during normal business hours an officer, director or managing agent who is a natural person;

d. Provide the Secretary of State upon request with such information identifying and enabling communication with such commercial registered agent as the Secretary of State shall require; and

e. Satisfy and adhere to regulations established by the Secretary regarding the verification of both the identity of the entity's contacts and individuals for which it maintains a record for the reduction of risk of unlawful business purposes.

(3) For purposes of this subsection and paragraph (i)(2)a. of this section, a "commercial registered agent" shall also include any registered agent which has an officer, director or managing agent in common with any other registered agent or agents if such registered agents at any time during such common service as officer, director or managing agent collectively served as registered agents for more than 50 entities, whether domestic or foreign.

(g) Every partnership formed under the laws of the State of Delaware or qualified to do business in the State of Delaware that has and maintains a registered agent pursuant to this section shall provide to its registered agent and update from time to time as necessary the name, business address and business telephone number of a natural person who is a partner, officer, employee or designated agent of the partnership, who is then authorized to receive communications from the registered agent. Such person shall be deemed the communications contact for the partnership. Every registered agent shall retain (in paper or electronic form) the above information concerning the current communications contact for each partnership for which he, she, or it serves as registered agent. If the partnership fails to provide the registered agent with a current communications contact, the registered agent may resign as the registered agent for such partnership pursuant to this section.

(h) The Secretary of State is fully authorized to issue such regulations, as may be necessary or appropriate to carry out the enforcement of subsections (e), (f) and (g) of this section, and to take actions reasonable and necessary to assure registered agents' compliance with subsections (e), (f) and (g) of this section. Such actions may include refusal to file documents submitted by a registered agent, including the refusal to file any documents regarding an entity's formation.

(i) Upon application of the Secretary of State, the Court of Chancery may enjoin any person or entity from serving as a registered agent or as an officer, director or managing agent of a registered agent.

(1) Upon the filing of a complaint by the Secretary of State pursuant to this section, the court may make such orders respecting such proceeding as it deems appropriate, and may enter such orders granting interim or final relief as it deems proper under the circumstances.

(2) Any 1 or more of the following grounds shall be a sufficient basis to grant an injunction pursuant to this section:

a. With respect to any registered agent who at any time within 1 year immediately prior to the filing of the Secretary of State's complaint is a commercial registered agent, failure after notice and warning to comply with the qualifications set forth in subsection (e) of this section and/or the requirements of subsection (f) or (g) of this section above;

b. The person serving as a registered agent, or any person who is an officer, director or managing agent of an entity registered agent, has been convicted of a felony or any crime which includes an element of dishonesty or fraud or involves moral turpitude; or

c. The registered agent has engaged in conduct in connection with acting as a registered agent that is intended to or likely to deceive or defraud the public.

(3) With respect to any order the court enters pursuant to this section with respect to an entity that has acted as a registered agent, the court may also direct such order to any person who has served as an officer, director or managing agent of such registered agent. Any person who, on or after January 1, 2007, serves as an officer, director or managing agent of an entity acting as a registered agent in the State of Delaware shall be deemed thereby to have consented to the appointment of such registered agent as agent upon whom service of process may be made in any action brought pursuant to this section, and service as an officer, director or managing agent of an entity acting as a registered agent in the State of Delaware shall be a signification of the consent of such person that any process

when so served shall be of the same legal force and validity as if served upon such person within the State of Delaware, and such appointment of the registered agent shall be irrevocable.

(4) Upon the entry of an order by the court enjoining any person or entity from acting as a registered agent, the Secretary of State shall mail or deliver notice of such order to each affected partnership:

a. That has specified the address of a place of business in a record of the Secretary of State, to the address specified, or

b. To an address which the Secretary of State has obtained from the partnership's former registered agent, to the address obtained.

If such a partnership is a domestic partnership and fails to obtain and designate a new registered agent within 30 days after such notice is given, the statement of partnership existence and statement of qualification of such partnership (in each case as applicable) shall be canceled. If such a partnership is a foreign limited liability partnership and fails to obtain and designate a new registered agent within 30 days after such notice is given, such foreign limited liability partnership shall not be permitted to do business in the State of Delaware and its statement of foreign qualification shall be canceled. If any other affected partnership is a domestic partnership and fails to obtain and designate a new registered agent within 60 days after entry of an order by the court enjoining such partnership's registered agent from acting as a registered agent, the statement of partnership existence and statement of qualification of such partnership (in each case as applicable) shall be canceled. If any other affected partnership is a foreign limited liability partnership and fails to obtain and designate a new registered agent within 60 days after entry of an order by court enjoining such partnership's registered agent from acting as a registered agent, such foreign limited liability partnership shall not be permitted to do business in the State of Delaware and its statement of foreign qualification shall be canceled. If the court enjoins a person or entity from acting as a registered agent as provided in this section and no new registered agent shall have been obtained and designated in the time and manner aforesaid, service of legal process against the partnership for which the registered agent had been acting shall thereafter be upon the Secretary of State in accordance with § 15-113 of this title. The Court of Chancery may, upon application of the Secretary of State on notice to the former registered agent, enter such orders as it deems appropriate to give the Secretary of State access to information in the former registered agent's possession in order to facilitate communication with the partnerships the former registered agent served.

(j) The Secretary of State is authorized to make a list of registered agents available to the public, and to establish such qualifications and issue such rules and regulations with respect to such listing as the Secretary of State deems necessary or appropriate.

(k) As contained in any statement of partnership existence, statement of qualification, statement of foreign qualification, or other document filed with the Secretary of State under this chapter, the address of a registered agent or registered office shall include the street, number, city and postal code.

(72 Del. Laws, c. 151, § 1; 70 Del. Laws, c. 186, § 1; 73 Del. Laws, c. 85, § 7; 73 Del. Laws, c. 329, § 12; 75 Del. Laws, c. 416, §§ 3-5; 76 Del. Laws, c. 106, §§ 5-7; 78 Del. Laws, c. 98, § 5; 81 Del. Laws, c. 334, § 2; 82 Del. Laws, c. 47, § 3; 82 Del. Laws, c. 257, § 2.)

§ 15-112 Service of process on partnership filing a statement.

(a) Service of legal process upon any partnership which has filed a statement of partnership existence, a statement of qualification or a statement of foreign qualification shall be made by delivering a copy personally to any partner of the partnership in the State of Delaware or any partner who signed a statement of partnership existence, a statement of qualification or a statement of foreign qualification or the registered agent of the partnership in the State of Delaware or by leaving it at the dwelling house or usual place of abode in the State of Delaware of any such partner or registered agent (if the registered agent be an individual), or at the registered office or any place of business of the partnership in the State of Delaware. Service by copy left at the dwelling house or usual place of abode of a partner, registered agent, or at the registered office or any place of business of the partnership in the State of Delaware, to be effective, must be delivered thereat at least 6 days before the return date of the process, and in the presence of an adult person, and the officer serving the process shall distinctly state the manner of service in the return thereto. Process returnable forthwith must be delivered personally to the partner or registered agent.

(b) In case the officer whose duty it is to serve legal process cannot by due diligence serve the process in any manner provided for by subsection (a) of this section, it shall be lawful to serve the process against the partnership upon the Secretary of State, and such service shall be as effectual for all intents and purposes as if made in any of the ways provided for in subsection (a) of this section. Process may be served upon the Secretary of State under this subsection by means of electronic transmission but only as prescribed by the Secretary of State. The Secretary of State is authorized to issue such rules and regulations with respect to such service as the Secretary of State deems necessary or appropriate. In the event that service is effected through the Secretary of State in accordance with this subsection, the Secretary of State shall forthwith notify the partnership by letter, directed to the partnership at the address of any partner as it appears on the records relating to such partnership on file with the Secretary of State or, if no such address appears, at the last registered office. Such letter shall be sent by a mail or courier service that includes a record of mailing or deposit with the courier and a record of delivery evidenced by the signature of the recipient. Such letter shall enclose a copy of the process and any other papers served on the Secretary of State pursuant to this subsection. It shall be the duty of the plaintiff in the event of such service to serve process and any other papers in duplicate, to notify the Secretary of State that service is being effected pursuant to this subsection, and to pay the Secretary of State the sum of $50 for the use of the State of Delaware, which sum shall be taxed as part of the costs in the proceeding if the plaintiff shall prevail therein. The Secretary of State shall maintain an alphabetical record of any such service setting forth the name of the plaintiff and defendant, the title, docket number and nature of the proceeding in which process has been served upon him or her, the fact that service

has been effected pursuant to this subsection, the return date thereof, and the day and hour when the service was made. The Secretary of State shall not be required to retain such information for a period longer than 5 years from receipt of the service of process.

(72 Del. Laws, c. 151, § 1; 70 Del. Laws, c. 186, § 1; 77 Del. Laws, c. 289, § 4.)

§ 15-113 Service of process on a partnership not filing a statement.

(a) Service of legal process upon any partnership which has not filed a statement of partnership existence, a statement of qualification or a statement of foreign qualification and which is formed under the laws of the State of Delaware or doing business in the State of Delaware shall be made by delivering a copy personally to any partner doing business in the State of Delaware or by leaving it at the dwelling house or usual place of abode in the State of Delaware of a partner or at a place of business of the partnership in the State of Delaware. Service by copy left at the dwelling house or usual place of abode of a partner or at a place of business of the partnership in the State of Delaware, to be effective, must be delivered thereat at least 6 days before the return date of the process, and in the presence of an adult person, and the officer serving the process shall distinctly state the manner of service in the return thereto. Process returnable forthwith must be delivered personally to the partner.

(b) In case the officer whose duty it is to serve legal process cannot by due diligence serve the process in any manner provided for by subsection (a) of this section, it shall be lawful to serve the process against the partnership upon the Secretary of State, and such service shall be as effectual for all intents and purposes as if made in any of the ways provided for in subsection (a) of this section. Process may be served upon the Secretary of State under this subsection by means of electronic transmission but only as prescribed by the Secretary of State. The Secretary of State is authorized to issue such rules and regulations with respect to such service as the Secretary of State deems necessary or appropriate. In the event that service is effected through the Secretary of State in accordance with this subsection, the Secretary of State shall forthwith notify the partnership by letter, directed to the partnership at the address of any partner or the partnership as it is furnished to the Secretary of State by the person desiring to make service. Such letter shall be sent by a mail or courier service that includes a record of mailing or deposit with the courier and a record of delivery evidenced by the signature of the recipient. Such letter shall enclose a copy of the process and any other papers served on the Secretary of State pursuant to this subsection. It shall be the duty of the plaintiff in the event of such service to serve process and any other papers in duplicate, to notify the Secretary of State that service is being effected pursuant to this subsection, and to pay the Secretary of State the sum of $50 for the use of the State of Delaware, which sum shall be taxed as part of the costs on the proceeding if the plaintiff shall prevail therein. The Secretary of State shall maintain an alphabetical record of any such service setting forth the name of the plaintiff and defendant, the title, docket number and nature of the proceeding in which process has been served upon the Secretary of State, the fact that service has been effected pursuant to this subsection, the return date thereof, and the day and hour when the service was made. The Secretary of State shall not be required to retain such information for a period longer than 5 years from the Secretary of State's receipt of the service of process.

(72 Del. Laws, c. 151, § 1; 70 Del. Laws, c. 186, § 1; 77 Del. Laws, c. 289, § 5.)

§ 15-114 Service of process on a partner and liquidating trustee.

(a) A partner or a liquidating trustee of a partnership which is formed under the laws of the State of Delaware or doing business in the State of Delaware may be served with process in the manner prescribed in this section in all civil actions or proceedings brought in the State of Delaware involving or relating to the business of the partnership or a violation by the partner or the liquidating trustee of a duty to the partnership or any partner of the partnership, whether or not the partner or the liquidating trustee is a partner or a liquidating trustee at the time suit is commenced. A person who is at the time of the effectiveness of this section or who becomes a partner or a liquidating trustee of a partnership thereby consents to the appointment of the registered agent of the partnership (or, if there is none, the Secretary of State) as such person's agent upon whom service of process may be made as provided in this section. Any process when so served shall be of the same legal force and validity as if served upon such partner or liquidating trustee within the State of Delaware and such appointment of the registered agent (or, if there is none, the Secretary of State) shall be irrevocable.

(b) Service of process shall be effected by serving the registered agent (or, if there is none, the Secretary of State) with 1 copy of such process in the manner provided by law for service of writs of summons. In the event service is made under this subsection upon the Secretary of State, the plaintiff shall pay to the Secretary of State the sum of $50 for the use of the State of Delaware, which sum shall be taxed as part of the costs of the proceeding if the plaintiff shall prevail therein. In addition, the Prothonotary or the Register in Chancery of the court in which the civil action or proceeding is pending shall, within 7 days of such service, deposit in the United States mails, by registered mail, postage prepaid, true and attested copies of the process, together with a statement that service is being made pursuant to this section, addressed to such partner or liquidating trustee at the partner's or liquidating trustee's address furnished to the Prothonotary or Register in Chancery by the person desiring to make service, which address shall be the partner's or the liquidating trustee's address as the same appears in any statement of the partnership or, if no such address appears, the partner's or the liquidating trustee's last known address.

(c) In any action in which any such partner or liquidating trustee has been served with process as hereinabove provided, the time in which a defendant shall be required to appear and file a responsive pleading shall be computed from the date of mailing by the Prothonotary or the Register in Chancery as provided in subsection (b) of the section; however, the court in which such action has been commenced may order such continuance or continuances as may be necessary to afford such partner or liquidating trustee reasonable opportunity to defend the action.

(d) In a written partnership agreement or other writing, a partner may consent to be subject to the nonexclusive jurisdiction of the courts of, or arbitration in, a specified jurisdiction, or the exclusive jurisdiction of the courts of the State of Delaware, or the exclusivity of arbitration in a specified jurisdiction or the State of Delaware, and to be served with legal process in the manner prescribed in such partnership agreement or other writing.

(e) Nothing herein contained limits or affects the right to serve process in any other manner now or hereafter provided by law. This section is an extension of and not a limitation upon the right otherwise existing of service of legal process upon nonresidents.

(f) The Court of Chancery and the Superior Court may make all necessary rules respecting the form of process, the manner of issuance and return thereof and such other rules which may be necessary to implement this section and are not inconsistent with this section.

(72 Del. Laws, c. 151, § 1; 72 Del. Laws, c. 390, § 10.)

§ 15-115 Doing business.

A limited partnership, a partnership, a limited liability company, a business or other trust or association, or a corporation formed or organized under the laws of any foreign country or other foreign jurisdiction or the laws of any state shall not be deemed to be doing business in the State of Delaware solely by reason of its being a partner in a domestic partnership.

(72 Del. Laws, c. 151, § 1.)

§ 15-116 Restated statement of partnership existence.

(a) A statement of partnership existence may be restated by integrating into a single instrument all of the provisions of the statement of partnership existence which are then in effect and operative as a result of there having been theretofore filed 1 or more amendments pursuant to § 15-105(d) of this title or other instruments having the effect of amending a statement of partnership existence and the statement of partnership existence may be amended or further amended by the filing of a restated statement of partnership existence. The restated statement of partnership existence shall be specifically designated as such in its heading and shall set forth:

(1) The present name of the partnership, and if it has been changed, the name under which the partnership was originally formed;

(2) The date of filing of the original statement of partnership existence with the Secretary of State;

(3) The information required to be included pursuant to § 15-303(a) of this title; and

(4) Any other information desired to be included therein.

(b) Upon the filing of the restated statement of partnership existence with the Secretary of State, or upon the future effective date or time of a restated statement of partnership existence as provided for therein, the initial statement of partnership existence, as theretofore amended, shall be superseded; thenceforth, the restated statement of partnership existence, including any further amendment made thereby, shall be the statement of partnership existence of the partnership, but the original date of formation of the partnership shall remain unchanged.

(c) Any amendment effected in connection with the restatement of the statement of partnership existence shall be subject to any other provision of this chapter, not inconsistent with this section, which would apply if a separate amendment were filed to effect such amendment.

(72 Del. Laws, c. 151, § 1.)

§ 15-117 Execution, amendment or cancelation by judicial order.

(a) If a person required by this chapter to execute any statement or certificate fails or refuses to do so, any other person who is adversely affected by the failure or refusal, may petition the Court of Chancery to direct the execution of the statement or certificate. If the Court finds that the execution of the statement or certificate is proper and that any person so designated has failed or refused to execute the statement or certificate, the Court shall order the Secretary of State to file an appropriate statement or certificate.

(b) If a person required to execute a partnership agreement or amendment thereof fails or refuses to do so, any other person who is adversely affected by the failure or refusal may petition the Court of Chancery to direct the execution of the partnership agreement or amendment thereof. If the Court finds that the partnership agreement or amendment thereof should be executed and that any person so designated has failed or refused to do so, the Court shall enter an order granting appropriate relief.

(72 Del. Laws, c. 151, § 1.)

§ 15-118 Statement or certificate of correction; corrected statement or certificate.

(a) Whenever any statement or certificate authorized to be filed with the Secretary of State under any provision of this chapter has been so filed and is an inaccurate record of the action therein referred to, or was defectively or erroneously executed, such statement or certificate may be corrected by filing with the Secretary of State a statement or certificate of correction of such statement or certificate. The statement or certificate of correction shall specify the inaccuracy or defect to be corrected, shall set forth the portion of the statement or certificate in corrected form and shall be executed and filed as required by this chapter. The statement or certificate of correction shall be effective as of the date the original statement or certificate was filed, except as to those persons who are substantially and adversely affected by the correction, and as to those persons the statement or certificate of correction shall be effective from the filing date.

(b) In lieu of filing a statement or certificate of correction, a statement or certificate may be corrected by filing with the Secretary of State a corrected statement or certificate which shall be executed and filed as if the corrected statement or certificate were the statement or

certificate being corrected, and a fee equal to the fee payable to the Secretary of State if the statement or certificate being corrected were then being filed shall be paid to and collected by the Secretary of State for the use of the State of Delaware in connection with the filing of the corrected statement or certificate. The corrected statement or certificate shall be specifically designated as such in its heading, shall specify the inaccuracy or defect to be corrected, and shall set forth the entire statement or certificate in corrected form. A statement or certificate corrected in accordance with this section shall be effective as of the date the original statement or certificate was filed, except as to those persons who are substantially and adversely affected by the correction and as to those persons the statement or certificate as corrected shall be effective from the filing date.

(72 Del. Laws, c. 151, § 1.)

§ 15-119 Business transactions of partner with the partnership.

Except as provided in the partnership agreement, a partner may lend money to, borrow money from, act as a surety, guarantor or endorser for, guarantee or assume 1 or more specific obligations of, provide collateral for and transact other business with, the partnership and, subject to other applicable law, has the same rights and obligations with respect thereto as a person who is not a partner.

(72 Del. Laws, c. 151, § 1.)

§ 15-120 No statutory appraisal rights.

Unless otherwise provided in a partnership agreement or an agreement of merger or consolidation or a plan of merger, no appraisal rights shall be available with respect to a partnership interest or another interest in a partnership, including in connection with any amendment of a partnership agreement, any merger or consolidation in which the partnership is a constituent party to the merger or consolidation, any conversion of the partnership to another business form, any transfer to or domestication or continuance in any jurisdiction by the partnership, or the sale of all or substantially all of the partnership's assets. The Court of Chancery shall have jurisdiction to hear and determine any matter relating to any appraisal rights provided in a partnership agreement or an agreement of merger or consolidation or a plan of merger.

(72 Del. Laws, c. 151, § 1; 73 Del. Laws, c. 296, § 4; 76 Del. Laws, c. 106, § 8; 77 Del. Laws, c. 289, § 6; 82 Del. Laws, c. 257, § 3.)

§ 15-121 Contested matters relating to partners; contested votes.

(a) Upon application of any partner of a partnership which is formed under the laws of the State of Delaware or doing business in the State of Delaware, the Court of Chancery may hear and determine the validity of any admission, election, appointment or dissociation of a partner of the partnership, and the right of any person to become or continue to be a partner of the partnership, and to that end make such order or decree in any such case as may be just and proper, with power to enforce the production of any books, papers and records relating to the issue. In any such application, the partnership shall be named as a party, and service of copies of the application upon the partnership shall be deemed to be service upon the partnership and upon the person or persons whose right to be a partner is contested and upon the person or persons, if any, claiming to be a partner or claiming the right to be a partner; and the person upon whom service is made shall forward immediately a copy of the application to the partnership and to the person or persons whose right to be a partner is contested and to the person or persons, if any, claiming to be a partner or the right to be a partner, in a postpaid, sealed, registered letter addressed to such partnership and such person or persons at their post-office addresses last known to the person upon whom service is made or furnished to the person upon whom service is made by the applicant partner. The Court may make such order respecting further or other notice of such application as it deems proper under the circumstances.

(b) Upon application of any partner of a partnership which is formed under the laws of the State of Delaware or doing business in the State of Delaware, the Court of Chancery may hear and determine the result of any vote of partners upon matters as to which the partners of the partnership, or any class or group of partners, have the right to vote pursuant to the partnership agreement or other agreement or this chapter (other than the admission, election, appointment or dissociation of partners). In any such application, the partnership shall be named as a party, and service of the application upon the person upon whom service is made shall be deemed to be service upon the partnership, and no other party need be joined in order for the Court to adjudicate the result of the vote. The Court may make such order respecting further or other notice of such application as it deems proper under the circumstances.

(c) Nothing herein contained limits or affects the right to serve process in any other manner now or hereafter provided by law. This section is an extension of and not a limitation upon the right otherwise existing of service of legal process upon nonresidents.

(72 Del. Laws, c. 151, § 1.)

§ 15-122 Interpretation and enforcement of partnership agreement.

Any action to interpret, apply or enforce the provisions of a partnership agreement of a partnership which is formed under the laws of the State of Delaware or doing business in the State of Delaware, or the duties, obligations or liabilities of such partnership to the partners of the partnership, or the duties, obligations or liabilities among partners or of partners to such partnership, or the rights or powers of, or restrictions on, such partnership or partners, or any provision of this chapter, or any other instrument, document, agreement or certificate contemplated by any provision of this chapter, including actions authorized by § 15-405 of this title, may be brought in the Court of Chancery.

(72 Del. Laws, c. 151, § 1; 77 Del. Laws, c. 59, § 5.)

§ 15-123 Irrevocable power of attorney or proxy.

For all purposes of the laws of the State of Delaware, a power of attorney or proxy with respect to a partnership granted to any person shall be irrevocable if it states that it is irrevocable and it is coupled with an interest sufficient in law to support an irrevocable power or proxy. Such irrevocable power of attorney or proxy, unless otherwise provided therein, shall not be affected by subsequent death, disability, incapacity, dissolution, termination of existence or bankruptcy of, or any other event concerning, the principal. A power of attorney or proxy with respect to matters relating to the organization, internal affairs or termination of a partnership or granted by a person as a partner or a transferee of an economic interest or by a person seeking to become a partner or a transferee of an economic interest and, in either case, granted to the partnership, a partner thereof, or any of their respective officers, directors, managers, members, partners, trustees, employees or agents shall be deemed coupled with an interest sufficient in law to support an irrevocable power or proxy. The provisions of this section shall not be construed to limit the enforceability of a power of attorney or proxy that is part of a partnership agreement.

(77 Del. Laws, c. 289, § 7; 80 Del. Laws, c. 43, § 1.)

§ 15-124 Document form, signature and delivery.

(a) Except as provided in subsection (b) of this section, without limiting the manner in which any act or transaction may be documented, or the manner in which a document may be signed or delivered:

(1) Any act or transaction contemplated or governed by this chapter or the partnership agreement may be provided for in a document, and an electronic transmission is the equivalent of a written document.

(2) Whenever this chapter or the partnership agreement requires or permits a signature, the signature may be a manual, facsimile, conformed or electronic signature. “Electronic signature” means an electronic symbol or process that is attached to, or logically associated with, a document and executed or adopted by a person with an intent to execute, authenticate or adopt the document. A person may execute a document with such person’s signature.

(3) Unless otherwise provided in the partnership agreement or agreed between the sender and recipient, an electronic transmission is delivered to a person for purposes of this chapter and the partnership agreement when it enters an information processing system that the person has designated for the purpose of receiving electronic transmissions of the type delivered, so long as the electronic transmission is in a form capable of being processed by that system and such person is able to retrieve the electronic transmission. Whether a person has so designated an information processing system is determined by the partnership agreement or from the context and surrounding circumstances, including the parties’ conduct. An electronic transmission is delivered under this section even if no person is aware of its receipt. Receipt of an electronic acknowledgement from an information processing system establishes that an electronic transmission was received but, by itself, does not establish that the content sent corresponds to the content received.

This chapter shall not prohibit one or more persons from conducting a transaction in accordance with chapter 12A of this title so long as the part or parts of the transaction that are governed by this chapter are documented, signed and delivered in accordance with this subsection or otherwise in accordance with this chapter. This subsection shall apply solely for purposes of determining whether an act or transaction has been documented, and the document has been signed and delivered, in accordance with this chapter and the partnership agreement.

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

(1) A document filed with or submitted to the Secretary of State, the Register in Chancery, or a court or other judicial or governmental body of this State;

(2) A certificate of partnership interest; and

(3) An act or transaction effected pursuant to § 15-111, § 15-112, § 15-113 or § 15-114 or subchapter XI of this chapter.

The foregoing shall not create any presumption about the lawful means to document a matter addressed by this subsection, or the lawful means to sign or deliver a document addressed by this subsection. A provision of the partnership agreement shall not limit the application of subsection (a) of this section unless the provision expressly restricts one or more of the means of documenting an act or transaction, or of signing or delivering a document, permitted by subsection (a) of this section.

(c) In the event that any provision of this chapter is deemed to modify, limit or supersede the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. § 7001 et. seq., the provisions of this chapter shall control to the fullest extent permitted by § 7002(a)(2) of such act [15 U.S.C. § 7002(a)(2)].

(82 Del. Laws, c. 47, § 4; 82 Del. Laws, c. 257, § 4.)

Subchapter II

Nature of Partnership

§ 15-201 Partnership as entity.

(a) A partnership is a separate legal entity which is an entity distinct from its partners unless otherwise provided in a statement of partnership existence or a statement of qualification and in a partnership agreement.

(b) A limited liability partnership continues to be the same partnership that existed before the filing of a statement of qualification under § 15-1001 of this title.

(72 Del. Laws, c. 151, § 1; 72 Del. Laws, c. 390, § 11; 76 Del. Laws, c. 106, § 9; 77 Del. Laws, c. 59, § 6.)

§ 15-202 Formation of partnership; powers.

(a) Except as otherwise provided in subsection (b) of this section, the association of 2 or more persons (i) to carry on as co-owners a business for profit forms a partnership, whether or not the persons intend to form a partnership, and (ii) to carry on any purpose or activity not for profit, forms a partnership when the persons intend to form a partnership. A limited liability partnership is for all purposes a partnership.

(b) Subject to § 15-1206 of this title, an association formed under a statute other than (i) this chapter, (ii) a predecessor statute or (iii) a comparable statute of another jurisdiction, is not a partnership under this chapter.

(c) In determining whether a partnership is formed under § 15-202(a)(i) of this title, the following rules apply:

(1) Joint tenancy, tenancy in common, tenancy by the entireties, joint property, common property or part ownership does not by itself establish a partnership, even if the co-owners share profits made by the use of the property.

(2) The sharing of gross returns does not by itself establish a partnership, even if the persons sharing them have a joint or common right or interest in property from which the returns are derived.

(3) A person who receives a share of the profits of a business is presumed to be a partner in the business, unless the profits were received in payment:

(i) Of a debt by installments or otherwise;

(ii) For services as an independent contractor or of wages or other compensation to an employee;

(iii) Of rent;

(iv) Of an annuity or other retirement or health benefit to a beneficiary, representative or designee of a deceased or retired partner;

(v) Of interest or other charge on a loan, even if the amount of payment varies with the profits of the business, including a direct or indirect present or future ownership of the collateral, or rights to income, proceeds or increase in value derived from the collateral; or

(vi) For the sale of the goodwill of a business or other property by installments or otherwise.

(d) A partnership shall possess and may exercise all the powers and privileges granted by this chapter or by any other law or by its partnership agreement, together with any powers incidental thereto, including such powers and privileges as are necessary or convenient to the conduct, promotion or attainment of the business, purposes or activities of the partnership.

(e) Notwithstanding any provision of this chapter to the contrary, without limiting the general powers enumerated in subsection (d) of this section, a partnership shall, subject to such standards and restrictions, if any, as are set forth in its partnership agreement, have the power and authority to make contracts of guaranty and suretyship and enter into interest rate, basis, currency, hedge or other swap agreements or cap, floor, put, call, option, exchange or collar agreements, derivative agreements, or other agreements similar to any of the foregoing.

(f) A partnership has the power and authority to grant, hold or exercise a power of attorney, including an irrevocable power of attorney.

(72 Del. Laws, c. 151, § 1; 72 Del. Laws, c. 390, § 12; 73 Del. Laws, c. 296, § 5; 77 Del. Laws, c. 289, § 8; 80 Del. Laws, c. 43, § 2.)

§ 15-203 Partnership property.

Unless otherwise provided in a statement of partnership existence or a statement of qualification and in a partnership agreement, property acquired by a partnership is property of the partnership and not of the partners individually.

(72 Del. Laws, c. 151, § 1; 72 Del. Laws, c. 390, § 13; 77 Del. Laws, c. 59, § 7.)

§ 15-204 When property is partnership property.

(a) Property is partnership property if acquired in the name of:

(1) The partnership; or

(2) One or more persons with an indication in the instrument transferring title to the property of the person's capacity as a partner or of the existence of a partnership but without an indication of the name of the partnership.

(b) Property is acquired in the name of the partnership by a transfer to:

(1) The partnership in its name; or

(2) One or more persons in their capacity as partners in the partnership, if the name of the partnership is indicated in the instrument transferring title to the property.

(c) Property is presumed to be partnership property if purchased with partnership assets, even if not acquired in the name of the partnership or of 1 or more persons with an indication in the instrument transferring title to the property of the person's capacity as a partner or of the existence of a partnership.

(d) Property acquired in the name of 1 or more persons, without an indication in the instrument transferring title to the property of the person's capacity as a partner or of the existence of a partnership and without use of partnership assets, is presumed to be separate property, even if used for partnership purposes.

(72 Del. Laws, c. 151, § 1.)

§ 15-205 Admission without contribution or partnership interest.

Each person to be admitted as a partner to a partnership formed under either § 15-202(a)(i) or § 15-202(a)(ii) of this title may be admitted as a partner and may receive a partnership interest in the partnership without making a contribution or being obligated to make a contribution to the partnership. Each person to be admitted as a partner to a partnership formed under either § 15-202(a)(i) or § 15-202(a)(ii) of this title may be admitted as a partner without acquiring an economic interest in the partnership. Nothing contained in this section shall affect a partner's liability under § 15-306 of this title.

(72 Del. Laws, c. 151, § 1; 72 Del. Laws, c. 390, § 14.)

§ 15-206 Form of contribution.

The contribution of a partner may be in cash, property or services rendered, or a promissory note or other obligation to contribute cash or property or to perform services.

(72 Del. Laws, c. 151, § 1.)

§ 15-207 Liability for contribution.

(a) A partner is obligated to the partnership to perform any promise to contribute cash or property or to perform services, even if the partner is unable to perform because of death, disability or any other reason. If a partner does not make the required contribution of property or services, the partner is obligated at the option of the partnership to contribute cash equal to that portion of the value of the contribution that has not been made. The foregoing option shall be in addition to, and not in lieu of, any other rights, including the right to specific performance, that the partnership may have against such partner under the partnership agreement or applicable law.

(b) A partnership agreement may provide that the partnership interest of any partner who fails to make any contribution that the partner is obligated to make shall be subject to specified penalties for, or specified consequences of, such failure. Such penalty or consequence may take the form of reducing or eliminating the defaulting partner's interest in the partnership, subordinating the partner's partnership interest to that of nondefaulting partners, a forced sale of the partner's partnership interest, forfeiture of the partner's partnership interest, the lending by other partners of the amount necessary to meet the partner's commitment, a fixing of the value of the partner's partnership interest by appraisal or by formula and redemption or sale of the partner's partnership interest at such value, or other penalty or consequence.

(72 Del. Laws, c. 151, § 1.)

Subchapter III

Relations of Partners to Persons Dealing with Partnership

§ 15-301 Partner agent of partnership.

Subject to the effect of a statement of partnership existence under § 15-303 of this title:

(1) Each partner is an agent of the partnership for the purpose of its business, purposes or activities. An act of a partner, including the execution of an instrument in the partnership name, for apparently carrying on in the ordinary course the partnership's business, purposes or activities or business, purposes or activities of the kind carried on by the partnership binds the partnership, unless the partner had no authority to act for the partnership in the particular matter and the person with whom the partner was dealing had notice that the partner lacked authority.

(2) An act of a partner which is not apparently for carrying on in the ordinary course the partnership's business, purposes or activities or business, purposes or activities of the kind carried on by the partnership binds the partnership only if the act was authorized by the other partners.

(72 Del. Laws, c. 151, § 1.)

§ 15-302 Transfer of partnership property.

(a) Partnership property may be transferred as follows:

(1) Subject to the effect of a statement of partnership existence under § 15-303 of this title, partnership property held in the name of the partnership may be transferred by an instrument of transfer executed by a partner in the partnership name.

(2) Partnership property held in the name of 1 or more partners with an indication in the instrument transferring the property to them of their capacity as partners or of the existence of a partnership, but without an indication of the name of the partnership, may be transferred by an instrument of transfer executed by the persons in whose name the property is held.

(3) Partnership property held in the name of 1 or more persons other than the partnership, without an indication in the instrument transferring the property to them of their capacity as partners or of the existence of a partnership, may be transferred by an instrument of transfer executed by the persons in whose name the property is held.

(b) A partnership may recover partnership property from a transferee only if it proves that execution of the instrument of initial transfer did not bind the partnership under § 15-301 of this title and:

(1) As to a subsequent transferee who gave value for property transferred under § 15-302(a)(1) and (2) of this title, proves that the subsequent transferee had notice that the person who executed the instrument of initial transfer lacked authority to bind the partnership; or

(2) As to a transferee who gave value for property transferred under paragraph (a)(3) of this section, proves that the transferee had notice that the property was partnership property and that the person who executed the instrument of initial transfer lacked authority to bind the partnership.

(c) A partnership may not recover partnership property from a subsequent transferee if the partnership would not have been entitled to recover the property, under § 15-302(b) of this title, from any earlier transferee of the property.

(d) If a person holds all of the partners' interests in the partnership, all of the partnership property vests in that person. The person may execute a document in the name of the partnership to evidence vesting of the property in that person and may file or record the document.

(72 Del. Laws, c. 151, § 1.)

§ 15-303 Statement of partnership existence.

(a) A partnership may file a statement of partnership existence, which:

(1) Must include:

(i) The name of the partnership; and

(ii) The address of the registered office and the name and address of the registered agent for service of process required to be maintained by § 15-111 of this title; and

(2) May state (i) the names of the partners authorized to execute an instrument transferring real property held in the name of the partnership, (ii) the authority, or limitations on the authority, of some or all of the partners to enter into other transactions on behalf of the partnership and (iii) any other matter.

(b) A statement of partnership existence supplements the authority of a partner to enter into transactions on behalf of the partnership as follows:

(1) Except for transfers of real property, a grant of authority contained in a statement of partnership existence is conclusive in favor of a person who gives value without knowledge to the contrary, so long as and to the extent that a limitation on that authority is not then contained in another statement. A filed cancellation of a limitation on authority revives the previous grant of authority.

(2) A grant of authority to transfer real property held in the name of the partnership contained in a certified copy of a statement of partnership existence recorded in the office for recording transfers of that real property is conclusive in favor of a person who gives value without knowledge to the contrary, so long as and to the extent that a certified copy of a statement containing a limitation on that authority is not then of record in the office for recording transfers of that real property. The recording in the office for recording transfers of that real property of a certified copy of a cancellation of a limitation on authority revives the previous grant of authority.

(c) A person not a partner is deemed to know of a limitation on the authority of a partner to transfer real property held in the name of the partnership if a certified copy of the statement containing the limitation on authority is of record in the office for recording transfers of that real property.

(d) Except as otherwise provided in subsections (b) and (c) of this section and §§ 15-704 and 15-805 of this title, a person not a partner is not deemed to know of a limitation on the authority of a partner merely because the limitation is contained in a statement.

(72 Del. Laws, c. 151, § 1.)

§ 15-304 Denial of status as partner.

If a person named in a statement of partnership existence is or may be adversely affected by being so named, the person may petition the Court of Chancery to direct the correction of the statement. If the Court finds that correction of the statement is proper and that an authorized person has failed or refused to execute and file a certificate of correction or a corrected statement, the Court shall order the Secretary of State to file an appropriate correction.

(72 Del. Laws, c. 151, § 1.)

§ 15-305 Partnership liable for partner's actionable conduct.

(a) A partnership is liable for loss or injury caused to a person, or for a penalty incurred, as a result of a wrongful act or omission, or other actionable conduct, of a partner acting in the ordinary course of business of the partnership or with authority of the partnership.

(b) If, in the course of the partnership's business or while acting with authority of the partnership, a partner receives or causes the partnership to receive money or property of a person not a partner, and the money or property is misapplied by a partner, the partnership is liable for the loss.

(72 Del. Laws, c. 151, § 1.)

§ 15-306 Partner's liability.

(a) Except as otherwise provided in subsections (b) and (c) of this section, all partners are liable jointly and severally for all obligations of the partnership unless otherwise agreed by the claimant or provided by law.

(b) A person admitted as a partner into an existing partnership is not personally liable for any obligation of the partnership incurred before the person's admission as a partner.

(c) An obligation of a partnership arising out of or related to circumstances or events occurring while the partnership is a limited liability partnership or incurred while the partnership is a limited liability partnership, whether arising in contract, tort or otherwise, is solely the obligation of the partnership. A partner is not personally liable, directly or indirectly, by way of indemnification, contribution, assessment or otherwise, for such an obligation solely by reason of being or so acting as a partner.

(d) The ability of an attorney-at-law, admitted to the practice of law in the State of Delaware, to practice law in Delaware in a limited liability partnership, shall be determined by the Rules of the Supreme Court of the State of Delaware.

(e) Notwithstanding the provisions of subsection (c) of this section, under a partnership agreement or under another agreement, a partner may agree to be personally liable, directly or indirectly, by way of indemnification, contribution, assessment or otherwise, for any or all of the obligations of the partnership incurred while the partnership is a limited liability partnership.

(72 Del. Laws, c. 151, § 1; 73 Del. Laws, c. 85, § 8; 73 Del. Laws, c. 296, § 6; 75 Del. Laws, c. 50, § 3; 78 Del. Laws, c. 98, § 6.)

§ 15-307 Actions by and against partnership and partners.

(a) A partnership may sue and be sued in the name of the partnership.

(b) An action may be brought against the partnership and, to the extent not inconsistent with § 15-306 of this title, any or all of the partners in the same action or in separate actions.

(c) A judgment against a partnership is not by itself a judgment against a partner. A judgment against a partnership may not be satisfied from the assets of a partner liable as provided in § 15-306 of this title for a partnership obligation unless there is also a judgment against the partner for such obligation.

(d) A judgment creditor of a partner may not levy execution against the assets of the partner to satisfy a judgment based on a claim against the partnership unless:

(1) The claim is for an obligation of the partnership for which the partner is liable as provided in § 15-306 of this title and either:

(i) A judgment based on the same claim has been obtained against the partnership and a writ of execution on the judgment has been returned unsatisfied in whole or in part;

(ii) The partnership is a debtor in bankruptcy;

(iii) The partner has agreed that the creditor need not exhaust partnership assets; or

(iv) A court grants permission to the judgment creditor to levy execution against the assets of a partner based on a finding that partnership assets subject to execution are clearly insufficient to satisfy the judgment, that exhaustion of partnership assets is excessively burdensome, or that the grant of permission is an appropriate exercise of the court's equitable powers; or

(2) Liability is imposed on the partner by law or contract independent of the existence of the partnership.

(e) This section applies to any obligation of the partnership resulting from a representation by a partner or purported partner under § 15-308 of this title.

(72 Del. Laws, c. 151, § 1.)

§ 15-308 Liability of purported partner.

(a) If a person, by words or conduct, purports to be a partner, or consents to being represented by another as a partner, in a partnership or with 1 or more persons not partners, the purported partner is liable to a person to whom the representation is made, if that person, relying on the representation, enters into a transaction with the actual or purported partnership. If the representation, either by the purported partner or by a person with the purported partner's consent, is made in a public manner, the purported partner is liable to a person who relies upon the purported partnership even if the purported partner is not aware of being held out as a partner to the claimant. If a partnership obligation results, the purported partner is liable with respect to that obligation as if the purported partner were a partner. If no partnership obligation results, the purported partner is liable with respect to that obligation jointly and severally with any other person consenting to the representation. In the case of a limited liability partnership, a person's liability under § 15-308(a) of this title is subject to § 15-306 of this title as if the person were a partner in the limited liability partnership.

(b) If a person is thus represented to be a partner in an existing partnership, or with 1 or more persons not partners, the purported partner is an agent of persons consenting to the representation to bind them to the same extent and in the same manner as if the purported partner were a partner, with respect to persons who enter into transactions in reliance upon the representation. If all of the partners of the existing partnership consent to the representation, a partnership act or obligation results. If fewer than all of the partners of the existing partnership consent to the representation, the person acting and the partners consenting to the representation are jointly and severally liable.

(c) A person is not liable as a partner merely because the person is named by another in a statement of partnership existence.

(d) A person does not continue to be liable as a partner merely because of a failure to file a statement of dissociation or to amend a statement of partnership existence to indicate the partner's dissociation from the partnership.

(e) Except as otherwise provided in subsections (a) and (b) of this section, persons who are not partners as to each other are not liable as partners to other persons.

(72 Del. Laws, c. 151, § 1.)

§ 15-309 Limitations on distribution.

(a) A limited liability partnership shall not make a distribution to a partner to the extent that at the time of the distribution, after giving effect to the distribution, all liabilities of the limited liability partnership, other than liabilities to partners on account of their economic interests and liabilities for which the recourse of creditors is limited to specified property of the limited liability partnership, exceed the fair value of the assets of the limited liability partnership, except that the fair value of property that is subject to a liability for which the recourse of creditors is limited shall be included in the assets of the limited liability partnership only to the extent that the fair value of that property exceeds that liability. For purposes of this subsection, the term "distribution" shall not include amounts constituting reasonable compensation for present or past services or reasonable payments made in the ordinary course of business pursuant to a bona fide retirement plan or other benefits program.

(b) A partner of a limited liability partnership who receives a distribution in violation of subsection (a) of this section, and who knew at the time of the distribution that the distribution violated subsection (a) of this section, shall be liable to the partnership for the amount of the distribution. A partner of a limited liability partnership who receives a distribution in violation of subsection (a) of this section, and who did not know at the time of the distribution that the distribution violated subsection (a) of this section, shall not be liable for the amount of the distribution. Subject to subsection (c) of this section, this subsection (b) of this section shall not affect any obligation or liability of a partner of a limited liability partnership under an agreement or other applicable law for the amount of a distribution.

(c) Unless otherwise agreed, a partner of a limited liability partnership who receives a distribution from a partnership shall have no liability under this chapter or other applicable law for the amount of the distribution after the expiration of three years from the date of the distribution.

(72 Del. Laws, c. 151, § 1; 72 Del. Laws, c. 390, § 15.)

Subchapter IV

Relations of Partners to Each Other and to Partnership

§ 15-401 Partner's rights and duties.

(a) Each partner is deemed to have an account that is:

(1) Credited with an amount equal to the money plus the value of any other property, net of the amount of any liabilities, the partner contributes to the partnership and the partner's share of the partnership profits; and

(2) Charged with an amount equal to the money plus the value of any other property, net of the amount of any liabilities, distributed by the partnership to the partner and the partner's share of the partnership losses.

(b) Each partner is entitled to an equal share of the partnership profits and is chargeable with a share of the partnership losses in proportion to the partner's share of the profits.

(c) In addition to indemnification under § 15-110 of this title, a partnership shall reimburse a partner for payments made and indemnify a partner for liabilities incurred by the partner in the ordinary course of the business of the partnership or for the preservation of its business or property; however, no person shall be required as a consequence of any such indemnification to make any payment to the extent that the payment is inconsistent with § 15-306(b) or (c) of this title.

(d) A partnership shall reimburse a partner for an advance to the partnership beyond the amount of capital the partner agreed to contribute.

(e) A payment or advance made by a partner which gives rise to a partnership obligation under subsection (c) or (d) of this section constitutes a loan to the partnership which accrues interest from the date of the payment or advance.

(f) Each partner has equal rights in the management and conduct of the partnership business and affairs.

(g) A partner may use or possess partnership property only on behalf of the partnership.

(h) A partner is not entitled to remuneration for services performed for the partnership, except for reasonable compensation for services rendered in winding up the partnership.

(i) A person may become a partner only with the consent of all of the partners.

(j) A difference arising as to a matter in the ordinary course of business of a partnership may be decided by a majority of the partners. An act outside the ordinary course of business of a partnership may be undertaken only with the consent of all of the partners.

(k) This section does not affect the obligations of a partnership to other persons under § 15-301 of this title.

(l) A partner has the power and authority to delegate to 1 or more other persons any or all of the partner's rights, powers and duties to manage and control the business and affairs of the partnership. Any such delegation may be to agents, officers and employees of the

partner or the partnership, and by a management agreement or other agreement with, or otherwise to, other persons. Such delegation by a partner shall be irrevocable if it states that it is irrevocable. Such delegation by a partner shall not cause the partner to cease to be a partner of the partnership or cause the person to whom any such rights, powers and duties have been delegated to be a partner of the partnership. No other provision of this chapter shall be construed to restrict a partner's power and authority to delegate any or all of its rights, powers and duties to manage and control the business and affairs of the partnership.

(m) A partner shall have no preemptive right to subscribe to any additional issue of partnership interests or another interest in a partnership.

(72 Del. Laws, c. 151, § 1; 73 Del. Laws, c. 296, §§ 7, 8; 80 Del. Laws, c. 43, §§ 3, 4; 81 Del. Laws, c. 87, § 2.)

§ 15-402 Distributions in kind.

A partner, regardless of the nature of the partner's contribution, has no right to demand and receive any distribution from a partnership in kind. A partner may not be compelled to accept a distribution of any asset in kind from a partnership to the extent that the percentage of the asset distributed to the partner exceeds a percentage of that asset which is equal to the percentage in which the partner shares in distributions from the partnership. A partner may be compelled to accept a distribution of any asset in kind from a partnership to the extent that the percentage of the asset distributed to the partner is equal to a percentage of that asset which is equal to the percentage in which the partner shares in distributions from the partnership.

(72 Del. Laws, c. 151, § 1.)

§ 15-403 Partner's rights and duties with respect to information.

(a) Each partner and the partnership shall provide partners, former partners and the legal representative of a deceased partner or partner under a legal disability and their agents and attorneys, access to the books and records of the partnership and other information concerning the partnership's business and affairs (in the case of former partners, only with respect to the period during which they were partners) upon reasonable demand, for any purpose reasonably related to the partner's interest as a partner in the partnership. The right of access shall include access to:

(1) True and full information regarding the status of the business and financial condition of the partnership;

(2) Promptly after becoming available, a copy of the partnership's federal, state and local income tax returns for each year;

(3) A current list of the name and last known business, residence or mailing address of each partner;

(4) A copy of any statement and written partnership agreement and all amendments thereto, together with executed copies of any written powers of attorney pursuant to which the statement or the partnership agreement and any amendments thereto have been executed;

(5) True and full information regarding the amount of cash and a description and statement of the agreed value of any other property or services contributed by each partner and which each partner has agreed to contribute in the future, and the date on which each partner became a partner; and

(6) Other information regarding the affairs of the partnership as is just and reasonable.

The right of access includes the right to examine and make extracts from books and records and other information concerning the partnership's business and affairs. The partnership agreement may provide for, and in the absence of such provision in the partnership agreement, the partnership or the partner from whom access is sought may impose, reasonable standards (including standards governing what information and documents are to be furnished at what time and location and at whose expense) with respect to exercise of the right of access.

(b) A partnership agreement may provide that the partnership shall have the right to keep confidential from partners for such period of time as the partnership deems reasonable, any information which the partnership reasonably believes to be in the nature of trade secrets or other information the disclosure of which the partnership in good faith believes is not in the best interest of the partnership or could damage the partnership or its business or affairs or which the partnership is required by law or by agreement with a third party to keep confidential.

(c) A partnership and its partners may maintain the books and records and other information concerning the partnership in other than paper form, including on, by means of, or in the form of any information storage device, method, or 1 or more electronic networks or databases (including 1 or more distributed electronic networks or databases), if such form is capable of conversion into paper form within a reasonable time.

(d) Any demand by a partner or by a partner's attorney or other agent under this section shall be in writing and shall state the purpose of such demand. In every instance where an attorney or other agent shall be the person who seeks a right of access to the information described in subsection (a) of this section, the demand shall be accompanied by a power of attorney or such other writing which authorizes the attorney or other agent to so act on behalf of the partner.

(e) Any action to enforce any right arising under this section shall be brought in the Court of Chancery. If the partnership or a partner refuses to permit access as described in subsection (a) of this section or does not reply to a demand that has been made within 5 business days (or such shorter or longer period of time as is provided for in a partnership agreement but not longer than 30 business days) after the demand has been made, the demanding partner, former partner, or legal representative of a deceased partner or partner under a legal disability may apply to the Court of Chancery for an order to compel such disclosure. The Court of Chancery is hereby vested with

exclusive jurisdiction to determine whether or not the person making the demand is entitled to the books and records or other information concerning the partnership's business and affairs sought. The Court of Chancery may summarily order the partnership or partner to permit the demanding partner, former partner or legal representative of a deceased partner or partner under a legal disability and their agents and attorneys to provide access to the information described in subsection (a) of this section and to make copies or extracts therefrom; or the Court of Chancery may summarily order the partnership or partner to furnish to the demanding partner, former partner or legal representative of a deceased partner or partner under a legal disability and their agents and attorneys the information described in subsection (a) of this section on the condition that the partner, former partner or legal representative of a deceased partner or partner under a legal disability first pay to the partnership or to the partner from whom access is sought the reasonable cost of obtaining and furnishing such information and on such other conditions as the Court of Chancery deems appropriate. When a demanding partner, former partner or legal representative of a deceased partner or partner under a legal disability seeks to obtain access to information described in subsection (a) of this section, the demanding partner, former partner or legal representative of a deceased partner or partner under a legal disability shall first establish (1) that the demanding partner, former partner or legal representative of a deceased partner or partner under a legal disability has complied with the provisions of this section respecting the form and manner of making demand for obtaining access to such information and (2) that the information the demanding partner, former partner or legal representative of a deceased partner or partner under a legal disability seeks is reasonably related to the partner's interest as a partner in the partnership. The Court of Chancery may, in its discretion, prescribe any limitations or conditions with reference to the access to information, or award such other or further relief as the Court of Chancery may deem just and proper. The Court of Chancery may order books, documents and records, pertinent extracts therefrom, or duly authenticated copies thereof, to be brought within the State of Delaware and kept in the State of Delaware upon such terms and conditions as the order may prescribe.

(f) The rights of a partner to obtain information as provided in this section may be restricted in an original partnership agreement or in any subsequent amendment approved or adopted by all of the partners or in compliance with any applicable requirements of the partnership agreement.

(72 Del. Laws, c. 151, § 1; 73 Del. Laws, c. 85, § 9; 77 Del. Laws, c. 289, §§ 9, 10; 79 Del. Laws, c. 301, § 1; 82 Del. Laws, c. 47, § 5; 82 Del. Laws, c. 257, § 5.)

§ 15-404 General standards of partner's conduct.

(a) The only fiduciary duties a partner owes to the partnership and the other partners are the duty of loyalty and the duty of care set forth in subsections (b) and (c) of this section.

(b) A partner's duty of loyalty to the partnership and the other partners is limited to the following:

(1) To account to the partnership and hold as trustee for it any property, profit or benefit derived by the partner in the conduct or winding up of the partnership business or affairs or derived from a use by the partner of partnership property, including the appropriation of a partnership opportunity;

(2) To refrain from dealing with the partnership in the conduct or winding up of the partnership business or affairs as or on behalf of a party having an interest adverse to the partnership; and

(3) To refrain from competing with the partnership in the conduct of the partnership business or affairs before the dissolution of the partnership.

(c) A partner's duty of care to the partnership and the other partners in the conduct and winding up of the partnership business or affairs is limited to refraining from engaging in grossly negligent or reckless conduct, intentional misconduct, or a knowing violation of law.

(d) A partner does not violate a duty or obligation under this chapter or under the partnership agreement solely because the partner's conduct furthers the partner's own interest.

(e) A partner may lend money to, borrow money from, act as a surety, guarantor or endorser for, guarantee or assume 1 or more specific obligations of, provide collateral for and transact other business with, the partnership and, subject to other applicable law, has the same rights and obligations with respect thereto as a person who is not a partner.

(f) This section applies to a person winding up the partnership business or affairs as the personal or legal representative of the last surviving partner as if the person were a partner.

(72 Del. Laws, c. 151, § 1; 74 Del. Laws, c. 266, § 5.)

§ 15-405 Actions by partnership and partners; derivative actions.

(a) A partnership may maintain an action against a partner for a breach of the partnership agreement, or for the violation of a duty to the partnership, causing harm to the partnership.

(b) A partner may maintain an action against the partnership or another partner for legal or equitable relief, with or without an accounting as to partnership business, to:

(1) Enforce the partner's rights under the partnership agreement;

(2) Enforce the partner's rights under this chapter, including:

(i) The partner's rights under § 15-401, § 15-403 or § 15-404 of this title;

(ii) The partner's right on dissociation to have the partner's interest in the partnership purchased pursuant to § 15-701 of this title or enforce any other right under subchapter VI or VII of this chapter; or

(iii) The partner's right to compel a dissolution and winding up of the partnership business under § 15-801 of this title or enforce any other right under subchapter VIII of this chapter; or

(3) Enforce the rights and otherwise protect the interests of the partner, including rights and interests arising independently of the partnership relationship.

(c) The accrual of, and any time limitation on, a right of action for a remedy under this section is governed by other law. A right to an accounting upon a dissolution and winding up does not revive a claim barred by law.

(d) A partner may bring a derivative action in the Court of Chancery in the right of a partnership to recover a judgment in the partnership's favor.

(e) In a derivative action, the plaintiff must be a partner at the time of bringing the action and:

(1) At the time of the transaction of which the partner complains; or

(2) The partner's status as a partner had devolved upon the partner by operation of law or pursuant to the terms of the partnership agreement from a person who was a partner at the time of the transaction.

(f) In a derivative action, the complaint shall set forth with particularity the effort, if any, of the plaintiff to secure initiation of the action by the partnership or the reason for not making the effort.

(g) If a derivative action is successful, in whole or in part, as a result of a judgment, compromise or settlement of any such action, the court may award the plaintiff reasonable expenses, including reasonable attorney's fees, from any recovery in any such action or from a partnership.

(72 Del. Laws, c. 151, § 1.)

§ 15-406 Continuation of partnership beyond definite term or particular undertaking.

(a) If a partnership for a definite term or particular undertaking is continued, without an express agreement, after the expiration of the term or completion of the undertaking, the rights and duties of the partners remain the same as they were at the expiration or completion, so far as is consistent with a partnership at will.

(b) If the partners, or those of them who habitually acted in the business or affairs during the term or undertaking, continue the business or affairs without any settlement or liquidation of the partnership, they are presumed to have agreed that the partnership will continue.

(72 Del. Laws, c. 151, § 1.)

§ 15-407 Classes and voting.

(a) A partnership agreement may provide for classes or groups of partners having such relative rights, powers and duties as the partnership agreement may provide, and may make provision for the future creation in the manner provided in the partnership agreement of additional classes or groups of partners having such relative rights, powers and duties as may from time to time be established, including rights, powers and duties senior to existing classes and groups of partners. A partnership agreement may provide for the taking of an action, including the amendment of the partnership agreement, without the vote or approval of any partner or class or group of partners, including an action to create under the provisions of the partnership agreement a class or group of partnership interests that was not previously outstanding. A partnership agreement may provide that any partner or class or group of partners shall have no voting rights.

(b) The partnership agreement may grant to all or certain identified partners or a specified class or group of the partners the right to vote separately or with all or any class or group of the partners on any matter. Voting by partners may be on a per capita, number, financial interest, class, group or any other basis.

(c) A partnership agreement may set forth provisions relating to notice of the time, place or purpose of any meeting at which any matter is to be voted on by any partners, waiver of any such notice, action by consent without a meeting, the establishment of a record date, quorum requirements, voting in person or by proxy, or any other matter with respect to the exercise of any such right to vote.

(d) Meetings of partners may be held by means of conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other, and participation in a meeting pursuant to this subsection shall constitute presence in person at the meeting. On any matter that is to be voted on, consented to or approved by partners, the partners may take such action without a meeting, without prior notice and without a vote if consented to or approved, in writing, by electronic transmission or by any other means permitted by law, by partners having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all partners entitled to vote thereon were present and voted. If a person (whether or not then a partner) consenting as a partner to any matter provides that such consent will be effective at a future time (including a time determined upon the happening of an event), then such person shall be deemed to have consented as a partner at such future time so long as such person is then a partner. On any matter that is to be voted on by partners, the partners may vote in person or by proxy, and such proxy may be granted in writing, by means of electronic transmission or as otherwise permitted by applicable law. A consent transmitted by electronic transmission by a partner or by a person or persons authorized to act for a partner shall be deemed to be written and signed for purposes of this subsection (d).

(e) If a partnership agreement provides for the manner in which it may be amended, including by requiring the approval of a person who is not a party to the partnership agreement or the satisfaction of conditions, it may be amended only in that manner or as otherwise permitted by law, including as permitted by § 15-902(g) of this title (provided that the approval of any person may be waived by such person and that any such conditions may be waived by all persons for whose benefit such conditions were intended). If a partnership agreement does not provide for the manner in which it may be amended, the partnership agreement may be amended with the approval of all the partners or as otherwise permitted by law, including as permitted by § 15-902(g) of this title. A supermajority amendment provision shall only apply to provisions of the partnership agreement that are expressly included in the partnership agreement. As used in this section, "supermajority amendment provision" means any amendment provision set forth in a partnership agreement requiring that an amendment to a provision of the partnership agreement be adopted by no less than the vote or consent required to take action under such latter provision.

(72 Del. Laws, c. 151, § 1; 72 Del. Laws, c. 390, § 16; 73 Del. Laws, c. 85, § 10; 74 Del. Laws, c. 266, § 6; 75 Del. Laws, c. 416, § 6; 77 Del. Laws, c. 59, § 8; 78 Del. Laws, c. 98, §§ 7, 8; 79 Del. Laws, c. 301, § 2; 80 Del. Laws, c. 43, §§ 5, 6; 80 Del. Laws, c. 270, § 1; 82 Del. Laws, c. 47, § 6.)

§ 15-408 Remedies for breach of partnership agreement.

A partnership agreement may provide that (i) a partner who fails to perform in accordance with, or to comply with the terms and conditions of, the partnership agreement shall be subject to specified penalties or specified consequences, and (ii) at the time or upon the happening of events specified in the partnership agreement, a partner shall be subject to specified penalties or specified consequences. Such specified penalties or specified consequences may include and take the form of any penalty or consequence set forth in § 15-207(b) of this title.

(72 Del. Laws, c. 151, § 1; 72 Del. Laws, c. 390, § 17; 73 Del. Laws, c. 85, § 11.)

§ 15-409 Reliance on reports and information by partner or liquidating trustee.

(a) A liquidating trustee of a partnership (including a limited liability partnership) shall be fully protected in relying in good faith upon the records of the partnership and upon information, opinions, reports or statements presented by a partner of the partnership, an officer or employee of the partnership, another liquidating trustee, or committees of the partnership or partners, or by any other person as to matters the liquidating trustee reasonably believes are within such other person's professional or expert competence, including information, opinions, reports or statements as to the value and amount of assets, liabilities, profits or losses of the partnership, or the value and amount of assets or reserves or contracts, agreements or other undertakings that would be sufficient to pay claims and obligations of the partnership or to make reasonable provision to pay such claims and obligations, or any other facts pertinent to the existence and amount of assets from which distributions to partners or creditors might properly be paid.

(b) A partner of a limited liability partnership shall be fully protected in relying in good faith upon the records of the partnership and upon information, opinions, reports or statements presented by another partner of the partnership, an officer or employee of the partnership, a liquidating trustee, or committees of the partnership or partners, or by any other person as to matters the partner reasonably believes are within such other person's professional or expert competence, including information, opinions, reports or statements as to the value and amount of assets, liabilities, profits or losses of the partnership, or the value and amount of assets or reserves or contracts, agreements or other undertakings that would be sufficient to pay claims and obligations of the partnership or to make reasonable provision to pay such claims and obligations, or any other facts pertinent to the existence and amount of assets from which distributions to partners or creditors might properly be paid.

(c) A partner of a partnership that is not a limited liability partnership shall be fully protected from liability to the partnership, its partners or other persons party to or otherwise bound by the partnership agreement in relying in good faith upon the records of the partnership and upon information, opinions, reports or statements presented by another partner of the partnership, an officer or employee of the partnership, a liquidating trustee, or committees of the partnership or partners, or by any other person as to matters the partner reasonably believes are within such other person's professional or expert competence, including information, opinions, reports or statements as to the value and amount of assets, liabilities, profits or losses of the partnership, or the value and amount of assets or reserves or contracts, agreements or other undertakings that would be sufficient to pay claims and obligations of the partnership or to make reasonable provision to pay such claims and obligations, or any other facts pertinent to the existence and amount of assets from which distributions to partners or creditors might properly be paid.

(75 Del. Laws, c. 50, § 4.)

Subchapter V

Transferees and Creditors of Partner

§ 15-501 Partner not co-owner of partnership property.

Unless otherwise provided in a statement of partnership existence or a statement of qualification and in a partnership agreement, a partner is not a co-owner of partnership property and has no interest in specific partnership property.

(72 Del. Laws, c. 151, § 1; 72 Del. Laws, c. 390, § 18; 77 Del. Laws, c. 59, § 9.)

§ 15-502 Partner's economic interest in partnership; personal property.

A partnership interest is personal property. Only a partner's economic interest may be transferred.

(72 Del. Laws, c. 151, § 1.)

§ 15-503 Transfer of partner's economic interest.

(a) A transfer, in whole or in part, of a partner's economic interest in the partnership:

(1) Is permissible;

(2) Does not by itself cause the partner's dissociation or a dissolution and winding up of the partnership business or affairs; and

(3) Does not entitle the transferee to participate in the management or conduct of the partnership business or affairs, to require access to information concerning partnership transactions, or to inspect or copy the partnership books or records.

(b) A transferee of a partner's economic interest in the partnership has a right:

(1) To receive, in accordance with the transfer, distributions to which the transferor would otherwise be entitled;

(2) To receive upon the dissolution and winding up of the partnership business or affairs, in accordance with the transfer, the net amount otherwise distributable to the transferor; and

(3) To seek under § 15-801(6) of this title a judicial determination that it is equitable to wind up the partnership business or affairs.

(c) In a dissolution and winding up, a transferee is entitled to an account of partnership transactions only from the date of the latest account agreed to by all of the partners.

(d) Upon transfer, the transferor retains the rights and duties of a partner other than the economic interest transferred.

(e) A partnership need not give effect to a transferee's rights under this section until it has notice of the transfer. Upon request of a partnership or a partner, a transferee must furnish reasonable proof of a transfer.

(f) A transfer of a partner's economic interest in the partnership in violation of a restriction on transfer contained in a partnership agreement is ineffective.

(g) Notwithstanding anything to the contrary under applicable law, a partnership agreement may provide that a partner's economic interest may not be transferred prior to the dissolution and winding up of the partnership.

(h) A partnership interest in a partnership may be evidenced by a certificate of partnership interest issued by the partnership. A partnership agreement may provide for the transfer of any partnership interest represented by such a certificate and make other provisions with respect to such certificates. A partnership shall not have the power to issue a certificate of partnership interest in bearer form.

(i) Except to the extent assumed by agreement, until a transferee of a partnership interest becomes a partner, the transferee shall have no liability as a partner solely as a result of the transfer.

(j) A partnership may acquire, by purchase, redemption or otherwise, any partnership interest or other interest of a partner in the partnership. Any such interest so acquired by the partnership shall be deemed canceled.

(72 Del. Laws, c. 151, § 1; 73 Del. Laws, c. 85, § 12; 76 Del. Laws, c. 106, § 10.)

§ 15-504 Partner's economic interest subject to charging order.

(a) On application by a judgment creditor of a partner or of a partner's transferee, a court having jurisdiction may charge the economic interest of the judgment debtor to satisfy the judgment. To the extent so charged, the judgment creditor has only the right to receive any distribution or distributions to which the judgment debtor would otherwise have been entitled in respect of such economic interest.

(b) A charging order constitutes a lien on the judgment debtor's economic interest in the partnership.

(c) This chapter does not deprive a partner or a partner's transferee of a right under exemption laws with respect to the judgment debtor's economic interest in the partnership.

(d) The entry of a charging order is the exclusive remedy by which a judgment creditor of a partner or of a partner's transferee may satisfy a judgment out of the judgment debtor's economic interest in the partnership and attachment, garnishment, foreclosure or other legal or equitable remedies are not available to the judgment creditor.

(e) No creditor of a partner or of a partner's transferee shall have any right to obtain possession of, or otherwise exercise legal or equitable remedies with respect to, the property of the partnership.

(f) The Court of Chancery shall have jurisdiction to hear and determine any matter relating to any such charging order.

(72 Del. Laws, c. 151, § 1; 72 Del. Laws, c. 390, § 19; 75 Del. Laws, c. 50, §§ 5-11; 79 Del. Laws, c. 75, § 1.)

Subchapter VI

Partner's Dissociation

§ 15-601 Events causing partner's dissociation.

A partner is dissociated from a partnership upon the occurrence of any of the following events:

(1) The partnership's having notice of the partner's express will to withdraw as a partner on a later date specified by the partner in the notice or, if no later date is specified, then upon receipt of notice;

(2) An event agreed to in the partnership agreement as causing the partner's dissociation;

(3) The partner's expulsion pursuant to the partnership agreement;

(4) The partner's expulsion by the unanimous vote of the other partners if:

(i) It is unlawful to carry on the partnership business or affairs with that partner; or

(ii) There has been a transfer of all or substantially all of that partner's economic interest, other than a transfer for security purposes, or a court order charging the partner's interest which, in either case, has not been foreclosed;

(5) On application by or for the partnership or another partner to the Court of Chancery, the partner's expulsion by determination by the Court of Chancery because:

(i) The partner engaged in wrongful conduct that adversely and materially affected the partnership business or affairs;

(ii) The partner wilfully or persistently committed a material breach of either the partnership agreement or of a duty owed to the partnership or the other partners; or

(iii) The partner engaged in conduct relating to the partnership business or affairs which makes it not reasonably practicable to carry on the business or affairs in partnership with the partner;

(6) The partner's:

a. Making an assignment for the benefit of creditors;

b. Filing a voluntary petition in bankruptcy;

c. Being adjudged a bankrupt or insolvent, or having entered against that partner an order for relief in any bankruptcy or insolvency proceeding;

d. Filing a petition or answer seeking for that partner any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any statute, law or regulation;

e. Filing an answer or other pleading admitting or failing to contest the material allegations of a petition filed against that partner in any proceeding of this nature;

f. Seeking, consenting to or acquiescing in the appointment of a trustee, receiver or liquidator of that partner or of all or any substantial part of that partner's properties; or

g. Failing, within 120 days after its commencement, to have dismissed any proceeding against that partner seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any statute, law or regulation, or failing, within 90 days after the appointment without that partner's consent or acquiescence, to have vacated or stayed the appointment of a trustee, receiver or liquidator of that partner or of all or any substantial part of that partner's properties, or failing, within 90 days after the expiration of any such stay, to have the appointment vacated;

(7) In the case of a partner who is an individual:

(i) The partner's death;

(ii) The appointment of a guardian or general conservator for the partner; or

(iii) A judicial determination that the partner has otherwise become incapable of performing the partner's duties under the partnership agreement;

(8) In the case of a partner that is a trust or is acting as a partner by virtue of being a trustee of a trust, distribution of the trust's entire economic interest, but not merely by reason of the substitution of a successor trustee;

(9) In the case of a partner that is an estate or is acting as a partner by virtue of being a personal representative of an estate, distribution of the estate's entire economic interest, but not merely by reason of the substitution of a successor personal representative;

(10) The expiration of 90 days after the partnership notifies a corporate partner that it will be expelled because it has filed a certificate of dissolution or the equivalent, its existence has been terminated or its certificate of incorporation has been revoked, or its right to conduct business has been suspended by the jurisdiction of its incorporation, if there is no revocation of the certificate of dissolution or no reinstatement of its existence, its certificate of incorporation or its right to conduct business;

(11) A partnership, a limited liability company, a trust or a limited partnership that is a partner has been dissolved and its business is being wound up; or

(12) Termination of a partner who is not an individual, partnership, corporation, trust, limited partnership, limited liability company or estate.

(72 Del. Laws, c. 151, § 1; 72 Del. Laws, c. 390, § 20.)

§ 15-602 Partner's power to dissociate; wrongful dissociation.

(a) A partner has the power to dissociate at any time, rightfully or wrongfully, by express will pursuant to § 15-601(1) of this title.

(b) A partner's dissociation is wrongful only if any of the following apply:

(1) It is in breach of an express provision of the partnership agreement; or

(2) In the case of a partnership for a definite term or particular undertaking, before the expiration of the term or the completion of the undertaking if any of the following apply:

(i) The partner withdraws by express will, unless the withdrawal follows within 90 days after another partner's dissociation by death or otherwise under § 15-601(6) through (12) of this title or wrongful dissociation under this subsection;

(ii) The partner is expelled by judicial determination under § 15-601(5) of this title;

(iii) The partner is dissociated under § 15-601(6) of this title; or

(iv) In the case of a partner who is not an individual, trust (other than a statutory trust), or estate, the partner is expelled or otherwise dissociated because it wilfully dissolved or terminated.

(c) A partner who wrongfully dissociates is liable to the partnership and to the other partners for damages caused by the dissociation. Such liability is in addition to any other obligation of the partner to the partnership or to the other partners.

(72 Del. Laws, c. 151, § 1; 73 Del. Laws, c. 329, § 13.)

§ 15-603 Effect of partner's dissociation.

(a) If a partner's dissociation results in a dissolution and winding up of the partnership business, subchapter VIII of this chapter applies; otherwise, subchapter VII of this chapter applies.

(b) Upon a partner's dissociation:

(1) the partner's right to participate in the management and conduct of the partnership business terminates, except as otherwise provided in § 15-803 of this title;

(2) the partner's duty of loyalty under § 15-404(b)(3) of this title terminates; and

(3) the partner's duty of loyalty under § 15-404(b)(1) and (2) of this title and duty of care under § 15-404(c) of this title continue only with regard to matters arising and events occurring before the partner's dissociation, unless the partner participates in winding up the partnership's business pursuant to § 15-803 of this title.

(72 Del. Laws, c. 151, § 1.)

Subchapter VII

Partner's Dissociation When Business or Affairs Not Wound Up

§ 15-701 Purchase of dissociated partner's partnership interest.

(a) If a partner is dissociated from a partnership without resulting in a dissolution and winding up of the partnership business or affairs under § 15-801 of this title, the partnership shall cause the dissociated partner's interest in the partnership to be purchased for a buyout price determined pursuant to subsection (b) of this section.

(b) The buyout price of a dissociated partner's partnership interest is an amount equal to the fair value of such partner's economic interest as of the date of dissociation based upon such partner's right to share in distributions from the partnership. Interest must be paid from the date of dissociation to the date of payment.

(c) Damages for wrongful dissociation under § 15-602(b) of this title, and all other amounts owing, whether or not presently due, from the dissociated partner to the partnership, must be offset against the buyout price. Interest must be paid from the date the amount owed becomes due to the date of payment.

(d) A partnership shall indemnify a dissociated partner whose partnership interest is being purchased against all partnership obligations, whether incurred before or after the dissociation, except partnership obligations incurred by an act of the dissociated partner under § 15-702 of this title.

(e) If no agreement for the purchase of a dissociated partner's partnership interest is reached within 120 days after a written demand for payment, the partnership shall pay, or cause to be paid, in cash to the dissociated partner the amount the partnership estimates to be the buyout price and accrued interest, reduced by any offsets and accrued interest under subsection (c) of this section.

(f) If a deferred payment is authorized under subsection (h) of this section, the partnership may tender a written offer to pay the amount it estimates to be the buyout price and accrued interest, reduced by any offsets under subsection (c) of this section, stating the time of payment, the amount and type of security for payment, and the other terms and conditions of the obligation.

(g) The payment or tender required by subsection (e) or (f) of this section must be accompanied by the following:

(1) A written statement of partnership assets and liabilities as of the date of dissociation;

(2) The latest available partnership balance sheet and income statement, if any;

(3) A written explanation of how the estimated amount of the payment was calculated; and

(4) Written notice which shall state that the payment is in full satisfaction of the obligation to purchase unless, within 120 days after the written notice, the dissociated partner commences an action in the Court of Chancery under subsection (i) of this section to determine the buyout price of that partner's partnership interest, any offsets under subsection (c) of this section or other terms of the obligation to purchase.

(h) A partner who wrongfully dissociates before the expiration of a definite term or the completion of a particular undertaking is not entitled to payment of any portion of the buyout price until the expiration of the term or completion of the undertaking, unless the partner establishes to the satisfaction of the Court of Chancery that earlier payment will not cause undue hardship to the business of the

partnership. A deferred payment must bear interest and, to the extent it would not cause undue hardship to the business of the partnership, be adequately secured.

(i) A dissociated partner may maintain an action against the partnership, pursuant to § 15-405(b)(2)(ii) of this title, to determine the buyout price of that partner's partnership interest, any offsets under subsection (c) of this section, or other terms of the obligation to purchase. The action must be commenced within 120 days after the partnership has tendered payment or an offer to pay or within one year after written demand for payment if no payment or offer to pay is tendered. The Court of Chancery shall determine the buyout price of the dissociated partner's partnership interest, any offset due under subsection (c) of this section, and accrued interest, and enter judgment for any additional payment or refund. If deferred payment is authorized under subsection (h) of this section, the Court of Chancery shall also determine the security, if any, for payment and other terms of the obligation to purchase. The Court of Chancery may assess reasonable attorney's fees and the fees and expenses of appraisers or other experts for a party to the action, in amounts the Court of Chancery finds equitable, against a party that the Court of Chancery finds acted arbitrarily, vexatiously or not in good faith. The finding may be based on the partnership's failure to tender payment or an offer to pay or to comply with subsection (g) of this section.

(72 Del. Laws, c. 151, § 1; 72 Del. Laws, c. 390, § 21.)

§ 15-702 Dissociated partner's power to bind and liability to partnership.

(a) For one year after a partner dissociates without resulting in a dissolution and winding up of the partnership business, the partnership, including a surviving partnership under subchapter IX of this chapter, is bound by an act of the dissociated partner which would have bound the partnership under § 15-301 of this title before dissociation only if at the time of entering into the transaction the other party:

(1) Reasonably believed that the dissociated partner was then a partner and reasonably relied on such belief in entering into the transaction;

(2) Did not have notice of the partner's dissociation; and

(3) Is not deemed to have had knowledge under § 15-303(c) of this title or notice under § 15-704(c) of this title.

(b) A dissociated partner is liable to the partnership for any damage caused to the partnership arising from an obligation incurred by the dissociated partner after dissociation for which the partnership is liable under subsection (a) of this section.

(72 Del. Laws, c. 151, § 1.)

§ 15-703 Dissociated partner's liability to other persons.

(a) A partner's dissociation does not of itself discharge the partner's liability for a partnership obligation incurred before dissociation. A dissociated partner is not liable for a partnership obligation incurred after dissociation, except as otherwise provided in subsection (b) of this section.

(b) A partner who dissociates without resulting in a dissolution and winding up of the partnership business is liable as a partner to the other party in a transaction entered into by the partnership, or a surviving partnership under subchapter IX of this chapter, within 1 year after the partner's dissociation, only if the partner is liable for the obligation under § 15-306 of this title and at the time of entering into the transaction the other party:

(1) Reasonably believed that the dissociated partner was then a partner and reasonably relied on such belief in entering into the transaction;

(2) Did not have notice of the partner's dissociation; and

(3) Is not deemed to have had knowledge under § 15-303(c) of this title or notice under § 15-704(c) of this title.

(c) By agreement with the partnership creditor and the partners continuing the business, a dissociated partner may be released from liability for a partnership obligation.

(d) A dissociated partner is released from liability for a partnership obligation if a partnership creditor, with notice of the partner's dissociation but without the partner's consent, agrees to a material alteration in the nature or time of payment of a partnership obligation.

(72 Del. Laws, c. 151, § 1.)

§ 15-704 Statement of dissociation.

(a) A dissociated partner or, after the filing by the partnership of a statement of partnership existence, the partnership may file a statement of dissociation stating the name of the partnership and that the partner is dissociated from the partnership.

(b) A statement of dissociation is a limitation on the authority of a dissociated partner for the purposes of § 15-303(b) and (c) of this title.

(c) For the purposes of §§ 15-702(a)(3) and 15-703(b)(3) of this title, a person not a partner is deemed to have notice of the dissociation 60 days after the statement of dissociation is filed.

(72 Del. Laws, c. 151, § 1.)

§ 15-705 Continued use of partnership name.

Continued use of a partnership name, or a dissociated partner's name as part thereof, by partners continuing the business does not of itself make the dissociated partner liable for an obligation of the partners or the partnership.

(72 Del. Laws, c. 151, § 1.)

Subchapter VIII
Winding Up Partnership Business or Affairs

§ 15-801 Events causing dissolution and winding up of partnership business or affairs.

A partnership is dissolved, and its business must be wound up, only upon the occurrence of any of the following events:

(1) In a partnership at will, the partnership's having notice from a partner, other than a partner who is dissociated under § 15-601(2) through (12) of this title, of that partner's express will to withdraw as a partner, on a later date specified by the partner in the notice or, if no later date is specified, then upon receipt of notice;

(2) In a partnership for a definite term or particular undertaking:

(i) Within 90 days after a partner's dissociation by death or otherwise under § 15-601(6) through (12) of this title or wrongful dissociation under § 15-602(b) of this title, at least half of the remaining partners express the will to wind up the partnership business, for which purpose a partner's rightful dissociation pursuant to § 15-602(b)(2)(i) of this title constitutes the expression of that partner's will to wind up the partnership business;

(ii) The express will of all of the partners to wind up the partnership business or affairs; or

(iii) The expiration of the term or the completion of the undertaking;

(3) An event agreed to in the partnership agreement resulting in the winding up of the partnership business or affairs;

(4) An event that makes it unlawful for all or substantially all of the business or affairs of the partnership to be continued, but a cure of such illegality within 90 days after the partnership has notice of the event is effective retroactively to the date of the event for purposes of this section;

(5) On application by or for a partner to the Court of Chancery, the entry of a decree of dissolution of a partnership by the Court of Chancery upon a determination by the Court of Chancery that it is not reasonably practicable to carry on the partnership business, purpose or activity in conformity with the partnership agreement; or

(6) On application by a transferee of a partner's economic interest to the Court of Chancery, a determination by the Court of Chancery that it is equitable to wind up the partnership business or affairs:

(i) After the expiration of the term or completion of the undertaking, if the partnership was for a definite term or particular undertaking at the time of the transfer or entry of the charging order that gave rise to the transfer; or

(ii) At any time, if the partnership was a partnership at will at the time of the transfer or entry of the charging order that gave rise to the transfer.

(72 Del. Laws, c. 151, § 1; 72 Del. Laws, c. 390, § 22.)

§ 15-802 Partnership continues after dissolution.

(a) Subject to subsection (b) of this section, a partnership continues after dissolution only for the purpose of winding up its business or affairs. The partnership is terminated when the winding up of its business or affairs is completed.

(b) At any time after the dissolution of a partnership and before the winding up of its business or affairs is completed, all of the partners, including any dissociating partner other than a wrongfully dissociating partner, may waive the right to have the partnership's business or affairs wound up and the partnership terminated. In that event:

(1) The partnership resumes carrying on its business or affairs as if dissolution had never occurred, and any liability incurred by the partnership or a partner after the dissolution and before the waiver is determined as if dissolution had never occurred; and

(2) The rights of a third party accruing under § 15-804(1) of this title or arising out of conduct in reliance on the dissolution before the third party knew or received a notification of the waiver may not be adversely affected.

(72 Del. Laws, c. 151, § 1.)

§ 15-803 Right to wind up partnership business or affairs.

(a) A partner at the time of dissolution, including a partner who has dissociated but not wrongfully, may participate in winding up the partnership's business or affairs, but on application of any partner or a partner's legal representative or transferee, the Court of Chancery for good cause shown, may order judicial supervision of the winding up.

(b) The legal representative of the last surviving partner may wind up a partnership's business or affairs.

(c) The persons winding up the partnership's business or affairs may, in the name of, and for and on behalf of, the partnership, prosecute and defend suits, whether civil, criminal or administrative, gradually settle and close the partnership's business or affairs, dispose of and convey the partnership's property, discharge or make reasonable provision for the partnership's liabilities, distribute to the partners pursuant to § 15-807 of this title any remaining assets of the partnership, and perform other acts which are necessary or convenient to the winding up of the partnership's business or affairs.

(72 Del. Laws, c. 151, § 1.)

§ 15-804 Partner's power to bind partnership after dissolution.

Subject to § 15-805 of this title, a partnership is bound by a partner's act after dissolution that:

(1) Is appropriate for winding up the partnership business or affairs; or

(2) Would have bound the partnership under § 15-301 of this title before dissolution, if the other party to the transaction did not have notice of the dissolution.

(72 Del. Laws, c. 151, § 1.)

§ 15-805 Statement of dissolution.

(a) After dissolution, a partnership may file a statement of dissolution stating the name of the partnership and that the partnership has dissolved and is winding up its business or affairs.

(b) A statement of dissolution cancels a filed statement of partnership existence for the purposes of § 15-303(b) of this title and is a limitation on authority for the purposes of § 15-303(c) of this title.

(c) For the purposes of §§ 15-301 and 15-804 of this title, a person not a partner is deemed to have notice of the dissolution and the limitation on the partners' authority as a result of a statement of dissolution 60 days after it is filed.

(d) After filing a statement of dissolution, a dissolved partnership may file a statement of partnership existence which will operate with respect to a person not a partner as provided in § 15-303(b) and (c) of this title in any transaction, whether or not the transaction is appropriate for winding up the partnership business or affairs.

(e) If a partnership which has dissolved fails or refuses to file a statement of dissolution, any partner or dissociated partner who is or may be adversely affected by the failure or refusal may petition the Court of Chancery to direct the filing. If the Court finds that the statement of dissolution should be filed and that the partnership has failed or refused to do so, it shall enter an order granting appropriate relief.

(72 Del. Laws, c. 151, § 1.)

§ 15-806 Partner's liability to other partners after dissolution.

(a) Except as otherwise provided in subsection (b) of this section and § 15-306 of this title, after dissolution a partner is liable to the other partners for the partner's share of any partnership obligation incurred under § 15-804 of this title.

(b) A partner who, with knowledge of the dissolution, causes the partnership to incur an obligation under § 15-804(2) of this title by an act that is not appropriate for winding up the partnership business or affairs is liable to the partnership for any damage caused to the partnership arising from the obligation.

(72 Del. Laws, c. 151, § 1.)

§ 15-807 Settlement of accounts and contributions among partners.

(a) In winding up a partnership's business or affairs, the assets of the partnership, including the contributions of the partners required by this section, must be applied to pay or make reasonable provision to pay the partnership's obligations to creditors, including, to the extent permitted by law, partners who are creditors. Any surplus must be applied to pay in cash the net amount distributable to partners in accordance with their right to distributions under subsection (b) of this section.

(b) Each partner is entitled to a settlement of all partnership accounts upon winding up the partnership business or affairs. In settling accounts among the partners, profits and losses that result from the liquidation of the partnership assets must be credited and charged to the partners' accounts. The partnership shall make a distribution to a partner in an amount equal to any excess of the credits over the charges in the partner's account. A partner shall contribute to the partnership an amount equal to any excess of the charges over the credits in the partner's account but excluding from the calculation charges attributable to an obligation for which the partner is not personally liable under § 15-306 of this title.

(c) After the settlement of accounts, each partner shall contribute, in the proportion in which the partner shares partnership losses, the amount necessary to pay or make reasonable provision to pay partnership obligations that were not known at the time of the settlement and for which the partner is personally liable under § 15-306 of this title.

(d) If a partner fails to contribute, all of the other partners shall contribute, in the proportions in which those partners share partnership losses, the additional amount necessary to pay or make reasonable provision to pay the partnership obligations for which they are personally liable under § 15-306 of this title.

(e) A partner or partner's legal representative may recover from the other partners any contributions the partner makes to the extent the amount contributed exceeds that partner's share of the partnership obligations for which the partner is personally liable under § 15-306 of this title.

(f) The estate of a deceased partner is liable for the partner's obligation to contribute to the partnership.

(g) An assignee for the benefit of creditors of a partnership or a partner, or a person appointed by a court to represent creditors of a partnership or a partner, may enforce a partner's obligation to contribute to the partnership.

(h) A limited liability partnership which has dissolved (i) shall pay or make reasonable provision to pay all claims and obligations, including all contingent, conditional or unmatured contractual claims, known to the limited liability partnership, (ii) shall make such provision as will be reasonably likely to be sufficient to provide compensation for any claim against the limited liability partnership which is the subject of a pending action, suit or proceeding to which the limited liability partnership is a party and (iii) shall make such provision as will be reasonably likely to be sufficient to provide compensation for claims that have not been made known to the limited liability partnership or that have not arisen but that, based on facts known to the limited liability partnership, are likely to arise or to become known to the limited liability partnership within 10 years after the date of dissolution. If there are sufficient assets, such claims

and obligations shall be paid in full and any such provision for payment made shall be made in full. If there are insufficient assets, such claims and obligations shall be paid or provided for according to their priority and, among claims of equal priority, ratably to the extent of assets available therefor. Any remaining assets shall be distributed as provided in this chapter. Any liquidating trustee winding up a limited liability partnership's affairs who has complied with this section shall not be personally liable to the claimants of the dissolved limited liability partnership by reason of such person's actions in winding up the limited liability partnership.

(i) A partner of a limited liability partnership who receives a distribution in violation of subsection (h) of this section, and who knew at the time of the distribution that the distribution violated subsection (h) of this section, shall be liable to the limited liability partnership for the amount of the distribution. For purposes of the immediately preceding sentence, the term "distribution" shall not include amounts constituting reasonable compensation for present or past services or reasonable payments made in the ordinary course of business pursuant to a bona fide retirement plan or other benefits program. A partner of a limited liability partnership who receives a distribution in violation of subsection (h) of this section, and who did not know at the time of the distribution that the distribution violated subsection (h) of this section, shall not be liable for the amount of the distribution. Subject to subsection (j) of this section, this subsection shall not affect any obligation or liability of a partner of a limited liability partnership under an agreement or other applicable law for the amount of a distribution.

(j) Unless otherwise agreed, a partner of a limited liability partnership who receives a distribution from a limited liability partnership shall have no liability under this chapter or other applicable law for the amount of the distribution after the expiration of 3 years from the date of the distribution.

(k) Section 15-309 of this chapter shall not apply to a distribution to which this section applies.

(72 Del. Laws, c. 151, § 1; 72 Del. Laws, c. 390, §§ 23, 24; 80 Del. Laws, c. 43, § 7.)

Subchapter IX

Conversion; Merger; Domestication; and Transfer

§ 15-901 Conversion of certain entities to a domestic partnership.

(a) As used in this section and in § 15-105 of this title, the term "other entity" means a corporation, a statutory trust, a business trust, an association, a real estate investment trust, a common-law trust or any other incorporated or unincorporated business or entity, including a limited partnership (including a limited liability limited partnership), a foreign partnership or a limited liability company.

(b) Any other entity may convert to a domestic partnership (including a limited liability partnership) by complying with subsection (h) of this section and filing with the Secretary of State in accordance with § 15-105 of this title:

(1) A certificate of conversion to partnership that has been executed in accordance with § 15-105 of this title;

(2) A statement of partnership existence that complies with § 15-303 of this title and has been executed in accordance with § 15-105 of this title; and

(3) In the case of a conversion to a limited liability partnership, a statement of qualification in accordance with § 15-1001(c) of this title.

Each of the certificate and statements required by this subsection (b) shall be filed simultaneously with the Secretary of State and, if such certificate and statements are not to become effective upon their filing as permitted by § 15-105(h) of this title, then such certificate and each such statement shall provide for the same effective date or time in accordance with § 15-105(h) of this title.

(c) The certificate of conversion to partnership shall state:

(1) The date on which and jurisdiction where the other entity was first created, formed or otherwise came into being and, if it has changed, its jurisdiction immediately prior to its conversion to a domestic partnership;

(2) The name and type of entity of the other entity immediately prior to the filing of the certificate of conversion to partnership;

(3) The name of the partnership as set forth in its statement of partnership existence filed in accordance with subsection (b) of this section;

(4) The future effective date or time (which shall be a date or time certain) of the conversion to a partnership if it is not to be effective upon the filing of the certificate of conversion to partnership and the statement of partnership existence; and

(5) In the case of a conversion to a limited liability partnership, that the partnership agreement of the partnership states that the partnership shall be a limited liability partnership.

(d) Upon the filing with the Secretary of State of the certificate of conversion to partnership, the statement of partnership existence and the statement of qualification (if applicable), or upon the future effective date or time of the certificate of conversion to partnership, the statement of partnership existence and the statement of qualification (if applicable), the other entity shall be converted into a domestic partnership (including a limited liability partnership, if applicable) and the partnership shall thereafter be subject to all of the provisions of this chapter, except that the existence of the partnership shall be deemed to have commenced on the date the other entity commenced its existence in the jurisdiction in which the other entity was first created, formed, incorporated or otherwise came into being.

(e) The conversion of any other entity into a domestic partnership (including a limited liability partnership) shall not be deemed to affect any obligations or liabilities of the other entity incurred prior to its conversion to a domestic partnership, or the personal liability of any person incurred prior to such conversion.

(f) When any conversion shall have become effective under this section, for all purposes of the laws of the State of Delaware, all of the rights, privileges and powers of the other entity that has converted, and all property, real, personal and mixed, and all debts due to such other entity, as well as all other things and causes of action belonging to such other entity, shall remain vested in the domestic partnership to which such other entity has converted and shall be the property of such domestic partnership, and the title to any real property vested by deed or otherwise in such other entity shall not revert or be in any way impaired by reason of this chapter; but all rights of creditors and all liens upon any property of such other entity shall be preserved unimpaired, and all debts, liabilities and duties of the other entity that has converted shall remain attached to the domestic partnership to which such other entity has converted, and may be enforced against it to the same extent as if said debts, liabilities and duties had originally been incurred or contracted by it in its capacity as a domestic partnership. The rights, privileges, powers and interests in property of the other entity, as well as the debts, liabilities and duties of the other entity, shall not be deemed, as a consequence of the conversion, to have been transferred to the domestic partnership to which such other entity has converted for any purpose of the laws of the State of Delaware.

(g) Unless otherwise agreed, for all purposes of the laws of the State of Delaware, the converting other entity shall not be required to wind up its affairs or pay its liabilities and distribute its assets, and the conversion shall not be deemed to constitute a dissolution of such other entity. When another entity has been converted to a domestic partnership pursuant to this section, for all purposes of the laws of the State of Delaware, the domestic partnership shall be deemed to be the same entity as the converting other entity and the conversion shall constitute a continuation of the existence of the converting other entity in the form of a domestic partnership.

(h) Prior to filing a certificate of conversion to partnership with the Secretary of State, the conversion shall be approved in the manner provided for by the document, instrument, agreement or other writing, as the case may be, governing the internal affairs of the other entity and the conduct of its business or by applicable law, as appropriate, and a partnership agreement shall be approved by the same authorization required to approve the conversion; provided, that in the event the continuing domestic partnership is not a limited liability partnership, such approval shall include the approval of any person who, at the effective date or time of the conversion, shall be a partner of the partnership.

(i) In connection with a conversion hereunder, rights or securities of, or interests in, the other entity which is to be converted to a domestic partnership may be exchanged for or converted into cash, property, rights or securities of or interests in such domestic partnership or, in addition to or in lieu thereof, may be exchanged for or converted into cash, property, rights or securities of or interests in another domestic partnership or other entity, may remain outstanding or may be canceled.

(j) In connection with the conversion of any other entity to a domestic partnership (including a limited liability partnership), a person is admitted as a partner of the partnership as provided in the partnership agreement. For the purpose of § 15-306(b) of this title, a person who, at the effective time or date of the conversion of any other entity to a domestic partnership (including a limited liability partnership), is a partner of the partnership, shall be deemed admitted as a partner of the partnership at the effective date or time of such conversion.

(k) The provisions of this section shall not be construed to limit the accomplishment of a change in the law governing, or the domicile of, another entity to the State of Delaware by any other means provided for in a document, instrument, agreement or other writing, including by the amendment of any such document, instrument, agreement or other writing, or by applicable law.

(72 Del. Laws, c. 151, § 1; 72 Del. Laws, c. 390, §§ 25-27; 73 Del. Laws, c. 85, § 13; 73 Del. Laws, c. 329, § 14; 74 Del. Laws, c. 103, § 9; 74 Del. Laws, c. 266, § 7; 75 Del. Laws, c. 50, §§ 12-21; 75 Del. Laws, c. 416, §§ 7, 8; 76 Del. Laws, c. 106, § 11; 77 Del. Laws, c. 59, § 10; 78 Del. Laws, c. 98, § 9; 78 Del. Laws, c. 271, § 4; 79 Del. Laws, c. 75, § 2; 81 Del. Laws, c. 87, § 3.)

§ 15-902 Merger or consolidation.

(a) As used in this section and in § 15-105 of this title, “other business entity” means a corporation, a statutory trust, a business trust, an association, a real estate investment trust, a common-law trust, or any other incorporated or unincorporated business or entity, including a limited liability company, a limited partnership (including a limited liability limited partnership) and a foreign partnership, but excluding a domestic partnership. As used in this section and in § 15-120 of this title, “plan of merger” means a writing approved by a domestic partnership, in the form of resolutions or otherwise, that states the terms and conditions of a merger under subsection (m) of this section.

(b) Pursuant to an agreement of merger or consolidation, 1 or more domestic partnerships may merge or consolidate with or into 1 or more domestic partnerships or 1 or more other business entities formed or organized under the laws of the State of Delaware or any other state or the United States or any foreign country or other foreign jurisdiction, or any combination thereof, with such domestic partnership or other business entity as the agreement shall provide being the surviving or resulting domestic partnership or other business entity. An agreement of merger or consolidation or a plan of merger shall be approved by each domestic partnership which is to merge or consolidate by all of its partners. In connection with a merger or consolidation hereunder, rights or securities of, or interests in, a domestic partnership or other business entity which is a constituent party to the merger or consolidation may be exchanged for or converted into cash, property, rights or securities of, or interests in, the surviving or resulting domestic partnership or other business entity or, in addition to or in lieu thereof, may be exchanged for or converted into cash, property, rights or securities of, or interests in a domestic partnership or other business entity which is not the surviving or resulting domestic partnership or other business entity in the merger or consolidation, may remain outstanding or may be canceled. Notwithstanding prior approval, an agreement of merger or consolidation or a plan of merger may be terminated or amended pursuant to a provision for such termination or amendment contained in the agreement of merger or consolidation or plan of merger.

(c) Except in the case of a merger under subsection (m) of this section, if a domestic partnership is merging or consolidating under this section, (i) if the domestic partnership has not filed a statement of partnership existence, then the domestic partnership shall file a statement of partnership existence and (ii) the domestic partnership or other business entity surviving or resulting in or from the merger or consolidation shall file a certificate of merger or consolidation executed by at least 1 partner or by 1 or more authorized persons on behalf of the domestic partnership when it is the surviving or resulting entity with the Secretary of State. The certificate of merger or consolidation shall state:

(1) The name, jurisdiction of formation or organization and type of entity of each of the domestic partnerships and other business entities which is to merge or consolidate;

(2) That an agreement of merger or consolidation has been approved and executed by each of the domestic partnerships and other business entities which is to merge or consolidate;

(3) The name of the surviving or resulting domestic partnership or other business entity;

(4) In the case of a merger in which a domestic partnership is the surviving entity, such amendments, if any, to the statement of partnership existence of the surviving domestic partnership (and in the case of a surviving domestic partnership that is a limited liability partnership, to the statement of qualification of such surviving domestic partnership) to change its name, registered office or registered agent as are desired to be effected by the merger;

(5) The future effective date or time (which shall be a date or time certain) of the merger or consolidation if it is not to be effective upon the filing of the certificate of merger or consolidation;

(6) That the agreement of merger or consolidation is on file at a place of business of the surviving or resulting domestic partnership or other business entity, and shall state the address thereof;

(7) That a copy of the agreement of merger or consolidation will be furnished by the surviving or resulting domestic partnership or other business entity, on request and without cost, to any partner of any domestic partnership or any person holding an interest in any other business entity which is to merge or consolidate; and

(8) If the surviving or resulting entity is not formed, organized or created under the laws of the State of Delaware, a statement that such surviving or resulting entity agrees that it may be served with process in the State of Delaware in any action, suit or proceeding for the enforcement of any obligation of any domestic partnership which is to merge or consolidate, irrevocably appointing the Secretary of State as its agent to accept service of process in any such action, suit or proceeding and specifying the address to which a copy of such process shall be mailed to it by the Secretary of State. In the event of service hereunder upon the Secretary of State, the procedures set forth in § 15-113(b) of this title shall be applicable, except that the plaintiff in any such action, suit or proceeding shall furnish the Secretary of State with the address specified in the certificate of merger or consolidation provided for in this section and any other address which the plaintiff may elect to furnish, together with copies of each process as required by the Secretary of State, and the Secretary of State shall notify such surviving or resulting entity at all such addresses furnished by the plaintiff in accordance with the procedures set forth in § 15-113(b) of this title.

(d) Any failure to file a certificate of merger or consolidation in connection with a merger or consolidation which occurred prior to the effective date of this chapter shall not affect the validity or effectiveness of any such merger or consolidation.

(e) Unless a future effective date or time is provided in a certificate of merger or consolidation, or in the case of a merger under subsection (m) of this section in a certificate of ownership and merger, in which event a merger or consolidation shall be effective at any such future effective date or time, a merger or consolidation shall be effective upon the filing with the Secretary of State of a certificate of merger or consolidation or a certificate of ownership and merger.

(f) A certificate of merger or consolidation or a certificate of ownership and merger shall act as a statement of cancellation of the statement of partnership existence (and if applicable the statement of qualification) for a domestic partnership which is not the surviving or resulting entity in the merger or consolidation. A certificate of merger that sets forth any amendment in accordance with paragraph (c)(4) of this section shall be deemed to be an amendment to the statement of partnership existence (and if applicable to the statement of qualification) of the domestic partnership, and the domestic partnership shall not be required to take any further action to amend its statement of partnership existence (or if applicable its statement of qualification) under § 15-105 of this title with respect to such amendments set forth in the certificate of merger. Whenever this section requires the filing of a certificate of merger or consolidation, such requirement shall be deemed satisfied by the filing of an agreement of merger or consolidation containing the information required by this section to be set forth in the certificate of merger or consolidation.

(g) An agreement of merger or consolidation or a plan of merger approved in accordance with subsection (b) of this section may (1) effect any amendment to the partnership agreement or (2) effect the adoption of a new partnership agreement for a domestic partnership if it is the surviving or resulting partnership in the merger or consolidation. Any amendment to a partnership agreement or adoption of a new partnership agreement made pursuant to the foregoing sentence shall be effective at the effective time or date of the merger or consolidation and shall be effective notwithstanding any provision of the partnership agreement relating to amendment or adoption of a new partnership agreement, other than a provision that by its terms applies to an amendment to the partnership agreement or the adoption of a new partnership agreement, in either case, in connection with a merger or consolidation. The provisions of this subsection shall not be construed to limit the accomplishment of a merger or of any of the matters referred to herein by any other means provided for in a

partnership agreement or other agreement or as otherwise permitted by law, including that the partnership agreement of any constituent domestic partnership to the merger or consolidation (including a domestic partnership formed for the purpose of consummating a merger or consolidation) shall be the partnership agreement of the surviving or resulting domestic partnership.

(h) When any merger or consolidation shall have become effective under this section, for all purposes of the laws of the State of Delaware, all of the rights, privileges and powers of each of the domestic partnerships and other business entities that have merged or consolidated, and all property, real, personal and mixed, and all debts due to any of said domestic partnerships and other business entities, as well as all other things and causes of action belonging to each of such domestic partnerships and other business entities, shall be vested in the surviving or resulting domestic partnership or other business entity, and shall thereafter be the property of the surviving or resulting domestic partnership or other business entity as they were of each of the domestic partnerships and other business entities that have merged or consolidated, and the title to any real property vested by deed or otherwise, under the laws of the State of Delaware, in any of such domestic partnerships and other business entities, shall not revert or be in any way impaired by reason of this chapter; but all rights of creditors and all liens upon any property of any of said domestic partnerships and other business entities shall be preserved unimpaired, and all debts, liabilities and duties of each of the said domestic partnerships and other business entities that have merged or consolidated shall thenceforth attach to the surviving or resulting domestic partnership or other business entity, and may be enforced against it to the same extent as if said debts, liabilities and duties had been incurred or contracted by it. Unless otherwise agreed, a merger or consolidation of a domestic partnership, including a domestic partnership which is not the surviving or resulting entity in the merger or consolidation, shall not require such domestic partnership to wind up its affairs under subchapter VIII of this chapter of this title or pay its liabilities and distribute its assets under subchapter VIII of this chapter of this title, and the merger or consolidation shall not constitute a dissolution of such partnership.

(i) Except as provided by agreement with a person to whom a partner of a domestic partnership is obligated, a merger or consolidation of a domestic partnership that has become effective shall not affect any obligation or liability existing at the time of such merger or consolidation of a partner of a domestic partnership which is merging or consolidating.

(j) If a domestic partnership is a constituent party to a merger or consolidation that shall have become effective, but the domestic partnership is not the surviving or resulting entity of the merger or consolidation, then a judgment creditor of a partner of such domestic partnership may not levy execution against the assets of the partner to satisfy a judgment based on a claim against the surviving entity of the merger or consolidation unless:

(1) The claim is for an obligation of the domestic partnership for which the partner is liable as provided in § 15-306 of this title and either:

(i) A judgment based on the same claim has been obtained against the surviving or resulting entity of the merger or consolidation and a writ of execution on the judgment has been returned unsatisfied in whole or in part;

(ii) The surviving or resulting entity of the merger or consolidation is a debtor in bankruptcy;

(iii) The partner has agreed that the creditor need not exhaust the assets of the domestic partnership that was not the surviving or resulting entity of the merger or consolidation;

(iv) The partner has agreed that the creditor need not exhaust the assets of the surviving or resulting entity of the merger or consolidation; or

(v) A court grants permission to the judgment creditor to levy execution against the assets of the partner based on a finding that the assets of the surviving or resulting entity of the merger or consolidation that are subject to execution are clearly insufficient to satisfy the judgment, that exhaustion of the assets of the surviving or resulting entity of the merger or consolidation is excessively burdensome, or that the grant of permission is an appropriate exercise of the court's equitable powers; or

(2) Liability is imposed on the partner by law or contract independent of the existence of the surviving or resulting entity of the merger or consolidation.

(k) A person is admitted as a partner of a surviving or resulting domestic partnership pursuant to a merger or consolidation approved in accordance with subsection (b) of this section as provided in the partnership agreement of the surviving or resulting domestic partnership or in the agreement of merger or consolidation or the plan of merger, and in the event of any inconsistency, the terms of the agreement of merger or consolidation or the plan of merger shall control. A person is admitted as a partner of a domestic partnership pursuant to a merger or consolidation in which such domestic partnership is not the surviving or resulting domestic partnership in the merger or consolidation as provided in the partnership agreement of such domestic partnership.

(l) A partnership agreement may provide that a domestic partnership shall not have the power to merge or consolidate as set forth in this section.

(m) In any case in which (i) at least 90% of the outstanding shares of each class of the stock of a corporation or corporations (other than a corporation which has in its certificate of incorporation the provision required by § 251(g)(7)(A) and (B) of Title 8), of which class there are outstanding shares that, absent § 267(a) of Title 8, would be entitled to vote on such merger, is owned by a domestic partnership, (ii) 1 or more of such corporations is a corporation of the State of Delaware, and (iii) any corporation that is not a corporation of the State of Delaware is a corporation of any other state or the District of Columbia or another jurisdiction, the laws of which do not forbid such merger, the domestic partnership having such stock ownership may either merge the corporation or corporations into itself and assume all

of its or their obligations, or merge itself, or itself and 1 or more of such corporations, into 1 of the other corporations, pursuant to a plan of merger. If a domestic partnership is causing a merger under this subsection, the domestic partnership shall file a certificate of ownership and merger executed by at least 1 partner or by 1 or more authorized persons on behalf of the domestic partnership in the office of the Secretary of State. The certificate of ownership and merger shall certify that such merger was authorized in accordance with the domestic partnership's partnership agreement and this chapter, and if the domestic partnership shall not own all the outstanding stock of all the corporations that are parties to the merger, shall state the terms and conditions of the merger, including the securities, cash, property, or rights to be issued, paid, delivered or granted by the surviving domestic partnership or corporation upon surrender of each share of the corporation or corporations not owned by the domestic partnership, or the cancellation of some or all of such shares. The terms and conditions of the merger may not result in a holder of stock in a corporation becoming a partner in a surviving domestic partnership (other than a limited liability partnership). If a corporation surviving a merger under this subsection is not a corporation organized under the laws of the State of Delaware, then the terms and conditions of the merger shall obligate such corporation to agree that it may be served with process in the State of Delaware in any proceeding for enforcement of any obligation of the domestic partnership or any obligation of any constituent corporation of the State of Delaware, as well as for enforcement of any obligation of the surviving corporation, including any suit or other proceeding to enforce the right of any stockholders as determined in appraisal proceedings pursuant to § 262 of Title 8, and to irrevocably appoint the Secretary of State as its agent to accept service of process in any such suit or other proceedings, and to specify the address to which a copy of such process shall be mailed by the Secretary of State. Process may be served upon the Secretary of State under this subsection by means of electronic transmission but only as prescribed by the Secretary of State. The Secretary of State is authorized to issue such rules and regulations with respect to such service as the Secretary of State deems necessary or appropriate. In the event of such service upon the Secretary of State in accordance with this subsection, the Secretary of State shall forthwith notify such surviving corporation thereof by letter, directed to such surviving corporation at its address so specified, unless such surviving corporation shall have designated in writing to the Secretary of State a different address for such purpose, in which case it shall be mailed to the last address so designated. Such letter shall be sent by a mail or courier service that includes a record of mailing or deposit with the courier and a record of delivery evidenced by the signature of the recipient. Such letter shall enclose a copy of the process and any other papers served on the Secretary of State pursuant to this subsection. It shall be the duty of the plaintiff in the event of such service to serve process and any other papers in duplicate, to notify the Secretary of State that service is being effected pursuant to this subsection and to pay the Secretary of State the sum of $50 for the use of the State of Delaware, which sum shall be taxed as part of the costs in the proceeding, if the plaintiff shall prevail therein. The Secretary of State shall maintain an alphabetical record of any such service setting forth the name of the plaintiff and the defendant, the title, docket number and nature of the proceeding in which process has been served, the fact that service has been effected pursuant to this subsection, the return date thereof, and the day and hour service was made. The Secretary of State shall not be required to retain such information longer than 5 years from receipt of the service of process.

(72 Del. Laws, c. 151, § 1; 72 Del. Laws, c. 390, § 28; 73 Del. Laws, c. 85, §§ 14, 15; 73 Del. Laws, c. 329, § 15; 74 Del. Laws, c. 103, § 10; 74 Del. Laws, c. 266, §§ 8-10; 75 Del. Laws, c. 50, § 22; 76 Del. Laws, c. 106, §§ 12-14; 77 Del. Laws, c. 59, §§ 11-13; 77 Del. Laws, c. 289, §§ 11-18; 78 Del. Laws, c. 98, § 10; 78 Del. Laws, c. 271, § 5; 79 Del. Laws, c. 75, § 3; 80 Del. Laws, c. 43, § 8; 81 Del. Laws, c. 87, § 4; 82 Del. Laws, c. 256, § 14.)

§ 15-903 Approval of conversion of a domestic partnership.

(a) Upon compliance with this section, a domestic partnership may convert to a corporation, a statutory trust, a business trust, an association, a real estate investment trust, a common-law trust or any other incorporated or unincorporated business or entity, including a limited partnership (including a limited liability limited partnership), a foreign partnership or a limited liability company. If a domestic partnership is converting under this section to another business form organized, formed or created under the laws of a jurisdiction other than the State of Delaware and has not filed a statement of partnership existence, then the domestic partnership shall file a statement of partnership existence prior to or at the time of the filing of the certificate of conversion to non-Delaware entity.

(b) If the partnership agreement specifies the manner of authorizing a conversion of the partnership, the conversion shall be authorized as specified in the partnership agreement. If the partnership agreement does not specify the manner of authorizing a conversion of the partnership and does not prohibit a conversion of the partnership, the conversion shall be authorized in the same manner as is specified in the partnership agreement for authorizing a merger or consolidation that involves the partnership as a constituent party to the merger or consolidation. If the partnership agreement does not specify the manner of authorizing a conversion of the partnership or a merger or consolidation that involves the partnership as a constituent party and does not prohibit a conversion of the partnership, the conversion shall be authorized by the approval by all the partners.

(c) Unless otherwise agreed, the conversion of a domestic partnership to another entity or business form pursuant to this section shall not require such partnership to wind up its affairs under subchapter VIII of this chapter or pay its liabilities and distribute its assets under subchapter VIII of this chapter, and the conversion shall not constitute a dissolution of such partnership. When a partnership has converted to another entity or business form pursuant to this section, for all purposes of the laws of the State of Delaware, the other entity or business form shall be deemed to be the same entity as the converting partnership and the conversion shall constitute a continuation of the existence of the partnership in the form of such other entity or business form.

(d) In connection with a conversion of a domestic partnership to another entity or business form pursuant to this section, rights or securities of or interests in the domestic partnership which is to be converted may be exchanged for or converted into cash, property,

rights or securities of or interests in the entity or business form into which the domestic partnership is being converted or, in addition to or in lieu thereof, may be exchanged for or converted into cash, property, rights or securities of or interests in another entity or business form, may remain outstanding or may be canceled.

(e) If a partnership shall convert in accordance with this section to another entity or business form organized, formed or created under the laws of a jurisdiction other than the State of Delaware, a certificate of conversion to non-Delaware entity executed in accordance with § 15-105 of this title shall be filed in the office of the Secretary of State in accordance with § 15-105 of this title. The certificate of conversion to non-Delaware entity shall state:

(1) The name of the partnership and, if it has been changed, the name under which its statement of partnership existence was originally filed;

(2) The date of the filing of its original statement of partnership existence with the Secretary of State;

(3) The jurisdiction in which the entity or business form, to which the partnership shall be converted, is organized, formed or created, and the name of such entity or business form;

(4) The future effective date or time (which shall be a date or time certain) of the conversion if it is not to be effective upon the filing of the certificate of conversion to non-Delaware entity;

(5) That the conversion has been approved in accordance with this section;

(6) The agreement of the partnership that it may be served with process in the State of Delaware in any action, suit or proceeding for enforcement of any obligation of the partnership arising while it was a partnership of the State of Delaware, and that it irrevocably appoints the Secretary of State as its agent to accept service of process in any such action, suit or proceeding;

(7) The address to which a copy of the process referred to in paragraph (e)(6) of this section shall be mailed to it by the Secretary of State. In the event of service hereunder upon the Secretary of State, the procedures set forth in § 15-112(b) of this title shall be applicable, except that the plaintiff in any such action, suit or proceeding shall furnish the Secretary of State with the address specified in this paragraph and any other address that the plaintiff may elect to furnish, together with copies of such process as required by the Secretary of State, and the Secretary of State shall notify the partnership that has converted out of the State of Delaware at all such addresses furnished by the plaintiff in accordance with the procedures set forth in § 15-112(b) of this title.

(f) Upon the filing in the office of the Secretary of State of the certificate of conversion to non-Delaware entity or upon the future effective date or time of the certificate of conversion to non-Delaware entity and payment to the Secretary of State of all fees prescribed in this chapter, the partnership shall cease to exist as a partnership of the State of Delaware. A copy of the certificate of conversion to non-Delaware entity certified by the Secretary of State shall be prima facie evidence of the conversion by such partnership out of the State of Delaware.

(g) The conversion of a partnership out of the State of Delaware in accordance with this section and the resulting cessation of its existence as a partnership of the State of Delaware pursuant to a certificate of conversion to non-Delaware entity shall not be deemed to affect any obligations or liabilities of the partnership incurred prior to such conversion or the personal liability of any person incurred prior to such conversion, nor shall it be deemed to affect the choice of law applicable to the partnership with respect to matters arising prior to such conversion.

(h) When a domestic partnership has been converted to another entity or business form pursuant to this section, the other entity or business form shall, for all purposes of the laws of the State of Delaware, be deemed to be the same entity as the domestic partnership. When any conversion shall have become effective under this section, for all purposes of the laws of the State of Delaware, all of the rights, privileges and powers of the domestic partnership that has converted, and all property, real, personal and mixed, and all debts due to such partnership, as well as all other things and causes of action belonging to such partnership, shall remain vested in the other entity or business form to which such partnership has converted and shall be the property of such other entity or business form, and the title to any real property vested by deed or otherwise in such partnership shall not revert or be in any way impaired by reason of this chapter; but all rights of creditors and all liens upon any property of such partnership shall be preserved unimpaired, and all debts, liabilities and duties of the domestic partnership that has converted shall remain attached to the other entity or business form to which such partnership has converted, and may be enforced against it to the same extent as if said debts, liabilities and duties had originally been incurred or contracted by it in its capacity as such other entity or business form. The rights, privileges, powers and interests in property of the domestic partnership that has converted, as well as the debts, liabilities and duties of such partnership, shall not be deemed, as a consequence of the conversion, to have been transferred to the other entity or business form to which such partnership has converted for any purpose of the laws of the State of Delaware.

(i) A partnership agreement may provide that a domestic partnership shall not have the power to convert as set forth in this section.

(72 Del. Laws, c. 151, § 1; 72 Del. Laws, c. 390, § 29; 73 Del. Laws, c. 329, § 16; 74 Del. Laws, c. 103, § 11; 74 Del. Laws, c. 266, §§ 11, 12; 75 Del. Laws, c. 416, §§ 9-14; 76 Del. Laws, c. 106, § 15; 79 Del. Laws, c. 75, § 4; 81 Del. Laws, c. 87, § 5; 82 Del. Laws, c. 257, § 6.)

§ 15-904 Domestication of non-United States entities.

(a) As used in this section and in § 15-105 of this title, "non-United States entity" means a foreign limited partnership (other than 1 formed under the laws of a state) (including a foreign limited liability limited partnership (other than 1 formed under the laws of a

state)), or a corporation, a statutory trust, a business trust, an association, a real estate investment trust, a common-law trust or any other incorporated or unincorporated business or entity, including a general partnership (including a limited liability partnership) or a limited liability company, formed, incorporated, created or that otherwise came into being under the laws of any foreign country or other foreign jurisdiction (other than any state).

(b) Any non-United States entity may become domesticated as a partnership (including a limited liability partnership) in the State of Delaware by complying with subsection (g) of this section and filing with the Secretary of State in accordance with § 15-105 of this title:

(1) A certificate of partnership domestication that has been executed in accordance with § 15-105 of this title;

(2) A statement of partnership existence that complies with § 15-303 of this title and has been executed in accordance with § 15-105 of this title; and

(3) In the case of a domestication as a limited liability partnership, a statement of qualification in accordance with § 15-1001(c) of this title.

The certificate and the statements required by this subsection (b) of this section shall be filed simultaneously with the Secretary of State and, if such certificate and such statements are not to become effective upon their filing as permitted by § 15-105(h) of this title, then such certificate and such statements shall provide for the same effective date or time in accordance with § 15-105(h) of this title.

(c) The certificate of partnership domestication shall state:

(1) The date on which and jurisdiction where the non-United States entity was first formed, incorporated, created or otherwise came into being;

(2) The name of the non-United States entity immediately prior to the filing of the certificate of partnership domestication;

(3) The name of the partnership as set forth in the statement of partnership existence filed in accordance with subsection (b) of this section;

(4) The future effective date or time (which shall be a date or time certain) of the domestication as a partnership if it is not to be effective upon the filing of the certificate of partnership domestication and the statement of partnership existence;

(5) The jurisdiction that constituted the seat, siege social, or principal place of business or central administration of the non-United States entity, or any other equivalent thereto under applicable law, immediately prior to the filing of the certificate of partnership domestication;

(6) That the domestication has been approved in the manner provided for by the document, instrument, agreement or other writing, as the case may be, governing the internal affairs of the non-United States entity and the conduct of its business or by applicable non-Delaware law, as appropriate; and

(7) In the case of a domestication as a limited liability partnership, that the partnership agreement of the partnership states that the partnership shall be a limited liability partnership.

(d) Upon the filing with the Secretary of State of the certificate of partnership domestication, the statement of partnership existence and the statement of qualification (if applicable) or upon the future effective date or time of the certificate of partnership domestication, the statement of partnership existence and the statement of qualification (if applicable), the non-United States entity shall be domesticated as a partnership (including a limited liability partnership, if applicable) in the State of Delaware and the partnership shall thereafter be subject to all of the provisions of this chapter, provided that the existence of the partnership shall be deemed to have commenced on the date the non-United States entity commenced its existence in the jurisdiction in which the non-United States entity was first formed, incorporated, created or otherwise came into being.

(e) The domestication of any non-United States entity as a partnership (including a limited liability partnership) in the State of Delaware shall not be deemed to affect any obligations or liabilities of the non-United States entity incurred prior to its domestication as a partnership in the State of Delaware, or the personal liability of any person therefor.

(f) The filing of a certificate of partnership domestication shall not affect the choice of law applicable to the non-United States entity, except that from the effective date or time of the domestication, the laws of the State of Delaware, including the provisions of this chapter, shall apply to the non-United States entity to the same extent as if the non-United States entity had been formed as a partnership on that date.

(g) Prior to the filing of a certificate of partnership domestication with the Secretary of State, the domestication shall be approved in the manner provided for by the document, instrument, agreement or other writing, as the case may be, governing the internal affairs of the non-United States entity and the conduct of its business or by applicable non-Delaware law, as appropriate, and a partnership agreement shall be approved by the same authorization required to approve the domestication; provided that, in the event the continuing domestic partnership is not a limited liability partnership, such approval shall include the approval of any person who, at the effective date or time of the domestication, shall be a partner of the partnership.

(h) When any domestication shall have become effective under this section, for all purposes of the laws of the State of Delaware, all of the rights, privileges and powers of the non-United States entity that has been domesticated, and all property, real, personal and mixed, and all debts due to such non-United States entity, as well as all other things and causes of action belonging to such non-United States entity, shall remain vested in the domestic partnership to which such non-United States entity has been domesticated (and also in the non-United States entity, if and for so long as the non-United States entity continues its existence in the foreign jurisdiction in which it was existing immediately prior to the domestication) and shall be the property of such domestic partnership (and also of the non-United

States entity, if and for so long as the non-United States entity continues its existence in the foreign jurisdiction in which it was existing immediately prior to the domestication), and the title to any real property vested by deed or otherwise in such non-United States entity shall not revert or be in any way impaired by reason of this chapter; but all rights of creditors and all liens upon any property of such non-United States entity shall be preserved unimpaired, and all debts, liabilities and duties of the non-United States entity that has been domesticated shall remain attached to the domestic partnership to which such non-United States entity has been domesticated (and also to the non-United States entity, if and for so long as the non-United States entity continues its existence in the foreign jurisdiction in which it was existing immediately prior to the domestication), and may be enforced against it to the same extent as if said debts, liabilities and duties had originally been incurred or contracted by it in its capacity as a domestic partnership. The rights, privileges, powers and interests in property of the non-United States entity, as well as the debts, liabilities and duties of the non-United States entity, shall not be deemed, as a consequence of the domestication, to have been transferred to the domestic partnership to which such non-United States entity has domesticated for any purpose of the laws of the State of Delaware.

(i) When a non-United States entity has become domesticated as a domestic partnership pursuant to this section, for all purposes of the laws of the State of Delaware, the domestic partnership shall be deemed to be the same entity as the domesticating non-United States entity and the domestication shall constitute a continuation of the existence of the domesticating non-United States entity in the form of a domestic partnership. Unless otherwise agreed, for all purposes of the laws of the State of Delaware, the domesticating non-United States entity shall not be required to wind up its affairs or pay its liabilities and distribute its assets, and the domestication shall not be deemed to constitute a dissolution of such non-United States entity. If, following domestication, a non-United States entity that has become domesticated as a domestic partnership continues its existence in the foreign country or other foreign jurisdiction in which it was existing immediately prior to domestication, the domestic partnership and such non-United States entity shall, for all purposes of the laws of the State of Delaware, constitute a single entity formed, incorporated, created or otherwise having come into being, as applicable, and existing under the laws of the State of Delaware and the laws of such foreign country or other foreign jurisdiction.

(j) In connection with a domestication hereunder, rights or securities of, or interests in, the non-United States entity that is to be domesticated as a domestic partnership may be exchanged for or converted into cash, property, rights or securities of, or interests in, such domestic partnership or, in addition to or in lieu thereof, may be exchanged for or converted into cash, property, rights or securities of, or interests in, another domestic partnership or other entity, may remain outstanding or may be canceled.

(k) In connection with the domestication of a non-United States entity as a domestic partnership (including a limited liability partnership), a person is admitted as a partner of the partnership as provided in the partnership agreement. For the purpose of § 15-306(b) of this title, a person who, at the effective time or date of the domestication of any non-United States entity as a domestic partnership (including a limited liability partnership), is a partner of the partnership, shall be deemed admitted as a partner of the partnership at the effective date or time of such domestication.

(72 Del. Laws, c. 151, § 1; 72 Del. Laws, c. 390, §§ 30, 31; 73 Del. Laws, c. 85, §§ 16, 17; 74 Del. Laws, c. 103, § 12; 74 Del. Laws, c. 266, § 13; 75 Del. Laws, c. 50, §§ 23, 24; 75 Del. Laws, c. 416, §§ 15-21; 76 Del. Laws, c. 106, § 16; 77 Del. Laws, c. 59, § 14; 78 Del. Laws, c. 98, § 11; 78 Del. Laws, c. 271, §§ 6-9; 79 Del. Laws, c. 75, § 5; 81 Del. Laws, c. 87, § 6.)

§ 15-905 Transfer or continuance of domestic partnerships.

(a) Upon compliance with the provisions of this section, any domestic partnership may transfer to or domesticate or continue in any jurisdiction, other than any state, and, in connection therewith, may elect to continue its existence as a partnership in the State of Delaware. If a domestic partnership is transferring or domesticating or continuing under this section and has not filed a statement of partnership existence, then the domestic partnership shall file a statement of partnership existence prior to or at the time of the filing of the certificate of transfer or certificate of transfer and domestic continuance.

(b) If the partnership agreement specifies the manner of authorizing a transfer or domestication or continuance described in subsection (a) of this section, the transfer or domestication or continuance shall be authorized as specified in the partnership agreement. If the partnership agreement does not specify the manner of authorizing a transfer or domestication or continuance described in subsection (a) of this section and does not prohibit such a transfer or domestication or continuance, the transfer or domestication or continuance shall be authorized in the same manner as is specified in the partnership agreement for authorizing a merger or consolidation that involves the partnership as a constituent party to the merger or consolidation. If the partnership agreement does not specify the manner of authorizing a transfer or domestication or continuance described in subsection (a) of this section or a merger or consolidation that involves the partnership as a constituent party and does not prohibit such a transfer or domestication or continuance, the transfer or domestication or continuance shall be authorized by the approval by all the partners. If a transfer or domestication or continuance described in subsection (a) of this section shall be authorized as provided in this subsection (b) of this section, a certificate of transfer if the partnership's existence as a partnership of the State of Delaware is to cease, or a certificate of transfer and domestic continuance if the partnership's existence as a partnership in the State of Delaware is to continue, executed in accordance with § 15-105 of this title, shall be filed with the Secretary of State in accordance with § 15-105 of this title. The certificate of transfer or the certificate of transfer and domestic continuance shall state:

(1) The name of the partnership and, if it has been changed, the name under which its statement of partnership existence was originally filed;

(2) The date of the filing of its original statement of partnership existence with the Secretary of State;

(3) The jurisdiction to which the partnership shall be transferred or in which it shall be domesticated or continued and the name of the entity or business form formed, incorporated, created or that otherwise comes into being as a consequence of the transfer of the partnership to, or its domestication or continuance in, such foreign jurisdiction;

(4) The future effective date or time (which shall be a date or time certain) of the transfer to or domestication or continuance in the jurisdiction specified in paragraph (b)(3) of this section if it is not to be effective upon the filing of the certificate of transfer or the certificate of transfer and domestic continuance;

(5) That the transfer or domestication or continuance of the partnership has been approved in accordance with the provisions of this section;

(6) In the case of a certificate of transfer, (i) that the existence of the partnership as a partnership of the State of Delaware shall cease when the certificate of transfer becomes effective and (ii) the agreement of the partnership that it may be served with process in the State of Delaware in any action, suit or proceeding for enforcement of any obligation of the partnership arising while it was a partnership of the State of Delaware, and that it irrevocably appoints the Secretary of State as its agent to accept service of process in any such action, suit or proceeding;

(7) The address (which may not be that of the partnership's registered agent without the written consent of the partnership's registered agent, such consent to be filed with the certificate of transfer) to which a copy of the process referred to in paragraph (b)(6) of this section shall be mailed to it by the Secretary of State. In the event of service hereunder upon the Secretary of State, the procedures set forth in § 15-113(b) of this title shall be applicable, except that the plaintiff in any such action, suit or proceeding shall furnish the Secretary of State with the address specified in this subsection and any other address that the plaintiff may elect to furnish, together with copies of such process as required by the Secretary of State, and the Secretary of State shall notify the partnership that has transferred or domesticated or continued out of the State of Delaware at all such addresses furnished by the plaintiff in accordance with the procedures set forth in § 15-113(b) of this title; and

(8) In the case of a certificate of transfer and domestic continuance, that the partnership will continue to exist as a partnership of the State of Delaware after the certificate of transfer and domestic continuance becomes effective.

(c) Upon the filing with the Secretary of State of the certificate of transfer or upon the future effective date or time of the certificate of transfer and payment to the Secretary of State of all fees prescribed in this chapter, the partnership shall cease to exist as a partnership of the State. A copy of the certificate of transfer certified by the Secretary of State shall be prima facie evidence of the transfer or domestication or continuance by such partnership out of the State of Delaware. A copy of the certificate of transfer and domestic continuance certified by the Secretary of State shall be prima facie evidence of such partnership's transfer to or domestication or continuance in another jurisdiction and its continuance as a partnership in the State of Delaware.

(d) The transfer or domestication or continuance of a partnership out of the State of Delaware in accordance with this section and the resulting cessation of its existence as a partnership of the State of Delaware pursuant to a certificate of transfer shall not be deemed to affect any obligations or liabilities of the partnership incurred prior to such transfer or domestication or continuance or the personal liability of any person incurred prior to such transfer or domestication or continuance, nor shall it be deemed to affect the choice of law applicable to the partnership with respect to matters arising prior to such transfer or domestication or continuance. Unless otherwise agreed, the transfer or domestication or continuance of a partnership out of the State of Delaware in accordance with this section shall not require such partnership to wind up its affairs under subchapter VIII of this chapter or pay its liabilities and distribute its assets under subchapter VIII of this chapter and shall not be deemed to constitute a dissolution of such partnership.

(e) If a partnership files a certificate of transfer and domestic continuance, after the time the certificate of transfer and domestic continuance becomes effective, the partnership shall continue to exist as a partnership of the State of Delaware, and the laws of the State of Delaware, including the provisions of this chapter, shall apply to the partnership, to the same extent as prior to such time. So long as a partnership continues to exist as a partnership of the State of Delaware following the filing of a certificate of transfer and domestic continuance, the continuing domestic partnership and the entity or business form formed, incorporated, created or that otherwise came into being as a consequence of the transfer of the partnership to, or its domestication or continuance in, a foreign country or other foreign jurisdiction shall, for all purposes of the laws of the State of Delaware, constitute a single entity formed, incorporated, created or otherwise having come into being, as applicable, and existing under the laws of the State of Delaware and the laws of such foreign country or other foreign jurisdiction.

(f) In connection with a transfer or domestication or continuance of a domestic partnership to or in another jurisdiction pursuant to subsection (a) of this section, rights or securities of, or interests in, such partnership may be exchanged for or converted into cash, property, rights or securities of, or interests in, the entity or business form in which the partnership will exist in such other jurisdiction as a consequence of the transfer or domestication or continuance or, in addition to or in lieu thereof, may be exchanged for or converted into cash, property, rights or securities of, or interests in, another entity or business form, may remain outstanding or may be canceled.

(g) When a domestic partnership has transferred or domesticated or continued out of the State of Delaware pursuant to this section, the transferred or domesticated or continued entity or business form shall, for all purposes of the laws of the State of Delaware, be deemed to be the same entity as the domestic partnership and shall constitute a continuation of the existence of such domestic partnership in the form of the transferred or domesticated or continued entity or business form. When any transfer or domestication or continuance of a domestic partnership out of the State of Delaware shall have become effective under this section, for all purposes of the laws of the State

of Delaware, all of the rights, privileges and powers of the domestic partnership that has transferred or domesticated or continued, and all property, real, personal and mixed, and all debts due to such partnership, as well as all other things and causes of action belonging to such partnership, shall remain vested in the transferred or domesticated or continued entity or business form (and also in the domestic partnership that has transferred, domesticated or continued, if and for so long as such domestic partnership continues its existence as a domestic partnership) and shall be the property of such transferred or domesticated or continued entity or business form (and also of the domestic partnership that has transferred, domesticated or continued, if and for so long as such domestic partnership continues its existence as a domestic partnership), and the title to any real property vested by deed or otherwise in such partnership shall not revert or be in any way impaired by reason of this chapter; but all rights of creditors and all liens upon any property of such partnership shall be preserved unimpaired, and all debts, liabilities and duties of the domestic partnership that has transferred or domesticated or continued shall remain attached to the transferred or domesticated or continued entity or business form (and also to the domestic partnership that has transferred, domesticated or continued, if and for so long as such domestic partnership continues its existence as a domestic partnership), and may be enforced against it to the same extent as if said debts, liabilities and duties had originally been incurred or contracted by it in its capacity as the transferred or domesticated or continued entity or business form. The rights, privileges, powers and interests in property of the domestic partnership that has transferred or domesticated or continued, as well as the debts, liabilities and duties of such partnership, shall not be deemed, as a consequence of the transfer or domestication or continuance out of the State of Delaware, to have been transferred to the transferred or domesticated or continued entity or business form for any purpose of the laws of the State of Delaware.

(h) A partnership agreement may provide that a domestic partnership shall not have the power to transfer, domesticate or continue as set forth in this section.

(72 Del. Laws, c. 151, § 1; 72 Del. Laws, c. 390, §§ 32, 33; 73 Del. Laws, c. 85, § 18; 74 Del. Laws, c. 103, §§ 13-16; 74 Del. Laws, c. 266, §§ 14, 15; 75 Del. Laws, c. 50, § 25; 75 Del. Laws, c. 416, §§ 22-32; 76 Del. Laws, c. 106, §§ 17-19; 78 Del. Laws, c. 271, § 10; 79 Del. Laws, c. 75, § 6; 82 Del. Laws, c. 257, § 7.)

Subchapter X

Limited Liability Partnership

§ 15-1001 Statement of qualification of a domestic partnership.

(a) A domestic partnership may be formed as, or may become, a limited liability partnership pursuant to this section.

(b) In order to form a limited liability partnership, the original partnership agreement of the partnership shall state that the partnership is formed as a limited liability partnership, and the partnership shall file a statement of qualification in accordance with subsection (c) of this section. In order for an existing partnership to become a limited liability partnership, the terms and conditions on which the partnership becomes a limited liability partnership must be approved by the vote necessary to amend the partnership agreement and, in the case of a partnership agreement that expressly considers obligations to contribute to the partnership, also the vote necessary to amend those provisions, and after such approval, the partnership shall file a statement of qualification in accordance with subsection (c) of this section.

(c) The statement of qualification must contain:

(1) The name of the partnership;

(2) The address of the registered office and the name and address of the registered agent for service of process required to be maintained by § 15-111 of this title;

(3) The number of partners of the partnership at the time of the effectiveness of the statement of qualification;

(4) A statement that the partnership elects to be a limited liability partnership; and

(5) The future effective date or time (which shall be a date or time certain) of the statement of qualification if it is not to be effective upon the filing of the statement of qualification.

(d) The status of a partnership as a limited liability partnership is effective on the later of the filing of the statement of qualification or a future effective date or time specified in the statement of qualification. The status as a limited liability partnership remains effective, regardless of changes in the partnership and regardless of cancellation of a statement of partnership existence for such partnership pursuant to the filing of a statement of cancellation to accomplish the cancellation of such statement of partnership existence or pursuant to § 15-1209(a) of this title, until the statement of qualification is canceled pursuant to § 15-105(d), § 15-111(d), or § 15-111(i)(4) of this title or revoked pursuant to § 15-1003 of this title.

(e) A partnership is a limited liability partnership if there has been substantial compliance with the requirements of this subchapter. The status of a partnership as a limited liability partnership and the liability of its partners is not affected by errors or later changes in the information required to be contained in the statement of qualification under subsection (c) of this section.

(f) The filing of a statement of qualification establishes that a partnership has satisfied all conditions precedent to the qualification of the partnership as a limited liability partnership.

(g) An amendment or cancellation of a statement of qualification is effective when it is filed or on a future effective date or time specified in the amendment or cancellation.

(h) If a person is included in the number of partners of a limited liability partnership set forth in a statement of qualification, a statement of foreign qualification or an annual report, the inclusion of such person shall not be admissible as evidence in any action, suit or proceeding, whether civil, criminal, administrative or investigative, for the purpose of determining whether such person is liable as a partner of such

limited liability partnership. The status of a partnership as a limited liability partnership and the liability of a partner of such limited liability partnership shall not be adversely affected if the number of partners stated in a statement of qualification, a statement of foreign qualification or an annual report is erroneously stated provided that the statement of qualification, the statement of foreign qualification or the annual report was filed in good faith.

(i) Notwithstanding anything in this chapter to the contrary, a domestic partnership having, or that but for its election in accordance with § 15-1206(c) of this chapter, would have had, on December 31, 2001, the status of a registered limited liability partnership under predecessor law, shall have the status of a limited liability partnership under this chapter as of January 1, 2002, and to the extent such partnership has not filed a statement of qualification pursuant to this section, the latest application or renewal application filed by such partnership under such predecessor law shall constitute a statement of qualification filed under this section.

(72 Del. Laws, c. 151, § 1; 73 Del. Laws, c. 223, § 2; 75 Del. Laws, c. 50, §§ 26-29; 77 Del. Laws, c. 59, § 15; 78 Del. Laws, c. 98, § 12.)

§ 15-1002 Name.

The name of a limited liability partnership shall comply with § 15-108 of this title.

(72 Del. Laws, c. 151, § 1.)

§ 15-1003 Annual report.

(a) A limited liability partnership, and a foreign limited liability partnership authorized to transact business in the State of Delaware, shall file an annual report with the Secretary of State which contains:

(1) The name of the limited liability partnership and the state or other jurisdiction under whose laws the foreign limited liability partnership is formed and the number of partners of the partnership as of the date of the filing of the annual report or, in the case of a delinquent annual report, the number of partners as of June 1 of the year such annual report was due; and

(2) The address of the registered office and the name and address of the registered agent for service of process required to be maintained by § 15-111 of this title.

(b) An annual report must be filed by June 1 of each year following the calendar year in which a statement of qualification filed by a partnership becomes effective or a foreign partnership becomes authorized to transact business in the State of Delaware.

(c) On or before March 31 of each year, the Secretary of State shall mail to each partnership at its registered office set forth in the last filed statement of qualification or statement of foreign qualification or annual report a notice specifying that the annual report together with applicable fees shall be due on June 1 of the current year and stating that the statement of qualification or statement of foreign qualification of the partnership shall be revoked unless such report is filed and such filing fee is paid on or before June 1 of the following year. The Secretary of State shall not issue a certificate of good standing with respect to any limited liability partnership or foreign limited liability partnership which has not filed an annual report and paid the required filing fee pursuant to this section or with respect to any limited liability partnership or foreign limited liability partnership if its statement of qualification or statement of foreign qualification (as applicable) is canceled or revoked. The statement of qualification or statement of foreign qualification of any such partnership that fails to file such annual report or pay such required filing fee on or before June 1 of the following year shall be revoked.

(d) A revocation under subsection (c) of this section only affects a partnership's status as a limited liability partnership and is not an event of dissolution of the partnership.

(e) A partnership whose statement of qualification or statement of foreign qualification has been revoked pursuant to subsection (c) of this section may apply to the Secretary of State for reinstatement after the effective date of the revocation. The application must state:

(1) The name of the partnership and the effective date of the revocation; and

(2) That the ground for revocation either did not exist or has been corrected.

(f) A reinstatement under subsection (e) relates back to and takes effect as of the effective date of the revocation, and the partnership's status as a limited liability partnership continues as if the revocation had never occurred.

(72 Del. Laws, c. 151, § 1; 73 Del. Laws, c. 223, § 3; 75 Del. Laws, c. 50, §§ 30, 31; 76 Del. Laws, c. 106, § 20; 78 Del. Laws, c. 271, § 11.)

§ 15-1004 Reinstatement of statement of qualification or statement of foreign qualification.

(a) A partnership whose statement of qualification or statement of foreign qualification has been canceled pursuant to § 15-111(d) or § 15-111(i)(4) of this title may apply to the Secretary of State for reinstatement after the effective date of the cancellation. The application must state:

(1) The name of the partnership and the effective date of the cancellation and, if such name is not available at the time of reinstatement, the name under which the statement of qualification or statement of foreign qualification is to be reinstated; and

(2) That the partnership has obtained and designated a new registered agent as required by § 15-111(a) of this title and the name and address of such new registered agent and the address of the partnership's registered office in the State of Delaware.

(b) A cancellation of a partnership's statement of qualification or statement of foreign qualification pursuant to § 15-111(d) and (i)(4) of this title only affects a partnership's status as a limited liability partnership or a foreign limited liability partnership and is not an event of dissolution of the partnership.

(c) A reinstatement under subsection (a) of this section relates back to and takes effect as of the effective date of the cancellation, and the partnership's status as a limited liability partnership or a foreign limited liability partnership continues as if the cancellation had never occurred.

(75 Del. Laws, c. 416, § 33.)

Subchapter XI

Foreign Limited Liability Partnership

§ 15-1101 Law governing foreign limited liability partnership.

(a) The law under which a foreign limited liability partnership is formed governs relations among the partners and between the partners and the partnership and the liability of partners for obligations of the partnership.

(b) A foreign limited liability partnership may not be denied a statement of foreign qualification by reason of any difference between the law under which the partnership was formed and the law of the State of Delaware.

(c) A statement of foreign qualification does not authorize a foreign limited liability partnership to engage in any business or exercise any power that a partnership may not engage in or exercise in the State of Delaware as a limited liability partnership.

(72 Del. Laws, c. 151, § 1.)

§ 15-1102 Statement of foreign qualification.

(a) Before doing business in the State of Delaware, a foreign limited liability partnership shall register with the Secretary of State by filing:

(1) A statement of foreign qualification which must contain:

a. The name of the foreign limited liability partnership which (i) satisfies the requirements of the state, territory, possession or other jurisdiction or country under whose law it is formed, (ii) ends with the words "Registered Limited Liability Partnership" or "Limited Liability Partnership," the abbreviation "R.L.L.P." or "L.L.P." or the designation "RLLP" or "LLP" and (iii) complies with § 15-108(c) and (d) of this title;

b. The address of the registered office and the name and address of the registered agent for service of process required to be maintained by § 15-111 of this title;

c. The number of partners of the partnership; and

d. The future effective date or time (which shall be a date or time certain) of the statement of foreign qualification if it is not to be effective upon the filing of the statement of foreign qualification.

(2) A certificate, as of a date not earlier than 6 months prior to the filing date, issued by an authorized officer of the jurisdiction of its formation evidencing its existence. If such certificate is in a foreign language, a translation thereof, under oath of the translator, shall be attached thereto.

(b) The status of a partnership as a foreign limited liability partnership is effective on the later of the filing of the statement of foreign qualification or the future effective date or time specified in the statement of foreign qualification. The status remains effective, regardless of changes in the partnership, until it is canceled pursuant to § 15-105(d), § 15-111(d) or § 15-111(i)(4) of this title or revoked pursuant to § 15-1003 of this title.

(c) An amendment or cancellation of a statement of foreign qualification is effective when it is filed or on the future effective date or time specified in the amendment or cancellation.

(72 Del. Laws, c. 151, § 1; 75 Del. Laws, c. 416, § 34; 77 Del. Laws, c. 289, § 19; 81 Del. Laws, c. 87, § 7; 82 Del. Laws, c. 257, § 8.)

§ 15-1103 Effect of failure to qualify.

(a) A foreign limited liability partnership doing business in the State of Delaware may not maintain an action or proceeding in the State of Delaware until it has in effect a statement of foreign qualification and has paid to the State of Delaware all fees and penalties for the years or parts thereof during which it did business in the State of Delaware without such qualification.

(b) The failure of a foreign limited liability partnership to have in effect a statement of foreign qualification does not impair the validity of a contract or act of the foreign limited liability partnership or preclude it from defending an action or proceeding in the State of Delaware or does not impair the right of any other party to a contract to maintain any action, suit or proceeding on the contract.

(c) A limitation on personal liability of a partner is not waived solely by doing business in the State of Delaware without a statement of foreign qualification having been filed.

(d) If a foreign limited liability partnership does business in the State of Delaware without a statement of foreign qualification having been filed, the Secretary of State is its agent for service of process with respect to a right of action arising out of the doing of business in the State of Delaware and service of process may be made in accordance with the procedures set forth in § 15-113 of this title.

(72 Del. Laws, c. 151, § 1.)

§ 15-1104 Activities not constituting doing business.

(a) Activities of a foreign limited liability partnership in the State of Delaware which do not constitute doing business for the purpose of this subchapter include:

(1) Maintaining, defending or settling an action or proceeding;

(2) Holding meetings of its partners or carrying on any other activity concerning its internal affairs;

(3) Maintaining bank accounts;

(4) Maintaining offices or agencies for the transfer, exchange or registration of the partnership's own securities or maintaining trustees or depositories with respect to those securities;

(5) Selling through independent contractors;

(6) Soliciting or obtaining orders, whether by mail or through employees or agents or otherwise, if the orders require acceptance outside the State of Delaware before they become contracts;

(7) Selling, by contract consummated outside the State of Delaware, and agreeing, by the contract, to deliver into the State of Delaware, machinery, plants or equipment, the construction, erection or installation of which within the State of Delaware requires the supervision of technical engineers or skilled employees performing services not generally available, and as part of the contract of sale agreeing to furnish such services, and such services only, to the vendee at the time of construction, erection or installation;

(8) Creating, as borrower or lender, or acquiring indebtedness with or without a mortgage or other security interest in property;

(9) Collecting debts or foreclosing mortgages or other security interests in property securing the debts, and holding, protecting and maintaining property so acquired;

(10) Conducting an isolated transaction that is not one in the course of similar transactions;

(11) Doing business in interstate commerce; and

(12) Doing business in the State of Delaware as an insurance company.

(b) A person shall not be deemed to be doing business in the State of Delaware solely by reason of being a partner in a partnership.

(c) This section does not apply in determining whether a foreign limited liability partnership is subject to service of process, taxation or regulation under any other law of the State of Delaware.

(72 Del. Laws, c. 151, § 1; 75 Del. Laws, c. 50, §§ 32-37.)

§ 15-1105 Foreign limited liability partnerships doing business without having qualified; injunctions.

(a) The Court of Chancery shall have jurisdiction to enjoin any foreign limited liability partnership, or any agent thereof, from doing any business in the State of Delaware if such foreign limited liability partnership has failed to register under this subchapter or if such foreign limited liability partnership's statement of foreign qualification contains false or misleading representations. The Attorney General shall, upon his or her own motion or upon the relation of proper parties, proceed for this purpose by complaint in any county in which such foreign limited liability partnership is doing or has done business.

(b) Any foreign limited liability partnership doing business in the State of Delaware without first having registered shall pay to the Secretary of State a fee of $200 for each year or part thereof during which the foreign limited liability partnership failed to register in the State of Delaware.

(72 Del. Laws, c. 151, § 1; 70 Del. Laws, c. 186, § 1.)

Subchapter XII

Miscellaneous Provisions

§ 15-1201 Uniformity of application and construction.

This chapter shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this chapter among states enacting it. The rule that statutes in derogation of the common law are to be strictly construed shall have no application to this chapter. Action validly taken pursuant to one provision of this chapter shall not be deemed invalid solely because it is identical or similar in substance to an action that could have been taken pursuant to some other provision of this chapter but fails to satisfy 1 or more requirements prescribed by such other provision.

(72 Del. Laws, c. 151, § 1; 77 Del. Laws, c. 59, § 16.)

§ 15-1202 Short title.

This chapter may be cited as the "Delaware Revised Uniform Partnership Act."

(72 Del. Laws, c. 151, § 1.)

§ 15-1203 Severability clause.

If any provision of this chapter or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable.

(72 Del. Laws, c. 151, § 1.)

§ 15-1204 Effective date.

This chapter takes effect January 1, 2000.

(72 Del. Laws, c. 151, § 1.)

§ 15-1205 Repeals.

Except with respect to limited partnerships (see 6 Del. C. § 17-1105), effective January 1, 2002, the Delaware Uniform Partnership Law, 6 Del. C. §§ 1501-1553 is repealed.

(72 Del. Laws, c. 151, § 1.)

§ 15-1206 Applicability.

(a) Before January 1, 2002, this chapter governs only a partnership formed:

(1) After the effective date of this chapter, except a partnership that is continuing the business of a dissolved partnership under 6 Del. C. § 1541; and

(2) Before the effective date of this chapter, that elects, as provided by subsection (c) of this section, to be governed by this chapter.

(b) On and after January 1, 2002, this chapter governs all partnerships.

(c) Before January 1, 2002, a partnership voluntarily may elect, in the manner provided in its partnership agreement or by law for amending the partnership agreement, to be governed by this chapter. The provisions of this chapter relating to the liability of the partnership's partners to third parties apply to limit those partners' liability to a third party who had done business with the partnership within 1 year before the partnership's election to be governed by this chapter only if the third party knows or has received a notification of the partnership's election to be governed by this chapter.

(72 Del. Laws, c. 151, § 1.)

§ 15-1207 Fees.

(a) No document required to be filed under this chapter shall be effective until the applicable fee required by this section is paid. The following fees shall be paid to and collected by the Secretary of State for the use of the State of Delaware:

(1) Upon the receipt for filing of any statement or certificate, a fee in the amount of $200.

(2) Upon the receipt for filing of an application for reservation of name, an application for renewal of reservation or a notice of transfer or cancellation of reservation pursuant to § 15-109 of this title, a fee in the amount of $75.

(3) Upon the receipt for filing of a statement of qualification, a statement of foreign qualification or an annual report for a limited liability partnership or a foreign limited liability partnership, a fee in the amount of $200 for each partner, but in no event shall the fee payable for any year with respect to a limited liability partnership or a foreign limited liability partnership under this section be more than $120,000.

(4) For certifying copies of any paper on file as provided for by this chapter, a fee in the amount of $50 for each copy certified. In addition, a fee of $2.00 per page shall be paid in each instance where the Secretary of State provides the copies of the document to be certified.

(5) The Secretary of State may issue photocopies or electronic image copies of instruments on file, as well as instruments, documents and other papers not on file, and for all such photocopies or electronic image copies which are not certified by the Secretary of State, a fee of $10 shall be paid for the first page and $2.00 for each additional page. Notwithstanding Delaware's Freedom of Information Act (Chapter 100 of Title 29) or other provision of law granting access to public records, the Secretary of State upon request shall issue only photocopies or electronic image copies of public records in exchange for the fees described in this section, and in no case shall the Secretary of State be required to provide copies (or access to copies) of such public records (including without limitation bulk data, digital copies of instruments, documents and other papers, databases or other information) in an electronic medium or in any form other than photocopies or electronic image copies of such public records in exchange for the fees, as applicable, described in this section or § 2318 of Title 29 for each such record associated with a file number.

(6) Upon the receipt for filing of a certificate under § 15-111(b) of this title, a fee in the amount of $200, upon the receipt for filing of a certificate under § 15-111(c) of this title, a fee in the amount of $200, and upon the receipt for filing of a certificate under § 15-111(d) of this title, a fee in the amount of $2.00 for each partnership whose registered agent has resigned by such certificate.

(7) For preclearance of any document for filing, a fee in the amount of $250.

(8) For preparing and providing a written report of a record search, a fee of up to $100.

(9) For issuing any certificate of the Secretary of State, including but not limited to a certificate of good standing, other than a certification of a copy under paragraph (a)(2) of this section, a fee in the amount of $50, except that for issuing any certificate of the Secretary of State that recites all of a partnership's filings with the Secretary of State, a fee of $175 shall be paid for each such certificate. For issuing any certificate via the Secretary of State's online services, a fee of up to $175 shall be paid for each certificate.

(10) For receiving and filing and/or indexing any certificate, affidavit, agreement or any other paper provided for by this chapter, for which no different fee is specifically prescribed, a fee in the amount of $100. For filing any instrument submitted by a partnership that

only changes the registered office or registered agent and is specifically captioned as a certificate or statement of amendment changing only the registered office or registered agent, a fee in the amount of $50.

(11) The Secretary of State may in the Secretary of State's discretion charge a fee of $60 for each check received for payment of any fee that is returned due to insufficient funds or the result of a stop payment order.

(b) In addition to those fees charged under subsection (a) of this section, there shall be collected by and paid to the Secretary of State the following:

(1) For all services described in subsection (a) of this section that are requested to be completed within 30 minutes on the same day as the day of the request, an additional sum of up to $7,500 and for all services described in subsection (a) of this section that are requested to be completed within 1 hour on the same day as the day of the request, an additional sum of up to $1,000 and for all services described in subsection (a) of this section that are requested to be completed within 2 hours on the same day as the day of the request, an additional sum of up to $500;

(2) For all services described in subsection (a) of this section that are requested to be completed within the same day as the day of the request, an additional sum of up to $300; and

(3) For all services described in subsection (a) of this section that are requested to be completed within a 24-hour period from the time of the request, an additional sum of up to $150.

The Secretary of State shall establish (and may from time to time amend) a schedule of specific fees payable pursuant to this subsection.

(c) The Secretary of State may in the Secretary of State's discretion permit the extension of credit for the fees required by this section upon such terms as the Secretary of State shall deem to be appropriate.

(d) The Secretary of State shall retain from the revenue collected from the fees required by this section a sum sufficient to provide at all times a fund of at least $500, but not more than $1,500, from which the Secretary of State may refund any payment made pursuant to this section to the extent that it exceeds the fees required by this section. The funds shall be deposited in a financial institution which is a legal depository of State of Delaware moneys to the credit of the Secretary of State and shall be disbursable on order of the Secretary of State.

(e) Except as provided in this section, the fees of the Secretary of State shall be as provided in § 2315 of Title 29.

(72 Del. Laws, c. 151, § 1; 74 Del. Laws, c. 52, §§ 5-11; 77 Del. Laws, c. 78, §§ 3-11; 78 Del. Laws, c. 98, §§ 13, 14; 80 Del. Laws, c. 43, § 9; 82 Del. Laws, c. 47, § 7.)

§ 15-1208 Annual tax of partnership.

(a) Every partnership that has filed a statement of partnership existence shall pay an annual tax, for the use of the State of Delaware, in the amount of $300.

(b) The annual tax shall be due and payable on the first day of June following the close of the calendar year or upon the cancellation of a statement of partnership existence. The Secretary of State shall receive the annual tax and pay over all taxes collected to the Department of Finance of the State of Delaware. If the annual tax remains unpaid after the due date established by subsection (d) of this section, the tax shall bear interest at the rate of $1^1/_2$% for each month or portion thereof until fully paid.

(c) The Secretary of State shall, at least 60 days prior to the first day of June of each year, cause to be mailed to each partnership required to comply with the provisions of this section in care of its registered agent in the State of Delaware an annual statement for the tax to be paid hereunder.

(d) In the event of neglect, refusal or failure on the part of any partnership to pay the annual tax to be paid hereunder on or before the first day of June in any year, such partnership shall pay the sum of $200 to be recovered by adding that amount to the annual tax, and such additional sum shall become a part of the tax and shall be collected in the same manner and subject to the same penalties.

(e) In case any partnership shall fail to pay the annual tax due within the time required by this section, and in case the agent in charge of the registered office of any partnership upon whom process against such partnership may be served shall die, resign, refuse to act as such, remove from the State of Delaware or cannot with due diligence be found, it shall be lawful while default continues to serve process against such partnership upon the Secretary of State. Such service upon the Secretary of State shall be made in the manner and shall have the effect stated in § 15-113 of this title in the case of a partnership and shall be governed in all respects by said sections.

(f) The annual tax shall be a debt due from a partnership to the State of Delaware, for which an action at law may be maintained after the same shall have been in arrears for a period of 1 month. The tax shall also be a preferred debt in the case of insolvency.

(g) A partnership that neglects, refuses or fails to pay the annual tax when due shall cease to be in good standing as a partnership in the State of Delaware.

(h) A partnership that has ceased to be in good standing by reason of the failure to pay an annual tax shall be restored to and have the status of a partnership in good standing in the State of Delaware upon the payment of the annual tax and all penalties and interest thereon for each year for which such partnership neglected, refused or failed to pay an annual tax.

(i) The Attorney General, either on his or her own motion or upon request of the Secretary of State, whenever any annual tax due under this chapter from any partnership shall have remained in arrears for a period of 3 months after the tax shall have become payable, may apply to the Court of Chancery, by petition in the name of the State of Delaware, on 5 days' notice to such partnership, which notice

may be served in such manner as the Court may direct, for an injunction to restrain such partnership from the transaction of any business within the State of Delaware or elsewhere, until the payment of the annual tax, and all penalties and interest due thereon and the cost of the application, which shall be fixed by the Court. The Court of Chancery may grant the injunction, if a proper case appears, and upon granting and service of the injunction, such partnership thereafter shall not transact any business until the injunction shall be dissolved.

(j) A partnership that has ceased to be in good standing by reason of its neglect, refusal or failure to pay an annual tax shall remain a partnership formed under this chapter. The Secretary of State shall not accept for filing any certificate (except a certificate of resignation of a registered agent when a successor registered agent is not being appointed) required or permitted by this chapter to be filed in respect of any partnership which has neglected, refused or failed to pay an annual tax, and shall not issue any certificate of good standing with respect to such partnership, unless and until such partnership shall have been restored to and have the status of a partnership in good standing in the State of Delaware.

(k) A partnership that has ceased to be in good standing in the State of Delaware by reason of its neglect, refusal or failure to pay an annual tax may not maintain any action, suit or proceeding in any court of the State of Delaware until such partnership has been restored to and has the status of a partnership in good standing in the State of Delaware. An action, suit or proceeding may not be maintained in any court of the State of Delaware by any successor or assignee of such partnership on any right, claim or demand arising out of the transaction of business by such partnership after it has ceased to be in good standing in the State of Delaware until such partnership, or any person that has acquired all or substantially all of its assets, has paid any annual tax then due and payable, together with penalties and interest thereon.

(l) The neglect, refusal or failure of a partnership to pay an annual tax shall not impair the validity of any contract, deed, mortgage, security interest, lien or act of such partnership or prevent such partnership from defending any action, suit, or proceeding in any court of the State of Delaware.

(72 Del. Laws, c. 151, § 1; 70 Del. Laws, c. 186, § 1; 74 Del. Laws, c. 52, § 12; 76 Del. Laws, c. 287, § 1; 77 Del. Laws, c. 78, § 12; 79 Del. Laws, c. 212, § 1.)

§ 15-1209 Cancelation of statement of partnership existence for failure to pay annual tax.

(a) The statement of partnership existence of a partnership shall be canceled if the partnership shall fail to pay the annual tax due under § 15-1208 of this title for a period of 3 years from the date it is due, such cancellation to be effective on the third anniversary of such due date.

(b) A list of those partnerships whose statement of partnership existence were canceled on June 1 of such calendar year pursuant to § 15-1209(a) of this title shall be filed in the office of the Secretary of State. On or before October 31 of each calendar year, the Secretary of State shall publish such list on the Internet or on a similar medium for a period of 1 week and shall advertise the website or other address where such list can be accessed in at least 1 newspaper of general circulation in the State of Delaware.

(c) A partnership whose statement of partnership existence has been canceled and has not been revived pursuant to § 15-1210 of this title shall be deemed, from the date such cancellation became effective, to be a partnership that has not filed a statement of partnership existence.

(72 Del. Laws, c. 151, § 1; 73 Del. Laws, c. 296, § 9; 75 Del. Laws, c. 50, § 38; 76 Del. Laws, c. 106, § 21.)

§ 15-1210 Revival of statement of partnership existence.

(a) A statement of partnership existence that has been canceled pursuant to § 15-111(d) or § 15-111(i)(4) or § 15-1209(a) of this title may be revived by filing in the office of the Secretary of State a certificate of revival accompanied by the payment of the fee required by § 15-1207 of this title and payment of the annual tax due under § 15-1208 of this title and all penalties and interest thereon due at the time of the cancellation of its statement of partnership existence. The certificate of revival shall set forth:

(1) The name of the partnership at the time its statement of partnership existence was canceled and, if such name is not available at the time of revival, the name under which the partnership is to be revived;

(2) The date of filing of the original statement of partnership existence of the partnership;

(3) The address of the partnership's registered office in the State of Delaware and the name and address of the partnership's registered agent in the State of Delaware;

(4) A statement that the certificate of revival is filed by 1 or more partners of the partnership authorized to execute and file the certificate of revival to revive the partnership; and

(5) Any other matters the partner or partners executing the certificate of revival determine to include therein.

(b) The certificate of revival shall be deemed to be an amendment to the statement of partnership existence of the partnership, and the partnership shall not be required to take any further action to amend its statement of partnership existence under § 15-105 of this title with respect to the matters set forth in the certificate of revival.

(c) Upon the filing of a certificate of revival, the statement of partnership existence of the partnership shall be revived with the same force and effect as if its statement of partnership existence had not been canceled pursuant to § 15-111(d) or § 15-111(i)(4) or § 15-1209(a) of this title.

(72 Del. Laws, c. 151, § 1; 75 Del. Laws, c. 50, §§ 39-41; 75 Del. Laws, c. 416, §§ 35, 36; 77 Del. Laws, c. 78, § 13.)

Subtitle II
Other Laws Relating to Commerce and Trade
Chapter 17
Limited Partnerships
Subchapter I
General Provisions

§ 17-101 Definitions.

As used in this chapter unless the context otherwise requires:

(1) "Certificate of limited partnership" means the certificate referred to in § 17-201 of this title, and the certificate as amended.

(2) "Contribution" means any cash, property, services rendered or a promissory note or other obligation to contribute cash or property or to perform services, which a partner contributes to a limited partnership in the capacity as a partner.

(3) "Document" means:

a. Any tangible medium on which information is inscribed, and includes handwritten, typed, printed or similar instruments, and copies of such instruments; and

b. An electronic transmission.

(4) "Electronic transmission" means any form of communication not directly involving the physical transmission of paper, including the use of, or participation in, 1 or more electronic networks or databases (including 1 or more distributed electronic networks or databases), that creates a record that may be retained, retrieved and reviewed by a recipient thereof and that may be directly reproduced in paper form by such a recipient through an automated process.

(5) "Event of withdrawal of a general partner" means an event that causes a person to cease to be a general partner as provided in § 17-402 of this title.

(6) "Foreign limited partnership" includes a partnership formed under the laws of any state or under the laws of any foreign country or other foreign jurisdiction consisting of 2 or more persons and having 1 or more general partners and 1 or more limited partners. When used in this title in reference to a foreign limited partnership, the terms "partnership agreement," "partnership interest," "general partner" or "limited partner" shall mean a partnership agreement, partnership interest, general partner or limited partner, respectively, under the laws of the state or foreign country or other foreign jurisdiction under which the foreign limited partnership is formed.

(7) "General partner" means a person who is named as a general partner in the certificate of limited partnership or similar instrument under which a limited partnership is formed if so required and who is admitted to the limited partnership as a general partner in accordance with the partnership agreement or this chapter, and includes a general partner of the limited partnership generally and a general partner associated with a series of the limited partnership. Unless the context otherwise requires, references in this chapter to a general partner (including references in this chapter to a general partner of a limited partnership) shall be deemed to be references to a general partner of the limited partnership generally and to a general partner associated with a series with respect to such series.

(8) "Knowledge" means a person's actual knowledge of a fact, rather than the person's constructive knowledge of the fact.

(9) "Limited liability limited partnership" means a limited partnership complying with § 17-214 of this title.

(10) "Limited partner" means a person who is admitted to a limited partnership as a limited partner as provided in § 17-301 of this title, and includes a limited partner of the limited partnership generally and a limited partner associated with a series of the limited partnership. Unless the context otherwise requires, references in this chapter to a limited partner (including references in this chapter to a limited partner of a limited partnership) shall be deemed to be references to a limited partner of the limited partnership generally and to a limited partner associated with a series with respect to such series.

(11) "Limited partnership" and "domestic limited partnership" mean a partnership formed under the laws of the State of Delaware consisting of 2 or more persons and having 1 or more general partners and 1 or more limited partners, and includes, for all purposes of the laws of the State of Delaware, a limited liability limited partnership.

(12) "Liquidating trustee" means a person, other than a general partner, but including a limited partner, carrying out the winding up of a limited partnership.

(13) "Partner" means a limited or general partner.

(14) "Partnership agreement" means any agreement, written, oral or implied, of the partners as to the affairs of a limited partnership and the conduct of its business. A partner of a limited partnership or an assignee of a partnership interest is bound by the partnership agreement whether or not the partner or assignee executes the partnership agreement. A limited partnership is not required to execute its partnership agreement. A limited partnership is bound by its partnership agreement whether or not the limited partnership executes the partnership agreement. A partnership agreement is not subject to any statute of frauds (including § 2714 of this title). A partnership agreement may provide rights to any person, including a person who is not a party to the partnership agreement, to the extent set forth therein. A written partnership agreement or another written agreement or writing:

a. May provide that a person shall be admitted as a limited partner of a limited partnership, or shall become an assignee of a partnership interest or other rights or powers of a limited partner to the extent assigned (i) if such person (or a representative authorized by such person orally, in writing or by other action such as payment for a partnership interest) executes the partnership agreement or any other writing evidencing the intent of such person to become a limited partner or assignee, or (ii) without such execution, if such person (or a representative authorized by such person orally, in writing or by other action such as payment for a partnership interest) complies with the conditions for becoming a limited partner or assignee as set forth in the partnership agreement or any other writing; and

b. Shall not be unenforceable by reason of its not having been signed by a person being admitted as a limited partner or becoming an assignee as provided in paragraph (14)a. of this section, or by reason of its having been signed by a representative as provided in this title.

(15) "Partnership interest" means a partner's share of the profits and losses of a limited partnership and the right to receive distributions of partnership assets.

(16) "Person" means a natural person, partnership (whether general or limited), limited liability company, trust (including a common law trust, business trust, statutory trust, voting trust or any other form of trust), estate, association (including any group, organization, co-tenancy, plan, board, council or committee), corporation, government (including a country, state, county or any other governmental subdivision, agency or instrumentality), custodian, nominee or any other individual or entity (or series thereof) in its own or any representative capacity, in each case, whether domestic or foreign.

(17) "Personal representative" means, as to a natural person, the executor, administrator, guardian, conservator or other legal representative thereof and, as to a person other than a natural person, the legal representative or successor thereof.

(18) "Protected series" means a designated series of limited partners, general partners, partnership interests or assets that is established in accordance with § 17-218(b) of this title.

(19) "Registered series" means a designated series of limited partners, general partners, partnership interests or assets that is formed in accordance with § 17-221 of this title.

(20) "Series" means a designated series of limited partners, general partners, partnership interests or assets that is a protected series or a registered series, or that is neither a protected series nor a registered series.

(21) "State" means the District of Columbia or the Commonwealth of Puerto Rico or any state, territory, possession, or other jurisdiction of the United States other than the State of Delaware.

(6 Del. C. 1953, § 1701; 59 Del. Laws, c. 105, § 1; 63 Del. Laws, c. 420, § 1; 65 Del. Laws, c. 188, § 1; 66 Del. Laws, c. 316, §§ 1-3; 67 Del. Laws, c. 348, §§ 1, 2; 69 Del. Laws, c. 258, § 1; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 78, § 1; 71 Del. Laws, c. 340, §§ 1, 2; 72 Del. Laws, c. 228, § 1; 73 Del. Laws, c. 73, §§ 1, 2; 73 Del. Laws, c. 297, § 1; 74 Del. Laws, c. 265, § 1; 75 Del. Laws, c. 31, § 1; 75 Del. Laws, c. 414, § 1; 76 Del. Laws, c. 104, §§ 1-3; 76 Del. Laws, c. 386, §§ 1, 2; 77 Del. Laws, c. 288, § 1; 81 Del. Laws, c. 88, §§ 1, 2; 82 Del. Laws, c. 46, § 1; 82 Del. Laws, c. 258, § 1.)

§ 17-102 Name set forth in certificate.

The name of each limited partnership as set forth in its certificate of limited partnership:

(1) Shall contain the words "Limited Partnership" or the abbreviation "L.P." or the designation "LP" or, in the case of a limited partnership that is formed as or becomes a limited liability limited partnership, shall contain the words, abbreviation or designation required by § 17-214(a) of this title;

(2) May contain the name of a partner;

(3) Must be such as to distinguish it upon the records in the office of the Secretary of State from the name on such records of any corporation, partnership, limited partnership, statutory trust, limited liability company, registered series of a limited liability company or registered series of a limited partnership reserved, registered, formed or organized under the laws of the State of Delaware or qualified to do business or registered as a foreign corporation, foreign limited partnership, foreign statutory trust, foreign partnership or foreign limited liability company in the State of Delaware; provided, however, that a limited partnership may register under any name which is not such as to distinguish it upon the records in the office of the Secretary of State from the name on such records of any domestic or foreign corporation, partnership, statutory trust, limited liability company, registered series of a limited liability company, registered series of a limited partnership, or foreign limited partnership reserved, registered, formed or organized under the laws of the State of Delaware with the written consent of the other corporation, partnership, statutory trust, limited liability company, registered series of a limited liability company, registered series of a limited partnership, or foreign limited partnership, which written consent shall be filed with the Secretary of State; provided further, that, if on July 31, 2011, a limited partnership is registered (with the consent of another limited partnership) under a name which is not such as to distinguish it upon the records in the office of the Secretary of State from the name on such records of such other domestic limited partnership, it shall not be necessary for any such limited partnership to amend its certificate of limited partnership to comply with this subsection;

(4) May contain the following words: "Company," "Association," "Club," "Foundation," "Fund," "Institute," "Society," "Union," "Syndicate," "Limited," "Public Benefit" or "Trust" (or abbreviations of like import); and

(5) Shall not contain the word "bank," or any variation thereof, except for the name of a bank reporting to and under the supervision of the State Bank Commissioner of this State or a subsidiary of a bank or savings association (as those terms are defined in the Federal

Deposit Insurance Act, as amended, at 12 U.S.C. § 1813), or a limited partnership regulated under the Bank Holding Company Act of 1956, as amended, 12 U.S.C. § 1841 et seq., or the Home Owners' Loan Act, as amended, 12 U.S.C. § 1461 et seq.; provided, however, that this section shall not be construed to prevent the use of the word "bank," or any variation thereof, in a context clearly not purporting to refer to a banking business or otherwise likely to mislead the public about the nature of the business of the limited partnership or to lead to a pattern and practice of abuse that might cause harm to the interests of the public or this State as determined by the Division of Corporations in the Department of State.

(6 Del. C. 1953, § 1705; 59 Del. Laws, c. 105, § 1; 63 Del. Laws, c. 420, § 1; 65 Del. Laws, c. 188, § 1; 66 Del. Laws, c. 316, § 4; 69 Del. Laws, c. 258, § 2; 70 Del. Laws, c. 78, § 1; 72 Del. Laws, c. 386, § 1; 73 Del. Laws, c. 73, § 3; 73 Del. Laws, c. 329, § 17; 75 Del. Laws, c. 414, § 2; 78 Del. Laws, c. 97, § 1; 78 Del. Laws, c. 272, § 1; 81 Del. Laws, c. 356, § 1; 81 Del. Laws, c. 88, § 3; 82 Del. Laws, c. 46, § 2; 82 Del. Laws, c. 258, § 2.)

§ 17-103 Reservation of name.

(a) The exclusive right to the use of a name may be reserved by:

(1) Any person intending to organize a limited partnership under this chapter and to adopt that name;

(2) Any person intending to form a registered series of a limited partnership under this chapter and to adopt that name in accordance with § 17-221(e) of this title;

(3) Any domestic limited partnership or any foreign limited partnership registered in the State of Delaware which, in either case, proposes to change its name;

(4) Any foreign limited partnership intending to register in the State of Delaware and adopt that name; and

(5) Any person intending to organize a foreign limited partnership and intending to have it register in the State of Delaware and adopt that name.

(b) The reservation of a specified name shall be made by filing with the Secretary of State an application, executed by the applicant, specifying the name to be reserved and the name and address of the applicant. If the Secretary of State finds that the name is available for use by a domestic or foreign limited partnership, the Secretary shall reserve the name for the exclusive use of the applicant for a period of 120 days. Once having so reserved a name, the same applicant may again reserve the same name for successive 120-day periods. The right to the exclusive use of a reserved name may be transferred to any other person by filing in the Office of the Secretary of State a notice of the transfer, executed by the applicant for whom the name was reserved, specifying the name to be transferred and the name and address of the transferee. The reservation of a specified name may be canceled by filing with the Secretary of State a notice of cancellation, executed by the applicant or transferee, specifying the name reservation to be canceled and the name and address of the applicant or transferee. Unless the Secretary of State finds that any application, notice of transfer, or notice of cancellation filed with the Secretary of State as required by this subsection does not conform to law, upon receipt of all filing fees required by law, the Secretary shall prepare and return to the person who filed such instrument a copy of the filed instrument with a notation thereon of the action taken by the Secretary of State.

(c) A fee as set forth in § 17-1107(a)(1) of this title shall be paid at the time of the initial reservation of any name, at the time of the renewal of any such reservation and at the time of the filing of a notice of the transfer or cancellation of any such reservation.

(6 Del. C. 1953, § 1705; 59 Del. Laws, c. 105, § 1; 63 Del. Laws, c. 420, § 1; 65 Del. Laws, c. 188, § 1; 69 Del. Laws, c. 258, § 3; 70 Del. Laws, c. 186, § 1; 82 Del. Laws, c. 46, § 3.)

§ 17-104 Registered office; registered agent.

(a) Each limited partnership shall have and maintain in the State of Delaware:

(1) A registered office, which may but need not be a place of its business in the State of Delaware; and

(2) A registered agent for service of process on the limited partnership, having a business office identical with such registered office, which agent may be any of

a. The limited partnership itself,

b. An individual resident in the State of Delaware,

c. A domestic limited liability company, a domestic corporation, a domestic partnership (whether general (including a limited liability partnership) or limited (other than the limited partnership itself, including a limited liability limited partnership)), or a domestic statutory trust, or

d. A foreign corporation, a foreign limited liability partnership, a foreign limited partnership (including a foreign limited liability limited partnership), a foreign limited liability company, or a foreign statutory trust.

(b) A registered agent may change the address of the registered office of the limited partnership(s) for which it is registered agent to another address in the State of Delaware by paying a fee as set forth in § 17-1107(a)(2) of this title and filing with the Secretary of State a certificate, executed by such registered agent, setting forth the address at which such registered agent has maintained the registered office for each of the limited partnerships for which it is a registered agent, and further certifying to the new address to which each such registered office will be changed on a given day, and at which new address such registered agent will thereafter maintain the registered office for each of the limited partnerships for which it is a registered agent. Upon the filing of such certificate, until further change of address, as

authorized by law, the registered office in the State of Delaware of each of the limited partnerships for which the agent is a registered agent shall be located at the new address of the registered agent thereof as given in the certificate. In the event of a change of name of any person acting as a registered agent of a limited partnership, such registered agent shall file with the Secretary of State a certificate, executed by such registered agent, setting forth the new name of such registered agent, the name of such registered agent before it was changed, and the address at which such registered agent has maintained the registered office for each of the limited partnerships for which it is a registered agent, and shall pay a fee as set forth in § 17-1107(a)(2) of this title. A change of name of any person acting as a registered agent of a limited partnership as a result of (i) a merger or consolidation of the registered agent, with or into another person which succeeds to its assets and liabilities by operation of law, (ii) the conversion of the registered agent into another person, or (iii) a division of the registered agent in which an identified resulting person succeeds to all of the assets and liabilities of the registered agent related to its registered agent business pursuant to the plan of division, as set forth in the certificate of division, shall each be deemed a change of name for purposes of this section. Filing a certificate under this section shall be deemed to be an amendment of the certificate of limited partnership of each limited partnership affected thereby and each such limited partnership shall not be required to take any further action with respect thereto, to amend its certificate of limited partnership under § 17-202 of this title. Any registered agent filing a certificate under this section shall promptly, upon such filing, deliver a copy of any such certificate to each limited partnership affected thereby.

(c) The registered agent of 1 or more limited partnerships may resign and appoint a successor registered agent by paying a fee as set forth in § 17-1107(a)(2) of this title and filing a certificate with the Secretary of State stating that it resigns and the name and address of the successor registered agent. There shall be attached to such certificate a statement of each affected limited partnership ratifying and approving such change of registered agent. Upon such filing, the successor registered agent shall become the registered agent of such limited partnerships as have ratified and approved such substitution and the successor registered agent's address, as stated in such certificate, shall become the address of each such limited partnership's registered office in the State of Delaware. Filing of such certificate of resignation shall be deemed to be an amendment of the certificate of limited partnership of each limited partnership affected thereby and each such limited partnership shall not be required to take any further action with respect thereto to amend its certificate of limited partnership under § 17-202 of this title.

(d) The registered agent of a limited partnership, including a limited partnership whose certificate of limited partnership has been cancelled pursuant to § 17-1110 of this title, may resign without appointing a successor registered agent by paying a fee as set forth in § 17-1107(a)(2) of this title and filing a certificate of resignation with the Secretary of State, but such resignation shall not become effective until 30 days after the certificate is filed. The certificate shall contain a statement that written notice of resignation was given to the limited partnership at least 30 days prior to the filing of the certificate by mailing or delivering such notice to the limited partnership at its address last known to the registered agent and shall set forth the date of such notice. The certificate shall include such information last provided to the registered agent pursuant to § 17-104(g) of this title for a communications contact for the limited partnership. Such information regarding the communications contact shall not be deemed public. A certificate filed pursuant to this § 17-104(d) must be on the form prescribed by the Secretary of State. After receipt of the notice of the resignation of its registered agent, the limited partnership for which such registered agent was acting shall obtain and designate a new registered agent, to take the place of the registered agent so resigning. If such limited partnership fails to obtain and designate a new registered agent as aforesaid prior to the expiration of the period of 30 days after the filing by the registered agent of the certificate of resignation, the certificate of limited partnership and statement of qualification (as applicable) of such limited partnership shall be canceled. After the resignation of the registered agent shall have become effective as provided in this section and if no new registered agent shall have been obtained and designated in the time and manner aforesaid, service of legal process against each limited partnership (and each protected series and each registered series thereof) for which the resigned registered agent had been acting shall thereafter be upon the Secretary of State in accordance with § 17-105 of this title.

(e) Every registered agent shall:

(1) If an entity, maintain a business office in the State of Delaware which is generally open, or if an individual, be generally present at a designated location in the State of Delaware, at sufficiently frequent times to accept service of process and otherwise perform the functions of a registered agent;

(2) If a foreign entity, be authorized to transact business in the State of Delaware;

(3) Accept service of process and other communications directed to the limited partnerships (and any protected series or registered series thereof) and foreign limited partnerships for which it serves as registered agent and forward same to the limited partnership or foreign limited partnership to which the service or communication is directed; and

(4) Forward to the limited partnership and foreign limited partnership for which it serves as registered agent the statement for the annual tax for such limited partnership (and each registered series thereof) or such foreign limited partnership, as applicable, as described in § 17-1109 of this title or an electronic notification of same in a form satisfactory to the Secretary of State.

(5) Satisfy and adhere to regulations established by the Secretary regarding the verification of both the identity of the entity's contacts and individuals for which the registered agent maintains a record for the reduction of risk of unlawful business purposes.

(f) Any registered agent, who at any time serves as registered agent for more than 50 entities (a "commercial registered agent"), whether domestic or foreign, shall satisfy and comply with the following qualifications.

(1) A natural person serving as a commercial registered agent shall:

a. Maintain a principal residence or a principal place of business in the State of Delaware;

b. Maintain a Delaware business license;

c. Be generally present at a designated location within the State of Delaware during normal business hours to accept service of process and otherwise perform the functions of a registered agent as specified in subsection (e) of this section;

d. Provide the Secretary of State upon request with such information identifying and enabling communication with such commercial registered agent as the Secretary of State shall require; and

e. Satisfy and adhere to regulations established by the Secretary regarding the verification of both the identity of the entity's contacts and individuals for which the natural person maintains a record for the reduction of risk of unlawful business purposes.

(2) A domestic or foreign corporation, a domestic partnership (whether general (including a limited liability partnership) or limited (including a limited liability limited partnership)), a foreign limited liability partnership, a domestic or foreign limited liability company, or a domestic or foreign statutory trust serving as a commercial registered agent shall:

a. Have a business office within the State of Delaware which is generally open during normal business hours to accept service of process and otherwise perform the functions of a registered agent as specified in subsection (e) of this section;

b. Maintain a Delaware business license;

c. Have generally present at such office during normal business hours an officer, director or managing agent who is a natural person;

d. Provide the Secretary of State upon request with such information identifying and enabling communication with such commercial registered agent as the Secretary of State shall require; and

e. Satisfy and adhere to regulations established by the Secretary regarding the verification of both the identity of the entity's contacts and individuals for which it maintains a record for the reduction of risk of unlawful business purposes.

(3) For purposes of this subsection and paragraph (i)(2)a. of this section, a "commercial registered agent" shall also include any registered agent which has an officer, director or managing agent in common with any other registered agent or agents if such registered agents at any time during such common service as officer, director or managing agent collectively served as registered agents for more than 50 entities, whether domestic or foreign.

(g) Every domestic limited partnership and every foreign limited partnership qualified to do business in the State of Delaware shall provide to its registered agent and update from time to time as necessary the name, business address and business telephone number of a natural person who is a partner, officer, employee, or designated agent of the domestic or foreign limited partnership who is then authorized to receive communications from the registered agent. Such person shall be deemed the communications contact for the domestic or foreign limited partnership. A domestic limited partnership, upon receipt of a request by the communications contact delivered in writing or by electronic transmission, shall provide the communications contact with the name, business address, and business telephone number of a natural person who has access to the record required to be maintained pursuant to § 17-305(g) of this title. Every registered agent shall retain (in paper or electronic form) the above information concerning the current communications contact for each domestic limited partnership and each foreign limited partnership for which he, she, or it serves as registered agent. If the domestic or foreign limited partnership fails to provide the registered agent with a current communications contact, the registered agent may resign as the registered agent for such domestic or foreign limited partnership pursuant to this section.

(h) The Secretary of State is fully authorized to issue such regulations as may be necessary or appropriate to carry out the enforcement of subsections (e), (f) and (g) of this section, and to take actions reasonable and necessary to assure registered agents' compliance with subsections (e), (f) and (g) of this section. Such actions may include refusal to file documents submitted by a registered agent, including the refusal to file any documents regarding an entity's formation.

(i) Upon application of the Secretary of State, the Court of Chancery may enjoin any person or entity from serving as a registered agent or as an officer, director or managing agent of a registered agent.

(1) Upon the filing of a complaint by the Secretary of State pursuant to this section, the court may make such orders respecting such proceeding as it deems appropriate, and may enter such orders granting interim or final relief as it deems proper under the circumstances.

(2) Any 1 or more of the following grounds shall be a sufficient basis to grant an injunction pursuant to this section:

a. With respect to any registered agent who at any time within 1 year immediately prior to the filing of the Secretary of State's complaint is a commercial registered agent, failure after notice and warning to comply with the qualifications set forth in subsection (e) of this section and/or the requirements of subsection (f) or (g) of this section above;

b. The person serving as a registered agent, or any person who is an officer, director or managing agent of an entity registered agent, has been convicted of a felony or any crime which includes an element of dishonesty or fraud or involves moral turpitude; or

c. The registered agent has engaged in conduct in connection with acting as a registered agent that is intended to or likely to deceive or defraud the public.

(3) With respect to any order the court enters pursuant to this section with respect to an entity that has acted as a registered agent, the court may also direct such order to any person who has served as an officer, director or managing agent of such registered agent. Any person who, on or after January 1, 2007, serves as an officer, director or managing agent of an entity acting as a registered agent in the State of Delaware shall be deemed thereby to have consented to the appointment of such registered agent as agent upon whom service of process may be made in any action brought pursuant to this section, and service as an officer, director or managing agent

of an entity acting as a registered agent in the State of Delaware shall be a signification of the consent of such person that any process when so served shall be of the same legal force and validity as if served upon such person within the State of Delaware, and such appointment of the registered agent shall be irrevocable.

(4) Upon the entry of an order by the court enjoining any person or entity from acting as a registered agent, the Secretary of State shall mail or deliver notice of such order to each general partner of each affected domestic or foreign limited partnership at the address of such general partner specified in the affected domestic limited partnership's certificate of limited partnership or the affected foreign limited partnership's application for registration. If such a domestic limited partnership fails to obtain and designate a new registered agent within 30 days after such notice is given, the certificate of limited partnership and statement of qualification (as applicable) of such limited partnership shall be canceled. If such a foreign limited partnership fails to obtain and designate a new registered agent within 30 days after such notice is given, such foreign limited partnership shall not be permitted to do business in the State of Delaware, and its registration shall be canceled. If the court enjoins a person or entity from acting as a registered agent as provided in this section and no new registered agent shall have been obtained and designated in the time and manner aforesaid by an affected domestic or foreign limited partnership, service of legal process against the domestic or foreign limited partnership for which the registered agent had been acting shall thereafter be upon the Secretary of State in accordance with § 17-105 or § 17-911 of this title. The Court of Chancery may, upon application of the Secretary of State on notice to the former registered agent, enter such orders as it deems appropriate to give the Secretary of State access to information in the former registered agent's possession in order to facilitate communication with the domestic and foreign limited partnerships the former registered agent served.

(j) The Secretary of State is authorized to make a list of registered agents available to the public, and to establish such qualifications and issue such rules and regulations with respect to such listing as the Secretary of State deems necessary or appropriate.

(k) As contained in any certificate of limited partnership, application for registration as a foreign limited partnership, or other document filed in the office of the Secretary of State under this chapter, the address of a registered agent or registered office shall include the street, number, city and postal code.

(63 Del. Laws, c. 420, § 1; 65 Del. Laws, c. 188, § 1; 67 Del. Laws, c. 348, §§ 3-5; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 78, §§ 2, 3; 73 Del. Laws, c. 73, § 4; 73 Del. Laws, c. 329, § 18; 75 Del. Laws, c. 414, §§ 3, 4; 76 Del. Laws, c. 104, §§ 4-9; 78 Del. Laws, c. 97, § 2; 79 Del. Laws, c. 73, §§ 1, 2; 79 Del. Laws, c. 326, § 1; 81 Del. Laws, c. 88, §§ 4-6; 81 Del. Laws, c. 334, § 3; 81 Del. Laws, c. 356, § 2; 82 Del. Laws, c. 46, § 4; 82 Del. Laws, c. 258, § 3.)

§ 17-105 Service of process on domestic limited partnerships and protected series or registered series thereof.

(a) Service of legal process upon any domestic limited partnership or any protected series or registered series thereof shall be made by delivering a copy personally to any managing or general agent or general partner of the limited partnership in the State of Delaware, or the registered agent of the limited partnership in the State of Delaware, or by leaving it at the dwelling house or usual place of abode in the State of Delaware of any such managing or general agent, general partner or registered agent (if the registered agent be an individual), or at the registered office or other place of business of the limited partnership in the State of Delaware. If service of legal process is made upon the registered agent of the limited partnership in the State of Delaware on behalf of any such protected series or registered series, such process shall include the name of the limited partnership and the name of such protected series or registered series. If the registered agent be a corporation, service of process upon it as such may be made by serving, in the State of Delaware, a copy thereof on the president, vice-president, secretary, assistant secretary or any director of the corporate registered agent. Service by copy left at the dwelling house or usual place of abode of an officer, managing or general agent, general partner or registered agent, or at the registered office or other place of business of the limited partnership in the State of Delaware, to be effective, must be delivered thereat at least 6 days before the return date of the process, and in the presence of an adult person, and the officer serving the process shall distinctly state the manner of service in the officer's return thereto. Process returnable forthwith must be delivered personally to the officer, managing or general agent, general partner or registered agent.

(b) In case the officer whose duty it is to serve legal process cannot by due diligence serve the process in any manner provided for by subsection (a) of this section, it shall be lawful to serve the process against the limited partnership or any protected series or registered series thereof upon the Secretary of State, and such service shall be as effectual for all intents and purposes as if made in any of the ways provided for in subsection (a) of this section. If service of legal process is made upon the Secretary of State on behalf of any such protected series or registered series, such process shall include the name of the limited partnership and the name of such protected series or registered series. Process may be served upon the Secretary of State under this subsection by means of electronic transmission but only as prescribed by the Secretary of State. The Secretary of State is authorized to issue such rules and regulations with respect to such service as the Secretary of State deems necessary or appropriate. In the event that service is effected through the Secretary of State in accordance with this subsection, the Secretary of State shall forthwith notify the limited partnership by letter, directed to the limited partnership at the address of a general partner as it appears on the records relating to such limited partnership on file with the Secretary of State or, if no such address appears, at its last registered office. Such letter shall be sent by a mail or courier service that includes a record of mailing or deposit with the courier and a record of delivery evidenced by the signature of the recipient. Such letter shall enclose a copy of the process and any other papers served on the Secretary of State pursuant to this subsection. It shall be the duty of the plaintiff in the event of such service to serve process and any other papers in duplicate, to notify the Secretary of State that service is being effected pursuant

to this subsection, and to pay the Secretary of State the sum of $50 for the use of the State of Delaware, which sum shall be taxed as part of the costs in the proceeding if the plaintiff shall prevail therein. The Secretary of State shall maintain an alphabetical record of any such service setting forth the name of the plaintiff and defendant, the title, docket number and nature of the proceeding in which process has been served upon the Secretary, the fact that service has been effected pursuant to this subsection, the return date thereof, and the day and hour when the service was made. The Secretary of State shall not be required to retain such information for a period longer than 5 years from the Secretary's receipt of the service of process.

(63 Del. C. 1953, § 1727; 59 Del. Laws, c. 105, § 1; 63 Del. Laws, c. 420, § 1; 65 Del. Laws, c. 188, § 1; 70 Del. Laws, c. 186, § 1; 77 Del. Laws, c. 288, § 2; 80 Del. Laws, c. 269, § 1; 82 Del. Laws, c. 46, § 5.)

§ 17-106 Nature of business permitted; powers.

(a) A limited partnership may carry on any lawful business, purpose or activity, whether or not for profit, with the exception of the business of banking as defined in § 126 of Title 8.

(b) A limited partnership shall possess and may exercise all the powers and privileges granted by this chapter or by any other law or by its partnership agreement, together with any powers incidental thereto, including such powers and privileges as are necessary or convenient to the conduct, promotion or attainment of the business, purposes or activities of the limited partnership.

(c) Notwithstanding any provision of this chapter to the contrary, without limiting the general powers enumerated in subsection (b) of this section above, a limited partnership shall, subject to such standards and restrictions, if any, as are set forth in its partnership agreement, have the power and authority to make contracts of guaranty and suretyship and enter into interest rate, basis, currency, hedge or other swap agreements or cap, floor, put, call, option, exchange or collar agreements, derivative agreements or other agreements similar to any of the foregoing.

(d) Unless otherwise provided in a partnership agreement, a limited partnership has the power and authority to grant, hold or exercise a power of attorney, including an irrevocable power of attorney.

(6 Del. C. 1953, § 1703; 59 Del. Laws, c. 105, § 1; 63 Del. Laws, c. 420, § 1; 65 Del. Laws, c. 188, § 1; 70 Del. Laws, c. 78, § 2; 71 Del. Laws, c. 78, § 4; 72 Del. Laws, c. 128, § 1; 73 Del. Laws, c. 297, § 2; 75 Del. Laws, c. 31, § 2; 77 Del. Laws, c. 288, § 3.)

§ 17-107 Business transactions of partner with the partnership.

Except as provided in the partnership agreement, a partner may lend money to, borrow money from, act as a surety, guarantor or endorser for, guarantee or assume 1 or more specific obligations of, provide collateral for and transact other business with, the limited partnership and, subject to other applicable law, has the same rights and obligations with respect thereto as a person who is not a partner.

(6 Del. C. 1953, § 1713; 59 Del. Laws, c. 105, § 1; 63 Del. Laws, c. 420, § 1; 65 Del. Laws, c. 188, § 1; 66 Del. Laws, c. 316, § 5; 69 Del. Laws, c. 258, § 4.)

§ 17-108 Indemnification.

Subject to such standards and restrictions, if any, as are set forth in its partnership agreement, a limited partnership may, and shall have the power to, indemnify and hold harmless any partner or other person from and against any and all claims and demands whatsoever.

(65 Del. Laws, c. 188, § 1.)

§ 17-109 Service of process on partners and liquidating trustees.

(a) A general partner or a liquidating trustee of a limited partnership may be served with process in the manner prescribed in this section in all civil actions or proceedings brought in the State of Delaware involving or relating to the business of the limited partnership or a violation by the general partner or the liquidating trustee of a duty to the limited partnership, or any partner of the limited partnership, whether or not the general partner or the liquidating trustee is a general partner or a liquidating trustee at the time suit is commenced. The filing in the Office of the Secretary of State of a certificate of limited partnership executed, and the execution thereof, by a resident or nonresident of the State of Delaware which names such person as a general partner or a liquidating trustee of a limited partnership, or the acceptance by a general partner or a liquidating trustee after August 1, 1999, of election or appointment as a general partner or a liquidating trustee of a limited partnership, or a general partner or a liquidating trustee of a limited partnership serving in such capacity after August 1, 1999, constitute such person's consent to the appointment of the registered agent of the limited partnership (or, if there is none, the Secretary of State) as such person's agent upon whom service of process may be made as provided in this section. Such execution and filing, or such acceptance or service, shall signify the consent of such general partner or liquidating trustee that any process when so served shall be of the same legal force and validity as if served upon such general partner or liquidating trustee within the State of Delaware and such appointment of the registered agent (or, if there is none, the Secretary of State) shall be irrevocable.

(b) Service of process shall be effected by serving the registered agent (or, if there is none, the Secretary of State) with 1 copy of such process in the manner provided by law for service of writs of summons. In the event service is made under this subsection upon the Secretary of State, the plaintiff shall pay to the Secretary of State the sum of $50 for the use of the State of Delaware, which sum shall be taxed as part of the costs of the proceeding if the plaintiff shall prevail therein. In addition, the Prothonotary or the Register in Chancery of the court in which the civil action or proceeding is pending shall, within 7 days of such service, deposit in the United States mails, by registered mail, postage prepaid, true and attested copies of the process, together with a statement that service is being made pursuant to

this section, addressed to such general partner or liquidating trustee at the same address that appears in the certificate of limited partnership of the limited partnership, or, if no such address appears, at his or her address last known to the party desiring to make such service.

(c) In any action in which any such general partner or liquidating trustee has been served with process as hereinabove provided, the time in which a defendant shall be required to appear and file a responsive pleading shall be computed from the date of mailing by the Prothonotary or the Register in Chancery as provided in subsection (b) of this section; however, the Court in which such action has been commenced may order such continuance or continuances as may be necessary to afford such general partner or liquidating trustee reasonable opportunity to defend the action.

(d) In a written partnership agreement or other writing, a partner may consent to be subject to the nonexclusive jurisdiction of the courts of, or arbitration in, a specified jurisdiction, or the exclusive jurisdiction of the courts of the State of Delaware, or the exclusivity of arbitration in a specified jurisdiction or the State of Delaware, and to be served with legal process in the manner prescribed in such partnership agreement or other writing. Except by agreeing to arbitrate any arbitrable matter in a specified jurisdiction or in the State of Delaware, a limited partner may not waive its right to maintain a legal action or proceeding in the courts of the State of Delaware with respect to matters relating to the organization or internal affairs of a limited partnership.

(e) Nothing herein contained limits or affects the right to serve process in any other manner now or hereafter provided by law. This section is an extension of and not a limitation upon the right otherwise existing of service of legal process upon nonresidents.

(f) The Court of Chancery and the Superior Court may make all necessary rules respecting the form of process, the manner of issuance and return thereof and such other rules which may be necessary to implement this section and are not inconsistent with this section.

(66 Del. Laws, c. 316, § 6; 67 Del. Laws, c. 348, § 6; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 78, § 5; 72 Del. Laws, c. 128, §§ 2, 3; 72 Del. Laws, c. 386, § 2.)

§ 17-110 Contested matters relating to general partners; contested votes.

(a) Upon application of any partner, the Court of Chancery may hear and determine the validity of any admission, election, appointment or removal or other withdrawal of a general partner of a limited partnership, and the right of any person to become or continue to be a general partner of a limited partnership, and, in case the right to serve as a general partner is claimed by more than 1 person, may determine the person or persons entitled to serve as general partners; and to that end make such order or decree in any such case as may be just and proper, with power to enforce the production of any books, papers and records of the limited partnership relating to the issue. In any such application, the limited partnership shall be named as a party and service of copies of the application upon the registered agent of the limited partnership shall be deemed to be service upon the limited partnership and upon the person or persons whose right to serve as a general partner is contested and upon the person or persons, if any, claiming to be a general partner or claiming the right to be a general partner; and the registered agent shall forward immediately a copy of the application to the limited partnership and to the person or persons whose right to serve as a general partner is contested and to the person or persons, if any, claiming to be a general partner or the right to be a general partner, in a postpaid, sealed, registered letter addressed to such limited partnership and such person or persons at their post-office addresses last known to the registered agent or furnished to the registered agent by the applicant partner. The Court may make such order respecting further or other notice of such application as it deems proper under the circumstances.

(b) Upon application of any partner, the Court of Chancery may hear and determine the result of any vote of partners upon matters as to which the partners of the limited partnership, or any class or group of partners, have the right to vote pursuant to the partnership agreement or other agreement or this chapter (other than the admission, election, appointment or removal or other withdrawal of general partners). In any such application, the limited partnership shall be named as a party and service of the application upon the registered agent of the limited partnership shall be deemed to be service upon the limited partnership, and no other party need be joined in order for the Court to adjudicate the result of the vote. The Court may make such order respecting further or other notice of such application as it deems proper under the circumstances.

(c) Nothing herein contained limits or affects the right to serve process in any other manner now or hereafter provided by law. This section is an extension of and not a limitation upon the right otherwise existing of service of legal process upon nonresidents.

(69 Del. Laws, c. 258, § 5; 71 Del. Laws, c. 78, § 6.)

§ 17-111 Interpretation and enforcement of partnership agreement.

Any action to interpret, apply or enforce the provisions of a partnership agreement, or the duties, obligations or liabilities of a limited partnership to the partners of the limited partnership, or the duties, obligations or liabilities among partners or of partners to the limited partnership, or the rights or powers of, or restrictions on, the limited partnership or partners, or any provision of this chapter, or any other instrument, document, agreement or certificate contemplated by any provision of this chapter, may be brought in the Court of Chancery.

(69 Del. Laws, c. 258, § 6; 77 Del. Laws, c. 69, § 1.)

§ 17-112 Judicial cancellation of certificate of limited partnership; proceedings.

(a) Upon motion by the Attorney General, the Court of Chancery shall have jurisdiction to cancel the certificate of limited partnership of any domestic limited partnership for abuse or misuse of its limited partnership powers, privileges or existence. The Attorney General shall proceed for this purpose in the Court of Chancery.

(b) The Court of Chancery shall have power, by appointment of trustees, receivers or otherwise, to administer and wind up the affairs of any domestic limited partnership whose certificate of limited partnership shall be canceled by the Court of Chancery under this section, and to make such orders and decrees with respect thereto as shall be just and equitable respecting its affairs and assets and the rights of its partners and creditors.

(82 Del. Laws, c. 46, § 6.)

§ 17-113 Document form, signature and delivery.

(a) Except as provided in subsection (b) of this section, without limiting the manner in which any act or transaction may be documented, or the manner in which a document may be signed or delivered:

(1) Any act or transaction contemplated or governed by this chapter or the partnership agreement may be provided for in a document, and an electronic transmission is the equivalent of a written document.

(2) Whenever this chapter or the partnership agreement requires or permits a signature, the signature may be a manual, facsimile, conformed or electronic signature. "Electronic signature" means an electronic symbol or process that is attached to, or logically associated with, a document and executed or adopted by a person with an intent to execute, authenticate or adopt the document. A person may execute a document with such person's signature.

(3) Unless otherwise provided in the partnership agreement or agreed between the sender and recipient, an electronic transmission is delivered to a person for purposes of this chapter and the partnership agreement when it enters an information processing system that the person has designated for the purpose of receiving electronic transmissions of the type delivered, so long as the electronic transmission is in a form capable of being processed by that system and such person is able to retrieve the electronic transmission. Whether a person has so designated an information processing system is determined by the partnership agreement or from the context and surrounding circumstances, including the parties' conduct. An electronic transmission is delivered under this section even if no person is aware of its receipt. Receipt of an electronic acknowledgement from an information processing system establishes that an electronic transmission was received but, by itself, does not establish that the content sent corresponds to the content received.

This chapter shall not prohibit 1 or more persons from conducting a transaction in accordance with Chapter 12A of this title so long as the part or parts of the transaction that are governed by this chapter are documented, signed and delivered in accordance with this subsection or otherwise in accordance with this chapter. This subsection shall apply solely for purposes of determining whether an act or transaction has been documented, and the document has been signed and delivered, in accordance with this chapter and the partnership agreement.

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

(1) A document filed with or submitted to the Secretary of State, the Register in Chancery, or a court or other judicial or governmental body of this State;

(2) A certificate of partnership interest; and

(3) An act or transaction effected pursuant to § 17-104, § 17-105, or § 17-109 of this title or subchapter IX or X of this chapter.

The foregoing shall not create any presumption about the lawful means to document a matter addressed by this subsection, or the lawful means to sign or deliver a document addressed by this subsection. A provision of the partnership agreement shall not limit the application of subsection (a) of this section unless the provision expressly restricts 1 or more of the means of documenting an act or transaction, or of signing or delivering a document, permitted by subsection (a) of this section.

(c) In the event that any provision of this chapter is deemed to modify, limit or supersede the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. § 7001 et. seq., the provisions of this chapter shall control to the fullest extent permitted by § 7002(a)(2) of such act [15 U.S.C. § 7002(a)(2)].

(82 Del. Laws, c. 46, § 7; 82 Del. Laws, c. 258, § 4.)

Subchapter II

Formation; Certificate of Limited Partnership

§ 17-201 Certificate of limited partnership.

(a) In order to form a limited partnership, 1 or more persons (but not less than all of the general partners) must execute a certificate of limited partnership. The certificate of limited partnership shall be filed in the Office of the Secretary of State and set forth:

(1) The name of the limited partnership;

(2) The address of the registered office and the name and address of the registered agent for service of process required to be maintained by § 17-104 of this title;

(3) The name and the business, residence or mailing address of each general partner; and

(4) Any other matters the partners determine to include therein.

(b) A limited partnership is formed at the time of the filing of the initial certificate of limited partnership in the Office of the Secretary of State or at any later date or time specified in the certificate of limited partnership if, in either case, there has been substantial compliance with the requirements of this section. A limited partnership formed under this chapter shall be a separate legal entity, the existence of which as a separate legal entity shall continue until cancellation of the limited partnership's certificate of limited partnership.

(c) The filing of the certificate of limited partnership in the Office of the Secretary of State shall make it unnecessary to file any other documents under Chapter 31 of this title.

(d) A partnership agreement shall be entered into or otherwise existing either before, after or at the time of the filing of a certificate of limited partnership and, whether entered into or otherwise existing before, after or at the time of such filing, may be made effective as of the effective time of such filing or at such other time or date as provided in or reflected by the partnership agreement.

(e) A certificate of limited partnership substantially complies with § 17-201(a)(2) of this title if it contains the name of the registered agent and the address of the registered office even if the certificate of limited partnership does not expressly designate such person as the registered agent or such address as the registered office or the address of the registered agent.

(6 Del. C. 1953, § 1702; 59 Del. Laws, c. 105, § 1; 59 Del. Laws, c. 422, § 4; 63 Del. Laws, c. 420, § 1; 65 Del. Laws, c. 188, § 1; 67 Del. Laws, c. 348, § 7; 76 Del. Laws, c. 104, § 10; 78 Del. Laws, c. 272, § 2; 81 Del. Laws, c. 88, § 7.)

§ 17-202 Amendment to certificate.

(a) A certificate of limited partnership is amended by filing a certificate of amendment thereto in the Office of the Secretary of State. The certificate of amendment shall set forth:

(1) The name of the limited partnership; and

(2) The amendment to the certificate.

(b) A general partner who becomes aware that any statement in a certificate of limited partnership was false when made, or that any matter described has changed making the certificate false in any material respect, shall promptly amend the certificate.

(c) Notwithstanding the requirements of subsection (b) of this section, no later than 90 days after the happening of any of the following events an amendment to a certificate of limited partnership reflecting the occurrence of the event or events shall be filed by a general partner:

(1) The admission of a new general partner;

(2) The withdrawal of a general partner; or

(3) A change in the name of the limited partnership, or, except as provided in § 17-104(b) and (c) of this title, a change in the address of the registered office or a change in the name or address of the registered agent of the limited partnership.

(d) A certificate of limited partnership may be amended at any time for any other proper purpose the general partners may determine.

(e) Unless otherwise provided in this chapter or in the certificate of amendment, a certificate of amendment shall be effective at the time of its filing with the Secretary of State.

(f) If after the dissolution of a limited partnership but prior to the filing of a certificate of cancellation as provided in § 17-203 of this title:

(1) A certificate of limited partnership has been amended to reflect the withdrawal of all general partners of a limited partnership, the certificate of limited partnership shall be amended to set forth the name and the business, residence or mailing address of each person winding up the limited partnership's affairs, each of whom shall execute and file such certificate of amendment, and each of whom shall not be subject to liability as a general partner by reason of such amendment; or

(2) A person shown on a certificate of limited partnership as a general partner is not winding up the limited partnership's affairs, the certificate of limited partnership shall be amended to add the name and the business, residence or mailing address of each person winding up the limited partnership's affairs, each of whom shall execute and file such certificate of amendment, and each of whom shall not be subject to liability as a general partner by reason of such amendment. A person shown on a certificate of limited partnership as a general partner who is not winding up a limited partnership's affairs need not execute a certificate of amendment which is being executed and filed as required under this subsection.

(6 Del. C. 1953, §§ 1724, 1725; 59 Del. Laws, c. 105, § 1; 59 Del. Laws, c. 442, § 1; 63 Del. Laws, c. 420, § 1; 65 Del. Laws, c. 188, § 1; 66 Del. Laws, c. 316, § 7; 67 Del. Laws, c. 348, § 8.)

§ 17-203 Cancellation of certificate.

(a) A certificate of limited partnership shall be canceled upon the dissolution and the completion of winding up of the limited partnership, or as provided in § 17-104(d) or § 17-104(i)(4), § 17-112 or § 17-1110 of this title, or upon the filing of a certificate of merger or consolidation or a certificate of ownership and merger if the limited partnership is not the surviving or resulting entity in a merger or consolidation, or upon the future effective date or time of a certificate of merger or consolidation or a certificate of ownership and merger if the limited partnership is not the surviving or resulting entity in a merger or consolidation, or upon the filing of a certificate of transfer or upon the future effective date or time of a certificate of transfer, or upon the filing of a certificate of conversion to non-Delaware entity or upon the future effective date or time of a certificate of conversion to non-Delaware entity or upon the filing of a certificate of division if the limited partnership is a dividing partnership that is not a surviving partnership or upon the future effective date or time of a certificate of division if the limited partnership is a dividing partnership that is not a surviving partnership. A certificate of cancellation shall be filed in the Office of the Secretary of State to accomplish the cancellation of a certificate of limited partnership upon the dissolution and the completion of winding up of a limited partnership and shall set forth:

(1) The name of the limited partnership;

(2) The date of filing of its certificate of limited partnership;

(3) If the limited partnership has formed 1 or more registered series whose certificate of registered series has not been canceled prior to the filing of the certificate of cancellation, the name of each such registered series;

(4) The future effective date or time (which shall be a date or time certain) of cancellation if it is not to be effective upon the filing of the certificate; and

(5) Any other information the person filing the certificate of cancellation determines.

(b) A certificate of cancellation that is filed in the office of the Secretary of State prior to the dissolution or the completion of winding up of a limited partnership may be corrected as an erroneously executed certificate of cancellation by filing with the office of the Secretary of State a certificate of correction of such certificate of cancellation in accordance with § 17-213 of this title.

(c) The Secretary of State shall not issue a certificate of good standing with respect to a limited partnership (or any registered series thereof) if its certificate of limited partnership is canceled.

(6 Del. C. 1953, §§ 1724, 1725; 59 Del. Laws, c. 105, § 1; 59 Del. Laws, c. 442, § 1; 63 Del. Laws, c. 420, § 1; 65 Del. Laws, c. 188, § 1; 66 Del. Laws, c. 316, § 8; 70 Del. Laws, c. 78, § 3; 70 Del. Laws, c. 362, § 1; 71 Del. Laws, c. 78, § 7; 71 Del. Laws, c. 340, § 3; 72 Del. Laws, c. 386, §§ 3-5; 73 Del. Laws, c. 297, § 3; 74 Del. Laws, c. 104, § 1; 75 Del. Laws, c. 414, § 5; 76 Del. Laws, c. 104, § 11; 77 Del. Laws, c. 288, § 4; 78 Del. Laws, c. 97, § 3; 82 Del. Laws, c. 46, § 8.)

§ 17-204 Execution.

(a) Each certificate required by this subchapter to be filed in the Office of the Secretary of State shall be executed in the following manner:

(1) An initial certificate of limited partnership, a certificate of limited partnership domestication, a certificate of conversion to limited partnership, a certificate of conversion to a non-Delaware entity, a certificate of transfer and a certificate of transfer and domestic continuance must be signed by all general partners or, in the case of a certificate of limited partnership domestication or certificate of conversion to limited partnership, by any person authorized to execute such certificate on behalf of the non-United States entity or other entity, respectively;

(2) A certificate of amendment or a certificate of correction must be signed by at least 1 general partner and by each other general partner designated in the certificate of amendment or a certificate of correction as a new general partner, but if the certificate of amendment or a certificate of correction reflects the withdrawal of a general partner as a general partner, it need not be signed by that former general partner;

(3) A certificate of cancellation must be signed by all general partners or, if the general partners are not winding up the limited partnership's affairs, then by all liquidating trustees; provided, however, that if the limited partners are winding up the limited partnership's affairs, a certificate of cancellation shall be signed by limited partners who own more than 50 percent of the then current percentage or other interest in the profits of the limited partnership owned by all of the limited partners;

(4) If a domestic limited partnership is filing a certificate of merger or consolidation or a certificate of ownership and merger, the certificate of merger or consolidation or certificate of ownership and merger must be signed by at least 1 general partner of the domestic limited partnership, or if the certificate of merger or consolidation is being filed by another business entity (as defined in § 17-211(a) of this title), the certificate of merger or consolidation, must be signed by a person authorized by such other business entity;

(5) A certificate of revival must be signed by at least 1 general partner;

(6) A certificate of termination of a certificate with a future effective date or time or a certificate of amendment of a certificate with a future effective date or time being filed in accordance with § 17-206(c) of this title shall be signed in the same manner as the certificate with a future effective date or time being amended or terminated is required to be signed under this chapter;

(7) A certificate of division must be signed by at least 1 general partner of the dividing partnership;

(8) A certificate of registered series and a certificate of conversion of registered series to protected series must be signed by all general partners associated with the registered series;

(9) A certificate of amendment of certificate of registered series or a certificate of correction of certificate of registered series must be signed by at least 1 general partner associated with such series and by each other general partner designated in such certificate of amendment or such certificate of correction as a new general partner associated with such series, but if such certificate of amendment or such certificate of correction reflects the withdrawal of a general partner as a general partner associated with such series, it need not be signed by that former general partner;

(10) A certificate of conversion of protected series to registered series must be signed by all general partners associated with the protected series;

(11) A certificate of merger or consolidation of registered series must be signed by all general partners associated with the surviving or resulting registered series;

(12) A certificate of cancellation of certificate of registered series must be signed by all general partners associated with such series or, if such general partners are not winding up the registered series' affairs, then by all liquidating trustees of such registered series; provided, however, that if the limited partners of such registered series are winding up such series' affairs, the certificate of cancellation

of certificate of registered series shall be signed by limited partners of such registered series who own more than 50% of the then current percentage or other interest in the profits of such registered series owned by all of the limited partners of such series; and

(13) A certificate of revival of registered series must be signed by at least 1 general partner associated with such registered series.

(b) Unless otherwise provided in the partnership agreement, any person may sign any certificate or amendment thereof or enter into a partnership agreement or amendment thereof by an agent, including an attorney-in-fact. An authorization, including a power of attorney, to sign any certificate or amendment thereof or to enter into a partnership agreement or amendment thereof need not be in writing, need not be sworn to, verified or acknowledged, and need not be filed in the Office of the Secretary of State, but if in writing, must be retained by a general partner.

(c) For all purposes of the laws of the State of Delaware, unless otherwise provided in a partnership agreement, a power of attorney or proxy with respect to a limited partnership granted to any person shall be irrevocable if it states that it is irrevocable and it is coupled with an interest sufficient in law to support an irrevocable power or proxy. Such irrevocable power of attorney or proxy, unless otherwise provided therein or in a partnership agreement, shall not be affected by subsequent death, disability, incapacity, dissolution, termination of existence or bankruptcy of, or any other event concerning, the principal. A power of attorney or proxy with respect to matters relating to the organization, internal affairs or termination of a limited partnership or granted by a person as a partner or an assignee of a partnership interest or by a person seeking to become a partner or an assignee of a partnership interest and, in either case, granted to the limited partnership, a general partner or limited partner thereof, or any of their respective officers, directors, managers, members, partners, trustees, employees or agents shall be deemed coupled with an interest sufficient in law to support an irrevocable power or proxy. The provisions of this subsection shall not be construed to limit the enforceability of a power of attorney or proxy that is part of a partnership agreement.

(d) The execution of a certificate by a person who is authorized by this chapter to execute such certificate constitutes an oath or affirmation, under the penalties of perjury in the third degree, that, to the best of such person's knowledge and belief, the facts stated therein are true.

(6 Del. C. 1953, § 1702; 59 Del. Laws, c. 105, § 1; 59 Del. Laws, c. 442, § 4; 63 Del. Laws, c. 420, § 1; 65 Del. Laws, c. 188, § 1; 66 Del. Laws, c. 316, §§ 9-12; 67 Del. Laws, c. 348, § 9; 69 Del. Laws, c. 258, §§ 7, 8; 70 Del. Laws, c. 78, §§ 4, 5; 70 Del. Laws, c. 362, § 2; 71 Del. Laws, c. 78, § 8; 73 Del. Laws, c. 73, § 5; 74 Del. Laws, c. 104, § 2; 76 Del. Laws, c. 104, § 12; 76 Del. Laws, c. 386, §§ 3, 4; 77 Del. Laws, c. 288, §§ 5, 6; 80 Del. Laws, c. 44, §§ 1, 2; 82 Del. Laws, c. 46, § 9.)

§ 17-205 Execution, amendment or cancellation by judicial order.

(a) If a person required by § 17-204 of this title to execute any certificate fails or refuses to do so, any other person who is adversely affected by the failure or refusal may petition the Court of Chancery to direct the execution of the certificate. If the Court finds that the execution of the certificate is proper and that any person so designated has failed or refused to execute the certificate, it shall order the Secretary of State to record an appropriate certificate.

(b) If a person required to execute a partnership agreement or amendment thereof fails or refuses to do so, any other person who is adversely affected by the failure or refusal may petition the Court of Chancery to direct the execution of the partnership agreement or amendment thereof. If the Court finds that the partnership agreement or amendment thereof should be executed and that any person so designated has failed or refused to do so, it shall enter an order granting appropriate relief.

(63 Del. Laws, c. 420, § 1; 65 Del. Laws, c. 188, § 1.)

§ 17-206 Filing.

(a) The signed copy of any certificate authorized to be filed under this chapter shall be delivered to the Secretary of State. A person who executes a certificate as an agent or fiduciary need not exhibit evidence of that person's authority as a prerequisite to filing. Any signature on any certificate authorized to be filed with the Secretary of State under any provision of this chapter may be a facsimile, a conformed signature or an electronically transmitted signature. Upon delivery of any certificate, the Secretary of State shall record the date and time of its delivery. Unless the Secretary of State finds that any certificate does not conform to law, upon receipt of all filing fees required by law the Secretary of State shall:

(1) Certify that any certificate authorized to be filed under this chapter has been filed in the Secretary of State's office by endorsing upon the signed certificate the word "Filed," and the date and time of the filing. This endorsement is conclusive of the date and time of its filing in the absence of actual fraud. Except as provided in paragraph (a)(5) or (a)(6) of this section, such date and time of filing of a certificate shall be the date and time of delivery of the certificate;

(2) File and index the endorsed certificate;

(3) Prepare and return to the person who filed it or that person's representative a copy of the signed certificate, similarly endorsed, and shall certify such copy as a true copy of the signed certificate; and

(4) Cause to be entered such information from the certificate as the Secretary of State deems appropriate into the Delaware Corporation Information System or any system which is a successor thereto in the office of the Secretary of State, and such information and a copy of such certificate shall be permanently maintained as a public record on a suitable medium. The Secretary of State is authorized to grant direct access to such system to registered agents subject to the execution of an operating agreement between the Secretary of State and such registered agent. Any registered agent granted such access shall demonstrate the existence of policies to

ensure that information entered into the system accurately reflects the content of certificates in the possession of the registered agent at the time of entry.

(5) Upon request made upon or prior to delivery, the Secretary of State may, to the extent deemed practicable, establish as the date and time of filing of a certificate a date and time after its delivery. If the Secretary of State refuses to file any certificate due to an error, omission or other imperfection, the Secretary of State may hold such certificate in suspension, and in such event, upon delivery of a replacement certificate in proper form for filing and tender of the required fees within 5 business days after notice of such suspension is given to the filer, the Secretary of State shall establish as the date and time of filing of such certificate the date and time that would have been the date and time of filing of the rejected certificate had it been accepted for filing. The Secretary of State shall not issue a certificate of good standing with respect to any limited partnership or registered series with a certificate held in suspension pursuant to this subsection. The Secretary of State may establish as the date and time of filing of a certificate the date and time at which information from such certificate is entered pursuant to paragraph (a)(4) of this section if such certificate is delivered on the same date and within 4 hours after such information is entered.

(6) If:

a. Together with the actual delivery of a certificate and tender of the required fees, there is delivered to the Secretary of State a separate affidavit (which in its heading shall be designated as an affidavit of extraordinary condition) attesting, on the basis of personal knowledge of the affiant or a reliable source of knowledge identified in the affidavit, that an earlier effort to deliver such certificate and tender such fees was made in good faith, specifying the nature, date and time of such good faith effort and requesting that the Secretary of State establish such date and time as the date and time of filing of such certificate; or

b. Upon the actual delivery of a certificate and tender of the required fees, the Secretary of State in the Secretary of State's own discretion provides a written waiver of the requirement for such an affidavit stating that it appears to the Secretary of State that an earlier effort to deliver such certificate and tender such fees was made in good faith and specifying the date and time of such effort; and

c. The Secretary of State determines that an extraordinary condition existed at such date and time, that such earlier effort was unsuccessful as a result of the existence of such extraordinary condition, and that such actual delivery and tender were made within a reasonable period (not to exceed 2 business days) after the cessation of such extraordinary condition, then the Secretary of State may establish such date and time as the date and time of filing of such certificate. No fee shall be paid to the Secretary of State for receiving an affidavit of extraordinary condition. For purposes of this subsection, an extraordinary condition means: any emergency resulting from an attack on, invasion or occupation by foreign military forces of, or disaster, catastrophe, war or other armed conflict, revolution or insurrection, or rioting or civil commotion in, the United States or a locality in which the Secretary of State conducts its business or in which the good faith effort to deliver the certificate and tender the required fees is made, or the immediate threat of any of the foregoing; or any malfunction or outage of the electrical or telephone service to the Secretary of State's office, or weather or other condition in or about a locality in which the Secretary of State conducts its business, as a result of which the Secretary of State's office is not open for the purpose of the filing of certificates under this chapter or such filing cannot be effected without extraordinary effort. The Secretary of State may require such proof as it deems necessary to make the determination required under this paragraph (a)(6)c., and any such determination shall be conclusive in the absence of actual fraud. If the Secretary of State establishes the date and time of filing of a certificate pursuant to this subsection, the date and time of delivery of the affidavit of extraordinary condition or the date and time of the Secretary of State's written waiver of such affidavit shall be endorsed on such affidavit or waiver and such affidavit or waiver, so endorsed, shall be attached to the filed certificate to which it relates. Such filed certificate shall be effective as of the date and time established as the date and time of filing by the Secretary of State pursuant to this subsection, except as to those persons who are substantially and adversely affected by such establishment and, as to those persons, the certificate shall be effective from the date and time endorsed on the affidavit of extraordinary condition or written waiver attached thereto.

(b) Notwithstanding any other provision of this chapter, any certificate filed under this chapter shall be effective at the time of its filing with the Secretary of State or at any later date or time (not later than a time on the one hundred and eightieth day after the date of its filing if such date of filing is on or after January 1, 2012) specified in the certificate. Upon the filing of a certificate of amendment (or judicial decree of amendment), certificate of correction, corrected certificate or restated certificate in the Office of the Secretary of State, or upon the future effective date or time of a certificate of amendment (or judicial decree thereof) or restated certificate, as provided for therein, the certificate of limited partnership or certificate of registered series, as applicable, shall be amended, corrected or restated as set forth therein. Upon the filing of a certificate of cancellation (or a judicial decree thereof), a certificate of merger or consolidation or a certificate of ownership and merger or a certificate of division which acts as a certificate of cancellation, a certificate of transfer, a certificate of conversion to a non-Delaware entity, or a certificate of conversion of registered series to protected series, or upon the future effective date or time of a certificate of cancellation (or a judicial decree thereof), a certificate of merger or consolidation or a certificate of ownership and merger or a certificate of division which acts as a certificate of cancellation, a certificate of transfer, a certificate of conversion to a non-Delaware entity, or a certificate of conversion of registered series to protected series, as provided for therein, or as specified in § 17-104(d), § 17-104(i)(4), § 17-112 or § 17-1110 of this title, the certificate of limited partnership or certificate of registered series, as applicable, is canceled. Upon the filing of a certificate of limited partnership domestication, or upon the future effective date or time of a certificate of limited partnership domestication, the entity filing the certificate of limited partnership domestication is domesticated as a limited partnership with the effect provided in § 17-215 of this title. Upon the filing of a certificate of conversion to limited partnership, or

upon the future effective date or time of a certificate of conversion to limited partnership, the entity filing the certificate of conversion to limited partnership is converted to a limited partnership with the effect provided in § 17-217 of this title. Upon the filing of a certificate of conversion of protected series to registered series, or upon the future effective date or time of a certificate of conversion of protected series to registered series, the protected series with respect to which such filing is made is converted to a registered series with the effect provided in § 17-222 of this title. Upon the filing of a certificate of conversion of registered series to protected series, or upon the future effective date or time of a certificate of conversion of registered series to protected series, the registered series filing such certificate is converted to a protected series with the effect provided in § 17-223 of this title. Upon the filing of a certificate of revival, a limited partnership or a registered series shall be revived with the effect provided in § 17-1111 or § 17-1112 of this title. Upon the filing of a certificate of transfer and domestic continuance, or upon the future effective date or time of a certificate of transfer and domestic continuance, as provided for therein, the limited partnership filing the certificate of transfer and domestic continuance shall continue to exist as a limited partnership of the State of Delaware with the effect provided in § 17-216 of this title.

(c) If any certificate filed in accordance with this chapter provides for a future effective date or time and if, prior to such future effective date or time set forth in such certificate, the transaction is terminated or its terms are amended to change the future effective date or time or any other matter described in such certificate so as to make such certificate false or inaccurate in any respect, such certificate shall, prior to the future effective date or time set forth in such certificate, be terminated or amended by the filing of a certificate of termination or certificate of amendment of such certificate, executed in accordance with § 17-204 of this title, which shall identify the certificate which has been terminated or amended and shall state that the certificate has been terminated or the manner in which it has been amended. Upon the filing of a certificate of amendment of a certificate with a future effective date or time, the certificate identified in such certificate of amendment is amended. Upon the filing of a certificate of termination of a certificate with a future effective date or time, the certificate identified in such certificate of termination is terminated.

(d) A fee as set forth in § 17-1107(a)(3) of this title shall be paid at the time of the filing of a certificate of limited partnership, a certificate of registered series, a certificate of amendment, a certificate of correction, a certificate of amendment of a certificate with a future effective date or time, a certificate of termination of a certificate with a future effective date or time, a certificate of cancellation, a certificate of merger or consolidation, a certificate of ownership and merger, a restated certificate, a corrected certificate, a certificate of conversion to limited partnership, a certificate of conversion to a non-Delaware entity, a certificate of conversion of protected series to registered series, a certificate of conversion of registered series to protected series, a certificate of transfer, a certificate of transfer and domestic continuance, a certificate of limited partnership domestication, a certificate of division, or a certificate of revival.

(e) A fee as set forth in § 17-1107(a)(4) of this title shall be paid for a certified copy of any paper on file as provided for by this chapter, and a fee as set forth in § 17-1107(a)(5) of this title shall be paid for each page copied.

(f) Notwithstanding any other provision of this chapter, it shall not be necessary for any limited partnership or foreign limited partnership to amend its certificate of limited partnership, its application for registration as a foreign limited partnership, or any other document that has been filed in the office of the Secretary of State prior to August 1, 2011, to comply with § 17-104(k) of this title; notwithstanding the foregoing, any certificate or other document filed under this chapter on or after August 1, 2011, and changing the address of a registered agent or registered office shall comply with § 17-104(k) of this title.

(6 Del. C. 1953, § 1702; 59 Del. Laws, c. 105, § 1; 59 Del. Laws, c. 442, § 4; 63 Del. Laws, c. 420, § 1; 65 Del. Laws, c. 188, § 1; 66 Del. Laws, c. 316, §§ 13-16; 69 Del. Laws, c. 258, §§ 9-12; 70 Del. Laws, c. 78, §§ 6-14; 70 Del. Laws, c. 186, § 1; 70 Del. Laws, c. 362, §§ 3-6; 71 Del. Laws, c. 78, §§ 9-12; 73 Del. Laws, c. 73, §§ 6-12; 73 Del. Laws, c. 297, § 4; 74 Del. Laws, c. 104, §§ 3-11; 75 Del. Laws, c. 414, § 6; 76 Del. Laws, c. 104, §§ 13-16; 77 Del. Laws, c. 288, §§ 7-9; 78 Del. Laws, c. 97, §§ 4, 5; 82 Del. Laws, c. 46, § 10.)

§ 17-207 Liability for false statement.

(a) If any certificate authorized to be filed under this chapter contains a materially false statement, one who suffers loss by reasonable reliance on the statement may recover damages for the loss from:

(1) Any general partner who executes the certificate and knew or should have known the statement to be false in any material respect at the time the certificate was executed; and

(2) Any general partner that filed the certificate, who thereafter knows that any arrangement or other fact described in the certificate is false in any material respect or has changed, making the statement false in any material respect, if that general partner had sufficient time to amend, correct or cancel the certificate, or to file a petition for its amendment, correction or cancellation, before the statement was reasonably relied upon.

(b) No general partner shall have any liability for failing to cause the amendment, correction or cancellation of a certificate to be filed or failing to file a petition for its amendment, correction or cancellation pursuant to subsection (a) of this section if the certificate of amendment, certificate of correction, certificate of cancellation or petition is filed within 90 days of when that general partner knew or should have known to the extent provided in subsection (a) of this section that the statement in the certificate was false in any material respect.

(6 Del. C. 1953, § 1706; 59 Del. Laws, c. 105, § 1; 63 Del. Laws, c. 420, § 1; 65 Del. Laws, c. 188, § 1; 69 Del. Laws, c. 258, §§ 13-15; 70 Del. Laws, c. 78, § 15; 70 Del. Laws, c. 362, § 7; 71 Del. Laws, c. 78, § 13; 74 Del. Laws, c. 104, § 12; 76 Del. Laws, c. 104, § 17; 82 Del. Laws, c. 46, § 11.)

§ 17-208 Notice.

The fact that a certificate of limited partnership is on file in the Office of the Secretary of State is notice that the partnership is a limited partnership and is notice of all other facts set forth therein which are required to be set forth in a certificate of limited partnership by § 17-201(a)(1)-(3) or § 17-1202 of this title and by § 17-202(f) of this title and which are permitted to be set forth in a certificate of limited partnership by § 17-218(b) or § 17-221(b) of this title. The fact that a certificate of registered series is on file in the office of the Secretary of State is notice that the registered series named in such certificate of registered series has been formed pursuant to § 17-221 of this title and is notice of all other facts set forth therein which are required to be set forth in a certificate of registered series by § 17-221(d) of this title.

(63 Del. Laws, c. 420, § 1; 65 Del. Laws, c. 188, § 1; 66 Del. Laws, c. 316, § 17; 70 Del. Laws, c. 362, § 8; 82 Del. Laws, c. 46, § 12.)

§ 17-209 Delivery of certificates to limited partners.

Upon the return by the Secretary of State pursuant to § 17-206 of this title of a certificate marked "Filed," the general partners shall promptly deliver or mail a copy of the certificate to each limited partner if the partnership agreement so requires.

(63 Del. Laws, c. 420, § 1; 65 Del. Laws, c. 188, § 1.)

§ 17-210 Restated certificate.

(a) *Restated certificate of limited partnership.* — (1) A limited partnership may, whenever desired, integrate into a single instrument all of the provisions of its certificate of limited partnership which are then in effect and operative as a result of there having theretofore been filed with the Secretary of State 1 or more certificates or other instruments pursuant to any of the sections referred to in this subchapter and it may at the same time also further amend its certificate of limited partnership by adopting a restated certificate of limited partnership.

(2) If a restated certificate of limited partnership merely restates and integrates but does not further amend the initial certificate of limited partnership, as theretofore amended or supplemented by any instrument that was executed and filed pursuant to any of the sections in this subchapter, it shall be specifically designated in its heading as a "Restated Certificate of Limited Partnership" together with such other words as the partnership may deem appropriate and shall be executed by a general partner and filed as provided in § 17-206 of this title in the Office of the Secretary of State. If a restated certificate restates and integrates and also further amends in any respect the certificate of limited partnership, as theretofore amended or supplemented, it shall be specifically designated in its heading as an "Amended and Restated Certificate of Limited Partnership" together with such other words as the partnership may deem appropriate and shall be executed by at least 1 general partner and by each other general partner designated in the restated certificate of limited partnership as a new general partner, but if the restated certificate reflects the withdrawal of a general partner as a general partner, such restated certificate of limited partnership need not be signed by that former general partner, and filed as provided in § 17-206 of this title in the Office of the Secretary of State.

(3) A restated certificate of limited partnership shall state, either in its heading or in an introductory paragraph, the limited partnership's present name, and, if it has been changed, the name under which it was originally filed, and the date of filing of its original certificate of limited partnership with the Secretary of State, and the future effective date or time (which shall be a date or time certain) of the restated certificate if it is not to be effective upon the filing of the restated certificate. A restated certificate shall also state that it was duly executed and is being filed in accordance with this section. If a restated certificate only restates and integrates and does not further amend a limited partnership's certificate of limited partnership as theretofore amended or supplemented and there is no discrepancy between those provisions and the restated certificate, it shall state that fact as well.

(4) Upon the filing of a restated certificate of limited partnership with the Secretary of State, or upon the future effective date or time of a restated certificate of limited partnership as provided for therein, the initial certificate of limited partnership, as theretofore amended or supplemented, shall be superseded; thenceforth, the restated certificate of limited partnership, including any further amendment or changes made thereby, shall be the certificate of limited partnership of the limited partnership, but the original effective date of formation shall remain unchanged.

(5) Any amendment or change effected in connection with the restatement and integration of the certificate of limited partnership shall be subject to any other provision of this chapter, not inconsistent with this section, which would apply if a separate certificate of amendment were filed to effect such amendment or change.

(b) *Restated certificate of registered series.* — (1) A registered series of a limited partnership may, whenever desired, integrate into a single instrument all of the provisions of its certificate of registered series which are then in effect and operative as a result of there having theretofore been filed with the Secretary of State 1 or more certificates or other instruments pursuant to any of the sections referred to in this subchapter, and it may at the same time also further amend its certificate of registered series by adopting a restated certificate of registered series.

(2) If a restated certificate of registered series merely restates and integrates but does not further amend the initial certificate of registered series, as theretofore amended or supplemented by any instrument that was executed and filed pursuant to any of the sections in this subchapter, it shall be specifically designated in its heading as a "Restated Certificate of Registered Series" together with such other words as the registered series may deem appropriate and shall be executed by a general partner of such registered series and filed as provided in § 17-206 of this title in the office of the Secretary of State. If a restated certificate restates and integrates and also further amends in any respect the certificate of registered series as theretofore amended or supplemented, it shall be specifically designated

in its heading as an "Amended and Restated Certificate of Registered Series" together with such other words as the registered series may deem appropriate and shall be executed by at least 1 general partner of such registered series and by each other general partner designated in the amended and restated certificate of registered series as a new general partner of such registered series, but if the restated certificate of registered series reflects the withdrawal of a general partner as a general partner of such registered series, such restated certificate of registered series need not be signed by that former general partner, and filed as provided in § 17-206 of this title in the office of the Secretary of State.

(3) A restated certificate of registered series shall state, either in its heading or in an introductory paragraph, the name of the limited partnership, the present name of the registered series, and, if the name of the registered series has been changed, the name under which it was originally filed, and the date of filing of its original certificate of registered series with the Secretary of State, and the future effective date or time (which shall be a date or time certain) of the restated certificate of registered series if it is not to be effective upon the filing of the restated certificate of registered series. A restated certificate shall also state that it was duly executed and is being filed in accordance with this section. If a restated certificate only restates and integrates and does not further amend a certificate of registered series, as theretofore amended or supplemented and there is no discrepancy between those provisions and the restated certificate, it shall state that fact as well.

(4) Upon the filing of a restated certificate of registered series with the Secretary of State, or upon the future effective date or time of a restated certificate of registered series as provided for therein, the initial certificate of registered series, as theretofore amended or supplemented, shall be superseded; thenceforth, the restated certificate of registered series, including any further amendment or changes made thereby, shall be the certificate of registered series of such registered series, but the original effective date of formation of the registered series, as applicable, shall remain unchanged.

(5) Any amendment or change effected in connection with the restatement and integration of a certificate of registered series shall be subject to any other provision of this chapter, not inconsistent with this section, which would apply if a separate certificate of amendment were filed to effect such amendment or change.

(63 Del. Laws, c. 420, § 1; 65 Del. Laws, c. 188, § 1; 66 Del. Laws, c. 316, § 18; 82 Del. Laws, c. 46, § 13.)

§ 17-211 Merger and consolidation.

(a) As used in this section and in §§ 17-220, 17-222, 17-223 and 17-224 of this title, "other business entity" means a corporation, a statutory trust, a business trust, an association, a real estate investment trust, a common-law trust, a limited liability company, or any other incorporated or unincorporated business or entity, including a partnership (whether general (including a limited liability partnership) or limited (including a foreign limited liability limited partnership), but excluding a domestic limited partnership). As used in this section and in §§ 17-212 and 17-301 of this title, "plan of merger" means a writing approved by a domestic limited partnership, in the form of resolutions or otherwise, that states the terms and conditions of a merger under subsection (*l*) of this section.

(b) Pursuant to an agreement of merger or consolidation, 1 or more domestic limited partnerships may merge or consolidate with or into 1 or more domestic limited partnerships or 1 or more other business entities formed or organized under the laws of the State of Delaware or any other state or the United States or any foreign country or other foreign jurisdiction, or any combination thereof, with such domestic limited partnership or other business entity as the agreement shall provide being the surviving or resulting domestic limited partnership or other business entity. Unless otherwise provided in the partnership agreement, an agreement of merger or consolidation or a plan of merger shall be approved by each domestic limited partnership which is to merge or consolidate: (1) by all general partners; and (2) by limited partners who own more than 50 percent of the then current percentage or other interest in the profits of the domestic limited partnership owned by all of the limited partners. In connection with a merger or consolidation hereunder, rights or securities of, or interests in, a limited partnership or other business entity which is a constituent party to the merger or consolidation may be exchanged for or converted into cash, property, rights or securities of, or interests in, the surviving or resulting limited partnership or other business entity or, in addition to or in lieu thereof, may be exchanged for or converted into cash, property, rights or securities of, or interests in, a limited partnership or other business entity which is not the surviving or resulting limited partnership or other business entity in the merger or consolidation, may remain outstanding or may be canceled. Notwithstanding prior approval, an agreement of merger or consolidation or a plan of merger may be terminated or amended pursuant to a provision for such termination or amendment contained in the agreement of merger or consolidation or plan of merger. Unless otherwise provided in a partnership agreement, a limited partnership whose original certificate of limited partnership was filed with the Secretary of State and effective on or prior to July 31, 2015, shall continue to be governed by clause (2) of this subsection as in effect on July 31, 2015.

(c) Except in the case of a merger under subsection (*l*) of this section, if a domestic limited partnership is merging or consolidating under this section, the domestic limited partnership or other business entity surviving or resulting in or from the merger or consolidation shall file a certificate of merger or consolidation executed by at least 1 general partner on behalf of the domestic limited partnership when it is the surviving or resulting entity in the office of the Secretary of State. The certificate of merger or consolidation shall state:

(1) The name, jurisdiction of formation or organization and type of entity of each of the domestic limited partnerships and other business entities which is to merge or consolidate;

(2) That an agreement of merger or consolidation has been approved and executed by each of the domestic limited partnerships and other business entities which is to merge or consolidate;

(3) The name of the surviving or resulting domestic limited partnership or other business entity;

(4) In the case of a merger in which a domestic limited partnership is the surviving entity, such amendments, if any, to the certificate of limited partnership of the surviving domestic limited partnership (and in the case of a surviving domestic limited partnership that is a limited liability limited partnership, to the statement of qualification of such surviving domestic limited partnership filed under § 15-1001 of this title) to change its name, registered office or registered agent as are desired to be effected by the merger;

(5) The future effective date or time (which shall be a date or time certain) of the merger or consolidation if it is not to be effective upon the filing of the certificate of merger or consolidation;

(6) That the agreement of merger or consolidation is on file at a place of business of the surviving or resulting domestic limited partnership or other business entity, and shall state the address thereof;

(7) That a copy of the agreement of merger or consolidation will be furnished by the surviving or resulting domestic limited partnership or other business entity, on request and without cost, to any partner of any domestic limited partnership or any person holding an interest in any other business entity which is to merge or consolidate; and

(8) If the surviving or resulting entity is not a domestic limited partnership (including a limited liability limited partnership), or a corporation, limited liability company, partnership (including a limited liability partnership) or statutory trust organized under the laws of the State of Delaware, a statement that such surviving or resulting other business entity agrees that it may be served with process in the State of Delaware in any action, suit or proceeding for the enforcement of any obligation of any domestic limited partnership which is to merge or consolidate, irrevocably appointing the Secretary of State as its agent to accept service of process in any such action, suit or proceeding and specifying the address to which a copy of such process shall be mailed to it by the Secretary of State. Process may be served upon the Secretary of State under this subsection by means of electronic transmission but only as prescribed by the Secretary of State. The Secretary of State is authorized to issue such rules and regulations with respect to such service as the Secretary of State deems necessary or appropriate. In the event of service hereunder upon the Secretary of State, the procedures set forth in § 17-911(c) of this title shall be applicable, except that the plaintiff in any such action, suit or proceeding shall furnish the Secretary of State with the address specified in the certificate of merger or consolidation provided for in this section and any other address which the plaintiff may elect to furnish, together with copies of such process as required by the Secretary of State, and the Secretary of State shall notify such surviving or resulting other business entity at all such addresses furnished by the plaintiff in accordance with the procedures set forth in § 17-911(c) of this title.

(d) Any failure to file a certificate of merger or consolidation in connection with a merger or consolidation pursuant to this section which was effective prior to September 1, 1988, shall not affect the validity or effectiveness of any such merger or consolidation.

(e) Unless a future effective date or time is provided in a certificate of merger or consolidation, or in the case of a merger under subsection (*l*) of this section in a certificate of ownership and merger, in which event a merger or consolidation shall be effective at any such future effective date or time, a merger or consolidation shall be effective upon the filing in the Office of the Secretary of State of a certificate of merger or consolidation or a certificate of ownership and merger.

(f) A certificate of merger or consolidation or a certificate of ownership and merger shall act as a certificate of cancellation for a domestic limited partnership which is not the surviving or resulting entity in the merger or consolidation. A certificate of merger that sets forth any amendment in accordance with paragraph (c)(4) of this section shall be deemed to be an amendment to the certificate of limited partnership (and if applicable to the statement of qualification) of the limited partnership, and the limited partnership shall not be required to take any further action to amend its certificate of limited partnership under § 17-202 of this title (or if applicable its statement of qualification under § 15-105 of this title) with respect to such amendments set forth in the certificate of merger. Whenever this section requires the filing of a certificate of merger or consolidation, such requirement shall be deemed satisfied by the filing of an agreement of merger or consolidation containing the information required by this section to be set forth in the certificate of merger or consolidation.

(g) An agreement of merger or consolidation or a plan of merger approved in accordance with subsection (b) of this section may (1) effect any amendment to the partnership agreement or (2) effect the adoption of a new partnership agreement for a limited partnership if it is the surviving or resulting limited partnership in the merger or consolidation. Any amendment to a partnership agreement or adoption of a new partnership agreement made pursuant to the foregoing sentence shall be effective at the effective time or date of the merger or consolidation and shall be effective notwithstanding any provision of the partnership agreement relating to amendment or adoption of a new partnership agreement, other than a provision that by its terms applies to an amendment to the partnership agreement or the adoption of a new partnership agreement, in either case, in connection with a merger or consolidation. The provisions of this subsection shall not be construed to limit the accomplishment of a merger or of any of the matters referred to herein by any other means provided for in a partnership agreement or other agreement or as otherwise permitted by law, including that the partnership agreement of any constituent limited partnership to the merger or consolidation (including a limited partnership formed for the purpose of consummating a merger or consolidation) shall be the partnership agreement of the surviving or resulting limited partnership. Unless otherwise provided in a partnership agreement, a limited partnership whose original certificate of limited partnership was filed with the Secretary of State and effective on or prior to July 31, 2005, shall continue to be governed by this subsection as in effect on July 31, 2005.

(h) When any merger or consolidation shall have become effective under this section, for all purposes of the laws of the State of Delaware, all of the rights, privileges and powers of each of the domestic limited partnerships and other business entities that have merged or consolidated, and all property, real, personal and mixed, and all debts due to any of said domestic limited partnerships and other business

entities, as well as all other things and causes of action belonging to each of such domestic limited partnerships and other business entities, shall be vested in the surviving or resulting domestic limited partnership or other business entity, and shall thereafter be the property of the surviving or resulting domestic limited partnership or other business entity as they were of each of the domestic limited partnerships and other business entities that have merged or consolidated, and the title to any real property vested by deed or otherwise, under the laws of the State of Delaware, in any of such domestic limited partnerships and other business entities, shall not revert or be in any way impaired by reason of this chapter; but all rights of creditors and all liens upon any property of any of said domestic limited partnerships and other business entities shall be preserved unimpaired, and all debts, liabilities and duties of each of the said domestic limited partnerships and other business entities that have merged or consolidated shall thenceforth attach to the surviving or resulting domestic limited partnership or other business entity, and may be enforced against it to the same extent as if said debts, liabilities and duties had been incurred or contracted by it. Unless otherwise agreed, a merger or consolidation of a domestic limited partnership, including a domestic limited partnership which is not the surviving or resulting entity in the merger or consolidation, shall not require such domestic limited partnership to wind up its affairs under § 17-803 of this title or pay its liabilities and distribute its assets under § 17-804 of this title, and the merger or consolidation shall not constitute a dissolution of such limited partnership.

(i) Except as provided by agreement with a person to whom a general partner of a limited partnership is obligated, a merger or consolidation of a limited partnership that has become effective shall not affect any obligation or liability existing at the time of such merger or consolidation of a general partner of a limited partnership which is merging or consolidating.

(j) If a limited partnership is a constituent party to a merger or consolidation that shall have become effective, but the limited partnership is not the surviving or resulting entity of the merger or consolidation, then a judgment creditor of a general partner of such limited partnership may not levy execution against the assets of the general partner to satisfy a judgment based on a claim against the surviving or resulting entity of the merger or consolidation unless:

(1) A judgment based on the same claim has been obtained against the surviving or resulting entity of the merger or consolidation and a writ of execution on the judgment has been returned unsatisfied in whole or in part;

(2) The surviving or resulting entity of the merger or consolidation is a debtor in bankruptcy;

(3) The general partner has agreed that the creditor need not exhaust the assets of the limited partnership that was not the surviving or resulting entity of the merger or consolidation;

(4) The general partner has agreed that the creditor need not exhaust the assets of the surviving or resulting entity of the merger or consolidation;

(5) A court grants permission to the judgment creditor to levy execution against the assets of the general partner based on a finding that the assets of the surviving or resulting entity of the merger or consolidation that are subject to execution are clearly insufficient to satisfy the judgment, that exhaustion of the assets of the surviving or resulting entity of the merger or consolidation is excessively burdensome, or that the grant of permission is an appropriate exercise of the court's equitable powers; or

(6) Liability is imposed on the general partner by law or contract independent of the existence of the surviving or resulting entity of the merger or consolidation.

(k) A partnership agreement may provide that a domestic limited partnership shall not have the power to merge or consolidate as set forth in this section.

(l) In any case in which (i) at least 90% of the outstanding shares of each class of the stock of a corporation or corporations (other than a corporation which has in its certificate of incorporation the provision required by § 251(g)(7)(i) of Title 8), of which class there are outstanding shares that, absent § 267(a) of Title 8, would be entitled to vote on such merger, is owned by a domestic limited partnership, (ii) 1 or more of such corporations is a corporation of the State of Delaware, and (iii) any corporation that is not a corporation of the State of Delaware is a corporation of any other state or the District of Columbia or another jurisdiction, the laws of which do not forbid such merger, the domestic limited partnership having such stock ownership may either merge the corporation or corporations into itself and assume all of its or their obligations, or merge itself, or itself and 1 or more of such corporations, into 1 of the other corporations, pursuant to a plan of merger. If a domestic limited partnership is causing a merger under this subsection, the domestic limited partnership shall file a certificate of ownership and merger executed by at least 1 general partner on behalf of the domestic limited partnership in the office of the Secretary of State. The certificate of ownership and merger shall certify that such merger was authorized in accordance with the domestic limited partnership's partnership agreement and this chapter, and if the domestic limited partnership shall not own all the outstanding stock of all the corporations that are parties to the merger, shall state the terms and conditions of the merger, including the securities, cash, property, or rights to be issued, paid, delivered or granted by the surviving domestic limited partnership or corporation upon surrender of each share of the corporation or corporations not owned by the domestic limited partnership, or the cancellation of some or all of such shares. The terms and conditions of the merger may not result in a holder of stock in a corporation becoming a general partner in a surviving domestic limited partnership (other than a limited liability limited partnership). If a corporation surviving a merger under this subsection is not a corporation organized under the laws of the State of Delaware, then the terms and conditions of the merger shall obligate such corporation to agree that it may be served with process in the State of Delaware in any proceeding for enforcement of any obligation of the domestic limited partnership or any obligation of any constituent corporation of the State of Delaware, as well as for enforcement of any obligation of the surviving corporation, including any suit or other proceeding to enforce the right of any stockholders as determined in appraisal proceedings pursuant to § 262 of Title 8, and to irrevocably appoint the Secretary of State as its agent to accept

service of process in any such suit or other proceedings, and to specify the address to which a copy of such process shall be mailed by the Secretary of State. Process may be served upon the Secretary of State under this subsection by means of electronic transmission but only as prescribed by the Secretary of State. The Secretary of State is authorized to issue such rules and regulations with respect to such service as the Secretary of State deems necessary or appropriate. In the event of such service upon the Secretary of State in accordance with this subsection, the Secretary of State shall forthwith notify such surviving corporation thereof by letter, directed to such surviving corporation at its address so specified, unless such surviving corporation shall have designated in writing to the Secretary of State a different address for such purpose, in which case it shall be mailed to the last address so designated. Such letter shall be sent by a mail or courier service that includes a record of mailing or deposit with the courier and a record of delivery evidenced by the signature of the recipient. Such letter shall enclose a copy of the process and any other papers served on the Secretary of State pursuant to this subsection. It shall be the duty of the plaintiff in the event of such service to serve process and any other papers in duplicate, to notify the Secretary of State that service is being effected pursuant to this subsection and to pay the Secretary of State the sum of $50 for the use of the State of Delaware, which sum shall be taxed as part of the costs in the proceeding, if the plaintiff shall prevail therein. The Secretary of State shall maintain an alphabetical record of any such service setting forth the name of the plaintiff and the defendant, the title, docket number and nature of the proceeding in which process has been served, the fact that service has been effected pursuant to this subsection, the return date thereof, and the day and hour service was made. The Secretary of State shall not be required to retain such information longer than 5 years from receipt of the service of process.

(65 Del. Laws, c. 188, § 1; 66 Del. Laws, c. 316, § 19; 67 Del. Laws, c. 348, §§ 10, 11; 69 Del. Laws, c. 258, §§ 16-18; 70 Del. Laws, c. 78, §§ 16, 17; 70 Del. Laws, c. 362, § 9; 71 Del. Laws, c. 340, §§ 4-8; 72 Del. Laws, c. 386, § 6; 73 Del. Laws, c. 73, § 13; 73 Del. Laws, c. 329, §§ 19, 20; 74 Del. Laws, c. 265, §§ 2-4; 75 Del. Laws, c. 31, § 3; 76 Del. Laws, c. 104, §§ 18-21; 77 Del. Laws, c. 69, §§ 2, 3; 77 Del. Laws, c. 288, §§ 10-17; 78 Del. Laws, c. 272, § 3; 79 Del. Laws, c. 73, § 3; 80 Del. Laws, c. 44, § 3; 81 Del. Laws, c. 88, § 8; 82 Del. Laws, c. 46, § 14; 82 Del. Laws, c. 256, § 14.)

§ 17-212 No statutory appraisal rights.

Unless otherwise provided in a partnership agreement or an agreement of merger or consolidation or a plan of merger or a plan of division, no appraisal rights shall be available with respect to a partnership interest or another interest in a limited partnership, including in connection with any amendment of a partnership agreement, any merger or consolidation in which the limited partnership or a registered series of the limited partnership is a constituent party to the merger or consolidation, any division of the limited partnership, any conversion of the limited partnership to another business form, any conversion of a protected series of the limited partnership to a registered series of such limited partnership, any conversion of a registered series of the limited partnership to a protected series of such limited partnership, any transfer to or domestication or continuance in any jurisdiction by the limited partnership, or the sale of all or substantially all of the limited partnership's assets. The Court of Chancery shall have jurisdiction to hear and determine any matter relating to any appraisal rights provided in a partnership agreement or an agreement of merger or consolidation or a plan of merger or a plan of division.

(69 Del. Laws, c. 258, § 19; 73 Del. Laws, c. 297, § 5; 76 Del. Laws, c. 104, § 22; 77 Del. Laws, c. 288, § 18; 82 Del. Laws, c. 46, § 15; 82 Del. Laws, c. 258, § 5.)

§ 17-213 Certificate of correction.

(a) Whenever any certificate authorized to be filed with the office of the Secretary of State under any provision of this chapter has been so filed and is an inaccurate record of the action therein referred to, or was defectively or erroneously executed, such certificate may be corrected by filing with the office of the Secretary of State a certificate of correction of such certificate. The certificate of correction shall specify the inaccuracy or defect to be corrected, shall set forth the portion of the certificate in corrected form and shall be executed and filed as required by this chapter. The certificate of correction shall be effective as of the date the original certificate was filed except as to those persons who are substantially and adversely affected by the correction, and as to those persons, the certificate of correction shall be effective from the filing date.

(b) In lieu of filing a certificate of correction, a certificate may be corrected by filing with the Secretary of State a corrected certificate which shall be executed and filed as if the corrected certificate were the certificate being corrected, and a fee equal to the fee payable to the Secretary of State for a certificate of correction as prescribed by § 17-1107 of this title shall be paid to and collected by the Secretary of State for the use of the State of Delaware in connection with the filing of the corrected certificate. The corrected certificate shall be specifically designated as such in its heading, shall specify the inaccuracy or defect to be corrected and shall set forth the entire certificate in corrected form. A certificate corrected in accordance with this section shall be effective as of the date the original certificate was filed except as to those persons who are substantially and adversely affected by the correction and, as to those persons, the certificate as corrected shall be effective from the filing date.

(69 Del. Laws, c. 258, § 20; 71 Del. Laws, c. 78, § 14; 81 Del. Laws, c. 356, § 3.)

§ 17-214 Limited partnerships as limited liability limited partnerships.

(a) A limited partnership may be formed as, or may become, a limited liability limited partnership pursuant to this section. A limited partnership may become a limited liability limited partnership as permitted by the limited partnership's partnership agreement or, if the limited partnership's partnership agreement does not provide for the limited partnership's becoming a limited liability limited partnership, with the approval (i) by all general partners, and (ii) by limited partners who own more than 50 percent of the then current percentage or

other interest in the profits of the limited partnership owned by all of the limited partners. To be formed or to become, and to continue as, a limited liability limited partnership, a limited partnership shall, in addition to complying with the requirements of this chapter:

(1) File a statement of qualification as provided in § 15-1001 of this title and thereafter an annual report as provided in § 15-1003 of this title; and

(2) Have as the last words or letters of its name the words "Limited Liability Limited Partnership," or the abbreviation "L.L.L.P.," or the designation "LLLP."

(b) In applying the Delaware Revised Uniform Partnership Act (Chapter 15 of this title) to a limited liability limited partnership for the purposes of subsections (a), (d), (f), (g), (*l*) and (m) of this section:

(1) Any statement shall be executed by at least 1 general partner of the limited partnership;

(2) All references to "partner" or "partners" mean general partners only;

(3) All references to a "limited liability partnership" shall be deemed references to a limited liability limited partnership;

(4) All references to a "partnership" shall be deemed references to a limited partnership;

(5) All references to "foreign partnerships," "foreign limited liability partnerships" or "statements of foreign qualification" shall be disregarded; and

(6) The reference to "certificate" in § 15-1207(a)(1) shall be disregarded.

(c) If a statement of cancellation of a statement of qualification is filed and the limited partnership shall remain a domestic limited partnership, an amendment to the certificate of limited partnership removing the "Limited Liability Limited Partnership," "L.L.L.P." or "LLLP" designation from the name of the limited partnership shall be filed simultaneously with the filing of such statement of cancellation of the statement of qualification. As changed, such name must also comply with § 17-102 of this title.

(d) If a limited partnership is a limited liability limited partnership, (i) its partners who are liable for the debts, liabilities and other obligations of the limited partnership shall have the limitation on liability afforded to partners of limited liability partnerships under the Delaware Revised Uniform Partnership Act [Chapter 15 of this title], and (ii) no limited partner of the limited partnership shall have any liability for the obligations of the limited partnership under § 17-303(a) of this title.

(e) The status of a limited partnership as a limited liability limited partnership is effective on the later of the filing of the statement of qualification or a future effective date or time specified in the statement of qualification. The status as a limited liability limited partnership remains effective, regardless of changes in the limited partnership, until the statement of qualification is canceled or revoked.

(f) The provisions of §§ 15-105 and 15-118 of this title shall apply to a limited liability limited partnership insofar as such sections have application to a statement of qualification.

(g) A limited partnership is a limited liability limited partnership if there has been substantial compliance with the requirements of this section. The status of a limited partnership as a limited liability limited partnership and the liability of its partners is not affected by errors or later changes in the information required to be contained in the statement of qualification under § 15-1001(c) of this title.

(h) The filing of a statement of qualification establishes that a limited partnership has satisfied all conditions precedent to the qualification of the limited partnership as a limited liability limited partnership.

(i) An amendment or cancellation of a statement of qualification is effective when it is filed or on a future effective date or time specified in the amendment or cancellation.

(j) If a person is included in the number of general partners of a limited liability limited partnership set forth in a statement of qualification or an annual report, the inclusion of such person shall not be admissible as evidence in any action, suit or proceeding, whether civil, criminal, administrative or investigative, for the purpose of determining whether such person is liable as a general partner of such limited liability limited partnership. The status of a limited partnership as a limited liability limited partnership and the liability of a partner of such limited liability limited partnership shall not be adversely affected if the number of general partners stated in a statement of qualification or an annual report is erroneously stated provided that the statement of qualification or the annual report was filed in good faith.

(k) A limited partnership whose statement of qualification has been canceled pursuant to § 17-104(d) or (i)(4) of this title may apply to the Secretary of State for reinstatement after the effective date of the cancellation. The application must state:

(1) The name of the limited partnership and the effective date of the cancellation and, if such name is not available at the time of reinstatement, the name under which the statement of qualification is to be reinstated; and

(2) That the limited partnership has obtained and designated a new registered agent as required by § 17-104(a) of this title and the name and address of such new registered agent and the address of the limited partnership's registered office in the State of Delaware.

A reinstatement under this subsection (k) relates back to and takes effect as of the effective date of the cancellation, and the limited partnership's status as a limited liability limited partnership continues as if the cancellation had never occurred.

(l) Section 15-1003 of this title shall apply to a limited liability limited partnership, except that the reference to § 15-111 of this title in § 15-1003(a)(2) of this title shall be deemed for purposes of this section as a reference to § 17-104 of this title.

(m) Section 15-1207(a)(1) and (3) of this title shall apply to a limited liability limited partnership.

(n) Except as provided in subsections (a), (b), (d), (f), (g), (*l*) and (m) of this section, a limited liability limited partnership shall be governed by this chapter, including, without limitation, § 17-1105 of this title.

(o) Notwithstanding anything in this chapter to the contrary, a limited partnership having, on December 31, 1999, the status of a registered limited liability limited partnership under predecessor law shall have the status of a limited liability limited partnership under this chapter as of January 1, 2000, and to the extent such limited partnership has not filed a statement of qualification pursuant to § 15-1001 of this title, the latest application or renewal application filed by such limited partnership under such predecessor law shall constitute a statement of qualification filed under § 15-1001 of this title.

(69 Del. Laws, c. 258, § 21; 70 Del. Laws, c. 78, § 18; 71 Del. Laws, c. 78, § 15; 72 Del. Laws, c. 228, § 2; 73 Del. Laws, c. 73, §§ 14-16; 73 Del. Laws, c. 222, § 1; 73 Del. Laws, c. 297, § 6; 75 Del. Laws, c. 414, §§ 7, 8; 78 Del. Laws, c. 272, § 4; 79 Del. Laws, c. 73, § 4; 80 Del. Laws, c. 44, § 4.)

§ 17-215 Domestication of non-United States entities.

(a) As used in this section and in § 17-204 of this title, "non-United States entity" means a foreign limited partnership (other than 1 formed under the laws of a state) (including a foreign limited liability limited partnership (other than 1 formed under the laws of a state)), a corporation, a statutory trust, a business trust, an association, a real estate investment trust, a common-law trust, or any other incorporated or unincorporated business or entity, including a general partnership (including a limited liability partnership) or a limited liability company, formed, incorporated, created or that otherwise came into being under the laws of any foreign country or other foreign jurisdiction (other than any state).

(b) Any non-United States entity may become domesticated as a limited partnership in the State of Delaware by complying with subsection (g) of this section and filing in the office of the Secretary of State in accordance with § 17-206 of this title:

(1) A certificate of limited partnership domestication that has been executed in accordance with § 17-204 of this title; and

(2) A certificate of limited partnership that complies with § 17-201 of this title and has been executed in accordance with § 17-204 of this title.

Each of the certificates required by this subsection (b) shall be filed simultaneously in the office of the Secretary of State and, if such certificates are not to become effective upon their filing as permitted by § 17-206(b) of this title, then each such certificate shall provide for the same effective date or time in accordance with § 17-206(b) of this title.

(c) The certificate of limited partnership domestication shall state:

(1) The date on which and jurisdiction where the non-United States entity was first formed, incorporated, created or otherwise came into being;

(2) The name of the non-United States entity immediately prior to the filing of the certificate of limited partnership domestication;

(3) The name of the limited partnership as set forth in the certificate of limited partnership filed in accordance with subsection (b) of this section;

(4) The future effective date or time (which shall be a date or time certain) of the domestication as a limited partnership if it is not to be effective upon the filing of the certificate of limited partnership domestication and the certificate of limited partnership;

(5) The jurisdiction that constituted the seat, siege social, or principal place of business or central administration of the non-United States entity, or any other equivalent thereto under applicable law, immediately prior to the filing of the certificate of limited partnership domestication; and

(6) That the domestication has been approved in the manner provided for by the document, instrument, agreement or other writing, as the case may be, governing the internal affairs of the non-United States entity and the conduct of its business or by applicable non-Delaware law, as appropriate.

(d) Upon the filing in the office of the Secretary of State of the certificate of limited partnership domestication and the certificate of limited partnership or upon the future effective date or time of the certificate of limited partnership domestication and the certificate of limited partnership, the non-United States entity shall be domesticated as a limited partnership in the State of Delaware and the limited partnership shall thereafter be subject to all of the provisions of this chapter, except that notwithstanding § 17-201 of this title, the existence of the limited partnership shall be deemed to have commenced on the date the non-United States entity commenced its existence in the jurisdiction in which the non-United States entity was first formed, incorporated, created or otherwise came into being.

(e) The domestication of any non-United States entity as a limited partnership in the State of Delaware shall not be deemed to affect any obligations or liabilities of the non-United States entity incurred prior to its domestication as a limited partnership in the State of Delaware, or the personal liability of any person therefor.

(f) The filing of a certificate of limited partnership domestication shall not affect the choice of law applicable to the non-United States entity, except that from the effective date or time of the domestication, the law of the State of Delaware, including the provisions of this chapter, shall apply to the non-United States entity to the same extent as if the non-United States entity had been formed as a limited partnership on that date.

(g) Prior to the filing of a certificate of limited partnership domestication with the office of the Secretary of State, the domestication shall be approved in the manner provided for by the document, instrument, agreement or other writing, as the case may be, governing the internal affairs of the non-United States entity and the conduct of its business or by applicable non-Delaware law, as appropriate, and a partnership agreement shall be approved by the same authorization required to approve the domestication; provided that, in any event, such approval shall include the approval of any person who, at the effective date or time of the domestication, shall be a general partner of the limited partnership.

(h) When any domestication shall have become effective under this section, for all purposes of the laws of the State of Delaware, all of the rights, privileges and powers of the non-United States entity that has been domesticated, and all property, real, personal and mixed, and all debts due to such non-United States entity, as well as all other things and causes of action belonging to such non-United States entity, shall remain vested in the domestic limited partnership to which such non-United States entity has been domesticated (and also in the non-United States entity, if and for so long as the non-United States entity continues its existence in the foreign jurisdiction in which it was existing immediately prior to the domestication) and shall be the property of such domestic limited partnership (and also of the non-United States entity, if and for so long as the non-United States entity continues its existence in the foreign jurisdiction in which it was existing immediately prior to the domestication), and the title to any real property vested by deed or otherwise in such non-United States entity shall not revert or be in any way impaired by reason of this chapter; but all rights of creditors and all liens upon any property of such non-United States entity shall be preserved unimpaired, and all debts, liabilities and duties of the non-United States entity that has been domesticated shall remain attached to the domestic limited partnership to which such non-United States entity has been domesticated (and also to the non-United States entity, if and for so long as the non-United States entity continues its existence in the foreign jurisdiction in which it was existing immediately prior to the domestication), and may be enforced against it to the same extent as if said debts, liabilities and duties had originally been incurred or contracted by it in its capacity as a domestic limited partnership. The rights, privileges, powers and interests in property of the non-United States entity, as well as the debts, liabilities and duties of the non-United States entity, shall not be deemed, as a consequence of the domestication, to have been transferred to the domestic limited partnership to which such non-United States entity has domesticated for any purpose of the laws of the State of Delaware.

(i) When a non-United States entity has become domesticated as a limited partnership pursuant to this section, for all purposes of the laws of the State of Delaware the limited partnership shall be deemed to be the same entity as the domesticating non-United States entity and the domestication shall constitute a continuation of the existence of the domesticating non-United States entity in the form of a domestic limited partnership. Unless otherwise agreed, for all purposes of the laws of the State of Delaware, the domesticating non-United States entity shall not be required to wind up its affairs or pay its liabilities and distribute its assets, and the domestication shall not be deemed to constitute a dissolution of such non-United States entity. If, following domestication, a non-United States entity that has become domesticated as a limited partnership continues its existence in the foreign country or other foreign jurisdiction in which it was existing immediately prior to domestication, the limited partnership and such non-United States entity shall, for all purposes of the laws of the State of Delaware, constitute a single entity formed, incorporated, created or otherwise having come into being, as applicable, and existing under the laws of the State of Delaware and the laws of such foreign country or other foreign jurisdiction.

(j) In connection with a domestication hereunder, rights or securities of, or interests in, the non-United States entity that is to be domesticated as a domestic limited partnership may be exchanged for or converted into cash, property, rights or securities of, or interests in, such domestic limited partnership or, in addition to or in lieu thereof, may be exchanged for or converted into cash, property, rights or securities of, or interests in, another domestic limited partnership or other entity, may remain outstanding or may be canceled.

(70 Del. Laws, c. 362, § 10; 71 Del. Laws, c. 78, § 16; 72 Del. Laws, c. 128, § 4; 72 Del. Laws, c. 386, §§ 7, 8; 73 Del. Laws, c. 73, § 17; 74 Del. Laws, c. 265, § 5; 75 Del. Laws, c. 31, § 4; 75 Del. Laws, c. 414, §§ 9-15; 76 Del. Laws, c. 386, § 5; 78 Del. Laws, c. 97, § 6; 79 Del. Laws, c. 73, § 5; 81 Del. Laws, c. 88, § 9.)

§ 17-216 Transfer or continuance of domestic limited partnerships.

(a) Upon compliance with the provisions of this section, any limited partnership may transfer to or domesticate or continue in any jurisdiction, other than any state, and, in connection therewith, may elect to continue its existence as a limited partnership in the State of Delaware.

(b) If the partnership agreement specifies the manner of authorizing a transfer or domestication or continuance described in subsection (a) of this section, the transfer or domestication or continuance shall be authorized as specified in the partnership agreement. If the partnership agreement does not specify the manner of authorizing a transfer or domestication or continuance described in subsection (a) of this section and does not prohibit such a transfer or domestication or continuance, the transfer or domestication or continuance shall be authorized in the same manner as is specified in the partnership agreement for authorizing a merger or consolidation that involves the limited partnership as a constituent party to the merger or consolidation. If the partnership agreement does not specify the manner of authorizing a transfer or domestication or continuance described in subsection (a) of this section or a merger or consolidation that involves the limited partnership as a constituent party and does not prohibit such a transfer or domestication or continuance, the transfer or domestication or continuance shall be authorized by the approval by (1) all general partners and (2) limited partners who own more than 50 percent of the then current percentage or other interest in the profits of the domestic limited partnership owned by all of the limited partners. If a transfer or domestication or continuance described in subsection (a) of this section shall be authorized as provided in this subsection (b), a certificate of transfer if the limited partnership's existence as a limited partnership of the State of Delaware is to cease or a certificate of transfer and domestic continuance if the limited partnership's existence as a limited partnership in the State of Delaware is to continue, executed in accordance with § 17-204 of this title, shall be filed in the office of the Secretary of State in accordance with 17-206 of this title. The certificate of transfer or the certificate of transfer and domestic continuance shall state:

(1) The name of the limited partnership and, if it has been changed, the name under which its certificate of limited partnership was originally filed;

(2) The date of the filing of its original certificate of limited partnership with the Secretary of State;

(3) The jurisdiction to which the limited partnership shall be transferred or in which it shall be domesticated or continued and the name of the entity or business form formed, incorporated, created or that otherwise comes into being as a consequence of the transfer of the limited partnership to, or its domestication or continuance in, such foreign jurisdiction;

(4) The future effective date or time (which shall be a date or time certain) of the transfer to or domestication or continuance in the jurisdiction specified in paragraph (b)(3) of this section if it is not to be effective upon the filing of the certificate of transfer or the certificate of transfer and domestic continuance;

(5) That the transfer or domestication or continuance of the limited partnership has been approved in accordance with the provisions of this section;

(6) In the case of a certificate of transfer, (i) that the existence of the limited partnership as a limited partnership of the State of Delaware shall cease when the certificate of transfer becomes effective and (ii) the agreement of the limited partnership that it may be served with process in the State of Delaware in any action, suit or proceeding for enforcement of any obligation of the limited partnership arising while it was a limited partnership of the State of Delaware, and that it irrevocably appoints the Secretary of State as its agent to accept service of process in any such action, suit or proceeding;

(7) The address (which may not be that of the limited partnership's registered agent without the written consent of the limited partnership's registered agent, such consent to be filed with the certificate of transfer) to which a copy of the process referred to in paragraph (b)(6) of this section shall be mailed to it by the Secretary of State. Process may be served upon the Secretary of State under paragraph (b)(6) of this section by means of electronic transmission but only as prescribed by the Secretary of State. The Secretary of State is authorized to issue such rules and regulations with respect to such service as the Secretary of State deems necessary or appropriate. In the event of service hereunder upon the Secretary of State, the procedures set forth in § 17-911(c) of this title shall be applicable, except that the plaintiff in any such action, suit or proceeding shall furnish the Secretary of State with the address specified in this subsection and any other address that the plaintiff may elect to furnish, together with copies of such process as required by the Secretary of State, and the Secretary of State shall notify the limited partnership that has transferred or domesticated or continued out of the State of Delaware at all such addresses furnished by the plaintiff in accordance with the procedures set forth in § 17-911(c) of this title; and

(8) In the case of a certificate of transfer and domestic continuance, that the limited partnership will continue to exist as a limited partnership of the State of Delaware after the certificate of transfer and domestic continuance becomes effective.

Unless otherwise provided in a partnership agreement, a limited partnership whose original certificate of limited partnership was filed with the Secretary of State and effective on or prior to July 31, 2015, shall continue to be governed by clause (2) of the third sentence of this subsection as in effect on July 31, 2015.

(c) Upon the filing in the office of the Secretary of State of the certificate of transfer or upon the future effective date or time of the certificate of transfer and payment to the Secretary of State of all fees prescribed in this chapter, the limited partnership shall cease to exist as a limited partnership of the State of Delaware. A copy of the certificate of transfer certified by the Secretary of State shall be prima facie evidence of the transfer or domestication or continuance by such limited partnership out of the State of Delaware. A copy of the certificate of transfer and domestic continuance certified by the Secretary of State shall be prima facie evidence of such limited partnership's transfer to or domestication or continuance in another jurisdiction and its continuance as a limited partnership in the State of Delaware.

(d) The transfer or domestication or continuance of a limited partnership out of the State of Delaware in accordance with this section and the resulting cessation of its existence as a limited partnership of the State of Delaware pursuant to a certificate of transfer shall not be deemed to affect any obligations or liabilities of the limited partnership incurred prior to such transfer or domestication or continuance or the personal liability of any person incurred prior to such transfer or domestication or continuance, nor shall it be deemed to affect the choice of law applicable to the limited partnership with respect to matters arising prior to such transfer or domestication or continuance. Unless otherwise agreed, the transfer or domestication or continuance of a limited partnership out of the State of Delaware in accordance with this section shall not require such limited partnership to wind up its affairs under § 17-803 of this title or pay its liabilities and distribute its assets under § 17-804 of this title and shall not be deemed to constitute a dissolution of such limited partnership.

(e) If a limited partnership files a certificate of transfer and domestic continuance, after the time the certificate of transfer and domestic continuance becomes effective, the limited partnership shall continue to exist as a limited partnership of the State of Delaware, and the laws of the State of Delaware, including the provisions of this chapter, shall apply to the limited partnership, to the same extent as prior to such time. So long as a limited partnership continues to exist as a limited partnership of the State of Delaware following the filing of a certificate of transfer and domestic continuance, the continuing domestic limited partnership and the entity or business form formed, incorporated, created or that otherwise came into being as a consequence of the transfer of the limited partnership to, or its domestication or continuance in, a foreign country or other foreign jurisdiction shall, for all purposes of the laws of the State of Delaware, constitute a single entity formed, incorporated, created or otherwise having come into being, as applicable, and existing under the laws of the State of Delaware and the laws of such foreign country or other foreign jurisdiction.

(f) In connection with a transfer or domestication or continuance of a domestic limited partnership to or in another jurisdiction pursuant to subsection (a) of this section, rights or securities of, or interests in, such limited partnership may be exchanged for or converted into cash, property, rights or securities of, or interests in, the entity or business form in which the limited partnership will exist in such other jurisdiction as a consequence of the transfer or domestication or continuance or, in addition to or in lieu thereof, may be exchanged for

or converted into cash, property, rights or securities of, or interests in, another entity or business form, may remain outstanding or may be canceled.

(g) When a limited partnership has transferred or domesticated or continued out of the State of Delaware pursuant to this section, the transferred or domesticated or continued entity or business form shall, for all purposes of the laws of the State of Delaware, be deemed to be the same entity as the limited partnership and shall constitute a continuation of the existence of such limited partnership in the form of the transferred or domesticated or continued entity or business form. When any transfer or domestication or continuance of a limited partnership out of the State of Delaware shall have become effective under this section, for all purposes of the laws of the State of Delaware, all of the rights, privileges and powers of the limited partnership that has transferred or domesticated or continued, and all property, real, personal and mixed, and all debts due to such limited partnership, as well as all other things and causes of action belonging to such limited partnership, shall remain vested in the transferred or domesticated or continued entity or business form (and also in the limited partnership that has transferred, domesticated or continued, if and for so long as such limited partnership continues its existence as a domestic limited partnership) and shall be the property of such transferred or domesticated or continued entity or business form (and also of the limited partnership that has transferred, domesticated or continued, if and for so long as such limited partnership continues its existence as a domestic limited partnership), and the title to any real property vested by deed or otherwise in such limited partnership shall not revert or be in any way impaired by reason of this chapter; but all rights of creditors and all liens upon any property of such limited partnership shall be preserved unimpaired, and all debts, liabilities and duties of the limited partnership that has transferred or domesticated or continued shall remain attached to the transferred or domesticated or continued entity or business form (and also to the limited partnership that has transferred, domesticated or continued, if and for so long as such limited partnership continues its existence as a domestic limited partnership), and may be enforced against it to the same extent as if said debts, liabilities and duties had originally been incurred or contracted by it in its capacity as the transferred or domesticated or continued entity or business form. The rights, privileges, powers and interests in property of the limited partnership that has transferred or domesticated or continued, as well as the debts, liabilities and duties of such limited partnership, shall not be deemed, as a consequence of the transfer or domestication or continuance out of the State of Delaware, to have been transferred to the transferred or domesticated or continued entity or business form for any purpose of the laws of the State of Delaware.

(h) A partnership agreement may provide that a domestic limited partnership shall not have the power to transfer, domesticate or continue as set forth in this section.

(70 Del. Laws, c. 362, § 11; 71 Del. Laws, c. 78, § 17; 71 Del. Laws, c. 340, § 9; 72 Del. Laws, c. 128, § 5; 72 Del. Laws, c. 386, § 9; 73 Del. Laws, c. 73, § 18; 74 Del. Laws, c. 104, § 13; 74 Del. Laws, c. 265, §§ 6, 7; 75 Del. Laws, c. 31, § 5; 75 Del. Laws, c. 414, §§ 16-26; 76 Del. Laws, c. 104, §§ 23, 24; 77 Del. Laws, c. 288, § 19; 78 Del. Laws, c. 272, § 5; 79 Del. Laws, c. 73, § 6; 80 Del. Laws, c. 44, § 5; 81 Del. Laws, c. 88, § 10; 82 Del. Laws, c. 258, § 6.)

§ 17-217 Conversion of certain entities to a limited partnership.

(a) As used in this section and in § 17-204 of this title, the term "other entity" means a corporation, a statutory trust, a business trust, an association, a real estate investment trust, a common-law trust, or any other incorporated or unincorporated business or entity, including a general partnership (including a limited liability partnership) or a foreign limited partnership (including a foreign limited liability limited partnership) or a limited liability company.

(b) Any other entity may convert to a domestic limited partnership (including a limited liability limited partnership) by complying with subsection (h) of this section and filing in the office of the Secretary of State in accordance with § 17-206 of this title:

(1) A certificate of conversion to limited partnership that has been executed in accordance with § 17-204 of this title;

(2) A certificate of limited partnership that complies with § 17-201 of this title and has been executed in accordance with § 17-204 of this title; and

(3) In the case of a conversion to a limited liability limited partnership, a statement of qualification in accordance with of § 15-1001(c) of this title.

Each of the certificates (and, as applicable, the statement) required by this subsection (b) shall be filed simultaneously in the office of the Secretary of State and, if such certificates (and, as applicable, such statement) are not to become effective upon their filing as permitted by § 17-206(b) of this title, then each such certificate (and, as applicable, such statement) shall provide for the same effective date or time in accordance with § 17-206(b) of this title.

(c) The certificate of conversion to limited partnership shall state:

(1) The date on which and jurisdiction where the other entity was first created, incorporated, formed or otherwise came into being and, if it has changed, its jurisdiction immediately prior to its conversion to a domestic limited partnership;

(2) The name and type of entity of the other entity immediately prior to the filing of the certificate of conversion to limited partnership;

(3) The name of the limited partnership as set forth in its certificate of limited partnership filed in accordance with subsection (b) of this section; and

(4) The future effective date or time (which shall be a date or time certain) of the conversion to a limited partnership if it is not to be effective upon the filing of the certificate of conversion to limited partnership and the certificate of limited partnership.

(d) Upon the filing in the office of the Secretary of State of the certificate of conversion to limited partnership, the certificate of limited partnership and the statement of qualification (if applicable), or upon the future effective date or time of the certificate of conversion

to limited partnership, the certificate of limited partnership and the statement of qualification (if applicable), the other entity shall be converted into a domestic limited partnership (including a limited liability limited partnership, if applicable) and the limited partnership shall thereafter be subject to all of the provisions of this chapter, except that notwithstanding § 17-201 of this title, the existence of the limited partnership shall be deemed to have commenced on the date the other entity commenced its existence in the jurisdiction in which the other entity was first created, formed, incorporated or otherwise came into being.

(e) The conversion of any other entity into a domestic limited partnership (including a limited liability limited partnership) shall not be deemed to affect any obligations or liabilities of the other entity incurred prior to its conversion to a domestic limited partnership, or the personal liability of any person incurred prior to such conversion.

(f) When any conversion shall have become effective under this section, for all purposes of the laws of the State of Delaware, all of the rights, privileges and powers of the other entity that has converted, and all property, real, personal and mixed, and all debts due to such other entity, as well as all other things and causes of action belonging to such other entity, shall remain vested in the domestic limited partnership to which such other entity has converted and shall be the property of such domestic limited partnership, and the title to any real property vested by deed or otherwise in such other entity shall not revert or be in any way impaired by reason of this chapter; but all rights of creditors and all liens upon any property of such other entity shall be preserved unimpaired, and all debts, liabilities and duties of the other entity that has converted shall remain attached to the domestic limited partnership to which such other entity has converted, and may be enforced against it to the same extent as if said debts, liabilities and duties had originally been incurred or contracted by it in its capacity as a domestic limited partnership. The rights, privileges, powers and interests in property of the other entity, as well as the debts, liabilities and duties of the other entity, shall not be deemed, as a consequence of the conversion, to have been transferred to the domestic limited partnership to which such other entity has converted for any purpose of the laws of the State of Delaware.

(g) Unless otherwise agreed, for all purposes of the laws of the State of Delaware, the converting other entity shall not be required to wind up its affairs or pay its liabilities and distribute its assets, and the conversion shall not be deemed to constitute a dissolution of such other entity. When an other entity has been converted to a limited partnership pursuant to this section, for all purposes of the laws of the State of Delaware, the limited partnership shall be deemed to be the same entity as the converting other entity and the conversion shall constitute a continuation of the existence of the converting other entity in the form of a domestic limited partnership.

(h) Prior to filing a certificate of conversion to limited partnership with the office of the Secretary of State, the conversion shall be approved in the manner provided for by the document, instrument, agreement or other writing, as the case may be, governing the internal affairs of the other entity and the conduct of its business or by applicable law, as appropriate, and a partnership agreement shall be approved by the same authorization required to approve the conversion; provided, that in any event, such approval shall include the approval of any person who, at the effective date or time of the conversion, shall be a general partner of the limited partnership.

(i) In connection with a conversion hereunder, rights or securities of, or interests in, the other entity which is to be converted to a domestic limited partnership may be exchanged for or converted into cash, property, rights or securities of, or interests in, such domestic limited partnership or, in addition to or in lieu thereof, may be exchanged for or converted into cash, property, rights or securities of, or interests in, another domestic limited partnership or other entity, may remain outstanding or may be canceled.

(j) The provisions of this section shall not be construed to limit the accomplishment of a change in the law governing, or the domicile of, an other entity to the State of Delaware by any other means provided for in a partnership agreement or other agreement or as otherwise permitted by law, including by the amendment of a partnership agreement or other agreement.

(70 Del. Laws, c. 362, § 12; 71 Del. Laws, c. 78, §§ 18-20; 72 Del. Laws, c. 128, §§ 6-8; 72 Del. Laws, c. 386, §§ 10-12; 73 Del. Laws, c. 329, § 21; 74 Del. Laws, c. 265, § 8; 75 Del. Laws, c. 31, § 6; 75 Del. Laws, c. 414, §§ 27-33; 76 Del. Laws, c. 386, § 6; 78 Del. Laws, c. 97, § 7; 78 Del. Laws, c. 272, § 6; 79 Del. Laws, c. 73, § 7; 81 Del. Laws, c. 88, § 11.)

§ 17-218 Series of limited partners, general partners, partnership interests or assets.

(a) A partnership agreement may establish or provide for the establishment of 1 or more designated series of limited partners, general partners, partnership interests or assets. Any such series may have separate rights, powers or duties with respect to specified property or obligations of the limited partnership or profits and losses associated with specified property or obligations, and any such series may have a separate business purpose or investment objective. No provision of subsection (b) of this section or § 17-221 of this title shall be construed to limit the application of the principle of freedom of contract to a series that is not a protected series or a registered series. Other than pursuant to §§ 17-222, 17-223 and 17-224 of this title a series may not merge, convert or consolidate pursuant to any section of this title or any other statute of this State.

(b) A series established in accordance with the following sentence is a protected series. Notwithstanding anything to the contrary set forth in this chapter or under other applicable law, in the event that a partnership agreement establishes or provides for the establishment of 1 or more series, and to the extent the records maintained for any such series account for the assets associated with such series separately from the other assets of the limited partnership, or any other series thereof, and if the partnership agreement so provides, and if notice of the limitation on liabilities of a series as referenced in this subsection is set forth in the certificate of limited partnership, then the debts, liabilities, obligations and expenses incurred, contracted for or otherwise existing with respect to such series shall be enforceable only against the assets of such series or the general partners associated with such series and not against the assets of the limited partnership generally, any other series thereof, or any general partner not associated with such series, and, unless otherwise provided in the partnership agreement, none of the debts, liabilities, obligations and expenses incurred, contracted for or otherwise existing with respect to the limited

partnership generally or any other series thereof shall be enforceable against the assets of such series or the general partners associated with such series who are not also general partners of the limited partnership generally or general partners associated with the other series, as the case may be. Neither the preceding sentence nor any provision pursuant thereto in a partnership agreement or certificate of limited partnership shall (i) restrict a protected series or limited partnership on behalf of a protected series or a general partner associated with a protected series from agreeing in the partnership agreement or otherwise that any or all of the debts, liabilities, obligations and expenses incurred, contracted for or otherwise existing with respect to the limited partnership generally or any other series thereof shall be enforceable against the assets of such series or such general partner associated with such series, (ii) restrict a limited partnership from agreeing in the partnership agreement or otherwise that any or all of the debts, liabilities, obligations and expenses incurred, contracted for or otherwise existing with respect to a protected series shall be enforceable against the assets of the limited partnership generally, or (iii) restrict a general partner of the limited partnership from agreeing in the partnership agreement or otherwise that any or all of the debts, liabilities, obligations and expenses incurred, contracted for or otherwise existing with respect to a protected series shall be enforceable against the assets of such general partner. A partnership agreement does not need to use the term protected when referencing series or refer to this section. Assets associated with a protected series may be held directly or indirectly, including in the name of such series, in the name of the limited partnership, through a nominee or otherwise. Records maintained for a protected series that reasonably identify its assets, including by specific listing, category, type, quantity, computational or allocational formula or procedure (including a percentage or share of any asset or assets) or by any other method where the identity of such assets is objectively determinable, will be deemed to account for the assets associated with such series separately from the other assets of the limited partnership, or any other series thereof. Notice in a certificate of limited partnership of the limitation on liabilities of a protected series as referenced in this subsection shall be sufficient for all purposes of this subsection whether or not the limited partnership has established any protected series when such notice is included in the certificate of limited partnership, and there shall be no requirement that (i) any specific protected series of the limited partnership be referenced in such notice, or (ii) such notice use the term protected when referencing series or include a reference to this section. The fact that a certificate of limited partnership that contains notice of the limitation on liabilities of a protected series is on file in the office of the Secretary of State shall constitute notice of such limitation on liabilities of a protected series. As used in this chapter, a reference to assets of a protected series includes assets associated with such series and a reference to assets associated with a protected series includes assets of such series, a reference to limited partners or general partners of a protected series includes limited partners or general partners associated with such series, and a reference to limited partners or general partners associated with a protected series includes limited partners or general partners of such series. The following shall apply to a protected series:

(1) A limited partnership governed by a partnership agreement that establishes or provides for the establishment of 1 or more series shall have at least 1 general partner of the partnership generally and at least 1 general partner associated with each of its protected series. If a partnership agreement does not designate a general partner of a particular protected series, then each general partner of the limited partnership generally shall be deemed to be a general partner associated with such series. If a partnership agreement does not designate a general partner of the limited partnership generally, then each general partner of the limited partnership not associated with a protected series or a registered series shall be deemed to be a general partner of the limited partnership generally, but if there is no such general partner, then each general partner of the limited partnership shall be deemed to be a general partner of the limited partnership generally. General partners of the limited partnership generally and general partners associated with a protected series are general partners of the limited partnership under this chapter. Limited partners of the limited partnership generally and limited partners associated with a protected series are limited partners of the limited partnership under this chapter. The same person may be a general partner of the limited partnership generally and be associated with any or all protected series thereof. The same person may be a limited partner of the limited partnership generally and be associated with any or all protected series thereof.

(2) A protected series may carry on any lawful business, purpose or activity, whether or not for profit, with the exception of the business of banking as defined in § 126 of Title 8. Unless otherwise provided in a partnership agreement, a protected series shall have the power and capacity to, in its own name, contract, hold title to assets (including real, personal and intangible property), grant liens and security interests, and sue and be sued.

(3) A limited partner of a protected series is not liable for the obligations of such series unless such limited partner is also a general partner of such series or, in addition to the exercise of the rights and powers of a limited partner of such series, such limited partner participates in the control of the business of such series. If a limited partner of a protected series participates in the control of the business of such series, such limited partner is liable only to persons who transact business with such series reasonably believing, based upon such limited partner's conduct, that such limited partner is a general partner of such series. Notwithstanding the preceding sentence, under a partnership agreement or under another agreement, a limited partner of a protected series may agree to be obligated personally for any or all of the debts, obligations and liabilities of 1 or more protected series.

(4) A limited partner may possess or exercise any of the rights and powers or act or attempt to act in 1 or more of the capacities as permitted under § 17-303 of this title, with respect to the limited partnership and any series, without participating in the control of the business of the limited partnership or with respect to any series within the meaning of § 17-303(a) of this title. A partnership agreement may provide for classes or groups of general partners or limited partners associated with a protected series having such relative rights, powers and duties as the partnership agreement may provide, and may make provision for the future creation in the manner provided in the partnership agreement of additional classes or groups of general partners or limited partners associated with such series having such relative rights, powers and duties as may from time to time be established, including rights, powers and duties senior to existing classes

and groups of general partners or limited partners associated with such series. A partnership agreement may provide for the taking of an action, including the amendment of the partnership agreement, without the vote or approval of any general partner or limited partner or class or group of general partners or limited partners, including an action to create under the provisions of the partnership agreement a class or group of a protected series of partnership interests that was not previously outstanding. A partnership agreement may provide that any limited partner or class or group of limited partners associated with a protected series shall have no voting rights.

(5) A partnership agreement may grant to all or certain identified general partners or limited partners or a specified class or group of the general partners or limited partners associated with a protected series the right to vote separately or with all or any class or group of the general partners or limited partners associated with such series, on any matter. Voting by general partners or limited partners associated with a protected series may be on a per capita, number, financial interest, class, group or any other basis.

(6) Section 17-603 of this title shall apply to a limited partner with respect to any protected series with which the limited partner is associated. Except as otherwise provided in a partnership agreement, any event under this subsection or in a partnership agreement that causes a limited partner of a protected series to cease to be associated with such series shall not, in itself, cause such limited partner to cease to be associated with any other series or to be a limited partner of the limited partnership generally or cause the termination of the protected series, regardless of whether such limited partner was the last remaining limited partner associated with such series. A limited partner of a protected series shall cease to be a limited partner with respect to such series and to have the power to exercise any rights or powers of a limited partner with respect to such series upon the happening of either of the following events:

a. The limited partner withdraws with respect to such series in accordance with § 17-603 of this title; or

b. Except as otherwise provided in the partnership agreement, the limited partner assigns all of his or her partnership interest with respect to such series.

(7) Section 17-602 of this title shall apply to a general partner with respect to any protected series with which the general partner is associated. A general partner of a protected series shall cease to be a general partner with respect to such series and to have the power to exercise any rights or powers of a general partner with respect to such series upon an event of withdrawal of the general partner with respect to such series. Except as otherwise provided in a partnership agreement, either of the following events or any event in a partnership agreement that causes a general partner of a protected series to cease to be associated with such series shall not, in itself, cause such general partner to cease to be associated with any other series or to be a general partner of the limited partnership generally:

a. The general partner withdraws with respect to such series in accordance with § 17-602 of this title; or

b. The general partner assigns all of the general partner's partnership interest with respect to such series.

(8) Notwithstanding § 17-606 of this title, but subject to paragraphs (b)(9) and (b)(11) of this section, and unless otherwise provided in a partnership agreement, at the time a partner of a protected series becomes entitled to receive a distribution with respect to such series, the partner has the status of, and is entitled to all remedies available to, a creditor of such series, with respect to the distribution. A partnership agreement may provide for the establishment of a record date with respect to allocations and distributions with respect to a protected series.

(9) Notwithstanding § 17-607(a) of this title, a limited partnership may make a distribution with respect to a protected series. A limited partnership shall not make a distribution with respect to a protected series to a partner to the extent that at the time of the distribution, after giving effect to the distribution, all liabilities of such series, other than liabilities to partners on account of their partnership interests with respect to such series and liabilities for which the recourse of creditors is limited to specified property of such series, exceed the fair value of the assets associated with such series, except that the fair value of property of such series that is subject to a liability for which the recourse of creditors is limited shall be included in the assets associated with such series only to the extent that the fair value of that property exceeds that liability. For purposes of the immediately preceding sentence, the term "distribution" shall not include amounts constituting reasonable compensation for present or past services or reasonable payments made in the ordinary course of business pursuant to a bona fide retirement plan or other benefits program. A limited partner of a protected series who receives a distribution in violation of this subsection, and who knew at the time of the distribution that the distribution violated this subsection, shall be liable to such series for the amount of the distribution. A limited partner of a protected series who receives a distribution in violation of this subsection, and who did not know at the time of the distribution that the distribution violated this subsection, shall not be liable for the amount of the distribution. Subject to § 17-607(c) of this title, which shall apply to any distribution made with respect to a protected series under this subsection, this subsection shall not affect any obligation or liability of a limited partner under an agreement or other applicable law for the amount of a distribution.

(10) Subject to § 17-801 of this title, except to the extent otherwise provided in the partnership agreement, a protected series may be terminated and its affairs wound up without causing the dissolution of the limited partnership. The termination of a protected series shall not affect the limitation on liabilities of such series provided by this subsection. A protected series is terminated and its affairs shall be wound up upon the dissolution of the limited partnership under § 17-801 of this title or otherwise upon the first to occur of the following:

a. At the time specified in the partnership agreement;

b. Upon the happening of events specified in the partnership agreement;

c. Unless otherwise provided in the partnership agreement, upon the vote or consent of (i) all general partners associated with such series and (ii) limited partners associated with such series who own more than $^{2}/_{3}$ of the then-current percentage or other interest in the profits of such series owned by all of the limited partners associated with such series;

d. An event of withdrawal of a general partner associated with such series unless at the time there is at least 1 other general partner associated with such series and the partnership agreement permits the business of such series to be carried on by the remaining general partner associated with such series and that partner does so, but such series is not terminated and is not required to be wound up by reason of any event of withdrawal if (i) within 90 days or such other period as is provided for in the partnership agreement after the withdrawal either (A) if provided for in the partnership agreement, the then-current percentage or other interest in the profits of such series specified in the partnership agreement owned by the remaining partners associated with such series agree or vote to continue the business of such series and to appoint, effective as of the date of withdrawal, 1 or more additional general partners for such series if necessary or desired, or (B) if no such right to agree or vote to continue the business of such series of the limited partnership and to appoint 1 or more additional general partners for such series is provided for in the partnership agreement, then more than 50 percent of the then-current percentage or other interest in the profits of such series owned by the remaining partners associated with such series agree or vote to continue the business of such series and to appoint, effective as of the date of withdrawal, 1 or more additional general partners for such series if necessary or desired, or (ii) the business of such series is continued pursuant to a right to continue stated in the partnership agreement and the appointment, effective as of the date of withdrawal, of 1 or more additional general partners to be associated with such series if necessary or desired; or

e. The termination of such series under paragraph (b)(12) of this section.

Unless otherwise provided in a partnership agreement, a limited partnership whose original certificate of limited partnership was filed with the Secretary of State and effective on or prior to July 31, 2015, shall continue to be governed by clause (ii) of paragraph (k)(3) of this section and clause (i)(B) of paragraph (k)(4) of this section as in effect on July 31, 2015 (except that "in writing" shall be deleted from such clause (i)(B) of paragraph (k)(4) of that section).

(11) Notwithstanding § 17-803(a) of this title, unless otherwise provided in the partnership agreement, a general partner associated with a protected series who has not wrongfully terminated such series or, if none, the limited partners associated with such series or a person approved by the limited partners associated with such series, in either case, by limited partners who own more than 50 percent of the then current percentage or other interest in the profits of such series owned by all of the limited partners associated with such series, may wind up the affairs of such series; but, the Court of Chancery, upon cause shown, may wind up the affairs of a protected series upon application of any partner associated with such series, the partner's personal representative or assignee, and in connection therewith, may appoint a liquidating trustee. The persons winding up the affairs of a protected series may, in the name of the limited partnership and for and on behalf of the limited partnership and such series, take all actions with respect to such series as are permitted under § 17-803(b) of this title. The persons winding up the affairs of a protected series shall provide for the claims and obligations of such series and distribute the assets of such series as provided in § 17-804 of this title, which section shall apply to the winding up and distribution of assets of a protected series. Actions taken in accordance with this subsection shall not affect the liability of limited partners and shall not impose liability on a liquidating trustee. Unless otherwise provided in a partnership agreement, a limited partnership whose original certificate of limited partnership was filed with the Secretary of State and effective on or prior to July 31, 2015, shall continue to be governed by the first sentence of this subsection as in effect on July 31, 2015.

(12) On application by or for a partner associated with a protected series, the Court of Chancery may decree termination of such series whenever it is not reasonably practicable to carry on the business of such series in conformity with a partnership agreement.

(13) For all purposes of the laws of the State of Delaware, a "protected series" is an association, regardless of the number of partners of such series.

(c) If a foreign limited partnership that is registering to do business in the State of Delaware in accordance with § 17-902 of this title is governed by a partnership agreement that establishes or provides for the establishment of designated series of limited partners, general partners, partnership interests or assets having separate rights, powers or duties with respect to specified property or obligations of the foreign limited partnership or profits and losses associated with specified property or obligations, that fact shall be so stated on the application for registration as a foreign limited partnership. In addition, the foreign limited partnership shall state on such application whether the debts, liabilities and obligations incurred, contracted for or otherwise existing with respect to a particular series, if any, shall be enforceable only against the assets of such series or the general partners associated with such series and not against the assets of the foreign limited partnership generally, any other series thereof, or the general partners not associated with such series, and, whether any of the debts, liabilities, obligations and expenses incurred, contracted for or otherwise existing with respect to the foreign limited partnership generally or any other series thereof shall be enforceable against the assets of such series or the general partners associated with such series who are not also general partners of the foreign limited partnership generally or general partners associated with the other series, as the case may be.

(70 Del. Laws, c. 362, § 13; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 78, §§ 21-31; 71 Del. Laws, c. 340, §§ 10, 11; 72 Del. Laws, c. 386, §§ 13-17; 74 Del. Laws, c. 104, §§ 14-16; 74 Del. Laws, c. 265, § 9; 76 Del. Laws, c. 104, §§ 25-31; 80 Del. Laws, c. 44, §§ 6, 7; 80 Del. Laws, c. 269, §§ 2, 3; 82 Del. Laws, c. 46, § 16.)

§ 17-219 Approval of conversion of a limited partnership.

(a) Upon compliance with this section, a domestic limited partnership may convert to a corporation, a statutory trust, a business trust, an association, a real estate investment trust, a common-law trust or any other incorporated or unincorporated business or entity, including a

general partnership (including a limited liability partnership) or a foreign limited partnership (including a foreign limited liability limited partnership) or a limited liability company.

(b) If the partnership agreement specifies the manner of authorizing a conversion of the limited partnership, the conversion shall be authorized as specified in the partnership agreement. If the partnership agreement does not specify the manner of authorizing a conversion of the limited partnership and does not prohibit a conversion of the limited partnership, the conversion shall be authorized in the same manner as is specified in the partnership agreement for authorizing a merger or consolidation that involves the limited partnership as a constituent party to the merger or consolidation. If the partnership agreement does not specify the manner of authorizing a conversion of the limited partnership or a merger or consolidation that involves the limited partnership as a constituent party and does not prohibit a conversion of the limited partnership, the conversion shall be authorized by the approval (1) by all general partners, and (2) by limited partners who own more than 50 percent of the then current percentage or other interest in the profits of the domestic limited partnership owned by all of the limited partners. Unless otherwise provided in a partnership agreement, a limited partnership whose original certificate of limited partnership was filed with the Secretary of State and effective on or prior to July 31, 2015, shall continue to be governed by clause (2) of this subsection as in effect on July 31, 2015.

(c) Unless otherwise agreed, the conversion of a domestic limited partnership to another entity or business form pursuant to this section shall not require such limited partnership to wind up its affairs under § 17-803 of this title or pay its liabilities and distribute its assets under § 17-804 of this title, and the conversion shall not constitute a dissolution of such limited partnership. When a limited partnership has converted to another entity or business form pursuant to this section, for all purposes of the laws of the State of Delaware, the other entity or business form shall be deemed to be the same entity as the converting limited partnership and the conversion shall constitute a continuation of the existence of the limited partnership in the form of such other entity or business form.

(d) In connection with a conversion of a domestic limited partnership to another entity or business form pursuant to this section, rights or securities of or interests in the domestic limited partnership which is to be converted may be exchanged for or converted into cash, property, rights or securities of or interests in the entity or business form into which the domestic limited partnership is being converted or, in addition to or in lieu thereof, may be exchanged for or converted into cash, property, rights or securities of or interests in another entity or business form, may remain outstanding or may be canceled.

(e) If a limited partnership shall convert in accordance with this section to another entity or business form organized, formed or created under the laws of a jurisdiction other than the State of Delaware, a certificate of conversion to non-Delaware entity executed in accordance with § 17-204 of this title shall be filed in the office of the Secretary of State in accordance with § 17-206 of this title. The certificate of conversion to non-Delaware entity shall state:

(1) The name of the limited partnership and, if it has been changed, the name under which its certificate of limited partnership was originally filed;

(2) The date of filing of its original certificate of limited partnership with the Secretary of State;

(3) The jurisdiction in which the entity or business form, to which the limited partnership shall be converted, is organized, formed or created, and the name of such entity or business form;

(4) The future effective date or time (which shall be a date or time certain) of the conversion if it is not to be effective upon the filing of the certificate of conversion to non-Delaware entity;

(5) That the conversion has been approved in accordance with this section;

(6) The agreement of the limited partnership that it may be served with process in the State of Delaware in any action, suit or proceeding for enforcement of any obligation of the limited partnership arising while it was a limited partnership of the State of Delaware, and that it irrevocably appoints the Secretary of State as its agent to accept service of process in any such action, suit or proceeding;

(7) The address to which a copy of the process referred to in paragraph (e)(6) of this section shall be mailed to it by the Secretary of State. Process may be served upon the Secretary of State under paragraph (e)(6) of this section by means of electronic transmission but only as prescribed by the Secretary of State. The Secretary of State is authorized to issue such rules and regulations with respect to such service as the Secretary of State deems necessary or appropriate. In the event of service hereunder upon the Secretary of State, the procedures set forth in § 17-911(c) of this title shall be applicable, except that the plaintiff in any such action, suit or proceeding shall furnish the Secretary of State with the address specified in this paragraph and any other address that the plaintiff may elect to furnish, together with copies of such process as required by the Secretary of State, and the Secretary of State shall notify the limited partnership that has converted out of the State of Delaware at all such addresses furnished by the plaintiff in accordance with the procedures set forth in § 17-911(c) of this title.

(f) Upon the filing in the office of the Secretary of State of the certificate of conversion to non-Delaware entity or upon the future effective date or time of the certificate of conversion to non-Delaware entity and payment to the Secretary of State of all fees prescribed in this chapter, the limited partnership shall cease to exist as a limited partnership of the State of Delaware. A copy of the certificate of conversion to non-Delaware entity certified by the Secretary of State shall be prima facie evidence of the conversion by such limited partnership out of the State of Delaware.

(g) The conversion of a limited partnership out of the State of Delaware in accordance with this section and the resulting cessation of its existence as a limited partnership of the State of Delaware pursuant to a certificate of conversion to non-Delaware entity shall not

be deemed to affect any obligations or liabilities of the limited partnership incurred prior to such conversion or the personal liability of any person incurred prior to such conversion, nor shall it be deemed to affect the choice of law applicable to the limited partnership with respect to matters arising prior to such conversion.

(h) When any conversion shall have become effective under this section, for all purposes of the laws of the State of Delaware, all of the rights, privileges and powers of the limited partnership that has converted, and all property, real, personal and mixed, and all debts due to such limited partnership, as well as all other things and causes of action belonging to such limited partnership, shall remain vested in the other entity or business form to which such limited partnership has converted and shall be the property of such other entity or business form, and the title to any real property vested by deed or otherwise in such limited partnership shall not revert or be in any way impaired by reason of this chapter; but all rights of creditors and all liens upon any property of such limited partnership shall be preserved unimpaired, and all debts, liabilities and duties of the limited partnership that has converted shall remain attached to the other entity or business form to which such limited partnership has converted, and may be enforced against it to the same extent as if said debts, liabilities and duties had originally been incurred or contracted by it in its capacity as such other entity or business form. The rights, privileges, powers and interests in property of the limited partnership that has converted, as well as the debts, liabilities and duties of such limited partnership, shall not be deemed, as a consequence of the conversion, to have been transferred to the other entity or business form to which such limited partnership has converted for any purpose of the laws of the State of Delaware.

(i) A partnership agreement may provide that a domestic limited partnership shall not have the power to convert as set forth in this section.

(70 Del. Laws, c. 362, § 14; 72 Del. Laws, c. 128, § 9; 72 Del. Laws, c. 386, §§ 18, 19; 73 Del. Laws, c. 329, § 22; 74 Del. Laws, c. 104, § 17; 74 Del. Laws, c. 265, §§ 10, 11; 75 Del. Laws, c. 414, §§ 34-39; 76 Del. Laws, c. 104, §§ 32, 33; 77 Del. Laws, c. 288, § 20; 79 Del. Laws, c. 73, § 8; 80 Del. Laws, c. 44, § 8; 81 Del. Laws, c. 88, § 12; 82 Del. Laws, c. 258, § 7.)

§ 17-220 Division of a limited partnership.

(a) As used in this section and §§ 17-203, 17-301 and 17-1203:

(1) “Dividing partnership” means the domestic limited partnership that is effecting a division in the manner provided in this section.

(2) “Division” means the division of a dividing partnership into two or more domestic limited partnerships in accordance with this section.

(3) “Division contact” means, in connection with any division, a natural person who is a Delaware resident, any division partnership in such division or any other domestic limited partnership or other business entity as defined in § 17-211 of this title formed or organized under the laws of the State of Delaware, which division contact shall maintain a copy of the plan of division for a period of 6 years from the effective date of the division and shall comply with paragraph (g)(3) of this section.

(4) “Division partnership” means a surviving partnership, if any, and each resulting partnership.

(5) “Organizational documents” means the certificate of limited partnership and partnership agreement of a domestic limited partnership.

(6) “Resulting partnership” means a domestic limited partnership formed as a consequence of a division.

(7) “Surviving partnership” means a dividing partnership that survives the division.

(b) Pursuant to a plan of division, any domestic limited partnership may, in the manner provided in this section, be divided into 2 or more domestic limited partnerships. The division of a domestic limited partnership in accordance with this section and, if applicable, the resulting cessation of the existence of the dividing partnership pursuant to a certificate of division shall not be deemed to affect the personal liability of any person (including any general partner of the dividing partnership) incurred prior to such division with respect to matters arising prior to such division, nor shall it be deemed to affect the validity or enforceability of any obligations or liabilities of the dividing partnership incurred prior to such division; provided, that the obligations and liabilities of the dividing partnership shall be allocated to and vested in, and valid and enforceable obligations of, such division partnership or partnerships to which such obligations and liabilities have been allocated pursuant to the plan of division, as provided in subsection (*l*) of this section. Each resulting partnership in a division shall be formed in compliance with the requirements of this chapter and subsection (i) of this section.

(c) If the partnership agreement of the dividing partnership specifies the manner of adopting a plan of division, the plan of division shall be adopted as specified in the partnership agreement. If the partnership agreement of the dividing partnership does not specify the manner of adopting a plan of division and does not prohibit a division of the limited partnership, the plan of division shall be adopted in the same manner as is specified in the partnership agreement for authorizing a merger or consolidation that involves the limited partnership as a constituent party to the merger or consolidation. If the partnership agreement of the dividing partnership does not specify the manner of adopting a plan of division or authorizing a merger or consolidation that involves the limited partnership as a constituent party and does not prohibit a division of the limited partnership, the adoption of a plan of division shall be authorized by the approval:

(1) By all general partners of the dividing partnership; and

(2) Limited partners who own more than 50% of the then current percentage or other interest in the profits of the dividing partnership owned by all of the limited partners of the dividing partnership.

In any event, the adoption of a plan of division also shall require the approval of any person who, at the effective date or time of the division, shall be a general partner of any division partnership. Notwithstanding prior approval, a plan of division may be terminated or amended pursuant to a provision for such termination or amendment contained in the plan of division.

(d) Unless otherwise provided in a plan of division, the division of a domestic limited partnership pursuant to this section shall not require such limited partnership to wind up its affairs under § 17-803 of this title or pay its liabilities and distribute its assets under § 17-804 of this title, and the division shall not constitute a dissolution of such limited partnership.

(e) In connection with a division under this section, rights or securities of, or interests in, the dividing partnership may be exchanged for or converted into cash, property, rights or securities of, or interests in, the surviving partnership or any resulting partnership or, in addition to or in lieu thereof, may be exchanged for or converted into cash, property, rights or securities of, or interests in, a domestic limited partnership or any other business entity which is not a division partnership or may be canceled or remain outstanding (if the dividing partnership is a surviving partnership).

(f) A plan of division adopted in accordance with subsection (c) of this section:

(1) May effect any amendment to the partnership agreement of the dividing partnership if it is a surviving partnership in the division; or

(2) May effect the adoption of a new partnership agreement for the dividing partnership if it is a surviving partnership in the division; and

(3) Shall effect the adoption of a partnership agreement for each resulting partnership.

Any amendment to a partnership agreement or adoption of a new partnership agreement for the dividing partnership, if it is a surviving partnership in the division, or adoption of a partnership agreement for each resulting partnership made pursuant to the foregoing sentence shall be effective at the effective time or date of the division. Any amendment to a partnership agreement or adoption of a new partnership agreement for the dividing partnership, if it is a surviving partnership in the division, shall be effective notwithstanding any provision in the partnership agreement of the dividing partnership relating to amendment or adoption of a new partnership agreement, other than a provision that by its terms applies to an amendment to the partnership agreement or the adoption of a new partnership agreement, in either case, in connection with a division, merger or consolidation.

(g) If a domestic limited partnership is dividing under this section, the dividing partnership shall adopt a plan of division which shall set forth:

(1) The terms and conditions of the division, including:

a. Any conversion or exchange of the partnership interests of the dividing partnership into or for partnership interests or other securities or obligations of any division partnership or cash, property or rights or securities or obligations of or interests in any other business entity or domestic limited partnership which is not a division partnership, or that the partnership interests of the dividing partnership shall remain outstanding or be canceled, or any combination of the foregoing; and

b. The allocation of assets, property, rights, series, debts, liabilities and duties of the dividing partnership among the division partnerships;

(2) The name of each resulting partnership and, if the dividing partnership will survive the division, the name of the surviving partnership;

(3) The name and business address of a division contact which shall have custody of a copy of the plan of division. The division contact, or any successor division contact, shall serve for a period of 6 years following the effective date of the division. During such 6 year period the division contact shall provide, without cost, to any creditor of the dividing partnership, within 30 days following the division contact's receipt of a written request from any creditor of the dividing partnership, the name and business address of the division partnership to which the claim of such creditor was allocated pursuant to the plan of division; and

(4) Any other matters that the dividing partnership determines to include therein.

(h) If a domestic limited partnership divides under this section, the dividing partnership shall file a certificate of division executed by at least 1 general partner of the dividing partnership on behalf of such dividing partnership in the office of the Secretary of State in accordance with § 17-204 of this title, and a certificate of limited partnership that complies with § 17-201 of this title for each resulting partnership executed by all general partners of such resulting partnership in accordance with § 17-204 of this title. The certificate of division shall state:

(1) The name of the dividing partnership and, if it has been changed, the name under which its certificate of limited partnership was originally filed and whether the dividing partnership is a surviving partnership;

(2) The date of filing of the dividing partnership's original certificate of limited partnership with the Secretary of State;

(3) The name of each division partnership;

(4) The name and business address of the division contact required by paragraph (g)(3) of this section;

(5) The future effective date or time (which shall be a date or time certain) of the division if it is not to be effective upon the filing of the certificate of division;

(6) That the division has been approved in accordance with this section;

(7) That the plan of division is on file at a place of business of such division partnership as is specified therein, and shall state the address thereof;

(8) That a copy of the plan of division will be furnished by such division partnership as is specified therein, on request and without cost, to any partner of the dividing partnership; and

(9) Any other information the dividing partnership determines to include therein.

(i) The certificate of division and each certificate of limited partnership for each resulting partnership required by subsection (h) of this section shall be filed simultaneously in the office of the Secretary of State and, if such certificates are not to become effective upon their filing as permitted by § 17-206(b) of this title, then each such certificate shall provide for the same effective date or time in accordance with § 17-206(b) of this title. Concurrently with the effective date or time of a division, the partnership agreement of each resulting partnership shall become effective.

(j) A certificate of division shall act as a certificate of cancellation for a dividing partnership which is not a surviving partnership.

(k) A partnership agreement may provide that a domestic limited partnership shall not have the power to divide as set forth in this section.

(l) Upon the division of a domestic limited partnership becoming effective:

(1) The dividing partnership shall be divided into the distinct and independent resulting partnerships named in the plan of division, and, if the dividing partnership is not a surviving partnership, the existence of the dividing partnership shall cease.

(2) For all purposes of the laws of the State of Delaware, all of the rights, privileges and powers, and all the property, real, personal and mixed, of the dividing partnership and all debts due on whatever account to it, as well as all other things and other causes of action belonging to it, shall without further action be allocated to and vested in the applicable division partnership in such a manner and basis and with such effect as is specified in the plan of division, and the title to any real property or interest therein allocated to and vested in any division partnership shall not revert or be in any way impaired by reason of the division.

(3) Each division partnership shall, from and after effectiveness of the certificate of division, be liable as a separate and distinct domestic limited partnership for such debts, liabilities and duties of the dividing partnership as are allocated to such division partnership pursuant to the plan of division in the manner and on the basis provided in paragraph (g)(1)b. of this section.

(4) Each of the debts, liabilities and duties of the dividing partnership shall without further action be allocated to and be the debts, liabilities and duties of such division partnership as is specified in the plan of division as having such debts, liabilities and duties allocated to it, in such a manner and basis and with such effect as is specified in the plan of division, and no other division partnership shall be liable therefor, so long as the plan of division does not constitute a fraudulent transfer under applicable law, and all liens upon any property of the dividing partnership shall be preserved unimpaired, and all debts, liabilities and duties of the dividing partnership shall remain attached to the division partnership to which such debts, liabilities and duties have been allocated in the plan of division, and may be enforced against such division partnership to the same extent as if said debts, liabilities and duties had originally been incurred or contracted by it in its capacity as a domestic limited partnership.

(5) In the event that any allocation of assets, debts, liabilities and duties to division partnerships in accordance with a plan of division is determined by a court of competent jurisdiction to constitute a fraudulent transfer, each division partnership shall be jointly and severally liable on account of such fraudulent transfer notwithstanding the allocations made in the plan of division; provided, however, the validity and effectiveness of the division are not otherwise affected thereby.

(6) Debts and liabilities of the dividing partnership that are not allocated by the plan of division shall be the joint and several debts and liabilities of all of the division partnerships.

(7) It shall not be necessary for a plan of division to list each individual asset, property, right, series, debt, liability or duty of the dividing partnership to be allocated to a division partnership so long as the assets, property, rights, series, debts, liabilities or duties so allocated are reasonably identified by any method where the identity of such assets, property, rights, series, debts, liabilities or duties is objectively determinable.

(8) The rights, privileges, powers and interests in property of the dividing partnership that have been allocated to a division partnership, as well as the debts, liabilities and duties of the dividing partnership that have been allocated to such division partnership pursuant to a plan of division, shall remain vested in each such division partnership and shall not be deemed, as a result of the division, to have been assigned or transferred to such division partnership for any purpose of the laws of the State of Delaware.

(9) Any action or proceeding pending against a dividing partnership may be continued against the surviving partnership as if the division did not occur, but subject to paragraph (*l*)(4) of this section, and against any resulting partnership to which the asset, property, right, series, debt, liability or duty associated with such action or proceeding was allocated pursuant to the plan of division by adding or substituting such resulting partnership as a party in the action or proceeding. Any action or proceeding pending against a general partner of a dividing partnership may be continued against such general partner as if the division did not occur and against the general partner of any resulting partnership to which the asset, property, right, series, debt, liability or duty associated with such action or proceeding was allocated pursuant to the plan of division by adding or substituting such general partner as a party in the action or proceeding.

(m) In applying the provisions of this chapter on distributions, a direct or indirect allocation of property or liabilities in a division is not deemed a distribution for purposes of this chapter.

(n) The provisions of this section shall not be construed to limit the means of accomplishing a division by any other means provided for in a partnership agreement or other agreement or as otherwise permitted by this chapter or as otherwise permitted by law.

(o) All limited partnerships formed on or after August 1, 2019, shall be governed by this section. All limited partnerships formed prior to August 1, 2019, shall be governed by this section; provided, that if the dividing partnership is a party to any written contract, indenture or other agreement entered into prior to August 1, 2019, that, by its terms, restricts, conditions or prohibits the consummation of a merger or consolidation by the dividing partnership with or into another party, or the transfer of assets by the dividing partnership to another

party, then such restriction, condition or prohibition shall be deemed to apply to a division as if it were a merger, consolidation or transfer of assets, as applicable.

(82 Del. Laws, c. 46, § 17; 82 Del. Laws, c. 258, § 8.)

§ 17-221 Registered series of limited partners, general partners, partnership interests or assets.

(a) If a partnership agreement provides for the establishment or formation of 1 or more series, then a registered series may be formed by complying with this section. A partnership agreement does not need to use the term registered when referencing series or refer to this section, and a reference in a partnership agreement for a registered series, including a registered series resulting from the conversion of a protected series to a registered series, may continue to refer to § 17-218 of this title, which reference shall be deemed a reference to this section with respect to such registered series. A registered series is formed by the filing of a certificate of registered series in the office of the Secretary of State.

(b) Notice of the limitation on liabilities of a registered series as referenced in subsection (c) of this section shall be set forth in the certificate of limited partnership of the limited partnership. Notice in a certificate of limited partnership of the limitation on liabilities of a registered series as referenced in subsection (c) of this section shall be sufficient for all purposes of this subsection whether or not the limited partnership has formed any registered series when such notice is included in the certificate of limited partnership, and there shall be no requirement that (i) any specific registered series of the limited partnership be referenced in such notice, (ii) such notice use the term registered when referencing series or include a reference to this section, or (iii) the certificate of limited partnership be amended if it includes a reference to § 17-218 of this title. Any reference to § 17-218 of this title in a certificate of limited partnership of a limited partnership that has 1 or more registered series shall be deemed a reference to this section with respect to such registered series. The fact that a certificate of limited partnership that contains the foregoing notice of the limitation on liabilities of a series is on file in the office of the Secretary of State shall constitute notice of such limitation on liabilities of a registered series.

(c) Notwithstanding anything to the contrary set forth in this chapter or under other applicable law, to the extent the records maintained for a registered series account for the assets associated with such series separately from the other assets of the limited partnership, or any other series thereof, then the debts, liabilities, obligations and expenses incurred, contracted for or otherwise existing with respect to such series shall be enforceable against the assets of such series or the general partners associated with such series only, and not against the assets of the limited partnership generally, any other series thereof, or any general partner not associated with such series, and, unless otherwise provided in the partnership agreement, none of the debts, liabilities, obligations and expenses incurred, contracted for or otherwise existing with respect to the limited partnership generally or any other series thereof shall be enforceable against the assets of such series or the general partners associated with such series who are not also general partners of the limited partnership generally or general partners associated with the other series, as the case may be. Neither the preceding sentence nor any provision pursuant thereto in a partnership agreement, certificate of limited partnership or certificate of registered series shall (i) restrict a registered series or limited partnership on behalf of a registered series or a general partner associated with a registered series from agreeing in the partnership agreement or otherwise that any or all of the debts, liabilities, obligations and expenses incurred, contracted for or otherwise existing with respect to the limited partnership generally or any other series thereof shall be enforceable against the assets of such series or such general partner associated with such registered series, (ii) restrict a limited partnership from agreeing in the partnership agreement or otherwise that any or all of the debts, liabilities, obligations and expenses incurred, contracted for or otherwise existing with respect to a registered series shall be enforceable against the assets of the limited partnership generally or (iii) restrict a general partner of the limited partnership from agreeing in the partnership agreement or otherwise that any or all of the debts, liabilities, obligations and expenses incurred, contracted for or otherwise existing with respect to a registered series shall be enforceable against the assets of such general partner. Assets associated with a registered series may be held directly or indirectly, including in the name of such series, in the name of the limited partnership, through a nominee or otherwise. Records maintained for a registered series that reasonably identify its assets, including by specific listing, category, type, quantity, computational or allocational formula or procedure (including a percentage or share of any asset or assets) or by any other method where the identity of such assets is objectively determinable, will be deemed to account for the assets associated with such series separately from the other assets of the limited partnership, or any other series thereof. As used in this chapter, a reference to assets of a registered series includes assets associated with such series and a reference to assets associated with a registered series includes assets of such series, a reference to limited partners or general partners of a registered series includes limited partners or general partners associated with such series, and a reference to limited partners or general partners associated with a registered series includes limited partners or general partners of such series. The following shall apply to a registered series:

(1) A limited partnership governed by a partnership agreement that establishes or provides for the establishment of 1 or more series shall have at least 1 general partner of the partnership generally and at least 1 general partner associated with each of its registered series. If a partnership agreement does not designate a general partner of a particular registered series, then each general partner of the limited partnership generally shall be deemed to be a general partner associated with such series. If a partnership agreement does not designate a general partner of the limited partnership generally, then each general partner of the limited partnership not associated with a registered series or a protected series shall be deemed to be a general partner of the limited partnership generally, but if there is no such general partner, then each general partner of the limited partnership shall be deemed to be a general partner of the limited partnership generally. General partners of the limited partnership generally and general partners associated with a registered series are general partners of the limited partnership under this chapter. Limited partners of the limited partnership generally and limited partners

associated with a registered series are limited partners of the limited partnership under this chapter. The same person may be a general partner of the limited partnership generally and be associated with any or all registered series thereof. The same person may be a limited partner of the limited partnership generally and be associated with any or all registered series thereof.

(2) A registered series may carry on any lawful business, purpose or activity, whether or not for profit, with the exception of the business of banking as defined in § 126 of Title 8. Unless otherwise provided in a partnership agreement, a registered series shall have the power and capacity to, in its own name, contract, hold title to assets (including real, personal and intangible property), grant liens and security interests, and sue and be sued.

(3) A limited partner of a registered series is not liable for the obligations of such series unless such limited partner is also a general partner of such series or, in addition to the exercise of the rights and powers of a limited partner of such series, such limited partner participates in the control of the business of such series. If a limited partner of a registered series participates in the control of the business of such series, such limited partner is liable only to persons who transact business with such series reasonably believing, based upon such limited partner's conduct, that such limited partner is a general partner of such series. Notwithstanding the preceding sentence, under a partnership agreement or under another agreement, a limited partner of a registered series may agree to be obligated personally for any or all of the debts, obligations and liabilities of one or more registered series.

(4) A limited partner may possess or exercise any of the rights and powers or act or attempt to act in 1 or more of the capacities as permitted under § 17-303 of this title, with respect to the limited partnership and any series, without participating in the control of the business of the limited partnership or with respect to any series within the meaning of § 17-303(a) of this title. A partnership agreement may provide for classes or groups of general partners or limited partners associated with a registered series having such relative rights, powers and duties as the partnership agreement may provide, and may make provision for the future creation in the manner provided in the partnership agreement of additional classes or groups of general partners or limited partners associated with such series having such relative rights, powers and duties as may from time to time be established, including rights, powers and duties senior to existing classes and groups of general partners or limited partners associated with such series. A partnership agreement may provide for the taking of an action, including the amendment of the partnership agreement, without the vote or approval of any general partner or limited partner or class or group of general partners or limited partners, including an action to create under the provisions of the partnership agreement a class or group of a registered series of partnership interests that was not previously outstanding. A partnership agreement may provide that any limited partner or class or group of limited partners associated with a registered series shall have no voting rights.

(5) A partnership agreement may grant to all or certain identified general partners or limited partners or a specified class or group of the general partners or limited partners associated with a registered series the right to vote separately or with all or any class or group of the general partners or limited partners associated with such series, on any matter. Voting by general partners or limited partners associated with a registered series may be on a per capita, number, financial interest, class, group or any other basis.

(6) Section 17-603 of this title shall apply to a limited partner with respect to any registered series with which the limited partner is associated. Except as otherwise provided in a partnership agreement, any event under this subsection or in a partnership agreement that causes a limited partner of a registered series to cease to be associated with such series shall not, in itself, cause such limited partner to cease to be associated with any other series or to be a limited partner of the limited partnership generally or cause the dissolution of the registered series, regardless of whether such limited partner was the last remaining limited partner associated with such series. A limited partner of a registered series shall cease to be a limited partner with respect to such series and to have the power to exercise any rights or powers of a limited partner with respect to such series upon the happening of either of the following events:

a. The limited partner withdraws with respect to such series in accordance with § 17-603 of this title; or

b. Except as otherwise provided in the partnership agreement, the limited partner assigns all of his or her partnership interest with respect to such series.

(7) Section 17-602 of this title shall apply to a general partner with respect to any registered series with which the general partner is associated. A general partner of a registered series shall cease to be a general partner with respect to such series and to have the power to exercise any rights or powers of a general partner with respect to such series upon an event of withdrawal of the general partner with respect to such series. Except as otherwise provided in a partnership agreement, either of the following events or any event in a partnership agreement that causes a general partner of a registered series to cease to be associated with such series shall not, in itself, cause such general partner to cease to be associated with any other series or to be a general partner of the limited partnership generally:

a. The general partner withdraws with respect to such series in accordance with § 17-602 of this title; or

b. The general partner assigns all of the general partner's partnership interest with respect to such series.

(8) Notwithstanding § 17-606 of this title, but subject to paragraphs (c)(9) and (c)(11) of this section, and unless otherwise provided in a partnership agreement, at the time a partner of a registered series becomes entitled to receive a distribution with respect to such series, the partner has the status of, and is entitled to all remedies available to, a creditor of such series, with respect to the distribution. A partnership agreement may provide for the establishment of a record date with respect to allocations and distributions with respect to a registered series.

(9) Notwithstanding § 17-607(a) of this title, a limited partnership may make a distribution with respect to registered series. A limited partnership shall not make a distribution with respect to a registered series to a partner to the extent that at the time of the distribution, after giving effect to the distribution, all liabilities of such series, other than liabilities to partners on account of their partnership interests

with respect to such series and liabilities for which the recourse of creditors is limited to specified property of such series, exceed the fair value of the assets associated with such series, except that the fair value of property of such series that is subject to a liability for which the recourse of creditors is limited shall be included in the assets associated with such series only to the extent that the fair value of that property exceeds that liability. For purposes of the immediately preceding sentence, the term "distribution" shall not include amounts constituting reasonable compensation for present or past services or reasonable payments made in the ordinary course of business pursuant to a bona fide retirement plan or other benefits program. A limited partner of a registered series who receives a distribution in violation of this subsection, and who knew at the time of the distribution that the distribution violated this subsection, shall be liable to such series for the amount of the distribution. A limited partner of a registered series who receives a distribution in violation of this subsection, and who did not know at the time of the distribution that the distribution violated this subsection, shall not be liable for the amount of the distribution. Subject to § 17-607(c) of this title, which shall apply to any distribution made with respect to a registered series under this subsection, this subsection shall not affect any obligation or liability of a limited partner under an agreement or other applicable law for the amount of a distribution.

(10) Subject to § 17-801 of this title, except to the extent otherwise provided in the partnership agreement, a registered series may be dissolved and its affairs wound up without causing the dissolution of the limited partnership. The dissolution of a registered series shall not affect the limitation on liabilities of such series provided by this subsection. A registered series is dissolved and its affairs shall be wound up upon the dissolution of the limited partnership under § 17-801 of this title or otherwise upon the first to occur of the following:

a. At the time specified in the partnership agreement;

b. Upon the happening of events specified in the partnership agreement;

c. Unless otherwise provided in the partnership agreement, upon the vote or consent of (i) all general partners associated with such series and (ii) limited partners associated with such series who own more than $^{2}/_{3}$ of the then-current percentage or other interest in the profits of such series owned by all of the limited partners associated with such series;

d. An event of withdrawal of a general partner associated with such series unless at the time there is at least 1 other general partner associated with such series and the partnership agreement permits the business of such series to be carried on by the remaining general partner associated with such series and that partner does so, but such series is not dissolved and is not required to be wound up by reason of any event of withdrawal if (i) within 90 days or such other period as is provided for in the partnership agreement after the withdrawal either (A) if provided for in the partnership agreement, the then-current percentage or other interest in the profits of such series specified in the partnership agreement owned by the remaining partners associated with such series agree or vote to continue the business of such series and to appoint, effective as of the date of withdrawal, 1 or more additional general partners for such series if necessary or desired, or (B) if no such right to agree or vote to continue the business of such series of the limited partnership and to appoint 1 or more additional general partners for such series is provided for in the partnership agreement, then more than 50% of the then-current percentage or other interest in the profits of such series owned by the remaining partners associated with such series agree or vote to continue the business of such series and to appoint, effective as of the date of withdrawal, 1 or more additional general partners for such series if necessary or desired, or (ii) the business of such series is continued pursuant to a right to continue stated in the partnership agreement and the appointment, effective as of the date of withdrawal, of 1 or more additional general partners to be associated with such series if necessary or desired; or

e. The dissolution of such series under paragraph (c)(12) of this section.

(11) Notwithstanding § 17-803(a) of this title, unless otherwise provided in the partnership agreement, a general partner associated with a registered series who has not wrongfully dissolved such series or, if none, the limited partners associated with such series or a person approved by the limited partners associated with such series, in either case, by limited partners who own more than 50% of the then current percentage or other interest in the profits of such series owned by all of the limited partners associated with such series, may wind up the affairs of such series; but, the Court of Chancery, upon cause shown, may wind up the affairs of a registered series upon application of any partner associated with such series, the partner's personal representative or assignee, and in connection therewith, may appoint a liquidating trustee. The persons winding up the affairs of a registered series may, in the name of the limited partnership and for and on behalf of the limited partnership and such series, take all actions with respect to such series as are permitted under § 17-803(b) of this title. The persons winding up the affairs of a registered series shall provide for the claims and obligations of such series and distribute the assets of such series as provided in § 17-804 of this title, which section shall apply to the winding up and distribution of assets of a registered series. Actions taken in accordance with this subsection shall not affect the liability of limited partners and shall not impose liability on a liquidating trustee.

(12) On application by or for a partner associated with a registered series, the Court of Chancery may decree dissolution of such series whenever it is not reasonably practicable to carry on the business of such series in conformity with a partnership agreement.

(13) For all purposes of the laws of the State of Delaware, a registered series is an association, regardless of the number of partners of such series.

(d) In order to form a registered series of a limited partnership, a certificate of registered series must be filed in accordance with this subsection.

(1) A certificate of registered series:

a. Shall set forth:

(i) The name of the limited partnership;

(ii) The name of the registered series; and

(iii) The name and the business, residence or mailing address of each general partner of the registered series.

b. May include any other matter that the partners of such registered series determine to include therein.

(2) A certificate of registered series shall be executed in accordance with § 17-204 of this title and shall be filed in the office of the Secretary of State in accordance with § 17-206 of this title. A certificate of registered series shall be effective as of the effective time of such filing unless a later effective date or time (which shall be a date or time certain) is provided for in the certificate of registered series. A certificate of registered series is not an amendment to the certificate of limited partnership of the limited partnership. The filing of a certificate of registered series in the office of the Secretary of State shall make it unnecessary to file any other documents under Chapter 31 of this title.

(3) A certificate of registered series is amended by filing a certificate of amendment thereto in the office of the Secretary of State. The certificate of amendment of certificate of registered series shall set forth:

a. The name of the limited partnership;

b. The name of the registered series; and

c. The amendment to the certificate of registered series.

(4) A general partner of a registered series who becomes aware that any statement in a certificate of registered series filed with respect to such registered series was false when made, or that any matter described therein has changed making the certificate of registered series false in any material respect or noncompliant with paragraph (e)(1) of this section, shall promptly amend the certificate of registered series.

(5) Notwithstanding the requirements of paragraph (d)(4) of this section, no later than 90 days after the happening of any of the following events an amendment to a certificate of registered series reflecting the occurrence of the event or events shall be filed by a general partner of such registered series:

a. The admission of a new general partner to such registered series;

b. The withdrawal of a general partner of such registered series; or

c. A change in the name of the registered series.

(6) A certificate of registered series may be amended at any time for any other proper purpose.

(7) Unless otherwise provided in this chapter or unless a later effective date or time (which shall be a date or time certain) is provided for in the certificate of amendment of certificate of registered series, a certificate of amendment of certificate of registered series shall be effective at the time of its filing with the Secretary of State.

(8) A certificate of registered series shall be canceled upon the cancellation of the certificate of limited partnership of the limited partnership named in the certificate of registered series, or upon the filing of a certificate of cancellation of certificate of registered series or upon the future effective date or time of a certificate of cancellation of certificate of registered series, or as provided in § 17-1110(b) of this title, or upon the filing of a certificate of merger or consolidation of registered series if the registered series is not the surviving or resulting registered series in a merger or consolidation or upon the future effective date or time of a certificate of merger or consolidation of registered series if the registered series is not the surviving or resulting registered series in a merger or consolidation, or upon the filing of a certificate of conversion of registered series to protected series or upon the future effective date or time of a certificate of conversion of registered series to protected series. A certificate of cancellation of certificate of registered series may be filed at any time, and shall be filed, in the office of the Secretary of State to accomplish the cancellation of a certificate of registered series upon the dissolution of a registered series for which a certificate of registered series was filed and completion of the winding up of such registered series. A certificate of cancellation of certificate of registered series shall set forth:

a. The name of the limited partnership;

b. The name of the registered series;

c. The date of filing of the certificate of registered series;

d. The future effective date or time (which shall be a date or time certain) of cancellation if it is not to be effective upon the filing of the certificate of cancellation; and

e. Any other information the person filing the certificate of cancellation of certificate of registered series determines.

(9) A certificate of cancellation of certificate of registered series that is filed in the office of the Secretary of State prior to the dissolution or the completion of winding up of a registered series may be corrected as an erroneously executed certificate of cancellation of certificate of registered series by filing with the office of the Secretary of State a certificate of correction of such certificate of cancellation of certificate of registered series in accordance with § 17-213 of this title.

(10) The Secretary of State shall not issue a certificate of good standing with respect to a registered series if its certificate of registered series is canceled or the limited partnership has ceased to be in good standing.

(e) The name of each registered series as set forth in its certificate of registered series:

(1) Shall begin with the name of the limited partnership, including any word, abbreviation or designation required by § 17-102 of this title;

(2) May contain the name of a limited partner or general partner;

(3) Must be such as to distinguish it upon the records in the office of the Secretary of State from the name on such records of any corporation, partnership, limited partnership, statutory trust, limited liability company, registered series of a limited liability company or registered series of a limited partnership reserved, registered, formed or organized under the laws of the State of Delaware or qualified to do business or registered as a foreign corporation, foreign limited partnership, foreign statutory trust, foreign partnership or foreign limited liability company in the State of Delaware; provided, however, that a registered series may register under any name which is not such as to distinguish it upon the records in the office of the Secretary of State from the name on such records of any domestic or foreign corporation, partnership, statutory trust, limited liability company, registered series of a limited liability company, registered series of a limited partnership, or foreign limited partnership reserved, registered, formed or organized under the laws of the State of Delaware with the written consent of the other corporation, partnership, statutory trust, limited liability company, registered series of a limited liability company, registered series of a limited partnership, or foreign limited partnership, which written consent shall be filed with the Secretary of State;

(4) May contain the following words:"Company," "Association," "Club," "Foundation," "Fund," "Institute," "Society," "Union," "Syndicate," "Limited," "Public Benefit" or "Trust" (or abbreviations of like import); and

(5) Shall not contain the word "bank," or any variation thereof, except for the name of a bank reporting to and under the supervision of the State Bank Commissioner of this State or a subsidiary of a bank or savings association (as those terms are defined in the Federal Deposit Insurance Act, as amended, at 12 U.S.C. § 1813), or a limited partnership regulated under the Bank Holding Company Act of 1956, as amended, 12 U.S.C. § 1841 et seq., or the Home Owners' Loan Act, as amended, 12 U.S.C. § 1461 et seq.; provided, however, that this section shall not be construed to prevent the use of the word "bank," or any variation thereof, in a context clearly not purporting to refer to a banking business or otherwise likely to mislead the public about the nature of the business of the limited partnership or the registered series, or to lead to a pattern and practice of abuse that might cause harm to the interests of the public or this State as determined by the Division of Corporations in the Department of State.

(82 Del. Laws, c. 46, § 18; 70 Del. Laws, c. 186, § 1; 82 Del. Laws, c. 258, § 9.)

§ 17-222 Approval of conversion of a protected series of a domestic limited partnership to a registered series of such domestic limited partnership.

(a) A protected series of a domestic limited partnership may convert to a registered series of such domestic limited partnership by complying with this section and filing in the office of the Secretary of State in accordance with § 17-206 of this title:

(1) A certificate of conversion of protected series to registered series that has been executed in accordance with § 17-204 of this title; and

(2) A certificate of registered series that has been executed in accordance with § 17-204 of this title.

Each of the certificates required by this subsection shall be filed simultaneously in the office of the Secretary of State and, if such certificates are not to become effective upon their filing as permitted by § 17-206(b) of this title, then each such certificate shall provide for the same effective date or time in accordance with § 17-206(b) of this title.

An existing series may not become a registered series other than pursuant to this § 17-222 of this title.

(b) If the partnership agreement specifies the manner of authorizing a conversion of a protected series of such limited partnership to a registered series of such limited partnership, the conversion of a protected series to a registered series shall be authorized as specified in the partnership agreement. If the partnership agreement does not specify the manner of authorizing a conversion of a protected series of such limited partnership to a registered series of such limited partnership and does not prohibit a conversion of a protected series to a registered series, the conversion shall be authorized by approval:

(1) By all general partners associated with such protected series; and

(2) By limited partners who own more than 50% of the then current percentage or other interest in the profits of such protected series owned by all of the limited partners associated with such series.

In any event, the conversion of a protected series of a limited partnership to a registered series of such limited partnership also shall require the approval of any person who, at the effective date or time of such conversion, shall be a general partner associated with such registered series.

(c) Unless otherwise agreed, the conversion of a protected series of a limited partnership to a registered series of such limited partnership pursuant to this section shall not require such limited partnership or such protected series of such limited partnership to wind up its affairs under § 17-803 or § 17-218 of this title or pay its liabilities and distribute its assets under § 17-804 or § 17-218 of this title, and the conversion of a protected series of a limited partnership to a registered series of such limited partnership shall not constitute a dissolution of such limited partnership or a termination of such protected series. When a protected series of a limited partnership has converted to a registered series of such limited partnership pursuant to this section, for all purposes of the laws of the State of Delaware, the registered series shall be deemed to be the same series as the converting protected series and the conversion shall constitute a continuation of the existence of the protected series in the form of such registered series.

(d) In connection with a conversion of a protected series of a limited partnership to a registered series of such limited partnership pursuant to this section, rights or securities of or interests in the protected series which is to be converted may be exchanged for or converted into cash, property, rights or securities of or interests in the registered series into which the protected series is being converted or, in addition to or in lieu thereof, may be exchanged for or converted into cash, property, rights or securities of or interests in any other business entity, may remain outstanding or may be canceled.

(e) If a protected series shall convert to a registered series in accordance with this section, a certificate of conversion of protected series to registered series executed in accordance with § 17-204 of this title shall be filed in the office of the Secretary of State in accordance with § 17-206 of this title. The certificate of conversion of protected series to registered series shall state:

(1) The name of the limited partnership and, if it has been changed, the name under which its certificate of limited partnership was originally filed;

(2) The name of the protected series and, if it has been changed, the name of the protected series as originally established;

(3) The name of the registered series as set forth in its certificate of registered series filed in accordance with subsection (a) of this section;

(4) The date of filing of the original certificate of limited partnership of the limited partnership with the Secretary of State;

(5) The date on which the protected series was established;

(6) The future effective date or time (which shall be a date or time certain) of the conversion if it is not to be effective upon the filing of the certificate of conversion of protected series to registered series; and

(7) That the conversion has been approved in accordance with this section.

(f) A copy of the certificate of conversion of protected series to registered series certified by the Secretary of State shall be prima facie evidence of the conversion by such protected series to a registered series of such limited partnership.

(g) When any conversion shall have become effective under this section, for all purposes of the laws of the State of Delaware, all of the rights, privileges and powers of the protected series that has converted, and all property, real, personal and mixed, and all debts due to such protected series, as well as all other things and causes of action belonging to such protected series, shall remain vested in the registered series to which such protected series has converted and shall be the property of such registered series, and the title to any real property vested by deed or otherwise in such protected series shall not revert or be in any way impaired by reason of this chapter; but all rights of creditors and all liens upon any property of such protected series shall be preserved unimpaired, and all debts, liabilities and duties of the protected series that has converted shall remain attached to the registered series to which such protected series has converted, and may be enforced against it to the same extent as if said debts, liabilities and duties had originally been incurred or contracted by it in its capacity as such registered series. The rights, privileges, powers and interests in property of the protected series that has converted, as well as the debts, liabilities and duties of such protected series, shall not be deemed, as a consequence of the conversion, to have been transferred to the registered series to which such protected series of such limited partnership has converted for any purpose of the laws of the State of Delaware.

(h) A partnership agreement may provide that a protected series of a limited partnership shall not have the power to convert to a registered series of such limited partnership as set forth in this section.

(82 Del. Laws, c. 46, § 19.)

§ 17-223 Approval of conversion of a registered series of a domestic limited partnership to a protected series of such domestic limited partnership.

(a) Upon compliance with this section, a registered series of a domestic limited partnership may convert to a protected series of such domestic limited partnership. An existing registered series may not become a protected series other than pursuant to this section.

(b) If the partnership agreement specifies the manner of authorizing a conversion of a registered series of such limited partnership to a protected series of such limited partnership, the conversion of a registered series to a protected series shall be authorized as specified in the partnership agreement. If the partnership agreement does not specify the manner of authorizing a conversion of a registered series of such limited partnership to a protected series of such limited partnership and does not prohibit a conversion of a registered series to a protected series, the conversion shall be authorized by approval:

(1) By all general partners associated with such registered series; and

(2) By limited partners who own more than 50% of the then current percentage or other interest in the profits of such registered series owned by all of the limited partners associated with such protected series.

In any event, the conversion of a registered series of a limited partnership to a protected series of such limited partnership also shall require the approval of any person who, at the effective date or time of such conversion, shall be a general partner associated with such protected series.

(c) Unless otherwise agreed, the conversion of a registered series of a limited partnership to a protected series of such limited partnership pursuant to this section shall not require such limited partnership or such registered series of such limited partnership to wind up its affairs under § 17-803 or § 17-221 of this title or pay its liabilities and distribute its assets under § 17-804 or § 17-221 of this title, and the conversion of a registered series of a limited partnership to a protected series of such limited partnership shall not constitute a dissolution of such limited partnership or of such registered series. When a registered series of a limited partnership has converted to a protected

series of such limited partnership pursuant to this section, for all purposes of the laws of the State of Delaware, the protected series shall be deemed to be the same series as the converting registered series and the conversion shall constitute a continuation of the existence of the registered series in the form of such protected series.

(d) In connection with a conversion of a registered series of a limited partnership to a protected series of such limited partnership pursuant to this section, rights or securities of or interests in the registered series which is to be converted may be exchanged for or converted into cash, property, rights or securities of or interests in the protected series into which the registered series is being converted or, in addition to or in lieu thereof, may be exchanged for or converted into cash, property, rights or securities of or interests in any other business entity, may remain outstanding or may be canceled.

(e) If a registered series shall convert to a protected series in accordance with this section, a certificate of conversion of registered series to protected series executed in accordance with § 17-204 of this title shall be filed in the office of the Secretary of State in accordance with § 17-206 of this title. The certificate of conversion of registered series to protected series shall state:

(1) The name of the limited partnership and, if it has been changed, the name under which its certificate of limited partnership was originally filed;

(2) The date of filing of the original certificate of limited partnership of the limited partnership with the Secretary of State;

(3) The name of the registered series and, if it has been changed, the name under which its certificate of registered series was originally filed;

(4) The date of filing of its original certificate of registered series with the Secretary of State;

(5) The future effective date or time (which shall be a date or time certain) of the conversion if it is not to be effective upon the filing of the certificate of conversion of registered series to protected series; and

(6) That the conversion has been approved in accordance with this section.

(f) A copy of the certificate of conversion of registered series to protected series certified by the Secretary of State shall be prima facie evidence of the conversion by such registered series to a protected series of such limited partnership.

(g) When any conversion shall have become effective under this section, for all purposes of the laws of the State of Delaware, all of the rights, privileges and powers of the registered series that has converted, and all property, real, personal and mixed, and all debts due to such registered series, as well as all other things and causes of action belonging to such registered series, shall remain vested in the protected series to which such registered series has converted and shall be the property of such protected series, and the title to any real property vested by deed or otherwise in such registered series shall not revert or be in any way impaired by reason of this chapter; but all rights of creditors and all liens upon any property of such registered series shall be preserved unimpaired, and all debts, liabilities and duties of the registered series that has converted shall remain attached to the protected series to which such registered series has converted, and may be enforced against it to the same extent as if said debts, liabilities and duties had originally been incurred or contracted by it in its capacity as such protected series. The rights, privileges, powers and interests in property of the registered series that has converted, as well as the debts, liabilities and duties of such registered series, shall not be deemed, as a consequence of the conversion, to have been transferred to the protected series to which such registered series of such limited partnership has converted for any purpose of the laws of the State of Delaware.

(h) A partnership agreement may provide that a registered series of a limited partnership shall not have the power to convert to a protected series of such limited partnership as set forth in this section.

(82 Del. Laws, c. 46, § 20; 82 Del. Laws, c. 258, § 10.)

§ 17-224 Merger and consolidation of registered series.

(a) Pursuant to an agreement of merger or consolidation, 1 or more registered series may merge or consolidate with or into 1 or more other registered series of the same limited partnership with such registered series as the agreement shall provide being the surviving or resulting registered series. Unless otherwise provided in the partnership agreement, an agreement of merger or consolidation shall be approved:

(1) By all general partners associated with each such registered series; and

(2) By limited partners who own more than 50% of the then current percentage or other interest in the profits of each such registered series owned by all of the limited partners associated with such series.

In connection with a merger or consolidation hereunder, rights or securities of, or interests in, a registered series which is a constituent party to the merger or consolidation may be exchanged for or converted into cash, property, rights or securities of, or interests in, the surviving or resulting registered series or, in addition to or in lieu thereof, may be exchanged for or converted into cash, property, rights or securities of, or interests in, a domestic limited partnership or other business entity which is not the surviving or resulting registered series in the merger or consolidation, may remain outstanding or may be canceled. Notwithstanding prior approval, an agreement of merger or consolidation may be terminated or amended pursuant to a provision for such termination or amendment contained in the agreement of merger or consolidation.

(b) If a registered series is merging or consolidating under this section, the registered series surviving or resulting in or from the merger or consolidation shall file in the office of the Secretary of State a certificate of merger or consolidation of registered series executed in accordance with § 17-204 of this title. The certificate of merger or consolidation of registered series shall state:

(1) The name of each registered series which is to merge or consolidate and the name of the limited partnership that formed such registered series;

(2) That an agreement of merger or consolidation has been approved and executed by or on behalf of each registered series which is to merge or consolidate;

(3) The name of the surviving or resulting registered series;

(4) Such amendment, if any, to the certificate of registered series of the surviving registered series to change the name of the surviving registered series, as is desired to be effected by the merger;

(5) The future effective date or time (which shall be a date or time certain) of the merger or consolidation if it is not to be effective upon the filing of the certificate of merger or consolidation of registered series;

(6) That the agreement of merger or consolidation is on file at a place of business of the surviving or resulting registered series or the limited partnership that formed such registered series, and shall state the address thereof; and

(7) That a copy of the agreement of merger or consolidation will be furnished by the surviving or resulting registered series, on request and without cost, to any partner of any registered series which is to merge or consolidate.

(c) Unless a future effective date or time is provided in a certificate of merger or consolidation of registered series, a merger or consolidation pursuant to this section shall be effective upon the filing in the office of the Secretary of State of a certificate of merger or consolidation of registered series.

(d) A certificate of merger or consolidation of registered series shall act as a certificate of cancellation of certificate of registered series of the registered series which is not the surviving or resulting registered series in the merger or consolidation. A certificate of merger or consolidation of registered series that sets forth any amendment in accordance with paragraph (b)(4) of this section shall be deemed to be an amendment to the certificate of registered series of the surviving registered series, and no further action shall be required to amend the certificate of registered series of the surviving registered series under § 17-221 of this title with respect to such amendments set forth in such certificate of merger or consolidation. Whenever this section requires the filing of a certificate of merger or consolidation of registered series, such requirement shall be deemed satisfied by the filing of an agreement of merger or consolidation containing the information required by this section to be set forth in such certificate of merger or consolidation.

(e) An agreement of merger or consolidation approved in accordance with paragraph (a) of this section may effect any amendment to the partnership agreement relating solely to the registered series that are constituent parties to the merger or consolidation.

Any amendment to a partnership agreement relating solely to the registered series that are constituent parties to the merger or consolidation made pursuant to the foregoing sentence shall be effective at the effective time or date of the merger or consolidation and shall be effective notwithstanding any provision of the partnership agreement relating to amendment of the partnership agreement, other than a provision that by its terms applies to an amendment to the partnership agreement in connection with a merger or consolidation. The provisions of this subsection shall not be construed to limit the accomplishment of a merger or of any of the matters referred to herein by any other means provided for in a partnership agreement or other agreement or as otherwise permitted by law, including that the partnership agreement relating to any constituent registered series to the merger or consolidation (including a registered series formed for the purpose of consummating a merger or consolidation) shall be the partnership agreement of the surviving or resulting registered series.

(f) When any merger or consolidation shall have become effective under this section, for all purposes of the laws of the State of Delaware, all of the rights, privileges and powers of each of the registered series that have merged or consolidated, and all property, real, personal and mixed, and all debts due to any of said registered series, as well as all other things and causes of action belonging to each of such registered series, shall be vested in the surviving or resulting registered series, and shall thereafter be the property of the surviving or resulting registered series as they were of each of the registered series that have merged or consolidated, and the title to any real property vested by deed or otherwise, under the laws of the State of Delaware, in any of such registered series, shall not revert or be in any way impaired by reason of this chapter; but all rights of creditors and all liens upon any property of any of said registered series shall be preserved unimpaired, and all debts, liabilities and duties of each of the said registered series that have merged or consolidated shall thenceforth attach to the surviving or resulting registered series, and may be enforced against it to the same extent as if said debts, liabilities and duties had been incurred or contracted by it. Unless otherwise agreed, a merger or consolidation of a registered series of a limited partnership, including a registered series which is not the surviving or resulting registered series in the merger or consolidation, shall not require such registered series to wind up its affairs under § 17-221 of this title, or pay its liabilities and distribute its assets under § 17-221 of this title and the merger or consolidation shall not constitute a dissolution of such registered series.

(g) A partnership agreement may provide that a registered series of such limited partnership shall not have the power to merge or consolidate as set forth in this section.

(82 Del. Laws, c. 46, § 21.)

Subchapter III
Limited Partners

§ 17-301 Admission of limited partners.

(a) In connection with the formation of a limited partnership, a person is admitted as a limited partner of the limited partnership upon the later to occur of:

(1) The formation of the limited partnership; or

(2) The time provided in and upon compliance with the partnership agreement or, if the partnership agreement does not so provide, when the person's admission is reflected in the records of the limited partnership or as otherwise provided in the partnership agreement.

(b) After the formation of a limited partnership, a person is admitted as a limited partner of the limited partnership:

(1) In the case of a person who is not an assignee of a partnership interest, including a person acquiring a partnership interest directly from the limited partnership and a person to be admitted as a limited partner of the limited partnership without acquiring a partnership interest in the limited partnership, at the time provided in and upon compliance with the partnership agreement or, if the partnership agreement does not so provide, upon the consent of all partners or as otherwise provided in the partnership agreement;

(2) In the case of an assignee of a partnership interest, as provided in § 17-704(a) of this title;

(3) In the case of a person being admitted as a partner of a surviving or resulting limited partnership pursuant to a merger or consolidation approved in accordance with § 17-211(b) of this title, as provided in the partnership agreement of the surviving or resulting limited partnership or in the agreement of merger or consolidation or plan of merger, and in the event of any inconsistency, the terms of the agreement of merger or consolidation or plan of merger shall control; and in the case of a person being admitted as a partner of a limited partnership pursuant to a merger or consolidation in which such limited partnership is not the surviving or resulting limited partnership in the merger or consolidation, as provided in the partnership agreement of such limited partnership; or

(4) In the case of a person being admitted as a partner of a division partnership pursuant to a division approved in accordance with § 17-220 of this title, as provided in the partnership agreement of such division partnership or in the plan of division, and in the event of any inconsistency, the terms of the plan of division shall control; and in the case of a person being admitted as a partner of a limited partnership pursuant to a division in which such limited partnership is not a division partnership in the division, as provided in the partnership agreement of such limited partnership.

(c) In connection with the domestication of a non-United States entity (as defined in § 17-215 of this title) as a limited partnership in the State of Delaware in accordance with § 17-215 of this title or the conversion of an other entity (as defined in § 17-217 of this title) to a domestic limited partnership in accordance with § 17-217 of this title, a person is admitted as a limited partner of the limited partnership as provided in the partnership agreement.

(d) A person may be admitted to a limited partnership as a limited partner of the limited partnership and may receive a partnership interest in the limited partnership without making a contribution or being obligated to make a contribution to the limited partnership. Unless otherwise provided in a partnership agreement, a person may be admitted to a limited partnership as a limited partner of the limited partnership without acquiring a partnership interest in the limited partnership. Unless otherwise provided in a partnership agreement, a person may be admitted as the sole limited partner of a limited partnership without making a contribution or being obligated to make a contribution to the limited partnership or without acquiring a partnership interest in the limited partnership.

(e) Unless otherwise provided in a partnership agreement or another agreement, a limited partner shall have no preemptive right to subscribe to any additional issue of partnership interests or another interest in a limited partnership.

(6 Del. C. 1953, § 1708; 59 Del. Laws, c. 105, § 1; 63 Del. Laws, c. 420, § 1; 65 Del. Laws, c. 188, § 1; 66 Del. Laws, c. 316, § 20; 67 Del. Laws, c. 348, § 12; 69 Del. Laws, c. 258, §§ 22-27; 70 Del. Laws, c. 78, § 19; 71 Del. Laws, c. 78, §§ 32, 33; 73 Del. Laws, c. 297, § 7; 75 Del. Laws, c. 31, §§ 7, 8; 77 Del. Laws, c. 288, § 21; 82 Del. Laws, c. 46, § 22; 82 Del. Laws, c. 258, § 11.)

§ 17-302 Classes and voting.

(a) A partnership agreement may provide for classes or groups of limited partners having such relative rights, powers and duties as the partnership agreement may provide, and may make provision for the future creation in the manner provided in the partnership agreement of additional classes or groups of limited partners having such relative rights, powers and duties as may from time to time be established, including rights, powers and duties senior to existing classes and groups of limited partners.

A partnership agreement may provide for the taking of an action, including the amendment of the partnership agreement, without the vote or approval of any limited partner or class or group of limited partners, including an action to create under the provisions of the partnership agreement a class or group of partnership interests that was not previously outstanding.

(b) Subject to § 17-303 of this title, the partnership agreement may grant to all or certain identified limited partners or a specified class or group of the limited partners the right to vote separately or with all or any class or group of the limited partners or the general partners, on any matter. Voting by limited partners may be on a per capita, number, financial interest, class, group or any other basis.

(c) A partnership agreement may set forth provisions relating to notice of the time, place or purpose of any meeting at which any matter is to be voted on by any limited partners, waiver of any such notice, action by consent without a meeting, the establishment of a record date, quorum requirements, voting in person or by proxy, or any other matter with respect to the exercise of any such right to vote.

(d) Any right or power, including voting rights, granted to limited partners as permitted under § 17-303 of this title shall be deemed to be permitted by this section.

(e) Unless otherwise provided in a partnership agreement, meetings of limited partners may be held by means of conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other, and participation in a meeting pursuant to this subsection shall constitute presence in person at the meeting. Unless otherwise provided in a partnership agreement, on any matter that is to be voted on, consented to or approved by limited partners, the limited partners may take such action

without a meeting, without prior notice and without a vote if consented to or approved, in writing, by electronic transmission or by any other means permitted by law, by limited partners having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all limited partners entitled to vote thereon were present and voted. Unless otherwise provided in a partnership agreement, if a person (whether or not then a limited partner) consenting as a limited partner to any matter provides that such consent will be effective at a future time (including a time determined upon the happening of an event), then such person shall be deemed to have consented as a limited partner at such future time so long as such person is then a limited partner. Unless otherwise provided in a partnership agreement, on any matter that is to be voted on by limited partners, the limited partners may vote in person or by proxy, and such proxy may be granted in writing, by means of electronic transmission or as otherwise permitted by applicable law. Unless otherwise provided in a partnership agreement, a consent transmitted by electronic transmission by a limited partner or by a person or persons authorized to act for a limited partner shall be deemed to be written and signed for purposes of this subsection.

(f) If a partnership agreement provides for the manner in which it may be amended, including by requiring the approval of a person who is not a party to the partnership agreement or the satisfaction of conditions, it may be amended only in that manner or as otherwise permitted by law, including as permitted by § 17-211(g) of this title (provided that the approval of any person may be waived by such person and that any such conditions may be waived by all persons for whose benefit such conditions were intended). If a partnership agreement does not provide for the manner in which it may be amended, the partnership agreement may be amended with the approval of all the partners or as otherwise permitted by law, including as permitted by § 17-211(g) of this title. A limited partner and any class or group of limited partners have the right to vote only on matters as specifically set forth in this chapter, on matters specifically provided by agreement, including a partnership agreement, and on any matter with respect to which a general partner may determine in its discretion to seek a vote of a limited partner or a class or group of limited partners if a vote on such matter is not contrary to a partnership agreement or another agreement to which a general partner or the limited partnership is a party. A limited partner and any class or group of limited partners have no other voting rights. A partnership agreement may provide that any limited partner or class or group of limited partners shall have no voting rights. Unless otherwise provided in a partnership agreement, a supermajority amendment provision shall only apply to provisions of the partnership agreement that are expressly included in the partnership agreement. As used in this section, “supermajority amendment provision” means any amendment provision set forth in a partnership agreement requiring that an amendment to a provision of the partnership agreement be adopted by no less than the vote or consent required to take action under such latter provision.

(63 Del. Laws, c. 420, § 1; 65 Del. Laws, c. 188, § 1; 66 Del. Laws, c. 316, §§ 21-23; 71 Del. Laws, c. 78, § 34; 71 Del. Laws, c. 340, §§ 12, 13; 72 Del. Laws, c. 128, § 10; 72 Del. Laws, c. 386, § 20; 73 Del. Laws, c. 73, § 19; 74 Del. Laws, c. 265, § 12; 75 Del. Laws, c. 414, § 40; 77 Del. Laws, c. 69, § 4; 78 Del. Laws, c. 97, §§ 8, 9; 79 Del. Laws, c. 326, § 2; 80 Del. Laws, c. 269, § 4; 81 Del. Laws, c. 356, § 4; 82 Del. Laws, c. 46, § 23.)

§ 17-303 Liability to third parties.

(a) A limited partner is not liable for the obligations of a limited partnership unless he or she is also a general partner or, in addition to the exercise of the rights and powers of a limited partner, he or she participates in the control of the business. However, if the limited partner does participate in the control of the business, he or she is liable only to persons who transact business with the limited partnership reasonably believing, based upon the limited partner’s conduct, that the limited partner is a general partner.

(b) A limited partner does not participate in the control of the business within the meaning of subsection (a) of this section by virtue of possessing or, regardless of whether or not the limited partner has the rights or powers, exercising or attempting to exercise 1 or more of the following rights or powers or having or, regardless of whether or not the limited partner has the rights or powers, acting or attempting to act in 1 or more of the following capacities:

(1) To be an independent contractor for or to transact business with, including being a contractor for, or to be an agent or employee of, the limited partnership or a general partner, or to be an officer, director, stockholder, or interest holder of a corporate general partner, or to be a partner or interest holder of a partnership that is a general partner of the limited partnership, or to be a trustee, administrator, executor, custodian, fiduciary, beneficiary, or interest holder of an estate or trust which is a general partner, or to be a trustee, officer, advisor, stockholder, beneficiary, beneficial owner, or interest holder of a business trust or a statutory trust which is a general partner or to be a member, manager, agent, employee, or interest holder of a limited liability company which is a general partner;

(2) To consult with or advise a general partner or any other person with respect to any matter, including the business of the limited partnership, or to act or cause a general partner or any other person to take or refrain from taking any action, including by proposing, approving, consenting or disapproving, by voting or otherwise, with respect to any matter, including the business of the limited partnership;

(3) To act as surety, guarantor or endorser for the limited partnership or a general partner, to guaranty or assume 1 or more obligations of the limited partnership or a general partner, to borrow money from the limited partnership or a general partner, to lend money to the limited partnership or a general partner, or to provide collateral for the limited partnership or a general partner;

(4) To call, request, or attend or participate at a meeting of the partners or the limited partners;

(5) To wind up a limited partnership pursuant to § 17-803 of this title;

(6) To take any action required or permitted by law to bring, pursue or settle or otherwise terminate a derivative action in the right of the limited partnership;

(7) To serve on a committee of the limited partnership or the limited partners or partners or to appoint, elect or otherwise participate in the choice of a representative or another person to serve on any such committee, and to act as a member of any such committee directly or by or through any such representative or other person;

(8) To act or cause the taking or refraining from the taking of any action, including by proposing, approving, consenting or disapproving, by voting or otherwise, with respect to 1 or more of the following matters:

a. The dissolution and winding up of the limited partnership or an election to continue the limited partnership or an election to continue the business of the limited partnership;

b. The sale, exchange, lease, mortgage, assignment, pledge or other transfer of, or granting of a security interest in, any asset or assets of the limited partnership;

c. The incurrence, renewal, refinancing or payment or other discharge of indebtedness by the limited partnership;

d. A change in the nature of the business;

e. The admission, removal or retention of a general partner;

f. The admission, removal or retention of a limited partner;

g. A transaction or other matter involving an actual or potential conflict of interest;

h. An amendment to the partnership agreement or certificate of limited partnership;

i. The merger or consolidation of a limited partnership;

j. In respect of a limited partnership which is registered as an investment company under the Investment Company Act of 1940, as amended [15 U.S.C. § 80a-1 et seq.], any matter required by the Investment Company Act of 1940, as amended, or the rules and regulations of the Securities and Exchange Commission thereunder, to be approved by the holders of beneficial interests in an investment company, including the electing of directors or trustees of the investment company, the approving or terminating of investment advisory or underwriting contracts and the approving of auditors;

k. The indemnification of any partner or other person;

l. The making of, or calling for, or the making of other determinations in connection with, contributions;

m. The making of, or the making of other determinations in connection with or concerning, investments, including investments in property, whether real, personal or mixed, either directly or indirectly, by the limited partnership;

n. The nomination, appointment, election or other manner of selection or removal of an independent contractor for, or an agent or employee of, the limited partnership or a general partner, or an officer, director or stockholder of a corporate general partner, or a partner of a partnership which is a general partner, or a trustee, administrator, executor, custodian or other fiduciary or beneficiary of an estate or trust which is a general partner, or a trustee, officer, advisor, stockholder or beneficiary of a business trust or a statutory trust which is a general partner, or a member or manager of a limited liability company which is a general partner, or a member of a governing body of, or a fiduciary for, any person, whether domestic or foreign, which is a general partner; or

o. Such other matters as are stated in the partnership agreement or in any other agreement or in writing;

(9) To serve on the board of directors or a committee of, to consult with or advise, to be an officer, director, stockholder, partner, member, manager, trustee, agent or employee of, or to be a fiduciary or contractor for, any person in which the limited partnership has an interest or any person providing management, consulting, advisory, custody or other services or products for, to or on behalf of, or otherwise having a business or other relationship with, the limited partnership or a general partner of the limited partnership; or

(10) Any right or power granted or permitted to limited partners under this chapter and not specifically enumerated in this subsection.

(c) The enumeration in subsection (b) of this section does not mean that the possession or exercise of any other powers or having or acting in other capacities by a limited partner constitutes participation by him or her in the control of the business of the limited partnership.

(d) A limited partner does not participate in the control of the business within the meaning of subsection (a) of this section by virtue of the fact that all or any part of the name of such limited partner is included in the name of the limited partnership.

(e) This section does not create rights or powers of limited partners. Such rights and powers may be created only by a certificate of limited partnership, a partnership agreement or any other agreement or in writing, or other sections of this chapter.

(f) A limited partner does not participate in the control of the business within the meaning of subsection (a) of this section regardless of the nature, extent, scope, number or frequency of the limited partner's possessing or, regardless of whether or not the limited partner has the rights or powers, exercising or attempting to exercise 1 or more of the rights or powers or having or, regardless of whether or not the limited partner has the rights or powers, acting or attempting to act in 1 or more of the capacities which are permitted under this section.

(6 Del. C. 1953, § 1707; 59 Del. Laws, c. 105, § 1; 63 Del. Laws, c. 420, § 1; 65 Del. Laws, c. 188, § 1; 66 Del. Laws, c. 316, §§ 24-34; 67 Del. Laws, c. 348, §§ 13-17; 69 Del. Laws, c. 258, §§ 28-31; 70 Del. Laws, c. 78, §§ 20, 21; 70 Del. Laws, c. 186, § 1; 73 Del. Laws, c. 329, § 23; 74 Del. Laws, c. 265, §§ 13, 14; 76 Del. Laws, c. 386, § 7; 81 Del. Laws, c. 88, § 13.)

§ 17-304 Person erroneously believing himself or herself limited partner.

(a) Except as provided in subsection (b) of this section, a person who makes a contribution to a partnership and erroneously but in good faith believes that he or she has become a limited partner in the partnership is not a general partner in the partnership and is not bound

by its obligations by reason of making the contribution, receiving distributions from the partnership or exercising any rights of a limited partner, if, within a reasonable time after ascertaining the mistake:

(1) In the case of a person who wishes to be a limited partner, he or she causes an appropriate certificate to be executed and filed; or

(2) In the case of a person who wishes to withdraw from the partnership, that person takes such action as may be necessary to withdraw.

(b) A person who makes a contribution under the circumstances described in subsection (a) of this section is liable as a general partner to any third party who transacts business with the partnership prior to the occurrence of either of the events referred to in subsection (a) of this section:

(1) If such person knew or should have known either that no certificate has been filed or that the certificate inaccurately refers to the person as a general partner; and

(2) If the third party actually believed in good faith that such person was a general partner at the time of the transaction, acted in reasonable reliance on such belief and extended credit to the partnership in reasonable reliance on the credit of such person.

(6 Del. C. 1953, § 1711; 59 Del. Laws, c. 105, § 1; 63 Del. Laws, c. 420, § 1; 65 Del. Laws, c. 188, § 1; 70 Del. Laws, c. 186, § 1.)

§ 17-305 Access to and confidentiality of information; records.

(a) Each limited partner, in person or by attorney or other agent, has the right, subject to such reasonable standards (including standards governing what information and documents are to be furnished, at what time and location and at whose expense) as may be set forth in the partnership agreement or otherwise established by the general partners, to obtain from the general partners from time to time upon reasonable demand for any purpose reasonably related to the limited partner's interest as a limited partner:

(1) True and full information regarding the status of the business and financial condition of the limited partnership;

(2) Promptly after becoming available, a copy of the limited partnership's federal, state and local income tax returns for each year;

(3) A current list of the name and last known business, residence or mailing address of each partner;

(4) A copy of any written partnership agreement and certificate of limited partnership and all amendments thereto, together with executed copies of any written powers of attorney pursuant to which the partnership agreement and any certificate and all amendments thereto have been executed;

(5) True and full information regarding the amount of cash and a description and statement of the agreed value of any other property or services contributed by each partner and which each partner has agreed to contribute in the future, and the date on which each became a partner; and

(6) Other information regarding the affairs of the limited partnership as is just and reasonable.

(b) A general partner shall have the right to keep confidential from limited partners for such period of time as the general partner deems reasonable, any information which the general partner reasonably believes to be in the nature of trade secrets or other information the disclosure of which the general partner in good faith believes is not in the best interest of the limited partnership or could damage the limited partnership or its business or which the limited partnership is required by law or by agreement with a third party to keep confidential.

(c) A limited partnership may maintain its records in other than paper form, including on, by means of, or in the form of any information storage device, method, or 1 or more electronic networks or databases (including 1 or more distributed electronic networks or databases), if such form is capable of conversion into paper form within a reasonable time.

(d) Any demand under this section shall be in writing and shall state the purpose of such demand. In every instance where an attorney or other agent shall be the person who seeks the right to obtain the information described in subsection (a) of this section, the demand shall be accompanied by a power of attorney or such other writing which authorizes the attorney or other agent to so act on behalf of the limited partner.

(e) Any action to enforce any right arising under this section shall be brought in the Court of Chancery. If a general partner refuses to permit a limited partner, or attorney or other agent acting for the limited partner, to obtain from the general partner the information described in subsection (a) of this section or does not reply to the demand that has been made within 5 business days (or such shorter or longer period of time as is provided for in a partnership agreement but not longer than 30 business days) after the demand has been made, the limited partner may apply to the Court of Chancery for an order to compel such disclosure. The Court of Chancery is hereby vested with exclusive jurisdiction to determine whether or not the person seeking such information is entitled to the information sought. The Court of Chancery may summarily order the general partner to permit the limited partner to obtain the information described in subsection (a) of this section and to make copies or abstracts therefrom, or the Court of Chancery may summarily order the general partner to furnish to the limited partner the information described in subsection (a) of this section on the condition that the limited partner first pay to the limited partnership the reasonable cost of obtaining and furnishing such information and on such other conditions as the Court of Chancery deems appropriate. When a limited partner seeks to obtain the information described in subsection (a) of this section, the limited partner shall first establish: (1) that the limited partner has complied with the provisions of this section respecting the form and manner of making demand for obtaining such information, and (2) that the information the limited partner seeks is reasonably related to the limited partner's interest as a limited partner. The Court of Chancery may, in its discretion, prescribe any limitations or conditions

with reference to the obtaining of information, or award such other or further relief as the Court of Chancery may deem just and proper. The Court of Chancery may order books, documents and records, pertinent extracts therefrom, or duly authenticated copies thereof, to be brought within the State of Delaware and kept in the State of Delaware upon such terms and conditions as the order may prescribe.

(f) The rights of a limited partner to obtain information as provided in this section may be restricted in an original partnership agreement or in any subsequent amendment approved or adopted by all of the partners or in compliance with any applicable requirements of the partnership agreement. The provisions of this subsection shall not be construed to limit the ability to impose restrictions on the rights of a limited partner to obtain information by any other means permitted under this chapter.

(g) A limited partnership shall maintain a current record that identifies the name and last known business, residence, or mailing address of each partner.

(6 Del. C. 1953, § 1710; 59 Del. Laws, c. 105, § 1; 63 Del. Laws, c. 420, § 1; 65 Del. Laws, c. 188, § 1; 66 Del. Laws, c. 316, § 35; 70 Del. Laws, c. 362, § 15; 73 Del. Laws, c. 73, § 20; 77 Del. Laws, c. 288, §§ 22, 23; 79 Del. Laws, c. 326, § 3; 81 Del. Laws, c. 356, § 5; 82 Del. Laws, c. 258, § 12.)

§ 17-306 Remedies for breach of partnership agreement by limited partner.

A partnership agreement may provide that:

(1) A limited partner who fails to perform in accordance with, or to comply with the terms and conditions of, the partnership agreement shall be subject to specified penalties or specified consequences; and

(2) At the time or upon the happening of events specified in the partnership agreement, a limited partner shall be subject to specified penalties or specified consequences.

Such specified penalties or specified consequences may include and take the form of any penalty or consequence set forth in § 17-502(c) of this title.

(67 Del. Laws, c. 348, § 18; 73 Del. Laws, c. 73, § 21.)

Subchapter IV

General Partners

§ 17-401 Admission of general partners.

(a) A person may be admitted to a limited partnership as a general partner of the limited partnership and may receive a partnership interest in the limited partnership without making a contribution or being obligated to make a contribution to the limited partnership. Unless otherwise provided in a partnership agreement, a person may be admitted to a limited partnership as a general partner of the limited partnership without acquiring a partnership interest in the limited partnership. Unless otherwise provided in a partnership agreement, a person may be admitted as the sole general partner of a limited partnership without making a contribution or being obligated to make a contribution to the limited partnership or without acquiring a partnership interest in the limited partnership. Nothing contained in this subsection shall affect the first sentence of § 17-403(b) of this title.

(b) After the filing of a limited partnership's initial certificate of limited partnership, unless otherwise provided in the partnership agreement, additional general partners may be admitted only with the consent of each partner.

(c) Unless otherwise provided in a partnership agreement or another agreement, a general partner shall have no preemptive right to subscribe to any additional issue of partnership interests or another interest in a limited partnership.

(63 Del. Laws, c. 420, § 1; 65 Del. Laws, c. 188, § 1; 66 Del. Laws, c. 316, § 37; 67 Del. Laws, c. 348, § 19; 69 Del. Laws, c. 258, § 32; 71 Del. Laws, c. 78, § 35; 73 Del. Laws, c. 297, § 8; 80 Del. Laws, c. 269, § 5.)

§ 17-402 Events of withdrawal.

(a) A person ceases to be a general partner of a limited partnership upon the happening of any of the following events:

(1) The general partner withdraws from the limited partnership as provided in § 17-602 of this title;

(2) The general partner ceases to be a general partner of the limited partnership as provided in § 17-702 of this title;

(3) The general partner is removed as a general partner in accordance with the partnership agreement;

(4) Unless otherwise provided in the partnership agreement, or with the consent of all partners, the general partner:

a. Makes an assignment for the benefit of creditors;

b. Files a voluntary petition in bankruptcy;

c. Is adjudged a bankrupt or insolvent, or has entered against him or her an order for relief in any bankruptcy or insolvency proceeding;

d. Files a petition or answer seeking for himself or herself any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any statute, law or regulation;

e. Files an answer or other pleading admitting or failing to contest the material allegations of a petition filed against him or her in any proceeding of this nature; or

f. Seeks, consents to or acquiesces in the appointment of a trustee, receiver or liquidator of the general partner or of all or any substantial part of his or her properties;

(5) Unless otherwise provided in the partnership agreement, or with the consent of all partners, 120 days after the commencement of any proceeding against the general partner seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any statute, law or regulation, the proceeding has not been dismissed, or if within 90 days after the appointment without the general partner's consent or acquiescence of a trustee, receiver or liquidator of the general partner or of all or any substantial part of his or her properties, the appointment is not vacated or stayed, or within 90 days after the expiration of any such stay, the appointment is not vacated;

(6) In the case of a general partner who is a natural person:

a. The general partner's death; or

b. The entry by a court of competent jurisdiction adjudicating the general partner incompetent to manage his or her person or property;

(7) In the case of a general partner who is acting as a general partner by virtue of being a trustee of a trust, the termination of the trust (but not merely the substitution of a new trustee);

(8) In the case of a general partner that is a separate partnership, the dissolution and commencement of winding up of the separate partnership;

(9) In the case of a general partner that is a corporation, the filing of a certificate of dissolution, or its equivalent, for the corporation or the revocation of its charter and the expiration of 90 days after the date of notice to the corporation of revocation without a reinstatement of its charter;

(10) Unless otherwise provided in the partnership agreement, or with the consent of all partners, in the case of a general partner that is an estate, the distribution by the fiduciary of the estate's entire interest in the limited partnership;

(11) In the case of a general partner that is a limited liability company, the dissolution and commencement of winding up of the limited liability company; or

(12) In the case of a general partner who is not an individual, partnership, limited liability company, corporation, trust or estate, the termination of the general partner.

(b) A general partner who suffers an event that with the passage of the specified period becomes an event of withdrawal under paragraph (a)(4) or (5) of this section shall notify each other general partner, or in the event that there is no other general partner, each limited partner, of the occurrence of the event within 30 days after the date of occurrence of the event of withdrawal.

(6 Del. C. 1953, § 1720; 59 Del. Laws, c. 105, § 1; 63 Del. Laws, c. 420, § 1; 65 Del. Laws, c. 188, § 1; 66 Del. Laws, c. 316, §§ 38-43; 69 Del. Laws, c. 258, § 33; 70 Del. Laws, c. 186, § 1; 72 Del. Laws, c. 128, § 11; 80 Del. Laws, c. 269, § 6.)

§ 17-403 General powers and liabilities.

(a) Except as provided in this chapter or in the partnership agreement, a general partner of a limited partnership has the rights and powers and is subject to the restrictions of a partner in a partnership that is governed by the Delaware Uniform Partnership Law in effect on July 11, 1999 (6 Del. C. § 1501 et seq.).

(b) Except as provided in this chapter, a general partner of a limited partnership has the liabilities of a partner in a partnership that is governed by the Delaware Uniform Partnership Law in effect on July 11, 1999 (6 Del. C. § 1501 et seq.) to persons other than the partnership and the other partners. Except as provided in this chapter or in the partnership agreement, a general partner of a limited partnership has the liabilities of a partner in a partnership that is governed by the Delaware Uniform Partnership Law in effect on July 11, 1999 (6 Del. C. § 1501 et seq.) to the partnership and to the other partners.

(c) Unless otherwise provided in the partnership agreement, a general partner of a limited partnership has the power and authority to delegate to 1 or more other persons any or all of the general partner's rights, powers and duties to manage and control the business and affairs of the limited partnership. Any such delegation may be to agents, officers, and employees of the general partner or the limited partnership and by a management agreement or another agreement with, or otherwise to, other persons. Unless otherwise provided in the partnership agreement, such delegation by a general partner of a limited partnership shall be irrevocable if it states that it is irrevocable. Unless otherwise provided in the partnership agreement, such delegation by a general partner of a limited partnership shall not cause the general partner to cease to be a general partner of the limited partnership or cause the person to whom any such rights, powers and duties have been delegated to be a general partner of the limited partnership. No other provision of this chapter shall be construed to restrict a general partner's power and authority to delegate any or all of its rights, powers, and duties to manage and control the business and affairs of the limited partnership.

(d) A judgment creditor of a general partner of a limited partnership may not levy execution against the assets of the general partner to satisfy a judgment based on a claim against the limited partnership unless:

(1) A judgment based on the same claim has been obtained against the limited partnership and a writ of execution on the judgment has been returned unsatisfied in whole or in part;

(2) The limited partnership is a debtor in bankruptcy;

(3) The general partner has agreed that the creditor need not exhaust the assets of the limited partnership;

(4) A court grants permission to the judgment creditor to levy execution against the assets of the general partner based on a finding that the assets of the limited partnership that are subject to execution are clearly insufficient to satisfy the judgment, that exhaustion of the assets of the limited partnership is excessively burdensome, or that the grant of permission is an appropriate exercise of the court's equitable powers; or

(5) Liability is imposed on the general partner by law or contract independent of the existence of the limited partnership.

(6 Del. C. 1953, § 1709; 59 Del. Laws, c. 105, § 1; 63 Del. Laws, c. 420, § 1; 65 Del. Laws, c. 188, § 1; 69 Del. Laws, c. 258, § 34; 71 Del. Laws, c. 78, § 36; 73 Del. Laws, c. 73, §§ 22, 23; 73 Del. Laws, c. 297, § 9; 80 Del. Laws, c. 44, § 9; 81 Del. Laws, c. 88, § 14.)

§ 17-404 Contributions by a general partner.

A general partner of a limited partnership may make contributions to the limited partnership and share in the profits and losses of, and in distributions from, the limited partnership as a general partner. A general partner also may make contributions to and share in profits, losses and distributions as a limited partner. A person who is both a general partner and a limited partner has the rights and powers, and is subject to the restrictions and liabilities, of a general partner and, except as provided in the partnership agreement, also has the rights and powers, and is subject to the restrictions, of a limited partner to the extent of his or her participation in the partnership as a limited partner.

(63 Del. Laws, c. 420, § 1; 65 Del. Laws, c. 188, § 1; 70 Del. Laws, c. 186, § 1.)

§ 17-405 Classes and voting.

(a) A partnership agreement may provide for classes or groups of general partners having such relative rights, powers and duties as the partnership agreement may provide, and may make provision for the future creation in the manner provided in the partnership agreement of additional classes or groups of general partners having such relative rights, powers and duties as may from time to time be established, including rights, powers and duties senior to existing classes and groups of general partners.

A partnership agreement may provide for the taking of an action, including the amendment of the partnership agreement, without the vote or approval of any general partner or class or group of general partners, including an action to create under the provisions of the partnership agreement a class or group of partnership interests that was not previously outstanding.

(b) The partnership agreement may grant to all or certain identified general partners or a specified class or group of the general partners the right to vote, separately or with all or any class or group of the limited partners or the general partners, on any matter. Voting by general partners may be on a per capita, number, financial interest, class, group or any other basis.

(c) A partnership agreement may set forth provisions relating to notice of the time, place or purpose of any meeting at which any matter is to be voted on by any general partner, waiver of any such notice, action by consent without a meeting, the establishment of a record date, quorum requirements, voting in person or by proxy, or any other matter with respect to the exercise of any such right to vote.

(d) Unless otherwise provided in a partnership agreement, meetings of general partners may be held by means of conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other, and participation in a meeting pursuant to this subsection shall constitute presence in person at the meeting. Unless otherwise provided in a partnership agreement, on any matter that is to be voted on, consented to or approved by general partners, the general partners may take such action without a meeting, without prior notice and without a vote if consented to or approved, in writing, by electronic transmission or by any other means permitted by law, by general partners having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all general partners entitled to vote thereon were present and voted. Unless otherwise provided in a partnership agreement, if a person (whether or not then a general partner) consenting as a general partner to any matter provides that such consent will be effective at a future time (including a time determined upon the happening of an event), then such person shall be deemed to have consented as a general partner at such future time so long as such person is then a general partner. Unless otherwise provided in a partnership agreement, on any matter that is to be voted on by general partners, the general partners may vote in person or by proxy, and such proxy may be granted in writing, by means of electronic transmission or as otherwise permitted by applicable law. Unless otherwise provided in a partnership agreement, a consent transmitted by electronic transmission by a general partner or by a person or persons authorized to act for a general partner shall be deemed to be written and signed for purposes of this subsection (d).

(63 Del. Laws, c. 420, § 1; 65 Del. Laws, c. 188, § 1; 66 Del. Laws, c. 316, §§ 44, 45; 71 Del. Laws, c. 78, § 37; 71 Del. Laws, c. 340, § 14; 72 Del. Laws, c. 386, § 21; 73 Del. Laws, c. 73, § 24; 75 Del. Laws, c. 414, § 41; 78 Del. Laws, c. 97, § 10; 79 Del. Laws, c. 326, § 4; 80 Del. Laws, c. 269, § 7; 81 Del. Laws, c. 356, § 6; 82 Del. Laws, c. 46, § 24.)

§ 17-406 Remedies for breach of partnership agreement by general partner.

A partnership agreement may provide that (1) a general partner who fails to perform in accordance with, or to comply with the terms and conditions of, the partnership agreement shall be subject to specified penalties or specified consequences, and (2) at the time or upon the happening of events specified in the partnership agreement, a general partner shall be subject to specified penalties or specified consequences. Such specified penalties or specified consequences may include and take the form of any penalty or consequence set forth in § 17-502(c) of this title.

(67 Del. Laws, c. 348, § 20; 73 Del. Laws, c. 73, § 25.)

§ 17-407 Reliance on reports and information by limited partners, liquidating trustees, and general partners.

(a) A limited partner or liquidating trustee of a limited partnership shall be fully protected in relying in good faith upon the records of the limited partnership and upon information, opinions, reports or statements presented by a general partner of the limited partnership, an officer or employee of a general partner of the limited partnership, another liquidating trustee, or committees of the limited partnership, limited partners or partners, or by any other person as to matters the limited partner or liquidating trustee reasonably believes are within such other person's professional or expert competence, including information, opinions, reports or statements as to the value and amount of the assets, liabilities, profits or losses of the limited partnership, or the value and amount of assets or reserves or contracts, agreements or other undertakings that would be sufficient to pay claims and obligations of the limited partnership or to make reasonable provision to pay such claims and obligations, or any other facts pertinent to the existence and amount of assets from which distributions to partners or creditors might properly be paid.

(b) A general partner of a limited liability limited partnership shall be fully protected in relying in good faith upon the records of the limited partnership and upon information, opinions, reports or statements presented by another general partner of the limited partnership, an officer or employee of the limited partnership, a liquidating trustee, or committees of the limited partnership, limited partners or partners, or by any other person as to matters the general partner reasonably believes are within such other person's professional or expert competence, including information, opinions, reports or statements as to the value and amount of the assets, liabilities, profits or losses of the limited partnership, or the value and amount of assets or reserves or contracts, agreements or other undertakings that would be sufficient to pay claims and obligations of the limited partnership or to make reasonable provision to pay such claims and obligations, or any other facts pertinent to the existence and amount of assets from which distributions to partners or creditors might properly be paid.

(c) A general partner of a limited partnership that is not a limited liability limited partnership shall be fully protected from liability to the limited partnership, its partners or other persons party to or otherwise bound by the partnership agreement in relying in good faith upon the records of the limited partnership and upon information, opinions, reports or statements presented by another general partner of the limited partnership, an officer or employee of the limited partnership, a liquidating trustee, or committees of the limited partnership, limited partners or partners, or by any other person as to matters the general partner reasonably believes are within such other person's professional or expert competence, including information, opinions, reports or statements as to the value and amount of the assets, liabilities, profits or losses of the limited partnership, or the value and amount of assets or reserves or contracts, agreements or other undertakings that would be sufficient to pay claims and obligations of the limited partnership or to make reasonable provision to pay such claims and obligations, or any other facts pertinent to the existence and amount of assets from which distributions to partners or creditors might properly be paid.

(75 Del. Laws, c. 31, § 9.)

Subchapter V
Finance

§ 17-501 Form of contribution.

The contribution of a partner may be in cash, property or services rendered, or a promissory note or other obligation to contribute cash or property or to perform services.

(6 Del. C. 1953, § 1704; 59 Del. Laws, c. 105, § 1; 63 Del. Laws, c. 420, § 1; 65 Del. Laws, c. 188, § 1.)

§ 17-502 Liability for contribution.

(a) (1) Except as provided in the partnership agreement, a partner is obligated to the limited partnership to perform any promise to contribute cash or property or to perform services, even if that partner is unable to perform because of death, disability or any other reason. If a partner does not make the required contribution of property or services, he or she is obligated at the option of the limited partnership to contribute cash equal to that portion of the agreed value (as stated in the records of the limited partnership) of the contribution that has not been made.

(2) The foregoing option shall be in addition to, and not in lieu of, any other rights, including the right to specific performance, that the limited partnership may have against such partner under the partnership agreement or applicable law.

(b) (1) Unless otherwise provided in the partnership agreement, the obligation of a partner to make a contribution or return money or other property paid or distributed in violation of this chapter may be compromised only by consent of all the partners. Notwithstanding the compromise, a creditor of a limited partnership who extends credit, after the entering into of a partnership agreement or an amendment thereto which, in either case, reflects the obligation, and before the amendment thereof to reflect the compromise, may enforce the original obligation to the extent that, in extending credit, the creditor reasonably relied on the obligation of a partner to make a contribution or return.

(2) A conditional obligation of a partner to make a contribution or return money or other property to a limited partnership may not be enforced unless the conditions to the obligation have been satisfied or waived as to or by such partner. Conditional obligations include contributions payable upon a discretionary call of a limited partnership or a general partner prior to the time the call occurs.

(c) A partnership agreement may provide that the interest of any partner who fails to make any contribution that he or she is obligated to make shall be subject to specified penalties for, or specified consequences of, such failure. Such penalty or consequence may take the

form of reducing or eliminating the defaulting partner's proportionate interest in the limited partnership, subordinating the partnership interest to that of nondefaulting partners, a forced sale of his or her partnership interest, forfeiture of that partnership interest, the lending by other partners of the amount necessary to meet his or her commitment, a fixing of the value of that partnership interest by appraisal or by formula and redemption or sale of the partnership interest at such value, or other penalty or consequence.

(6 Del. C. 1953, § 1717; 59 Del. Laws, c. 105, § 1; 63 Del. Laws, c. 420, § 1; 65 Del. Laws, c. 188, § 1; 66 Del. Laws, c. 316, §§ 46-49; 70 Del. Laws, c. 186, § 1.)

§ 17-503 Allocation of profits and losses.

The profits and losses of a limited partnership shall be allocated among the partners, and among classes or groups of partners, in the manner provided in the partnership agreement. If the partnership agreement does not so provide, profits and losses shall be allocated on the basis of the agreed value (as stated in the records of the limited partnership) of the contributions made by each partner to the extent they have been received by the limited partnership and have not been returned.

(6 Del. C. 1953, § 1723; 59 Del. Laws, c. 105, § 1; 63 Del. Laws, c. 420, § 1; 65 Del. Laws, c. 188, § 1.)

§ 17-504 Allocation of distributions.

Distributions of cash or other assets of a limited partnership shall be allocated among the partners, and among classes or groups of partners, in the manner provided in the partnership agreement. If the partnership agreement does not so provide, distributions shall be made on the basis of the agreed value (as stated in the records of the limited partnership) of the contributions made by each partner to the extent they have been received by the limited partnership and have not been returned.

(6 Del. C. 1953, § 1723; 59 Del. Laws, c. 105, § 1; 63 Del. Laws, c. 420, § 1; 65 Del. Laws, c. 188, § 1.)

§ 17-505 Defense of usury not available.

No obligation of a partner of a limited partnership to the limited partnership, or to a partner of the limited partnership, arising under the partnership agreement or a separate agreement or writing, and no note, instrument or other writing evidencing any such obligation of a partner, shall be subject to the defense of usury, and no partner shall interpose the defense of usury with respect to any such obligation in any action.

(69 Del. Laws, c. 258, § 35; 78 Del. Laws, c. 272, § 7.)

Subchapter VI
Distributions and Withdrawal

§ 17-601 Interim distributions.

Except as provided in this subchapter, to the extent and at the times or upon the happening of the events specified in the partnership agreement, a partner is entitled to receive from a limited partnership distributions before withdrawing from the limited partnership and before the dissolution and winding up thereof.

(63 Del. Laws, c. 420, § 1; 65 Del. Laws, c. 188, § 1; 66 Del. Laws, c. 316, § 50; 70 Del. Laws, c. 186, § 1.)

§ 17-602 Withdrawal of general partner and assignment of general partner's partnership interest.

(a) A general partner may withdraw from a limited partnership at the time or upon the happening of events specified in the partnership agreement and in accordance with the partnership agreement. A partnership agreement may provide that a general partner shall not have the right to withdraw as a general partner of a limited partnership. Notwithstanding that a partnership agreement provides that a general partner does not have the right to withdraw as a general partner of a limited partnership, a general partner may withdraw from a limited partnership at any time by giving written notice to the other partners. If the withdrawal of a general partner violates a partnership agreement, in addition to any remedies otherwise available under applicable law, the limited partnership may recover from the withdrawing general partner damages for breach of the partnership agreement and offset the damages against the amount otherwise distributable to the withdrawing general partner.

(b) Notwithstanding anything to the contrary set forth in this chapter, a partnership agreement may provide that a general partner may not assign a partnership interest in a limited partnership prior to the dissolution and winding up of the limited partnership.

(63 Del. Laws, c. 420, § 1; 65 Del. Laws, c. 188, § 1; 66 Del. Laws, c. 316, § 51; 67 Del. Laws, c. 348, § 21.)

§ 17-603 Withdrawal of limited partner.

A limited partner may withdraw from a limited partnership only at the time or upon the happening of events specified in the partnership agreement and in accordance with the partnership agreement. Notwithstanding anything to the contrary under applicable law, unless a partnership agreement provides otherwise, a limited partner may not withdraw from a limited partnership prior to the dissolution and winding up of the limited partnership. Notwithstanding anything to the contrary under applicable law, a partnership agreement may provide that a partnership interest may not be assigned prior to the dissolution and winding up of the limited partnership.

Unless otherwise provided in a partnership agreement, a limited partnership whose original certificate of limited partnership was filed with the Secretary of State and effective on or prior to July 31, 1996, shall continue to be governed by this section as in effect on July 31, 1996.

(6 Del. C. 1953, § 1716; 59 Del. Laws, c. 105, § 1; 63 Del. Laws, c. 420, § 1; 65 Del. Laws, c. 188, § 1; 66 Del. Laws, c. 316, § 52; 69 Del. Laws, c. 258, § 36; 70 Del. Laws, c. 362, § 16; 80 Del. Laws, c. 44, § 10.)

§ 17-604 Distribution upon withdrawal.

Except as provided in this subchapter, upon withdrawal any withdrawing partner is entitled to receive any distribution to which such partner is entitled under a partnership agreement and, if not otherwise provided in a partnership agreement, such partner is entitled to receive, within a reasonable time after withdrawal, the fair value of such partner's partnership interest in the limited partnership as of the date of withdrawal based upon such partner's right to share in distributions from the limited partnership.

(6 Del. C. 1953, § 1716; 59 Del. Laws, c. 105, § 1; 63 Del. Laws, c. 420, § 1; 65 Del. Laws, c. 188, § 1; 71 Del. Laws, c. 340, § 15; 72 Del. Laws, c. 128, § 12.)

§ 17-605 Distribution in kind.

Except as provided in the partnership agreement, a partner, regardless of the nature of the partner's contribution, has no right to demand and receive any distribution from a limited partnership in any form other than cash. Except as provided in the partnership agreement, a partner may not be compelled to accept a distribution of any asset in kind from a limited partnership to the extent that the percentage of the asset distributed exceeds a percentage of that asset which is equal to the percentage in which the partner shares in distributions from the limited partnership. Except as provided in the partnership agreement, a partner may be compelled to accept a distribution of any asset in kind from a limited partnership to the extent that the percentage of the asset distributed is equal to a percentage of that asset which is equal to the percentage in which the partner shares in distributions from the limited partnership.

(6 Del. C. 1953, § 1716; 59 Del. Laws, c. 105, § 1; 63 Del. Laws, c. 420, § 1; 65 Del. Laws, c. 188, § 1; 69 Del. Laws, c. 258, § 37; 70 Del. Laws, c. 186, § 1.)

§ 17-606 Right to distribution.

(a) Subject to §§ 17-607 and 17-804 of this title, and unless otherwise provided in the partnership agreement, at the time a partner becomes entitled to receive a distribution, he or she has the status of, and is entitled to all remedies available to, a creditor of the limited partnership with respect to the distribution.

(b) A partnership agreement may provide for the establishment of a record date with respect to allocations and distributions by a limited partnership.

(6 Del. C. 1953, § 1716; 59 Del. Laws, c. 105, § 1; 63 Del. Laws, c. 420, § 1; 65 Del. Laws, c. 188, § 1; 66 Del. Laws, c. 316, §§ 53, 54; 70 Del. Laws, c. 186, § 1.)

§ 17-607 Limitations on distribution.

(a) A limited partnership shall not make a distribution to a partner to the extent that at the time of the distribution, after giving effect to the distribution, all liabilities of the limited partnership, other than liabilities to partners on account of their partnership interests and liabilities for which the recourse of creditors is limited to specified property of the limited partnership, exceed the fair value of the assets of the limited partnership, except that the fair value of property that is subject to a liability for which the recourse of creditors is limited shall be included in the assets of the limited partnership only to the extent that the fair value of that property exceeds that liability. For purposes of this subsection (a), the term "distribution" shall not include amounts constituting reasonable compensation for present or past services or reasonable payments made in the ordinary course of business pursuant to a bona fide retirement plan or other benefits program.

(b) A limited partner who receives a distribution in violation of subsection (a) of this section, and who knew at the time of the distribution that the distribution violated subsection (a) of this section, shall be liable to the limited partnership for the amount of the distribution. A limited partner who receives a distribution in violation of subsection (a) of this section, and who did not know at the time of the distribution that the distribution violated subsection (a) of this section, shall not be liable for the amount of the distribution. Subject to subsection (c) of this section, this subsection shall not affect any obligation or liability of a limited partner under an agreement or other applicable law for the amount of a distribution.

(c) Unless otherwise agreed, a limited partner who receives a distribution from a limited partnership shall have no liability under this chapter or other applicable law for the amount of the distribution after the expiration of 3 years from the date of the distribution.

(6 Del. C. 1953, § 1716; 59 Del. Laws, c. 105, § 1; 63 Del. Laws, c. 420, § 1; 65 Del. Laws, c. 188, § 1; 66 Del. Laws, c. 316, § 55; 69 Del. Laws, c. 258, § 38; 72 Del. Laws, c. 386, § 22.)

§ 17-608 Liability upon return of contribution.

Repealed by 66 Del. Laws, c. 316, § 56, eff. Sept. 1, 1988.

Subchapter VII

Assignment of Partnership Interests

§ 17-701 Nature of partnership interest.

A partnership interest is personal property. A partner has no interest in specific limited partnership property.

(6 Del. C. 1953, § 1718; 59 Del. Laws, c. 105, § 1; 63 Del. Laws, c. 420, § 1; 65 Del. Laws, c. 188, § 1.)

§ 17-702 Assignment of partnership interest.

(a) Unless otherwise provided in the partnership agreement:

(1) A partnership interest is assignable in whole or in part;

(2) An assignment of a partnership interest does not dissolve a limited partnership or entitle the assignee to become or to exercise any rights or powers of a partner;

(3) An assignment of a partnership interest entitles the assignee to share in such profits and losses, to receive such distribution or distributions, and to receive such allocation of income, gain, loss, deduction, or credit or similar item to which the assignor was entitled, to the extent assigned; and

(4) A partner ceases to be a partner and to have the power to exercise any rights or powers of a partner upon assignment of all of its partnership interests. Unless otherwise provided in a partnership agreement, the pledge of, or granting of a security interest, lien or other encumbrance in or against, any or all of the partnership interest of a partner shall not cause the partner to cease to be a partner or to have the power to exercise any rights or powers of a partner.

(b) Unless otherwise provided in a partnership agreement, a partner's interest in a limited partnership may be evidenced by a certificate of partnership interest issued by the limited partnership. A partnership agreement may provide for the assignment or transfer of any partnership interest represented by such a certificate and make other provisions with respect to such certificates. A limited partnership shall not have the power to issue a certificate of partnership interest in bearer form.

(c) Unless otherwise provided in a partnership agreement and except to the extent assumed by agreement, until an assignee of a partnership interest becomes a partner, the assignee shall have no liability as a partner solely as a result of the assignment.

(d) Unless otherwise provided in the partnership agreement, a limited partnership may acquire, by purchase, redemption or otherwise, any partnership interest or other interest of a partner in the limited partnership. Unless otherwise provided in the partnership agreement, any such interest so acquired by the limited partnership shall be deemed canceled.

(6 Del. C. 1953, § 1719; 59 Del. Laws, c. 105, § 1; 59 Del. Laws, c. 442, § 2; 63 Del. Laws, c. 420, § 1; 65 Del. Laws, c. 188, § 1; 66 Del. Laws, c. 316, § 57; 67 Del. Laws, c. 348, § 22; 69 Del. Laws, c. 258, §§ 39, 40; 70 Del. Laws, c. 186, § 1; 73 Del. Laws, c. 73, § 26; 76 Del. Laws, c. 104, § 34.)

§ 17-703 Partner's partnership interest subject to charging order.

(a) On application by a judgment creditor of a partner or of a partner's assignee, a court having jurisdiction may charge the partnership interest of the judgment debtor to satisfy the judgment. To the extent so charged, the judgment creditor has only the right to receive any distribution or distributions to which the judgment debtor would otherwise have been entitled in respect of such partnership interest.

(b) A charging order constitutes a lien on the judgment debtor's partnership interest.

(c) This chapter does not deprive a partner or partner's assignee of a right under exemption laws with respect to the judgment debtor's partnership interest.

(d) The entry of a charging order is the exclusive remedy by which a judgment creditor of a partner or of a partner's assignee may satisfy a judgment out of the judgment debtor's partnership interest and attachment, garnishment, foreclosure or other legal or equitable remedies are not available to the judgment creditor.

(e) No creditor of a partner or of a partner's assignee shall have any right to obtain possession of, or otherwise exercise legal or equitable remedies with respect to, the property of the limited partnership.

(f) The Court of Chancery shall have jurisdiction to hear and determine any matter relating to any such charging order.

(6 Del. C. 1953, § 1722; 59 Del. Laws, c. 105, § 1; 63 Del. Laws, c. 420, § 1; 65 Del. Laws, c. 188, § 1; 70 Del. Laws, c. 186, § 1; 72 Del. Laws, c. 386, § 23; 75 Del. Laws, c. 31, §§ 10-16; 79 Del. Laws, c. 73, § 9.)

§ 17-704 Right of assignee to become limited partner.

(a) An assignee of a partnership interest, including an assignee of a general partner, becomes a limited partner:

(1) As provided in the partnership agreement; or

(2) Unless otherwise provided in the partnership agreement, upon the vote or consent of all partners.

(b) An assignee who has become a limited partner has, to the extent assigned, the rights and powers, and is subject to the restrictions and liabilities, of a limited partner under the partnership agreement and this chapter. Notwithstanding the foregoing, unless otherwise provided in the partnership agreement, an assignee who becomes a limited partner is liable for the obligations of his or her assignor to make contributions as provided in § 17-502 of this title, but shall not be liable for the obligations of the assignor under subchapter VI of this chapter. However, the assignee is not obligated for liabilities, including the obligations of the assignor to make contributions as provided in § 17-502 of this title, unknown to the assignee at the time the assignee became a limited partner and which could not be ascertained from the partnership agreement.

(c) Whether or not an assignee of a partnership interest becomes a limited partner, the assignor is not released from liability to the limited partnership under subchapters V and VI of this chapter.

(63 Del. Laws, c. 420, § 1; 65 Del. Laws, c. 188, § 1; 66 Del. Laws, c. 316, §§ 58, 59; 70 Del. Laws, c. 186, § 1; 77 Del. Laws, c. 288, § 24; 80 Del. Laws, c. 269, § 8.)

§ 17-705 Powers of estate of deceased or incompetent partner.

If a partner who is an individual dies or a court of competent jurisdiction adjudges the partner to be incompetent to manage the partner's person or property, the partner's personal representative may exercise all of the partner's rights for the purpose of settling the partner's estate or administering the partner's property, including any power under the partnership agreement of an assignee to become a limited partner. If a partner is a corporation, trust or other entity and is dissolved or terminated, the powers of that partner may be exercised by its personal representative.

(6 Del. C. 1953, § 1721; 59 Del. Laws, c. 105, § 1; 63 Del. Laws, c. 420, § 1; 65 Del. Laws, c. 188, § 1; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 78, § 38.)

Subchapter VIII
Dissolution

§ 17-801 Nonjudicial dissolution.

A limited partnership is dissolved and its affairs shall be wound up upon the first to occur of the following:

(1) At the time specified in a partnership agreement, but if no such time is set forth in the partnership agreement, then the limited partnership shall have a perpetual existence;

(2) Unless otherwise provided in a partnership agreement, upon the vote or consent of (i) all general partners and (ii) limited partners who own more than 2/3 of the then-current percentage or other interest in the profits of the limited partnership owned by all of the limited partners;

(3) An event of withdrawal of a general partner unless at the time there is at least 1 other general partner and the partnership agreement permits the business of the limited partnership to be carried on by the remaining general partner and that partner does so, but the limited partnership is not dissolved and is not required to be wound up by reason of any event of withdrawal if (i) within 90 days or such other period as is provided for in a partnership agreement after the withdrawal either (A) if provided for in the partnership agreement, the then-current percentage or other interest in the profits of the limited partnership specified in the partnership agreement owned by the remaining partners agree or vote to continue the business of the limited partnership and to appoint, effective as of the date of withdrawal, 1 or more additional general partners if necessary or desired, or (B) if no such right to agree or vote to continue the business of the limited partnership and to appoint 1 or more additional general partners is provided for in the partnership agreement, then more than 50 percent of the then-current percentage or other interest in the profits of the limited partnership owned by the remaining partners agree or vote to continue the business of the limited partnership and to appoint, effective as of the date of withdrawal, 1 or more additional general partners if necessary or desired, or (ii) the business of the limited partnership is continued pursuant to a right to continue stated in the partnership agreement and the appointment, effective as of the date of withdrawal, of 1 or more additional general partners if necessary or desired;

(4) At the time there are no limited partners; provided, that the limited partnership is not dissolved and is not required to be wound up if:

a. Unless otherwise provided in a partnership agreement, within 90 days or such other period as is provided for in the partnership agreement after the occurrence of the event that caused the last remaining limited partner to cease to be a limited partner, the personal representative of the last remaining limited partner and all of the general partners agree or vote to continue the business of the limited partnership and to the admission of the personal representative of such limited partner or its nominee or designee to the limited partnership as a limited partner, effective as of the occurrence of the event that caused the last remaining limited partner to cease to be a limited partner; provided, that a partnership agreement may provide that the general partners or the personal representative of the last remaining limited partner shall be obligated to agree to continue the business of the limited partnership and to the admission of the personal representative of such limited partner or its nominee or designee to the limited partnership as a limited partner, effective as of the occurrence of the event that caused the last limited partner to cease to be a limited partner; or

b. A limited partner is admitted to the limited partnership in the manner provided for in the partnership agreement, effective as of the occurrence of the event that caused the last remaining limited partner to cease to be a limited partner, within 90 days or such other period as is provided for in the partnership agreement after the occurrence of the event that caused the last remaining limited partner to cease to be a limited partner, pursuant to a provision of the partnership agreement that specifically provides for the admission of a limited partner to the limited partnership after there is no longer a remaining limited partner of the limited partnership.

(5) Upon the happening of events specified in a partnership agreement; or

(6) Entry of a decree of judicial dissolution under § 17-802 of this title.

Unless otherwise provided in a partnership agreement, a limited partnership whose original certificate of limited partnership was filed with the Secretary of State and effective on or prior to July 31, 2015, shall continue to be governed by clause (ii) of paragraph (2) of this section and clause (i)(B) of paragraph (3) of this section as in effect on July 31, 2015 (except that "in writing" shall be deleted from such clause (i)(B) of paragraph (3) of this section).

(63 Del. Laws, c. 420, § 1; 65 Del. Laws, c. 188, § 1; 69 Del. Laws, c. 258, § 41; 71 Del. Laws, c. 78, §§ 39-41; 72 Del. Laws, c. 128, §§ 13-15; 72 Del. Laws, c. 386, §§ 24, 25; 80 Del. Laws, c. 44, § 11; 80 Del. Laws, c. 269, § 9.)

§ 17-802 Judicial dissolution.

On application by or for a partner the Court of Chancery may decree dissolution of a limited partnership whenever it is not reasonably practicable to carry on the business in conformity with the partnership agreement.

(63 Del. Laws, c. 420, § 1; 65 Del. Laws, c. 188, § 1.)

§ 17-803 Winding up.

(a) Unless otherwise provided in the partnership agreement, the general partners who have not wrongfully dissolved a limited partnership or, if none, the limited partners, or a person approved by the limited partners, in either case, by limited partners who own more than 50 percent of the then current percentage or other interest in the profits of the limited partnership owned by all of the limited partners may wind up the limited partnership's affairs; but the Court of Chancery, upon cause shown, may wind up the limited partnership's affairs upon application of any partner, the partner's personal representative or assignee, and in connection therewith, may appoint a liquidating trustee. Unless otherwise provided in a partnership agreement, a limited partnership whose original certificate of limited partnership was filed with the Secretary of State and effective on or prior to July 31, 2015, shall continue to be governed by this subsection as in effect on July 31, 2015.

(b) Upon dissolution of a limited partnership and until the filing of a certificate of cancellation as provided in § 17-203 of this title, the persons winding up the limited partnership's affairs may, in the name of, and for and on behalf of, the limited partnership, prosecute and defend suits, whether civil, criminal or administrative, gradually settle and close the limited partnership's business, dispose of and convey the limited partnership's property, discharge or make reasonable provision for the limited partnership's liabilities, and distribute to the partners any remaining assets of the limited partnership, all without affecting the liability of limited partners and without imposing the liability of a general partner on a liquidating trustee.

(63 Del. Laws, c. 420, § 1; 65 Del. Laws, c. 188, § 1; 66 Del. Laws, c. 316, §§ 60, 61; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 78, § 42; 80 Del. Laws, c. 44, § 12.)

§ 17-804 Distribution of assets.

(a) Upon the winding up of a limited partnership, the assets shall be distributed as follows:

(1) To creditors, including partners who are creditors, to the extent otherwise permitted by law, in satisfaction of liabilities of the limited partnership (whether by payment or the making of reasonable provision for payment thereof) other than liabilities for which reasonable provision for payment has been made and liabilities for distributions to partners and former partners under § 17-601 or § 17-604 of this title;

(2) Unless otherwise provided in the partnership agreement, to partners and former partners in satisfaction of liabilities for distributions under § 17-601 or § 17-604 of this title; and

(3) Unless otherwise provided in the partnership agreement, to partners first for the return of their contributions and second respecting their partnership interests, in the proportions in which the partners share in distributions.

(b) A limited partnership which has dissolved:

(1) Shall pay or make reasonable provision to pay all claims and obligations, including all contingent, conditional or unmatured contractual claims, known to the limited partnership;

(2) Shall make such provision as will be reasonably likely to be sufficient to provide compensation for any claim against the limited partnership which is the subject of a pending action, suit or proceeding to which the limited partnership is a party and

(3) Shall make such provision as will be reasonably likely to be sufficient to provide compensation for claims that have not been made known to the limited partnership or that have not arisen but that, based on facts known to the limited partnership, are likely to arise or to become known to the limited partnership within 10 years after the date of dissolution.

If there are sufficient assets, such claims and obligations shall be paid in full and any such provision for payment made shall be made in full. If there are insufficient assets, such claims and obligations shall be paid or provided for according to their priority and, among claims of equal priority, ratably to the extent of assets available therefor. Unless otherwise provided in the partnership agreement, any remaining assets shall be distributed as provided in this chapter. Any liquidating trustee winding up a limited partnership's affairs who has complied with this section shall not be personally liable to the claimants of the dissolved limited partnership by reason of such person's actions in winding up the limited partnership.

(c) A limited partner who receives a distribution in violation of subsection (a) of this section, and who knew at the time of the distribution that the distribution violated subsection (a) of this section, shall be liable to the limited partnership for the amount of the distribution. For purposes of the immediately preceding sentence, the term "distribution" shall not include amounts constituting reasonable compensation for present or past services or reasonable payments made in the ordinary course of business pursuant to a bona fide retirement plan or other benefits program. A limited partner who receives a distribution in violation of subsection (a) of this section, and who did not know at the time of the distribution that the distribution violated subsection (a) of this section, shall not be liable for the amount of the distribution. Subject to subsection (d) of this section, this subsection shall not affect any obligation or liability of a limited partner under an agreement or other applicable law for the amount of a distribution.

(d) Unless otherwise agreed, a limited partner who receives a distribution from a limited partnership to which this section applies shall have no liability under this chapter or other applicable law for the amount of the distribution after the expiration of 3 years from the date of the distribution.

(e) Section 17-607 of this title shall not apply to a distribution to which this section applies.

(63 Del. Laws, c. 420, § 1; 65 Del. Laws, c. 188, § 1; 66 Del. Laws, c. 316, §§ 62-64; 69 Del. Laws, c. 258, § 42; 71 Del. Laws, c. 340, § 16; 72 Del. Laws, c. 386, § 26.)

§ 17-805 Trustees or receivers for limited partnerships; appointment; powers; duties.

When the certificate of limited partnership of any limited partnership formed under this chapter shall be canceled by the filing of a certificate of cancellation pursuant to § 17-203 of this title, the Court of Chancery, on application of any creditor or partner of the limited partnership, or any other person who shows good cause therefor, at any time, may either appoint 1 or more of the general partners of the limited partnership to be trustees, or appoint 1 or more persons to be receivers, of and for the limited partnership, to take charge of the limited partnership's property, and to collect the debts and property due and belonging to the limited partnership, with the power to prosecute and defend, in the name of the limited partnership, or otherwise, all such suits as may be necessary or proper for the purposes aforesaid, and to appoint an agent or agents under them, and to do all other acts which might be done by the limited partnership, if in being, that may be necessary for the final settlement of the unfinished business of the limited partnership. The powers of the trustees or receivers may be continued as long as the Court of Chancery shall think necessary for the purposes aforesaid.

(74 Del. Laws, c. 104, § 18.)

§ 17-806 Revocation of dissolution.

If a partnership agreement provides the manner in which a dissolution may be revoked, it may be revoked in that manner and, unless a partnership agreement prohibits revocation of dissolution, then notwithstanding the occurrence of an event set forth in § 17-801(1), (2), (3), (4) or (5) of this title, the limited partnership shall not be dissolved and its affairs shall not be wound up if, prior to the filing of a certificate of cancellation in the office of the Secretary of State, the business of the limited partnership is continued, effective as of the occurrence of such event:

(1) In the case of dissolution effected by the vote or consent of the partners or other persons, pursuant to such vote or consent (and the approval of any partners or other persons whose approval is required under the partnership agreement to revoke a dissolution contemplated by this paragraph);

(2) In the case of dissolution under § 17-801(1) or (5) of this title (other than a dissolution effected by the vote or consent of the partners or other persons, an event of withdrawal of a general partner or the occurrence of an event that causes the last remaining limited partner to cease to be a limited partner), pursuant to such vote or consent that, pursuant to the terms of the partnership agreement, is required to amend the provision of the partnership agreement effecting such dissolution (and the approval of any partners or other persons whose approval is required under the partnership agreement to revoke a dissolution contemplated by this paragraph); and

(3) In the case of dissolution effected by an event of withdrawal of a general partner or the occurrence of an event that causes the last remaining limited partner to cease to be a limited partner, pursuant to the vote or consent of:

a. All remaining general partners; and

b. Limited partners who own more than # of the then-current percentage or other interest in the profits of the limited partnership owned by all of the limited partners, or if there is no remaining limited partner the personal representative of the last remaining limited partner of the limited partnership or the assignee of all of the limited partners' partnership interests in the limited partnership (and the approval of any partners or other persons whose approval is required under the partnership agreement to revoke a dissolution contemplated by this paragraph).

If dissolution is revoked pursuant to paragraph (3) of this section above and there is no remaining general partner of the limited partnership, 1 or more general partners shall be appointed, effective as of the date of withdrawal of the last remaining general partner, by the vote or consent of the limited partners of the limited partnership who own more than 2/3 of the then-current percentage or other interest in the profits of the limited partnership owned by all of the limited partners. If dissolution is revoked pursuant to paragraph (3) of this section above and there is no remaining limited partner of the limited partnership, a nominee or designee of such personal representative or such assignee, as applicable, shall be appointed as a limited partner, effective as of the occurrence of the event that caused the last remaining limited partner to cease to be a limited partner, by the vote or consent of the remaining general partners and such personal representative or such assignee, as applicable. If dissolution is revoked pursuant to paragraph (3) of this section above and there is no remaining general partner of the limited partnership and no remaining limited partner of the limited partnership, 1 or more general partners shall be appointed, effective as of the date of withdrawal of the last remaining general partner, and a nominee or designee of such personal representative or such assignee, as applicable, shall be appointed as a limited partner, effective as of the occurrence of the event that caused the last remaining limited partner to cease to be a limited partner, in each case, by the vote or consent of such personal representative or such assignee, as applicable. The provisions of this section shall not be construed to limit the accomplishment of a revocation of dissolution by other means permitted by law.

(75 Del. Laws, c. 31, § 17; 79 Del. Laws, c. 326, § 5; 80 Del. Laws, c. 44, § 13; 80 Del. Laws, c. 269, § 10.)

Subchapter IX
Foreign Limited Partnerships

§ 17-901 Law governing.

(a) Subject to the Constitution of the State of Delaware:

(1) The laws of the state, territory, possession, or other jurisdiction or country under which a foreign limited partnership is organized govern its organization and internal affairs and the liability of its limited partners; and

(2) A foreign limited partnership may not be denied registration by reason of any difference between those laws and the laws of the State of Delaware.

(b) A foreign limited partnership shall be subject to § 17-106 of this title.

(63 Del. Laws, c. 420, § 1; 65 Del. Laws, c. 188, § 1.)

§ 17-902 Registration required; application.

Before doing business in the State of Delaware, a foreign limited partnership shall register with the Secretary of State. In order to register, a foreign limited partnership shall submit to the Secretary of State:

(1) A copy executed by a general partner of an application for registration as a foreign limited partnership, setting forth:

a. The name of the foreign limited partnership and, if different, the name under which it proposes to register and do business in the State of Delaware;

b. The state, territory, possession or other jurisdiction or country where organized, the date of its organization and a statement from a general partner that, as of the date of filing, the foreign limited partnership validly exists as a limited partnership under the laws of the jurisdiction of its organization;

c. The nature of the business or purposes to be conducted or promoted in the State of Delaware;

d. The address of the registered office and the name and address of the registered agent for service of process required to be maintained by § 17-904(b) of this title;

e. A statement that the Secretary of State is appointed the agent of the foreign limited partnership for service of process under the circumstances set forth in § 17-910(b) of this title;

f. The name and business, residence or mailing addresses of each of the general partners; and

g. The date on which the foreign limited partnership first did, or intends to do, business in the State of Delaware.

(2) A certificate, as of a date not earlier than 6 months prior to the filing date, issued by an authorized officer of the jurisdiction of its formation evidencing its existence. If such certificate is in a foreign language, a translation thereof, under oath of the translator, shall be attached thereto.

(3) A fee as set forth in § 17-1107(a)(6) of this title shall be paid.

(63 Del. Laws, c. 420, § 1; 65 Del. Laws, c. 188, § 1; 66 Del. Laws, c. 316, § 65; 69 Del. Laws, c. 258, §§ 43, 44; 75 Del. Laws, c. 31, § 18; 77 Del. Laws, c. 288, § 25; 81 Del. Laws, c. 88, § 15.)

§ 17-903 Issuance of registration.

(a) If the Secretary of State finds that an application for registration conforms to law and all requisite fees have been paid, the Secretary shall:

(1) Certify that the application has been filed in the Secretary's office by endorsing upon the original application the word "Filed," and the date and hour of the filing. This endorsement is conclusive of the date and time of its filing in the absence of actual fraud;

(2) File and index the endorsed application.

(b) The Secretary of State shall prepare and return to the person who filed the application or the person's representative a copy of the original signed application, similarly endorsed, and shall certify such copy as a true copy of the original signed application.

(c) The filing of the application with the Secretary of State shall make it unnecessary to file any other documents under Chapter 31 of this title.

(63 Del. Laws, c. 420, § 1; 65 Del. Laws, c. 188, § 1; 69 Del. Laws, c. 258, § 45; 70 Del. Laws, c. 186, § 1.)

§ 17-904 Name; registered office; registered agent.

(a) A foreign limited partnership may register with the Secretary of State under any name (whether or not it is the name under which it is registered in the jurisdiction of its organization) that includes the words "Limited Partnership" or the abbreviation "L.P." or the designation "LP" and that could be registered by a domestic limited partnership; provided, however, that a foreign limited partnership may register under any name which is not such as to distinguish it upon the records in the Office of the Secretary of State from the name on such records of any domestic or foreign corporation, partnership, statutory trust, limited liability company, limited partnership, registered series of a limited liability company or registered series of a limited partnership reserved, registered, formed or organized under the laws of the State of Delaware with the written consent of the other corporation, partnership, statutory trust, limited liability company, limited

partnership, registered series of a limited liability company or registered series of a limited partnership, which written consent shall be filed with the Secretary of State.

(b) Each foreign limited partnership shall have and maintain in the State of Delaware:

(1) A registered office which may but need not be a place of its business in the State of Delaware; and

(2) A registered agent for service of process on the limited partnership, having a business office identical with such registered office, which agent may be any of:

a. An individual resident in the State of Delaware,

b. A domestic limited liability company, a domestic corporation, a domestic partnership (whether general (including a limited liability partnership) or limited (including a limited liability limited partnership)), or a domestic statutory trust, or

c. A foreign corporation, a foreign limited liability partnership, a foreign limited partnership (including a foreign limited liability limited partnership) (other than the foreign limited partnership itself), a foreign limited liability company or a foreign statutory trust.

(c) A registered agent may change the address of the registered office of the foreign limited partnership(s) for which the agent is registered agent to another address in the State of Delaware by paying a fee as set forth in § 17-1107(a)(7) of this title and filing with the Secretary of State a certificate, executed by such registered agent, setting forth the address at which such registered agent has maintained the registered office for each of the foreign limited partnerships for which it is a registered agent, and further certifying to the new address to which each such registered office will be changed on a given day, and at which new address such registered agent will thereafter maintain the registered office for each of the foreign limited partnerships for which it is a registered agent. Upon the filing of such certificate, until further change of address, as authorized by law, the registered office in the State of Delaware of each of the foreign limited partnerships for which the agent is a registered agent shall be located at the new address of the registered agent thereof as given in the certificate. In the event of a change of name of any person acting as a registered agent of a foreign limited partnership, such registered agent shall file with the Secretary of State a certificate, executed by such registered agent, setting forth the new name of such registered agent, the name of such registered agent before it was changed and the address at which such registered agent has maintained the registered office for each of the foreign limited partnerships for which it is a registered agent, and shall pay a fee as set forth in § 17-1107(a)(7) of this title. A change of name of any person acting as a registered agent of a foreign limited partnership as a result of (i) a merger or consolidation of the registered agent with or into another person which succeeds to its assets and liabilities by operation of law, (ii) the conversion of the registered agent into another person, or (iii) a division of the registered agent in which an identified resulting person succeeds to all of the assets and liabilities of the registered agent related to its registered agent business pursuant to the plan of division, as set forth in the certificate of division, shall each be deemed a change of name for purposes of this section. Filing a certificate under this section shall be deemed to be an amendment of the application of each foreign limited partnership affected thereby and each such foreign limited partnership shall not be required to take any further action with respect thereto to amend its application under § 17-905 of this title. Any registered agent filing a certificate under this section shall promptly, upon such filing, deliver a copy of any such certificate to each foreign limited partnership affected thereby.

(d) The registered agent of 1 or more foreign limited partnerships may resign and appoint a successor registered agent by paying a fee as set forth in § 17-1107(a)(7) of this title and filing a certificate with the Secretary of State stating that it resigns and the name and address of the successor registered agent. There shall be attached to such certificate a statement of each affected foreign limited partnership ratifying and approving such change of registered agent. Upon such filing, the successor registered agent shall become the registered agent of such foreign limited partnerships as have ratified and approved such substitution and the successor registered agent's address, as stated in such certificate, shall become the address of each such foreign limited partnership's registered office in the State of Delaware. Filing of such certificate of resignation shall be deemed to be an amendment of the application of each foreign limited partnership affected thereby and each such foreign limited partnership shall not be required to take any further action with respect thereto to amend its application under § 17-905 of this title.

(e) The registered agent of a foreign limited partnership, including a foreign limited partnership that has ceased to be registered as a foreign limited partnership in the State of Delaware pursuant to § 17-1109(g) of this title, may resign without appointing a successor registered agent by paying a fee as set forth in § 17-1107(a)(7) of this title and filing a certificate of resignation with the Secretary of State, but such resignation shall not become effective until 30 days after the certificate is filed. The certificate shall contain a statement that written notice of resignation was given to the foreign limited partnership at least 30 days prior to the filing of the certificate by mailing or delivering such notice to the foreign limited partnership at its address last known to the registered agent and shall set forth the date of such notice.The certificate shall include such information last provided to the registered agent pursuant to § 17-104(g) of this title for a communications contact for the foreign limited partnership. Such information regarding the communications contact shall not be deemed public. A certificate filed pursuant to this subsection must be on the form prescribed by the Secretary of State. After receipt of the notice of the resignation of its registered agent, the foreign limited partnership for which such registered agent was acting shall obtain and designate a new registered agent to take the place of the registered agent so resigning. If such foreign limited partnership fails to obtain and designate a new registered agent as aforesaid prior to the expiration of the period of 30 days after the filing by the registered agent of the certificate of resignation, such foreign limited partnership shall not be permitted to do business in the State of Delaware and its registration shall be canceled. After the resignation of the registered agent shall have become effective as provided in this section and if no new registered agent shall have been obtained and designated in the time and manner aforesaid, service of legal process against

each foreign limited partnership for which the resigned registered agent had been acting shall thereafter be upon the Secretary of State in accordance with § 17-911 of this title.

(63 Del. Laws, c. 420, § 1; 65 Del. Laws, c. 188, § 1; 67 Del. Laws, c. 348, §§ 23-26; 70 Del. Laws, c. 78, §§ 22, 23; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 78, §§ 43, 44; 73 Del. Laws, c. 297, §§ 10, 11; 73 Del. Laws, c. 329, § 24; 76 Del. Laws, c. 104, §§ 35-37; 82 Del. Laws, c. 258, § 13.)

§ 17-905 Amendments to application.

If any statement in the application for registration of a foreign limited partnership was false when made or any arrangements or other facts described have changed, making the application false in any respect, the foreign limited partnership shall promptly file in the Office of the Secretary of State a certificate, executed by a general partner, correcting such statement, together with a fee as set forth in § 17-1107(a)(6) of this title.

(63 Del. Laws, c. 420, § 1; 65 Del. Laws, c. 188, § 1.)

§ 17-906 Cancellation of registration.

A foreign limited partnership may cancel its registration by filing with the Secretary of State a certificate of cancellation executed by a general partner, together with a fee as set forth in § 17-1107(a)(6) of this title. The registration of a foreign limited partnership shall be canceled as provided in §§ 17-104(i)(4), 17-904(e) and 17-1109(g) of this title. A cancellation does not terminate the authority of the Secretary of State to accept service of process on the foreign limited partnership with respect to causes of action arising out of the doing of business in the State of Delaware.

(63 Del. Laws, c. 420, § 1; 65 Del. Laws, c. 188, § 1; 75 Del. Laws, c. 414, § 42; 76 Del. Laws, c. 104, § 38.)

§ 17-907 Doing business without registration.

(a) A foreign limited partnership doing business in the State of Delaware may not maintain any action, suit or proceeding in the State of Delaware until it has registered in the State of Delaware, and has paid to the State of Delaware all fees and penalties for the years or parts thereof during which it did business in the State of Delaware without having registered.

(b) The failure of a foreign limited partnership to register in the State of Delaware does not impair:

(1) The validity of any contract or act of the foreign limited partnership;

(2) The right of any other party to the contract to maintain any action, suit or proceeding on the contract; or

(3) Prevent the foreign limited partnership from defending any action, suit or proceeding in any court of the State of Delaware.

(c) A limited partner of a foreign limited partnership is not liable as a general partner of the foreign limited partnership solely by reason of the foreign limited partnership's having done business in the State of Delaware without registration.

(d) Any foreign limited partnership doing business in the State of Delaware without first having registered shall be fined and shall pay to the Secretary of State $200 for each year or part thereof during which the foreign limited partnership failed to register in the State of Delaware.

(63 Del. Laws, c. 420, § 1; 65 Del. Laws, c. 188, § 1; 70 Del. Laws, c. 78, § 24.)

§ 17-908 Foreign limited partnerships doing business without having qualified; injunctions.

The Court of Chancery shall have jurisdiction to enjoin any foreign limited partnership, or any agent thereof, from doing any business in the State of Delaware if such foreign limited partnership has failed to register under this subchapter or if such foreign limited partnership has secured a certificate of the Secretary of State under § 17-903 of this title on the basis of false or misleading representations. The Attorney General shall, upon the Attorney General's own motion or upon the relation of proper parties, proceed for this purpose by complaint in any county in which such foreign limited partnership is doing or has done business.

(63 Del. Laws, c. 420, § 1; 65 Del. Laws, c. 188, § 1; 70 Del. Laws, c. 186, § 1.)

§ 17-909 Execution; liability.

Sections 17-204(d) and 17-207 of this title shall be applicable to foreign limited partnerships as if they were domestic limited partnerships.

(63 Del. Laws, c. 420, § 1; 65 Del. Laws, c. 188, § 1; 77 Del. Laws, c. 288, § 6.)

§ 17-910 Service of process on registered foreign limited partnerships.

(a) Service of legal process upon any foreign limited partnership shall be made by delivering a copy personally to any managing or general agent or general partner of the foreign limited partnership in the State of Delaware or the registered agent of the foreign limited partnership in the State of Delaware, or by leaving it at the dwelling house or usual place of abode in the State of Delaware of any such managing or general agent, general partner or registered agent (if the registered agent be an individual), or at the registered office or other place of business of the foreign limited partnership in the State of Delaware. If the registered agent be a corporation, service of process upon it as such may be made by serving, in the State of Delaware, a copy thereof on the president, vice-president, secretary, assistant secretary or any director of the corporate registered agent. Service by copy left at the dwelling house or usual place of abode of any officer, managing or general agent, general partner or registered agent, or at the registered office or other place of business of the foreign limited

partnership in the State of Delaware, to be effective must be delivered thereat at least 6 days before the return date of the process, and in the presence of an adult person, and the officer serving the process shall distinctly state the manner of service in the return thereto. Process returnable forthwith must be delivered personally to the officer, managing or general agent, general partner or registered agent.

(b) In case the officer whose duty it is to serve legal process cannot by due diligence serve the process in any manner provided for by subsection (a) of this section, it shall be lawful to serve the process against the foreign limited partnership upon the Secretary of State, and such service shall be as effectual for all intents and purposes as if made in any of the ways provided for in subsection (a) of this section. Process may be served upon the Secretary of State under this subsection by means of electronic transmission but only as prescribed by the Secretary of State. The Secretary of State is authorized to issue such rules and regulations with respect to such service as the Secretary of State deems necessary or appropriate. In the event that service is effected through the Secretary of State in accordance with this subsection, the Secretary of State shall forthwith notify the foreign limited partnership by letter, directed to the foreign limited partnership at the address of a general partner as it appears on the records relating to such foreign limited partnership on file with the Secretary of State or, if no such address appears, at its last registered office. Such letter shall be sent by a mail or courier service that includes a record of mailing or deposit with the courier and a record of delivery evidenced by the signature of the recipient. Such letter shall enclose a copy of the process and any other papers served on the Secretary of State pursuant to this subsection. It shall be the duty of the plaintiff in the event of such service to serve process and any other papers in duplicate, to notify the Secretary of State that service is being effected pursuant to this subsection, and to pay to the Secretary of State the sum of $50 for the use of the State of Delaware, which sum shall be taxed as a part of the costs in the proceeding if the plaintiff shall prevail therein. The Secretary of State shall maintain an alphabetical record of any such service setting forth the name of the plaintiff and defendant, the title, docket number and nature of the proceeding in which process has been served upon the Secretary, the fact that service has been effected pursuant to this subsection, the return date thereof and the day and hour when the service was made. The Secretary of State shall not be required to retain such information for a period longer than 5 years from receipt of the service of process.

(63 Del. Laws, c. 420, § 1; 65 Del. Laws, c. 188, § 1; 70 Del. Laws, c. 186, § 1; 77 Del. Laws, c. 288, § 26.)

§ 17-911 Service of process on unregistered foreign limited partnerships.

(a) Any foreign limited partnership which shall do business in the State of Delaware without having registered under § 17-902 of this title shall be deemed to have thereby appointed and constituted the Secretary of State of the State of Delaware its agent for the acceptance of legal process in any civil action, suit or proceeding against it in any state or federal court in the State of Delaware arising or growing out of any business done by it within the State of Delaware. The doing of business in the State of Delaware by such foreign limited partnership shall be a signification of the agreement of such foreign limited partnership that any such process when so served shall be of the same legal force and validity as if served upon an authorized general partner or agent personally within the State of Delaware. Process may be served upon the Secretary of State under this subsection by means of electronic transmission but only as prescribed by the Secretary of State. The Secretary of State is authorized to issue such rules and regulations with respect to such service as the Secretary of State deems necessary or appropriate.

(b) Whenever the words “doing business,” “the doing of business” or “business done in the State,” by any such foreign limited partnership are used in this section, they shall mean the course or practice of carrying on any business activities in the State of Delaware, including, without limiting the generality of the foregoing, the solicitation of business or orders in the State of Delaware.

(c) In the event of service upon the Secretary of State in accordance with subsection (a) of this section, the Secretary of State shall forthwith notify the foreign limited partnership thereof by letter, directed to the foreign limited partnership at the address furnished to the Secretary of State by the plaintiff in such action, suit or proceeding. Such letter shall be sent by a mail or courier service that includes a record of mailing or deposit with the courier and a record of delivery evidenced by the signature of the recipient. Such letter shall enclose a copy of the process and any other papers served upon the Secretary of State. It shall be the duty of the plaintiff in the event of such service to serve process and any other papers in duplicate, to notify the Secretary of State that service is being made pursuant to this subsection, and to pay to the Secretary of State the sum of $50 for the use of the State of Delaware, which sum shall be taxed as part of the costs in the proceeding, if the plaintiff shall prevail therein. The Secretary of State shall maintain an alphabetical record of any such process setting forth the name of the plaintiff and defendant, the title, docket number and nature of the proceeding in which process has been served upon the Secretary, the return date thereof, and the day and hour when the service was made. The Secretary of State shall not be required to retain such information for a period longer than 5 years from receipt of the service of process.

(63 Del. Laws, c. 420, § 1; 65 Del. Laws, c. 188, § 1; 70 Del. Laws, c. 186, § 1; 77 Del. Laws, c. 288, §§ 27, 28.)

§ 17-912 Activities not constituting doing business.

(a) Activities of a foreign limited partnership in the State of Delaware that do not constitute doing business for the purpose of this subchapter include:

(1) Maintaining, defending or settling an action or proceeding;

(2) Holding meetings of its partners or carrying on any other activity concerning its internal affairs;

(3) Maintaining bank accounts;

(4) Maintaining offices or agencies for the transfer, exchange or registration of the limited partnership’s own securities or maintaining trustees or depositories with respect to those securities;

(5) Selling through independent contractors;

(6) Soliciting or obtaining orders, whether by mail or through employees or agents or otherwise, if the orders require acceptance outside the State of Delaware before they become contracts;

(7) Selling, by contract consummated outside the State of Delaware, and agreeing, by the contract, to deliver into the State of Delaware, machinery, plants or equipment, the construction, erection or installation of which within the State of Delaware requires the supervision of technical engineers or skilled employees performing services not generally available, and as part of the contract of sale agreeing to furnish such services, and such services only, to the vendee at the time of construction, erection or installation;

(8) Creating, as borrower or lender, or acquiring indebtedness with or without a mortgage or other security interest in property;

(9) Collecting debts or foreclosing mortgages or other security interests in property securing the debts, and holding, protecting and maintaining property so acquired;

(10) Conducting an isolated transaction that is not one in the course of similar transactions;

(11) Doing business in interstate commerce; and

(12) Doing business in the State of Delaware as an insurance company.

(b) A person shall not be deemed to be doing business in the State of Delaware solely by reason of being a partner of a domestic limited partnership or a foreign limited partnership.

(c) This section does not apply in determining whether a foreign limited partnership is subject to service of process, taxation or regulation under any other law of the State of Delaware.

(75 Del. Laws, c. 31, § 19.)

Subchapter X
Derivative Actions

§ 17-1001 Right to bring action.

A limited partner or an assignee of a partnership interest may bring an action in the Court of Chancery in the right of a limited partnership to recover a judgment in its favor if general partners with authority to do so have refused to bring the action or if an effort to cause those general partners to bring the action is not likely to succeed.

(6 Del. C. 1953, § 1732; 59 Del. Laws, c. 105, § 1; 63 Del. Laws, c. 420, § 1; 65 Del. Laws, c. 188, § 1; 71 Del. Laws, c. 340, § 17.)

§ 17-1002 Proper plaintiff.

In a derivative action, the plaintiff must be a partner or an assignee of a partnership interest at the time of bringing the action and:

(1) At the time of the transaction of which the plaintiff complains; or

(2) The plaintiff's status as a partner or an assignee of a partnership interest had devolved upon the plaintiff by operation of law or pursuant to the terms of the partnership agreement from a person who was a partner or an assignee of a partnership interest at the time of the transaction.

(6 Del. C. 1953, § 1732; 59 Del. Laws, c. 105, § 1; 63 Del. Laws, c. 420, § 1; 65 Del. Laws, c. 188, § 1; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 340, § 18.)

§ 17-1003 Complaint.

In a derivative action, the complaint shall set forth with particularity the effort, if any, of the plaintiff to secure initiation of the action by a general partner or the reasons for not making the effort.

(6 Del. C. 1953, § 1732; 59 Del. Laws, c. 105, § 1; 63 Del. Laws, c. 420, § 1; 65 Del. Laws, c. 188, § 1.)

§ 17-1004 Expenses.

If a derivative action is successful, in whole or in part, as a result of a judgment, compromise or settlement of any such action, the court may award the plaintiff reasonable expenses, including reasonable attorney's fees, from any recovery in any such action or from a limited partnership.

(6 Del. C. 1953, § 1732; 59 Del. Laws, c. 105, § 1; 63 Del. Laws, c. 420, § 1; 65 Del. Laws, c. 188, § 1; 69 Del. Laws, c. 258, § 46.)

Subchapter XI
Miscellaneous

§ 17-1101 Construction and application of chapter and partnership agreement.

(a) This chapter shall be so applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this chapter among states enacting it.

(b) The rule that statutes in derogation of the common law are to be strictly construed shall have no application to this chapter.

(c) It is the policy of this chapter to give maximum effect to the principle of freedom of contract and to the enforceability of partnership agreements.

(d) To the extent that, at law or in equity, a partner or other person has duties (including fiduciary duties) to a limited partnership or to another partner or to another person that is a party to or is otherwise bound by a partnership agreement, the partner's or other person's duties may be expanded or restricted or eliminated by provisions in the partnership agreement; provided that the partnership agreement may not eliminate the implied contractual covenant of good faith and fair dealing.

(e) Unless otherwise provided in a partnership agreement, a partner or other person shall not be liable to a limited partnership or to another partner or to another person that is a party to or is otherwise bound by a partnership agreement for breach of fiduciary duty for the partner's or other person's good faith reliance on the provisions of the partnership agreement.

(f) A partnership agreement may provide for the limitation or elimination of any and all liabilities for breach of contract and breach of duties (including fiduciary duties) of a partner or other person to a limited partnership or to another partner or to an other person that is a party to or is otherwise bound by a partnership agreement; provided, that a partnership agreement may not limit or eliminate liability for any act or omission that constitutes a bad faith violation of the implied contractual covenant of good faith and fair dealing.

(g) Sections 9-406 and 9-408 of this title do not apply to any interest in a limited partnership, including all rights, powers and interests arising under a partnership agreement or this chapter. This provision prevails over §§ 9-406 and 9-408 of this title.

(h) Action validly taken pursuant to 1 provision of this chapter shall not be deemed invalid solely because it is identical or similar in substance to an action that could have been taken pursuant to some other provision of this chapter but fails to satisfy 1 or more requirements prescribed by such other provision.

(i) A partnership agreement that provides for the application of Delaware law shall be governed by and construed under the laws of the State of Delaware in accordance with its terms.

(6 Del. C. 1953, § 1729; 59 Del. Laws, c. 105, § 1; 63 Del. Laws, c. 420, § 1; 65 Del. Laws, c. 188, § 1; 67 Del. Laws, c. 348, § 27; 69 Del. Laws, c. 258, § 47; 72 Del. Laws, c. 386, § 27; 73 Del. Laws, c. 222, § 2; 74 Del. Laws, c. 265, §§ 15, 16; 77 Del. Laws, c. 69, § 5; 77 Del. Laws, c. 288, § 29.)

§ 17-1102 Short title.

This chapter may be cited as the "Delaware Revised Uniform Limited Partnership Act."

(6 Del. C. 1953, § 1728; 59 Del. Laws, c. 105, § 1; 63 Del. Laws, c. 420, § 1; 65 Del. Laws, c. 188, § 1.)

§ 17-1103 Severability.

If any provision of this chapter or its application to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of the chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable.

(63 Del. Laws, c. 420, § 1; 65 Del. Laws, c. 188, § 1.)

§ 17-1104 Effective date and extended effective date.

(a) All limited partnerships formed on or after January 1, 1983, the "effective date," shall be governed by this chapter.

(b) Except as provided in subsections (e) and (f) of this section, all limited partnerships formed on or after July 1, 1973, and prior to the effective date, under Chapter 17 of this title as hereby repealed, shall continue to be governed by that chapter until January 1, 1985, the "extended effective date," at which time such limited partnerships shall be governed by this chapter.

(c) Except as provided in subsection (e) of this section, a limited partnership formed prior to July 1, 1973, shall continue to be governed by Chapter 17 of this title in effect prior to the adoption of Chapter 17 of this title as hereby repealed, except that such limited partnership shall not be renewed except under this chapter.

(d) Except as provided in subsection (e) of this section, subchapter IX of this chapter, dealing with foreign limited partnerships, is not effective until the extended effective date.

(e) Any limited partnership formed prior to the effective date, and any foreign limited partnership, may elect to be governed by this chapter before the extended effective date by filing with the Secretary of State a certificate of limited partnership or an application for registration as a foreign limited partnership which complies with this chapter or a certificate of amendment which would cause its certificate of limited partnership to comply with this chapter and which specifically states that it is electing to be so bound.

(f) With respect to a limited partnership formed on or after July 1, 1973, and prior to the effective date:

(1) On and after the extended effective date, such limited partnership need not file with the Secretary of State a certificate of amendment which would cause its certificate of limited partnership to comply with this chapter until the occurrence of an event which, under this chapter, requires the filing of a certificate of amendment;

(2) Sections 17-501 and 17-502 of this title shall apply only to contributions and distributions made after the effective date; and

(3) Section 17-704 of this title shall apply only to assignments made after the effective date.

(6 Del. C. 1953, § 1731; 59 Del. Laws, c. 105, § 1; 63 Del. Laws, c. 420, § 1; 65 Del. Laws, c. 188, § 1; 66 Del. Laws, c. 316, § 66.)

§ 17-1105 Cases not provided for in this chapter.

In any case not provided for in this chapter, the Delaware Uniform Partnership Law in effect on July 11, 1999 [6 Del. C. § 1501, et seq.] and the rules of law and equity, including the law merchant, shall govern.

(6 Del. C. 1953, § 1730; 59 Del. Laws, c. 105, § 1; 63 Del. Laws, c. 420, § 1; 65 Del. Laws, c. 188, § 1; 73 Del. Laws, c. 73, § 27.)

§ 17-1106 Prior law.

Except as set forth in § 17-1104 of this title, [former] Chapter 17 of this title is hereby repealed.

(63 Del. Laws, c. 420, § 1; 65 Del. Laws, c. 188, § 1.)

§ 17-1107 Fees.

(a) No document required to be filed under this chapter shall be effective until the applicable fee required by this section is paid. The following fees shall be paid to and collected by the Secretary of State for the use of the State of Delaware:

(1) Upon the receipt for filing of an application for reservation of name, an application for renewal of reservation or a notice of transfer or cancellation of reservation pursuant to § 17-103(b) of this title, a fee in the amount of $75.

(2) Upon the receipt for filing of a certificate under § 17-104(b) of this title, a fee in the amount of $200, upon the receipt for filing of a certificate under § 17-104(c) of this title, a fee in the amount of $200, and upon the receipt for filing of a certificate under § 17-104(d) of this title, a fee in the amount of $2.00 for each limited partnership whose registered agent has resigned by such certificate.

(3) Upon the receipt for filing of a certificate of limited partnership domestication under § 17-215 of this title, a certificate of transfer or a certificate of transfer and domestic continuance under § 17-216 of this title, a certificate of conversion to limited partnership under § 17-217 of this title, a certificate of conversion to a non-Delaware entity under § 17-219 of this title, a certificate of limited partnership under § 17-201 of this title, a certificate of registered series under § 17-221 of this title, a certificate of amendment under § 17-202 or § 17-221(d)(3) of this title, (except as otherwise provided in paragraph (a)(11) of this section) a certificate of cancellation under § 17-203 or § 17-221(d)(8) of this title, a certificate of merger or consolidation or a certificate of ownership and merger under § 17-211 of this title, a restated certificate of limited partnership or a restated certificate of registered series under § 17-210 of this title, a certificate of amendment of a certificate with a future effective date or time under § 17-206(c) of this title, a certificate of termination of a certificate with a future effective date or time under § 17-206(c) of this title, a certificate of correction under § 17-213 of this title, a certificate of division under § 17-220 of this title, a certificate of conversion of protected series to registered series under § 17-222 of this title, a certificate of conversion of registered series to protected series under § 17-223 of this title, a certificate of merger or consolidation of registered series under § 17-224 of this title or a certificate of revival under § 17-1111 or § 17-1112 of this title, a fee in the amount of $200, plus, in the case of a certificate of cancellation under § 17-203 of this title, a fee in the amount of $50 for each registered series of the limited partnership named in the certificate of cancellation.

(4) For certifying copies of any paper on file as provided for by this chapter, a fee in the amount of $50 for each copy certified. In addition, a fee of $2.00 per page shall be paid in each instance where the Secretary of State provides the copies of the document to be certified.

(5) The Secretary of State may issue photocopies or electronic image copies of instruments on file, as well as instruments, documents and other papers not on file, and for all such photocopies or electronic image copies which are not certified by the Secretary of State, a fee of $10 shall be paid for the first page and $2.00 for each additional page. Notwithstanding Delaware's Freedom of Information Act (Chapter 100 of Title 29) or other provision of law granting access to public records, the Secretary of State upon request shall issue only photocopies or electronic image copies of public records in exchange for the fees described in this section, and in no case shall the Secretary of State be required to provide copies (or access to copies) of such public records (including without limitation bulk data, digital copies of instruments, documents and other papers, databases or other information) in an electronic medium or in any form other than photocopies or electronic image copies of such public records in exchange, as applicable, for the fees described in this section or § 2318 of Title 29 for each such record associated with a file number.

(6) Upon the receipt for filing of an application for registration as a foreign limited partnership under § 17-902 of this title, a certificate under § 17-905 of this title or a certificate of cancellation under § 17-906 of this title, a fee in the amount of $200.

(7) Upon the receipt for filing of a certificate under § 17-904(c) of this title, a fee in the amount of $200, upon the receipt for filing of a certificate under § 17-904(d) of this title, a fee in the amount of $200, and upon the receipt for filing of a certificate under § 17-904(e) of this title, a fee in the amount of $2.00 for each foreign limited partnership whose registered agent has resigned by such certificate.

(8) For preclearance of any document for filing, a fee in the amount of $250.

(9) For preparing and providing a written report of a record search, a fee of up to $100.

(10) For issuing any certificate of the Secretary of State, including but not limited to a certificate of good standing with respect to a limited partnership or a registered series thereof, other than a certification of a copy under paragraph (a)(4) of this section, a fee in the amount of $50, except that for issuing any certificate of the Secretary of State that recites all of the filings with the Secretary of State of a limited partnership or all of the filings of any registered series or that lists all of the registered series formed by a limited

partnership, a fee of $175 shall be paid for each such certificate. For issuing any certificate via the Secretary of State's online services, a fee of up to $175 shall be paid for each certificate.

(11) For receiving and filing and/or indexing any certificate, affidavit, agreement or any other paper provided for by this chapter, for which no different fee is specifically prescribed, a fee in the amount of $100. For filing any instrument submitted by a limited partnership or foreign limited partnership that only changes the registered office or registered agent and is specifically captioned as a certificate of amendment changing only the registered office or registered agent, a fee in the amount of $50.

(12) The Secretary of State may in his or her discretion charge a fee of $60 for each check received for payment of any fee that is returned due to insufficient funds or the result of a stop payment order.

(b) In addition to those fees charged under subsection (a) of this section, there shall be collected by and paid to the Secretary of State the following:

(1) For all services described in subsection (a) of this section that are requested to be completed within 30 minutes on the same day as the day of the request, an additional sum of up to $7,500 and for all services described in subsection (a) of this section that are requested to be completed within 1 hour on the same day as the day of the request, an additional sum of up to $1,000 and for all services described in subsection (a) of this section that are requested to be completed within 2 hours on the same day of the request, an additional sum of $500;

(2) For all services described in subsection (a) of this section that are requested to be completed within the same day as the day of the request, an additional sum of up to $300; and

(3) For all services described in subsection (a) of this section that are requested to be completed within a 24-hour period from the time of the request, an additional sum of up to $150.

The Secretary of State shall establish (and may from time to time amend) a schedule of specific fees payable pursuant to this subsection.

(c) The Secretary of State may in his or her discretion permit the extension of credit for the fees required by this section upon such terms as the secretary shall deem to be appropriate.

(d) The Secretary of State shall retain from the revenue collected from the fees required by this section a sum sufficient to provide at all times a fund of at least $500, but not more than $1,500, from which the secretary may refund any payment made pursuant to this section to the extent that it exceeds the fees required by this section. The funds shall be deposited in a financial institution which is a legal depository of State of Delaware moneys to the credit of the Secretary of State and shall be disbursable on order of the Secretary of State.

(e) Except as provided in this section, the fees of the Secretary of State shall be as provided in § 2315 of Title 29.

(6 Del. C. 1953, § 1733; 59 Del. Laws, c. 105, § 1; 63 Del. Laws, c. 420, § 1; 65 Del. Laws, c. 188, § 1; 66 Del. Laws, c. 316, §§ 67, 68; 67 Del. Laws, c. 92, § 1; 67 Del. Laws, c. 348, §§ 28-31; 69 Del. Laws, c. 258, §§ 48-52; 70 Del. Laws, c. 78, §§ 25-28; 70 Del. Laws, c. 186, § 1; 70 Del. Laws, c. 362, § 17; 71 Del. Laws, c. 78, § 45; 72 Del. Laws, c. 128, §§ 16, 17; 73 Del. Laws, c. 73, § 28; 74 Del. Laws, c. 52, §§ 13-19; 74 Del. Laws, c. 104, § 19; 76 Del. Laws, c. 104, § 39; 77 Del. Laws, c. 78, §§ 14-22; 77 Del. Laws, c. 288, § 30; 78 Del. Laws, c. 97, §§ 11-14; 80 Del. Laws, c. 44, § 14; 82 Del. Laws, c. 46, § 25.)

§ 17-1108 Reserved power of State of Delaware to alter or repeal chapter.

All provisions of this chapter may be altered from time to time or repealed and all rights of partners are subject to this reservation. Unless expressly stated to the contrary in this chapter, all amendments of this chapter shall apply to limited partnerships and partners whether or not existing as such at the time of the enactment of any such amendment.

(65 Del. Laws, c. 188, § 1; 72 Del. Laws, c. 128, § 18.)

§ 17-1109 Annual tax of domestic limited partnership and foreign limited partnership and registered series.

(a) Every domestic limited partnership and every foreign limited partnership registered to do business in the State of Delaware shall pay an annual tax, for the use of the State of Delaware, in the amount of $300. There shall be paid by or on behalf of each registered series of a domestic limited partnership an annual tax, for use of the State of Delaware, in the amount of $75 per registered series.

(b) The annual tax for a domestic limited partnership shall be due and payable on June 1 following the close of the calendar year or upon the cancellation of a certificate of limited partnership. The annual tax for a registered series shall be due and payable on June 1 following the close of the calendar year or upon the cancellation of a certificate of registered series. The annual tax for a foreign limited partnership shall be due and payable on June 1 following the close of the calendar year or upon the cancellation of the certificate of registration. The Secretary of State shall receive the annual tax and pay over all taxes collected to the Department of Finance of the State of Delaware. If the annual tax remains unpaid after the due date established by subsection (d) of this section, the tax shall bear interest at the rate of $1^1/_2$% for each month or portion thereof until fully paid.

(c) The Secretary of State shall, at least 60 days prior to June 1 of each year, cause to be mailed to each domestic limited partnership and each registered series thereof and each foreign limited partnership required to comply with the provisions of this section in care of its registered agent in the State of Delaware an annual statement for the tax to be paid hereunder.

(d) In the event of neglect, refusal or failure on the part of any domestic limited partnership, registered series or foreign limited partnership to pay the annual tax to be paid hereunder on or before June 1 in any year, such domestic limited partnership or foreign

limited partnership shall pay the sum of $200, and such registered series shall pay the sum of $50, to be recovered by adding that amount to the annual tax, and such additional sum shall become a part of the tax and shall be collected in the same manner and subject to the same penalties.

(e) In case any domestic limited partnership, registered series or foreign limited partnership shall fail to pay the annual tax due within the time required by this section, and in case the agent in charge of the registered office of any domestic limited partnership or foreign limited partnership upon whom process against such domestic limited partnership or any protected series or registered series thereof or foreign limited partnership may be served shall die, resign, refuse to act as such, remove from the State of Delaware or cannot with due diligence be found, it shall be lawful while default continues to serve process against such domestic limited partnership or any protected series or registered series thereof or foreign limited partnership upon the Secretary of State. Such service upon the Secretary of State shall be made in the manner and shall have the effect stated in § 17-105 of this title in the case of a domestic limited partnership or any protected series or registered series thereof and § 17-910 of this title in the case of a foreign limited partnership and shall be governed in all respects by said sections.

(f) The annual tax shall be a debt due from a domestic limited partnership, registered series or foreign limited partnership to the State of Delaware, for which an action at law may be maintained after the same shall have been in arrears for a period of 1 month. The tax shall also be a preferred debt in the case of insolvency.

(g) A domestic limited partnership that neglects, refuses or fails to pay the annual tax when due shall cease to be in good standing as a domestic limited partnership and all registered series thereof shall also cease to be in good standing. A registered series that neglects, refuses or fails to pay the annual tax when due shall cease to be in good standing as a registered series. A foreign limited partnership that neglects, refuses or fails to pay the annual tax when due shall cease to be registered as a foreign limited partnership in the State of Delaware.

(h) A domestic limited partnership or registered series that has ceased to be in good standing or a foreign limited partnership that has ceased to be registered by reason of the failure by the limited partnership, registered series or foreign limited partnership to pay an annual tax shall be restored to and have the status of a domestic limited partnership or registered series in good standing or a foreign limited partnership that is registered in the State of Delaware upon the payment of the annual tax and all penalties and interest thereon for each year for which such domestic limited partnership, registered series or foreign limited partnership neglected, refused or failed to pay an annual tax.

(i) The Attorney General, either on the Attorney General's own motion or upon request of the Secretary of State, whenever any annual tax due under this chapter from any domestic limited partnership, registered series or foreign limited partnership shall have remained in arrears for a period of 3 months after the tax shall have become payable, may apply to the Court of Chancery, by petition in the name of the State of Delaware, on 5 days' notice to such domestic limited partnership, registered series or foreign limited partnership, which notice may be served in such manner as the Court may direct, for an injunction to restrain such domestic limited partnership, registered series or foreign limited partnership from the transaction of any business within the State of Delaware or elsewhere, until the payment of the annual tax, and all penalties and interest due thereon and the cost of the application, which shall be fixed by the Court. The Court of Chancery may grant the injunction, if a proper case appears, and upon granting and service of the injunction, such domestic limited partnership, registered series or foreign limited partnership thereafter shall not transact any business until the injunction shall be dissolved.

(j) A domestic limited partnership that has ceased to be in good standing by reason of the limited partnership's neglect, refusal or failure to pay an annual tax shall remain a domestic limited partnership formed under this chapter, and each registered series thereof shall remain a registered series formed under this chapter, and each protected series thereof shall remain a protected series established under this chapter. A registered series that has ceased to be in good standing by reason of the registered series' neglect, refusal or failure to pay an annual tax shall remain a registered series formed under this chapter. The Secretary of State shall not accept for filing any certificate (except a certificate of resignation of a registered agent when a successor registered agent is not being appointed) required or permitted by this chapter to be filed in respect of any domestic limited partnership, registered series or foreign limited partnership if such domestic limited partnership, registered series or foreign limited partnership has neglected, refused or failed to pay an annual tax, and shall not issue any certificate of good standing with respect to such domestic limited partnership, registered series or foreign limited partnership, unless and until such domestic limited partnership, registered series or foreign limited partnership shall have been restored to and have the status of a domestic limited partnership or registered series in good standing or a foreign limited partnership duly registered in the State of Delaware.

(k) A domestic limited partnership that has ceased to be in good standing (and each protected series and registered series thereof), a registered series that has ceased to be in good standing, or a foreign limited partnership that has ceased to be registered in the State of Delaware by reason of the domestic limited partnership's, registered series' or foreign limited partnership's neglect, refusal or failure to pay an annual tax may not maintain any action, suit or proceeding in any court of the State of Delaware until such domestic limited partnership, registered series or foreign limited partnership has been restored to and has the status of a domestic limited partnership, registered series or foreign limited partnership in good standing or duly registered in the State of Delaware. An action, suit or proceeding may not be maintained in any court of the State of Delaware by any successor or assignee of such domestic limited partnership (or any protected series or registered series thereof), registered series, or foreign limited partnership on any right, claim or demand arising out of the transaction of business by such domestic limited partnership (or any protected series or registered series thereof) or registered series after the domestic limited partnership or registered series has ceased to be in good standing or a foreign limited partnership that has ceased to be registered in the State of Delaware until such domestic limited partnership, registered series or foreign limited partnership,

or any person that has acquired all or substantially all of its assets, has paid any annual tax then due and payable, together with penalties and interest thereon.

(l) The neglect, refusal or failure of a domestic limited partnership, registered series or foreign limited partnership to pay an annual tax shall not impair the validity of any contract, deed, mortgage, security interest, lien or act of such domestic limited partnership or any protected series or registered series thereof or foreign limited partnership or prevent such domestic limited partnership or any protected series or registered series thereof or foreign limited partnership from defending any action, suit or proceeding in any court of the State of Delaware.

(m) A limited partner of a domestic limited partnership, registered series or foreign limited partnership is not liable as a general partner of such domestic limited partnership, registered series or foreign limited partnership solely by reason of the neglect, refusal or failure of such domestic limited partnership, registered series or foreign limited partnership to pay an annual tax or by reason of such domestic limited partnership, registered series or foreign limited partnership ceasing to be in good standing or duly registered. A protected series or registered series of a domestic limited partnership is not liable for the debts, obligations or liabilities of such domestic limited partnership or any other series thereof solely by reason of the neglect, refusal or failure of such domestic limited partnership or other series to pay an annual tax or by reason of such domestic limited partnership or other series ceasing to be in good standing.

(66 Del. Laws, c. 316, § 69; 67 Del. Laws, c. 348, §§ 32, 33; 68 Del. Laws, c. 246, § 5; 69 Del. Laws, c. 258, §§ 53, 54; 70 Del. Laws, c. 186, § 1; 72 Del. Laws, c. 128, § 19; 74 Del. Laws, c. 52, §§ 20, 21; 76 Del. Laws, c. 287, § 2; 77 Del. Laws, c. 78, § 23; 79 Del. Laws, c. 212, § 2; 82 Del. Laws, c. 46, § 26.)

§ 17-1110 Cancellation of certificate of limited partnership or certificate of registered series for failure to pay annual tax.

(a) The certificate of limited partnership of a domestic limited partnership shall be canceled if the annual tax due under § 17-1109 of this title for the domestic limited partnership is not paid for a period of 3 years from the date it is due, such cancellation to be effective on the third anniversary of such due date.

(b) The certificate of registered series shall be canceled if the annual tax due under § 17-1109 of this title is not paid for a period of 3 years from the date it is due, such cancellation to be effective on the third anniversary of such due date.

(c) A list of those domestic limited partnerships and registered series whose certificates of limited partnership or certificates of registered series were canceled on June 1 of such calendar year pursuant to subsection (a) or (b) of this section shall be filed in the office of the Secretary of State. On or before October 31 of each calendar year, the Secretary of State shall publish such list on the Internet or on a similar medium for a period of 1 week and shall advertise the website or other address where such list can be accessed in at least 1 newspaper of general circulation in the State of Delaware.

(70 Del. Laws, c. 78, § 29; 73 Del. Laws, c. 297, § 12; 76 Del. Laws, c. 104, § 40; 82 Del. Laws, c. 46, § 27.)

§ 17-1111 Revival of domestic limited partnership.

(a) A domestic limited partnership whose certificate of limited partnership has been canceled pursuant to § 17-104(d) or (i)(4) or § 17-1110(a) of this title may be revived by filing in the office of the Secretary of State a certificate of revival accompanied by the payment of the fee required by § 17-1107(a)(3) of this title and payment of the annual tax due under § 17-1109 of this title and all penalties and interest thereon due at the time of the cancellation of its certificate of limited partnership. The certificate of revival shall set forth:

(1) The name of the limited partnership at the time its certificate of limited partnership was canceled and, if such name is not available at the time of revival, the name under which the limited partnership is to be revived;

(2) The date of filing of the original certificate of limited partnership of the limited partnership;

(3) The address of the limited partnership's registered office in the State of Delaware and the name and address of the limited partnership's registered agent in the State of Delaware;

(4) A statement that the certificate of revival is filed by 1 or more general partners of the limited partnership authorized to execute and file the certificate of revival to revive the limited partnership; and

(5) Any other matters the general partner or general partners executing the certificate of revival determine to include therein.

(b) The certificate of revival shall be deemed to be an amendment to the certificate of limited partnership of the limited partnership, and the limited partnership shall not be required to take any further action to amend its certificate of limited partnership under § 17-202 of this title with respect to the matters set forth in the certificate of revival.

(c) Upon the filing of a certificate of revival, a limited partnership and all registered series thereof that have been formed and whose certificate of registered series has not been cancelled prior to the cancellation of the certificate of limited partnership shall be revived with the same force and effect as if its certificate of limited partnership had not been canceled pursuant to § 17-104(d), § 17-104(i)(4) or § 17-1110(a) of this title. Such revival shall validate all contracts, acts, matters and things made, done and performed by the limited partnership, its partners, employees and agents during the time when its certificate of limited partnership was canceled pursuant to § 17-104(d), § 17-104(i)(4) or § 17-1110(a) of this title, with the same force and effect and to all intents and purposes as if the certificate of limited partnership had remained in full force and effect. All real and personal property, and all rights and interests, which belonged to the

limited partnership at the time its certificate of limited partnership was canceled pursuant to § 17-104(d), § 17-104(i)(4) or § 17-1110(a) of this title, or which were acquired by the limited partnership following the cancellation of its certificate of limited partnership pursuant to § 17-104(d), § 17-104(i)(4) or § 17-1110(a) of this title, and which were not disposed of prior to the time of its revival, shall be vested in the limited partnership after its revival as fully as they were held by the limited partnership at, and after, as the case may be, the time its certificate of limited partnership was canceled pursuant to § 17-104(d), § 17-104(i)(4) or § 17-1110(a) of this title. After its revival, the limited partnership and its partners shall have the same liability for all contracts, acts, matters and things made, done or performed in the limited partnership's name and on its behalf by its partners, employees and agents as the limited partnership and its partners would have had if the limited partnership's certificate of limited partnership had at all times remained in full force and effect.

(70 Del. Laws, c. 78, § 30; 75 Del. Laws, c. 414, §§ 43, 44; 77 Del. Laws, c. 78, § 24; 82 Del. Laws, c. 46, § 28.)

§ 17-1112 Revival of registered series.

(a) A registered series whose certificate of registered series has been canceled pursuant to § 17-1110(b) of this title may be revived by filing in the office of the Secretary of State a certificate of revival of registered series accompanied by the payment of the fee required by § 17-1107(a)(3) of this title and payment of the annual tax due under § 17-1109 of this title and all penalties and interest thereon due at the time of the cancellation of its certificate of registered series. The certificate of revival of registered series shall set forth:

(1) The name of the limited partnership at the time the certificate of registered series was canceled and, if such name has changed, the name of the limited partnership at the time of revival of the registered series;

(2) The name of the registered series at the time the certificate of registered series was canceled and, if such name is not available at the time of revival, the name under which the registered series is to be revived;

(3) The date of filing of the original certificate of registered series;

(4) A statement that the certificate of revival of registered series is filed by 1 or more general partners associated with the registered series authorized to execute and file such certificate of revival to revive the registered series; and

(5) Any other matters the persons executing the certificate of revival of registered series determine to include therein.

(b) The certificate of revival of registered series shall be deemed to be an amendment to the certificate of registered series, and no further actions shall be required to amend its certificate of registered series under § 17-221(d)(3) of this title with respect to the matters set forth in such certificate of revival.

(c) Upon the filing of a certificate of revival of registered series, a registered series shall be revived with the same force and effect as if its certificate of registered series had not been canceled pursuant to § 17-1110(b) of this title. Such revival shall validate all contracts, acts, matters and things made, done and performed by the registered series, its partners, employees and agents during the time when its certificate of registered series was canceled pursuant to § 17-1110(b) of this title, with the same force and effect and to all intents and purposes as if the certificate of registered series had remained in full force and effect. All real and personal property, and all rights and interests, which belonged to the registered series at the time its certificate of registered series was canceled pursuant to § 17-1110(b) of this title or which were acquired by the registered series following the cancellation of its certificate of registered series pursuant to § 17-1110(b) of this title, and which were not disposed of prior to the time of its revival, shall be vested in the registered series after its revival as fully as they were held by the registered series at, and after, as the case may be, the time its certificate of registered series was canceled pursuant to § 17-1110(b) of this title. After its revival, the registered series and its partners shall have the same liability for all contracts, acts, matters and things made, done or performed in the registered series' name and on its behalf by its partners, employees and agents as the registered series and its partners would have had if its certificate of registered series had at all times remained in full force and effect.

(82 Del. Laws, c. 46, § 29.)

Subchapter XII

Statutory Public Benefit Limited Partnerships

§ 17-1201 Law applicable to statutory public benefit limited partnerships; how formed.

This subchapter applies to all statutory public benefit limited partnerships, as defined in § 17-1202 of this title. If a limited partnership elects to become a statutory public benefit limited partnership under this subchapter in the manner prescribed in this subchapter, it shall be subject in all respects to the provisions of this chapter, except to the extent this subchapter imposes additional or different requirements, in which case such requirements shall apply, and notwithstanding § 17-1101 of this title or any other provision of this title, such requirements imposed by this subchapter may not be altered in the partnership agreement.

(82 Del. Laws, c. 46, § 30.)

§ 17-1202 Statutory public benefit limited partnership defined; contents of certificate of limited partnership and partnership agreement.

(a) A "statutory public benefit limited partnership" is a for-profit limited partnership formed under and subject to the requirements of this chapter that is intended to produce a public benefit or public benefits and to operate in a responsible and sustainable manner. To that end, a statutory public benefit limited partnership shall be managed in a manner that balances the partners' pecuniary interests,

the best interests of those materially affected by the limited partnership's conduct, and the public benefit or public benefits set forth in its certificate of limited partnership. A statutory public benefit limited partnership shall state in the heading of its certificate of limited partnership that it is a statutory public benefit limited partnership and shall set forth 1 or more specific public benefits to be promoted by the limited partnership in its certificate of limited partnership. The partnership agreement of a statutory public benefit limited partnership may not contain any provision inconsistent with this subchapter.

(b) "Public benefit" means a positive effect (or reduction of negative effects) on 1 or more categories of persons, entities, communities or interests (other than partners in their capacities as partners) including, but not limited to, effects of an artistic, charitable, cultural, economic, educational, environmental, literary, medical, religious, scientific or technological nature. "Public benefit provisions" means the provisions of a partnership agreement contemplated by this subchapter.

(82 Del. Laws, c. 46, § 30.)

§ 17-1203 Certain amendments and mergers; votes required.

Notwithstanding any other provision of this chapter, a statutory public benefit limited partnership may not, without the approval (i) by all general partners, and (ii) limited partners who own more than $^{2}/_{3}$ of the then current percentage or other interest in the profits of the limited partnership owned by all of the limited partners:

(1) Amend its certificate of limited partnership to delete or amend a provision required by § 17-1202(a) of this title;

(2) Merge or consolidate with or into another entity or divide into 2 or more domestic limited partnerships if, as a result of such merger, consolidation or division, the limited partnership interests in such limited partnership would become, or be converted into or exchanged for the right to receive, limited partnership interests or other equity interests in a domestic or foreign limited partnership or other entity that is not a statutory public benefit limited partnership or similar entity, the certificate of limited partnership or partnership agreement (or similar governing document) of which does not contain provisions identifying a public benefit or public benefits comparable in all material respects to those set forth in the certificate of limited partnership of such limited partnership as contemplated by § 17-1202(a) of this title; or

(3) Cease to be a statutory public benefit limited partnership under the provisions of this subchapter.

(82 Del. Laws, c. 46, § 30.)

§ 17-1204 Duties of general partners or other persons.

(a) The general partners or other persons with authority to manage or direct the business and affairs of a statutory public benefit limited partnership shall manage or direct the business and affairs of the statutory public benefit limited partnership in a manner that balances the pecuniary interests of the partners, the best interests of those materially affected by the limited partnership's conduct, and the specific public benefit or public benefits set forth in its certificate of limited partnership. Unless otherwise provided in a partnership agreement, no general partner or other person with authority to manage or direct the business and affairs of the statutory public benefit limited partnership shall have any liability for monetary damages for the failure to manage or direct the business and affairs of the statutory public benefit limited partnership as provided in this subsection.

(b) A general partner of a statutory public benefit limited partnership or any other person with authority to manage or direct the business and affairs of the statutory public benefit limited partnership shall not, by virtue of the public benefit provisions or § 17-1202(a) of this title, have any duty to any person on account of any interest of such person in the public benefit or public benefits set forth in its certificate of limited partnership or on account of any interest materially affected by the limited partnership's conduct and, with respect to a decision implicating the balance requirement in subsection (a) of this section, will be deemed to satisfy such person's fiduciary duties to limited partners and the limited partnership if such person's decision is both informed and disinterested and not such that no person of ordinary, sound judgment would approve.

(82 Del. Laws, c. 46, § 30.)

§ 17-1205 Periodic statements and third-party certification.

A statutory public benefit limited partnership shall no less than biennially provide its limited partners with a statement as to the limited partnership's promotion of the public benefit or public benefits set forth in its certificate of limited partnership and as to the best interests of those materially affected by the limited partnership's conduct. The statement shall include:

(1) The objectives that have been established to promote such public benefit or public benefits and interests;

(2) The standards that have been adopted to measure the limited partnership's progress in promoting such public benefit or public benefits and interests;

(3) Objective factual information based on those standards regarding the limited partnership's success in meeting the objectives for promoting such public benefit or public benefits and interests; and

(4) An assessment of the limited partnership's success in meeting the objectives and promoting such public benefit or public benefits and interests.

(82 Del. Laws, c. 46, § 30.)

§ 17-1206 Derivative suits.

Limited partners of a statutory public benefit limited partnership or assignees of partnership interests in a statutory public benefit limited partnership owning individually or collectively, as of the date of instituting such derivative suit, at least 2% of the then-current percentage or other interest in the profits of the limited partnership or, in the case of a limited partnership with partnership interests listed on a national securities exchange, the lesser of such percentage or partnership interests of at least $2,000,000 in market value, may maintain a derivative lawsuit to enforce the requirements set forth in § 17-1204(a) of this title.

(82 Del. Laws, c. 46, § 30.)

§ 17-1207 No effect on other limited partnerships.

This subchapter shall not affect a statute or rule of law that is applicable to a limited partnership that is not a statutory public benefit limited partnership.

(82 Del. Laws, c. 46, § 30.)

§ 17-1208 Accomplishment by other means.

The provisions of this subchapter shall not be construed to limit the accomplishment by any other means permitted by law of the formation or operation of a limited partnership that is formed or operated for a public benefit (including a limited partnership that is designated as a public benefit limited partnership) that is not a statutory public benefit limited partnership.

(82 Del. Laws, c. 46, § 30.)

Subtitle II
Other Laws Relating to Commerce and Trade
Chapter 18
Limited Liability Company Act
Subchapter I
General Provisions

§ 18-101 Definitions.

As used in this chapter unless the context otherwise requires:

(1) "Bankruptcy" means an event that causes a person to cease to be a member as provided in § 18-304 of this title.

(2) "Certificate of formation" means the certificate referred to in § 18-201 of this title, and the certificate as amended.

(3) "Contribution" means any cash, property, services rendered or a promissory note or other obligation to contribute cash or property or to perform services, which a person contributes to a limited liability company in the person's capacity as a member.

(4) "Document" means:

a. Any tangible medium on which information is inscribed, and includes handwritten, typed, printed or similar instruments, and copies of such instruments; and

b. An electronic transmission.

(5) "Electronic transmission" means any form of communication not directly involving the physical transmission of paper, including the use of, or participation in, 1 or more electronic networks or databases (including 1 or more distributed electronic networks or databases), that creates a record that may be retained, retrieved and reviewed by a recipient thereof and that may be directly reproduced in paper form by such a recipient through an automated process.

(6) "Foreign limited liability company" means a limited liability company formed under the laws of any state or under the laws of any foreign country or other foreign jurisdiction. When used in this title in reference to a foreign limited liability company, the terms "limited liability company agreement," "limited liability company interest," "manager" or "member" shall mean a limited liability company agreement, limited liability company interest, manager or member, respectively, under the laws of the state or foreign country or other foreign jurisdiction under which the foreign limited liability company is formed.

(7) "Knowledge" means a person's actual knowledge of a fact, rather than the person's constructive knowledge of the fact.

(8) "Limited liability company" and "domestic limited liability company" means a limited liability company formed under the laws of the State of Delaware and having 1 or more members.

(9) "Limited liability company agreement" means any agreement (whether referred to as a limited liability company agreement, operating agreement or otherwise), written, oral or implied, of the member or members as to the affairs of a limited liability company and the conduct of its business. A member or manager of a limited liability company or an assignee of a limited liability company interest is bound by the limited liability company agreement whether or not the member or manager or assignee executes the limited liability company agreement. A limited liability company is not required to execute its limited liability company agreement. A limited liability company is bound by its limited liability company agreement whether or not the limited liability company executes the limited liability company agreement. A limited liability company agreement of a limited liability company having only 1 member shall not be unenforceable by reason of there being only 1 person who is a party to the limited liability company agreement. A limited liability company agreement is not subject to any statute of frauds (including § 2714 of this title). A limited liability company agreement may provide rights to any person, including a person who is not a party to the limited liability company agreement, to the extent set forth therein. A written limited liability company agreement or another written agreement or writing:

a. May provide that a person shall be admitted as a member of a limited liability company, or shall become an assignee of a limited liability company interest or other rights or powers of a member to the extent assigned:

1. If such person (or a representative authorized by such person orally, in writing or by other action such as payment for a limited liability company interest) executes the limited liability company agreement or any other writing evidencing the intent of such person to become a member or assignee; or

2. Without such execution, if such person (or a representative authorized by such person orally, in writing or by other action such as payment for a limited liability company interest) complies with the conditions for becoming a member or assignee as set forth in the limited liability company agreement or any other writing; and

b. Shall not be unenforceable by reason of its not having been signed by a person being admitted as a member or becoming an assignee as provided in paragraph (9)a. of this section, or by reason of its having been signed by a representative as provided in this chapter.

(10) "Limited liability company interest" means a member's share of the profits and losses of a limited liability company and a member's right to receive distributions of the limited liability company's assets.

(11) "Liquidating trustee" means a person carrying out the winding up of a limited liability company.

(12) "Manager" means a person who is named as a manager of a limited liability company in, or designated as a manager of a limited liability company pursuant to, a limited liability company agreement or similar instrument under which the limited liability company is formed, and includes a manager of the limited liability company generally and a manager associated with a series of the limited liability company. Unless the context otherwise requires, references in this chapter to a manager (including references in this chapter to a manager of a limited liability company) shall be deemed to be references to a manager of the limited liability company generally and to a manager associated with a series with respect to such series.

(13) "Member" means a person who is admitted to a limited liability company as a member as provided in § 18-301 of this title, and includes a member of the limited liability company generally and a member associated with a series of the limited liability company. Unless the context otherwise requires, references in this chapter to a member (including references in this chapter to a member of a limited liability company) shall be deemed to be references to a member of the limited liability company generally and to a member associated with a series with respect to such series.

(14) "Person" means a natural person, partnership (whether general or limited), limited liability company, trust (including a common law trust, business trust, statutory trust, voting trust or any other form of trust), estate, association (including any group, organization, co-tenancy, plan, board, council or committee), corporation, government (including a country, state, county or any other governmental subdivision, agency or instrumentality), custodian, nominee or any other individual or entity (or series thereof) in its own or any representative capacity, in each case, whether domestic or foreign.

(15) "Personal representative" means, as to a natural person, the executor, administrator, guardian, conservator or other legal representative thereof and, as to a person other than a natural person, the legal representative or successor thereof.

(16) "Protected series" means a designated series of members, managers, limited liability company interests or assets that is established in accordance with § 18-215(b) of this title.

(17) "Registered series" means a designated series of members, managers, limited liability company interests or assets that is formed in accordance with § 18-218 of this title.

(18) "Series" means a designated series of members, managers, limited liability company interests or assets that is a protected series or a registered series, or that is neither a protected series nor a registered series.

(19) "State" means the District of Columbia or the Commonwealth of Puerto Rico or any state, territory, possession or other jurisdiction of the United States other than the State of Delaware.

(68 Del. Laws, c. 434, § 1; 69 Del. Laws, c. 260, § 1; 70 Del. Laws, c. 75, §§ 1-3; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 77, §§ 1, 2; 71 Del. Laws, c. 341, § 1; 72 Del. Laws, c. 129, § 1; 73 Del. Laws, c. 83, § 1; 73 Del. Laws, c. 295, §§ 1, 2; 74 Del. Laws, c. 275, § 1; 75 Del. Laws, c. 51, § 1; 75 Del. Laws, c. 317, § 1; 76 Del. Laws, c. 105, §§ 1, 2; 76 Del. Laws, c. 387, § 1; 77 Del. Laws, c. 287, § 1; 81 Del. Laws, c. 357, § 1; 81 Del. Laws, c. 89, §§ 1, 2; 82 Del. Laws, c. 48, § 1; 82 Del. Laws, c. 259, § 1.)

§ 18-102 Name set forth in certificate.

The name of each limited liability company as set forth in its certificate of formation:

(1) Shall contain the words "Limited Liability Company" or the abbreviation "L.L.C." or the designation "LLC";

(2) May contain the name of a member or manager;

(3) Must be such as to distinguish it upon the records in the office of the Secretary of State from the name on such records of any corporation, partnership, limited partnership, statutory trust, limited liability company, registered series of a limited liability company or registered series of a limited partnership reserved, registered, formed or organized under the laws of the State of Delaware or qualified to do business or registered as a foreign corporation, foreign limited partnership, foreign statutory trust, foreign partnership, or foreign limited liability company in the State of Delaware; provided however, that a limited liability company may register under any name which is not such as to distinguish it upon the records in the office of the Secretary of State from the name on such records of any domestic or foreign corporation, partnership, limited partnership, statutory trust, registered series of a limited liability company, registered series of a limited partnership, or foreign limited liability company reserved, registered, formed or organized under the laws of the State of Delaware with the written consent of the other corporation, partnership, limited partnership, statutory trust, registered series of a limited liability company, registered series of a limited partnership, or foreign limited liability company, which written consent shall be filed with the Secretary of State; provided further, that, if on July 31, 2011, a limited liability company is registered (with the consent of another limited liability company) under a name which is not such as to distinguish it upon the records in the office of the Secretary of State from the name on such records of such other domestic limited liability company, it shall not be necessary for any such limited liability company to amend its certificate of formation to comply with this subsection;

(4) May contain the following words: "Company," "Association," "Club," "Foundation," "Fund," "Institute," "Society," "Union," "Syndicate," "Limited", "Public Benefit" or "Trust" (or abbreviations of like import); and

(5) Shall not contain the word "bank," or any variation thereof, except for the name of a bank reporting to and under the supervision of the State Bank Commissioner of this State or a subsidiary of a bank or savings association (as those terms are defined in the Federal Deposit Insurance Act, as amended, at 12 U.S.C. § 1813), or a limited liability company regulated under the Bank Holding Company Act of 1956, as amended, 12 U.S.C. § 1841 et seq., or the Home Owners' Loan Act, as amended, 12 U.S.C. § 1461 et seq.; provided,

however, that this section shall not be construed to prevent the use of the word "bank," or any variation thereof, in a context clearly not purporting to refer to a banking business or otherwise likely to mislead the public about the nature of the business of the limited liability company or to lead to a pattern and practice of abuse that might cause harm to the interests of the public or this State as determined by the Division of Corporations in the Department of State.

(68 Del. Laws, c. 434, § 1; 69 Del. Laws, c. 260, § 2; 70 Del. Laws, c. 75, § 4; 72 Del. Laws, c. 389, § 1; 73 Del. Laws, c. 83, § 2; 73 Del. Laws, c. 329, § 25; 78 Del. Laws, c. 95, § 1; 78 Del. Laws, c. 270, § 1; 81 Del. Laws, c. 89, § 3; 81 Del. Laws, c. 357, §§ 2, 3; 82 Del. Laws, c. 48, § 2; 82 Del. Laws, c. 259, § 2.)

§ 18-103 Reservation of name.

(a) The exclusive right to the use of a name may be reserved by:

(1) Any person intending to organize a limited liability company under this chapter and to adopt that name;

(2) Any person intending to form a registered series of a limited liability company under this chapter and to adopt that name in accordance with § 18-218(e) of this title;

(3) Any domestic limited liability company or any foreign limited liability company registered in the State of Delaware which, in either case, proposes to change its name;

(4) Any foreign limited liability company intending to register in the State of Delaware and adopt that name; and

(5) Any person intending to organize a foreign limited liability company and intending to have it register in the State of Delaware and adopt that name.

(b) The reservation of a specified name shall be made by filing with the Secretary of State an application, executed by the applicant, specifying the name to be reserved and the name and address of the applicant. If the Secretary of State finds that the name is available for use by a domestic or foreign limited liability company, the Secretary shall reserve the name for the exclusive use of the applicant for a period of 120 days. Once having so reserved a name, the same applicant may again reserve the same name for successive 120-day periods. The right to the exclusive use of a reserved name may be transferred to any other person by filing in the office of the Secretary of State a notice of the transfer, executed by the applicant for whom the name was reserved, specifying the name to be transferred and the name and address of the transferee. The reservation of a specified name may be canceled by filing with the Secretary of State a notice of cancellation, executed by the applicant or transferee, specifying the name reservation to be canceled and the name and address of the applicant or transferee. Unless the Secretary of State finds that any application, notice of transfer, or notice of cancellation filed with the Secretary of State as required by this subsection does not conform to law, upon receipt of all filing fees required by law the Secretary shall prepare and return to the person who filed such instrument a copy of the filed instrument with a notation thereon of the action taken by the Secretary of State.

(c) A fee as set forth in § 18-1105(a)(1) of this title shall be paid at the time of the initial reservation of any name, at the time of the renewal of any such reservation and at the time of the filing of a notice of the transfer or cancellation of any such reservation.

(68 Del. Laws, c. 434, § 1; 69 Del. Laws, c. 260, § 3; 70 Del. Laws, c. 186, § 1; 81 Del. Laws, c. 357, § 4.)

§ 18-104 Registered office; registered agent.

(a) Each limited liability company shall have and maintain in the State of Delaware:

(1) A registered office, which may but need not be a place of its business in the State of Delaware; and

(2) A registered agent for service of process on the limited liability company, having a business office identical with such registered office, which agent may be any of:

a. The limited liability company itself,

b. An individual resident in the State of Delaware,

c. A domestic limited liability company (other than the limited liability company itself), a domestic corporation, a domestic partnership (whether general (including a limited liability partnership) or limited (including a limited liability limited partnership)), or a domestic statutory trust, or

d. A foreign corporation, a foreign limited liability partnership, a foreign limited partnership (including a foreign limited liability limited partnership), a foreign limited liability company, or a foreign statutory trust.

(b) A registered agent may change the address of the registered office of the limited liability company(ies) for which it is registered agent to another address in the State of Delaware by paying a fee as set forth in § 18-1105(a)(2) of this title and filing with the Secretary of State a certificate, executed by such registered agent, setting forth the address at which such registered agent has maintained the registered office for each of the limited liability companies for which it is a registered agent, and further certifying to the new address to which each such registered office will be changed on a given day, and at which new address such registered agent will thereafter maintain the registered office for each of the limited liability companies for which it is a registered agent. Upon the filing of such certificate, until further change of address, as authorized by law, the registered office in the State of Delaware of each of the limited liability companies for which the agent is a registered agent shall be located at the new address of the registered agent thereof as given in the certificate. In the event of a change of name of any person acting as a registered agent of a limited liability company, such registered agent shall file with the Secretary of State a certificate executed by such registered agent setting forth the new name of such registered agent, the name

of such registered agent before it was changed, and the address at which such registered agent has maintained the registered office for each of the limited liability companies for which it is a registered agent, and shall pay a fee as set forth in § 18-1105(a)(2) of this title. A change of name of any person acting as a registered agent of a limited liability company as a result of (i) a merger or consolidation of the registered agent with or into another person which succeeds to its assets and liabilities by operation of law, (ii) the conversion of the registered agent into another person, or (iii) a division of the registered agent in which an identified resulting person succeeds to all of the assets and liabilities of the registered agent related to its registered agent business pursuant to the plan of division, as set forth in the certificate of division, shall each be deemed a change of name for purposes of this section. Filing a certificate under this section shall be deemed to be an amendment of the certificate of formation of each limited liability company affected thereby, and each such limited liability company shall not be required to take any further action with respect thereto to amend its certificate of formation under § 18-202 of this title. Any registered agent filing a certificate under this section shall promptly, upon such filing, deliver a copy of any such certificate to each limited liability company affected thereby.

(c) The registered agent of 1 or more limited liability companies may resign and appoint a successor registered agent by paying a fee as set forth in § 18-1105(a)(2) of this title and filing a certificate with the Secretary of State stating that it resigns and the name and address of the successor registered agent. There shall be attached to such certificate a statement of each affected limited liability company ratifying and approving such change of registered agent. Upon such filing, the successor registered agent shall become the registered agent of such limited liability companies as have ratified and approved such substitution, and the successor registered agent's address, as stated in such certificate, shall become the address of each such limited liability company's registered office in the State of Delaware. Filing of such certificate of resignation shall be deemed to be an amendment of the certificate of formation of each limited liability company affected thereby, and each such limited liability company shall not be required to take any further action with respect thereto to amend its certificate of formation under § 18-202 of this title.

(d) The registered agent of a limited liability company, including a limited liability company whose certificate of formation has been cancelled pursuant to § 18-1108 of this title, may resign without appointing a successor registered agent by paying a fee as set forth in § 18-1105(a)(2) of this title and filing a certificate of resignation with the Secretary of State, but such resignation shall not become effective until 30 days after the certificate is filed. The certificate shall contain a statement that written notice of resignation was given to the limited liability company at least 30 days prior to the filing of the certificate by mailing or delivering such notice to the limited liability company at its address last known to the registered agent and shall set forth the date of such notice. The certificate shall include such information last provided to the registered agent pursuant to subsection (g) of this section of this title for a communications contact for the limited liability company. Such information regarding the communications contact shall not be deemed public. A certificate filed pursuant to this subsection must be on the form prescribed by the Secretary of State. After receipt of the notice of the resignation of its registered agent, the limited liability company for which such registered agent was acting shall obtain and designate a new registered agent, to take the place of the registered agent so resigning. If such limited liability company fails to obtain and designate a new registered agent as aforesaid prior to the expiration of the period of 30 days after the filing by the registered agent of the certificate of resignation, the certificate of formation of such limited liability company shall be canceled. After the resignation of the registered agent shall have become effective as provided in this section and if no new registered agent shall have been obtained and designated in the time and manner aforesaid, service of legal process against each limited liability company (and each protected series and each registered series thereof) for which the resigned registered agent had been acting shall thereafter be upon the Secretary of State in accordance with § 18-105 of this title.

(e) Every registered agent shall:

(1) If an entity, maintain a business office in the State of Delaware which is generally open, or if an individual, be generally present at a designated location in the State of Delaware, at sufficiently frequent times to accept service of process and otherwise perform the functions of a registered agent;

(2) If a foreign entity, be authorized to transact business in the State of Delaware;

(3) Accept service of process and other communications directed to the limited liability companies (and any protected series or registered series thereof) and foreign limited liability companies for which it serves as registered agent and forward same to the limited liability company or foreign limited liability company to which the service or communication is directed;

(4) Forward to the limited liability companies and foreign limited liability companies for which it serves as registered agent the statement for the annual tax for such limited liability company (and each registered series thereof) or such foreign limited liability company, as applicable, as described in § 18-1107 of this title or an electronic notification of same in a form satisfactory to the Secretary of State; and

(5) Satisfy and adhere to regulations established by the Secretary regarding the verification of both the identity of the entity's contacts and individuals for which the registered agent maintains a record for the reduction of risk of unlawful business purposes.

(f) Any registered agent who at any time serves as registered agent for more than 50 entities (a "commercial registered agent"), whether domestic or foreign, shall satisfy and comply with the following qualifications:

(1) A natural person serving as a commercial registered agent shall:

a. Maintain a principal residence or a principal place of business in the State of Delaware;

b. Maintain a Delaware business license;

c. Be generally present at a designated location within the State of Delaware during normal business hours to accept service of process and otherwise perform the functions of a registered agent as specified in subsection (e) of this section;

d. Provide the Secretary of State upon request with such information identifying and enabling communication with such commercial registered agent as the Secretary of State shall require; and

e. Satisfy and adhere to regulations established by the Secretary regarding the verification of both the identity of the entity's contacts and individuals for which the natural person maintains a record for the reduction of risk of unlawful business purposes.

(2) A domestic or foreign corporation, a domestic partnership (whether general (including a limited liability partnership) or limited (including a limited liability limited partnership)), a foreign limited liability partnership, a domestic or foreign limited liability company, or a domestic or foreign statutory trust serving as a commercial registered agent shall:

a. Have a business office within the State of Delaware which is generally open during normal business hours to accept service of process and otherwise perform the functions of a registered agent as specified in subsection (e) of this section;

b. Maintain a Delaware business license;

c. Have generally present at such office during normal business hours an officer, director or managing agent who is a natural person;

d. Provide the Secretary of State upon request with such information identifying and enabling communication with such commercial registered agent as the Secretary of State shall require; and

e. Satisfy and adhere to regulations established by the Secretary regarding the verification of both the identity of the entity's contacts and individuals for which it maintains a record for the reduction of risk of unlawful business purposes.

(3) For purposes of this subsection and paragraph (i)(2)a. of this section, a commercial registered agent shall also include any registered agent which has an officer, director or managing agent in common with any other registered agent or agents if such registered agents at any time during such common service as officer, director or managing agent collectively served as registered agents for more than 50 entities, whether domestic or foreign.

(g) Every domestic limited liability company and every foreign limited liability company qualified to do business in the State of Delaware shall provide to its registered agent and update from time to time as necessary the name, business address and business telephone number of a natural person who is a member, manager, officer, employee or designated agent of the domestic or foreign limited liability company who is then authorized to receive communications from the registered agent. Such person shall be deemed the communications contact for the domestic or foreign limited liability company. A domestic limited liability company, upon receipt of a request by the communications contact delivered in writing or by electronic transmission, shall provide the communications contact with the name, business address and business telephone number of a natural person who has access to the record required to be maintained pursuant to § 18-305(h) of this title. Every registered agent shall retain (in paper or electronic form) the above information concerning the current communications contact for each domestic limited liability company and each foreign limited liability company for which that registered agent serves as registered agent. If the domestic or foreign limited liability company fails to provide the registered agent with a current communications contact, the registered agent may resign as the registered agent for such domestic or foreign limited liability company pursuant to this section.

(h) The Secretary of State is fully authorized to issue such regulations, as may be necessary or appropriate to carry out the enforcement of subsections (e), (f) and (g) of this section, and to take actions reasonable and necessary to assure registered agents' compliance with subsections (e), (f) and (g) of this section. Such actions may include refusal to file documents submitted by a registered agent, including the refusal to file any documents regarding an entity's formation.

(i) Upon application of the Secretary of State, the Court of Chancery may enjoin any person or entity from serving as a registered agent or as an officer, director or managing agent of a registered agent.

(1) Upon the filing of a complaint by the Secretary of State pursuant to this section, the court may make such orders respecting such proceeding as it deems appropriate, and may enter such orders granting interim or final relief as it deems proper under the circumstances.

(2) Any 1 or more of the following grounds shall be a sufficient basis to grant an injunction pursuant to this section:

a. With respect to any registered agent who at any time within 1 year immediately prior to the filing of the Secretary of State's complaint is a commercial registered agent, failure after notice and warning to comply with the qualifications set forth in subsection (e) of this section and/or the requirements of subsection (f) or (g) of this section above;

b. The person serving as a registered agent, or any person who is an officer, director or managing agent of an entity registered agent, has been convicted of a felony or any crime which includes an element of dishonesty or fraud or involves moral turpitude; or

c. The registered agent has engaged in conduct in connection with acting as a registered agent that is intended to or likely to deceive or defraud the public.

(3) With respect to any order the court enters pursuant to this section with respect to an entity that has acted as a registered agent, the Court may also direct such order to any person who has served as an officer, director or managing agent of such registered agent. Any person who, on or after January 1, 2007, serves as an officer, director or managing agent of an entity acting as a registered agent in the State of Delaware shall be deemed thereby to have consented to the appointment of such registered agent as agent upon whom service of process may be made in any action brought pursuant to this section, and service as an officer, director or managing agent of an entity acting as a registered agent in the State of Delaware shall be a signification of the consent of such person that any process

when so served shall be of the same legal force and validity as if served upon such person within the State of Delaware, and such appointment of the registered agent shall be irrevocable.

(4) Upon the entry of an order by the Court enjoining any person or entity from acting as a registered agent, the Secretary of State shall mail or deliver notice of such order to each affected domestic or foreign limited liability company:

a. That has specified the address of a place of business in a record of the Secretary of State, to the address specified, or

b. An address of which the Secretary of State has obtained from the domestic or foreign limited liability company's former registered agent, to the address obtained.

If such a domestic limited liability company fails to obtain and designate a new registered agent within 30 days after such notice is given, the certificate of formation of such limited liability company shall be canceled. If such a foreign limited liability company fails to obtain and designate a new registered agent within 30 days after such notice is given, such foreign limited liability company shall not be permitted to do business in the State of Delaware and its registration shall be canceled. If any other affected domestic limited liability company fails to obtain and designate a new registered agent within 60 days after entry of an order by the Court enjoining such limited liability company's registered agent from acting as a registered agent, the certificate of formation of such limited liability company shall be canceled. If any other affected foreign limited liability company fails to obtain and designate a new registered agent within 60 days after entry of an order by the Court enjoining such foreign limited liability company's registered agent from acting as a registered agent, such foreign limited liability company shall not be permitted to do business in the State of Delaware and its registration shall be canceled. If the Court enjoins a person or entity from acting as a registered agent as provided in this section and no new registered agent shall have been obtained and designated in the time and manner aforesaid, service of legal process against the domestic or foreign limited liability company for which the registered agent had been acting shall thereafter be upon the Secretary of State in accordance with § 18-105 or § 18-911 of this title. The Court of Chancery may, upon application of the Secretary of State on notice to the former registered agent, enter such orders as it deems appropriate to give the Secretary of State access to information in the former registered agent's possession in order to facilitate communication with the domestic and foreign limited liability companies the former registered agent served.

(j) The Secretary of State is authorized to make a list of registered agents available to the public, and to establish such qualifications and issue such rules and regulations with respect to such listing as the Secretary of State deems necessary or appropriate.

(k) As contained in any certificate of formation, application for registration as a foreign limited liability company, or other document filed in the office of the Secretary of State under this chapter, the address of a registered agent or registered office shall include the street, number, city and postal code.

(68 Del. Laws, c. 434, § 1; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 77, §§ 3, 4; 73 Del. Laws, c. 83, § 3; 73 Del. Laws, c. 329, § 26; 75 Del. Laws, c. 317, §§ 2, 3; 76 Del. Laws, c. 105, §§ 3-8; 78 Del. Laws, c. 95, § 2; 79 Del. Laws, c. 302, § 1; 81 Del. Laws, c. 89, §§ 4, 5; 81 Del. Laws, c. 334, § 4; 81 Del. Laws, c. 357, §§ 5, 6; 82 Del. Laws, c. 48, § 3; 82 Del. Laws, c. 259, § 3.)

§ 18-105 Service of process on domestic limited liability companies and protected series or registered series thereof.

(a) Service of legal process upon any domestic limited liability company or any protected series or registered series thereof shall be made by delivering a copy personally to any manager of the limited liability company in the State of Delaware, or the registered agent of the limited liability company in the State of Delaware, or by leaving it at the dwelling house or usual place of abode in the State of Delaware of any such manager or registered agent (if the registered agent be an individual), or at the registered office or other place of business of the limited liability company in the State of Delaware. If service of legal process is made upon the registered agent of the limited liability company in the State of Delaware on behalf of any such protected series or registered series, such process shall include the name of the limited liability company and the name of such protected series or registered series. If the registered agent be a corporation, service of process upon it as such may be made by serving, in the State of Delaware, a copy thereof on the president, vice-president, secretary, assistant secretary or any director of the corporate registered agent. Service by copy left at the dwelling house or usual place of abode of a manager or registered agent, or at the registered office or other place of business of the limited liability company in the State of Delaware, to be effective, must be delivered thereat at least 6 days before the return date of the process, and in the presence of an adult person, and the officer serving the process shall distinctly state the manner of service in the officer's return thereto. Process returnable forthwith must be delivered personally to the manager or registered agent.

(b) In case the officer whose duty it is to serve legal process cannot by due diligence serve the process in any manner provided for by subsection (a) of this section, it shall be lawful to serve the process against the limited liability company or any protected series or registered series thereof upon the Secretary of State, and such service shall be as effectual for all intents and purposes as if made in any of the ways provided for in subsection (a) of this section. If service of legal process is made upon the Secretary of State on behalf of any such protected series or registered series, such process shall include the name of the limited liability company and the name of such protected series or registered series. Process may be served upon the Secretary of State under this subsection by means of electronic transmission but only as prescribed by the Secretary of State. The Secretary of State is authorized to issue such rules and regulations with respect to such service as the Secretary of State deems necessary or appropriate. In the event that service is effected through the Secretary of State in accordance with this subsection, the Secretary of State shall forthwith notify the limited liability company by letter, directed to the

limited liability company at its address as it appears on the records relating to such limited liability company on file with the Secretary of State or, if no such address appears, at its last registered office. Such letter shall be sent by a mail or courier service that includes a record of mailing or deposit with the courier and a record of delivery evidenced by the signature of the recipient. Such letter shall enclose a copy of the process and any other papers served on the Secretary of State pursuant to this subsection. It shall be the duty of the plaintiff in the event of such service to serve process and any other papers in duplicate, to notify the Secretary of State that service is being effected pursuant to this subsection, and to pay the Secretary of State the sum of $50 for the use of the State of Delaware, which sum shall be taxed as part of the costs in the proceeding if the plaintiff shall prevail therein. The Secretary of State shall maintain an alphabetical record of any such service setting forth the name of the plaintiff and defendant, the title, docket number and nature of the proceeding in which process has been served upon the Secretary, the fact that service has been effected pursuant to this subsection, the return date thereof, and the day and hour when the service was made. The Secretary of State shall not be required to retain such information for a period longer than 5 years from the Secretary's receipt of the service of process.

(68 Del. Laws, c. 434, § 1; 70 Del. Laws, c. 186, § 1; 77 Del. Laws, c. 287, § 2; 80 Del. Laws, c. 271, § 1; 81 Del. Laws, c. 357, § 7.)

§ 18-106 Nature of business permitted; powers.

(a) A limited liability company may carry on any lawful business, purpose or activity, whether or not for profit, with the exception of the business of banking as defined in § 126 of Title 8.

(b) A limited liability company shall possess and may exercise all the powers and privileges granted by this chapter or by any other law or by its limited liability company agreement, together with any powers incidental thereto, including such powers and privileges as are necessary or convenient to the conduct, promotion or attainment of the business, purposes or activities of the limited liability company.

(c) Notwithstanding any provision of this chapter to the contrary, without limiting the general powers enumerated in subsection (b) of this section, a limited liability company shall, subject to such standards and restrictions, if any, as are set forth in its limited liability company agreement, have the power and authority to make contracts of guaranty and suretyship and enter into interest rate, basis, currency, hedge or other swap agreements or cap, floor, put, call, option, exchange or collar agreements, derivative agreements, or other agreements similar to any of the foregoing.

(d) Unless otherwise provided in a limited liability company agreement, a limited liability company has the power and authority to grant, hold or exercise a power of attorney, including an irrevocable power of attorney.

(68 Del. Laws, c. 434, § 1; 71 Del. Laws, c. 77, § 5; 72 Del. Laws, c. 129, § 2; 73 Del. Laws, c. 295, § 3; 75 Del. Laws, c. 51, § 2; 77 Del. Laws, c. 287, § 3.)

§ 18-107 Business transactions of member or manager with the limited liability company.

Except as provided in a limited liability company agreement, a member or manager may lend money to, borrow money from, act as a surety, guarantor or endorser for, guarantee or assume 1 or more obligations of, provide collateral for, and transact other business with, a limited liability company and, subject to other applicable law, has the same rights and obligations with respect to any such matter as a person who is not a member or manager.

(68 Del. Laws, c. 434, § 1; 69 Del. Laws, c. 260, § 4.)

§ 18-108 Indemnification.

Subject to such standards and restrictions, if any, as are set forth in its limited liability company agreement, a limited liability company may, and shall have the power to, indemnify and hold harmless any member or manager or other person from and against any and all claims and demands whatsoever.

(68 Del. Laws, c. 434, § 1.)

§ 18-109 Service of process on managers and liquidating trustees.

(a) A manager or a liquidating trustee of a limited liability company may be served with process in the manner prescribed in this section in all civil actions or proceedings brought in the State of Delaware involving or relating to the business of the limited liability company or a violation by the manager or the liquidating trustee of a duty to the limited liability company or any member of the limited liability company, whether or not the manager or the liquidating trustee is a manager or a liquidating trustee at the time suit is commenced. A manager's or a liquidating trustee's serving as such constitutes such person's consent to the appointment of the registered agent of the limited liability company (or, if there is none, the Secretary of State) as such person's agent upon whom service of process may be made as provided in this section. Such service as a manager or a liquidating trustee shall signify the consent of such manager or liquidating trustee that any process when so served shall be of the same legal force and validity as if served upon such manager or liquidating trustee within the State of Delaware and such appointment of the registered agent (or, if there is none, the Secretary of State) shall be irrevocable. As used in this subsection (a) and in subsections (b), (c) and (d) of this section, the term "manager" refers (i) to a person who is a manager as defined in § 18-101 of this title and (ii) to a person, whether or not a member of a limited liability company, who, although not a "manager" as defined in § 18-101 of this title, participates materially in the management of the limited liability company; provided however, that the power to elect or otherwise select or to participate in the election or selection of a person to be a "manager" as defined in § 18-101 of this title shall not, by itself, constitute participation in the management of the limited liability company.

(b) Service of process shall be effected by serving the registered agent (or, if there is none, the Secretary of State) with 1 copy of such process in the manner provided by law for service of writs of summons. In the event service is made under this subsection upon the Secretary of State, the plaintiff shall pay to the Secretary of State the sum of $50 for the use of the State of Delaware, which sum shall be taxed as part of the costs of the proceeding if the plaintiff shall prevail therein. In addition, the Prothonotary or the Register in Chancery of the court in which the civil action or proceeding is pending shall, within 7 days of such service, deposit in the United States mails, by registered mail, postage prepaid, true and attested copies of the process, together with a statement that service is being made pursuant to this section, addressed to such manager or liquidating trustee at the registered office of the limited liability company and at the manager's or liquidating trustee's address last known to the party desiring to make such service.

(c) In any action in which any such manager or liquidating trustee has been served with process as hereinabove provided, the time in which a defendant shall be required to appear and file a responsive pleading shall be computed from the date of mailing by the Prothonotary or the Register in Chancery as provided in subsection (b) of this section; however, the court in which such action has been commenced may order such continuance or continuances as may be necessary to afford such manager or liquidating trustee reasonable opportunity to defend the action.

(d) In a written limited liability company agreement or other writing, a manager or member may consent to be subject to the nonexclusive jurisdiction of the courts of, or arbitration in, a specified jurisdiction, or the exclusive jurisdiction of the courts of the State of Delaware, or the exclusivity of arbitration in a specified jurisdiction or the State of Delaware, and to be served with legal process in the manner prescribed in such limited liability company agreement or other writing. Except by agreeing to arbitrate any arbitrable matter in a specified jurisdiction or in the State of Delaware, a member who is not a manager may not waive its right to maintain a legal action or proceeding in the courts of the State of Delaware with respect to matters relating to the organization or internal affairs of a limited liability company.

(e) Nothing herein contained limits or affects the right to serve process in any other manner now or hereafter provided by law. This section is an extension of and not a limitation upon the right otherwise existing of service of legal process upon nonresidents.

(f) The Court of Chancery and the Superior Court may make all necessary rules respecting the form of process, the manner of issuance and return thereof and such other rules which may be necessary to implement this section and are not inconsistent with this section.

(68 Del. Laws, c. 434, § 1; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 77, § 6; 72 Del. Laws, c. 129, § 3; 72 Del. Laws, c. 389, §§ 2, 3; 82 Del. Laws, c. 48, § 1.)

§ 18-110 Contested matters relating to managers; contested votes.

(a) Upon application of any member or manager, the Court of Chancery may hear and determine the validity of any admission, election, appointment, removal or resignation of a manager of a limited liability company, and the right of any person to become or continue to be a manager of a limited liability company, and, in case the right to serve as a manager is claimed by more than 1 person, may determine the person or persons entitled to serve as managers; and to that end make such order or decree in any such case as may be just and proper, with power to enforce the production of any books, papers and records of the limited liability company relating to the issue. In any such application, the limited liability company shall be named as a party and service of copies of the application upon the registered agent of the limited liability company shall be deemed to be service upon the limited liability company and upon the person or persons whose right to serve as a manager is contested and upon the person or persons, if any, claiming to be a manager or claiming the right to be a manager; and the registered agent shall forward immediately a copy of the application to the limited liability company and to the person or persons whose right to serve as a manager is contested and to the person or persons, if any, claiming to be a manager or the right to be a manager, in a postpaid, sealed, registered letter addressed to such limited liability company and such person or persons at their post-office addresses last known to the registered agent or furnished to the registered agent by the applicant member or manager. The Court may make such order respecting further or other notice of such application as it deems proper under these circumstances.

(b) Upon application of any member or manager, the Court of Chancery may hear and determine the result of any vote of members or managers upon matters as to which the members or managers of the limited liability company, or any class or group of members or managers, have the right to vote pursuant to the limited liability company agreement or other agreement or this chapter (other than the admission, election, appointment, removal or resignation of managers). In any such application, the limited liability company shall be named as a party and service of the application upon the registered agent of the limited liability company shall be deemed to be service upon the limited liability company, and no other party need be joined in order for the Court to adjudicate the result of the vote. The Court may make such order respecting further or other notice of such application as it deems proper under these circumstances.

(c) As used in this section, the term "manager" refers to a person:

(1) Who is a "manager" as defined in § 18-101 of this title; and

(2) Whether or not a member of a limited liability company, who, although not a "manager" as defined in § 18-101 of this title, participates materially in the management of the limited liability company;

provided however, that the power to elect or otherwise select or to participate in the election or selection of a person to be a "manager" as defined in § 18-101 of this title shall not, by itself, constitute participation in the management of the limited liability company.

(d) Nothing herein contained limits or affects the right to serve process in any other manner now or hereafter provided by law. This section is an extension of and not a limitation upon the right otherwise existing of service of legal process upon nonresidents.

(69 Del. Laws, c. 260, § 5; 71 Del. Laws, c. 77, § 7; 76 Del. Laws, c. 387, § 2; 82 Del. Laws, c. 48, § 1.)

§ 18-111 Interpretation and enforcement of limited liability company agreement.

Any action to interpret, apply or enforce the provisions of a limited liability company agreement, or the duties, obligations or liabilities of a limited liability company to the members or managers of the limited liability company, or the duties, obligations or liabilities among members or managers and of members or managers to the limited liability company, or the rights or powers of, or restrictions on, the limited liability company, members or managers, or any provision of this chapter, or any other instrument, document, agreement or certificate contemplated by any provision of this chapter, may be brought in the Court of Chancery.

As used in this section, the term "manager" refers to a person:

(1) Who is a "manager" as defined in § 18-101 of this title; and

(2) Whether or not a member of a limited liability company, who, although not a "manager" as defined in § 18-101 of this title, participates materially in the management of the limited liability company;

provided however, that the power to elect or otherwise select or to participate in the election or selection of a person to be a "manager" as defined in § 18-101 of this title shall not, by itself, constitute participation in the management of the limited liability company.

(69 Del. Laws, c. 260, § 6; 76 Del. Laws, c. 387, § 3; 77 Del. Laws, c. 58, § 1; 82 Del. Laws, c. 48, § 1.)

§ 18-112 Judicial cancellation of certificate of formation; proceedings.

(a) Upon motion by the Attorney General, the Court of Chancery shall have jurisdiction to cancel the certificate of formation of any domestic limited liability company for abuse or misuse of its limited liability company powers, privileges or existence. The Attorney General shall proceed for this purpose in the Court of Chancery.

(b) The Court of Chancery shall have power, by appointment of trustees, receivers or otherwise, to administer and wind up the affairs of any domestic limited liability company whose certificate of formation shall be canceled by the Court of Chancery under this section, and to make such orders and decrees with respect thereto as shall be just and equitable respecting its affairs and assets and the rights of its members and creditors.

(81 Del. Laws, c. 357, § 8.)

§ 18-113 Document form, signature and delivery.

(a) Except as provided in subsection (b) of this section, without limiting the manner in which any act or transaction may be documented, or the manner in which a document may be signed or delivered:

(1) Any act or transaction contemplated or governed by this chapter or the limited liability company agreement may be provided for in a document, and an electronic transmission is the equivalent of a written document.

(2) Whenever this chapter or the limited liability company agreement requires or permits a signature, the signature may be a manual, facsimile, conformed or electronic signature. "Electronic signature" means an electronic symbol or process that is attached to, or logically associated with, a document and executed or adopted by a person with an intent to execute, authenticate or adopt the document. A person may execute a document with such person's signature.

(3) Unless otherwise provided in the limited liability company agreement or agreed between the sender and recipient, an electronic transmission is delivered to a person for purposes of this chapter and the limited liability company agreement when it enters an information processing system that the person has designated for the purpose of receiving electronic transmissions of the type delivered, so long as the electronic transmission is in a form capable of being processed by that system and such person is able to retrieve the electronic transmission. Whether a person has so designated an information processing system is determined by the limited liability company agreement or from the context and surrounding circumstances, including the parties' conduct. An electronic transmission is delivered under this section even if no person is aware of its receipt. Receipt of an electronic acknowledgement from an information processing system establishes that an electronic transmission was received but, by itself, does not establish that the content sent corresponds to the content received.

This chapter shall not prohibit 1 or more persons from conducting a transaction in accordance with Chapter 12A of this title so long as the part or parts of the transaction that are governed by this chapter are documented, signed and delivered in accordance with this subsection or otherwise in accordance with this chapter. This subsection shall apply solely for purposes of determining whether an act or transaction has been documented, and the document has been signed and delivered, in accordance with this chapter and the limited liability company agreement.

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

(1) A document filed with or submitted to the Secretary of State, the Register in Chancery, or a court or other judicial or governmental body of this State;

(2) A certificate of limited liability company interest; and

(3) An act or transaction effected pursuant to § 18-104, § 18-105, or § 18-109 or subchapter IX or X of this title.

The foregoing shall not create any presumption about the lawful means to document a matter addressed by this subsection, or the lawful means to sign or deliver a document addressed by this subsection. A provision of the limited liability company agreement shall not limit

the application of subsection (a) of this section unless the provision expressly restricts one or more of the means of documenting an act or transaction, or of signing or delivering a document, permitted by subsection (a) of this section.

(c) In the event that any provision of this chapter is deemed to modify, limit or supersede the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. § 7001 et. seq., the provisions of this chapter shall control to the fullest extent permitted by § 7002(a)(2) of such act [15 U.S.C. § 7002(a)(2)].

(82 Del. Laws, c. 48, § 4; 82 Del. Laws, c. 259, § 4.)

Subchapter II

Formation; Certificate of Formation

§ 18-201 Certificate of formation.

(a) In order to form a limited liability company, 1 or more authorized persons must execute a certificate of formation. The certificate of formation shall be filed in the office of the Secretary of State and set forth:

(1) The name of the limited liability company;

(2) The address of the registered office and the name and address of the registered agent for service of process required to be maintained by § 18-104 of this title; and

(3) Any other matters the members determine to include therein.

(b) A limited liability company is formed at the time of the filing of the initial certificate of formation in the office of the Secretary of State or at any later date or time specified in the certificate of formation if, in either case, there has been substantial compliance with the requirements of this section. A limited liability company formed under this chapter shall be a separate legal entity, the existence of which as a separate legal entity shall continue until cancellation of the limited liability company's certificate of formation.

(c) The filing of the certificate of formation in the office of the Secretary of State shall make it unnecessary to file any other documents under Chapter 31 of this title.

(d) A limited liability company agreement shall be entered into or otherwise existing either before, after or at the time of the filing of a certificate of formation and, whether entered into or otherwise existing before, after or at the time of such filing, may be made effective as of the effective time of such filing or at such other time or date as provided in or reflected by the limited liability company agreement.

(e) A certificate of formation substantially complies with § 18-201(a)(2) of this title if it contains the name of the registered agent and the address of the registered office even if the certificate of formation does not expressly designate such person as the registered agent or such address as the registered office or the address of the registered agent.

(68 Del. Laws, c. 434, § 1; 69 Del. Laws, c. 260, § 7; 70 Del. Laws, c. 75, § 5; 76 Del. Laws, c. 105, § 9; 78 Del. Laws, c. 270, § 2; 81 Del. Laws, c. 89, § 6.)

§ 18-202 Amendment to certificate of formation.

(a) A certificate of formation is amended by filing a certificate of amendment thereto in the office of the Secretary of State. The certificate of amendment shall set forth:

(1) The name of the limited liability company; and

(2) The amendment to the certificate of formation.

(b) A manager or, if there is no manager, then any member who becomes aware that any statement in a certificate of formation was false when made, or that any matter described has changed making the certificate of formation false in any material respect, shall promptly amend the certificate of formation.

(c) A certificate of formation may be amended at any time for any other proper purpose.

(d) Unless otherwise provided in this chapter or unless a later effective date or time (which shall be a date or time certain) is provided for in the certificate of amendment, a certificate of amendment shall be effective at the time of its filing with the Secretary of State.

(68 Del. Laws, c. 434, § 1.)

§ 18-203 Cancellation of certificate.

(a) A certificate of formation shall be canceled upon the dissolution and the completion of winding up of a limited liability company, or as provided in § 18-104(d), § 18-104 (i)(4), § 18-112 or § 18-1108 of this title, or upon the filing of a certificate of merger or consolidation or a certificate of ownership and merger if the limited liability company is not the surviving or resulting entity in a merger or consolidation or upon the future effective date or time of a certificate of merger or consolidation or a certificate of ownership and merger if the limited liability company is not the surviving or resulting entity in a merger or consolidation, or upon the filing of a certificate of transfer or upon the future effective date or time of a certificate of transfer, or upon the filing of a certificate of conversion to non-Delaware entity or upon the future effective date or time of a certificate of conversion to non-Delaware entity or upon the filing of a certificate of division if the limited liability company is a dividing company that is not a surviving company or upon the future effective date or time of a certificate of division if the limited liability company is a dividing company that is not a surviving company. A certificate of cancellation shall be filed

in the office of the Secretary of State to accomplish the cancellation of a certificate of formation upon the dissolution and the completion of winding up of a limited liability company and shall set forth:

(1) The name of the limited liability company;

(2) The date of filing of its certificate of formation;

(3) If the limited liability company has formed 1 or more registered series whose certificate of registered series has not been canceled prior to the filing of the certificate of cancellation, the name of each such registered series;

(4) The future effective date or time (which shall be a date or time certain) of cancellation if it is not to be effective upon the filing of the certificate; and

(5) Any other information the person filing the certificate of cancellation determines.

(b) A certificate of cancellation that is filed in the office of the Secretary of State prior to the dissolution or the completion of winding up of a limited liability company may be corrected as an erroneously executed certificate of cancellation by filing with the office of the Secretary of State a certificate of correction of such certificate of cancellation in accordance with § 18-211 of this title.

(c) The Secretary of State shall not issue a certificate of good standing with respect to a limited liability company (or any registered series thereof) if its certificate of formation is canceled.

(68 Del. Laws, c. 434, § 1; 70 Del. Laws, c. 75, § 6; 71 Del. Laws, c. 77, § 8; 71 Del. Laws, c. 341, § 2; 72 Del. Laws, c. 389, §§ 4-6; 73 Del. Laws, c. 295, § 4; 74 Del. Laws, c. 85, § 1; 75 Del. Laws, c. 317, § 4; 76 Del. Laws, c. 105, § 10; 77 Del. Laws, c. 287, § 4; 78 Del. Laws, c. 95, § 3; 81 Del. Laws, c. 357, §§ 9, 10.)

§ 18-204 Execution.

(a) Each certificate required by this subchapter to be filed in the office of the Secretary of State shall be executed by 1 or more authorized persons or, in the case of a certificate of conversion to limited liability company or certificate of limited liability company domestication, by any person authorized to execute such certificate on behalf of the other entity or non-United States entity, respectively, except that a certificate of merger or consolidation filed by a surviving or resulting other business entity shall be executed by any person authorized to execute such certificate on behalf of such other business entity.

(b) Unless otherwise provided in a limited liability company agreement, any person may sign any certificate or amendment thereof or enter into a limited liability company agreement or amendment thereof by an agent, including an attorney-in-fact. An authorization, including a power of attorney, to sign any certificate or amendment thereof or to enter into a limited liability company agreement or amendment thereof need not be in writing, need not be sworn to, verified or acknowledged, and need not be filed in the office of the Secretary of State, but if in writing, must be retained by the limited liability company.

(c) For all purposes of the laws of the State of Delaware, unless otherwise provided in a limited liability company agreement, a power of attorney or proxy with respect to a limited liability company granted to any person shall be irrevocable if it states that it is irrevocable and it is coupled with an interest sufficient in law to support an irrevocable power or proxy. Such irrevocable power of attorney or proxy, unless otherwise provided therein or in a limited liability company agreement, shall not be affected by subsequent death, disability, incapacity, dissolution, termination of existence or bankruptcy of, or any other event concerning, the principal. A power of attorney or proxy with respect to matters relating to the organization, internal affairs or termination of a limited liability company or granted by a person as a member or an assignee of a limited liability company interest or by a person seeking to become a member or an assignee of a limited liability company interest and, in either case, granted to the limited liability company, a manager or member thereof, or any of their respective officers, directors, managers, members, partners, trustees, employees or agents shall be deemed coupled with an interest sufficient in law to support an irrevocable power or proxy. The provisions of this subsection shall not be construed to limit the enforceability of a power of attorney or proxy that is part of a limited liability company agreement.

(d) The execution of a certificate by a person who is authorized by this chapter to execute such certificate constitutes an oath or affirmation, under the penalties of perjury in the third degree, that, to the best of such person's knowledge and belief, the facts stated therein are true.

(68 Del. Laws, c. 434, § 1; 76 Del. Laws, c. 387, §§ 4, 5; 77 Del. Laws, c. 58, § 2; 77 Del. Laws, c. 287, § 5; 80 Del. Laws, c. 45, § 1.)

§ 18-205 Execution, amendment or cancellation by judicial order.

(a) If a person required to execute a certificate required by this subchapter fails or refuses to do so, any other person who is adversely affected by the failure or refusal may petition the Court of Chancery to direct the execution of the certificate. If the Court finds that the execution of the certificate is proper and that any person so designated has failed or refused to execute the certificate, it shall order the Secretary of State to record an appropriate certificate.

(b) If a person required to execute a limited liability company agreement or amendment thereof fails or refuses to do so, any other person who is adversely affected by the failure or refusal may petition the Court of Chancery to direct the execution of the limited liability company agreement or amendment thereof. If the Court finds that the limited liability company agreement or amendment thereof should be executed and that any person required to execute the limited liability company agreement or amendment thereof has failed or refused to do so, it shall enter an order granting appropriate relief.

(68 Del. Laws, c. 434, § 1.)

§ 18-206 Filing.

(a) The signed copy of any certificate authorized to be filed under this chapter shall be delivered to the Secretary of State. A person who executes a certificate as an agent or fiduciary need not exhibit evidence of that person's authority as a prerequisite to filing. Any signature on any certificate authorized to be filed with the Secretary of State under any provision of this chapter may be a facsimile, a conformed signature or an electronically transmitted signature. Upon delivery of any certificate, the Secretary of State shall record the date and time of its delivery. Unless the Secretary of State finds that any certificate does not conform to law, upon receipt of all filing fees required by law the Secretary of State shall:

(1) Certify that any certificate authorized to be filed under this chapter has been filed in the Secretary of State's office by endorsing upon the signed certificate the word "Filed," and the date and time of the filing. This endorsement is conclusive of the date and time of its filing in the absence of actual fraud. Except as provided in paragraph (a)(5) or (a)(6) of this section, such date and time of filing of a certificate shall be the date and time of delivery of the certificate;

(2) File and index the endorsed certificate;

(3) Prepare and return to the person who filed it or that person's representative a copy of the signed certificate, similarly endorsed, and shall certify such copy as a true copy of the signed certificate; and

(4) Cause to be entered such information from the certificate as the Secretary of State deems appropriate into the Delaware Corporation Information System or any system which is a successor thereto in the office of the Secretary of State, and such information and a copy of such certificate shall be permanently maintained as a public record on a suitable medium. The Secretary of State is authorized to grant direct access to such system to registered agents subject to the execution of an operating agreement between the Secretary of State and such registered agent. Any registered agent granted such access shall demonstrate the existence of policies to ensure that information entered into the system accurately reflects the content of certificates in the possession of the registered agent at the time of entry.

(5) Upon request made upon or prior to delivery, the Secretary of State may, to the extent deemed practicable, establish as the date and time of filing of a certificate a date and time after its delivery. If the Secretary of State refuses to file any certificate due to an error, omission or other imperfection, the Secretary of State may hold such certificate in suspension, and in such event, upon delivery of a replacement certificate in proper form for filing and tender of the required fees within 5 business days after notice of such suspension is given to the filer, the Secretary of State shall establish as the date and time of filing of such certificate the date and time that would have been the date and time of filing of the rejected certificate had it been accepted for filing. The Secretary of State shall not issue a certificate of good standing with respect to any limited liability company or registered series with a certificate held in suspension pursuant to this subsection. The Secretary of State may establish as the date and time of filing of a certificate the date and time at which information from such certificate is entered pursuant to paragraph (a)(4) of this section if such certificate is delivered on the same date and within 4 hours after such information is entered.

(6) If:

a. Together with the actual delivery of a certificate and tender of the required fees, there is delivered to the Secretary of State a separate affidavit (which in its heading shall be designated as an affidavit of extraordinary condition) attesting, on the basis of personal knowledge of the affiant or a reliable source of knowledge identified in the affidavit, that an earlier effort to deliver such certificate and tender such fees was made in good faith, specifying the nature, date and time of such good faith effort and requesting that the Secretary of State establish such date and time as the date and time of filing of such certificate; or

b. Upon the actual delivery of a certificate and tender of the required fees, the Secretary of State in the Secretary of State’s own discretion provides a written waiver of the requirement for such an affidavit stating that it appears to the Secretary of State that an earlier effort to deliver such certificate and tender such fees was made in good faith and specifying the date and time of such effort; and

c. The Secretary of State determines that an extraordinary condition existed at such date and time, that such earlier effort was unsuccessful as a result of the existence of such extraordinary condition, and that such actual delivery and tender were made within a reasonable period (not to exceed 2 business days) after the cessation of such extraordinary condition, then the Secretary of State may establish such date and time as the date and time of filing of such certificate. No fee shall be paid to the Secretary of State for receiving an affidavit of extraordinary condition. For purposes of this subsection, an extraordinary condition means: any emergency resulting from an attack on, invasion or occupation by foreign military forces of, or disaster, catastrophe, war or other armed conflict, revolution or insurrection or rioting or civil commotion in, the United States or a locality in which the Secretary of State conducts its business or in which the good faith effort to deliver the certificate and tender the required fees is made, or the immediate threat of any of the foregoing; or any malfunction or outage of the electrical or telephone service to the Secretary of State’s office, or weather or other condition in or about a locality in which the Secretary of State conducts its business, as a result of which the Secretary of State’s office is not open for the purpose of the filing of certificates under this chapter or such filing cannot be effected without extraordinary effort. The Secretary of State may require such proof as it deems necessary to make the determination required under this paragraph (a)(6)c., and any such determination shall be conclusive in the absence of actual fraud. If the Secretary of State establishes the date and time of filing of a certificate pursuant to this subsection, the date and time of delivery of the affidavit of extraordinary condition or the date and time of the Secretary of State’s written waiver of such affidavit shall be endorsed on such affidavit or waiver and such affidavit or waiver, so endorsed, shall be attached to the filed certificate to which it relates. Such filed certificate shall be effective as

of the date and time established as the date and time of filing by the Secretary of State pursuant to this subsection, except as to those persons who are substantially and adversely affected by such establishment and, as to those persons, the certificate shall be effective from the date and time endorsed on the affidavit of extraordinary condition or written waiver attached thereto.

(b) Notwithstanding any other provision of this chapter, any certificate filed under this chapter shall be effective at the time of its filing with the Secretary of State or at any later date or time (not later than a time on the one hundred and eightieth day after the date of its filing if such date of filing is on or after January 1, 2012) specified in the certificate. Upon the filing of a certificate of amendment (or judicial decree of amendment), certificate of correction, corrected certificate or restated certificate in the office of the Secretary of State, or upon the future effective date or time of a certificate of amendment (or judicial decree thereof) or restated certificate, as provided for therein, the certificate of formation or certificate of registered series, as applicable, shall be amended, corrected or restated as set forth therein. Upon the filing of a certificate of cancellation (or a judicial decree thereof), a certificate of merger or consolidation or a certificate of ownership and merger or a certificate of division which acts as a certificate of cancellation, a certificate of transfer, a certificate of conversion to a non-Delaware entity, or a certificate of conversion of registered series to protected series, or upon the future effective date or time of a certificate of cancellation (or a judicial decree thereof), a certificate of merger or consolidation or a certificate of ownership and merger or a certificate of division which acts as a certificate of cancellation, a certificate of transfer, a certificate of conversion to a non-Delaware entity, or a certificate of conversion of registered series to protected series, as provided for therein, or as specified in § 18-104(d), § 18-104(i)(4), § 18-112 or § 18-1108 of this title, the certificate of formation or certificate of registered series, as applicable, is canceled. Upon the filing of a certificate of limited liability company domestication or upon the future effective date or time of a certificate of limited liability company domestication, the entity filing the certificate of limited liability company domestication is domesticated as a limited liability company with the effect provided in § 18-212 of this title. Upon the filing of a certificate of conversion to limited liability company or upon the future effective date or time of a certificate of conversion to limited liability company, the entity filing the certificate of conversion to limited liability company is converted to a limited liability company with the effect provided in § 18-214 of this title. Upon the filing of a certificate of conversion of protected series to registered series, or upon the future effective date or time of a certificate of conversion of protected series to registered series, the protected series with respect to which such filing is made is converted to a registered series with the effect provided in § 18-219 of this title. Upon the filing of a certificate of conversion of registered series to protected series, or upon the future effective date or time of a certificate of conversion of registered series to protected series, the registered series filing such certificate is converted to a protected series with the effect provided in § 18-220 of this title. Upon the filing of a certificate of revival, a limited liability company or a registered series is revived with the effect provided in § 18-1109 or § 18-1110 of this title. Upon the filing of a certificate of transfer and domestic continuance, or upon the future effective date or time of a certificate of transfer and domestic continuance, as provided for therein, the limited liability company filing the certificate of transfer and domestic continuance shall continue to exist as a limited liability company of the State of Delaware with the effect provided in § 18-213 of this title.

(c) If any certificate filed in accordance with this chapter provides for a future effective date or time and if, prior to such future effective date or time set forth in such certificate, the transaction is terminated or its terms are amended to change the future effective date or time or any other matter described in such certificate so as to make such certificate false or inaccurate in any respect, such certificate shall, prior to the future effective date or time set forth in such certificate, be terminated or amended by the filing of a certificate of termination or certificate of amendment of such certificate, executed in accordance with § 18-204 of this title, which shall identify the certificate which has been terminated or amended and shall state that the certificate has been terminated or the manner in which it has been amended. Upon the filing of a certificate of amendment of a certificate with a future effective date or time, the certificate identified in such certificate of amendment is amended. Upon the filing of a certificate of termination of a certificate with a future effective date or time, the certificate identified in such certificate of termination is terminated.

(d) A fee as set forth in § 18-1105(a)(3) of this title shall be paid at the time of the filing of a certificate of formation, a certificate of registered series, a certificate of amendment, a certificate of correction, a certificate of amendment of a certificate with a future effective date or time, a certificate of termination of a certificate with a future effective date or time, a certificate of cancellation, a certificate of merger or consolidation, a certificate of ownership and merger, a restated certificate, a corrected certificate, a certificate of conversion to limited liability company, a certificate of conversion to a non-Delaware entity, a certificate of conversion of protected series to registered series, a certificate of conversion of registered series to protected series, a certificate of transfer, a certificate of transfer and domestic continuance, a certificate of limited liability company domestication, a certificate of division or a certificate of revival.

(e) The Secretary of State, acting as agent, shall collect and deposit in a separate account established exclusively for that purpose, a courthouse municipality fee with respect to each filed instrument and shall thereafter monthly remit funds from such account to the treasuries of the municipalities designated in § 301 of Title 10. Said fees shall be for the purposes of defraying certain costs incurred by such municipalities in hosting the primary locations for the Delaware Courts. The fee to such municipalities shall be $ 20 for each instrument filed with the Secretary of State in accordance with this section. The municipality to receive the fee shall be the municipality designated in § 301 of Title 10 in the county in which the limited liability company's registered office in this State is, or is to be, located, except that a fee shall not be charged for a document filed in accordance with subchapter IX of this chapter.

(f) A fee as set forth in § 18-1105(a)(4) of this title shall be paid for a certified copy of any paper on file as provided for by this chapter, and a fee as set forth in § 18-1105(a)(5) of this title shall be paid for each page copied.

(g) Notwithstanding any other provision of this chapter, it shall not be necessary for any limited liability company or foreign limited liability company to amend its certificate of formation, its application for registration as a foreign limited liability company, or any other

document that has been filed in the office of the Secretary of State prior to August 1, 2011, to comply with § 18-104(k) of this title; notwithstanding the foregoing, any certificate or other document filed under this chapter on or after August 1, 2011, and changing the address of a registered agent or registered office shall comply with § 18-104(k) of this title.

(68 Del. Laws, c. 434, § 1; 69 Del. Laws, c. 260, §§ 8-11; 70 Del. Laws, c. 75, §§ 7-15; 70 Del. Laws, c. 186, § 1; 70 Del. Laws, c. 360, §§ 1-4; 71 Del. Laws, c. 77, §§ 9-12; 73 Del. Laws, c. 83, §§ 4-10; 73 Del. Laws, c. 295, § 5; 74 Del. Laws, c. 85, §§ 2-10; 74 Del. Laws, c. 119, § 1; 75 Del. Laws, c. 317, § 5; 76 Del. Laws, c. 105, §§ 11-14; 77 Del. Laws, c. 287, §§ 6-8; 78 Del. Laws, c. 95, §§ 4, 5; 81 Del. Laws, c. 357, §§ 11, 12; 82 Del. Laws, c. 48, § 5.)

§ 18-207 Notice.

The fact that a certificate of formation is on file in the office of the Secretary of State is notice that the entity formed in connection with the filing of the certificate of formation is a limited liability company formed under the laws of the State of Delaware and is notice of all other facts set forth therein which are required to be set forth in a certificate of formation by § 18-201(a)(1) and (2) or § 18-1202 of this title and which are permitted to be set forth in a certificate of formation by § 18-215(b) or § 18-218(b) of this title. The fact that a certificate of registered series is on file in the office of the Secretary of State is notice that the registered series named in such certificate of registered series has been formed pursuant to § 18-218 of this title and is notice of all other facts set forth therein which are required to be set forth in a certificate of registered series by § 18-218(d) of this title.

(68 Del. Laws, c. 434, § 1; 70 Del. Laws, c. 360, § 5; 81 Del. Laws, c. 357, §§ 13, 14.)

§ 18-208 Restated certificate.

(a) *Restated certificate of formation*. — (1) A limited liability company may, whenever desired, integrate into a single instrument all of the provisions of its certificate of formation which are then in effect and operative as a result of there having theretofore been filed with the Secretary of State 1 or more certificates or other instruments pursuant to any of the sections referred to in this subchapter, and it may at the same time also further amend its certificate of formation by adopting a restated certificate of formation.

(2) If a restated certificate of formation merely restates and integrates but does not further amend the initial certificate of formation, as theretofore amended or supplemented by any instrument that was executed and filed pursuant to any of the sections in this subchapter, it shall be specifically designated in its heading as a "Restated Certificate of Formation" together with such other words as the limited liability company may deem appropriate and shall be executed by an authorized person and filed as provided in § 18-206 of this title in the office of the Secretary of State. If a restated certificate restates and integrates and also further amends in any respect the certificate of formation, as theretofore amended or supplemented, it shall be specifically designated in its heading as an "Amended and Restated Certificate of Formation" together with such other words as the limited liability company may deem appropriate and shall be executed by at least 1 authorized person, and filed as provided in § 18-206 of this title in the office of the Secretary of State.

(3) A restated certificate of formation shall state, either in its heading or in an introductory paragraph, the limited liability company's present name, and, if it has been changed, the name under which it was originally filed, and the date of filing of its original certificate of formation with the Secretary of State, and the future effective date or time (which shall be a date or time certain) of the restated certificate if it is not to be effective upon the filing of the restated certificate. A restated certificate shall also state that it was duly executed and is being filed in accordance with this section. If a restated certificate only restates and integrates and does not further amend a limited liability company's certificate of formation as theretofore amended or supplemented and there is no discrepancy between those provisions and the restated certificate, it shall state that fact as well.

(4) Upon the filing of a restated certificate of formation with the Secretary of State, or upon the future effective date or time of a restated certificate of formation as provided for therein, the initial certificate of formation, as theretofore amended or supplemented, shall be superseded; thenceforth, the restated certificate of formation, including any further amendment or changes made thereby, shall be the certificate of formation of the limited liability company, but the original effective date of formation shall remain unchanged.

(5) Any amendment or change effected in connection with the restatement and integration of the certificate of formation shall be subject to any other provision of this chapter, not inconsistent with this section, which would apply if a separate certificate of amendment were filed to effect such amendment or change.

(b) *Restated certificate of registered series*. — (1) A registered series of a limited liability company may, whenever desired, integrate into a single instrument all of the provisions of its certificate of registered series which are then in effect and operative as a result of there having theretofore been filed with the Secretary of State 1 or more certificates or other instruments pursuant to any of the sections referred to in this subchapter, and it may at the same time also further amend its certificate of registered series by adopting a restated certificate of registered series.

(2) If a restated certificate of registered series merely restates and integrates but does not further amend the initial certificate of registered series, as theretofore amended or supplemented by any instrument that was executed and filed pursuant to any of the sections in this subchapter, it shall be specifically designated in its heading as a "Restated Certificate of Registered Series" together with such other words as the registered series may deem appropriate and shall be executed by an authorized person and filed as provided in § 18-206 of this title in the office of the Secretary of State. If a restated certificate restates and integrates and also further amends in any respect the certificate of registered series as theretofore amended or supplemented, it shall be specifically designated in its heading as an

"Amended and Restated Certificate of Registered Series" together with such other words as the registered series may deem appropriate and shall be executed by at least 1 authorized person, and filed as provided in § 18-206 of this title in the office of the Secretary of State.

(3) A restated certificate of registered series shall state, either in its heading or in an introductory paragraph, the name of the limited liability company, the present name of the registered series, and, if the name of the registered series has been changed, the name under which it was originally filed, and the date of filing of its original certificate of registered series with the Secretary of State, and the future effective date or time (which shall be a date or time certain) of the restated certificate of registered series if it is not to be effective upon the filing of the restated certificate of registered series. A restated certificate shall also state that it was duly executed and is being filed in accordance with this section. If a restated certificate only restates and integrates and does not further amend a certificate of registered series, as theretofore amended or supplemented and there is no discrepancy between those provisions and the restated certificate, it shall state that fact as well.

(4) Upon the filing of a restated certificate of registered series with the Secretary of State, or upon the future effective date or time of a restated certificate of registered series as provided for therein, the initial certificate of registered series, as theretofore amended or supplemented, shall be superseded; thenceforth, the restated certificate of registered series, including any further amendment or changes made thereby, shall be the certificate of registered series of such registered series, but the original effective date of formation of the registered series, as applicable, shall remain unchanged.

(5) Any amendment or change effected in connection with the restatement and integration of a certificate of registered series shall be subject to any other provision of this chapter, not inconsistent with this section, which would apply if a separate certificate of amendment were filed to effect such amendment or change.

(68 Del. Laws, c. 434, § 1; 81 Del. Laws, c. 357, § 15.)

§ 18-209 Merger and consolidation.

(a) As used in this section and in §§ 18-204, 18-217, 18-219, 18-220 and 18-221 of this title, "other business entity" means a corporation, a statutory trust, a business trust, an association, a real estate investment trust, a common-law trust, or any other incorporated or unincorporated business or entity, including a partnership (whether general (including a limited liability partnership) or limited (including a limited liability limited partnership)), and a foreign limited liability company, but excluding a domestic limited liability company. As used in this section and in §§ 18-210 and 18-301 of this title, "plan of merger" means a writing approved by a domestic limited liability company, in the form of resolutions or otherwise, that states the terms and conditions of a merger under subsection (i) of this section.

(b) Pursuant to an agreement of merger or consolidation, 1 or more domestic limited liability companies may merge or consolidate with or into 1 or more domestic limited liability companies or 1 or more other business entities formed or organized under the laws of the State of Delaware or any other state or the United States or any foreign country or other foreign jurisdiction, or any combination thereof, with such domestic limited liability company or other business entity as the agreement shall provide being the surviving or resulting domestic limited liability company or other business entity. Unless otherwise provided in the limited liability company agreement, an agreement of merger or consolidation or a plan of merger shall be approved by each domestic limited liability company which is to merge or consolidate by members who own more than 50 percent of the then current percentage or other interest in the profits of the domestic limited liability company owned by all of the members. In connection with a merger or consolidation hereunder, rights or securities of, or interests in, a domestic limited liability company or other business entity which is a constituent party to the merger or consolidation may be exchanged for or converted into cash, property, rights or securities of, or interests in, the surviving or resulting domestic limited liability company or other business entity or, in addition to or in lieu thereof, may be exchanged for or converted into cash, property, rights or securities of, or interests in, a domestic limited liability company or other business entity which is not the surviving or resulting limited liability company or other business entity in the merger or consolidation, may remain outstanding or may be canceled. Notwithstanding prior approval, an agreement of merger or consolidation or a plan of merger may be terminated or amended pursuant to a provision for such termination or amendment contained in the agreement of merger or consolidation or plan of merger. Unless otherwise provided in a limited liability company agreement, a limited liability company whose original certificate of formation was filed with the Secretary of State and effective on or prior to July 31, 2015, shall continue to be governed by the second sentence of this subsection as in effect on July 31, 2015.

(c) Except in the case of a merger under subsection (i) of this section, if a domestic limited liability company is merging or consolidating under this section, the domestic limited liability company or other business entity surviving or resulting in or from the merger or consolidation shall file a certificate of merger or consolidation executed by 1 or more authorized persons on behalf of the domestic limited liability company when it is the surviving or resulting entity in the office of the Secretary of State. The certificate of merger or consolidation shall state:

(1) The name, jurisdiction of formation or organization and type of entity of each of the domestic limited liability companies and other business entities which is to merge or consolidate;

(2) That an agreement of merger or consolidation has been approved and executed by each of the domestic limited liability companies and other business entities which is to merge or consolidate;

(3) The name of the surviving or resulting domestic limited liability company or other business entity;

(4) In the case of a merger in which a domestic limited liability company is the surviving entity, such amendments, if any, to the certificate of formation of the surviving domestic limited liability company to change its name, registered office or registered agent as are desired to be effected by the merger;

(5) The future effective date or time (which shall be a date or time certain) of the merger or consolidation if it is not to be effective upon the filing of the certificate of merger or consolidation;

(6) That the agreement of merger or consolidation is on file at a place of business of the surviving or resulting domestic limited liability company or other business entity, and shall state the address thereof;

(7) That a copy of the agreement of merger or consolidation will be furnished by the surviving or resulting domestic limited liability company or other business entity, on request and without cost, to any member of any domestic limited liability company or any person holding an interest in any other business entity which is to merge or consolidate; and

(8) If the surviving or resulting entity is not a domestic limited liability company, or a corporation, partnership (whether general (including a limited liability partnership) or limited (including a limited liability limited partnership)) or statutory trust organized under the laws of the State of Delaware, a statement that such surviving or resulting other business entity agrees that it may be served with process in the State of Delaware in any action, suit or proceeding for the enforcement of any obligation of any domestic limited liability company which is to merge or consolidate, irrevocably appointing the Secretary of State as its agent to accept service of process in any such action, suit or proceeding and specifying the address to which a copy of such process shall be mailed to it by the Secretary of State. Process may be served upon the Secretary of State under this subsection by means of electronic transmission but only as prescribed by the Secretary of State. The Secretary of State is authorized to issue such rules and regulations with respect to such service as the Secretary of State deems necessary or appropriate. In the event of service hereunder upon the Secretary of State, the procedures set forth in § 18-911(c) of this title shall be applicable, except that the plaintiff in any such action, suit or proceeding shall furnish the Secretary of State with the address specified in the certificate of merger or consolidation provided for in this section and any other address which the plaintiff may elect to furnish, together with copies of such process as required by the Secretary of State, and the Secretary of State shall notify such surviving or resulting other business entity at all such addresses furnished by the plaintiff in accordance with the procedures set forth in § 18-911(c) of this title.

(d) Unless a future effective date or time is provided in a certificate of merger or consolidation, or in the case of a merger under subsection (i) of this section in a certificate of ownership and merger, in which event a merger or consolidation shall be effective at any such future effective date or time, a merger or consolidation shall be effective upon the filing in the office of the Secretary of State of a certificate of merger or consolidation or a certificate of ownership and merger.

(e) A certificate of merger or consolidation or a certificate of ownership and merger shall act as a certificate of cancellation for a domestic limited liability company which is not the surviving or resulting entity in the merger or consolidation. A certificate of merger that sets forth any amendment in accordance with paragraph (c)(4) of this section shall be deemed to be an amendment to the certificate of formation of the limited liability company, and the limited liability company shall not be required to take any further action to amend its certificate of formation under § 18-202 of this title with respect to such amendments set forth in the certificate of merger. Whenever this section requires the filing of a certificate of merger or consolidation, such requirement shall be deemed satisfied by the filing of an agreement of merger or consolidation containing the information required by this section to be set forth in the certificate of merger or consolidation.

(f) An agreement of merger or consolidation or a plan of merger approved in accordance with subsection (b) of this section may:

(1) Effect any amendment to the limited liability company agreement; or

(2) Effect the adoption of a new limited liability company agreement, for a limited liability company if it is the surviving or resulting limited liability company in the merger or consolidation.

Any amendment to a limited liability company agreement or adoption of a new limited liability company agreement made pursuant to the foregoing sentence shall be effective at the effective time or date of the merger or consolidation and shall be effective notwithstanding any provision of the limited liability company agreement relating to amendment or adoption of a new limited liability company agreement, other than a provision that by its terms applies to an amendment to the limited liability company agreement or the adoption of a new limited liability company agreement, in either case, in connection with a merger or consolidation. The provisions of this subsection shall not be construed to limit the accomplishment of a merger or of any of the matters referred to herein by any other means provided for in a limited liability company agreement or other agreement or as otherwise permitted by law, including that the limited liability company agreement of any constituent limited liability company to the merger or consolidation (including a limited liability company formed for the purpose of consummating a merger or consolidation) shall be the limited liability company agreement of the surviving or resulting limited liability company.

(g) When any merger or consolidation shall have become effective under this section, for all purposes of the laws of the State of Delaware, all of the rights, privileges and powers of each of the domestic limited liability companies and other business entities that have merged or consolidated, and all property, real, personal and mixed, and all debts due to any of said domestic limited liability companies and other business entities, as well as all other things and causes of action belonging to each of such domestic limited liability companies and other business entities, shall be vested in the surviving or resulting domestic limited liability company or other business entity, and shall thereafter be the property of the surviving or resulting domestic limited liability company or other business entity as they were of each of the domestic limited liability companies and other business entities that have merged or consolidated, and the title to any real property vested by deed or otherwise, under the laws of the State of Delaware, in any of such domestic limited liability companies and other business entities, shall not revert or be in any way impaired by reason of this chapter; but all rights of creditors and all liens upon

any property of any of said domestic limited liability companies and other business entities shall be preserved unimpaired, and all debts, liabilities and duties of each of the said domestic limited liability companies and other business entities that have merged or consolidated shall thenceforth attach to the surviving or resulting domestic limited liability company or other business entity, and may be enforced against it to the same extent as if said debts, liabilities and duties had been incurred or contracted by it. Unless otherwise agreed, a merger or consolidation of a domestic limited liability company, including a domestic limited liability company which is not the surviving or resulting entity in the merger or consolidation, shall not require such domestic limited liability company to wind up its affairs under § 18-803 of this title or pay its liabilities and distribute its assets under § 18-804 of this title, and the merger or consolidation shall not constitute a dissolution of such limited liability company.

(h) A limited liability company agreement may provide that a domestic limited liability company shall not have the power to merge or consolidate as set forth in this section.

(i) In any case in which (i) at least 90% of the outstanding shares of each class of the stock of a corporation or corporations (other than a corporation which has in its certificate of incorporation the provision required by § 251(g)(7)(A) and (B) of Title 8), of which class there are outstanding shares that, absent § 267(a) of Title 8, would be entitled to vote on such merger, is owned by a domestic limited liability company, (ii) 1 or more of such corporations is a corporation of the State of Delaware, and (iii) any corporation that is not a corporation of the State of Delaware is a corporation of any other state or the District of Columbia or another jurisdiction, the laws of which do not forbid such merger, the domestic limited liability company having such stock ownership may either merge the corporation or corporations into itself and assume all of its or their obligations, or merge itself, or itself and 1 or more of such corporations, into 1 of the other corporations, pursuant to a plan of merger. If a domestic limited liability company is causing a merger under this subsection, the domestic limited liability company shall file a certificate of ownership and merger executed by 1 or more authorized persons on behalf of the domestic limited liability company in the office of the Secretary of State. The certificate of ownership and merger shall certify that such merger was authorized in accordance with the domestic limited liability company's limited liability company agreement and this chapter, and if the domestic limited liability company shall not own all the outstanding stock of all the corporations that are parties to the merger, shall state the terms and conditions of the merger, including the securities, cash, property, or rights to be issued, paid, delivered or granted by the surviving domestic limited liability company or corporation upon surrender of each share of the corporation or corporations not owned by the domestic limited liability company, or the cancellation of some or all of such shares. If a corporation surviving a merger under this subsection is not a corporation organized under the laws of the State of Delaware, then the terms and conditions of the merger shall obligate such corporation to agree that it may be served with process in the State of Delaware in any proceeding for enforcement of any obligation of the domestic limited liability company or any obligation of any constituent corporation of the State of Delaware, as well as for enforcement of any obligation of the surviving corporation, including any suit or other proceeding to enforce the right of any stockholders as determined in appraisal proceedings pursuant to § 262 of Title 8, and to irrevocably appoint the Secretary of State as its agent to accept service of process in any such suit or other proceedings, and to specify the address to which a copy of such process shall be mailed by the Secretary of State. Process may be served upon the Secretary of State under this subsection by means of electronic transmission but only as prescribed by the Secretary of State. The Secretary of State is authorized to issue such rules and regulations with respect to such service as the Secretary of State deems necessary or appropriate. In the event of such service upon the Secretary of State in accordance with this subsection, the Secretary of State shall forthwith notify such surviving corporation thereof by letter, directed to such surviving corporation at its address so specified, unless such surviving corporation shall have designated in writing to the Secretary of State a different address for such purpose, in which case it shall be mailed to the last address so designated. Such letter shall be sent by a mail or courier service that includes a record of mailing or deposit with the courier and a record of delivery evidenced by the signature of the recipient. Such letter shall enclose a copy of the process and any other papers served on the Secretary of State pursuant to this subsection. It shall be the duty of the plaintiff in the event of such service to serve process and any other papers in duplicate, to notify the Secretary of State that service is being effected pursuant to this subsection and to pay the Secretary of State the sum of $50 for the use of the State of Delaware, which sum shall be taxed as part of the costs in the proceeding, if the plaintiff shall prevail therein. The Secretary of State shall maintain an alphabetical record of any such service setting forth the name of the plaintiff and the defendant, the title, docket number and nature of the proceeding in which process has been served, the fact that service has been effected pursuant to this subsection, the return date thereof, and the day and hour service was made. The Secretary of State shall not be required to retain such information longer than 5 years from receipt of the service of process.

(68 Del. Laws, c. 434, § 1; 69 Del. Laws, c. 260, §§ 12, 13; 70 Del. Laws, c. 75, §§ 16, 17; 71 Del. Laws, c. 341, §§ 3-7; 72 Del. Laws, c. 389, § 7; 73 Del. Laws, c. 83, § 11; 73 Del. Laws, c. 329, §§ 27, 28; 74 Del. Laws, c. 275, §§ 2-4; 75 Del. Laws, c. 317, § 6; 76 Del. Laws, c. 105, §§ 15-18; 77 Del. Laws, c. 58, §§ 3-5; 77 Del. Laws, c. 287, §§ 9-16; 78 Del. Laws, c. 270, § 3; 79 Del. Laws, c. 74, § 1; 80 Del. Laws, c. 45, § 2; 81 Del. Laws, c. 89, § 7; 81 Del. Laws, c. 357, §§ 16, 17; 82 Del. Laws, c. 256, § 14.)

§ 18-210 No statutory appraisal rights.

Unless otherwise provided in a limited liability company agreement or an agreement of merger or consolidation or a plan of merger or a plan of division, no appraisal rights shall be available with respect to a limited liability company interest or another interest in a limited liability company, including in connection with any amendment of a limited liability company agreement, any merger or consolidation in which the limited liability company or a registered series of the limited liability company is a constituent party to the merger or consolidation, any division of the limited liability company, any conversion of the limited liability company to another business form, any

conversion of a protected series of the limited liability company to a registered series of such limited liability company, any conversion of a registered series of the limited liability company to a protected series of such limited liability company, any transfer to or domestication or continuance in any jurisdiction by the limited liability company, or the sale of all or substantially all of the limited liability company's assets. The Court of Chancery shall have jurisdiction to hear and determine any matter relating to any appraisal rights provided in a limited liability company agreement or an agreement of merger or consolidation or a plan of merger or a plan of division.

(69 Del. Laws, c. 260, § 14; 73 Del. Laws, c. 295, § 6; 76 Del. Laws, c. 105, § 19; 77 Del. Laws, c. 287, § 17; 82 Del. Laws, c. 48, § 6; 82 Del. Laws, c. 259, § 5.)

§ 18-211 Certificate of correction.

(a) Whenever any certificate authorized to be filed with the office of the Secretary of State under any provision of this chapter has been so filed and is an inaccurate record of the action therein referred to, or was defectively or erroneously executed, such certificate may be corrected by filing with the office of the Secretary of State a certificate of correction of such certificate. The certificate of correction shall specify the inaccuracy or defect to be corrected, shall set forth the portion of the certificate in corrected form, and shall be executed and filed as required by this chapter. The certificate of correction shall be effective as of the date the original certificate was filed, except as to those persons who are substantially and adversely affected by the correction, and as to those persons the certificate of correction shall be effective from the filing date.

(b) In lieu of filing a certificate of correction, a certificate may be corrected by filing with the Secretary of State a corrected certificate which shall be executed and filed as if the corrected certificate were the certificate being corrected, and a fee equal to the fee payable to the Secretary of State for a certificate of correction as prescribed by § 18-1105 of this title shall be paid and collected by the Secretary of State for the use of the State of Delaware in connection with the filing of the corrected certificate. The corrected certificate shall be specifically designated as such in its heading, shall specify the inaccuracy or defect to be corrected and shall set forth the entire certificate in corrected form. A certificate corrected in accordance with this section shall be effective as of the date the original certificate was filed, except as to those persons who are substantially and adversely affected by the correction and as to those persons the certificate as corrected shall be effective from the filing date.

(69 Del. Laws, c. 260, § 15; 71 Del. Laws, c. 77, § 13; 81 Del. Laws, c. 357, § 18.)

§ 18-212 Domestication of non-United States entities.

(a) As used in this section and in § 18-204 of this title, "non-United States entity" means a foreign limited liability company (other than 1 formed under the laws of a state) or a corporation, a statutory trust, a business trust, an association, a real estate investment trust, a common-law trust or any other incorporated or unincorporated business or entity, including a partnership (whether general (including a limited liability partnership) or limited (including a limited liability limited partnership)) formed, incorporated, created or that otherwise came into being under the laws of any foreign country or other foreign jurisdiction (other than any state).

(b) Any non-United States entity may become domesticated as a limited liability company in the State of Delaware by complying with subsection (g) of this section and filing in the office of the Secretary of State in accordance with § 18-206 of this title:

(1) A certificate of limited liability company domestication that has been executed in accordance with § 18-204 of this title; and

(2) A certificate of formation that complies with § 18-201 of this title and has been executed by 1 or more authorized persons in accordance with § 18-204 of this title.

Each of the certificates required by this subsection (b) shall be filed simultaneously in the office of the Secretary of State and, if such certificates are not to become effective upon their filing as permitted by § 18-206(b) of this title, then each such certificate shall provide for the same effective date or time in accordance with § 18-206(b) of this title.

(c) The certificate of limited liability company domestication shall state:

(1) The date on which and jurisdiction where the non-United States entity was first formed, incorporated, created or otherwise came into being;

(2) The name of the non-United States entity immediately prior to the filing of the certificate of limited liability company domestication;

(3) The name of the limited liability company as set forth in the certificate of formation filed in accordance with subsection (b) of this section;

(4) The future effective date or time (which shall be a date or time certain) of the domestication as a limited liability company if it is not to be effective upon the filing of the certificate of limited liability company domestication and the certificate of formation;

(5) The jurisdiction that constituted the seat, siege social, or principal place of business or central administration of the non-United States entity, or any other equivalent thereto under applicable law, immediately prior to the filing of the certificate of limited liability company domestication; and

(6) That the domestication has been approved in the manner provided for by the document, instrument, agreement or other writing, as the case may be, governing the internal affairs of the non-United States entity and the conduct of its business or by applicable non-Delaware law, as appropriate.

(d) Upon the filing in the office of the Secretary of State of the certificate of limited liability company domestication and the certificate of formation or upon the future effective date or time of the certificate of limited liability company domestication and the certificate of

formation, the non-United States entity shall be domesticated as a limited liability company in the State of Delaware and the limited liability company shall thereafter be subject to all of the provisions of this chapter, except that notwithstanding § 18-201 of this title, the existence of the limited liability company shall be deemed to have commenced on the date the non-United States entity commenced its existence in the jurisdiction in which the non-United States entity was first formed, incorporated, created or otherwise came into being.

(e) The domestication of any non-United States entity as a limited liability company in the State of Delaware shall not be deemed to affect any obligations or liabilities of the non-United States entity incurred prior to its domestication as a limited liability company in the State of Delaware, or the personal liability of any person therefor.

(f) The filing of a certificate of limited liability company domestication shall not affect the choice of law applicable to the non-United States entity, except that from the effective date or time of the domestication, the law of the State of Delaware, including the provisions of this chapter, shall apply to the non-United States entity to the same extent as if the non-United States entity had been formed as a limited liability company on that date.

(g) Prior to the filing of a certificate of limited liability company domestication with the Office of the Secretary of State, the domestication shall be approved in the manner provided for by the document, instrument, agreement or other writing, as the case may be, governing the internal affairs of the non-United States entity and the conduct of its business or by applicable non-Delaware law, as appropriate, and a limited liability company agreement shall be approved by the same authorization required to approve the domestication.

(h) When any domestication shall have become effective under this section, for all purposes of the laws of the State of Delaware, all of the rights, privileges and powers of the non-United States entity that has been domesticated, and all property, real, personal and mixed, and all debts due to such non-United States entity, as well as all other things and causes of action belonging to such non-United States entity, shall remain vested in the domestic limited liability company to which such non-United States entity has been domesticated (and also in the non-United States entity, if and for so long as the non-United States entity continues its existence in the foreign jurisdiction in which it was existing immediately prior to the domestication) and shall be the property of such domestic limited liability company (and also of the non-United States entity, if and for so long as the non-United States entity continues its existence in the foreign jurisdiction in which it was existing immediately prior to the domestication), and the title to any real property vested by deed or otherwise in such non-United States entity shall not revert or be in any way impaired by reason of this chapter; but all rights of creditors and all liens upon any property of such non-United States entity shall be preserved unimpaired, and all debts, liabilities and duties of the non-United States entity that has been domesticated shall remain attached to the domestic limited liability company to which such non-United States entity has been domesticated (and also to the non-United States entity, if and for so long as the non-United States entity continues its existence in the foreign jurisdiction in which it was existing immediately prior to the domestication), and may be enforced against it to the same extent as if said debts, liabilities and duties had originally been incurred or contracted by it in its capacity as a domestic limited liability company. The rights, privileges, powers and interests in property of the non-United States entity, as well as the debts, liabilities and duties of the non-United States entity, shall not be deemed, as a consequence of the domestication, to have been transferred to the domestic limited liability company to which such non-United States entity has domesticated for any purpose of the laws of the State of Delaware.

(i) When a non-United States entity has become domesticated as a limited liability company pursuant to this section, for all purposes of the laws of the State of Delaware, the limited liability company shall be deemed to be the same entity as the domesticating non-United States entity and the domestication shall constitute a continuation of the existence of the domesticating non-United States entity in the form of a domestic limited liability company. Unless otherwise agreed, for all purposes of the laws of the State of Delaware, the domesticating non-United States entity shall not be required to wind up its affairs or pay its liabilities and distribute its assets, and the domestication shall not be deemed to constitute a dissolution of such non-United States entity. If, following domestication, a non-United States entity that has become domesticated as a limited liability company continues its existence in the foreign country or other foreign jurisdiction in which it was existing immediately prior to domestication, the limited liability company and such non-United States entity shall, for all purposes of the laws of the State of Delaware, constitute a single entity formed, incorporated, created or otherwise having come into being, as applicable, and existing under the laws of the State of Delaware and the laws of such foreign country or other foreign jurisdiction.

(j) In connection with a domestication hereunder, rights or securities of, or interests in, the non-United States entity that is to be domesticated as a domestic limited liability company may be exchanged for or converted into cash, property, rights or securities of, or interests in, such domestic limited liability company or, in addition to or in lieu thereof, may be exchanged for or converted into cash, property, rights or securities of, or interests in, another domestic limited liability company or other entity, may remain outstanding or may be canceled.

(70 Del. Laws, c. 360, § 6; 71 Del. Laws, c. 77, § 14; 72 Del. Laws, c. 129, § 4; 72 Del. Laws, c. 389, §§ 8, 9; 73 Del. Laws, c. 83, § 12; 74 Del. Laws, c. 275, § 5; 75 Del. Laws, c. 51, § 3; 75 Del. Laws, c. 317, §§ 7-13; 76 Del. Laws, c. 387, §§ 6, 7; 78 Del. Laws, c. 95, § 6; 79 Del. Laws, c. 74, § 2; 81 Del. Laws, c. 89, § 8.)

§ 18-213 Transfer or continuance of domestic limited liability companies.

(a) Upon compliance with this section, any limited liability company may transfer to or domesticate or continue in any jurisdiction, other than any state, and, in connection therewith, may elect to continue its existence as a limited liability company in the State of Delaware.

(b) If the limited liability company agreement specifies the manner of authorizing a transfer or domestication or continuance described in subsection (a) of this section, the transfer or domestication or continuance shall be authorized as specified in the limited liability company agreement. If the limited liability company agreement does not specify the manner of authorizing a transfer or domestication or

continuance described in subsection (a) of this section and does not prohibit such a transfer or domestication or continuance, the transfer or domestication or continuance shall be authorized in the same manner as is specified in the limited liability company agreement for authorizing a merger or consolidation that involves the limited liability company as a constituent party to the merger or consolidation. If the limited liability company agreement does not specify the manner of authorizing a transfer or domestication or continuance described in subsection (a) of this section or a merger or consolidation that involves the limited liability company as a constituent party and does not prohibit such a transfer or domestication or continuance, the transfer or domestication or continuance shall be authorized by the approval by members who own more than 50 percent of the then current percentage or other interest in the profits of the domestic limited liability company owned by all of the members. If a transfer or domestication or continuance described in subsection (a) of this section shall be authorized as provided in this subsection (b), a certificate of transfer if the limited liability company's existence as a limited liability company of the State of Delaware is to cease, or a certificate of transfer and domestic continuance if the limited liability company's existence as a limited liability company in the State of Delaware is to continue, executed in accordance with § 18-204 of this title, shall be filed in the office of the Secretary of State in accordance with 18-206 of this title. The certificate of transfer or the certificate of transfer and domestic continuance shall state:

(1) The name of the limited liability company and, if it has been changed, the name under which its certificate of formation was originally filed;

(2) The date of the filing of its original certificate of formation with the Secretary of State;

(3) The jurisdiction to which the limited liability company shall be transferred or in which it shall be domesticated or continued and the name of the entity or business form formed, incorporated, created or that otherwise comes into being as a consequence of the transfer of the limited liability company to, or its domestication or continuance in, such foreign jurisdiction;

(4) The future effective date or time (which shall be a date or time certain) of the transfer to or domestication or continuance in the jurisdiction specified in paragraph (b)(3) of this section if it is not to be effective upon the filing of the certificate of transfer or the certificate of transfer and domestic continuance;

(5) That the transfer or domestication or continuance of the limited liability company has been approved in accordance with this section;

(6) In the case of a certificate of transfer, (i) that the existence of the limited liability company as a limited liability company of the State of Delaware shall cease when the certificate of transfer becomes effective, and (ii) the agreement of the limited liability company that it may be served with process in the State of Delaware in any action, suit or proceeding for enforcement of any obligation of the limited liability company arising while it was a limited liability company of the State of Delaware, and that it irrevocably appoints the Secretary of State as its agent to accept service of process in any such action, suit or proceeding;

(7) The address (which may not be that of the limited liability company's registered agent without the written consent of the limited liability company's registered agent, such consent to be filed with the certificate of transfer) to which a copy of the process referred to in paragraph (b)(6) of this section shall be mailed to it by the Secretary of State. Process may be served upon the Secretary of State under paragraph (b)(6) of this section by means of electronic transmission but only as prescribed by the Secretary of State. The Secretary of State is authorized to issue such rules and regulations with respect to such service as the Secretary of State deems necessary or appropriate. In the event of service hereunder upon the Secretary of State, the procedures set forth in § 18-911(c) of this title shall be applicable, except that the plaintiff in any such action, suit or proceeding shall furnish the Secretary of State with the address specified in this subsection and any other address that the plaintiff may elect to furnish, together with copies of such process as required by the Secretary of State, and the Secretary of State shall notify the limited liability company that has transferred or domesticated or continued out of the State of Delaware at all such addresses furnished by the plaintiff in accordance with the procedures set forth in § 18-911(c) of this title; and

(8) In the case of a certificate of transfer and domestic continuance, that the limited liability company will continue to exist as a limited liability company of the State of Delaware after the certificate of transfer and domestic continuance becomes effective.

Unless otherwise provided in a limited liability company agreement, a limited liability company whose original certificate of formation was filed with the Secretary of State and effective on or prior to July 31, 2015, shall continue to be governed by the third sentence of this subsection as in effect on July 31, 2015.

(c) Upon the filing in the office of the Secretary of State of the certificate of transfer or upon the future effective date or time of the certificate of transfer and payment to the Secretary of State of all fees prescribed in this chapter, the limited liability company shall cease to exist as a limited liability company of the State of Delaware. A copy of the certificate of transfer certified by the Secretary of State shall be prima facie evidence of the transfer or domestication or continuance by such limited liability company out of the State of Delaware. A copy of the certificate of transfer and domestic continuance certified by the Secretary of State shall be prima facie evidence of such limited liability company's transfer to or domestication or continuance in another jurisdiction and its continuance as a limited liability company in the State of Delaware.

(d) The transfer or domestication or continuance of a limited liability company out of the State of Delaware in accordance with this section and the resulting cessation of its existence as a limited liability company of the State of Delaware pursuant to a certificate of transfer shall not be deemed to affect any obligations or liabilities of the limited liability company incurred prior to such transfer or domestication or continuance or the personal liability of any person incurred prior to such transfer or domestication or continuance, nor

shall it be deemed to affect the choice of law applicable to the limited liability company with respect to matters arising prior to such transfer or domestication or continuance. Unless otherwise agreed, the transfer or domestication or continuance of a limited liability company out of the State of Delaware in accordance with this section shall not require such limited liability company to wind up its affairs under § 18-803 of this title or pay its liabilities and distribute its assets under § 18-804 of this title and shall not be deemed to constitute a dissolution of such limited liability company.

(e) If a limited liability company files a certificate of transfer and domestic continuance, after the time the certificate of transfer and domestic continuance becomes effective, the limited liability company shall continue to exist as a limited liability company of the State of Delaware, and the laws of the State of Delaware, including this chapter, shall apply to the limited liability company to the same extent as prior to such time. So long as a limited liability company continues to exist as a limited liability company of the State of Delaware following the filing of a certificate of transfer and domestic continuance, the continuing domestic limited liability company and the entity or business form formed, incorporated, created or that otherwise came into being as a consequence of the transfer of the limited liability company to, or its domestication or continuance in, a foreign country or other foreign jurisdiction shall, for all purposes of the laws of the State of Delaware, constitute a single entity formed, incorporated, created or otherwise having come into being, as applicable, and existing under the laws of the State and the laws of such foreign country or other foreign jurisdiction.

(f) In connection with a transfer or domestication or continuance of a domestic limited liability company to or in another jurisdiction pursuant to subsection (a) of this section, rights or securities of, or interests in, such limited liability company may be exchanged for or converted into cash, property, rights or securities of, or interests in, the entity or business form in which the limited liability company will exist in such other jurisdiction as a consequence of the transfer or domestication or continuance or, in addition to or in lieu thereof, may be exchanged for or converted into cash, property, rights or securities of, or interests in, another entity or business form, may remain outstanding or may be canceled.

(g) When a limited liability company has transferred or domesticated or continued out of the State of Delaware pursuant to this section, the transferred or domesticated or continued entity or business form shall, for all purposes of the laws of the State of Delaware, be deemed to be the same entity as the limited liability company and shall constitute a continuation of the existence of such limited liability company in the form of the transferred or domesticated or continued entity or business form. When any transfer or domestication or continuance of a limited liability company out of the State of Delaware shall have become effective under this section, for all purposes of the laws of the State of Delaware, all of the rights, privileges and powers of the limited liability company that has transferred or domesticated or continued, and all property, real, personal and mixed, and all debts due to such limited liability company, as well as all other things and causes of action belonging to such limited liability company, shall remain vested in the transferred or domesticated or continued entity or business form (and also in the limited liability company that has transferred, domesticated or continued, if and for so long as such limited liability company continues its existence as a domestic limited liability company) and shall be the property of such transferred or domesticated or continued entity or business form (and also of the limited liability company that has transferred, domesticated or continued, if and for so long as such limited liability company continues its existence as a domestic limited liability company), and the title to any real property vested by deed or otherwise in such limited liability company shall not revert or be in any way impaired by reason of this chapter; but all rights of creditors and all liens upon any property of such limited liability company shall be preserved unimpaired, and all debts, liabilities and duties of the limited liability company that has transferred or domesticated or continued shall remain attached to the transferred or domesticated or continued entity or business form (and also to the limited liability company that has transferred, domesticated or continued, if and for so long as such limited liability company continues its existence as a domestic limited liability company), and may be enforced against it to the same extent as if said debts, liabilities and duties had originally been incurred or contracted by it in its capacity as the transferred or domesticated or continued entity or business form. The rights, privileges, powers and interests in property of the limited liability company that has transferred or domesticated or continued, as well as the debts, liabilities and duties of such limited liability company, shall not be deemed, as a consequence of the transfer or domestication or continuance out of the State of Delaware, to have been transferred to the transferred or domesticated or continued entity or business form for any purpose of the laws of the State of Delaware.

(h) A limited liability company agreement may provide that a domestic limited liability company shall not have the power to transfer, domesticate or continue as set forth in this section.

(70 Del. Laws, c. 360, § 7; 71 Del. Laws, c. 77, § 15; 71 Del. Laws, c. 341, § 8; 72 Del. Laws, c. 129, § 5; 72 Del. Laws, c. 389, § 10; 73 Del. Laws, c. 83, § 13; 74 Del. Laws, c. 85, § 11; 74 Del. Laws, c. 275, §§ 6, 7; 75 Del. Laws, c. 51, § 4; 75 Del. Laws, c. 317, §§ 14-24; 76 Del. Laws, c. 105, §§ 20, 21; 77 Del. Laws, c. 287, § 18; 78 Del. Laws, c. 270, § 4; 79 Del. Laws, c. 74, § 3; 80 Del. Laws, c. 45, § 3; 82 Del. Laws, c. 259, § 6.)

§ 18-214 Conversion of certain entities to a limited liability company.

(a) As used in this section and in § 18-204 of this title, the term “other entity” means a corporation, a statutory trust, a business trust, an association, a real estate investment trust, a common-law trust or any other incorporated or unincorporated business or entity, including a partnership (whether general (including a limited liability partnership) or limited (including a limited liability limited partnership)) or a foreign limited liability company.

(b) Any other entity may convert to a domestic limited liability company by complying with subsection (h) of this section and filing in the office of the Secretary of State in accordance with § 18-206 of this title:

(1) A certificate of conversion to limited liability company that has been executed in accordance with § 18-204 of this title; and

(2) A certificate of formation that complies with § 18-201 of this title and has been executed by 1 or more authorized persons in accordance with § 18-204 of this title.

Each of the certificates required by this subsection (b) shall be filed simultaneously in the office of the Secretary of State and, if such certificates are not to become effective upon their filing as permitted by § 18-206(b) of this title, then each such certificate shall provide for the same effective date or time in accordance with § 18-206(b) of this title.

(c) The certificate of conversion to limited liability company shall state:

(1) The date on which and jurisdiction where the other entity was first created, incorporated, formed or otherwise came into being and, if it has changed, its jurisdiction immediately prior to its conversion to a domestic limited liability company;

(2) The name and type of entity of the other entity immediately prior to the filing of the certificate of conversion to limited liability company;

(3) The name of the limited liability company as set forth in its certificate of formation filed in accordance with subsection (b) of this section; and

(4) The future effective date or time (which shall be a date or time certain) of the conversion to a limited liability company if it is not to be effective upon the filing of the certificate of conversion to limited liability company and the certificate of formation.

(d) Upon the filing in the office of the Secretary of State of the certificate of conversion to limited liability company and the certificate of formation or upon the future effective date or time of the certificate of conversion to limited liability company and the certificate of formation, the other entity shall be converted into a domestic limited liability company and the limited liability company shall thereafter be subject to all of the provisions of this chapter, except that notwithstanding § 18-201 of this title, the existence of the limited liability company shall be deemed to have commenced on the date the other entity commenced its existence in the jurisdiction in which the other entity was first created, formed, incorporated or otherwise came into being.

(e) The conversion of any other entity into a domestic limited liability company shall not be deemed to affect any obligations or liabilities of the other entity incurred prior to its conversion to a domestic limited liability company or the personal liability of any person incurred prior to such conversion.

(f) When any conversion shall have become effective under this section, for all purposes of the laws of the State of Delaware, all of the rights, privileges and powers of the other entity that has converted, and all property, real, personal and mixed, and all debts due to such other entity, as well as all other things and causes of action belonging to such other entity, shall remain vested in the domestic limited liability company to which such other entity has converted and shall be the property of such domestic limited liability company, and the title to any real property vested by deed or otherwise in such other entity shall not revert or be in any way impaired by reason of this chapter; but all rights of creditors and all liens upon any property of such other entity shall be preserved unimpaired, and all debts, liabilities and duties of the other entity that has converted shall remain attached to the domestic limited liability company to which such other entity has converted, and may be enforced against it to the same extent as if said debts, liabilities and duties had originally been incurred or contracted by it in its capacity as a domestic limited liability company. The rights, privileges, powers and interests in property of the other entity, as well as the debts, liabilities and duties of the other entity, shall not be deemed, as a consequence of the conversion, to have been transferred to the domestic limited liability company to which such other entity has converted for any purpose of the laws of the State of Delaware.

(g) Unless otherwise agreed, for all purposes of the laws of the State of Delaware, the converting other entity shall not be required to wind up its affairs or pay its liabilities and distribute its assets, and the conversion shall not be deemed to constitute a dissolution of such other entity. When an other entity has been converted to a limited liability company pursuant to this section, for all purposes of the laws of the State of Delaware, the limited liability company shall be deemed to be the same entity as the converting other entity and the conversion shall constitute a continuation of the existence of the converting other entity in the form of a domestic limited liability company.

(h) Prior to filing a certificate of conversion to limited liability company with the office of the Secretary of State, the conversion shall be approved in the manner provided for by the document, instrument, agreement or other writing, as the case may be, governing the internal affairs of the other entity and the conduct of its business or by applicable law, as appropriate and a limited liability company agreement shall be approved by the same authorization required to approve the conversion.

(i) In connection with a conversion hereunder, rights or securities of or interests in the other entity which is to be converted to a domestic limited liability company may be exchanged for or converted into cash, property, or rights or securities of or interests in such domestic limited liability company or, in addition to or in lieu thereof, may be exchanged for or converted into cash, property, or rights or securities of or interests in another domestic limited liability company or other entity, may remain outstanding or may be canceled.

(j) The provisions of this section shall not be construed to limit the accomplishment of a change in the law governing, or the domicile of, an other entity to the State of Delaware by any other means provided for in a limited liability company agreement or other agreement or as otherwise permitted by law, including by the amendment of a limited liability company agreement or other agreement.

(70 Del. Laws, c. 360, § 8; 71 Del. Laws, c. 77, §§ 16-18; 72 Del. Laws, c. 129, §§ 6-8; 72 Del. Laws, c. 389, §§ 11-13; 73 Del. Laws, c. 329, § 29; 74 Del. Laws, c. 275, § 8; 75 Del. Laws, c. 51, § 5; 75 Del. Laws, c. 317, §§ 25, 26; 76 Del. Laws, c. 387, §§ 8, 9; 78 Del. Laws, c. 95, § 7; 78 Del. Laws, c. 270, § 5; 79 Del. Laws, c. 74, § 4; 81 Del. Laws, c. 89, § 9.)

§ 18-215 Series of members, managers, limited liability company interests or assets.

(a) A limited liability company agreement may establish or provide for the establishment of 1 or more designated series of members, managers, limited liability company interests or assets. Any such series may have separate rights, powers or duties with respect to specified property or obligations of the limited liability company or profits and losses associated with specified property or obligations, and any such series may have a separate business purpose or investment objective. No provision of subsection (b) of this section or § 18-218 of this title shall be construed to limit the application of the principle of freedom of contract to a series that is not a protected series or a registered series. Other than pursuant to §§ 18-219, 18-220 and 18-221, a series may not merge, convert or consolidate pursuant to any section of this title or any other statute of this State.

(b) A series established in accordance with the following sentence is a protected series. Notwithstanding anything to the contrary set forth in this chapter or under other applicable law, in the event that a limited liability company agreement establishes or provides for the establishment of 1 or more series, and to the extent the records maintained for any such series account for the assets associated with such series separately from the other assets of the limited liability company, or any other series thereof, and if the limited liability company agreement so provides, and if notice of the limitation on liabilities of a series as referenced in this subsection is set forth in the certificate of formation of the limited liability company, then the debts, liabilities, obligations and expenses incurred, contracted for or otherwise existing with respect to such series shall be enforceable against the assets of such series only, and not against the assets of the limited liability company generally or any other series thereof, and, unless otherwise provided in the limited liability company agreement, none of the debts, liabilities, obligations and expenses incurred, contracted for or otherwise existing with respect to the limited liability company generally or any other series thereof shall be enforceable against the assets of such series. Neither the preceding sentence nor any provision pursuant thereto in a limited liability company agreement or certificate of formation shall (i) restrict a protected series or limited liability company on behalf of a protected series from agreeing in the limited liability company agreement or otherwise that any or all of the debts, liabilities, obligations and expenses incurred, contracted for or otherwise existing with respect to the limited liability company generally or any other series thereof shall be enforceable against the assets of such protected series or (ii) restrict a limited liability company from agreeing in the limited liability company agreement or otherwise that any or all of the debts, liabilities, obligations and expenses incurred, contracted for or otherwise existing with respect to a protected series shall be enforceable against the assets of the limited liability company generally. A limited liability company agreement does not need to use the term protected when referencing series or refer to this section. Assets associated with a protected series may be held directly or indirectly, including in the name of such series, in the name of the limited liability company, through a nominee or otherwise. Records maintained for a protected series that reasonably identify its assets, including by specific listing, category, type, quantity, computational or allocational formula or procedure (including a percentage or share of any asset or assets) or by any other method where the identity of such assets is objectively determinable, will be deemed to account for the assets associated with such series separately from the other assets of the limited liability company, or any other series thereof. Notice in a certificate of formation of the limitation on liabilities of a protected series as referenced in this subsection shall be sufficient for all purposes of this subsection whether or not the limited liability company has established any protected series when such notice is included in the certificate of formation, and there shall be no requirement that (i) any specific protected series of the limited liability company be referenced in such notice, or (ii) such notice use the term protected when referencing series or include a reference to this section. The fact that a certificate of formation that contains the foregoing notice of the limitation on liabilities of a protected series is on file in the office of the Secretary of State shall constitute notice of such limitation on liabilities of a protected series. As used in this chapter, a reference to assets of a protected series includes assets associated with such series, a reference to assets associated with a protected series includes assets of such series, a reference to members or managers of a protected series includes members or managers associated with such series, and a reference to members or managers associated with a protected series includes members or managers of such series. The following shall apply to a protected series:

(1) A protected series may carry on any lawful business, purpose or activity, whether or not for profit, with the exception of the business of banking as defined in § 126 of Title 8. Unless otherwise provided in a limited liability company agreement, a protected series shall have the power and capacity to, in its own name, contract, hold title to assets (including real, personal and intangible property), grant liens and security interests, and sue and be sued.

(2) Except as otherwise provided by this chapter, no member or manager of a protected series shall be obligated personally for any debt, obligation or liability of such series, whether arising in contract, tort or otherwise, solely by reason of being a member or acting as manager of such series. Notwithstanding the preceding sentence, under a limited liability company agreement or under another agreement, a member or manager may agree to be obligated personally for any or all of the debts, obligations and liabilities of 1 or more protected series.

(3) A limited liability company agreement may provide for classes or groups of members or managers associated with a protected series having such relative rights, powers and duties as the limited liability company agreement may provide, and may make provision for the future creation in the manner provided in the limited liability company agreement of additional classes or groups of members or managers associated with such series having such relative rights, powers and duties as may from time to time be established, including rights, powers and duties senior to existing classes and groups of members or managers associated with such series. A limited liability company agreement may provide for the taking of an action, including the amendment of the limited liability company agreement, without the vote or approval of any member or manager or class or group of members or managers, including an action to create under

the provisions of the limited liability company agreement a class or group of a protected series of limited liability company interests that was not previously outstanding. A limited liability company agreement may provide that any member or class or group of members associated with a protected series shall have no voting rights.

(4) A limited liability company agreement may grant to all or certain identified members or managers or a specified class or group of the members or managers associated with a protected series the right to vote separately or with all or any class or group of the members or managers associated with such series, on any matter. Voting by members or managers associated with a protected series may be on a per capita, number, financial interest, class, group or any other basis.

(5) Unless otherwise provided in a limited liability company agreement, the management of a protected series shall be vested in the members associated with such series in proportion to the then current percentage or other interest of members in the profits of such series owned by all of the members associated with such series, the decision of members owning more than 50 percent of the said percentage or other interest in the profits controlling; provided, however, that if a limited liability company agreement provides for the management of a protected series, in whole or in part, by a manager, the management of such series, to the extent so provided, shall be vested in the manager who shall be chosen in the manner provided in the limited liability company agreement. The manager of a protected series shall also hold the offices and have the responsibilities accorded to the manager as set forth in a limited liability company agreement. A protected series may have more than 1 manager. Subject to § 18-602 of this title, a manager shall cease to be a manager with respect to a protected series as provided in a limited liability company agreement. Except as otherwise provided in a limited liability company agreement, any event under this chapter or in a limited liability company agreement that causes a manager to cease to be a manager with respect to a protected series shall not, in itself, cause such manager to cease to be a manager of the limited liability company or with respect to any other series thereof.

(6) Notwithstanding § 18-606 of this title, but subject to paragraphs (b)(7) and (b)(10) of this section, and unless otherwise provided in a limited liability company agreement, at the time a member of a protected series becomes entitled to receive a distribution with respect to such series, the member has the status of, and is entitled to all remedies available to, a creditor of such series, with respect to the distribution. A limited liability company agreement may provide for the establishment of a record date with respect to allocations and distributions with respect to a protected series.

(7) Notwithstanding § 18-607(a) of this title, a limited liability company may make a distribution with respect to a protected series. A limited liability company shall not make a distribution with respect to a protected series to a member to the extent that at the time of the distribution, after giving effect to the distribution, all liabilities of such series, other than liabilities to members on account of their limited liability company interests with respect to such series and liabilities for which the recourse of creditors is limited to specified property of such series, exceed the fair value of the assets associated with such series, except that the fair value of property of such series that is subject to a liability for which the recourse of creditors is limited shall be included in the assets associated with such series only to the extent that the fair value of that property exceeds that liability. For purposes of the immediately preceding sentence, the term “distribution” shall not include amounts constituting reasonable compensation for present or past services or reasonable payments made in the ordinary course of business pursuant to a bona fide retirement plan or other benefits program. A member who receives a distribution in violation of this paragraph (b)(7), and who knew at the time of the distribution that the distribution violated this paragraph (b)(7), shall be liable to the protected series for the amount of the distribution. A member who receives a distribution in violation of this paragraph (b)(7), and who did not know at the time of the distribution that the distribution violated this paragraph (b)(7), shall not be liable for the amount of the distribution. Subject to § 18-607(c) of this title, which shall apply to any distribution made with respect to a protected series under this paragraph (b)(7), this paragraph (b)(7) shall not affect any obligation or liability of a member under an agreement or other applicable law for the amount of a distribution.

(8) Unless otherwise provided in the limited liability company agreement, a member shall cease to be associated with a protected series and to have the power to exercise any rights or powers of a member with respect to such series upon the assignment of all of the member’s limited liability company interest with respect to such series. Except as otherwise provided in a limited liability company agreement, any event under this chapter or a limited liability company agreement that causes a member to cease to be associated with a protected series shall not, in itself, cause such member to cease to be associated with any other series or terminate the continued membership of a member in the limited liability company or cause the termination of the protected series, regardless of whether such member was the last remaining member associated with such series.

(9) Subject to § 18-801 of this title, except to the extent otherwise provided in the limited liability company agreement, a protected series may be terminated and its affairs wound up without causing the dissolution of the limited liability company. The termination of a protected series shall not affect the limitation on liabilities of such series provided by this subsection (b). A protected series is terminated and its affairs shall be wound up upon the dissolution of the limited liability company under § 18-801 of this title or otherwise upon the first to occur of the following:

a. At the time specified in the limited liability company agreement;

b. Upon the happening of events specified in the limited liability company agreement;

c. Unless otherwise provided in the limited liability company agreement, upon the vote or consent of members associated with such series who own more than 2/3 of the then-current percentage or other interest in the profits of such series of the limited liability company owned by all of the members associated with such series; or

d. The termination of such series under paragraph (b)(11) of this section.

Unless otherwise provided in a limited liability company agreement, a limited liability company whose original certificate of formation was filed with the Secretary of State and effective on or prior to July 31, 2015, shall continue to be governed by paragraph (k)(3) of this section as in effect on July 31, 2015 (except that "affirmative" and "written" shall be deleted from such paragraph (k)(3) of this section).

(10) Notwithstanding § 18-803(a) of this title, unless otherwise provided in the limited liability company agreement, a manager associated with a protected series who has not wrongfully terminated such series or, if none, the members associated with such series or a person approved by the members associated with such series, in either case, by members who own more than 50 percent of the then current percentage or other interest in the profits of such series owned by all of the members associated with such series, may wind up the affairs of such series; but the Court of Chancery, upon cause shown, may wind up the affairs of a protected series upon application of any member or manager associated with such series, or the member's personal representative or assignee, and in connection therewith, may appoint a liquidating trustee. The persons winding up the affairs of a protected series may, in the name of the limited liability company and for and on behalf of the limited liability company and such series, take all actions with respect to such series as are permitted under § 18-803(b) of this title. The persons winding up the affairs of a protected series shall provide for the claims and obligations of such series and distribute the assets of such series as provided in § 18-804 of this title, which section shall apply to the winding up and distribution of assets of a protected series. Actions taken in accordance with this paragraph (b)(10)shall not affect the liability of members and shall not impose liability on a liquidating trustee. Unless otherwise provided in a limited liability company agreement, a limited liability company whose original certificate of formation was filed with the Secretary of State and effective on or prior to July 31, 2015, shall continue to be governed by the first sentence of this paragraph (b)(10) as in effect on July 31, 2015.

(11) On application by or for a member or manager associated with a protected series, the Court of Chancery may decree termination of such series whenever it is not reasonably practicable to carry on the business of such series in conformity with a limited liability company agreement.

(12) For all purposes of the laws of the State of Delaware, a protected series is an association, regardless of the number of members or managers, if any, of such series.

(c) If a foreign limited liability company that is registering to do business in the State of Delaware in accordance with § 18-902 of this title is governed by a limited liability company agreement that establishes or provides for the establishment of designated series of members, managers, limited liability company interests or assets having separate rights, powers or duties with respect to specified property or obligations of the foreign limited liability company or profits and losses associated with specified property or obligations, that fact shall be so stated on the application for registration as a foreign limited liability company. In addition, the foreign limited liability company shall state on such application whether the debts, liabilities and obligations incurred, contracted for or otherwise existing with respect to a particular series, if any, shall be enforceable against the assets of such series only, and not against the assets of the foreign limited liability company generally or any other series thereof, and whether any of the debts, liabilities, obligations and expenses incurred, contracted for or otherwise existing with respect to the foreign limited liability company generally or any other series thereof shall be enforceable against the assets of such series.

(70 Del. Laws, c. 360, § 9; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 77, §§ 19-23; 71 Del. Laws, c. 341, §§ 9, 10; 72 Del. Laws, c. 389, §§ 14-18; 74 Del. Laws, c. 85, §§ 12, 13; 74 Del. Laws, c. 275, § 9; 76 Del. Laws, c. 105, §§ 22-28; 78 Del. Laws, c. 270, § 6; 80 Del. Laws, c. 45, §§ 4, 5; 80 Del. Laws, c. 271, §§ 2, 3; 81 Del. Laws, c. 357, § 19; 82 Del. Laws, c. 48, § 7.)

§ 18-216 Approval of conversion of a limited liability company.

(a) Upon compliance with this section, a domestic limited liability company may convert to a corporation, a statutory trust, a business trust, an association, a real estate investment trust, a common-law trust or any other incorporated or unincorporated business or entity, including a partnership (whether general (including a limited liability partnership) or limited (including a limited liability limited partnership)) or a foreign limited liability company.

(b) If the limited liability company agreement specifies the manner of authorizing a conversion of the limited liability company, the conversion shall be authorized as specified in the limited liability company agreement. If the limited liability company agreement does not specify the manner of authorizing a conversion of the limited liability company and does not prohibit a conversion of the limited liability company, the conversion shall be authorized in the same manner as is specified in the limited liability company agreement for authorizing a merger or consolidation that involves the limited liability company as a constituent party to the merger or consolidation. If the limited liability company agreement does not specify the manner of authorizing a conversion of the limited liability company or a merger or consolidation that involves the limited liability company as a constituent party and does not prohibit a conversion of the limited liability company, the conversion shall be authorized by the approval by members who own more than 50 percent of the then current percentage or other interest in the profits of the domestic limited liability company owned by all of the members. Unless otherwise provided in a limited liability company agreement, a limited liability company whose original certificate of formation was filed with the Secretary of State and effective on or prior to July 31, 2015, shall continue to be governed by the third sentence of this subsection as in effect on July 31, 2015.

(c) Unless otherwise agreed, the conversion of a domestic limited liability company to another entity or business form pursuant to this section shall not require such limited liability company to wind up its affairs under § 18-803 of this title or pay its liabilities and distribute its assets under § 18-804 of this title, and the conversion shall not constitute a dissolution of such limited liability company. When a

limited liability company has converted to another entity or business form pursuant to this section, for all purposes of the laws of the State of Delaware, the other entity or business form shall be deemed to be the same entity as the converting limited liability company and the conversion shall constitute a continuation of the existence of the limited liability company in the form of such other entity or business form.

(d) In connection with a conversion of a domestic limited liability company to another entity or business form pursuant to this section, rights or securities of or interests in the domestic limited liability company which is to be converted may be exchanged for or converted into cash, property, rights or securities of or interests in the entity or business form into which the domestic limited liability company is being converted or, in addition to or in lieu thereof, may be exchanged for or converted into cash, property, rights or securities of or interests in another entity or business form, may remain outstanding or may be canceled.

(e) If a limited liability company shall convert in accordance with this section to another entity or business form organized, formed or created under the laws of a jurisdiction other than the State of Delaware, a certificate of conversion to non-Delaware entity executed in accordance with § 18-204 of this title, shall be filed in the office of the Secretary of State in accordance with § 18-206 of this title. The certificate of conversion to non-Delaware entity shall state:

(1) The name of the limited liability company and, if it has been changed, the name under which its certificate of formation was originally filed;

(2) The date of filing of its original certificate of formation with the Secretary of State;

(3) The jurisdiction in which the entity or business form, to which the limited liability company shall be converted, is organized, formed or created, and the name of such entity or business form;

(4) The future effective date or time (which shall be a date or time certain) of the conversion if it is not to be effective upon the filing of the certificate of conversion to non-Delaware entity;

(5) That the conversion has been approved in accordance with this section;

(6) The agreement of the limited liability company that it may be served with process in the State of Delaware in any action, suit or proceeding for enforcement of any obligation of the limited liability company arising while it was a limited liability company of the State of Delaware, and that it irrevocably appoints the Secretary of State as its agent to accept service of process in any such action, suit or proceeding;

(7) The address to which a copy of the process referred to in paragraph (e)(6) of this section shall be mailed to it by the Secretary of State. Process may be served upon the Secretary of State under paragraph (e)(6) of this section by means of electronic transmission but only as prescribed by the Secretary of State. The Secretary of State is authorized to issue such rules and regulations with respect to such service as the Secretary of State deems necessary or appropriate. In the event of service hereunder upon the Secretary of State, the procedures set forth in § 18-911(c) of this title shall be applicable, except that the plaintiff in any such action, suit or proceeding shall furnish the Secretary of State with the address specified in this subdivision and any other address that the plaintiff may elect to furnish, together with copies of such process as required by the Secretary of State, and the Secretary of State shall notify the limited liability company that has converted out of the State of Delaware at all such addresses furnished by the plaintiff in accordance with the procedures set forth in § 18-911(c) of this title.

(f) Upon the filing in the office of the Secretary of State of the certificate of conversion to non-Delaware entity or upon the future effective date or time of the certificate of conversion to non-Delaware entity and payment to the Secretary of State of all fees prescribed in this chapter, the limited liability company shall cease to exist as a limited liability company of the State of Delaware. A copy of the certificate of conversion to non-Delaware entity certified by the Secretary of State shall be prima facie evidence of the conversion by such limited liability company out of the State of Delaware.

(g) The conversion of a limited liability company out of the State of Delaware in accordance with this section and the resulting cessation of its existence as a limited liability company of the State of Delaware pursuant to a certificate of conversion to non-Delaware entity shall not be deemed to affect any obligations or liabilities of the limited liability company incurred prior to such conversion or the personal liability of any person incurred prior to such conversion, nor shall it be deemed to affect the choice of law applicable to the limited liability company with respect to matters arising prior to such conversion.

(h) When any conversion shall have become effective under this section, for all purposes of the laws of the State of Delaware, all of the rights, privileges and powers of the limited liability company that has converted, and all property, real, personal and mixed, and all debts due to such limited liability company, as well as all other things and causes of action belonging to such limited liability company, shall remain vested in the other entity or business form to which such limited liability company has converted and shall be the property of such other entity or business form, and the title to any real property vested by deed or otherwise in such limited liability company shall not revert or be in any way impaired by reason of this chapter; but all rights of creditors and all liens upon any property of such limited liability company shall be preserved unimpaired, and all debts, liabilities and duties of the limited liability company that has converted shall remain attached to the other entity or business form to which such limited liability company has converted, and may be enforced against it to the same extent as if said debts, liabilities and duties had originally been incurred or contracted by it in its capacity as such other entity or business form. The rights, privileges, powers and interests in property of the limited liability company that has converted, as well as the debts, liabilities and duties of such limited liability company, shall not be deemed, as a consequence of the conversion, to have been transferred to the other entity or business form to which such limited liability company has converted for any purpose of the laws of the State of Delaware.

(i) A limited liability company agreement may provide that a domestic limited liability company shall not have the power to convert as set forth in this section.

(70 Del. Laws, c. 360, § 10; 72 Del. Laws, c. 129, § 9; 72 Del. Laws, c. 389, §§ 19, 20; 73 Del. Laws, c. 329, § 30; 74 Del. Laws, c. 85, § 14; 74 Del. Laws, c. 275, §§ 10, 11; 75 Del. Laws, c. 317, §§ 27-32; 76 Del. Laws, c. 105, §§ 29, 30; 77 Del. Laws, c. 287, § 19; 79 Del. Laws, c. 74, § 5; 80 Del. Laws, c. 45, § 6; 81 Del. Laws, c. 89, § 10; 82 Del. Laws, c. 259, § 7.)

§ 18-217 Division of a limited liability company.

(a) As used in this section and §§ 18-203, 18-301 and 18-1203:

(1) "Dividing company" means the domestic limited liability company that is effecting a division in the manner provided in this section.

(2) "Division" means the division of a dividing company into 2 or more domestic limited liability companies in accordance with this section.

(3) "Division company" means a surviving company, if any, and each resulting company.

(4) "Division contact" means, in connection with any division, a natural person who is a Delaware resident, any division company in such division or any other domestic limited liability company or other business entity as defined in § 18-209 of this title formed or organized under the laws of the State of Delaware, which division contact shall maintain a copy of the plan of division for a period of 6 years from the effective date of the division and shall comply with paragraph (g)(3) of this section.

(5) "Organizational documents" means the certificate of formation and limited liability company agreement of a domestic limited liability company.

(6) "Resulting company" means a domestic limited liability company formed as a consequence of a division.

(7) "Surviving company" means a dividing company that survives the division.

(b) Pursuant to a plan of division, any domestic limited liability company may, in the manner provided in this section, be divided into 2 or more domestic limited liability companies. The division of a domestic limited liability company in accordance with this section and, if applicable, the resulting cessation of the existence of the dividing company pursuant to a certificate of division shall not be deemed to affect the personal liability of any person incurred prior to such division with respect to matters arising prior to such division, nor shall it be deemed to affect the validity or enforceability of any obligations or liabilities of the dividing company incurred prior to such division; provided, that the obligations and liabilities of the dividing company shall be allocated to and vested in, and valid and enforceable obligations of, such division company or companies to which such obligations and liabilities have been allocated pursuant to the plan of division, as provided in subsection (*l*) of this section. Each resulting company in a division shall be formed in compliance with the requirements of this chapter and subsection (i) of this section.

(c) If the limited liability company agreement of the dividing company specifies the manner of adopting a plan of division, the plan of division shall be adopted as specified in the limited liability company agreement. If the limited liability company agreement of the dividing company does not specify the manner of adopting a plan of division and does not prohibit a division of the limited liability company, the plan of division shall be adopted in the same manner as is specified in the limited liability company agreement for authorizing a merger or consolidation that involves the limited liability company as a constituent party to the merger or consolidation. If the limited liability company agreement of the dividing company does not specify the manner of adopting a plan of division or authorizing a merger or consolidation that involves the limited liability company as a constituent party and does not prohibit a division of the limited liability company, the adoption of a plan of division shall be authorized by the approval by members who own more than 50 percent of the then current percentage or other interest in the profits of the dividing company owned by all of the members. Notwithstanding prior approval, a plan of division may be terminated or amended pursuant to a provision for such termination or amendment contained in the plan of division.

(d) Unless otherwise provided in a plan of division, the division of a domestic limited liability company pursuant to this section shall not require such limited liability company to wind up its affairs under § 18-803 of this title or pay its liabilities and distribute its assets under § 18-804 of this title, and the division shall not constitute a dissolution of such limited liability company.

(e) In connection with a division under this section, rights or securities of, or interests in, the dividing company may be exchanged for or converted into cash, property, rights or securities of, or interests in, the surviving company or any resulting company or, in addition to or in lieu thereof, may be exchanged for or converted into cash, property, rights or securities of, or interests in, a domestic limited liability company or any other business entity which is not a division company or may be canceled or remain outstanding (if the dividing company is a surviving company).

(f) A plan of division adopted in accordance with subsection (c) of this section:

(1) May effect any amendment to the limited liability company agreement of the dividing company if it is a surviving company in the division; or

(2) May effect the adoption of a new limited liability company agreement for the dividing company if it is a surviving company in the division; and

(3) Shall effect the adoption of a limited liability company agreement for each resulting company.

Any amendment to a limited liability company agreement or adoption of a new limited liability company agreement for the dividing company, if it is a surviving company in the division, or adoption of a limited liability company agreement for each resulting company

made pursuant to the foregoing sentence shall be effective at the effective time or date of the division. Any amendment to a limited liability company agreement or adoption of a limited liability company agreement for the dividing company, if it is a surviving company in the division, shall be effective notwithstanding any provision in the limited liability company agreement of the dividing company relating to amendment or adoption of a new limited liability company agreement, other than a provision that by its terms applies to an amendment to the limited liability company agreement or the adoption of a new limited liability company agreement, in either case, in connection with a division, merger or consolidation.

(g) If a domestic limited liability company is dividing under this section, the dividing company shall adopt a plan of division which shall set forth:

(1) The terms and conditions of the division, including:

a. Any conversion or exchange of the limited liability company interests of the dividing company into or for limited liability company interests or other securities or obligations of any division company or cash, property or rights or securities or obligations of or interests in any other business entity or domestic limited liability company which is not a division company, or that the limited liability company interests of the dividing company shall remain outstanding or be canceled, or any combination of the foregoing; and

b. The allocation of assets, property, rights, series, debts, liabilities and duties of the dividing company among the division companies;

(2) The name of each resulting company and, if the dividing company will survive the division, the name of the surviving company;

(3) The name and business address of a division contact which shall have custody of a copy of the plan of division. The division contact, or any successor division contact, shall serve for a period of 6 years following the effective date of the division. During such 6-year period the division contact shall provide, without cost, to any creditor of the dividing company, within 30 days following the division contact's receipt of a written request from any creditor of the dividing company, the name and business address of the division company to which the claim of such creditor was allocated pursuant to the plan of division; and

(4) Any other matters that the dividing company determines to include therein.

(h) If a domestic limited liability company divides under this section, the dividing company shall file a certificate of division executed by 1 or more authorized persons on behalf of such dividing company in the office of the Secretary of State in accordance with § 18-204 of this title and a certificate of formation that complies with § 18-201 of this title for each resulting company executed by 1 or more authorized persons in accordance with § 18-204 of this title. The certificate of division shall state:

(1) The name of the dividing company and, if it has been changed, the name under which its certificate of formation was originally filed and whether the dividing company is a surviving company;

(2) The date of filing of the dividing company's original certificate of formation with the Secretary of State;

(3) The name of each division company;

(4) The name and business address of the division contact required by paragraph (g)(3) of this section;

(5) The future effective date or time (which shall be a date or time certain) of the division if it is not to be effective upon the filing of the certificate of division;

(6) That the division has been approved in accordance with this section;

(7) That the plan of division is on file at a place of business of such division company as is specified therein, and shall state the address thereof;

(8) That a copy of the plan of division will be furnished by such division company as is specified therein, on request and without cost, to any member of the dividing company; and

(9) Any other information the dividing company determines to include therein.

(i) The certificate of division and each certificate of formation for each resulting company required by subsection (h) of this section shall be filed simultaneously in the office of the Secretary of State and, if such certificates are not to become effective upon their filing as permitted by § 18-206(b) of this title, then each such certificate shall provide for the same effective date or time in accordance with § 18-206(b) of this title. Concurrently with the effective date or time of a division, the limited liability company agreement of each resulting company shall become effective.

(j) A certificate of division shall act as a certificate of cancellation for a dividing company which is not a surviving company.

(k) A limited liability company agreement may provide that a domestic limited liability company shall not have the power to divide as set forth in this section.

(l) Upon the division of a domestic limited liability company becoming effective:

(1) The dividing company shall be divided into the distinct and independent resulting companies named in the plan of division, and, if the dividing company is not a surviving company, the existence of the dividing company shall cease.

(2) For all purposes of the laws of the State of Delaware, all of the rights, privileges and powers, and all the property, real, personal and mixed, of the dividing company and all debts due on whatever account to it, as well as all other things and other causes of action belonging to it, shall without further action be allocated to and vested in the applicable division company in such a manner and basis and with such effect as is specified in the plan of division, and the title to any real property or interest therein allocated to and vested in any division company shall not revert or be in any way impaired by reason of the division.

(3) Each division company shall, from and after effectiveness of the certificate of division, be liable as a separate and distinct domestic limited liability company for such debts, liabilities and duties of the dividing company as are allocated to such division company pursuant to the plan of division in the manner and on the basis provided in paragraph (g)(1)b. of this section.

(4) Each of the debts, liabilities and duties of the dividing company shall without further action be allocated to and be the debts, liabilities and duties of such division company as is specified in the plan of division as having such debts, liabilities and duties allocated to it, in such a manner and basis and with such effect as is specified in the plan of division, and no other division company shall be liable therefor, so long as the plan of division does not constitute a fraudulent transfer under applicable law, and all liens upon any property of the dividing company shall be preserved unimpaired, and all debts, liabilities and duties of the dividing company shall remain attached to the division company to which such debts, liabilities and duties have been allocated in the plan of division, and may be enforced against such division company to the same extent as if said debts, liabilities and duties had originally been incurred or contracted by it in its capacity as a domestic limited liability company.

(5) In the event that any allocation of assets, debts, liabilities and duties to division companies in accordance with a plan of division is determined by a court of competent jurisdiction to constitute a fraudulent transfer, each division company shall be jointly and severally liable on account of such fraudulent transfer notwithstanding the allocations made in the plan of division; provided, however, the validity and effectiveness of the division are not otherwise affected thereby.

(6) Debts and liabilities of the dividing company that are not allocated by the plan of division shall be the joint and several debts and liabilities of all of the division companies.

(7) It shall not be necessary for a plan of division to list each individual asset, property, right, series, debt, liability or duty of the dividing company to be allocated to a division company so long as the assets, property, rights, series, debts, liabilities or duties so allocated are reasonably identified by any method where the identity of such assets, property, rights, series, debts, liabilities or duties is objectively determinable.

(8) The rights, privileges, powers and interests in property of the dividing company that have been allocated to a division company, as well as the debts, liabilities and duties of the dividing company that have been allocated to such division company pursuant to a plan of division, shall remain vested in each such division company and shall not be deemed, as a result of the division, to have been assigned or transferred to such division company for any purpose of the laws of the State of Delaware.

(9) Any action or proceeding pending against a dividing company may be continued against the surviving company as if the division did not occur, but subject to paragraph (*l*)(4) of this section, and against any resulting company to which the asset, property, right, series, debt, liability or duty associated with such action or proceeding was allocated pursuant to the plan of division by adding or substituting such resulting company as a party in the action or proceeding.

(m) In applying the provisions of this chapter on distributions, a direct or indirect allocation of property or liabilities in a division is not deemed a distribution for purposes of this chapter.

(n) The provisions of this section shall not be construed to limit the means of accomplishing a division by any other means provided for in a limited liability company agreement or other agreement or as otherwise permitted by this chapter or as otherwise permitted by law.

(o) All limited liability companies formed on or after August 1, 2018, shall be governed by this section. All limited liability companies formed prior to August 1, 2018, shall be governed by this section; provided, that if the dividing company is a party to any written contract, indenture or other agreement entered into prior to August 1, 2018, that, by its terms, restricts, conditions or prohibits the consummation of a merger or consolidation by the dividing company with or into another party, or the transfer of assets by the dividing company to another party, then such restriction, condition or prohibition shall be deemed to apply to a division as if it were a merger, consolidation or transfer of assets, as applicable.

(81 Del. Laws, c. 357, § 20; 82 Del. Laws, c. 48, § 8; 82 Del. Laws, c. 259, § 8.)

§ 18-218 Registered series of members, managers, limited liability company interests or assets.

(a) If a limited liability company agreement provides for the establishment or formation of 1 or more series, then a registered series may be formed by complying with this § 18-218. A limited liability company agreement does not need to use the term registered when referencing series or refer to this § 18-218, and a reference in a limited liability company agreement for a registered series, including a registered series resulting from the conversion of a protected series to a registered series, may continue to refer to § 18-215 of this title, which reference shall be deemed a reference to this § 18-218 with respect to such registered series. A registered series is formed by the filing of a certificate of registered series in the office of the Secretary of State.

(b) Notice of the limitation on liabilities of a registered series as referenced in subsection (c) of this section shall be set forth in the certificate of formation of the limited liability company. Notice in a certificate of formation of the limitation on liabilities of a registered series as referenced in subsection (c) of this section shall be sufficient for all purposes of this subsection whether or not the limited liability company has formed any registered series when such notice is included in the certificate of formation, and there shall be no requirement that (i) any specific registered series of the limited liability company be referenced in such notice, (ii) such notice use the term registered when referencing series or include a reference to this § 18-218, or (iii) the certificate of formation be amended if it includes a reference to § 18-215 of this title. Any reference to § 18-215 of this title in a certificate of formation of a limited liability company that has one or more registered series shall be deemed a reference to this § 18-218 with respect to such registered series. The fact that a certificate of

formation that contains the foregoing notice of the limitation on liabilities of a series is on file in the office of the Secretary of State shall constitute notice of such limitation on liabilities of a registered series.

(c) Notwithstanding anything to the contrary set forth in this chapter or under other applicable law, to the extent the records maintained for a registered series account for the assets associated with such series separately from the other assets of the limited liability company, or any other series thereof, then the debts, liabilities, obligations and expenses incurred, contracted for or otherwise existing with respect to such series shall be enforceable against the assets of such series only, and not against the assets of the limited liability company generally or any other series thereof, and, unless otherwise provided in the limited liability company agreement, none of the debts, liabilities, obligations and expenses incurred, contracted for or otherwise existing with respect to the limited liability company generally or any other series thereof shall be enforceable against the assets of such series. Neither the preceding sentences nor any provision pursuant thereto in a limited liability company agreement, certificate of formation or certificate of registered series shall (i) restrict a registered series or limited liability company on behalf of a registered series from agreeing in the limited liability company agreement or otherwise that any or all of the debts, liabilities, obligations and expenses incurred, contracted for or otherwise existing with respect to the limited liability company generally or any other series thereof shall be enforceable against the assets of such registered series or (ii) restrict a limited liability company from agreeing in the limited liability company agreement or otherwise that any or all of the debts, liabilities, obligations and expenses incurred, contracted for or otherwise existing with respect to a registered series shall be enforceable against the assets of the limited liability company generally. Assets associated with a registered series may be held directly or indirectly, including in the name of such series, in the name of the limited liability company, through a nominee or otherwise. Records maintained for a registered series that reasonably identify its assets, including by specific listing, category, type, quantity, computational or allocational formula or procedure (including a percentage or share of any asset or assets) or by any other method where the identity of such assets is objectively determinable, will be deemed to account for the assets associated with such series separately from the other assets of the limited liability company, or any other series thereof. As used in this chapter, a reference to assets of a registered series includes assets associated with such series, a reference to assets associated with a registered series includes assets of such series, a reference to members or managers of a registered series includes members or managers associated with such series, and a reference to members or managers associated with a registered series includes members or managers of such series. The following shall apply to a registered series:

(1) A registered series may carry on any lawful business, purpose or activity, whether or not for profit, with the exception of the business of banking as defined in § 126 of Title 8. Unless otherwise provided in a limited liability company agreement, a registered series shall have the power and capacity to, in its own name, contract, hold title to assets (including real, personal and intangible property), grant liens and security interests, and sue and be sued.

(2) Except as otherwise provided by this chapter, no member or manager of a registered series shall be obligated personally for any debt, obligation or liability of such series, whether arising in contract, tort or otherwise, solely by reason of being a member or acting as manager of such series. Notwithstanding the preceding sentence, under a limited liability company agreement or under another agreement, a member or manager may agree to be obligated personally for any or all of the debts, obligations and liabilities of 1 or more registered series.

(3) A limited liability company agreement may provide for classes or groups of members or managers associated with a registered series having such relative rights, powers and duties as the limited liability company agreement may provide, and may make provision for the future creation in the manner provided in the limited liability company agreement of additional classes or groups of members or managers associated with such series having such relative rights, powers and duties as may from time to time be established, including rights, powers and duties senior to existing classes and groups of members or managers associated with such series. A limited liability company agreement may provide for the taking of an action, including the amendment of the limited liability company agreement, without the vote or approval of any member or manager or class or group of members or managers, including an action to create under the provisions of the limited liability company agreement a class or group of a registered series of limited liability company interests that was not previously outstanding. A limited liability company agreement may provide that any member or class or group of members associated with a registered series shall have no voting rights.

(4) A limited liability company agreement may grant to all or certain identified members or managers or a specified class or group of the members or managers associated with a registered series the right to vote separately or with all or any class or group of the members or managers associated with such series, on any matter. Voting by members or managers associated with a registered series may be on a per capita, number, financial interest, class, group or any other basis.

(5) Unless otherwise provided in a limited liability company agreement, the management of a registered series shall be vested in the members associated with such series in proportion to the then current percentage or other interest of members in the profits of such series owned by all of the members associated with such series, the decision of members owning more than 50 percent of the said percentage or other interest in the profits controlling; provided, however, that if a limited liability company agreement provides for the management of a registered series, in whole or in part, by a manager, the management of such series, to the extent so provided, shall be vested in the manager who shall be chosen in the manner provided in the limited liability company agreement. The manager of a registered series shall also hold the offices and have the responsibilities accorded to the manager as set forth in a limited liability company agreement. A registered series may have more than 1 manager. Subject to § 18-602 of this title, a manager shall cease to be a manager with respect to a registered series as provided in a limited liability company agreement. Except as otherwise provided in a

limited liability company agreement, any event under this chapter or in a limited liability company agreement that causes a manager to cease to be a manager with respect to a registered series shall not, in itself, cause such manager to cease to be a manager of the limited liability company or with respect to any other series thereof.

(6) Notwithstanding § 18-606 of this title, but subject to paragraphs (c)(7) and (c)(10) of this section, and unless otherwise provided in a limited liability company agreement, at the time a member of a registered series becomes entitled to receive a distribution with respect to such series, the member has the status of, and is entitled to all remedies available to, a creditor of such series, with respect to the distribution. A limited liability company agreement may provide for the establishment of a record date with respect to allocations and distributions with respect to a registered series.

(7) Notwithstanding § 18-607(a) of this title, a limited liability company may make a distribution with respect to a registered series. A limited liability company shall not make a distribution with respect to a registered series to a member to the extent that at the time of the distribution, after giving effect to the distribution, all liabilities of such series, other than liabilities to members on account of their limited liability company interests with respect to such series and liabilities for which the recourse of creditors is limited to specified property of such series, exceed the fair value of the assets associated with such series, except that the fair value of property of such series that is subject to a liability for which the recourse of creditors is limited shall be included in the assets associated with such series only to the extent that the fair value of that property exceeds that liability. For purposes of the immediately preceding sentence, the term “distribution” shall not include amounts constituting reasonable compensation for present or past services or reasonable payments made in the ordinary course of business pursuant to a bona fide retirement plan or other benefits program. A member who receives a distribution in violation of this subsection, and who knew at the time of the distribution that the distribution violated this subsection, shall be liable to the registered series for the amount of the distribution. A member who receives a distribution in violation of this subsection, and who did not know at the time of the distribution that the distribution violated this subsection, shall not be liable for the amount of the distribution. Subject to § 18-607(c) of this title, which shall apply to any distribution made with respect to a registered series under this subsection, this subsection shall not affect any obligation or liability of a member under an agreement or other applicable law for the amount of a distribution.

(8) Unless otherwise provided in the limited liability company agreement, a member shall cease to be associated with a registered series and to have the power to exercise any rights or powers of a member with respect to such series upon the assignment of all of the member’s limited liability company interest with respect to such series. Except as otherwise provided in a limited liability company agreement, any event under this chapter or a limited liability company agreement that causes a member to cease to be associated with a registered series shall not, in itself, cause such member to cease to be associated with any other series or terminate the continued membership of a member in the limited liability company or cause the dissolution of the registered series, regardless of whether such member was the last remaining member associated with such series.

(9) Subject to § 18-801 of this title, except to the extent otherwise provided in the limited liability company agreement, a registered series may be dissolved and its affairs wound up without causing the dissolution of the limited liability company. The dissolution of a registered series shall not affect the limitation on liabilities of such series provided by this subsection (c). A registered series is dissolved and its affairs shall be wound up upon the dissolution of the limited liability company under § 18-801 of this title or otherwise upon the first to occur of the following:

a. At the time specified in the limited liability company agreement;

b. Upon the happening of events specified in the limited liability company agreement;

c. Unless otherwise provided in the limited liability company agreement, upon the vote or consent of members associated with such series who own more than 2/3 of the then-current percentage or other interest in the profits of such series of the limited liability company owned by all of the members associated with such series; or

d. The dissolution of such series under paragraph (c)(11) of this section.

(10) Notwithstanding § 18-803(a) of this title, unless otherwise provided in the limited liability company agreement, a manager associated with a registered series who has not wrongfully dissolved such series or, if none, the members associated with such series or a person approved by the members associated with such series, in either case, by members who own more than 50 percent of the then current percentage or other interest in the profits of such series owned by all of the members associated with such series, may wind up the affairs of such series; but the Court of Chancery, upon cause shown, may wind up the affairs of a registered series upon application of any member or manager associated with such series, or the member’s personal representative or assignee, and in connection therewith, may appoint a liquidating trustee. The persons winding up the affairs of a registered series may, in the name of the limited liability company and for and on behalf of the limited liability company and such series, take all actions with respect to such series as are permitted under § 18-803(b) of this title. The persons winding up the affairs of a registered series shall provide for the claims and obligations of such series and distribute the assets of such series as provided in § 18-804 of this title, which section shall apply to the winding up and distribution of assets of a registered series. Actions taken in accordance with this subsection shall not affect the liability of members and shall not impose liability on a liquidating trustee.

(11) On application by or for a member or manager associated with a registered series, the Court of Chancery may decree dissolution of such series whenever it is not reasonably practicable to carry on the business of such series in conformity with a limited liability company agreement.

(12) For all purposes of the laws of the State of Delaware, a registered series is an association, regardless of the number of members or managers, if any, of such series.

(d) In order to form a registered series of a limited liability company, a certificate of registered series must be filed in accordance with this subsection.

(1) A certificate of registered series:

a. Shall set forth:

1. The name of the limited liability company; and

2. The name of the registered series.

b. May include any other matter that the members of such registered series determine to include therein.

(2) A certificate of registered series shall be executed in accordance with § 18-204 of this title and shall be filed in the office of the Secretary of State in accordance with § 18-206 of this title. A certificate of registered series shall be effective as of the effective time of such filing unless a later effective date or time (which shall be a date or time certain) is provided for in the certificate of registered series. A certificate of registered series is not an amendment to the certificate of formation of the limited liability company. The filing of a certificate of registered series in the office of the Secretary of State shall make it unnecessary to file any other documents under Chapter 31 of this title.

(3) A certificate of registered series is amended by filing a certificate of amendment thereto in the office of the Secretary of State. The certificate of amendment of certificate of registered series shall set forth:

a. The name of the limited liability company;

b. The name of the registered series; and

c. The amendment to the certificate of registered series.

(4) A manager of a registered series or, if there is no manager, then any member of a registered series who becomes aware that any statement in a certificate of registered series filed with respect to such registered series was false when made, or that any matter described therein has changed making the certificate of registered series false in any material respect or noncompliant with paragraph (e)(1) of this section, shall promptly amend the certificate of registered series.

(5) A certificate of registered series may be amended at any time for any other proper purpose.

(6) Unless otherwise provided in this chapter or unless a later effective date or time (which shall be a date or time certain) is provided for in the certificate of amendment of certificate of registered series, a certificate of amendment of certificate of registered series shall be effective at the time of its filing with the Secretary of State.

(7) A certificate of registered series shall be canceled upon the cancellation of the certificate of formation of the limited liability company named in the certificate of registered series, or upon the filing of a certificate of cancellation of the certificate of registered series or upon the future effective date or time of a certificate of cancellation of the certificate of registered series, or as provided in § 18-1108(b) of this title, or upon the filing of a certificate of merger or consolidation of registered series if the registered series is not the surviving or resulting registered series in a merger or consolidation or upon the future effective date or time of a certificate of merger or consolidation of registered series if the registered series is not the surviving or resulting registered series in a merger or consolidation, or upon the filing of a certificate of conversion of registered series to protected series or upon the future effective date or time of a certificate of conversion of registered series to protected series. A certificate of cancellation of the certificate of registered series may be filed at any time, and shall be filed, in the office of the Secretary of State to accomplish the cancellation of a certificate of registered series upon the dissolution of a registered series for which a certificate of registered series was filed and completion of the winding up of such registered series. A certificate of cancellation of the certificate of registered series shall set forth:

a. The name of the limited liability company;

b. The name of the registered series;

c. The date of filing of the certificate of registered series;

d. The future effective date or time (which shall be a date or time certain) of cancellation if it is not to be effective upon the filing of the certificate of cancellation; and

e. Any other information the person filing the certificate of cancellation of the certificate of registered series determines.

(8) A certificate of cancellation of the certificate of registered series that is filed in the office of the Secretary of State prior to the dissolution or the completion of winding up of a registered series may be corrected as an erroneously executed certificate of cancellation of the certificate of registered series by filing with the office of the Secretary of State a certificate of correction of such certificate of cancellation of the certificate of registered series in accordance with § 18-211 of this title.

(9) The Secretary of State shall not issue a certificate of good standing with respect to a registered series if its certificate of registered series is canceled or the limited liability company has ceased to be in good standing.

(e) The name of each registered series as set forth in its certificate of registered series:

(1) Shall begin with the name of the limited liability company, including any word, abbreviation or designation required by § 18-102 of this title;

(2) May contain the name of a member or manager;

(3) Must be such as to distinguish it upon the records in the office of the Secretary of State from the name on such records of any corporation, partnership, limited partnership, statutory trust, limited liability company, registered series of a limited liability company or registered series of a limited partnership reserved, registered, formed or organized under the laws of the State of Delaware or qualified to do business or registered as a foreign corporation, foreign limited partnership, foreign statutory trust, foreign partnership or foreign limited liability company in the State of Delaware; provided, however, that a registered series may register under any name which is not such as to distinguish it upon the records in the office of the Secretary of State from the name on such records of any domestic or foreign corporation, partnership, limited partnership, statutory trust, registered series of a limited liability company, registered series of a limited partnership, or foreign limited liability company reserved, registered, formed or organized under the laws of the State of Delaware with the written consent of the other corporation, partnership, limited partnership, statutory trust, registered series of a limited liability company, registered series of a limited partnership, or foreign limited liability company, which written consent shall be filed with the Secretary of State;

(4) May contain the following words: “Company,” “Association,” “Club,” “Foundation,” “Fund,” “Institute,” “Society,” “Union,” “Syndicate,” “Limited,” “Public Benefit” or “Trust” (or abbreviations of like import); and

(5) Shall not contain the word “bank,” or any variation thereof, except for the name of a bank reporting to and under the supervision of the State Bank Commissioner of this State or a subsidiary of a bank or savings association (as those terms are defined in the Federal Deposit Insurance Act, as amended, at 12 U.S.C. § 1813), or a limited liability company regulated under the Bank Holding Company Act of 1956, as amended, 12 U.S.C. § 1841 et seq., or the Home Owners’ Loan Act, as amended, 12 U.S.C. § 1461 et seq.; provided, however, that this section shall not be construed to prevent the use of the word “bank,” or any variation thereof, in a context clearly not purporting to refer to a banking business or otherwise likely to mislead the public about the nature of the business of the limited liability company or the registered series, or to lead to a pattern and practice of abuse that might cause harm to the interests of the public or this State as determined by the Division of Corporations in the Department of State.

(81 Del. Laws, c. 357, § 21; 82 Del. Laws, c. 48, § 9; 82 Del. Laws, c. 259, § 9.)

§ 18-219 Approval of conversion of a protected series of a domestic limited liability company to a registered series of such domestic limited liability company.

(a) A protected series of a domestic limited liability company may convert to a registered series of such domestic limited liability company by complying with this section and filing in the office of the Secretary of State in accordance with § 18-206 of this title:

(1) A certificate of conversion of protected series to registered series that has been executed in accordance with § 18-204 of this title; and

(2) A certificate of registered series that complies with § 18-218(d) of this title and has been executed by 1 or more authorized persons in accordance with § 18-204 of this title.

Each of the certificates required by this subsection (a) shall be filed simultaneously in the office of the Secretary of State and, if such certificates are not to become effective upon their filing as permitted by § 18-206(b) of this title, then each such certificate shall provide for the same effective date or time in accordance with § 18-206(b) of this title.

An existing series may not become a registered series other than pursuant to this section.

(b) If the limited liability company agreement specifies the manner of authorizing a conversion of a protected series of such limited liability company to a registered series of such limited liability company, the conversion of a protected series to a registered series shall be authorized as specified in the limited liability company agreement. If the limited liability company agreement does not specify the manner of authorizing a conversion of a protected series of such limited liability company to a registered series of such limited liability company and does not prohibit a conversion of a protected series to a registered series, the conversion shall be authorized by members of such protected series who own more than 50 percent of the then current percentage or other interest in the profits of such protected series owned by all of the members of such protected series.

(c) Unless otherwise agreed, the conversion of a protected series of a limited liability company to a registered series of such limited liability company pursuant to this section shall not require such limited liability company or such protected series of such limited liability company to wind up its affairs under § 18-803 or § 18-215 of this title or pay its liabilities and distribute its assets under § 18-804 or § 18-215 of this title, and the conversion of a protected series of a limited liability company to a registered series of such limited liability company shall not constitute a dissolution of such limited liability company or a termination of such protected series. When a protected series of a limited liability company has converted to a registered series of such limited liability company pursuant to this section, for all purposes of the laws of the State of Delaware, the registered series shall be deemed to be the same series as the converting protected series and the conversion shall constitute a continuation of the existence of the protected series in the form of such registered series.

(d) In connection with a conversion of a protected series of a limited liability company to a registered series of such limited liability company pursuant to this section, rights or securities of or interests in the protected series which is to be converted may be exchanged for or converted into cash, property, rights or securities of or interests in the registered series into which the protected series is being converted or, in addition to or in lieu thereof, may be exchanged for or converted into cash, property, rights or securities of or interests in any other business entity, may remain outstanding or may be canceled.

(e) If a protected series shall convert to a registered series in accordance with this section, a certificate of conversion of protected series to registered series executed in accordance with § 18-204 of this title shall be filed in the office of the Secretary of State in accordance with § 18-206 of this title. The certificate of conversion of protected series to registered series shall state:

(1) The name of the limited liability company and, if it has been changed, the name under which its certificate of formation was originally filed;

(2) The name of the protected series and, if it has been changed, the name of the protected series as originally established;

(3) The name of the registered series as set forth in its certificate of registered series filed in accordance with subsection (a) of this section;

(4) The date of filing of the original certificate of formation of the limited liability company with the Secretary of State;

(5) The date on which the protected series was established;

(6) The future effective date or time (which shall be a date or time certain) of the conversion if it is not to be effective upon the filing of the certificate of conversion of protected series to registered series; and

(7) That the conversion has been approved in accordance with this section.

(f) A copy of the certificate of conversion of protected series to registered series certified by the Secretary of State shall be prima facie evidence of the conversion by such protected series to a registered series of such limited liability company.

(g) When any conversion shall have become effective under this section, for all purposes of the laws of the State of Delaware, all of the rights, privileges and powers of the protected series that has converted, and all property, real, personal and mixed, and all debts due to such protected series, as well as all other things and causes of action belonging to such protected series, shall remain vested in the registered series to which such protected series has converted and shall be the property of such registered series, and the title to any real property vested by deed or otherwise in such protected series shall not revert or be in any way impaired by reason of this chapter; but all rights of creditors and all liens upon any property of such protected series shall be preserved unimpaired, and all debts, liabilities and duties of the protected series that has converted shall remain attached to the registered series to which such protected series has converted, and may be enforced against it to the same extent as if said debts, liabilities and duties had originally been incurred or contracted by it in its capacity as such registered series. The rights, privileges, powers and interests in property of the protected series that has converted, as well as the debts, liabilities and duties of such protected series, shall not be deemed, as a consequence of the conversion, to have been transferred to the registered series to which such protected series of such limited liability company has converted for any purpose of the laws of the State of Delaware.

(h) A limited liability company agreement may provide that a protected series of a limited liability company shall not have the power to convert to a registered series of such limited liability company as set forth in this section.

(81 Del. Laws, c. 357, § 22; 82 Del. Laws, c. 48, § 10.)

§ 18-220 Approval of conversion of a registered series of a domestic limited liability company to a protected series of such domestic limited liability company.

(a) Upon compliance with this section, a registered series of a domestic limited liability company may convert to a protected series of such domestic limited liability company. An existing registered series may not become a protected series other than pursuant to this section.

(b) If the limited liability company agreement specifies the manner of authorizing a conversion of a registered series of such limited liability company to a protected series of such limited liability company, the conversion of a registered series to a protected series shall be authorized as specified in the limited liability company agreement. If the limited liability company agreement does not specify the manner of authorizing a conversion of a registered series of such limited liability company to a protected series of such limited liability company and does not prohibit a conversion of a registered series to a protected series, the conversion shall be authorized by members of such registered series who own more than 50 percent of the then current percentage or other interest in the profits of such registered series owned by all of the members of such registered series.

(c) Unless otherwise agreed, the conversion of a registered series of a limited liability company to a protected series of such limited liability company pursuant to this section shall not require such limited liability company or such registered series of such limited liability company to wind up its affairs under § 18-803 or § 18-218 of this title or pay its liabilities and distribute its assets under § 18-804 or § 18-218 of this title, and the conversion of a registered series of a limited liability company to a protected series of such limited liability company shall not constitute a dissolution of such limited liability company or of such registered series. When a registered series of a limited liability company has converted to a protected series of such limited liability company pursuant to this section, for all purposes of the laws of the State of Delaware, the protected series shall be deemed to be the same series as the converting registered series and the conversion shall constitute a continuation of the existence of the registered series in the form of such protected series.

(d) In connection with a conversion of a registered series of a limited liability company to protected series of such limited liability company pursuant to this section, rights or securities of or interests in the registered series which is to be converted may be exchanged for or converted into cash, property, rights or securities of or interests in the protected series into which the registered series is being converted or, in addition to or in lieu thereof, may be exchanged for or converted into cash, property, rights or securities of or interests in any other business entity, may remain outstanding or may be canceled.

(e) If a registered series shall convert to a protected series in accordance with this section, a certificate of conversion of registered series to protected series executed in accordance with § 18-204 of this title shall be filed in the office of the Secretary of State in accordance with § 18-206 of this title. The certificate of conversion of registered series to protected series shall state:

(1) The name of the limited liability company and, if it has been changed, the name under which its certificate of formation was originally filed;

(2) The date of filing of the original certificate of formation of the limited liability company with the Secretary of State;

(3) The name of the registered series and, if it has been changed, the name under which its certificate of registered series was originally filed;

(4) The date of filing of its original certificate of registered series with the Secretary of State;

(5) The future effective date or time (which shall be a date or time certain) of the conversion if it is not to be effective upon the filing of the certificate of conversion of registered series to protected series; and

(6) That the conversion has been approved in accordance with this section.

(f) A copy of the certificate of conversion of registered series to protected series certified by the Secretary of State shall be prima facie evidence of the conversion by such registered series to a protected series of such limited liability company.

(g) When any conversion shall have become effective under this section, for all purposes of the laws of the State of Delaware, all of the rights, privileges and powers of the registered series that has converted, and all property, real, personal and mixed, and all debts due to such registered series, as well as all other things and causes of action belonging to such registered series, shall remain vested in the protected series to which such registered series has converted and shall be the property of such protected series, and the title to any real property vested by deed or otherwise in such registered series shall not revert or be in any way impaired by reason of this chapter; but all rights of creditors and all liens upon any property of such registered series shall be preserved unimpaired, and all debts, liabilities and duties of the registered series that has converted shall remain attached to the protected series to which such registered series has converted, and may be enforced against it to the same extent as if said debts, liabilities and duties had originally been incurred or contracted by it in its capacity as such protected series. The rights, privileges, powers and interests in property of the registered series that has converted, as well as the debts, liabilities and duties of such registered series, shall not be deemed, as a consequence of the conversion, to have been transferred to the protected series to which such registered series of such limited liability company has converted for any purpose of the laws of the State of Delaware.

(h) A limited liability company agreement may provide that a registered series of a limited liability company shall not have the power to convert to a protected series of such limited liability company as set forth in this section.

(81 Del. Laws, c. 357, § 23; 82 Del. Laws, c. 48, § 11; 82 Del. Laws, c. 259, § 10.)

§ 18-221 Merger and consolidation of registered series.

(a) Pursuant to an agreement of merger or consolidation, 1 or more registered series may merge or consolidate with or into 1 or more other registered series of the same limited liability company with such registered series as the agreement shall provide being the surviving or resulting registered series. Unless otherwise provided in the limited liability company agreement, an agreement of merger or consolidation shall be approved by each registered series which is to merge or consolidate by members of such registered series who own more than 50 percent of the then current percentage or other interest in the profits of such registered series owned by all of the members of such registered series. In connection with a merger or consolidation hereunder, rights or securities of, or interests in, a registered series which is a constituent party to the merger or consolidation may be exchanged for or converted into cash, property, rights or securities of, or interests in, the surviving or resulting registered series or, in addition to or in lieu thereof, may be exchanged for or converted into cash, property, rights or securities of, or interests in, a domestic limited liability company or other business entity which is not the surviving or resulting registered series in the merger or consolidation, may remain outstanding or may be canceled. Notwithstanding prior approval, an agreement of merger or consolidation may be terminated or amended pursuant to a provision for such termination or amendment contained in the agreement of merger or consolidation.

(b) If a registered series is merging or consolidating under this section, the registered series surviving or resulting in or from the merger or consolidation shall file a certificate of merger or consolidation of registered series executed by 1 or more authorized persons on behalf of the registered series when it is the surviving or resulting registered series in the office of the Secretary of State. The certificate of merger or consolidation of registered series shall state:

(1) The name of each registered series which is to merge or consolidate and the name of the limited liability company that formed such registered series;

(2) That an agreement of merger or consolidation has been approved and executed by or on behalf of each registered series which is to merge or consolidate;

(3) The name of the surviving or resulting registered series;

(4) Such amendment, if any, to the certificate of registered series of the registered series that is the surviving registered series to change the name of the surviving registered series, as is desired to be effected by the merger;

(5) The future effective date or time (which shall be a date or time certain) of the merger or consolidation if it is not to be effective upon the filing of the certificate of merger or consolidation of registered series;

(6) That the agreement of merger or consolidation is on file at a place of business of the surviving or resulting registered series or the limited liability company that formed such registered series, and shall state the address thereof; and

(7) That a copy of the agreement of merger or consolidation will be furnished by the surviving or resulting registered series, on request and without cost, to any member of any registered series which is to merge or consolidate.

(c) Unless a future effective date or time is provided in a certificate of merger or consolidation of registered series, a merger or consolidation pursuant to this section shall be effective upon the filing in the office of the Secretary of State of a certificate of merger or consolidation of registered series.

(d) A certificate of merger or consolidation of registered series shall act as a certificate of cancellation of the certificate of registered series of the registered series which is not the surviving or resulting registered series in the merger or consolidation. A certificate of merger or consolidation of registered series that sets forth any amendment in accordance with paragraph (b)(4) of this section shall be deemed to be an amendment to the certificate of registered series of the surviving registered series, and no further action shall be required to amend the certificate of registered series of the surviving registered series under § 18-218 of this title with respect to such amendments set forth in such certificate of merger or consolidation. Whenever this section requires the filing of a certificate of merger or consolidation of registered series, such requirement shall be deemed satisfied by the filing of an agreement of merger or consolidation containing the information required by this section to be set forth in such certificate of merger or consolidation.

(e) An agreement of merger or consolidation approved in accordance with subsection (a) of this section may effect any amendment to the limited liability company agreement relating solely to the registered series that are constituent parties to the merger or consolidation.

Any amendment to a limited liability company agreement relating solely to the registered series that are constituent parties to the merger or consolidation made pursuant to the foregoing sentence shall be effective at the effective time or date of the merger or consolidation and shall be effective notwithstanding any provision of the limited liability company agreement relating to amendment of the limited liability company agreement, other than a provision that by its terms applies to an amendment to the limited liability company agreement in connection with a merger or consolidation. The provisions of this subsection shall not be construed to limit the accomplishment of a merger or of any of the matters referred to herein by any other means provided for in a limited liability company agreement or other agreement or as otherwise permitted by law, including that the limited liability company agreement relating to any constituent registered series to the merger or consolidation (including a registered series formed for the purpose of consummating a merger or consolidation) shall be the limited liability company agreement of the surviving or resulting registered series.

(f) When any merger or consolidation shall have become effective under this section, for all purposes of the laws of the State of Delaware, all of the rights, privileges and powers of each of the registered series that have merged or consolidated, and all property, real, personal and mixed, and all debts due to any of said registered series, as well as all other things and causes of action belonging to each of such registered series, shall be vested in the surviving or resulting registered series, and shall thereafter be the property of the surviving or resulting registered series as they were of each of the registered series that have merged or consolidated, and the title to any real property vested by deed or otherwise, under the laws of the State of Delaware, in any of such registered series, shall not revert or be in any way impaired by reason of this chapter; but all rights of creditors and all liens upon any property of any of said registered series shall be preserved unimpaired, and all debts, liabilities and duties of each of the said registered series that have merged or consolidated shall thenceforth attach to the surviving or resulting registered series, and may be enforced against it to the same extent as if said debts, liabilities and duties had been incurred or contracted by it. Unless otherwise agreed, a merger or consolidation of a registered series of a limited liability company, including a registered series which is not the surviving or resulting registered series in the merger or consolidation, shall not require such registered series to wind up its affairs under § 18-218 of this title, or pay its liabilities and distribute its assets under § 18-218 of this title and the merger or consolidation shall not constitute a dissolution of such registered series.

(g) A limited liability company agreement may provide that a registered series of such limited liability company shall not have the power to merge or consolidate as set forth in this section.

(81 Del. Laws, c. 357, § 24; 82 Del. Laws, c. 48, § 12.)

Subchapter III
Members

§ 18-301 Admission of members.

(a) In connection with the formation of a limited liability company, a person is admitted as a member of the limited liability company upon the later to occur of:

(1) The formation of the limited liability company; or

(2) The time provided in and upon compliance with the limited liability company agreement or, if the limited liability company agreement does not so provide, when the person's admission is reflected in the records of the limited liability company or as otherwise provided in the limited liability company agreement.

(b) After the formation of a limited liability company, a person is admitted as a member of the limited liability company:

(1) In the case of a person who is not an assignee of a limited liability company interest, including a person acquiring a limited liability company interest directly from the limited liability company and a person to be admitted as a member of the limited liability company without acquiring a limited liability company interest in the limited liability company at the time provided in and upon compliance

with the limited liability company agreement or, if the limited liability company agreement does not so provide, upon the consent of all members or as otherwise provided in the limited liability company agreement;

(2) In the case of an assignee of a limited liability company interest, as provided in § 18-704(a) of this title;

(3) In the case of a person being admitted as a member of a surviving or resulting limited liability company pursuant to a merger or consolidation approved in accordance with § 18-209(b) of this title, as provided in the limited liability company agreement of the surviving or resulting limited liability company or in the agreement of merger or consolidation or plan of merger, and in the event of any inconsistency, the terms of the agreement of merger or consolidation or plan of merger shall control; and in the case of a person being admitted as a member of a limited liability company pursuant to a merger or consolidation in which such limited liability company is not the surviving or resulting limited liability company in the merger or consolidation, as provided in the limited liability company agreement of such limited liability company; or

(4) In the case of a person being admitted as a member of a division company pursuant to a division approved in accordance with § 18-217(c) of this title, as provided in the limited liability company agreement of such division company or in the plan of division, and in the event of any inconsistency, the terms of the plan of division shall control; and in the case of a person being admitted as a member of a limited liability company pursuant to a division in which such limited liability company is not a division company in the division, as provided in the limited liability company agreement of such limited liability company.

(c) In connection with the domestication of a non-United States entity (as defined in § 18-212 of this title) as a limited liability company in the State of Delaware in accordance with § 18-212 of this title or the conversion of an other entity (as defined in § 18-214 of this title) to a domestic limited liability company in accordance with § 18-214 of this title, a person is admitted as a member of the limited liability company as provided in the limited liability company agreement.

(d) A person may be admitted to a limited liability company as a member of the limited liability company and may receive a limited liability company interest in the limited liability company without making a contribution or being obligated to make a contribution to the limited liability company. Unless otherwise provided in a limited liability company agreement, a person may be admitted to a limited liability company as a member of the limited liability company without acquiring a limited liability company interest in the limited liability company. Unless otherwise provided in a limited liability company agreement, a person may be admitted as the sole member of a limited liability company without making a contribution or being obligated to make a contribution to the limited liability company or without acquiring a limited liability company interest in the limited liability company.

(e) Unless otherwise provided in a limited liability company agreement or another agreement, a member shall have no preemptive right to subscribe to any additional issue of limited liability company interests or another interest in a limited liability company.

(68 Del. Laws, c. 434, § 1; 69 Del. Laws, c. 260, §§ 16-21; 70 Del. Laws, c. 75, § 18; 71 Del. Laws, c. 77, §§ 24, 25; 73 Del. Laws, c. 295, § 7; 75 Del. Laws, c. 51, §§ 6, 7; 77 Del. Laws, c. 287, § 20; 82 Del. Laws, c. 48, § 13; 82 Del. Laws, c. 259, § 11.)

§ 18-302 Classes and voting.

(a) A limited liability company agreement may provide for classes or groups of members having such relative rights, powers and duties as the limited liability company agreement may provide, and may make provision for the future creation in the manner provided in the limited liability company agreement of additional classes or groups of members having such relative rights, powers and duties as may from time to time be established, including rights, powers and duties senior to existing classes and groups of members. A limited liability company agreement may provide for the taking of an action, including the amendment of the limited liability company agreement, without the vote or approval of any member or class or group of members, including an action to create under the provisions of the limited liability company agreement a class or group of limited liability company interests that was not previously outstanding. A limited liability company agreement may provide that any member or class or group of members shall have no voting rights.

(b) A limited liability company agreement may grant to all or certain identified members or a specified class or group of the members the right to vote separately or with all or any class or group of the members or managers, on any matter. Voting by members may be on a per capita, number, financial interest, class, group or any other basis.

(c) A limited liability company agreement may set forth provisions relating to notice of the time, place or purpose of any meeting at which any matter is to be voted on by any members, waiver of any such notice, action by consent without a meeting, the establishment of a record date, quorum requirements, voting in person or by proxy, or any other matter with respect to the exercise of any such right to vote.

(d) Unless otherwise provided in a limited liability company agreement, meetings of members may be held by means of conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other, and participation in a meeting pursuant to this subsection shall constitute presence in person at the meeting. Unless otherwise provided in a limited liability company agreement, on any matter that is to be voted on, consented to or approved by members, the members may take such action without a meeting, without prior notice and without a vote if consented to or approved, in writing, by electronic transmission or by any other means permitted by law, by members having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all members entitled to vote thereon were present and voted. Unless otherwise provided in a limited liability company agreement, if a person (whether or not then a member) consenting as a member to any matter provides that such consent will be effective at a future time (including a time determined upon the happening of an event), then such person shall be deemed to have consented as a member at such future time so long as such person is then a member. Unless otherwise provided in a

limited liability company agreement, on any matter that is to be voted on by members, the members may vote in person or by proxy, and such proxy may be granted in writing, by means of electronic transmission or as otherwise permitted by applicable law. Unless otherwise provided in a limited liability company agreement, a consent transmitted by electronic transmission by a member or by a person or persons authorized to act for a member shall be deemed to be written and signed for purposes of this subsection.

(e) If a limited liability company agreement provides for the manner in which it may be amended, including by requiring the approval of a person who is not a party to the limited liability company agreement or the satisfaction of conditions, it may be amended only in that manner or as otherwise permitted by law, including as permitted by § 18-209(f) of this title (provided that the approval of any person may be waived by such person and that any such conditions may be waived by all persons for whose benefit such conditions were intended). Unless otherwise provided in a limited liability company agreement, a supermajority amendment provision shall only apply to provisions of the limited liability company agreement that are expressly included in the limited liability company agreement. As used in this section, "supermajority amendment provision" means any amendment provision set forth in a limited liability company agreement requiring that an amendment to a provision of the limited liability company agreement be adopted by no less than the vote or consent required to take action under such latter provision.

(f) If a limited liability company agreement does not provide for the manner in which it may be amended, the limited liability company agreement may be amended with the approval of all of the members or as otherwise permitted by law, including as permitted by § 18-209(f) of this title. This subsection shall only apply to a limited liability company whose original certificate of formation was filed with the Secretary of State on or after January 1, 2012.

(68 Del. Laws, c. 434, § 1; 70 Del. Laws, c. 360, § 11; 71 Del. Laws, c. 77, § 26; 71 Del. Laws, c. 341, § 11; 72 Del. Laws, c. 129, § 10; 72 Del. Laws, c. 389, § 21; 73 Del. Laws, c. 83, § 14; 74 Del. Laws, c. 275, § 12; 75 Del. Laws, c. 317, § 33; 77 Del. Laws, c. 58, § 6; 78 Del. Laws, c. 95, §§ 8-10; 79 Del. Laws, c. 302, § 2; 80 Del. Laws, c. 271, § 4; 81 Del. Laws, c. 357, § 25; 82 Del. Laws, c. 48, § 14.)

§ 18-303 Liability to third parties.

(a) Except as otherwise provided by this chapter, the debts, obligations and liabilities of a limited liability company, whether arising in contract, tort or otherwise, shall be solely the debts, obligations and liabilities of the limited liability company, and no member or manager of a limited liability company shall be obligated personally for any such debt, obligation or liability of the limited liability company solely by reason of being a member or acting as a manager of the limited liability company.

(b) Notwithstanding the provisions of subsection (a) of this section, under a limited liability company agreement or under another agreement, a member or manager may agree to be obligated personally for any or all of the debts, obligations and liabilities of the limited liability company.

(68 Del. Laws, c. 434, § 1; 69 Del. Laws, c. 260, § 22.)

§ 18-304 Events of bankruptcy.

A person ceases to be a member of a limited liability company upon the happening of any of the following events:

(1) Unless otherwise provided in a limited liability company agreement, or with the consent of all members, a member:

a. Makes an assignment for the benefit of creditors;

b. Files a voluntary petition in bankruptcy;

c. Is adjudged a bankrupt or insolvent, or has entered against the member an order for relief, in any bankruptcy or insolvency proceeding;

d. Files a petition or answer seeking for the member any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any statute, law or regulation;

e. Files an answer or other pleading admitting or failing to contest the material allegations of a petition filed against the member in any proceeding of this nature;

f. Seeks, consents to or acquiesces in the appointment of a trustee, receiver or liquidator of the member or of all or any substantial part of the member's properties; or

(2) Unless otherwise provided in a limited liability company agreement, or with the consent of all members, 120 days after the commencement of any proceeding against the member seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any statute, law or regulation, if the proceeding has not been dismissed, or if within 90 days after the appointment without the member's consent or acquiescence of a trustee, receiver or liquidator of the member or of all or any substantial part of the member's properties, the appointment is not vacated or stayed, or within 90 days after the expiration of any such stay, the appointment is not vacated.

(68 Del. Laws, c. 434, § 1; 70 Del. Laws, c. 186, § 1; 80 Del. Laws, c. 271, § 5.)

§ 18-305 Access to and confidentiality of information; records.

(a) Each member of a limited liability company, in person or by attorney or other agent, has the right, subject to such reasonable standards (including standards governing what information and documents are to be furnished at what time and location and at whose expense) as may be set forth in a limited liability company agreement or otherwise established by the manager or, if there is no manager,

then by the members, to obtain from the limited liability company from time to time upon reasonable demand for any purpose reasonably related to the member's interest as a member of the limited liability company:

(1) True and full information regarding the status of the business and financial condition of the limited liability company;

(2) Promptly after becoming available, a copy of the limited liability company's federal, state and local income tax returns for each year;

(3) A current list of the name and last known business, residence or mailing address of each member and manager;

(4) A copy of any written limited liability company agreement and certificate of formation and all amendments thereto, together with executed copies of any written powers of attorney pursuant to which the limited liability company agreement and any certificate and all amendments thereto have been executed;

(5) True and full information regarding the amount of cash and a description and statement of the agreed value of any other property or services contributed by each member and which each member has agreed to contribute in the future, and the date on which each became a member; and

(6) Other information regarding the affairs of the limited liability company as is just and reasonable.

(b) Each manager shall have the right to examine all of the information described in subsection (a) of this section for a purpose reasonably related to the position of manager.

(c) The manager of a limited liability company shall have the right to keep confidential from the members, for such period of time as the manager deems reasonable, any information which the manager reasonably believes to be in the nature of trade secrets or other information the disclosure of which the manager in good faith believes is not in the best interest of the limited liability company or could damage the limited liability company or its business or which the limited liability company is required by law or by agreement with a third party to keep confidential.

(d) A limited liability company may maintain its records in other than paper form, including on, by means of, or in the form of any information storage device, method, or 1 or more electronic networks or databases (including 1 or more distributed electronic networks or databases), if such form is capable of conversion into paper form within a reasonable time.

(e) Any demand under this section shall be in writing and shall state the purpose of such demand. In every instance where an attorney or other agent shall be the person who seeks the right to obtain the information described in subsection (a) of this section, the demand shall be accompanied by a power of attorney or such other writing which authorizes the attorney or other agent to so act on behalf of the member.

(f) Any action to enforce any right arising under this section shall be brought in the Court of Chancery. If the limited liability company refuses to permit a member, or attorney or other agent acting for the member, to obtain or a manager to examine the information described in subsection (a) of this section or does not reply to the demand that has been made within 5 business days (or such shorter or longer period of time as is provided for in a limited liability company agreement but not longer than 30 business days) after the demand has been made, the demanding member or manager may apply to the Court of Chancery for an order to compel such disclosure. The Court of Chancery is hereby vested with exclusive jurisdiction to determine whether or not the person seeking such information is entitled to the information sought. The Court of Chancery may summarily order the limited liability company to permit the demanding member to obtain or manager to examine the information described in subsection (a) of this section and to make copies or abstracts therefrom, or the Court of Chancery may summarily order the limited liability company to furnish to the demanding member or manager the information described in subsection (a) of this section on the condition that the demanding member or manager first pay to the limited liability company the reasonable cost of obtaining and furnishing such information and on such other conditions as the Court of Chancery deems appropriate. When a demanding member seeks to obtain or a manager seeks to examine the information described in subsection (a) of this section, the demanding member or manager shall first establish:

(1) That the demanding member or manager has complied with the provisions of this section respecting the form and manner of making demand for obtaining or examining of such information, and

(2) That the information the demanding member or manager seeks is reasonably related to the member's interest as a member or the manager's position as a manager, as the case may be.

The Court of Chancery may, in its discretion, prescribe any limitations or conditions with reference to the obtaining or examining of information, or award such other or further relief as the Court of Chancery may deem just and proper. The Court of Chancery may order books, documents and records, pertinent extracts therefrom, or duly authenticated copies thereof, to be brought within the State of Delaware and kept in the State of Delaware upon such terms and conditions as the order may prescribe.

(g) The rights of a member or manager to obtain information as provided in this section may be restricted in an original limited liability company agreement or in any subsequent amendment approved or adopted by all of the members or in compliance with any applicable requirements of the limited liability company agreement. The provisions of this subsection shall not be construed to limit the ability to impose restrictions on the rights of a member or manager to obtain information by any other means permitted under this chapter.

(h) A limited liability company shall maintain a current record that identifies the name and last known business, residence or mailing address of each member and manager.

(68 Del. Laws, c. 434, § 1; 70 Del. Laws, c. 186, § 1; 70 Del. Laws, c. 360, § 12; 73 Del. Laws, c. 83, § 15; 77 Del. Laws, c. 287, §§ 21, 22; 79 Del. Laws, c. 302, § 3; 81 Del. Laws, c. 357, § 26; 82 Del. Laws, c. 259, § 12.)

§ 18-306 Remedies for breach of limited liability company agreement by member.

A limited liability company agreement may provide that:

(1) A member who fails to perform in accordance with, or to comply with the terms and conditions of, the limited liability company agreement shall be subject to specified penalties or specified consequences; and

(2) At the time or upon the happening of events specified in the limited liability company agreement, a member shall be subject to specified penalties or specified consequences.

Such specified penalties or specified consequences may include and take the form of any penalty or consequence set forth in § 18-502(c) of this title.

(68 Del. Laws, c. 434, § 1; 73 Del. Laws, c. 83, § 16.)

Subchapter IV

Managers

§ 18-401 Admission of managers.

A person may be named or designated as a manager of the limited liability company as provided in § 18-101(12) of this title.

(68 Del. Laws, c. 434, § 1; 69 Del. Laws, c. 260, § 23; 82 Del. Laws, c. 48, § 1.)

§ 18-402 Management of limited liability company.

Unless otherwise provided in a limited liability company agreement, the management of a limited liability company shall be vested in its members in proportion to the then current percentage or other interest of members in the profits of the limited liability company owned by all of the members, the decision of members owning more than 50 percent of the said percentage or other interest in the profits controlling; provided however, that if a limited liability company agreement provides for the management, in whole or in part, of a limited liability company by a manager, the management of the limited liability company, to the extent so provided, shall be vested in the manager who shall be chosen in the manner provided in the limited liability company agreement. The manager shall also hold the offices and have the responsibilities accorded to the manager by or in the manner provided in a limited liability company agreement. Subject to § 18-602 of this title, a manager shall cease to be a manager as provided in a limited liability company agreement. A limited liability company may have more than 1 manager. Unless otherwise provided in a limited liability company agreement, each member and manager has the authority to bind the limited liability company.

(68 Del. Laws, c. 434, § 1; 69 Del. Laws, c. 260, § 24; 70 Del. Laws, c. 75, § 19; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 341, § 12; 72 Del. Laws, c. 129, § 11.)

§ 18-403 Contributions by a manager.

A manager of a limited liability company may make contributions to the limited liability company and share in the profits and losses of, and in distributions from, the limited liability company as a member. A person who is both a manager and a member has the rights and powers, and is subject to the restrictions and liabilities, of a manager and, except as provided in a limited liability company agreement, also has the rights and powers, and is subject to the restrictions and liabilities, of a member to the extent of the manager's participation in the limited liability company as a member.

(68 Del. Laws, c. 434, § 1; 70 Del. Laws, c. 186, § 1.)

§ 18-404 Classes and voting.

(a) A limited liability company agreement may provide for classes or groups of managers having such relative rights, powers and duties as the limited liability company agreement may provide, and may make provision for the future creation in the manner provided in the limited liability company agreement of additional classes or groups of managers having such relative rights, powers and duties as may from time to time be established, including rights, powers and duties senior to existing classes and groups of managers. A limited liability company agreement may provide for the taking of an action, including the amendment of the limited liability company agreement, without the vote or approval of any manager or class or group of managers, including an action to create under the provisions of the limited liability company agreement a class or group of limited liability company interests that was not previously outstanding.

(b) A limited liability company agreement may grant to all or certain identified managers or a specified class or group of the managers the right to vote, separately or with all or any class or group of managers or members, on any matter. Voting by managers may be on a per capita, number, financial interest, class, group or any other basis.

(c) A limited liability company agreement may set forth provisions relating to notice of the time, place or purpose of any meeting at which any matter is to be voted on by any manager or class or group of managers, waiver of any such notice, action by consent without a meeting, the establishment of a record date, quorum requirements, voting in person or by proxy, or any other matter with respect to the exercise of any such right to vote.

(d) Unless otherwise provided in a limited liability company agreement, meetings of managers may be held by means of conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other, and participation in a meeting pursuant to this subsection shall constitute presence in person at the meeting. Unless otherwise provided in a

limited liability company agreement, on any matter that is to be voted on, consented to or approved by managers, the managers may take such action without a meeting, without prior notice and without a vote if consented to or approved, in writing, by electronic transmission or by any other means permitted by law, by managers having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all managers entitled to vote thereon were present and voted. Unless otherwise provided in a limited liability company agreement, if a person (whether or not then a manager) consenting as a manager to any matter provides that such consent will be effective at a future time (including a time determined upon the happening of an event), then such person shall be deemed to have consented as a manager at such future time so long as such person is then a manager. Unless otherwise provided in a limited liability company agreement, on any matter that is to be voted on by managers, the managers may vote in person or by proxy, and such proxy may be granted in writing, by means of electronic transmission or as otherwise permitted by applicable law. Unless otherwise provided in a limited liability company agreement, a consent transmitted by electronic transmission by a manager or by a person or persons authorized to act for a manager shall be deemed to be written and signed for purposes of this subsection.

(68 Del. Laws, c. 434, § 1; 71 Del. Laws, c. 77, § 27; 71 Del. Laws, c. 341, § 13; 72 Del. Laws, c. 389, § 22; 73 Del. Laws, c. 83, § 17; 75 Del. Laws, c. 317, § 34; 78 Del. Laws, c. 95, § 11; 79 Del. Laws, c. 302, § 4; 80 Del. Laws, c. 271, § 6; 81 Del. Laws, c. 357, § 27; 82 Del. Laws, c. 48, § 15.)

§ 18-405 Remedies for breach of limited liability company agreement by manager.

A limited liability company agreement may provide that:

(1) A manager who fails to perform in accordance with, or to comply with the terms and conditions of, the limited liability company agreement shall be subject to specified penalties or specified consequences; and

(2) At the time or upon the happening of events specified in the limited liability company agreement, a manager shall be subject to specified penalties or specified consequences.

(68 Del. Laws, c. 434, § 1.)

§ 18-406 Reliance on reports and information by member or manager.

A member, manager or liquidating trustee of a limited liability company shall be fully protected in relying in good faith upon the records of the limited liability company and upon information, opinions, reports or statements presented by another manager, member or liquidating trustee, an officer or employee of the limited liability company, or committees of the limited liability company, members or managers, or by any other person as to matters the member, manager or liquidating trustees reasonably believes are within such other person's professional or expert competence, including information, opinions, reports or statements as to the value and amount of the assets, liabilities, profits or losses of the limited liability company, or the value and amount of assets or reserves or contracts, agreements or other undertakings that would be sufficient to pay claims and obligations of the limited liability company or to make reasonable provision to pay such claims and obligations, or any other facts pertinent to the existence and amount of assets from which distributions to members or creditors might properly be paid.

(68 Del. Laws, c. 434, § 1; 75 Del. Laws, c. 51, § 8.)

§ 18-407 Delegation of rights and powers to manage.

Unless otherwise provided in the limited liability company agreement, a member or manager of a limited liability company has the power and authority to delegate to 1 or more other persons any or all of the member's or manager's, as the case may be, rights, powers and duties to manage and control the business and affairs of the limited liability company. Any such delegation may be to agents, officers and employees of a member or manager or the limited liability company, and by a management agreement or another agreement with, or otherwise to, other persons. Unless otherwise provided in the limited liability company agreement, such delegation by a member or manager shall be irrevocable if it states that it is irrevocable. Unless otherwise provided in the limited liability company agreement, such delegation by a member or manager of a limited liability company shall not cause the member or manager to cease to be a member or manager, as the case may be, of the limited liability company or cause the person to whom any such rights, powers and duties have been delegated to be a member or manager, as the case may be, of the limited liability company. No other provision of this chapter shall be construed to restrict a member's or manager's power and authority to delegate any or all of its rights, powers and duties to manage and control the business and affairs of the limited liability company.

(69 Del. Laws, c. 260, § 25; 71 Del. Laws, c. 77, § 28; 73 Del. Laws, c. 295, § 8; 80 Del. Laws, c. 45, § 7; 81 Del. Laws, c. 89, § 11.)

Subchapter V

Finance

§ 18-501 Form of contribution.

The contribution of a member to a limited liability company may be in cash, property or services rendered, or a promissory note or other obligation to contribute cash or property or to perform services.

(68 Del. Laws, c. 434, § 1.)

§ 18-502 Liability for contribution.

(a) Except as provided in a limited liability company agreement, a member is obligated to a limited liability company to perform any promise to contribute cash or property or to perform services, even if the member is unable to perform because of death, disability or any other reason. If a member does not make the required contribution of property or services, the member is obligated at the option of the limited liability company to contribute cash equal to that portion of the agreed value (as stated in the records of the limited liability company) of the contribution that has not been made. The foregoing option shall be in addition to, and not in lieu of, any other rights, including the right to specific performance, that the limited liability company may have against such member under the limited liability company agreement or applicable law.

(b) Unless otherwise provided in a limited liability company agreement, the obligation of a member to make a contribution or return money or other property paid or distributed in violation of this chapter may be compromised only by consent of all the members. Notwithstanding the compromise, a creditor of a limited liability company who extends credit, after the entering into of a limited liability company agreement or an amendment thereto which, in either case, reflects the obligation, and before the amendment thereof to reflect the compromise, may enforce the original obligation to the extent that, in extending credit, the creditor reasonably relied on the obligation of a member to make a contribution or return. A conditional obligation of a member to make a contribution or return money or other property to a limited liability company may not be enforced unless the conditions of the obligation have been satisfied or waived as to or by such member. Conditional obligations include contributions payable upon a discretionary call of a limited liability company prior to the time the call occurs.

(c) A limited liability company agreement may provide that the interest of any member who fails to make any contribution that the member is obligated to make shall be subject to specified penalties for, or specified consequences of, such failure. Such penalty or consequence may take the form of reducing or eliminating the defaulting member's proportionate interest in a limited liability company, subordinating the member's limited liability company interest to that of nondefaulting members, a forced sale of that limited liability company interest, forfeiture of the defaulting member's limited liability company interest, the lending by other members of the amount necessary to meet the defaulting member's commitment, a fixing of the value of the defaulting member's limited liability company interest by appraisal or by formula and redemption or sale of the limited liability company interest at such value, or other penalty or consequence.

(68 Del. Laws, c. 434, § 1; 70 Del. Laws, c. 186, § 1.)

§ 18-503 Allocation of profits and losses.

The profits and losses of a limited liability company shall be allocated among the members, and among classes or groups of members, in the manner provided in a limited liability company agreement. If the limited liability company agreement does not so provide, profits and losses shall be allocated on the basis of the agreed value (as stated in the records of the limited liability company) of the contributions made by each member to the extent they have been received by the limited liability company and have not been returned.

(68 Del. Laws, c. 434, § 1.)

§ 18-504 Allocation of distributions.

Distributions of cash or other assets of a limited liability company shall be allocated among the members, and among classes or groups of members, in the manner provided in a limited liability company agreement. If the limited liability company agreement does not so provide, distributions shall be made on the basis of the agreed value (as stated in the records of the limited liability company) of the contributions made by each member to the extent they have been received by the limited liability company and have not been returned.

(68 Del. Laws, c. 434, § 1.)

§ 18-505 Defense of usury not available.

No obligation of a member or manager of a limited liability company to the limited liability company, or to a member or manager of the limited liability company, arising under the limited liability company agreement or a separate agreement or writing, and no note, instrument or other writing evidencing any such obligation of a member or manager, shall be subject to the defense of usury, and no member or manager shall interpose the defense of usury with respect to any such obligation in any action.

(69 Del. Laws, c. 260, § 26; 78 Del. Laws, c. 270, § 7.)

Subchapter VI
Distributions and Resignation

§ 18-601 Interim distributions.

Except as provided in this subchapter, to the extent and at the times or upon the happening of the events specified in a limited liability company agreement, a member is entitled to receive from a limited liability company distributions before the member's resignation from the limited liability company and before the dissolution and winding up thereof.

(68 Del. Laws, c. 434, § 1; 70 Del. Laws, c. 186, § 1.)

§ 18-602 Resignation of manager.

A manager may resign as a manager of a limited liability company at the time or upon the happening of events specified in a limited liability company agreement and in accordance with the limited liability company agreement. A limited liability company agreement

may provide that a manager shall not have the right to resign as a manager of a limited liability company. Notwithstanding that a limited liability company agreement provides that a manager does not have the right to resign as a manager of a limited liability company, a manager may resign as a manager of a limited liability company at any time by giving written notice to the members and other managers. If the resignation of a manager violates a limited liability company agreement, in addition to any remedies otherwise available under applicable law, a limited liability company may recover from the resigning manager damages for breach of the limited liability company agreement and offset the damages against the amount otherwise distributable to the resigning manager.

(68 Del. Laws, c. 434, § 1.)

§ 18-603 Resignation of member.

A member may resign from a limited liability company only at the time or upon the happening of events specified in a limited liability company agreement and in accordance with the limited liability company agreement. Notwithstanding anything to the contrary under applicable law, unless a limited liability company agreement provides otherwise, a member may not resign from a limited liability company prior to the dissolution and winding up of the limited liability company. Notwithstanding anything to the contrary under applicable law, a limited liability company agreement may provide that a limited liability company interest may not be assigned prior to the dissolution and winding up of the limited liability company.

Unless otherwise provided in a limited liability company agreement, a limited liability company whose original certificate of formation was filed with the Secretary of State and effective on or prior to July 31, 1996, shall continue to be governed by this section as in effect on July 31, 1996.

(68 Del. Laws, c. 434, § 1; 69 Del. Laws, c. 260, § 27; 70 Del. Laws, c. 360, § 13; 80 Del. Laws, c. 45, § 8.)

§ 18-604 Distribution upon resignation.

Except as provided in this subchapter, upon resignation any resigning member is entitled to receive any distribution to which such member is entitled under a limited liability company agreement and, if not otherwise provided in a limited liability company agreement, such member is entitled to receive, within a reasonable time after resignation, the fair value of such member's limited liability company interest as of the date of resignation based upon such member's right to share in distributions from the limited liability company.

(68 Del. Laws, c. 434, § 1; 71 Del. Laws, c. 341, § 14; 72 Del. Laws, c. 129, § 12.)

§ 18-605 Distribution in kind.

Except as provided in a limited liability company agreement, a member, regardless of the nature of the member's contribution, has no right to demand and receive any distribution from a limited liability company in any form other than cash. Except as provided in a limited liability company agreement, a member may not be compelled to accept a distribution of any asset in kind from a limited liability company to the extent that the percentage of the asset distributed exceeds a percentage of that asset which is equal to the percentage in which the member shares in distributions from the limited liability company. Except as provided in the limited liability company agreement, a member may be compelled to accept a distribution of any asset in kind from a limited liability company to the extent that the percentage of the asset distributed is equal to a percentage of that asset which is equal to the percentage in which the member shares in distributions from the limited liability company.

(68 Del. Laws, c. 434, § 1; 69 Del. Laws, c. 260, § 28; 70 Del. Laws, c. 186, § 1.)

§ 18-606 Right to distribution.

Subject to §§ 18-607 and 18-804 of this title, and unless otherwise provided in a limited liability company agreement, at the time a member becomes entitled to receive a distribution, the member has the status of, and is entitled to all remedies available to, a creditor of a limited liability company with respect to the distribution. A limited liability company agreement may provide for the establishment of a record date with respect to allocations and distributions by a limited liability company.

(68 Del. Laws, c. 434, § 1; 70 Del. Laws, c. 186, § 1.)

§ 18-607 Limitations on distribution.

(a) A limited liability company shall not make a distribution to a member to the extent that at the time of the distribution, after giving effect to the distribution, all liabilities of the limited liability company, other than liabilities to members on account of their limited liability company interests and liabilities for which the recourse of creditors is limited to specified property of the limited liability company, exceed the fair value of the assets of the limited liability company, except that the fair value of property that is subject to a liability for which the recourse of creditors is limited shall be included in the assets of the limited liability company only to the extent that the fair value of that property exceeds that liability. For purposes of this subsection (a), the term "distribution" shall not include amounts constituting reasonable compensation for present or past services or reasonable payments made in the ordinary course of business pursuant to a bona fide retirement plan or other benefits program.

(b) A member who receives a distribution in violation of subsection (a) of this section, and who knew at the time of the distribution that the distribution violated subsection (a) of this section, shall be liable to a limited liability company for the amount of the distribution. A member who receives a distribution in violation of subsection (a) of this section, and who did not know at the time of the distribution that the distribution violated subsection (a) of this section, shall not be liable for the amount of the distribution. Subject to subsection

(c) of this section, this subsection shall not affect any obligation or liability of a member under an agreement or other applicable law for the amount of a distribution.

(c) Unless otherwise agreed, a member who receives a distribution from a limited liability company shall have no liability under this chapter or other applicable law for the amount of the distribution after the expiration of 3 years from the date of the distribution unless an action to recover the distribution from such member is commenced prior to the expiration of the said 3-year period and an adjudication of liability against such member is made in the said action.

(68 Del. Laws, c. 434, § 1; 69 Del. Laws, c. 260, § 29; 72 Del. Laws, c. 389, § 23.)

Subchapter VII

Assignment of Limited Liability Company Interests

§ 18-701 Nature of limited liability company interest.

A limited liability company interest is personal property. A member has no interest in specific limited liability company property.

(68 Del. Laws, c. 434, § 1.)

§ 18-702 Assignment of limited liability company interest.

(a) A limited liability company interest is assignable in whole or in part except as provided in a limited liability company agreement. The assignee of a member's limited liability company interest shall have no right to participate in the management of the business and affairs of a limited liability company except as provided in a limited liability company agreement or, unless otherwise provided in the limited liability company agreement, upon the vote or consent of all of the members of the limited liability company.

(b) Unless otherwise provided in a limited liability company agreement:

(1) An assignment of a limited liability company interest does not entitle the assignee to become or to exercise any rights or powers of a member;

(2) An assignment of a limited liability company interest entitles the assignee to share in such profits and losses, to receive such distribution or distributions, and to receive such allocation of income, gain, loss, deduction, or credit or similar item to which the assignor was entitled, to the extent assigned; and

(3) A member ceases to be a member and to have the power to exercise any rights or powers of a member upon assignment of all of the member's limited liability company interest. Unless otherwise provided in a limited liability company agreement, the pledge of, or granting of a security interest, lien or other encumbrance in or against, any or all of the limited liability company interest of a member shall not cause the member to cease to be a member or to have the power to exercise any rights or powers of a member.

(c) Unless otherwise provided in a limited liability company agreement, a member's interest in a limited liability company may be evidenced by a certificate of limited liability company interest issued by the limited liability company. A limited liability company agreement may provide for the assignment or transfer of any limited liability company interest represented by such a certificate and make other provisions with respect to such certificates. A limited liability company shall not have the power to issue a certificate of limited liability company interest in bearer form.

(d) Unless otherwise provided in a limited liability company agreement and except to the extent assumed by agreement, until an assignee of a limited liability company interest becomes a member, the assignee shall have no liability as a member solely as a result of the assignment.

(e) Unless otherwise provided in the limited liability company agreement, a limited liability company may acquire, by purchase, redemption or otherwise, any limited liability company interest or other interest of a member or manager in the limited liability company. Unless otherwise provided in the limited liability company agreement, any such interest so acquired by the limited liability company shall be deemed canceled.

(68 Del. Laws, c. 434, § 1; 69 Del. Laws, c. 260, §§ 30, 31; 70 Del. Laws, c. 186, § 1; 70 Del. Laws, c. 360, § 14; 73 Del. Laws, c. 83, § 18; 76 Del. Laws, c. 105, § 31; 77 Del. Laws, c. 287, § 23; 80 Del. Laws, c. 271, § 7.)

§ 18-703 Member's limited liability company interest subject to charging order.

(a) On application by a judgment creditor of a member or of a member's assignee, a court having jurisdiction may charge the limited liability company interest of the judgment debtor to satisfy the judgment. To the extent so charged, the judgment creditor has only the right to receive any distribution or distributions to which the judgment debtor would otherwise have been entitled in respect of such limited liability company interest.

(b) A charging order constitutes a lien on the judgment debtor's limited liability company interest.

(c) This chapter does not deprive a member or member's assignee of a right under exemption laws with respect to the judgment debtor's limited liability company interest.

(d) The entry of a charging order is the exclusive remedy by which a judgment creditor of a member or a member's assignee may satisfy a judgment out of the judgment debtor's limited liability company interest and attachment, garnishment, foreclosure or other legal or equitable remedies are not available to the judgment creditor, whether the limited liability company has 1 member or more than 1 member.

(e) No creditor of a member or of a member's assignee shall have any right to obtain possession of, or otherwise exercise legal or equitable remedies with respect to, the property of the limited liability company.

(f) The Court of Chancery shall have jurisdiction to hear and determine any matter relating to any such charging order.

(68 Del. Laws, c. 434, § 1; 70 Del. Laws, c. 186, § 1; 72 Del. Laws, c. 389, § 24; 75 Del. Laws, c. 51, §§ 9-15; 79 Del. Laws, c. 74, § 6.)

§ 18-704 Right of assignee to become member.

(a) An assignee of a limited liability company interest becomes a member:

(1) As provided in the limited liability company agreement;

(2) Unless otherwise provided in the limited liability company agreement, upon the vote or consent of all of the members of the limited liability company; or

(3) Unless otherwise provided in the limited liability company agreement by a specific reference to this subsection or otherwise provided in connection with the assignment, upon the voluntary assignment by the sole member of the limited liability company of all of the limited liability company interests in the limited liability company to a single assignee. An assignment will be voluntary for purposes of this subsection if it is consented to by the member at the time of the assignment and is not effected by foreclosure or other similar legal process.

(b) An assignee who has become a member has, to the extent assigned, the rights and powers, and is subject to the restrictions and liabilities, of a member under a limited liability company agreement and this chapter. Notwithstanding the foregoing, unless otherwise provided in a limited liability company agreement, an assignee who becomes a member is liable for the obligations of the assignor to make contributions as provided in § 18-502 of this title, but shall not be liable for the obligations of the assignor under subchapter VI of this chapter. However, the assignee is not obligated for liabilities, including the obligations of the assignor to make contributions as provided in § 18-502 of this title, unknown to the assignee at the time the assignee became a member and which could not be ascertained from a limited liability company agreement.

(c) Whether or not an assignee of a limited liability company interest becomes a member, the assignor is not released from liability to a limited liability company under subchapters V and VI of this chapter.

(68 Del. Laws, c. 434, § 1; 70 Del. Laws, c. 186, § 1; 77 Del. Laws, c. 287, § 24; 80 Del. Laws, c. 271, § 8.)

§ 18-705 Powers of estate of deceased or incompetent member.

If a member who is an individual dies or a court of competent jurisdiction adjudges the member to be incompetent to manage the member's person or property, the member's personal representative may exercise all of the member's rights for the purpose of settling the member's estate or administering the member's property, including any power under a limited liability company agreement of an assignee to become a member. If a member is a corporation, trust or other entity and is dissolved or terminated, the powers of that member may be exercised by its personal representative.

(68 Del. Laws, c. 434, § 1; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 77, § 29.)

Subchapter VIII

Dissolution

§ 18-801 Dissolution.

(a) A limited liability company is dissolved and its affairs shall be wound up upon the first to occur of the following:

(1) At the time specified in a limited liability company agreement, but if no such time is set forth in the limited liability company agreement, then the limited liability company shall have a perpetual existence;

(2) Upon the happening of events specified in a limited liability company agreement;

(3) Unless otherwise provided in a limited liability company agreement, upon the vote or consent of members who own more than 2/3 of the then-current percentage or other interest in the profits of the limited liability company owned by all of the members;

(4) At any time there are no members; provided, that the limited liability company is not dissolved and is not required to be wound up if:

a. Unless otherwise provided in a limited liability company agreement, within 90 days or such other period as is provided for in the limited liability company agreement after the occurrence of the event that terminated the continued membership of the last remaining member, the personal representative of the last remaining member agrees to continue the limited liability company and to the admission of the personal representative of such member or its nominee or designee to the limited liability company as a member, effective as of the occurrence of the event that terminated the continued membership of the last remaining member; provided, that a limited liability company agreement may provide that the personal representative of the last remaining member shall be obligated to agree to continue the limited liability company and to the admission of the personal representative of such member or its nominee or designee to the limited liability company as a member, effective as of the occurrence of the event that terminated the continued membership of the last remaining member, or

b. A member is admitted to the limited liability company in the manner provided for in the limited liability company agreement, effective as of the occurrence of the event that terminated the continued membership of the last remaining member, within 90 days or such other period as is provided for in the limited liability company agreement after the occurrence of the event that terminated the continued membership of the last remaining member, pursuant to a provision of the limited liability company agreement that specifically provides for the admission of a member to the limited liability company after there is no longer a remaining member of the limited liability company.

(5) The entry of a decree of judicial dissolution under § 18-802 of this title.

Unless otherwise provided in a limited liability company agreement, a limited liability company whose original certificate of formation was filed with the Secretary of State and effective on or prior to July 31, 2015, shall continue to be governed by paragraph (a)(3) of this section as in effect on July 31, 2015 (except that "affirmative" and "written" shall be deleted from such paragraph (a)(3) of this section).

(b) Unless otherwise provided in a limited liability company agreement, the death, retirement, resignation, expulsion, bankruptcy or dissolution of any member or the occurrence of an event that terminates the continued membership of any member shall not cause the limited liability company to be dissolved or its affairs to be wound up, and upon the occurrence of any such event, the limited liability company shall be continued without dissolution.

(68 Del. Laws, c. 434, § 1; 69 Del. Laws, c. 260, § 32; 70 Del. Laws, c. 75, § 20; 70 Del. Laws, c. 360, § 15; 71 Del. Laws, c. 77, § 30; 72 Del. Laws, c. 129, §§ 13-15; 80 Del. Laws, c. 45, § 9; 80 Del. Laws, c. 271, § 9.)

§ 18-802 Judicial dissolution.

On application by or for a member or manager the Court of Chancery may decree dissolution of a limited liability company whenever it is not reasonably practicable to carry on the business in conformity with a limited liability company agreement.

(68 Del. Laws, c. 434, § 1; 70 Del. Laws, c. 75, § 21.)

§ 18-803 Winding up.

(a) Unless otherwise provided in a limited liability company agreement, a manager who has not wrongfully dissolved a limited liability company or, if none, the members or a person approved by the members, in either case, by members who own more than 50 percent of the then current percentage or other interest in the profits of the limited liability company owned by all of the members, may wind up the limited liability company's affairs; but the Court of Chancery, upon cause shown, may wind up the limited liability company's affairs upon application of any member or manager, or the member's personal representative or assignee, and in connection therewith, may appoint a liquidating trustee. Unless otherwise provided in a limited liability company agreement, a limited liability company whose original certificate of formation was filed with the Secretary of State and effective on or prior to July 31, 2015, shall continue to be governed by this subsection as in effect on July 31, 2015.

(b) Upon dissolution of a limited liability company and until the filing of a certificate of cancellation as provided in § 18-203 of this title, the persons winding up the limited liability company's affairs may, in the name of, and for and on behalf of, the limited liability company, prosecute and defend suits, whether civil, criminal or administrative, gradually settle and close the limited liability company's business, dispose of and convey the limited liability company's property, discharge or make reasonable provision for the limited liability company's liabilities, and distribute to the members any remaining assets of the limited liability company, all without affecting the liability of members and managers and without imposing liability on a liquidating trustee.

(68 Del. Laws, c. 434, § 1; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 77, § 31; 78 Del. Laws, c. 270, § 8; 80 Del. Laws, c. 45, § 10.)

§ 18-804 Distribution of assets.

(a) Upon the winding up of a limited liability company, the assets shall be distributed as follows:

(1) To creditors, including members and managers who are creditors, to the extent otherwise permitted by law, in satisfaction of liabilities of the limited liability company (whether by payment or the making of reasonable provision for payment thereof) other than liabilities for which reasonable provision for payment has been made and liabilities for distributions to members and former members under § 18-601 or § 18-604 of this title;

(2) Unless otherwise provided in a limited liability company agreement, to members and former members in satisfaction of liabilities for distributions under § 18-601 or § 18-604 of this title; and

(3) Unless otherwise provided in a limited liability company agreement, to members first for the return of their contributions and second respecting their limited liability company interests, in the proportions in which the members share in distributions.

(b) A limited liability company which has dissolved:

(1) Shall pay or make reasonable provision to pay all claims and obligations, including all contingent, conditional or unmatured contractual claims, known to the limited liability company;

(2) Shall make such provision as will be reasonably likely to be sufficient to provide compensation for any claim against the limited liability company which is the subject of a pending action, suit or proceeding to which the limited liability company is a party; and

(3) Shall make such provision as will be reasonably likely to be sufficient to provide compensation for claims that have not been made known to the limited liability company or that have not arisen but that, based on facts known to the limited liability company, are likely to arise or to become known to the limited liability company within 10 years after the date of dissolution.

If there are sufficient assets, such claims and obligations shall be paid in full and any such provision for payment made shall be made in full. If there are insufficient assets, such claims and obligations shall be paid or provided for according to their priority and, among claims of equal priority, ratably to the extent of assets available therefor. Unless otherwise provided in the limited liability company agreement, any remaining assets shall be distributed as provided in this chapter. Any liquidating trustee winding up a limited liability company's affairs who has complied with this section shall not be personally liable to the claimants of the dissolved limited liability company by reason of such person's actions in winding up the limited liability company.

(c) A member who receives a distribution in violation of subsection (a) of this section, and who knew at the time of the distribution that the distribution violated subsection (a) of this section, shall be liable to the limited liability company for the amount of the distribution. For purposes of the immediately preceding sentence, the term "distribution" shall not include amounts constituting reasonable compensation for present or past services or reasonable payments made in the ordinary course of business pursuant to a bona fide retirement plan or other benefits program. A member who receives a distribution in violation of subsection (a) of this section, and who did not know at the time of the distribution that the distribution violated subsection (a) of this section, shall not be liable for the amount of the distribution. Subject to subsection (d) of this section, this subsection shall not affect any obligation or liability of a member under an agreement or other applicable law for the amount of a distribution.

(d) Unless otherwise agreed, a member who receives a distribution from a limited liability company to which this section applies shall have no liability under this chapter or other applicable law for the amount of the distribution after the expiration of 3 years from the date of the distribution unless an action to recover the distribution from such member is commenced prior to the expiration of the said 3-year period and an adjudication of liability against such member is made in the said action.

(e) Section 18-607 of this title shall not apply to a distribution to which this section applies.

(68 Del. Laws, c. 434, § 1; 69 Del. Laws, c. 260, § 33; 71 Del. Laws, c. 341, § 15; 72 Del. Laws, c. 389, § 25.)

§ 18-805 Trustees or receivers for limited liability companies; appointment; powers; duties.

When the certificate of formation of any limited liability company formed under this chapter shall be canceled by the filing of a certificate of cancellation pursuant to § 18-203 of this title, the Court of Chancery, on application of any creditor, member or manager of the limited liability company, or any other person who shows good cause therefor, at any time, may either appoint 1 or more of the managers of the limited liability company to be trustees, or appoint 1 or more persons to be receivers, of and for the limited liability company, to take charge of the limited liability company's property, and to collect the debts and property due and belonging to the limited liability company, with the power to prosecute and defend, in the name of the limited liability company, or otherwise, all such suits as may be necessary or proper for the purposes aforesaid, and to appoint an agent or agents under them, and to do all other acts which might be done by the limited liability company, if in being, that may be necessary for the final settlement of the unfinished business of the limited liability company. The powers of the trustees or receivers may be continued as long as the Court of Chancery shall think necessary for the purposes aforesaid.

(74 Del. Laws, c. 85, § 15.)

§ 18-806 Revocation of dissolution.

If a limited liability company agreement provides the manner in which a dissolution may be revoked, it may be revoked in that manner and, unless a limited liability company agreement prohibits revocation of dissolution, then notwithstanding the occurrence of an event set forth in § 18-801(a)(1), (2), (3) or (4) of this title, the limited liability company shall not be dissolved and its affairs shall not be wound up if, prior to the filing of a certificate of cancellation in the office of the Secretary of State, the limited liability company is continued, effective as of the occurrence of such event:

(1) In the case of dissolution effected by the vote or consent of the members or other persons, pursuant to such vote or consent (and the approval of any members or other persons whose approval is required under the limited liability company agreement to revoke a dissolution contemplated by this paragraph);

(2) In the case of dissolution under § 18-801(a)(1) or (2) of this title (other than a dissolution effected by the vote or consent of the members or other persons or the occurrence of an event that causes the last remaining member to cease to be a member), pursuant to such vote or consent that, pursuant to the terms of the limited liability company agreement, is required to amend the provision of the limited liability company agreement effecting such dissolution (and the approval of any members or other persons whose approval is required under the limited liability company agreement to revoke a dissolution contemplated by this paragraph); and

(3) In the case of dissolution effected by the occurrence of an event that causes the last remaining member to cease to be a member, pursuant to the vote or consent of the personal representative of the last remaining member of the limited liability company or the assignee of all of the limited liability company interests in the limited liability company (and the approval of any other persons whose approval is required under the limited liability company agreement to revoke a dissolution contemplated by this paragraph).

If there is no remaining member of the limited liability company and the personal representative of the last remaining member or the assignee of all of the limited liability company interests in the limited liability company votes in favor of or consents to the continuation

of the limited liability company, such personal representative or such assignee, as applicable, shall be required to agree to the admission of a nominee or designee as a member, effective as of the occurrence of the event that terminated the continued membership of the last remaining member. The provisions of this section shall not be construed to limit the accomplishment of a revocation of dissolution by other means permitted by law.

(75 Del. Laws, c. 51, § 16; 79 Del. Laws, c. 302, § 5; 80 Del. Laws, c. 271, § 10.)

Subchapter IX
Foreign Limited Liability Companies

§ 18-901 Law governing.

(a) Subject to the Constitution of the State of Delaware:

(1) The laws of the state, territory, possession, or other jurisdiction or country under which a foreign limited liability company is organized govern its organization and internal affairs and the liability of its members and managers; and

(2) A foreign limited liability company may not be denied registration by reason of any difference between those laws and the laws of the State of Delaware.

(b) A foreign limited liability company shall be subject to § 18-106 of this title.

(68 Del. Laws, c. 434, § 1.)

§ 18-902 Registration required; application.

Before doing business in the State of Delaware, a foreign limited liability company shall register with the Secretary of State. In order to register, a foreign limited liability company shall submit to the Secretary of State:

(1) A copy executed by an authorized person of an application for registration as a foreign limited liability company, setting forth:

a. The name of the foreign limited liability company and, if different, the name under which it proposes to register and do business in the State of Delaware;

b. The state, territory, possession or other jurisdiction or country where formed, the date of its formation and a statement from an authorized person that, as of the date of filing, the foreign limited liability company validly exists as a limited liability company under the laws of the jurisdiction of its formation;

c. The nature of the business or purposes to be conducted or promoted in the State of Delaware;

d. The address of the registered office and the name and address of the registered agent for service of process required to be maintained by § 18-904(b) of this title;

e. A statement that the Secretary of State is appointed the agent of the foreign limited liability company for service of process under the circumstances set forth in § 18-910(b) of this title; and

f. The date on which the foreign limited liability company first did, or intends to do, business in the State of Delaware.

(2) A certificate, as of a date not earlier than 6 months prior to the filing date, issued by an authorized officer of the jurisdiction of its formation evidencing its existence. If such certificate is in a foreign language, a translation thereof, under oath of the translator, shall be attached thereto.

(3) A fee as set forth in § 18-1105(a)(6) of this title shall be paid.

(68 Del. Laws, c. 434, § 1; 75 Del. Laws, c. 51, § 17; 77 Del. Laws, c. 287, § 25.)

§ 18-903 Issuance of registration.

(a) If the Secretary of State finds that an application for registration conforms to law and all requisite fees have been paid, the Secretary shall:

(1) Certify that the application has been filed by endorsing upon the original application the word “Filed”, and the date and hour of the filing. This endorsement is conclusive of the date and time of its filing in the absence of actual fraud;

(2) File and index the endorsed application.

(b) The Secretary of State shall prepare and return to the person who filed the application or the person’s representative a copy of the original signed application, similarly endorsed, and shall certify such copy as a true copy of the original signed application.

(c) The filing of the application with the Secretary of State shall make it unnecessary to file any other documents under Chapter 31 of this title.

(68 Del. Laws, c. 434, § 1; 69 Del. Laws, c. 260, § 34; 70 Del. Laws, c. 186, § 1.)

§ 18-904 Name; registered office; registered agent.

(a) A foreign limited liability company may register with the Secretary of State under any name (whether or not it is the name under which it is registered in the jurisdiction of its formation) that includes the words “Limited Liability Company” or the abbreviation “L.L.C.” or the designation “LLC” and that could be registered by a domestic limited liability company; provided however, that a foreign limited liability company may register under any name which is not such as to distinguish it upon the records in the office of the Secretary of

State from the name on such records of any domestic or foreign corporation, partnership, statutory trust, limited liability company, limited partnership, registered series of a limited liability company or registered series of a limited partnership reserved, registered, formed or organized under the laws of the State of Delaware with the written consent of the other corporation, partnership, statutory trust, limited liability company, limited partnership, registered series of a limited liability company or registered series of a limited partnership, which written consent shall be filed with the Secretary of State.

(b) Each foreign limited liability company shall have and maintain in the State of Delaware:

(1) A registered office which may but need not be a place of its business in the State of Delaware; and

(2) A registered agent for service of process on the foreign limited liability company, having a business office identical with such registered office, which agent may be any of:

a. An individual resident in the State of Delaware,

b. A domestic limited liability company, a domestic corporation, a domestic partnership (whether general (including a limited liability partnership) or limited (including a limited liability limited partnership)), or a domestic statutory trust, or

c. A foreign corporation, a foreign limited liability partnership, a foreign limited partnership (including a foreign limited liability limited partnership), a foreign limited liability company (other than the foreign limited liability company itself), or a foreign statutory trust.

(c) A registered agent may change the address of the registered office of the foreign limited liability company or companies for which the agent is registered agent to another address in the State of Delaware by paying a fee as set forth in § 18-1105(a)(7) of this title and filing with the Secretary of State a certificate, executed by such registered agent, setting forth the address at which such registered agent has maintained the registered office for each of the foreign limited liability companies for which it is a registered agent, and further certifying to the new address to which each such registered office will be changed on a given day, and at which new address such registered agent will thereafter maintain the registered office for each of the foreign limited liability companies for which it is registered agent. Upon the filing of such certificate, until further change of address, as authorized by law, the registered office in the State of Delaware of each of the foreign limited liability companies for which the agent is a registered agent shall be located at the new address of the registered agent thereof as given in the certificate. In the event of a change of name of any person acting as a registered agent of a foreign limited liability company, such registered agent shall file with the Secretary of State a certificate, executed by such registered agent, setting forth the new name of such registered agent, the name of such registered agent before it was changed and the address at which such registered agent has maintained the registered office for each of the foreign limited liability companies for which it is registered agent, and shall pay a fee as set forth in § 18-1105(a)(7) of this title. A change of name of any person acting as a registered agent of a foreign limited liability company as a result of (i) a merger or consolidation of the registered agent with or into another person which succeeds to its assets and liabilities by operation of law, (ii) the conversion of the registered agent into another person, or (iii) a division of the registered agent in which an identified resulting person succeeds to all of the assets and liabilities of the registered agent related to its registered agent business pursuant to the plan of division, as set forth in the certificate of division, shall each be deemed a change of name for purposes of this section. Filing a certificate under this section shall be deemed to be an amendment of the application of each foreign limited liability company affected thereby and each such foreign limited liability company shall not be required to take any further action with respect thereto to amend its application under § 18-905 of this title. Any registered agent filing a certificate under this section shall promptly, upon such filing, deliver a copy of any such certificate to each foreign limited liability company affected thereby.

(d) The registered agent of 1 or more foreign limited liability companies may resign and appoint a successor registered agent by paying a fee as set forth in § 18-1105(a)(7) of this title and filing a certificate with the Secretary of State stating that it resigns and the name and address of the successor registered agent. There shall be attached to such certificate a statement of each affected foreign limited liability company ratifying and approving such change of registered agent. Upon such filing, the successor registered agent shall become the registered agent of such foreign limited liability companies as have ratified and approved such substitution and the successor registered agent's address, as stated in such certificate, shall become the address of each such foreign limited liability company's registered office in the State of Delaware. Filing of such certificate of resignation shall be deemed to be an amendment of the application of each foreign limited liability company affected thereby and each such foreign limited liability company shall not be required to take any further action with respect thereto to amend its application under § 18-905 of this title.

(e) The registered agent of a foreign limited liability company, including a foreign limited liability company that has ceased to be registered as a foreign limited liability company in the State of Delaware pursuant to § 18-1107(h) of this title, may resign without appointing a successor registered agent by paying a fee as set forth in § 18-1105(a)(7) of this title and filing a certificate of resignation with the Secretary of State, but such resignation shall not become effective until 30 days after the certificate is filed. The certificate shall contain a statement that written notice of resignation was given to the foreign limited liability company at least 30 days prior to the filing of the certificate by mailing or delivering such notice to the foreign limited liability company at its address last known to the registered agent and shall set forth the date of such notice. The certificate shall include such information last provided to the registered agent pursuant to § 18-104(g) of this title for a communications contact for the foreign limited liability company. Such information regarding the communications contact shall not be deemed public. A certificate filed pursuant to this subsection must be on the form prescribed by the Secretary of State. After receipt of the notice of the resignation of its registered agent, the foreign limited liability company for which such registered agent was acting shall obtain and designate a new registered agent to take the place of the registered agent so resigning.

If such foreign limited liability company fails to obtain and designate a new registered agent as aforesaid prior to the expiration of the period of 30 days after the filing by the registered agent of the certificate of resignation, such foreign limited liability company shall not be permitted to do business in the State of Delaware and its registration shall be canceled. After the resignation of the registered agent shall have become effective as provided in this section and if no new registered agent shall have been obtained and designated in the time and manner aforesaid, service of legal process against each foreign limited liability company for which the resigned registered agent had been acting shall thereafter be upon the Secretary of State in accordance with § 18-911 of this title.

(68 Del. Laws, c. 434, § 1; 70 Del. Laws, c. 75, § 22; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 77, §§ 32, 33; 73 Del. Laws, c. 295, §§ 9, 10; 73 Del. Laws, c. 329, § 31; 76 Del. Laws, c. 105, §§ 32, 33; 82 Del. Laws, c. 259, § 13.)

§ 18-905 Amendments to application.

If any statement in the application for registration of a foreign limited liability company was false when made or any arrangements or other facts described have changed, making the application false in any respect, the foreign limited liability company shall promptly file in the office of the Secretary of State a certificate, executed by an authorized person, correcting such statement, together with a fee as set forth in § 18-1105(a)(6) of this title.

(68 Del. Laws, c. 434, § 1.)

§ 18-906 Cancellation of registration.

A foreign limited liability company may cancel its registration by filing with the Secretary of State a certificate of cancellation, executed by an authorized person, together with a fee as set forth in § 18-1105(a)(6) of this title. The registration of a foreign limited liability company shall be canceled as provided in §§ 18-104(i)(4), 18-904(e) and 18-1107(h) of this title. A cancellation does not terminate the authority of the Secretary of State to accept service of process on the foreign limited liability company with respect to causes of action arising out of the doing of business in the State of Delaware.

(68 Del. Laws, c. 434, § 1; 75 Del. Laws, c. 317, § 35; 76 Del. Laws, c. 105, § 34.)

§ 18-907 Doing business without registration.

(a) A foreign limited liability company doing business in the State of Delaware may not maintain any action, suit or proceeding in the State of Delaware until it has registered in the State of Delaware, and has paid to the State of Delaware all fees and penalties for the years or parts thereof, during which it did business in the State of Delaware without having registered.

(b) The failure of a foreign limited liability company to register in the State of Delaware does not impair:

(1) The validity of any contract or act of the foreign limited liability company;

(2) The right of any other party to the contract to maintain any action, suit or proceeding on the contract; or

(3) Prevent the foreign limited liability company from defending any action, suit or proceeding in any court of the State of Delaware.

(c) A member or a manager of a foreign limited liability company is not liable for the obligations of the foreign limited liability company solely by reason of the limited liability company's having done business in the State of Delaware without registration.

(d) Any foreign limited liability company doing business in the State of Delaware without first having registered shall be fined and shall pay to the Secretary of State $200 for each year or part thereof during which the foreign limited liability company failed to register in the State of Delaware.

(68 Del. Laws, c. 434, § 1.)

§ 18-908 Foreign limited liability companies doing business without having qualified; injunctions.

The Court of Chancery shall have jurisdiction to enjoin any foreign limited liability company, or any agent thereof, from doing any business in the State of Delaware if such foreign limited liability company has failed to register under this subchapter or if such foreign limited liability company has secured a certificate of the Secretary of State under § 18-903 of this title on the basis of false or misleading representations. Upon the motion of the Attorney General or upon the relation of proper parties, the Attorney General shall proceed for this purpose by complaint in any county in which such foreign limited liability company is doing or has done business.

(68 Del. Laws, c. 434, § 1; 70 Del. Laws, c. 186, § 1.)

§ 18-909 Execution; liability.

Section 18-204(d) of this title shall be applicable to foreign limited liability companies as if they were domestic limited liability companies.

(68 Del. Laws, c. 434, § 1; 77 Del. Laws, c. 287, § 5.)

§ 18-910 Service of process on registered foreign limited liability companies.

(a) Service of legal process upon any foreign limited liability company shall be made by delivering a copy personally to any managing or general agent or manager of the foreign limited liability company in the State of Delaware or the registered agent of the foreign limited liability company in the State of Delaware, or by leaving it at the dwelling house or usual place of abode in the State of Delaware of any such managing or general agent, manager or registered agent (if the registered agent be an individual), or at the registered office or

other place of business of the foreign limited liability company in the State of Delaware. If the registered agent be a corporation, service of process upon it as such may be made by serving, in the State of Delaware, a copy thereof on the president, vice-president, secretary, assistant secretary or any director of the corporate registered agent. Service by copy left at the dwelling house or usual place of abode of any managing or general agent, manager or registered agent, or at the registered office or other place of business of the foreign limited liability company in the State of Delaware, to be effective must be delivered thereat at least 6 days before the return date of the process, and in the presence of an adult person, and the officer serving the process shall distinctly state the manner of service in the officer's return thereto. Process returnable forthwith must be delivered personally to the managing or general agent, manager or registered agent.

(b) In case the officer whose duty it is to serve legal process cannot by due diligence serve the process in any manner provided for by subsection (a) of this section, it shall be lawful to serve the process against the foreign limited liability company upon the Secretary of State, and such service shall be as effectual for all intents and purposes as if made in any of the ways provided for in subsection (a) of this section. Process may be served upon the Secretary of State under this subsection by means of electronic transmission but only as prescribed by the Secretary of State. The Secretary of State is authorized to issue such rules and regulations with respect to such service as the Secretary of State deems necessary or appropriate. In the event that service is effected through the Secretary of State in accordance with this subsection, the Secretary of State shall forthwith notify the foreign limited liability company by letter, directed to the foreign limited liability company at its last registered office. Such letter shall be sent by a mail or courier service that includes a record of mailing or deposit with the courier and a record of delivery evidenced by the signature of the recipient. Such letter shall enclose a copy of the process and any other papers served on the Secretary of State pursuant to this subsection. It shall be the duty of the plaintiff in the event of such service to serve process and any other papers in duplicate, to notify the Secretary of State that service is being effected pursuant to this subsection, and to pay to the Secretary of State the sum of $50 for the use of the State of Delaware, which sum shall be taxed as a part of the costs in the proceeding if the plaintiff shall prevail therein. The Secretary of State shall maintain an alphabetical record of any such service setting forth the name of the plaintiff and defendant, the title, docket number and nature of the proceeding in which process has been served upon the Secretary, the fact that service has been effected pursuant to this subsection, the return date thereof and the day and hour when the service was made. The Secretary of State shall not be required to retain such information for a period longer than 5 years from the Secretary's receipt of the service of process.

(68 Del. Laws, c. 434, § 1; 70 Del. Laws, c. 186, § 1; 77 Del. Laws, c. 287, § 26.)

§ 18-911 Service of process on unregistered foreign limited liability companies.

(a) Any foreign limited liability company which shall do business in the State of Delaware without having registered under § 18-902 of this title shall be deemed to have thereby appointed and constituted the Secretary of State of the State of Delaware its agent for the acceptance of legal process in any civil action, suit or proceeding against it in any state or federal court in the State of Delaware arising or growing out of any business done by it within the State of Delaware. The doing of business in the State of Delaware by such foreign limited liability company shall be a signification of the agreement of such foreign limited liability company that any such process when so served shall be of the same legal force and validity as if served upon an authorized manager or agent personally within the State of Delaware. Process may be served upon the Secretary of State under this subsection by means of electronic transmission but only as prescribed by the Secretary of State. The Secretary of State is authorized to issue such rules and regulations with respect to such service as the Secretary of State deems necessary or appropriate.

(b) Whenever the words "doing business," "the doing of business" or "business done in this State," by any such foreign limited liability company are used in this section, they shall mean the course or practice of carrying on any business activities in the State of Delaware, including, without limiting the generality of the foregoing, the solicitation of business or orders in the State of Delaware.

(c) In the event of service upon the Secretary of State in accordance with subsection (a) of this section, the Secretary of State shall forthwith notify the foreign limited liability company thereof by letter, directed to the foreign limited liability company at the address furnished to the Secretary of State by the plaintiff in such action, suit or proceeding. Such letter shall be sent by a mail or courier service that includes a record of mailing or deposit with the courier and a record of delivery evidenced by the signature of the recipient. Such letter shall enclose a copy of the process and any other papers served upon the Secretary of State. It shall be the duty of the plaintiff in the event of such service to serve process and any other papers in duplicate, to notify the Secretary of State that service is being made pursuant to this subsection, and to pay to the Secretary of State the sum of $50 for the use of the State of Delaware, which sum shall be taxed as part of the costs in the proceeding, if the plaintiff shall prevail therein. The Secretary of State shall maintain an alphabetical record of any such process setting forth the name of the plaintiff and defendant, the title, docket number and nature of the proceeding in which process has been served upon the Secretary, the return date thereof, and the day and hour when the service was made. The Secretary of State shall not be required to retain such information for a period longer than 5 years from the receipt of the service of process.

(68 Del. Laws, c. 434, § 1; 70 Del. Laws, c. 186, § 1; 77 Del. Laws, c. 287, §§ 27, 28.)

§ 18-912 Activities not constituting doing business.

(a) Activities of a foreign limited liability company in the State of Delaware that do not constitute doing business for the purpose of this subchapter include:

(1) Maintaining, defending or settling an action or proceeding;

(2) Holding meetings of its members or managers or carrying on any other activity concerning its internal affairs;

(3) Maintaining bank accounts;

(4) Maintaining offices or agencies for the transfer, exchange or registration of the limited liability company's own securities or maintaining trustees or depositories with respect to those securities;

(5) Selling through independent contractors;

(6) Soliciting or obtaining orders, whether by mail or through employees or agents or otherwise, if the orders require acceptance outside the State of Delaware before they become contracts;

(7) Selling, by contract consummated outside the State of Delaware, and agreeing, by the contract, to deliver into the State of Delaware, machinery, plants or equipment, the construction, erection or installation of which within the State of Delaware requires the supervision of technical engineers or skilled employees performing services not generally available, and as part of the contract of sale agreeing to furnish such services, and such services only, to the vendee at the time of construction, erection or installation;

(8) Creating, as borrower or lender, or acquiring indebtedness with or without a mortgage or other security interest in property;

(9) Collecting debts or foreclosing mortgages or other security interests in property securing the debts, and holding, protecting and maintaining property so acquired;

(10) Conducting an isolated transaction that is not 1 in the course of similar transactions;

(11) Doing business in interstate commerce; and

(12) Doing business in the State of Delaware as an insurance company.

(b) A person shall not be deemed to be doing business in the State of Delaware solely by reason of being a member or manager of a domestic limited liability company or a foreign limited liability company.

(c) This section does not apply in determining whether a foreign limited liability company is subject to service of process, taxation or regulation under any other law of the State of Delaware.

(75 Del. Laws, c. 51, § 18.)

Subchapter X
Derivative Actions

§ 18-1001 Right to bring action.

A member or an assignee of a limited liability company interest may bring an action in the Court of Chancery in the right of a limited liability company to recover a judgment in its favor if managers or members with authority to do so have refused to bring the action or if an effort to cause those managers or members to bring the action is not likely to succeed.

(68 Del. Laws, c. 434, § 1; 71 Del. Laws, c. 341, § 16.)

§ 18-1002 Proper plaintiff.

In a derivative action, the plaintiff must be a member or an assignee of a limited liability company interest at the time of bringing the action and:

(1) At the time of the transaction of which the plaintiff complains; or

(2) The plaintiff's status as a member or an assignee of a limited liability company interest had devolved upon the plaintiff by operation of law or pursuant to the terms of a limited liability company agreement from a person who was a member or an assignee of a limited liability company interest at the time of the transaction.

(68 Del. Laws, c. 434, § 1; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 341, § 17.)

§ 18-1003 Complaint.

In a derivative action, the complaint shall set forth with particularity the effort, if any, of the plaintiff to secure initiation of the action by a manager or member or the reasons for not making the effort.

(68 Del. Laws, c. 434, § 1.)

§ 18-1004 Expenses.

If a derivative action is successful, in whole or in part, as a result of a judgment, compromise or settlement of any such action, the court may award the plaintiff reasonable expenses, including reasonable attorney's fees, from any recovery in any such action or from a limited liability company.

(68 Del. Laws, c. 434, § 1.)

Subchapter XI
Miscellaneous

§ 18-1101 Construction and application of chapter and limited liability company agreement.

(a) The rule that statutes in derogation of the common law are to be strictly construed shall have no application to this chapter.

(b) It is the policy of this chapter to give the maximum effect to the principle of freedom of contract and to the enforceability of limited liability company agreements.

(c) To the extent that, at law or in equity, a member or manager or other person has duties (including fiduciary duties) to a limited liability company or to another member or manager or to another person that is a party to or is otherwise bound by a limited liability company agreement, the member's or manager's or other person's duties may be expanded or restricted or eliminated by provisions in the limited liability company agreement; provided, that the limited liability company agreement may not eliminate the implied contractual covenant of good faith and fair dealing.

(d) Unless otherwise provided in a limited liability company agreement, a member or manager or other person shall not be liable to a limited liability company or to another member or manager or to another person that is a party to or is otherwise bound by a limited liability company agreement for breach of fiduciary duty for the member's or manager's or other person's good faith reliance on the provisions of the limited liability company agreement.

(e) A limited liability company agreement may provide for the limitation or elimination of any and all liabilities for breach of contract and breach of duties (including fiduciary duties) of a member, manager or other person to a limited liability company or to another member or manager or to another person that is a party to or is otherwise bound by a limited liability company agreement; provided, that a limited liability company agreement may not limit or eliminate liability for any act or omission that constitutes a bad faith violation of the implied contractual covenant of good faith and fair dealing.

(f) Unless the context otherwise requires, as used herein, the singular shall include the plural and the plural may refer to only the singular. The use of any gender shall be applicable to all genders. The captions contained herein are for purposes of convenience only and shall not control or affect the construction of this chapter.

(g) Sections 9-406 and 9-408 of this title do not apply to any interest in a limited liability company, including all rights, powers and interests arising under a limited liability company agreement or this chapter. This provision prevails over §§ 9-406 and 9-408 of this title.

(h) Action validly taken pursuant to 1 provision of this chapter shall not be deemed invalid solely because it is identical or similar in substance to an action that could have been taken pursuant to some other provision of this chapter but fails to satisfy 1 or more requirements prescribed by such other provision.

(i) A limited liability company agreement that provides for the application of Delaware law shall be governed by and construed under the laws of the State of Delaware in accordance with its terms.

(j) The provisions of this chapter shall apply whether a limited liability company has 1 member or more than 1 member.

(68 Del. Laws, c. 434, § 1; 69 Del. Laws, c. 260, § 35; 72 Del. Laws, c. 389, § 26; 73 Del. Laws, c. 221, § 1; 74 Del. Laws, c. 275, §§ 13, 14; 77 Del. Laws, c. 58, § 7; 77 Del. Laws, c. 287, § 29; 79 Del. Laws, c. 74, § 7.)

§ 18-1102 Short title.

This chapter may be cited as the "Delaware Limited Liability Company Act."

(68 Del. Laws, c. 434, § 1.)

§ 18-1103 Severability.

If any provision of this chapter or its application to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of the chapter which can be given effect without the invalid provision or application, and to this end, the provisions of this chapter are severable.

(68 Del. Laws, c. 434, § 1.)

§ 18-1104 Cases not provided for in this chapter.

In any case not provided for in this chapter, the rules of law and equity, including the rules of law and equity relating to fiduciary duties and the law merchant, shall govern.

(68 Del. Laws, c. 434, § 1; 79 Del. Laws, c. 74, § 8.)

§ 18-1105 Fees.

(a) No document required to be filed under this chapter shall be effective until the applicable fee required by this section is paid. The following fees shall be paid to and collected by the Secretary of State for the use of the State of Delaware:

(1) Upon the receipt for filing of an application for reservation of name, an application for renewal of reservation or a notice of transfer or cancellation of reservation pursuant to § 18-103(b) of this title, a fee in the amount of $75.

(2) Upon the receipt for filing of a certificate under § 18-104(b) of this title, a fee in the amount of $200, upon the receipt for filing of a certificate under § 18-104(c) of this title, a fee in the amount of $200, and upon the receipt for filing of a certificate under § 18-104(d) of this title, a fee in the amount of $2.00 for each limited liability company whose registered agent has resigned by such certificate.

(3) Upon the receipt for filing of a certificate of formation under § 18-201 of this title or a certificate of registered series under § 18-218 of this title, a fee in the amount of $70 and upon the receipt for filing of a certificate of limited liability company domestication under § 18-212 of this title, a certificate of transfer or a certificate of transfer and domestic continuance under § 18-213 of this title, a

certificate of conversion to limited liability company under § 18-214 of this title, a certificate of conversion to a non-Delaware entity under § 18-216 of this title, a certificate of amendment under § 18-202 or § 18-218(d)(3) of this title (except as otherwise provided in paragraph (a)(11) of this section), a certificate of cancellation under § 18-203 or § 18-218(d)(7) of this title, a certificate of merger or consolidation or a certificate of ownership and merger under § 18-209 of this title, a restated certificate of formation or a restated certificate of registered series under § 18-208 of this title, a certificate of amendment of a certificate with a future effective date or time under § 18-206(c) of this title, a certificate of termination of a certificate with a future effective date or time under § 18-206(c) of this title, a certificate of correction under § 18-211 of this title, a certificate of division under § 18-217 of this title, a certificate of conversion of protected series to registered series under § 18-219 of this title, a certificate of conversion of registered series to protected series under § 18-220 of this title, a certificate of merger or consolidation of registered series under § 18-221 of this title or a certificate of revival under § 18-1109 or § 18-1110 of this title, a fee in the amount of $180, plus, in the case of a certificate of cancellation under § 18-203 of this title, a fee in the amount of $50 for each registered series of the limited liability company named in the certificate of cancellation.

(4) For certifying copies of any paper on file as provided for by this chapter, a fee in the amount of $50 for each copy certified. In addition, a fee of $2.00 per page shall be paid in each instance where the Secretary of State provides the copies of the document to be certified.

(5) The Secretary of State may issue photocopies or electronic image copies of instruments on file, as well as instruments, documents and other papers not on file, and for all such photocopies or electronic image copies which are not certified by the Secretary of State, a fee of $10 shall be paid for the first page and $2.00 for each additional page. Notwithstanding Delaware's Freedom of Information Act (Chapter 100 of Title 29) or other provision of law granting access to public records, the Secretary of State upon request shall issue only photocopies or electronic image copies of public records in exchange for the fees described in this section, and in no case shall the Secretary of State be required to provide copies (or access to copies) of such public records (including without limitation bulk data, digital copies of instruments, documents and other papers, databases or other information) in an electronic medium or in any form other than photocopies or electronic image copies of such public records in exchange, as applicable, for the fees described in this section or § 2318 of Title 29 for each such record associated with a file number.

(6) Upon the receipt for filing of an application for registration as a foreign limited liability company under § 18-902 of this title, a certificate under § 18-905 of this title or a certificate of cancellation under § 18-906 of this title, a fee in the amount of $200.

(7) Upon the receipt for filing of a certificate under § 18-904(c) of this title, a fee in the amount of $200, upon the receipt for filing of a certificate under § 18-904(d) of this title, a fee in the amount of $200, and upon the receipt for filing of a certificate under § 18-904(e) of this title, a fee in the amount of $2.00 for each foreign limited liability company whose registered agent has resigned by such certificate.

(8) For preclearance of any document for filing, a fee in the amount of $250.

(9) For preparing and providing a written report of a record search, a fee of up to $100.

(10) For issuing any certificate of the Secretary of State, including but not limited to a certificate of good standing with respect to a limited liability company or a registered series thereof, other than a certification of a copy under paragraph (a)(4) of this section, a fee in the amount of $50, except that for issuing any certificate of the Secretary of State that recites all of the filings with the Secretary of State of a limited liability company or all of the filings of any registered series or that lists all of the registered series formed by a limited liability company, a fee of $175 shall be paid for each such certificate. For issuing any certificate via the Secretary of State's online services, a fee of up to $175 shall be paid for each certificate.

(11) For receiving and filing and/or indexing any certificate, affidavit, agreement or any other paper provided for by this chapter, for which no different fee is specifically prescribed, a fee in the amount of $200. For filing any instrument submitted by a limited liability company or foreign limited liability company that only changes the registered office or registered agent and is specifically captioned as a certificate of amendment changing only the registered office or registered agent, a fee in the amount of $50 provided that no fee shall be charged pursuant to § 18-206(e) of this title.

(12) The Secretary of State may in the Secretary of State's own discretion charge a fee of $60 for each check received for payment of any fee that is returned due to insufficient funds or the result of a stop payment order.

(b) In addition to those fees charged under subsection (a) of this section, there shall be collected by and paid to the Secretary of State the following:

(1) For all services described in subsection (a) of this section that are requested to be completed within 30 minutes on the same day as the day of the request, an additional sum of up to $7,500 and for all services described in subsection (a) of this section that are requested to be completed within 1 hour on the same day as the day of the request, an additional sum of up to $1,000 and for all services described in subsection (a) of this section that are requested to be completed within 2 hours on the same day of the request, an additional sum of up to $500;

(2) For all services described in subsection (a) of this section that are requested to be completed within the same day as the day of the request, an additional sum of up to $300; and

(3) For all services described in subsection (a) of this section that are requested to be completed within a 24-hour period from the time of the request, an additional sum of up to $150.

The Secretary of State shall establish (and may from time to time amend) a schedule of specific fees payable pursuant to this subsection.

(c) The Secretary of State may in his or her discretion permit the extension of credit for the fees required by this section upon such terms as the secretary shall deem to be appropriate.

(d) The Secretary of State shall retain from the revenue collected from the fees required by this section a sum sufficient to provide at all times a fund of at least $500, but not more than $1,500, from which the secretary may refund any payment made pursuant to this section to the extent that it exceeds the fees required by this section. The funds shall be deposited in a financial institution which is a legal depository of State of Delaware moneys to the credit of the Secretary of State and shall be disbursable on order of the Secretary of State.

(e) Except as provided in this section, the fees of the Secretary of State shall be as provided in § 2315 of Title 29.

(68 Del. Laws, c. 434, § 1; 69 Del. Laws, c. 260, §§ 36, 37; 70 Del. Laws, c. 75, §§ 23-27; 70 Del. Laws, c. 186, § 1; 70 Del. Laws, c. 360, § 16; 71 Del. Laws, c. 77, § 34; 72 Del. Laws, c. 129, § 16; 73 Del. Laws, c. 83, § 19; 74 Del. Laws, c. 52, §§ 22-29; 74 Del. Laws, c. 85, § 16; 74 Del. Laws, c. 119, § 2; 76 Del. Laws, c. 105, § 35; 77 Del. Laws, c. 78, §§ 25-35; 77 Del. Laws, c. 287, § 30; 78 Del. Laws, c. 95, §§ 12-15; 80 Del. Laws, c. 45, § 11; 81 Del. Laws, c. 357, § 28; 81 Del. Laws, c. 357, § 29; 82 Del. Laws, c. 48, § 16.)

§ 18-1106 Reserved power of State of Delaware to alter or repeal chapter.

All provisions of this chapter may be altered from time to time or repealed and all rights of members and managers are subject to this reservation. Unless expressly stated to the contrary in this chapter, all amendments of this chapter shall apply to limited liability companies and members and managers whether or not existing as such at the time of the enactment of any such amendment.

(68 Del. Laws, c. 434, § 1; 72 Del. Laws, c. 129, § 17.)

§ 18-1107 Taxation of limited liability companies and registered series.

(a) For purposes of any tax imposed by the State of Delaware or any instrumentality, agency or political subdivision of the State of Delaware, a domestic limited liability company or a foreign limited liability company qualified to do business in the State of Delaware shall be classified as a partnership unless classified otherwise for federal income tax purposes, in which case the domestic or foreign limited liability company shall be classified in the same manner as it is classified for federal income tax purposes. For purposes of any tax imposed by the State of Delaware or any instrumentality, agency or political subdivision of the State of Delaware, a member or an assignee of a member of a domestic limited liability company or a foreign limited liability company qualified to do business in the State of Delaware shall be treated as either a resident or nonresident partner unless classified otherwise for federal income tax purposes, in which case the member or assignee of a member shall have the same status as such member or assignee of a member has for federal income tax purposes.

(b) Every domestic limited liability company and every foreign limited liability company registered to do business in the State of Delaware shall pay an annual tax, for the use of the State of Delaware, in the amount of $300. There shall be paid by or on behalf of each registered series of a domestic limited liability company an annual tax, for use of the State of Delaware, in the amount of $75 per registered series.

(c) The annual tax for a domestic limited liability company shall be due and payable on the first day of June following the close of the calendar year or upon the cancellation of a certificate of formation. The annual tax for a registered series shall be due and payable on the first day of June following the close of the calendar year or upon the cancellation of a certificate of registered series. The annual tax for a foreign limited liability company shall be due and payable on the first day of June following the close of the calendar year or upon the cancellation of the certificate of registration. The Secretary of State shall receive the annual tax and pay over all taxes collected to the Department of Finance of the State of Delaware. If the annual tax remains unpaid after the due date, the tax shall bear interest at the rate of 1 and one-half percent for each month or portion thereof until fully paid.

(d) The Secretary of State shall, at least 60 days prior to June 1 of each year, cause to be mailed to each domestic limited liability company and each registered series thereof and each foreign limited liability company required to comply with the provisions of this section in care of its registered agent in the State of Delaware an annual statement for the tax to be paid hereunder.

(e) In the event of neglect, refusal or failure on the part of any domestic limited liability company, registered series or foreign limited liability company to pay the annual tax to be paid hereunder on or before June 1 in any year, such domestic limited liability company or foreign limited liability company shall pay the sum of $200, and such registered series shall pay the sum of $50, to be recovered by adding that amount to the annual tax and such additional sum shall become a part of the tax and shall be collected in the same manner and subject to the same penalties.

(f) In case any domestic limited liability company, registered series or foreign limited liability company shall fail to pay the annual tax due within the time required by this section, and in case the agent in charge of the registered office of any domestic limited liability company or foreign limited liability company upon whom process against such domestic limited liability company or any protected series or registered series thereof or foreign limited liability company may be served shall die, resign, refuse to act as such, remove from the State of Delaware or cannot with due diligence be found, it shall be lawful while default continues to serve process against such domestic limited liability company or any protected series or registered series thereof or foreign limited liability company upon the Secretary of State. Such service upon the Secretary of State shall be made in the manner and shall have the effect stated in § 18-105 of this title in the

case of a domestic limited liability company or any protected series or registered series thereof and § 18-910 of this title in the case of a foreign limited liability company and shall be governed in all respects by said sections.

(g) The annual tax shall be a debt due from a domestic limited liability company, registered series or foreign limited liability company to the State of Delaware, for which an action at law may be maintained after the same shall have been in arrears for a period of 1 month. The tax shall also be a preferred debt in the case of insolvency.

(h) A domestic limited liability company that neglects, refuses or fails to pay the annual tax when due shall cease to be in good standing as a domestic limited liability company and all registered series thereof shall also cease to be in good standing. A registered series that neglects, refuses or fails to pay the annual tax when due shall cease to be in good standing as a registered series. A foreign limited liability company that neglects, refuses or fails to pay the annual tax when due shall cease to be registered as a foreign limited liability company in the State of Delaware.

(i) A domestic limited liability company or registered series that has ceased to be in good standing or a foreign limited liability company that has ceased to be registered by reason of the failure by the limited liability company, registered series or foreign limited liability company to pay an annual tax shall be restored to and have the status of a domestic limited liability company or registered series in good standing or a foreign limited liability company that is registered in the State of Delaware upon the payment of the annual tax and all penalties and interest thereon for each year for which such domestic limited liability company, registered series or foreign limited liability company neglected, refused or failed to pay an annual tax.

(j) On the motion of the Attorney General or upon request of the Secretary of State, whenever any annual tax due under this chapter from any domestic limited liability company, registered series or foreign limited liability company shall have remained in arrears for a period of 3 months after the tax shall have become payable, the Attorney General may apply to the Court of Chancery, by petition in the name of the State of Delaware, on 5 days' notice to such domestic limited liability company, registered series or foreign limited liability company, which notice may be served in such manner as the Court may direct, for an injunction to restrain such domestic limited liability company, registered series or foreign limited liability company from the transaction of any business within the State of Delaware or elsewhere, until the payment of the annual tax, and all penalties and interest due thereon and the cost of the application which shall be fixed by the Court. The Court of Chancery may grant the injunction, if a proper case appears, and upon granting and service of the injunction, such domestic limited liability company, registered series or foreign limited liability company thereafter shall not transact any business until the injunction shall be dissolved.

(k) A domestic limited liability company that has ceased to be in good standing by reason of the domestic limited liability company's neglect, refusal or failure to pay an annual tax shall remain a domestic limited liability company formed under this chapter, and each registered series thereof shall remain a registered series formed under this chapter, and each protected series thereof shall remain a protected series established under this chapter. A registered series that has ceased to be in good standing by reason of the registered series' neglect, refusal or failure to pay an annual tax shall remain a registered series formed under this chapter. The Secretary of State shall not accept for filing any certificate (except a certificate of resignation of a registered agent when a successor registered agent is not being appointed) required or permitted by this chapter to be filed in respect of any domestic limited liability company, registered series or foreign limited liability company if such domestic limited liability company, registered series or foreign limited liability company has neglected, refused or failed to pay an annual tax, and shall not issue any certificate of good standing with respect to such domestic limited liability company, registered series or foreign limited liability company, unless or until such domestic limited liability company, registered series or foreign limited liability company shall have been restored to and have the status of a domestic limited liability company or registered series in good standing or a foreign limited liability company duly registered in the State of Delaware.

(l) A domestic limited liability company that has ceased to be in good standing (and each protected series and registered series thereof), a registered series that has ceased to be in good standing, or a foreign limited liability company that has ceased to be registered in the State of Delaware by reason of the domestic limited liability company's, registered series' or foreign limited liability company's neglect, refusal or failure to pay an annual tax may not maintain any action, suit or proceeding in any court of the State of Delaware until such domestic limited liability company, registered series or foreign limited liability company has been restored to and has the status of a domestic limited liability company, registered series or foreign limited liability company in good standing or duly registered in the State of Delaware. An action, suit or proceeding may not be maintained in any court of the State of Delaware by any successor or assignee of such domestic limited liability company (or any protected series or registered series thereof), registered series, or foreign limited liability company on any right, claim or demand arising out the transaction of business by such domestic limited liability company (or any protected series or registered series thereof) or registered series after the domestic limited liability company or registered series has ceased to be in good standing or a foreign limited liability company that has ceased to be registered in the State of Delaware until such domestic limited liability company, registered series or foreign limited liability company, or any person that has acquired all or substantially all of its assets, has paid any annual tax then due and payable, together with penalties and interest thereon.

(m) The neglect, refusal or failure of a domestic limited liability company, registered series or foreign limited liability company to pay an annual tax shall not impair the validity of any contract, deed, mortgage, security interest, lien or act of such domestic limited liability company or any protected series or registered series thereof or foreign limited liability company or prevent such domestic limited liability company or any protected series or registered series thereof or foreign limited liability company from defending any action, suit or proceeding with any court of the State of Delaware.

(n) A member or manager of a domestic limited liability company, registered series or foreign limited liability company is not liable for the debts, obligations or liabilities of such domestic limited liability company, registered series or foreign limited liability company solely by reason of the neglect, refusal or failure of such domestic limited liability company, registered series or foreign limited liability company to pay an annual tax or by reason of such domestic limited liability company, registered series or foreign limited liability company ceasing to be in good standing or duly registered. A protected series or registered series of a domestic limited liability company is not liable for the debts, obligations or liabilities of such domestic limited liability company or any other series thereof solely by reason of the neglect, refusal or failure of such domestic limited liability company or other series to pay an annual tax or by reason of such domestic limited liability company or other series ceasing to be in good standing.

(68 Del. Laws, c. 434, § 1; 69 Del. Laws, c. 260, §§ 38, 39; 70 Del. Laws, c. 75, § 28; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 341, § 18; 72 Del. Laws, c. 129, § 18; 74 Del. Laws, c. 52, §§ 30, 31; 76 Del. Laws, c. 287, § 3; 77 Del. Laws, c. 78, § 36; 79 Del. Laws, c. 212, § 3; 81 Del. Laws, c. 357, § 30; 81 Del. Laws, c. 89, § 12; 82 Del. Laws, c. 48, § 17.)

§ 18-1108 Cancellation of certificate of formation or certificate of registered series for failure to pay taxes.

(a) The certificate of formation of a domestic limited liability company shall be canceled if the annual tax due under § 18-1107 of this title for the domestic limited liability company is not paid for a period of 3 years from the date it is due, such cancellation to be effective on the third anniversary of such due date.

(b) The certificate of registered series shall be canceled if the annual tax due under § 18-1107 of this title is not paid for a period of 3 years from the date it is due, such cancellation to be effective on the third anniversary of such due date.

(c) A list of those domestic limited liability companies and registered series whose certificates of formation or certificates of registered series were canceled on June 1 of such calendar year pursuant to § 18-1108(a) or § 18-1108(b) of this title shall be filed in the office of the Secretary of State. On or before October 31 of each calendar year, the Secretary of State shall publish such list on the Internet or on a similar medium for a period of 1 week and shall advertise the website or other address where such list can be accessed in at least 1 newspaper of general circulation in the State of Delaware.

(70 Del. Laws, c. 75, § 29; 73 Del. Laws, c. 295, § 11; 76 Del. Laws, c. 105, § 36; 81 Del. Laws, c. 357, § 31.)

§ 18-1109 Revival of domestic limited liability company.

(a) A domestic limited liability company whose certificate of formation has been canceled pursuant to § 18-104(d) or (i)(4) or § 18-1108(a) of this title may be revived by filing in the office of the Secretary of State a certificate of revival accompanied by the payment of the fee required by § 18-1105(a)(3) of this title and payment of the annual tax due under § 18-1107 of this title and all penalties and interest thereon due at the time of the cancellation of its certificate of formation. The certificate of revival shall set forth:

(1) The name of the limited liability company at the time its certificate of formation was canceled and, if such name is not available at the time of revival, the name under which the limited liability company is to be revived;

(2) The date of filing of the original certificate of formation of the limited liability company;

(3) The address of the limited liability company's registered office in the State of Delaware and the name and address of the limited liability company's registered agent in the State of Delaware;

(4) A statement that the certificate of revival is filed by 1 or more persons authorized to execute and file the certificate of revival to revive the limited liability company; and

(5) Any other matters the persons executing the certificate of revival determine to include therein.

(b) The certificate of revival shall be deemed to be an amendment to the certificate of formation of the limited liability company, and the limited liability company shall not be required to take any further action to amend its certificate of formation under § 18-202 of this title with respect to the matters set forth in the certificate of revival.

(c) Upon the filing of a certificate of revival, a limited liability company and all registered series thereof that have been formed and whose certificate of registered series has not been canceled prior to the cancellation of the certificate of formation shall be revived with the same force and effect as if its certificate of formation had not been canceled pursuant to § 18-104(d), § 18-104(i)(4) or § 18-1108(a) of this title. Such revival shall validate all contracts, acts, matters and things made, done and performed by the limited liability company, its members, managers, employees and agents during the time when its certificate of formation was canceled pursuant to § 18-104(d), § 18-104(i)(4) or § 18-1108(a) of this title, with the same force and effect and to all intents and purposes as if the certificate of formation had remained in full force and effect. All real and personal property, and all rights and interests, which belonged to the limited liability company at the time its certificate of formation was canceled pursuant to § 18-104(d), § 18-104(i)(4) or § 18-1108(a) of this title or which were acquired by the limited liability company following the cancellation of its certificate of formation pursuant to § 18-104(d), § 18-104(i)(4) or § 18-1108(a) of this title, and which were not disposed of prior to the time of its revival, shall be vested in the limited liability company after its revival as fully as they were held by the limited liability company at, and after, as the case may be, the time its certificate of formation was canceled pursuant to § 18-104(d), § 18-104(i)(4) or § 18-1108(a) of this title. After its revival, the limited liability company shall be as exclusively liable for all contracts, acts, matters and things made, done or performed in its name and on its behalf by its members, managers, employees and agents prior to its revival as if its certificate of formation had at all times remained in full force and effect.

(70 Del. Laws, c. 75, § 30; 75 Del. Laws, c. 317, §§ 36, 37; 77 Del. Laws, c. 78, § 37; 81 Del. Laws, c. 357, § 32.)

§ 18-1110 Revival of a registered series.

(a) A registered series whose certificate of registered series has been canceled pursuant to § 18-1108(b) of this title may be revived by filing in the office of the Secretary of State a certificate of revival of registered series accompanied by the payment of the fee required by § 18-1105(a)(3) of this title and payment of the annual tax due under § 18-1107 of this title and all penalties and interest thereon due at the time of the cancellation of its certificate of registered series. The certificate of revival of registered series shall set forth:

(1) The name of the limited liability company at the time the certificate of registered series was canceled and, if such name has changed, the name of the limited liability company at the time of revival of the registered series;

(2) The name of the registered series at the time the certificate of registered series was canceled and, if such name is not available at the time of revival, the name under which the registered series is to be revived;

(3) The date of filing of the original certificate of registered series;

(4) A statement that the certificate of revival of registered series is filed by 1 or more persons authorized to execute and file such certificate of revival to revive the registered series; and

(5) Any other matters the persons executing the certificate of revival of registered series determine to include therein.

(b) The certificate of revival of registered series shall be deemed to be an amendment to the certificate of registered series, and no further actions shall be required to amend its certificate of registered series under § 18-218(d)(3) of this title with respect to the matters set forth in such certificate of revival.

(c) Upon the filing of a certificate of revival of registered series, a registered series shall be revived with the same force and effect as if its certificate of registered series had not been canceled pursuant to § 18-1108(b) of this title. Such revival shall validate all contracts, acts, matters and things made, done and performed by the registered series, its members, managers, employees and agents during the time when its certificate of registered series was canceled pursuant to § 18-1108(b) of this title, with the same force and effect and to all intents and purposes as if the certificate of registered series had remained in full force and effect. All real and personal property, and all rights and interests, which belonged to the registered series at the time its certificate of registered series was canceled pursuant to § 18-1108(b) of this title or which were acquired by the registered series following the cancellation of its certificate of registered series pursuant to § 18-1108(b) of this title, and which were not disposed of prior to the time of its revival, shall be vested in the registered series after its revival as fully as they were held by the registered series at, and after, as the case may be, the time its certificate of registered series was canceled pursuant to § 18-1108(b) of this title. After its revival, the registered series shall be as exclusively liable for all contracts, acts, matters and things made, done or performed in its name and on its behalf by its members, managers, employees and agents prior to its revival as if its certificate of registered series had at all times remained in full force and effect.

(81 Del. Laws, c. 357, § 33; 82 Del. Laws, c. 48, § 18.)

Subchapter XII

Statutory Public Benefit Limited Liability Companies

§ 18-1201 Law applicable to statutory public benefit limited liability companies; how formed.

This subchapter applies to all statutory public benefit limited liability companies, as defined in § 18-1202 of this title. If a limited liability company elects to become a statutory public benefit limited liability company under this subchapter in the manner prescribed in this subchapter, it shall be subject in all respects to the provisions of this chapter, except to the extent this subchapter imposes additional or different requirements, in which case such requirements shall apply, and notwithstanding § 18-1101 of this title or any other provision of this title, such requirements imposed by this subchapter may not be altered in the limited liability company agreement.

(81 Del. Laws, c. 357, § 34.)

§ 18-1202 Statutory public benefit limited liability company defined; contents of certificate of formation and limited liability company agreement.

(a) A “statutory public benefit limited liability company” is a for-profit limited liability company formed under and subject to the requirements of this chapter that is intended to produce a public benefit or public benefits and to operate in a responsible and sustainable manner. To that end, a statutory public benefit limited liability company shall be managed in a manner that balances the members’ pecuniary interests, the best interests of those materially affected by the limited liability company’s conduct, and the public benefit or public benefits set forth in its certificate of formation. A statutory public benefit limited liability company shall state in the heading of its certificate of formation that it is a statutory public benefit limited liability company and shall set forth 1 or more specific public benefits to be promoted by the limited liability company in its certificate of formation. The limited liability company agreement of a statutory public benefit limited liability company may not contain any provision inconsistent with this subchapter.

(b) “Public benefit” means a positive effect (or reduction of negative effects) on 1 or more categories of persons, entities, communities or interests (other than members in their capacities as members) including, but not limited to, effects of an artistic, charitable, cultural, economic, educational, environmental, literary, medical, religious, scientific or technological nature. “Public benefit provisions” means the provisions of a limited liability company agreement contemplated by this subchapter.

(81 Del. Laws, c. 357, § 34.)

§ 18-1203 Certain amendments and mergers; votes required.

Notwithstanding any other provision of this chapter, a statutory public benefit limited liability company may not, without the approval of members who own at least 2/3 of the then-current percentage or other interest in the profits of the limited liability company owned by all members:

(1) Amend its certificate of formation to delete or amend a provision required by § 18-1202(a) of this title;

(2) Merge or consolidate with or into another entity or divide into 2 or more domestic limited liability companies if, as a result of such merger, consolidation or division, the limited liability company interests in such limited liability company would become, or be converted into or exchanged for the right to receive, limited liability company interests or other equity interests in a domestic or foreign limited liability company or other entity that is not a statutory public benefit limited liability company or similar entity, the certificate of formation or limited liability company agreement (or similar governing document) of which does not contain provisions identifying a public benefit or public benefits comparable in all material respects to those set forth in the certificate of formation of such limited liability company as contemplated by § 18-1202(a) of this title; or

(3) Cease to be a statutory public benefit limited liability company under the provisions of this subchapter.

(81 Del. Laws, c. 357, § 34.)

§ 18-1204 Duties of members or managers.

(a) The members or managers or other persons with authority to manage or direct the business and affairs of a statutory public benefit limited liability company shall manage or direct the business and affairs of the statutory public benefit limited liability company in a manner that balances the pecuniary interests of the members, the best interests of those materially affected by the limited liability company's conduct, and the specific public benefit or public benefits set forth in its certificate of formation. Unless otherwise provided in a limited liability company agreement, no member, manager or other person with authority to manage or direct the business and affairs of the statutory public benefit limited liability company shall have any liability for monetary damages for the failure to manage or direct the business and affairs of the statutory public benefit limited liability company as provided in this subsection.

(b) A member or manager of a statutory public benefit limited liability company or any other person with authority to manage or direct the business and affairs of the statutory public benefit limited liability company shall not, by virtue of the public benefit provisions or § 18-1202(a) of this title, have any duty to any person on account of any interest of such person in the public benefit or public benefits set forth in its certificate of formation or on account of any interest materially affected by the limited liability company's conduct and, with respect to a decision implicating the balance requirement in subsection (a) of this section, will be deemed to satisfy such person's fiduciary duties to members and the limited liability company if such person's decision is both informed and disinterested and not such that no person of ordinary, sound judgment would approve.

(81 Del. Laws, c. 357, § 34.)

§ 18-1205 Periodic statements and third-party certification.

A statutory public benefit limited liability company shall no less than biennially provide its members with a statement as to the limited liability company's promotion of the public benefit or public benefits set forth in its certificate of formation and as to the best interests of those materially affected by the limited liability company's conduct. The statement shall include:

(1) The objectives that have been established to promote such public benefit or public benefits and interests;

(2) The standards that have been adopted to measure the limited liability company's progress in promoting such public benefit or public benefits and interests;

(3) Objective factual information based on those standards regarding the limited liability company's success in meeting the objectives for promoting such public benefit or public benefits and interests; and

(4) An assessment of the limited liability company's success in meeting the objectives and promoting such public benefit or public benefits and interests.

(81 Del. Laws, c. 357, § 34.)

§ 18-1206 Derivative suits.

Members of a statutory public benefit limited liability company or assignees of limited liability company interests in a statutory public benefit limited liability company owning individually or collectively, as of the date of instituting such derivative suit, at least 2% of the then-current percentage or other interest in the profits of the limited liability company or, in the case of a limited liability company with limited liability company interests listed on a national securities exchange, the lesser of such percentage or limited liability company interests of at least $2,000,000 in market value, may maintain a derivative lawsuit to enforce the requirements set forth in § 18-1204(a) of this title.

(81 Del. Laws, c. 357, § 34.)

§ 18-1207 No effect on other limited liability companies.

This subchapter shall not affect a statute or rule of law that is applicable to a limited liability company that is not a statutory public benefit limited liability company.

(81 Del. Laws, c. 357, § 34.)

§ 18-1208 Accomplishment by other means.

The provisions of this subchapter shall not be construed to limit the accomplishment by any other means permitted by law of the formation or operation of a limited liability company that is formed or operated for a public benefit (including a limited liability company that is designated as a public benefit limited liability company) that is not a statutory public benefit limited liability company.

(81 Del. Laws, c. 357, § 34.)

(81 Del. Laws, c. 357, § 34.)

Subtitle II
Other Laws Relating to Commerce and Trade
Chapter 19
Delaware Uniform Unin- corporated Nonprofit Association Act

§ 1901 Definitions.

In this chapter:

(1) "Member" means a person who, under the rules or practices of a nonprofit association, may participate in the selection of persons authorized to manage the affairs of the nonprofit association or in the development of policy of the nonprofit association.

(2) "Nonprofit association" means an unincorporated organization consisting of 2 or more members joined by mutual consent for a common, nonprofit purpose. However, joint tenancy, tenancy in common or tenancy by the entireties does not by itself establish a nonprofit association, even if the co-owners share use of the property for a nonprofit purpose.

(3) "Person" means an individual, corporation, statutory trust, business trust, estate, trust, partnership, limited liability company, association, joint venture, government, governmental subdivision, agency or instrumentality or any other legal or commercial entity.

(4) "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico or any territory or insular possession subject to the jurisdiction of the United States.

(71 Del. Laws, c. 79, § 1; 73 Del. Laws, c. 329, § 32.)

§ 1902 Supplementary general principles of law and equity.

Principles of law and equity supplement this chapter unless displaced by a particular provision of it.

(71 Del. Laws, c. 79, § 1.)

§ 1903 Territorial application.

Real and personal property in this State may be acquired, held, encumbered and transferred by a nonprofit association, whether or not the nonprofit association or a member has any other relationship to this State.

(71 Del. Laws, c. 79, § 1.)

§ 1904 Real and personal property; nonprofit association as legatee, devisee or beneficiary.

(a) A nonprofit association in its name may acquire, hold, encumber or transfer an estate or interest in real or personal property.

(b) A nonprofit association may be a legatee, devisee or beneficiary of a trust or contract.

(71 Del. Laws, c. 79, § 1.)

§ 1905 Statement of authority as to real property.

(a) A nonprofit association may execute and file a statement of authority to transfer an estate or interest in real property in the name of the nonprofit association.

(b) An estate or interest in real property in the name of a nonprofit association may be transferred by a person so authorized in a statement of authority filed in the office in the county in which a transfer of the property would be recorded.

(c) A statement of authority must set forth:

(1) The name of the nonprofit association;

(2) The address in this State, including the street address, if any, of the nonprofit association or, if the nonprofit association does not have an address in this State, its address out of state;

(3) The name or title of a person authorized to transfer an estate or interest in real property held in the name of the nonprofit association; and

(4) The action, procedure or vote of the nonprofit association which authorizes the person to transfer the real property of the nonprofit association and which authorizes the person to execute the statement of authority.

(d) A statement of authority must be executed in the same manner as a deed by a person who is not the person authorized to transfer the estate or interest.

(e) A filing officer may collect a fee for filing a statement of authority in the amount authorized for recording a transfer of real property.

(f) An amendment, including a cancellation, of a statement of authority must meet the requirements for execution and filing of an original statement. Unless canceled earlier, a filed statement of authority or its most recent amendment is canceled by operation of law 5 years after the date of the most recent recording.

(g) If the record title to real property is in the name of a nonprofit association and the statement of authority is filed in the office of the county in which a transfer of real property would be recorded, the authority of the person named in a statement of authority is conclusive in favor of a person who gives value without notice that the person lacks authority.

(71 Del. Laws, c. 79, § 1.)

§ 1906 Liability in tort and contract.

(a) A nonprofit association is a legal entity separate from its members for the purposes of determining and enforcing rights, duties and liabilities in contract and tort.

(b) A person is not liable for a breach of a nonprofit association's contract merely because the person is a member, is authorized to participate in the management of the affairs of the nonprofit association or is a person considered to be a member by the nonprofit association.

(c) A person is not liable for a tortious act or omission for which a nonprofit association is liable merely because the person is a member, is authorized to participate in the management of the affairs of the nonprofit association or is a person considered as a member by the nonprofit association.

(d) A tortious act or omission of a member or other person for which a nonprofit association is liable is not imputed to a person merely because the person is a member of the nonprofit association, is authorized to participate in the management of the affairs of the nonprofit association or is a person considered as a member by the nonprofit association.

(e) A member of, or a person considered to be a member by, a nonprofit association may assert a claim against the nonprofit association. A nonprofit association may assert a claim against a member or a person considered to be a member by the nonprofit association.

(71 Del. Laws, c. 79, § 1.)

§ 1907 Capacity to assert and defend; standing.

(a) A nonprofit association, in its name, may institute, defend, intervene or participate in a judicial, administrative or other governmental proceeding or in an arbitration, mediation or any other form of alternative dispute resolution.

(b) A nonprofit association may assert a claim in its name on behalf of its members if 1 or more members of the nonprofit association have standing to assert a claim in their own right, the interests the nonprofit association seeks to protect are germane to its purposes and neither the claim asserted nor the relief requested requires the participation of a member.

(71 Del. Laws, c. 79, § 1.)

§ 1908 Effect of judgment or order.

A judgment or order against a nonprofit association is not by itself a judgment or order against a member.

(71 Del. Laws, c. 79, § 1.)

§ 1909 Disposition of personal property of inactive nonprofit association.

If a nonprofit association has been inactive for 3 years or longer, a person in possession or control of personal property of the nonprofit association may transfer the property:

(1) If a document of a nonprofit association specifies a person to whom transfer is to be made under these circumstances, to that person; or

(2) If no person is so specified, to a nonprofit association or nonprofit corporation pursuing broadly similar purposes or to a government or governmental subdivision, agency or instrumentality.

(71 Del. Laws, c. 79, § 1.)

§ 1910 Appointment of agent to receive service of process.

(a) A nonprofit association may file in the office of the Secretary of State a statement appointing an agent authorized to receive service of process.

(b) A statement appointing an agent must set forth:

(1) The name of the nonprofit association;

(2) The address in this State, including the street address, if any, of the nonprofit association or, if the nonprofit association does not have an address in this State, its address out of state; and

(3) The name of the person in this State authorized to receive service of process and the person's address, including the street address, in this State.

(c) A statement appointing an agent must be signed and acknowledged by a person authorized to manage the affairs of a nonprofit association. The statement must also be signed and acknowledged by the person appointed agent, who thereby accepts the appointment. The appointed agent may resign by filing a resignation in the office of the Secretary of State and giving notice to the nonprofit association.

(d) A filing officer may collect a fee for filing a statement appointing an agent to receive service of process, an amendment or a resignation in the amount charged for filing similar documents.

(e) An amendment to a statement appointing an agent to receive service of process must meet the requirements for execution of an original statement.

(71 Del. Laws, c. 79, § 1.)

§ 1911 Claim not abated by change of members or officers.

A claim for relief against a nonprofit association does not abate merely because of a change in its members or persons authorized to manage the affairs of the nonprofit association.

(71 Del. Laws, c. 79, § 1.)

§ 1912 Venue.

For purposes of venue, a nonprofit association is a resident of a city or county in which it has an office.

(71 Del. Laws, c. 79, § 1.)

§ 1913 Summons and complaint; service on whom.

In an action or proceeding against a nonprofit association, a summons and complaint must be served on an agent authorized by appointment to receive service of process, an officer, managing or general agent, or a person authorized to participate in the management of its affairs. If none of them can be served, service may be made on a member.

(71 Del. Laws, c. 79, § 1.)

§ 1914 Uniformity of application and construction.

This chapter shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this chapter among states enacting it.

(71 Del. Laws, c. 79, § 1.)

§ 1915 Short title.

This chapter shall be known as and may be cited as the “Delaware Uniform Unincorporated Nonprofit Association Act.”

(71 Del. Laws, c. 79, § 1.)

§ 1916 Transition concerning real and personal property.

(a) If, before June 25, 1997, an estate or interest in real or personal property was purportedly transferred to a nonprofit association, on June 25, 1997, the estate or interest vests in the nonprofit association unless the parties have treated the transfer as ineffective.

(b) If, before June 25, 1997, the transfer vested the estate or interest in another person to hold the estate or interest as a fiduciary for the benefit of the nonprofit association, its members, or both, on or after June 25, 1997, the fiduciary may transfer the estate or interest to the nonprofit association in its name, or the nonprofit association, by appropriate proceedings, may require that the estate or interest be transferred to it in its name.

(71 Del. Laws, c. 79, § 1.)

Subtitle II
Other Laws Relating to Commerce and Trade
Chapter 20
Trade Secrets

§ 2001 Definitions.

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) "Improper means" shall include theft, bribery, misrepresentation, breach or inducement of a breach of a duty to maintain secrecy, or espionage through electronic or other means.

(2) "Misappropriation" shall mean:

a. Acquisition of a trade secret of another by a person who knows or has reason to know that the trade secret was acquired by improper means; or

b. Disclosure or use of a trade secret of another without express or implied consent by a person who:

1. Used improper means to acquire knowledge of the trade secret; or

2. At the time of disclosure or use, knew or had reason to know that his or her knowledge of the trade was:

A. Derived from or through a person who had utilized improper means to acquire it;

B. Acquired under circumstances giving rise to a duty to maintain its secrecy or limit its use; or

C. Derived from or through a person who owed a duty to the person seeking relief to maintain its secrecy or limit its use; or

3. Before a material change of the person's position, knew or had reason to know that it was a trade secret and that knowledge of it had been acquired by accident or mistake.

(3) "Person" shall mean a natural person, corporation, statutory trust, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision or agency, or any other legal or commercial entity.

(4) "Trade secret" shall mean information, including a formula, pattern, compilation, program, device, method, technique or process, that:

a. Derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and

b. Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

(63 Del. Laws, c. 218, § 1; 70 Del. Laws, c. 186, § 1; 73 Del. Laws, c. 329, § 33.)

§ 2002 Injunctive relief.

(a) Actual or threatened misappropriation may be enjoined. Upon application to the court, an injunction shall be terminated when the trade secret has ceased to exist, but the injunction may be continued for an additional reasonable period of time in order to eliminate commercial advantage that otherwise would be derived from the misappropriation.

(b) In exceptional circumstances, an injunction may condition future use upon payment of a reasonable royalty for no longer than the period of time for which use could have been prohibited. Exceptional circumstances include, but are not limited to, a material and prejudicial change of position prior to acquiring knowledge or reason to know of misappropriation that renders a prohibitive injunction inequitable.

(c) In appropriate circumstances, affirmative acts to protect a trade secret may be compelled by court order.

(63 Del. Laws, c. 218, § 1; 71 Del. Laws, c. 80, § 1.)

§ 2003 Damages.

(a) Except to the extent that a material and prejudicial change of position prior to acquiring knowledge or reason to know of misappropriation renders a monetary recovery inequitable, a complainant is entitled to recover damages for misappropriation. Damages can include both the actual loss caused by misappropriation and the unjust enrichment caused by misappropriation that is not taken into account in computing actual loss. In lieu of damages measured by any other methods, the damages caused by misappropriation may be measured by imposition of liability for a reasonable royalty for a misappropriator's unauthorized disclosure or use of a trade secret.

(b) If wilful and malicious misappropriation exists, the court may award exemplary damages in an amount not exceeding twice any award made under subsection (a) of this section.

(63 Del. Laws, c. 218, § 1; 71 Del. Laws, c. 80, § 2.)

§ 2004 Attorneys' fees.

If a claim of misappropriation is made in bad faith, a motion to terminate an injunction is made or resisted in bad faith, or wilful and malicious misappropriation exists, the court may award reasonable attorney's fees to the prevailing party.

(63 Del. Laws, c. 218, § 1.)

§ 2005 Preservation of secrecy.

In an action under this chapter, a court shall preserve the secrecy of an alleged trade secret by reasonable means, which may include granting protective orders in connection with discovery proceedings, holding in-camera hearings, sealing the records of the action and ordering any person involved in the litigation not to disclose an alleged trade secret without prior court approval.

(63 Del. Laws, c. 218, § 1.)

§ 2006 Statute of limitations.

An action for misappropriation must be brought within 3 years after the misappropriation is discovered or by the exercise of reasonable diligence should have been discovered. For the purposes of this section, a continuing misappropriation constitutes a single claim.

(63 Del. Laws, c. 218, § 1.)

§ 2007 Effect on other law.

(a) Except as provided in subsection (b) of this section, this chapter displaces conflicting tort, restitutionary and other law of this State providing civil remedies for misappropriation of a trade secret.

(b) This chapter does not affect:

(1) Contractual remedies, whether or not based upon misappropriation of a trade secret;

(2) Other civil remedies that are not based upon misappropriation of a trade secret; or

(3) Criminal remedies, whether or not based upon misappropriation of a trade secret.

(63 Del. Laws, c. 218, § 1; 71 Del. Laws, c. 80, § 3.)

§ 2008 Application and construction of chapter.

This chapter shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this chapter among states enacting it.

(63 Del. Laws, c. 218, § 1.)

§ 2009 Short title.

This chapter may be cited as the “Uniform Trade Secrets Act.”

(63 Del. Laws, c. 218, § 1.)

Subtitle II
Other Laws Relating to Commerce and Trade

Chapter 21
Antitrust

§ 2101 Purpose; legislative intent.

The purpose of this chapter shall be to promote the public benefits of a competitive economic environment based upon free enterprise. It is the intent of the General Assembly to promote efficiency in business operations, an equitable return on capital investments, an efficient allocation of goods and services and freedom of economic opportunity.

(62 Del. Laws, c. 89, § 1.)

§ 2102 Definitions.

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) "Court" means the Court of Chancery except where another court is specifically designated.

(2) "Documentary material" means the original or any copy of any book, record, report, memorandum, paper, communication, tabulation, chart or other document, and further includes data and other information in a form readable by a data processing machine.

(3) "Public body" means the state's public agencies, including school districts, and its political subdivisions, including municipal and other authorities.

(4) "Trade or commerce of this State" means all economic activity carried on wholly or partially in this State, which involves or relates to any commodity, service or business activity.

(62 Del. Laws, c. 89, § 1.)

§ 2103 Restraint of trade unlawful.

Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce of this State shall be unlawful.

(62 Del. Laws, c. 89, § 1.)

§ 2104 Exemptions.

(a) Nothing in this chapter shall be construed to forbid the existence or operation of labor, agricultural or horticultural organizations, instituted for the purposes of mutual help, and not having capital stock or conducted for profit, or to forbid or restrain individual members of such organizations from lawfully carrying out the legitimate objects thereof; nor shall such organizations or the members thereof be held or construed to be illegal combinations or agreements in restraint of trade under this chapter.

(b) Nothing in this chapter shall be construed to forbid any conduct or arrangement required by any statute of this State or of the United States, nor any conduct or arrangement approved or required by a regulatory body or officer acting under statutory authority of this State or of the United States.

(c) Without limiting the effect of the foregoing, activity of the following shall not be construed as a violation of this chapter:

(1) Any public utility, to the extent that such activity is subject to regulation by the Public Service Commission, the State or federal Department of Transportation, the Federal Power Commission, the Federal Communications Commission or the Interstate Commerce Commission;

(2) Any person to the extent that such activity is subject to regulation by the Insurance Commissioner of this State or is authorized by the Insurance Code or any other law of this State, including the making of or participating in joint underwriting or joint reinsurance arrangements;

(3) A nonprofit corporation, trust or organization established exclusively for religious or charitable purposes, or for both purposes, to the extent that the activity is a religious or charitable activity;

(4) A security dealer who is licensed by this State or who is a member of the National Association of Securities Dealers or a member of a national securities exchange registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934 [15 U.S.C. § 78a et seq.], in the course of the business of offering, selling, buying and selling, or otherwise trading in or underwriting, securities as an agent, broker or principal, or the activity of a registered national securities exchange, including the establishment of commission rates and schedules of charges, to the extent that such activity is subject to regulation under the laws of this State or the United States; or

(5) Any state or national banking association or savings and loan association, or any other lending institution, to the extent that such activity is regulated or supervised by the banking laws or savings and loan laws of this State or the United States.

(62 Del. Laws, c. 89, § 1; 70 Del. Laws, c. 186, § 1.)

§ 2105 General power of Attorney General.

The Attorney General shall have full power and authority on behalf of the State and its public bodies to investigate suspected violations of this chapter or of federal antitrust laws, and may institute such proceedings as are provided for violations thereof.

(62 Del. Laws, c. 89, § 1.)

§ 2106 Investigative demand by Attorney General.

(a) Whenever the Attorney General has reason to believe that any person may have knowledge, or be in possession, custody or control of any documentary material, pertinent to a possible violation of this chapter, the Attorney General may issue in writing and cause to be served upon the person an investigative demand that may:

(1) Compel the attendance of such person and require that person to submit to examination and give testimony under oath;

(2) Require the production of documentary material pertinent to the investigation; and

(3) Require answers to written interrogatories to be furnished under oath.

(b) Service of any demand under this section may be made by mailing such demand to the last known place of business, residence or abode within or without this State of the person to whom such demand is directed; service may also be made upon any person other than a natural person, in the manner provided in § 321 or §§ 371-385 of Title 8 and in the manner provided in the Rules of the Court of Chancery.

(c) Each demand under this section shall be in writing and shall:

(1) State the nature of the conduct constituting the alleged violation of this chapter which is under investigation and the provision of law applicable thereto;

(2) Describe the class or classes of documentary material to be produced thereunder with such definiteness and certainty as to permit such material to be fairly identified;

(3) Prescribe a return date which will provide a reasonable time within which the material so demanded may be assembled and made available for inspection and copying or reproduction; and

(4) Identify the custodian to whom such material shall be made available or the official before whom such examination shall take place or to whom such answers shall be furnished.

(d) Any person required to submit to examination under this section shall be entitled to be represented by counsel. Any person so required shall be entitled to procure a transcript of the testimony, provided that the Court, for good cause shown by the Attorney General, may order that such person be limited to inspection of such transcript.

(e) No demand under this section shall contain any requirement which would be held to be unreasonable if contained in a subpoena issued by a court of this State in aid of a grand jury investigation, or require the production of any evidence which would be privileged from disclosure if demanded by a subpoena issued by a court of this State in aid of a grand jury investigation.

(f) Within 20 days after the service of any demand under this section, or at any time before the return date specified in the demand, whichever period is shorter, the person served may file with the Court a motion for an order modifying or setting aside such demand. The motion shall specify each ground upon which the person relies in seeking such relief, and may be based upon any failure of the demand to comply with this section, or upon any constitutional right or privilege of the person.

(g) If any person fails to comply with a demand under this section, the Attorney General may file with the Court a motion for an order, and the Court may enter an order:

(1) Requiring the person to respond to the demand;

(2) Granting such other relief as may be required to obtain compliance with the demand.

(h) If any person shall refuse to give testimony or to produce documentary material or to answer a written interrogatory in obedience to an investigative demand on the ground that the person may thereby be incriminated, the Court, upon motion by the Attorney General, may order such person to give testimony or to produce documentary material or to answer the written interrogatory, or to do an applicable combination of these, after notice to the witness and a hearing. Such person so ordered by the Court shall comply with the Court order. After complying, the testimony of such person or the matters produced, which are obtained by virtue of said order, shall not be used against the person in any criminal prosecution nor shall any evidence obtained derivatively from said testimony be so used, provided that, but for this section, such person would have been privileged to withhold the answer or the evidence produced by the person. In no event, however, shall such person, acting pursuant to such order, be exempt from prosecution or penalty or forfeiture for any perjury, false statement or contempt committed in answering or failing to answer, or in producing or failing to produce evidence in accordance with the order, and any testimony or evidence so given or produced shall not, by virtue of this section, be rendered inadmissible in evidence upon any criminal action, investigation or proceeding concerning such perjury, false statement or contempt.

(i) Any transcripts of oral testimony, documentary material or answers to written interrogatories provided pursuant to a demand under this section shall be exempt from disclosure under the Delaware Freedom of Information Act. The custodian described in paragraph (c)(4) of this section shall take physical possession of such transcripts, material and answers. Such transcripts, material or answers, or copies thereof, shall not be disclosed by the custodian to any person other than the Attorney General or authorized employees of the Department of Justice, and the Attorney General and authorized employees shall not make further disclosure of such transcripts, material or answers,

or copies, or of internal memoranda or work papers relating thereto. Nothing in this section shall prevent the Attorney General from introducing said testimony, material or answers in any action initially filed in a federal court sitting in this State, or before any court or grand jury of this State.

(62 Del. Laws, c. 89, § 1; 70 Del. Laws, c. 186, § 1.)

§ 2107 Actions by Attorney General for violations; civil penalty; equitable relief.

The Attorney General may bring an action for any violation or threatened violation of this chapter. In any such action, the Court may assess against each defendant a civil penalty for the benefit of the State of not less than $1,000 nor more than $100,000 for each violation, or may award appropriate equitable relief, or may order a combination of civil penalty and equitable relief.

(62 Del. Laws, c. 89, § 1.)

§ 2108 Actions for equitable relief and damages; suits parens patriae.

(a) If the State or any public body thereof is threatened with injury or injured in its business or property by a violation of this chapter, the Attorney General may bring an action for appropriate equitable relief, damages sustained and, as determined by the Court, taxable costs, and reasonable fees for expert witnesses and attorneys, including the Attorney General.

(b) The Attorney General may bring suit as parens patriae on behalf of natural persons residing in this State to secure monetary relief for such persons who are injured in their business or property by a violation of this chapter. The Court may also award taxable costs and reasonable fees for expert witnesses and attorneys, including the Attorney General.

(c) In actions under this section, the Court may, in its discretion, award as monetary relief up to threefold the total damage sustained, in addition to costs and fees, provided that the Court finds the acts complained of to have been wilful.

(d) Monetary relief awarded under subsection (b) of this section may be payable to the State or may be distributed in such manner as the Court in its discretion may authorize.

(e) In any action brought under subsection (b) of this section, the Attorney General shall, at such times, in such manner, and with such content as the Court may direct, cause notice thereof to be given by publication. If the Court finds that notice given solely by publication would deny due process of law to any person or persons, the Court may direct further notice to such person or persons according to the circumstances of the case.

(f) Any person on whose behalf an action is brought under subsection (b) of this section may elect to exclude from adjudication the portion of the state claim for monetary relief attributable to the person by filing notice of such election with the Court in the manner specified in the notice given pursuant to subsection (e) of this section. The final judgment in any action under subsection (b) of this section shall be res judicata as to any claim under this chapter by any person on behalf of whom such action was brought and who fails to give notice of exclusion in the manner specified in this subsection.

(g) In any action brought under subsection (b) of this section, the Court shall exclude from the amount of any monetary relief awarded any amount which duplicates an award made by any court for the same injury, or which is allocable to persons excluded under subsection (f) of this section.

(62 Del. Laws, c. 89, § 1; 70 Del. Laws, c. 186, § 1.)

§ 2109 Judgment or decree as prima facie evidence.

In any action or proceeding brought by the Attorney General, a final judgment or decree determining that a person has violated this chapter, other than a consent judgment or decree entered before any testimony has been taken, is prima facie evidence against that person in any other action as to all matters with respect to which the judgment or decree would be an estoppel between the parties thereto.

(62 Del. Laws, c. 89, § 1; 70 Del. Laws, c. 186, § 1.)

§ 2110 Jurisdiction.

The Court of Chancery shall have exclusive jurisdiction of all actions or proceedings authorized by this chapter or relating to its enforcement; provided, however, that in an action in which any party would otherwise have a right to trial by jury of any issue of fact, and such party shall demand such trial, the Court shall order such issue to trial and binding determination of such issue in the Superior Court, the action or proceeding being retained in the Court of Chancery in all other respects, including entry of judgment.

(62 Del. Laws, c. 89, § 1.)

§ 2111 Limitation of actions.

Any action to enforce this chapter shall be forever barred unless commenced within 4 years after the cause of action accrued. For purposes of this section, a cause of action for a continuing violation is deemed to accrue at any time during the period of such violation. Whenever any civil or criminal proceeding is instituted by the federal government to prevent, restrain, or punish violations of the federal antitrust laws, the running of the period of limitations in respect of every right of action arising under this chapter, based in whole or in part on any matter complained of in the federal proceeding, shall be suspended during the pendency of said proceeding and for 1 year

thereafter; provided, however, that whenever the running of the period of limitations in respect of a right of action arising under this chapter is suspended hereunder, any action to enforce such right of action shall be forever barred unless commenced within the period of suspension or within 4 years after the cause of action accrued.

(62 Del. Laws, c. 89, § 1; 78 Del. Laws, c. 257, § 1.)

§ 2112 Security not required of State and public bodies.

Unless otherwise ordered by the Court, the State and its public bodies shall not be required to give security in any action or proceeding under this chapter.

(62 Del. Laws, c. 89, § 1.)

§ 2113 Construction of chapter.

This chapter shall be construed in harmony with ruling judicial interpretations of comparable federal antitrust statutes.

(62 Del. Laws, c. 89, § 1.)

§ 2114 Short title.

This chapter shall be known and may be cited as the “Delaware Antitrust Act.”

(62 Del. Laws, c. 89, § 1.)

Subtitle II
Other Laws Relating to Commerce and Trade

Chapter 22
Credit and Identity Theft Protection

§ 2201 Short title.

This chapter shall be known as the "Clean Credit and Identity Theft Prevention Act."

(75 Del. Laws, c. 328, § 1.)

§ 2202 Definitions.

For the purposes of this chapter, the following terms shall have the following meanings:

(1) "Consumer" means an individual who is a resident of Delaware.

(2) "Consumer report" or "credit report" means any written, oral, or other communication of any information by a consumer reporting agency bearing on a consumer's credit worthiness, credit standing, credit score, credit capacity, character, general reputation, personal characteristics, or mode of living which is used or expected to be used or collected in whole or in part for the purpose of serving as a factor in establishing the consumer's eligibility for:

a. Credit or insurance to be used primarily for personal, family, or household purposes, except that nothing in this chapter authorizes the use of credit evaluations, credit scoring or insurance scoring in the underwriting of personal lines of property or casualty insurance;

b. Employment purposes; or

c. Any other purpose authorized under section 15 U.S.C. § 1681b.

(3) "Consumer reporting agency" means any person which, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties.

(4) "Credit card" has the same meaning as in § 103 of the Truth in Lending Act [15 U.S.C. § 1602].

(5) "Credit history" means any written, oral, or other communication of any information by a consumer reporting agency bearing on a consumer's creditworthiness, credit standing, or credit capacity that is used or expected to be used, or collected in whole or in part, for the purpose of determining personal lines insurance premiums or eligibility for coverage.

(6) "Debit card" means any card or device issued by a financial institution to a consumer for use in initiating an electronic fund transfer from the account holding assets of the consumer at such financial institution, for the purpose of transferring money between accounts or obtaining money, property, labor, or services.

(7) The term "person" means any individual, partnership, corporation, trust, estate, cooperative, association, government or governmental subdivision or agency, or other entity.

(75 Del. Laws, c. 328, § 1; 70 Del. Laws, c. 186, § 1.)

§ 2203 Security freeze.

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

(1) "Reviewing the account" or "account review" includes activities related to account maintenance, monitoring, credit line increases, and account upgrades and enhancements.

(2) "Security freeze" means a notice, at the request of the consumer and subject to certain exceptions, that prohibits the consumer reporting agency from releasing all or any part of the consumer's credit report or any information derived from it without the express authorization of the consumer. If a security freeze is in place, such a report or information may not be released to a third party without prior express authorization from the consumer. This chapter does not prevent a consumer reporting agency from advising a third party that a security freeze is in effect with respect to the consumer's credit report.

(b) *Security freeze: timing, covered entities, cost.* — (1) A consumer may elect to place a security freeze on that consumer's own credit report by making a request by mail or, through an electronic mail method when such method is made available. By January 31, 2009, consumer reporting agencies shall make available an electronic mail method of requesting a security freeze.

(2) A consumer reporting agency shall place a security freeze on a consumer's credit report no later than 5 business days after receiving a consumer's request. By September 29, 2007, a consumer reporting agency shall place a security freeze on a consumer's credit report no later than 3 business days after receiving a request from a consumer.

(3) The consumer reporting agency shall send a written confirmation of the security freeze to the consumer within 5 business days of placing the freeze and at the same time shall provide the consumer with a unique personal identification number or password to be used by the consumer when providing authorization for the release of that consumer's credit for a specific period of time, or when permanently lifting the freeze.

(4) If the consumer wishes to allow that consumer's own credit report to be accessed for a specific period of time while a freeze is in place, that consumer shall contact the consumer reporting agency, at a point of contact made available by the agency to receive requests such as via telephone, U.S. mail, certified mail, overnight mail, or secure electronic mail, with a request that the freeze be temporarily lifted, and provide the following:

a. Proper identification,

b. The unique personal identification number or password provided by the consumer reporting agency pursuant to paragraph (b)(3) of this section, and

c. The time period for which the report shall be available to users of the credit report.

(5) A consumer reporting agency that receives a request from a consumer to temporarily lift a freeze on a credit report pursuant to paragraph (b)(4) of this section shall comply with the request no later than 3 business days after receiving the request. By no later than January 31, 2009, a consumer reporting agency shall honor such a request made by electronic mail or by telephone within 15 minutes of receiving the request.

(6) A consumer reporting agency shall develop procedures involving the use of telephone, or upon the consent of the consumer in the manner required by the Electronic Signatures in Global and National Commerce Act [E-Sign] for legally required notices, by the Internet, e-mail, or other electronic media to receive and process a request from a consumer to temporarily lift a freeze on a credit report pursuant to paragraph (b)(4) of this section in an expedited manner.

(7) A consumer reporting agency shall remove or temporarily lift a freeze placed on a consumer's credit report only in the following cases:

a. Upon consumer request, pursuant to paragraph (b)(4) or paragraph (b)(9) of this section;

b. If the consumer's credit report was frozen due to a material misrepresentation of fact by the consumer. If a consumer reporting agency intends to remove a freeze upon a consumer's credit report pursuant to this paragraph, the consumer reporting agency shall notify the consumer in writing 5 business days prior to removing the freeze on the consumer's credit report.

(8) If a third party requests access to a consumer credit report on which a security freeze is in effect, and this request is in connection with an application for credit or any other use, and the consumer does not allow that consumer's own credit report to be accessed for that specific period of time, the third party may treat the application as incomplete.

(9) A security freeze shall remain in place until the consumer requests that the security freeze be removed. A consumer reporting agency shall remove a security freeze within 3 business days of receiving a request for removal from the consumer, who provides both of the following:

a. Proper identification; and

b. The unique personal identification number or password provided by the consumer reporting agency pursuant to paragraph (b)(3) of this section.

(10) A consumer reporting agency shall require proper identification of the person making a request to place or remove a security freeze.

(11) A consumer reporting agency may not suggest or otherwise state or imply to a third party that the consumer's security freeze reflects a negative credit score, history, report or rating.

(12) The provisions of this section do not apply to the use of a consumer credit report by any of the following:

a. A person, or the person's subsidiary, affiliate, agent, or assignee with which the consumer has or, prior to assignment, had an account, contract, or debtor-creditor relationship for the purposes of reviewing the account or collecting the financial obligation owing for the account, contract, or debt.

b. A subsidiary, affiliate, agent, assignee, or prospective assignee of a person to whom access has been granted under paragraph (b)(4) of this section for purposes of facilitating the extension of credit or other permissible use.

c. Any person or entity acting pursuant to a court order, warrant, or subpoena.

d. A State or local agency which administers a program for establishing and enforcing child support obligations.

e. The Department of Justice, law-enforcement agencies, and the Department of Health and Social Services and their agents or assigns acting to investigate fraud.

f. The State Division of Revenue or its agents or assigns acting to investigate or collect delinquent taxes or unpaid court orders or to fulfill any of its other statutory responsibilities.

g. A person or entity for the purposes of prescreening or postscreening as permitted by the Federal Fair Credit Reporting Act [15 U.S.C. § 1681 et seq.].

h. Any person or entity administering a credit file monitoring subscription service to which the consumer has subscribed.

i. Any person or entity for the purpose of providing a consumer with a copy of that consumer's own credit report upon the consumer's request.

j. Any property and casualty insurance company for use only in setting or adjusting a rate or underwriting for property and casualty insurance purposes.

(13) A consumer reporting agency may charge a consumer for a security freeze service only in the following discrete circumstances:

a. Ten dollars for the initial application for the consumer's first personal identification number or password.

b. Five dollars for the initial application for a person age 65 years or over.

c. If the consumer fails to retain the original personal identification number or password provided by the agency, the consumer may not be charged for a 1-time reissue of the same or a new personal identification number or password; however, the consumer may be charged no more than $10 for subsequent instances of loss and reissuance of a new personal identification number or password.

d. No consumer who has been a victim of identity theft shall be charged any fee for placement of a security freeze on the consumer's own report.

(14) The following agencies are not required to place a security freeze on a credit report:

a. A consumer reporting agency that acts only as a reseller of credit information by assembling and merging information contained in the data base of another consumer reporting agency or multiple consumer reporting agencies, and does not maintain a permanent data base of credit information from which new consumer credit reports are produced. However, a consumer reporting agency acting as a reseller shall honor any security freeze placed on a consumer credit report by another consumer reporting agency.

b. A check services or fraud prevention services company which issues reports on incidents of fraud or authorizations for the purpose of approving or processing negotiable instruments, electronic funds transfers, or similar methods of payments.

c. A deposit account information service company which issues reports regarding account closures due to fraud, substantial overdrafts, ATM [automatic teller machine] abuse, or similar negative information regarding a consumer to inquiring banks or other financial institutions for use only in reviewing a consumer request for a deposit account at the inquiring bank or financial institution.

d. A consumer reporting agency database or file that consists entirely of consumer information concerning, and used solely for:

1. Criminal record information;
2. Personal loss history information;
3. Fraud prevention or detection;
4. Employment screening; or
5. Tenant screening.

(c) *Notice of rights.* — At any time that a consumer is required to receive a summary of rights required under § 609 of the Federal Fair Credit Reporting Act [15 U.S.C. § 1681g], the following notice shall be included:

Delaware Consumers Have the Right to Obtain a Security Freeze.

You may obtain a security freeze on your credit report for no more than ten dollars to protect your privacy and ensure that credit is not granted in your name without your knowledge. You have a right to place a security freeze on your credit report pursuant to Delaware law. The security freeze will prohibit a consumer reporting agency from releasing any information in your credit report without your express authorization or approval. You must separately request, by certified mail, that it be frozen by the three consumer reporting agencies and pay each a ten dollar fee to do so. After January 31, 2009, you will be able to request this freeze from the agencies by e-mail.

The security freeze is designed to prevent credit, loans, and services from being approved in your name without your consent. When you place a security freeze on your credit report, you will be sent a personal identification number or password to use if you choose to remove the freeze on your credit report or to temporarily authorize the release of your credit report for a specific period of time after the freeze is in place. To provide that authorization, you must contact the consumer reporting agency and provide all of the following:

1. The unique personal identification number or password provided by the consumer reporting agency.
2. Proper identification to verify your identity.
3. The proper information regarding the period of time for which the report shall be available to users of the credit report.
4. A consumer reporting agency that receives a request from a consumer to lift temporarily a freeze on a credit report shall comply with the request no later than three business days after receiving the request. By January 31, 2009, the consumer reporting agency must temporarily lift the freeze within 15 minutes of receiving the request.

A security freeze does not apply to circumstances where you have an existing account relationship and a copy of your report is requested by your existing creditor or its agents or affiliates for certain types of account review, collection, fraud control or similar activities.

If you are actively seeking a new credit, loan, utility, telephone, or insurance account, you should understand that the procedures involved in lifting a security freeze may slow your own applications for credit. You should plan ahead and lift a freeze with enough advance notice before you apply for new credit for the lifting to take effect. Until January 31, 2009, you should lift the freeze at least 3 business days before applying, and after that date you should lift the freeze at least 15 minutes before applying for a new account.

You have a right to bring a civil action against someone who violates your rights under the credit reporting laws. The action can be brought against a consumer reporting agency.

(d) *Violations; penalties.* — If a consumer reporting agency negligently, violates the security freeze by releasing credit information that has been placed under a security freeze, the affected consumer is entitled to:

(1) Notification within 5 business days of the release of the information, including specificity as to the information released and the third party recipient of the information.

(2) File a complaint with the Federal Trade Commission.

(3) In a civil action against the consumer reporting agency recover:

a. Injunctive relief to prevent or restrain further violation of the security freeze; and/or

b. A civil penalty in an amount up to $1,000 for each violation plus any damages available under other civil laws; and

c. Reasonable expenses, court costs, investigative costs, and attorney's fees.

(4) Each violation of the security freeze shall be counted as a separate incident for purposes of imposing penalties under this section.

(75 Del. Laws, c. 328, § 1; 70 Del. Laws, c. 186, § 1; 79 Del. Laws, c. 109, § 1.)

§ 2204 Right to file a police report regarding identity theft.

(a) A person who knows or reasonably believes that the person has been the victim of identity theft may contact the police agency that has jurisdiction over that person's actual residence, which shall take a police report of the matter, and provide the complainant with a copy of that report. Notwithstanding the fact that jurisdiction may lie elsewhere for investigation and prosecution of a crime of identity theft, the local law-enforcement agency shall take the complaint and provide the complainant with a copy of the complaint and may refer the complaint to a law-enforcement agency in that different jurisdiction.

(b) Nothing in this section interferes with the discretion of a police department to allocate resources for investigations of crimes. A complaint filed under this section is not required to be counted as an open case for purposes such as compiling open case statistics.

(75 Del. Laws, c. 328, § 1; 70 Del. Laws, c. 186, § 1.)

§ 2205 Security freezes for minors and protected persons.

(a) In this section the following words have the meanings indicated.

(1) "Protected consumer" means an individual who is:

a. Under the age of 16 years at the time a request for the placement of a security freeze is made; or

b. An incapacitated person or a protected person for whom a guardian or conservator has been appointed.

(2) "Protected consumer security freeze" means:

a. If a consumer reporting agency does not have a consumer report pertaining to a protected consumer, a restriction that:

1. Is placed on the protected consumer's record in accordance with this section; and

2. Prohibits the consumer reporting agency from releasing the protected consumer's record except as provided in this section; or

b. If a consumer reporting agency has a consumer report pertaining to the protected consumer, a restriction that:

1. Is placed on the protected consumer's consumer report in accordance with this section; and

2. Prohibits the consumer reporting agency from releasing the protected consumer's consumer report or any information derived from the protected consumer's consumer report except as provided in this section.

(3) "Record" means a compilation of information that:

a. Identifies a protected consumer;

b. Is created by a consumer reporting agency solely for the purpose of complying with this section; and

c. May not be created or used to consider the protected consumer's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living.

(4) "Representative" means a person who provides to a consumer reporting agency sufficient proof of authority to act on behalf of a protected consumer.

(5) "Sufficient proof of authority" means documentation that shows a representative has authority to act on behalf of a protected consumer. "Sufficient proof of authority" includes:

a. An order issued by a court of law;

b. A lawfully executed and valid power of attorney; or

c. A written, notarized statement signed by a representative that expressly describes the authority of the representative to act on behalf of a protected consumer.

(6) "Sufficient proof of identification" means information or documentation that identifies a protected consumer or a representative of a protected consumer. "Sufficient proof of identification" includes:

a. A Social Security number or a copy of a Social Security card issued by the Social Security Administration;

b. A certified or official copy of a birth certificate issued by the entity authorized to issue the birth certificate;

c. A copy of a driver's license, an identification card issued by the Motor Vehicle Administration, or any other government-issued identification; or

d. A copy of a bill, including a bill for telephone, sewer, septic tank, water, electric, oil, or natural gas services, that shows a name and home address.

(b) This section does not apply to the use of a protected consumer's consumer report or record by:

(1) A person administering a consumer report monitoring subscription service to which:

a. The protected consumer has subscribed; or

b. The representative of the protected consumer has subscribed on behalf of the protected consumer;

(2) A person providing the protected consumer or the protected consumer's representative with a copy of the protected consumer's consumer report on request of the protected consumer or the protected consumer's representative; or

(3) An entity or purpose listed in § 2203(b)(14) of this title.

(c) A consumer reporting agency shall place a protected consumer security freeze for a protected consumer if:

(1) The consumer reporting agency receives a request from the protected consumer's representative for the placement of the security freeze under this section; and

(2) The protected consumer's representative:

a. Submits the request to the consumer reporting agency at the address or other point of contact and in the manner specified by the consumer reporting agency;

b. Provides to the consumer reporting agency sufficient proof of identification of the protected consumer and the representative;

c. Provides to the consumer reporting agency sufficient proof of authority to act on behalf of the protected consumer; and

d. Pays to the consumer reporting agency a fee as provided in subsection (j) of this section.

(d) If a consumer reporting agency does not have a consumer report pertaining to a protected consumer when the consumer reporting agency receives a request under paragraph (c)(2) of this section, the consumer reporting agency shall create a record for the protected consumer.

(e) Within 30 days after receiving a request that meets the requirements of paragraph (c)(2) of this section, a consumer reporting agency shall place a protected consumer security freeze.

(f) Unless a protected consumer security freeze is removed in accordance with subsection (h) or (k) of this section, a consumer reporting agency may not release the protected consumer's consumer report, any information derived from the protected consumer's consumer report, or any record created for the protected consumer.

(g) A protected consumer security freeze placed under subsection (e) of this section shall remain in effect until:

(1) The protected consumer or the protected consumer's representative requests the consumer reporting agency to remove the protected consumer security freeze in accordance with subsection (h) of this section; or

(2) The protected consumer security freeze is removed in accordance with subsection (k) of this section.

(h) If a protected consumer or a protected consumer's representative wishes to remove a protected consumer security freeze, the protected consumer or the protected consumer's representative shall:

(1) Submit a request for the removal of the protected consumer security freeze to the consumer reporting agency at the address or other point of contact and in the manner specified by the consumer reporting agency;

(2) Provide to the consumer reporting agency:

a. In the case of a request by the protected consumer:

1. Proof that the sufficient proof of authority for the protected consumer's representative to act on behalf of the protected consumer is no longer valid; and

2. Sufficient proof of identification of the protected consumer; or

b. In the case of a request by the representative of a protected consumer:

1. Sufficient proof of identification of the protected consumer and the representative; and

2. Sufficient proof of authority to act on behalf of the protected consumer; and

(3) Pay to the consumer reporting agency a fee as provided in subsection (j) of this section.

(i) Within 30 days after receiving a request that meets the requirements of subsection (h) of this section, the consumer reporting agency shall remove the protected consumer security freeze.

(j) (1) Except as provided in paragraph (j)(2) of this section, a consumer reporting agency may not charge a fee for any service performed under this section.

(2) A consumer reporting agency may charge a reasonable fee, not exceeding $5.00, for each placement or removal of a protected consumer security freeze.

(3) Notwithstanding paragraph (j)(2) of this section, a consumer reporting agency may not charge any fee under this section if:

a. The protected consumer's representative:

1. Has obtained a report of alleged identity fraud against the protected consumer; and

2. Provides a copy of the report to the consumer reporting agency; or

b. A request for the placement or removal of a protected consumer security freeze is for a protected consumer who is under the age of 16 years at the time of the request and the consumer reporting agency has a consumer report pertaining to the protected consumer.

(k) A consumer reporting agency may remove a protected consumer security freeze or delete a record of a protected consumer if the protected consumer security freeze was placed or the record was created based on a material misrepresentation of fact by the protected consumer or the protected consumer's representative.

(l) *Violations; penalties.* — If a consumer reporting agency negligently violates the protected consumer security freeze by releasing credit information that has been placed under a protected consumer security freeze, the affected protected consumer is entitled to:

(1) Notification within 5 business days of the release of the information, including specificity as to the information released and the third party recipient of the information.

(2) File a complaint with the Federal Trade Commission.

(3) In a civil action against the consumer reporting agency recover:

a. Injunctive relief to prevent or restrain further violation of the protected consumer security freeze; and/or

b. A civil penalty in an amount up to $1,000 for each violation plus any damages available under other civil laws; and

c. Reasonable expenses, court costs, investigative costs, and attorney's fees.

(4) Each violation of the protected consumer security freeze shall be counted as a separate incident for purposes of imposing penalties under this section.

(79 Del. Laws, c. 43, § 1.)

Subtitle II
Other Laws Relating to Commerce and Trade
Chapter 23
Interest

§ 2301 Legal rate; loans insured by Federal Housing Administration.

(a) Any lender may charge and collect from a borrower interest at any rate agreed upon in writing not in excess of 5% over the Federal Reserve discount rate including any surcharge thereon. Where there is no expressed contract rate, the legal rate of interest shall be 5% over the Federal Reserve discount rate including any surcharge as of the time from which interest is due; provided, that where the time from which interest is due predates April 18, 1980, the legal rate shall remain as it was at such time. Except as otherwise provided in this Code, any judgment entered on agreements governed by this subsection, whether the contract rate is expressed or not, shall, from the date of the judgment, bear post-judgment interest of 5% over the Federal Reserve discount rate including any surcharge thereon or the contract rate, whichever is less.

(b) If the rate of interest specifically set forth in any bond, note or other evidence of indebtedness, exclusive of other charges, fees or discounts authorized or permitted under federal law or under any rule or regulation promulgated pursuant thereto, does not exceed the lawful rate prescribed in subsection (a) of this section, no person shall, by way of defense or otherwise, avail himself or herself of any of the provisions of this chapter, to avoid or defeat the payment of any interest or any such charges, fees or discounts, which any such person shall have contracted to pay in respect of any loan insured by the Federal Housing Administration, or the Commissioner thereof, under or pursuant to the provisions of the National Housing Act [12 U.S.C. § 1701 et seq.], approved June 27, 1934, and amendments thereto, or guaranteed by the Veterans Administration, or the administrator thereof, under and pursuant to Title 38 of the United States Code [38 U.S.C. § 3701 et seq.], and amendments thereto; nor shall anything contained in this chapter be construed to prevent recovery of any such interest or any such charges, fees or discounts from any person who shall have contracted to pay the same.

(c) Notwithstanding any other provision in this chapter to the contrary, there shall be no limitation on the rate of interest which may be legally charged for the loan or use of money, where the amount of money loaned or used exceeds $100,000, and where repayment thereof is not secured by a mortgage against the principal residence of any borrower.

(d) In any tort action for compensatory damages in the Superior Court or the Court of Common Pleas seeking monetary relief for bodily injuries, death or property damage, interest shall be added to any final judgment entered for damages awarded, calculated at the rate established in subsection (a) of this section, commencing from the date of injury, provided that prior to trial the plaintiff had extended to defendant a written settlement demand valid for a minimum of 30 days in an amount less than the amount of damages upon which the judgment was entered.

(Code 1852, § 1160; 16 Del. Laws, c. 310, § 1; Code 1915, § 2621; 28 Del. Laws, c. 213; Code 1935, § 3101; 6 Del. C. 1953, § 2301; 52 Del. Laws, c. 277; 56 Del. Laws, c. 288, §§ 1-4; 57 Del. Laws, c. 78, § 1; 57 Del. Laws, c. 311; 59 Del. Laws, c. 439, § 1; 59 Del. Laws, c. 589, § 1; 62 Del. Laws, c. 228, § 7; 62 Del. Laws, c. 239, § 1; 70 Del. Laws, c. 186, § 1; 72 Del. Laws, c. 443, § 1; 78 Del. Laws, c. 222, §§ 1, 2.)

§ 2302 Secured demand loans for not less than $5,000 by banks and others.

Every contract for the loan or advance of money by banking corporations, within this State, shall be subject to § 2301 of this title. In any case where loans or advances of money, made by banking corporations or otherwise, repayable on demand to an amount not less than $5,000, are made upon warehouse receipts, bills of lading, certificates of stock, certificates of deposit, bills of exchange, bonds, or other negotiable instruments, pledged as collateral security for such repayment, any sum agreed upon, in writing, by the parties to the transaction may be received, or contracted to be received, and collected as compensation for making the advances.

(11 Del. Laws, c. 227; Code 1915, § 2622; 28 Del. Laws, c. 213; Code 1935, § 3102; 6 Del. C. 1953, § 2302; 70 Del. Laws, c. 186, § 1.)

§ 2303 Loans of less than $500.

Repealed by 71 Del. Laws, c. 254, § 34, eff. Mar. 30, 1998.

§ 2304 Usury defined; borrower's rights and remedies where interest exceeds the lawful rate.

(a) Usury is the charge to a borrower by a lender, directly or indirectly, of a higher rate of interest than that permitted by law.

(b) When a rate of interest for the loan or use of money exceeding that established by law has been reserved or contracted for, the borrower or debtor shall not be required to pay the creditor the excess over the lawful rate and the borrower or debtor may, at the borrower's or debtor's option, retain and deduct the excess from the amount of any debt. In all cases where any borrower or debtor has paid the whole debt or sum loaned, together with interest exceeding the lawful rate, the borrower or debtor, or a personal representative, may recover in an action against the person who has taken or received the debt and interest, or the personal representative, the sum of 3 times the amount of interest collected on any loan in excess of that permitted by law or the sum of $500, whichever is greater, if such action is brought within 1 year after the time of such payment.

(Code 1852, § 1160; 16 Del. Laws, c. 310, § 1; Code 1915, § 2621; 28 Del. Laws, c. 213; Code 1935, § 3101; 6 Del. C. 1953, § 2304; 56 Del. Laws, c. 443; 70 Del. Laws, c. 186, § 1.)

§ 2305 Negotiable paper; rights of holders.

Nothing in this chapter shall affect the holders of negotiable paper taken bona fide in the usual course of business.

(Code 1852, § 1160; 16 Del. Laws, c. 310, § 1; Code 1915, § 2621; 28 Del. Laws, c. 213; Code 1935, § 3101; 6 Del. C. 1953, § 2305.)

§ 2306 Defense of usury as available to certain entities and associations.

No corporation, limited partnership, statutory trust, business trust or limited liability company, and no association or joint stock company having any of the powers and privileges of corporations not possessed by individuals or partnerships, shall interpose the defense of usury in any action.

(Code 1852, § 1160; 16 Del. Laws, c. 310, § 1; Code 1915, § 2621; 28 Del. Laws, c. 213; Code 1935, § 3101; 6 Del. C. 1953, § 2306; 69 Del. Laws, c. 258, § 55; 73 Del. Laws, c. 329, § 34.)

§ 2307 International banking transactions.

This chapter and any other law of this State limiting the rate or amount of interest, discount, points, finance charges, service charges or other charges which may be charged, taken, collected, received or reserved shall not apply to any international banking facility extension of credit, as such terms are contained in § 101 of Title 5.

(64 Del. Laws, c. 43, § 7.)

Subtitle II
Other Laws Relating to Commerce and Trade

Chapter 24
Credit Services Organizations

§ 2401 Definitions.

In this chapter:

(1) "Buyer" means an individual who is solicited to purchase or who purchases the services of a credit service organization.

(2) "Consumer reporting agency" has the meaning assigned by § 603(f), Fair Credit Reporting Act (15 U.S.C. § 1681a(f)).

(3) "Extension of credit" means the right to defer payment of debt or to incur debt and defer its payment offered or granted primarily for personal, family or household purposes.

(4) "Retail seller" means a person engaged in the business of selling goods or furnishing services to a buyer.

(68 Del. Laws, c. 180, § 1.)

§ 2402 Credit services organization.

(a) A credit services organization is a person who, with respect to the extension of credit by others and in return for the payment of money or other valuable consideration, provides, or represents that the person can or will provide, any of the following services:

(1) Improving a buyer's credit record, history or rating;

(2) Obtaining an extension of credit for a buyer; or

(3) Providing advice or assistance to a buyer with regard to paragraph (a)(1) or (2) of this section.

(b) The following are exempt from this chapter:

(1) A person authorized to make loans or extensions of credit under the laws of this State or the United States who is subject to regulation and supervision by this State or the United States, or a lender approved by the United States Secretary of Housing and Urban Development for participation in a mortgage insurance program under the National Housing Act (12 U.S.C. § 1701 et seq.);

(2) A bank or building/savings and loan association whose deposits or accounts are federally insured, or a subsidiary of such a bank or savings and loan association;

(3) A credit union doing business in this State;

(4) A person licensed under Chapter 22 of Title 5 or Chapter 24A of this title;

(5) A nonprofit organization exempt from taxation under § 501(c)(3) of the Internal Revenue Code of 1986 [26 U.S.C. § 501(c)(3)];

(6) A person licensed as a real estate broker or salesperson under Chapter 29 of Title 24 acting within the course and scope of that license;

(7) A person licensed to practice law in this State acting within the course and scope of the person's practice as an attorney;

(8) A broker-dealer registered with the Securities and Exchange Commission or the Commodity Future Trading Commission acting within the course and scope of that regulation;

(9) A consumer reporting agency;

(10) Mortgage loan or loan brokers who are not engaged in the other activities of credit services organizations as described in subsection (a) of this section; and

(11) A person licensed to practice public accounting in this State acting within the course and scope of the person's practice as an accountant.

(68 Del. Laws, c. 180, § 1; 75 Del. Laws, c. 430, § 4.)

§ 2403 Prohibited conduct.

A credit services organization, a salesperson, agent or representative of a credit services organization, or an independent contractor who sells or attempts to sell the services of a credit services organization may not:

(1) Charge a buyer or receive from a buyer money or other valuable consideration before completing performance of all services the credit services organization has agreed to perform for the buyer, unless the credit services organization has obtained in accordance with § 2404 of this title a surety bond in the amount required by § 2404(e) of this title issued by a surety company authorized to do business in this State or established and maintained a surety account at a federally insured bank or savings and loan association located in this State in which the amount required by § 2404(e) of this title is held in trust as required by § 2404(c) of this title;

(2) Charge a buyer or receive from a buyer money or other valuable consideration solely for referral of the buyer to a retail seller who will or may extend credit to the buyer if the credit that is or will be extended to the buyer is substantially the same as that available to the general public;

(3) Make or use a false or misleading representation in the offer or sale of the services of a credit services organization, including:

a. Guaranteeing to "erase bad credit" or words to that effect unless the representation clearly discloses that this can be done only if the credit history is inaccurate or obsolete; and

b. Guaranteeing an extension of credit regardless of the person's previous credit problem or credit history unless the representation clearly discloses the eligibility requirements for obtaining an extension of credit;

(4) Engage, directly or indirectly, in a fraudulent or deceptive act, practice or course of business in connection with the offer or sale of the services of a credit services organization;

(5) Make or advise a buyer to make a statement with respect to a buyer's creditworthiness, credit standing or credit capacity that is false or misleading, or that should be known by the exercise of reasonable care to be false or misleading, to a consumer reporting agency or to a person who has extended credit to a buyer or to whom a buyer is applying for an extension of credit;

(6) Advertise or cause to be advertised, in any manner whatsoever, the services of a credit services organization without filing a registration statement with the Secretary of State, unless otherwise provided by this chapter.

(68 Del. Laws, c. 180, § 1.)

§ 2404 Bond; surety account.

(a) This section applies to a credit services organization required by § 2403(1) of this title to obtain a surety bond or establish a surety account.

(b) If a bond is obtained, a copy of it shall be filed with the Secretary of State. If a surety account is established, a notarized or otherwise official notification of the deposit by the depository institution shall be filed with the Secretary of State. Such notification shall include, at a minimum, the name of the financial institution, name of the credit services organization, account number and verification that the account is established in accordance with the terms set forth in subsection (c) of this section.

(c) The bond or surety account required must be in favor of the State for the benefit of any person who is damaged by any violation of this chapter. The bond or surety account must also be in favor of any person damaged by such a violation.

(d) Any person claiming against the bond or surety account for a violation of this chapter may maintain an action at law against the credit services organization and against the surety or trustee. The surety or trustee shall be liable only for damages awarded under § 2409(a) of this title and not the punitive damages permitted under that section. The aggregate liability of the surety or trustee to all persons damaged by a credit services organization's violation of this chapter may not exceed the amount of the surety account or bond.

(e) The bond or the surety account shall be in the amount of $15,000.

(f) A depository holding money in a surety account under this chapter may not convey money in the account to the credit services organization that established the account or a representative of the credit services organization unless the credit services organization or representative presents a statement issued by the Secretary of State indicating that § 2405(f) of this title has been satisfied in relation to the account. The Secretary of State may conduct investigations and require submission of information as necessary to enforce this subsection.

(68 Del. Laws, c. 180, § 1.)

§ 2405 Registration.

(a) A credit services organization shall file a registration statement with the Secretary of State before conducting business in this State. The registration statement must contain:

(1) The name and address of the credit services organization; and

(2) The name and address of any person who directly or indirectly owns or controls 10 percent or more of the outstanding shares of stock in the credit services organization.

(b) The registration statement must also contain either:

(1) A full and complete disclosure of any litigation or unresolved complaint filed with a governmental authority of this State relating to the operation of the credit services organization; or

(2) A notarized statement that states that there has been no litigation or unresolved complaint filed with a governmental authority of this State relating to the operation of the credit services organization.

(3) The name and address of the credit services organization's agent in the State authorized to receive service of process.

(c) The credit services organization shall update the statement not later than the ninetieth day after the date on which a change in the information required in the statement occurs.

(d) Each credit services organization registering hereunder shall maintain a copy of the registration statement in the files of the credit services organization. The credit services organization shall allow a buyer to inspect the registration statement on request.

(e) The Secretary of State may charge each credit services organization that files a registration statement with the Secretary of State a reasonable fee not to exceed $100 to cover the cost of filing. The Secretary of State may not require a credit services organization to provide information other than that provided in the registration statement.

(f) The bond or surety account shall be maintained until 2 years after the date that the credit services organization ceases operations.

(68 Del. Laws, c. 180, § 1.)

§ 2406 Disclosure statement.

(a) Before executing a contract or agreement with a buyer or receiving money or other valuable consideration, a credit services organization shall provide the buyer with a statement in writing, containing:

(1) A complete and detailed description of the services to be performed by the credit services organization for the buyer and the total cost of the services;

(2) A statement explaining the buyer's right to proceed against the bond or surety account required by § 2404 of this title;

(3) The name and address of the surety company that issued the bond, or the name and address of the depository and the trustee, and the account number of the surety account;

(4) A complete and accurate statement of the buyer's right to review any file on the buyer maintained by a consumer reporting agency, as provided by the Fair Credit Reporting Act (15 U.S.C. § 1681 et seq.);

(5) A statement that the buyer's file is available for review from the consumer reporting agency at no charge, under certain circumstances, if requested by the consumer within 30 days of receiving notice of a denial of credit and as provided in the Federal Fair Credit Reporting Act (15 U.S.C. § 1681j);

(6) A complete and accurate statement of the buyer's right to dispute directly with the consumer reporting agency the completeness or accuracy of any item contained in a file on the buyer maintained by that consumer reporting agency;

(7) A statement that accurate information cannot be permanently removed from the files of a consumer reporting agency;

(8) A complete and accurate statement of when consumer information becomes obsolete, and of when consumer reporting agencies are prevented from issuing reports containing obsolete information; and

(9) A complete and accurate statement of the availability of nonprofit credit counseling services.

(b) The credit services organization shall maintain on file, for a period of 2 years after the date the statement is provided, an exact copy of the statement, signed by the buyer, acknowledging receipt of the statement.

(68 Del. Laws, c. 180, § 1.)

§ 2407 Form and terms of contract.

(a) Each contract between the buyer and a credit services organization for the purchase of the services of the credit services organization must be in writing, dated, signed by the buyer, and must include:

(1) A statement in type that is boldfaced, capitalized, underlined or otherwise set out from surrounding written materials so as to be conspicuous, in immediate proximity to the space reserved for the signature of the buyer, as follows: "You, the buyer, may cancel this contract at any time before midnight of the 3rd day after the date of the transaction. See the attached notice of cancellation form for an explanation of this right.";

(2) The terms and conditions of payment, including the total of all payments to be made by the buyer, whether to the credit services organization or to another person;

(3) A full and detailed description of the services to be performed by the credit services organization for the buyer, including all guarantees and all promises of full or partial refunds, and the estimated length of time, not to exceed 180 days, for performing the services; and

(4) The address of the credit services organization's principal place of business and the name and address of its agent in the State authorized to receive service of process.

(b) The contract must have attached two easily detachable copies of a notice of cancellation. The notice must be in boldfaced type and in the following form:

"Notice of Cancellation

You may cancel this contract, without any penalty or obligation, within 3 days after the date the contract is signed.

If you cancel, any payment made by you under this contract will be returned within 10 days after the date of receipt by the seller of your cancellation notice.

To cancel this contract, mail or deliver a signed dated copy of this cancellation notice, or other written notice to:

(name of seller) at (address of seller) (place of business) not later than midnight (date) I hereby cancel this transaction.

(date)

(purchaser's signature)"

(c) The credit services organization shall give to the buyer a copy of the completed contract and all other documents the credit services organization requires the buyer to sign at the time they are signed.

(d) The breach by a credit services organization of a contract under this chapter, or of any obligation arising from a contract under this chapter, is a violation of this chapter.

(68 Del. Laws, c. 180, § 1.)

§ 2408 Waiver.

(a) A credit services organization may not attempt to cause a buyer to waive a right under this chapter.

(b) A waiver by a buyer of any part of this chapter is void.

(68 Del. Laws, c. 180, § 1.)

§ 2409 Private enforcement.

(a) A buyer injured by a violation of this chapter may bring an action for injunctive relief or recovery of damages, or both. The damages awarded may not be less than the amount paid by the buyer to the credit services organization and may include punitive damages.

(b) In a civil action under subsection (a) of this section, the court, in its discretion, may allow reasonable attorney's fees and court costs to the prevailing buyer.

(68 Del. Laws, c. 180, § 1; 77 Del. Laws, c. 310, § 1.)

§ 2410 Enforcement by the Attorney General.

(a) The Attorney General shall have the same authority to enforce and carry out this subchapter as granted by § 2517 of Title 29 and by §§ 2511-2527 and §§ 2531-2536 of this title.

(b) Any violation of § 2403 of this title shall be deemed an unlawful practice in violation of § 2513 of this title.

(68 Del. Laws, c. 180, § 1; 77 Del. Laws, c. 310, § 1.)

§ 2411 Statute of limitations.

An action may not be brought under § 2409 or § 2410 of this title after 4 years after the date of the execution of the contract for services to which the action relates.

(68 Del. Laws, c. 180, § 1.)

§ 2412 Criminal penalty.

An offense under this chapter is a class B misdemeanor.

(68 Del. Laws, c. 180, § 1.)

§ 2413 Burden of proving exemption.

In an action under this chapter the burden of proving an exemption under § 2402 of this title shall be on the person claiming the exemption.

(68 Del. Laws, c. 180, § 1.)

§ 2414 Remedies cumulative.

The remedies provided by this chapter are in addition to any other remedies provided by law.

(68 Del. Laws, c. 180, § 1.)

Subtitle II
Other Laws Relating to Commerce and Trade

Chapter 24A
Debt-Management Services

§ 2401A Short title.

This chapter may be cited as the "Delaware Uniform Debt-Management Services Act."

(75 Del. Laws, c. 430, § 1.)

§ 2402A Definitions.

In this chapter:

(1) "Affiliate":

(A) With respect to an individual, means:

(i) The spouse of the individual;

(ii) A sibling of the individual or the spouse of a sibling;

(iii) An individual or the spouse of an individual who is a lineal ancestor or lineal descendant of the individual or the individual's spouse;

(iv) An aunt, uncle, great aunt, great uncle, first cousin, niece, nephew, grandniece, or grandnephew, whether related by the whole or the half blood or adoption, or the spouse of any of them; or

(v) Any other individual occupying the residence of the individual; and

(B) With respect to an entity, means:

(i) A person that directly or indirectly controls, is controlled by, or is under common control with the entity;

(ii) An officer of, or an individual performing similar functions with respect to, the entity;

(iii) A director of, or an individual performing similar functions with respect to, the entity;

(iv) Subject to adjustment of the dollar amount pursuant to § 2432A(f) of this title, a person that receives or received more than $25,000 from the entity in either the current year or the preceding year or a person that owns more than 10 percent of, or an individual who is employed by or is a director of, a person that receives or received more than $25,000 from the entity in either the current year or the preceding year;

(v) An officer or director of, or an individual performing similar functions with respect to, a person described in paragraph (1)(B)(i) of this section;

(vi) The spouse of, or an individual occupying the residence of, an individual described in paragraph (1)(B)(i) through (v) of this section; or

(vii) An individual who has the relationship specified in paragraph (1)(A)(iv) of this section to an individual or the spouse of an individual described in paragraph (1)(B)(i) through (v) of this section.

(2) "Agreement" means an agreement between a provider and an individual for the performance of debt-management services.

(3) "Attorney General" means the Attorney General of the State of Delaware or the Attorney General's designee.

(4) "Bank" means a financial institution, including a commercial bank, savings bank, savings and loan association, credit union, mortgage bank, and trust company, engaged in the business of banking, chartered under federal or state law, and regulated by a federal or state banking regulatory authority.

(5) "Business address" means the physical location of a business, including the name and number of a street.

(6) "Certified counselor" means an individual certified by a training program or certifying organization, approved by the Attorney General, that authenticates the competence of individuals providing education and assistance to other individuals in connection with debt-management services.

(7) "Concessions" means assent to repayment of a debt on terms more favorable to an individual than the terms of the contract between the individual and a creditor.

(8) "Day" means calendar day.

(9) "Debt-management services" means services as an intermediary between an individual and 1 or more unsecured creditors of the individual for the purpose of obtaining concessions, but does not include:

(A) Legal services provided in an attorney-client relationship by an attorney licensed or otherwise authorized to practice law in this State;

(B) Accounting services provided in an accountant-client relationship by a certified public accountant licensed to provide accounting services in this State; or

(C) Financial-planning services provided in a financial planner-client relationship by a member of a financial-planning profession whose members the Attorney General, by rule, determines are:

(i) Licensed by this State;

(ii) Subject to a disciplinary mechanism;

(iii) Subject to a code of professional responsibility; and

(iv) Subject to a continuing-education requirement.

(10) "Entity" means a person other than an individual.

(11) "Good faith" means honesty in fact and the observance of reasonable standards of fair dealing.

(12) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, or any other legal or commercial entity. The term does not include a public corporation, government, or governmental subdivision, agency, or instrumentality.

(13) "Plan" means a program or strategy in which a provider furnishes debt-management services to an individual and which includes a schedule of payments to be made by or on behalf of the individual and used to pay debts owed by the individual.

(14) "Principal amount of the debt" means the amount of a debt at the time of an agreement.

(15) "Provider" means a person that provides, offers to provide, or agrees to provide debt-management services directly or through others.

(16) "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.

(17) "Settlement fee" means a charge imposed on or paid by an individual in connection with a creditor's assent to accept in full satisfaction of a debt an amount less than the principal amount of the debt.

(18) "Sign" means, with present intent to authenticate or adopt a record:

(A) To execute or adopt a tangible symbol; or

(B) To attach to or logically associate with the record an electronic sound, symbol, or process.

(19) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(20) "Trust account" means an account held by a provider that is:

(A) Established in an insured bank;

(B) Separate from other accounts of the provider or its designee;

(C) Designated as a trust account or other account designated to indicate that the money in the account is not the money of the provider or its designee; and

(D) Used to hold money of 1 or more individuals for disbursement to creditors of the individuals.

(75 Del. Laws, c. 430, § 1; 70 Del. Laws, c. 186, § 1; 77 Del. Laws, c. 213, § 1.)

§ 2403A Exempt agreements and persons.

(a) This chapter does not apply to an agreement with an individual who the provider has no reason to know resides in this State at the time of the agreement.

(b) This chapter does not apply to a provider to the extent that the provider:

(1) Provides or agrees to provide debt-management, educational, or counseling services to an individual who the provider has no reason to know resides in this State at the time the provider agrees to provide the services; or

(2) Receives no compensation for debt-management services from or on behalf of the individuals to whom it provides the services or from their creditors.

(c) This chapter does not apply to the following persons or their employees when the person or the employee is engaged in the regular course of the person's business or profession:

(1) A judicial officer, a person acting under an order of a court or an administrative agency, or an assignee for the benefit of creditors;

(2) A bank;

(3) An affiliate, as defined in § 2402A(1)(B)(i) of this title, of a bank if the affiliate is regulated by a federal or state banking regulatory authority; or

(4) A title insurer, escrow company, or other person that provides bill-paying services if the provision of debt-management services is incidental to the bill-paying services.

(75 Del. Laws, c. 430, § 1.)

§ 2404A License required.

(a) Except as otherwise provided in subsection (b) of this section, a provider may not provide debt-management services to an individual who it reasonably should know resides in this State at the time it agrees to provide the services, unless the provider is licensed under this chapter.

(b) If a provider is licensed under this chapter, subsection (a) of this section does not apply to an employee or agent of the provider.

(c) The Attorney General shall maintain and publicize a list of the names of all licensed providers.

(75 Del. Laws, c. 430, § 1.)

§ 2405A Application for license — Form, fee, and accompanying documents.

(a) An application for license as a provider must be in a form prescribed by the Attorney General.

(b) An application for a license as a provider must be accompanied by:

(1) A nonrefundable fee of $2,000, which shall be deposited in the State Treasury to the credit of the State Consumer Protection Fund created under § 2527 of this title;

(2) The bond required by § 2413A of this title;

(3) Identification of all trust accounts required by § 2422A of this title, an irrevocable consent authorizing the Attorney General to review and examine the trust accounts, and the overdraft notification agreement required by § 2422A of this title;

(4) Evidence of insurance in the amount of $250,000:

(A) Against the risks of dishonesty, fraud, theft, and other misconduct on the part of the applicant or a director, employee, or agent of the applicant;

(B) Issued by an insurance company authorized to do business in this State and rated at least A by a nationally recognized rating organization;

(C) With no greater than a $5,000 deductible; and

(D) Naming the Attorney General as an additional interested party to receive notice upon cancellation of the policy.

(E) [Repealed.]

(75 Del. Laws, c. 430, § 1; 76 Del. Laws, c. 146, §§ 3, 4, 6.)

§ 2406A Application for license — Required information.

An application for a license must be signed under oath and include:

(1) The applicant's name, principal business address and telephone number, and all other business addresses in this State, electronic-mail addresses, and Internet website addresses;

(2) The name and address of the applicant's registered agent in this State;

(3) All names under which the applicant conducts business;

(4) The address of each location in this State at which the applicant will provide debt-management services or a statement that the applicant will have no such location;

(5) The name and home address of each officer and director of the applicant and each person that owns at least 10 percent of the applicant;

(6) Identification of every jurisdiction in which, during the 5 years immediately preceding the application:

(A) The applicant or any of its officers or directors has been licensed or registered to provide debt-management services; or

(B) Individuals have resided when they received debt-management services from the applicant;

(7) A statement describing, to the extent it is known or should be known by the applicant, any material civil or criminal judgment or litigation and any material administrative or enforcement action by a governmental agency in any jurisdiction against the applicant, any of its officers, directors, owners, or agents, or any person who is authorized to have access to the trust account required by § 2422A of this title;

(8) At minimum, an audited review by a certified accountant of the applicant's financial statements, for each of the 2 years immediately preceding the application or, if it has not been in operation for the 2 years preceding the application, for the period of its existence;

(9) Evidence of accreditation by an independent accrediting organization approved by the Attorney General;

(10) Evidence that, within 12 months after initial employment, each of the applicant's counselors becomes certified as a certified counselor;

(11) A description of the 3 most commonly used educational programs that the applicant provides or intends to provide to individuals who reside in this State and a copy of any materials used or to be used in those programs;

(12) A description of the applicant's financial analysis and initial budget plan, including any form or electronic model, used to evaluate the financial condition of individuals;

(13) A copy of each form of agreement that the applicant will use with individuals who reside in this State;

(14) The schedule of fees and charges that the applicant will use with individuals who reside in this State;

(15) At the applicant's expense, the results of a national criminal history record check, including fingerprints, provided pursuant to the Federal Bureau of Investigation appropriation of Title II of Public Law 92-544 (28 U.S.C. § 534) conducted within the immediately

preceding 12 months, covering every officer of the applicant and every employee or agent who is authorized to have access to the trust account required by § 2422A of this title.

(16) The names and addresses of all employers of each director during the 5 years immediately preceding the application;

(17) A description of any ownership interest of at least 10 percent by a director, owner, or employee of the applicant in:

(A) Any affiliate of the applicant; or

(B) Any entity that provides products or services to the applicant or any individual relating to the applicant's debt-management services;

(18) If a provider has organized as a not for profit entity or has obtained tax exempt status under the Federal Internal Revenue Code, 26 U.S.C. § 501 as amended a statement of the amount of compensation of the applicant's 5 most highly compensated employees for each of the 3 years immediately preceding the application or, if it has not been in operation for the 3 years preceding the application, for the period of its existence; and

(19) The identity of each director who is an affiliate, as defined in § 2402A(1)(A) or (1)(B)(i), (1)(B)(ii), (1)(B)(iv), (1)(B)(v), (1)(B)(vi), or (1)(B)(vii) of this title, of the applicant; and

(20) Any other information that the Attorney General reasonably requires to perform the Attorney General's duties under this chapter.

(75 Del. Laws, c. 430, § 1; 76 Del. Laws, c. 146, § 1.)

§ 2407A Application for license — Obligation to update information.

An applicant or licensed provider shall notify the Attorney General within 10 days after a change in the information specified in § 2405A or § 2406A of this title.

(75 Del. Laws, c. 430, § 1.)

§ 2408A Application for license — Public information.

Except for the information required by § 2406A(8), (15), and (18) of this title and the addresses required by § 2406A(5) of this title, the Attorney General shall make the information in an application for a provider license available to the public.

(75 Del. Laws, c. 430, § 1.)

§ 2409A License — Issuance or denial.

(a) Except as otherwise provided in subsections (b) and (c) of this section, the Attorney General shall issue a provider license to a person who complies with §§ 2405A and 2406A of this title.

(b) The Attorney General may deny a license if:

(1) The application contains information that is materially erroneous or incomplete;

(2) An officer, director, or owner of the applicant has been convicted of a crime, or suffered a civil judgment, involving dishonesty or the violation of state or federal securities laws;

(3) The applicant or any of its officers, directors, or owners has defaulted in the payment of money collected for others; or

(4) The Attorney General finds that the financial responsibility, experience, character, or general fitness of the applicant or its owners, directors, employees, or agents does not warrant belief that the business will be operated in compliance with this chapter.

(c) The Attorney General shall deny a license if:

(1) The application is not accompanied by the fee established pursuant to this chapter; or

(2) With respect to an applicant that has organized as a not-for-profit entity or has obtained tax-exempt status under the Federal Internal Revenue Code, 26 U.S.C. § 501 as amended, the applicant's board of directors is not independent of the applicant's employees and agents.

(d) Subject to adjustment of the dollar amount pursuant to § 2432A(f) of this title, a board of directors is not independent for purposes of subsection (c) of this section if more than $^{1}/_{4}$ of its members:

(1) Are affiliates of the applicant, as defined in § 2402A(1)(A) or (1)(B)(i), (1)(B)(ii), (1)(B)(iv), (1)(B)(v), (1)(B)(vi), or (1)(B)(vii) of this title; or

(2) After the date 10 years before first becoming a director of the applicant, were employed by or directors of a person that received from the applicant more than $25,000 in either the current year or the preceding year.

(75 Del. Laws, c. 430, § 1.)

§ 2410A License — Timing.

(a) The Attorney General shall approve or make a preliminary determination to deny an initial license as a provider within 120 days from the date that the Attorney General determines that the application as filed is complete. In connection with a request pursuant to § 2406A(20) of this title for additional information, the Attorney General may extend the 120-day period for not more than 60 days. Within 7 days after making a preliminary determination to deny an application, the Attorney General, in a record, shall inform the applicant of the reasons for the proposed denial.

(b) If the Attorney General makes a preliminary determination to deny an application for an initial license as a provider, the applicant may file a request for a hearing with the Attorney General pursuant to subchapter IV of the Delaware Administrative Procedures Act, Chapter 101 of Title 29. The Attorney General's preliminary determination may become a final decision if such a request is not timely filed.

(c) Subject to §§ 2411A(d) and 2434A of this title, a provider license is valid for 1 year after the date of issuance.

(75 Del. Laws, c. 430, § 1.)

§ 2411A Renewal of licenses.

(a) A provider must obtain a renewal of its license annually.

(b) An application for renewal of a provider license must be in a form prescribed by the Attorney General signed under oath, and:

(1) Be filed no fewer than 30 and no more than 60 days before the license expires;

(2) Be accompanied by (i) a nonrefundable fee of $1,000, which shall be deposited in the State Treasury to the credit of the State Consumer Protection Fund created under § 2527 of this title, and (ii) the bond required by § 2413A of this title.

(3) Contain the matter required for initial licensing as a provider by § 2406A(9) and (10) of this title and a financial statement, audited by an accountant licensed to conduct audits, for the applicant's fiscal year immediately preceding the application;

(4) Disclose any changes in the information contained in the applicant's application for licensing or its immediately previous application for renewal, as applicable;

(5) Supply evidence of insurance in an amount equal to the larger of $250,000 or the highest daily balance in the trust account required by § 2422A of this title during the 6-month period immediately preceding the application;

(A) Against risks of dishonesty, fraud, theft, and other misconduct on the part of the applicant or a director, employee, or agent of the applicant;

(B) Issued by an insurance company authorized to do business in this State and rated at least "A" by a nationally recognized rating organization;

(C) With no greater than a $5,000 deductible; and

(D) Naming the Attorney General as an additional interested party to receive notice upon cancellation of the policy.

(E) [Repealed.]

(6) If a provider holds money on behalf of a debtor to pay creditors, the provider shall disclose the total amount of money received by the applicant pursuant to plans during the preceding 12 months from or on behalf of individuals who reside in this State and the total amount of money distributed to creditors of those individuals during that period;

(7) Disclose, to the best of the applicant's knowledge, the gross amount of money accumulated during the preceding 12 months pursuant to plans by or on behalf of individuals who reside in this State and with whom the applicant has agreements; and

(8) Provide any other information that the Attorney General reasonably requires to perform the Attorney General's duties under this chapter.

(c) Except for the information required by § 2406A(8), (15), and (18) of this title and the addresses required by § 2406A(5) of this title, the Attorney General shall make the information in an application for renewal of a provider license available to the public.

(d) If a licensed provider files a timely and complete application for renewal of its license, the license remains effective until the Attorney General, in a record, notifies the applicant of a denial and states the reasons for the denial.

(e) If the Attorney General makes a preliminary determination to deny an application for the renewal of a provider license, the applicant may file a request for a hearing with the Attorney General pursuant to subchapter IV of the Delaware Administrative Procedures Act, Chapter 101 of Title 29. The Attorney General's preliminary determination may become a final decision if such a request is not timely filed.

(f) Subject to § 2434A of this title, while the final decision is pending, the applicant shall continue to provide debt-management services to individuals with whom it has agreements. If the Attorney General's final decision is to deny the application, subject to the Attorney General's order and § 2434A of this title, the applicant shall continue to provide debt-management services to individuals with whom it has agreements until, with the Attorney General's approval, it transfers the agreements to another licensed provider or returns to the individuals all unexpended money that is under the applicant's control.

(75 Del. Laws, c. 430, § 1; 76 Del. Laws, c. 146, §§ 2-4.)

§ 2412A License in another state.

If a provider holds a license or certificate of registration in another state authorizing it to provide debt-management services, and the Attorney General has approved the application forms of that state for use under this chapter, the provider may submit a copy of that license or certificate and the application for it in lieu of an application in the form prescribed by § 2405A(a), § 2406A, or § 2411A(b) of this title.

(75 Del. Laws, c. 430, § 1.)

§ 2413A Bond required.

(a) Except as otherwise provided in § 2414A of this title, every licensed provider shall file with the Attorney General, in a form satisfactory to the Attorney General, an original corporate surety bond, with surety provided by a corporation authorized to transact

business in this State, in the principal sum to be determined by the Attorney General, except that the bond amount shall not be less than $50,000. In determining the amount of the bond required for a licensed provider, the Attorney General shall consider, among other things:

(1) The dollar value of the licensed provider's Delaware business;

(2) The dollar value of all trusts accounts; and

(3) Such other and further criteria as the Attorney General may deem necessary and appropriate.

(b) No bond shall be accepted unless the following requirements are satisfied:

(1) The aggregate value of the bond shall be equal to or greater than the amount determined in accordance with subsection (a) of this section;

(2) The term of the bond shall be commensurate with the license period or continuous;

(3) The expiration date of the bond shall not be earlier than midnight of the date on which the license expires; and

(4) The bond shall run to the state for the benefit of the Attorney General and for the benefit of all consumers injured by any wrongful act, omission, default, fraud or misrepresentation by a licensed provider in the course of its activity as a licensed provider. Compensation under the bond shall be for amounts which represent actual losses and shall not be payable for claims made by business creditors, third-party service providers, agents or persons otherwise in the employ of the licensed provider. Surety claims shall be paid to the Attorney General, for the credit of the State Consumer Protection Fund created under § 2527 of this title, by the insurer not later than 90 days after receipt of a claim. Claims paid after 90 days shall be subject to daily interest at the legal rate. The aggregate liability of the surety on the bond, exclusive of any interest which accrues for payments made after 90 days, shall in no event exceed the amount of such bond.

(c) If the licensed provider changes its surety company or the bond is otherwise amended, the licensed provider shall immediately provide the Attorney General with the amended original copy of the surety bond. No cancellation of any existing bond by a surety shall be effective unless written notice of its intention to cancel is filed with the Attorney General at least 30 days before the date upon which cancellation shall take effect.

(d) The Attorney General may require potential claimants to provide such documentation and affirmations as the Attorney General may determine to be necessary and appropriate. In the event the Attorney General determines that multiple consumers have been injured by a licensed provider, the Attorney General shall cause a notice to be published for the purpose of identifying all relevant claims.

(e) When a surety company receives a claim against the bond of a licensed provider, it shall immediately notify the Attorney General and shall not pay any claim unless and until it receives notice to do so from the Attorney General.

(f) The Attorney General shall have a period of 2 calendar years after the effective date of cancellation or termination of the surety bond by the insurer to submit claims to the insurer.

(75 Del. Laws, c. 430, § 1.)

§ 2414A Bond required — Substitute.

(a) In lieu of requiring the filing of a surety bond, the Attorney General may, at the Attorney General's discretion, accept from a licensed provider an irrevocable letter of credit. Such irrevocable letters of credit shall be provided by an insured depository institution (as defined in the Federal Deposit Insurance Act at 12 U.S.C. § 1813(c)) acceptable to the Attorney General, in a form satisfactory to the Attorney General in the principal sum to be determined by the Attorney General, except that the irrevocable letter of credit amount shall not be less than $50,000. In determining the amount of the irrevocable letter of credit required for a licensed provider, the Attorney General shall consider, among other things:

(1) The dollar value of the licensed provider's Delaware business;

(2) The dollar value of all trust accounts; and

(3) Such other and further criteria as the Attorney General may deem necessary and appropriate.

(b) No irrevocable letter of credit shall be accepted unless the following requirements are satisfied:

(1) The aggregate value of the irrevocable letter of credit shall be equal to or greater than the amount determined by subsection (a) of this section;

(2) The irrevocable letter of credit shall run to the State for the benefit of Attorney General, for the credit of the State Consumer Protection Fund created under § 2527 of this title, and for the benefit of all consumers injured by the wrongful act, omission, default, fraud or misrepresentation by a licensed provider in the course of its activity as a licensed provider. Compensation under the irrevocable letter of credit shall be for amounts which represent actual losses and shall not be payable for claims made by business creditors, third-party service providers, agents or persons otherwise in the employ of the licensed provider. The aggregate liability of the insured depository institution issuing the irrevocable letter of credit shall in no event exceed the amount of such irrevocable letter of credit; and

(3) Draws upon such irrevocable letters of credit shall be available by sight drafts thereunder, in amounts determined by the Attorney General, up to the aggregate amount of the irrevocable letter of credit.

(c) The Attorney General may require potential claimants to provide such documentation and affirmations as the Attorney General may determine to be necessary and appropriate. In the event the Attorney General determines that multiple consumers have been injured by a licensed provider, the Attorney General shall cause a notice to be published for the purpose of identifying all relevant claims.

(d) The Attorney General may refuse release of an irrevocable letter of credit, following the surrender of a license, up to 2 years after the effective date of such termination of licensure.

(75 Del. Laws, c. 430, § 1.)

§ 2415A Requirement of good faith.

A provider shall act in good faith in all matters under this chapter.

(75 Del. Laws, c. 430, § 1.)

§ 2416A Customer service.

A provider that is required to be licensed under this chapter shall maintain a toll-free communication system, staffed at a level that reasonably permits an individual to speak to a certified counselor or customer service representative, as appropriate, during ordinary business hours.

(75 Del. Laws, c. 430, § 1.)

§ 2417A Prerequisites for providing debt-management services.

(a) Before providing debt-management services, a licensed provider shall give the individual an itemized list of goods and services and the charges for each. The list must be clear and conspicuous, be in a record the individual may keep whether or not the individual assents to an agreement, and describe the goods and services the provider offers:

(1) Free of additional charge if the individual enters into an agreement;

(2) For a charge if the individual does not enter into an agreement; and

(3) For a charge if the individual enters into an agreement with a provider that holds money on behalf of an individual to pay creditors, using the following terminology, as applicable, and format:

Set-up fee

_____d

amount of fee

Monthly service fee

_____d

amount of fee or method of determining amount

Settlement fee

_____d

amount of fee or method of determining amount

Goods and services in addition to those provided in connection with a plan:

(*item*)

_____

dollar amount or method of determining amount

(*item*)

_____

dollar amount or method of determining amount

(4) For a charge if the individual enters into an agreement with a provider who does not hold money on behalf of a debt to pay creditors, using the following terminology, as applicable, and format:

Non Refundable Set-Up fee

_____D

amount of fee

Monthly service fee

_____D

amount of monthly service

fee

or the aggregate amount for

the

term of the plan or method

of

determining amount

Settlement fee

_____D

amount of fee or method of determining amount

Goods and services in addition to those provided in connection with a plan:

(*item*)

dollar amount or method of determining amount

(*item*)

dollar amount or method of determining amount

The maximum fee that you may be required to pay is 18% of the principal amount of the debt, and includes the set-up fee, monthly fee, settlement fee, or other service charges.

(b) A provider may not furnish debt-management services unless the provider, through the services of a certified counselor:

(1) Provides the individual with reasonable education about the management of personal finance;

(2) Has prepared a financial analysis; and

(3) If the individual is to make regular, periodic payments:

(A) Has prepared a plan for the individual;

(B) Has made a determination, based on the provider's analysis of the information provided by the individual and otherwise available to it, that the plan is suitable for the individual and the individual will be able to meet the payment obligations under the plan or that the creditor will likely engage in negotiations with the provider; and

(C) Believes that each creditor of the individual listed as a participating creditor in the plan will accept likely payment of the individual's debts as provided in the plan.

(c) Before an individual assents to an agreement to engage in a plan, a provider shall:

(1) Provide the individual with a copy of the analysis and plan required by subsection (b) of this section in a record that identifies the provider and that the individual may keep whether or not the individual assents to the agreement;

(2) Inform the individual of the availability, at the individual's option, of assistance by a toll free communication system or in person to discuss the financial analysis and plan required by subsection (b) of this section; and

(3) With respect to all creditors identified by the individual or otherwise known by the provider to be creditors of the individual, inform the individual that some creditors may be unwilling to negotiate with the provider.

(d) Before an individual assents to an agreement to engage in a plan, the provider shall inform the individual, in a record that contains nothing else, that is given separately, and that the individual may keep whether or not the individual assents to the agreement:

(1) Of the name and business address of the provider;

(2) That plans are not suitable for all individuals and the individual may ask the provider about other ways, including bankruptcy, to deal with indebtedness;

(3) That establishment of a plan may adversely affect the individual's credit rating or credit scores;

(4) That nonpayment of debt may lead creditors to increase finance and other charges or undertake collection activity, including litigation;

(5) Unless it is not true, that the provider may receive compensation from the creditors of the individual; and

(6) That, unless the individual is insolvent, if a creditor settles for less than the full amount of the debt, the plan may result in the creation of taxable income to the individual, even though the individual does not receive any money.

(e) If a provider may receive payments from an individual's creditors and the plan contemplates that the individual's creditors will reduce finance charges or fees for late payment, default, or delinquency, the provider may comply with subsection (d) of this section by providing the following disclosure, surrounded by black lines:

IMPORTANT INFORMATION FOR YOU TO CONSIDER

(1) Debt-management plans are not right for all individuals, and you may ask us to provide information about other ways, including bankruptcy, to deal with your debts.

(2) Using a debt-management plan may hurt your credit rating or credit scores.

(3) We may receive compensation for our services from your creditors.

Name and business address of provider

(f) If a provider will not receive payments from an individual's creditors and the plan contemplates that the individual's creditors will reduce finance charges or fees for late payment, default, or delinquency, a provider may comply with subsection (d) of this section by providing the following disclosure, surrounded by black lines:

IMPORTANT INFORMATION FOR YOU TO CONSIDER

(1) Debt-management plans are not right for all individuals, and you may ask us to provide information about other ways, including bankruptcy, to deal with your debts.

(2) Using a debt-management plan may hurt your credit rating or credit scores.

_____

Name and business address of provider

(g) If a plan contemplates that creditors will settle debts for less than the full principal amount of debt owed, a provider may comply with subsection (d) of this section by providing the following disclosure, surrounded by black lines:

IMPORTANT INFORMATION FOR YOU TO CONSIDER

(1) Our program is not right for all individuals, and you may ask us to provide information about bankruptcy and other ways to deal with your debts.

(2) Nonpayment of your debts under our program may

• Hurt your credit rating or credit scores;

• Lead your creditors to increase finance and other charges; and

• Lead your creditors to undertake activity, including lawsuits, to collect the debts.

(3) Reduction of debt under our program may result in taxable income to you, even though you will not actually receive any money.

_____

Name and business address of provider

(75 Del. Laws, c. 430, § 1.)

§ 2418A Communication by electronic or other means.

(a) In this section:

(1) "Federal act" means the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. § 7001 et seq., as amended;

(2) "Consumer" means an individual who seeks or obtains goods or services that are used primarily for personal, family, or household purposes.

(b) A provider may satisfy the requirements of § 2417A, § 2419A, or § 2427A of this title by means of the Internet or other electronic means if the provider obtains a consumer's consent in the manner provided by § 101(c)(1) of the federal act [15 U.S.C. § 7001(c)(1)].

(c) The disclosures and materials required by §§ 2417A, 2419A, and 2427A of this title shall be presented in a form that is capable of being accurately reproduced for later reference.

(d) With respect to disclosure by means of an Internet website, the disclosure of the information required by § 2417A(d) of this title must appear on 1 or more screens that:

(1) Contain no other information; and

(2) The individual must see before proceeding to assent to formation of a plan.

(e) At the time of providing the materials and agreement required by §§ 2417A(c) and (d), 2419A, and 2427A of this title, a provider shall inform the individual that upon electronic, telephonic, or written request, it will send the individual a written copy of the materials and shall comply with a request as provided in subsection (f) of this section.

(f) If a provider is requested, before the expiration of 90 days after a plan is completed or terminated, to send a written copy of the materials required by §§ 2417A(c) and (d), 2419A or § 2427A of this title, the provider shall send them at no charge within 3 business days after the request, but the provider need not comply with a request more than once per calendar month or if it reasonably believes the request is made for purposes of harassment. If a request is made more than 90 days after a plan is completed or terminated, the provider shall send within a reasonable time a written copy of the materials requested.

(g) A provider that maintains an Internet website shall disclose on the home page of its website or on a page that is clearly and conspicuously connected to the home page by a link that clearly reveals its contents:

(1) Its name and all names under which it does business;

(2) Its principal business address, telephone number, and electronic mail address, if any; and

(3) The names of its principal officers.

(h) Subject to subsection (i) of this section, if a consumer who has consented to electronic communication in the manner provided by § 101 of the federal act [15 U.S.C. § 7001] withdraws consent as provided in the federal act, a provider may terminate its agreement with the consumer.

(i) If a provider wishes to terminate an agreement with a consumer pursuant to subsection (h) of this section, it shall notify the consumer that it will terminate the agreement unless the consumer, within 30 days after receiving the notification, consents to electronic communication in the manner provided in § 101(c) of the federal act [15 U.S.C. § 7001(c)]. If the consumer consents, the provider may terminate the agreement only as permitted by § 2419A(a)(6)(G) of this title.

(75 Del. Laws, c. 430, § 1.)

§ 2419A Form and contents of agreement.

(a) An agreement must:

(1) Be in a record;

(2) Be dated and signed by the provider and the individual;

(3) Include the name of the individual and the address where the individual resides;

(4) Include the name, business address, and telephone number of the provider;

(5) Be delivered to the individual immediately upon formation of the agreement; and

(6) Disclose:

(A) The services to be provided;

(B) The amount or method of determining the amount of all fees, individually itemized, to be paid by the individual;

(C) The schedule of payments to be made by or on behalf of the individual, including the amount of each payment, the date on which each payment is due, and an estimate of the date of the final payment;

(D) If a plan provides for regular periodic payments to creditors:

(i) Each creditor of the individual to which payment will be made, the amount owed to each creditor, and any concessions the provider reasonably believes each creditor will offer; and

(ii) The schedule of expected payments to each creditor, including the amount of each payment and the date on which it will be made;

(E) Each creditor that the provider believes will not participate in the plan and to which the provider will not direct payment;

(F) How the provider will comply with its obligations under § 2427A(a) of this title;

(G) That the provider may terminate the agreement for good cause, upon return of unexpended money of the individual;

(H) That the individual may cancel the agreement as provided in § 2420A of this title;

(I) That the individual may contact the Attorney General with any questions or complaints regarding the provider; and

(J) The address, telephone number, and Internet address or website of the Attorney General.

(b) For purposes of paragraph (a)(5) of this section, delivery of an electronic record occurs when it is made available in a format in which the individual may retrieve, save, and print it and the individual is notified that it is available.

(c) If the Attorney General supplies the provider with any information required under paragraph (a)(6)(J) of this section, the provider may comply with that requirement only by disclosing the information supplied by the Attorney General.

(d) An agreement must provide that:

(1) The individual has a right to terminate the agreement at any time, without penalty or obligation, by giving the provider written or electronic notice, in which event:

(A) The provider will refund all unexpended money that the provider or its agent has received from or on behalf of the individual for the reduction or satisfaction of the individual's debt;

(B) With respect to an agreement that contemplates that creditors will settle debts for less than the principal amount of debt, the provider will refund 65 percent of fees associated with that percentage of the principal amount remaining unsettled at the time of the termination; and

(C) All powers of attorney granted by the individual to the provider are revoked and ineffective;

(2) The individual authorizes any bank in which the provider or its agent has established a trust account to disclose to the Attorney General any financial records relating to the trust account; and

(3) The provider will notify the individual within 5 days after learning of a creditor's decision to reject or withdraw from a plan and that this notice will include:

(A) The identity of the creditor; and

(B) The right of the individual to modify or terminate the agreement.

(e) An agreement may confer on a provider a power of attorney to settle the individual's debt for no more than 50 percent of the amount of the debt. An agreement may not confer a power of attorney to settle a debt for more than 50 percent of that amount, but may confer a power of attorney to negotiate with creditors of the individual on behalf of the individual. An agreement must provide that the provider will obtain the assent of the individual after a creditor has assented to a settlement for more than 50 percent of the amount of the debt.

(f) An agreement may not:

(1) Provide for application of the law of any jurisdiction other than the United States and this State;

(2) Except as permitted by Section 2 of the Federal Arbitration Act, 9 U.S.C. § 2, as amended, or the Delaware Uniform Arbitration Act, Chapter 57 of Title 10, contain a provision that modifies or limits otherwise available forums or procedural rights, including the right to trial by jury, that are generally available to the individual under law other than this chapter;

(3) Contain a provision that restricts the individual's remedies under this chapter or law other than this chapter; or

(4) Contain a provision that:

(A) Limits or releases the liability of any person for not performing the agreement or for violating this chapter; or

(B) Indemnifies any person for liability arising under the agreement or this chapter.

(g) All rights and obligations specified in subsection (d) of this section and § 2420A of this title exist even if not provided in the agreement. A provision in an agreement which violates subsection (d), (e), or (f) of this section is void.

(75 Del. Laws, c. 430, § 1.)

§ 2420A Cancellation of agreement; waiver.

(a) An individual may cancel an agreement before midnight of the third business day after the individual assents to it, unless the agreement does not comply with subsection (b) of this section or § 2419A or 2428A of this title, in which event the individual may cancel the agreement within 30 days after the individual assents to it. To exercise the right to cancel, the individual must give notice in a record to the provider. Notice by mail is given when mailed.

(b) An agreement must be accompanied by a form that contains in bold-face type surrounded by bold black lines:

Notice of Right to Cancel

You may cancel this agreement, without any penalty or obligation, at any time before midnight of the third business day that begins the day after you agree to it by electronic communication or by signing it.

To cancel this agreement during this period, send an e-mail to ___ *E-mail address of provider* or mail or deliver a signed, dated copy of this notice, or any other written notice to ___ *Name of provider* at ___ *Address of provider* before midnight on ___ *Date*

If you cancel this agreement within the 3-day period, we will refund all money you already have paid us.

You also may terminate this agreement at any later time, but we are not required to refund fees you have paid us.

I cancel this agreement,

_____ *Print your name*

_____ *Signature*

_____ *Date*

(c) If a personal financial emergency necessitates the disbursement of an individual's money to 1 or more of the individual's creditors before the expiration of 3 days after an agreement is signed, an individual may waive the right to cancel. To waive the right, the individual must send or deliver a signed, dated statement in the individual's own words describing the circumstances that necessitate a waiver. The waiver must explicitly waive the right to cancel. A waiver by means of a standard-form record is void.

(75 Del. Laws, c. 430, § 1.)

§ 2421A Required language.

Unless the Attorney General, by rule, provides otherwise, the disclosures and documents required by this chapter must be in English. If a provider communicates with an individual primarily in a language other than English, the provider must furnish a translation into the other language of the disclosures and documents required by this chapter.

(75 Del. Laws, c. 430, § 1.)

§ 2422A Trust account.

(a) All money paid to a provider by or on behalf of an individual pursuant to a plan for distribution to creditors is held in trust. Within 2 business days after receipt, the provider shall deposit the money in a trust account established for the benefit of individuals to whom the provider is furnishing debt-management services.

(b) Money held in trust by a provider is not property of the provider or its designee. The money is not available to creditors of the provider or designee, except an individual from whom or on whose behalf the provider received money, to the extent that the money has not been disbursed to creditors of the individual.

(c) A provider shall:

(1) Maintain separate records of account for each individual to whom the provider is furnishing debt-management services;

(2) Disburse money paid by or on behalf of the individual to creditors of the individual as disclosed in the agreement, except that:

(A) The provider may delay payment to the extent that a payment by the individual is not final; and

(B) If a plan provides for regular periodic payments to creditors, the disbursement must comply with the due dates established by each creditor; and

(3) Promptly correct any payments that are not made or that are misdirected as a result of an error by the provider or other person in control of the trust account and reimburse the individual for any costs or fees imposed by a creditor as a result of the failure to pay or misdirection.

(d) A provider may not commingle money in a trust account established for the benefit of individuals to whom the provider is furnishing debt-management services with money of other persons.

(e) A trust account must at all times have a cash balance equal to the sum of the balances of each individual's account.

(f) If a provider has established a trust account pursuant to subsection (a) of this section, the provider shall reconcile the trust account at least once a month. The reconciliation must compare the cash balance in the trust account with the sum of the balances in each individual's account. If the provider or its designee has more than 1 trust account, each trust account must be individually reconciled.

(g) If a provider discovers, or has a reasonable suspicion of, embezzlement or other unlawful appropriation of money held in trust, the provider immediately shall notify the Attorney General by a method approved by the Attorney General. Unless the Attorney General by rule provides otherwise, within 5 days thereafter, the provider shall give notice to the Attorney General describing the remedial action taken or to be taken.

(h) If an individual terminates an agreement or it becomes reasonably apparent to a provider that a plan has failed, the provider shall promptly refund to the individual all money paid by or on behalf of the individual which has not been paid to creditors, less fees that are payable to the provider under § 2423A of this title.

(i) Before relocating a trust account from 1 bank to another, a provider shall inform the Attorney General of the name, business address, and telephone number of the new bank. As soon as practicable, the provider shall inform the Attorney General of the account number of the trust account at the new bank.

(j) A provider shall be deemed not to hold a trust account for disbursement to creditors if such client funds are either:

(1) Retained by the client in a bank of their choosing at all times prior to their disbursement to the clients' creditors; or

(2) Deposited by the client in a bank or with a third party designated by the provider, in an account having the following characteristics:

(A) It is in the name of the client;

(B) It is not subject to claims of the creditors of any party other than the client; or

(C) The client exercises full control over all aspects of the account.

(k), (l) [Repealed.]

(75 Del. Laws, c. 430, § 1; 76 Del. Laws, c. 146, § 5.)

§ 2423A Fees and other charges.

(a) A provider may not impose directly or indirectly a fee or other charge on an individual or receive money from or on behalf of an individual for debt-management services except as permitted by this section.

(b) A provider may not impose charges or receive payment for debt-management services until the provider and the individual have signed an agreement that complies with §§ 2419A and 2428A of this title.

(c) If an individual assents to an agreement, a provider may not impose a fee or other charge for educational or counseling services, or the like, except as otherwise provided in this subsection and § 2428A(d) of this title. The Attorney General may authorize a provider to charge a fee based on the nature and extent of the educational or counseling services furnished by the provider.

(d) Subject to adjustment of dollar amounts pursuant to § 2432A(f) of this title, the following rules apply:

(1) If an individual assents to a plan that contemplates that creditors will reduce finance charges or fees for late payment, default, or delinquency, the provider may charge:

(A) A fee not exceeding $50 for consultation, obtaining a credit report, setting up an account, and the like; and

(B) A monthly service fee, not to exceed $10 times the number of creditors remaining in a plan at the time the fee is assessed, but not more than $50 in any month.

(2) If an individual assents to a plan that contemplates that creditors will settle debts for less than the principal amount of the debt, a provider may charge:

(A) Subject to § 2419A(d) of this title, a nonrefundable fee for consultation, obtaining a credit report,

(B) A monthly service fee,

(C) A settlement fee. In no case shall aggregate fees exceed 18 percent of the total principal amount of the debt.

(3) A provider may not impose or receive fees under both paragraphs (d)(1) and (d)(2) of this section.

(4) Except as otherwise provided in § 2428A(d) of this section, if an individual does not assent to an agreement, a provider may receive for educational and counseling services it provides to the individual a fee not exceeding $100 or, with the approval of the Attorney General, a larger fee. The Attorney General may approve a fee larger than $100 if the nature and extent of the educational and counseling services warrant the larger fee.

(e) If, before the expiration of 90 days after the completion or termination of educational or counseling services, an individual assents to an agreement, the provider shall refund to the individual any fee paid pursuant to paragraph (d)(4) of this section.

(f) Except as otherwise provided in subsections (c) and (d) of this section, if a plan contemplates that creditors will settle an individual's debts for less than the principal amount of the debt, compensation for services in connection with settling a debt may not exceed, with respect to each debt:

(1) Eighteen percent of the principal amount; less

(2) To the extent it has not been credited against an earlier settlement fee:

(A) The fee charged pursuant to paragraph (d)(2)(A) of this section; and

(B) The aggregate of fees charged pursuant to paragraph (d)(2)(B) of this section.

(g) Subject to adjustment of the dollar amount pursuant to § 2432A(f) of this section, if a payment to a provider by an individual under this chapter is dishonored, a provider may impose a reasonable charge on the individual, not to exceed the lesser of $25 and the amount permitted by law other than this chapter.

(75 Del. Laws, c. 430, § 1.)

§ 2424A Voluntary contributions.

A provider may not solicit a voluntary contribution from an individual or an affiliate of the individual for any service provided to the individual. A provider may accept voluntary contributions from an individual but, until 30 days after completion or termination of a plan, the aggregate amount of money received from or on behalf of the individual may not exceed the total amount the provider may charge the individual under § 2423A of this title.

(75 Del. Laws, c. 430, § 1.)

§ 2425A Voidable agreements.

(a) If a provider imposes a fee or other charge or receives money or other payments not authorized by § 2423A or § 2424A of this title, the individual may void the agreement and recover as provided in § 2435A of this title.

(b) If a provider is not licensed as required by this chapter when an individual assents to an agreement, the agreement is voidable by the individual.

(c) If an individual voids an agreement under subsection (b) of this section, the provider does not have a claim against the individual for breach of contract or for restitution.

(75 Del. Laws, c. 430, § 1.)

§ 2426A Termination of agreements.

(a) If an individual who has entered into an agreement fails for 60 days to make payments required by the agreement, a provider may terminate the agreement.

(b) If a provider holds money on behalf of a debtor to pay creditors and a provider or an individual terminates an agreement, the provider shall immediately return to the individual:

(1) Any money of the individual held in trust for the benefit of the individual; and

(2) Sixty-five percent of any portion of the set-up fee received pursuant to § 2423A(d)(2) of this title which has not been credited against settlement fees.

(c) If a provider does not hold money on behalf of a debtor to pay creditors and if a provider or an individual terminates an agreement, the provider shall immediately return to the individual 65 percent of fees associated with that percentage of the principal amount remaining unsettled at the time of termination.

(75 Del. Laws, c. 430, § 1.)

§ 2427A Periodic reports and retention of records.

(a) A provider shall provide the accounting required by subsection (b) of this section:

(1) Upon cancellation or termination of an agreement; and

(2) Before cancellation or termination of any agreement:

(A) At least once each month; and

(B) Within 5 business days after a request by an individual, but the provider need not comply with more than 1 request in any calendar month.

(b) A provider, in a record, shall provide each individual for whom it has established a plan an accounting of the following information:

(1) The amount of money received from the individual since the last report;

(2) The amounts and dates of disbursement made on the individual's behalf, or by the individual upon the direction of the provider, since the last report to each creditor listed in the plan;

(3) The amounts deducted from the amount received from the individual;

(4) The amount held in reserve; and

(5) If, since the last report, a creditor has agreed to accept as payment in full an amount less than the principal amount of the debt owed by the individual:

(A) The total amount and terms of the settlement;

(B) The amount of the debt when the individual assented to the plan;

(C) The amount of the debt when the creditor agreed to the settlement; and

(D) The calculation of a settlement fee.

(c) A provider shall maintain records for each individual for whom it provides debt-management services for a minimum of 5 years after the final payment made by the individual and produce a copy of them to the individual within a reasonable time after a request for them.

(d) (1) Every provider shall maintain such books, accounts and records relating to all transactions within this chapter as will enable the Attorney General to enforce full compliance with this chapter;

(2) All books, accounts and records of the provider shall be preserved and kept available as provided in this chapter or for such longer period of time as the Attorney General may by regulation require; and

(3) The Attorney General may prescribe the minimum information to be shown in such books, accounts and records of the provider so that such records will enable the Attorney General to determine compliance with this chapter.

(e) The provider may use electronic or other means of storage of all books, accounts and records that it is required to maintain.

(75 Del. Laws, c. 430, § 1.)

§ 2428A Prohibited acts and practices.

(a) A provider may not, directly or indirectly:

(1) Misappropriate or misapply money held in trust;

(2) Settle a debt on behalf of an individual for more than 50 percent of the amount of the debt owed a creditor, unless the individual assents to the settlement after the creditor has assented;

(3) Take a power of attorney that authorizes it to settle a debt, unless the power of attorney expressly limits the provider's authority to settle debts for not more than 50 percent of the amount of the debt owed a creditor;

(4) Exercise or attempt to exercise a power of attorney after an individual has terminated an agreement;

(5) Initiate a transfer from an individual's account at a bank or with another person unless the transfer is:

(A) A return of money to the individual; or

(B) Before termination of an agreement, properly authorized by the agreement and this chapter, and for:

(i) Payment to one or more creditors pursuant to a plan; or

(ii) Payment of a fee;

(6) Offer a gift or bonus, premium, reward, or other compensation to an individual for executing an agreement;

(7) Offer, pay, or give a gift or bonus, premium, reward, or other compensation to a person for referring a prospective customer, if the person making the referral has a financial interest in the outcome of debt-management services provided to the customer, unless neither the provider nor the person making the referral communicates to the prospective customer the identity of the source of the referral;

(8) Receive a bonus, commission, or other benefit for referring an individual to a person;

(9) Structure a plan in a manner that would result in a negative amortization of any of an individual's debts, unless a creditor that is owed a negatively amortizing debt agrees to refund or waive the finance charge upon payment of the principal amount of the debt;

(10) Compensate its employees on the basis of a formula that incorporates the number of individuals the employee induces to enter into agreements;

(11) Settle a debt or lead an individual to believe that a payment to a creditor is in settlement of a debt to the creditor unless, at the time of settlement, the individual receives a certification by the creditor that the payment is in full settlement of the debt;

(12) Make a representation that:

(A) The provider will furnish money to pay bills or prevent attachments;

(B) Payment of a certain amount will permit satisfaction of a certain amount or range of indebtedness; or

(C) Participation in a plan will or may prevent litigation, garnishment, attachment, repossession, foreclosure, eviction, or loss of employment;

(13) Misrepresent that it is authorized or competent to furnish legal advice or perform legal services;

(14) Represent that it is a not-for-profit entity unless it is organized and properly operating as a not-for-profit under the law of the state in which it was formed or that it is a tax-exempt entity unless it has received certification of tax-exempt status from the United States Internal Revenue Service;

(15) Take a confession of judgment or power of attorney to confess judgment against an individual; or

(16) Employ an unfair, unconscionable, or deceptive act or practice, including the knowing omission of any material information.

(b) If a provider furnishes debt-management services to an individual, the provider may not, directly or indirectly:

(1) Purchase a debt or obligation of the individual;

(2) Receive from or on behalf of the individual:

(A) A promissory note or other negotiable instrument other than a check or a demand draft; or

(B) A post-dated check or demand draft;

(3) Lend money or provide credit to the individual, except as a deferral of a settlement fee at no additional expense to the individual;

(4) Obtain a mortgage or other security interest from any person in connection with the services provided to the individual;

(5) Except as permitted by federal law, disclose the identity or identifying information of the individual or the identity of the individual's creditors, except to:

(A) The Attorney General, upon proper demand;

(B) A creditor of the individual, to the extent necessary to secure the cooperation of the creditor in a plan; or

(C) The extent necessary to administer the plan;

(6) Except as otherwise provided in § 2423A(f) of this section, provide the individual less than the full benefit of a compromise of a debt arranged by the provider;

(7) Charge the individual for or provide credit or other insurance, coupons for goods or services, membership in a club, access to computers or the Internet, or any other matter not directly related to debt-management services or educational services concerning personal finance;

(8) Furnish legal advice or perform legal services, unless the person furnishing that advice to or performing those services for the individual is licensed to practice law; or

(9) Advise, encourage, or suggest to the individual not to make payment to creditors while under the plan.

(c) This chapter does not authorize any person to engage in the practice of law.

(d) A provider may not receive a gift or bonus, premium, reward or other compensation, directly or indirectly, for advising, arranging, or assisting an individual in connection with obtaining an extension of credit or other service from a lender or service provider, except for educational or counseling services required in connection with a government-sponsored program.

(e) Unless a person supplies goods, services, or facilities generally and supplies them to the provider at a cost no greater than the cost the person generally charges to others, a provider may not purchase goods, services, or facilities from the person if an employee or a person that the provider should reasonably know is an affiliate of the provider:

(1) Owns more than 10 percent of the person; or

(2) Is an employee or affiliate of the person.

(75 Del. Laws, c. 430, § 1.)

§ 2429A Notice of litigation.

No later than 30 days after a provider has been served with notice of a civil action for violation of this chapter by or on behalf of an individual who resides in this state at either the time of an agreement or the time the notice is served, the provider shall notify the Attorney General in a record that it has been sued.

(75 Del. Laws, c. 430, § 1.)

§ 2430A Advertising.

A provider that advertises debt-management services shall disclose in an easily comprehensible manner the information specified in § 2417A(d)(3) and (4) of this title.

(75 Del. Laws, c. 430, § 1.)

§ 2431A Liability for the conduct of other persons.

If a provider delegates any of its duties or obligations under an agreement or this chapter to another person, including an independent contractor, the provider is liable for conduct of the person which, if done by the provider, would violate the agreement or this chapter.

(75 Del. Laws, c. 430, § 1.)

§ 2432A Powers of Attorney General.

(a) The Attorney General may act on the Attorney General's own initiative or in response to complaints, and may receive complaints, take action to obtain voluntary compliance with this chapter, and seek or provide remedies as provided in this chapter.

(b) Every provider licensed under this chapter, or other person to whom a provider has delegated its obligations under an agreement or this chapter, shall be subject to the supervision and examination of the Attorney General and shall be examined by the Attorney General or the Attorney General's authorized representative annually or at such intervals as the Attorney General deems necessary.

(1) On the occasion of every examination, the Attorney General or the Attorney General's authorized representative shall be given access to every part of the office or place of business visited and to the assets, securities, books, records and papers of the business;

(2) The examination made by the Attorney General or the Attorney General's authorized representative shall be a thorough examination into the affairs of the business visited, the resources and liabilities, the investment of the funds, the mode of conducting

the business and the compliance or noncompliance with this Code and any other statutes of the State; and in connection with such examination, the Attorney General or the Attorney General's authorized representative may examine, under oath or affirmation, any and all persons connected with or associated with the licensed provider.

(3) If, in the Attorney General's opinion, it is necessary for a thorough examination of a licensed provider, the Attorney General may retain 1 or more accountants, attorneys, appraisers or other third parties to assist the Attorney General in such examination. Within 10 days after receipt of a statement from the Attorney General, such licensed provider shall pay or reimburse the fees, costs and expenses of any third parties retained by the Attorney General under this subsection.

(c) The Attorney General may seek a court order authorizing seizure from a bank at which the person maintains a trust account required by § 2422A of this title, any or all money, books, records, accounts, and other property of the provider that is in the control of the bank and relates to individuals who reside in this State.

(d) The Attorney General may enter into cooperative arrangements with any other federal or state agency having authority over providers and may exchange with any of those agencies information about a provider, including information obtained during an examination of the provider.

(e) The Attorney General shall assess fees to be paid by providers for the expense of administering this chapter, including examination, application and renewal fees, in accordance with this chapter. All fees shall be paid to the State Consumer Protection Fund created under § 2527 of this title.

(f) The Attorney General may adopt dollar amounts instead of those specified in §§ 2402A, 2409A, and 2423A of this title to reflect inflation, as measured by the United States Bureau of Labor Statistics Consumer Price Index for All Urban Consumers or, if that index is not available, another index adopted by rule by the Attorney General. The Attorney General shall adopt a base year and adjust the dollar amounts, effective on July 1 of each year, if the change in the index from the base year, as of December 31 of the preceding year, is at least 10 percent. The dollar amount must be rounded to the nearest $100, except that the amounts in § 2423A of this title must be rounded to the nearest dollar.

(g) The Attorney General shall notify licensed providers of any change in dollar amounts made pursuant to subsection (f) of this section and make that information available to the public.

(h) The Attorney General may adopt such regulations, not inconsistent herewith, as the Attorney General may deem necessary or appropriate in the administration, interpretation and enforcement of this chapter. Subchapter II of the Delaware Administrative Procedures Act, Chapter 101 of Title 29 shall apply to the procedures for adopting such regulations.

(75 Del. Laws, c. 430, § 1.)

§ 2433A Administrative remedies.

(a) In addition to any other enforcement method specified in this Code, the Attorney General may enforce this chapter and the rules adopted under this chapter by taking one or more of the following actions:

(1) Ordering a provider or a director, employee, or other agent of a provider to cease and desist from any violations;

(2) Ordering a provider or a person that has caused a violation to correct the violation, including making restitution of money or property to a person aggrieved by a violation;

(3) Imposing on a provider or a person that has caused a violation a civil penalty not exceeding $50,000 for each violation;

(4) Prosecuting a civil action to:

(A) Enforce an order; or

(B) Obtain restitution or an injunction or other equitable relief, or both;

(5) Intervening in an action brought under § 2435A of this title.

(b) If a person violates or knowingly authorizes, directs, or aids in the violation of a final order issued under paragraph (a)(1) or (a)(2) of this section, the Attorney General may impose a civil penalty not exceeding $75,000 for each violation.

(c) In determining the amount of a civil penalty to impose under subsection (a) or (b) of this section, the Attorney General shall consider the seriousness of the violation, the good faith of the violator, any previous violations by the violator, the deleterious effect of the violation on the public, the net worth of the violator, and any other factor the Attorney General considers relevant to the determination of the civil penalty.

(d) Any civil penalty imposed under subsection (a) or (b) of this section shall be paid to the State Treasurer for deposit in the General Fund.

(e) Service of any notice or order issued pursuant to paragraph (a)(1), (a)(2), (a)(3) or subsection (b) of this section may be effected in any manner that is allowed for service of a complaint in the Superior Court of this State.

(f) The Attorney General may recover from the violator all reasonable costs of enforcing this chapter under subsections (a) and (b) of this section, including attorney's fees based on the hours reasonably expended and the hourly rates for attorneys of comparable experience in the community, and also including the compensation of all employees of the Attorney General's office based on the time they reasonably expended on the matter.

(g) (1) Except as provided in paragraph (g)(2) of this section, an order issued under paragraph (a)(1), (a)(2), (a)(3), or subsection (b) of this section shall not become effective less than 10 days after the order is served. After an order is served, but before its effective date, any interested party may petition the Attorney General for a hearing. At the conclusion of such hearing, the Attorney General may affirm the order as originally issued, or modify, amend or rescind the order.

(2) Whenever in the opinion of the Attorney General, the violation that is the subject of an order under paragraph (a)(1) or (a)(2) of this section represents an immediate danger or substantial harm to the interests of any person aggrieved by a violation or the public, or where such violation or its continuance is likely to cause insolvency or substantial dissipation of the assets of a provider, the Attorney General may issue an order which shall become effective immediately upon service, without prior notice or hearing. Upon application of any interested party, the Attorney General shall afford an opportunity for a hearing to consider rescission of that order or any action taken promptly thereafter.

(3) Upon receipt of a hearing request, the Attorney General shall conduct a proceeding pursuant to subchapter III of the Delaware Administrative Procedures Act, Chapter 101 of Title 29. Notwithstanding any other provision of this Code, any final order under this section will be a public record.

(75 Del. Laws, c. 430, § 1.)

§ 2434A Suspension, revocation, or nonrenewal of license.

(a) In this section "insolvent" means:

(1) Having generally ceased to pay debts in the ordinary course of business other than as a result of good-faith dispute;

(2) Being unable to pay debts as they become due; or

(3) Being insolvent within the meaning of the federal bankruptcy law, 11 U.S.C. § 101 et seq., as amended.

(b) The Attorney General may suspend, revoke, or deny renewal of a provider's license if:

(1) A fact or condition exists that, if it had existed when the licensed provider applied for its provider license, would have been a reason for denying the license;

(2) The provider has committed a material violation of this chapter or a rule or order of the Attorney General under this chapter;

(3) The provider is insolvent;

(4) The provider or an employee or affiliate of the provider has refused to permit the Attorney General to make an examination authorized by this chapter; or

(5) The provider has not responded within a reasonable time and in an appropriate manner to communications from the Attorney General.

(c) If a provider does not comply with § 2422A(f) of this title or if the Attorney General otherwise finds that the public health or safety or general welfare requires emergency action, the Attorney General may order a summary suspension of the provider's license, effective on the date specified in the order.

(d) If the Attorney General suspends, revokes, or denies the renewal of a provider license, the Attorney General may seek a court order authorizing seizure of any or all of the money in a trust account required by § 2422A of this title, as well as all books, records, accounts, and other property of the provider which are located in this State.

(e) If the Attorney General makes a preliminary determination to suspend or revoke a provider's license, the provider may file a request for a hearing with the Attorney General pursuant to subchapter IV of the Delaware Administrative Procedures Act, Chapter 101 of Title 29. The Attorney General's preliminary determination may become a final decision if such a request is not timely filed. Notwithstanding any other provisions of this Code, any final order under this section will be a public record.

(75 Del. Laws, c. 430, § 1.)

§ 2435A Private enforcement.

(a) If an individual voids an agreement pursuant to § 2425A(b) of this title, the individual may recover in a civil action all money paid or deposited by or on behalf of the individual pursuant to the agreement, except amounts paid to creditors, in addition to the recovery under paragraphs (c)(3) and (c)(4) of this section.

(b) If an individual voids an agreement pursuant to § 2425A(a) of this title, the individual may recover in a civil action 3 times the total amount of the fees, charges, money, and payments made by the individual to the provider, in addition to the recovery under paragraph (c)(4) of this section.

(c) Subject to subsection (d) of this section, an individual with respect to whom a provider violates this chapter may recover in a civil action from the provider and any person that caused the violation:

(1) Compensatory damages for injury, including noneconomic injury, caused by the violation;

(2) Except as otherwise provided in subsection (d) of this section, with respect to a violation of § 2417A, § 2419A, § 2420A, § 2421A, § 2422A, § 2423A, § 2424A, § 2427A, or § 2428A(a), (b), or (d) of this title, the greater of the amount recoverable under paragraph (c)(1) of this section or $5,000;

(3) Punitive damages; and

(4) Reasonable attorney's fees and costs.

(d) In a class action, except for a violation of § 2428A(a)(5) of this title, the minimum damages provided in paragraph (c)(2) of this section do not apply.

(e) In addition to the remedy available under subsection (c) of this section, if a provider violates an individual's rights under § 2420A of this title, the individual may recover in a civil action all money paid or deposited by or on behalf of the individual pursuant to the agreement, except for amounts paid to creditors.

(f) A provider is not liable under this section for a violation of this chapter if the provider proves that the violation was not intentional and resulted from a good-faith error notwithstanding the maintenance of procedures reasonably adapted to avoid the error. An error of legal judgment with respect to a provider's obligations under this chapter is not a good-faith error. If in connection with a violation, the provider has received more money than authorized by an agreement or this chapter, the defense provided by this subsection is not available unless the provider refunds the excess within 2 business days of learning of the violation.

(g) The Attorney General shall assist an individual in enforcing a judgment against the surety bond or other security provided under § 2413A or § 2414A of this title.

(75 Del. Laws, c. 430, § 1.)

§ 2436A Violation of unfair or deceptive practices statute.

If an act or practice of a provider violates both this chapter and Chapter 25 of this title, an individual may not recover under both for the same act or practice.

(75 Del. Laws, c. 430, § 1.)

§ 2437A Statute of limitations.

(a) An action or proceeding brought pursuant to § 2433A(a), (b), or (c) of this title must be commenced within 4 years after the conduct that is the basis of the Attorney General's complaint.

(b) An action brought pursuant to § 2435A of this title must be commenced within 3 years after the latest of:

(1) The individual's last transmission of money to a provider;

(2) The individual's last transmission of money to a creditor at the direction of the provider;

(3) The provider's last disbursement to a creditor of the individual;

(4) The provider's last accounting to the individual pursuant to § 2427A(a) of this title;

(5) The date on which the individual discovered or reasonably should have discovered the facts giving rise to the individual's claim; or

(6) Termination of actions or proceedings by the Attorney General with respect to a violation of the chapter.

(c) The period prescribed in paragraph (b)(5) of this section is tolled during any period during which the provider or, if different, the defendant has materially and wilfully misrepresented information required by this chapter to be disclosed to the individual if the information so misrepresented is material to the establishment of the liability of the defendant under this chapter.

(75 Del. Laws, c. 430, § 1.)

§ 2438A Uniformity of application and construction.

In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

(75 Del. Laws, c. 430, § 1.)

§ 2439A Relation to Electronic Signatures in Global and National Commerce Act.

This chapter modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act (15 U.S.C. § 7001 et seq.) but does not modify, limit, or supersede § 101(c) of that act (15 U.S.C. § 7001(c)) or authorize electronic delivery of any of the notices described in § 103(b) of that act (15 U.S.C. § 7003(b)).

(75 Del. Laws, c. 430, § 1.)

Subtitle II
Other Laws Relating to Commerce and Trade

Chapter 24B
Foreclosure Consultants and Reconveyances

Subchapter I
General Provisions

§ 2400B Short title.

This chapter may be cited as the "Mortgage Rescue Fraud Protection Act."

(76 Del. Laws, c. 419, § 1.)

§ 2401B Purpose.

The purpose of this chapter is to protect homeowners from unfair or deceptive practices by foreclosure consultants or through foreclosure reconveyance agreements.

(76 Del. Laws, c. 419, § 1.)

§ 2402B Definitions.

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

(1) "Foreclosure consultant" means a person who:

a. Solicits or contacts a homeowner in writing, in person, or through any electronic or telecommunications medium, and directly or indirectly makes a representation or offer to perform any service that the person represents will:

1. Stop, enjoin, delay, void, set aside, annul, stay, or postpone a foreclosure sale;

2. Obtain forbearance from any mortgager servicer, mortgagee or mortgage assignee;

3. Assist the homeowner to exercise a right of reinstatement provided in the mortgage loan documents or to refinance a mortgage loan that is in foreclosure and for which an action to foreclose the mortgage has been filed;

4. Obtain an extension of the period within which the homeowner may reinstate the homeowner's obligation or extend the deadline to object to a ratification;

5. Obtain a waiver of an acceleration clause contained in any promissory note or contract secured by a mortgage on a residence in default or contained in the mortgage;

6. Assist the homeowner to obtain a loan or advance of funds;

7. Avoid or ameliorate the impairment of the homeowner's credit resulting from an action to foreclose the mortgage or the conduct of a foreclosure sale;

8. Save the homeowner's residence from foreclosure;

9. Purchase or obtain an option to purchase the homeowner's residence in foreclosure within 20 days prior to the date advertised for a foreclosure sale;

10. Arrange for the homeowner to become a lessee or renter entitled to continue to reside in the homeowner's residence in default;

11. Arrange for the homeowner to have an option to repurchase the homeowner's residence in default; or

12. Engage in any documentation, grant, conveyance, sale, lease, trust, or gift by which the homeowner limits or impairs the homeowner's equity of redemption in the homeowner's residence in foreclosure; or

b. Systematically contacts owners of residences in default to offer foreclosure consulting services.

(2) "Foreclosure consulting contract" means a written, oral, or equitable agreement between a foreclosure consultant and a homeowner for the provision of any foreclosure consulting service or foreclosure reconveyance.

(3) "Foreclosure consulting service" includes:

a. Receiving money for the purpose of distributing it to creditors in payment or partial payment of any obligation secured by a lien on a residence in default;

b. Contacting creditors on behalf of a homeowner;

c. Arranging or attempting to arrange for an extension of the period within which a homeowner may cure the homeowner's default and reinstate the homeowner's obligation;

d. Arranging or attempting to arrange for any delay or postponement of the foreclosure sale of a residence in default;

e. Arranging or facilitating the purchase of a homeowner's equity of redemption or legal or equitable title in the homeowner's residence in foreclosure within 20 days prior to date advertised for a foreclosure sale;

f. Arranging or facilitating any transaction through which a homeowner will become a lessee, optionee, life tenant, partial owner, or vested or contingent remainderman of the homeowner's residence in default;

g. Arranging or facilitating the sale of a homeowner's residence in default or the transfer of legal title, in any form, to another party as an alternative to foreclosure;

h. Arranging for a homeowner to have an option to repurchase the homeowner's residence in default after its sale or transfer;

i. Arranging for or facilitating a homeowner remaining in the homeowner's residence in default as a tenant, renter, or lessee; or

j. Arranging or facilitating any other grant, conveyance, sale, lease, trust, or gift of the homeowner's residence in default.

(4) "Foreclosure purchaser" means a person who acquires title or possession of a deed or other document transferring title to a residence in foreclosure as a result of a foreclosure reconveyance.

(5) "Foreclosure reconveyance" means a transaction involving:

a. The transfer of title to a residence in foreclosure by a homeowner during or incident to a foreclosure proceeding, either by transfer of interest from the homeowner to another party or by creation of a mortgage, trust, or other lien or encumbrance that allows the acquirer to obtain legal or equitable title to all or part of the property; and

b. The subsequent conveyance, or promise of a subsequent conveyance, of an interest back to the homeowner by the acquirer, or a person acting in participation with the acquirer, that allows the homeowner to possess the real property following the completion of the foreclosure proceeding, including an interest in a contract for deed, purchase agreement, land installment sale, contract for sale, option to purchase, lease, trust, or other contractual arrangement.

(6) "Homeowner" means the record owner of a residence in default or a residence in foreclosure.

(7) "Primary housing expenses" means the total amount required to pay regular mortgage principal, mortgage interest, rent, utilities, hazard insurance, real estate taxes, and association dues on a property.

(8) "Related person" for an individual, means the individual's parents, spouse, children (natural or adopted), and siblings of the whole or half blood; and for an entity, means a person who directly or indirectly or with another related person owns 5% or more of the equity in that entity.

(9) "Resale" means a bona fide market sale of property subject to a foreclosure reconveyance by the foreclosure purchaser to an unaffiliated third party.

(10) "Resale price" means the gross sale price of a property on resale.

(11) "Residence in default" means residential real property consisting of not more than 4 single-family dwelling units, 1 of which is occupied by the owner as the individual's principal place of residence, and on which the mortgage is at least 60 days in default.

(12) "Residence in foreclosure" means residential real property consisting of not more than 4 single-family dwelling units, 1 of which is occupied by the owner as the individual's principal place of residence, and against which any type of foreclosure action has been filed.

(13) "Settlement" means an in-person, face-to-face meeting with the homeowner to complete final documents incident to the sale or transfer of real property, or the creation of a mortgage or equitable interest in real property, conducted by a settlement agent who is not employed by, or an affiliate of, the foreclosure purchaser, during which the homeowner must be presented with a completed copy of the HUD-1 Settlement form.

(76 Del. Laws, c. 419, § 1; 78 Del. Laws, c. 196, §§ 1-5.)

§ 2403B Exempt agreements and persons.

This chapter does not apply to:

(1) An individual admitted to practice law in this State, while performing any activity related to the individual's regular practice of law in this State;

(2) A person who holds, or is owed as an obligation secured by, a lien on any residence in default with respect to which the person performs services in connection with the obligation or lien, if the obligation or lien did not arise as a result of a foreclosure reconveyance;

(3) A person doing business under any law of this State or the United States, which law regulates banks, trust companies, savings and loan associations, credit unions, insurance companies while performing services as part of the person's normal business activities;

(4) A person originating or closing a loan in a person's normal course of business if, as to that loan:

a. The loan is subject to the requirements of the federal Real Estate Settlement Procedures Act, 12 U.S.C. §§ 2601-2617; or

b. With respect to any second mortgage or home equity line of credit, the loan is subordinate to, and closed simultaneously with, a qualified first mortgage loan under paragraph (4)a. of this section or is initially payable on the face of the note or contract to an entity included in paragraph (3) of this section;

(5) A judgment creditor of the homeowner, if the judgment creditor's claim accrued before the action to foreclose is filed;

(6) A title insurer authorized to conduct business in this State while performing title insurance services;

(7) A person licensed as a mortgage broker or lender under Title 5 while acting under the authority of that license;

(8) A person licensed as a real estate broker or real estate salesperson under the Delaware Code while engaging in any activity for which the person is licensed;

(9) A nonprofit organization that offers counseling or advice to homeowners in foreclosure or loan default, if the organization is not directly or indirectly related to, and does not contract for services with, for-profit lenders or foreclosure purchasers;

(10) An organization that is licensed to practice debt management services under Chapter 24A of this title while the person engages in any activity for which the organization is licensed;

(11) A public corporation, government or governmental subdivision, agency, or instrumentality; or

(12) A lien hold mortgagee who takes title through the normal state prescribed foreclosure process or through a deed in lieu of foreclosure.

(76 Del. Laws, c. 419, § 1; 78 Del. Laws, c. 196, § 6.)

§ 2404B Required language.

The disclosures and documents required by this chapter must be in English. If a person communicates with an individual primarily in a language other than English, that person must furnish a translation into the other language of the disclosures and documents required by this chapter.

(76 Del. Laws, c. 419, § 1.)

§§ 2405B-2412B [Reserved.]

Subchapter II
Foreclosure Consultants

§ 2413B Foreclosure consulting contract.

(a) A foreclosure consulting contract shall be in writing and provided to the homeowner, without changes, alterations, or modification, for review at least 24 hours before it signed by the homeowner.

(b) A foreclosure consulting contract shall be printed in at least 12-point type and shall include the name and address of the foreclosure consultant to which a Notice of Cancellation can be mailed and the date the homeowner signed the contract.

(c) A foreclosure consulting contract shall fully disclose the exact nature of the foreclosure consulting services to be provided and the total amount and terms of any compensation to be received by the foreclosure consultant.

(d) A foreclosure consulting contract shall be dated and personally signed, with each page being initialed, by both the homeowner of the residence in default and the foreclosure consultant and shall be witnessed and acknowledged by a notary public in the presence of the homeowner at the time the contract is signed by the homeowner.

(e) A foreclosure consulting contract shall contain the following notice, which shall be printed in at least 14-point bold-face type, completed with the name of the foreclosure consultant, and located in immediate proximity to the space reserved for the homeowner's signature:

NOTICE REQUIRED BY DELAWARE LAW

[Name of foreclosure consultant] or anyone working for that company or individual CANNOT ask you to sign or have you sign any lien, mortgage or deed as part of signing this agreement unless the terms of the transfer or encumbrance are specified in this document and you are given a separate explanation of the precise nature of the transaction.

[Name of foreclosure consultant] or anyone working for that company or individual CANNOT guarantee you that they will be able to refinance your home or arrange for you to keep your home. Continue making mortgage payments until a refinancing, if applicable, is approved.

You may at any time cancel this contract, without penalty of any kind. If you want to cancel this contract, mail or deliver a signed and dated copy of the Notice of Cancellation, or any other written notice indicating your intent to cancel, to [name and address of the foreclosure consultant].

As part of any cancellation, you, the homeowner, must repay any money actually spent on your behalf by [name of foreclosure consultant] prior to receipt of this notice and as a result of this agreement, within sixty days, along with interest at the primary credit rate established by the United States Federal Reserve Board plus 2 percentage points, with the total interest rate not to exceed 8% per year.

THIS IS AN IMPORTANT LEGAL CONTRACT AND COULD RESULT IN THE LOSS OF YOUR HOME. CONTACT AN ATTORNEY FOR LEGAL ADVICE OR A HOUSING COUNSELOR APPROVED BY THE FEDERAL DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT FOR OTHER OPTIONS WITH YOUR LENDER BEFORE SIGNING.

(f) A completed form in duplicate, entitled "NOTICE OF CANCELLATION", shall accompany the foreclosure consulting contract. The Notice of Cancellation shall:

(1) Be on a separate sheet of paper attached to the contract;

(2) Be easily detachable; and

(3) Contain the following statement, printed in at least 14-point type:

NOTICE OF CANCELLATION
Date of Contract: [Contract date]
To: [Name of foreclosure consultant]
[Address of foreclosure consultant]

I hereby cancel this contract.
[Signature date] [Homeowner's signature]

(g) A notice of cancellation need not take the particular form specified in this subchapter or any form contained in any agreement with the foreclosure consultant, and is effective, however expressed, if it indicates the intention of the homeowner to cancel the foreclosure consulting contract.

(h) If a foreclosure reconveyance is included in a foreclosure consulting contract or arranged after the execution of a foreclosure consulting contract, the foreclosure purchaser shall provide the homeowner with a document entitled "NOTICE OF RIGHT TO RESCIND TRANSFER OF DEED OR TITLE" in the form required under subchapter III of this chapter.

(i) The foreclosure consultant shall provide to the homeowner a signed, dated, and acknowledged copy of the foreclosure consulting contract and the attached Notice of Cancellation immediately upon execution of the contract.

(76 Del. Laws, c. 419, § 1; 78 Del. Laws, c. 196, § 7.)

§ 2414B Waiver of rights.

Any provision in a foreclosure consulting contract that attempts or purports to waive the homeowner's rights under this chapter, consent to jurisdiction for litigation or choice of law in a state other than this State, consent to a venue in a county other than the county in which the property is located or impose any costs or filing fees greater than the actual costs and fees, is void.

(76 Del. Laws, c. 419, § 1.)

§ 2415B Prohibited acts.

(a) A foreclosure consultant may not:

(1) Claim, demand, charge, collect, or receive any compensation until after the foreclosure consultant has fully performed each and every service the foreclosure consultant contracted to perform or represented that the foreclosure consultant would perform;

(2) Claim, demand, charge, collect, or receive any interest or any other compensation for any loan that the foreclosure consultant makes to the homeowner that exceeds 8% per year;

(3) Take any wage assignment, any lien, or any type of real or personal property, or other security to secure the payment of compensation;

(4) Receive any consideration from any third party in connection with foreclosure consulting services provided to a homeowner unless the consideration is first fully disclosed in writing to the homeowner;

(5) Acquire any interest, directly or indirectly, or by means of a related person, in a residence in default from a homeowner with whom the foreclosure consultant has contracted;

(6) Take any power of attorney from a homeowner to enter into a foreclosure consulting contract that does not comply in all respects with this subchapter; or

(7) Facilitate or engage in any transaction that is unconscionable under the terms and circumstances of the transaction.

(b) No person may engage in any of the activities identified in § 2402B(1) or (3) of this title if such activities are prohibited by § 910 of Title 11.

(c) No person may engage in any of the activities identified in § 2402B(1) or (3) of this title for which registration is required under Chapter 24 of this title, unless such person has registered and fulfilled all other applicable requirement of that chapter.

(76 Del. Laws, c. 419, § 1; 78 Del. Laws, c. 196, § 8.)

§§ 2416B-2422B [Reserved.]

Subchapter III

Foreclosure Reconveyances

§ 2423B Notice of transfer of deed or title.

(a) If a foreclosure reconveyance is included in a foreclosure consulting contract or arranged after the execution of a foreclosure consulting contract, the foreclosure purchaser shall provide the homeowner with a document entitled "NOTICE OF TRANSFER OF DEED OR TITLE".

(b) The "Notice of Transfer of Deed or Title" shall:

(1) Contain the entire agreement of the parties;

(2) Be printed in at least 12-point type;

(3) Be dated and personally signed, with each page being initialed by both the homeowner of the residence in foreclosure and the foreclosure purchaser and witnessed and acknowledged by a notary public in the presence of the homeowner at the time the contract is signed by the homeowner;

(4) Describe in detail the terms of any foreclosure reconveyance including:

a. The name, business address, telephone number, and facsimile number of the person to whom the deed or title will be transferred;

b. The address of the residence in foreclosure;

c. The total consideration to be given by the foreclosure purchaser, the foreclosure consultant, and any other party as a result of the transfer;

d. The time at which title is to be transferred to the foreclosure purchaser and the terms of any conveyance;

e. Any financial or legal obligations that the homeowner may remain subject to, including a description of any mortgages, liens, or other obligations that will remain in place;

f. A description of any services of any nature that the foreclosure purchaser will perform for the homeowner before or after the sale or transfer;

g. A complete description of the terms of any related agreement designed to allow the homeowner to remain in the home, including the terms of any rental agreement, repurchase agreement, contract for deed, land installment contract, or option to buy, and any provisions for eviction or removal of the homeowner in the case of late payment; and

h. How any repurchase price or fee associated with any transfer of title or deed back to the homeowner will be calculated; and

(5) Contain the following statement printed in at least 14-point bold-face type and located in immediate proximity to the space reserved for the homeowner's signature:

If you change your mind about transferring ownership of your property, you, the homeowner, may cancel or rescind the transfer of the deed or title to your property at any time before midnight of the third business day that begins the day after you sign the deed or title.

To rescind this transaction, mail or deliver a signed and dated copy of the Notice of Rescission provided, or any other written notice indicating your intent to rescind, to [name of foreclosure purchaser] at [address of foreclosure purchaser].

THIS IS AN IMPORTANT LEGAL CONTRACT AND COULD RESULT IN THE LOSS OF YOUR HOME. CONTACT AN ATTORNEY FOR LEGAL ADVICE OR A HOUSING COUNSELOR APPROVED BY THE FEDERAL DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT FOR OTHER OPTIONS WITH YOUR LENDER BEFORE SIGNING.

(c) If a foreclosure reconveyance is included in a foreclosure consulting contract or arranged after the execution of a foreclosure consulting contract, the foreclosure purchaser shall provide the homeowner with a document entitled "NOTICE OF RIGHT TO RESCIND TRANSFER OF DEED OR TITLE" which shall:

(1) Be on a separate sheet of paper attached to the Notice of Transfer of Deed or Title;

(2) Be easily detachable; and

(3) Contain the following statement printed in at least 14-point type:

NOTICE OF RIGHT TO RESCIND TRANSFER OF DEED OR TITLE

[Date]

You may cancel or rescind the transfer of ownership of your property through the transfer of a deed or title before midnight of the third business day that begins the day after you sign the deed or title.

To rescind or cancel this transaction, mail or deliver a signed and dated copy of the Notice of Rescission, or any other written notice expressing a similar intent to [name of foreclosure purchaser] at [address of foreclosure purchaser].

THIS IS AN IMPORTANT LEGAL CONTRACT AND COULD RESULT IN THE LOSS OF YOUR HOME. CONTACT AN ATTORNEY FOR LEGAL ADVICE OR A HOUSING COUNSELOR APPROVED BY THE FEDERAL DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT FOR OTHER OPTIONS WITH YOUR LENDER BEFORE SIGNING.

NOTICE OF RESCISSION

To: [Name of foreclosure purchaser]

[Address of foreclosure purchaser]

I hereby rescind the transfer of deed or title to my property. Please return all executed documents to me.

[Signature date] [Homeowner's signature]

(d) The foreclosure purchaser shall provide the homeowner with a copy of the Notice of Right to Rescind Transfer of Deed or Title immediately on execution of any document that includes a foreclosure reconveyance.

(e) The time during which the homeowner may rescind the contract or transfer does not begin to run until the foreclosure purchaser has complied with this section.

(f) A foreclosure reconveyance may not be carried out using a power of attorney from the homeowner.

(g) A notice of rescission need not take the particular form specified in this subchapter or any form contained in any agreement with the foreclosure consultant or foreclosure purchaser and is effective, however expressed, if it indicates the intention of the homeowner to rescind the foreclosure reconveyance agreement.

(h) The right to rescind may not be conditioned on the repayment of any funds.

(i) Within 10 days after receipt of a notice of rescission, the foreclosure purchaser shall return, without condition, any original deed, title, contract, and any other document signed by the homeowner.

(j) During the 3-day rescission period, a deed or other document affecting title to the homeowner's residence in foreclosure may not be recorded.

(76 Del. Laws, c. 419, § 1.)

§ 2424B Waiver of rights.

Any provision in an agreement concerning a foreclosure reconveyance that attempts or purports to waive the homeowner's rights under this chapter, consent to jurisdiction for litigation or choice of law in a state other than this State, consent to a venue in a county other than the county in which the property is located or impose any costs or filing fees greater than the actual costs and fees, is void.

(76 Del. Laws, c. 419, § 1.)

§ 2425B Prohibited acts.

A foreclosure purchaser may not:

(1) Enter into, or attempt to enter into, a foreclosure reconveyance with a homeowner unless:

a. The foreclosure purchaser verifies and can demonstrate that the homeowner has or will have a reasonable ability to pay for the subsequent reconveyance of the property back to the homeowner on completion of the terms of a foreclosure reconveyance, or, if the foreclosure reconveyance provides for a lease with an option to repurchase the property, the homeowner has or will have a reasonable ability to make the lease payments and repurchase the property within the term of the option to repurchase;

b. The foreclosure purchaser and the homeowner complete a settlement before any transfer of an interest in the property is effected; and

c. The foreclosure purchaser complies with the requirements of the federal Home Ownership Equity Protection Act, 15 U.S.C. § 1639, and its implementing regulations for any foreclosure reconveyance in which the homeowner obtains a vendee interest in a contract for deed;

(2) Fail to:

a. Ensure that the title to the property has been reconveyed to the homeowner in a timely manner if this subchapter or the terms of a foreclosure reconveyance agreement require a reconveyance; or

b. Make payment to the homeowner within 90 days of any resale of the property so that the homeowner receives cash payments or consideration in an amount equal to at least 82% of the net proceeds from any resale of the property should a property subject to a foreclosure reconveyance be sold within 18 months after entering into a foreclosure reconveyance agreement;

(3) Enter into repurchase or lease terms as part of the foreclosure conveyance that are unfair or commercially unreasonable, or engage in any other unfair conduct;

(4) Represent, directly or indirectly, that:

a. The foreclosure purchaser is acting as an advisor or a consultant, or in any other manner represent that the foreclosure purchaser is acting on behalf of the homeowner;

b. The foreclosure purchaser has certification or licensure that the foreclosure purchaser does not have; or

c. The foreclosure purchaser is assisting the homeowner to "save the house" or use a substantially similar phrase;

(5) Make any other statements, directly or by implication, or engage in any other conduct that is false, deceptive, or misleading, or that has the likelihood to cause confusion or misunderstanding, including statements regarding:

a. The value of the residence in foreclosure;

b. The amount of proceeds the homeowner will receive after a foreclosure sale;

c. Any contract term; or

d. The homeowner's rights or obligations incident to, or arising out of, the foreclosure reconveyance; or

(6) Until the homeowner's right to cancel the transaction has expired:

a. Record any document, including an instrument of conveyance, signed by the homeowner; or

b. Transfer or encumber or purport to transfer or encumber any interest in the residence in foreclosure to any third party.

(76 Del. Laws, c. 419, § 1.)

§ 2426B Presumptions, accounting, bona fide purchaser.

(a) For the purposes of § 2425B(1)a. of this title, there is a rebuttable presumption that:

(1) A homeowner has a reasonable ability to pay for a subsequent reconveyance of the property if the homeowner's payments for primary housing expenses and regular principal and interest payments on other personal debt, on a monthly basis, do not exceed 60% of the homeowner's monthly gross income; and

(2) The foreclosure purchaser has not verified reasonable payment ability if the foreclosure purchaser has not obtained documents other than a statement by the homeowner of assets, liabilities, and income.

(b) The foreclosure purchaser shall make a detailed accounting of the basis for the amount of a payment made to the homeowner of a property resold within 18 months after entering into a foreclosure reconveyance agreement in accordance with § 2425B(2)b. of this title. The accounting shall include documentation of expenses and other consideration paid by the foreclosure purchaser and deducted from the resale price.

(c) A bona fide purchaser for value or bona fide lender for value who enters into a transaction with a homeowner or a foreclosure purchaser when a foreclosure consulting contract is in effect or during the period when a foreclosure reconveyance may be canceled, without notice of those facts, receives good title to the property, free and clear of the right of the parties to the foreclosure consulting contract or the right of the homeowner to rescind the foreclosure reconveyance.

(d) This subchapter may not be construed to impose any duty on a purchaser, title insurer, or title insurance producer with respect to the application of the proceeds of a sale of property by a foreclosure purchaser.

(76 Del. Laws, c. 419, § 1.)

Subchapter IV

Enforcement and Remedies

§ 2427B Enforcement.

(a) The Attorney General shall have the same authority to enforce and carry out this chapter as is granted by Chapter 25 of Title 29 and by §§ 2511-2527 and 2531-2536 of this title.

(b) If a court or tribunal of competent jurisdiction finds that any person has wilfully violated this chapter, the Attorney General, upon petition to the court or tribunal, shall recover from the person, on behalf of the State, in addition to all costs, a civil penalty of not more than $10,000 per violation pursuant to § 2533 of this title. If the violation is against an elder person or person with a disability or an additional civil penalty of not more than $10,000 per violation shall be recovered pursuant to § 2581 of this title. Each day that a wilful violation continues shall be considered a separate violation.

(c) For the purpose of this chapter, a wilful violation occurs when the party committing the violation knew or should have known that the party's conduct was of the nature prohibited by this chapter.

(76 Del. Laws, c. 419, § 1; 77 Del. Laws, c. 282, § 17; 79 Del. Laws, c. 371, § 1.)

§ 2428B Remedies, penalties, and violation of order or injunction.

(a) A person engages in a deceptive trade practice and is subject to the remedies available in § 2533 of this title when, in the course, of such person's business, vocation, or occupation, such person violates any provision of this chapter.

(b) Any homeowner who brings an action under this chapter may be awarded monetary damages by a court of competent jurisdiction.

(c) A person who violates any order or injunction issued pursuant to this chapter is subject to the provisions of § 2598 [repealed] of this title.

(d) A person who violates any provision of this chapter shall be guilty of a class A misdemeanor.

(76 Del. Laws, c. 419, § 1.)

§ 2429B Remedies and penalties not exclusive.

The remedies and penalties provided for in this chapter are not exclusive and shall be in addition to any other procedures, rights or remedies which exist with respect to any other provisions of law including but not limited to state and/or federal criminal prosecutions and/or actions brought by private parties.

(76 Del. Laws, c. 419, § 1.)

Subtitle II
Other Laws Relating to Commerce and Trade
Chapter 24C
Mortgage Loan Modification Services

§ 2400C Short title.

This chapter may be cited as the "Delaware Mortgage Loan Modification Services Act."

(78 Del. Laws, c. 196, § 9.)

§ 2401C Purpose.

The purpose of this chapter is to protect homeowners from unfair or deceptive practices by providers of mortgage loan modification services.

(78 Del. Laws, c. 196, § 9.)

§ 2402C Definitions.

As used in the chapter, unless the context requires otherwise:

(1) "Commercial communication" means any written or oral statement, illustration, or depiction in any medium that is designed to effect a sale of or create interest in purchasing, any mortgage modification service.

(2) "Dwelling" means a residential structure containing 4 or fewer units, whether or not the structure is attached to real property, that is primarily for personal, family, or household use.

(3) "Dwelling loan" or "mortgage loan" means any loan secured by a dwelling, and any associated deed of trust or mortgage.

(4) "Mortgage loan modification services" means services as an intermediary between an individual and 1 or more dwelling loan creditors for the purpose of obtaining assent to the repayment of a mortgage loan on terms more favorable to the individual than the terms of the original mortgage loan.

(5) "Mortgage loan modification services provider" means any person that provides, offers to provide, or arranges for others to provide, any mortgage modification service but does not include the dwelling loan holder, servicer, or any agent or contractor of such individuals or entities.

(6) "Servicer" means the individual or entity responsible for receiving any scheduled periodic payment from a homeowner pursuant to the terms of the dwelling loan that is the subject of the offer to provide mortgage modification services or for making the payments of principal and interest and such other payments with respect to the amounts received as may be required pursuant to the terms of the mortgage servicing loan documents or servicing contract.

(78 Del. Laws, c. 196, § 9.)

§ 2403C Exemptions.

This chapter does not apply to:

(1) An individual admitted to practice law in this State, who is in an attorney client relationship, while performing any activity related to the individual's regular practice of law in this State;

(2) A person doing business under any law of this State or the United States, which law regulates banks, trust companies, savings and loan associations, credit unions, insurance companies while performing services as part of the person's normal business activities;

(3) A person licensed as a mortgage loan originator, broker or lender under Title 5 or as a debt management service provider in Chapter 24A of this title, while acting under the authority of that license;

(4) A person licensed as a real estate broker or real estate salesperson under Title 24 while negotiating with the mortgage loan holder on a dwelling that is listed for sale by the broker or brokerage organization as long as no additional fee is charged for the negotiation;

(5) A nonprofit organization that offers housing counseling or advice to homeowners; or

(6) A public corporation, government or governmental subdivision, agency, or instrumentality.

(78 Del. Laws, c. 196, § 9.)

§ 2404C Registration required.

Unless exempted under this chapter, a person may not provide mortgage loan modification services to an individual who it reasonably should know resides in this State at the time it agrees to provide the services, unless the person satisfies the following requirements:

(1) The person registers with, and is issued and maintains a certificate of registration from the Attorney General in accordance with the following requirements:

a. The person shall submit a completed registration application on a form approved by the Attorney General, along with a nonrefundable fee of $1000 which shall be deposited in the State Treasury to the credit of the State Consumer Protection Fund created under § 2527 of this title. Funds received pursuant to this chapter may be used to support foreclosure relief programs.

b. The registration form shall be accompanied by a copy of all print or electronic advertising and scripts of telephonic or broadcast advertising.

c. The registration form shall be accompanied by the bond required pursuant to this section.

(2) The person provides an original corporate surety bond, with surety provided by a corporation authorized to transact business in this State, in the principal sum of $100,000. The bond shall run to the State for the benefit of the Attorney General and for the benefit of all consumers injured by any wrongful act, omission, default, fraud or misrepresentation by such person in the course of its activity authorized by this chapter.

(78 Del. Laws, c. 196, § 9.)

§ 2405C Registration procedure.

(a) Except as otherwise provided in subsection (b) of this section, the Attorney General shall register a person in compliance with § 2404C of this title.

(b) The Attorney General may deny registration if:

(1) The application contains information that is materially erroneous or incomplete;

(2) An officer, director, member or owner of the applicant has been convicted of a crime, or suffered a civil judgment, involving dishonesty;

(3) The Attorney General finds that the financial responsibility, experience, character, or general fitness of the applicant or its owners, members, directors, employees, or agents does not warrant belief that the business will be operated in compliance with this chapter.

(c) Registration shall be renewed annually by using an approved form and submitting a renewal fee in the amount of $500.

(78 Del. Laws, c. 196, § 9.)

§ 2406C Form and content of contracts.

(a) A contract for mortgage loan modification services shall be in writing and provided to the homeowner, without changes, alterations, or modification, for review at least 24 hours before it is signed by the homeowner.

(b) A contract for mortgage loan modification services shall be dated and personally signed with each page being initialed, by both the homeowner and the provider.

(c) A contract for mortgage loan modification service shall be printed in at least 12-point type and shall include the name and address of the mortgage modification service provider and the date the homeowner signed the agreement.

(d) A contract for mortgage loan modification service shall fully disclose the exact nature of the modification services to be provided and the total amount and terms of compensation to be received by the mortgage loan modification service provider.

(e) A contract for mortgage loan modification services must include a provision that allows the homeowner to cancel at any time without penalty and a separate, detachable page designated “NOTICE OF CANCELLATION” containing the name and address of the provider for the use of the homeowner if services are to be canceled.

(78 Del. Laws, c. 196, § 9.)

§ 2407C Required disclosures.

Any commercial communication by a mortgage loan modification services provider shall include the following statements in a clear and prominent format:

(1) “(Name of Company) is not associated with the government, and our service is not approved by the government or your lender.”

(2) “Even if you accept this offer and use our service, your lender may not agree to change your loan.”

(3) “You may stop doing business with us at any time. You may accept or reject any offer of mortgage modification we may obtain from your lender or servicer. If you reject the offer, you do not have to pay us.”

(78 Del. Laws, c. 196, § 9.)

§ 2408C Prohibited acts.

A mortgage loan modification services provider may not:

(1) Misrepresent, expressly or by implication, that the provider is affiliated with, endorsed or approved by, or otherwise associated with:

a. The United States government,

b. Any governmental homeowner assistance plan,

c. Any federal, state, or local government agency, unit, or department,

d. Any nonprofit housing counselor agency or program,

e. The maker, holder, or servicer of the dwelling loan, or

f. Any other individual, entity or program.

(2) Represent, expressly or by implication, that a homeowner cannot or should not contact or communicate with his or her lender or servicer.

(3) Request or receive payment of any fee or other consideration until the homeowner has executed a written agreement between the homeowner and the dwelling loan holder or servicer incorporating the offer of mortgage modification services obtained by the provider.

(78 Del. Laws, c. 196, § 9; 70 Del. Laws, c. 186, § 1.)

§ 2409C Enforcement.

(a) The Attorney General shall have the same authority to enforce and carry out this chapter as is granted by Chapter 25 of Title 29 and by §§ 2511-2527 and 2531-2536 of this title.

(b) If a court or tribunal of competent jurisdiction finds that any person has wilfully violated this chapter, the Attorney General, upon petition to the court or tribunal, shall recover from the person, on behalf of the State, in addition to all costs, a civil penalty of not more than $10,000 per violation pursuant to § 2533 of this title. If the violation is against an elderly person or person with a disability, an additional civil penalty of not more than $10,000 per violation shall be recovered pursuant to § 2581 of this title. Each day that a wilful violation continues shall be considered a separated violation.

(c) For the purpose of this chapter, a “wilful violation” occurs when the party committing the violation knew or should have known that the party’s conduct was of the nature prohibited by this chapter.

(78 Del. Laws, c. 196, § 9.)

Subtitle II
Other Laws Relating to Commerce and Trade

Chapter 25
Prohibited Trade Practices

Subchapter I
General Provisions

§ 2501 Falsely advertising goods as property of an insolvent or as damaged.

No person engaged in the sale of any goods, wares or merchandise within the State shall publicly and falsely, and with intent to deceive the general buying public, advertise or otherwise represent that the goods, wares or merchandise are or were either in whole or in part the property of any insolvent or bankrupt or the assignee of any insolvent or bankrupt, or that such goods, wares or merchandise were either in whole or in part damaged by fire or accident of any kind.

(18 Del. Laws, c. 661; 20 Del. Laws, c. 70; 20 Del. Laws, c. 571; 26 Del. Laws, c. 207; Code 1915, § 3580; Code 1935, § 4074; 6 Del. C. 1953, § 2501.)

§ 2502 Sale of goods in Wilmington as a removed stock or in other than regular business manner.

No person shall engage in the sale of any goods, wares or merchandise, within the corporate limits of the City of Wilmington, which have been brought to that city or consigned to any person in that city, for the purpose of the special sale thereof, as a removed stock of goods, or for the purpose of any sale thereof in any other than a regular business manner, by regular established merchants of that city. This section shall not prevent any person from embarking in the regular business of a merchant by any other method than those herein or elsewhere in the laws of this State prohibited, and this section shall not apply to goods and chattels shipped to Wilmington from other points of the State.

(18 Del. Laws, c. 661; 20 Del. Laws, c. 70; 20 Del. Laws, c. 571; 26 Del. Laws, c. 207; Code 1915, § 3580; Code 1935, § 4074; 6 Del. C. 1953, § 2502.)

§ 2503 Penalties; presumption of intent to deceive.

Whoever violates § 2501 or § 2502 of this title shall be fined $100. Upon the trial of any person for such violation, the intent to deceive the general buying public shall be presumed where proof is made of a public and false advertisement or representation.

(18 Del. Laws, c. 661; 20 Del. Laws, c. 70; 20 Del. Laws, c. 571; 26 Del. Laws, c. 207; Code 1915, § 3580; Code 1935, § 4074; 6 Del. C. 1953, § 2503.)

§ 2504 Price discrimination; penalty.

Whoever, doing business in this State and engaged in the production, manufacture or distribution of any commodity in general use, intentionally, for the purpose of destroying the competition of any regular, established dealer in such commodity or to prevent competition of any person who in good faith intends or attempts to become such dealer, discriminates between different sections, communities, or cities of this State, by selling the commodity at a lower rate in 1 section, community, or city, or any portion thereof, than in another, after making due allowance for any difference in the grade or quality and in the cost of transportation from the point of production, if a raw product, or from the point of manufacture, if a manufactured product, shall be fined not less than $200, nor more than $5,000 or imprisoned not more than 1 year, or both.

(Code 1915, § 2498A; 29 Del. Laws, c. 213; Code 1935, § 3124; 6 Del. C. 1953, § 2504.)

§ 2505 Delivery of unsolicited merchandise.

Where unsolicited merchandise is delivered to a person for whom it is intended such person has a right to refuse to accept delivery of this merchandise or such person may deem it to be a gift and use it or dispose of it in any manner without any obligation to the sender.

(6 Del. C. 1953, § 2505; 56 Del. Laws, c. 413; 70 Del. Laws, c. 186, § 1.)

§ 2506 Limitation of actions.

Notwithstanding any other statute to the contrary, no action at law by the Attorney General brought under this chapter shall be initiated after the expiration of 5 years from the time the cause of action accrued; however, §§ 8117 and 8118 of Title 10 and any applicable tolling or savings provisions created under the common law shall apply.

(71 Del. Laws, c. 470, § 15.)

§ 2507 Advertising of tobacco products on or in school properties prohibited.

(a) No person, firm, corporation, partnership or other organization shall advertise or cause to be advertised any tobacco products within 200 feet of any public or private school, excluding institutions of higher education. This section shall not apply to advertisements inside of a commercial establishment, except outward-facing advertisements placed in windows.

(b) This section shall not be construed to prohibit the display of any message or advertisement opposing the use of tobacco products. Any message or advertisement opposing the use of tobacco products that is placed within 200 feet of a school may not contain the brand name of any tobacco product or the name of any tobacco company.

(c) This section shall not be construed to prohibit an advertisement stating that a commercial establishment sells tobacco products, provided that the advertisement is on the premises or property of the commercial establishment and does not identify any tobacco product brand or any tobacco product manufacturer by name.

(d) The Attorney General may file a complaint in the Court of Chancery or Superior Court for the county in which the alleged unlawful practice has been or is to be partially or completely performed. The Court of Chancery may enjoin any person, firm, corporation, partnership or other organization from the commission of any such act, and may award damages and costs. Whoever is found to be in violation of this section by the Superior Court shall be fined not more than $1,000 for the first offense and not more than $5,000 for each subsequent offense.

(72 Del. Laws, c. 472, § 4.)

§ 2508 Sale of fur-containing apparel; requirements.

(a) No merchant shall sell, offer or display for sale any coat, jacket, garment, or other wearing apparel made wholly or partially of animal fur, regardless of the price of the wearing apparel or the amount or value of the fur contained therein, without having attached to and conspicuously displayed on such apparel a tag, label or sticker that clearly and legibly states in English that such apparel contains real animal fur.

(b) This section shall apply only to new apparel that is sold by a merchant to a retail consumer in the first instance, and shall not apply to the resale of such apparel by second-hand, consignment, Goodwill or similar “resell” merchants.

(c) This section shall apply only to the sale of new wearing apparel sold by a merchant in a retail store only.

(d) Any merchant found to be in violation of this section shall be subject to a civil penalty of $200 per incident, regardless of the total number of articles of wearing apparel found in violation of this section during an incident.

(e) This section shall become effective and enforceable on June 1, 2010.

(76 Del. Laws, c. 297, § 1.)

§ 2509 Products for young children; prohibition of bisphenol-A.

(a) No manufacturer may sell or offer for sale in this State a children’s product that contains bisphenol-A.

(b) After July 1, 2012, no merchant may, knowingly sell or offer for sale in this State a children’s product that contains bisphenol-A.

(c) This section shall not apply to the sale of a used children’s product or to substances present in, or used in the production or packaging of, any drug, intended for use in humans or animals, as such term is defined in 21 U.S.C. § 321, that is manufactured or distributed consistent with the requirements of the Federal Food, Drug, and Cosmetic Act [21 U.S.C. § 301 et seq.] or the Public Health Service Act [42 U.S.C. § 201 et seq.].

(d) As used in this section:

(1) “Child” means a person under 4 years of age.

(2) “Children’s product” means an empty bottle or cup designed to be filled with food or liquid that is designed or intended by a manufacturer to be used by a child.

(e) Violation of this section shall be a class A misdemeanor. The Superior Court shall have exclusive jurisdiction over violations of this section.

(78 Del. Laws, c. 68, § 1.)

§ 2510 Deceptive foreclosure practices.

(a) No person shall make, use, or cause to be made or used a deceptive or fraudulent record, document, or statement in support of any foreclosure upon real property, including, without limitation, statements about the offering of a loan modification, the borrower’s history of payments, the validity of the assignment of the mortgage loan, the identity of the record holder of the mortgage loan, or the compliance with any other requirements of the Delaware Code or Superior Court rule.

(b) The Attorney General shall have the same authority to enforce and carry out this section as is granted by Chapter 25 of Title 29 and by §§ 2511-2527 and 2531-2536 of this title.

(c) The Attorney General shall have the same authority to enforce and carry out this section as is granted by Chapter 25 of Title 29 and by §§ 2511-2527 and 2531-2536 of this title; however, this section shall not be enforced by a private cause of action under § 2525 or § 2533 of this title or otherwise.

(d) If a court or tribunal of competent jurisdiction finds that any person has wilfully violated this section, the Attorney General, upon petition to the court or tribunal, shall recover from the person, on behalf of the State, in addition to all costs, a civil penalty of not more than $10,000 per violation pursuant to § 2533 of this title. If the violation is against an elderly person or person with a disability, an

additional civil penalty of not more than $10,000 per violation shall be recovered pursuant to § 2581 of this title. Each day that a wilful violation continues shall be considered a separate violation.

(e) For the purpose of this section, a "wilful violation" occurs when the party committing the violation knew or should have known that the party's conduct was of the nature prohibited by this section.

(f) After confirmation of the foreclosure sale by Superior Court, title to real property sold to an innocent third-party purchaser for value at a foreclosure sale shall not be contested, clouded, or deemed to be unmarketable or uninsurable for title insurance based solely upon a violation of this section.

(78 Del. Laws, c. 197, § 1.)

Subchapter II
Consumer Fraud

§ 2511 Definitions.

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

(1) "Advertisement" means the attempt by publication, dissemination, solicitation or circulation to induce, directly or indirectly, any person to enter into any obligation or acquire any title or interest in, any merchandise.

(2) "Examination" means inspection, study or copying.

(3) "Lease" means any lease, offer to lease or attempt to lease any merchandise for any consideration.

(4) "Local telephone directory" means a telephone classified advertising directory or the business section of a telephone directory that is distributed free of charge to some or all telephone subscribers in a local area.

(5) "Local telephone number" means a telephone number that has the 3-number prefix(es) used by the telephone service company(ies) for telephones physically located within the area covered by the local telephone directory in which the number is listed. The term does not include long distance numbers or toll or toll free numbers listed in a local telephone directory.

(6) "Merchandise" means any objects, wares, goods, commodities, intangibles, real estate or services.

(7) "Person" means an individual, corporation, government, or governmental subdivision or agency, statutory trust, business trust, estate, trust, partnership, unincorporated association, 2 or more of any of the foregoing having a joint or common interest, or any other legal or commercial entity.

(8) "Sale" means any sale, offer for sale or attempt to sell any merchandise for any consideration.

(6 Del. C. 1953, § 2511; 55 Del. Laws, c. 46; 71 Del. Laws, c. 420, §§ 2, 3; 71 Del. Laws, c. 470, § 11; 73 Del. Laws, c. 329, § 35.)

§ 2512 Purpose; construction.

The purpose of this subchapter shall be to protect consumers and legitimate business enterprises from unfair or deceptive merchandising practices in the conduct of any trade or commerce in part or wholly within this State. It is the intent of the General Assembly that such practices be swiftly stopped and that this subchapter shall be liberally construed and applied to promote its underlying purposes and policies.

(6 Del. C. 1953, § 2512; 55 Del. Laws, c. 46.)

§ 2513 Unlawful practice.

(a) The act, use or employment by any person of any deception, fraud, false pretense, false promise, misrepresentation, or the concealment, suppression, or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale, lease or advertisement of any merchandise, whether or not any person has in fact been misled, deceived or damaged thereby, is an unlawful practice. It shall also be an unlawful practice to misrepresent the geographic location of a business or supplier which raises or sells flowers and/or ornamental plants by:

(1) Listing a local telephone number in a local telephone directory if:

a. Calls to the telephone number are routinely forwarded or otherwise transferred to a business location that is outside the calling area covered by the local telephone directory other than to counties contiguous to this State; and

b. The listing fails to identify the locality and state of the supplier's business; or

(2) Listing a fictitious business name or an assumed business name in a local telephone directory if:

a. The name misrepresents the supplier's geographic location; and

b. The listing fails to identify the locality and state of the supplier's business.

(b) This section shall not apply:

(1) To the owner or publisher of newspapers, magazines, publications or printed matter wherein such advertisement appears, or to the owner or operator of a radio or television station which disseminates such advertisement when the owner, publisher or operator has no knowledge of the intent, design or purpose of the advertiser; or

(2) To any advertisement or merchandising practice which is subject to and complies with the rules and regulations, of and the statutes administered by, the Federal Trade Commission; or

(3) To matters subject to the jurisdiction of the Public Service Commission, or of the Insurance Commissioner of this State.

(6 Del. C. 1953, § 2513; 55 Del. Laws, c. 46; 69 Del. Laws, c. 203, § 23; 71 Del. Laws, c. 420, § 1; 71 Del. Laws, c. 470, §§ 12, 13.)

§ 2514 Attorney General's investigative demand — Things demanded.

Whenever the Attorney General has reason to believe that a person has engaged in, is engaging in, or is about to engage in, any practice declared by this chapter to be unlawful, the Attorney General may, pursuant to an order of any Judge of the Superior Court or of the Chancellor or Vice-Chancellor, prior to the institution of a civil or criminal proceeding against such person, issue and cause to be served upon such person, an investigative demand requiring such person to:

(1) File a statement or report in writing under oath on such forms as the Attorney General may prescribe as to all the facts and circumstances concerning the sale, lease or advertisement of merchandise by such person;

(2) Answer oral interrogatories under oath at such places and times as the Attorney General may reasonably specify as to all facts and circumstances concerning the sale, lease or advertisement of merchandise by such person; and

(3) Produce for examination the original or copy of any advertisement, merchandise or sample thereof, record, book, document, tabulation, map, chart, photograph, report, memorandum, communication, mechanical transcription, account, paper or computer record as the Attorney General may specify in the demand.

(6 Del. C. 1953, § 2514; 55 Del. Laws, c. 46; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 470, §§ 7-10.)

§ 2515 Attorney General's investigative demand — Contents.

Each Attorney General's investigative demand shall be in writing and shall:

(1) State the nature of the conduct constituting the alleged violation of this subchapter which is under investigation and the provision of law applicable thereto;

(2) Describe the class or classes of material to be produced thereunder with such definiteness and certainty as to permit such material to be fairly identified;

(3) Prescribe a return date which will provide a reasonable time within which the material so demanded may be assembled and made available for inspection and copying or reproduction; and

(4) Identify the custodian to whom such material shall be made available or the official before whom such oral examination shall take place or with whom such written reports shall be filed.

(6 Del. C. 1953, § 2515; 55 Del. Laws, c. 46.)

§ 2516 Attorney General's investigative demand — Limitations.

No such demand shall:

(1) Contain any requirement which would be held to be unreasonable if contained in a subpoena issued by a court of this State in aid of a grand jury investigation of an alleged violation of this subchapter; or

(2) Require the production of any evidence which would be privileged from disclosure if demanded by a subpoena issued by a court of this State in aid of a grand jury investigation of an alleged violation of this subchapter.

(6 Del. C. 1953, § 2516; 55 Del. Laws, c. 46.)

§ 2517 Attorney General's investigative demand — Issuance of protective order.

(a) On motion promptly made by a person who receives such a demand from the Attorney General, the judge who authorized the issuance of the investigative demand, if available, and if not, another member of the judge's court, upon notice and good cause shown, may make any order which is deemed appropriate and just to protect the person from an improper demand from the Attorney General.

(b) If the Attorney General determines that it would not be in the best interests of the investigation to disclose the evidence on which the Attorney General relied to establish the belief that unlawful conduct has occurred, is occurring or is about to occur, the Attorney General may request, and the court may examine, in camera, the evidence upon which the Attorney General relied in order to rule on such a motion.

(6 Del. C. 1953, § 2517; 55 Del. Laws, c. 46; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 470, § 14.)

§ 2518 Impounding evidence.

Pursuant to an order of the Superior Court or the Court of Chancery, the Attorney General may impound the original or copy of any document or other material produced in accordance with § 2514 of this title, which material shall be retained in the possession of such custodian and under such circumstances as the Court may designate until the completion of all proceedings in connection with which the same is produced.

(6 Del. C. 1953, § 2518; 55 Del. Laws, c. 46; 71 Del. Laws, c. 470, § 6.)

§ 2519 Service of demand.

Service of any demand by the Attorney General under § 2514 of this title shall be made personally within this State, if the person can be found therein; but if such service cannot be made, substituted service may be made in the following manner:

(1) Personal service outside of this State; or

(2) The mailing by registered mail to the last known place of business, residence or abode within or without this State of the person to whom such demand is directed; or

(3) As to any person other than a natural person, in the manner provided in § 321 or §§ 371 to 385 of Title 8 and in the manner provided in the procedural rules of the court authorizing the issuance of the demand; or

(4) Such service as the Court may direct in lieu of personal service within this State.

(6 Del. C. 1953, § 2519; 55 Del. Laws, c. 46; 71 Del. Laws, c. 470, § 4.)

§ 2520 Failure to respond; order; penalties.

If any person fails to respond to any investigative demand issued by the Attorney General under § 2514 of this title, the Attorney General may, after due notice, apply to the court which authorized the issuance of the demand for an order, and the court, after a hearing on said application, may enter an order:

(1) Requiring said person to respond to the demand;

(2) Granting injunctive relief restraining any practice or act declared by this chapter to be unlawful;

(3) Vacating, annulling or suspending the corporate charter of a corporation created by or under the laws of this State or revoking or suspending the certificate of authority to do business in this State of a foreign corporation, or revoking or suspending any other licenses, permits or certificates issued pursuant to law to such person which are used to further the allegedly unlawful practice;

(4) Adjudging such person in contempt of court; and

(5) Granting such other relief or imposing any other penalty or fine as may be determined by the court in its discretion to be appropriate to obtain compliance with the Attorney General's investigative demand.

(6 Del. C. 1953, § 2520; 55 Del. Laws, c. 46; 71 Del. Laws, c. 470, § 5.)

§ 2521 Cease and desist agreements.

Repealed by 77 Del. Laws, c. 282, § 3, effective June 10, 2010.

§ 2522 Proceedings brought by the Attorney General.

(a) Whenever it appears to the Attorney General that a person has engaged in, is engaging in or is about to engage in any practice declared by this subchapter to be unlawful, the Attorney General may institute an action in accordance with subchapter II of Chapter 25 of Title 29 in order to enjoin such practices or any acts being done in furtherance thereof. The complaint shall state the nature of the conduct constituting a violation of this subchapter and the relief sought thereunder. Such action shall be brought in a court of competent jurisdiction in the county in which the alleged unlawful practice has been, is, or is about to be performed.

(b) If a court of competent jurisdiction finds that any person has wilfully violated this subchapter, upon petition to the court by the Attorney General in the original complaint or made at any time following the court's finding of a wilful violation, the person shall forfeit and pay to the State a civil penalty of not more than $10,000 for each violation. For purposes of this subchapter, a wilful violation occurs when the person committing the violation knew or should have known that the conduct was of the nature prohibited by this subchapter.

(6 Del. C. 1953, § 2522; 55 Del. Laws, c. 46; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 470, § 3; 77 Del. Laws, c. 282, § 1; 78 Del. Laws, c. 219, § 1.)

§ 2523 Restraining orders; injunctions.

In actions filed under this subchapter, the Court of Chancery after a hearing may grant relief by issuing temporary restraining orders, preliminary or permanent injunctions, and such other relief as may be necessary to prevent any person from engaging in activities declared by this subchapter to be unlawful or which may be necessary to restore to any person in interest any money or property, real or personal, which may have been acquired by means of any practice declared to be unlawful by this subchapter. Unless otherwise specified in this subchapter, the procedure for all such proceedings shall be as provided in the Rules of Procedure of the Court of Chancery or as established by the usual practice and procedure in said Court.

(6 Del. C. 1953, § 2523; 55 Del. Laws, c. 46.)

§ 2524 Appointment of receiver; powers; damages; administration of estate; jurisdiction.

(a) If it should appear to the Court of Chancery after a hearing, that a receiver should be appointed in cases of substantial and wilful violations of the provisions of this subchapter, the Court may appoint such receiver.

(b) The receiver shall have the power to sue for, collect, receive and take possession of all the goods and chattels, rights and credits, moneys and effects, lands and tenements, books, records, documents, papers, choses in action, bills, notes and property of every

description, acquired by means of any practice declared to be unlawful by this subchapter, including property with which such property has been mingled if it cannot be identified in kind because of such commingling, and to sell, convey, and assign the same and hold and dispose of the proceeds thereof under the direction of the Court.

(c) Any person who has suffered damages as a result of the use or employment of any such unlawful acts or practices and submits proof to the satisfaction of the Court that that person has in fact been damaged, may participate with general creditors in the distribution of the assets to the extent of out-of-pocket losses.

(d) The receiver shall settle the estate and distribute the assets under the direction of the Court.

(e) The Court shall have jurisdiction of all questions arising in such proceedings and may make such orders and judgments therein as may be required.

(6 Del. C. 1953, § 2524; 55 Del. Laws, c. 46; 70 Del. Laws, c. 186, § 1.)

§ 2525 Private cause of action; savings clause for private claims against persons who acquired property by unlawful practices.

(a) A private cause of action shall be available to any victim of a violation of this subchapter. Such cause of action may be brought in any court of competent jurisdiction in this State without prior action by the Attorney General as provided for in this subchapter.

(b) Subject to an order of the court terminating the business affairs of any person after receivership proceedings held pursuant to this subchapter, the provisions of this subchapter shall not bar any claim against any person who has acquired any money or property, real or personal, by means of any acts or practices declared by this subchapter to be unlawful.

(6 Del. C. 1953, § 2525; 55 Del. Laws, c. 46; 74 Del. Laws, c. 113, §§ 1, 2.)

§ 2526 Costs.

In any action brought under the provisions of this subchapter in which any person is found to have engaged in, or be about to engage in, a practice declared by this subchapter to be unlawful, the court may award costs to the Attorney General for the use of the State.

(6 Del. C. 1953, § 2526; 55 Del. Laws, c. 46.)

§ 2527 Consumer Protection Fund.

(a) All money received by the State as a result of actions brought by the Attorney General pursuant to subchapter II of Chapter 25 of Title 29 or pursuant to the state or federal antitrust laws shall be credited by the State Treasurer to a fund to be known as the "Consumer Protection Fund."

(b) The Consumer Protection Fund will be a revolving fund and shall consist of funds transferred to the revolving fund pursuant to actions brought pursuant to subchapter II of Chapter 25 of Title 29 or an antitrust action, gifts or grants made to the revolving fund and funds awarded to the State or any agency thereof for the recovery of costs and attorney fees in a consumer fraud or an antitrust action; provided, however, that to the extent that such costs constitute reimbursement for expenses directly paid from constitutionally dedicated funds, such recoveries shall be transferred to the constitutionally dedicated fund.

(c) Money in the Consumer Protection Fund shall be used for the payment of expenses incurred by the Attorney General in connection with activities under subchapter II of Chapter 25 of Title 29, this chapter, or the state or federal antitrust laws or, if approved by the Director of the Office of Management and Budget and the Controller General, for other Department of Justice expenses resulting from General Fund deficits. At the end of any fiscal year, if the balance in the Consumer Protection Fund exceeds $3,000,000, the excess shall be withdrawn from the Consumer Protection Fund and deposited in the General Fund.

(d) The Attorney General is authorized to expend from the Consumer Protection Fund such moneys as are necessary for the payment of salaries, costs, expenses and charges incurred in the preparation, institution and maintenance of consumer protection and antitrust actions under state or federal antitrust laws.

(e) When it is legally established that the State, or agencies thereof, public bodies of the State or individuals have a right to a portion of funds in the Consumer Protection Fund, the Attorney General is authorized to approve release of such funds to the appropriate fund, entity or recipient.

(f) From time to time as determined by the Delaware State Clearinghouse Committee, the Attorney General shall submit a detailed report to members of the Committee of revenues, expenditures and program measures for the fiscal period in question. Such report shall also be sufficiently descriptive in nature so as to be concise and informative. The Committee may cause the Attorney General to appear before the Committee and to answer such questions as the Committee may require.

(64 Del. Laws, c. 303, § 1; 69 Del. Laws, c. 151, § 2; 69 Del. Laws, c. 203, §§ 13, 17-21; 77 Del. Laws, c. 282, § 1; 78 Del. Laws, c. 219, §§ 2-4; 79 Del. Laws, c. 292, § 29; 80 Del. Laws, c. 79, § 114(a); 81 Del. Laws, c. 28, § 1; 81 Del. Laws, c. 28, § 5.)

§ 2528 Price protections during the COVID-19 recovery period [Effective until fulfillment of 82 Del. Laws, c. 267, § 4].

(a) As used in this section:

(1) "COVID-19" means any of the following:

a. Severe acute respiratory syndrome coronavirus 2.

b. The disease caused by severe acute respiratory syndrome coronavirus 2.

(2) "COVID-19 order" means a modification to the COVID-19 State of Emergency Declaration or another order issued by the Governor under Chapter 31 of Title 20 and relating to the COVID-19 State of Emergency.

(3) "COVID-19 recovery period" means the period beginning immediately upon termination of the COVID-19 State of Emergency and continuing until the sixty-first day following the termination of the COVID-19 State of Emergency.

(4) "COVID-19 State of Emergency" means the state of emergency declared effective by the Governor as of Friday, March 13, 2020, at 8:00 a.m. Eastern Standard Time under the COVID-19 State of Emergency Declaration, and any subsequent state of emergency relating to COVID-19.

(5) "COVID-19 State of Emergency Declaration" means the Declaration of a State of Emergency for the State of Delaware Due to a Public Health Threat issued by the Governor on March 12, 2020.

(6) "Price gouging" means an excessive increase in the price of goods or services offered for sale by an entity as compared to the sales price offered by the entity in the usual course of business immediately before the date of the COVID-19 State of Emergency. If an entity did not sell or offer to sell the goods or services before the COVID-19 state of emergency, the price at which that good or service was generally available within the State immediately before March 12, 2020, will be used to determine if an entity is engaging in price gouging.

(7) "State of emergency" means as defined in § 3102 of Title 20.

(b) (1) An entity doing business in this State may not engage in price gouging during the COVID-19 recovery period.

(2) It is prima facie evidence that an entity has engaged in price gouging if all of the following apply:

a. The price increase is more than 10% above the sales price offered by the entity in the usual course of business immediately before the date of the COVID-19 State of Emergency. If an entity did not sell or offer to sell goods or services before the COVID-19 State of Emergency, the price at which that good or service was generally available within the State immediately before March 12, 2020, will be used to determine if there has been a price increase of more than 10%.

b. The increase in price is not attributable to additional costs imposed on the seller of the good or service.

(c) A violation of subsection (b) of this section is an unlawful act under § 2513 of this title, and a violation of this subchapter.

(d) Subject to paragraph (e)(1) of this section, subsections (b) and (c) of this section supersede any protections relating to price gouging contained in a COVID-19 order.

(e) (1) The Governor may, based on an evaluation of market needs or conditions, issue a COVID-19 order that does the following as it relates to a protection under subsections (b) and (c) of this section:

a. Modifies the protection to impose a less restrictive protection that transitions back toward the applicable law that was in effect before the COVID-19 State of Emergency Declaration. The less restrictive protection applies during the COVID-19 recovery period.

b. Suspends the protection. The suspended protection does not apply during the COVID-19 recovery period.

(2) Nothing in this subsection limits the Governor's power under Chapter 31 of Title 20. However, a price gouging protection in a COVID-19 order that does not comply with paragraph (e)(1) of this section does not apply after the termination of the COVID-19 State of Emergency.

(82 Del. Laws, c. 267, § 2.)

§ 2528 Price protections during the COVID-19 recovery period [Effective upon fulfillment of 82 Del. Laws, c. 267, § 4].

(82 Del. Laws, c. 267, § 2; repealed by 82 Del. Laws, c. 267, § 4.)

Subchapter III

Deceptive Trade Practices

§ 2531 Definitions.

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

(1) "Article" means a product as distinguished from its trademark, label, or distinctive dress in packaging.

(2) "Certification mark" means a mark used in connection with the goods or services of a person other than the certifier to indicate geographic origin, material, mode of manufacture, quality, accuracy, or other characteristics of the goods or services or to indicate that the work or labor on the goods or services was performed by members of a union or other organization.

(3) "Collective mark" means a mark used by members of a cooperative, association, or other collective group or organization to identify goods or services and distinguish them from those of others, or to indicate membership in the collective group or organization.

(4) "Mark" means a word, name, symbol, device, or any combination of the foregoing in any form or arrangement.

(5) "Person" means an individual, corporation, government, or governmental subdivision or agency, statutory trust, business trust, estate, trust, partnership, unincorporated association, 2 or more of any of the foregoing having a joint or common interest, or any other legal or commercial entity.

(6) "Service mark" means a mark used by a person to identify services and to distinguish them from the services of others.

(7) "Trademark" means a mark used by a person to identify goods and to distinguish them from the goods of others.

(8) "Trade name" means a word, name, symbol, device, or any combination of the foregoing in any form or arrangement used by a person to identify a business, vocation, or occupation and distinguish it from the business, vocation, or occupation of others.

(6 Del. C. 1953, § 2531; 55 Del. Laws, c. 36; 70 Del. Laws, c. 186, § 1; 73 Del. Laws, c. 329, § 36.)

§ 2532 Deceptive trade practices.

(a) A person engages in a deceptive trade practice when, in the course of a business, vocation, or occupation, that person:

(1) Passes off goods or services as those of another;

(2) Causes likelihood of confusion or of misunderstanding as to the source, sponsorship, approval, or certification of goods or services;

(3) Causes likelihood of confusion or of misunderstanding as to affiliation, connection, or association with, or certification by, another;

(4) Uses deceptive representations or designations of geographic origin in connection with goods or services;

(5) Represents that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities that they do not have, or that a person has a sponsorship, approval, status, affiliation, or connection that the person does not have;

(6) Represents that goods are original or new if they are deteriorated, altered, reconditioned, reclaimed, used, or secondhand;

(7) Represents that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another;

(8) Disparages the goods, services, or business of another by false or misleading representation of fact;

(9) Advertises goods or services with intent not to sell them as advertised;

(10) Advertises goods or services with intent not to supply reasonably expectable public demand, unless the advertisement discloses a limitation of quantity;

(11) Makes false or misleading statements of fact concerning the reasons for, existence of, or amounts of, price reductions; or

(12) Engages in any other conduct which similarly creates a likelihood of confusion or of misunderstanding.

(b) In order to prevail in an action under this chapter, a complainant need not prove competition between the parties or actual confusion or misunderstanding.

(c) This section does not affect unfair trade practices otherwise actionable at common law or under other statutes of this State.

(6 Del. C. 1953, § 2532; 55 Del. Laws, c. 36; 70 Del. Laws, c. 186, § 1.)

§ 2533 Remedies.

(a) A person likely to be damaged by a deceptive trade practice of another may be granted an injunction against it under the principles of equity and on terms that the court considers reasonable. Proof of monetary damage, loss of profits, or intent to deceive, is not required. Relief granted for the copying of an article shall be limited to the prevention of confusion or misunderstanding as to source.

(b) The court in exceptional cases may award reasonable attorneys' fees to the prevailing party. Costs or attorneys' fees may be assessed against a defendant only if the court finds that defendant has wilfully engaged in a deceptive trade practice.

(c) The relief provided in this section is in addition to remedies otherwise available against the same conduct under the common law or other statutes of this State. If damages are awarded to the aggrieved party under the common law or other statutes of this State, such damages awarded shall be treble the amount of the actual damages proved.

(d) The Attorney General shall have standing to seek, on behalf of the State, any remedy enumerated in this section for any violation of § 2532 of this title that is likely to harm any person, including but not limited to individual retail purchasers and consumers of goods, services or merchandise.

(e) If a court of competent jurisdiction finds that any person has wilfully violated this subchapter, upon petition to the court by the Attorney General in the original complaint or at any time following the court's finding of a wilful violation, the person shall forfeit and pay to the State a civil penalty of not more than $10,000 for each violation. For purposes of this subchapter, a wilful violation occurs when the person committing the violation knew or should have known that the conduct was of the nature prohibited by this subchapter.

(6 Del. C. 1953, § 2533; 55 Del. Laws, c. 36; 57 Del. Laws, c. 499; 69 Del. Laws, c. 203, § 22; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 470, § 16.)

§ 2534 Application.

(a) This chapter does not apply to:

(1) Conduct in compliance with the orders or rules of, or a statute administered by, a federal, state, or local governmental agency, or a board or commission organized under Professions and Occupations in Title 24, and shall not be the subject of a private cause of action thereunder; provided that said conduct has been addressed by the applicable statute, order, or rule of a board or commission organized under Title 24 and said order or rule does not clearly conflict with a specific provision of the consumer protection laws the Attorney General is charged to enforce;

(2) Publishers, broadcasters, printers, or other persons engaged in the dissemination of information or reproduction of printed or pictorial matter who publish, broadcast, or reproduce material without knowledge of its deceptive character; or

(3) Actions or appeals pending on April 19, 1965.

(b) Section 2532(a)(2) and (3) of this title do not apply to the use of a service mark, trademark, certification mark, collective mark, trade name, or other trade identification that was used and not abandoned before April 19, 1965, if the use was in good faith and is otherwise lawful except for this chapter.

(6 Del. C. 1953, § 2534; 55 Del. Laws, c. 36; 77 Del. Laws, c. 282, § 19.)

§ 2535 Uniformity of interpretation.

This chapter shall be construed to effectuate its general purpose to make uniform the law of those states which enact it.

(6 Del. C. 1953, § 2535; 55 Del. Laws, c. 36.)

§ 2536 Short title.

This subchapter may be cited as the "Uniform Deceptive Trade Practices Act."

(6 Del. C. 1953, § 2536; 55 Del. Laws, c. 36.)

Subchapter IV
Distribution of Credit Cards

§ 2541 Definitions.

As used in this subchapter:

"Credit card" means any card or document entitling its holder to obtain any goods or services by the production of the card or document, and entitling its holder to tender payment for such goods and services at a later date.

(6 Del. C. 1953, § 2541; 57 Del. Laws, c. 390.)

§ 2542 Prohibition upon distribution.

No person, or any representative thereof, shall distribute any credit card to any person, association, corporation, partnership, or any representative thereof, within this State unless such credit card shall have been requested or unless the issuer shall have given at least 14 days notice of intention to issue such card. The notice shall also include a conspicuous legend that the prospective holder has the right to refuse the credit card and shall be accompanied by a postage prepaid, preaddressed envelope or card upon which the prospective holder may indicate such refusal. Use of the credit card by the intended recipient shall constitute acceptance, but there shall be no liability by the intended recipient prior to the use of same. This subchapter shall not apply to the issuance of renewal or substitute cards.

(6 Del. C. 1953, § 2542; 57 Del. Laws, c. 390; 70 Del. Laws, c. 186, § 1.)

§ 2543 Penalty.

Whoever violates § 2542 of this title shall be fined not less than $100 nor more than $500 for each offense.

(6 Del. C. 1953, § 2543; 57 Del. Laws, c. 390.)

§ 2544 Injunctive relief.

Whenever the Attorney General has reason to believe that a violation of § 2542 of this title is a continuing practice, the Attorney General may apply to the Court of Chancery and may obtain the appropriate injunctive relief against any violator.

(6 Del. C. 1953, § 2544; 57 Del. Laws, c. 390; 70 Del. Laws, c. 186, § 1.)

Subchapter V
Security for Franchised Distributors

§ 2551 Definitions.

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

(1) "Franchise" means a contract or other arrangement governing the business relationship within this State between a franchised distributor and a franchisor where the franchised distributor is required to pay more than $100 to enter into such contract or other arrangement; provided, however, that a franchised distributor as defined under paragraph (2)(d) of this section shall not be required to have paid any consideration to enter into such contract or other arrangement.

(2) "Franchised distributor " means an individual, partnership, corporation, or unincorporated association with a place of business within the State, and engaged in the business of:

(a) Purchasing or taking on consignment products which bear the trademark or trade name of the manufacturer, producer or publisher for the primary purpose of selling such products to retail outlets; or

(b) Selling in or through retail outlets products which bear the trademark or trade name of no more than 3 manufacturers, producers, publishers, trademark licensors, or trade name licensors; or

(c) Purchasing or taking on consignment, books, magazines, journals, newspapers, or other publications for the primary purpose of selling such publications to retail outlets; or

(d) Operating a service station, filling station, store, garage or other place of business for the sale of motor fuel for delivery into the service tank or tanks of any vehicle propelled by an internal combustion engine.

(3) "Franchisor" means an individual, partnership, corporation or unincorporated association in the business of:

(a) Distributing or selling to one or more franchised distributors, on its own behalf or on behalf of another, products which bear the trademark or trade name of the manufacturer, producer or publisher; or

(b) Licensing the use of one or more trademarks or trade names to one or more franchised distributors; or

(c) Distributing or selling to one or more franchised distributors, on its own behalf or on behalf of another, books, magazines, journals, newspapers, and/or other publications published by it or by another; or

(d) Producing or refining of petroleum products, or the producer or fabricator of any automotive products sold or distributed by a service station.

(4) "Products" means any tangible items offered for sale irrespective of their nature, including, without limiting the generality of the term, all types of publications.

(6 Del. C. 1953, § 2551; 57 Del. Laws, c. 693; 62 Del. Laws, c. 352, §§ 1-3.)

§ 2552 Unjust termination of, or failure to renew, a franchise.

(a) Termination of a franchise by a franchisor shall be deemed to be "unjust," or to have been made "unjustly," if such termination is without good cause or in bad faith. Any termination of a franchise which is not unjust shall be deemed to be "just," or to have been made "justly."

(b) The failure of a franchisor to renew a franchise shall be deemed to be "unjust," or to have been made "unjustly," if such failure to renew is without good cause or in bad faith. Any failure to renew a franchise which is not unjust shall be deemed to be "just," or to have been made "justly."

(c) A provision of a franchise which permits a franchisor to terminate that franchise, which provision does not specify the grounds upon which such termination may be made, shall be construed to permit the franchisor to make only a just termination.

(d) A provision of a franchise which permits a franchisor to fail to renew that franchise, which provision does not specify the grounds upon which such failure to renew may be made, shall be construed to permit the franchisor only justly to fail or refuse to renew.

(e) A provision in a franchise permitting a franchisor to make an unjust termination of a franchise is against the public policy of this State and shall not be enforced in the courts of this State.

(f) A provision in a franchise permitting a franchisor unjustly to fail or refuse to renew a franchise is against the public policy of this State and shall not be enforced in the courts of this State.

(g) No franchisor may unjustly terminate a franchise.

(h) No franchisor may unjustly fail or refuse to renew a franchise.

(i) No franchisor may unjustly refuse to deal with a franchised distributor with whom the franchisor has been dealing for at least 2 years.

(j) Notwithstanding any terms of the franchise agreement to the contrary, no franchisor who leases real or personal property to a franchised distributor may charge the franchised distributor a rent or other charge for the use or occupancy of such real or personal property which is unreasonable or excessive in light of the franchisor's interest in such real or personal property, and the purpose to which the real or personal property is being used. The refusal of the franchisor to renew a lease for real or personal property except upon the payment of a rent or other charge which is unreasonable or excessive in light of the use to which the property has been placed by the franchisor and/or the interest of the franchisor in the real or personal property shall be deemed to be an unjust termination of the franchise.

(6 Del. C. 1953, § 2552; 57 Del. Laws, c. 693; 62 Del. Laws, c. 352, § 4.)

§ 2553 Remedies.

(a) If a franchisor (1) unjustly terminates a franchise, or (2) unjustly fails or refuses to renew a franchise, or (3) threatens, or attempts, or gives notice that it intends to attempt unjustly to terminate a franchise, or (4) threatens, or attempts, or gives notice that it intends to attempt unjustly to refuse to renew a franchise, then the franchised distributor whose franchise is threatened shall be entitled to recover damages from the franchisor and, in addition, shall be entitled to secure in the Court of Chancery of this State, subject to general equitable principles, an order enjoining such termination or, in case of a failure or refusal to renew, a mandatory order for renewal of the franchise.

Pending the issuance of such an order, the franchised distributor shall be entitled to an order enjoining such termination pendente lite, or in case of a failure or refusal to renew, a mandatory order extending the franchise pendente lite. Any such order, whether final or pendente lite, shall contain provisions directing the franchisor to sell or consign to the franchised distributor the products covered by the franchise and/or to license to the franchised distributor the trademarks or trade names covered by the franchise, and otherwise to deal with the franchised distributor under the terms of the franchise so terminated.

(b) Without limiting any other provisions of this chapter, if a franchisor unjustly refuses to deal with a franchised distributor with whom the franchisor has been dealing for at least 2 years, the franchised distributor shall be entitled to recover damages from the franchisor pursuant to subsection (a) of this section plus all other damages (including, without limitation, loss of profits) allowed under the law of this State; and, in addition, shall be entitled to secure in the Court of Chancery of this State an order directing the franchisor to deal with the franchised distributor on fair and competitive terms. Pending the issuance of such final order, the franchised distributor shall be entitled to secure such a mandatory order pendente lite.

(c) Except as otherwise provided in subsection (b) of this section, damages recoverable pursuant to the provisions of this chapter shall include, but shall not be limited to, the following:

(1) A fractional portion of the franchised distributor's tangible assets (both real and personal) in this State used with respect to the terminated or unrenewed franchise, including, but not limited to, sales outlets and facilities, offices, warehouses, trucks and the furnishing, equipment and accessories therein; the numerator of the fraction shall consist of the franchised distributor's gross sales (in the most recently completed fiscal year) within this State attributable to the terminated or unrenewed franchise, and the denominator of the fraction shall consist of the franchised distributor's total gross sales (in the most recently completed fiscal year) in this State; and

(2) Loss of goodwill; and

(3) Loss of profits, which loss shall be presumed to be no less than 5 times the profit obtained by the franchised distributor, by virtue of the terminated franchise, in the most recently completed fiscal year; and

(4) All other damages allowed under the law of this State; and

(5) The reasonable counsel fees and expenses incurred in the action or actions brought pursuant to this chapter.

(6 Del. C. 1953, § 2553; 57 Del. Laws, c. 693.)

§ 2554 Franchisee worker classification.

Individuals or entities who are parties to a franchise agreement as set out by the Federal Trade Commission shall not be deemed employees for purposes of Chapter 11 of Title 19.

(79 Del. Laws, c. 39, § 1.)

§ 2555 Notice required to terminate or elect not to renew a franchise.

Notwithstanding any provision in a franchise agreement which provides otherwise, any termination of a franchise or election not to renew a franchise must be made on at least 90 days' notice.

(6 Del. C. 1953, § 2554; 57 Del. Laws, c. 693; 79 Del. Laws, c. 39, § 1.)

§ 2556 Application.

This law shall apply to franchises in existence on July 8, 1970, and the renewal of such franchises, as well as franchises subsequently executed.

(6 Del. C. 1953, § 2555; 57 Del. Laws, c. 693; 79 Del. Laws, c. 39, § 1.)

§ 2557 Short title.

This chapter may be cited as the "Delaware Franchise Security Law."

(6 Del. C. 1953, § 2556; 57 Del. Laws, c. 693; 79 Del. Laws, c. 39, § 1.)

Subchapter VI

Pyramid or Chain Distribution Schemes

§ 2561 Definitions.

As used in this subchapter:

(1) "Person" includes an individual, corporation, trust, estate, partnership, unincorporated association, or any other legal or commercial entity.

(2) "Pyramid or chain distribution scheme" means a sales device whereby a person, upon a condition that the person part with money, property or any other thing of value, is granted a franchise license, distributorship or other right which person may further perpetuate the pyramid or chain of persons who are granted such franchise, license, distributorship or right upon such condition. A limitation as to the number of persons who may participate, or the presence of additional conditions upon the eligibility for such a franchise, license,

distributorship or other right recruit or upon the receipt of profits therefrom, does not change the identity of the scheme as a pyramid or chain distribution scheme.

(6 Del. C. 1953, § 2561; 59 Del. Laws, c. 86, § 1; 70 Del. Laws, c. 186, § 1.)

§ 2562 Unlawful practice.

The use of a pyramid or chain sales distribution scheme in connection with the solicitation of investments in the form of money, property or any other thing of value is hereby declared to be an unlawful practice under § 2513 of this title.

(6 Del. C. 1953, § 2562; 59 Del. Laws, c. 86, § 1.)

§ 2563 Prohibition.

(a) No person, either directly or through the use of agents or other intermediaries, shall promote, sell, attempt to sell, offer or grant participation in a pyramid or chain distribution scheme.

(b) Whoever, directly or through the use of agents or intermediaries, violates subsection (a) of this section shall be fined not more than $5,000, or imprisoned not more than 3 years, or both.

(c) The Superior Court shall have exclusive jurisdiction of offenses under this section.

(6 Del. C. 1953, § 2563; 59 Del. Laws, c. 86, § 1.)

§ 2564 Contracts void; civil liability.

(a) Any contract made in violation of § 2563 of this title shall be void and any person who, directly or through the use of agents or intermediaries, induces or causes another person to participate in a pyramid or chain distribution scheme shall be liable to that person in an amount equal to the sum of:

(1) Twice the amount of any consideration paid; and

(2) In the case of any successful action to enforce such liability, the costs of the action together with a reasonable attorney's fee, as determined by the court.

(b) An action under this section may be brought in any court in this State otherwise having jurisdiction over the dollar amount being sought by way of recovery within 1 year from the date on which the consideration was paid.

(6 Del. C. 1953, § 2564; 59 Del. Laws, c. 86, § 1.)

Subchapter VII

Buyer Property Protection Act

§ 2570 Short title.

This subchapter may be cited as the "Buyer Property Protection Act."

(69 Del. Laws, c. 86, § 2.)

§ 2571 Definitions.

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

(1) "Agent" means any individual, partnership, corporation or trustee defined as a broker in § 2901 of Title 24, acting on behalf of a seller or buyer of residential real property.

(2) "Buyer" means any individual, partnership, corporation or trustee purchasing any estate or interest in real property.

(3) "Final settlement" means the time at which the parties have signed and delivered all papers and consideration to convey title to the estate or interest in residential real property being conveyed.

(4) "Residential real property" means any estate or interest in a manufactured housing lot or real property, improved by dwelling units for 1-4 families.

(5) "Seller" means any individual, partnership, corporation or trustee transferring residential real property.

(6) "Subagent" means any individual, partnership, corporation or trustee defined as a broker or sales person in § 2901 of Title 24 acting on behalf of an agent.

(69 Del. Laws, c. 86, § 2.)

§ 2572 Disclosure of material defects.

(a) Except as excluded by § 2577 of this title hereof, a seller transferring residential real property shall disclose, in writing, to the buyer, agent and subagent, as applicable, all material defects of that property that are known at the time the property is offered for sale or that are known prior to the time of final settlement.

(b) This disclosure shall be made in writing before the seller signs the listing agreement and shall be updated as necessary for any material changes occurring in the property before final settlement.

(69 Del. Laws, c. 86, § 2.)

§ 2572A Radon testing and disclosure.

(a) Except as excluded by § 2577 of this title, every purchaser of any interest in residential real property on which a residential dwelling exists shall be notified that said property may present the potential for exposure to radon.

(b) Except as excluded by § 2577 of this title, the seller of any interest in residential real property on which a residential dwelling exists is required to provide the buyer with any information on radon from tests or inspections in the seller's possession, and notify the buyer of any known radon hazards.

(c) The Department of Health and Social Services shall develop the content of written information that the selling broker shall provide to the buyer of any interest in residential real property on which a residential dwelling exists. The information shall describe potential hazards of exposure to radon, testing for radon and radon remediation.

(d) The Delaware Real Estate Commission shall develop a form that will document that subsections (a), (b) and (c) of this section have occurred. The form shall be utilized for every transfer of residential real property as described in this section and shall include:

(1) The property address;

(2) The seller's disclosure of the presence of radon hazards, if known;

(3) The buyer's acknowledgement that information about radon was received;

(4) The buyer's acknowledgement of that buyer's option to test for radon;

(5) The seller's acknowledgement that the seller has been informed of the seller's obligation and is aware of that seller's responsibility to ensure compliance with this section; and

(6) Signatures of the buyer and seller attesting to the above and the date so signed.

(75 Del. Laws, c. 360, § 1; 70 Del. Laws, c. 186, § 1.)

§ 2573 Property condition report.

The agent, subagent or seller, as applicable, shall give a copy of the Seller's Disclosure of Real Property Condition Report to all prospective buyers or prospective buyer's agent prior to the time the buyer makes an offer to purchase. This written disclosure form, signed by buyer and seller, shall become a part of the purchase agreement.

(69 Del. Laws, c. 86, § 2.)

§ 2574 Other inspections or warranties.

The seller's completed disclosure form is a good faith effort by the seller to make the disclosures required by this subchapter, and is not a warranty of any kind by the seller or any agents or subagents representing seller or buyer in the transfer and is not a substitute for any inspections or warranties that the seller or buyer may wish to obtain.

(69 Del. Laws, c. 86, § 2.)

§ 2575 Cause of action.

The buyer shall not have a cause of action against the seller, agent and/or subagent for:

(1) Material defects in condition of the residential real property disclosed to the buyer prior to the buyer making an offer to purchase;

(2) Material defects developed after the offer was made but disclosed prior to final settlement, provided seller has complied with the agreement of sale; or

(3) Material defects which occur after final settlement.

(69 Del. Laws, c. 86, § 2.)

§ 2576 Applicability [For application of this section, see 80 Del. Laws, c. 308, § 2].

This subchapter shall apply to transfers by sale, exchange, installment land sale contract, lease with an option to purchase or ground lease of a manufactured housing lot, or residential real property, improved with dwelling units for 1-4 families, or vacant land zoned for residential use and marketed as appropriate for the construction of a dwelling for 1-4 families.

(69 Del. Laws, c. 86, § 2; 80 Del. Laws, c. 308, § 1.)

§ 2577 Exemptions.

This subchapter shall not apply to the following transfers of residential real property:

(1) Transfers governed by the Delaware Out-of-State Land Sales and Promotions Act [repealed] where the property disclosure report required by that law is provided to a prospective purchaser.

(2) Transfers pursuant to court order such as transfers ordered by the Court of Chancery in the administration of an estate, trust or guardianship or pursuant to a writ of execution, by a trustee in bankruptcy or a receiver, by eminent domain, and transfers resulting from a decree for specific performance.

(3) Transfers to a mortgagee by a mortgagor in default by a deed in lieu of foreclosure.

(4) Transfers by any sheriff's sale for default on an obligation secured by a mortgage, judgment, tax or other lien.

(5) Transfers by a fiduciary in the course of the administration of the decedent's estate, guardianship or trust.

(6) Transfers from 1 co-owner to 1 or more other co-owners.

(7) Transfers made to a spouse or to a person or persons in the lineal line of consanguinity of 1 or more of the transferors.

(8) Transfers between spouses resulting from a property settlement incident to a divorce.

(9) Transfers to or from any government entity.

(69 Del. Laws, c. 86, § 2.)

§ 2578 Property condition report form [For application of section, see 80 Del. Laws, c. 145, § 3].

(a) The Delaware Real Estate Commission shall develop a standard form or forms to be used as the Seller's Disclosure of Real Property Condition Report, for the disclosure of the condition of residential real property. This form or forms for different circumstances shall be promulgated and amended from time to time by the Real Estate Commission, including such additional relevant content as the Commission deems appropriate.

(b) The form for new construction shall include the following:

"An automatic fire sprinkler system or other fire suppression systems may be available. For further information, visit www.statefiremarshall.delaware.gov.".

(c) Each form shall also include the following:

"The cost of repairing and repaving the streets adjacent to the property is paid for by (check one):

___ The property owner(s), estimated fees: $____.

___ Delaware Department of Transportation or the State.

___ Unknown.

Note to Buyer: Repairing and repaving of the streets can be very costly."

(d) Each form shall also include the results of the radon test or tests required to be disclosed by § 2572A of this title.

(69 Del. Laws, c. 86, § 2; 72 Del. Laws, c. 426, § 1; 75 Del. Laws, c. 360, § 2; 80 Del. Laws, c. 145, § 2.)

Subchapter VIII

Enhanced Penalties when Elder Person or Person with a Disability Targeted

§ 2580 Definitions.

(a) "Elder person" means a person who is 65 years of age or older.

(b) "Major life activities" includes functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working.

(c) "Person with a disability" means a person who has a disability as defined in § 4602 of this title.

(d) "Substantially limits" means substantially interferes with or affects over an extended period of time. Minor temporary ailments or injuries shall not be considered physical or mental impairments which substantially limit a person's major life activities. Examples of minor temporary ailments are colds, influenza or sprains or minor injuries.

(69 Del. Laws, c. 151, § 1; 78 Del. Laws, c. 179, §§ 4, 5.)

§ 2581 Civil penalty; disposition of funds.

(a) If any person is found to have violated any provision of this chapter, and said violation is committed against an elder person or a person with a disability, in addition to any criminal or civil penalty otherwise set forth or imposed, the court may impose an additional civil penalty not to exceed $10,000 for each violation.

(b) The civil penalties imposed pursuant to subsection (a) of this section shall be deposited with the State Treasurer and placed into the Consumer Protection Fund as created by § 2527 of this title, shall be subject to appropriation by the General Assembly, and shall be used for the investigation and prosecution of deceptive acts against elder and disabled persons and for consumer education initiatives.

(69 Del. Laws, c. 151, § 1; 78 Del. Laws, c. 179, § 6.)

§ 2582 Determination of civil penalty.

In determining whether to impose an enhanced civil penalty under this subchapter and the amount thereof, the court shall consider the extent to which 1 or more of the following factors are present:

(1) Whether the defendant's conduct was in disregard of the rights of the elder person or person with a disability;

(2) Whether the defendant knew or should have known that the defendant's conduct was directed to an elder person or person with a disability;

(3) Whether the elder person or person with a disability was more vulnerable to the defendant's conduct because of age, poor health, infirmity, impaired understanding, restricted mobility or disability than other persons and whether the elder person or person with a disability actually suffered substantial physical, emotional or economic damage resulting from the defendant's conduct;

(4) Whether the defendant's conduct caused an elder person or person with a disability to suffer any of the following:

a. Mental or emotional anguish;

b. Loss of or encumbrance upon a primary residence of the elder person or person with a disability;

c. Loss of or encumbrance upon the principal employment or principal source of income of the elder person or person with a disability;

d. Loss of funds received under a pension or retirement plan or a government benefits program;

e. Loss of property set aside for retirement or for personal or family care and maintenance; or

f. Loss of assets essential to the health and welfare of the elder person or person with a disability.

(5) Any other factors the court deems appropriate.

(69 Del. Laws, c. 151, § 1; 78 Del. Laws, c. 179, §§ 7-14.)

§ 2583 Cause of action; enhanced penalties.

(a) An elder person or person with a disability who suffers damage or injury as a result of an offense or violation described in this chapter has a cause of action to recover actual damages, court costs and reasonable attorney's fees.

(b) If a private cause of action is brought by the victim of a violation of this subchapter, and said victim was 65 years of age or older or a person with a disability when the violation occurred, the victim shall be entitled to recover 3 times the amount of the victim's compensatory damages if a violation of this subchapter is established. Such treble damages shall be in addition to any other damages to which the victim is entitled pursuant to common law or other provisions of the Delaware Code.

(c) Restitution ordered pursuant to this section has priority over a civil penalty imposed pursuant to this subchapter.

(69 Del. Laws, c. 151, § 1; 74 Del. Laws, c. 113, §§ 3, 4; 78 Del. Laws, c. 179, §§ 15, 16.)

§ 2584 Referrals for abuse, neglect and exploitation.

The Attorney General shall establish and maintain referral procedures with the Division of Services for Aging and Adults with Physical Disabilities within the Department of Health and Social Services in order to provide any necessary intervention and assistance to elder persons or persons with disabilities who may have been victimized by violations of this chapter.

(69 Del. Laws, c. 151, § 1; 69 Del. Laws, c. 345, § 5; 78 Del. Laws, c. 179, § 17.)

Subchapter IX

Home Food Service Plan Sales

§ 2585 Short title.

This subchapter may be cited as the "Delaware Home Food Service Plan Sales Act."

(70 Del. Laws, c. 450, § 1.)

§ 2586 Purpose.

The purpose of this subchapter is to safeguard the public against deceit and misrepresentation and to ensure, foster and encourage truthful practices and disclosure in home food service plan sales.

(70 Del. Laws, c. 450, § 1.)

§ 2587 Definitions.

As used in this subchapter, the following definitions shall apply:

(1) "Buyer" means both the actual and prospective purchaser of a home food service plan, but does not include persons purchasing for resale.

(2) "Contract" means all of the collective written or oral agreements between a seller and a buyer relating to the purchase of a home food service plan, except promissory notes or other financing agreements.

(3) "Food item" means each edible product sold as part of a home food service plan, including, but not limited to, each constituent part or kind of meat cut from a primal source, each kind of whole poultry or poultry part, seafood products and other like products.

(4) "Home food service plan" means a plan of food items or food items in combination with non-food items and/or service offered by the seller for profit and for sale in the consumer's home, whether or not a membership fee or similar charge is involved. Sales of immediately consumable food items, "Meals on Wheels" or similar programs, "fund-raising efforts" and meals prepared in the consumer's home by another are not within the definition of a "home food service plan."

(5) "Item price" means the price of a food or non-food item sold as part of a home food service plan, computed to the nearest tenth of 1 cent when less than $1.00 and to the nearest cent when $1.00 or more. The item price, exclusive of any service charge(s), shall be expressed in terms of the price per unit of weight, measure or count set forth in "Uniform Unit Pricing Regulation" in the current edition of National Institute of Standards and Technology Handbook 130.

(6) "Non-food item" means each inedible product sold as part of a home food service plan, including, but not limited to, paper products, health and beauty products, detergents, cleaners and disinfectants, rolls of wrapping and like products. The term does not include food items and durable consumer goods such as appliances.

(7) "Primal source" means the following cuts:

a. For beef, the primal sources are the round, flank, loin, rib, plate, brisket, chuck and shank;

b. For veal and lamb or mutton, the primal sources are the leg, flank, loin, rack (rib) and shoulder; and

c. For pork, the primal sources are the belly, loin, ham, spareribs, shoulder and jowl.

(8) "Seller" means any person, partnership, corporation or association, however organized, engaged in the sale of a home food service plan.

(9) "Service charge" means the total price for any additional features, services and processing associated with the purchase of a home food service plan, whether stated in terms of membership fees or otherwise.

(70 Del. Laws, c. 450, § 1.)

§ 2588 Contract and disclosure requirements.

(a) At the time of sale, the seller shall provide the buyer with a written document referred to in this section as the "written agreement," which shall clearly and conspicuously disclose all of the following:

(1) The name, address and telephone number of the seller and the name and address of the buyer;

(2) The date of the contract;

(3) The price of the food and non-food items included in the home food service plan;

(4) The service charge or the price of any service charges associated with the home food service plan;

(5) The total price of the home food service plan, including the price of the food and non-food items, and the price of any service charge(s); and

(6) A statement that the buyer shall have the right to cancel the home food service plan contract until midnight of the third business day after the date on which the buyer executes the contract or until midnight of the third business day after the day on which the buyer takes first delivery or until midnight of the third business day after the day on which the seller provides the buyer with the fully executed copy of the contract, whichever is later, by giving written notice of cancellation to the seller. Compliance with requirements of Chapter 44 of this title governing the form of notice of right of cancellation in home solicitation sales shall be deemed satisfactory notice of the requirements of this regulation.

(b) In addition to the above disclosures required in the written agreement, all of the following disclosures are required to be given to the buyer at the time of sale:

(1) A written list of all food and non-food items to be sold, which shall include:

a. The identity of each item and, where applicable, the United States Department of Agriculture quality grade of the item, if so graded; the primal source; and the brand or trade name;

b. The quantity of each item sold;

c. The estimated serving size by net weight of each piece of meat, poultry and seafood item offered for sale under the home food service plan; provided however, that such estimates shall not differ from the actual weight at the time of delivery by more than 5 percent, and that the dollar value of the meat, poultry and seafood items delivered is equal to or greater than that represented to the buyer; and

d. The net weight, measure or count of all other food and non-food items offered for sale;

(2) A current item price list stating, in dollars and cents, the price per kilogram or pound or other appropriate unit of measure and the total sale price of each item to be delivered. This price list shall clearly and conspicuously identify whether there are additional costs disclosed in the written agreement relating to any "service charges" associated with the purchase of the home food service plan;

(3) If a membership is sold, a written statement of all terms, conditions, benefits and privileges applicable to the membership; and

(4) If a service charge is included, a written statement specifically identifying the service(s) provided and the price(s) charged for them.

(c) At the time of delivery, the seller shall provide a receipt, for signature by the buyer, disclosing all of the following information:

(1) The identity of each food and non-food item and the net quantity of the contents in terms of either weight, measure or count, as required by applicable law. The net weight of each food item delivered shall be within the limit specified in paragraph (b)(1)c. of this section; and

(2) The item price and total sales price of each food and non-food item. The item price shall be the same as that specified on the item price list given to the buyer at the time of sale.

(70 Del. Laws, c. 450, § 1.)

§ 2589 Advertisement of home food service plans.

Any advertisement of a home food service plan which discloses item pricing information in accordance with the provisions of this subchapter shall set forth in a clear and conspicuous manner whether there are any service charges or other additional costs associated with the purchase of the home food service plan.

(70 Del. Laws, c. 450, § 1.)

§ 2590 Enforcement and remedies.

(a) The Attorney General shall have the same authority in enforcing, remedying, and otherwise carrying out the provisions of this subchapter as is provided by Chapter 25 of Title 29 and by §§ 2511-2527 and 2531-2536 of this title.

(b) If a court or tribunal of competent jurisdiction finds that any person has wilfully violated this subchapter, the Attorney General, upon petition to the court or tribunal, shall recover from the person, on behalf of the State, in addition to all costs, a civil penalty of not more than $10,000 per violation pursuant to § 2513 of this title. If the violation is against an elder person or person with a disability an additional civil penalty of not more than $10,000 per violation shall be recovered pursuant to § 2581 of this title. Each day that a wilful violation continues shall be considered a separate violation.

(c) For the purpose of this subchapter, a wilful violation occurs when the party committing the violation knew or should have known that the party's conduct was of the nature prohibited by this subchapter.

(d) The remedies provided for in this subchapter are not exclusive, and shall be in addition to any other procedures, rights or remedies which exist with respect to any other provision of law.

(70 Del. Laws, c. 450, § 1; 77 Del. Laws, c. 282, § 5; 79 Del. Laws, c. 371, § 3.)

Subchapter X

Charitable/Fraternal Solicitation

§ 2591 Short title.

This subchapter may be cited as the "Delaware Charitable/Fraternal Solicitation Act of 1996."

(70 Del. Laws, c. 584, § 1.)

§ 2592 Purpose.

The purpose of this subchapter is to safeguard the public against fraudulent and misleading charitable/fraternal solicitations, thereby enhancing public confidence in legitimate charitable/fraternal organizations.

(70 Del. Laws, c. 584, § 1.)

§ 2593 Definitions.

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

(1) "Charitable/fraternal organization" means any person who is or holds himself or herself out to be established:

a. For any benevolent, educational, humane, scientific, patriotic, social welfare or advocacy, public health, environmental conservation, civic or philanthropic purpose;

b. For the benefit of law-enforcement officers, firefighters or other persons who protect the public safety; or

c. Any organization otherwise subject to § 501(c) of the Internal Revenue Code of 1986 [26 U.S.C. § 501(c)], as amended;

(2) "Charitable/fraternal purpose" means:

a. Any benevolent, educational, humane, scientific, patriotic, social welfare or advocacy, public health, environmental conservation, civic or philanthropic objective; or

b. An objective to benefit law-enforcement officers, firefighters or other persons who protect the public safety;

(3) "Charitable/fraternal solicitation" means any oral or written request, directly or indirectly, for money, credit, property, financial assistance or other thing of value on the plea or representation that such money, credit, property, financial assistance or other thing of value or any portion thereof, will be used for a charitable/fraternal purpose or the benefit of a charitable/fraternal organization. No actual contribution need be made in order for a charitable/fraternal solicitation to be deemed to have taken place.

(4) "Contribution" means the grant, promise or pledge of money, credit, property, financial assistance or other thing of value in response to a charitable/fraternal solicitation.

(5) "Person" means any individual, organization, corporation, government, or governmental subdivision or agency, statutory trust, business trust, estate, trust, partnership, unincorporated association, limited liability company, limited liability partnership, 2 or more of any of the foregoing having a joint or common interest, or any other legal or commercial entity.

(6) "Professional solicitor" means a person who, for financial consideration, solicits contributions for a charitable/fraternal purpose or on behalf of a charitable/fraternal organization, either personally or through agents or employees employed or designated for that purpose. The term does not include a charitable/fraternal organization or an officer, director, employee, member or volunteer of a charitable/fraternal organization.

(70 Del. Laws, c. 584, § 1; 70 Del. Laws, c. 186, § 1; 73 Del. Laws, c. 329, § 37.)

§ 2594 Records.

(a) Every professional solicitor shall keep accurate fiscal records regarding its charitable/fraternal solicitations in Delaware.

(b) There shall be a written contract between a professional solicitor and a charitable/fraternal organization that clearly states the respective obligations of the professional solicitor and the charitable/fraternal organization and the compensation terms of the professional solicitor.

(c) Every professional solicitor shall retain the records and the written contract required pursuant to this section for at least 3 years from the effective date of the termination of such contract.

(d) Every professional solicitor shall review the requirements of this subchapter prior to executing each written contract with a charitable/fraternal organization.

(70 Del. Laws, c. 584, § 1.)

§ 2595 Unlawful practices.

(a) The act, use or employment by any person of any deception, fraud, false pretense, false promise, misrepresentation or the concealment, suppression or omission of any material fact with the intent that others rely upon such concealment, suppression or omission in connection with a charitable solicitation, whether or not any person has in fact been misled, deceived or damaged thereby.

(b) Such acts or practices shall include, but are not limited to, any 1 of the following:

(1) The failure of any person to identify himself or herself by name prior to making a charitable solicitation;

(2) The failure of a person to identify the charitable/fraternal organization for which the charitable/fraternal solicitation is being made or the charitable/fraternal purpose of the solicitation prior to making the solicitation;

(3) If the solicitation is made by a professional solicitor, the failure to disclose that the person soliciting the contribution is, or is employed by, a professional solicitor and the identity of the professional solicitor;

(4) Upon request by the person being solicited, the failure of any person to disclose the amount/percentage of the contribution that will be turned over to the charitable/fraternal organization, the amount/percentage of the contribution to be used for the charitable/fraternal purposes for which it is being solicited or the amount/percentage to be retained by the professional solicitor. To the extent the amount/percentage of the contribution to be turned over to the charitable/fraternal organization is not known at the time of the solicitation, the person shall disclose a good faith estimate of the percentage/amount of the contribution to be turned over to the charitable/fraternal organization;

(5) The use or reference to the term "police," "law enforcement," "trooper," "rescue squad," "firemen" or "firefighter" unless:

a. The person making such representations is employed by a bona fide police, law enforcement, rescue squad or fire department and the person is authorized by such entity to engage in charitable solicitation; or

b. Such entity has authorized the use or reference to such term in writing for the purpose of charitable/fraternal solicitation;

(6) The representation that a percentage of the contribution will be used for a charitable/fraternal purpose if the person has reason to believe the contribution will not be used for a charitable/fraternal purpose;

(7) The representation that another person, as defined by § 2593(5) of this title, endorses the solicitation unless such person has consented in writing to the use of the person's name for the purpose of endorsing the solicitation;

(8) The representation that the contribution is solicited on behalf of anyone other than the charitable/fraternal organization that authorized the solicitation in accordance with this subchapter;

(9) The use of the name of any charitable/fraternal organization without the written consent of the charitable/fraternal organization;

(10) The use of a name, symbol or statement so closely related or similar to that used by another charitable/fraternal organization or governmental agency that the use thereof would tend to confuse or mislead the public;

(11) The failure to create and/or maintain the records and written contracts as required by § 2594 of this title with the intent to hinder the discovery of practices otherwise prohibited by this subchapter or having otherwise been in violation of this subsection; and

(12) The failure to comply with § 2596 of this title on 3 separate occasions.

(c) No charitable/fraternal organization or any officer, director, member, volunteer or employee of a charitable/fraternal organization shall be deemed in violation of this section for an unlawful practice committed by a professional solicitor unless the charitable/fraternal organization or such officer, director, member, volunteer or employee has actual prior knowledge of such unlawful practice or the charitable/fraternal organization or such officer, director, member, volunteer or employee had fraudulent intent in connection with the unlawful practice.

(70 Del. Laws, c. 584, § 1; 70 Del. Laws, c. 186, § 1.)

§ 2596 Time restriction.

No charitable/fraternal organization and/or professional solicitor shall engage in charitable/fraternal solicitation of any person after 9:00 p.m. or before 8:00 a.m., unless authorized by the person being solicited prior to the solicitation.

(70 Del. Laws, c. 584, § 1.)

§ 2597 Enforcement and remedies.

(a) The Attorney General shall have the same authority in enforcing, remedying, and otherwise carrying out the provisions of this subchapter as is provided by Chapter 25 of Title 29 and by §§ 2511-2527 and 2531-2536 of this title.

(b) Any violation of § 2595 of this title shall be deemed an unlawful practice in violation of § 2513 of this title and wilful violations of § 2595 of this title shall be punishable in accordance with § 2513 and/or § 2581 of this title.

(c) The remedies and penalties provided for in this subchapter are not exclusive and shall be in addition to any other procedures, rights or remedies which exist with respect to any other provisions of law including but not limited to state and/or federal criminal prosecutions and/or actions brought by private parties.

(70 Del. Laws, c. 584, § 1; 77 Del. Laws, c. 282, § 6.)

Subchapter XI

Cumulative Remedies and Enhanced Penalties

§ 2598 Violation of order or injunction; penalty.

Repealed by 77 Del. Laws, c. 282, § 4, effective June 10, 2010.

Subtitle II
Other Laws Relating to Commerce and Trade
Chapter 25A
Telemarketing Registration and Fraud Prevention

§ 2501A Purpose; short title.

The purpose of this chapter shall be to set standards of conduct for organized commercial telemarketing in or into the State and to protect consumers from unfair, deceptive or abusive practices by telemarketers and companies using established telemarketing methods to promote and sell products, services and investments. This chapter may be cited as the "Delaware Telemarketing Fraud Act."

(72 Del. Laws, c. 262, § 1.)

§ 2502A Definitions.

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

(1) "Advertisement" shall have the same meaning as defined in § 2511 of this title.

(2) "Customer" means a person who is or may be required to pay for merchandise offered through telemarketing by a seller, telemarketer or telemarketing business.

(3) "Investment" means any property, real or personal, tangible or intangible, that is offered for sale, sold or traded based wholly or in part on representations, express or implied, that the property may or will generate income or profit or appreciate in value.

(4) "Merchandise" shall have the same meaning as defined in § 2511 of this title. Additionally, "merchandise" includes loans, services related to a person's credit worthiness, leases of personal property, prizes from prize promotions, long-distance telephone services and investments.

(5) "Person" shall have the same meaning as defined in § 2511 of this title.

(6) "Prize" means anything offered, or purportedly offered, and given, or purportedly given, to a person by chance. In addition to its ordinary meaning, for this purpose, "by chance" includes circumstances whereby a person is guaranteed to receive merchandise or anything of value and at the time of the offer or purported offer the telemarketer does not identify the specific item that the person will receive.

(7) "Prize promotion" means a sweepstakes or other game of chance or an oral or written representation, express or implied, that a person has won or has been selected to receive or is eligible to receive a prize or purported prize.

(8) "Sale" shall have the same meaning as defined in § 2511 of this title.

(9) "Seller" means any person who or which utilizes telemarketing or engages the services of a telemarketing business to promote, advertise, sell or distribute merchandise.

(10) "Solicitation" means a written or oral notification, advertisement or offer that consists of any 1 or more of the following characteristics:

a. Transmitted to a customer by or on behalf of a seller by any printed, audio, video, cinematic, telephonic or electronic means, including a computer; or

b. In the case of a transmission to a customer by any means other than by telephone, any one of the following occurs:

1. The original communication is followed by a telephone call from a telemarketer or seller in connection with the notification, advertisement or offer;

2. The original communication invites a response by telephone and through that response, a telemarketer attempts a sale of merchandise to the customer; or

3. The original communication invites a customer to call a 900-line service or similar telephone number for any reason.

(11) "Telemarketer" means a natural person who, from any location, in connection with telemarketing, initiates or receives or causes the initiation or receipt of telephone calls to or from a customer who is located in the State. A person "causes the initiation or receipt" of telephone calls if the person manages, directs or supervises the activities of persons engaged in telemarketing.

(12) "Telemarketing" is an organized activity, program or campaign by 1 or more telemarketers that is conducted for solicitation of a sale of merchandise through the use of 1 or more telephones to contact customers.

(13) "Telemarketing business" means any person who or which engages in telemarketing on behalf of any seller in exchange for any consideration or compensation.

(72 Del. Laws, c. 262, § 1.)

§ 2503A Registration of sellers, telemarketers and telemarketing businesses.

(a) Unless exempted under this section or § 2505A of this title, no person shall transact any business with any customer who is located in the State through telemarketing as a seller or a telemarketing business without having first obtained a certificate of registration from the Director of the Consumer Protection Unit of the Department of Justice (hereinafter "Director'') in accordance with this section.

(b) Any person required by this section to obtain a certificate of registration (hereinafter "registrant") shall apply to renew the registration no less than 30 days before the end of the effective term as indicated on the certificate.

(c) A registrant applying for a certificate of registration or renewal must include the following information in his or her application:

(1) The registrant's true name, current address, telephone number and principal place of business, including each fictitious or business name under which the registrant intends to engage in telemarketing;

(2) Each occupation or business that the registrant has engaged in for 2 years immediately preceding the date of registration;

(3) With respect to the registrant, any person employed by the registrant as a telemarketer, manager or director and, if the registrant is not a natural person, the registrant's owners; whether any person so designated has been convicted of or pled guilty to or is being prosecuted in any jurisdiction for racketeering, violation of state or federal securities laws, theft, fraud, forgery or any other offense involving falsehood or deception;

(4) With respect to the registrant, any person employed by the registrant as a telemarketer, manager or director, and if the registrant is not a natural person, the registrant's owners; whether any person so designated is or has been subject to any pending or final cease and desist order, assurance of discontinuance, injunction, restraining order or judgment under this chapter or Chapter 25 of this title or in any other civil or administrative action in any other jurisdiction involving telemarketing, consumer or securities fraud, deceptive trade practices, racketeering or any other civil enforcement statute involving fraud or deception;

(5) With respect to the registrant, or if the registrant is not a natural person, the registrant's owners or directors; whether at any time during the previous 7 years any person so designated has filed for bankruptcy, been adjudged bankrupt, or been reorganized because of insolvency;

(6) When disclosing matters under paragraph (c)(3), (4) or (5) of this section, the registrant shall include the following information:

a. The name and address of the court having jurisdiction in the matter;

b. The name and address of any governmental agency, prosecutor's office, probation office or law-enforcement agency involved in the matter;

c. The case, docket or identification numbers as used by the court having jurisdiction over the matter; and

d. Where relevant, whether and to what extent the registrant is on probation or owes any restitution, fines, penalties or assessments to any person or governmental authority;

(7) If the registrant is a seller, the legal name, address, phone number, business name and state of incorporation (including name, address and phone number of any registered agent) of any telemarketing business hired by the registrant for telemarketing to customers located in the State; if the registrant is a telemarketing business, the legal name, address, phone number, business name and state of incorporation (including name, address and phone number of any registered agent) of the seller that has hired the telemarketing business to engage in telemarketing to customers located in the State;

(8) Where pertinent, the names, including any fictitious names, current home addresses, dates of birth and Social Security numbers of the following persons employed by the registrant:

a. The owners and directors of any telemarketing business;

b. All telemarketers employed by the registrant; and

c. All persons participating in or responsible for the management of the telemarketing business or telemarketing activities;

(9) The name and address of every financial institution where proceeds of telemarketing sales are to be deposited;

(10) Representative copies of any scripts, outlines or presentation materials to be used by the telemarketer when soliciting and representative copies of all written materials to be provided by the seller to a customer in connection with any solicitation; and

(11) A sworn and notarized statement that the information contained in the application is the product of a diligent and reasonable investigation and is true and accurate to the best of the registrant's information and belief.

(d) *Security requirements:* — Every registrant shall file with the Director a corporate surety bond in the principal sum of $50,000 in a form satisfactory to the Director with surety provided by a corporation authorized to do business in this State. The bond shall run to the Director and shall be conditioned upon the registrant's compliance with the provisions of this chapter. The bond shall pay to customers all moneys that become due and owing for violations of this chapter. The aggregate liability of the surety on the bond shall in no event exceed the amount of such bond. In lieu of requiring the filing of a surety bond, the Director may, at the Director's discretion, accept from a registrant a letter of credit in the amount of $50,000 running in favor of the Director for payments to customers of all moneys that become due and owing for violations of this chapter, with draws available by sight drafts thereunder in amounts determined by the Director, up to the aggregate amount of $50,000, if the registrant shall fail to comply with this chapter. Any such letter of credit shall be issued by a financial institution and shall be in a form satisfactory to the Director.

(1) The surety bond or letter of credit shall remain in effect for 3 years from the period the person ceases to operate in this State. A registrant who or which has ceased operating in this State may apply to the Director in writing for a waiver of this residual security requirement. In deciding whether to grant a waiver, the Director shall consider the length of time said registrant has operated in this State, the record of said registrant's compliance with this chapter, and the nature and frequency of complaints concerning the registrant's operations within or outside of this State.

(2) The certificate of registration of any person shall be deemed to be lapsed if, at any time, the surety bond or letter of credit expires or becomes ineffective for any reason.

(3) A customer's claim against a bond or letter of credit shall be deemed payable as "due and owing" upon entry of a final judgment of civil liability in favor of the customer or the issuance of a criminal sentencing order awarding restitution to the customer pursuant to Chapter 41 of Title 11. A customer may make claims against such bond or letter of credit for the amounts awarded as compensatory damages in any civil action under this chapter or as restitution pursuant to § 4106 of Title 11.

(e) This section shall not apply to any corporation having shares of stock that are traded on any public exchange or subsidiary of any corporation when not less than 60 percent of the voting power of its shares is owned by the qualifying corporation or corporations or to any not-for-profit corporation within the exemption of § 501(c)(3) or (6) of the United States Internal Revenue Code [26 U.S.C. § 501(c)(3) or (6)], provided that 1 of the following 2 conditions is and remains satisfied:

(1) The corporation is organized and existing under the laws of the State; or

(2) The corporation is a foreign corporation authorized to do business in this State and has complied with all of the requirements of §§ 371, 372, and 374 of Title 8, irrespective of any available exceptions under § 373 of Title 8.

(f) This section shall not apply to any telemarketing business engaging in telemarketing for or on behalf of a corporation exempted from this section, provided the telemarketing business is engaging in telemarketing under and in accordance with a written contract or agreement whereby the telemarketing business expressly agrees and is obligated under its terms to engage in telemarketing only in conformance with all prevailing laws, rules and regulations of this State or of the United States pertaining to telemarketing. A telemarketing business shall not be entitled to this exemption if 25 percent or more of its gross revenue from telemarketing services in any 12-month period beginning on January 1 of each year is derived from sellers required to be registered and bonded under this section.

(g) This section shall not apply to:

(1) A seller or telemarketing business that solicits contracts for the maintenance or repair of merchandise previously purchased from the seller authorizing the solicitation.

(2) A seller or telemarketing business operating within the jurisdiction of the Public Service Commission.

(3) A seller who has been operating for at least 1 year a retail business establishment situated in this State under the same trade name as that used in telemarketing, and both of the following conditions are satisfied:

a. Merchandise is displayed and offered for sale at the business establishment; and

b. Greater than 50 percent of the seller's annual sales of merchandise in any calendar year is derived from the sale and delivery of merchandise at the seller's business location.

(4) A seller of books, videotapes, audio recordings or multimedia products under a contractual plan or multimedia club otherwise regulated by the Federal Trade Commission's regulation concerning "use of negative option plans by sellers in commerce" or which provider for the sale of books, audio recordings, videos, multimedia products or other goods, including continuity plans, subscription arrangements, standing order arrangements, supplements and series arrangements under which the seller periodically ships merchandise to a consumer who has consented in advance to receive such merchandise on a periodic basis.

(5) A seller of food products, where the actual or intended cost of the food product sold to a single address does not exceed $100.

(6) A person subject to and licensed by the Delaware Real Estate Commission acting within the scope of his, her or its active and valid license.

(7) A seller soliciting the sale of services provided by a cable television system operating under authority of a franchise or permit.

(8) A seller primarily soliciting the sale of a magazine or newspaper of general circulation, either by the publisher or the publisher's agent by written agreement.

(h) The following are deemed violations of this chapter and of § 2513 of this title:

(1) Failing to satisfy the registration or security requirements of this section.

(2) Submitting false or misleading information in an application.

(3) Failing to disclose any information required to be disclosed in an application.

(i) Any person required by this chapter to submit an application for a certificate of registration or renewal shall submit with each application an administrative fee of $100 made payable to the "Consumer Protection Fund'" to cover the costs of registration.

(j) *Obligation to update information:* — A registrant shall notify the Director within 30 calendar days of the registrant's discovery of any material change in any information required to be disclosed by this section. For the purpose of this section, a registrant discovers a material change in information when the registrant or any person employed by the registrant as a manager or director of the registrant knows or should know of the material change in information.

(72 Del. Laws, c. 262, § 1; 70 Del. Laws, c. 186, § 1; 80 Del. Laws, c. 227, § 1.)

§ 2504A Record-keeping requirements.

(a) Any seller or telemarketing business shall preserve its individual records for a period of 24 months from the date the records are produced. A record, to the extent the seller or telemarketing business, or both, created it in the ordinary course of business, shall be kept in

the form, manner, format or place as such record is maintained in the ordinary course of business. Records to be preserved shall include, but not be limited to:

(1) All substantially different advertising, brochures, telemarketing scripts and promotional materials;

(2) The name and last known address of each prize recipient and the description of the prize awarded for prizes represented to have a value of $25 or more;

(3) The name and last known address of each prize recipient and the description of the prize awarded for any prize in connection with a consumer call to a 900 number and any prize promotion when the consumer is told that the consumer will definitely win 1 of several prizes and any of the prizes is represented to have a value of $25 or more;

(4) The name and last known address of each customer, the merchandise purchased, the date such merchandise was ordered and shipped or provided, the amount of merchandise ordered and shipped or provided, and the amount paid by the customer;

(5) The name, any fictitious name used, the last known home address and telephone number, and the job title for each current and former employee directly involved in the telemarketing activities; and

(6) All written or recorded authorizations required to be provided or received under this chapter, including, but not limited to, any express verifiable authorization as defined in § 2507A of this title.

(b) The seller and any telemarketing business calling on behalf of the seller may, by written agreement, allocate responsibility between themselves for the record-keeping required by this chapter. When a seller and a telemarketing business have entered into such an agreement, the written terms of that agreement shall determine and govern each party's respective obligations under this chapter. If no agreement exists, or such written agreement is unclear as to which party must create and maintain a record, the seller shall be deemed the responsible party under this chapter.

(c) In the event of any dissolution or termination of the operations of any business employing telemarketers or the telemarketing business, the principal owners or directors of the entity shall maintain all records as required under this chapter. In the event of any sale, assignment or other change in ownership of the seller or telemarketing business, the buyer or successor shall maintain all records required under this chapter.

(72 Del. Laws, c. 262, § 1.)

§ 2505A Exempt practices.

This chapter shall not apply to the following business practices by a seller, telemarketer or a telemarketing business except as otherwise provided in this section:

(1) Solicitations in which the sale of merchandise is not completed and payment or authorization for payment is not required until after a face-to-face sales presentation to the customer by the telemarketer, seller, or telemarketing business or its representatives.

(2) Communications by telephone or other forms of media initiated by a customer that are not the result of any solicitation by the telemarketer, seller or telemarketing business.

(3) Solicitations, telemarketing or the use of telephone equipment in connection with any sale of goods or services by a business supplier to a business or between businesses.

(4) Use of telephones or telemarketing by or on behalf of a charitable/fraternal organization in connection with charitable/fraternal solicitations as those terms are defined in § 2593 of this title; provided, however, that a corporation claiming exemption pursuant to § 2593(1)c. of this title must also satisfy the requirements of § 2503A(e) of this title.

(5) Use of telephones or telemarketing for fundraising and other noncommercial purposes by religious, charitable, political, educational, labor and social organizations or entities not otherwise regulated by §§ 2591 through 2597 of this title.

(6) Use of telephones or telemarketing by or on behalf of a licensed insurance broker, agent, customer representative or solicitor when making solicitations is within the scope of the person's license. For this purpose, a "licensed" person is one who or that is authorized by the Insurance Commissioner to conduct business within the State pursuant to Title 18.

(7) Use of telephones or telemarketing by or on behalf of a person lawfully registered with the Delaware Securities Commissioner pursuant to § 73-301 of this title and acting within the scope of the person's registration as a broker-dealer, investment advisor or agent.

(8) Use of telephones or telemarketing by or on behalf of a supervised financial institution or parent, subsidiary or affiliate thereof. For purposes of this exemption, "supervised financial institution" shall mean any bank, trust company, savings bank, credit card institution, building and loan association, building and industrial development corporation, licensed mortgage loan broker, licensed lender, licensed check seller or money transmitter, licensed cashier of checks, licensed motor vehicle sales finance company, licensed transporter of money and valuables, licensed preneed burial contractor, credit union, industrial loan company, or other institution engaged in a business similar to any of the foregoing; provided, however, that such institution is subject to supervision and regulation by the Delaware State Banking Commission or any official or agency of any state or of the United States. For purposes of this exemption, "subsidiary" and "affiliate" shall have the meanings specified in § 101 of Title 5.

(9) Soliciting sales through the distribution of a catalog which:

a. Contains a written description, picture or illustration and price of each item of merchandise offered for sale;

b. Includes the business address of the company;

c. Is distributed in more than 1 state;

d. Includes at least 10 pages of written material or illustration;

e. Is issued not less frequently than once a year;

f. Has an annual circulation of not less than 100,000 consumers; and

g. The company's use of telephones is solely for the receipt of calls initiated by customers in response to the catalog and during those calls the person representing the company takes orders for merchandise only without further solicitation. For this purpose, "further solicitation" does not include providing the customer with information about or attempting to sell any other item included in the same catalog that prompted the customer's call or in a substantially similar catalog.

(10) The sale of goods or services for which the terms and conditions of offering or sale are subject to regulations by the Public Service Commission or the Federal Communications Commission, such sales being governed by the provisions of applicable rate sheets, tariffs or rules of those Commissions.

(72 Del. Laws, c. 262, § 1; 78 Del. Laws, c. 175, § 98.)

§ 2506A Disclosure and contract requirements.

(a) A telemarketer shall provide all of the following information when contacting a consumer:

(1) At the beginning of the call and prior to any sales pitch, the telemarketer shall disclose to the customer:

a. That the purpose of the telephone call is to sell specific merchandise;

b. The telemarketer's name and the name of the seller on whose behalf the solicitation is being made; and

c. Accurate information concerning the nature and description of the merchandise being offered for sale.

(2) Before completion of the initial sales call and before payment is requested the telemarketer shall disclose to the customer:

a. The total amount of money to be paid by the customer for the merchandise that is the subject of the telemarketing sales call;

b. Any restrictions, limitations or conditions applicable to the purchase of the merchandise that is the subject of the telemarketing sales call;

c. Any material aspect of the performance, quality, efficacy, nature or basic characteristics of the merchandise that is the subject of the telemarketing sales call;

d. Any material aspect of the nature or terms of the refund, cancellation, exchange or repurchase policies;

e. Any material aspect of any investment being offered, including benefits, the price of the investment, the location of the investment, and the reasonable likelihood of success of the investment opportunity;

f. Any material element of a prize promotion, including:

1. An accurate description of the prize;

2. Its market value;

3. All material conditions to receive or redeem the prize;

4. The actual number of prizes to be awarded;

5. The odds of being able to receive the prize, and if the odds are not calculable in advance, the factors and methods used in calculating the odds;

6. The fact that no purchase or payment of any kind is required to win a prize or to participate in a prize promotion; and

7. Instructions on how to participate or an address or local or toll-free telephone number to which customers may write or call for information on how to participate in the prize promotion.

(b) The following requirements shall apply to each sale of merchandise by a telemarketer:

(1) The telemarketer's sales transaction shall only be considered final 7 business days after the customer has received a written notice as required by this subsection.

(2) The telemarketer shall furnish the customer, in the same language as that principally used in the sales presentation, said written notice, which shall contain in not less than 12-point boldface type, a statement in substantially the following form:

"You, the purchaser, may cancel this transaction without any penalty or obligation at any time prior to midnight of the seventh business day after receipt of this notice. If you cancel, any payments made by you under the sale will be returned within 10 business days following receipt by the seller of your written notice of cancellation and any security interest arising out of the transaction will be canceled.

If you cancel, you must make available to the seller at your residence, in substantially as good condition as when received, any merchandise delivered to you under this contract of sale; or you may, if you wish, comply with the instructions of the seller regarding the return shipment of the goods at the seller's expense and risk.

If you do make the merchandise available to the seller and the seller does not pick the merchandise up within 20 days of the date of your notice of cancellation, or agree to pay the expense for its return, you may retain or dispose of the merchandise without any

further obligation. If you fail to make the merchandise available to the seller, or if you agree to return the merchandise to the seller and fail to do so, then you remain liable for performance of all obligations under the contract.

To cancel this transaction, mail or deliver a written notice of cancellation or send a telegram to (name of seller) at the following address (address of seller). The effective time of any cancellation is deemed to be the postmarked date upon which the notice was mailed to the seller, the date upon which the notice was delivered to any commercial document or parcel service for delivery to the seller or the date upon which any telegram was sent to the seller."

(3) The telemarketer or telemarketing business shall notify the customer of the seller's name, address and phone number and the name, address and phone number of the person to whom any notice of cancellation is to be given if different from the seller. The seller is additionally required to furnish the customer with the date of the telephone solicitation and a description of the telephone solicitation.

(c) Exempt from the requirements of subsection (b) of this section is any sale in which the consumer is given a full refund for the return of undamaged and unused goods, or the merchant guarantees full satisfaction or a cancellation of services notice, when the consumer has at least 7 days to review goods or services after receipt of the goods or services by the consumer, and the seller shall process the refund within 30 days after receipt of returned merchandise or cancellation of services by the consumer. The seller must disclose the review, return and refund policy to the buyer orally by telephone or in writing with advertising or promotional material or with delivery of goods or services. A seller must disclose a return address in writing where the consumer may return goods or cancel services. A seller who discloses in writing that a sale provides "satisfaction guaranteed" or "free inspection" or "no risk guarantee," or similar words or phrases, shall be deemed to meet the requirements of the review and refund policy."

(d) It is a violation of this chapter and of § 2513 of this title for any seller, telemarketer or telemarketing business to engage in any unfair or deceptive conduct that would create a likelihood of confusion or misunderstanding to any reasonable consumer in connection with this section.

(e) It is a violation of this chapter and of § 2532 of this title for any seller, telemarketer or telemarketing business to engage in any unfair or deceptive conduct that would create a likelihood of confusion or misunderstanding to any reasonable consumer in connection with this section.

(72 Del. Laws, c. 262, § 1.)

§ 2507A Prohibited acts and practices.

(a) It is a prohibited telemarketing act or practice and a violation of this chapter and § 2513 of this title for any person to:

(1) Obtain or submit for payment a check, draft or other form of negotiable paper drawn on a person's checking, savings, share or similar account without that person's express verifiable authorization. For this purpose, "express verifiable authorization" means:

a. A written statement signed by the customer expressly authorizing the payment;

b. The customer's signature on the negotiable instrument;

c. An oral authorization by the customer that is tape-recorded and made available upon request to the customer's bank and that evidences both the customer's authorization of a payment for the specific merchandise sold and the customer's receipt of the following information:

1. The date of the draft;
2. The amount of the draft;
3. The payor's name;
4. The number of draft payments, if more than 1;
5. A telephone number for customer inquiry that is answered during normal business hours; and
6. The date of the customer's oral authorization; or

d. Written confirmation of the transaction sent to the customer prior to submission for payment of the customer's check, draft or other form of negotiable paper that includes all of the information required to be given under any oral tape-recorded authorization described in this section;

e. Any otherwise valid "express verifiable authorization" shall be deemed invalid if said authorization was induced by fraud, false pretenses, misrepresentation, false promises or failure to disclose material information;

(2) Advertise or represent that registration as a telemarketer equals an endorsement or approval by any government or governmental agency of any state;

(3) Wilfully call or contact any customer by telephone for any purpose connected with or related to the sale or advertising of merchandise for 10 years after having been directed, orally or in writing, by the customer or any person acting on behalf of the customer with said customer's authorization, to cease and desist from said calls or contacts. For purpose of this section, a call or contact is "wilful" if the person making or initiating the call or contact knows or should know of the customer's instruction to not call or contact;

(4) Assist, support or provide substantial assistance to any seller, telemarketer or telemarketing business when the person knew or should have known that the seller, telemarketer or telemarketing business was engaged in any act or practice in violation of this chapter;

(5) Request or receive payment in advance from a person to recover or otherwise aid in the return of money or any other item lost by the customer in a prior telemarketing transaction; or

(6) Use the services of any professional delivery, courier or other pickup service to obtain receipt or possession of a customer's payment, unless the merchandise is delivered with the opportunity to inspect it before any payment is collected.

(b) Nothing in this chapter shall prevent the Attorney General from seeking any other civil remedy or criminal sanction for any violation of this chapter as otherwise provided by law. Any person who violates § 1401 or § 1402 of Title 11 in connection with telemarketing shall, in addition, be guilty of a class F felony.

(72 Del. Laws, c. 262, § 1.)

§ 2508A Customers' remedies.

(a) The sale of any merchandise by an unregistered, nonexempt seller or an unregistered, nonexempt telemarketing business shall be voidable.

(b) Any customer who suffers a loss or harm as a result of a violation or prohibited act or practice under this chapter, in addition to any other rights of action allowed by law, may recover actual and punitive damages, attorney's fees, court costs and any other remedies provided by law, including equitable relief.

(72 Del. Laws, c. 262, § 1.)

§ 2509A Enforcement.

All enforcement actions under this chapter by the Attorney General shall be undertaken in accordance with Chapter 25 of Title 29.

(72 Del. Laws, c. 262, § 1.)

§ 2510A Certificate of registration — Issuance, denial, renewal, or revocation.

(a) Upon receipt of the completed application for a certificate of registration or renewal, security requirement, and fee, and unless such certificate of registration or renewal has been denied as provided in subsection (b) of this section, the Director shall issue and deliver to the applicant a certificate of registration in such form and manner as the Director shall prescribe, but which must set forth the applicant's name, business address, and the effective term of the registration. A certificate of registration issued or renewed under the provisions of this section shall entitle a person to act as a registered telemarketer for a period of 1 year from the effective date of the registration.

(b) The Director may deny the application of any person for a certificate of registration or renewal, or revoke an already-issued certificate of registration or renewal, if the Director determines that such registrant, or any of its principals, meets any of the following criteria:

(1) Has made a material false statement or omitted a material fact in connection with an application under this section.

(2) Was the former holder of a certificate of registration issued under this chapter, which the Director revoked, suspended, or refused to renew.

(3) Has failed to furnish satisfactory evidence of good character, reputation, and fitness.

(4) With respect to the registrant, is not the true owner of the telemarketing business, except in the case of a franchise.

(5) Is in violation of or has violated any of the following statutes or regulations promulgated under these statutes:

a. This chapter.

b. The equivalent law of any other state applicable to sellers, telemarketers, and telemarketing businesses.

c. The Act of Congress entitled the "Telemarketing and Consumer Fraud and Abuse Prevention Act" (15 U.S.C. §§ 6101-6108).

(6) Has been convicted of or pled guilty to or is being prosecuted in any jurisdiction for racketeering, violation of state or federal securities laws, theft, fraud, forgery, or any other offense involving falsehood or deception.

(7) Has been subject to any pending or final cease and desist order, assurance of discontinuance, injunction, restraining order, or judgment under this chapter or Chapter 25 of this title or in any other civil or administrative action in any other jurisdiction involving telemarketing, consumer or securities fraud, deceptive trade practices, racketeering, or any other civil enforcement statute involving fraud or deception.

(8) Has had a license or registration to engage in any business, occupation, or profession suspended or revoked in any jurisdiction which may impact upon the registrant's fitness for registration under this section.

(9) Has committed or is committing deceptive, unfair, illegal, or unconscionable trade practices in violation of the laws of this State, any other state, or the United States.

(c) The Director or the Director's designee may not enter an order under subsection (b) of this section without first providing the parties with all of the following:

(1) Appropriate prior notice to the registrant.

(2) Opportunity for a hearing.

(3) Written findings of fact and conclusions of law.

(d) The Director or the Director's designee shall control the procedures and the conduct of the parties at a hearing under this section.

(80 Del. Laws, c. 227, § 2.)

Subtitle II
Other Laws Relating to Commerce and Trade

Chapter 25B
Delaware Residential Water Treatment System Sales

§ 2501B Short title.

This chapter may be cited as the "Delaware Residential Water Treatment System Sales Act."

(73 Del. Laws, c. 420, § 1.)

§ 2502B Purpose.

The purpose of this chapter is to safeguard the public against deceit and misrepresentation and to ensure, foster and encourage truthful practices and disclosure in the door-to-door sale of residential water treatment systems.

(73 Del. Laws, c. 420, § 1.)

§ 2503B Definitions.

(a) "Aesthetic test" shall mean, but not be limited to, a test of a water sample to determine 1 or more of the following:

(1) pH (Acidity/Alkalinity);

(2) Hardness (calcium and/or magnesium content);

(3) Iron content;

(4) Total dissolved solids;

(5) Sulphur content; and

(6) Chlorine taste and odor.

(b) "Buyer" shall mean the actual or prospective purchaser of a residential water treatment system, but does not include persons purchasing for resale.

(c) "Certified laboratory" shall mean a laboratory that is not affiliated with the seller and that is certified to analyze water samples by the Office of Drinking Water of the Division of Public Health of the State. A certified laboratory that is under common ownership with a seller of residential water treatment systems which is operated separately from the seller and which provides services to persons other than the seller shall be deemed to be not affiliated with the seller.

(d) "Door-to-door sale" shall have the meaning set forth in § 4403 of this title.

(e) "Health-related test" shall mean any test to determine whether a water sample meets a Maximum Contaminant Level (MCL) primary drinking water standard established by the United States Environmental Protection Agency under the Safe Drinking Water Act [42 U.S.C. § 300f et seq.], or by the Office of Drinking Water of the Delaware Division of Public Health.

(f) "Heavy metal test" shall mean a test that purports to detect the total content of undifferentiated metal elements in a water sample.

(g) "Place of business" shall have the meaning set forth in § 4403 of this title.

(h) "Precipitation test" shall mean a test that uses chemicals or electricity to precipitate hardness or metal ions in a water sample.

(i) "Residential water treatment systems" shall mean any device that is intended to be connected to the plumbing system of a dwelling in order to filter, purify or otherwise treat potable water.

(j) "Seller" shall have the meaning set forth in § 4403 of this title, except that for the purposes of this chapter the definition of "door-to-door" sale shall not include an exception for transactions that are subject to a right of rescission under § 125 of the Consumer Credit Protection Act (15 U.S.C. § 1635), as set forth in § 4403(3)b. of this title.

(73 Del. Laws, c. 420, § 1.)

§ 2504B Unlawful practices.

Section 2513(b)(2) of this title notwithstanding, in connection with any door-to-door sale of a residential water treatment system, it is an unlawful practice within the meaning of § 2513 of this title for any seller to:

(1) Fail to display on the person of each salesperson upon each visit to the home of a buyer an identification badge which conspicuously discloses the name and business address of the seller and the salesperson.

(2) Fail to furnish each buyer a business card or other writing that conspicuously discloses the name, address and telephone number of the seller and the salesperson.

(3) Perform or display during a visit to the home of a buyer a precipitation test or heavy metals test. A seller may perform an in-home aesthetic test and furnish to the buyer a document that conspicuously discloses the test results and that the aesthetic test is related to matters of personal taste and is not related to health. All health-related tests must be performed by a certified laboratory.

Notwithstanding the preceding sentence, a seller may perform an in-home test of a water sample for nitrates, provided that if the buyer's home is served by public water supplied by a municipal, utility or other community system, the seller also obtains at the seller's cost a test for nitrates from a certified laboratory prior to completion of a sale and installation of a residential water treatment system.

(4) Fail to furnish to the buyer a copy of any report from a certified laboratory that pertains to a buyer's home.

(73 Del. Laws, c. 420, § 1.)

§ 2505B In-home testing.

(a) A seller may perform an in-home aesthetic test and furnish to the buyer a document that conspicuously discloses the test results and that the aesthetic test is related to matters of personal taste and is not related to health. All health-related tests must be performed by a certified laboratory. Notwithstanding the preceding sentence, a seller may perform an in-home test of a water sample for nitrates, provided that if the buyer's home is served by public water supplied by a municipal, utility or other community system, the seller also obtains at the seller's cost a test for nitrates from a certified laboratory prior to completion of a sale and installation of a residential water treatment system.

(b) Performance of any in-home testing not in compliance with this act shall constitute an unlawful practice within the meaning of § 2513 of this title.

(73 Del. Laws, c. 420, § 1.)

§ 2506B Enforcement and remedies.

(a) The Attorney General shall have the same authority in enforcing, remedying, and otherwise carrying out the provisions of this subchapter as is provided by Chapter 25 of Title 29 and by §§ 2511-2527 and 2531-2536 of this title.

(b) If a court or tribunal of competent jurisdiction finds that any person has wilfully violated this chapter, the Attorney General, upon petition to the court or tribunal, shall recover from the person, on behalf of the State, in addition to all the costs, a civil penalty of not more than $10,000 per violation pursuant to § 2513 of this title. If the violation is against a person age 65 or older or a person with a disability, an additional civil penalty of not more than $10,000 per violation shall be recovered pursuant to § 2581 of this title. Each day that a wilful violation continues shall be considered a separate violation.

(c) For the purpose of this chapter, a wilful violation occurs when the party committing the violation knew or should have known that the party's conduct was of a nature prohibited by this chapter.

(d) The remedies provided for in this chapter are not exclusive, and shall be in addition to any other procedures, rights or remedies which exist with respect to any other provisions of law.

(73 Del. Laws, c. 420, § 1; 77 Del. Laws, c. 282, § 7; 79 Del. Laws, c. 371, § 2.)

Subtitle II
Other Laws Relating to Commerce and Trade
Chapter 25C
Toy Safety

§ 2501C Definitions.

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

(1) "Child" shall be defined as an individual less than 12 years of age.

(2) "Consumer" shall have the meaning as set forth in the Consumer Product Safety Act, 15 U.S.C. §§ 2051 — 2085.

(3) "Person" means an individual, partnership, corporation, association, governmental entity, business entity, or other legal entity.

(4) "Toxic substance" means a substance that contains lead or a coating on an item that contains lead in excess of the limit set by Title 16, Code of Federal Regulations, Part 1303 (i.e., 0.06 percent by weight of the total nonvolatile content of the paint or the weight of the dried paint film); or a substance that has been deemed toxic or harmful to the health of children by the U.S. Consumer Product Safety Commission. "Toxic substance" does not include glass, decorative crystal or inaccessible components.

(5) "Toy" means an article designed and intended for the child's use in play.

(76 Del. Laws, c. 358, § 1.)

§ 2502C Prohibited conduct.

(a) A person shall not knowingly sell, offer for sale, or transfer a toy in the State that contains a toxic substance or that is otherwise unsafe to a child.

(b) A person shall not knowingly fail to remove for sale or transfer any toy that has been identified as containing lead and/or unsafe by the U.S. Consumer Product Safety Commission or has been the subject of a corrective action plan, which must be promptly implemented, or a recall, as described further at § 2503C(2) of this title.

(c) This section does not apply to the sale of an antique or collectible toy that is not marketed to or intended to be used by a child.

(76 Del. Laws, c. 358, § 1.)

§ 2503C Criteria.

A toy will be deemed unsafe if it meets 1 or more of the following criteria:

(1) The toy does not conform to federal laws and regulations setting forth standards for the toy;

(2) The toy has been recalled by a state or federal agency, the toy's manufacturer, distributor, or importer, or the toy has been listed by the U.S. Consumer Product Safety Commission as a recalled product which has not been corrected, and the recall has not been rescinded; or

(3) A state or federal agency has issued an imminent hazard warning that a toy's intended use constitutes a safety hazard and such warning has not been rescinded.

(76 Del. Laws, c. 358, § 1.)

§ 2504C Penalties.

(a) Except as otherwise provided in § 2502C of this title, a person who violates this chapter is subject to the following:

(1) If the person is not an individual consumer, a civil fine of not more than $100 per incident not to exceed $5,000 total.

(2) If the person is not an individual consumer and the violation is the person's second offense under this chapter, a civil fine of not more than $500 per incident not to exceed $25,000 total.

(3) If the person is not an individual consumer and the violation is the person's third or subsequent offense under this chapter, a civil fine of not more than $1,000 per incident not to exceed $50,000 total.

(4) If a person knowingly violates this chapter after receipt of a notice of violation and the person is not an individual consumer, a civil fine equal to 3 times the amount in the preceding paragraph (a)(3) of this section.

(b) A civil fine imposed under this section shall be waived if it is determined that a person acted in good faith to be in compliance with this chapter, pursued compliance with due diligence, and promptly corrected any noncompliance after discovery of the violation.

(76 Del. Laws, c. 358, § 1.)

§ 2505C The Department of Health and Social Services.

The Delaware Department of Health and Social Services ("DHSS") shall provide and maintain a list of all unsafe toys and toys containing a toxic substance or a link to the *www.recalls.gov* website. This list shall be updated no later than 72 hours after a new unsafe toy or toy containing a toxic substance has been subject to recall. This list shall also be linked through the DHSS website and a physical copy shall be made available to the public in designated locations throughout the State.

(76 Del. Laws, c. 358, § 1.)

Subtitle II
Other Laws Relating to Commerce and Trade
Chapter 25D
Delaware Servicemembers Civil Relief Act

§ 2501D Purpose; short title.

The provisions of this chapter are intended to be supplemental to any rights that persons called to military service have under any applicable federal statutes, including the Servicemembers Civil Relief Act, 50 U.S.C. App. § 501 et seq., and under any other applicable laws of this State. This chapter may be cited as the "Delaware Servicemembers Civil Relief Act."

(79 Del. Laws, c. 359, § 1.)

§ 2502D Definitions.

For purposes of this chapter:

(1) "Court" means any court or administrative agency of the State, or a subdivision thereof, whether or not a court or administrative agency of record.

(2) "Judgment" means any judgment, decree, order, or ruling, final or temporary.

(3) "Military service" means:

a. In the case of a servicemember who is a member of the Army, Navy, Air Force, Marine Corps, or Coast Guard, active duty, as defined in 10 U.S.C. § 101(d)(1);

b. In the case of a member of the National Guard, includes service under a call to active service authorized by the President or the Secretary of Defense for a period of more than 30 consecutive days under 32 U.S.C. § 502(f) for purposes of responding to a national emergency declared by the President and supported by federal funds;

c. In the case of a servicemember who is a commissioned officer of the Public Health Service or the National Oceanic and Atmospheric Administration, active service;

d. In the case of a servicemember who is a member of the Delaware National Guard, called out to serve in a state duty status pursuant to § 171 of Title 20, for a period of more than 30 consecutive days; or

e. Any period during which a servicemember is absent from duty on account of sickness, wounds, leave, or other lawful cause.

(4) "Period of military service" means the period beginning on the date on which a servicemember enters military service and ending on the date on which the servicemember is released from military service or dies while in military service.

(5) a. "Servicemember" means a resident of the State or a natural person stationed in the State who is a member of the Army, Navy, Air Force, Marine Corps, Coast Guard, the commissioned corps of the National Oceanic and Atmospheric Administration, the commissioned corps of the Public Health Service, or the Delaware National Guard.

b. Whenever the term "servicemember" is used, it shall be treated as including a reference to a legal representative of a servicemember, which shall include an attorney acting on behalf of the servicemember or an individual possessing power of attorney.

(79 Del. Laws, c. 359, § 1.)

§ 2503D Protection of servicemembers against default judgments.

(a) *Applicability of section.* — This section applies to any civil action or proceeding, including any child custody proceeding, in which the defendant does not make an appearance.

(b) *Affidavit requirement.* — (1) *Plaintiff to file affidavit.* — In any action or proceeding covered by this section, the court, before entering judgment for the plaintiff, shall require the plaintiff to file with the court an affidavit:

a. Stating whether or not the defendant is in military service and showing necessary facts to support the affidavit; or

b. If the plaintiff is unable to determine whether or not the defendant is in military service, stating that the plaintiff is unable to determine whether or not the defendant is in military service.

(2) *Appointment of attorney to represent defendant in military service.* — If in an action covered by this section it appears that the defendant is in military service, the court may not enter a judgment until after the court appoints an attorney to represent the defendant. If an attorney appointed under this section to represent a servicemember cannot locate the servicemember, actions by the attorney in the case shall not waive any defense of the servicemember or otherwise bind the servicemember.

(3) *Defendant's military status not ascertained by affidavit.* — If based upon the affidavits filed in such an action, the court is unable to determine whether the defendant is in military service, the court, before entering judgment, may require the plaintiff to file a bond in an amount approved by the court. If the defendant is later found to be in military service, the bond shall be available to indemnify the defendant against any loss or damage the defendant may suffer by reason of any judgment for the plaintiff against the defendant, should the judgment be set aside in whole or in part. The bond shall remain in effect until expiration of the time for appeal and setting aside of a judgment under applicable federal or state law or regulation or under any applicable ordinance of a political subdivision of a

state. The court may issue such orders or enter such judgments as the court determines necessary to protect the rights of the defendant under this chapter.

(4) *Satisfaction of requirement for affidavit.* — The requirement for an affidavit under paragraph (b)(1) of this section may be satisfied by a statement, declaration, verification, or certificate, in writing, subscribed and certified or declared to be true under penalty of perjury.

(c) *Penalty for making or using false affidavit.* — A person who makes or uses an affidavit permitted under subsection (b) of this section (or a statement, declaration, verification, or certificate as authorized under paragraph (b)(4) of this section) knowing it to be false, is guilty of perjury, under § 1222 of Title 11, a class F felony and may be punished as provided by law.

(d) *Stay of proceedings.* — In an action covered by this section in which the defendant is in military service, the court shall grant a stay of proceedings for a minimum period of 90 days under this subsection upon application of counsel, or on the court's own motion, if the court determines that:

(1) There may be a defense to the action and a defense cannot be presented without the presence of the defendant; or

(2) After due diligence, counsel has been unable to contact the defendant or otherwise determine if a meritorious defense exists.

(e) *Inapplicability of § 2504D-of-this-title procedures.* — A stay of proceedings under subsection (d) of this section shall not be controlled by procedures or requirements under § 2504D of this title.

(f) *Section 2504D-of-this-title protection.* — If a servicemember who is a defendant in an action covered by this section receives actual notice of the action, the servicemember may request a stay of proceeding under § 2504D of this title.

(g) *Vacation or setting aside of default judgments.* — (1) *Authority for court to vacate or set aside judgment.* — If a default judgment is entered in an action covered by this section against a servicemember during the servicemember's period of military service (or within 60 days after termination of or release from such military service), the court entering the judgment shall, upon application by or on behalf of the servicemember, reopen the judgment for the purpose of allowing the servicemember to defend the action if it appears that:

a. The servicemember was materially affected by reason of that military service in making a defense to the action; and

b. The servicemember has a meritorious or legal defense to the action or some part of it.

(2) *Time for filing application.* — An application under this subsection must be filed not later than 90 days after the date of the termination of or release from military service.

(h) *Protection of bona fide purchaser.* — If a court vacates, sets aside, or reverses a default judgment against a servicemember and the vacating, setting aside, or reversing is because of a provision of this chapter, that action shall not impair a right or title acquired by a bona fide purchaser for value under the default judgment.

(79 Del. Laws, c. 359, § 1.)

§ 2504D Stay of proceedings when servicemember has notice.

(a) *Applicability of section.* — This section applies to any civil action or proceeding, including any child custody proceeding, in which the plaintiff or defendant at the time of filing an application under this section:

(1) Is in military service or is within 90 days after termination of or release from military service; and

(2) Has received notice of the action or proceeding.

(b) *Stay of proceedings.* — (1) *Authority for stay.* — At any stage before final judgment in a civil action or proceeding in which a servicemember described in subsection (a) of this section is a party, the court may on its own motion and shall, upon application by the servicemember, stay the action for a period of not less than 90 days, if the conditions in paragraph (b)(2) of this section are met.

(2) *Conditions for stay.* — An application for a stay under paragraph (b)(1) of this section shall include the following:

a. A letter or other communication setting forth facts stating the manner in which current military duty requirements materially affect the servicemember's ability to appear and stating a date when the servicemember will be available to appear.

b. A letter or other communication from the servicemember's commanding officer stating that the servicemember's current military duty prevents appearance and that military leave is not authorized for the servicemember at the time of the letter.

(c) *Application not a waiver of defenses.* — An application for a stay under this section does not constitute an appearance for jurisdictional purposes and does not constitute a waiver of any substantive or procedural defense (including a defense relating to lack of personal jurisdiction).

(d) *Additional stay.* — (1) *Application.* — A servicemember who is granted a stay of a civil action or proceeding under subsection (b) of this section may apply for an additional stay based on continuing material affect of military duty on the servicemember's ability to appear. Such an application may be made by the servicemember at the time of the initial application under subsection (b) of this section or when it appears that the servicemember is unavailable to prosecute or defend the action. The same information required under paragraph (b)(2) of this section shall be included in an application under this subsection.

(2) *Appointment of counsel when additional stay refused.* — If the court refuses to grant an additional stay of proceedings under paragraph (d)(1) of this section, the court shall appoint counsel to represent the servicemember in the action or proceeding.

(e) *Coordination with § 2503D of this title.* — A servicemember who applies for a stay under this section and is unsuccessful may not seek the protections afforded by § 2503D of this title.

(79 Del. Laws, c. 359, § 1.)

§ 2505D Fines and penalties under contracts.

(a) *Prohibition of penalties.* — When an action for compliance with the terms of a contract is stayed pursuant to this chapter, a penalty shall not accrue for failure to comply with the terms of the contract during the period of the stay.

(b) *Reduction or waiver of fines or penalties.* — If a servicemember fails to perform an obligation arising under a contract and a penalty is incurred arising from that nonperformance, a court may reduce or waive the fine or penalty if:

(1) The servicemember was in military service at the time the fine or penalty was incurred; and

(2) The ability of the servicemember to perform the obligation was materially affected by such military service.

(79 Del. Laws, c. 359, § 1.)

§ 2506D Stay or vacation of execution of judgments, attachments, and garnishments.

(a) *Court action upon material affect determination.* — If a servicemember, in the opinion of the court, is materially affected by reason of military service in complying with a court judgment or order, the court may on its own motion and shall on application by the servicemember:

(1) Stay the execution of any judgment or order entered against the servicemember; and

(2) Vacate or stay an attachment or garnishment of property, money, or debts in the possession of the servicemember or a third party, whether before or after judgment.

(b) *Applicability.* — This section applies to an action or proceeding commenced in a court against a servicemember before or during the period of the servicemember's military service or within 90 days after such service terminates.

(79 Del. Laws, c. 359, § 1.)

§ 2507D Duration and term of stays; codefendants not in service.

(a) *Period of stay.* — A stay of an action, proceeding, attachment, or execution made pursuant to the provisions of this chapter by a court may be ordered for the period of military service and 90 days thereafter, or for any part of that period. The court may set the terms and amounts for such installment payments as is considered reasonable by the court.

(b) *Codefendants.* — If the servicemember is a codefendant with others who are not in military service and who are not entitled to the relief and protections provided under this chapter, the plaintiff may proceed against those other defendants with the approval of the court.

(c) *Inapplicability of section.* — This section does not apply to §§ 2504D and 2510D of this title.

(79 Del. Laws, c. 359, § 1.)

§ 2508D Statute of limitations.

To the extent that it is allowable by federal law, the period of a servicemember's military service shall not be included in computing any period limited by law, regulation, or order for the bringing of an action or proceeding in any court, or in any board, bureau, commission, department or other agency of government of this State or any of its political subdivisions by or against a servicemember or the servicemember's heirs, executors, administrators, or assigns, nor shall a period of military service be included in computing any period provided by law for the redemption of real property sold or forfeited to enforce an obligation, tax, or assessment.

(79 Del. Laws, c. 359, § 1.)

§ 2509D Maximum rate of interest on debts incurred before military service.

(a) *Interest rate limitation.* — (1) *Limitation to 6 percent.* — An obligation or liability bearing interest at a rate in excess of 6 percent per year that is incurred by a servicemember, or the servicemember and the servicemember's spouse jointly, before the servicemember enters military service shall not bear interest at a rate in excess of 6 percent:

a. During the period of military service and 1 year thereafter, in the case of an obligation or liability consisting of a mortgage, trust deed, or other security in the nature of a mortgage; or

b. During the period of military service, in the case of any other obligation or liability.

(2) *Forgiveness of interest in excess of 6 percent.* — Interest at a rate in excess of 6 percent per year that would otherwise be incurred but for the prohibition in paragraph (a)(1) of this section is forgiven.

(3) *Prevention of acceleration of principal.* — The amount of any periodic payment due from a servicemember under the terms of the instrument that created an obligation or liability covered by this section shall be reduced by the amount of the interest forgiven under paragraph (a)(2) of this section that is allocable to the period for which such payment is made.

(b) *Implementation of limitation.* — (1) *Written notice to creditor.* — In order for an obligation or liability of a servicemember to be subject to the interest rate limitation in subsection (a) of this section, the servicemember shall provide to the creditor written notice and a copy of the military orders calling the servicemember to military service and any orders further extending military service, not later than 180 days after the date of the servicemember's termination or release from military service.

(2) *Limitation effective as of date of order to active duty.* — Upon receipt of written notice and a copy of orders calling a servicemember to military service, the creditor shall treat the debt in accordance with subsection (a) of this section, effective as of the date on which the servicemember is called to military service.

(c) *Creditor protection.* — A court may grant a creditor relief from the limitations of this section if, in the opinion of the court, the ability of the servicemember to pay interest upon the obligation or liability at a rate in excess of 6 percent per years is not materially affected by reason of the servicemember's military service.

(d) *Definitions.* — For purposes of this section, the term "interest" includes service charges, renewal charges, fees, or any other charges (except bona fide insurance) with respect to an obligation or liability, and the term "obligation or liability" includes an obligation or liability consisting of a mortgage, trust deed, or other security in the nature of a mortgage.

(79 Del. Laws, c. 359, § 1.)

§ 2510D Anticipatory relief.

(a) *Application for relief.* — A servicemember may, during military service or within 180 days of termination of or release from military service, apply to a court for relief:

(1) From any obligation or liability incurred by the servicemember before the servicemember's military service; or

(2) From a tax or assessment falling due before or during the servicemember's military service.

(b) *Tax liability or assessment.* — In a case covered by subsection (a) of this section, the court may, if the ability of the servicemember to comply with the terms of such obligation or liability or pay such tax or assessment has been materially affected by reason of military service, after appropriate notice and hearing, grant the following relief:

(1) *Stay of enforcement of real estate contracts.* — a. In the case of an obligation payable in installments under a contract for the purchase of real estate, or secured by a mortgage or other instrument in the nature of a mortgage upon real estate, the court may grant a stay of the enforcement of the obligation:

1. During the servicemember's period of military service; and

2. From the date of termination of or release from military service, or from the date of application if made after termination of or release from military service.

b. Any stay under this paragraph shall be:

1. For a period equal to the remaining life of the installment contract or other instrument, plus a period of time equal to the period of military service of the servicemember, or any part of such combined period; and

2. Subject to payment of the balance of the principal and accumulated interest due and unpaid at the date of termination or release from the applicant's military service or from the date of application in equal installments during the combined period at the rate of interest on the unpaid balance prescribed in the contract or other instrument evidencing the obligation, and subject to other terms as may be equitable.

(2) *Stay of enforcement of other contracts.* — a. In the case of any other obligation, liability, tax, or assessment, the court may grant a stay of enforcement:

1. During the servicemember's military service; and

2. From the date of termination of or release from military service, or from the date of application if made after termination or release from military service.

b. Any stay under this paragraph shall be:

1. For a period of time equal to the period of the servicemember's military service or any part of such period; and

2. Subject to payment of the balance of principal and accumulated interest due and unpaid at the date of termination or release from military service, or the date of application, in equal periodic installments during this extended period at the rate of interest as may be prescribed for this obligation, liability, tax, or assessment, if paid when due, and subject to other terms as may be equitable.

(c) *Effect of stay on fine or penalty.* — When a court grants a stay under this section, a fine or penalty shall not accrue on the obligation, liability, tax, or assessment for the period of compliance with the terms and conditions of the stay.

(79 Del. Laws, c. 359, § 1.)

§ 2511D Certificates; reliance on certificates; persons reported missing.

(a) *Prima facie evidence.* — In any proceeding under this chapter (§§ 2501D-2513D of this title), a certificate obtained pursuant to 50 U.S.C. Appx. § 582 is prima facie evidence as to any of the following facts stated in the certificate:

(1) That a person named is, is not, has been, or has not been in military service.

(2) The time and the place the person entered military service.

(3) The person's residence at the time the person entered military service.

(4) The rank, branch, and unit of military service of the person upon entry.

(5) The inclusive dates of the person's military service.

(6) The monthly pay received by the person at the date of the certificate's issuance.

(7) The time and place of the person's termination of or release from military service, or the person's death during military service.

(b) *DMDC certificate.* — For purposes of this section, "certificate" includes the certificate provided by the Defense Manpower Data Center website in response to a single record request or a multiple record request.

(c) *Reliance on certificate.* — If a creditor:

(1) Receives a certificate that indicates a servicemember is or was not in military service or is otherwise ineligible for a benefit or protection under this act (§§ 2501D-2513D of this title);

(2) Denies a request for or otherwise does not provide any benefit or protection to a servicemember under this chapter (§§ 2501D-2513D of this title); and

(3) Did not receive from the servicemember or servicemember's representative written notice of the servicemember's military service at the time the creditor denied or otherwise did not provide the benefit or protection;

the creditor shall be required only to provide the benefit or protection retroactively or to provide the financial equivalent of the benefit or protection to the servicemember. The creditor shall not be liable for any further penalties, costs or damages, including any damages under this chapter.

(d) *Treatment of servicemembers in missing status.* — A servicemember who has been reported missing is presumed to continue in service until accounted for. A requirement under this act (§§ 2501D-2513D of this title) that begins or ends with the death of a servicemember does not begin or end until the servicemember's death is reported to, or determined by, appropriate authorities concerned or by a court of competent jurisdiction.

(79 Del. Laws, c. 359, § 1.)

§ 2512D Implementing regulations.

The Governor, or the Governor's designee, shall implement regulations establishing a process of notification that Delaware National Guard members are called to state duty status pursuant to § 171 of Title 20 and accordingly covered under this chapter. Such process shall provide identification of such personnel to all persons responsible for compliance with this chapter. Until such regulations are implemented, § 2502D(2)d. of this title shall be of no force and effect.

(79 Del. Laws, c. 359, § 1.)

§ 2513D Enforcement.

(a) The Attorney General shall have the same authority to enforce and carry out this Chapter 25D as is granted by Chapter 25 of Title 29 and by §§ 2511-2527 and 2531-2536 of this title.

(b) If a court or tribunal of competent jurisdiction finds that any person has violated this Chapter 25D, the Attorney General, upon petition to the court or tribunal, shall recover from the person, on behalf of the State, in addition to all costs, a civil penalty of not more than $10,000 per violation pursuant to § 2533 of this title. Where such violation is wilful, each day that a wilful violation continues shall be considered a separate violation.

(c) For the purpose of this chapter, a "wilful violation" occurs when the party committing the violation knew that the party's conduct was of the nature prohibited by this chapter.

(79 Del. Laws, c. 359, § 1.)

Subtitle II
Other Laws Relating to Commerce and Trade

Chapter 25E
Delaware Federal Employees Civil Relief Act

§ 2501E Short title.

This chapter may be cited as the "Delaware Federal Employees Civil Relief Act."

(82 Del. Laws, c. 2, § 1.)

§ 2502E Purpose.

The purpose of this chapter is to provide for the temporary suspension of judicial and administrative proceedings in Delaware that may adversely affect the civil rights of federal workers during a shutdown. The provisions of this chapter are intended to be supplemental to any rights that federal workers have under any applicable federal statutes and under any other applicable laws of this State.

(82 Del. Laws, c. 2, § 1.)

§ 2503E Definitions.

For purposes of this chapter:

(1) "Contractor" means a party to a federal government contract other than the federal government.

(2) "Court" means any court or administrative agency of the State, or a subdivision thereof, whether or not a court or administrative agency of record.

(3) "Covered insurance policy" means a policy for health insurance, life insurance, disability insurance, or motor vehicle insurance that a federal worker enters into before the date on which a shutdown begins and is in effect during a shutdown.

(4) "Covered period" means the period beginning on the date on which a shutdown begins and ending on the date that is 30 days after the date on which that shutdown ends.

(5) "Federal government agency" means each authority of the executive, legislative, or judicial branch of the government of the United States.

(6) "Federal worker" means an employee of a federal government agency who resides in the State and includes an employee of a contractor.

(7) "Judgment" means any judgment, decree, order, or ruling, final or temporary.

(8) "Shutdown" means any period in which there is more than a 24-hour lapse in appropriations for any federal government agency as a result of a failure to enact a regular appropriations bill or continuing resolution.

(82 Del. Laws, c. 2, § 1.)

§ 2504E Applicability.

This chapter applies to any judicial or administrative proceeding commenced in a court in this State against a federal worker during a covered period. This chapter does not apply to criminal proceedings or to child support payments.

(82 Del. Laws, c. 2, § 1.)

§ 2505E Anticipatory relief.

(a) A federal worker who is furloughed or required to work without pay during a shutdown may apply to a court for a temporary stay, postponement, or suspension regarding any payment of rent, mortgage, tax, fine, penalty, insurance premium, judgment, or other civil obligation or liability that the federal worker owes or would owe during the duration of the shutdown.

(b) A court may grant relief if the court finds that the ability of the federal worker to pay such obligation has been materially affected by the shutdown.

(82 Del. Laws, c. 2, § 1.)

§ 2506E Duration and term of stays; codefendants not a federal employee.

(a) *Period of stay.* — A stay of an action, proceeding, attachment, or execution made pursuant to the provisions of this chapter by a court may be ordered for the covered period and 90 days thereafter, or for any part of that period. The court may set the terms and amounts for such installment payments as is considered reasonable by the court.

(b) *Codefendants.* — If the federal worker is a codefendant with others who are not a federal worker and who are not entitled to the relief and protections provided under this chapter, the plaintiff may proceed against those other defendants with the approval of the court.

(82 Del. Laws, c. 2, § 1.)

§ 2507E Evictions.

(a) During a covered period, a landlord may only evict a federal worker for nonpayment from premises that are occupied or intended to be occupied primarily as a residence with an order of a court.

(b) A court may stay eviction proceedings against a federal worker for a period of 30 days if the court finds that the ability of the federal worker to comply with the lease obligations has been materially affected by the shutdown. The court may extend the stay if, in the opinion of the court, justice and equity require.

(82 Del. Laws, c. 2, § 1.)

§ 2508E Insurance protection.

Without an order of a court, a covered insurance policy shall not lapse, terminate or be forfeited because a federal worker does not pay a premium or interest or indebtedness on a premium under the policy that is due during a covered period.

(82 Del. Laws, c. 2, § 1.)

§ 2509E Maximum rate of interest on debts incurred before the shutdown

(82 Del. Laws, c. 2, § 1; expired by operation of 82 Del. Laws, c. 78, § 9, eff. July 1, 2019.)

§ 2510E Enforcement.

(a) The Attorney General shall have the same authority to enforce and carry out this chapter as is granted by Chapter 25 of Title 29 and by §§ 2511 to 2527 and 2531 to 2536 of this title.

(b) If a court or tribunal of competent jurisdiction finds that any person has violated this chapter, the Attorney General, upon petition to the court or tribunal, shall recover from the person, on behalf of the State, in addition to all costs, a civil penalty of not more than $10,000 per violation pursuant to § 2533 of this title. Where such violation is wilful, each day that a wilful violation continues shall be considered a separate violation.

(c) For the purpose of this chapter, a “wilful violation” occurs when the party committing the violation knew that the party’s conduct was of the nature prohibited by this chapter.

(82 Del. Laws, c. 2, § 1.)

(82 Del. Laws, c. 2, § 1.)

Subtitle II
Other Laws Relating to Commerce and Trade

Chapter 25F
Patient Brokering

§ 2501F Definitions.

For purposes of this chapter:

(1) "Carrier" means any entity that provides health insurance in this State. "Carrier" includes an insurance company, health service corporation, health maintenance organization, and any other entity providing a plan of health insurance or health benefits subject to state insurance regulation. "Carrier" also includes any third-party administrator or other entity that adjusts, administers, or settles claims in connection with health benefit plans.

(2) "Health benefit plan" means any hospital or medical policy or certificate, major medical expense insurance, health service corporation subscriber contract, or health maintenance organization subscriber contract.

(3) "Health-care facility" means an institution, facility, or agency licensed, certified, or otherwise authorized or permitted by law to provide health care in the ordinary course of business.

(4) "Health-care provider" means an individual licensed, certified, or otherwise authorized or permitted by law to provide health care in the ordinary course of business or practice of a profession.

(82 Del. Laws, c. 202, § 1.)

§ 2502F Patient brokering prohibited.

(a) A person may not engage in patient brokering.

(b) A person engages in patient brokering by doing any of the following:

(1) Offering or paying a commission, benefit, bonus, rebate, kickback, or bribe, directly or indirectly, in cash or in kind, or engaging in any form of split-fee arrangement, to induce the referral of a patient or patronage to or from a health-care provider or health-care facility.

(2) Soliciting or receiving a commission, benefit, bonus, rebate, kickback, or bribe, directly or indirectly, in cash or in kind, or engaging in any form of split-fee arrangement, in return for referring a patient or patronage to or from a health-care provider or health-care facility.

(3) Soliciting or receiving a commission, benefit, bonus, rebate, kickback, or bribe, directly or indirectly, in cash or in kind, or engaging in any form of a split-fee arrangement, in return for the acceptance or acknowledgement of treatment from a health-care provider or health-care facility.

(4) Aid, abet, advise, or otherwise participate in the conduct prohibited under this section.

(82 Del. Laws, c. 202, § 1.)

§ 2503F Application.

This section does not apply to any of the following:

(1) a. Any discount, payment, remuneration, waiver of payment, or payment practice not prohibited by § 1128B of the Social Security Act, 42 U.S.C. § 1320a-7b, and its implementing regulations, 42 C.F.R § 1001.

b. This paragraph (1) includes a patient, claim, or benefit under a federal health care program, as defined under § 1128B(f) the Social Security Act, 42 U.S.C. § 1320a-7b(f), or a federal health benefit plan.

(2) Any payment, compensation, or financial arrangement within a group practice, if the payment, compensation, or arrangement is not to or from a person who is not a member of the group practice.

(3) Payments to a health-care provider or health-care facility for professional consultation services.

(4) Commissions, fees, or other remuneration lawfully paid to insurance agents as provided under Title 18.

(5) Payments by a carrier who reimburses, provides, offers to provide, or administers health, mental health, or substance abuse goods or services under a health benefit plan.

(6) Payments to or by a health-care provider or health-care facility, or a health-care provider network entity, that has contracted with a carrier, a health-care purchasing group, Medicare, or Medicaid to provide health, metal health, or substance abuse goods or services under a health benefit plan when such payments are for goods or services under the plan.

(7) Payments by a health-care provider or health-care facility to a health, mental health, or substance abuse information service that provides information upon request and without charge to consumers about providers of health-care goods or services to enable consumers to select appropriate providers or facilities, provided that the information service meets all of the following criteria:

a. Does not attempt through its standard questions for solicitation of consumer criteria or through any other means to steer or lead a consumer to select or consider selection of a particular health-care provider or health-care facility.

b. Does not provide or represent itself as providing diagnostic or counseling services or assessments of illness or injury and does not make any promises of cure or guarantees of treatment.

c. Does not provide or arrange for transportation of a consumer to or from the location of a health-care provider or health-care facility.

d. Charges and collects fees from a health-care provider or health-care facility participating in its services that are set in advance, are consistent with the fair market value for those information services, and are not based on the potential value of a patient or patients to a health-care provider or health-care facility or of the goods or services provided by the health-care provider or health-care facility.

(8) An individual employed by the assisted living facility, or with whom the facility contracts to provide marketing services for the facility, if the individual clearly indicates that they work with or for the facility.

(9) Payments by an assisted living facility to a referral service that provides information, consultation, or referrals to consumers to assist them in finding appropriate care or housing options for seniors or disabled adults if the referred consumers are not Medicaid recipients.

(10) A resident of an assisted living facility who refers a friend, family member, or other individual with whom the resident has a personal relationship to the assisted living facility, in which case the assisted living facility may provide a monetary reward to the resident for making such referral.

(11) Payments to a health-care provider or health-care facility under the requirements of a contract with the State to provide assistance to individuals with mental health conditions or substance use disorders in identifying and obtaining resources to pay for treatment, including clinical and related services for an individual with a mental health condition or substance use disorder.

(82 Del. Laws, c. 202, § 1.)

§ 2504F Enforcement.

(a) The Attorney General has the same authority to enforce and carry out this chapter as under Chapter 25 of Title 29 and by §§ 2511 through 2527 and §§ 2531 through 2536 of this title.

(b) A violation of this chapter shall be deemed an unlawful practice under § 2513 of this title and a violation of subchapter II of Chapter 25 of this title.

(c) Nothing in this chapter modifies requirements under mental health parity laws, including § 3343, § 3571T, or § 3578 of Title 18 or the federal Mental Health Parity and Addiction Equity Act of 2008 (29 U.S.C. § 1185a).

(82 Del. Laws, c. 202, § 1.)

§ 2505F Penalties.

(a) A person who violates this chapter is subject to a civil penalty, in addition to all costs, of not more than $10,000 per violation.

(b) If the violation is against an elder person or person with a disability, a person who violates this chapter is subject to an additional civil penalty of not more than $10,000 per violation under § 2581 of this title.

(c) Each day that a wilful violation continues is considered a separate violation.

(d) For the purpose of this chapter, a wilful violation occurs when the person committing the violation knew or should have known that the person's conduct was prohibited under this chapter.

(82 Del. Laws, c. 202, § 1.)

§ 2506F Remedies and penalties not exclusive.

The remedies and penalties under this chapter are not exclusive and are in addition to any other procedures, rights, or remedies which exist with respect to any other provisions of law including subchapter II and subchapter III of Chapter 25 of this title, actions brought by private parties, or state or federal criminal prosecutions.

(82 Del. Laws, c. 202, § 1.)

(82 Del. Laws, c. 202, § 1.)

Subtitle II
Other Laws Relating to Commerce and Trade

Chapter 26
Unfair Cigarette Sales Act

§ 2601 Sale at less than cost.

No wholesaler, with intent to injure a competitor or competitors, or with intent to destroy or substantially lessen competition, shall sell at wholesale cigarettes at less than the cost to the wholesaler, either directly or indirectly by any means or device whatever, including but not limited to offering or accepting or inducing or attempting to induce a rebate in price or a concession of any kind in connection with the sale or purchase of cigarettes.

(6 Del. C. 1953, § 2601; 59 Del. Laws, c. 214, § 1; 59 Del. Laws, c. 299, § 1.)

§ 2602 Definitions.

For the purposes of this chapter the following definitions shall apply:

(1) "Basic cost of cigarettes" means the invoice cost of cigarettes to the wholesaler, or the replacement cost of cigarettes to the wholesaler (i.e., the cost for which cigarettes could have been bought by the wholesaler at any time within 30 days prior to the date of sale by the wholesaler if bought in the same quantity as the last purchase made by the wholesaler), whichever is lower, plus in-freight charges not otherwise included in invoice or replacement cost, less all trade discounts and the usual and customary 2 percent cash discount, plus the full face value of any cigarette taxes payable on cigarettes sold.

(2) "Cigarettes" includes any roll for smoking, made wholly or in part of tobacco, irrespective of size or shape and whether or not such tobacco is flavored, adulterated or mixed with any other ingredient, where such roll has a wrapper or cover made of paper or any other material except tobacco. Cigarettes shall not be construed to include cigars.

(3) "Consumer" means any person who has possession of tobacco products for any purpose other than transportation or sale.

(4) "Cost to the wholesaler" means the basic cost of cigarettes to the wholesaler plus a markup to cover the cost of doing business by the wholesaler, including cartage to the retailer. In the absence of satisfactory proof of a lesser cost of doing business by any wholesaler, the cost of doing business shall be presumed to be 5 percent of the basic cost of cigarettes to the wholesaler. Any fractional part of a cent, amounting to $^{1}/_{10}$ of a cent or more, in the cost of the wholesaler per carton of 10 packages shall be rounded off to the next higher cent.

(5) "Secretary of Finance" or "Secretary" means the Secretary of Finance or a duly authorized designee; provided that any such delegation of authority is consistent with Chapter 83 of Title 29.

(6) "Sell," in addition to its usual meaning, includes to advertise, offer to sell, offer for sale, barter, exchange, transfer, gift or distribution.

(7) "Sell cigarettes at wholesale," "wholesale sales of cigarettes," "sales of cigarettes at wholesale," and similar expressions include any sale whereby cigarettes are sold for a valuable consideration in the ordinary course of trade or in the usual conduct of the seller's business to a retailer (other than a vending machine operator) for the bona fide purpose of resale to the ultimate consumer, and includes any such transfer of cigarettes on consignment or otherwise where title is retained by the seller as security for the payment of the purchase price.

(8) "Vending machine operator" means any person who places 1 or more vending machines owned, leased or operated at locations where cigarettes are sold therefrom. The owner or lessee of the premises upon which a vending machine is placed shall not be considered the operator of the machine if the owner or lessee does not own or lease the machine and if the sole remuneration therefrom is a flat rental fee or a commission based upon the number or value of tobacco products sold from the machine or a combination of both.

(9) "Wholesaler" means any person who regularly sells tobacco products within this State to others who buy for the purpose of resale to the ultimate consumer or any person who, because of volume of cigarette sale business and other criteria as determined by the manufacturer, has the privilege of buying direct from the manufacturer.

(6 Del. C. 1953, § 2602; 59 Del. Laws, c. 214, § 1; 59 Del. Laws, c. 299, § 1; 70 Del. Laws, c. 186, § 1.)

§ 2603 Special cost provisions.

(a) *Markup on sales at wholesale on cash and carry basis.* — In any sale of cigarettes at wholesale on a cash and carry basis (i.e., where cigarettes are not delivered unless the full price thereof is received by the seller at or before delivery and where the purchaser performs or pays for the cartage of the cigarettes to the purchaser's place of business), the presumptive wholesale markup of 5 percent provided in § 2602(4) of this title may be reduced by 2 cents for each carton containing 200 cigarettes.

(b) *Sales by wholesalers to other wholesalers and vending machine operators.* — When 1 wholesaler sells cigarettes to any other wholesaler or vending machine operator, as herein defined, the former shall not be required to include in the selling price to the latter "cost of the wholesaler," as provided by § 2602(4) of this title, but said seller must include in said selling price "basic cost of cigarettes" as defined in § 2602(1) of this title plus a charge of 1 percent thereon, in the absence of satisfactory proof of a lesser cost for the rendition

of such service by the seller, and the latter wholesaler, upon resale to a retailer, shall be deemed to be the wholesaler governed by the provisions of § 2602(4) of this title.

(6 Del. C. 1953, § 2603; 59 Del. Laws, c. 214, § 1; 59 Del. Laws, c. 299, § 1; 70 Del. Laws, c. 186, § 1.)

§ 2604 Combination sales and concessions.

It is unlawful for any wholesaler, with the purpose or intent specified in § 2601 of this title, to:

(1) Sell cigarettes in combination with any other item or items of merchandise where any such other item is given free of charge or sold at a price which is below the cost of such item to the seller;

(2) Sell cigarettes in combination with any other item or items of merchandise where the total sale price for all the items included in the sale is less than the sum of the cost of cigarettes to the wholesaler, as herein defined, plus the cost to the wholesaler of all other items included in the sale, including items given free of charge in connection with the sale;

(3) Give cigarettes free of charge, except in the case of specially packaged manufacturers' samples which are designated on the package as not to be sold; and

(4) Make any rebate, advertising allowance, or any other concession by any means or device whatever in connection with the sale of cigarettes, whereby the cigarettes are in effect sold below cost as herein defined, except that any reduction in cost to the seller resulting from any payment or compensation given by manufacturers of cigarettes on a uniform and nondiscriminatory basis for promotional services, and any coupons issued and ultimately redeemed by the manufacturer on the same basis may be passed on to the purchaser without violating this chapter.

(6 Del. C. 1953, § 2604; 59 Del. Laws, c. 214, § 1; 59 Del. Laws, c. 299, § 1.)

§ 2605 Exceptions.

(a) *Clearance sales, liquidation sales, etc.* — This chapter shall not apply to sales at wholesale:

(1) Where cigarettes are imperfect, damaged or being discontinued, if advertised and marked as such, and the quantity and quality is accurately, clearly and conspicuously stated in all advertising of such sale and in signs conspicuously posted where the sale takes place;

(2) Where cigarettes are sold upon the complete and final liquidation of the seller's business;

(3) Where cigarettes are sold under the order, direction or supervision of a court;

(4) Where cigarettes are sold by a wholesaler at a price fixed in good faith to meet the competition of another wholesaler who is rendering the same type of service (i.e., "cash and carry" or "service") as the seller, and provided that the competitor's price which seller desires to meet is itself lawful and not in violation of the provisions of this chapter. The price of cigarettes sold under paragraphs (a)(1) through (3) inclusive of this section shall not be deemed the price of a competitor under this paragraph.

(b) *Calculating basic cost.* — In calculating the basic cost to any wholesaler of cigarettes purchased at any sale under paragraphs (a)(1) through (4) inclusive of this section or at any other sale outside the ordinary channels of trade, invoice cost shall not be used, but there shall be used instead the replacement cost of the cigarettes as defined in § 2602(1) of this title, based upon the quantity last purchased by the seller through the ordinary channels of trade.

(6 Del. C. 1953, § 2605; 59 Del. Laws, c. 214, § 1; 59 Del. Laws, c. 299, § 1.)

§ 2606 Evidence.

(a) *Prima facie evidence of intent.* — In any action or proceeding pursuant to this chapter, including proceedings before the Secretary relating to licenses, proof of a sale of cigarettes or any other item or items in combination or in connection with cigarettes at less than cost to the seller as defined and specified in this chapter shall be prima facie evidence of intent to injure a competitor or competitors and/or of intent to destroy or substantially lessen competition.

(b) *Evidence bearing on cost.* — In determining cost to the wholesaler, the Secretary or any court shall receive and consider as bearing on the bona fides of such cost evidence tending to show that any person complained against under this chapter purchased cigarettes with respect to the sale of which complaint is made at a fictitious price or upon terms or in such a manner or under such invoices as to conceal the true costs, discounts or terms of purchase and shall also receive and consider as bearing on the bona fides of such cost evidence of the normal, customary, and prevailing terms and discounts in connection with other sales of a similar nature in the trade area.

(6 Del. C. 1953, § 2606; 59 Del. Laws, c. 214, § 1; 59 Del. Laws, c. 299, § 1.)

§ 2607 Remedies.

(a) *Injunction; action for damages.* — The Secretary or any person affected by an act in violation of this chapter, may file a complaint in the Court of Chancery for the county in which the alleged unlawful practice has been or is to be partially or completely performed, and the Court may enjoin any wholesaler from the commission of any such act, and may award damages and costs.

(b) *Suspension or revocation of license.* — The wholesale cigarette vender's license required by § 5307 of Title 30, of any wholesaler found to be in violation of this chapter, shall be suspended or revoked by the Secretary.

(c) *Penalties.* — Whoever is found to be in violation of this chapter by the Superior Court shall be fined not more than $1,000 for the first offense and not more than $5,000 for each subsequent offense.

(6 Del. C. 1953, § 2607; 59 Del. Laws, c. 214, § 1; 59 Del. Laws, c. 299, § 1.)

§ 2608 Administration and enforcement.

The Secretary shall enforce this chapter and shall, within the limitations of available appropriations, and in accordance with the laws of this State: Employ and fix the duties and compensation of inspectors and other personnel necessary to effectuate this chapter; and shall make such reasonable rules and regulations as may be necessary to effectuate and enforce the policies of this chapter.

(6 Del. C. 1953, § 2608; 59 Del. Laws, c. 214, § 1; 59 Del. Laws, c. 299, § 1.)

Subtitle II
Other Laws Relating to Commerce and Trade

Chapter 27
Contracts

Subchapter I
General Provisions

§ 2701 Joint and several contracts.

An obligation or written contract of several persons shall be joint and several, unless otherwise expressed.

(Code 1852, § 1170; Code 1915, § 2628; Code 1935, § 3108; 6 Del. C. 1953, § 2701.)

§ 2702 Assignment of bonds, specialties and notes.

(a) All bonds, specialties, and notes in writing, payable to any person, or order, or assigns, may be assigned, or indorsed, and the assignee, or indorsee, his or her executors, administrators, or assigns, may again assign, or indorse the same, as often as desired. The assignees, or indorsees, or their executors, or administrators, may, in their own name, sue for and recover the money due on the bonds, specialties, or notes. All assignments of bonds or specialties shall be under hand and seal, and executed before at least one credible witness.

(b) Assignors, or indorsers, or their executors, or administrators may not release or discharge any sum due by the bonds, specialties, or notes, after the date of the assignment, and no release, receipt, or discharge from him, her or them made after the date of the assignment shall be good or available.

(Code 1852, §§ 1168, 1169; 18 Del. Laws, c. 213; Code 1915, § 2627; Code 1935, § 3107; 6 Del. C. 1953, § 2702; 70 Del. Laws, c. 186, § 1.)

§ 2703 Construction with Chapter 1.

If any of the provisions of this subchapter are in conflict or inconsistent with any of the provisions of Chapter 1 of this title, such provisions of Chapter 1 of this title shall govern.

(6 Del. C. 1953, § 2703.)

§ 2704 Exculpatory clauses in certain contracts void.

(a) A covenant, promise, agreement or understanding in, or in connection with or collateral to, a contract or agreement (including but not limited to a contract or agreement with the State, any county, municipality or political subdivision of the State, or with any agency, commission, department, body or board of any of them, as well as any contract or agreement with a private party or entity) relative to the construction, alteration, repair or maintenance in the State of a road, highway, driveway, street, bridge or entrance or walkway of any type constructed thereon in the State, and building, structure, appurtenance or appliance in the State, including without limiting the generality of the foregoing, the moving, demolition and excavating connected therewith, purporting to indemnify or hold harmless the promisee or indemnitee or others, or their agents, servants and employees, for damages arising from liability for bodily injury or death to persons or damage to property caused partially or solely by, or resulting partially or solely from, or arising partially or solely out of the negligence of such promisee or indemnitee or others than the promisor or indemnitor, or its subcontractors, agents, servants or employees, is against public policy and is void and unenforceable, even where such covenant, promise, agreement or understanding is crystal clear and unambiguous in obligating the promisor or indemnitor to indemnify or hold harmless the promisee or indemnitee from liability resulting from such promisee's or indemnitee's own negligence. This section shall apply to all phases of the preconstruction, construction, repairs and maintenance described in this subsection, and nothing in this section shall be construed to limit its application to preconstruction professionals such as designers, planners and architects; provided, however, that this section shall not apply to any obligation owed to the Department of Transportation pursuant to a contract awarded under Title 17 or Chapter 69 of Title 29.

(b) Nothing in subsection (a) of this section shall be construed to void or render unenforceable policies of insurance issued by duly authorized insurance companies and insuring against losses or damages from any causes whatsoever.

(c) Subsection (a) of this section does not apply to any covenant, promise, agreement, understanding, or other provision in a partnership agreement of a partnership (whether general or limited), limited liability company agreement, trust agreement, governing instrument of a trust, certificate of incorporation or bylaw.

(6 Del. C. 1953, § 2704; 56 Del. Laws, c. 444; 57 Del. Laws, c. 706; 66 Del. Laws, c. 394, §§ 1-5; 74 Del. Laws, c. 105, §§ 1, 2.)

§ 2705 Age of majority; capacity to contract.

Any person who has attained 18 years of age shall have full capacity to contract; provided such person has not been declared legally incompetent to contract for reasons other than age. Any person who has attained the age of 18 years shall become fully responsible for that person's own contracts.

(6 Del. C. 1953, § 2705; 57 Del. Laws, c. 74; 58 Del. Laws, c. 511, § 8; 70 Del. Laws, c. 186, § 1.)

§ 2706 Settlement and release of claims by persons of the age of 18 years or older.

Any person of the age of 18 years or older may settle and compromise any claim, demand, or action of any nature which that person may have or which may be asserted against that person without the interference of a guardian, trustee, or the like, and the release and acquittal of such person shall be valid and legally effective for all intents and purposes in law or in equity and shall bind all heirs, executors and administrators.

(6 Del. C. 1953, § 2706; 58 Del. Laws, c. 440, § 1; 70 Del. Laws, c. 186, § 1.)

§ 2707 Agreements not to compete.

Any covenant not to compete provision of an employment, partnership or corporate agreement between and/or among physicians which restricts the right of a physician to practice medicine in a particular locale and/or for a defined period of time, upon the termination of the principal agreement of which the said provision is a part, shall be void; except that all other provisions of such an agreement shall be enforceable at law, including provisions which require the payment of damages in an amount that is reasonably related to the injury suffered by reason of termination of the principal agreement. Provisions which require the payment of damages upon termination of the principal agreement may include, but not be limited to, damages related to competition.

(64 Del. Laws, c. 175, § 1.)

§ 2708 Choice of law.

(a) The parties to any contract, agreement or other undertaking, contingent or otherwise, may agree in writing that the contract, agreement or other undertaking shall be governed by or construed under the laws of this State, without regard to principles of conflict of laws, or that the laws of this State shall govern, in whole or in part, any or all of their rights, remedies, liabilities, powers and duties if the parties, either as provided by law or in the manner specified in such writing are:

(1) Subject to the jurisdiction of the courts of, or arbitration in, Delaware; and

(2) May be served with legal process.

The foregoing shall conclusively be presumed to be a significant, material and reasonable relationship with this State and shall be enforced whether or not there are other relationships with this State.

(b) Any person may maintain an action in a court of competent jurisdiction in this State where the action or proceeding arises out of or relates to any contract, agreement or other undertaking for which a choice of Delaware law has been made in whole or in part and which contains the provision permitted by subsection (a) of this section.

(c) This section shall not apply to any contract, agreement or other undertaking:

(1) To the extent provided to the contrary in § 1-301(c) of this title; or

(2) Involving less than $100,000.

(d) In the event that any provision hereof shall be held to be invalid or unenforceable, such holding shall not invalidate or render unenforceable any other provision hereof. Any provision hereof which is held to be invalid or unenforceable only in part or degree or under specific facts, shall remain in full force and effect to the extent, and with respect to facts in connection with which, it has not been held to be invalid or unenforceable.

(e) This section shall not limit any jurisdiction otherwise existing in a court sitting in the State and shall not affect the validity of any other choice of law provisions in any contract, agreement or other undertaking.

(69 Del. Laws, c. 127, § 1; 75 Del. Laws, c. 66, § 5.)

Subchapter II

Statute of Frauds and Perjuries

§ 2711 Sale of goods; possession; rights of vendor's creditors.

(a) No sale, whether with or without bill of sale, of any goods or chattels, within this State, shall be good in law (except as against the vendor), or shall change or alter the property in such goods or chattels, unless a valuable consideration for the same is paid, or in good faith secured to be paid, and unless the goods and chattels sold are actually delivered into the possession of the vendee, as soon as it is convenient after the making of such sale.

(b) If the goods and chattels, so sold, afterwards come into and continue in the possession of the vendor, that vendor shall be liable to the demands of all creditors.

(Code 1852, §§ 1163, 1164; Code 1915, § 2623; Code 1935, § 3103; 6 Del. C. 1953, § 2711; 70 Del. Laws, c. 186, § 1.)

§ 2712 Promise to pay debt of another under $5.

All promises and assumptions, whereby any person undertakes to answer, or pay, for the default, debt, or miscarriage, of another, any sum under $5.00, being proved by the oath or affirmation of the persons to whom such promise and assumption are made, are good and available in law to charge the party making such promise or assumption.

(Code 1852, § 1165; Code 1915, § 2624; Code 1935, § 3104; 6 Del. C. 1953, § 2712.)

§ 2713 Promise of an executor, administrator or other person to pay debt of another.

No action shall be brought to charge any executor or administrator upon any special promise to answer damages out of his or her own estate, or to charge any defendant, upon any special promise, to answer for the debt, default, or miscarriage of another person, of the value of $5.00 and not more than $25, unless such promise and assumption is proved by the oath or affirmation of one credible witness, or some memorandum, or note in writing is signed by the party to be charged therewith.

(Code 1852, § 1166; Code 1915, § 2625; Code 1935, § 3105; 6 Del. C. 1953, § 2713; 70 Del. Laws, c. 186, § 1.)

§ 2714 Necessity of writing for contracts; definition of writing; evidence.

(a) No action shall be brought to charge any person upon any agreement made upon consideration of marriage, or upon any contract or sale of lands, tenements, or hereditaments, or any interest in or concerning them, or upon any agreement that is not to be performed within the space of 1 year from the making thereof, or to charge any person to answer for the debt, default, or miscarriage, of another, in any sum of the value of $25 and upwards, unless the contract is reduced to writing, or some memorandum, or notes thereof, are signed by the party to be charged therewith, or some other person thereunto by the party lawfully authorized in writing; except for goods, wares and merchandise, sold and delivered, money loaned and other matters which are properly chargeable in an account, in which case the oath or affirmation of the plaintiff, together with a record regularly and fairly kept, shall be allowed to be given in evidence in order to charge the defendant with the sums therein contained.

(b) A contract, promise, undertaking or commitment to loan money or to grant or extend credit, or any modification thereof, in an amount greater than $100,000, not primarily for personal, family, or household purposes, made by a person engaged in the business of lending or arranging for the lending of money or the extending of credit shall be invalid unless it or some note or memorandum thereof is in writing and subscribed by the party to be charged or by the party's agent. For purposes of this section, a contract, promise, undertaking or commitment to loan money secured solely by residential property consisting of 1 to 4 dwelling units shall be deemed to be for personal, family or household purposes.

(c) For the purposes of this section, "writing" includes microphotography, photography and photostating, and a microphotographic, photographic or photostatic copy of any agreement covered by this section. Such copy or copies having been regularly made and kept in the course of business, shall be equally competent as evidence as the original of such agreement, where the original is inaccessible or has been destroyed or otherwise disposed of in good faith in the regular course of business and where the mode of making such microphotograph, photograph or photostat was such as to justify its admission as a true copy of the original.

(Code 1852, § 1167; 13 Del. Laws, c. 451; Code 1915, § 2626; 38 Del. Laws, c. 157; Code 1935, § 3106; 48 Del. Laws, c. 224, § 1; 6 Del. C. 1953, § 2714; 67 Del. Laws, c. 189, §§ 1-3; 70 Del. Laws, c. 186, § 1.)

§ 2715 Promise of decedent respecting testamentary disposition of property.

No action shall be brought to charge the personal representatives or heirs of any deceased person upon any agreement to make a will of real or personal property, or to give a legacy or make a devise, unless such agreement is reduced to writing, or some memorandum or note thereof is signed by the person whose personal representatives or heirs are sought to be charged, or some other person lawfully authorized in writing, by the decedent, to sign for in the decedent's absence. This section shall not apply to any agreement made prior to May 1, 1933.

(Code 1852, § 1167; 13 Del. Laws, c. 451; Code 1915, § 2626; 38 Del. Laws, c. 157; Code 1935, § 3106; 48 Del. Laws, c. 224, § 1; 6 Del. C. 1953, § 2715; 70 Del. Laws, c. 186, § 1.)

Subchapter III
Equipment Dealer Contracts

§ 2720 Definitions.

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

(1) "Construction," "farm," "industrial" and "outdoor power," when used to refer to tractors, implements, attachments or repair parts, have the meanings commonly used and understood among dealers and suppliers of those trades.

(2) "Contract agreement" means a written or oral contract or agreement between a dealer and a supplier by which the dealer is granted the right to sell their equipment and the dealer is required to order and maintain an inventory in excess of $25,000 at current net price from the supplier.

(3) "Current net price" means the price listed in the supplier's price list in effect at the time the contract agreement is terminated, less any applicable discount allowed.

(4) "Dealer" means a person, firm or corporation engaged in the business of selling, at retail, construction, farm, industrial or outdoor power equipment and who maintains a total inventory of new equipment and repair parts valued at $50,000 or over and provides repair service for the above-mentioned equipment.

(5) "Inventory" means the tractors, implements, attachments, equipment and repair parts that the dealer purchased from the supplier.

(6) "Net cost" means the price the dealer paid the supplier for the inventory, less all applicable discounts allowed, plus the amount the dealer paid for freight costs from the supplier's location to the dealer's location, plus reasonable cost of assembly performed by the dealer.

(7) "Supplier" means a wholesaler, manufacturer or distributor who enters into a contract agreement with a dealer.

(8) "Termination" of a contract agreement means the termination, cancellation, nonrenewal or noncontinuation of the agreement.

(66 Del. Laws, c. 173, § 1.)

§ 2721 Notice of termination of contract agreements.

(a) Notwithstanding any agreement to the contrary, a supplier who terminates a contract agreement with a dealer shall notify the dealer of the termination not less than 6 months prior to the effective date of the termination. If termination results from an ongoing program or standard of which the dealer was aware at least 6 months prior to termination, the supplier shall give 90 days' notice of termination. However, the supplier may immediately terminate the agreement at any time after the occurrence of any of the following events:

(1) A petition under bankruptcy or receivership law has been filed against the dealer.

(2) The dealer has made an intentional misrepresentation with the intent to defraud the supplier.

(3) Default by the dealer under a chattel mortgage or other security agreement between the dealer and the supplier.

(4) Close out or sale of a substantial part of the dealer's business related to the handling of the supplier's product, the commencement or dissolution or liquidation of the dealer if the dealer is a partnership or corporation, or a change, without the prior written approval of the supplier, in the location of the dealer's principal place of business under the agreement.

(5) Withdrawal of an individual proprietor, partner, major shareholder or manager of the dealership, or a substantial reduction in interest of a partner or major shareholder, without the prior written consent of the supplier.

(6) Revocation or discontinuance of any guarantee of the dealer's present or future obligations to the supplier.

(b) Notwithstanding any agreement to the contrary, a dealer who terminates a contract agreement with a supplier shall notify the supplier of the termination not less than 6 months prior to the effective date of the termination.

(c) The contract agreement may also be terminated by the mutual written consent of the parties, with the effective date of such termination to be such as may be mutually agreed upon.

(d) Notification under this section shall be in writing and shall be by certified mail or personally delivered to the recipient. It shall contain:

(1) A statement of intention to terminate the agreement.

(2) A statement of the reasons for the termination.

(3) The date on which the termination takes effect.

(66 Del. Laws, c. 173, § 1.)

§ 2722 Supplier's requirement to repurchase.

(a) Whenever a contract agreement between a dealer and a supplier is terminated by either party, the supplier shall repurchase the dealer's inventory as provided in this subchapter unless the dealer chooses to keep the inventory.

(b) If the dealer principal who is a party to a contract agreement dies or becomes incompetent, the supplier shall, at the option of the personal representative or guardian, repurchase the inventory as if the agreement had been terminated. The personal representative or guardian has 1 year from the date of the death or incompetency of the dealer principal to exercise the option under this subchapter.

(c) This subchapter does not apply to a supplier that does not require the dealer to order and maintain an inventory in excess of $25,000 at current net price from the supplier.

(66 Del. Laws, c. 173, § 1.)

§ 2723 Repurchase terms.

(a) The supplier shall repurchase from the dealer within 90 days after termination of the contract agreement all inventory previously purchased from the supplier that remains unsold on the date of termination of the agreement.

(b) The supplier shall pay the dealer:

(1) One hundred percent of the net cost of all new, unused, undamaged and complete inventory except repair parts, less a reasonable allowance for deterioration attributable to weather conditions at the dealer's location.

(2) Eighty-five percent of the current net price of all new, unused and undamaged repair parts that are currently listed in the supplier's price book. The supplier may perform the handling, packing and loading of repair parts returned and withhold 5 percent of the current net price of the repair parts returned for their services.

(c) The inventory shall be returned FOB to the dealership. The dealer and the supplier may each furnish a representative to inspect all inventory and certify acceptability before being returned.

(d) The supplier shall pay the full repurchase amount to the dealer not later than 60 days after receipt of the inventory.

(66 Del. Laws, c. 173, § 1.)

§ 2724 Exceptions to repurchase requirements.

This subchapter does not require repurchase from a dealer of:

(1) A repair part with a limited storage life or otherwise subject to deterioration, such as gaskets or batteries.

(2) Multiple packaged repair parts when the package has been broken.

(3) A repair part that, because of its condition, is not resalable as a new part without repackaging or reconditioning.

(4) Any inventory that the dealer chooses to keep.

(5) Any inventory that was acquired by the dealer from a source other than the supplier.

(6) Any tractors, implements, attachments or equipment that the dealer purchased from the supplier more than 36 months before date of the notice of termination.

(66 Del. Laws, c. 173, § 1.)

§ 2725 Uniform commercial practice.

This subchapter does not affect a security interest of the supplier in the inventory of the dealer.

(66 Del. Laws, c. 173, § 1; 70 Del. Laws, c. 439, § 5.)

§ 2726 Warranty claims.

If, after the termination of a contract agreement, the dealer submits a warranty claim to the supplier for work performed prior to the effective date of the termination, the supplier shall accept or reject the claim within a maximum of 45 days from the day that the supplier received the claim. A claim not rejected before the deadline shall be deemed accepted. The supplier shall pay an accepted claim not later than 60 days after the day that the supplier received the claim.

(66 Del. Laws, c. 173, § 1.)

§ 2727 Civil remedy for failure to repurchase.

(a) If a supplier fails or refuses to repurchase any inventory covered under this subchapter within the time periods established, the supplier is civilly liable for 100% of the "current net price" of the inventory, plus the amount the dealer paid for freight costs from the supplier's location to the dealer's location, plus reasonable cost of assembly performed by the dealer, and plus the dealer's reasonable attorney's fees and court costs, and interest on the "current net price" of the inventory computed at the legal rate of interest, but not to exceed 18% annual percentage rate, from the ninety-first day after termination of the contract agreement.

(b) Notwithstanding any agreement to the contrary, and in addition to any other legal remedies available, any person who suffers monetary loss due to a violation of this subchapter or because of a refusal to accede to a proposal for an arrangement that, if consummated, is in violation of this subchapter may bring a civil action to enjoin further violations and to recover damages sustained together with the costs of the suit, including a reasonable attorney's fee.

(c) A civil action commenced under this subchapter shall be brought within 4 years after the violation complained of is or reasonably should have been discovered, whichever occurs first.

(d) In the event of failure to provide required notice of termination or otherwise comply with provisions of the law, the supplier is civilly liable for the dealer's loss of business for the time period the supplier is in violation of the notice of termination provisions of this subchapter, plus reasonable attorney's fees and court costs.

(e) The provisions of this section are in addition to all legal or equitable remedies available at law, as well as any agreement between the supplier and dealer.

(66 Del. Laws, c. 173, § 1; 70 Del. Laws, c. 186, § 1.)

Subchapter IV
Consumer Contracts

§ 2731 Definitions.

As used in this subchapter:

(1) "Consumer" means an individual who purchases or leases merchandise primarily for personal, family or household purposes.

(2) "Lease" means any lease, offer to lease or attempt to lease any merchandise.

(3) "Merchandise" means any objects, wares, goods, commodities, intangibles, real estate or services, other than insurance.

(4) "Person" means an individual, corporation, government or governmental subdivision or agency, statutory trust, business trust, estate, trust, partnership, unincorporated association, 2 or more of any of the foregoing having a joint or common interest or any other legal or commercial entity.

(5) "Sale" means any sale, offer for sale or attempt to sell any merchandise for cash or credit.

(66 Del. Laws, c. 276, § 1; 73 Del. Laws, c. 329, § 38.)

§ 2732 Deceptive practices in consumer contracts.

In a contract for the sale or lease of merchandise to a consumer, a person engages in a deceptive practice when that person knowingly or recklessly:

(1) Distorts or obscures the terms, conditions or meaning of the contract or creates a likelihood of confusion or misunderstanding by the use of unintelligible words, phrases or sentences; or

(2) Omits information required by law to be disclosed in contracts with a consumer.

(66 Del. Laws, c. 276, § 1; 70 Del. Laws, c. 186, § 1.)

§ 2733 Guidelines.

The following are factors that a court may consider in determining whether a contract complies with this subchapter:

(1) Whether cross-references are confusing.

(2) Whether sentences are unreasonably long or complex.

(3) Whether sentences contain double negatives and exceptions to exceptions.

(4) Whether sentences and sections are in a confusing or illogical order.

(5) Whether it contains words with obsolete meanings or words that differ in their legal meaning from their ordinary meaning.

(6) Whether conditions, exceptions to the main provision of the agreement and protection for consumers or restrictions of consumers' right are given equal prominence with the main provision.

(66 Del. Laws, c. 276, § 1.)

§ 2734 Remedies.

(a) Any person who engages in a deceptive practice governed by this subchapter shall be liable to a consumer in an amount equal to treble the amount of actual damages proved, plus reasonable attorney's fees.

(b) A consumer likely to be damaged by a deceptive practice governed by this subchapter may be granted an injunction against it under the principles of equity and on terms the court considers reasonable.

(66 Del. Laws, c. 276, § 1.)

§ 2735 Application.

This subchapter shall not apply to contracts in which the total contract price or the total amount financed exceeds $50,000, or to any contract entered into with or acquired by a banking organization or building and loan association as defined by Chapters 1 and 17, respectively, of Title 5 or to any public utility tariff on file with the Delaware Public Service Commission pursuant to Chapter 7 [repealed] of Title 26.

(66 Del. Laws, c. 276, § 1.)

§ 2736 Enforcement.

In addition to any remedies a consumer may have at law or in equity, Chapter 25 of Title 29 shall apply to violations of this subchapter.

(66 Del. Laws, c. 276, § 1; 69 Del. Laws, c. 291, § 98(a); 77 Del. Laws, c. 282, § 18.)

Subtitle II
Other Laws Relating to Commerce and Trade

Chapter 27A
Asset-Backed Securities Facilitation Act

§ 2701A Title.

This chapter may be cited as the "Asset-Backed Securities Facilitation Act."

(73 Del. Laws, c. 214, § 1.)

§ 2702A Intent.

It is intended by the General Assembly that the term "securitization transaction" shall be construed broadly.

(73 Del. Laws, c. 214, § 1.)

§ 2703A Securitization transaction.

(a) Notwithstanding any other provision of law, including, but not limited to, § 9-506 of this title, "Debtor's right to redeem collateral," as said section existed prior to July 1, 2001, and § 9-623 of the title, "Right to redeem collateral," which became effective July 1, 2001, to the extent set forth in the transaction documents relating to a securitization transaction:

(1) Any property, assets or rights purported to be transferred, in whole or in part, in the securitization transaction shall be deemed to no longer be the property, assets or rights of the transferor;

(2) A transferor in the securitization transaction, its creditors or, in any insolvency proceeding with respect to the transferor or the transferor's property, a bankruptcy trustee, receiver, debtor, debtor in possession or similar person, to the extent the issue is governed by Delaware law, shall have no rights, legal or equitable, whatsoever to reacquire, reclaim, recover, repudiate, disaffirm, redeem or recharacterize as property of the transferor any property, assets or rights purported to be transferred, in whole or in part, by the transferor; and

(3) In the event of a bankruptcy, receivership or other insolvency proceeding with respect to the transferor or the transferor's property, to the extent the issue is governed by Delaware law, such property, assets and rights shall not be deemed to be part of the transferor's property, assets, rights or estate.

(b) Nothing contained in this chapter shall be deemed to require any securitization transaction to be treated as a sale for federal or state tax purposes or to preclude the treatment of any securitization transaction as debt for federal or state tax purposes or to change any applicable laws relating to the perfection and priority of security or ownership interests of persons other than the transferor, hypothetical lien creditor or, in the event of a bankruptcy, receivership or other insolvency proceeding with respect to the transferor or its property, a bankruptcy trustee, receiver, debtor, debtor in possession or similar person.

It is not the purpose of this chapter to change the tax treatment of securitizations that take place pursuant to this chapter.

(73 Del. Laws, c. 214, § 1.)

Subtitle II
Other Laws Relating to Commerce and Trade

Chapter 28
Campground Resorts Membership and Vacation Time-Sharing Plans Sales Act

Subchapter I
Campground Resorts Membership Sales

§ 2801 Applicability.

This subchapter shall apply to each campground resort membership contract executed at least in part in the State 90 days after this chapter is signed into law, regardless of the whereabouts of the membership camping resort operator's principal office, campground resort, or recreational facilities.

(67 Del. Laws, c. 433, § 1; 70 Del. Laws, c. 186, § 1.)

§ 2802 Definitions.

When used in this subchapter, the following shall have the meanings respectively set forth:

(1) "Advertisement" means the attempt by publication, dissemination, solicitation or circulation to induce, directly or indirectly, any person to enter into any obligation, acquire any title, interest in or otherwise execute a contract as defined in this section.

(2) "Business day" means any day except Sunday or a legal holiday.

(3) "Campground resort" means any tract or parcel of real property within the State on which there are at least 10 camping sites.

(4) "Camping site" means a space designed and promoted for the purpose of locating a trailer, tent, tent trailer, pickup camper, van, recreational vehicle or other similar device used for camping.

(5) "Contract" means any written agreement of more than 1 year's duration, executed in whole or in part within the State, which grants to a purchaser a nonexclusive right or license to use the campground resort of a membership camping resort operator or any portion thereof on a first come, first serve or reservation basis together with other purchasers.

(6) "Facility" means an amenity within a campground resort set aside or otherwise made available to purchasers in their use and enjoyment of the campground resort, and may include campsites, swimming pools, tennis courts, recreational buildings, boat docks, rest rooms, showers, laundry rooms, and trading posts or grocery stores.

(7) "Holder" means the membership camping resort operator who enters into a membership camping resort contract with a purchaser or the assignee of such contract who purchases the same for value.

(8) "Managing entity" means a person who undertakes the duties, responsibilities and obligations of the management of a campground resort.

(9) "Offer" means any offer, solicitation, advertisement or inducement, to execute a contract.

(10) "Operator" means any person who is in the business of soliciting, offering, advertising or executing membership camping resort contracts.

(11) "Person" means any individual, corporation, partnership, company, unincorporated association or any other legal entity other than a government or agency or a subdivision thereof.

(12) "Purchase money" means any money, currency, note, security or other consideration paid by the purchaser for a membership camping agreement.

(13) "Purchaser" means any person who enters into a contract with an operator as defined herein.

(14) "Reciprocal program" means any arrangement under which a purchaser is permitted to use camping resort sites or facilities at 1 or more campground resorts not owned or operated by the operator with whom the purchaser has entered into a contract.

(15) "Salesperson" means an individual, other than an operator, who offers to sell a contract by means of a direct sales presentation, but does not include a person who merely refers a prospective purchaser to a sales person without making any direct sales presentation.

(67 Del. Laws, c. 433, § 1.)

§ 2803 Operator's disclosure statement.

(a) Every operator, salesperson or other person who is in the business of offering for sale or transfer the rights under existing membership camping resort contracts for a fee shall deliver to the purchaser a current operator's disclosure statement before execution by the purchaser of the contract and no later than the date shown on such contract.

(b) The operator's disclosure statement shall consist of the following:

(1) A cover page containing:

a. The words, "Membership Camping Operator's Disclosure Statement," printed in boldfaced type of a minimum size of 10 points, followed by,

b. The name and principal business address of the operator followed by,

c. A statement that the operator is in the business of offering for sale contracts, followed by,

d. The following in printed boldfaced type of a minimum size of 10 points:

THIS DISCLOSURE STATEMENT CONTAINS IMPORTANT MATTERS TO BE CONSIDERED IN THE EXECUTION OF A MEMBERSHIP CAMPING RESORT CONTRACT. THE MEMBERSHIP CAMPING RESORT OPERATOR IS REQUIRED BY LAW TO DELIVER TO YOU A COPY OF THIS DISCLOSURE STATEMENT BEFORE YOU EXECUTE A MEMBERSHIP CAMPING RESORT CONTRACT. THE STATEMENTS CONTAINED HEREIN ARE ONLY SUMMARY IN NATURE. YOU AS A PROSPECTIVE PURCHASER SHOULD REVIEW ALL REFERENCES, EXHIBITS, CONTRACT DOCUMENTS, AND SALES MATERIALS. YOU SHOULD NOT RELY UPON ANY ORAL REPRESENTATIONS AS BEING CORRECT. REFER TO THIS DOCUMENT AND TO THE ACCOMPANYING EXHIBITS FOR CORRECT REPRESENTATIONS. THE MEMBERSHIP CAMPING RESORT OPERATOR IS PROHIBITED FROM MAKING ANY REPRESENTATIONS WHICH CONFLICT WITH THOSE CONTAINED IN THE CONTRACT AND THIS DISCLOSURE STATEMENT.

e. The following language, printed in boldfaced type of a minimum size of 10 points after the appearance of the items required in paragraphs (b)(1)a. through d. of this section:

SHOULD YOU EXECUTE A MEMBERSHIP CAMPING RESORT CONTRACT, YOU HAVE THE UNQUALIFIED RIGHT TO CANCEL SUCH CONTRACT. THIS RIGHT OF CANCELLATION CANNOT BE WAIVED. THE RIGHT TO CANCEL EXPIRES AT MIDNIGHT ON THE 5th BUSINESS DAY FOLLOWING THE DATE ON WHICH THE CONTRACT WAS EXECUTED. TO CANCEL THE MEMBERSHIP CAMPING CONTRACT, YOU AS THE PURCHASER MUST MAIL NOTICE OF YOUR INTENT TO CANCEL BY CERTIFIED MAIL TO THE MEMBERSHIP CAMPING RESORT OPERATOR AT THE ADDRESS SHOWN IN THE MEMBERSHIP CAMPING RESORT CONTRACT, POSTAGE PREPAID. THE MEMBERSHIP CAMPING RESORT OPERATOR IS REQUIRED BY LAW TO RETURN ALL MONEYS PAID BY YOU IN CONNECTION WITH THE EXECUTING OF THE MEMBERSHIP CAMPING RESORT CONTRACT, UPON YOUR PROPER AND TIMELY CANCELLATION OF THE CONTRACT.

(2) The following information is required after all disclosure statements required in paragraphs (b)(1)a. through e. of this section:

a. The name of the operator and the address of the principal place of business;

b. A brief description of the nature of the purchaser's right or license to use the campground resort and the facilities which are to be available for use by purchasers;

c. The location of each of the campground resorts which is to be available for use by purchasers and a brief description of the facilities at each campground resort which are currently available for use by purchasers. Facilities which are planned, incomplete, or not yet available for use shall be clearly identified as incomplete or unavailable. A brief description of any facilities that are or will be available to nonpurchasers shall also be provided;

d. As to all memberships offered by the operator at each campground resort:

1. The form of membership offered;

2. The types and duration of memberships along with a summary of the major privileges, restrictions and limitations applicable to each type; and

3. Provisions, if any, that have been made for public utilities at each campsite including water, electricity, telephone and sewer facilities;

e. Any initial or special fee due from the purchaser together with a description of the purpose and method of calculating the fee;

f. A description of any liens, defects or encumbrances affecting the campground resort;

g. A general description of any financing offered or available through the operator;

h. A statement that the purchaser has until midnight of the fifth business day following the signing of the membership campground resort contract to cancel the contract by proper notice to the membership camping resort operator;

i. A description of the insurance coverage that the operator provides for the benefit of purchasers, if any;

j. Any fees or charges that purchasers are or may be required to pay for the use of the campground resort or any facilities;

k. The extent to which financial arrangements, if any, have been provided for the completion of facilities together with a statement of the operator's obligation to complete planned facilities. The statement shall include a description of any restrictions or limitations on the operator's obligation to begin or to complete such facilities;

l. The name of the managing entity, if there is one, and the significant terms of any management contract, including, but not limited to, the circumstances under which the operator may terminate the management contract;

m. Any services which the operator currently provides or expenses the operator pays which are expected to become the responsibility of the purchasers, including the projected liability which each such service or expense may impose on each purchaser;

n. A brief description of the ownership in or other right to use the campground resort which is to be transferred to each purchaser, together with the duration of any lease, license, franchise or reciprocal agreement entitling the operator or the purchasers to use the campground resort, and any provision in any such agreements which restrict or limit a purchaser's use of the campground resort;

o. A summary or copy, whether by way of supplement or otherwise, of the rules, restrictions or covenant regulating the purchaser's use of the campground resort and the facilities which are to be available for use by the purchasers, including a statement of whether and how the rules, restrictions, or covenants may be changed;

p. A description of any restraints on the transfer of the membership camping resort contract;

q. A brief description of the policies covering the availability of camping sites, the availability of reservations and the conditions under which they are made;

r. A statement of whether the operator has the right to withdraw permanently from use all or any portion of any campground resort devoted to membership camping and, if so, the conditions under which such withdrawal is to be permitted; and

s. A statement describing the material terms and conditions of any reciprocal program to be available to the purchaser including a statement concerning whether the purchaser's participation in any reciprocal program is dependent upon the continued affiliation of the operator with that reciprocal program and whether the operator reserves the right to terminate such affiliation.

(c) The operator shall promptly amend the operator's disclosure statements to reflect any material change in the campground resorts or its facilities.

(67 Del. Laws, c. 433, § 1; 70 Del. Laws, c. 186, § 1.)

§ 2804 Cancellation.

(a) A purchaser shall have the right to cancel a membership camping resort contract within 5 business days following the date of its execution.

(b) The right of cancellation shall not be waived and any attempt to obtain such waiver shall be unlawful. Nothing in this section shall preclude the execution of documents in advance of closing for delivery after the expiration of the cancellation period.

(c) If the purchaser elects to cancel the contract, the cancellation may be done only by mailing notice thereof by certified mail to the operator at the address listed in the contract. The cancellation shall be deemed effective upon mailing.

(d) Upon cancellation, the operator shall refund to the purchaser all payments made by such purchaser and collected by the operator pursuant to the canceled contract. The refund shall be made within 15 days and may, where payment has been made by credit card, be made by an appropriate credit to the purchaser's account.

(67 Del. Laws, c. 433, § 1; 70 Del. Laws, c. 186, § 1.)

§ 2805 Contracts.

The operator shall deliver to the purchaser a fully executed copy of the contract, which contract shall include at least the following information:

(1) The actual date the contract is executed by the purchaser.

(2) The name of the operator and address of the principal place of business.

(3) The total financial obligation imposed upon the purchaser by the contract, including the initial purchase price and any additional charges which the purchaser may be required to pay.

(4) A description of the nature and duration of the membership being purchased.

(5) A statement that the operator, salesperson or any other person who in the business of offering for sale or transfer the rights under contracts for a fee is required by this chapter to provide each purchaser of a campground resorts membership with a copy of the operator's disclosure statement prior to execution of such contract and that a failure to do so is a violation of this chapter.

(6) The following statement shall appear in the contract, under its own paragraph, immediately above the space reserved in the contract for the signature of the purchaser, in boldfaced type of a minimum size of 10 points:

"PURCHASER'S NONWAIVABLE RIGHT TO CANCEL"

shall appear at the beginning of said paragraph in boldfaced type of a minimum of 10 points, immediately preceding the following statement:

_____ (Date of Transaction)

"YOU MAY CANCEL THIS CONTRACT WITHOUT ANY PENALTY OR OBLIGATION WITHIN 5 BUSINESS DAYS FROM THE ABOVE DATE.

IF YOU CANCEL, ANY PAYMENTS MADE BY YOU UNDER THE CONTRACT AND ANY NEGOTIABLE INSTRUMENT EXECUTED BY YOU WILL BE RETURNED WITHIN 15 BUSINESS DAYS FOLLOWING RECEIPT BY THE SELLER OF YOUR CANCELLATION NOTICE, AND ANY SECURITY INTEREST ARISING OUT OF THE TRANSACTION WILL BE CANCELLED. IF YOU DECIDE TO CANCEL THIS CONTRACT, YOU MUST NOTIFY THE SELLER IN WRITING BY CERTIFIED MAIL OF YOUR INTENT TO CANCEL. YOUR NOTICE OF CANCELLATION SHALL BE EFFECTIVE UPON THE DATE SENT AND SHALL BE SENT

TO: _____ (Name of Operator) AT _____ (Address of Operator)

NO PURCHASER SHOULD RELY UPON REPRESENTATIONS OTHER THAN THOSE INCLUDED IN THIS CONTRACT."

If no interest in real property is being conveyed, the contract shall also contain the following statement:

"YOU MAY ALSO CANCEL THIS CONTRACT AT ANY TIME AFTER THE ACCOMMODATIONS OR FACILITIES ARE NO LONGER AVAILABLE AS PROVIDED IN THIS CONTRACT."

(7) The full name of all salespersons involved in the execution of the membership camping resort contract.

(67 Del. Laws, c. 433, § 1.)

§ 2806 Escrow.

All purchase money received from or on behalf of a purchaser in connection with the execution of a contract shall be deposited and held in this State in an escrow account designated solely for that purpose, which may be the operator's own escrow account or that of the operator's attorney, until the time for cancellation has expired as provided for in § 2804 of this title, unless a later time is provided in the contract. If the contract has not been canceled, any purchase money received from a purchaser may be released to the operator upon:

(1) The conveying to the purchaser of the right or license to use the campground resort and facilities as required in the contract; or

(2) The forfeiture of the purchase money by the purchaser under the terms of the contract.

(67 Del. Laws, c. 433, § 1.)

§ 2807 Conditions on offering items as an inducement to execute.

(a) It is unlawful for any person by any means, as part of an advertising program, to offer any item of value as an inducement to the recipient to visit an operator's campground resort, attend a sales presentation or contact a salesperson, unless the person clearly discloses in writing in the offer in plain language each of the following:

(1) The name and campground resort address of the operator.

(2) A general statement that the advertising program is being conducted by an operator and the purpose of any requested visit.

(3) A statement of odds, in Arabic numerals, of receiving each item offered.

(4) The approximate retail value of each item offered.

(5) The number of campgrounds that are participating in such advertising programs.

(6) The restrictions, qualifications and other conditions that must be satisfied before the recipient is entitled to receive the item, including:

a. Any deadline, if any, by which the recipient must visit the campground resort, attend the sales presentation or contact a salesperson in order to receive the item.

b. The approximate duration of any visit and sales presentation.

c. The date upon which the offer shall terminate and the final date upon which the gift or prizes are to be awarded.

d. Any other conditions, such as minimum age qualification, a financial qualification or a requirement that if the recipient is married both spouses must be present in order to receive the item.

(7) A statement that the operator reserves the right to provide a rain check or a substitute or like item, if these rights are reserved.

(8) All other material rules, terms and conditions of the offer or program.

(b) It is unlawful to charge postage, shipping, handling, insurance redemption fees or any other fees for any item of value offered as an inducement to the recipient to visit an operator's campground resort and attend a sales presentation.

(c) It is unlawful for any person making an offer subject to subsection (a) of this section or any employee or agent of the person to offer any item if the person knows or has reason to know that the offered item will not be available in a sufficient quantity based on the reasonably anticipated response to the offer.

(d) If the person making an offer subject to subsection (a) of this section is unable to provide an offered item because of limitations of supply, quantity or quality not reasonably foreseeable or controllable by the person making the offer, the person making the offer shall provide the approximate retail value of the item as stated in the advertising program as required under subsection (a)(4) of this section.

(e) On the written request of a recipient who has received or claims a right to receive any offered item, the person making an offer subject to subsection (a) of this section shall furnish to the recipient sufficient evidence showing that the item provided matches the item randomly or otherwise selected for distribution to that recipient.

(f) It is unlawful for any person making an offer subject to subsection (a) of this section or any employee or agent of the person to:

(1) Misrepresent the size, quantity, identity or quality of any prize, gift, money or other item of value offered.

(2) Misrepresent in any manner the odds of receiving any particular gift, prize, amount of money or other item of value.

(3) Label any offer a "notice of termination" or "notice of cancellation."

(4) Materially misrepresent, in any manner, the offer or program.

(g) Any violation of this section shall make any contract entered into voidable at the option of the purchaser.

(67 Del. Laws, c. 433, § 1; 70 Del. Laws, c. 186, § 1.)

§ 2808 Unfair trade practices.

A violation of any of the provisions of §§ 2803 to 2807 of this title, inclusive, or failure to comply with the notice of cancellation required by § 2805 of this title shall constitute an unfair or deceptive act or practice as set forth in Chapter 25 of this title.

(67 Del. Laws, c. 433, § 1.)

§ 2809 Enforcement.

Violations of this subchapter shall be within the scope of the enforcement duties and powers of the State Division of Consumer Protection as described in subchapter II of Chapter 25 of Title 29.

(67 Del. Laws, c. 433, § 1; 69 Del. Laws, c. 291, § 98(b), (c); 78 Del. Laws, c. 219, § 5.)

Subchapter II

Vacation Time-Sharing Plan

§ 2821 Applicability.

This subchapter shall apply to each vacation time-sharing plan contract executed at least in part in the State 90 days after this chapter is signed into law, regardless of the whereabouts of the developer's principal office.

(67 Del. Laws, c. 433, § 1.)

§ 2822 Definitions.

When used in this subchapter, the following shall have the meanings respectively set forth:

(1) "Accommodations" means any apartment, condominium or cooperative unit, cabin, lodge, hotel or motel room or any other structure which is situated on real property and designed for occupancy by one or more individuals.

(2) "Advertising" means the use of media, mail or personal contacts to induce, directly or indirectly, any person to enter into any obligation, acquire any title, interest in or otherwise execute a contract as defined in this section.

(3) "Business day" means any day except Sunday or a legal holiday.

(4) "Common expenses" means those expenses properly incurred for the maintenance, operation and repair of all accommodations or facilities subject to this subchapter.

(5) "Contract" means any written agreement of more than 1 year's duration, executed in whole or in part within the State which grants to a purchaser the rights and obligations of a time-sharing plan.

(6) "Developer" means the person creating a time-sharing plan.

(7) "Facilities" means any structure, service, improvement or real property, whether improved or unimproved, which is made available to the purchasers of a time-sharing plan.

(8) "Offer" means any offer, solicitation, advertisement or inducement to execute a contract.

(9) "Person" means any individual, corporation, partnership, company, unincorporated association or any other legal entity other than a government or agency or a subdivision thereof.

(10) "Purchaser" means any person who is buying or who has bought a time-share period in a time-sharing plan.

(11) "Reciprocal program" means any arrangement under which a purchaser is permitted to use time-share units or facilities in 1 or more time-sharing plans' locations not owned by the seller with whom the purchaser has entered into a contract.

(12) "Salesperson" means an individual, other than a seller, who offers to sell a contract by means of a direct sales presentation, but does not include a person who merely refers a prospective purchaser to a sales person without making any direct sales presentation.

(13) "Seller" means any developer, or any other person, or agent or employee thereof, who offers time-share periods for sale to the public in the ordinary course of business, except persons who have acquired a time-share period for their own occupancy and later offer it for resale.

(14) "Time-share period" means that period of time during which a purchaser of a time-sharing plan is entitled to possession and use of the accommodations or facilities, or both, of a time-sharing plan.

(15) "Time-share unit" means an accommodation or facility of a time-sharing plan which is divided into time-share periods.

(16) "Time-sharing plan" means an arrangement, plan, or similar device, whereby a purchaser, in exchange for consideration, receives a right to use accommodations or facilities, or both, for a period of more than 3 years and such use is to occur during specific periods of time which are less than 1 year during any given year within the terms of such arrangement, plan or other device.

(67 Del. Laws, c. 433, § 1.)

§ 2823 Seller's disclosure statement.

(a) Every seller, salesperson, or other person who is in the business of offering for sale time-sharing plan contracts for a fee shall deliver to a purchaser a current seller's disclosure statement before execution by the purchaser of the contract and no later than the date shown on such contract.

(b) The seller's disclosure statement shall consist of the following:

(1) A cover page containing:

a. The words, "Vacation Time-Sharing Plan Seller's Disclosure Statement," printed in boldfaced type of a minimum size of 10 points, followed by,

b. The name and principal business address of the seller followed by,

c. A statement that the seller is in the business of offering for sale contracts, followed by,

d. The following in printed boldfaced type of a minimum size of 10 points:

THIS DISCLOSURE STATEMENT CONTAINS IMPORTANT MATTERS TO BE CONSIDERED IN THE EXECUTION OF A VACATION TIME-SHARING PLAN CONTRACT. THE VACATION TIME-SHARING PLAN SELLER IS REQUIRED BY LAW TO DELIVER TO YOU A COPY OF THIS DISCLOSURE STATEMENT BEFORE YOU EXECUTE A VACATION TIME-SHARING PLAN. THE STATEMENTS CONTAINED HEREIN ARE ONLY SUMMARY IN NATURE. YOU AS A PROSPECTIVE PURCHASER SHOULD REVIEW ALL REFERENCES, EXHIBITS, CONTRACT DOCUMENTS, AND SALES MATERIALS. YOU SHOULD NOT RELY UPON ANY ORAL REPRESENTATIONS AS BEING CORRECT. REFER TO THIS DOCUMENT AND TO THE ACCOMPANYING EXHIBITS FOR CORRECT REPRESENTATIONS. THE VACATION TIME-SHARING PLAN SELLER IS PROHIBITED FROM MAKING ANY REPRESENTATIONS WHICH CONFLICT WITH THOSE CONTAINED IN THE CONTRACT AND THIS DISCLOSURE STATEMENT.

e. The following language, printed in boldfaced type of a minimum size of 10 points after the appearance of the items required in paragraphs (b)(1)a. through d. of this section:

SHOULD YOU EXECUTE A VACATION TIME- SHARING PLAN CONTRACT, YOU HAVE THE UNQUALIFIED RIGHT TO CANCEL SUCH CONTRACT. THIS RIGHT OF CANCELLATION CANNOT BE WAIVED. THE RIGHT TO CANCEL EXPIRES AT MIDNIGHT ON THE 5th BUSINESS DAY FOLLOWING THE DATE ON WHICH THE CONTRACT WAS EXECUTED. TO CANCEL THE VACATION TIME-SHARING PLAN CONTRACT, YOU AS THE PURCHASER MUST MAIL NOTICE OF YOUR INTENT TO CANCEL BY CERTIFIED MAIL TO THE VACATION TIME-SHARING PLAN SELLER AT THE ADDRESS SHOWN IN THE VACATION TIME SHARING PLAN CONTRACT, POSTAGE PREPAID. THE VACATION TIME- SHARING PLAN SELLER IS REQUIRED BY LAW TO RETURN ALL MONEYS PAID BY YOU IN CONNECTION WITH THE EXECUTION OF THE VACATION TIME SHARING PLAN CONTRACT, UPON YOUR PROPER AND TIMELY CANCELLATION OF THE CONTRACT.

(2) The following information is required after all disclosure statements required in paragraphs (b)(1)a. through e. of this section:

a. The name of the seller and the address of the principal place of business;

b. A brief description of the nature of the purchaser's right or license to use the time-share unit and the facilities which are to be available for use by purchasers;

c. The location of each of the time-share accommodations which is to be available for use by purchasers and a brief description of the facilities at each time-share accommodation which are currently available for use by purchasers. Facilities which are planned, incomplete, or not yet available for use shall be clearly identified as incomplete or unavailable. A brief description of any facilities that are or will be available to nonpurchasers shall also be provided;

d. As to all time-sharing plans offered by sellers:

1. The form of plan offered;

2. The types and duration of plans along with a summary of the major privileges, restrictions and limitations applicable to each type; and

3. Provisions, if any, that have been made for public utilities at each time share unit including water, electricity, telephone and sewer facilities;

e. Any initial or special fee due from the purchaser together with a description of the purpose and method of calculating the fee;

f. A description of any liens, defects or encumbrances affecting the time-share plan;

g. A general description of any financing offered or available through the seller;

h. A statement that the purchaser has until midnight of the fifth business day following the signing of the vacation time-sharing plan contract to cancel the contract by proper notice to the vacation time-sharing plan seller;

i. A description of the insurance coverage that the seller provides for the benefit of purchasers, if any;

j. Any fees or charges that purchasers are or may be required to pay for the use of the time-share unit or any facilities;

k. The extent to which financial arrangements, if any, have been provided for the completion of facilities together with a statement of the seller's obligation to complete planned facilities. The statement shall include a description of any restrictions or limitations on the seller's obligation to begin or to complete such facilities;

l. Any services which the seller currently provides or expenses the seller pays which are expected to become the responsibility of the purchasers, including the projected liability which each such service or expense may impose on each purchaser;

m. A brief description of the ownership in or other right to use the time-share unit which is to be transferred to each purchaser, together with the duration of any lease, license, franchise or reciprocal agreement entitling the seller or the purchasers to use the accommodations, and any provision in any such agreements which restrict or limit a purchaser's use of the time-sharing plan;

n. A summary or copy, whether by way of supplement or otherwise, of the rules, restrictions or covenant regulating the purchaser's use of the time sharing plan and the facilities which are to be available for use by the purchasers, including a statement of whether and how the rules, restrictions, or covenants may be changed;

o. A description of any restraints on the transfer of the vacation time sharing plan contract;

p. A brief description of the policies covering the availability of time-share units, the availability of reservations and the conditions under which they are made;

q. A brief description of any grounds for forfeiture of a purchaser's contract;

r. A statement of whether the seller has the right to withdraw permanently from use all or any portion of any facilities devoted to the time-sharing plan and, if so, the conditions under which such withdrawal is to be permitted; and

s. A statement describing the material terms and conditions of any reciprocal program to be available to the purchaser including a statement concerning whether the purchaser's participation in any reciprocal program is dependent upon the continued affiliation of the operator with that reciprocal program and whether the operator reserves the right to terminate such affiliation.

(c) The seller shall promptly amend the seller's disclosure statements to reflect any material change in the time-sharing plan or its facilities.

(67 Del. Laws, c. 433, § 1; 70 Del. Laws, c. 186, § 1.)

§ 2824 Cancellation.

(a) A purchaser shall have the right to cancel a vacation time-sharing plan contract within 5 business days following the date of its execution.

(b) The right of cancellation shall not be waived and any attempt to obtain such a waiver shall be unlawful. Nothing in this section shall preclude the execution of documents in advance of closing for delivery after the expiration of the cancellation period.

(c) If the purchaser elects to cancel the contract, the purchaser may do so only by mailing notice thereof by certified mail to the seller at the address listed in the contract. The cancellation shall be deemed effective upon mailing.

(d) Upon cancellation, the seller shall refund to the purchaser all payments made by such purchaser and collected by the seller pursuant to the canceled contract. The refund shall be made within 15 days and may, where payment has been made by credit card, be made by an appropriate credit to the purchaser's account.

(67 Del. Laws, c. 433, § 1.)

§ 2825 Contracts.

The seller shall deliver to the purchaser a fully executed copy of the contract, which contract shall include at least the following information:

(1) The actual date the contract is executed by the purchaser.

(2) The name of the seller and address of the principal place of business.

(3) The total financial obligation imposed upon the purchaser by the contract, including the initial purchase price and any additional charges which the purchaser may be required to pay.

(4) A description of the nature and duration of the plan being purchased.

(5) A statement that the seller, salesperson or any other person who is in the business of offering for sale or transfer the rights under contracts for a fee is required by this chapter to provide each purchaser of a vacation time-sharing plan with a copy of the seller's disclosure statement prior to execution of such contract and that a failure to do so is a violation of this chapter.

(6) The following statement shall appear in the contract, under its own paragraph, immediately above the space reserved in the contract for the signature of the purchaser, in boldfaced type of a minimum size of 10 points:

"PURCHASER'S NONWAIVABLE RIGHT TO CANCEL"

shall appear at the beginning of said paragraph in boldfaced type of a minimum of 10 points, immediately preceding the following statement:

_____ (Date of Transaction)

"YOU MAY CANCEL THIS CONTRACT WITHOUT ANY PENALTY OR OBLIGATION WITHIN 5 BUSINESS DAYS FROM THE ABOVE DATE.

IF YOU CANCEL, ANY PAYMENTS MADE BY YOU UNDER THE CONTRACT AND ANY NEGOTIABLE INSTRUMENT EXECUTED BY YOU WILL BE RETURNED WITHIN 15 BUSINESS DAYS FOLLOWING RECEIPT BY THE SELLER OF YOUR CANCELLATION NOTICE, AND ANY SECURITY INTEREST ARISING OUT OF THE TRANSACTION WILL BE CANCELLED.

IF YOU DECIDE TO CANCEL THIS CONTRACT, YOU MUST NOTIFY THE SELLER IN WRITING BY CERTIFIED MAIL OF YOUR INTENT TO CANCEL. YOUR NOTICE OF CANCELLATION SHALL BE EFFECTIVE UPON THE DATE SENT AND SHALL BE SENT

TO: ____ (Name of Seller) AT ____ (Address of Seller)

NO PURCHASER SHOULD RELY UPON REPRESENTATIONS OTHER THAN THOSE INCLUDED IN THIS CONTRACT."

If no interest in real property is being conveyed, the contract shall also contain the following statement:

"YOU MAY ALSO CANCEL THIS CONTRACT AT ANY TIME AFTER THE ACCOMMODATIONS OR FACILITIES ARE NO LONGER AVAILABLE AS PROVIDED IN THIS CONTRACT."

(7) The full name of all sales persons involved in the execution of the membership camping resort contract.

(67 Del. Laws, c. 433, § 1.)

§ 2826 Escrow.

All purchase money received from or on behalf of a purchaser in connection with the execution of a contract shall be deposited and held in this State in an escrow account designated solely for that purpose, which may be the seller's own escrow account or that of the seller's attorney, until the time for cancellation has expired as provided for in § 2824 of this title, unless a later time is provided in the contract. If the contract has not been canceled, any purchase money received from a purchaser may be released to the seller upon:

(1) The conveying to the purchaser of the right or license to use the time-share unit and facilities as required in the contract; or

(2) The forfeiture of the purchase money by the purchaser under the terms of the contract.

(67 Del. Laws, c. 433, § 1.)

§ 2827 Conditions on offering items as an inducement to execute.

(a) It is unlawful for any person by any means, as part of an advertising program, to offer any item of value as an inducement to the recipient to visit a vacation time-sharing plan's facilities, attend a sales presentation or contact a salesperson, unless the person clearly discloses in writing in the offer in plain language each of the following:

(1) The name and vacation time-sharing plan's address.

(2) A general statement that the advertising program is being conducted by a seller and the purpose of any requested visit.

(3) A statement of odds, in Arabic numerals, of receiving each item offered.

(4) The approximate retail value of each item offered.

(5) The number of vacation time-sharing plans that are participating in such advertising programs.

(6) The restrictions, qualifications and other conditions that must be satisfied before the recipient is entitled to receive the item, including:

a. Any deadline, if any, by which the recipient must visit the vacation time-sharing facilities, attend the sales presentation or contact a salesperson in order to receive the item.

b. The approximate duration of any visit and sales presentation.

c. The date upon which the offer shall terminate and the final date upon which the gift or prizes are to be awarded.

d. Any other conditions, such as minimum age qualification, a financial qualification or a requirement that if the recipient is married both spouses must be present in order to receive the item.

(7) A statement that the seller reserves the right to provide a rain check or a substitute or like item, if these rights are reserved.

(8) All other material rules, terms and conditions of the offer or program.

(b) It is unlawful to charge postage, shipping, handling, insurance redemption fees or any other fees for any item of value offered as an inducement to the recipient to visit a vacation time-sharing plan's facilities and attend a sales presentation.

(c) It is unlawful for any person making an offer subject to subsection (a) of this section or any employee or agent of the person to offer any item if the person knows or has reason to know that the offered item will not be available in a sufficient quantity based on the reasonably anticipated response to the offer.

(d) If the person making an offer subject to subsection (a) of this section is unable to provide an offered item because of limitations of supply, quantity or quality not reasonably foreseeable or controllable by the person making the offer, the person making the offer shall provide the approximate retail value of the item as stated in the advertising program as required under paragraph (a)(4) of this section.

(e) On the written request of a recipient who has received or claims a right to receive any offered item, the person making an offer subject to subsection (a) of this section shall furnish to the recipient sufficient evidence showing that the item provided matches the item randomly or otherwise selected for distribution to that recipient.

(f) It is unlawful for any person making an offer subject to subsection (a) of this section or any employee or agent of the person, to:

(1) Misrepresent the size, quantity, identity or quality of any prize, gift, money or other item of value offered.

(2) Misrepresent in any manner the odds of receiving any particular gift, prize, amount of money or other item of value.

(3) Label any offer a “notice of termination” or “notice of cancellation.”

(4) Materially misrepresent, in any manner, the offer or program.

(g) Any violation of this section shall make any contract entered into voidable at the option of the purchaser.

(67 Del. Laws, c. 433, § 1; 70 Del. Laws, c. 186, § 1.)

§ 2828 Unfair trade practices.

A violation of any of the provisions of §§ 2823 to 2827 of this title inclusive, or failure to comply with the notice of cancellation required by § 2825 of this title shall constitute an unfair or deceptive act or practice as set forth in Chapter 25 of this title.

(67 Del. Laws, c. 433, § 1.)

§ 2829 Enforcement.

Violations of this subchapter shall be within the scope of the enforcement duties and powers of the State Division of Consumer Protection as described in Chapter 25 of Title 29.

(67 Del. Laws, c. 433, § 1; 69 Del. Laws, c. 291, § 98(b), (c); 77 Del. Laws, c. 282, § 8.)

Subtitle II
Other Laws Relating to Commerce and Trade
Chapter 29
Retail Sales of Motor Fuel

§ 2901 Definitions.

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

(1) "Automotive products" shall mean any product sold or distributed by a retail dealer for use with a motor vehicle, whether or not such product is essential for the maintenance of the motor vehicle and whether or not such product is also used for nonautomotive purposes.

(2) "Deposit in advance" shall mean any deposit, regardless of its purported purpose, which is received by a distributor or manufacturer from the retail dealer as a breakage, security or other similar deposit.

(3) "Manufacturer" shall mean every producer or refiner of petroleum products, or the producer or fabricator of any automotive product sold or distributed by a service station.

(4) "Marketing agreement" shall mean a written or parol agreement between a manufacturer and a retail dealer or a distributor and a retail dealer under which:

a. The dealer promises to sell or distribute the product or products of the manufacturer or distributor;

b. The retail dealer is granted the right to use a trademark, trade name, service mark or other identifying symbol or name owned by a manufacturer; or

c. The retail dealer is granted the right to occupy premises owned, leased or controlled by a manufacturer or distributor.

(5) "Motor fuel" shall mean and include any substance or combination of substances which is intended to be or is capable of being used for the purpose of propelling or running by combustion any internal combustion engine and sold or used for that purpose.

(6) "Retail dealer" shall mean and include any person operating a service station, filling station, store, garage or other place of business for the sale of motor fuel for delivery into the service tank or tanks of any vehicle propelled by an internal combustion engine.

(7) "Retail fuel outlet" shall mean a place at which gasoline and oil are stored and supplied to service stations or to the public, and which is operated by independent contractors or by persons in the employ of such independent contractors.

(42 Del. Laws, c. 70, §§ 2, 3; 48 Del. Laws, c. 299, § 1; 6 Del. C. 1953, § 2901; 59 Del. Laws, c. 556, § 1; 77 Del. Laws, c. 394, § 1.)

§ 2902 Price signs on fuel pumps and premises.

(a) Every retail dealer in motor fuel shall publicly display and maintain on each pump or other dispensing device, from which motor fuel is sold, at least 1 sign stating the price per gallon of the motor fuel sold from such pump or device, which price shall be the total price for such motor fuel, including all state and federal taxes. Such sign or signs shall contain no information other than the total price, except the sign or signs may state that the price includes all taxes or may state the amount of taxes included in the price or may include, in addition to the price per gallon, the price in metric units. The statement of the total price, as shown by the figures used in any price computing mechanism constituting a part of any such pump or dispensing device, shall be considered as a sign within the meaning of this section and no other or additional signs stating the price shall be required.

(b) Nothing in this section shall be construed to prohibit other signs stating the price of motor fuel from other locations on or about the premises where motor fuel is sold at retail.

(c) When the price indicated on the computing mechanism of a pump or other dispensing device offering motor fuel for sale is the per gallon price, that is the only price sign required to be displayed on said pump.

(d) When the price indicated on the computing mechanism of a pump is the per liter price, another sign indicating the equivalent price per gallon to the nearest $^{1}/_{10}$ cent must be prominently displayed on said pump with numerals no smaller than those which display the liter price. In addition to the unit price, the signs on the pump may indicate that state and federal taxes are included in the unit price. All taxes must be included in the advertised price.

(e) The price indicated on the computing mechanism is the maximum price which may be charged per measured unit and the resulting total cost computed is the maximum remittance that can be demanded from the consumer for the fuel sold.

(f) A cash discount may be offered which is less than the computed cost, but a surcharge for credit, or any other reason, may not be added to the computed cost for the fuel sold.

(g) Separate pumps may be provided for cash and charge sales of the same brand, grade, type of fuel and service, providing that the pumps are adequately and prominently identified.

(h) Price signs displayed on the station premises and not attached to a pump must indicate the grade of fuel, the type of service and the unit, if other than gallon. If there are special requirements to qualify for an advertised price, such as minimum quantities, cash, etc., those requirements must also be prominently included on said sign.

(i) Fractions of a cent on the price advertised must be of the same general design and at least $^1/_2$ the height and width of the numerals representing the whole cents.

(42 Del. Laws, c. 70, § 1; 48 Del. Laws, c. 299, § 1; 6 Del. C. 1953, § 2902; 63 Del. Laws, c. 58, § 1; 70 Del. Laws, c. 186, § 1; 77 Del. Laws, c. 394, § 2.)

§ 2903 Manufacturers.

Repealed by 77 Del. Laws, c. 394, § 3, effective July 15, 2010.

§ 2904 Brand name of product on equipment.

All above-ground equipment for storing or dispensing motor fuel operated by a retail dealer shall bear in a conspicuous place the brand name or trademark of the manufacturer or distributor of the product stored therein or sold or dispensed therefrom or shall have conspicuously displayed thereon the words "No Brand."

(42 Del. Laws, c. 70, § 2; 48 Del. Laws, c. 299, § 1; 6 Del. C. 1953, § 2904.)

§ 2905 Independence of retail dealers.

Repealed by 77 Del. Laws, c. 394, § 4, effective July 15, 2010.

§ 2906 Equal treatment.

Repealed by 77 Del. Laws, c. 394, § 5, effective July 15, 2010.

§ 2907 Equipment purchased by retail dealer.

Repealed by 77 Del. Laws, c. 394, § 6, effective July 15, 2010.

§ 2908 Purchase promotion sales.

Repealed by 77 Del. Laws, c. 394, § 7, effective July 15, 2010.

§ 2909 Marketing agreements.

Repealed by 77 Del. Laws, c. 394, § 8, effective July 15, 2010.

§ 2910 Termination of contract or franchise.

Repealed by 77 Del. Laws, c. 394, § 9, effective July 15, 2010.

§ 2911 Office of Retail Gasoline Sales; rules and regulations; Advisory Council; injunctions.

(a) The Office of Retail Gasoline Sales is established within the Weights and Measures Unit of the Department of Agriculture, and shall have the power to perform and be responsible for the performance of all the administrative, ministerial, clerical and advisory functions involved in the administration and enforcement of this chapter. The Office of Retail Gasoline Sales shall determine the rules and regulations necessary for the proper enforcement of this chapter, but prior to the adoption, amendment or repeal of any rule or regulation the Office shall:

(1) Give at least 20 days' notice for a public hearing. Such notice shall include a statement of either the terms or substance of the intended action or a description of the subjects and issues involved, and the time when, the place where, and the manner in which interested persons may present their views thereon. The notice shall be mailed to all persons who have made timely request to the Office for advance notice, and shall be published at least once in each county by a daily newspaper of general circulation and at least once in a weekly newspaper in each county.

(2) Afford all interested persons the opportunity to submit data, views or arguments (orally or in writing). The Office shall fully consider all oral and written suggestions respecting the proposed rule or regulation. The Office may make its decision at the public hearing or announce the earliest date as to when it intends to make its decision. Any proceeding to contest a rule or regulation by the Office must be commenced within 6 months from the effective date of the rule or regulation.

(b), (c) [Repealed.]

(d) The Attorney General, the Office or any aggrieved person may institute an action in the Court of Chancery to enjoin any person from engaging in or continuing a practice in violation of this chapter.

(59 Del. Laws, c. 556, § 9; 62 Del. Laws, c. 72, § 4; 63 Del. Laws, c. 58, § 3; 68 Del. Laws, c. 290, § 184; 77 Del. Laws, c. 394, §§ 10, 11.)

§ 2912 Self-service gasoline stations; refueling assistance for persons with disabilities.

(a) A retail establishment that offers gasoline or any other motor fuel for sale on both a full-service and self-service basis must provide refueling assistance during hours in which full-service is offered at the establishment, upon the request of a person with a disability who is operating a motor vehicle, provided that the person properly displays a special plate or parking permit for a person with a disability or a person 85 or older, as described in § 2134 or § 2135 of Title 21, and provided that the person to whom the permit has been issued is the operator of the vehicle. Refueling assistance must be provided without a charge beyond the self-service price, regardless of whether

the refueling assistance is provided at the self-service or the full-service pump. An employee providing refueling assistance has the right to request proof that the operator of the vehicle is the owner of the vehicle to whom the special plate or parking permit has been issued.

(b) A retail establishment that offers gasoline for sale only on a self-serve basis must provide at least 1 refueling site with a calling device which allows a person with a disability or a person 85 or older to whom a special license plate or parking permit has been issued pursuant to § 2134 or § 2135 of Title 21 to signal an employee that refueling assistance is needed. A retail establishment that offers gasoline or any other motor fuel for sale only on a self-serve basis must provide refueling assistance without a charge beyond the self-service price. However, a retail establishment is not required to provide refueling assistance during those times that the establishment is being operated on a remote control basis by only 1 employee, or if someone able to provide refueling assistance is in the vehicle.

(c) A "calling device" under subsection (b) of this section must meet the following minimum specifications:

(1) Must provide a recognizable signal inside the retail establishment that a driver needs refueling assistance;

(2) Must be able to be operated from the vehicle using only 1 hand;

(3) Must have at least 1 sign next to it which identifies the device and specifies the hours when refueling assistance is available;

(4) Must be able to be operated from the vehicle in accordance with all requirements of the Americans with Disabilities Act Accessibility Guidelines.

(d) Failure to comply with the provisions of this section will subject the owner of a retail establishment that offers gasoline or any other motor fuel for sale to a civil penalty of not less than $300 nor more than $600. Justices of the peace have jurisdiction over offenses under this section.

(e) Retail dealers of gasoline or motor fuel who offer full-serve and self-serve facilities shall post signs provided to the retail dealer by the Office of Retail Gasoline Sales which indicates that the service station will pump gasoline to qualified persons with disabilities from the self-service pump.

(f) The sign or signs shall be conspicuously posted in close proximity to the full-service island so that any driver seeking refueling services will be able to see said sign from each point of access to the full-service islands. Additional signs may be posted to direct persons with disabilities to the pumps from which their gasoline will be dispensed.

(66 Del. Laws, c. 282, § 1; 73 Del. Laws, c. 397, § 5; 76 Del. Laws, c. 50, § 1; 77 Del. Laws, c. 394, § 12.)

§ 2913 Access to information.

(a) *Books and records.* — Whenever the Office has reason to believe that a manufacturer has engaged in, is engaging in, or is about to engage in any practice in violation of the act or regulations, or in order to verify the accuracy of any information submitted to the Office, the Office may demand access to the books, records and data of the manufacturer. A manufacturer shall make such information available to the Office for inspection or copying during normal business hours unless otherwise agreed.

(b) *Samples.* — Any seller of fuels within the scope of this act shall, upon the request of the Office, provide samples of any motor fuel or special fuel for chemical analysis or other inspection, and reimbursement shall be made for the samples taken.

(c) *Standard specification for fuels.* — (1) Any motor fuel sold at retail or intended to be sold at retail in the State which does not meet or exceed American Society for Testing and Materials specifications for that type fuel and which causes "fuel-related performance problems" for the motoring public may be ordered corrected or removed from the marketplace.

(2) *Violation of standards; stop sale.* — If a sample taken by the Office and tested by a qualified laboratory finds the sample to be substandard for any of the reasons established as standards or limitations written herein, the Office shall issue a stop sale for all or any portion of the seller's operation which is in violation until the violation has been corrected. The Office shall have the authority and duty to decide when the steps taken were sufficient to correct the violation and inform the seller of when sales may resume.

(3) Whenever the Office finds any person marketing petroleum products in violation of this act or its regulations and has issued a stop sale directing them to cease such violation and the violation continues, the Office shall refer the matter to the Attorney General and the Attorney General shall take appropriate legal action.

(77 Del. Laws, c. 394, § 13; 70 Del. Laws, c. 186, § 1.)

§ 2914 Violation of act or regulation.

(a) *Powers.* — Whenever the Office receives a complaint or any information from any source, which if true would amount to a violation of the act or regulations:

(1) The Office may investigate the complaint or information;

(2) The Office may, upon investigation of the complaint or information, make recommendations to the Attorney General's Office to investigate and enforce this chapter by any remedy available.

(b) The Department shall, with the approval of the Secretary, prepare proposed rules and regulations governing the responsibilities of the retail dealers it regulates. Adoption of these rules and regulations shall be as provided in subchapter II, Chapter 101 of Title 29. The rules and regulations as adopted, and as they may be from time to time amended by the Department, shall have the effect of law and shall remain in power and force until the same are amended or repealed by the Department.

(77 Del. Laws, c. 394, § 13.)

Subtitle II
Other Laws Relating to Commerce and Trade
Chapter 31
Registration of Trade Names, Partnerships and Associations

§ 3101 Use and registration of trade names or titles.

No person, firm or association shall engage in, prosecute or transact any business within the limits of this State, by using any trade name or title which does not disclose the Christian and surname of such person, or in case of a firm or association, the Christian and surname of each and every person comprising the firm or association without, in addition to what is otherwise required by the laws of this State, first filing a certificate under the hand of such person or, in case of a firm or association, under the hand of one of the members of the firm or association, in the office of the prothonotary of each county in which it is prosecuting or transacting such business, designating the trade name or title and Christian and surname of such person, or, in case of a firm or association, the Christian and surname of each and every member comprising the firm or association. All certificates shall show the date when the partnership or association was organized, to which certificates there shall be attached the affidavit of the person signing it to the effect that the facts therein stated are true and correct.

(25 Del. Laws, c. 146, § 1; 27 Del. Laws, c. 177, § 1; Code 1915, § 2639; Code 1935, § 3111; 6 Del. C. 1953, § 3101.)

§ 3102 Supplemental certificate upon change in membership.

Whenever a change occurs in the membership of any firm or association which has filed a certificate under § 3101 of this title, a supplemental certificate under the hand of 1 of the members of the firm or association shall, within 10 days after the change, be filed in the office of the prothonotary of each county in which it had theretofore filed a certificate, designating the Christian and surname of each and every member comprising the firm or association after the change, and the date when the change took effect, to which certificate shall be attached the affidavit of the person signing it to the effect that the facts therein stated are true and correct.

(25 Del. Laws, c. 146, § 2; 27 Del. Laws, c. 177, § 2; Code 1915, § 2640; Code 1935, § 3112; 6 Del. C. 1953, § 3102.)

§ 3103 Partnership and association docket; duty of prothonotaries; fee for filing certificate.

The prothonotary of each county shall number the certificates when filed, consecutively, and endorse thereon the date of filing, and enter and record in a book which the prothonotary shall procure for that purpose, which is named "Partnership and Association Docket," the trade name and title of the person, firm or association, the date of the filing of the certificate, the date of the formation or change in the formation of the firm or association, and the number thereof. For the filing and making of the entries, the prothonotary shall receive from the person filing the certificate a fee of $5.00, to be disposed of in the same manner as other fees which are by law payable to the prothonotary.

(25 Del. Laws, c. 146, § 3; 27 Del. Laws, c. 177, § 3; Code 1915, § 2641; Code 1935, § 3113; 6 Del. C. 1953, § 3103; 62 Del. Laws, c. 320, § 1; 70 Del. Laws, c. 186, § 1.)

§ 3104 Unincorporated associations.

No unincorporated association of persons shall transact business in this State, unless the individual names of all concerned therein shall be first certified by an officer of such association and filed in the office of the prothonotary of each county.

This section shall not apply to partnerships.

(13 Del. Laws, c. 32, § 1; Code 1915, § 4198; Code 1935, § 4676; 6 Del. C. 1953, § 3104; 63 Del. Laws, c. 407, § 1; 70 Del. Laws, c. 186, § 1.)

§ 3105 False affidavit; penalty.

Whoever wilfully makes or files, under §§ 3101, 3102 and 3103 of this title, any affidavit which is false commits the crime of false swearing and shall be punishable therefor.

(25 Del. Laws, c. 146, § 4; 27 Del. Laws, c. 177, § 4; Code 1915, § 2642; Code 1935, § 3114; 6 Del. C. 1953, § 3105.)

§ 3106 Penalties.

If any person, firm or association violates any of the provisions of §§ 3101, 3102, 3103 and 3104 of this title, every such person, and each and every person comprising such firm or association, shall be fined not more than $100 or imprisoned not more than 3 months, or both.

(25 Del. Laws, c. 146, § 5; 27 Del. Laws, c. 177, § 5; Code 1915, § 2643; Code 1935, § 3115; 6 Del. C. 1953, § 3106; 63 Del. Laws, c. 407, § 2.)

§ 3107 Application to joint stock associations of more than 50 members or corporations.

Nothing in §§ 3101-3105 of this title shall affect or apply to joint stock associations, using a common name, not being ordinary partnerships, which have more than 50 stockholders or members nor to legally incorporated companies.

(25 Del. Laws, c. 146, § 6; 27 Del. Laws, c. 177, § 6; Code 1915, § 2644; Code 1935, § 3116; 6 Del. C. 1953, § 3107.)

Subtitle II
Other Laws Relating to Commerce and Trade
Chapter 33
Trademarks, Brands and Labels

§ 3301 Short title.

This chapter may be known and cited as the "Delaware Trademark Act."

(60 Del. Laws, c. 612, § 1.)

§ 3302 Definitions.

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

(1) "Applicant" shall mean any person filing an application for registration of a trademark under this chapter, the applicant's legal representatives, successors or assigns.

(2) "Mark" shall include any trademark or service mark entitled to registration under this chapter, whether registered or not.

(3) "Person" shall mean any individual, firm, partnership, corporation, association, union or other organization.

(4) "Registrant" shall mean the person to whom the registration of a trademark under this chapter is issued, that person's legal representatives, successors or assigns.

(5) "Service mark" shall mean a mark used in the sale or advertising of services to identify the services of 1 person and distinguish them from the services of others.

(6) "Trademark" shall mean any word, name, symbol or device or any combination thereof adopted and used by a person to identify goods made or sold by that person, and to distinguish them from goods made or sold by others.

(7) "Trade name" shall mean a word, name, symbol, device or any combination thereof used by a person to identify a business, vocation or occupation and distinguish it from the business, vocation or occupation of others.

(8) For the purposes of this chapter, a trademark shall be deemed to be "used" in this State:

a. On goods, when it is placed in any manner on the goods, their containers or the displays associated therewith, or on labels affixed thereto and such goods are sold or otherwise distributed within this State; and

b. On services, when the trademark is used or displayed in the sale or advertising of services and the services are rendered in this State.

(60 Del. Laws, c. 612, § 1; 70 Del. Laws, c. 186, § 1.)

§ 3303 Registrability.

A mark by which the goods or services of any applicant for registration may be distinguished from the goods or services of others shall not be registered if it:

(1) Consists of or comprises immoral, deceptive or scandalous matter;

(2) Consists of or comprises matter which may disparage or falsely suggest a connection with persons, living or dead, institutions, beliefs or national symbols, or bring them into contempt or disrepute;

(3) Consists of or comprises the flag or coat of arms or other insignia of the United States, or of any state or municipality, or of any foreign nation or any simulation thereof;

(4) Consists of or comprises the name, signature or portrait of any living individual, except with that individual's written consent;

(5) Consists of a mark which:

a. When applied to the goods or services of the applicant, is merely descriptive or deceptively misdescriptive of them;

b. When applied to the goods or services of the applicant, is primarily geographically descriptive or deceptively misdescriptive of them; or

c. Is primarily merely a surname (provided, however, that nothing in this section shall prevent the registration of a mark used in this State by the applicant which is or has become distinctive of the applicant's goods or services); or

(6) Consists of or comprises a mark which so resembles a mark registered in this State or a trademark or trade name previously used in this State by another and not abandoned, as to be likely, when applied to the goods or services of the applicant, to cause mistake, or to confuse or deceive.

(60 Del. Laws, c. 612, § 1; 70 Del. Laws, c. 186, § 1.)

§ 3304 Application for registration.

(a) Subject to the limitations set forth in this chapter, any person who adopts and uses a mark in this State may file in the office of the Secretary of State, on a form to be furnished by the Secretary of State, an application for registration of that mark setting forth, but not limited to, the following information:

(1) The name and business address of the person applying for such registration, and if a corporation, the state of incorporation;

(2) The goods or services in connection with which the mark is used, the mode or manner in which the mark is used in connection with such goods or services and the class in which such goods or services fall;

(3) The date when the mark was first used anywhere, and the date when it was first used in this State by the applicant or the applicant's predecessor in business; and

(4) A statement that the applicant is the owner of the mark and that no other person has the right to use such mark in this State, either in the identical form thereof or in such near resemblance thereto, as might be calculated to deceive or to be mistaken therefor.

(b) The application shall be signed and verified by the applicant, by a member of the firm or by an officer of the corporation or association applying therefor. The application shall be accompanied by a specimen or facsimile of such mark in duplicate. The application for registration shall be accompanied by a filing fee of $25 payable to the Secretary of State.

(60 Del. Laws, c. 612, § 1; 70 Del. Laws, c. 186, § 1.)

§ 3305 Certificate of registration.

(a) Upon compliance by the applicant with the requirements of this chapter, the Secretary of State shall cause a certificate of registration to be issued and delivered to the applicant. The certificate of registration shall be issued under the signature of the Secretary of State and the seal of the State, and it shall show the name and business address and, if a corporation, the state of incorporation, of the person claiming ownership of the mark, the date claimed for the first use of the mark anywhere, the date claimed for the first use of the mark in this State, the class of goods or services, a description of the goods or services on which the mark is used, a reproduction of the mark, the registration date and the term of the registration period.

(b) Any certificate of registration issued by the Secretary of State under this chapter or a copy thereof duly certified by the Secretary shall be admissible in evidence as competent and sufficient proof of the registration of such mark in any action or judicial proceeding in any court of this State.

(c) A certificate of registration will be issued by the Secretary of State upon receipt of a $10 fee payable to the Secretary of State.

(60 Del. Laws, c. 612, § 1.)

§ 3306 Duration and renewal.

(a) Registration of a mark under this chapter shall be effective for a term of 10 years from the date of registration and, upon application filed within 6 months prior to the expiration of such term, on a form to be furnished by the Secretary of State, the registration may be renewed for a like term. A renewal fee of $25, payable to the Secretary of State, shall accompany the application for renewal of the registration. A trademark registration may be renewed for successive periods of 10 years in like manner.

(b) The Secretary of State shall notify registrants of marks hereunder of the necessity of renewal within the year next preceding expiration of the 10 years from the date of registration by writing to the last known address of a registrant.

(c) Any registration in force on the date on which this chapter shall become effective shall expire 10 years from the date of the registration, the last renewal thereof or 1 year after the effective date of this chapter, whichever is later, and may be renewed by filing an application with the Secretary of State on a form furnished by the secretary and paying the aforementioned renewal fee thereof within 6 months prior to the expiration of the registration.

(d) All applications for renewals under this chapter, whether of registrations made hereunder or of registrations effected under any prior act, shall include a statement that the mark is still in use in this State.

(e) The Secretary of State shall, within 6 months after such effective date, notify all registrants of marks registered under previous acts of the date of expiration of such registrations, unless renewed in accordance with this chapter, by writing to the last known address of the registrants.

(60 Del. Laws, c. 612, § 1; 70 Del. Laws, c. 186, § 1.)

§ 3307 Assignment.

Any mark and its registration hereunder shall be assignable, with the good will of the business in which the mark is used, or with that part of the good will of the business connected with the use of and symbolized by the mark. Assignment shall be by instruments in writing duly executed, and may be recorded with the Secretary of State upon the payment of a fee of $25, payable to the Secretary of State who, upon recording of the assignment, shall issue in the name of the assignee a new certificate for the remainder of the term of the registration, or of the last renewal thereof. An assignment of any registration under this chapter shall be void as against any subsequent purchaser for valuable consideration without notice, unless it is recorded with the Secretary of State within 3 months after the date thereof, or prior to such subsequent purchase.

(60 Del. Laws, c. 612, § 1.)

§ 3308 Records.

The Secretary of State shall keep for public examination a record of all marks registered or renewed under this chapter.

(60 Del. Laws, c. 612, § 1.)

§ 3309 Cancellation.

The Secretary of State shall cancel from the register:

(1) After 1 year from the effective date of this chapter, all registrations under prior acts which are more than 10 years old, and not renewed in accordance with this chapter;

(2) Any registration concerning which the Secretary of State shall receive a voluntary request for cancellation thereof from the registrant or the assignee of record;

(3) All registrations granted under this chapter and not renewed in accordance with this chapter;

(4) Any registration concerning which a court of competent jurisdiction shall find:

a. That the registered mark has been abandoned;

b. That the registrant is not the owner of the mark;

c. That the registration was granted improperly;

d. That the registration was obtained fraudulently; or

e. That the registered mark is so similar, as to be likely to cause confusion or to deceive, to a mark registered by another person in the United States Patent Office, prior to the date of the filing of the application for registration by the registrant hereunder, and not abandoned; provided, however, that should the registrant prove ownership of a concurrent registration of the mark in the United States Patent Office covering an area including this State, the registration hereunder shall not be canceled; or

(5) When a court of competent jurisdiction shall order cancellation of a registration on any ground.

(60 Del. Laws, c. 612, § 1; 70 Del. Laws, c. 186, § 1.)

§ 3310 Classification.

Classification shall be as that which is enforced at the time of application under the classification system used by the United States Patent Office.

(60 Del. Laws, c. 612, § 1.)

§ 3311 Fraudulent registration.

Any person who shall for himself or herself, or on behalf of any other person, procure the filing or registration of any mark in the office of the Secretary of State under this chapter, by knowingly making any false or fraudulent representation or declaration, verbally or in writing, or by any other fraudulent means, shall be liable to pay all damages sustained in consequence of such filing or registration, to be recovered by or on behalf of the party injured thereby in any court of competent jurisdiction.

(60 Del. Laws, c. 612, § 1; 70 Del. Laws, c. 186, § 1.)

§ 3312 Infringement.

Subject to common-law rights as set forth in § 3315 of this title, any person who shall:

(1) Use, without the consent of the registrant, any reproduction, counterfeit, copy or colorable imitation of a mark registered under this chapter in connection with the sale, offering for sale or advertising of any goods or services, or in connection with which such use is likely to cause confusion or to deceive as to the source or origin of such goods or services; or

(2) Reproduce, counterfeit, copy or colorably imitate any such mark and apply such reproduction, counterfeit, copy or colorable imitation to labels, signs, prints, packages, wrappers, receptacles or advertisements intended to be used upon or in conjunction with the sale or other distribution in this State of such goods or services;

shall be liable to a civil action by the owner of such registered mark for any or all of the remedies provided in § 3314 of this title, except that under paragraph (2) of this section, the registrant shall not be entitled to recover profits or damages unless the acts have been committed with knowledge that such mark is intended to be used to cause confusion or to deceive.

(60 Del. Laws, c. 612, § 1.)

§ 3313 Injury to business reputation; dilution.

Likelihood of injury to business reputation or of dilution of the distinctive quality of a mark registered under this chapter, or a mark valid at common law or a trade name valid at common law, shall be a ground for injunctive relief notwithstanding the absence of competition between the parties, or the absence of confusion as to the source of goods or services.

(60 Del. Laws, c. 612, § 1.)

§ 3314 Remedies, including injunctions against forged or counterfeited trademarks, service marks, or copyrighted or registered designs.

(a) The State finds and declares that the citizens of this State have a right to receive those goods and services which they reasonably believe they are purchasing or for which they contract. The State further finds that the manufacture and sale of counterfeit goods or goods which are not what they purport to be and the offering of services through the use of counterfeit service marks constitutes a fraud on the public and results in economic disruption to the legitimate businesses of this State. Moreover, those individuals and businesses doing

business in Delaware who have, through their labors, developed intellectual property rights associated with their goods or services sold to the public also deserve protection. In order to protect the citizens of this State and those who do business in this State, it is necessary to take appropriate actions to remove counterfeit goods from the channels of commerce and prevent the manufacture, sale and distribution of such goods or the offering of such services through the use of counterfeit service marks.

(b) As used in this chapter, the term "forged or counterfeited trademark, service mark, or copyrighted or registered design" means:

(1) any mark or design which is identical to, substantially indistinguishable from, or an imitation of a trademark, service mark, or copyrighted or registered design which is registered for those types of goods or services with the Secretary of State pursuant to this chapter or registered on the Principal Register of the United States Patent and Trademark Office or registered under the laws of any other state, whether or not the offender knew such mark or design was so registered or protected, if the use by such offender of such trademark, service mark, or copyrighted or registered design has not been expressly authorized by the owner thereof, and

(2) any mark or design which is designed to, is reasonably likely to, or does give the impression that the mark or design, or the good or product to which the mark or design is affixed, is authorized by or produced by an owner of a trademark or service mark or copyrighted or registered design registered under this chapter or on the Principal Register of the United States Patent and Trademark Office or registered under the laws of any other state.

(c) As used in this chapter, the terms "counterfeits" and "counterfeit goods" mean any product or good bearing or to which is affixed a forged or counterfeited trademark, service mark, or copyrighted or registered design.

(d) As used in this chapter, "Court" means the Court of Chancery.

(e) Any owner of a trademark or service mark or copyrighted or registered design registered under this chapter or on the Principal Register of the United States Patent and Trademark Office or registered under the laws of any other state may proceed by action to enjoin the manufacture, use, display or sale of any counterfeits or imitations thereof; and the Court may grant such relief, including orders restraining or enjoining such manufacture, use, display or sale as the Court may deem just and reasonable, and the Court may further require the defendants to pay to such plaintiff all profits derived from such wrongful manufacture, use, display or sale, or both profits and damages.

(f) If, in any action brought under this section, the Court determines that a trademark or service mark or copyrighted or registered design is counterfeit, the Court may order the destruction of all such forged or counterfeited trademarks or service marks or copyrighted or registered designs and all goods, articles or other matter bearing the forged or counterfeited trademarks or service marks or copyrighted or registered designs which are in the possession or control of the Court or any party to the action; or, after obliteration of the forged or counterfeited trademark or service mark or copyrighted or registered design, the Court may order the transfer of any of those materials to the State, a civil claimant, a charitable institution or any other appropriate person.

(g) (1) The Court, upon application, including an ex parte application, in an action against persons known or unknown to enjoin either or both (i) the manufacture, use, display or sale of counterfeits, or (ii) the unauthorized sale of any goods or products upon the plaintiff's property, whether counterfeit or not, may, as a preliminary matter, order seizure of the counterfeit goods upon a showing of good cause and upon the posting of a bond in an amount deemed appropriate by the Court. If it appears from an ex parte application that there is good reason for proceeding without notification to the defendant (including, for example, that the defendant may flee with or without the allegedly counterfeit goods or that the identity of the defendant is unknown), the Court may proceed ex parte. In determining "good cause," the Court may grant an order of seizure in advance of such unlawful acts where they are reasonably anticipated to occur and the plaintiff demonstrates a particular need for such advance relief. A copy of the order of seizure shall be served at the time of seizure upon any person from whom seizure is effected. The order shall specifically set forth:

a. The date or dates on which the seizure is ordered to take place;

b. A description of the goods to be seized;

c. The identity of the persons or class of persons to effect seizure, which persons may include officers of the Court, police officers and other law-enforcement officials, persons licensed under Chapter 13 of Title 24, and such other persons as the Court may, in its discretion, decide are appropriate;

d. A description of the location or locations at which seizure is to occur; and

e. A hearing date not more than 10 court days after the last date on which seizure is ordered at which any person from whom goods are seized may appear and seek release of the seized goods.

(2) The persons effecting seizure shall seize those articles which are, in the judgment of such persons, described in the order.

(3) The order of seizure shall include a statement advising the person from whom the goods are seized that a bond has been filed and informing such person of the right to object to the bond, at the hearing called for in the order, on the grounds that the surety or the amount of the bond is insufficient.

(h) (1) Any applicant who causes seizure of goods which are subsequently determined not to be counterfeits shall be liable, except as provided in paragraphs (h)(2) and (h)(3) of this section below, in an amount equal to the following:

a. Any direct damages proximately caused to any person having a financial interest in the seized noncounterfeit goods; provided however, that in the event of a claim for lost profits, such damages may only be awarded upon a showing that the amount sought is reasonable and not speculative;

b. Costs incurred in defending against seizure of noncounterfeit goods; and

c. Upon a showing that the person causing the seizure to occur acted in bad faith, expenses, including reasonable attorneys' fees expended in defending against the seizure of any noncounterfeit or noninfringing goods.

(2) If in the course of seizing the noncounterfeit goods, counterfeit goods were also seized, no damages may be recovered unless the Court concludes that such a result would be grossly inequitable.

(3) If the non-counterfeit goods were seized on the plaintiff's property, no damages may be recovered unless the person from whom such goods were seized demonstrates to the Court that the sale of such goods was authorized in writing by the plaintiff and the sale otherwise complied with all applicable laws.

(4) A person seeking a recovery pursuant to this subsection may join any surety on a bond posted pursuant to this section, and any judgment of liability shall bind the person liable and the surety jointly and severally; provided, however, that the liability of the surety shall be limited to the amount of the bond.

(i) The enumeration of any right or remedy in this chapter shall not affect a person's right to prosecute under any penal law of this State or the laws of any other state or federal government.

(60 Del. Laws, c. 612, § 1; 71 Del. Laws, c. 195, § 1.)

§ 3315 Common-law rights.

Nothing herein shall adversely affect the rights or the enforcement of the rights in marks acquired in good faith at any time at common law.

(60 Del. Laws, c. 612, § 1.)

§§ 3321-3323; 3331-3336 [Repealed].

Subtitle II
Other Laws Relating to Commerce and Trade

Chapter 33A
Truth in Music

§ 3301A Definitions.

The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

(1) "Performing group" means a vocal or instrumental group using or seeking to use the name of another group that has previously released a commercial sound recording under that name.

(2) "Recording group" means a vocal or instrumental group at least 1 of whose members has previously released a commercial sound recording under that group's name and in which the member or members have a legal right by virtue of use or operation under the group name without having abandoned the name or affiliation with the group.

(3) "Sound recording" means a work that results from the fixation on a material object of a series of musical, spoken or other sounds regardless of the nature of the material object, such as a disk, tape or other media in which the sounds are embodied.

(76 Del. Laws, c. 337, § 2.)

§ 3302A Prohibition.

(a) No person shall advertise or conduct a live musical performance or production in this State through the use of a false, deceptive or misleading affiliation, connection or association between a performing group and a recording group.

(b) This section shall not apply if any of the following apply:

(1) The performing group is the authorized registrant and owner of a Federal service mark for that group registered in the United States Patent and Trademark Office.

(2) At least 1 member of the performing group was a member of the recording group and has a legal right by virtue of use or operation under the group name without having abandoned the name or affiliation with the group.

(3) The live musical performance or production is identified in all advertising and promotion as a salute or tribute and the name of the vocal or instrumental group performing is not so closely related or similar to that used by the recording group that it would tend to confuse or mislead the public.

(4) The advertising does not relate to a live musical performance or production taking place in this State.

(5) The performance or production is expressly authorized by the recording group.

(76 Del. Laws, c. 337, § 2.)

§ 3303A Restraining prohibited acts.

(a) Whenever the Attorney General has reason to believe that any person is advertising or conducting or is about to advertise or conduct a live musical performance or production in violation of § 3302A of this title and that proceedings would be in the public interest, the Attorney General shall bring an action in the name of the State against the person to restrain by temporary or permanent injunction that practice.

(b) Whenever any court issues a permanent injunction to restrain and prevent violations of this chapter as authorized in subsection (a) of this section, the court may in its discretion direct that the defendant restore to the recording group any moneys or property, real or personal, which may have been acquired by means of any violation of this chapter, under terms and conditions to be established by the court.

(76 Del. Laws, c. 337, § 2.)

Subtitle II
Other Laws Relating to Commerce and Trade

Chapter 34
Contracts for Providing Service and Fuel for Residential Heating Systems

§ 3401 Definitions.

As used in this chapter:

(1) "Energy service agreement" means a contract between a homeowner and an energy service company by which the energy service company is to provide residential heating fuel to the homeowner's home and/or service the residential heating system.

(2) "Energy service company" means any person engaged in the sale of residential heating fuel and/or the service of residential heating systems.

(3) "Person" means any individual, partnership, corporation, trustee or other entity having the capacity to enter into a valid and enforceable contract.

(4) "Residential heating fuel" includes natural gas, propane, fuel oil, wood and electricity.

(5) "Residential heating system" means all equipment necessary for the storage and transmission of residential heating fuel and the conversion thereof to energy for the purpose of heating a residence and/or heating hot water to be used in the residence.

(71 Del. Laws, c. 238, § 1.)

§ 3402 Mandatory provisions for energy service agreements.

(a) An energy service agreement must contain the following provisions:

(1) All charges associated with the commencement of the services provided by the energy service company, listed with specificity;

(2) All charges associated with the termination of the services provided by the energy service company, listed with specificity;

(3) That the energy service company will, after the energy service agreement has been in effect for at least 1 year and at the written request of the homeowner, sell the residential heating system equipment installed on the premises and owned by the energy service company to another energy service company designated in writing by the homeowner. The purchase price of the residential heating system equipment sold pursuant to the preceding sentence shall be no more than the actual cost of equipment at the time of sale, plus installation costs incurred at the time of installation; and

(4) Notice that sale of the residence, whether voluntary or involuntary, shall be deemed a termination of the energy service agreement by the homeowner, and notice of the homeowner's notice obligations under § 3403(a) of this title.

(b) An energy service company may not demand from the homeowner payment of any charges not specified in the energy agreement pursuant to the above provisions.

(c) Except as provided in this section, an energy service agreement may contain any provisions mutually agreeable to an energy service company and a homeowner. Nothing in this section shall require an energy service company to enter into an energy service agreement with any homeowner.

(71 Del. Laws, c. 238, § 1.)

§ 3403 Provision of information to purchasers of residences.

(a) When the owner of any residence subject to an energy service agreement enters into a contract for the sale of such residence, the owner must provide the energy service company with notice thereof at least 30 days prior to settlement.

(b) No later than 15 days prior to the scheduled settlement, the energy service company shall provide to the prospective purchaser a copy of any agreement the energy service company proposed to have the purchaser sign as a condition to the continuation of the energy service company's services after the sale.

(c) This 15 day notice period may be waived only by the prospective purchaser, and then only in writing signed by the purchaser acknowledging the purchaser's understanding of entitlement to 15 days to consider any proposed energy service agreement.

(d) If the energy service company fails to comply with subsection (b) of this section and the purchaser does not waive in writing such noncompliance, then, unless the purchaser agrees otherwise, the energy service company shall be required to remove the residential heating system equipment owned by the energy service company from the premises. Removal of the residential heating system equipment shall be, except as provided below, at the energy service company's expense and shall be completed within 30 days after the sale; provided, however, that no energy service company shall be permitted to remove any equipment or refuse to supply fuel between the months of October and April unless the owner waives this restriction in writing. If the new owner refuses to enter into a contract with the energy service company and refuses to provide the written waiver to remove the equipment, the use of the equipment and supply of the fuel shall be billed to the new owner, at the energy service company's regular rates, on a monthly basis until such time as the equipment may be removed in compliance with the terms of this subsection.

(71 Del. Laws, c. 238, § 1.)

§ 3404 Limitation of liability upon transfer of residential heating system equipment.

If the owner of a residence requires the settlement of residential heating system equipment pursuant to § 3402(a)(3) of this title, the purchasing energy service company shall perform such inspection of the residential heating system equipment as it deems appropriate. The sale may be completed only if the purchasing energy service company gives the owner of the residence a written certification that the equipment to be purchased has been properly installed and is in good working order. If, upon inspection, the condition of the residential heating equipment is not to the satisfaction of the purchasing energy service company, the purchasing energy company shall give the homeowner a list of conditions or repairs needed. The purchasing energy service company may refuse to complete the purchase if such repairs or conditions are not met. At or before the sale of such residential heating system equipment, the purchasing energy service company shall give the selling energy service company a written release of all liability arising out of or relating to the sale of, installation of, service of or provision of fuel for such residential heating system equipment. The selling energy service company may refuse to complete the sale absent such release.

(71 Del. Laws, c. 238, § 1.)

§ 3405 Private rights of action.

This chapter does not afford any person or any energy service company a private right of action for damages or rescission of the agreement of sale for the residence, and no such right of action shall be implied from any of its provisions, except that an energy service company may bring an action in any court of competent jurisdiction to recover removal costs from a homeowner pursuant to § 3403(d) and (b) of this title. The Court of Chancery may enforce this chapter by appropriate orders.

(71 Del. Laws, c. 238, § 1.)

Subtitle II
Other Laws Relating to Commerce and Trade

Chapter 35
Building Construction Payments

§ 3501 Definitions.

As used in this chapter:

(1) "Billing period" means the payment cycle agreed to by the parties, or, in the absence of an agreement, the calendar month within which the work is performed.

(2) "Contractor" includes, but is not limited to, an architect, engineer, real estate broker or agent, subcontractor or other person, who enters into any contract with another person to furnish labor and/or materials in connection with the erection, construction, completion, alteration or repair of any building or for additions to a building, by such contractor, or for the sale to such other person of any lands and premises, whether owned by such contractor or another, upon which such contractor undertakes to erect, construct, complete, alter or repair any building or addition to a building.

(3) "Moneys or funds" includes, but is not limited to, the entire amount of all moneys or funds received by a contractor, as defined in this section, who, being the owner of the legal title to lands and premises, receives, in connection with a contract for the sale thereof and for the erection, construction, completion, alteration or repair of any building or addition thereon by such contractor, any moneys or funds by way of a loan or advance upon the security of such lands and premises for the purpose of such erection, construction, completion, alteration or repair, or who receives from the other contracting party or vendee any deposit or sum of money on account of the purchase or contract price, and no part of such moneys or funds shall be deemed or construed applicable to the payment of the cost or selling price of land, unless that part of the contract price or selling price applicable to cost or selling price of land, be specifically so stated in the contract.

(4) "Owner" means a person who has an interest in the lands or premises upon which a contractor has undertaken to erect, construct, complete, alter or repair any building or addition to a building.

(5) "Person" shall include a corporation, partnership, limited liability corporation or partnership, business trust, other association, estate trust, foundation or a natural person.

(6) "Subcontractor" means a person who enters into a contract to furnish labor and/or materials to a contractor.

(38 Del. Laws, c. 169, § 1; Code 1935, § 3652; 44 Del. Laws, c. 163, § 1; 6 Del. C. 1953, § 3501; 70 Del. Laws, c. 420, § 3; 74 Del. Laws, c. 357, § 1.)

§ 3502 Payments to contractor impressed with trust.

All moneys or funds received by a contractor in connection with a contract for the erection, construction, completion, alteration or repair of any building or for additions to a building and all moneys or funds received by a contractor in connection with a contract for the sale of land and the erection, construction, completion, alteration or repair of any building or addition thereon, shall be trust funds in the hands of the contractor.

(38 Del. Laws, c. 169, § 1; Code 1935, § 3652; 44 Del. Laws, c. 163, § 1; 6 Del. C. 1953, § 3502.)

§ 3503 Use or application of money received by contractor.

No contractor, or agent of a contractor, shall pay out, use or appropriate any moneys or funds described in § 3502 of this title until they have first been applied to the payment of the full amount of all moneys due and owing by the contractor to all persons (including surveyors and engineers) furnishing labor or material (including fuel) for the erection, construction, completion, alteration or repair of, or for additions to, such building, whether or not the labor or material entered into or became a component part of any such building or addition and whether or not the same were furnished on the credit of such building or addition or on the credit of such contractor.

(38 Del. Laws, c. 169, § 1; Code 1935, § 3652; 44 Del. Laws, c. 163, § 1; 6 Del. C. 1953, § 3503.)

§ 3504 Contractor's failure to use or apply money in accordance with § 3503 of this title.

Failure of a contractor, or of an agent of a contractor, to pay or cause to be paid, in full or pro rata, the lawful claims of all persons, firms, association of persons or corporations (including surveyors and engineers), furnishing labor or material (including fuel), as required by § 3503 of this title, within 30 days after the receipt of any moneys or funds for the purposes of § 3502 of this title, shall be prima facie evidence of the payment, use or appropriation of such trust moneys or funds by the contractor in violation of the provisions of this chapter.

(38 Del. Laws, c. 169, § 3; Code 1935, § 3654; 44 Del. Laws, c. 163, § 3; 6 Del. C. 1953, § 3504.)

§ 3505 Penalties.

Whoever, being a contractor, or any agent of a contractor, pays out, uses or appropriates, or consents to the paying out, use or appropriation of any moneys or funds received for any of the purposes specified in § 3502 of this title, prior to paying in full or pro

rata to the extent of the moneys or funds so received, all the lawful claims of all persons (including surveyors and engineers) furnishing labor or materials (including fuel), as prescribed by § 3503 of this title, shall be fined not more than $1,000 or imprisoned not more than 3 years, or both.

(38 Del. Laws, c. 169, § 2; Code 1935, § 3653; 44 Del. Laws, c. 163, § 2; 6 Del. C. 1953, § 3505.)

§ 3506 Interest penalties on late payments.

(a) Each construction contract awarded by an owner shall include:

(1) A payment clause which obligates the owner to pay the contractor for satisfactory performance under the contract within 30 days of the end of the billing period;

(2) An interest penalty clause which obligates the owner to pay the contractor an interest penalty on amounts due in the case of each payment not made in accordance with the payment clause included in the contract pursuant to paragraph (a)(1) of this section;

(3) The clause required by this subsection shall not be construed to impair the right of the owner to include in its contracts provisions which permit the owner to retain a specified percentage of each progress payment otherwise due to a contractor for satisfactory performance under the contract without incurring any obligation to incur an interest penalty, in accordance with the terms and conditions agreed to by the parties to the contract. In such a case, the owner must provide written notice to contractor as to why payment is being withheld within 7 days of the date required for payment to the contractor.

(b) Each construction contract awarded by a contractor shall include:

(1) A payment clause which obligates the contractor to pay the subcontractor and each supplier for satisfactory performance under the subcontract within 30 days out of such amounts as are paid to the contractor; and

(2) An interest penalty clause which obligates the contractor to pay the subcontractor and each supplier an interest penalty on amounts due in the case of each payment not made in accordance with the payment clause included in the contract pursuant to paragraph (b)(1) of this section.

(c) The interest penalty shall apply to the period beginning on the day after the required date and ending on the date on which payment of that amount due is made and shall be computed at the legal rate in effect at the time the obligation to pay a late payment interest penalty accrues. Any amount of an interest penalty which remains unpaid at the end of any 30-day period shall be added to the principal amount of the debt and thereafter interest penalties shall accrue on such amount.

(d) The clauses required by subsection (b) of this section shall not be construed to impair the right of the contractor to include in its subcontracts provisions which permit the contractor to retain a specified percentage of each progress payment otherwise due to a subcontractor and each supplier for satisfactory performance under the subcontract without incurring any obligation to incur an interest penalty, in accordance with the terms and conditions agreed to by the parties to the contract. In such a case, the contractor must provide written notice to the subcontractor or supplier as to why payment is being withheld within 7 days of the date required for payment to the subcontractor or supplier.

(e) If it is determined by a court of competent jurisdiction that a payment withheld pursuant to paragraph (a)(3) or subsection (d) of this section was not withheld in good faith for reasonable cause, the court may award reasonable attorney's fees to the prevailing party. In any civil action brought pursuant to this section, if a court determines after a hearing for such purpose that the cause was initiated, or a defense was asserted, or a motion was filed or any proceeding therein was done frivolously or in bad faith, the court shall require the party who initiated such cause, asserted such defense, filed such motion or caused such proceeding to be had to pay the other party named in such action the amount of the costs attributable thereto and reasonable expenses incurred by such party, including reasonable attorney's fees.

(f) Once a contractor has made payment to the subcontractor or supplier according to the payment terms of the construction contract or the provisions of this section, future claims for payment against the contractor or any surety of the contractor by parties owed payment from the subcontractor or supplier shall be barred.

(70 Del. Laws, c. 420, § 2; 71 Del. Laws, c. 134, §§ 1-5; 74 Del. Laws, c. 357, §§ 2-4.)

§ 3507 Payments due.

(a) The owner shall pay the contractor strictly in accordance with the terms of the contract.

(b) If the terms of the contract do not contain a term governing payment, the contractor shall be entitled to submit an invoice to the owner for payments at the end of the billing period for:

(1) Work already commenced but not fully completed and/or,

(2) Materials already supplied, if the agreed upon work is completed at the end of such billing period.

(c) If the contract between the owner and a contractor, or between contractors, does not contain a provision governing when invoices may be submitted, a contractor shall be entitled to submit a final invoice for payment in full when the agreed-upon work is fully completed. The owner shall pay all undisputed amounts owed to the contractor within 30 days after the end of the billing period or 30 days after delivery of the invoice, whichever is later. This subsection shall not be construed to impair the right of an owner to include in a contract provisions that permit the owner to retain a specified percentage of each progress payment otherwise due to a contractor and each supplier for satisfactory performance under the contract.

(d) If subcontractor payment terms are not specified in the contract between the owner and a general or prime contractor, or in the contract between the general or prime contractor and a subcontractor, or in the contract between the subcontractors, a general contractor, prime contractor or subcontractor shall pay all undisputed amounts owed to its subcontractors, suppliers and/or materialmen within 15 days after receipt by the general contractor, prime contractor or subcontractor of each payment received for work performed or materials supplied by its subcontractors, suppliers and/or materialmen. This subsection shall not be construed to impair the right of an owner or contractor to include in a subcontract provisions that permit the owner or contractor to retain a specified percentage of each progress payment otherwise due to a subcontractor and each supplier for satisfactory performance under the subcontract.

(e) It shall be against public policy and shall be void and unenforceable for any provision of a construction contract or subcontract agreement to:

(1) State that a contractor assumes the risk of nonpayment of the owner;

(2) Require a contractor to waive any statutory or other right to commence litigation or arbitration until payment is made to the general or prime contractor;

(3) Make subject to payment by the owner the obligation of a contractor and its surety under any payment or performance bond to make any payment to a claimant under such bond;

(4) State that a contractor relies on the credit of the owner and not on the credit of the general or prime contractor or of a bonding company; or

(5) Require a dispute or claim between the contractor and subcontractor to be governed or subject to the laws of a state other than Delaware or require litigation, arbitration, mediation or other dispute resolution processes to occur in a state other than Delaware.

(f) This section shall not apply to:

(1) Public works contracts awarded under Chapter 69 of Title 29;

(2) Contracts for the erection of 6 or fewer residential units which are under construction simultaneously, or for the alteration or repair of any single residential unit; or

(3) Contracts for the purchase of materials by a person performing work on that person's own real property.

(73 Del. Laws, c. 344, § 1; 70 Del. Laws, c. 186, § 1; 74 Del. Laws, c. 357, §§ 5, 6; 78 Del. Laws, c. 269, § 1.)

§ 3508 Procedure for dispute of claims.

(a) If an owner or contractor disputes any amounts stated in an invoice for payment, then:

(1) The party disputing the invoice must notify the other party in writing within 7 days of the receipt of the disputed invoice; and

(2) The party disputing the invoice must be specific as to those items within the invoice that are disputed.

(b) If notice of dispute is not given within the time required by this section, then the invoice is deemed to be accepted as submitted.

(c) If notice of dispute is not given within the time required by this section, such lack of notice does not constitute acceptance of the work performed.

(d) This section shall not apply:

(1) To public works contracts awarded under Chapter 69 of Title 29;

(2) To contracts for the erection of 6 or fewer residential units which are under construction simultaneously, or for the alteration or repair of any single residential unit;

(3) To contracts for the purchase of materials by a person performing work on that person's own real property; or

(4) Where the terms of a contract specify a different procedure for disputing claims for payment.

(e) This section shall not apply where the terms of a contract between a general or prime contractor and a subcontractor specify a difference procedure for disputing claims for payment.

(73 Del. Laws, c. 344, § 1; 70 Del. Laws, c. 186, § 1; 74 Del. Laws, c. 357, §§ 7, 8.)

§ 3509 Attorneys' fees and litigation costs.

(a) *Award of attorneys' fees and arbitration costs.* — If arbitration or litigation is commenced to recover payment due under § 3507 of this title and it is determined that the owner, contractor or subcontractor has failed to comply with the payment terms of § 3507 of this title, the arbitrator or court shall award damages due equal to the amount that is determined by the arbitrator or court to have been wrongfully withheld. An amount shall not be deemed to have been wrongfully withheld to the extent that it bears a reasonable relationship to the value of any disputed amount or claim held in good faith by the owner, contractor or subcontractor against whom the contractor or subcontractor is seeking to recover payment.

(b) Absent any agreements to the contrary between the parties, the arbitrator in any arbitration proceeding arising under this chapter shall award to the substantially prevailing party its reasonable attorneys' fees, arbitration costs and expenses for expert witnesses.

(c) This section shall not apply to:

(1) Public works contracts awarded under Chapter 69 of Title 29;

(2) Contracts for the erection of 6 or fewer residential units which are under construction simultaneously, or for the alteration or repair of any single residential unit; or

(3) Contracts for the purchase of materials by a person performing work on that person's own real property.

(d) This section shall not apply where the terms of a contract between a general or prime contractor and subcontractor specifies different terms regarding the award of attorney fees and litigation costs in an arbitration or judicial proceeding.

(73 Del. Laws, c. 344, § 1; 70 Del. Laws, c. 186, § 1; 74 Del. Laws, c. 357, §§ 9, 10.)

Subtitle II
Other Laws Relating to Commerce and Trade

Chapter 36
Home Construction and Improvement Protection

Subchapter I
New Home Buyers Protection Act

§ 3601 Definitions.

As used in this subchapter:

(1) "Buyer" means any individual, partnership, corporation or trustee purchasing any estate or interest in a new residential real property or new dwelling.

(2) "Final settlement" means the time at which the parties have signed and delivered all papers and consideration to convey title to the estate or interest in a new residential real property or new dwelling.

(3) "New dwelling" means a new multi-family, single family or townhouse dwelling not previously occupied and constructed for use as a residence.

(4) "New residential real property" means any estate or interest in real property improved by a new dwelling not previously occupied and constructed for use as a residence.

(5) "Seller" means any individual, partnership, corporation or trustee transferring new residential property or a new dwelling.

(6) "Unfinished work" means a condition in a new residential real property or new dwelling which fails to comply with the work agreed upon by the vendor and/or seller in the specifications, contract terms and applicable building codes.

(7) "Vendor" means any person, firm, partnership, corporation or other entity that contracts to sell new dwellings or new residential real property.

(70 Del. Laws, c. 355, § 1.)

§ 3602 New home construction; unfinished work and the escrow of moneys.

(a) If any unfinished work is discovered prior to or at the time of the previously agreed upon final settlement date on new residential real property or a new dwelling, the vendor and/or seller shall be required to set aside from the proceeds of the sale a sum of money equal to the contractual cost required to complete any such unfinished work. If the contract does not set forth the cost, the escrowed amount shall be the fair market value of completing said unfinished work. The escrow agreement shall specify the unfinished work at issue.

(b) Said moneys shall be held in escrow for no longer than 30 days following the completion of the unfinished work. No buyer may refuse to release moneys escrowed pursuant to this section for unfinished work not specified pursuant to subsection (a) of this section.

(c) If the unfinished work specified at the final settlement has not been remedied upon the expiration of 90 days from the date of final settlement or a date agreed upon by the parties and set forth in the escrow agreement, the moneys held in escrow pursuant to this section shall be released to the buyer.

(d) Notwithstanding the above, this section shall apply only when the estimated cost to complete said unfinished work equals 1 percent or more of the contract price or when the aggregate estimated costs of completing all unfinished work equals 1 percent or more of the contract price.

(e) This section shall not apply when a buyer unilaterally requests that settlement take place on a date prior to the previously agreed upon final settlement date.

(f) To the extent the seller/vendor and the buyer agree that the buyer may withhold, at the final settlement, moneys otherwise subject to escrow under this section, such an arrangement shall be deemed in compliance with this section.

(70 Del. Laws, c. 355, § 1.)

§ 3603 Remedies and penalties.

(a) In any successful action brought by a buyer for failure to acknowledge unfinished work subject to the escrow provisions of § 3602 of this title or failure to escrow the contractual cost or the fair market value required to complete the unfinished work subject to the escrow provisions of § 3602 of this title, the court may order the seller/vendor to pay the amount that should have been escrowed and the costs of litigation. To the extent a seller/vendor proves that a buyer's request to escrow under § 3602 of this title was not valid, the buyer may be liable for the seller/vendor's costs of litigation.

(b) Failure to comply with a buyer's valid request to escrow under § 3602 of this title shall constitute an unlawful practice in violation of § 2513 of this title and wilful violations of § 3602 of this title shall be punishable in accordance with § 2513 and/or § 2581 of this title. The Attorney General shall have the same authority in enforcing, remedying, and otherwise carrying out the provisions of this subchapter as is provided by Chapter 25 of Title 29 and by §§ 2511-2527 and 2531-2536 of this title.

(c) The remedies and penalties provided for in this section are not exclusive and shall be in addition to any other procedures, rights or remedies which exist with respect to any other provisions of law including, but not limited to, state and/or federal criminal prosecutions and/or common law statutory actions brought by private parties.

(70 Del. Laws, c. 355, § 1; 70 Del. Laws, c. 419, § 3; 77 Del. Laws, c. 282, § 9.)

Subchapter II

Home Owner's Protection Act

§ 3651 Definitions.

As used in this subchapter:

(1) "Construction" includes construction, erection, building, alteration, repair, reconstruction and destruction of improvements to real property.

(2) "Improvement" includes buildings, roads, streets, entrances and walkways of any type constructed thereon, and other structures affixed to and on land, as well as any changes to the land itself.

(3) "Residential real property" means any estate in real property improved by a dwelling for use as a residence.

(70 Del. Laws, c. 419, § 4.)

§ 3652 Economic loss relating to improvements to residential real property.

No action based in tort to recover damages resulting from negligence in the construction or manner of construction of an improvement to residential real property and/or in the designing, planning, supervision and/or observation of any such construction or manner of construction shall be barred solely on the ground that the only losses suffered are economic in nature.

(70 Del. Laws, c. 419, § 4.)

Subchapter III

New Home Buyers Fire Protection Act [For applicability of subchapter, see 80 Del. Laws, c. 145, § 3]

§ 3681 Definitions [For applicability of subchapter, see 80 Del. Laws, c. 145, § 3].

As used in this subchapter:

(1) "Builder" means any individual, trustee, partnership, corporation, or other entity contracting with an owner for the construction of a new dwelling.

(2) "Buyer" means any individual, trustee, partnership, corporation, or other entity purchasing any estate or interest in a new dwelling.

(3) "New dwelling" means a new 1- or 2-family residential dwelling, not previously occupied, and constructed for residential use.

(80 Del. Laws, c. 145, § 1.)

§ 3682 Disclosure of automatic fire sprinkler system information [For applicability of subchapter, see 80 Del. Laws, c. 145, § 3].

At the time of or prior to agreeing to final pricing for construction of a new dwelling with a buyer, a builder shall provide the buyer with a copy of written materials prepared and promulgated by the Office of the State Fire Marshal which detail the benefits an automatic fire sprinkler system. At the same time, a builder shall provide written materials including the costs associated with the installation and maintenance of an automatic fire sprinkler system. The buyer shall acknowledge receipt of the written materials in writing. Upon request of the buyer, the builder shall, at the buyer's expense, install an automatic fire sprinkler system or other requested fire suppression system.

(80 Del. Laws, c. 145, § 1.)

§ 3683 Remedies and penalties [For applicability of subchapter, see 80 Del. Laws, c. 145, § 3].

(a) In addition to any remedies the buyer may have at law or in equity, whenever it appears to the Attorney General or Director of the Division of Consumer Protection that a person has engaged in, is engaging in or is about to engage in any act or omission in violation of this subchapter, the Attorney General or Director of the Division of Consumer Protection may institute a court proceeding or administrative proceeding in accordance with the process in subchapter II of Chapter 25 of Title 29. However, upon a finding that any person has wilfully violated this subchapter, the person shall pay for the first offense a civil penalty not less than $75 nor more than $150, and for each subsequent offense, a civil penalty not less than $100 nor more than $250. For purposes of this subchapter, a wilful violation occurs when the person committing the violation knew or should have known that the conduct was of the nature prohibited by this subchapter.

(b) The remedies and penalties provided for in this section are not exclusive and shall be in addition to any other procedures, rights or remedies which exist with respect to any other provisions of law including, but not limited to, criminal prosecutions and actions brought by private parties under common or statutory law or both. However, there shall be no liability or cause of action against a real estate licensee licensed under Chapter 29 of Title 24 or real estate brokerage arising out of or related to a builder failing to provide the information

required by this subchapter or for the content of the information. Additionally, there shall be no liability or cause of action against any nonprofit builder using 0% financing to the buyer.

(80 Del. Laws, c. 145, § 1.)

Subtitle II
Other Laws Relating to Commerce and Trade

Chapter 37
Sale of Secondhand Watches

§ 3701 Definitions.

As used in this chapter:

(1) "Consumer" means a person who buys for personal use, or for the use of another but not for resale.

(2) "Secondhand" watch means:

a. A watch which, as a whole, or the case thereof, or the movement thereof has been previously sold to a consumer; but a watch which has been so sold and is thereafter returned, either through an exchange or for credit, to the same person who sold the watch to the consumer, shall not be deemed to be a secondhand watch for the purposes of this chapter if such person keeps a written or printed record setting forth the name and address of the consumer, the date of the sale to the consumer, the date of the return by the consumer, the name of the watch or its maker, and the serial numbers, if any, or, if none, any other distinguishing numbers or identification marks on the case and on the movement of the watch; and

b. Any watch whose case or movement serial numbers or other distinguishing numbers or identification marks have been erased, defaced, removed, altered or covered.

(3) "Sell" includes offer to sell or exchange, expose for sale or exchange, possess with intent to sell or exchange, and sell or exchange.

(41 Del. Laws, c. 198, §§ 1, 2; 6 Del. C. 1953, § 3701; 70 Del. Laws, c. 186, § 1.)

§ 3702 Seller's record of watches sold to consumers; inspection.

The seller's record of sold watches containing the information specified in § 3701 of this title shall be kept for at least 3 years from the date of the sale of the watch and shall be open for inspection during all business hours by any member of the police department of the City of Wilmington or other peace officer of the State.

(41 Del. Laws, c. 198, § 1; 6 Del. C. 1953, § 3702; 70 Del. Laws, c. 186, § 1.)

§ 3703 Tagging.

Any person, or any agent or employee thereof, who sells a secondhand watch, shall affix and keep affixed to the same a tag with the words "secondhand" legibly written or printed thereon in the English language.

(41 Del. Laws, c. 198, § 2; 6 Del. C. 1953, § 3703.)

§ 3704 Invoice to vendee; contents, duplicate and inspection.

Any person, or any agent or employee thereof, who sells a secondhand watch shall deliver to the vendee a written invoice setting forth the name and address of the vendor, the name and address of the vendee, the date of the sale, the name of the watch or its maker, and the serial numbers, if any, or other distinguishing numbers or identification marks on its case and movement. In the event the serial numbers or other distinguishing numbers or identification marks have been erased, defaced, removed, altered or covered, this shall be set forth in the invoice. A duplicate of the invoice shall be kept on file by the vendor of the secondhand watch for at least one year from the date of the sale thereof and shall be open to inspection during all business hours by any member of the police department of the City of Wilmington or other peace officer of the State.

(41 Del. Laws, c. 198, § 3; 6 Del. C. 1953, § 3704.)

§ 3705 Advertising.

Any person advertising in any manner secondhand watches for sale shall state clearly in such advertising that the watches advertised are secondhand watches.

(41 Del. Laws, c. 198, § 4; 6 Del. C. 1953, § 3705.)

§ 3706 Penalties.

Whoever violates this chapter shall be fined not less than $100 nor more than $500, or imprisoned not more than 3 months, or both.

(41 Del. Laws, c. 198, § 5; 6 Del. C. 1953, § 3706.)

Subtitle II
Other Laws Relating to Commerce and Trade

Chapter 38
Broadcasting Supplementary Public Notices

§ 3801 Definitions.

As used in this chapter unless the context requires a different meaning:

(1) "Broadcast" means the transmission of information by means of radio or television facilities.

(2) "Notice" means any notice that is required by law to be published.

(3) "Station" means any radio or television station licensed for commercial or educational operation by the Federal Communications Commission.

(6 Del. C. 1953, § 3801; 56 Del. Laws, c. 431.)

§ 3802 Supplemental publication.

(a) Any state or other public officer who is required by law to publish any notice, may supplement publication thereof by causing such notice or a concise summary or description thereof to be broadcast at such times and with such frequency determines to be suitable when, in the officer's judgment, the public interest is served thereby.

(b) Notices by political subdivisions of this State, cities, municipal and quasi municipal corporations, special districts and other public agencies shall be made only by stations whose primary broadcast coverage encompasses the county or counties in which the notice is required to be given.

(6 Del. C. 1953, § 3802; 56 Del. Laws, c. 431; 70 Del. Laws, c. 186, § 1.)

§ 3803 Broadcast requirements.

(a) In the broadcast of the notice or material under this chapter, no reference by name to any person who is a candidate for elective public office at the time of the broadcast shall be made.

(b) Each station that broadcasts any notice or material under this chapter shall retain at its office a copy or transcription of the text of the notice or material as broadcast for a period of 6 months after the broadcast. The copy or transcript shall be available for public inspection at reasonable times.

(6 Del. C. 1953, § 3803; 56 Del. Laws, c. 431.)

§ 3804 Affidavit.

Proof of publication of the notice or other material under this chapter shall be by affidavit of the owner, manager, assistant manager or program director of the station, in substantially the following form:

AFFIDAVIT OF BROADCAST

State of Delaware,

County of..... ss

I, ... being first duly being first duly sworn, depose and say that I am the owner, manager, assistant manager or program director of station ..... a radio (television) station broadcasting from ..... in the aforesaid county and state; that the notice (or other material) described as ..... was broadcast on the following days: (here set forth dates and times when the same was broadcast).

Subscribed and sworn to

before me .....Month Day , 20.....

..... Notary Public for Delaware

My commission expires: .....

(6 Del. C. 1953, § 3804; 56 Del. Laws, c. 431.)

§ 3805 Selection of stations.

All public officials performing functions under this chapter shall select stations that best assure effective publicity for the notice or material being broadcast, based on the nature of the notice or material being broadcast.

(6 Del. C. 1953, § 3805; 56 Del. Laws, c. 431.)

§ 3806 Payments.

The cost of such broadcast shall be paid out of the funds of the agency in whose behalf the broadcast is made.

(6 Del. C. 1953, § 3806; 56 Del. Laws, c. 471.)

Subtitle II
Other Laws Relating to Commerce and Trade

Chapter 39
Newspapers

§ 3901 Publication of public notices on Sunday.

Whenever, under any general or special law or charter in this State, any person is authorized to issue or publish any newspaper or newspapers on Sunday, any and every official or public notice, rule, order, proclamation, announcement or advertisement may be published in such newspaper or newspapers on Sunday with the same legal effect in all respects as if published on any secular day of the week.

(17 Del. Laws, c. 624; Code 1915, § 2630; Code 1935, § 3109; 6 Del. C. 1953, § 3901.)

Subtitle II
Other Laws Relating to Commerce and Trade

Chapter 40
Pet Warranties

§ 4001 Definitions.

As used in this chapter, the following words shall have the meaning ascribed to them:

(1) "Clinically ill" means an illness that is apparent to a licensed veterinarian based on observation, examination, or testing of the dog.

(2) "Nonelective surgical procedure" means a surgical procedure that is necessary to preserve or restore the health of an animal or to correct a condition that would interfere with the animal's ability to walk, run, jump or otherwise function in a normal manner.

(3) "Purchaser" means any person purchasing a dog from a seller, as defined by this section.

(4) "Seller" means any person, business or other entity engaging in the sale of dogs, except that this definition does not encompass the sale of dogs on the premises of and by a public shelter, pound or other entity operating as a nonprofit organization pursuant to Delaware law. Persons selling fewer than 20 dogs, or 3 litters, whichever is greater, in a single calendar year shall be exempt from the provisions of this chapter.

(72 Del. Laws, c. 293, § 1.)

§ 4002 Information provided at time of sale.

(a) Every seller shall, at the time of sale, deliver to the purchaser of each dog a written statement containing the following information:

(1) The date of the animal's birth, if known; the breeder's name and address, if known; and the date the seller received the animal, if not bred by the seller. If the seller does not know the name and address of the breeder, then the seller must provide the name and address of the person who sold or gave the animal to the seller.

(2) The breed, sex and color of the animal, and identifying marks existing at the time of sale, if any. If the animal is from a United States Department of Agriculture licensed source, the statement shall contain the individual identifying tag, tattoo or collar number for that animal. If the breed is unknown or mixed, the record shall so indicate.

(3) If the animal is being sold as registrable, the names and registration numbers of the sire and dam, and the litter number.

(4) A record of any inoculations and worming treatments administered to the animal as of the time of sale, to the extent known, including dates of administration and the type of vaccine or worming treatment.

(5) A record of any diagnosis, treatment or medication received by the animal from a licensed veterinarian while in the possession of the seller.

(72 Del. Laws, c. 293, § 1.)

§ 4003 Seller disclosure.

(a) Upon the sale of a dog by any seller, a written disclosure signed and dated by the seller and purchaser shall be provided at the time of sale, which shall include:

(1) A statement by the seller:

a. That the animal has no known disease or illness, nor any known congenital or hereditary condition that adversely affects the health of the animal at the time of sale or is likely to adversely affect the health of such animal in the future; or

b. Of any known disease, illness or congenital or hereditary condition that adversely affects the health of the animal at the time of sale or is likely to adversely affect the health of the animal in the future.

(b) If the animal has not received a veterinary examination prior to sale, this fact shall be disclosed to the purchaser in writing.

(72 Del. Laws, c. 293, § 1.)

§ 4004 Record keeping.

A seller shall maintain the written record on the health, status and disposition of each dog sold by the seller for a period of not less than 2 years following such sale. The record shall also contain all of the information required to be disclosed pursuant to §§ 4002 and 4003 of this title. Those records shall be available to animal welfare officers and law-enforcement officers for inspection and copying during normal business hours.

(72 Del. Laws, c. 293, § 1; 80 Del. Laws, c. 248, § 2.)

§ 4005 Purchaser remedies.

(a) A purchaser is entitled to a remedy from a seller pursuant to this section if after the purchase of a dog from such seller, 1 of the following subdivisions becomes applicable.

(1) Within 20 days after purchase of the animal, a licensed veterinarian states in writing that the animal suffers or has died from an illness, disease or other defect adversely affecting the animal's health that existed in the animal on or before delivery to the purchaser. Intestinal or external parasites shall not be considered to adversely affect an animal's health unless their presence makes the animal clinically ill.

(2) Within 2 years after purchase of the animal, a licensed veterinarian states in writing that the animal possesses or has died from a congenital or hereditary condition adversely affecting the health of the animal or that requires hospitalization or nonelective surgical procedures.

(b) A purchaser entitled to a remedy pursuant to this section may elect only 1 of the following remedies:

(1) Return the animal to the seller for a full refund of the purchase price and reimbursement for reasonable veterinary fees for diagnosis and treatment in an amount not to exceed the original purchase price of the animal.

(2) Exchange the animal for another one of purchaser's choice having comparable value, providing such replacement animal is available, and receive reimbursement for reasonable veterinary fees for diagnosis and treatment in an amount not to exceed the original purchase price of the animal; or

(3) Retain the animal and receive reimbursement for reasonable veterinary fees for diagnosis and treatment in an amount not to exceed the original purchase price of the animal.

(c) For purposes of this section, the veterinary fees shall be deemed reasonable if the services rendered are appropriate for the diagnosis and treatment of the illness or congenital or hereditary condition made by the veterinarian and the cost of such services is comparable to that charged for similar services by other licensed veterinarians in proximity to the treating veterinarian. A veterinary fee shall be presumed reasonable in the absence of evidence to the contrary.

(d) Refunds and payment of reimbursable expenses pursuant to this section shall be made by the seller to the purchaser not later than 10 business days following receipt of the veterinarian's statement required by § 4006 of this title, except in cases in which the entitlement to a remedy is contested pursuant to § 4008 of this title.

(72 Del. Laws, c. 293, § 1.)

§ 4006 Purchaser's obligations.

To obtain remedies under § 4005 of this title, the purchaser shall comply with all of the following requirements:

(1) Notify the seller as soon as practicable, but in no case more than 10 days after the diagnosis by a licensed veterinarian of a medical or health problem, including a congenital or hereditary condition, for which a remedy is requested. Such notice shall include the name and telephone number of the veterinarian providing the diagnosis.

(2) In the case of illness or disease, provide a written statement from a licensed veterinarian within 10 days of diagnosis stating that the animal is clinically ill, suffers from a congenital or hereditary condition, or has symptoms of a contagious infectious disease that existed on or before delivery to the purchaser and that adversely affects the health of the animal. At the request of the seller, the purchaser shall also take the animal for an examination by a licensed veterinarian of the seller's choice. The cost of such examination shall be paid by the seller. In the case of death, the seller may have his or her veterinarian perform a necropsy, and all other provisions of this section shall apply.

(3) The veterinarian's statement required under this section shall include all of the following:

a. The purchaser's name and address.

b. The date or dates on which the animal was examined.

c. The breed and age of the animal, if known.

d. That the veterinarian examined the animal.

e. That the animal has or had an illness or condition subject to a remedy under § 4005 of this title.

f. The precise findings of the examination or necropsy, including laboratory results or copies of laboratory reports.

(72 Del. Laws, c. 293, § 1; 70 Del. Laws, c. 186, § 1.)

§ 4007 Limitations.

(a) Notwithstanding any other provisions of this chapter, no refund, replacement or reimbursement of veterinary fees shall be made under any of the following conditions:

(1) The illness or death resulted from maltreatment or neglect or from an injury sustained or an illness contracted subsequent to the delivery of the animal to the purchaser.

(2) The purchaser fails to carry out the recommended treatment prescribed by the examining veterinarian who made the initial diagnosis. However, this paragraph shall not apply if the cost for such treatment, together with the veterinarian's fee for diagnosis, would exceed the purchase price of the animal.

(3) The illness, disease or condition was disclosed at the time of sale pursuant to § 4003 of this title.

(4) The purchaser fails to return to the seller all documents previously provided to the purchaser for the purpose of registering the animal.

(b) If a refund for reasonable veterinary expenses is being requested, the veterinary statement shall be accompanied by an itemized bill of fees appropriate for the diagnosis and treatment of the illness or congenital or hereditary condition which is the subject of the remedy requested pursuant to this chapter.

(72 Del. Laws, c. 293, § 1.)

§ 4008 Contested cases.

(a) In the event that a seller disputes a purchaser's entitlement to a remedy under this chapter, the seller may, except in the case of the animal's death, have the dog examined by a licensed veterinarian designated by the seller. The cost of such examination shall be borne by the seller.

(b) If, following examination of the animal by the seller's chosen veterinarian, the purchaser and the seller are unable to reach an agreement within 10 business days, the purchaser may initiate an action in a court of competent jurisdiction to resolve the dispute, or the parties may submit to binding arbitration if mutually agreed upon by the parties in writing. Any court having jurisdiction in a damages or trespass action for the amount in controversy shall have jurisdiction under this chapter.

(c) The purchaser in any such legal action shall have the right to collect reasonable attorney's fees and court costs if the opposing party acted in bad faith in seeking or denying the requested remedy.

(72 Del. Laws, c. 293, § 1.)

§ 4009 Notice.

(a) Every seller shall post in a conspicuous location a notice stating that purchasers of animals have specific rights under law and that a written statement of such rights is available upon request. Such notice shall be in 100-point type and shall read as follows:

"Purchasers of dogs from this seller are entitled to specific rights under the law. Purchasers must be provided a written copy of such rights at the time of sale. Prospective purchasers may receive a copy of such rights from the seller upon request."

(b) Every seller shall, at the time of sale or upon the request of a prospective purchaser, provide a written notice of rights under this chapter. Such notice shall be signed by the purchaser and seller at the time of sale acknowledging receipt.

(c) Every seller of an animal sold with the representation that the animal is registered or registrable with a registry shall, in addition to the above notices, provide purchaser a written notice, signed by purchaser and seller at time of sale, which shall read as follows:

"A pedigree or a registration does not assure proper breeding condition, health, quality or claims to lineage."

(72 Del. Laws, c. 293, § 1.)

§ 4010 Additional legal remedies.

(a) Nothing in this chapter shall limit the rights or remedies that are otherwise available to a consumer under any other law, nor shall this chapter in any way limit the seller and the purchaser from agreeing between themselves upon additional terms and conditions that are not inconsistent with this chapter. No waiver of rights under this chapter shall be effective.

(b) Nothing in this chapter shall limit prosecution for violation of any criminal statute or of Chapter 25 of this title or of any other law.

(c) Nothing in this chapter shall preclude the imposition of punitive damages otherwise available at law.

(72 Del. Laws, c. 293, § 1.)

§ 4011 Misrepresentation as to registration or breed; remedies.

(a) A seller shall not state, promise or represent to the purchaser, directly or indirectly, that an animal is registered or capable of being registered with an animal registering organization unless the seller provides the purchaser with the documents necessary for that registration with 120 days following the date of sale of such animal.

(b) In the event that a seller fails to provide documents necessary for registration within 120 days following the date of sale, the purchaser shall, upon written notice to the seller, be entitled to retain the animal and receive a partial refund of 75 percent of the purchase price or return the animal along with all documentation previously provided the purchaser for a full refund. Remedies under this section shall also be available where there was a material misrepresentation in connection with the sale as to the breed of the animal.

(72 Del. Laws, c. 293, § 1.)

Subtitle II
Other Laws Relating to Commerce and Trade

Chapter 41
Dry Cleaners and Launderers

§ 4101 Disposal of unclaimed garments.

Any garment left with a retail dry cleaner or retail launderer for dry cleaning or laundering which is not redeemed within 1 year may be disposed of by the dry cleaner or launderer without any liability or responsibility for the garment or any proceeds realized therefrom; provided, however, that this section shall apply only where advice to that effect is clearly printed in clear emphasized and differentiated type on the slip, ticket or check presented to the owner of the garment at the time it is left for dry cleaning or laundering.

(6 Del. C. 1953, § 4101; 50 Del. Laws, c. 330, § 1.)

Subtitle II
Other Laws Relating to Commerce and Trade
Chapter 42
Health Spa Regulation

§ 4201 Statement of purpose.

The purpose of this chapter is to safeguard the public interest against fraud, deceit and financial hardship, and to foster and encourage competition, fair dealing and prosperity in the field of health spa services by prohibiting false and misleading advertising and dishonest, deceptive and unscrupulous practices by which the public has been injured in connection with contracts for health spa services. This chapter shall be liberally construed and applied to promote its underlying purposes and policies.

(66 Del. Laws, c. 395, § 1.)

§ 4202 Definitions.

As used in this chapter:

(1) "Business day" means any day except a Sunday or legal holiday.

(2) "Buyer" means a natural person who enters into a health spa contract.

(3) "Contract price" means the sum of the initiation fee, if any, and all fees except interest required by the health spa contract.

(4) "Director" means the Director of the Division of Consumer Protection, or a member of the Director's staff to whom the Director may delegate duties under this chapter.

(5) "Health spa" includes any person, firm, corporation, organization, club or association engaged in the sale of memberships in a program of physical exercise, physical fitness, weight control or figure reduction, which offers the use of 1 or more of the following: a whirlpool, weight lifting room, steam room, exercising room or exercising or weight loss device. The term "health spa" shall not include the following:

a. Bona fide nonprofit organizations, including, but not limited to, the Young Men's Christian Association, Young Women's Christian Association or similar organizations whose functions as health spas are only incidental to their overall functions and purposes;

b. Any private club owned and operated by its members;

c. Any organization primarily operated for the purpose of teaching a particular form of self-defense such as judo or karate;

d. Any facility owned or operated by the United States;

e. Any facility owned or operated by the State or any of its political subdivisions; and

f. Any nonprofit public or private school, college or university.

(6) "Health spa contract" means a written agreement whereby the buyer of health spa services purchases or becomes obligated to purchase health spa services to be rendered over a period longer than 3 months, and the seller of health spa services receives payment to cover a period more than 3 months.

(7) "Health spa services" means and includes services, privileges or rights offered for sale or provided by a health spa.

(8) "Initiation fee" means a nonrecurring fee charged at or near the beginning of a health spa membership, and includes all fees or charges not a part of the monthly fee.

(9) "Pre-opening contract" means a health spa contract for services or the use of facilities made prior to the day on which the service or facilities of the health spa are fully open and available for regular use by the members.

(66 Del. Laws, c. 395, § 1; 69 Del. Laws, c. 291, § 98(c); 70 Del. Laws, c. 186, § 1.)

§ 4203 Registration.

(a) It shall be unlawful for any health spa to offer, advertise, or execute or cause to be executed by the buyer any health spa contract in this State unless the health spa at the time of the offer, advertisement, sale or execution of a health spa contract has been properly registered with the Director.

(b) (1) Prior to advertising or selling pre-opening contracts, every health spa shall register with the Director and shall notify the Director of the proposed location of the health spa for which pre-opening contracts will be solicited;

(2) The registration shall include the address, ownership, directors, corporate officers and parent corporation, if any, date of first sales and date of first opening of the health spa;

(3) The registration shall be renewed annually; and

(4) Each separate location where health spa services are offered shall be considered a separate health spa and shall file a separate registration even though the separate locations are owned or operated by the same owner, unless the spa offers all members fully interchangeable, comparable services at a separate location within a 15-mile radius.

(c) A bond or letter of credit in the amount of $50,000 shall be posted by each health spa prior to advertising or selling pre-opening contracts. The bond with corporate surety from a company authorized to transact business in the State or the letter of credit from a bank

insured by the Federal Deposit Insurance Corporation shall be filed and maintained with the Director. After a health spa has opened its facilities and been in operation for 90 days, the health spa may make application to the Director to cancel or terminate the bond or letter of credit. Unless the health spa has been cited for a violation of this chapter pursuant to the authority granted to the Attorney General or the Director by Chapter 25 of Title 29 or to the Attorney General by § 4220 of this title, the Director shall give consent to terminate the bond or letter of credit within 30 days after receiving the health spa's application.

(d) Upon its application to terminate the bond or letter of credit, the health spa shall pay all fees in accordance with the schedule set forth by § 4204 of this title.

(e) The bond or letter of credit required by this section shall be in favor of the State for the benefit of:

(1) Any buyer injured by having paid money for a health spa contract in a facility which fails to open within 9 months after the date upon which the buyer and the health spa entered into a contract or which substantially fails to provide the services described in the health spa contract;

(2) Any buyer injured as a result of a violation of this chapter.

(66 Del. Laws, c. 395, § 1; 69 Del. Laws, c. 291, § 98(a); 70 Del. Laws, c. 186, § 1; 77 Del. Laws, c. 282, § 10.)

§ 4204 Health Spa Guaranty Fund.

(a) The Director of the Division of Consumer Protection shall establish and maintain the Health Spa Guaranty Fund in accordance with the provisions of this section.

(b) (1) Upon registering with the Director pursuant to § 4203 of this title and upon renewing its registration annually, each health spa shall pay to the State a fee in the amount indicated below:

Number of unexpired contracts exceeding 3 months	Amount of annual fees
199 or fewer	$1,000
200 to 499	$2,000
500 to 999	$4,000
1000 or more	$8,000

(2) The number of unexpired contracts exceeding 3 months shall be calculated separately for each location where health spa services are offered, unless the spa offers all members fully interchangeable, comparable services at a separate location within a 15-mile radius.

(3) The amount of the fee shall be reviewed annually by the Director, and the health spa shall provide such information as the Director may request in order to ascertain the number of unexpired contracts exceeding 3 months.

(c) Payments received under subsection (b) of this section shall be credited by the State Treasurer to the Health Spa Guaranty Fund and money in the Fund may be invested or reinvested in the same manner as funds of the State Employees' Retirement System, and the interest arising from such investments shall be credited to the Guaranty Fund.

(d) Any buyer having a claim against a health spa may apply to the Director for payment of such claim from the Guaranty Fund, if the claim arises from a failure of the health spa to:

(1) Comply with its contract obligations;

(2) Comply with any provision of this chapter; or

(3) Remain open for the duration of its contracts or provide alternative facilities within 15 miles of the location designated in the health spa contract, if the health spa goes out of business or relocates.

(e) The Director shall provide forms for applications by buyers for payment from the Guaranty Fund. The application shall include the name and address of the health spa, the beginning and ending date of the contract, the price of the contract, the date of the closing of the health spa, the amount and the basis of the claim and a copy of the contract. No application for a payment from the Guaranty Fund shall be accepted by the Director more than 6 months after the date of the closing of the location of the health spa where the buyer entered into the contract.

(f) The Director shall proceed upon such application and if necessary hold a hearing to decide the merits of an application. The Director shall notify the health spa that a claim has been filed by a buyer and the health spa may request a hearing on the merits of the claim. The Director shall hold a hearing if one is requested by the health spa. The decision of the Director shall be final with respect to the application. The Director may hear applications of all buyers submitting claims against a single health spa in 1 proceeding.

(g) The Director shall issue an order requiring payment from the Guaranty Fund of any sum found to be payable upon such application. The total compensation payable from the Guaranty Fund on the closing of any 1 health spa location shall not exceed $100,000.

(h) If the Director pays any amount as a result of a claim against a health spa pursuant to an order under subsection (g) of this section, the health spa's registration shall be suspended and it shall not be eligible to register until it has repaid such amount in full, plus interest at a rate to be determined by the Director.

(i) If the Director pays any amount as a result of a claim against a health spa pursuant to an order under subsection (g) of this section, the Director shall determine if the health spa is possessed of real or personal property or other assets, liable to be sold or applied in satisfaction of the claim on such Fund. If the Director discovers any such assets, the Director may request that the Attorney General take any action necessary for the realization thereof for the reimbursement of the Guaranty Fund.

(j) If the money deposited in the Guaranty Fund is insufficient to satisfy any duly authorized claim or portion thereof, the Director shall, when sufficient money has been deposited in the Fund, satisfy such unpaid claims or portions thereof, in the order that such claims or portions thereof were originally filed.

(k) When the Director has caused any sum to be paid from the Guaranty Fund to a buyer who has entered into a health spa contract, the Director shall be subrogated to all of the rights of the buyer up to the amount paid, and the buyer shall assign all of personal right, title and interest in the claim up to such amount to the Director, and any amount and interest recovered by the Director on the claim shall be deposited to the Guaranty Fund, except as provided in subsection (c) of this section.

(l) If on December 31 of any year the balance of money in the Health Spa Guaranty Fund exceeds $250,000, the Director shall waive fee payments to the Fund for the following year for each health spa which has registered and paid fees for 3 or more consecutive years. If at the end of any fiscal year the balance of money in the Health Spa Guaranty Fund exceeds $350,000, the excess shall be withdrawn and deposited into the General Fund.

(66 Del. Laws, c. 395, § 1; 69 Del. Laws, c. 291, § 98(c); 70 Del. Laws, c. 186, § 1.)

§ 4205 Right of cancellation.

Every health spa contract for the sale of future health spa services which are paid for in advance or for which the buyer agrees to pay in future installments shall be in writing and shall contain the following contractual provisions:

(1) A provision for the penalty-free cancellation of the contract within 3 business days of its making and a provision for a refund following such cancellation of all moneys paid under the contract upon written notice by the buyer.

(2) A provision for the cancellation of the contract if the health spa relocates or goes out of business and fails to provide alternative facilities within 15 miles of the location designated in the health spa contract, obligating the health spa to refund to the buyer funds paid or accepted in payment of the contract in an amount computed by dividing the contract price by the number of weeks in the contract term and multiplying the result by the number of weeks remaining in the contract term.

(3) A provision that to cancel a contract in accordance with paragraph (2) of this section, the buyer shall notify the health spa of cancellation in writing, by certified mail, return receipt requested, to the address specified in the health spa contract; that all moneys to be refunded upon cancellation of the health spa contract shall be paid within 30 days of receipt of the notice of cancellation; and that if the customer has executed any credit or lien agreement with the health spa to pay for all or part of health spa services, any such negotiable instrument executed by the buyer shall also be returned within 30 days after such cancellation.

(66 Del. Laws, c. 395, § 1.)

§ 4206 Notice to buyer.

A copy of the signed health spa contract shall be delivered to the buyer at the time the contract is executed. All health spa contracts must be in writing, be signed by the buyer, must designate the date on which the buyer actually signed the contract, must describe the services to be provided to the buyer and shall contain the following written notice in at least 10-point boldface type:

"YOU, THE BUYER, MAY CANCEL THIS CONTRACT AT ANY TIME PRIOR TO MIDNIGHT OF THE 3RD BUSINESS DAY AFTER THE DATE OF THIS CONTRACT.

IF YOU WISH TO CANCEL THIS CONTRACT, YOU MAY DO SO WITHOUT ANY PENALTY OR OBLIGATION. TO CANCEL THIS CONTRACT MAIL BY CERTIFIED OR REGISTERED MAIL OR DELIVER A SIGNED AND DATED COPY OF THIS CONTRACT OR ANY OTHER WRITTEN NOTICE

TO ..... (Name of Health Spa) AT ..... (Address of Health Spa)

NOT LATER THAN MIDNIGHT OF ..... (Date)

YOU MAY ALSO CANCEL THIS CONTRACT IF THIS SPA MOVES OR GOES OUT OF BUSINESS AND FAILS TO PROVIDE EQUAL FACILITIES WITHIN 15 MILES OF THE LOCATION DESIGNATED IN THIS CONTRACT. IF YOU CANCEL, THE HEALTH SPA MAY RETAIN OR COLLECT A PORTION OF THE CONTRACT PRICE EQUAL TO THE PROPORTIONATE VALUE OF THE SERVICES OR USE OF FACILITIES YOU HAVE ALREADY RECEIVED."

(66 Del. Laws, c. 395, § 1.)

§ 4207 Duration of contract.

No health spa contract shall have a duration for a period longer than 36 months. However, the computation of the maximum duration permissible shall exclude any period of time (not to exceed 6 months) offered by a health spa as a bonus incentive at a price which, by comparison with comparable contracts offered by the same health spa, clearly demonstrates that the bonus incentive is not being paid for by the purchaser.

(66 Del. Laws, c. 395, § 1.)

§ 4208 Renewals.

If the original health spa contract complies with the chapter, or was entered into prior to January 1, 1989, the exercise of options to renew health spa contracts at a prorated price less than the original contract price may be accomplished by a separate written agreement devised by the health spa without regard to the provisions of §§ 4205 and 4206 of this title; provided however, that all regulatory provisions of this chapter including, without limitation, refund and fee provisions shall continue to apply. Notwithstanding the foregoing, any member of a health spa may demand to execute a renewal contract in compliance with the provisions of this chapter.

(66 Del. Laws, c. 395, § 1.)

§ 4209 Initiation fees limited.

No health spa shall charge any initiation fee in connection with a health spa contract of less than 12 months' duration. For all health spa contracts of 3 months or less duration, all rights of renewal which extend the membership beyond the first 3 months shall be offered and sold at a contract price per month for each renewal period not greater than the contract price per month for the initial membership period.

(66 Del. Laws, c. 395, § 1.)

§ 4210 Provisions not exclusive.

The provisions of this chapter are not exclusive and do not relieve the parties or the contracts subject thereto from compliance with all other applicable provisions of law.

(66 Del. Laws, c. 395, § 1.)

§ 4211 Fraud rendering contract void.

Any health spa contract entered into by the buyer upon any false or misleading information, representation, notice or advertisement of the health spa or the health spa's agents shall be void and unenforceable.

(66 Del. Laws, c. 395, § 1.)

§ 4212 Noncomplying contract voidable.

Any health spa contract which does not comply with the applicable provisions of this chapter shall be voidable at the option of the buyer.

(66 Del. Laws, c. 395, § 1.)

§ 4213 Waiver of provisions void and unenforceable.

Any waiver by the buyer of the provisions of this chapter shall be deemed contrary to public policy and shall be void and unenforceable.

(66 Del. Laws, c. 395, § 1.)

§ 4214 Notice of preservation of buyer's rights.

All health spa contracts and any promissory note executed by the buyer in connection therewith shall contain the following provision on the face thereof in at least 10-point, boldface type:

NOTICE ANY HOLDER OF THIS CONTRACT OR NOTE IS SUBJECT TO ALL CLAIMS AND DEFENSES WHICH THE DEBTOR COULD ASSERT AGAINST THE SELLER OF GOODS OR SERVICES OBTAINED WITH THE PROCEEDS HEREOF. RECOVERY HEREUNDER BY THE DEBTOR SHALL NOT EXCEED AMOUNTS PAID BY THE DEBTOR HEREUNDER.

(66 Del. Laws, c. 395, § 1.)

§ 4215 Prohibition against assignment of health spa contract cutting off buyer's right of action or defense against seller; conditions.

Whether or not the health spa has complied with the notice requirements of § 4206 of this title, any right of action or defense arising out of a health spa contract which the buyer has against the health spa, and which would be cut off by assignment, shall not be cut off by assignment of the contract to any third-party holder, whether or not the holder acquires the contract in good faith and for value.

(66 Del. Laws, c. 395, § 1.)

§ 4216 Change in ownership of health spa.

For purposes of this chapter, a health spa shall be considered a new health spa and subject to the requirements of §§ 4203 and 4204 of this title at the time the health spa changes ownership.

(66 Del. Laws, c. 395, § 1.)

§ 4217 Deceptive acts prohibited.

It is hereby declared to be an unfair and deceptive trade practice and unlawful for a health spa to:

(1) Misrepresent directly or indirectly in its advertising, promotional materials, or in any manner the size, location, facilities or equipment of its studio, or place of business or the number or qualifications of its personnel;

(2) Make any representation calculated to mislead or deceive buyers as to the health spa's affiliation with other health-related industries; or

(3) Misrepresent the location or locations at which its services will be offered.

(66 Del. Laws, c. 395, § 1.)

§ 4218 Production of records.

Every health spa, upon the written request of the Director, shall make available to the Director its pre-opening bank account records and all membership contracts for inspection and copying, to enable the Director reasonably to determine compliance with this chapter.

(66 Del. Laws, c. 395, § 1.)

§ 4219 Private right of action.

(a) Any buyer damaged by a violation of this chapter may bring an action for recovery of damages. If damages are awarded to the aggrieved party, such damages shall be triple the amount of the actual damages proved plus reasonable attorney fees.

(b) Nothing in this chapter shall be construed so as to nullify or impair any right or rights which a buyer may have at common law, by statute or otherwise.

(66 Del. Laws, c. 395, § 1.)

§ 4220 Violations.

In addition to the remedies hereinbefore provided, the Attorney General may bring an action to restrain violations of this chapter in the Court of Chancery and for such other relief as may be appropriate. The provisions of this chapter are not exclusive and do not relieve the health spa or its assignees or the contracts subject to this chapter from compliance with all other applicable provisions of law.

(66 Del. Laws, c. 395, § 1.)

§ 4221 Limitations.

Contracts executed prior to January 1, 1986, and whose original terms are still enforceable as of January 1, 1989, are excluded from all cancellation, refund and fee provisions of this chapter.

(66 Del. Laws, c. 395, § 1.)

§ 4222 Enforcement.

A violation of this chapter shall be within the scope of the enforcement duties and powers of the Division of Consumer Protection, as described in Chapter 25 of Title 29.

(66 Del. Laws, c. 395, § 1; 69 Del. Laws, c. 291, § 98(a), (c); 77 Del. Laws, c. 282, § 11.)

Subtitle II
Other Laws Relating to Commerce and Trade
Chapter 43
Retail Installment Sales
Subchapter I
General Provisions

§ 4301 Definitions.

Unless the context or subject matter otherwise requires, the definitions given in this section govern the construction of this chapter.

(1) "Cash sale price" means the cash sale price stated in a retail installment contract for which the seller would sell or furnish to the buyer and the buyer would buy or obtain from the seller the goods or services which are the subject matter of a retail installment contract if the sale were a sale for cash instead of a retail installment sale. The cash sale price may include any taxes and cash sale prices for accessories and services, if any, included in a retail installment sale.

(2) "Financing agency" means a person engaged in this State in whole or in part in the business of purchasing retail installment contracts, or installment accounts from 1 or more retail sellers. The term includes, but is not limited, to a bank, trust company, private banker, or investment company, if so engaged.

(3) "Goods" mean tangible chattels bought for use primarily for personal, family or household purposes, as distinguished from commercial or agricultural purposes, including certificates or coupons exchangeable for such goods, and including goods which, at the time of the sale or subsequently are to be affixed to real property as to become a part of such real property whether or not severable therefrom, but does not include any motor vehicle which for the purposes of this chapter shall mean any device propelled or drawn by any power other than muscular power, in, upon, or by which any person or property is, or may be transported or drawn upon a highway.

(4) "Holder" means the retail seller who acquires a retail installment contract or installment account executed, incurred or entered into by a retail buyer, or if the contract or installment account is purchased by a financing agency or other assignee, the financing agency or other assignee. The term does not include the pledgee of or the holder of a security interest in an aggregate number of such contracts or installment accounts to secure a bona fide loan thereon, unless the pledgee shall have perfected the pledgee's rights after default by his or her pledgor.

(5) "Official fees" means the fees required by law and actually to be paid to the appropriate public officer to perfect a lien or other security interest, on or in goods, retained or taken by a seller under a retail installment contract or installment account.

(6) "Person" means an individual, partnership, corporation, association or other group, however organized.

(7) "Retail buyer" or "buyer" means a person who buys goods or obtains services from a retail seller in a retail installment sale and not principally for the purpose of resale.

(8) "Retail installment account" or "installment account" or "revolving account" means an account established by an agreement entered into in this State, pursuant to which the buyer promises to pay, in installments, to a retail seller, the outstanding balance incurred in retail installment sales, whether or not a security interest in the goods sold is retained by the seller, and which provides for a service charge which is expressed as a percent of the periodic balances to accrue thereafter providing such charge is not capitalized or stated as a dollar amount in such agreement and includes those accounts established with banks or others operating a credit card system pursuant to which a cardholder purchases goods or services from participating merchants and others.

(9) "Retail installment contract" or "contract" means any contract for a retail installment sale between a buyer and seller, entered into or performed in this State, which provides for repayment in installments, whether or not such contract contains a title retention provision, and in which a time price differential is computed upon and added to the unpaid balance at the time of sale or where no time price differential is added but the goods or services are available at a lesser price if paid by cash. When taken or given in connection with a retail installment sale, the term includes but is not limited to a chattel mortgage, a conditional sales contract and a contract for the bailment or leasing of goods by which the bailee or lessee contracts to pay as compensation for their use a sum substantially equivalent to or in excess of their value and by which it is agreed that the bailee or lessee is bound to become, or has the option of becoming, the owner of the goods upon full compliance with the terms of the contract.

(10) "Retail installment sale" or "sale" means the sale of goods or the furnishing of services by a retail seller to a retail buyer for a time sale price payable in installments.

(11) "Retail seller" or "seller" means a person engaged in the business of selling goods or furnishing services to retail buyers and, as used in subchapter IX of this chapter dealing with retail installment accounts, includes a bank or others operating a credit card system pursuant to which a cardholder purchases goods or services from participating merchants and others.

(12) "Services" mean work, labor and services, for other than a commercial or business use, including services furnished in connection with the improvement of real property but does not include the services for which the tariffs, rates, charges, costs or expenses, including in each instance the time sale price, is required by law to be filed with the approval by the federal government or any official department, division, commission or agency of the United States.

(13) "Time balance" means the total of the unpaid balance and the amount of the service charge, if any.

(14) "Time price differential" or "service charge" means the amount however denominated or expressed which the retail buyer contracts to pay or pays for the privilege of purchasing goods or services to be paid for by the buyer in installments; it does not include the amounts, if any, charged for insurance premiums, delinquency charges, attorney's fees, court costs, collection expenses or official fees. Wherever either of such terms is required to be used under the provisions of this chapter the other may be used interchangeably.

(15) "Time sale price" means the total of the cash sale price of the goods or services, and the amounts, if any, included for insurance, official fees and service charge.

(16) "Unpaid balance" means the cash sale price of the goods or services which are the subject matter of the retail installment sale, plus the amounts, if any, included in a retail installment sale for insurance and official fees, minus the amount of the buyer's down payment in money or goods.

(6 Del. C. 1953, § 4301; 52 Del. Laws, c. 342; 58 Del. Laws, c. 168; 64 Del. Laws, c. 209, §§ 1, 2; 70 Del. Laws, c. 186, § 1.)

§ 4302 Waiver prohibited; separability; transactions not covered.

(a) Any waiver of the buyer of this chapter shall be deemed contrary to public policy and shall be unenforceable and void.

(b) If this chapter or the application thereof to any person or circumstances is held unconstitutional, the remainder of the chapter and the application of such provision to other persons or circumstances shall not be affected thereby.

(c) Except as provided in § 4315 of this title, this chapter shall not apply to any retail installment sale which is made for a cash sale price of $75 or less, where no title, lien or other security interest is retained or taken by the seller. This section shall not apply to sales made pursuant to the provisions of §§ 4334-4343 of this title.

(6 Del. C. 1953, § 4302; 52 Del. Laws, c. 342.)

Subchapter II

Provisions of Retail Installment Contracts

§ 4303 Date; size of printed type.

A retail installment contract shall be dated and in writing; the printed portion thereof shall be in at least 8-point type.

(6 Del. C. 1953, § 4303; 52 Del. Laws, c. 342.)

§ 4304 Contract to contain entire agreement; bold type headings; notice to buyer.

Every retail installment contract shall contain:

(1) The entire agreement of the parties with respect to the cost and terms of payment for the goods and services, which terms of payment must coincide with those stated in any promissory notes or any other evidences of indebtedness between the parties relating to the transaction;

(2) Either at the top of the contract or directly above the space reserved for the signature of the buyer, the words "conditional sale contract" or "lien contract," as the case may be, shall appear in at least 10-point bold type where a security interest in the goods is retained or a lien on other goods or realty is obtained by the seller as security for the goods or services purchased. Either at the top of the contract or directly above the space reserved for the signature of the buyer, the words "retail installment contract" shall appear in at least 10-point bold type where security is not obtained by the seller for the goods or services purchased;

(3) A notice in at least 8-point bold type reading as follows:

"Notice to the buyer: (1) Do not sign this agreement before you read it or if it contains any blank space. (2) You are entitled to a completely filled-in copy of this agreement. (3) Under the law, you have the right to pay off in advance the full amount due and under certain conditions to obtain a partial refund of the service charge."

(6 Del. C. 1953, § 4304; 52 Del. Laws, c. 342.)

§ 4305 Information required to be shown in contract.

(a) Except as provided in §§ 4327-4332 of this title, a contract shall contain the following:

(1) The names of the seller and the buyer, the place of business of the seller, the residence or place of business of the buyer as specified by the buyer and a description of the goods or services sufficient to identify them. Services or multiple items of goods may be described in general terms and may be described in detail sufficient to identify them in a separate writing.

(2) The cash sale price of the goods, services and accessories which are the subject matter of the retail installment sale.

(3) The amount of the buyer's down payment, itemizing the amounts paid in money and in goods and containing a brief description of the goods, if any, traded in.

(4) The difference between paragraphs (a)(1) and (2) of this section.

(5) The amount, if any, included for insurance, specifying the coverages and the cost of each type of coverage.

(6) The amount, if any, of official fees.

(7) The unpaid balance, which is the sum of paragraphs (a)(4), (5), and (6) of this section.

(8) The amount of the service charge, if any.

(9) The time balance, which is the sum of paragraphs (a)(7) and (8) of this section, payable by the buyer to the seller, the number of installments required, the amount of each installment expressed in dollars and the due date or period thereof.

(10) The time sale price.

(b) The items need not be stated in the sequence or order set forth above; additional items may be included to explain the computations made in determining the amount to be paid by the buyer.

(6 Del. C. 1953, § 4305; 52 Del. Laws, c. 342.)

§ 4306 Blank spaces to be filled in before signing by buyer.

The seller shall not obtain the signature of the buyer to a contract when it contains blank spaces to be filled in after it has been signed.

(6 Del. C. 1953, § 4306; 52 Del. Laws, c. 342.)

§ 4307 Insurance; cost and procurance of; notice or copy of policy to be furnished to buyer.

If the cost of any insurance is included in the contract and a separate charge is made to the buyer for such insurance:

(1) The contract shall state whether the insurance is to be procured by the buyer or the seller;

(2) The amount included for the insurance shall not exceed the premiums chargeable in accordance with the rate fixed for such insurance by the insurer;

(3) If the insurance is to be procured by the seller or holder, the seller or holder shall, within 45 days after delivery of the goods or furnishing of the services under the contract, deliver, mail or cause to be mailed to the buyer, at the seller's or holder's address as specified in the contract, a notice thereof or a copy of the policy or policies of insurance or a certificate or certificates of the insurance so procured.

(6 Del. C. 1953, § 4307; 52 Del. Laws, c. 342; 70 Del. Laws, c. 186, § 1.)

§ 4308 Delinquency charges.

A contract may provide for the payment by the buyer of a delinquency charge on each installment in default for a period of not less than 10 days in an amount not in excess of 5 percent of such installment or $5.00, whichever is less, but a minimum charge of $1.00 may be made. Only 1 such delinquency charge may be collected on any such installment regardless of the period during which it remains in default. The contract may also provide for payment of any actual and reasonable costs of collection occasioned by removal of the goods from the State without written permission of the holder, or by the failure of the buyer to notify the holder of any change of residence, or by the failure of the buyer to communicate with the holder for a period of 45 days after any default in making payments due under the contract.

(6 Del. C. 1953, § 4308; 52 Del. Laws, c. 342.)

§ 4309 Copy of signed contract to be furnished to buyer; acknowledgment by buyer.

The seller shall deliver or mail to the buyer, at the address shown on the contract, a legible copy thereof completed, in accordance with the provisions of this chapter. Until the seller does so, the buyer shall be obligated to pay only the cash sale price. Any acknowledgment by the buyer of delivery of a copy of the contract shall be printed or written in a size equal to at least 10-point bold type and, if contained in the contract shall also appear directly above the space reserved for the buyer's signature. The buyer's written acknowledgement, conforming to the requirements of this section of delivery of a copy of a contract, shall be a conclusive presumption of such delivery and of compliance with this section and § 4306 of this title, in any action or proceeding by or against an assignee of the contract without knowledge to the contrary when the assignee purchases the contract.

(6 Del. C. 1953, § 4309; 52 Del. Laws, c. 342; 70 Del. Laws, c. 186, § 1.)

Subchapter III

Restrictions on Retail Installment Contracts

§ 4310 Contracts made by mail or telephone without solicitation by salesperson.

Retail installment sales negotiated and entered into by mail or telephone without personal solicitation by a salesperson or other representative of the seller, where the seller's cash and deferred payment prices and other terms are clearly set forth in a catalog or other printed solicitation of business which is generally available to the public, may be made as hereinafter provided. All the provisions of this chapter shall apply to such sales except that the seller shall not be required to deliver a copy of the contract to the buyer as provided in § 4309 of this title, and if, when the proposed retail installment sale contract is received by the seller from the buyer, there are blank spaces to be filled in, the seller may insert in the appropriate blank spaces the amounts of money and other terms which are set forth in the seller's catalog which is then in effect. In lieu of the copy of the contract provided for in § 4309 of this title, the seller shall, within 15 days from the date of shipment of goods, furnish to the buyer a written statement of the items inserted in such blank spaces.

(6 Del. C. 1953, § 4310; 52 Del. Laws, c. 342; 70 Del. Laws, c. 186, § 1.)

§ 4311 Provisions prohibited in contracts.

No contract or obligation shall contain any provision by which:

(1) The buyer agrees not to assert against a seller a claim or defense arising out of the sale or agrees not to assert against an assignee such a claim or defense other than as provided in § 4312 of this title;

(2) In the absence of the buyer's default in the performance of any obligations, the holder may, arbitrarily and without reasonable cause, accelerate the maturity of any part or all of the amount owing thereunder;

(3) The seller or holder of the contract or other person acting as agent is given authority to enter upon the buyer's premises unlawfully or to commit any breach of the peace in the repossession of goods;

(4) The buyer waives any right of action against the seller or holder of the contract or other person acting as agent, for any illegal act committed in the collection of payments under the contract or in the repossession of goods;

(5) The buyer executes a power of attorney appointing the seller or holder of the contract, or other person acting as agent, as the buyer's agent in the repossession of goods;

(6) The buyer relieves the seller from liability for any legal remedies which the buyer may have against the seller under the contract or any separate instrument executed in connection therewith.

(6 Del. C. 1953, § 4311; 52 Del. Laws, c. 342; 70 Del. Laws, c. 186, § 1.)

§ 4312 Assignment of contract; notice to buyer.

No right of action or defense arising out of a retail installment sale which the buyer has against the seller, and which would be cut off by assignment, shall be cut off by assignment of the contract to any third party whether or not the third party acquires the contract in good faith and for value unless the assignee given notice of the assignment to the buyer as provided in this section and within 15 days of the mailing of such notice receives no written notice of the facts giving rise to the claim or defense of the buyer, or unless the assignee acquires the contract or evidence of indebtedness relying in good faith upon a certificate of completion or certificate of satisfaction signed by the buyer. A notice of assignment shall be in writing addressed to the buyer at the address shown on the contract and shall identify the contract and state that the buyer must, within 15 days of the date of mailing of such notice, notify the assignee in writing of any facts giving rise to a claim or defense which the buyer may have. The notice of assignment shall state the name of the seller and buyer, a description of the goods and services, the time balance and the number and amounts of the installments. If a certificate of completion or satisfaction is relied upon, the following notation must appear at the top thereof in at least 10 point bold type: "Notice to Buyer — Do Not Sign this certificate until all services have been satisfactorily performed and materials supplied or goods received and found satisfactory."

(6 Del. C. 1953, § 4312; 52 Del. Laws, c. 342; 70 Del. Laws, c. 186, § 1.)

§ 4313 Prohibition of lien on goods fully paid for.

No contract other than 1 for services shall provide for a lien on any goods theretofore fully paid for or which have not been sold by the seller.

(6 Del. C. 1953, § 4313; 52 Del. Laws, c. 342.)

§ 4314 Prohibited provisions in contract as void.

Any provision in a contract which is prohibited by this chapter shall be void but shall not otherwise affect the validity of the contract.

(6 Del. C. 1953, § 4314; 52 Del. Laws, c. 342.)

Subchapter IV

Service Charge Limitations

§ 4315 Service charges authorized; calculation.

A retail seller or the holder of a retail installment contract may charge and collect a service charge in respect of a retail installment sale and may calculate such service charge in the manner and at the rate or rates specified in the contract governing the sale.

(6 Del. C. 1953, § 4315; 52 Del. Laws, c. 342; 62 Del. Laws, c. 228, §§ 8, 9; 63 Del. Laws, c. 2, § 16.)

§ 4316 Period of installment payments.

Contracts may be payable in successive monthly, semimonthly or weekly installments.

(6 Del. C. 1953, § 4316; 52 Del. Laws, c. 342.)

§ 4317 Charges included in contract service charge; additional charges prohibited.

The service charge shall be inclusive of all charges incident to investigating and making the contract and for the extension of the credit provided for in the contract, and no fee, expense or other charge whatsoever shall be taken, received, reserved or contracted for except as otherwise provided in this chapter.

(6 Del. C. 1953, § 4318; 52 Del. Laws, c. 342; 63 Del. Laws, c. 2, § 16.)

§ 4318 Charges included in contract service charge; additional charges prohibited.

Transferred.

§ 4319 Splitting or dividing of sales transactions prohibited.

Repealed by 63 Del. Laws, c. 2, § 16, eff. June 1, 1981.

Subchapter V

Payments

§ 4320 Payment to last known holder as discharge of buyer in absence of notice of assignment.

Unless the buyer has notice of actual or intended assignment of a contract or installment account, payment thereunder made by the buyer to the last known holder of such contract or installment account, shall to the extent of the payment, discharge the buyer's obligation.

(6 Del. C. 1953, § 4320; 52 Del. Laws, c. 342.)

§ 4321 Periodic statements of account.

At any time after its execution, but not later than 1 year after the last payment made thereunder, the holder of a contract shall, upon written request of the buyer made in good faith, promptly give or forward to the buyer a detailed written statement which will state with accuracy the total amount, if any, unpaid thereunder. Such a statement shall be supplied by the holder once each year without charge; if any additional statement is requested by the buyer, the holder shall supply such statement to the buyer at a charge not exceeding $1.00 for each additional statement supplied to the buyer. The provisions of this section shall not apply to those transactions wherein, instead of periodic statements of account, the buyer is provided with a passbook, payment book or coupon book in which all payment, credits, charges and the unpaid balance are indicated.

(6 Del. C. 1953, § 4321; 52 Del. Laws, c. 342.)

§ 4322 Prepayment; refund of service charge.

(a) A buyer may prepay the debt due under a retail installment contract in full at any time.

(b) If the service charge imposed pursuant to § 4315 of this title in respect of a retail installment sale has been precomputed and taken in advance, then, in the event of prepayment of the entire indebtedness, the holder shall refund to such buyer the unearned portion of the precomputed service charge. This refund shall be in an amount not less than the amount which would be refunded if the unearned precomputed service charge were calculated in accordance with the actuarial method, except that the buyer shall not be entitled to a refund which is less than $1.00. The unearned portion of the precomputed service charge is, at the option of the holder, either:

(1) That portion of the precomputed service charge which is allocable to all originally scheduled or, if deferred, all deferred payment periods, or portions thereof, ending subsequent to the date of prepayment. The unearned precomputed service charge is the total of that which would have been earned for each such period, or portion thereof, had the debt due under the retail installment contract not been precomputed, by applying to unpaid balances, according to the actuarial method, an annual percentage rate based on the precomputed service charge, assuming that all payments were made as scheduled, or as deferred, if deferred. The holder, at its option, may round this annual percentage rate to the nearest $^{1}/_{4}$ of 1 percent; or

(2) The total precomputed service charge less the earned precomputed service charge. The earned precomputed service charge shall be determined by applying an annual percentage rate based on the total precomputed service charge, under the actuarial method, to the unpaid balances for the actual time those balances were unpaid up to the date of prepayment.

(c) As used in subsection (b) of this section:

(1) "Actuarial method" means the method of allocating payments made on a debt due under a retail installment contract between the outstanding balance of the indebtedness and the service charge pursuant to which a payment is applied first to the accumulated service charge and any remainder is subtracted from the outstanding balance of the indebtedness.

(2) "Payment period" means the time period within which periodic installment payments of the indebtedness are due under the terms of a retail installment contract.

(d) If a charge was made to a buyer for premiums for insuring such buyer in respect of a retail installment contract, then, in the event of prepayment, the holder shall refund to such buyer the excess of the charge to such buyer therefor over the premiums paid or payable to the holder, if such premiums were paid or payable by the holder periodically, or the refund for such insurance premium received or receivable by the holder if such premium was paid or payable in a lump sum by the holder, provided that no such refund shall be required if it amounts to less than $1.00.

(e) In connection with any prepayment of a debt due under a retail installment contract, a holder may not impose any prepayment charge.

(6 Del. C. 1953, § 4322; 52 Del. Laws, c. 342; 63 Del. Laws, c. 2, § 17.)

§ 4323 Acknowledgment of payment in full; release of security in goods.

After the payment of all sums for which the buyer is obligated under a contract and upon demand made by the buyer, the holder shall deliver, or mail to the buyer's last known address, such 1 or more good and sufficient instruments as may be necessary to acknowledge payment in full and to release all security in the goods under such contract.

(6 Del. C. 1953, § 4323; 52 Del. Laws, c. 342; 70 Del. Laws, c. 186, § 1.)

Subchapter VI
Refinancing and Consolidation

§ 4324 Deferred payments; charges.

A holder may at any time or from time to time permit a buyer to defer installment payments due under the terms of a retail installment contract and may, in connection with such deferral, charge and collect deferral charges and may also require payment by such buyer of the additional cost to the holder of premiums for continuing in force, until the end of such period of deferral, any insurance coverage provided in connection with the contract.

(6 Del. C. 1953, § 4324; 52 Del. Laws, c. 342; 63 Del. Laws, c. 2, § 18.)

§ 4325 Refinancing of unpaid balance; charges; agreement for refinancing.

The holder of a retail installment contract or contracts may, upon agreement in writing with the buyer, refinance the payment of the unpaid time balance or balances of the contract or contracts by providing for a new schedule of installment payments. The holder may charge and contract for the payment of a refinance charge by the buyer and collect and receive the same, but such refinance charge:

(1) Shall be based upon the amount refinanced, plus any additional cost of insurance and of official fees incident to such refinancing, after the deduction of a refund credit in an amount equal to that to which the buyer would have been entitled under § 4322 of this title, if the buyer has prepaid in full the buyer's obligations under the contract or contracts, but in computing such refund credit there shall not be allowed the minimum earned service charge as authorized by such section, and

(2) May not exceed the rate of service charge provided under §§ 4315-4317 of this title.

Such agreement for refinancing may also provide for the payment by the buyer of the additional cost to the holder of the contract or contracts of premiums for continuing in force, until the maturity of the contract or contracts as refinanced, any insurance coverages provided for therein, subject to § 4305 of this title. The refinancing agreement shall set forth the amount of the unpaid time balance or balances to be refinanced, the amount of any refund credit, the amount to be refinanced after the deduction of the refund credit, the amount of the service charge under the refinancing agreement, any additional cost of insurance and of official fees to the buyer, the new unpaid time balance and the new schedule of installment payments. Where there is a consolidation of 2 or more contracts then §§ 4327 and 4328 of this title shall apply.

(6 Del. C. 1953, § 4325; 52 Del. Laws, c. 342; 70 Del. Laws, c. 186, § 1.)

§ 4326 Default in payment of certain installments; buyer entitled to new payment schedule.

In the event a contract provides for the payment of any installment which is more than double the amount of the average of the preceding installment, the buyer, upon default of this installment, shall be given an absolute right to obtain a new payment schedule. Unless agreed to by the buyer, the periodic payments under the new schedule shall not be substantially greater than the average of the preceding installments.

(6 Del. C. 1953, § 4326; 52 Del. Laws, c. 342.)

Subchapter VII
Add-On Sales

§ 4327 Addition of subsequent purchases to contract.

A retail installment contract which otherwise conforms to the requirements of this chapter, may contain the provision that the seller may at the seller's option add subsequent purchases made by the buyer to the contract, and that the total price of the goods or services covered by the contract shall be increased by the price of such additional goods or services, and that all service charges and installment payments may, at the seller's option, be increased proportionately, and that all terms and conditions of the contract shall apply equally to such additional goods or services. The contract may also provide that the goods purchased under the previous contract or contracts shall be security for the goods purchased under the subsequent contract but only until such time as the time sale price under the previous contract or contracts is fully paid.

(6 Del. C. 1953, § 4327; 52 Del. Laws, c. 342; 70 Del. Laws, c. 186, § 1.)

§ 4328 Allocation of payments made subsequent to add-on purchases.

When a subsequent purchase is made, the entire amount of all payments made previous thereto shall be deemed to have been applied toward the payment of the previous time sale price or time sale prices. Each payment thereafter received shall be deemed to be allocated to all of the various time sale prices in the same proportion or ratio as the original cash sale prices of the various purchases bear to one another; where the amount of each installment payment is increased in connection with the subsequent purchase, the subsequent payments (at the seller's election) may be deemed to be allocated as follows: an amount equal to the original rate, to the previous time sale price, and an amount equal to the increase, to the subsequent time sale price. However, the amount of any initial or down payment on the subsequent purchase shall be deemed to be allocated in its entirety to such purchase.

(6 Del. C. 1953, § 4328; 52 Del. Laws, c. 342.)

§ 4329 Memorandum on subsequent purchases to be furnished to buyer.

(a) When a subsequent purchase is made, the seller shall deliver to the buyer, prior to the due date of the first installment, a memorandum which shall set forth the following:

(1) The names of the seller and the buyer, the place of business of the seller, the residence or place of business of the buyer as specified by the buyer and a description of the goods and services sufficient to identify them. Services or multiple items of goods may be described in general terms and may be described in detail in a separate writing.

(2) The cash sale price of the goods, services and accessories which are the subject matter of the new retail installment sale.

(3) The amount of the buyer's down payment, itemizing the amounts paid in money and in goods and containing a brief description of the goods, if any, traded in.

(4) The difference between paragraphs (a)(2) and (a)(3) of this section.

(5) The amount, if any, included for insurance, specifying the coverages and the cost of each type of coverage.

(6) The amount, if any, of official fees.

(7) The unpaid balance, which is the sum of paragraphs (a)(4), (5) and (6) of this section.

(8) The unpaid time balance of the prior contract or contracts.

(9) The new unpaid balance, which is the sum of paragraphs (a)(7) and (8) of this section.

(10) The amount of the service charge computed in conformity with § 4315 of this title.

(11) The consolidated time balance, which is the sum of paragraphs (a)(9) and (10) of this section, payable by the buyer to the seller, the number of installments required, the amount of each installment expressed in dollars and the due date or period thereof.

(b) The items need not be stated in the sequence or order set forth above; additional items may be included to explain the computations made in determining the amounts to be paid by the buyer.

(c) This memorandum shall contain the statement that the seller is adding the subsequent purchase to the buyer's existing contract in accordance with the provisions thereof.

(6 Del. C. 1953, § 4329; 52 Del. Laws, c. 342.)

§ 4330 Obligation of buyer in absence of memorandum.

Until the seller delivers to the buyer the memorandum as provided in § 4329 of this title, the buyer shall be obligated to pay only the cash sale price of the subsequent purchase.

(6 Del. C. 1953, § 4330; 52 Del. Laws, c. 342.)

§ 4331 Service charge on consolidated time balance.

Subject to the other provisions of §§ 4315-4317 of this title, the service charge to be included in a consolidated time balance shall be determined by applying the service charge at the applicable rate specified in that article to either:

(1) The total of the unpaid balance of the subsequent contract and the unpaid balance of any previous contract included in the consolidated total determined by deducting from the then unpaid time balance thereof any then unearned service charge in an amount not less than the refund credit for anticipation in §§ 4320-4323 of this title (computed, however, without the allowance of any minimum earned service charge), for the period from the date thereof to and including the date when the final installment of such consolidated total is payable; or

(2) The principal balance of the subsequent contract for the period from the date thereof to and including the date when the final installment of such consolidated total is payable and, if the due date of the final installment of such consolidated total is later than the due date of the final installment of any previous contract included in the consolidated total, on the time balance then unpaid on such previous contract from the date when the final installment thereof was payable to the date when the final installment of such consolidated total is payable.

(6 Del. C. 1953, § 4331; 52 Del. Laws, c. 342.)

§ 4332 Minimum service charge in add-on transactions.

The minimum service charge as provided in paragraph (3) [repealed] of § 4315 of this title may be used but once in any series of add-on transactions.

(6 Del. C. 1953, § 4332; 52 Del. Laws, c. 342.)

Subchapter VIII

Terms of Purchase by Financing Agency

§ 4333 Purchase of contract by financing agency authorized; notice of assignment not required.

Notwithstanding any contrary provision of this title, a financing agency may purchase a retail installment contract or installment account from a seller on such terms and conditions and for such price as may be mutually agreed upon. No filing of notice or of the assignment,

no notice to the buyer of the assignment, and no requirement that the seller be deprived of dominion over payments upon the contract or installment account or over the goods if repossessed by the seller, shall be necessary to the validity of a written assignment of a contract or installment account as against creditors, subsequent purchasers, pledgees, mortgagees or encumbrancers of the seller, except as may otherwise be required by law.

(6 Del. C. 1953, § 4333; 52 Del. Laws, c. 342.)

Subchapter IX

Retail Installment Accounts

§ 4334 Establishment of retail installment account authorized; statement of service charges to be furnished to buyer.

A retail installment account may be established by the seller upon the request of a buyer or prospective buyer. The statement that "service charges not in excess of those permitted by law will be charged on the outstanding balances from month to month" shall be printed in type no smaller than 8 points in every application form used by the seller and shall be stated to the applicant when such installment accounts are negotiated by telephone.

(6 Del. C. 1953, § 4334; 52 Del. Laws, c. 342.)

§ 4335 Confirmation of account by seller; contents; proof of mailing.

(a) At the time a seller accepts the credit of the buyer and establishes a retail installment account for that buyer's use, the seller shall confirm this fact to the buyer in writing. Such confirmation shall contain a clear and understandable statement of the rates of service charge, without regard to the variations contained in § 4337 of this title, which will be collected from the buyer, but may contain the clause that such rates are subject to change if permitted by law. This confirmation shall also contain a legend that the buyer may at any time pay the entire balance.

(b) The confirmation shall be in type no smaller than elite typewriter characters.

(c) If no copy of the confirmation is retained by the seller, a notation in the permanent record showing that such confirmation was mailed, and the date of mailing, shall serve as prima facie evidence of such mailing.

(6 Del. C. 1953, § 4335; 52 Del. Laws, c. 342; 70 Del. Laws, c. 186, § 1.)

§ 4336 Display of service charge rates by seller.

Each retail seller, before the retail seller can benefit from the service charges permitted by this subchapter, shall display prominently in the retail seller's main place of business and in each branch thereof, a statement outlining the service charge rates which will conform to § 4337 of this title.

(6 Del. C. 1953, § 4336; 52 Del. Laws, c. 342; 70 Del. Laws, c. 186, § 1.)

§ 4337 Service charge.

Subject to the other provisions of this subchapter a retail seller or the holder of a retail installment account may charge and collect a service charge computed on the outstanding unpaid indebtedness in a buyer's retail installment account and may calculate such service charge in the manner and at such daily, weekly, monthly, annual or other periodic percentage rate or rates as the agreement governing retail installment account provides; provided, however, that if the service charge as so computed is less than $1.00 for any month, the holder may charge $1.00 as a service charge for such month. If the applicable periodic percentage rate under the agreement governing a retail installment account is other than daily, the service charge may be calculated on an amount not in excess of the average of outstanding unpaid indebtedness for the applicable billing period, determined by dividing the total of the amounts of outstanding unpaid indebtedness for each day in the applicable billing period by the number of days in the billing period. If the applicable periodic percentage rate under the agreement governing the retail installment account is monthly, a billing period shall be deemed to be a month or monthly if the last day of each billing period is on the same day of each month or does not vary by more than 4 days therefrom.

(6 Del. C. 1953, § 4337; 52 Del. Laws, c. 342; 62 Del. Laws, c. 228, §§ 10, 11; 63 Del. Laws, c. 2, § 19.)

§ 4338 Monthly statement of account.

(a) The seller or holder of a retail installment account shall promptly provide the buyer with a statement as of the end of each monthly period (which need not be a calendar month) setting forth the following:

(1) The balance due to the seller or holder from the buyer at the beginning of the monthly period;

(2) The dollar amount of each purchase by the buyer during the monthly period and (unless a sales slip or memorandum of each purchase has previously been furnished the buyer or is attached to the statement), the purchase or posting date, a brief description and the cash price of each purchase;

(3) The payments made by the buyer to the seller or holder and any other credits to the buyer during the monthly period;

(4) The amount of the service charge;

(5) The total balance in the account at the end of the monthly period;

(6) A legend to the effect that the buyer may at any time pay the total balance.

(b) The items need not be stated in the sequence or order set forth above; additional items may be included to explain the computations made in determining the amount to be paid by the buyer.

(6 Del. C. 1953, § 4338; 52 Del. Laws, c. 342; 70 Del. Laws, c. 186, § 1.)

§ 4339 Charges included in installment account service charge; additional charges prohibited.

The service charge shall include all charges incident to investigating and making the retail installment account. No fee, expense, delinquency, collection or other charge whatsoever shall be taken, received, reserved or contracted by the seller or holder of a retail installment account except as provided in this section. A seller may, however, in an agreement which is signed by the buyer and of which a copy is given or furnished to the buyer provide for the payment of attorney's fees and costs in conformity with § 4345 of this title.

(6 Del. C. 1953, § 4339; 52 Del. Laws, c. 342.)

§ 4340 Insurance; cost and procurance of.

If the cost of any insurance is to be separately charged to the buyer, there shall be an agreement to that effect, signed by both the buyer and the seller, a copy of which shall be given or furnished to the buyer. Such agreement shall state whether the insurance is to be procured by the buyer or the seller or holder. If the insurance is to be procured by the seller or holder, the seller or holder shall comply with the provisions of § 4307 of this title.

(6 Del. C. 1953, § 4340; 52 Del. Laws, c. 342.)

§ 4341 Security interest of seller in goods.

Nothing in this subchapter prohibits the execution of an agreement between a buyer and seller whereby the seller retains a security interest in goods sold to the buyer until full payment therefor has been made. Section 4328 of this title shall apply to goods sold under such an agreement.

(6 Del. C. 1953, § 4341; 52 Del. Laws, c. 342.)

§ 4342 Notes cutting off buyer's right of action or defense against seller prohibited.

No retail installment account shall require or entail the execution of any note or series of notes by the buyer which, when separately negotiated, will cut off as to third parties, any right of action or defense which the buyer may have against the seller.

(6 Del. C. 1953, § 4342; 52 Del. Laws, c. 342.)

§ 4343 Application of other sections to retail installment accounts.

The provisions of §§ 4320 and 4323 of this title shall apply to retail installment accounts.

(6 Del. C. 1953, § 4343; 52 Del. Laws, c. 342.)

Subchapter X

Attorney's Fees and Court Costs

§ 4344 Award of reasonable attorney's fees and court costs to prevailing party.

A contract or installment account may provide for the payment of reasonable attorney's fees and actual court costs if it is referred to an attorney for collection. Reasonable attorney's fees and costs shall be awarded to the prevailing party in any action on a contract or installment account subject to the provisions of this chapter regardless of whether such action is instituted by the seller, holder, or buyer. Where the defendant alleges in an answer that the defendant tendered to the plaintiff the full amount to which the plaintiff was entitled, and thereupon deposits in court, for the plaintiff, the amount so tendered, and the allegation is found to be true, then the defendant is deemed to be a prevailing party within the meaning of this section.

(6 Del. C. 1953, § 4344; 52 Del. Laws, c. 342; 70 Del. Laws, c. 186, § 1.)

Subchapter XI

Attachment

§ 4345 Limited exemption of salary or wages.

In addition to any existing exemption under any other provisions of law, the salary or wages of a defendant are exempt from attachment for a period of 60 days from the date of default of the contract or installment account for any claim arising out of a contract or installment account subject to the provisions of this title.

(6 Del. C. 1953, § 4345; 52 Del. Laws, c. 342.)

Subchapter XII

Repossession and Resale

§ 4346 Remedies available to holder on default of buyer.

In the event of any default by the buyer in the performance of obligations under a contract or installment account, the holder, pursuant to any rights granted therein, may proceed to recover judgment for the balance due without retaking the goods, or the holder may retake the goods and proceed as provided for in Article 9 of Subtitle I of this title.

(6 Del. C. 1953, § 4346; 52 Del. Laws, c. 342; 56 Del. Laws, c. 221; 70 Del. Laws, c. 186, § 1.)

Subchapter XIII

Penalties

§ 4347 Violation as misdemeanor.

Any person who shall wilfully violate this chapter shall be guilty of a misdemeanor.

(6 Del. C. 1953, § 4347; 52 Del. Laws, c. 342.)

§ 4348 Knowledge by assignee of noncompliance with chapter as barring recovery of charges; recovery by buyer of charges paid.

In case of failure by any person to comply with the provisions of this chapter, such person or any person who acquires a contract or installment account with knowledge of such noncompliance is barred from recovery of any time price differential or service charge or of any delinquency, collection, extension, deferral or refinance charge imposed in connection with such contract or installment account and the buyer shall have the right to recover from such person an amount equal to any of such charges paid by the buyer.

(6 Del. C. 1953, § 4348; 52 Del. Laws, c. 342.)

§ 4349 Correction of failure of compliance with chapter.

Notwithstanding the provisions of this subchapter, any failure to comply with any provision of this chapter may be corrected within 10 days after the holder notices such failure or is notified thereof in writing by the buyer and, if so corrected, neither the seller nor the holder shall be subject to any penalty under this subchapter.

(6 Del. C. 1953, § 4349; 52 Del. Laws, c. 342.)

§ 4350 Wilful violations in connection with consolidated contracts as barring recovery of charges; recovery by buyer of charges paid.

Section 4349 of this title shall not apply to any person who wilfully violates any provision of this chapter in connection with the imposition, computation or disclosures of or relating to a time price differential or service charge on a consolidated total of 2 or more contracts under §§ 4327-4332 of this title, and the buyer may recover from such person an amount equal to 3 times the total of the time price differentials or service charges and any delinquency, collection, extension, deferral or refinance charges imposed, contracted for or received on all contracts included in the consolidated total and the seller shall be barred from the recovery of any such charges.

(6 Del. C. 1953, § 4350; 52 Del. Laws, c. 342.)

Subchapter XIV

Disclosures

§ 4351 Disclosure requirements.

Notwithstanding any other provision of this chapter to the contrary, disclosures made in the terminology of the Truth in Lending Act, as amended, [15 U.S.C. § 1601 et seq.], and regulations prescribed thereunder, shall be deemed to comply with comparable, but literally inconsistent disclosure requirements of this chapter; provided, however, that any charges otherwise authorized under this chapter may be contracted for and collected in amounts and at rates consistent with the provisions of this chapter without regard to any inconsistent terminology of said Truth in Lending Act and this chapter.

(6 Del. C. 1953, § 4351; 57 Del. Laws, c. 157.)

Subtitle II
Other Laws Relating to Commerce and Trade

Chapter 44
Home Solicitation Sales

§ 4401 Declaration of purpose.

This chapter shall be interpreted and administered so as to give greatest effect to the public policy of this State, which declares that it is a basic right of every Delaware citizen to be free of, and protected from, high-pressure door-to-door sales tactics and the resultant inequities to the consumer found in certain ambiguous or misleading contracts, poor quality merchandise and the quick discounting of evidences of indebtedness.

(6 Del. C. 1953, § 4401; 58 Del. Laws, c. 391; 60 Del. Laws, c. 543, § 1.)

§ 4402 Short title.

This chapter may be known and cited as the "Home Solicitation Sales Act."

(6 Del. C. 1953, § 4402; 58 Del. Laws, c. 391; 60 Del. Laws, c. 543, § 1.)

§ 4403 Definitions.

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

(1) "Business day" shall mean any calendar day except Saturdays, Sundays or legal holidays (as that term is defined in Chapter 5 of Title 1).

(2) "Consumer goods or services" shall mean goods or services purchased, leased or rented primarily for personal, family or household purposes, including courses of instruction or training regardless of the purpose for which they are taken.

(3) "Door-to-door sale" shall mean a sale, lease or rental of consumer goods or services with a purchase price of $25 or more, whether under single or multiple contracts, in which the seller or the seller's representative personally solicits the sale, including those in response to or following an invitation by the buyer, and the buyer's agreement or offer to purchase is made at a place other than the place of business of the seller. The term "door-to-door sale" does not include a transaction:

a. Made pursuant to prior negotiations in the course of a visit by the buyer to a retail business establishment having a fixed permanent location where the goods are exhibited or the services are offered for sale on a continuing basis;

b. In which the consumer is accorded the right of rescission by the Consumer Credit Protection Act (15 U.S.C. § 1635) or regulations issued pursuant thereto;

c. In which the buyer has initiated the contact and the goods or services are needed to meet a bona fide immediate personal emergency of the buyer, and the buyer furnishes the seller with a separate dated and signed personal statement in the buyer's handwriting describing the situation requiring immediate remedy and expressly acknowledging and waiving the right to cancel the sale within 3 business days;

d. In which the buyer has initiated the contact and the transaction is conducted and consummated entirely by mail or telephone;

e. In which the buyer has initiated the contact and specifically requested the seller to visit the buyer's home for the purpose of repairing or performing maintenance upon the buyer's personal property. If in the course of such a visit, the seller sells the buyer the right to receive additional services or goods other than replacement parts necessarily used in performing the maintenance or in making the repairs, the sale of those additional goods or services would not fall within this exclusion; or

f. Pertaining to the sale or rental of real property, to the sale of insurance or to the sale of securities or commodities by a broker-dealer registered with the Securities and Exchange Commission.

Except as provided above, the term door-to-door sale shall include any sale solicited and consummated via any telephone.

(4) "Home" shall mean a house, dwelling, condominium, townhouse, apartment or such other residential building or dwelling in which a person resides.

(5) "Place of business" shall mean the main or permanent branch office or a permanent local address of a seller, not including a hotel room, motel room or other temporary quarters.

(6) "Purchase price" shall mean the total price paid or to be paid for the consumer goods or services, including all interest and service charges.

(7) "Seller" shall mean any person, partnership, corporation or association engaged in the door-to-door sale of consumer goods or services.

(6 Del. C. 1953, § 4403; 58 Del. Laws, c. 391; 60 Del. Laws, c. 543, § 1; 64 Del. Laws, c. 102, § 1; 70 Del. Laws, c. 186, § 1; 78 Del. Laws, c. 221, § 3.)

§ 4404 Unlawful practices.

Section 2513(b)(2) of this title notwithstanding, in connection with any door-to-door sale, it is an unlawful practice within the meaning of § 2513 of this title for any seller to:

(1) Fail to furnish the buyer with a fully completed receipt or copy of any contract pertaining to such sale at the time of its execution, which is in the same language, e.g., Spanish, as that principally used in the oral sales presentation and which shows the date of the transaction and contains the name and address of the seller, and in immediate proximity to the space reserved in the contract for the signature of the buyer or on the front page of the receipt if a contract is not used and in bold-faced type of a minimum size of 10-point, a statement in substantially the following form:

"YOU, THE BUYER, MAY CANCEL THIS TRANSACTION AT ANY TIME PRIOR TO MIDNIGHT OF THE THIRD BUSINESS DAY AFTER THE DATE OF THIS TRANSACTION. SEE THE ATTACHED NOTICE OF CANCELLATION FORM FOR AN EXPLANATION OF THIS RIGHT."

Beginning 1 year after the effective date of this section, such statement shall be printed in an ink of a conspicuous color other than that used for the rest of the contract and/or receipt.

(2) Fail to furnish each buyer, when signing the door-to-door sales contract or otherwise agrees to buy consumer goods or services from the seller, a completed form in duplicate, captioned "Notice of Cancellation," which shall be attached to the contract or receipt and easily detachable, and which shall contain in 10-point, bold-faced type the following information and statements in the same language, e.g., Spanish, as that used in the contract:

"NOTICE OF CANCELLATION

..... (Enter date of transaction)

You may cancel this transaction, without any penalty or obligation, within 3 business days from the above date.

If you cancel, any property traded in, any payments made by you under the contract or sale and any negotiable instrument executed by you will be returned within 10 business days following receipt by the seller of your cancellation notice, and any security interest arising out of the transaction will be cancelled.

If you cancel, you must make available to the seller at your residence, in substantially as good condition as when received, any goods delivered to you under this contract or sale; or you may if you wish comply with the instructions of the seller regarding the return shipment of the goods at the seller's expense and risk.

If you do not agree to return the goods to the seller or if the seller does not pick them up within 20 days of the date of your Notice of Cancellation, you may retain or dispose of the goods without any further obligation.

To cancel this transaction, mail or deliver a signed and dated copy of this cancellation notice or any other written notice, or send a telegram, to

..... (Name of seller) , at ..... (Address at seller's place of business)

not later than midnight of ..... (Date)

I hereby cancel this transaction.

..... (Date)

..... (Buyer's signature)"

(3) Fail, before furnishing copies of the "Notice of Cancellation" to the buyer, to complete both copies by entering the name of the seller, the address of the seller's place of business, the date of the transaction and the date, not earlier than the third business day following the date of the transaction, by which the buyer may give the Notice of Cancellation.

(4) Include in any door-to-door contract or receipt any confession of judgment or any waiver of any of the rights to which the buyer is entitled under this chapter including specifically the right to cancel the sale in accordance with this chapter.

(5) Fail to inform each buyer orally, at the time the buyer signs the contract or purchases the goods or services, of the right to cancel.

(6) Misrepresent in any manner the buyer's right to cancel.

(7) Fail or refuse to honor any valid Notice of Cancellation by a buyer and within 10 business days after the receipt of such Notice, to (i) refund all payments made under the contract or sale; (ii) return any goods or property traded in, in substantially as good condition as when received by the seller; (iii) cancel and return any negotiable instrument executed by the buyer in connection with the contract or sale and take any action necessary or appropriate to terminate promptly any security interest created in the transaction.

(8) Negotiate, transfer, sell or assign any note or other evidence of indebtedness to a finance company or other third party prior to midnight of the fifth business day following the day the contract was signed or the goods or services were purchased.

(9) Fail, within 10 business days of receipt of the buyer's Notice of Cancellation, to notify the buyer whether the seller intends to repossess or to abandon any shipped or delivered goods.

(60 Del. Laws, c. 543, § 1; 70 Del. Laws, c. 186, § 1.)

§ 4405 Door-to-door salesperson identification card.

(a) (1) Any seller or seller's representative who solicits a door-to-door sale at a home shall prominently display a door-to-door salesperson identification card obtained from the Department of Finance while soliciting a door-to-door sale. The door-to-door salesperson

identification card shall be displayed on the person of the seller or the seller's representative in such a manner so that a potential buyer shall be able to view the door-to-door salesperson identification card during any transaction with the seller or the seller's representative soliciting a door-to-door sale.

(2) The Department of Finance shall issue the door-to-door salesperson identification card.

(3) A door-to-door salesperson's identification card may not be reproduced; as such, the Department of Finance must include a watermark or another feature which proves that the card is an original, and not a reproduction.

(4) A door-to-door salesperson identification card shall contain and display the following information concerning a seller or seller's representative:

a. The seller's business name;

b. The full legal name of the seller or the seller's representative;

c. The telephone number of the seller;

d. The address of the seller's place of business; and

e. The Delaware business license number of the seller.

(5) For purposes of this section, the term "door-to-door sale" shall include a transaction that would be a door-to-door sale but for the $25 purchase price limitation in the definition of "door-to-door sale" in § 4403(3) of this title, regardless of the purchase price.

(6) This section shall apply only to a door-to-door sale where the seller or the seller's representative personally solicits the sale at the residence of a person and where the solicitation involves contact with the person other than by merely leaving written solicitation or advertising materials at the person's residence without speaking with the person.

(7) This section does not apply to a door-to-door sale solicited:

a. Via telephone, mail, e-mail, or Internet;

b. Where the seller or the seller's representative solicits a person or persons who have been invited to the owner's, lessee's, and/or resident's home for the purpose of hearing the solicitation;

c. Where the owner, lessee and/or resident of a home invited a seller or a seller's representative into and/or to the home for the purpose of such solicitation;

d. By a nonprofit organization under § 501(c) of the Internal Revenue Code (26 U.S.C. § 501(c)) or Delaware law; or

e. By a public utility or cable television system operator, as defined in § 102(2) or (4) of Title 26, or its agents, provided that such salespersons prominently display an identification card containing the name of the public utility or cable television system operator and in such a manner that a potential buyer shall be able to view it during any transaction with the seller or a representative thereof soliciting a door-to-door sale.

(8) Whoever violates this section shall for the first offense be fined not less than $75 nor more than $150. For each subsequent like offense the person shall be fined not less than $100 nor more than $250.

(b) (1) The Department of Finance shall educate the public that this statute exists and what an individual can do if the individual reasonably believes that a door-to-door salesperson is not complying with the provisions of this section and § 4406 of this title.

(2) The Department of Finance must provide on its website a list of door-to-door salesperson identification cards, and such list must include the information contained on each identification card.

(78 Del. Laws, c. 221, § 2.)

§ 4406 Time of solicitation.

(a) A door-to-door sale shall be solicited by a seller or a seller's representative at a home between the hours of 9 a.m. to 8 p.m. prevailing Delaware time, only.

(b) For purposes of this section, the term "door-to-door sale" shall include a transaction that would be a door-to-door sale but for the $25 purchase price limitation in the definition of "door-to-door sale" in § 4403(3) of this title, regardless of the purchase price.

(c) This section does not apply to a door-to-door sale solicited:

(1) Via telephone, mail, e-mail, or Internet;

(2) Where the seller or the seller's representative solicits a person or persons who have been invited to the owner's, lessee's, and/or resident's home for the purpose of hearing the solicitation;

(3) Where the owner, lessee and/or resident of a home invited a seller or a seller's representative into and/or to the home for the purpose of such solicitation;

(4) By a nonprofit organization under § 501(c) of the Internal Revenue Code (26 U.S.C. § 501(c)) or Delaware law; or

(5) By a public utility or cable television system operator, as defined in § 102(2) or (4) of Title 26, or its agents, provided that such salespersons prominently display an identification card containing the name of the public utility or cable television system operator and in such a manner that a potential buyer shall be able to view it during any transaction with the seller or a representative thereof soliciting a door-to-door sale.

(d) Whoever violates this section shall for the first offense be fined not less than $75 nor more than $150. For each subsequent like offense the person shall be fined not less than $100 nor more than $250.

(78 Del. Laws, c. 221, § 2.)

§ 4407 Enforcement.

In addition to any remedies the buyer may have at law or in equity, the authority of the Attorney General under Chapter 25 of Title 29 shall apply to violations of this chapter.

(6 Del. C. 1953, § 4407; 58 Del. Laws, c. 391; 60 Del. Laws, c. 543, § 1; 69 Del. Laws, c. 291, § 98(a); 77 Del. Laws, c. 282, § 12; 78 Del. Laws, c. 221, § 1.)

Subtitle II
Other Laws Relating to Commerce and Trade
Chapter 45
Equal Accommodations

§ 4500 Short title.

This chapter may be cited as the "Delaware Equal Accommodations Law."

(70 Del. Laws, c. 350, § 1.)

§ 4501 Purpose and construction.

This chapter is intended to prevent, in places of public accommodations, practices of discrimination against any person because of race, age, marital status, creed, color, sex, disability, sexual orientation, gender identity, or national origin. This chapter shall be liberally construed to the end that the rights herein provided for all people, without regard to race, age, marital status, creed, color, sex, disability, sexual orientation, gender identity, or national origin, may be effectively safeguarded. Furthermore, in defining the scope or extent of any duty imposed by this chapter, higher or more comprehensive obligations established by otherwise applicable federal, state, or local enactments may be considered.

(6 Del. C. 1953, § 4502; 54 Del. Laws, c. 181, § 1; 58 Del. Laws, c. 133, § 1; 58 Del. Laws, c. 386, § 1; 65 Del. Laws, c. 377, § 1; 70 Del. Laws, c. 350, § 1; 75 Del. Laws, c. 356, § 8; 77 Del. Laws, c. 90, § 1; 79 Del. Laws, c. 47, § 1; 79 Del. Laws, c. 371, § 4; 81 Del. Laws, c. 440, § 1.)

§ 4502 Definitions.

As used in this chapter:

(1) "Automatic door" shall mean a door equipped with a power-operated mechanism and controls that open and close the door automatically upon receipt of a momentary actuating signal. The switch that begins the automatic cycle may be a photoelectric device, floor mat, or manual switch.

(2) "Chairperson" means the Chairperson of the State Human Relations Commission.

(3) "Commission" means the State Human Relations Commission.

(4) "Complainant" means the person who files a complaint under § 4508 of this title.

(5) "Conciliation" means the attempted resolution of issues raised by a complaint, or by the investigation of such complaint, through informal negotiations.

(6) "Conciliation agreement" means a written agreement setting forth the resolution of the issues in conciliation.

(7) "Disability'' means a physical or mental impairment which substantially limits a person's major life activities, or being regarded as having such an impairment, but such terms do not include current, illegal use of a controlled substance as defined in § 102 of the Controlled Substance Act (21 U.S.C. § 802) or Chapter 47 of Title 16, Uniform Controlled Substance Act.

(8) "Discriminatory public accommodations practice" means an act that is unlawful under this chapter.

(9) "Division" means the Division of Human Relations.

(10) "Gender identity" means a gender-related identity, appearance, expression or behavior of a person, regardless of the person's assigned sex at birth. Gender identity may be demonstrated by consistent and uniform assertion of the gender identity or any other evidence that the gender identity is sincerely held as part of a person's core identity; provided, however, that gender identity shall not be asserted for any improper purpose.

(11) "Marital status" means the legal relationship of parties as determined by the laws of marriage applicable to them or the absence of such a legal relationship.

(12) "Panel" means a group of 3 or more Commissioners appointed by the Chairperson to perform any task authorized by this chapter.

(13) "Panel chair" means that Commissioner serving on a panel who is designated by the Chairperson to serve as the Chairperson of the panel.

(14) "Place of public accommodation" means any establishment which caters to or offers goods or services or facilities to, or solicits patronage from, the general public. This definition includes state agencies, local government agencies, and state-funded agencies performing public functions. This definition includes hotels and motels catering to the transient public, but it does not apply to the sale or rental of houses, housing units, apartments, rooming houses, or other dwellings, nor to tourist homes with less than 10 rental units catering to the transient public.

(15) "Respondent" means a person who is alleged to have committed a discriminatory public accommodations practice.

(16) "Service animal" means a dog individually trained to do work or perform tasks for the benefit of a person with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability.

(17) "Sexual orientation" exclusively means heterosexuality, homosexuality, or bisexuality.

(18) "Special Administration Fund" means the Fund created pursuant to § 3005 of Title 31 .

(6 Del. C. 1953, § 4501; 54 Del. Laws, c. 181, § 1; 66 Del. Laws, c. 68, § 1; 70 Del. Laws, c. 350, § 1; 75 Del. Laws, c. 356, §§ 9, 11, 26, 28; 77 Del. Laws, c. 90, § 2; 77 Del. Laws, c. 346, § 1; 79 Del. Laws, c. 47, §§ 2, 3; 79 Del. Laws, c. 371, § 5; 81 Del. Laws, c. 440, § 2.)

§ 4503 Persons entitled to protection.

All persons within the jurisdiction of this State are entitled to the full and equal accommodations, facilities, advantages and privileges of any place of public accommodation regardless of the race, age, marital status, creed, color, sex, handicap, sexual orientation, gender identity, or national origin of such persons.

(6 Del. C. 1953, § 4503; 54 Del. Laws, c. 181, § 1; 58 Del. Laws, c. 133, § 1; 58 Del. Laws, c. 386, § 1; 65 Del. Laws, c. 377, § 2; 70 Del. Laws, c. 350, § 1; 77 Del. Laws, c. 90, § 3; 79 Del. Laws, c. 47, § 4.)

§ 4504 Unlawful practices.

(a) (1) No person being the owner, lessee, proprietor, manager, director, supervisor, superintendent, agent, or employee of any place of public accommodation, may directly or indirectly refuse, withhold from, or deny to any person, on account of race, age, marital status, creed, color, sex, disability, sexual orientation, gender identity, or national origin, any of the accommodations, facilities, advantages, or privileges thereof.

(2) A place of public accommodation may provide reasonable accommodations based on gender identity in areas of facilities where disrobing is likely, such as locker rooms or other changing facilities, which reasonable accommodations may include a separate or private place for the use of persons whose gender-related identity, appearance or expression is different from their assigned sex at birth, provided that such reasonable accommodations are not inconsistent with the gender-related identity of such persons.

(3) A place of public accommodation must permit service animals as follows:

a. An individual with a disability accompanied by a service animal in any place of public accommodation.

b. An individual training a service animal to be used by persons with disabilities accompanied by a service animal in any place of public accommodation.

(b) No person, being the owner, lessee, proprietor, manager, superintendent, agent or employee of any place of public accommodation, shall directly or indirectly publish, issue, circulate, post or display any written, typewritten, mimeographed, printed or radio communications notice or advertisement to the effect that any of the accommodations, facilities, advantages and privileges of any place of public accommodation shall be refused, withheld from or denied to any person on account of race, age, marital status, creed, color, sex, disability, sexual orientation, gender identity or national origin, or that the patronage or custom thereat of any person belonging to or purporting to be appearing to be of any particular race, age, marital status, creed, color, sex, disability, sexual orientation, gender identity or national origin is unlawful, objectionable, or not acceptable, desired, accommodated or solicited, or that the patronage of persons of any particular race, age, marital status, creed, color, sex, disability, sexual orientation, gender identity or national origin is preferred or is particularly welcomed, desired or solicited.

(c) It shall be unlawful to assist, induce, incite or coerce another person to commit any discriminatory public accommodations practice prohibited by subsection (a) or (b) of this section.

(d) *Requirements for newly constructed places of public accommodation.* — All buildings which are constructed after January 1, 2011, and intended for use as places of public accommodation (as defined in § 4502 of this title), must be equipped with an automatic door or calling device at each entrance that is intended to be a main entrance accessible by members of the general public. For purposes of this subsection, a calling device shall mean any device that allows a person with a disability to request assistance with entry meeting the following minimum specifications:

(1) The device must provide a recognizable signal inside the place of public accommodation;

(2) The device must be capable of being operated using only 1 hand or limb;

(3) The device must have at least 1 sign next to it which identifies the device and how to use it; and

(4) The device must be capable of being operated in accordance with all requirements of the Americans with Disabilities Act [42 U.S.C. § 12101 et seq.] Accessibility Guidelines.

(e) Nothing in this section shall be interpreted as an abrogation of any requirements otherwise imposed by applicable federal or state laws or regulations.

(f) A person, being the owner, lessee, proprietor, manager, director, supervisor, superintendent, agent, or employee of any place of public accommodation, may not engage in an act or practice that is unlawful under subsections (a) through (d) of this section against an individual because the individual has done 1 of the following:

(1) Opposed an act or practice that is unlawful under subsections (a) through (d) of this section.

(2) Made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing to enforce subsections (a) through (d) of this section.

(6 Del. C. 1953, § 4504; 54 Del. Laws, c. 181, § 1; 58 Del. Laws, c. 133, § 1; 58 Del. Laws, c. 386, § 1; 65 Del. Laws, c. 377, § 3; 66 Del. Laws, c. 68, § 1; 70 Del. Laws, c. 350, § 1; 75 Del. Laws, c. 356, §§ 10, 28; 77 Del. Laws, c. 90, § 4; 77 Del. Laws, c. 346, §§ 2, 4; 79 Del. Laws, c. 47, § 5; 81 Del. Laws, c. 440, § 3; 82 Del. Laws, c. 209, § 1.)

§ 4505 Authority of the Commission; delegation.

(a) The State Human Relations Commission shall implement the provisions of this chapter not expressly vested in another entity.

(b) The Commission may delegate, to a panel of its members, any power, duty, or function vested in it by this chapter. No panel to which any power, duty, or function of the Commission is delegated shall consist of fewer than 3 members of the Commission.

(c) The Commission may delegate, to the Division of Human Relations, any power, duty, or function vested in it by this chapter unless the delegation is expressly prohibited. If the Commission delegates to the Division a power, duty, or function vested in it by this chapter, the delegation shall specifically state the power, duty, or function being delegated.

(d) The Commission shall not delegate its power or duty to conduct public hearings or order relief to the Division.

(70 Del. Laws, c. 350, § 1; 75 Del. Laws, c. 356, § 12.)

§ 4506 Commission's power to adopt rules.

The Commission shall have the power in accordance with the Administrative Procedures Act in Title 29 [Chapter 101 of Title 29] to adopt rules and regulations concerning the manner in which complaints shall be investigated or other investigations pursuant to this chapter shall be conducted, the manner in which public hearings shall be conducted, the general form and content of agreements and orders provided for in this chapter and such other rules as the Commission shall consider appropriate to assist it in performing its duties and in carrying out the purposes of this chapter. Such rules and regulations shall have the force and effect of law.

(6 Del. C. 1953, § 4508; 54 Del. Laws, c. 181, § 1; 70 Del. Laws, c. 186, § 1; 70 Del. Laws, c. 350, § 1.)

§ 4507 Education and conciliation.

(a) The Commission may commence such educational activities as, in its judgment, will further the purposes of this chapter. It may hold conferences for persons in the business industry and other interested parties to acquaint them with the provisions of this chapter and its suggested means of implementing it. The Commission may issue reports on such conferences as it deems appropriate.

(b) The Division may commence such conciliatory activities in order to further the purposes of this chapter. It may call conferences of persons in the business industry and other interested parties to acquaint them with the provisions of this chapter governing conciliation and the means it employs to implement those provisions. It shall endeavor, with their advice, to develop programs of voluntary compliance and enforcement. The Division may issue reports on such conferences as it deems appropriate.

(c) When undertaking their respective duties under this section, the Commission and the Division may consult with state and local officials and other interested parties to learn the extent, if any, to which discriminatory public accommodations practices exist in the State or locality, and whether and how state or local enforcement programs might be utilized to combat such discrimination. The Commission may issue reports on such consultations as it deems appropriate.

(70 Del. Laws, c. 350, § 1; 75 Del. Laws, c. 356, § 13.)

§ 4508 Procedure on complaint.

(a) A person believing himself or herself aggrieved by a discriminatory public accommodation practice proscribed by § 4504 of this title may, by himself or herself or by his or her attorney-at-law, file with the Division a complaint in writing stating:

(1) His or her name and address;

(2) The name and location of the place of public accommodation at which the discriminatory public accommodation practice occurred, and the date, time and an explanation thereof;

(3) If known, the name and address of each respondent and, if different, the name of the owner, lessee, proprietor, manager or superintendent of the place of public accommodation; and

(4) Such other information as the Division requires.

(b) No complaint shall be filed with the Division more than 90 days after the occurrence of the alleged discriminatory public accommodation practice.

(c) Within 120 days after the complaint is filed, the Division shall investigate the complaint and endeavor to eliminate any unlawful discriminatory practice discovered through conciliation. Insofar as possible, conciliation meetings shall be held in the county where the alleged discriminatory public accommodations practice occurred. If the matter is resolved through conciliation, the parties shall enter a conciliation agreement stating the terms of the resolution of the matter. If the Division determines that the allegations in the complaint do not state a claim for which relief is available under this chapter or that the claim is not within the scope of the Division's jurisdiction, it may petition the Commission, with notice to the complainant, to dismiss the complaint.

(d) Whenever the Division has reasonable cause to believe that a respondent has breached a conciliation agreement, the Division shall refer the matter to the Attorney General with a recommendation that a civil action be filed under § 4512 of this title for the enforcement of such agreement.

(e) If a complaint cannot be resolved through conciliation as provided in subsection (c) of this section, the Commission shall appoint a panel to hold a public hearing within 60 days after the expiration of 120-day period for investigation and conciliation. The deadlines

provided in subsection (c) of this section and this subsection may be extended by the Chairperson or the Panel Chair at the request of any party or an employee of the Commission of Human Relations upon a showing of good cause.

(f) Public hearings shall be conducted in accordance with rules prescribed by the Commission. Each party may appear in person, be represented by counsel, present evidence, cross-examine witnesses and obtain the issuance of subpoenas under § 4510 of this title. The Delaware Rules of Evidence shall apply to the presentation of evidence in a public hearing as they would in an administrative hearing conducted in accordance with subchapter III of the Administrative Procedures Act in Title 29 [subchapter III of Chapter 101 of Title 29]. A record shall be kept of all public hearings, a transcript of which shall be provided at cost upon request of a party. Decisions of the panel shall be made by a majority of the members of the panel.

(g) If the panel determines that a violation of § 4504 of this title has not occurred, it shall issue an order dismissing the complaint. The panel may award reasonable attorneys' fees, costs and expenses to the respondent pursuant to this subsection if it determines that the complaint was brought for an improper purpose, such as to harass or embarrass the respondent.

(h) If the panel determines that a violation of § 4504 of this title has occurred, it shall issue an order stating its findings of fact and conclusions of law and containing such relief as may be appropriate, including actual damages suffered by the aggrieved person "including damages caused by humiliation and embarrassment," costs, expenses, reasonable attorneys' fees and injunctive or other equitable relief. To vindicate the public interest, the panel may assess a civil penalty against the respondent or respondents, to be paid to the Special Administration Fund:

(1) In an amount not exceeding $5,000 for each discriminatory public accommodations practice if the respondent has not been adjudged to have committed any prior discriminatory public accommodations practice;

(2) In an amount not exceeding $15,000 for each discriminatory public accommodations practice if the respondent has been adjudged to have committed 1 other discriminatory public accommodations practice during the 5-year period ending on the date of the complaint; and

(3) In an amount not exceeding $25,000 for each discriminatory public accommodations practice if the respondent has been adjudged to have committed 2 or more discriminatory public accommodations practices during the 7-year period ending on the date of the complaint.

(i) Copies of orders entered pursuant to subsections (g) and (h) of this section shall be served personally or by registered or certified mail to each party or their counsel.

(j) If the Division concludes, at any time following the filing of a complaint, that prompt judicial action is necessary to carry out the purpose of this chapter, the Division may authorize a civil action for appropriate temporary or preliminary relief pending final disposition of the complaint under this section. Upon receipt of such authorization, the Attorney General may elect, in the absence of a conflict of duties, to commence and maintain such an action in the Court of Chancery on behalf of the Division. If the Attorney General does not elect to pursue such an action, the Division may, with the written authorization of the Secretary of State, employ special counsel to pursue such action notwithstanding § 2507 of Title 29. The commencement of a civil action under this subsection does not affect the initiation or continuation of proceedings under this section.

(k) The Commission, by regulation, shall adopt procedures for dismissal of complaints based on lack of jurisdiction or failure to state a claim upon which relief is available under this chapter. Notwithstanding the limitation of delegation in § 4505 of this title, the Commission may authorize such dismissal by a single commissioner prior to appointment of a panel.

(6 Del. C. 1953, § 4506; 54 Del. Laws, c. 181, § 1; 70 Del. Laws, c. 186, § 1; 70 Del. Laws, c. 350, § 1; 75 Del. Laws, c. 356, §§ 14, 15, 17, 18; 81 Del. Laws, c. 171, § 9.)

§ 4509 Division's power to investigate compliance.

The Division is empowered to investigate compliance with this chapter whether or not a complaint is filed pursuant to § 4508 of this title. In furtherance of and not in limitation of this power, the Division may review practices of any place of public accommodation within this State. Investigations pursuant to this section that cannot be resolved through conciliation may be referred by the Division to the Attorney General for further proceedings pursuant to § 4512 of this title.

(6 Del. C. 1953, § 4507; 54 Del. Laws, c. 181, § 1; 70 Del. Laws, c. 350, § 1; 75 Del. Laws, c. 356, §§ 19, 20.)

§ 4510 Compelling attendance of witnesses and production of documents, oaths, subpoenas.

(a) The Commission may issue subpoenas and order discovery in aid of investigations and hearings under this chapter. Such subpoenas shall be signed by the chairperson or panel chair and may be served by any sheriff, deputy sheriff, constable or any member of the Commission or employee of the Division of Human Relations and return thereof shall be made to the Commission. Such subpoenas and discovery may be ordered to the same extent and subject to the same limitations as would apply if the subpoenas or discovery were ordered or served in aid of a civil action in the Superior Court. Provided, however, that such subpoenas and discovery in aid of investigations are first to be reviewed by the Attorney General to determine whether there is reason to believe that there has been a violation of this chapter.

(b) At any public hearing, any member of the Commission may administer oaths to all witnesses who may be called before the Commission.

(c) Witnesses summoned by a subpoena under this chapter shall be entitled to the same witness and mileage fees as witnesses in proceedings in Superior Court.

(d) Where any person fails or neglects to attend and testify or answer any lawful inquiry or to produce records, documents or other evidence, if it is in such person's power to do so, in obedience to the subpoena or other lawful order under subsection (a) of this section, the Attorney General, on behalf of the Commission, shall petition the Superior Court in the county where such person resides or conducts business for an order requiring such person to appear before the Commission to produce evidence if so ordered or to give testimony pertaining to the matter under investigation or in question. Any failure to obey such order may be punished by the Court as being in contempt of court.

(e) *Criminal penalties.* — (1) Any person who wilfully fails or neglects to attend and testify or to answer any lawful inquiry or to produce records, documents or other evidence, if it is in such person's power to do so, in obedience to the subpoena or other lawful order under subsection (a) of this section, shall, in each instance be fined not more than $2,500 or imprisoned not more than 1 year, or both.

(2) Any person who, with intent thereby to mislead another person in any proceeding under this chapter:

a. Makes or causes to be made any false entry or statement of fact in any report, account, record or other document produced pursuant to subpoena or other lawful order under subsection (a) of this section;

b. Wilfully neglects or fails to make or cause to be made full, true and correct entries in such reports, accounts, records or other documents; or

c. Wilfully mutilates, alters or by any other means falsifies any documentary evidence; shall in each instance be fined not more than $2,500 or imprisoned not more than 1 year, or both.

(6 Del. C. 1953, §§ 4509, 4510, 4511; 54 Del. Laws, c. 181, § 1; 70 Del. Laws, c. 350, § 1; 75 Del. Laws, c. 356, § 39.)

§ 4511 Judicial review.

(a) Any party aggrieved by an order for relief under § 4508 of this title granting or denying, in whole or in part, the relief sought, may obtain a review of such order in the Superior Court in the county in which the discriminatory public accommodations practice is alleged to have occurred, pursuant to the civil rules of that Court and the Administrative Procedures Act [Chapter 101 of Title 29]. Filing of the petition for review shall be not later than 30 days after the order is entered.

(b) Any party to the proceeding before the panel may intervene in the Superior Court in the appeal process.

(c) No objection not made before the panel shall be considered by the Court, unless the failure or neglect to urge such objection is excused because of extraordinary circumstances or when the interests of justice so require.

(d) If the Attorney General has not commenced a civil action within 60 days of notice of breach of a Commission order or conciliation agreement as authorized by § 4512 of this title, an aggrieved party may commence an action in the Superior Court, or Court of Chancery, or both, seeking enforcement and appropriate relief, including conversion of a Commission order conferring monetary relief to a judgment subject to execution. The Court may also award the aggrieved party reasonable costs and attorneys' fees in connection with the enforcement action.

(6 Del. C. 1953, § 4511; 54 Del. Laws, c. 181, § 1; 70 Del. Laws, c. 350, § 1; 75 Del. Laws, c. 356, § 16.)

§ 4512 Enforcement by the Attorney General.

(a) Whenever the Attorney General has reasonable cause to believe that any person or group of persons is engaging in a pattern of discriminatory public accommodation practices, that any person or group of persons has been denied any of the rights granted by this chapter and such denial raises an issue of general public importance or that any party to a conciliation agreement has breached such agreement, the Attorney General may commence a civil action in the Superior Court, Court of Chancery or both in any county of the State for appropriate relief including, but not limited to, equitable relief, monetary damages, reasonable attorneys' fees, costs and expenses. To vindicate the public interest, the court may assess a civil penalty to be paid to the Special Administration Fund in an amount not exceeding $25,000 for a first violation of this section and in an amount not exceeding $50,000 for any subsequent violation of this section.

(b) When a civil action is initiated by the Attorney General pursuant to this section, no Court shall charge fees of any kind in such proceeding to the Attorney General, the Commission or any of its members.

(6 Del. C. 1953, §§ 4512, 4514, 4515; 54 Del. Laws, c. 181, § 1; 70 Del. Laws, c. 350, § 1.)

§ 4513 Criminal jurisdiction.

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

(77 Del. Laws, c. 90, § 26.)

§§ 4514-4516

Subtitle II
Other Laws Relating to Commerce and Trade
Chapter 46
Fair Housing Act

§ 4600 Short title.

This chapter may be cited as the "Delaware Fair Housing Act."

(68 Del. Laws, c. 311, § 1.)

§ 4601 Declaration of purpose and construction.

(a) *Purpose.* — This chapter is intended to eliminate, as to housing offered to the public for sale, rent or exchange, discrimination based upon race, color, national origin, religion, creed, sex, marital status, familial status, source of income, age, sexual orientation or disability, and to provide an administrative procedure through which disputes concerning the same may effectively and expeditiously be resolved with fairness and due process for all parties concerned.

(b) *Construction.* — This chapter shall be liberally construed to the end that its purposes may be accomplished and all persons may fully enjoy equal rights and access to housing for themselves and their families. Furthermore, in defining the scope or extent of any duty imposed by this chapter, including the duty of reasonable accommodation, higher or more comprehensive obligations established by otherwise applicable federal, state or local enactments may be considered.

(6 Del. C. 1953, § 4602; 57 Del. Laws, c. 32, § 1; 58 Del. Laws, c. 133, § 2; 58 Del. Laws, c. 386, § 2; 62 Del. Laws, c. 330, § 3; 68 Del. Laws, c. 311, § 1; 75 Del. Laws, c. 356, § 28; 77 Del. Laws, c. 90, § 5; 79 Del. Laws, c. 47, § 6; 80 Del. Laws, c. 355, § 1.)

§ 4602 Definitions.

As used in this chapter:

(1) "Age" — For the purpose of defining what is a discriminatory housing practice, "age" means any age 18 years or older.

(2) "Aggrieved persons" includes any person who:

a. Claims to have been injured, directly or indirectly, by a discriminatory housing practice;

b. Believes that such person will be injured, directly or indirectly, by a discriminatory housing practice that is about to occur; or

c. Is associated with a person having a protected status under this chapter and claims to have been injured, directly or indirectly, as a result of a discriminatory housing practice against such person having the protected status.

(3) "Chairperson" means the Chairperson of the State Human Relations Commission.

(4) "Commission" means the State Human Relations Commission.

(5) "Complainant" means the person (including the Commission) who files a complaint under § 4610 of this title.

(6) "Conciliation" means the attempted resolution of issues raised by a complaint, or by the investigation of such complaint, through informal negotiations involving the aggrieved person, the respondent and the Commission.

(7) "Conciliation agreement" means a written agreement setting forth the resolution of the issues in conciliation.

(8) "Court" means the Superior Court of the State unless otherwise designated.

(9) "Covered multifamily dwellings" means:

a. Buildings consisting of 4 or more dwelling units if such buildings have 1 or more elevators; and

b. Ground floor dwelling units in other buildings consisting of 4 or more dwelling units.

(10) "Disability" means, with respect to a person:

a. A physical or mental impairment which substantially limits 1 or more of such person's major life activities;

b. A record of having such an impairment; or

c. Being regarded as having such an impairment, but such term does not include current, illegal use of a controlled substance as defined in § 102 of the Controlled Substances Act (21 U.S.C. 802) or Title 16 of Chapter 47, Uniform Controlled Substances Act.

(11) "Discriminatory housing practice" means an act that is unlawful under § 4603, § 4604, § 4605, § 4606 or § 4618 of this title.

(12) "Division" means the Division of Human Relations.

(13) "Dwelling" means any building, structure or portion thereof which is occupied as, or designed or intended for occupancy as, a residence by 1 or more families, together with any land which is offered for sale, rent or exchange therewith and also means any vacant land which is offered for sale, lease or exchange for the construction or location thereon of any such building, structure or portion thereof. "Dwelling" also includes the public and common use areas associated therewith.

(14) "Familial status" means: one or more individuals who have not attained the age of 18 years being domiciled with:

a. A parent or another person having legal custody of such individual or individuals; or

b. The designee of such parent or other person having such custody, with the written permission of such parent or other person; or

c. Any person who is pregnant or is in the process of securing legal custody of any individual who has not attained the age of 18 years.

(15) "Family" includes a single individual.

(16) "Gender identity" means a gender-related identity, appearance, expression or behavior of a person, regardless of the person's assigned sex at birth. Gender identity may be demonstrated by consistent and uniform assertion of the gender identity or any other evidence that the gender identity is sincerely held as part of a person's core identity; provided, however, that gender identity shall not be asserted for any improper purpose.

(17) "Housing for older persons" means housing:

a. Provided under any state or federal program that the Commission determines is specifically designed and operated to assist elderly persons;

b. Intended for, and solely occupied by, persons 62 years of age or older; or

c. Intended and operated for occupancy by at least 1 person 55 years of age or older per unit. In determining whether housing qualifies as housing for older persons under this subsection, the Commission shall develop regulations which shall require at least the following factors:

1. That at least 80 percent of the units are occupied by at least 1 person 55 years of age or older per unit; and

2. The publication of, and adherence to, policies and procedures which demonstrate an intent by the owner or manager to provide housing for persons 55 years of age or older.

(18) "Marital status" means the legal relationship of parties as determined by the laws of marriage applicable to them or the absence of such a legal relationship.

(19) "Panel" means 3 or more Commissioners appointed by the Chair to perform any act authorized under this chapter.

(20) "Panel Chair": that Commissioner designated by the Commission Chair to preside at case hearings, and, further, to perform such other duties as may be specified by applicable laws and regulations.

(21) "Person" includes 1 or more individuals, corporations, partnerships, associations, labor organizations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in bankruptcy in cases under Title 11 of the United States Code, receivers, fiduciaries and land use commissions or boards.

(22) "Residential real estate-related transaction" means any of the following:

a. The making, brokering or purchasing of loans or providing other financial assistance:

1. For purchasing, constructing, improving, repairing or maintaining a dwelling; or

2. Secured by residential real estate; or

b. The selling, brokering or appraising of residential real property.

(23) "Respondent" means:

a. The person or other entity accused in a complaint of an unfair housing practice; and

b. Any other person or entity identified in the course of investigation and notified as required with respect to respondents so identified under § 4610(a)(2)a. of this title.

(24) "Sexual orientation" exclusively means heterosexuality, homosexuality, or bisexuality.

(25) "Source of income" means any lawful source of money paid directly, indirectly, or on behalf of a renter or buyer of housing including:

a. Income derived from any lawful profession or occupation;

b. Income or rental payments derived from any government or private assistance, grant, or loan program.

(26) "Special Administration Fund" means the Fund established and maintained pursuant to § 3005 of Title 31.

(27) "To rent" includes to lease, to sublease, to assign a lease, to let and otherwise to grant, continue or renew for a consideration the right to occupy premises not owned by the occupant.

(28) "To sell" or "sale" includes a sale, gift, exchange or other means of conveyance.

(6 Del. C. 1953, § 4601; 57 Del. Laws, c. 32, § 1; 62 Del. Laws, c. 330, § 2; 68 Del. Laws, c. 311, § 1; 75 Del. Laws, c. 356, §§ 21-23, 27; 77 Del. Laws, c. 90, § 6; 79 Del. Laws, c. 47, §§ 7, 8; 80 Del. Laws, c. 355, § 2.)

§ 4603 Discrimination in sale or rental of housing and other prohibited practices.

(a) For purposes of paragraphs (b)(1)-(5) of this section, the unlawful discrimination against a person on the basis of a specified protected status refers to the protected status of:

(1) That buyer, renter or aggrieved person;

(2) A person residing in or intending to reside in that dwelling after it is sold, rented or made available; or

(3) Any person associated with that buyer or renter.

(b) Except as exempted by § 4607 of this title, it shall be unlawful:

(1) To discriminate in the sale or rental, to refuse to sell or rent, to refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling to any person because of race, color, national origin, religion, creed, sex, marital status, familial status, source of income, age, sexual orientation, gender identity or disability.

(2) To discriminate against any person in the terms, conditions or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith, because of race, color, national origin, religion, creed, sex, marital status, familial status, source of income, age, sexual orientation, gender identity or disability.

(3) To make, print or publish, or cause to be made, printed or published any notice, statement or advertisement, with respect to the sale or rental of a dwelling that indicates any preference, limitation or discrimination based on race, color, national origin, religion, creed, sex, marital status, familial status, source of income, age, sexual orientation, gender identity or disability, or an intention to make any such preference, limitation or discrimination. However, nothing in this chapter restricts the inclusion of information about the availability of housing accessible to persons with a disability in advertising of dwellings.

(4) To represent to any person because of race, color, national origin, religion, creed, sex, marital status, familial status, source of income, age, sexual orientation, gender identity or disability that any dwelling is not available for inspection, sale or rental when such dwelling is in fact so available.

(5) To induce or attempt to induce any person to sell or rent any dwelling by representations regarding the entry or prospective entry into the neighborhood of a person or persons of a particular race, color, national origin, religion, creed, sex, marital status, familial status, source of income, age, sexual orientation, gender identity or disability.

(6) [Repealed].

(c) Nothing in this section requires that a dwelling be made available to persons with disabilities whose tenancy would constitute a direct threat to the health or safety of other individuals or whose tenancy would result in substantial physical damage to the property of others.

(6 Del. C. 1953, § 4603; 57 Del. Laws, c. 32, § 1; 58 Del. Laws, c. 133, § 2; 58 Del. Laws, c. 386, § 2; 62 Del. Laws, c. 330, §§ 4, 5; 68 Del. Laws, c. 311, § 1; 75 Del. Laws, c. 356, §§ 24, 26, 28, 37, 38; 77 Del. Laws, c. 90, § 7; 79 Del. Laws, c. 47, § 9; 80 Del. Laws, c. 355, § 3.)

§ 4603A Discrimination in sale or rental of housing and other prohibited practices; additional provisions relating to discrimination against persons with disabilities.

(a) For purposes of this chapter, discrimination on the basis of a individual's disability includes, but is not limited to:

(1) A refusal to permit, at the expense of the person with a disability, reasonable modifications of existing premises occupied or to be occupied by such person if such modifications may be necessary to afford such person full enjoyment of the premises; except that, in the case of a rental, the landlord may where it is reasonable to do so condition permission for a modification on the renter agreeing to restore the interior of the premises to the condition that existed before the modification, reasonable wear and tear excepted;

(2) A refusal to make reasonable accommodations in rules, policies, practices or services, when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling;

(3) a. A failure to design and construct or alter those 2 categories of multifamily dwellings specified in paragraph (a)(3)b. of this section in such a manner that:

1. The dwellings have at least 1 building entrance on an accessible route, unless it is impractical to do so because of the terrain or unusual characteristics of the site;

2. With respect to dwellings with a building entrance on an accessible route:

A. The public use and common use portions of such dwellings are readily accessible to and usable by a person with a disability;

B. All the doors designed to allow passage into and within all premises within such dwellings are sufficiently wide to allow passage by a person in a wheelchair; and

C. All premises within such dwellings contain the following features of adaptive design:

I. An accessible route into and through the dwelling;

II. Light switches, electrical outlets, thermostats and other environmental controls in accessible locations;

III. Reinforcements in bathroom walls to allow later installation of grab bars; and

IV. Usable kitchens and bathrooms such that an individual in a wheelchair can maneuver about the space and make use of the facilities.

b. This paragraph applies to:

1. Covered multifamily dwellings for first occupancy after September 1, 1992; and

2. Covered multifamily dwellings after 1 year from September 1, 1992, undergoing alterations costing 50 percent or more of the replacement cost of the building unless to do so is structurally impracticable;

(4) To make an inquiry to determine whether an applicant for a dwelling, a person intending to reside in that dwelling after it is so sold, rented or made available, or any person associated with that person, has a disability or to make inquiry as to the nature or severity of a disability of such a person. However, this paragraph does not prohibit the following inquiries, provided these inquiries are made of all applicants, whether or not they have a disability:

a. Inquiry into an applicant's ability to meet the requirements of ownership or tenancy;

b. Inquiry to determine whether an applicant is qualified for a dwelling available only to persons with a particular type of disability;

c. Inquiry to determine whether an applicant for a dwelling is qualified for a priority available to a person with a disability or to persons with a particular type of disability; or

d. Inquiry to determine whether an applicant for a dwelling is a current illegal user of a controlled substance.

(b) Compliance with the appropriate requirements of the American National Standard for Buildings and Facilities Providing Accessibility and Usability for Physically Handicapped People (commonly cited as "ANSI A117.1") suffices to satisfy the requirements of paragraph (a)(3)a.2.C. of this section.

(c) (1) If an agency or a political subdivision of the State has incorporated into its laws the requirements set forth in paragraph (a)(3) of this section, compliance with such laws shall be deemed to satisfy the requirements of that paragraph.

(2) The State or a political subdivision thereof with a building code may review and approve newly constructed covered multifamily dwellings for the purpose of making determinations as to whether the design and construction requirements of paragraph (a)(3) of this section are met.

(3) The Division shall encourage, but may not require, any agency or political subdivision of the State to include in their existing procedures for the review and approval of newly constructed covered multifamily dwellings, determinations as to whether the design and construction of such dwellings are consistent with paragraph (a)(3) of this section, and may provide technical assistance to the State, political subdivisions thereof and other persons to implement the requirements of paragraph (a)(3) of this section.

(4) Nothing in this section shall be construed to require the Division to review or approve the plans, designs or construction of any covered multifamily dwellings, to determine whether the design and construction of such dwellings are consistent with the requirements of paragraph (a)(3) of this section.

(d) (1) Nothing in subsection (c) of this section shall be construed to affect the authority and responsibility of the Division to receive and process complaints or otherwise engage in enforcement activities under this chapter.

(2) Determinations by an agency or a political subdivision of the State under paragraphs (c)(1) and (c)(2) of this section shall not be conclusive in enforcement proceedings under this chapter.

(e) Nothing in this chapter shall be construed to invalidate or limit any law of the State or political subdivision thereof, that requires dwellings to be designed and constructed in a manner that affords a person with a disability greater access than is required by this chapter.

(f) Nothing in this section requires that a dwelling be made available to a person with a disability whose tenancy would constitute a direct threat to the health or safety of other individuals or whose tenancy would result in substantial physical damage to the property of others.

(75 Del. Laws, c. 356, § 25.)

§ 4604 Discrimination in residential real estate-related transactions.

(a) *In general.* — It shall be unlawful for any person or other entity whose business includes engaging in residential real estate-related transactions to discriminate against any person in making available such a transaction, or in the terms or conditions of such a transaction, because of race, color, national origin, religion, creed, sex, marital status, familial status, source of income, age, sexual orientation, gender identity or disability.

(b) *Appraisal exemption.* — Nothing in this chapter prohibits a person engaged in the business of furnishing appraisals of real property to take into consideration factors other than race, color, national origin, religion, creed, sex, marital status, familial status, source of income, age, sexual orientation, gender identity or disability.

(6 Del. C. 1953, § 4603; 57 Del. Laws, c. 32, § 1; 58 Del. Laws, c. 133, § 2; 58 Del. Laws, c. 386, § 2; 62 Del. Laws, c. 330, §§ 4, 5; 68 Del. Laws, c. 311, § 1; 75 Del. Laws, c. 356, § 28; 77 Del. Laws, c. 90, § 8; 79 Del. Laws, c. 47, § 10; 80 Del. Laws, c. 355, § 4.)

§ 4605 Discrimination in provision of brokerage services.

It shall be unlawful to deny any person access to or membership or participation in any multiple-listing service, real estate brokers' organization or other service, organization or facility relating to the business of selling, exchanging or renting dwellings, or to discriminate against the person in the terms or conditions of such access, membership, or participation, on account of race, color, national origin, religion, creed, sex, marital status, familial status, source of income, age, sexual orientation, gender identity or disability.

(6 Del. C. 1953, § 4603; 57 Del. Laws, c. 32, § 1; 58 Del. Laws, c. 133, § 2; 58 Del. Laws, c. 386, § 2; 62 Del. Laws, c. 330, §§ 4, 5; 68 Del. Laws, c. 311, § 1; 75 Del. Laws, c. 356, § 28; 77 Del. Laws, c. 90, § 9; 79 Del. Laws, c. 47, § 11; 80 Del. Laws, c. 355, § 5.)

§ 4606 Aiding discriminatory practices.

Notwithstanding the provisions enumerated in § 4619 of this title, it shall be unlawful to assist, induce, incite or coerce another person to commit any of the discriminatory housing practices prohibited by this chapter.

(6 Del. C. 1953, § 4603; 57 Del. Laws, c. 32, § 1; 58 Del. Laws, c. 133, § 2; 58 Del. Laws, c. 386, § 2; 62 Del. Laws, c. 330, §§ 4, 5; 68 Del. Laws, c. 311, § 1.)

§ 4607 Exemptions in certain situations.

(a) Nothing in this chapter shall prohibit a religious organization, association or society, or any nonprofit institution or organization operated, supervised or controlled by or in conjunction with a religious organization, association or society, from limiting the sale, rental

or occupancy of dwellings which it owns or operates for other than a commercial purpose to persons of the same religion, or from giving preference to such persons, unless membership in such religion is restricted on account of race, color or national origin.

(b) Nothing in this chapter shall prohibit a private club not in fact open to the public, which as an incident to its primary purpose or purposes provides lodgings which it owns or operates for other than a commercial purpose, from limiting the rental or occupancy of such lodgings to its members or from giving preference to its members, unless membership in such private club is restricted on account of race, color or national origin.

(c) Nothing in this chapter limits the applicability of any reasonable local, state or federal restrictions regarding the maximum number of occupants permitted to occupy a dwelling as long as they are applied to all occupants and do not operate to discriminate or have the effect of discriminating on the basis of race, color, national origin, religion, creed, sex, marital status, familial status, source of income, age, sexual orientation, gender identity or disability. Nor does any provision in this chapter regarding familial status or age apply with respect to housing for older persons as defined in § 4602(17) of this title.

(d) Housing shall not fail to meet the requirements for housing for older persons by reason of:

(1) Persons residing in such housing as of September 1, 1992 who do not meet the age requirements of § 4602(17)b. or c. of this title; provided, that new occupants of such housing meet the age requirements of § 4602(17)b. or c. of this title;

(2) Unoccupied units: provided, that such units are reserved for occupancy by persons who meet the age requirements of § 4602(17) b. or c. of this title; or

(3) Persons under 18 years of age residing in such housing with a person or persons who do meet the age requirements of § 4602(17)b. or c. of this title provided that:

a. Such person under 18 years of age must move into the housing by reason of death, serious injury or serious illness of the parent, guardian or person acting in the place of a parent with whom such person under 18 years of age resided immediately before the time of such death, serious injury or serious illness; and

b. Occupancy by the person under 18 years of age is of a temporary nature terminating when reasonably practicable.

(e) Nothing in § 4603 of this title, except paragraph (b)(3) thereof, or in § 4603A of this title, shall apply to rentals of rooms or units in dwellings containing living quarters occupied or intended to be occupied by no more than 4 families living independently of each other, if the owner actually maintains and occupies 1 of such living quarters as that owner's residence.

(f) Nothing in this chapter shall prohibit discrimination on the basis of sex for single sex student dormitories, fraternities, sororities, other housing or portion thereof of an educational institution certified, chartered, or established by the State and operated for students of that educational institution, provided that such educational institution provides reasonable accommodations to permit access to and use of such facilities consistent with a student's gender identity.

(g) Nothing in this chapter shall prohibit a religious organization, association, or society, or any nonprofit institution or organization operated, supervised or controlled by or in conjunction with a religious organization, association, or society, from discriminating on the basis of sex for single sex dormitories or portions thereof where such discrimination on the basis of sex is necessary for the safety of individuals in such dormitories or to preserve the personal privacy of such individuals, unless such organization, association, society or institution restricts its membership on account of race, color or national origin.

(h) The prohibitions in this chapter against discrimination based on source of income shall not limit the ability of any person to consider the sufficiency or sustainability of income, or the credit rating of a renter or buyer, so long as sufficiency or sustainability of income, and the credit requirements, are applied in a commercially reasonable manner and without regard to source of income.

(i) The prohibitions in this chapter against discrimination based on source of income shall not limit the ability of any housing authority or related agency having oversight over the provision of housing assistance from prohibiting such authority's employees or agents from renting housing to persons who receive such assistance, where such prohibition is intended to prevent conflicts of interest or the appearance of impropriety, nor shall this chapter prohibit such agents and employees from complying with any such prohibition on renting housing to persons receiving such assistance.

(j) A landlord is not required to participate in any government-sponsored rental assistance program, voucher, or certificate system. A landlord's nonparticipation in any government-sponsored rental assistance program, voucher, or certificate system may not serve as the basis for any administrative or judicial proceeding under this chapter.

(k) The prohibitions in this chapter against discrimination based on source of income shall not limit the ability of a landlord participating in any government-sponsored rental assistance program, voucher, or certificate system from reserving rental units for tenants who qualify for such governmental program.

(6 Del. C. 1953, § 4604; 57 Del. Laws, c. 32, § 1; 60 Del. Laws, c. 523, § 1; 62 Del. Laws, c. 330, § 6; 68 Del. Laws, c. 311, § 1; 70 Del. Laws, c. 186, § 1; 75 Del. Laws, c. 356, §§ 28, 29; 77 Del. Laws, c. 90, § 10; 79 Del. Laws, c. 47, § 12; 80 Del. Laws, c. 355, § 6.)

§ 4608 Administration.

(a) The State Human Relations Commission shall implement the provisions of this chapter not expressly vested in another entity.

(b) (1) The Commission may delegate to a panel of its members any power, duty, or function vested in it by this chapter. No panel to which any power, duty, or function of the Commission is delegated shall consist of fewer than 3 members of the Commission.

(2) The Commission may delegate, to the Division of Human Relations, any power, duty, or function vested in it by this chapter unless the delegation is expressly prohibited. If the Commission delegates to the Division a power, duty, or function vested in it by this chapter, the delegation shall specifically state the power, duty, or function being delegated. The Commission shall not delegated its power or duty to conduct public hearings or order relief to the Division.

(c) All executive departments and agencies of the State or any political subdivision thereof shall administer their programs and activities relating to housing and urban development (including, but not limited to, any agency having regulatory or supervisory authority over financial institutions) in a manner affirmatively to further the purposes of this chapter and shall cooperate with the Commission to further such purposes.

(d) The Commission, in connection with its enforcement of this chapter:

(1) May study the nature and extent of discriminatory housing practices in representative urban, suburban and rural communities throughout the State;

(2) May publish and disseminate reports, recommendations and information derived from such studies;

(3) Shall cooperate with and render technical assistance to federal and state agencies, organizations and institutions which are formulating or carrying on programs to prevent or eliminate discriminatory housing practices;

(4) May provide similar assistance to other local public or private agencies, organizations and institutions consistent with the purposes of this chapter; and

(5) Shall administer the programs and activities relating to eliminating discriminatory housing practices in a manner affirmatively to further the purpose of this chapter.

(68 Del. Laws, c. 311, § 1; 75 Del. Laws, c. 356, § 30.)

§ 4609 Education and conciliation.

(a) The Commission may commence such educational activities as, in its judgment, will further the purposes of this chapter. It may hold conferences for persons in the business industry and other interested parties to acquaint them with the provisions of this chapter and its suggested means of implementing it. The Commission may issue reports on such conferences as it deems appropriate.

(b) The Division may commence such conciliatory activities in order to further the purposes of this chapter. It may call conferences of persons in the business industry and other interested parties to acquaint them with the provisions of this chapter governing conciliation and the means it employs to implement those provisions. It shall endeavor, with their advice, to develop programs of voluntary compliance and enforcement. The Division may issue reports on such conferences as it deems appropriate.

(c) When undertaking their respective duties under this section, the Commission and the Division may consult with state and local officials and other interested parties to learn the extent, if any, to which discriminatory public accommodations practices exist in the State or locality, and whether and how state or local enforcement programs might be utilized to combat such discrimination. The Commission may issue reports on such consultations as it deems appropriate.

(68 Del. Laws, c. 311, § 1; 75 Del. Laws, c. 356, § 31.)

§ 4610 Administrative enforcement; preliminary matters.

(a) *Complaints and answers.* — (1) a. 1. An aggrieved person, not later than 1 year after an alleged discriminatory housing practice has occurred or terminated, or not later than 1 year after such practice has been discovered or reasonably should have been discovered by the aggrieved person, may file a complaint with the Division alleging such discriminatory housing practice. The Division on its own initiative may also file such a complaint subject to the same time limitations.

2. Such complaints shall be in writing and shall contain such information and be in such form as the Division requires.

3. The Division may also investigate housing practices to determine whether a complaint should be brought under this chapter.

b. Upon the filing of such a complaint:

1. The Division shall serve notice upon the aggrieved person acknowledging such filing and advising the aggrieved person of the time limits and choice of forums provided under this chapter;

2. The Division shall, not later than 10 days after such filing or the identification of an additional respondent under paragraph (a)(2) of this section, serve on the respondent a notice identifying the alleged discriminatory housing practice and advising such respondent of the procedural rights and obligations of respondents under this chapter, together with a copy of the original complaint;

3. Each respondent may file, not later than 20 days after receipt of notice from the Division, an answer to such complaint; and

4. The Division shall make an investigation of the alleged discriminatory housing practice and complete such investigation within 100 days after the filing of the complaint unless it is impracticable to do so.

c. If the Division is unable to complete the investigation within 100 days after the filing of the complaint, the Division shall notify the complainant and respondent in writing of the reasons for not doing so.

d. Complaints and answers shall be verified under oath or affirmation, and may be reasonably and fairly amended at any time.

(2) a. A person who is not named as a respondent in a complaint, but who is identified as a respondent in the course of investigation, may be joined as an additional or substitute respondent to the same extent such person could be joined in a civil action in Superior Court and upon written notice, under paragraph (a)(1) of this section, to such person, from the Division.

b. Such notice, in addition to meeting the requirements of paragraph (a)(1) of this section, shall explain the basis for the Division's belief that the person to whom the notice is addressed is properly joined as a respondent.

(b) *Investigative report and conciliation.* — (1) During the period beginning with the filing of such complaint and ending with the filing of a charge or a dismissal by the Division, the Division shall, to the extent feasible, engage in conciliation with respect to such complaint.

(2) A conciliation agreement arising out of such conciliation shall be an agreement between the respondent and the complainant, and shall be subject to approval by the Division.

(3) A conciliation agreement may provide binding arbitration of the dispute arising from the complaint. Any such arbitration that results from a conciliation agreement may award appropriate relief, including monetary relief.

(4) Each conciliation agreement shall be made public unless the complainant and respondent otherwise agree and the Division determines that disclosure is not required to further the purpose of this chapter.

(5) a. At the end of each investigation under this section, the Division shall prepare a final investigative report containing:

1. The names and dates of contacts with witnesses;

2. A summary and the dates of correspondence and other contacts with the aggrieved person and the respondent;

3. A summary description of other pertinent records;

4. A summary of witness statements;

5. Answers to interrogatories; and

6. Such other matters as the Division requires.

b. A final report under this paragraph may be amended if additional evidence is later discovered.

(c) *Failure to comply with conciliation agreement.* — Whenever the Division has reasonable cause to believe that a respondent has breached a conciliation agreement, the shall refer the matter to the Attorney General with a recommendation that a civil action be filed under § 4614 of this title for the enforcement of such agreement.

(d) *Prohibitions and requirements with respect to disclosure of information.* — (1) Nothing said or done for the purpose of promoting conciliation under this chapter may be made public or used as evidence in a subsequent proceeding under this chapter without the written consent of the persons whose words or actions are at issue.

(2) Notwithstanding paragraph (d)(1) of this section, the Division shall make available to the aggrieved person and the respondent, at any time, upon request following completion of the Division's investigation, information derived from an investigation and any final investigative report relating to that investigation.

(e) *Prompt judicial action.* — (1) If the Division concludes at any time following the filing of a complaint that prompt judicial action is necessary to carry out the purposes of this chapter, the Division may authorize a civil action for appropriate temporary or preliminary relief pending final disposition of the complaint under this section. Upon receipt of such an authorization, the Attorney General, in the absence of any conflict of duty, shall commence and maintain such an action in the Court of Chancery on behalf of the Division in the name of the Division or the aggrieved person or persons. The commencement of a civil action under this subsection does not affect the initiation or continuation of administrative proceedings under this section or § 4612 of this title.

(2) If the Attorney General does not commence such an action, the Division shall employ special counsel to pursue such action in accordance with § 2507 of Title 29. Whenever an action under this subsection will be pursued by special counsel, such action shall be commenced promptly after the Division employs such counsel.

(3) Whenever the Division has reason to believe that a basis may exist for the commencement of proceedings against any respondent under § 4614(a) and (c) of this title or for proceedings by any governmental licensing or supervisory authorities, the Division shall transmit the information upon which such belief is based to the Attorney General, or to such authorities, as the case may be.

(f) *Reasonable cause determination and effect.* — (1) The Division shall, within 100 days after the filing of the complaint, determine, based on the facts, whether reasonable cause exists to believe that a discriminatory housing practice has occurred or is about to occur, unless it is impracticable to do so, or unless the Division has approved a conciliation agreement with respect to the complaint. If the Division is unable to make the determination within 100 days after the filing of the complaint the Division shall notify the complainant and respondent in writing of the reasons for not doing so.

(2) a. If the Division determines that reasonable cause exists to believe that a discriminatory housing practice has occurred or is about to occur, the Division shall, except as provided in paragraph (f)(2)c. of this section, immediately issue a charge on behalf of the aggrieved person, for further proceedings under § 4612 of this title.

b. Such charge:

1. Shall consist of a short and plain statement of the facts upon which the Division has found reasonable cause to believe that a discriminatory housing practice has occurred or is about to occur;

2. Shall be based on the final investigative report; and

3. Need not be limited to the facts or grounds alleged in the complaint filed under § 4610(a) of this title.

c. If the Division determines that the matter involves the legality of any state or local zoning or other land use law or ordinance, the Division shall immediately refer the matter to the Attorney General for appropriate action under § 4614 of this title, instead of issuing such charge.

(3) If the Division determines that no reasonable cause exists to believe that a discriminatory housing practice has occurred or is about to occur, the Division shall promptly dismiss the complaint. The Division shall make public disclosure of each such dismissal.

(4) The Division may not issue a charge under this section regarding an alleged discriminatory housing practice after the beginning of the trial of a civil action commenced by the aggrieved party under a state or federal law, seeking relief with respect to that discriminatory housing practice.

(g) *Service of copies of charge.* — After the Division issues a charge under this section, the Division shall cause a copy thereof, together with information as to how to make an election under § 4612(a) of this title and the effect of such an election, to be served:

(1) On each respondent named in such charge, together with a notice of opportunity for a hearing at a time and place specified in the notice, unless that election is made; and

(2) On each aggrieved person on whose behalf the complaint was filed.

(6 Del. C. 1953, §§ 4605, 4606, 4608; 57 Del. Laws, c. 32, § 1; 61 Del. Laws, c. 498, § 1; 65 Del. Laws, c. 377, §§ 5, 6; 68 Del. Laws, c. 311, § 1; 69 Del. Laws, c. 381, §§ 1-4; 75 Del. Laws, c. 356, § 32.)

§ 4611 Subpoenas; giving of evidence.

(a) *In general.* — The Commission may, in accordance with this subsection, issue subpoenas and order discovery in aid of investigations and hearings under this chapter. Such subpoenas and discovery may be ordered to the same extent and subject to the same limitations as would apply if the subpoenas or discovery were ordered or served in aid of a civil action in the Superior Court.

(b) *Witness fees.* — Witnesses summoned by a subpoena under this chapter shall be entitled to the same witness and mileage fees as witnesses in proceedings in Superior Court.

(c) *Civil enforcement.* — Where any person fails or neglects to attend and testify or answer any lawful inquiry or to produce records, documents or other evidence, if it is in such person's power to do so, in obedience to the subpoena or other lawful order under subsection (a) of this section, the Commission may petition the Superior Court in the county where such person resides or conducts business for an order requiring such person to appear before the Commission to produce evidence if so ordered or to give testimony pertaining to the matter under investigation or in question. Any failure to obey such order may be punished by the Court as being in contempt of the Court.

(d) *Criminal penalties.* — (1) Any person who wilfully fails or neglects to attend and testify or to answer any lawful inquiry or to produce records, documents or other evidence, if it is in such person's power to do so, in obedience to the subpoena or other lawful order under subsection (a) of this section, shall in each instance be fined not more than $2,500, or imprisoned not more than 1 year, or both.

(2) Any person who, with intent thereby to mislead another person in any proceeding under this chapter:

a. Makes or causes to be made any false entry or statement of fact in any report, account, record or other document produced pursuant to subpoena or other lawful order under subsection (a) of this section;

b. Wilfully neglects or fails to make or to cause to be made full, true and correct entries in such reports, accounts, records or other documents; or

c. Wilfully mutilates, alters or by any other means falsifies any documentary evidence; shall in each instance be fined not more than $2,500, or imprisoned not more than 1 year, or both.

(6 Del. C. 1953, §§ 4609, 4610; 57 Del. Laws, c. 32, § 1; 68 Del. Laws, c. 311, § 1.)

§ 4612 Enforcement by Commission.

(a) *Election of judicial determination.* — When a charge is issued under § 4610 of this section, a complainant, a respondent or an aggrieved person on whose behalf the complaint was filed, may elect to have the claims asserted in that charge decided in a civil action under subsection (n) of this section in lieu of a hearing under subsection (b) of this section. The election must be made not later than 20 days after the receipt by the electing person of service under § 4610(g) of this title or, in the case of the Division, not later than 20 days after such service. The person making such election shall give notice of doing so to the Division and to all other parties to the proceeding to whom the charge relates.

(b) *Administrative hearing on absence of election.* — If an election is not made under subsection (a) of this section with respect to a charge issued under § 4610 of this title, the Commission shall provide an opportunity for a hearing on the record. The Commission shall delegate the conduct of a hearing under this section to an Administrative Hearing Officer or Panel appointed by the Commission Chairperson in accordance with regulations established by the Commission. The Administrative Hearing Officer or Panel shall conduct the hearing in the county in which the discriminatory housing practice is alleged to have occurred or to be about to occur.

(c) *Rights of parties.* — At a hearing under this section, each party may appear in person, be represented by counsel, present evidence, cross-examine witnesses and obtain the issuance of subpoenas under § 4611 of this title. Any aggrieved person may intervene as a party in the proceeding. The Delaware Rules of Evidence shall apply to the presentation of evidence in such hearing as they would in an administrative hearing conducted in accordance with subchapter III of the Administrative Procedures Act in Title 29 [subchapter III of Chapter 101 of Title 29].

(d) *Expedited discovery and hearing.* — (1) Discovery in administrative proceedings under this section shall be conducted as expeditiously and inexpensively as possible, consistent with the need of all parties to obtain relevant evidence.

(2) A hearing under this section shall be conducted as expeditiously and inexpensively as possible consistent with the needs and rights of the parties to obtain a fair hearing and a complete record.

(3) [Repealed.]

(e) *Resolution of charge.* — Any resolution of a charge before a final order under this section shall require the consent of the aggrieved person on whose behalf the charge is issued.

(f) *Effect of trial of civil action on administrative proceedings.* — An Administrative Hearing Officer or Panel may not continue administrative proceedings under this section regarding any alleged discriminatory housing practice after the beginning of the trial of a civil action commenced by the aggrieved party under a state or federal law, seeking relief with respect to that discriminatory housing practice.

(g) *Hearings; findings and conclusions; orders.* — (1) The Administrative Hearing Officer or Panel shall commence the hearing under this section not later than 120 days following the issuance of the charge, unless it is impracticable to do so. If the Administrative Hearing Officer or Panel is unable to commence the hearing within 120 days after the issuance of the charge, the Administrative Hearing Officer or Panel Chair shall notify the Division, the aggrieved person on whose behalf the charge was filed, and the respondent, in writing of the reasons for not doing so.

(2) The Administrative Hearing Officer or Panel shall make findings of fact and conclusions of law within 60 days after the end of the hearing under this section, unless it is impracticable to do so. If the Administrative Hearing Officer or Panel is unable to make findings of fact and conclusions of law within such period, or any succeeding 60-day period thereafter, the Administrative Hearing Officer or Panel Chair shall notify the Division, the aggrieved person on whose behalf the charge was filed and the respondent, in writing of the reasons for not doing so.

(3) If the Administrative Hearing Officer or Panel finds that a respondent has engaged or is about to engage in a discriminatory housing practice, such Administrative Hearing Officer or Panel shall promptly issue an order for such relief as may be appropriate, which may include actual damages suffered by the aggrieved person, costs, expenses, attorney's fees and injunctive or other equitable relief. Such order may, to vindicate the public interest, assess a civil penalty against the respondent to be paid to the Special Administration Fund:

a. In an amount not exceeding $10,000 for each discriminatory practice if the respondent has not been adjudged to have committed any prior discriminatory housing practice;

b. In an amount not exceeding $25,000 for each discriminatory practice if the respondent has been adjudged to have committed 1 other discriminatory housing practice during the 5-year period ending on the date of the filing of this charge; and

c. In an amount not exceeding $50,000 for each discriminatory practice if the respondent has been adjudged to have committed 2 or more discriminatory housing practices during the 7-year period ending on the date of the issuing of this charge; except that if the acts constituting the discriminatory housing practice that is the object of the charge are committed by the same natural person who has been previously adjudged to have committed acts constituting a discriminatory housing practice, then the civil penalties set forth in paragraphs (g)(3)b. and c. of this section may be imposed without regard to the period of time within which any subsequent discriminatory housing practice occurred.

(4) No such order shall affect any contract, sale, encumbrance or lease consummated before the issuance of such order and involving a bona fide purchaser, encumbrancer or tenant without actual notice of the charge issued under this chapter.

(5) In the case of an order with respect to a discriminatory housing practice that occurred in the course of a business subject to a licensing or regulation by a governmental agency, the Division shall, not later than 30 days after the date of the issuance of such order (or, if such order is judicially reviewed, 30 days after such order is in substance affirmed upon such review):

a. Send copies of the findings of fact, conclusions of law and the order, to that governmental agency; and

b. Recommend to that governmental agency appropriate disciplinary action (including, where appropriate, a reprimand or the suspension or revocation of the license of the respondent).

(6) In the case of an order against a respondent against whom another order was issued within the preceding 5 years under this section, the Division shall send a copy of each such order to the Attorney General.

(7) If the Administrative Hearing Officer or Panel finds that the respondent has not engaged or is not about to engage in a discriminatory housing practice, as the case may be, such Administrative Hearing Officer or Panel shall enter an order dismissing the charge. The Division shall make public disclosure of each such dismissal.

(h) *Service of final order.* — The Commission shall cause the findings of fact and conclusions of law made with respect to any final order for relief under this section, together with a copy of such order, to be served on each aggrieved person and each respondent in the proceeding.

(i) *Judicial review.* — (1) Any party aggrieved by a final order for relief under this section granting or denying in whole or in part the relief sought may obtain a review of such order in the Superior Court in the county in which the discriminatory practice is alleged to have occurred pursuant to the civil rules of that Court and the Administrative Procedures Act [Chapter 101 of Title 29]. Filing of the petition for review shall be not later than 30 days after the order is entered.

(2) Any party to the proceeding before the Administrative Hearing Officer or Panel may intervene in the Superior Court in the appeal process.

(3) No objection not made before the Administrative Hearing Officer or Panel shall be considered by the Court, unless the failure or neglect to urge such objection is excused because of extraordinary circumstances or when the interests of justice so require.

(j) *Court enforcement of administrative order upon petition by Commission.* — (1) The Commission may petition the Court of Chancery in the county in which the discriminatory housing practice is alleged to have occurred or in which any respondent resides or transacts business for the enforcement of the order of the Administrative Hearing Officer or Panel and for appropriate temporary relief or restraining order, by filing in such Court a written petition requesting that such order be enforced and for appropriate temporary relief or restraining order.

(2) The Commission shall file in Court with the petition the record in the proceeding. A copy of such petition shall be forthwith transmitted by the Register in Chancery to the parties to the proceeding before the Administrative Hearing Officer or Panel.

(3) Upon the filing of a petition under this subsection, the Court may grant to the petitioner, or any other party, such temporary relief, restraining order or other order as the Court deems just and proper to enforce the Commission's order.

(4) Any party to the proceeding before the Administrative Hearing Officer or Panel may intervene in the Court of Chancery in the enforcement process.

(k) *Enforcement decree in absence of petition for review.* — If no petition for review is filed under subsection (i) of this section before the expiration of 30 days after the date the order is entered, the findings of fact and order of the Administrative Hearing Officer or Panel shall be conclusive in connection with any petition for enforcement:

(1) Which is filed by the Commission under subsection (j) of this section after the end of such day; or

(2) Under subsection (l) of this section.

(l) *Court enforcement of administrative order upon petition of any person entitled to relief.* — If before the expiration of 60 days after the date of the order of the Administrative Hearing Officer or Panel is entered, no petition for review has been filed under subsection (i) of this section, and the Commission has not sought enforcement of the order under subsection (j) of this section, any person entitled to relief under the order may petition for a decree enforcing the order in the Court of Chancery in the county in which the discriminatory housing practice has occurred or is about to occur.

(m) *Entry of decree.* — The Register in Chancery for the Court in which a petition for enforcement is filed under subsection (k) or (l) of this section shall forthwith, upon order of the Court, enter a decree enforcing the order and shall transmit a copy of such decree to the Commission, the respondent named in the petition, and to any other parties to the proceeding before the Administrative Hearing Officer or Panel.

(n) *Civil action for enforcement when election is made for such civil action.* — (1) If an election is made under subsection (a) of this section, the Commission shall authorize a civil action on behalf of the aggrieved person or persons in the county in which the discriminatory practice is alleged to have occurred. The Commission shall immediately refer the matter to the Attorney General for appropriate action.

(2) Not later than 30 days after the Commission's referral, the Attorney General, in the absence of any conflict of duty, shall pursue a civil action on behalf of the Commission in the name of the aggrieved person or persons.

(3) If the Attorney General does not commence a civil action, the Commission shall employ special counsel to pursue such action in accordance with § 2507 of Title 29. Whenever a civil action under this subsection will be pursued by special counsel, such action shall be commenced promptly after the Commission employs such counsel.

(4) Any aggrieved person with respect to the issues to be determined in a civil action under this subsection may intervene as of right in that civil action.

(5) In a civil action under this subsection, if the Court finds that a discriminatory housing practice has occurred or is about to occur, the Court may grant as relief any relief which a court could grant with respect to such discriminatory housing practice in a civil action under § 4613 or § 4614(d)(2)b. of this title. Any relief so granted that would accrue to an aggrieved person in a civil action commenced by that aggrieved person under § 4613 of this title shall also accrue to that aggrieved person in a civil action under this subsection. If monetary relief is sought for the benefit of an aggrieved person who does not intervene in the civil action, the Court shall not award such relief if that aggrieved person has not complied with discovery orders entered by the Court.

(o) *Attorneys' fees and expenses.* — In any administrative proceeding brought under this section, or any court proceeding arising therefrom, the Administrative Hearing Officer, Panel or the court, as the case may be, in its discretion, may allow the prevailing aggrieved person or persons, which may include the State, costs, reasonable attorneys' fees and expenses. The Administrative Hearing Officer, Panel or the Court, as the case may be, may order that the attorneys' fees and expenses be paid directly to the attorney, who, when a Court enters the order, may enforce the order in the attorneys' name.

(6 Del. C. 1953, §§ 4611, 4612; 57 Del. Laws, c. 32, § 1; 68 Del. Laws, c. 311, § 1; 69 Del. Laws, c. 381, §§ 5-9; 75 Del. Laws, c. 356, §§ 33, 34.)

§ 4613 Enforcement by private persons.

(a) *Civil action.* — (1) a. An aggrieved person may commence a civil action in the county in which the discriminating housing practice is alleged to have occurred not later than 2 years after the occurrence or the termination of an alleged discriminatory housing practice,

not later than 2 years after such practice has been discovered or reasonably should have been discovered by the aggrieved person, or not later than 2 years after the breach of a conciliation agreement entered into under this chapter, whichever occurs last, to obtain appropriate relief with respect to such discriminatory housing practice or breach.

b. The computation of such 2-year period shall not include any time during which an administrative proceeding under this chapter was pending with respect to a complaint or charge under this chapter based upon such discriminatory housing practice. This subparagraph does not apply to actions arising from a breach of a conciliation agreement.

(2) An aggrieved person may commence a civil action under this subsection whether or not a complaint has been filed under § 4610 of this title and without regard to the status of any such complaint, but if the Division has obtained a conciliation agreement with the consent of an aggrieved person, no action may be filed under this subsection by such aggrieved person with respect to the alleged discriminatory housing practice which forms the basis for such complaint except for the purpose of enforcing the terms of such an agreement.

(3) An aggrieved person may not commence a civil action under this subsection with respect to an alleged discriminatory housing practice which forms the basis of a charge issued by the Division if an Administrative Hearing Officer or Panel has commenced a hearing on the record under this chapter with respect to such charge.

(b) *Appointment of attorney by court.* — Upon application by a person alleging under subsection (a) of this section, a discriminatory housing practice or a person against whom such a practice is alleged the court may:

(1) Appoint an attorney for such person; or

(2) Authorize the commencement or continuation of a civil action under subsection (a) of this section without the payment of fees, costs or security, if in the opinion of the court such person is financially unable to bear the expenses of such action.

(c) *Relief which may be granted.* — (1) In a civil action under subsection (a) of this section in Superior Court, if a discriminatory housing practice is found to have occurred the aggrieved person may be awarded actual and punitive damages; and

(2) Subject to subsection (d) of this section, in a civil action under subsection (a) of this section, in the Court of Chancery, if the Court finds that a discriminatory housing practice has occurred or is about to occur, the Court, as the Court deems appropriate, may grant:

a. Any temporary, preliminary, permanent or mandatory injunctive relief enjoining the defendant from engaging in such practice;

b. Ordering such affirmative action as may be appropriate; and

c. Such other relief as the Court deems appropriate to the fullest extent of its jurisdiction.

(3) In a civil action under subsection (a) of this section, the Court, in its discretion, may allow the prevailing aggrieved person or persons, reasonable attorneys' fees, expenses and costs.

(d) *Effect on certain sales, encumbrances, and rentals.* — Relief granted under this section shall not affect any lease consummated before the granting of such relief and involving a tenant without actual notice of the filing of a complaint with the Division or civil action under this chapter. Relief granted under this section shall not affect any contract, option, sale or encumbrance, consummated before the granting of such relief and involving a bona fide purchaser, encumbrancer or optionee, without either actual notice of the filing of a complaint with the Division or civil action under this chapter, or notice by lis pendens when appropriate under Chapter 16 of Title 25.

(e) *Intervention by Attorney General.* — Upon timely application, the Attorney General may intervene in such civil action, if the Attorney General certifies that the case is of general public importance. Upon such intervention the Attorney General may obtain such relief as would be available to the Attorney General under § 4614 of this title in a civil action to which such section applies.

(68 Del. Laws, c. 311, § 1; 75 Del. Laws, c. 356, § 35.)

§ 4614 Enforcement by the Attorney General.

(a) *Pattern or practice cases.* — Whenever the Attorney General has reasonable cause to believe that any person or group of persons is engaged in a pattern or practice of resistance to the full enjoyment of any of the rights granted by this chapter, or that any group of persons has been denied any of the rights granted by this chapter and such denial raises an issue of general public importance, the Attorney General may commence a civil action in the Superior Court, Court of Chancery or both in any county of the State.

(b) *On referral of discriminatory housing practice or conciliation agreement for enforcement.* — (1) a. The Attorney General may commence a civil action in any state court of competent jurisdiction for appropriate relief with respect to a discriminatory housing practice referred to the Attorney General by the Division under § 4610(f)(2)c. of this title.

b. A civil action under this paragraph may be commenced not later than the expiration of 18 months after the date of the occurrence or the termination of the alleged discriminatory housing practice.

(2) a. The Attorney General may commence a civil action in any state court of competent jurisdiction for appropriate relief with respect to breach of a conciliation agreement referred to the Attorney General by the Division under § 4610(c) of this title.

b. A civil action may be commenced under this paragraph not later than the expiration of 90 days after the referral of the alleged breach under § 4610(c) of this title.

(c) *Enforcement of subpoenas.* — The Attorney General, on behalf of the Commission, may enforce a subpoena issued by the Commission for itself or other party at whose request a subpoena is issued in appropriate proceedings in the Superior Court for the county in which the person to whom the subpoena was addressed resides, was served or transacts business.

(d) *Relief which may be granted in civil actions under subsections (a) and (b) of this section.* — (1) In a civil action brought in the Court of Chancery, the Court:

a. May award such preventive relief, including a permanent or temporary injunction, restraining order or other order against the person responsible for a violation of this chapter as is necessary to assure the full enjoyment of the rights granted by this chapter;

b. May allow the prevailing aggrieved person or persons, which may include the State, reasonable attorney's fees, expenses and costs; and

c. May award such other relief as the Court deems appropriate, including monetary damages to persons aggrieved.

(2) In a civil action brought in the Superior Court, the Court:

a. May award monetary damages to the aggrieved person or persons;

b. May, to vindicate the public interest, assess a civil penalty against the respondent to be paid to the Special Administration Fund:

1. In an amount not exceeding $50,000, for a 1st violation;

2. In an amount not exceeding $100,000, for any subsequent violation;

c. May allow the prevailing aggrieved person or persons, which may include the State, reasonable attorneys' fees, expenses and costs; and

d. May award such other relief as the Court deems appropriate.

(3) In a civil action under paragraph (b)(2) of this section, the court may award such relief as is enumerated in paragraphs (d)(1) and (2) of this section as may be appropriate given the nature of the action initiated and the jurisdiction of the Court.

(e) *Limitation of fees.* — Where a civil action is initiated by the Attorney General, or by the Attorney General or special counsel on behalf of the Commission or any aggrieved person, pursuant to the applicable provisions of this chapter, no court or any officer of such court shall charge fees of any kind in such proceeding to the Attorney General, the Commission, special counsel or such individual.

(f) *Intervention in civil actions.* — Upon timely application, any person may intervene in a civil action commenced by the Attorney General under subsection (a) or (b) of this section which involves an alleged discriminatory housing practice with respect to which such person is an aggrieved person or a conciliation agreement to which such person is a party. The Court may grant such appropriate relief to any such intervening party as is authorized to be granted to a plaintiff in a civil action under § 4613 of this title.

(68 Del. Laws, c. 311, § 1; 75 Del. Laws, c. 356, § 36.)

§ 4615 Fees, costs and expenses for respondent or defendant.

In any action, pleading or motion under this chapter, the Administrative Hearing Office, Panel or court hearing or reviewing the matter, may in its discretion, award attorneys' fees, costs and expenses to the respondent or defendant if an action was brought for an improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

(68 Del. Laws, c. 311, § 1.)

§ 4616 Rules to implement chapter.

The Commission may make rules and regulations (including rules for the collection, maintenance and analysis of appropriate data) to carry out this chapter. The Commission shall give public notice and opportunity for comment with respect to all rules and regulations made under this section in accordance with the Administrative Procedures Act [§ 10101 et seq. of Title 29].

(6 Del. C. 1953, § 4607; 57 Del. Laws, c. 32, § 1; 68 Del. Laws, c. 311, § 1.)

§ 4617 Effect on other laws.

Nothing in this chapter shall be construed to invalidate or limit any law of the State or any political subdivision thereof that grants, guarantees or protects the same rights as are granted by this chapter, but any law of the State or any political subdivision thereof that purports to require or permit any action that would be a discriminatory housing practice under this chapter shall to that extent be invalid.

(68 Del. Laws, c. 311, § 1.)

§ 4618 Interference, coercion or intimidation.

It shall be unlawful to coerce, intimidate, threaten or interfere with any person in the exercise or enjoyment of, or on account of that person having exercised or enjoyed, or on account of that person having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected by § 4603, § 4604, § 4605 or § 4606 of this title.

(68 Del. Laws, c. 311, § 1.)

§ 4619 Prohibition of intimidation, violations and penalties.

Whoever, whether or not acting under color of law, by force or threat of force wilfully injures, intimidates or interferes with, or attempts to injure, intimidate or interfere with:

(1) Any person because of race, color, national origin, religion, creed, sex, sexual orientation, gender identity, marital status, familial status, source of income, age or disability and because he or she is or has been selling, purchasing, renting, financing, occupying or

contracting or negotiating for the sale, purchase, rental, financing or occupation of any dwelling, or applying for participating in any service, organization or facility relating to the business of selling or renting dwellings; or

(2) Any person because he or she is or has been, or in order to intimidate such person or any other person or any class of persons from:

a. Participating, without discrimination on account of race, color, national origin, religion, creed, sex, sexual orientation, gender identity, marital status, familial status, source of income, age or disability in any of the activities, services, organizations or facilities described in paragraph (1) of this section; or

b. Affording another person or class of persons opportunity or protection so to participate; or

(3) Because any citizen is or has been, or in order to discourage such citizen or any other citizen from lawfully aiding or encouraging other persons to participate, without discrimination on account of race, color, national origin, religion, creed, sex, sexual orientation, gender identity, marital status, familial status, source of income, age or disability in any of the activities, services, organizations or facilities described in paragraph (1) of this section, or participating lawfully in speech or peaceful assembly opposing any denial of the opportunity to so participate, that citizen shall be fined for each such act not more than $2,500, or imprisoned not more than 1 year, or both, and if bodily injury results shall be fined for each such act not more than $10,000, or imprisoned not more than 10 years, or both; and, if death results, for each such act shall be subject to imprisonment for any term of years or for life.

(6 Del. C. 1953, § 4613; 57 Del. Laws, c. 32, § 1; 68 Del. Laws, c. 311, § 1; 70 Del. Laws, c. 186, § 1; 75 Del. Laws, c. 356, § 28; 77 Del. Laws, c. 90, § 11; 79 Del. Laws, c. 47, § 13; 80 Del. Laws, c. 355, § 7.)

§ 4620 Criminal jurisdiction.

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

(77 Del. Laws, c. 90, § 27.)

Subtitle II
Other Laws Relating to Commerce and Trade

Chapter 47
Transient Retailers

Subchapter I

General Provisions.

§ 4701 Purpose.

The purpose of this chapter is to protect the public from improper sales techniques by transient retailers, and to provide a method of processing warranty claims on merchandise sold by transient retailers.

(65 Del. Laws, c. 391, § 1.)

§ 4702 Definitions.

As used in this chapter, the following terms shall have the respective meanings ascribed by this section:

(1) "Operator" means the owner or operator of any building, structure, motor vehicle or real estate, whether fixed or mobile, which is leased or rented to a transient merchant.

(2) "Registered agent" as used in this chapter may be, but is not required to be, the agent appointed pursuant to § 132 of Title 8.

(3) "Temporary or transient business" means any exhibition or sale of goods, wares or merchandise which is carried on in any building, structure, motor vehicle or real estate for less than either of following times during any consecutive 12-month period:

a. A period of 4 months' duration between commencement and cessation of the conduct of business; or

b. A period of 90 actual days during which business is conducted.

(4) "Transient retailer" means any person, firm or corporation, as principal or agent, or both, which engages in, does or transacts any temporary or transient business in this State, either in 1 locality or in traveling from place to place in this State, offering for sale or selling goods, wares, merchandise, food or beverages, and including those who, for the purpose of carrying on such business, hire, lease, use or occupy any permanent or mobile building, structure, motor vehicle including trucks, or real estate for the exhibition by means of samples, catalogues, photographs and price lists or sale of such goods, wares or merchandise.

(65 Del. Laws, c. 391, § 1; 66 Del. Laws, c. 237, § 1.)

§ 4703 Exemptions.

(a) This chapter shall not apply to:

(1) Sales made to dealers by commercial travelers or selling agents in the usual course of business;

(2) Bona fide sales of goods, wares or merchandise by sample, brochure or catalogue for future delivery;

(3) Any annual fair;

(4) Any special event, taking place upon real property which is designed for and in the business of conducting such events where the transient merchant's goods, wares or merchandise are only displayed and sold on said property;

(5) Any general sale, fair, auction or bazaar sponsored by an ecclesiastical society, religious corporation, public service or charitable organization;

(6) Garage sales on premises devoted to residential use;

(7) Sales of crafts or items made by hand when sold or offered for sale by the person making such crafts or handmade items;

(8) Sales of local agricultural products;

(9) Sales resulting from prior invitation to the vendor by the owner or occupant of the residence; or

(10) Any special event, taking place within the confines of an enclosed retail shopping facility, having a total enclosed common area square footage, exclusive of the total square footage of all occupied retail space contained in said enclosed retail shopping facility, of not less than 20,000 square feet, where the transient merchant's goods, wares or merchandise are only displayed and sold within the confines of such enclosed retail shopping facility; provided, however, that each such enclosed retail shopping facility shall compile and maintain for a period of 4 years a listing containing the name, address, telephone number and general description of the type of goods or merchandise sold of each transient merchant participating in each special event.

(b) No transient retailer not otherwise exempted from this chapter by subsection (a) of this section shall be relieved or exempted from this chapter by reason of associating himself or herself temporarily with any local dealer, auctioneer, trader or merchant or by conducting such temporary or transient business in connection with or in the name of any local dealer, auctioneer, trader or merchant.

(65 Del. Laws, c. 391, § 1; 66 Del. Laws, c. 237, § 2; 70 Del. Laws, c. 186, § 1.)

§ 4704 License required.

It shall be unlawful for any transient retailer to transact business in this State unless such transient retailer and the owners of any goods, wares or merchandise to be offered for sale or sold, if such are not owned by the vendor, shall have first secured a license as provided in § 2905 of Title 30 and shall have complied with the other requirements of this chapter. The fee for such license shall be identical to the annual license fee assessed against a retailer transacting business in this State on a year-round basis.

(65 Del. Laws, c. 391, § 1.)

§ 4705 Registration of transient retailers.

In addition to obtaining the license referred to in § 4704 of this title, any transient retailer desiring to transact business in this State shall first register by filing an application with the Director of Revenue. The application shall state the following facts:

(1) The name and permanent address of the transient retailer making the application, and if the applicant is a firm or corporation, the name and address of the members of the firm or the officers of the corporation, as the case may be.

(2) If the applicant is a corporation, then there shall be stated on the application form the date of incorporation, the state of incorporation, and if the applicant is a corporation formed in a state other than the State of Delaware, the date on which such corporation qualified to transact business as a foreign corporation in the State of Delaware.

(3) A statement showing the kind of business proposed to be conducted, the length of time for which the applicant desires to transact such business and the location of such proposed place of business.

(4) A description of the types of goods, wares and merchandise to be offered for sale in this State.

(5) The name and permanent address of the transient retailer's registered agent and office.

(65 Del. Laws, c. 391, § 1.)

§ 4706 Registered agent.

(a) Every transient retailer shall file with the application required by § 4705 of this title the name and permanent address of such retailer's registered agent.

(b) Such registered agent shall be a resident of Delaware and shall be an agent of such transient retailer upon whom any legal process permitted by law to be served upon the transient retailer may be served.

(c) The registered agent shall agree in writing to act as such agent and a copy of the agreement shall be filed with the application.

(d) The Director of Revenue shall maintain an alphabetical record of all transient retailers and the names and addresses of their registered agents.

(e) Whenever a transient retailer doing business or having done business in this State shall fail to have or maintain a registered agent in the State, or whenever any such registered agent cannot with due diligence be found at the registered agent's permanent address, the Director of Revenue shall be an agent of such transient retailer upon whom any such legal process may be served. Service on the Director of Revenue of such legal process with the fee of $4.00 shall be made in the same manner as is provided by law for service of writs of summons and when so made shall be as effectual to all intents and purposes as if made personally upon the defendant within this State; provided, that not later than 7 days following the filing of the return of service of process in the court in which the civil action is commenced or following the filing with the court of the proof of the nonreceipt of notice provided for in subsection (h) of this section, the plaintiff or a person acting in the plaintiff's behalf shall send by registered mail to the transient retailer a notice consisting of a copy of the process and complaint served upon the Director of Revenue and the statement that service of the original of such process has been made upon the Director of Revenue of this State, and that under this section such service is as effectual to all intents and purposes as if it had been made upon such transient retailer personally within this State.

(f) Proof of the mailing and receipt or refusal of the notice shall be made in such manner as the court, by rule or otherwise, shall direct.

(g) The return receipt or other official proof of delivery shall constitute presumptive evidence that the notice mailed was received by the transient retailer or the retailer's agent, and the notation of refusal shall constitute presumptive evidence that the refusal was by the transient retailer or the retailer's agent.

(h) The plaintiff or plaintiff's counsel of record in the action may within 7 days following the return of any undelivered notice mailed in accordance with subsection (e) of this section other than a notice, delivery of which is shown by the notation of the postal authorities on the original envelope to have been refused by the transient retailer or the retailer's agent, file with the court in which the civil action is commenced proof of the nonreceipt of the notice by the transient retailer or the retailer's agent, which proof shall consist of the usual receipt given by the post office at the time of mailing to the person mailing the registered article containing the notice, the original envelope of the undelivered registered article and an affidavit made by or on behalf of plaintiff specifying:

(1) The date upon which the envelope containing the notice was mailed by registered mail;

(2) The date upon which the envelope containing the notice was returned to the sender;

(3) That the notice provided for in subsection (e) of this section was contained in the envelope at the time it was mailed; and

(4) That the receipt, obtained at the time of mailing by the person mailing the envelope containing the notice, is the receipt filed with the affidavit.

(i) The time in which defendant shall serve an answer shall be computed from the date of the mailing of the registered letter which is the subject of the return receipt or other official proof of delivery or the notation of refusal of delivery; provided, however, that the court in which the action is pending may, at any time before or after the expiration of the prescribed time for answering, order such continuances as may be necessary to afford the defendant therein reasonable opportunity to defend the action.

(j) Nothing herein contained limits or affects rights to serve process in any other manner now or hereafter provided by law. This section is an extension of and not a limitation upon the rights otherwise existing of service of legal process upon nonresidents.

(65 Del. Laws, c. 391, § 1; 70 Del. Laws, c. 186, § 1.)

§ 4707 Bond required.

(a) At the time of filing the application for license as provided in § 4704 of this title and as a part thereof, the applicant shall file and deposit with the Department of Finance a surety bond issued by an authorized surety insurer, or a cash bond, in the amount of $1,000, or, in the discretion of the Director of Revenue, a lesser amount determined in accordance with § 375 of Title 30. The surety bond shall run in favor of the State and shall be for the use of assuring the payment by the applicant of all taxes that may be payable by or due from the applicant to the State or any department thereof or any subdivision of the State, municipal or otherwise, and the payment of any fines that may be assessed by any court against the applicant or its agents or employees for violation of this chapter.

The Director of Revenue may waive the bond provided in this section upon a showing sufficient to satisfy the Director that:

(1) If the transient retailer is organized as a corporation, the principal offices for purposes of conducting the administrative business of the corporation are located in a permanent and fixed location within Delaware;

(2) If the transient retailer is organized other than as a corporation, at least 1 person legally liable for all the debts of the retailer maintains a permanent and fixed residence within this State. The Director may issue such forms or returns as may be necessary to carry out the Director's duties under this chapter.

(b) Such surety bond shall be maintained unimpaired as long as the transient retailer conducts business in this State. Whenever the transient retailer ceases to conduct temporary or transient business in this State and furnishes the Department proof satisfactory that it has satisfied all claims or causes of action against it, the Department shall release said bond to the applicant.

(65 Del. Laws, c. 391, § 1; 66 Del. Laws, c. 237, § 3; 70 Del. Laws, c. 186, § 1.)

§ 4708 Advertising.

No transient retailer who seeks to transact business in this State may advertise in any presale advertising media without including in each such advertisement the transient retailer's complete name in a form easily comprehensible to the reader, listener or viewer of such advertisement.

(65 Del. Laws, c. 391, § 1.)

§ 4709 Penalty for violation.

(a) A transient retailer who transacts business without having first obtained a license and filing a registration application, or who knowingly makes a material misstatement in such registration application, or who knowingly advertises, offers for sale, or sells any goods, wares or merchandise contrary to this chapter is guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than $200 or imprisoned for not more than 30 days, or both.

(b) Justices of the peace shall have original and exclusive jurisdiction to hear and determine violations of this chapter.

(65 Del. Laws, c. 391, § 1.)

§ 4710 Deceptive trade practices.

In addition to the criminal penalty provided in § 4709 of this title, any violation of this chapter shall constitute a deceptive trade practice under subchapter III of Chapter 25 of this title.

(65 Del. Laws, c. 391, § 1.)

Subchapter II

Unused Property Markets

§ 4720 Definitions.

As used in this subchapter:

(1) "Baby food" or "infant formula" means any food manufactured, packaged and labeled specifically for sale for consumption by a child under the age of 2.

(2) "Medical device" means any new or unused instrument, apparatus, implement, machine, contrivance, implant, in vitro reagent, tool or other similar or related article, including any component part or accessory, required by federal law to bear the label, "Caution: Federal law requires dispensing by or on the order of a physician" or which is defined by federal law as a medical device and which is

intended for use in the diagnosis of disease or other conditions or in the cure, mitigation, treatment of prevention of disease in humans or other animals, or is intended to affect the structure or any function of the body of humans or other animals, which does not achieve any of its principal intended purposes through chemical action within or on the body of humans or other animals and which is not dependent upon being metabolized for achievement of any of its principal intended purposes.

(3) "New and unused property" shall mean tangible personal property that was acquired by the unused property merchant directly from the producer, manufacturer, wholesaler or retailer in the ordinary course of business which has never been used since its production or manufacturing or which is in its original and unopened package or container, if such personal property was so packaged when originally produced or manufactured.

(4) "Nonprescription drug" means any nonnarcotic medicine or drug that may be sold without a prescription and is prepackaged for use by the consumer and prepared by the manufacturer or producer for use by the consumer. The term "nonprescription" shall include any drug commonly known as an "over the counter drug" which is required by state food and drug laws or the federal "Food, Drug and Cosmetic Act" [21 U.S.C. § 301 et seq.] to be properly labeled and unadulterated, but shall not include any herbal products, dietary supplements, botanical extracts or vitamins.

(5) "Unused property market" means any event at which persons offer personal property for sale or exchange, and which involves a series of sales sufficient in number, scope and character to constitute a regular course of business; provided, however, that the event occurs at least 6 times in any 12-month period. Unused property markets include any "swap meet, indoor swap meet," "flea market" or other similar event at which transient retailers transact temporary or transient business, however the event is described and whether or not a fee is charged for entrance thereto.

(6) "Unused property merchant" means any person, other than a vendor or merchant with an established retail store in the county, who transports an inventory of goods to a building, vacant lot or other unused property market location and who, at that location, displays the goods for sale and sells the goods at retail or offers the goods for sale at retail and shall include any transient retailer.

(72 Del. Laws, c. 419, § 1; 70 Del. Laws, c. 186, § 1.)

§ 4721 Prohibition on sale of certain goods.

No unused property merchant shall offer at an unused property market for sale or knowingly permit the sale of baby food, infant formula, cosmetics or any nonprescription drug or medical device. This section shall not apply to a person who keeps available for public inspection a written authorization identifying that person as an authorized representative of the manufacturer or distributor of such product, as long as the authorization is not false, fraudulent or fraudulently obtained.

(72 Del. Laws, c. 419, § 1.)

§ 4722 Receipts of purchase required for resale; maintenance and inspection of records; destruction or obliteration of receipts.

(a) No unused property merchant shall offer any new and unused property for sale at an unused property market for which the merchant does not possess a receipt of sale or equivalent documentary evidence of true ownership.

(b) Every unused property merchant shall maintain receipts for the purchase of, or other documentary evidence of true ownership of, new and unused property for a period of not less than 2 years from the date of acquisition by the unused property merchant.

(c) Receipts for the purchase for new and unused property, and any other documentary evidence of true ownership, must contain at least:

(1) The date of the transaction;

(2) The name and address of the person, corporation or entity from whom the new and unused property was acquired;

(3) An identification and description of the new and unused property acquired;

(4) The price paid for such new and unused property; and

(5) The signature of the seller and buyer of the new and unused property.

(d) No unused property merchant shall:

(1) Falsify, obliterate or destroy such receipts, or knowingly allow the same to occur; or

(2) Refuse or fail, upon request, to make such receipts available for inspection within a period of time which is reasonable under the individual circumstances surrounding such request.

(e) Nothing contained in this section shall be construed to require the unused property merchant to possess such receipt on or about his or her person without reasonable notice.

(72 Del. Laws, c. 419, § 1; 70 Del. Laws, c. 186, § 1.)

§ 4723 Unlawful trade in new and unused property; penalties.

(a) Any person who violates the provisions of this subchapter shall, in addition to any other crimes or violations contained in this Code, be guilty of the unlawful trade in new and unused property and shall, in addition to any other penalty provided for in any other provision of this Code:

(1) For the first offense, be guilty of a class B misdemeanor;

(2) For a second offense, be guilty of a class A misdemeanor; and

(3) For a third or subsequent offense, be guilty of a class G Felony.

(b) The Superior Court shall have original jurisdiction over all violations of this subchapter.

(72 Del. Laws, c. 419, § 1.)

§ 4724 Unlawful trade in new and unused property; exceptions.

The provisions of this subchapter shall not apply to:

(1) Any event which is organized for the exclusive benefit of any community chest, fund, foundation, association or corporation organized and operated for religious, educational or charitable purposes, provided that no part of any admission fee or parking fee charged vendors or prospective purchasers or the gross receipts or net earnings from the sale or exchange of personal property, whether in the form of a percentage of the receipts or earnings, as salary, or otherwise, inures to the benefit of any private shareholder or person participating in the organization or conduct of the event;

(2) Any event at which all of the personal property offered for sale or displayed is new, and all persons, selling, exchanging or offering or displaying personal property for sale or exchange, are manufacturers or authorized representatives of manufacturers or distributors;

(3) The sale of a motor vehicle or trailer that is required to be registered or is subject to the certificate of title laws of this State;

(4) The sale of wood for fuel, ice or livestock;

(5) Business conducted in any industry or association trade show;

(6) Property, although never used, whose style, packaging or material clearly indicates that such property was not produced or manufactured within recent times;

(7) Anyone who sells by sample, catalog or brochure for future delivery;

(8) The sale of arts or crafts by a person who produces such arts or crafts;

(9) The sale of new and unused property claimed to be the personal possession of the unused property merchant which had been intended for the merchant's personal use; provided, however, that this exception shall not apply to any item of personal property that is 1 of 4 or more identical items that the unused property merchant possesses or offers for sale; or

(10) Persons who make sales presentations pursuant to a prior, individualized invitation issued to the consumer by the owner or legal occupant of the premises.

(72 Del. Laws, c. 419, § 1.)

Subtitle II
Other Laws Relating to Commerce and Trade

Chapter 48
Shopping Centers

§ 4801 Definitions.

As used in this chapter:

(1) "Regulations" include any applicable federal regulations, state regulations, local regulations or regulations of the shopping center or a place of business within the shopping center, and include the regulating of the flow and direction of traffic in the parking areas of such shopping center as well as stop signs and no-parking regulations.

(2) "Shopping center" shall mean any area composed of at least 3 places of business which is serviced by a common parking area.

(6 Del. C. 1953, § 4801; 58 Del. Laws, c. 431.)

§ 4802 Local manager.

Every shopping center, whether owned by a single entity which leases the said shopping center or owned by a group of merchants or other persons, shall have a local representative or manager, easily accessible to the general public. Such representative or manager shall be authorized and equipped to represent the owner or owners of the shopping center in the answering of questions, enforcement of regulations and the arbitration of disputes. Each store which is part of the shopping center or which is a member of the shopping center association shall post in a conspicuous location within the store, a poster containing the name, address and phone number of the local representative or manager.

(6 Del. C. 1953, § 4802; 58 Del. Laws, c. 431.)

Subtitle II
Other Laws Relating to Commerce and Trade
Chapter 49
Motor Vehicle Franchising Practices

§ 4901 Declaration of purpose.

The General Assembly finds and declares that the distribution and sale of vehicles within this State vitally affects the general economy of the State and the public interest and the public welfare, and that in order to promote the public interest and the public welfare, and in the exercise of its police power, it is necessary to regulate vehicle manufacturers, distributors or wholesalers and factory or distributor representatives, and to regulate franchises issued by the aforementioned who are doing business in this State in order to prevent frauds, impositions and other abuses upon its citizens and to protect and preserve the investments and properties of the citizens of this State.

(64 Del. Laws, c. 27, § 1.)

§ 4902 Definitions.

As used in this chapter:

(1) "Commission" means the Public Service Commission.

(2) "Dealership facilities" means the real estate, buildings, fixtures and improvements which have been devoted to the conduct of business under the franchise by the new motor vehicle dealer.

(3) "Designated family member" means the spouse, child, grandchild, parent, brother or sister, of the owner of a new motor vehicle dealership who, in the case of the owner's death, is entitled to inherit the ownership interest in the new motor vehicle dealership under the terms of the owner's will, or who has been nominated in any other written instrument, or who, in the case of an incapacitated owner of a new motor vehicle dealership, has been appointed by a court as the legal representative of the new motor vehicle dealership's property.

(4) "Established place of business" means a permanent, commercial building located within this State easily accessible and open to the public at all reasonable times and at which the business of a new motor vehicle dealer, including the display and repair of vehicles, may be lawfully carried on in accordance with the terms of all applicable building codes, zoning and other land-use regulatory ordinances.

(5) "Franchise" means the written agreement or contract between any new motor vehicle manufacturer and any new motor vehicle dealer which purports to fix the legal rights and liabilities of the parties to such agreement or contract, and pursuant to which the dealer purchases and resells the franchise product or leases or rents the dealership premises.

(6) "Good faith" means honesty in fact and the observation of reasonable commercial standards of fair dealing in the trade as defined and interpreted in § 1-201(b)(20) of this title.

(7) "Manufacturer" means any person, resident or nonresident, who manufactures or assembles new motor vehicles, or imports for distribution through distributors of motor vehicles, including any person, partnership or corporation which acts for and is under the control of such manufacturer or assembler in connection with the distribution of said motor vehicles. "Manufacturer" includes the following terms:

a. "Distributor" which means any person, resident or nonresident, who in whole or in part offers for sale, sells or distributes any new motor vehicle to new motor vehicle dealers or who maintains factory representatives or who controls any person, firm, association, corporation or trust, resident or nonresident, who in whole or in part offers for sale, sells or distributes any new motor vehicle to new motor vehicle dealers.

b. "Factory branch" which means a branch office maintained by a manufacturer for the purpose of selling, or offering for sale, vehicles to a distributor or new motor vehicle dealer, or for directing or supervising in whole or in part factory or distributor representatives.

c. "Franchiser" which means 1 or more of the following:

1. Any person, resident or nonresident, who directly or indirectly licenses or otherwise authorizes 1 or more new motor vehicle dealers to use a trademark or service mark associated with a make of motor vehicle in connection with the retail sale of new motor vehicles bearing such trademark or service mark.

2. Any person who in the ordinary course of business and on a recurring basis sells such new motor vehicles to a new motor vehicle dealer for resale.

(8) a. "Motor vehicle" means every vehicle intended primarily for use and operation on the public highways which is self-propelled, not including motor homes, motor home products and recreational vehicles, farm tractors and other machines and tools used in the production, harvesting and care of farm products.

b. "New motor vehicle" means a vehicle which has been sold to a new motor vehicle dealer and which has not been used for other than demonstration purposes and on which the original title has not been issued from the new motor vehicle dealer.

(9) "New motor vehicle dealer" or "dealer" means any person or entity engaged in the business of selling, offering to sell, soliciting or advertising the sale of new motor vehicles and who holds, or held at the time a cause of action under this chapter accrued, a valid

sales and service agreement, franchise or contract granted by the manufacturer or distributor for the retail sale of said manufacturer's or distributor's new motor vehicles. " New motor vehicle dealer" or "dealer" includes any person who engages exclusively in the repair of motor vehicles, except motor homes, if such repairs are performed pursuant to the terms of a franchise or other agreement with a franchiser or such repairs are performed as part of a manufacturer's or franchiser's warranty. " New motor vehicle dealer" or "dealer" does not mean any person engaged solely in the business of selling used motor vehicles.

(10) "Person" means every natural person, partnership, corporation, association, trust, estate, or any other legal entity.

(11) "Relevant market area" means the area within a radius of 10 miles from the intended site of a proposed additional dealership.

(64 Del. Laws, c. 27, § 1; 70 Del. Laws, c. 186, § 1; 73 Del. Laws, c. 78, §§ 1-3; 78 Del. Laws, c. 372, § 1; 81 Del. Laws, c. 289, § 1.)

§ 4903 Sales incentives; warranty and predelivery obligations to new motor vehicle dealers.

(a) (1) Each new motor vehicle manufacturer shall do all of the following:

a. Specify in writing to each of its new motor vehicle dealers licensed in this State the dealer's obligations for predelivery preparation and warranty service on its products.

b. Compensate the new motor vehicle dealer for such service required of the dealer by the manufacturer.

c. Provide the dealer the schedule of compensation to be paid such dealer for parts, work, and service in connection therewith, and the time allowance for the performance of such work and service.

(2) Notwithstanding the terms of any franchise agreement, it is unlawful for a new motor vehicle manufacturer to recover all or any portion of its costs for compensating its dealers in this State for recalls or warranty parts and service either by reduction in the amount due to the dealer, or by separate charge, surcharge, or other imposition.

(b) In no event shall such schedule of compensation fail to include reasonable compensation for diagnostic work, as well as parts, repair service and labor. Time allowances for the diagnosis and performance of warranty work and service shall be reasonable and adequate for the work to be performed. With respect to parts and labor warranty reimbursement, reasonable compensation shall not be less than the rate charged by such dealer for like services to nonwarranty customers for nonwarranty parts, service, and repairs.

(1) For the purposes of this provision, the dealer's rate charged to nonwarranty customers for parts and labor shall be established by the dealer submitting to the manufacturer 100 sequential customer paid service repair orders or 90 days of customer paid service repair orders, whichever is less, covering like repairs made no more than 180 days before the submission of such customer paid service repair orders and declaring the schedule of compensation. The new schedule of compensation shall take effect within 30 days after the initial submission to the manufacturer and shall be presumed to be fair and reasonable. However, within 30 days following receipt of the declared schedule of compensation from the dealer, the manufacturer may make reasonable requests for additional information supporting the declared schedule of compensation. The 30-day time frame in which the manufacturer shall make the schedule of compensation effective shall commence following receipt from the dealer of any reasonably requested supporting information. No manufacturer shall require a motor vehicle dealer to establish a schedule of compensation by any other methodology or require supportive information that is unduly burdensome or time consuming to provide including, but not limited to, part by part or transaction by transaction calculations. The dealer shall not request a change in the schedule of compensation more than once every 9 months.

(2) For the purposes of this provision, all of the following parts or types of repairs are excluded from the calculation:

a. Repairs for manufacturer special events and manufacturer discounted service campaigns.

b. Parts sold at wholesale or parts discounted by a dealer for repairs made in group fleet, insurance, or other third-party payer service work or parts used in repairs of government agencies' repairs for which volume discounts have been negotiated.

c. Tires replaced due to normal wear.

d. Routine maintenance not covered under any retail customer warranty such as alignments, flushes, oil changes, brakes, fluids, filters and belts not provided in the course of repairs.

e. Engine assemblies and transmission assemblies.

f. Vehicle reconditioning.

g. Batteries and lightbulbs.

h. Nuts, bolts, fasteners, and similar items that do not have an individual part number.

(3) A manufacturer shall not take or threaten to take adverse action against a dealer who seeks to obtain compensation pursuant to this provision, including but not limited to, creating or implementing an obstacle or process that is inconsistent with the manufacturer's obligations to the dealer under this provision.

(4) Within 30 days of receiving the manufacturer's notice of denial of the dealer's parts and/or labor submission pursuant to this subsection, any such new motor vehicle dealer may file with the Public Service Commission a protest to the manufacturer's denial. In the event a protest is filed, the manufacturer possesses the burden of proof to establish that the dealer's submission did not meet the respective submission requirements contained within this provision. In the event a dealer prevails in a protest filed under this provision, the dealer's increased parts and/or labor reimbursement shall be provided retroactive to the date the submission would have been effective pursuant to the terms of this section but for the manufacturer's denial.

(c) It is a violation of this section for any new motor vehicle manufacturer to fail to perform any warranty obligations or to fail to include in written notices of factory recalls to new motor vehicle owners and dealers the expected date by which necessary parts and equipment will be available to dealers for the correction of such defects, or to fail to compensate any of the new motor vehicle dealers in this State for repairs effected by such recall.

(d) (1) All claims made by new motor vehicle dealers pursuant to this section for such labor and parts shall be paid within 30 days following their approval; provided, however, that the manufacturer retains the right to audit such claims and to charge back the dealer for claims due to fraud, work done unnecessarily, or work not properly performed for a period of 1 year following payment. All such claims shall be either approved or disapproved within 30 days after their receipt on forms and in the manner specified by the manufacturer, and any claim not specifically disapproved in writing within 30 days after the receipt shall be construed to be approved and payment must follow within 30 days. A manufacturer or distributor shall not deny a claim or reduce the amount to be reimbursed to the dealer as long as the dealer has provided reasonably sufficient documentation that the dealer did both of the following:

a. Made a good faith attempt to perform the work in compliance with the reasonable written policies and procedures of the manufacturer.

b. Actually performed the work.

(2) The manufacturer or distributor may not disapprove or charge back a reimbursement claim provided that the dealer can substantiate the claim either in accordance with the manufacturer's reasonable policies and procedures or by other reasonable means. A claim may not be denied or charged back due to an administrative error by the dealer as long as the claim meets the above requirements. The 1-year limitation on the manufacturer's right to audit a claim shall not be effect in the case of fraudulent claims.

(3) Notwithstanding anything in this subsection to the contrary, a manufacturer may not fail to fully compensate a dealer for warranty or recall work or make any charge back to the dealer's account based on the dealer's failure to comply with the manufacturer's claim documentation procedures unless both of the following requirements have been met:

a. The dealer has, within the previous 12 months, failed to comply with the same specific documentation procedure.

b. The manufacturer has, within the previous 12 months, provided a written warning to the dealer by certified United States mail, return receipt requested, identifying the specific claim documentation procedure violated by the dealer.

(e) Any audit for sales incentives, service incentives, rebates or other forms of incentive compensation shall only be for a period of 1 year following the date of the termination of the sales incentives program, service incentives program, rebate program or other form of incentive compensation program. These limitations shall not be in effect in the case of fraudulent claims.

(f) A manufacturer may not do any of the following related to a claim by a new motor vehicle dealer, unless it can be shown that the claim was false or fraudulent or that the dealer failed to reasonably substantiate the claim either in accordance with the manufacturer's reasonable written procedures or by other reasonable means:

(1) Deny a new motor vehicle dealer's claim for sales incentives, service incentives, rebates, or other forms of incentive compensation.

(2) Reduce the amount to be paid to the dealer on the claim.

(3) Charge a dealer back subsequent to the payment of the claim.

(g) (1) A manufacturer that has entered into a franchise agreement with a new motor vehicle dealer must compensate the new motor vehicle dealer for a used motor vehicle in any of the following circumstances:

a. That is of the same make and model manufactured, imported, or distributed by the manufacturer.

b. That is subject to a recall notice issued by the manufacturer or an authorized governmental agency, regardless of whether the vehicle is identified by its vehicle identification number.

c. That is held by the new motor vehicle dealer in the dealer's inventory at the time a recall notice is issued or that is taken by the new motor vehicle dealer into the dealer's inventory after the recall notice as a result of a retail consumer trade-in or a lease return to the dealer inventory in accordance with an applicable lease contract.

d. That cannot be repaired due to the unavailability, within 30 days after issuance of the recall notice, of a remedy or parts necessary for the new motor vehicle dealer to make the recall repair.

e. For which the manufacturer has not issued a written statement to the new motor vehicle dealer indicating that the used motor vehicle may be sold or delivered to a retail customer before completion of the recall repair. The purpose of such written statement is to provide notice to the new motor vehicle dealer that the vehicle may be sold or delivered based solely on the specific recall notice and is not intended to address any other aspect of the vehicle unrelated to the recall notice.

(2) The manufacturer shall pay the required compensation within 30 days after the motor vehicle dealer's application for payment. Applications for payment must be submitted monthly, as necessary, through the manufacturer's existing warranty application system or another system or process established by the manufacturer which is not unduly burdensome or which does not require information unnecessary for the payment.

(3) Compensation under this section must be the greater of the following:

a. Payment at a rate of at least 1.5 percent per month of the motor vehicle value, as determined by the average Black Book value of the corresponding model year vehicle of average condition, of each eligible used motor vehicle in the new motor vehicle dealer's

inventory for each month that the dealer does not receive a remedy and parts to complete the required recall repair. Such payment must be prorated for any period less than 1 month based on the number of days during the month each eligible used motor vehicle is in the motor vehicle dealer's inventory.

b. Payment under a national program applicable to all motor vehicle dealers holding a franchise agreement with the manufacturer for the motor vehicle dealer's costs associated with holding the eligible used motor vehicles.

(64 Del. Laws, c. 27, § 1; 73 Del. Laws, c. 78, § 4; 78 Del. Laws, c. 372, § 1; 81 Del. Laws, c. 289, § 2.)

§ 4904 Liability for transportation damages.

(a) Notwithstanding the terms, provisions or conditions of any agreement or franchise, the manufacturer is liable for all damages to motor vehicles before delivery to a carrier or transporter.

(b) If a new motor vehicle dealer determines the method of transportation, the risk of loss passes to the dealer upon delivery of the vehicle to the carrier.

(c) In every other instance, the risk of loss remains with the manufacturer until such time as the new motor vehicle dealer or a designee accepts the vehicle from the carrier.

(64 Del. Laws, c. 27, § 1; 70 Del. Laws, c. 186, § 2.)

§ 4905 Product liability indemnification.

Notwithstanding the terms of any franchise agreement, it shall be a violation of this chapter for any new motor vehicle manufacturer to fail to indemnify and hold harmless its franchised dealers against any judgment or settlement agreed to in writing by the manufacturer for damages, including, but not limited to, court costs and reasonable attorneys' fees of the new motor vehicle dealer, arising out of complaints, claims or lawsuits including, but not limited to, strict liability, negligence, misrepresentation, warranty (express or implied) or rescission of the sale as is defined in § 2-608 of this title, less any offset recovered by the dealer and only to the extent that the judgment or settlement relates to the alleged defective or negligent manufacture, assembly or design of new motor vehicles, parts or accessories or other functions by the manufacturer, beyond the control of the dealer.

(64 Del. Laws, c. 27, § 1; 78 Del. Laws, c. 372, § 1.)

§ 4906 Termination, cancellation or nonrenewal of franchise — Requisites.

(a) Notwithstanding the terms, provisions or conditions of any franchise or notwithstanding the terms or provisions of any waiver, no manufacturer shall cancel, terminate or fail to renew any franchise with a licensed new motor vehicle dealer unless the manufacturer has:

(1) Satisfied the notice requirement of subsection (d) of this section; and

(2) Has good cause for cancellation, termination or nonrenewal; and

(3) Has acted in good faith with regard to the cancellation, termination or nonrenewal as defined in this chapter.

(b) Notwithstanding the terms, provisions or conditions of any franchise or the terms or provisions of any waiver, good cause shall exist for the purposes of a termination, cancellation or nonrenewal when:

(1) There is a failure by the new motor vehicle dealer to comply with a provision of the franchise which provision is both reasonable and of material significance to the franchise relationship, provided that the dealer has been notified in writing of the failure within 180 days after the manufacturer first acquired knowledge of such failure, or after the dealer was given a reasonable opportunity to correct such failure during a period of not less than 6 months;

(2) If the failure by the new motor vehicle dealer relates to the performance of the new motor vehicle dealer in sales or service, then good cause shall be defined as the failure of the new motor vehicle dealer to comply with reasonable performance criteria established by the manufacturer if the new motor vehicle dealer was apprised by the manufacturer in writing of such failure; and:

a. Said notification stated that notice was provided of failure of performance pursuant to this section;

b. The new motor vehicle dealer was afforded a reasonable opportunity, for a period of not less than 6 months, to comply with such criteria; and

c. The new motor vehicle dealer did not demonstrate substantial compliance with the manufacturer's performance criteria during such period.

(c) The manufacturer shall have the burden of proof under this section.

(d) Notwithstanding the terms, provisions or conditions of any franchise prior to the termination, cancellation or nonrenewal of any franchise, the manufacturer shall furnish notification of such termination, cancellation or nonrenewal to the new motor vehicle dealer as follows:

(1) In the manner described in subsection (b) of this section; and

(2) Not less than 90 days prior to the effective date of such termination, cancellation or nonrenewal; or

(3) Not less than 15 days prior to the effective date of such termination, cancellation or nonrenewal with respect to any of the following:

a. Insolvency of the new motor vehicle dealer, or filing of any petition by or against the new motor vehicle dealer under any bankruptcy or receivership law;

b. Failure of the new motor vehicle dealer to conduct its customary sales and service operations during its customary business hours for 7 consecutive business days, except for acts of God or circumstances beyond the direct control of the new motor vehicle dealer;

c. Conviction in a court of original jurisdiction of the new motor vehicle dealer, or any owner or operator thereof, of any crime which is punishable by imprisonment;

d. Revocation of any license which the new motor vehicle dealer is required to have to operate a dealership.

(4) Not less than 180 days prior to the effective date of such termination or cancellation where the manufacturer or distributor is discontinuing the sale of the product line.

(e) Notification under this section shall be in writing; shall be by certified mail or personally delivered to the new motor vehicle dealer; and shall contain all of the following:

(1) A statement of intention to terminate, cancel, or not to renew the franchise.

(2) A statement of the reasons for the termination, cancellation, or nonrenewal.

(3) The date on which such termination, cancellation, or nonrenewal takes effect.

(f) (1) If a manufacturer provides notice of termination to a new motor vehicle dealer under subsection (e) of this section, the dealer may file with the Commission a protest to the proposed franchise termination on or before the stated effective date of the termination.

(2) If such a protest is filed, the Commission shall inform the manufacturer that a timely protest has been filed, and that the franchise in question continues in effect until the Commission holds a hearing, or thereafter, unless, the Commission determines that the manufacturer has complied with paragraphs (a)(2) and (a)(3) of this section.

(3) Until the termination of a dealer's franchise is effective, the dealer continues to have the same rights to assign, sell, or transfer the franchise to a third party under the franchise and as permitted under § 4910 of this title and the transferee may not be subject to termination by reason of the failure of performance or breaches of the franchise on the part of the dealer.

(4) The nonprevailing party may appeal an adverse decision by the Commission to the Superior Court. The Commission may enter a stay of its order pending appeal, which remains in effect while the appeal is pending.

(64 Del. Laws, c. 27, § 1; 81 Del. Laws, c. 289, § 3.)

§ 4907 Termination, cancellation or nonrenewal of franchise — Compensation by manufacturer.

Upon the termination, nonrenewal, discontinuance, or cancellation of any franchise by the manufacturer or by the new motor vehicle dealer, the new motor vehicle dealership shall be compensated by the manufacturer as set forth below:

(1) The manufacturer shall purchase from the dealer any new, unused, undamaged and unmodified motor vehicles with less than 750 miles registered on the odometer that the dealer has acquired from the manufacturer or distributor, or from another dealer of the same line-make in the ordinary course of business within 18 months of the notice of termination at dealer cost including any charges for distribution and delivery paid by the dealer, less all allowances paid to the dealer by the manufacturer;

(2) The manufacturer shall purchase from the dealer all new, unused, undamaged parts in their original, unbroken packaging, listed in the current price catalog and acquired from the manufacturer or distributor or from a source approved or recommended by the manufacturer, at the new motor vehicle dealer price listed in the current price catalog, less applicable allowances. If the above parts are not listed in the current price catalog due to the manufacturer's or distributor's renumbering of parts or issuance of a superseding part number within the last 3 years, said parts shall be repurchased by the manufacturer, provided they are new, unused, undamaged parts in their original, unbroken packaging and are in salable condition;

(3) The manufacturer shall purchase from the dealer all equipment and furnishings, showroom kiosks and other marketing structures, signs and special tools particular to the line-make and required by the manufacturer at:

a. The dealer's net acquisition cost if the item was acquired in the 12 months immediately preceding the effective date of the termination, cancellation or nonrenewal;

b. Seventy-five percent of the dealer's net acquisition cost if the item was acquired more than 12 but less than 24 months immediately preceding the effective date of the termination, cancellation or nonrenewal;

c. Fifty percent of the dealer's net acquisition cost if the item was acquired between 24 and 36 months immediately preceding the effective date of the termination, cancellation or nonrenewal;

d. Twenty-five percent of the dealer's net acquisition cost if the item was acquired more than 36 but less than 60 months immediately preceding effective date of the termination, cancellation or nonrenewal; or

e. Fair market value if the item was acquired between 60 and 84 months immediately preceding the termination, cancellation or nonrenewal;

(4) The manufacturer shall reimburse the dealer for any costs the dealer incurred for facility upgrades or alterations required by the manufacturer within the 24 months immediately preceding the effective date of the termination, including facility upgrades or alterations required in order to participate in any manufacturer sponsored programs that provided to the dealer financial reimbursement or benefits;

provided, however, that any amounts payable to a dealer shall be reduced by any amounts paid to the dealer by the manufacturer due to the dealer's participation in any such facilities upgrade or alteration program; and

(5) If a termination, cancellation, discontinuance or nonrenewal of a dealer's franchise is the result of the cessation of a line-make by a manufacturer, then in addition to the payment of termination assistance set forth in this statute, the dealer shall be paid an amount at least equivalent to the fair market value of the franchise for the line-make, which amount shall be the greater of that value as determined as of:

a. The date the manufacturer announces the action that results in the cessation of the line-make;

b. The date the action that resulted in the cessation is issued; or

c. The date 12 months prior to the date on which the notice of termination, cancellation, discontinuance or nonrenewal is issued.

Fair market value shall only include the value of the dealer's franchise for that line-make in the dealer's relevant market area. Payment is due not later than 45 days after fair market value has been determined as set forth below. Upon the dealer's written notice to the manufacturer that the dealer seeks compensation pursuant to this section, the affected dealer and the affected manufacturer shall each select a business valuation appraiser, certified public accountant, or other person that performs business valuations as a part of their occupation. The valuations shall be performed and exchanged within 60 days of the dealer's notice to the manufacturer. If the difference in valuation as determined by the respective valuators is within 10%, then the valuations shall be averaged and the average of the 2 valuations shall constitute fair market value for the purposes of this provision. If the difference in valuation as determined by the respective valuators is greater than 10%, then the chosen valuators shall select a third valuator by mutual agreement within 20 days following the exchange of the valuations. The third valuator shall provide its determination of fair market value within 45 days of selection. The third valuator's determination shall be the fair market value for the purposes of this provision unless the valuator's determination is within 25% of either the dealer or manufacturer's valuation. In that instance the valuator's determination shall be averaged with the determination that is within 25% of and that average shall be the fair market value for the purposes of this section.

(64 Del. Laws, c. 27, § 1; 73 Del. Laws, c. 78, § 5; 78 Del. Laws, c. 372, § 1; 81 Del. Laws, c. 289, § 4.)

§ 4908 Termination, cancellation or nonrenewal of franchise — Dealership facilities assistance.

In the event of a termination, cancellation or nonrenewal by the manufacturer under this chapter, except termination, cancellation or nonrenewal by the manufacturer for insolvency, license revocation, conviction of a crime or fraud by a dealer owner or failure of the dealer to conduct customary sales and service operations during business hours for 7 consecutive business days, except in circumstances beyond the direct control of the dealer, if the new motor vehicle dealer is leasing the dealership facilities from a lessor other than the manufacturer, the manufacturer shall pay the new motor vehicle dealer a sum equivalent to the rent for the unexpired term of the lease or 3 years' rent, whichever is less, or if the new motor vehicle dealer owns the dealership facilities, the manufacturer shall pay the new motor vehicle dealer a sum equivalent to the reasonable rental value of the dealership facilities for 3 years. Nothing in this section shall relieve a lessee from the obligation to mitigate damages under the lease, nor prevent a manufacturer from discharging its obligations by negotiating a lease termination, sublease or new lease.

(64 Del. Laws, c. 27, § 1; 73 Del. Laws, c. 78, § 6; 78 Del. Laws, c. 372, § 1.)

§ 4909 Succession to ownership of new motor vehicle dealer.

(a) Any owner of a new motor vehicle dealership may appoint by will or any other written instrument a designated family member to succeed in the ownership interest of the said owner in the new motor vehicle dealership.

(b) Unless there exists good cause for refusal to honor succession on the part of the franchiser, any designated successor of a deceased or incapacitated owner may succeed to the ownership interest of the owner if:

(1) The designated successor gives the franchiser written notice of his or her intention to succeed to the ownership interest within 120 days of the owner's death or incapacity or within a longer period if so provided in the franchise agreement; and

(2) The designated successor agrees to be bound by all the terms and conditions of the franchise.

(c) The franchiser may request the designated successor to complete a standard dealer application, and the designated successor shall provide promptly upon said request personal and financial data that is customarily required by the franchiser to determine whether the succession should be honored.

(d) If a franchiser believes that good cause exists for refusing to honor the succession to the ownership interest of an owner by a designated successor of a deceased or incapacitated owner, the franchiser may, within 60 days following receipt of:

(1) Notice of the designated successor's intent to succeed to the ownership interest of the owner, or

(2) Any personal or financial data which it has requested,

serve upon the designated successor notice of its refusal to honor the succession and of its intent to discontinue the existing franchise with the dealer no sooner than 90 days from the date such notice is served. However, if the franchiser shall enter into 1 or more interim or trial agreements with the designated successor, which interim or trial agreements may not extend more than 2 years from the owner's death or disability, then and in such event notice shall be deemed timely if sent within 60 days of the termination of such interim or trial agreement.

(e) The notice must state the specific grounds for the refusal to honor the succession and the franchiser's intent to discontinue the existing franchise with the dealer.

(f) If a franchiser refuses to honor the succession to the ownership interest of a deceased or incapacitated owner, then and in such event:

(1) The franchiser shall allow the designated successor a reasonable period of time, which shall not be less than 6 months, in which to negotiate a sale of the dealership.

(2) Upon termination of the franchise pursuant to such refusal, the provisions of § 4906 of this title shall apply.

(g) If notice of refusal and discontinuance is not timely served upon the designated successor, the franchise shall continue in effect subject to termination only as otherwise permitted by this chapter.

(h) No franchiser shall terminate, cancel or fail to renew any franchise solely because of the death or incapacity of an owner who is not listed in the franchise as one on whose expertise and abilities the franchiser relied in the granting of the franchise.

(64 Del. Laws, c. 27, § 1; 70 Del. Laws, c. 186, § 1; 73 Del. Laws, c. 78, § 7; 73 Del. Laws, c. 273, § 1.)

§ 4910 Sale of dealership franchise, notice to franchiser, and right of first refusal.

(a) If a new motor vehicle dealer desires to make a change in its executive management or ownership or to sell its principal assets, the new motor vehicle dealer will give the franchiser written notice of the proposed change or sale. The franchiser shall not arbitrarily refuse to agree to such proposed change or sale and may not disapprove or withhold approval of such change or sale unless the franchiser can prove:

(1) That its decision is not arbitrary; and

(2) That the new management, owner or transferee is unfit or unqualified to be a dealer based on the franchiser's prior written, reasonable, objective standards or qualifications which directly relate to the prospective transferee's business experience, moral character and financial qualifications.

(b) Where the franchiser rejects a proposed change or sale, the franchiser shall give written notice of the franchiser's reasons to the new motor vehicle dealer within 60 days. If no such notice is given to the new motor vehicle dealer, the change or sale shall be deemed approved.

(c) It is unlawful for a motor vehicle franchiser to exercise the right of first refusal or other right to acquire a motor vehicle franchise from a motor vehicle franchisee as a means to influence the consideration or other terms offered by a person in connection with the acquisition of the motor vehicle franchise or to influence a person to refrain from entering into or to withdraw from, negotiations for the acquisition of the motor vehicle franchise.

(d) In the event of a proposed sale or transfer of a dealership and if the franchise agreement has a right of first refusal in favor of the manufacturer or distributor, then notwithstanding the terms of the franchise agreement, the manufacturer, distributor or franchiser shall be permitted to exercise a right of first refusal to acquire the motor vehicle dealer's assets or ownership if all of the following requirements are met:

(1) In order to exercise the right of first refusal, the manufacturer or distributor shall notify the motor vehicle dealer in writing within 60 days of receipt of the completed proposal for the proposed sale or transfer and all related agreements.

(2) The exercise of the right of first refusal will result in the dealer receiving the same or greater consideration as the dealer has contracted to receive in connection with the proposed change of ownership or transfer.

(3) The proposed sale or transfer of the dealership's assets does not involve the transfer or sale to a member or members of the family of 1 or more dealers or to a qualified manager with at least 2 years management experience at the dealership or to a partnership or corporation controlled by such persons.

(4) The manufacturer or distributor agrees to pay the reasonable expenses, including attorney fees which do not exceed the usual, customary and reasonable fees charged for similar work done for other clients, incurred by the proposed owner or transferee prior to the manufacturer's or distributor's exercise of its right of first refusal in negotiating and implementing the contract for the proposed sale or transfer of the dealership or dealership assets.

a. Such expenses and attorney fees shall be paid to the proposed new owner or transferee at the time of closing of the sale or transfer for which the manufacturer or distributor exercised its right of first refusal.

b. No payment of such expenses and attorney fees shall be required if the new owner or transferee has not submitted or caused to be submitted an accounting of those expenses within 30 days of the dealer's receipt of the manufacturer's or distributor's written request for such an accounting.

c. A manufacturer or distributor may request such accounting before exercising the right of first refusal.

(64 Del. Laws, c. 27, § 1; 70 Del. Laws, c. 186, § 1; 73 Del. Laws, c. 78, § 8; 81 Del. Laws, c. 289, § 5.)

§ 4911 Sale of dealership franchise, notice to franchiser, and right of first refusal — Burden of proof.

In determining whether good cause for the refusal to honor the succession or sale of dealership exists, the manufacturer, distributor, factory branch or importer has the burden of proving that the successor or purchaser is a person who is not of good moral character or does not meet the franchisor's existing and reasonable standards and, considering the volume of sales and service of the new motor vehicle dealer, uniformly applied minimum business experience standards in the market area.

(64 Del. Laws, c. 27, § 1; 73 Del. Laws, c. 78, § 9.)

§ 4912 Written designation of succession unaffected.

This chapter does not preclude the owner of a new motor vehicle dealer from designating any person as successor by written instrument filed with the manufacturer or distributor and, in the event there is a conflict between such written instrument and this section, and that written instrument has not been revoked by the owner of the new motor vehicle dealer in writing to the manufacturer or distributor, then the written instrument shall govern.

(64 Del. Laws, c. 27, § 1; 70 Del. Laws, c. 186, § 1.)

§ 4913 Unlawful acts by manufacturers.

(a) Notwithstanding the terms of any franchise agreement, it shall be a violation of this chapter for any manufacturer licensed under this chapter to require, attempt to require, coerce or attempt to coerce any new motor vehicle dealer in this State:

(1) To order or accept delivery of any new motor vehicle, part or accessory thereof, equipment or any other commodity not required by law which shall not have been voluntarily ordered by the new motor vehicle dealer; except that this paragraph is not intended to modify or supersede any terms or provisions of the franchise requiring new motor vehicle dealers to market a representative line of those motor vehicles which the manufacturer or distributor is publicly advertising.

(2) To order or accept delivery of any new motor vehicle with special features, accessories or equipment not included in the list price of such motor vehicles as publicly advertised by the manufacturer or distributor.

(3) To participate monetarily in an advertising campaign or contest, or to purchase any promotional materials, training materials, showroom or other display decorations or materials at the expense of the new motor vehicle dealer.

(4) To enter into any agreement with the manufacturer or to do any other act prejudicial to the new motor vehicle dealer by threatening to terminate or cancel a franchise or any contractual agreement existing between the dealer and the manufacturer; except that this paragraph is not intended to preclude the manufacturer or distributor from insisting on compliance with the reasonable terms or provisions of the franchise or other contractual agreement, and notice in good faith to any new motor vehicle dealer of the new motor vehicle dealer's violation of such terms or provisions shall not constitute a violation of the chapter.

(5) To change the capital structure of the new motor vehicle dealer or the means by or through which the new motor vehicle dealer finances the operation of the dealership provided that the new motor vehicle dealer at all times meets any reasonable capital standards determined by the manufacturer in accordance with uniformly applied criteria; and also provided that no change in the capital structure shall cause a change in the principal management or have the effect of a sale of the franchise without the consent of the manufacturer or distributor; said consent shall not be unreasonably withheld.

(6) To refrain from participation in the management of, investment in or the acquisition of any other line of new motor vehicle or related products; provided, however, that this paragraph does not apply unless the new motor vehicle dealer maintains a reasonable line of credit for each make or line of new motor vehicle, the new motor vehicle dealer remains in substantial compliance with the terms and conditions of the franchise and any reasonable facilities requirements of the manufacturer, and no change is made in the principal management of the new motor vehicle dealer.

(7) To prospectively assent to a release, assignment, novation, waiver or estoppel which would relieve any person from liability to be imposed by this law or to require any controversy between a new motor vehicle dealer and a manufacturer, distributor or representatives to be referred to any person other than the duly constituted courts of the State or the United States of America, if such referral would be binding upon the new motor vehicle dealer.

(8) To either establish or maintain exclusive facilities, personnel, or display space.

(9) To expand, construct or significantly modify facilities without written assurances that the franchisor will provide a reasonable supply of new motor vehicles within a reasonable time so as to justify such an expansion, in light of the market and economic conditions. To require, coerce or attempt to coerce a dealer to construct or substantially alter a facility or premises if the facility or premises has been altered within the last 10 years at a cost of more than $250,000 and the alteration was required and approved by the manufacturer, except for improvements made to comply with health or safety laws, to accommodate the technology requirements necessary to sell or to service a motor vehicle or for alterations made pursuant to voluntary agreements between a dealer and a manufacturer where separate and valuable consideration has been offered and accepted.

a. If a manufacturer establishes a program, standard, or policy or in any manner offers a bonus, incentive, rebate, or other benefit to a new motor vehicle dealer which is based, in whole or in part, on the construction of new sales or service facilities or the remodeling, improvement, renovation, expansion, replacement, or other alteration of the new motor vehicle dealer's existing sales or service facilities, including installation of signs or other image elements, a new motor vehicle dealer who completes such construction, alteration, or installation in reliance upon such program, standard, policy, bonus, incentive, rebate, or other benefit is deemed to be in full compliance with the manufacturer's requirements related to the new, remodeled, improved, renovated, expanded, replaced, or altered facilities, signs, and image elements for 10 years after such completion.

b. If, during such 10-year period, the manufacturer revises an existing, or establishes a new, program, standard, policy, bonus, incentive, rebate, or other benefit described in paragraph (a)(9)a. of this section, a motor vehicle dealer who completed a facility in reliance upon a prior program, standard, policy, bonus, incentive, rebate, or other benefit and elects not to comply with the applicant's

or manufacturer's requirements for facilities, signs, or image elements under the revised or new program, standard, policy, bonus, incentive, rebate, or other benefit will not be eligible for any benefit under the revised or new program but remains entitled to all benefits under the prior program, plus any increase in benefits between the prior and revised or new programs, during the remainder of the 10-year period.

(10) To adhere to unreasonable sales, service or facility standards arrived at through policies, surveys or programs.

(11) To purchase nonline, make-specific goods, services or design elements from the manufacturer or its designated sources if the desired results can be produced through alternative means, except for parts or when necessary to protect the manufacturer's trademark or brand name.

(12) To refuse to pay, or claim reimbursement from, a dealer for sales, incentives or payments related to a motor vehicle sold by the dealer because the purchaser of the motor vehicle exported or resold the motor vehicle in violation of the policy of the manufacturer unless the manufacturer can show that, at the time of sale, the dealer knew or reasonably should have known of the purchaser's intention to export or resell the motor vehicle. There is a rebuttable presumption that the dealer did not know or should not have reasonably known that the vehicle would be exported if the vehicle is titled and registered in any state of the United States.

(13) To require a dealer to provide its customer lists or service files to the manufacturer, unless necessary for the sale and delivery of a new motor vehicle to a consumer, to validate and pay consumer or dealer incentives, for reasonable marketing purposes, for evaluation of dealer performance, for analytics or for the submission to the manufacturer for any services supplied by the dealer for any claim for warranty parts or repairs. Nothing in this section shall limit the manufacturer's ability to require or use customer information to satisfy any safety or recall notice obligation or other legal obligation. To release or cause to be released a dealer's nonpublic customer information to another dealer unless the franchise has been terminated, the customer has relocated to an address that is greater than 40 miles outside of the motor vehicle dealer's primary market area as assigned by the manufacturer, a customer has not transacted with the dealer from which a vehicle was purchased for a period of 36 months or the dealer expressly consents in writing to the sharing of customer information with other dealers.

(14) a. To establish, implement, or enforce criteria for measuring the sales or service performance of any of its franchised new motor vehicle dealers in this State which have a material or adverse effect on any new motor vehicle dealer and which meet any of the following:

1. Are unfair, unreasonable, arbitrary, or inequitable.

2. Do not include all relevant and material local and regional criteria, data, and facts. Relevant and material criteria, data, or facts include those of motor vehicle dealerships of comparable size in comparable markets.

b. If such performance measurement criteria are based, in whole or in part, on a survey, such survey must be based on a statistically significant and valid random sample.

c. A manufacturer or common entity, or an affiliate thereof, which enforces against any motor vehicle dealer any such performance measurement criteria shall, upon the request of the motor vehicle dealer, describe in writing to the motor vehicle dealer, in detail, how the performance measurement criteria were designed, calculated, established, and uniformly applied.

(15) a. To fail to allocate its products within this State in a manner that does all of the following:

1. Provides each of its franchised dealers in this State an adequate supply of vehicles by series, product line, and model in a fair, reasonable, and equitable manner based on each dealer's historical selling pattern and reasonable sales standards as compared to other same line-make dealers in the State.

2. Allocates an adequate supply of vehicles to each of its dealers by series, product line, and model so as to allow the dealer to achieve any performance standards established by the manufacturer and distributor.

3. Is fair and equitable to all of its franchised dealers in this State.

4. Makes available to each of its franchised dealers in this State a minimum of 1 of each vehicle series, model, or product line that the manufacturer makes available to any dealer in this State and advertises in the State as being available for purchase.

5. Does not unfairly discriminate among its franchised dealers in its allocation process.

b. This paragraph (a)(15) is not violated, however, if such failure is caused solely by the occurrence of temporary international, national, or regional product shortages resulting from natural disasters, unavailability of parts, labor strikes, product recalls, or other factors and events beyond the control of the manufacturer that temporarily reduce a manufacturer's product supply.

(16) To fail to reimburse a dealer in full for the actual cost of providing a loaner vehicle to any customer who is having a vehicle serviced or repaired at the dealership if the provision of such a loaner vehicle is required by the manufacturer, or is otherwise included as a condition of participating in any program sponsored by the manufacturer.

(17) Notwithstanding the terms, provisions, or conditions of any agreement, franchise, novation, waiver or other written instrument, to require, coerce, or attempt to coerce any of its franchised new motor vehicle dealers in this State to change the principal operator, general manager, or any other manager or supervisor employed by the dealer.

(18) a. Notwithstanding the terms, provisions, or conditions of any agreement or franchise, to discriminate against or otherwise penalize a new motor vehicle dealer located in this State for selling or offering for sale a service contract, debt cancellation agreement,

maintenance agreement, or similar product not approved, endorsed, sponsored, or offered by the manufacturer, affiliate, or captive finance source.

b. For purposes of this paragraph (a)(18), "discrimination" includes any of the following:

1. Requiring or coercing a dealer to exclusively sell or offer for sale service contracts, debt cancellation agreements, or similar products approved, endorsed, sponsored, or offered by the manufacturer, distributor, affiliate, or captive finance source.

2. Taking or threatening to take any adverse action against a dealer because the dealer does any of the following:

A. Sells or offers for sale any service contracts, debt cancellation agreements, maintenance agreements, or similar products not approved, endorsed, sponsored, or offered by the manufacturer, affiliate, or captive finance source.

B. Fails to sell or offer for sale service contracts, debt cancellation agreements, maintenance agreements, or similar products approved, endorsed, sponsored, or offered by the manufacturer, its affiliate, or captive finance source.

3. Measuring a dealer's performance under a franchise in any part based upon the dealer's sale of service contracts, debt cancellation agreements, or similar products approved, endorsed, sponsored, or offered by the manufacturer, affiliate, or captive finance source.

4. Requiring a dealer to exclusively promote the sale of service contracts, debt cancellation agreements, or similar products approved, endorsed, sponsored, or offered by the manufacturer, affiliate, or captive finance source.

5. Requiring a dealer to disclose who is not the provider or sponsor of a service contract, debt cancellation agreement, or similar product.

6. Considering the dealer's sale of service contracts, debt cancellation agreements, or similar products approved, endorsed, sponsored, or offered by the manufacturer, affiliate, or captive finance source in determining any of the following:

A. The dealer's eligibility to purchase any vehicles, parts, or other products or services from the manufacturer.

B. The volume of vehicles or other parts or services the dealer shall be eligible to purchase from the manufacturer.

C. The price or prices of any vehicles, parts, or other products or services that the dealer shall be eligible to purchase from the manufacturer.

D. The availability or amount of any vehicle discount, credit, special pricing, rebate, or sales or service incentive the dealer shall be eligible to receive from the manufacturer, affiliate, or captive finance source in which the incentives are calculated or paid on a per-vehicle basis or any vehicle discount, credit, special pricing, or rebate that are calculated or paid on a per-vehicle basis.

c. For purposes of this paragraph (a)(18), "discrimination" does not include, and nothing prohibits a manufacturer, affiliate, or captive finance source from offering, discounts, rebates, or other incentives to dealers that voluntarily sell or offer for sale service contracts, debt cancellation agreements, or similar products approved, endorsed, sponsored, or offered by the manufacturer, affiliate, or captive finance source; provided, however, that such discounts, rebates, or other incentives are based solely on the sales volume of the service contracts, debt cancellation agreements, or similar products sold by the dealer and do not provide vehicle sales or service incentives.

(19) a. Notwithstanding the terms of any contract, franchise, novation, or agreement, to prevent, attempt to prevent, prohibit, coerce, or attempt to coerce, any new motor vehicle dealer located in this State from charging any administrative, origination, documentary, procurement, or other similar administrative fee related to the sale or lease of a motor vehicle.

b. It is unlawful for any manufacturer, manufacturer branch, distributor, or distributor branch, notwithstanding the terms of any contract, franchise, novation, or agreement, to prevent or prohibit any new motor vehicle dealer in this State from participating in any program relating to the sale of motor vehicles or reduce the amount of compensation to be paid to any dealer in this State, based upon the dealer's willingness to refrain from charging or reduce the amount of any administrative, origination, documentary, procurement, or other similar administrative fee related to the sale or lease of a motor vehicle.

(b) It shall be a violation of this chapter for any manufacturer:

(1) To delay, refuse or fail to deliver new motor vehicles or new motor vehicle parts or accessories in a reasonable time, and in reasonable quantity relative to the new motor vehicle dealer's facilities and sales potential in the new motor vehicle dealer's relevant market area, after acceptance of an order from a new motor vehicle dealer having a franchise for the retail sale of any new motor vehicle sold or distributed by the manufacturer, any new motor vehicle, parts or accessories to new vehicles as are covered by such franchise, if such vehicle, parts or accessories are publicly advertised as being available for immediate delivery or actually being delivered. This paragraph is not violated, however, if such failure is caused by acts or causes beyond the control of the manufacturer.

(2) To refuse to disclose to any new motor vehicle dealer, handling the same line-make, any matters relating to the manner and mode of distribution of that line-make within the State, including, without limitation, matters related to establishment or relocation of dealers under § 4915 of this title (but with appropriate exclusion of financial information not essential to a complete understanding of the manufacturer's manner and mode of distribution).

(3) To obtain money, goods, service or any other benefit from any other person with whom the new motor vehicle dealer does business, on account of, or in relation to, the transaction between the new motor vehicle dealer and such other person, other than for compensation for services rendered, unless such benefit is promptly accounted for, and transmitted to, the new motor vehicle dealer.

(4) To increase prices of new motor vehicles which the new motor vehicle dealer had ordered for consumers prior to the new motor vehicle dealer's receipt of the written official price increase notification. A sales contract signed by a consumer shall constitute evidence of each such order provided that the vehicle is in fact delivered to that customer. In the event of manufacturer price reductions or cash rebates paid to the new motor vehicle dealer, the amount of any such reduction or rebate received by a new motor vehicle dealer shall be passed on to the consumer by the new motor vehicle dealer. Price reductions shall apply to all vehicles in the dealer's inventory which were subject to the price reduction. Price differences applicable to new model or series shall not be considered a price increase or price decrease. Price changes caused by either:

a. The addition to a motor vehicle of required or optional equipment; or

b. Revaluation of the United States dollar, in the case of foreign-make vehicles or components; or

c. An increase in transportation charges due to increased rates imposed by carriers;

shall not be subject to this paragraph.

(5) To release to any outside party, except under subpoena or as otherwise required by law (including, without limitation, provisions of this chapter) or in an administrative, judicial or arbitration proceeding involving the manufacturer or new motor vehicle dealer, any business, financial or personal information which may be from time to time provided by the new motor vehicle dealer to the manufacturer, without the express written consent of the new motor vehicle dealer.

(6) To deny any new motor vehicle dealer the right of free association with any other new motor vehicle dealer for any lawful purpose.

(7) To unfairly compete with a new motor vehicle dealer in the same line-make operating under an agreement or franchise from the aforementioned manufacturer in the relevant market area. A manufacturer shall not, however, be deemed to be competing when operating a dealership either temporarily for a reasonable period, or in a bona fide retail operation which is for sale to any qualified independent person at a fair and reasonable price, or in a bona fide relationship in which an independent person has made a significant investment subject to loss in the dealership and can reasonably expect to acquire full ownership of such dealership on reasonable terms and conditions.

(8) To unfairly discriminate among its new motor vehicle dealers with respect to warranty reimbursement.

(9) To prevent or attempt to prevent the new motor vehicle dealer by written instrument or otherwise from either receiving the fair market value of the dealership in a sale transaction or from transferring the new motor vehicle dealership to a spouse or legal heir as specified in this chapter.

(10) To offer to sell or lease, or to sell or lease, any new motor vehicle to any new motor vehicle dealer at a lower actual invoice price than the actual invoice price offered to another for the same model vehicle, notwithstanding the availability of incentive programs or sales promotion plans or other similar programs available to new motor vehicle dealers at the time of consumer purchase.

(11) To use a promotional program or device or an incentive, payment or other benefit, whether paid at the time of sale of the new motor vehicle to the dealer or later, that results in the sale or offer to sell a new motor vehicle at a lower price, including the price for vehicle transportation, than the price at which the same model similarly equipped is offered or is available to another dealer in the State during a similar time period. This subdivision shall not prohibit a promotional or incentive program that is functionally available to competing dealers of the same line-make in the State.

(12) To engage in any predatory practice or discrimination against any new motor vehicle dealer or unreasonably discriminate between or among dealers in the sale of a motor vehicle owned by the manufacturer or distributor.

(13) To resort to or to use any fraudulent or intentionally misleading advertisement in connection with its business as a distributor or manufacturer licensed in this State; or for any agent of a distributor or manufacturer or distributor to make any fraudulent or intentionally misleading statements to new motor vehicle dealers as inducements to enter into any agreement or franchise.

(14) To directly or indirectly own an interest in a dealer or dealership; or operate or control a dealer or dealership; or act in the capacity of a dealer except as provided by this section.

a. A manufacturer or distributor may own an interest in a franchised dealer, or otherwise control a dealership for a period not to exceed 24 months from the date the manufacturer or distributor acquires the dealership if the dealership is for sale by the manufacturer or distributor at a reasonable price and on reasonable terms and conditions.

b. A manufacturer or distributor may temporarily own an interest in a dealership if the manufacturer's or distributor's participation in the dealership is a bona fide relationship with a franchised dealer who:

1. Is required to make a significant investment in the dealership, subject to loss;

2. Has an ownership interest in the dealership; and

3. Operates the dealership under a plan to acquire full ownership of the dealership within a reasonable time and under reasonable terms and conditions.

(15) To engage in business as a dealer or to manage, control, operate or own any interest in a dealership either directly or indirectly, if the primary business of such dealer or dealership is to perform repair services on motor vehicles, except motor homes, pursuant to a manufacturer's or franchiser's warranty.

(c) (1) It is unlawful for any manufacturer, or any officer, agent or representative to coerce or to attempt to coerce any new motor vehicle dealer in this State to sell, assign or transfer any retail installment sales contract, obtained by such dealer in connection with the

sale by the dealer in this State of new motor vehicles manufactured or sold by such manufacturer, to a specified finance company or class of such companies, or to any other specified persons, by any of the acts or means hereinafter set forth, namely:

a. By any statement, suggestion, promise or threat that such manufacturer will in any manner benefit or injure such new motor vehicle dealer, whether such statement, suggestion, threat or promise is express or implied or made directly or indirectly.

b. By any act that will benefit or injure such new motor vehicle dealer.

c. By any contract, or any express or implied offer of contract, made directly or indirectly to such new motor vehicle dealer for handling such new motor vehicles on the condition that such new motor vehicle dealer sell, assign or transfer retail installment sales contract thereon, in this State, to a specified finance company or class of such companies or to any other specified person.

d. By any express or implied statement or representation made directly or indirectly that such new motor vehicle dealer is under any obligation whatsoever to sell, assign or transfer any retail sales contracts, in this State, on new motor vehicles manufactured or sold by such manufacturer to such finance company, or class of companies, or other specified person, because of any relationship or affiliation between such manufacturer and such finance company or companies or such specified person or persons.

(2) Any such statements, threats, promises, acts, contracts or offers of contracts, when the effect thereof may be to lessen or eliminate competition or tend to create a monopoly, are declared unfair trade practices and unfair methods of competition and against the policy of this State, are unlawful and are hereby prohibited.

(d) It shall be illegal for any manufacturer or agent or employee of a manufacturer to use a written instrument, agreement or waiver to attempt to nullify any of the provisions of this section and such agreement, written instrument or waiver shall be null and void.

(64 Del. Laws, c. 27, § 1; 70 Del. Laws, c. 186, § 1; 70 Del. Laws, c. 497, §§ 1-3; 73 Del. Laws, c. 78, §§ 10-13; 78 Del. Laws, c. 372, § 1; 81 Del. Laws, c. 289, § 6.)

§ 4914 Validity of certain agreements.

(a) It shall be unlawful directly or indirectly to impose unreasonable restrictions on the new motor vehicle dealer relative to the sale, transfer, right to renew, termination, discipline, noncompetition covenants, site control (whether by sublease, collateral pledge of lease or otherwise), right of first refusal to purchase, option to purchase, compliance with subjective standards and assertion of legal or equitable rights.

(b) This chapter shall not preclude dealers, manufacturers or distributors from entering into valid releases or settlement agreements consistent with the policy of this chapter. In no case shall a general release required to be executed as a condition to renewal of a franchise agreement be deemed to be consistent with the policy of this chapter.

(c) It shall be unlawful to sell a new motor vehicle to a consumer except for the federal government in the State unless that person, persons, partnership or corporation has a valid franchise agreement from a franchiser for that make or line and is in compliance with all Delaware Motor Vehicle licensing requirements. This subsection shall not preclude a franchiser from providing information to consumers for the purposes of marketing or facilitating the sale of a new motor vehicle or from establishing programs to sell or offer to sell new motor vehicles through participating franchisees.

(64 Del. Laws, c. 27, § 1; 73 Del. Laws, c. 78, § 14.)

§ 4915 Limitations on establishing or relocating dealers.

(a) In the event that a manufacturer seeks to enter into a franchise establishing an additional new motor vehicle dealer or relocating an existing new motor vehicle dealer within or into a relevant market area where the same line-make is then represented, the manufacturer shall in writing first notify the Public Service Commission and each new motor vehicle dealer in such line-make in the relevant market area of the intention to establish an additional dealer or to relocate an existing dealer within or into that market area. Within 30 days of receiving such notice or within 30 days after the end of any appeal procedure provided by the manufacturer, any such new motor vehicle dealer may file with the Public Service Commission a protest to the establishing or relocating of the new motor vehicle dealer. When such a protest is filed, the Public Service Commission shall inform the manufacturer that a timely protest has been filed, and that the manufacturer shall not establish or relocate the proposed new motor vehicle dealer until the Public Service Commission has held a hearing, nor thereafter, unless, the Public Service Commission has determined that there is good cause for permitting the addition or relocation of such new motor vehicle dealer.

(b) This section does not apply:

(1) To the relocation of an existing dealer within that dealer's relevant market area, provided that the relocation not be at a site within 7 miles of a licensed new motor vehicle dealer for the same line-make of motor vehicle; or

(2) If the proposed new motor vehicle dealer is to be established at or within 2 miles of a location at which a former new motor vehicle dealer for the same line-make of new motor vehicle had ceased operating within the previous 2 years. Determination of whether a new motor vehicle dealer "had ceased operating" under the preceding sentence shall be based on the facts and circumstances of a particular case; provided however, that in transactions involving a sale of the business or assets of a new motor vehicle dealer, the seller and purchaser shall be treated as the same entity.

(c) In determining whether good cause has been established for entering into or relocating an additional new motor vehicle dealer for the same line-make, the Public Service Commission shall take into consideration the existing circumstances, including, but not limited to:

(1) Permanency of the investment of both the existing and proposed new motor vehicle dealers;

(2) Growth or decline in population and new car registrations in the relevant market area;

(3) Effect on the consuming public in the relevant market area;

(4) Whether it is injurious or beneficial to the public welfare for an additional new motor vehicle dealer to be established;

(5) Whether the new motor vehicle dealers of the same line-make in that relevant market area are providing adequate competition and convenient customer care for the motor vehicles of the line-make in the market area which shall include the adequacy of motor vehicle sales and service facilities, equipment, supply of motor vehicle parts and qualified service personnel;

(6) Whether the establishment of an additional new motor vehicle dealer would increase competition, and therefore be in the public interest;

(7) The effect on the relocating dealer of a denial of its relocation.

(d) The manufacturer and proposed additional or relocating new motor vehicle dealer shall have the burden of proof to establish that good cause exists for permitting the proposed addition or relocation under this section.

(e) The Public Service Commission or its designee shall conduct the hearing and render its final determination within 90 days after a protest is filed.

(f) Any parties to a hearing by the Public Service Commission concerning the establishing or relocating of a new motor vehicle dealer shall have a right of review of the decision in the Superior Court; if no decision is made by the Public Service Commission within 90 days of the protest then the matter shall be heard and determined by the Superior Court on application by either party filed within 120 days after the protest.

(g) All new motor vehicle dealers in the State shall bear the costs of the administration of this chapter by means of an annual assessment which may be established by the Commission as needed and must be no more than what is reasonably needed to defray the annual cost of administering this chapter; provided, in the event the Commission determines that any action or actions by a manufacturer pursuant to this section are frivolous, the Commission may assess the reasonable cost of the hearing against the manufacturer. Such assessment shall be paid by each new motor vehicle dealer on or before March 31 of each year. If a new motor vehicle dealer fails to pay the assessment, it shall pay a penalty of 12 percent of the amount due for each month or fraction thereof that the amount is unpaid. The Commission may enforce the collection of any delinquent assessment, or portion thereof, by legal action or in any other manner by which the collection of debts due the State may be enforced. All assessments under this section shall be deposited in the State Treasury to the credit of a New Motor Vehicle Dealer Fund to be used for the administration of this chapter by the Commission, as authorized by the General Assembly in its annual operating budget. Any amount which remains in the Fund at the end of any fiscal year shall be applied on an equal basis to the assessment charged against each new motor vehicle dealer for the next succeeding fiscal year.

(64 Del. Laws, c. 27, § 1; 67 Del. Laws, c. 101, §§ 1-3; 70 Del. Laws, c. 186, § 1; 70 Del. Laws, c. 497, § 4; 82 Del. Laws, c. 11, § 1.)

§ 4916 Civil actions for violations.

(a) Notwithstanding the terms, provisions or conditions of any agreement or franchise or other terms or provisions of any novation, waiver or other written instrument, any person who is or may be injured by a violation of a provision of this chapter or any party to a franchise who is so injured in such party's business or property by a violation of a provision of this chapter relating to that franchise, or any person so injured because such person refuses to accede to a proposal for an arrangement which, if consummated, would be in violation of this chapter may bring an action in any court of competent jurisdiction for damages and equitable relief including injunctive relief. Said person may recover damages in the amount equal to the actual pecuniary loss. In addition, said person may recover costs and reasonable attorney's fees as damages. Upon a prima facie showing by the person filing the petition or cause of action that a violation of this chapter has occurred, the burden of proof shall then be upon the opposing party to prove that such violation did not occur.

(b) Where the violation of a provision of this chapter can be shown to be wilful or wanton, or if continued multiple violations of a provision or provisions of this chapter occur, the court may award punitive damages, attorney's fees and costs in addition to any other damages under this chapter.

(c) A new motor vehicle dealer, if the dealer has not suffered any loss of money or property, may obtain final equitable relief if it can be shown that the violation of a provision of this chapter by a manufacturer may have the effect of causing such loss of money or property.

(d) Where there are continued violations of a provision or provisions of this chapter and it can be shown that the violations are wilful or wanton, the court, in addition to any other remedy or award of damages under this chapter, may assess monetary penalties.

(e) In addition to any other relief under this chapter, the court may assess monetary penalties against a manufacturer for violations of this chapter.

(64 Del. Laws, c. 27, § 1; 70 Del. Laws, c. 186, § 1; 73 Del. Laws, c. 78, § 15; 78 Del. Laws, c. 372, § 1.)

§ 4917 Applicability of chapter.

(a) Any person who engages directly or indirectly in purposeful contacts within this State in connection with the offering or advertising for sale or has business dealings with respect to a new motor vehicle sale within this State shall be subject to this chapter and shall be subject to the jurisdiction of the courts of this State.

(b) The applicability of this chapter shall not be affected by a choice of law clause in any franchise, agreement, prospective waiver, novation or any other written instrument.

(c) Any provision of any agreement, franchise, prospective waiver, novation or any other written instrument which is in violation of any section of this chapter shall be deemed null and void and without force and effect.

(d) It shall be unlawful for a manufacturer to use any subsidiary corporation, affiliated corporation or any other controlled corporation, partnership, association or person to accomplish what would otherwise be illegal conduct under this chapter on the part of the manufacturer.

(e) If any provision of this chapter is declared to be invalid or unenforceable by a court or authority of competent jurisdiction, the remaining provisions of this chapter shall continue in full force and effect.

(f) The provisions of this chapter apply to all written agreements between a manufacturer and a new motor vehicle dealer, including the franchise offering, letter of intent, the franchise agreement, sales of goods, services or advertising, leases or deeds of trust of real or personal property, promises to pay, security interests, pledges, insurance contracts, advertising contracts, construction or installation contracts, servicing contracts, and all other such agreements between a new motor vehicle dealer and a manufacturer.

(64 Del. Laws, c. 27, § 1; 73 Del. Laws, c. 78, § 16; 81 Del. Laws, c. 289, § 7.)

§ 4918 Limitations of actions.

(a) Actions arising out of any provision of this chapter shall be commenced within a 4-year period of the accrual of the cause of action; provided, however, that if a person liable hereunder conceals the cause of action from the knowledge of the person entitled to bring it, the period prior to the discovery of a cause of action by the person entitled shall be excluded in determining the time limited for the commencement of the action.

(b) If a cause of action accrues during the pendency of any civil, criminal or administrative proceeding against a person brought by the United States or any of its agencies under the antitrust laws, the Federal Trade Commission Act [15 U.S.C. §§ 41-58] or any other federal act, or the laws as to franchising, such actions may be commenced within 1 year after the final disposition of such civil, criminal or administrative proceeding.

(64 Del. Laws, c. 27, § 1; 70 Del. Laws, c. 186, § 1.)

§ 4919 Consumer data protection.

(a) As used in this section:

(1) "Consumer data" means "nonpublic personal information," as defined in 15 U.S.C. § 6809(4), that is collected by a motor vehicle dealer and is provided by the motor vehicle dealer directly to a manufacturer or third party acting on behalf of a manufacturer. "Consumer data" does not include the same or similar data which is obtained by a manufacturer from any other source.

(2) a. "Data management system" means a computer hardware or software system that meets both of the following:

1. Is owned, leased, or licensed by a motor vehicle dealer, including a system of web-based applications, computer software, or computer hardware, whether located at the motor vehicle dealership or hosted remotely.

2. Stores and provides access to consumer data collected or stored by a motor vehicle dealer.

b. "Data management system" includes dealership management systems and customer relations management systems.

(b) Notwithstanding the provisions of any franchise agreement, with respect to consumer data a manufacturer or a third party acting on behalf of a manufacturer must do all of the following:

(1) Comply with all, and not knowingly cause a motor vehicle dealer to violate any, applicable restrictions on reuse or disclosure of the consumer data established by federal or state law and provide a written statement to the motor vehicle dealer upon request describing the established procedures adopted by the manufacturer or third party acting on behalf of the manufacturer which meet or exceed any federal or state requirements to safeguard the consumer data, including those established in the Gramm-Leach-Bliley Act, 15 U.S.C. § 6801 et seq.

(2) Upon the written request of the motor vehicle dealer, provide a written list of the consumer data obtained from the motor vehicle dealer and all persons to whom any consumer data has been provided by the manufacturer or a third party acting on behalf of a manufacturer during the preceding 6 months. The dealer may make such a request no more than once every 6 months. The list must indicate the specific fields of consumer data that were provided to each person. Notwithstanding the foregoing sentences of this paragraph (b)(2), such a list need not include:

a. A person to whom consumer data was provided, or the specific consumer data provided to such person, if the person was, at the time the consumer data was provided, 1 of the manufacturer's service providers, subcontractors, or consultants acting in the course of such person's performance of services on behalf of or for the benefit of the manufacturer or motor vehicle dealer, provided that the manufacturer has entered into an agreement with such person requiring that the person comply with the safeguard requirements of applicable state and federal law, including, but not limited to, those established in the Gramm-Leach-Bliley Act, 15 U.S.C. § 6801 et seq.

b. A person to whom consumer data was provided, or the specific consumer data provided to such person, if the motor vehicle dealer has previously consented in writing to such person receiving the consumer data provided and the motor vehicle dealer has not withdrawn such consent in writing.

(3) Not require a motor vehicle dealer to grant the manufacturer or a third party direct or indirect access to the dealer's data management system to obtain consumer data as a part of any program or otherwise. A manufacturer must permit a motor vehicle dealer to furnish consumer data in a widely accepted file format, such as comma delimited, and through a third-party vendor selected by the motor vehicle dealer. However, a manufacturer may access or obtain consumer data directly from a motor vehicle dealer's data management system with the prior express written consent of the dealer. The consent must be in the form of a stand-alone written document that is separate from the parties' franchise agreement, is executed by the dealer principal, and may be withdrawn by the dealer upon 30-days' written notice to the manufacturer.

(4) Indemnify the motor vehicle dealer for any third-party claims asserted against or damages incurred by the motor vehicle dealer to the extent caused by access to, use of, or disclosure of consumer data in violation of this section by the manufacturer, a third party acting on behalf of the manufacturer, or a third party to whom the manufacturer has provided consumer data.

(81 Del. Laws, c. 289, § 8.)

Subtitle II
Other Laws Relating to Commerce and Trade

Chapter 49A
Auto Repair Fraud Prevention

§ 4901A Purpose.

The purpose of this chapter is to safeguard the public against fraudulent auto repair practices thereby enhancing public confidence in legitimate auto repair facilities and mechanics.

(70 Del. Laws, c. 428, § 2.)

§ 4902A Definitions.

For the purposes of this chapter, the following definitions shall apply:

(1) "Automotive repair facility" means any person who performs auto repair work on a motor vehicle for financial profit.

(2) "Auto repair work" means performing or attempting to perform repairs and/or maintenance on a motor vehicle for financial profit.

(3) "Motor vehicle" is as defined by 21 § 101(35).

(4) "Pattern of violations" means 3 or more violations within a 1-year period.

(5) "Person" includes an individual, corporation, statutory trust, business trust, estate, trust, partnership, association, 2 or more persons having a joint or common interest or any other legal or commercial entity.

(70 Del. Laws, c. 428, § 2; 73 Del. Laws, c. 329, § 39.)

§ 4903A Unlawful practices.

(a) Deception, fraud, false pretense, false promise, misrepresentation or the concealment, suppression or omission of any material fact with the intent that others rely upon such concealment, suppression or omission of any material fact in connection with auto repair work by any automotive repair facility, whether or not any person has in fact been misled, deceived or damaged thereby, or the act, use or employment by any auto repair facility of a deceptive trade practice in connection with auto repair work shall constitute an unlawful practice.

(b) Acts or practices by an automotive repair facility prohibited by subsection (a) of this section shall include but are not limited to:

(1) Refusing to return a customer's motor vehicle because the customer refused to pay for unauthorized auto repair work in violation of § 4907A of this title;

(2) Misrepresenting that auto repair work has been made to a motor vehicle;

(3) Misrepresenting that auto repair work is necessary to a motor vehicle repair;

(4) Misrepresenting that the motor vehicle is in a dangerous condition or that the customer's continued use of the vehicle may be harmful or cause significant damage to the vehicle;

(5) Misrepresenting that the motor vehicle will or will not pass state inspection requirements or is not otherwise in compliance with state or federal requirements in connection with soliciting auto repair work;

(6) Performing unauthorized auto repair work in connection with a misrepresentation;

(7) Installing or reinstalling any nonoperative air bag or object in lieu of an operative air bag that was designed in accordance with federal safety regulations for the make, model, and year of the vehicle as part of the vehicle inflatable restraint system;

(8) Fraudulently altering any customer contract, estimate, invoice or other document;

(9) Fraudulently misusing a customer's credit card; or

(10) Engaging in a pattern of violations of § 4904A, § 4905A, § 4906A or § 4907A of this title or violating § 4904A, § 4905A, § 4906A or § 4907A of this title with the intent to hinder the discovery of practices or acts prohibited by this section.

(70 Del. Laws, c. 428, § 2; 74 Del. Laws, c. 277, § 1.)

§ 4904A Estimate requirements for auto repair work.

(a) *Written estimate and authorization requirements.* — Unless waived pursuant to subsection (b) of this section by the customer or by a person the auto repair facility reasonably believes is acting on the customer's behalf, the automotive repair facility shall, before beginning any auto repair work and/or transmission repair diagnosis on a motor vehicle, give the customer a written statement which contains:

(1) The estimated completion date;

(2) The estimated price for the auto repair work including parts and labor; and

(3) The estimated surcharge, if any.

(b) *Oral estimates and authorization.* — If a customer or a person the auto repair facility reasonably believes is acting on the customer's behalf, waives his or her right to a written estimate, the automotive repair facility shall orally provide to the customer or a person the

automotive repair facility reasonably believes to be acting on a customer's behalf the estimated price and completion date before beginning any auto repair work; provided however, that the person giving the oral estimate shall make a written record of the requirements set forth in paragraphs (a)(1) through (3) of this section, sign or initial the written document and retain such document for a period of no less than 2 years.

(c) *Prohibited charges.* — An automotive repair facility shall not charge a customer without the consent of the customer or a person the automotive repair facility reasonably believes is acting on behalf of the customer any amount which exceeds the estimate by 20% or $50, whichever is less. Any charges which exceed 20% or $50, whichever is less, must comply with the requirements of subsections (a) and (b) of this section.

(70 Del. Laws, c. 428, § 2; 70 Del. Laws, c. 186, § 1.)

§ 4905A Invoice requirements.

(a) *Work description.* — An automotive repair facility shall prepare an invoice which describes in all material respects:

(1) Auto repair work done by it, including all warranty work;

(2) All parts supplied by it;

(3) All labor performed by it. To the extent a charge for labor is not based on actual hours worked, the invoice shall specify that the labor charge is based on a flat rate. Notwithstanding the above, if the labor charge is part of a packaged price product, such as an oil change, the invoice need not specify the labor component of that charge; and

(4) All auto repair work that is performed by persons other than the auto repair facility. The auto repair facility shall retain the name, address and telephone number of such other persons performing auto repair work and disclose such information upon request of the customer or a person it reasonably believes to be acting on the customer's behalf.

(b) *Used, rebuilt or reconditioned parts.* — The invoice shall state clearly if any used, rebuilt or reconditioned parts were used in the auto repair work and/or if a part of a component system supplied is composed of used, rebuilt or reconditioned parts.

(c) *Copies of invoices.* — The automotive repair facility shall give the customer a copy of the invoice and retain a copy for no less than 2 years.

(70 Del. Laws, c. 428, § 2.)

§ 4906A Replaced parts — Requirement for return to the customer.

An automotive repair facility shall offer to return all replaced parts to the customer or a person acting on his or her behalf, except parts which are returned to a manufacturer or distributor, hazardous materials or other items which the automotive repair facility is otherwise required to properly dispose of or recycle. Nothing herein shall require the auto repair facility to retain replaced parts after final invoice.

(70 Del. Laws, c. 428, § 2; 70 Del. Laws, c. 186, § 1.)

§ 4907A Unauthorized repairs.

An automotive repair facility may not charge a customer for repairs not originally authorized or requested by the customer, or a person the auto repair facility reasonably believes is acting on the customer's behalf, unless the automotive repair facility receives written or oral permission from the customer in conformance with this chapter. To the extent a charge does not exceed an estimate by 20% or $50, whichever is less, no cause of action pursuant to § 4909A(c) of this title shall accrue. Nothing in this section shall preclude enforcement pursuant to § 4903A(b)(6) and (9) of this title.

(70 Del. Laws, c. 428, § 2.)

§ 4908A Required notice to customers.

(a) All auto repair shops not otherwise complying with subsection (b) of this section shall post a sign, in a manner conspicuous to the public, which states as follows:

(1) The customer is entitled to receive a written or oral estimate;

(2) No auto repair work charge may exceed the estimate without the customer's consent;

(3) The facility shall offer to return to the consumer all replaced parts except those under warranty or trade-in parts returned to a manufacturer or distributor; and

(4) Complaints can be made to the Consumer Protection and Fraud Division of the Delaware Department of Justice.

(b) To the extent an auto repair facility does not post a sign pursuant to subsection (a) of this section, an automotive repair facility shall, prior to performing auto repair work, disclose to the customer on a separate document or the written estimate itself the following language:

"PLEASE READ CAREFULLY

CHECK ONE OF THE STATEMENTS BELOW AND SIGN

I UNDERSTAND THAT, UNDER STATE LAW, I AM ENTITLED TO A WRITTEN ESTIMATE. ____I REQUEST A WRITTEN ESTIMATE. ____I REQUEST AN ORAL ESTIMATE. ____I DO NOT REQUEST A WRITTEN

ESTIMATE AS LONG AS THE REPAIR COSTS DO NOT EXCEED $. THE SHOP MAY NOT EXCEED THIS AMOUNT WITHOUT MY WRITTEN OR ORAL APPROVAL. ____I WAIVE MY RIGHT TO AN ESTIMATE.

SIGNED DATE ”

The above language shall be in bold typeset at least as large as the size of the print in the main body of the document. The requirements of this section shall be effective as of January 1, 1997.

(70 Del. Laws, c. 428, § 2.)

§ 4909A Enforcement and remedies.

(a) The Attorney General shall have the same authority in enforcing, remedying, and otherwise carrying out the provisions of this chapter as is provided by Chapter 25 of Title 29 and by §§ 2511-2527 and 2531-2536 of this title.

(b) Any violation of § 4903A of this title shall be deemed an unlawful practice in violation of § 2513 of this title.

(c) Transactions where an automotive repair facility has violated the requirements of §§ 4903A, 4904A, 4905A, 4906A and/or 4907A of this title shall be voidable by the consumer in actions brought in the Justice of Peace Courts. In successful actions brought by consumers under this subsection, the automotive repair facility shall be liable to the customer for twice the amount of any consideration obtained in violation of this chapter and the costs of the action; provided however, that the customer must first allow the auto repair facility the opportunity to resolve the dispute prior to filing an action under this subsection; and the Court may further award a customer reasonable attorneys’ fees.

Nothing in this subsection shall prohibit a person from otherwise seeking a recovery in an action for damages against an automotive repair facility in a court of competent jurisdiction.

(d) The remedies and penalties provided for in this section are not exclusive and shall be in addition to any other procedures, rights or remedies which exist with respect to any other provisions of law including, but not limited to, state and/or federal criminal prosecutions and/or common law or statutory actions brought by private parties.

(70 Del. Laws, c. 428, § 2; 77 Del. Laws, c. 282, § 13.)

Subtitle II
Other Laws Relating to Commerce and Trade
Chapter 50
Automobile Warranties

§ 5001 Definitions.

As used in this chapter:

(1) "Automobile" means any passenger motor vehicle which is leased or bought in Delaware or registered by the Division of Motor Vehicles in the Department of Transportation except the living facilities of motor homes.

(2) "Consumer" means the purchaser, other than for purposes of resale, of an automobile; a person to whom an automobile is transferred during the duration of an express warranty applicable to the automobile; or any other person entitled by the terms of the warranty to enforce the obligations of the warranty.

(3) "Dealer" means a person actively engaged in the business of buying, selling or exchanging automobiles at retail and who has an established place of business.

(4) "Lien" means a security interest in an automobile.

(5) "Lienholder" means a person with a security interest in an automobile pursuant to a lien.

(6) "Manufacturer" means a person engaged in the business of manufacturing, assembling or distributing automobiles, who will, under normal business conditions during the year, manufacture, assemble or distribute to dealers at least 10 new automobiles.

(7) "Manufacturer's express warranty" or "warranty" means the written warranty of the manufacturer of a new automobile of its condition and fitness for use, including any terms or conditions precedent to the enforcement of obligations under that warranty.

(8) "Nonconformity" means a defect or condition which substantially impairs the use, value or safety of an automobile.

(64 Del. Laws, c. 173, § 1; 66 Del. Laws, c. 36, § 1; 74 Del. Laws, c. 110, § 1; 80 Del. Laws, c. 213, § 1.)

§ 5002 Duty to repair nonconforming automobiles.

If a new automobile does not conform to the manufacturer's express warranty, and the consumer reports the nonconformity to the manufacturer or its agent or dealer during the term of the warranty or during the period of 1 year following the date of original delivery of an automobile to the consumer, whichever is earlier, the manufacturer shall make, or arrange with its dealer or agent to make, within a reasonable period of time, all repairs necessary to conform the new automobile to the warranty, notwithstanding that the repairs or corrections are made after the expiration of the term of the warranty or the 1-year period.

(64 Del. Laws, c. 173, § 1.)

§ 5003 Remedies upon failure to repair.

(a) If the manufacturer, its agent or its authorized dealer does not conform the automobile to any applicable express warranty by repairing or correcting any nonconformity after a reasonable number of attempts, the manufacturer shall either replace the automobile with a comparable new automobile acceptable to the consumer or repurchase the automobile from the consumer and refund to the consumer the full purchase, including all credits and allowances for any trade-in vehicle; provided, however, that the consumer shall have the unqualified right to decline a replacement automobile and to demand instead a repurchase.

(b) In instances in which an automobile is replaced by a manufacturer under this section, said manufacturer shall accept return of the automobile and reimburse the consumer for any incidental costs, including dealer preparation fees, fees for transfer of registration, sales taxes or other charges or fees incurred by the consumer as a result of such replacement. In instances in which an automobile which was financed by the manufacturer or its subsidiary or agent is replaced under this section, said manufacturer, subsidiary or agent shall not require the consumer to enter into any refinancing agreement for a replacement automobile which would create any financial obligations upon such consumer beyond those created by the original financing agreement.

(c) In instances in which a refund is tendered under this section, the manufacturer shall accept return of the automobile from the consumer and shall reimburse the consumer for related purchase costs, including sales taxes, registration fees and dealer preparation fees, less:

(1) A reasonable allowance for the consumer's use of the automobile, not to exceed the full purchase price of the automobile multiplied by a fraction which consists of the number of miles driven before the consumer first reported the nonconformity to the manufacturer, its agent or dealer divided by 100,000 miles; and

(2) A reasonable allowance for damage not attributable to normal wear and tear, but not to include damage resulting from a nonconformity.

(d) Refunds shall be made to the consumer, and lienholder, if any, as their interests may appear.

(e) No authorized dealer shall be held liable by the manufacturer for any refunds or automobile replacements in the absence of evidence indicating that dealership repairs have been carried out in a manner inconsistent with the manufacturer's instructions.

(64 Del. Laws, c. 173, § 1; 66 Del. Laws, c. 36, § 3.)

§ 5004 Presumptions.

(a) It shall be presumed that a reasonable number of attempts have been undertaken to conform a new automobile to the manufacturer's express warranty if, within the warranty term or during the period of 1 year following the date of original delivery of the motor vehicle to a consumer, whichever is the earlier date:

(1) Substantially the same nonconformity has been subject to repair or correction 4 or more times by the manufacturer, its agents or its dealers and the nonconformity continues to exist; or

(2) The automobile is out of service by reason of repair or correction of a nonconformity by the manufacturer, its agents or its dealers for a cumulative total of more than 30 calendar days since the original delivery of the motor vehicle to the consumer. This 30-day limit shall commence with the first day on which the consumer presents the automobile to the manufacturer, its agent or dealer for service of the nonconformity and a written document describing the nonconformity is prepared by the manufacturer, its agent or dealer. The 30-day limit shall be extended only if repairs cannot be performed due to conditions beyond the control of the manufacturer, its agents or its dealers, including war, invasion, strike, fire, flood or other natural disaster.

(b) The presumption provided in this section shall not apply against a manufacturer unless the manufacturer has received prior direct written notification from or on behalf of the consumer and has had an opportunity to repair or correct the nonconformity; provided, however, that if the manufacturer does not directly attempt or arrange with its dealer or agent to repair or correct the nonconformity, the manufacturer may not defend a claim by a consumer under this chapter on the ground that the agent or dealer failed to properly repair or correct the nonconformity or that the repairs or corrections made by the agent or dealer caused or contributed to the nonconformity.

(64 Del. Laws, c. 173, § 1; 66 Del. Laws, c. 36, § 4.)

§ 5005 Costs and attorneys' fees in breach of warranty actions.

In any court action brought under this chapter by a consumer against the manufacturer of an automobile, or the manufacturer's agent or authorized dealer, based upon the alleged breach of an express warranty made in connection with the sale of such automobile, the court, in its discretion, may award the plaintiff's costs and reasonable attorney's fees or, if the court determines that the action is brought in bad faith or is frivolous in nature, may award reasonable attorney's fees to the defendant.

(64 Del. Laws, c. 173, § 1; 66 Del. Laws, c. 36, § 5; 70 Del. Laws, c. 186, § 1.)

§ 5006 Affirmative defense to claim.

It shall be an affirmative defense to a claim under this chapter that the alleged nonconformity does not substantially impair the use, value or safety of the new automobile or that the nonconformity is the result of abuse or neglect or of unauthorized modifications or alterations of the new automobile by anyone other than the manufacturer, its agent or dealer.

(64 Del. Laws, c. 173, § 1.)

§ 5007 Informal dispute settlement procedure.

(a) If a manufacturer has established an informal settlement procedure that has a certificate of approval by the Division of Consumer Protection, the remedies provided by this chapter shall not be available to any consumer who has not first resorted to such procedure. In the event a manufacturer's informal dispute settlement procedure does not have a certificate of approval from the Division of Consumer Protection, a consumer may immediately and directly seek the remedies provided by this chapter.

(b) The Division of Consumer Protection shall annually evaluate the operation of informal dispute settlement procedures established by manufacturers and shall issue an annual certificate of approval to those manufacturers whose procedures comply with Title 16, Code of Federal Regulations, Part 703 and with subsections (c), (d) and (e) of this section. The Division of Consumer Protection shall suspend the certification of, or decertify, any informal dispute settlement which no longer complies with said provisions.

(c) Any manufacturer who has established an informal settlement procedure shall file with the Division of Consumer Protection a copy of each decision of the informal dispute settlement procedure within 30 days after the decision is rendered.

(d) In order to obtain the certification of the Division of Consumer Protection, a manufacturer's informal dispute settlement procedure shall not convene any informal dispute settlement hearing or meeting outside the State and shall refrain from any practices which:

(1) Delay a decision in any dispute beyond 65 days after the date on which the consumer initially resorts to the informal dispute settlement procedure by written notification that a dispute exists; or

(2) Delay performance of remedies awarded in a settlement beyond 30 days after receipt of notice of the consumer's acceptance of the decision; provided, however, that such time limits shall not include periods of time when the consumer or the consumer's car is unavailable for the remedies specified in the settlement; or

(3) Require the consumer to make the automobile available more than once for inspection by a manufacturer's representative or more than once for repair of the same nonconformity; or

(4) Fail to consider in decisions any remedies provided by this chapter, such remedies to include:

a. Repair, replacement and refund;

b. Reimbursement for related purchase costs; or

(5) Require the consumer to take any action or assume any obligation not specifically authorized under the provisions of Title 16, Code of Federal Regulations, Part 703.

(e) A manufacturer desiring annual certification of an informal dispute settlement procedure shall make application to the Division of Consumer Protection on forms developed by, and shall provide such information as required by, the Division of Consumer Protection.

(64 Del. Laws, c. 173, § 1; 66 Del. Laws, c. 36, § 6; 69 Del. Laws, c. 291, § 98(c).)

§ 5008 Remedies cumulative.

Nothing in this chapter shall in any way limit the rights or remedies available to a consumer under Subtitle I of this title.

(64 Del. Laws, c. 173, § 1.)

§ 5009 Enforcement.

In addition to any remedies the consumer may have at law or in equity, a violation of this chapter shall be an unlawful practice as defined in § 2513 of this title. The Division of Consumer Protection shall promulgate rules and regulations in order to implement the purposes of this chapter.

(64 Del. Laws, c. 173, § 1; 66 Del. Laws, c. 36, § 7; 69 Del. Laws, c. 291, § 98(c).)

Subtitle II
Other Laws Relating to Commerce and Trade
Chapter 50A
Farm Equipment Warranties

§ 5001A Definitions.

As used in this chapter:

(1) "Consumer" means a purchaser, other than for purposes of resale, of a new farm tractor, a person to whom the new farm tractor is transferred for the same purposes during the duration of an express warranty applicable to the farm tractor and any other person entitled by the terms of the warranty to enforce the terms of the warranty. In the case of an agricultural vehicle within the warranty period, the sale must be made through an authorized farm equipment dealer.

(2) "Fair rental value" means the rental value calculated in accordance with the "Tractor and Farm Equipment Trade-In Guide" published by the National Farm and Power Equipment Dealers Association.

(3) "Farm tractor" means any self-propelled vehicle which is designed primarily for pulling or propelling agricultural machinery and implements and is used principally in the occupation or business of farming, including an implement of husbandry that is self-propelled.

(4) "Manufacturer" means a person engaged in the business of manufacturing, assembling or distributing farm tractors, who under normal business conditions during the year manufacturers, assembles, or distributes to dealers at least 10 new farm tractors.

(5) "Manufacturer's express warranty"; "warranty" mean the written warranty of the manufacturer of a new farm tractor of its condition and fitness for use, including any terms or conditions precedent to the enforcement of obligations under that warranty.

(6) "Nonconformity" means any condition of the farm tractor that makes it reasonably unsuitable to use for the purpose for which it was intended.

(7) "Reasonable allowance for prior use" shall mean no less than the fair rental value of the fair tractor and shall be the sum of:

a. That amount attributable to use by the consumer prior to the consumer's first report of the nonconformity to the manufacturer or its authorized dealers;

b. That amount attributable to use by the consumer during any period subsequent to such report of the reported nonconformity; and

c. That amount attributable to use by the consumer of the farm tractor provided by the manufacturer or its authorized dealers while the farm tractor is out of service by reason of repair of the reported nonconformity.

(66 Del. Laws, c. 57, § 1.)

§ 5002A Notice to consumer.

At the time of purchase the manufacturer must provide directly to the consumer a written statement on a separate piece of paper, in 10-point all capital type, in substantially the following form: "IMPORTANT: IF THIS VEHICLE IS DEFECTIVE, YOU MAY BE ENTITLED UNDER STATE LAW TO REPLACEMENT OF IT OR A REFUND OF ITS PURCHASE PRICE. HOWEVER, TO BE ENTITLED TO REFUND OR REPLACEMENT, YOU MUST FIRST NOTIFY THE MANUFACTURER, ITS AGENT OR ITS AUTHORIZED DEALER OF THE PROBLEM IN WRITING AND GIVE THEM AN OPPORTUNITY TO REPAIR THE VEHICLE."

(66 Del. Laws, c. 57, § 1.)

§ 5003A Manufacturer's duty to repair.

If a farm tractor does not conform to applicable express written warranties and the consumer reports the nonconformity to the manufacturer and its authorized dealer during the term of the express written warranties or during the period of 1 year following the date of the original delivery of the farm tractor to the consumer, whichever is earlier, the manufacturer or its authorized dealers shall make the repairs necessary to make the farm tractor conform to the express written warranties, notwithstanding that the repairs are made after the expiration of the warranty term or the 1-year period. For a self-propelled vehicle this section is limited to warranties on the engine and power train.

(66 Del. Laws, c. 57, § 1.)

§ 5004A Manufacturer's duty to refund or replace.

(a) If the manufacturer or its authorized dealers are unable to make the farm tractor conform to any applicable express written warranty by repairing or correcting any condition which substantially impairs the use or market value of the farm tractor to the consumer within the time periods and after the number of attempts specified in subsection (b) of this section, the manufacturer, through its authorized dealer who sold the farm tractor, shall, at the option of the consumer, replace the farm tractor with a comparable one, charging the consumer only a reasonable allowance for the consumer's use of the farm tractor, or accept the return of the farm tractor from the consumer and refund to the consumer the cash purchase price, including sales tax, license fees, registration fees and any similar governmental charges, less a reasonable allowance for prior use. Refunds shall be made to the consumer and lienholder, if any, as their interests may appear in the county recorder of deeds and/or Secretary of State's office. If no replacement or refund is made, the consumer may bring a civil

action to enforce the obligation. No action may be brought unless the manufacturer has received prior direct written notification from or on behalf of the consumer and has been offered an opportunity to cure the condition alleged within a reasonable time that is not to exceed 60 business days. For a self-propelled vehicle, this section is limited to warranties on the engine and power train.

(b) The replacement or refund obligation specified in subsection (a) of this section shall arise if the manufacturer or its authorized dealers are unable to make the farm tractor conform to applicable express written warranties within the express written warranty term or during the period of 1 year following the date of the original physical delivery of the farm tractor to the consumer, whichever is the earlier date, and (1) the same nonconformity has been subject to repair 4 or more times by the manufacturer or its authorized dealers, but such nonconformity continues to exist; or (2) the farm tractor is out of service by reason of repair of the same nonconformity for a cumulative total of 60 or more business days when the service department of the authorized dealer in possession of the farm tractor is open for purposes of repair, provided that days when the consumer has been provided by the manufacturer or its authorized dealers with the use of another farm tractor which performs the same function shall not be counted.

(66 Del. Laws, c. 57, § 1.)

§ 5005A Extension of warranty.

The terms of any express written warranty, the 1-year period and the 60-day repair period shall be reasonably extended by any period of time during which repair services or replacement parts are not available to the consumer because of a war, invasion or strike, or fire, flood or other natural disaster.

(66 Del. Laws, c. 57, § 1.)

§ 5006A Alternative dispute settlement.

(a) *Exhaustion required.* — If a manufacturer has established, or participates in, an informal dispute settlement procedure which substantially complies with the provisions of the Code of Federal Regulations, Title 16, Part 703, as amended, and the requirements of this section, the provisions of § 5004A of this title concerning refunds or replacement do not apply to a consumer who has not first used this procedure.

(b) *Findings as evidence.* — The findings and decisions in an informal dispute settlement procedure shall address and state in writing whether the consumer would be entitled to a refund or replacement under the presumptions and criteria set out in § 5004A of this title and are admissible as nonbinding evidence in any legal action and are not subject to further foundation requirements.

(c) *Replacement or refund.* — If, in an informal dispute settlement procedure, it is decided that a consumer is entitled to a replacement vehicle under subsection (d) of this section, then the consumer has the option of selecting and receiving either a replacement vehicle or a full refund as authorized by § 5004A of this title. Any refund selected by a consumer shall include all amounts authorized by § 5004A of this title.

(d) *Requirements of informal dispute settlement procedure.* — In any informal dispute settlement procedure provided for by this section:

(1) No documents shall be received by any informal dispute settlement arbitrators unless those documents have been provided to each of the parties in the dispute prior to the arbitrator's meeting, with an opportunity for the parties to comment on the documents in writing, or with oral presentation at the request of the arbitrators;

(2) "Nonvoting" manufacturer or dealer representatives shall not attend or participate in the internal dispute settlement procedures unless the consumer is also present and given a chance to be heard, or unless the consumer previously consents to the manufacturer or dealer participation without the consumer's presence and participation;

(3) Consumers shall be given an adequate opportunity to contest a manufacturer's assertion that a nonconformity falls within intended specifications for the vehicle by having the basis of the manufacturer's claim appraised by a technical expert selected and paid for by the consumer prior to the informal dispute settlement hearing;

(4) No disputes shall be heard where there has been a recent attempt by the manufacturer to repair a consumer's vehicle, but no response has yet been received by the informal dispute arbitrators from the consumer as to whether the repairs were successfully completed. This provision shall not prejudice a consumer's rights under this section nor shall it extend the informal dispute mechanism's 40-day time limit for deciding disputes, as established by the Code of Federal Regulations, Title 16, Part 703;

(5) The manufacturer shall provide and the informal dispute settlement arbitrators shall consider all information relevant to resolving the dispute, such as the prior dispute records and information required by the Code of Federal Regulations, Title 16, Part 703.6, and any relevant technical service bulletins which may have been issued by the manufacturer or lessor regarding the motor vehicle being disputed; and

(6) Any decision reached under this section shall be binding on the manufacturer.

(e) *Exhaustion not required.* — No consumer shall be required to first participate in an informal dispute settlement procedure before filing an action in Superior Court if the informal dispute settlement procedure does not comply with the requirements of this section, notwithstanding the procedure's compliance with the Code of Federal Regulations, Title 16, Part 703.

(f) *Civil remedy.* — Any consumer injured by a violation of this section may bring a civil action to enforce this section and recover costs and disbursements including reasonable attorney's fees.

(g) *Affirmative defenses.* — It shall be an affirmative defense to claim that:

(1) The alleged nonconformity does not substantially impair such use and market value; or

(2) A nonconformity is the result of abuse or neglect or of modifications or alterations of the farm tractor not authorized by the manufacturer.

(66 Del. Laws, c. 57, § 1.)

§ 5007A Limitation of actions.

Any action brought under this chapter shall be commenced within 6 months following:

(1) Expiration of the express written warranty term, or

(2) 1 year following the date of the original delivery of the farm tractor to the consumer,

whichever is later.

(66 Del. Laws, c. 57, § 1.)

§ 5008A Remedy nonexclusive.

Nothing in this chapter limits the rights or remedies which are otherwise available to a consumer under any other law.

(66 Del. Laws, c. 57, § 1.)

§ 5009A Rules and regulations; evaluation of procedure.

The Division of Consumer Protection shall promulgate necessary rules and regulations to implement the purposes of this chapter and shall annually evaluate and certify whether any informal dispute settlement procedure utilized or sought to be utilized under this chapter complies with the Code of Federal Regulations, Title 16, Part 703.

(66 Del. Laws, c. 57, § 1; 69 Del. Laws, c. 291, § 98(c).)

Subtitle II
Other Laws Relating to Commerce and Trade
Chapter 50B
Assistive Technology Device Warranties and Consumer Protection

§ 5001B Definitions.

For purposes of this chapter, the following words, terms and phrases shall have the meanings herein ascribed to them, except when the context clearly indicates a different meaning:

(1) "Assistive technology device" means any item, piece of equipment, or product system that is designed and used to increase, maintain, or improve functional capabilities of individuals with disabilities; whether acquired commercially or "off-the-shelf," modified, customized, or currently or previously used as a demonstrator. An assistive technology device system that, as a whole, is within the definition of this term is itself an assistive technology device, and in this case this term also applies to each component product of the assistive technology device system that is itself ordinarily an assistive technology device. This term includes, but is not limited to:

a. Motorized and manually operated wheelchairs, personal mobility equipment, and other devices or aids of any kind that enhance the mobility or positioning of an individual with a disability, such as motorization, motorized positioning features, and the switches and controls for any motorized features;

b. Hearing aids, telephone communication devices for persons who are deaf or hard of hearing, assistive listening devices, and other hearing and communication assistive technology;

c. Computer equipment and reading devices with voice output, optical scanners, talking software, Braille printers, and other aids and devices that provide access to text;

d. Computer equipment and communication devices with voice output, artificial larynges, voice amplification devices, and other alternative and augmentative communication devices;

e. Voice recognition computer equipment, software and hardware accommodations, switches, and other alternative access to computers;

f. Environmental control units designed for or used by individuals with disabilities; and

g. Mechanical aids that increase, maintain or improve the functional capabilities or health and safety of an individual with disabilities.

(2) "Assistive technology device dealer" means a person or entity in the business of selling new assistive technology devices.

(3) "Assistive technology device lessor" means a person or entity who leases new assistive technology devices to consumers, or who holds the lessor's rights, under a written lease.

(4) "Assistive technology device system" means the final product resulting from a manufacturer customizing, adapting, reconfiguring, refitting, refurbishing or composing into a system 1 or more component products, whether or not new, that may be assistive technology devices or standard products of the same or other manufacturer.

(5) "Collateral costs" means expenses incurred by a consumer in connection with the repair of a nonconformity, including the cost of sales tax and of obtaining an alternative assistive technology device.

(6) "Consumer" includes any of the following:

a. The purchaser of an assistive technology device, including any insurer or governmental agency or instrumentality, if the assistive technology device was purchased from an assistive technology device dealer or manufacturer for purposes other than resale;

b. A person to whom the assistive technology device is transferred for purposes other than resale, if the transfer occurs before the expiration of an express warranty applicable to the assistive technology device;

c. A person who may enforce the warranty; or

d. A person who leases an assistive technology device from an assistive technology device lessor under a written lease.

(7) "Demonstrator" means an assistive technology device used primarily for the purpose of demonstration to the public.

(8) "Early termination cost" means an expense or obligation that an assistive technology device lessor incurs as a result of both the termination of a written lease before the termination date set forth in that lease and the return of an assistive technology device to the manufacturer. The term includes a penalty for prepayment under a finance arrangement.

(9) "Early termination savings" means an expense or obligation that an assistive technology device lessor avoids as a result of both the termination of a written lease before the termination date set forth in that lease and the return of an assistive technology device to a manufacturer. The term includes an interest charge that the assistive technology device lessor would have paid to finance the assistive technology device or, if the assistive technology device lessor does not finance the assistive technology device, the difference between the total period of the lease term remaining after the early termination and the present value of that amount at the date of the early termination.

(10) "An individual with disabilities" means a person who has 1 or more physical or mental impairments that restrict or limit that person's ability to perform activities of daily living or limit that person's capacity to live independently.

(11) "Manufacturer" means a person who manufactures or assembles assistive technology devices and agents of that person, including any importer, distributor, factory branch, distributor branch, or a warrantor of the manufacturer's assistive technology device. The term does not include an assistive technology device dealer or lessor, unless the manufacturer acts directly as an assistive technology dealer or lessor.

(12) "Nonconformity" means a specific or generic condition, defect, or malfunction that substantially impairs the use, value, or safety of an assistive technology device.

(13) "Reasonable attempt to repair" means any of the following occurring within the term of an express warranty applicable to a new assistive technology device:

a. The consumer tenders the assistive technology device to the manufacturer, assistive technology device lessor, or any of the manufacturer's authorized assistive technology device dealers for repair at least 2 times; or

b. The assistive technology device is out of service for an aggregate of at least 30 cumulative days because of a warranty nonconformity.

(74 Del. Laws, c. 278, § 1; 70 Del. Laws, c. 186, § 1.)

§ 5002B Express warranties.

(a) A manufacturer who sells or leases a new assistive technology device to a consumer, either directly or through an assistive technology device dealer or lessor, shall furnish the consumer with an express warranty that the assistive technology device will be free from any defect or condition that substantially impairs the use, value or safety of the assistive technology device. The duration of the express warranty must not be less than 1 year after first possession of the assistive technology device by the consumer. The duration of the express warranty shall be reasonably extended by any period of time during which repair services or replacement parts are not available to the consumer because of a war, invasion, or strike, fire, flood, or other natural disaster.

(b) If a new assistive technology device does not conform to an applicable express warranty and the consumer reports the nonconformity to the manufacturer, the assistive technology device lessor, or any of the manufacturer's authorized assistive technology device dealers and makes the assistive technology device available for repair before 1 year after first possession of the device by the consumer, the nonconformity must be repaired or replaced at no cost to the consumer.

(c) If a manufacturer fails to furnish an express warranty as required by this section, the assistive technology device shall be covered by an express warranty as if the manufacturer had furnished an express warranty to the consumer as required by this section.

(d) A manufacturer may provide any express warranty in addition to the express warranty required by this section; provided, however, that no term of any additional express warranty is inconsistent with, or in any way limits the applicability of, the warranty required by this section.

(74 Del. Laws, c. 278, § 1.)

§ 5003B Notice to consumer.

At the time of purchase the manufacturer must provide directly to the consumer a statement, written in 10-point all capital type on a separate piece of paper or in such other form as the consumer can understand, in substantially the following form:

"IMPORTANT: IF THIS DEVICE IS DEFECTIVE, YOU MAY BE ENTITLED UNDER STATE LAW TO REPLACEMENT OF IT OR A REFUND OF ITS PURCHASE PRICE. HOWEVER, TO BE ENTITLED TO REFUND OR REPLACEMENT, YOU MUST FIRST NOTIFY THE MANUFACTURER, ITS AGENT OR ITS AUTHORIZED DEALER OF THE PROBLEM AND GIVE THEM AN OPPORTUNITY TO REPAIR THE DEVICE IN ACCORDANCE WITH TITLE 6, CHAPTER 50B."

(74 Del. Laws, c. 278, § 1.)

§ 5004B Replacement or refund.

(a) If, after a reasonable attempt to repair, a nonconformity is not repaired, the manufacturer shall, at the direction of the consumer, do 1 of the following:

(1) Accept return of the assistive technology device and within 30 days refund to the consumer and to a holder of a perfected security interest in the consumer's assistive technology device, as their interest may appear, the full purchase price plus any finance charge, amount paid by the consumer at the point of sale and collateral costs; or

(2) Accept return of the assistive technology device, refund to the assistive technology device lessor and to a holder of a perfected security interest in the assistive technology device, as their interest may appear, the current value of the written lease and refund to the consumer the amount that the consumer paid under the written lease plus collateral costs; or

(3) Accept return of the assistive technology device upon delivery to the consumer of a comparable new assistive technology device.

(b) To receive a comparable new assistive technology device, a consumer shall offer to transfer possession of the nonconforming assistive technology device to the manufacturer. No later than 30 days after that offer, the manufacturer shall provide the consumer with the comparable new assistive technology device. When the manufacturer provides the new assistive technology device, the consumer shall return the assistive technology device having the nonconformity to the manufacturer, at the manufacturer's expense, along with any endorsements necessary to transfer real possession to the manufacturer.

(c) For the purposes of this section, the current value of the written lease equals the total amount for which that lease obligates the consumer during the period of the lease remaining after its early termination, plus the assistive technology device dealer's early termination costs and the value of the assistive technology device at the lease expiration date if the lease sets forth that value, less the assistive technology device lessor's early termination savings.

(d) No person may enforce the lease against the consumer after the consumer receives a refund.

(74 Del. Laws, c. 278, § 1.)

§ 5005B Nonconformity disclosure requirement.

No assistive technology device returned by a consumer or assistive technology device lessor in this State or another state may be sold or leased in this State unless full disclosure of the reason for return is made to a prospective buyer or lessee.

(74 Del. Laws, c. 278, § 1.)

§ 5006B Availability of other remedies; waivers void; additional relief.

(a) This chapter does not limit rights or remedies which are otherwise available under any uniform commercial code, consumer protection statute, or any other applicable law or regulation.

(b) A waiver of rights by a consumer under this chapter is void.

(c) In addition to pursuing other remedies, a consumer may bring an action to recover damages for any damages caused by a violation of this chapter. The court shall award a consumer who prevails in the action twice the amount of any pecuniary loss, together with costs, disbursements, reasonable attorney's fees, and any equitable relief that the court may determine is appropriate.

(74 Del. Laws, c. 278, § 1.)

§ 5007B Replacement during repair; reimbursement of rental costs incurred by consumer; penalties.

(a) Whenever an assistive technology device covered by a manufacturer's express warranty is tendered by a consumer to the manufacturer, assistive technology lessor, or authorized assistive technology dealer from whom it was purchased or exchanged for the repair of a defect, malfunction, or nonconformity to which the warranty is applicable and at least 1 of the following conditions exists, the manufacturer shall provide directly to the consumer for the duration of the repair period, a replacement assistive technology device or reimbursement for the cost incurred by the consumer for renting a replacement assistive technology device. The applicable conditions are as follows:

(1) The repair period exceeds 10 working days, including the day on which the device is tendered to the dealer for repair; or

(2) The defect, malfunction, or nonconformity is the same for which the assistive technology device has been tendered to the dealer for repair on at least 2 previous occasions.

(b) This section applies for the duration of the manufacturer's express warranty and any extension thereof.

(74 Del. Laws, c. 278, § 1.)

Subtitle II
Other Laws Relating to Commerce and Trade

Chapter 50C
Safe Destruction of Records Containing Personal Identifying Information

§ 5001C Definitions.

For purposes of this chapter:

(1) "Commercial entity" means a corporation, business trust, estate, trust, partnership, limited partnership, limited liability partnership, limited liability company, association, organization, joint venture, or other legal entity, whether or not for profit, that transacts business in this State. For the purposes of this paragraph, "transacts business in this State" means the course or practice of carrying on any business activity in this State and includes the solicitation of business or orders in this State.

(2) "Consumer" means an individual who enters into a transaction primarily for personal, family, or household purposes except employees.

(3) "Personal identifying information" means a consumer's first name or first initial and last name in combination with any 1 of the following data elements that relate to the consumer, 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 including all information relating to a patient's health-care history; diagnosis condition, treatment; or evaluation obtained from a health-care provider who has treated the patient which explicitly or by implication identifies a particular patient.

(4) "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 a consumer 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.

(79 Del. Laws, c. 287, § 1; 80 Del. Laws, c. 21, § 1.)

§ 5002C Safe destruction of records.

In the event that a commercial entity seeks permanently to dispose of records containing consumers' personal identifying information within its custody or control, such commercial entity shall take 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.

(79 Del. Laws, c. 287, § 1.)

§ 5003C Violations.

A consumer who incurs actual damages due to a reckless or intentional violation of this chapter may bring a civil action against the commercial entity.

(79 Del. Laws, c. 287, § 1.)

§ 5004C Exemptions.

This chapter does not apply to any of the following:

(1) Any bank, credit union, or financial institution, as defined under the federal Gramm Leach Bliley Act, 15 U.S.C. § 6801 et seq., as amended, that is subject to the regulation of the Office of the Comptroller of Currency, the Federal Reserve, the National Credit Union Administration, the Securities and Exchange Commission, the Federal Deposit Insurance Corporation, the Office of Thrift Supervision and the U.S. Department of the Treasury, the Department of Business Regulation, or the Delaware Department of Insurance and is subject to the privacy and security provisions of the Gramm Leach Bliley Act;

(2) Any health insurer or health-care facility that is subject to and in compliance with the standards for privacy of individually identifiable health information and the security standards for the protection of electronic health information of the Health Insurance Portability and Accountability Act of 1996 [P.L. 104-191]; or

(3) Any consumer report agency that is subject to and in compliance with the Federal Credit Reporting Act, 15 U.S.C. § 1681 et seq., as amended; or

(4) Any government, governmental subdivision, agency, or instrumentality.

(79 Del. Laws, c. 287, § 1.)

Subtitle II
Other Laws Relating to Commerce and Trade
Chapter 50D.
Abandoned Cultural Property Act

§ 5001D Definitions

(a) "Conservation measures," as defined by the American Institute for Conservation of Historic and Artistic Works, encompass actions taken toward the long-term preservation of cultural property. "Conservation activities" include examination, documentation, treatment, and preventative care, supported by research and education.

(b) "Lender" means a person whose name appears on records of a museum as the person legally entitled to, or claiming to be legally entitled to, property held by the museum.

(c) "Lender's address" means the most recent address of a lender as shown on the museum's records pertaining to property on loan from the lender.

(d) "Loan" means a deposit of property not accompanied by a transfer of title to that property.

(e) "Museum" means an institution located in Delaware that:

(1) Is operated by a person primarily for education, scientific, historic preservation, or aesthetic purposes; and

(2) Owns, borrows, cares for, exhibits, studies, archives, or catalogs property.

(f) "Permanent loan" means a loan of property to a museum for an indefinite period.

(g) "Person" means an individual, a nonprofit corporation, a trustee or legal representative, the State, a political subdivision of the State, an agency of the State or political subdivision of the State, or a group of those persons acting in concert.

(h) "Property" means a tangible object under a museum's care that has intrinsic historic, artistic, scientific, or cultural value.

(i) "Undocumented property" means property in the possession of a museum for which the museum cannot determine the owner by reference to the museum's records.

(j) "Unsolicited donation" means any property that is left at property controlled by the museum that is from an unknown source and might be reasonably assumed to have been intended as a gift to the museum.

(81 Del. Laws, c. 213, § 1.)

§ 5002D Mailed notice; change of address or ownership.

(a) A notice given by a museum under this chapter must be mailed to the lender's last known address by certified mail. Proper notice is given if the museum receives proof of receipt of the notice not more than 30 days after notice was mailed.

(b) If:

(1) The lender's address; or

(2) The address of any designated agent of the lender changes, the lender must provide written notice of the new address to the museum.

(c) If the ownership of property loaned to a museum changes while the museum is in possession of the property, the new owner of the property must provide written notice to the museum of:

(1) The change of ownership of the property; and

(2) The name and address of the new owner.

(81 Del. Laws, c. 213, § 1.)

§ 5003D Notice by publication.

(a) A museum may give notice by publication under this chapter if the museum does not:

(1) Know the identity of the lender or any designated agent of the lender;

(2) Have an address last known for the lender or any designated agent of the lender; or

(3) Receive proof of receipt of the notice by the person to whom the notice was sent within 30 days after the notice was mailed.

(b) Notice by publication under subsection (a) of this section must be given at least once a week for 2 consecutive weeks in a newspaper of general circulation in:

(1) The county in which the museum is located; and

(2) The county of the lender's last known address, if the identity of the lender is known.

(81 Del. Laws, c. 213, § 1.)

§ 5004D Notice; contents.

In addition to any other information that may be required or seem appropriate, a notice given by a museum under this chapter must contain the following:

(1) The name of:

a. The lender; or

b. Any designated agent of the lender.

(2) The last known address of:

a. The lender; or

b. Any designated agent of the lender.

(3) A brief description of the property on loan.

(4) The date of the loan, if known.

(5) The name of the museum.

(6) The name, address, and telephone number of the person or office at the museum to be contacted regarding the property.

(81 Del. Laws, c. 213, § 1.)

§ 5005D Acquiring title — Permanent loaned or loaned property.

(a) A museum may acquire title in the following manner to property that is on permanent loan to the museum or that was loaned for a specified term that has expired:

(1) The museum must give notice that the museum is terminating the loan of the property.

(2) The notice that the loan of the property is terminated must include a statement containing substantially the following information:

"The records at (name of museum) indicate that you have property on loan to it. The museum hereby terminates the loan. If you desire to claim the property, you must contact the museum, establish your ownership of the property, and make arrangements to collect the property. If you do not contact the museum within 60 days, you will be considered to have donated the property to the museum."

(3) If the lender does not respond to the notice of termination within 60 days after the notice required by this chapter by filing a notice of intent to preserve an interest in the property on loan, clear and unrestricted title is transferred to the museum 60 days after the notice required by this chapter was completed.

(b) If the loan of the property to a museum is not considered a permanent loan and does not have a specific expiration date, the property is considered abandoned if there has not been any written communication for at least 7 years after the date the museum took possession of the property between:

(1) The lender or the lender's designated agent; and

(2) The museum.

(81 Del. Laws, c. 213, § 1.)

§ 5006D Acquiring title — Undocumented property, notice.

A museum may acquire title to undocumented property held by the museum for at least 3 years as follows:

(1) The museum must give notice that the museum is asserting title to the undocumented property.

(2) The notice that the museum is asserting title to the property must include a statement containing substantially the following information:

"The records of (name of museum) fail to indicate the owner of record of certain property in its possession. The museum hereby asserts title to the following property: (general description of property). If you claim ownership or other legal interest in this property, you must contact the museum, establish ownership of the property, and make arrangements to collect the property If you fail to do so within 60 days, you will be considered to have waived any claim you may have had to the property."

(3) If a lender does not respond to the notice within 60 days by giving a written notice of intent to retain an interest in the property on loan, the museum's title to the property becomes absolute.

(81 Del. Laws, c. 213, § 1.)

§ 5007D Acquiring title — Unsolicited donations, notice.

A museum may acquire title to unsolicited donations found on museum property as follows:

(1) Unsolicited donations are conclusively presumed to be a gift to the museum if ownership is not claimed by a person or individual within 60 days after its discovery and notice is given by the museum under this section.

(2) Undocumented property found in the collection or collections of a museum are not unsolicited donations and are subject to § 5006D of this title.

(3) The museum must give notice that the museum is asserting title to any unsolicited donation.

(4) Notice that the museum is asserting title to the unsolicited property must include a statement containing substantially the following information:

"The following property was found at (name of museum) and is presumed to be a donation to the museum. The museum hereby asserts title to the following property: (general description of property). Anyone claiming ownership or other legal interest in this property must contact the museum, establish ownership of the property, and make arrangements to collect the property. If you fail to do so within 60 days of notice required under this section, you will have waived any claim to this unsolicited property."

(5) Notice by publication under paragraph (3) of this section must be given at least once a week for 2 consecutive weeks in a newspaper of general circulation in the county in which the museum is located.

(81 Del. Laws, c. 213, § 1.)

§ 5008D Conservation measures.

Unless there is a written loan agreement to the contrary, a museum may apply conservation measures to property on loan to the museum without the lender's permission or formal notice:

(1) If:

a. Action is required to protect the property on loan or other property in the custody of the museum; or

b. The property on loan is a hazard to the health and safety of the public or the museum staff; and

(2) If:

a. The museum is unable to reach the lender at the lender's last known address within 3 days before the time the museum determines action is necessary; or

b. The lender does not respond or will not agree to the protective measures the museum recommends and does not terminate the loan and retrieve the property within 3 days.

(81 Del. Laws, c. 213, § 1.)

§ 5009D Conservation measures — Lien, liability.

If a museum applies conservation measures to property under § 5008D of this title or with the agreement of the lender, unless the agreement provides otherwise, the museum:

(1) Acquires a lien on the property in the amount of the conservation measure costs incurred by the museum; and

(2) Is not liable for injury to or loss of the property if the museum:

a. Had a reasonable belief at the time the conservation measure action was taken that the action was necessary to protect the property on loan or other property in the custody of the museum, or that the property on loan was a hazard to the health and safety of the public or the museum staff; and

b. Exercised reasonable care in the choice and application of conservation measures.

(81 Del. Laws, c. 213, § 1.)

Subtitle II
Other Laws Relating to Commerce and Trade
Chapter 50E
Certification of Adoption of Transparency and Sustainability standards by Delaware Business Entities

§ 5000E Purpose.

The intent of this chapter is to support Delaware business entities in their global sustainability efforts. This chapter is enabling legislation that permits a Delaware entity to signal its commitment to global sustainability. This chapter does not purport to prescribe which sustainability standards an entity chooses to adopt. Thus, a Delaware entity is free to choose standards promulgated or developed by any entity.

(81 Del. Laws, c. 279, § 1.)

§ 5001E Definitions.

As used in this chapter only, the following terms shall have the following meanings:

(1) "Acknowledged" shall mean, with respect to any document or instrument required to be executed by an authorized person pursuant to this chapter, the authorized person executing such document or instrument has certified, under penalty of perjury, that the information set forth in such document or instrument is accurate and complete to the best of such authorized person's actual knowledge after due inquiry.

(2) "Assessment measures" shall mean, with respect to any entity, the policies, procedures or practices adopted by such entity to adduce objective factual information to assess the entity's performance in meeting its standards, including any procedures for internal or external verification of such information.

(3) "Authorized person" means, with respect to any entity, any person or entity who has been duly authorized in accordance with the organizational documents of the entity and the laws of this State (whether statutory, common law or otherwise) under which the entity is incorporated, formed or organized to execute such documents and instruments and make such acknowledgments as are required by this chapter.

(4) "Certification of adoption of transparency and sustainability standards" shall mean a certificate, issued by the Secretary of State, attesting that a reporting entity has filed with the Secretary of State a standards statement pursuant to this chapter. Such certificate shall state on its face that the State has not reviewed the contents or implementation of the matters referenced in the standards statement, nor verified any reports made by the reporting entity.

(5) "Control," including the terms "controlling," "controlled by" and "under common control with," means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a person or entity, whether through the ownership of equity or other voting securities, by contract or otherwise.

(6) "Entity" means any: (A) corporation (stock or nonstock), partnership (whether general (including a limited liability partnership) or limited (including a limited liability limited partnership)), limited liability company, or statutory trust validly existing under the applicable laws of this State, or (B) any association of the kind commonly known as a joint-stock association or joint-stock company, and any unincorporated association, trust or other enterprise having members or having outstanding shares of stock or other evidences of financial or beneficial interest therein, the internal affairs of which are governed by the laws of this State and which has not otherwise been dissolved (whether voluntarily or by any order or decree of any court of competent jurisdiction) or otherwise terminated.

(7) "Governing body" shall mean the board of directors or equivalent governing body, person or entity having the power to manage and direct the business and affairs of the entity, and shall include any duly authorized and empowered committee of the board of directors or equivalent governing body.

(8) "Nonreporting entity" shall mean any person or entity (including any entity) that is not a reporting entity.

(9) "Organizational documents" shall mean the certificate of incorporation, bylaws, partnership agreement, limited liability company agreement, articles of association or other agreement, document or instrument containing the provisions by which an entity is formed or organized and by which its internal affairs are governed, in each case as amended, modified, supplemented and/or restated and in effect as of any date of determination.

(10) "Provider" shall mean, as to any entity, any third party that is engaged to provide professional consulting services or advice to assist entities or enterprises in measuring, managing or reporting the impact of their business and operations on issues of social and environmental impact.

(11) "Report" shall mean a report with respect to a reporting period for a reporting entity containing the following:

a. A summary of the standards and assessment measures in effect during the applicable reporting period, which summary shall include the third-party criteria and any other source used to develop the entity's standards and assessment measures and the process by which they were identified, developed and approved by the entity;

b. A summary of the actions or activities by which the entity has sought to meet the standards during the applicable reporting period, including engagement with and disclosure to stakeholders, if any;

c. The most recent available objective and factual information developed pursuant to the assessment measures, if any, with respect to the entity's performance in meeting its standards during the reporting period, and an assessment by the governing body whether the entity has been successful in meeting the standards. And in the case of any failure to meet such standards, a summary of any additional efforts the governing body has determined the entity will undertake to improve its performance in respect thereof, or its determination not to undertake such additional efforts;

d. 1. The identity of any provider assisting the entity in measuring, managing or reporting the impact of the entity's business and operations in light of its standards; or

2. A statement that the entity has not engaged the services of any provider for such purposes;

e. A summary of any changes to the standards, assessment measures or reporting period, the process by which such changes were identified, developed and approved by the entity, and the third-party criteria used to develop any changes to the standards;

f. A summary of the actions or activities planned for the next succeeding reporting period with respect to measuring, managing and reporting with respect to the standards if such actions and activities are materially different from those described for the applicable reporting period; and

Notwithstanding the foregoing, no entity shall be required to include in any report any information that such entity determines in good faith is subject to an attorney-client or other applicable privilege or would result in the disclosure of trade secrets or other competitively sensitive information.

(12) "Reporting entity" shall mean an entity that has been issued a certificate of adoption of transparency and sustainability standards and that has not become and continues to be a nonreporting entity pursuant to § 5004E of this title.

(13) "Reporting period" shall mean a period of 1 year, the initial such period to begin not more than 1 year following the filing of the standards statement, and subsequent reporting periods to begin on the day following the last date of the prior reporting period, unless a governing body elects to shorten the duration of a reporting period that has not begun in order to change the start date for subsequent reporting periods.

(14) "Standards" shall mean, with respect to an entity, the principles, guidelines or standards adopted by the entity to assess and report the impacts of its activities on society and the environment, which principles, guidelines or standards shall be based on or derived from third-party criteria.

(15) "Standards statement" shall mean the filing described in § 5003E of this title.

(16) "Third party" means, with respect to any entity, any person or entity other than any person or entity that controls, is controlled by or under common control with such entity, including any governmental or nongovernmental organization that provides services, standards, or criteria with respect to measuring, managing or reporting the social and environmental impact of businesses or other enterprises.

(17) "Third-party criteria" shall mean any principles, guidelines or standards developed and maintained by a third party (including a provider) that are used to assist businesses or other enterprises in measuring, managing or reporting the social and environmental impact of businesses or other entities.

(81 Del. Laws, c. 279, § 1.)

§ 5002E Certificate of adoption of transparency and sustainability standards.

(a) The Secretary of State shall issue a certificate of adoption of transparency and sustainability standards to any entity if the Secretary of State shall have determined that the following conditions have been satisfied:

(1) Such entity shall have executed and acknowledged, and delivered to the Secretary of State, a standards statement;

(2) Such entity shall have paid all fees and costs assessed by the Secretary of State; and

(3) Such entity remains a reporting entity, and if such entity is registered or formed with the Secretary of State, it is in good standing upon the records of the Secretary of State.

(b) Each reporting entity shall, for all purposes of the laws of this State, be authorized and permitted to disclose, publicly or privately, that it is a reporting entity.

(81 Del. Laws, c. 279, § 1.)

§ 5003E Statement of adoption of transparency and sustainability standards.

If the governing body of an entity has adopted resolutions setting forth the entity's standards and assessment measures, the entity may file a standards statement that:

(1) Acknowledges that the governing body of the entity has adopted resolutions setting forth the entity's standards and assessment measures;

(2) Identifies an internet link on the principal website maintained by or on behalf of the entity at which the standards and assessment measures, the third-party criteria used to develop the standards, a description of the process by which such standards were identified, developed and approved and any report filed or to be filed by the entity are and will be readily available at no cost and without the

requirement of the provision of any information, and will remain available for so long as the entity remains a reporting entity (the "website");

(3) Acknowledges that the entity has agreed to acknowledge and deliver to the Secretary of State, within 30 days after a request therefor by the Secretary of State, its most recent report; and

(4) Acknowledges that the entity has committed to:

a. Use the assessment measures to assess the entity's performance in meeting its standards;

b. Review and assess its standards and assessment measures from time to time, and make such changes thereto as the governing body in good faith determines are necessary or advisable in furtherance of meeting the entity's standards; and

c. Prepare and make readily available to the public at no cost and without the requirement of the provision of any information (by posting on the website at the identified internet link) a copy of its report within 90 days of the end of each reporting period; and

(5) Sets forth the address within the State to which the Secretary of State shall mail any notices; and

(6) Is acknowledged by an authorized person.

(81 Del. Laws, c. 279, § 1.)

§ 5004E Reporting entity status — Renewal statement.

(a) A renewal statement shall be submitted to the Secretary of State between October 1 and December 31 of each year. A reporting entity shall become a nonreporting entity on January 1 of the following year if the reporting entity shall have failed to submit the renewal statement to the Secretary of State in accordance with this chapter without the need for further action by the Secretary of State. A reporting entity's renewal statement shall:

(1) Acknowledge that any changes since its most recent filing of a renewal statement or restoration statement, or, if no renewal statement or restoration statement has been filed, since the filing of its standards statement, to its address within the State or standards and assessment measures, and a description of the process by which such changes were identified, developed and approved by the entity and the third-party criteria used to develop any changes to the standards are available on the website;

(2) Acknowledge that, for the most recent reporting period for which a report was required to be made available on or prior to October 1, if any, a report was made available on the website in accordance with this chapter within the time period provided for in § 5003E(4)c. of this title;

(3) Provide an internet link to the report for the most recent reporting period, if any, on the website and

(4) Be acknowledged by an authorized person.

(b) No standards statement shall be accepted by the Secretary of State for an entity if it has become a nonreporting entity pursuant to subsection (a) of this section within the prior year.

(c) On or before September 1 of each year, the Secretary of State shall mail to each reporting entity at its address as specified in § 5003E(5) of this title, a notice specifying that the renewal statement together with applicable fees shall be due on October 1 of the current year and stating that the reporting entity shall become a nonreporting entity on January 1 of the following year if such renewal statement is not filed.

(81 Del. Laws, c. 279, § 1.)

§ 5005E Restoration statement.

(a) If any reporting entity shall become a nonreporting entity for failure to file a renewal statement, it may, at any time during the calendar year following such failure, file a restoration statement. The restoration statement shall:

(1) Acknowledge that any changes since its most recent filing of a renewal statement or restoration statement, or, if no renewal statement or restoration statement has been filed, since the filing of its standards statement, to its address within the State or standards and assessment measures, and a description of the process by which such changes were identified, developed and approved by the entity and the third-party criteria used to develop any changes to the standards are available on the website;

(2) Acknowledge that a report for the all reporting periods ended more than 90 days prior to filing the restoration statement have been made available on the website in accordance with this chapter;

(3) Provide an internet link on the website to the report for the most recent reporting period and any other reporting period for which an internet link has not been previously provided in a renewal statement or restoration statement; and

(4) Be acknowledged by an authorized person.

(b) Any nonreporting entity that files a restoration statement shall thereupon automatically become a reporting entity, without the need for further action by the Secretary of State.

(81 Del. Laws, c. 279, § 1.)

§ 5006E Limitation of liability.

Neither the failure by an entity to satisfy any of its standards, nor the selection of specific assessment measures, nor any other action taken by or on behalf of the entity pursuant to this chapter or any omission to take any action required by this chapter to seek, obtain or

maintain status as a reporting entity, shall, in and of itself, create any right of action on the part of any person or entity or otherwise give rise to any claim for breach of any fiduciary or similar duty owed to any person or entity.

(81 Del. Laws, c. 279, § 1.)

§ 5007E Fees.

No document required to be filed under this chapter shall be effective until the applicable fee required by this section is paid. The following fees shall be paid to and collected by the Secretary of State for the use of the State:

(1) Upon the receipt of a statement under § 5003E of this title or a renewal statement under § 5004E of this title, a fee in the amount of up to $200.

(2) For issuing a certificate of adoption and availability of transparency and sustainability standards reporting, a fee in the amount of $50.

(3) Upon receipt of a restoration statement under § 5005E of this title, a fee in the amount of $5,000.

(4) For certifying copies of any instrument on file as provided by this chapter, a fee in the amount of $50 for each copy certified.

(5) The Secretary of State may issue photocopies or electronic image copies of instruments on file as provided for by this chapter, as well as instruments, documents and other papers not on file, and for all such photocopies or electronic image copies which are not certified by the Secretary of State, a fee of $10 shall be paid for the first page and $2.00 for each additional page. Notwithstanding Delaware's Freedom of Information Act (Chapter 100 of Title 29) or other provision of law granting access to public records, the Secretary of State upon request shall issue only photocopies or electronic image copies of public records in exchange for the fees described in this section, and in no case shall the Secretary of State be required to provide copies (or access to copies) of such public records (including without limitation bulk data, digital copies of instruments, documents and other papers, databases or other information) in an electronic medium or in any form other than photocopies or electronic image copies of such public records in exchange, as applicable, for the fees described in this section or § 2318 of Title 29 for each such record associated with a file number.

(6) For issuing any certificate of the Secretary of State, including a certificate of nonreporting status, other than a certification of a copy under paragraph (3) of this section, a fee in the amount of $50.

(81 Del. Laws, c. 279, § 1.)

§ 5008E Short title.

This chapter shall be known and may be identified and referred to as the "Certification of Adoption of Transparency and Sustainability Standards Act."

(81 Del. Laws, c. 279, § 1.)

Subtitle III
Weights, Measures and Standards
Chapter 51
Standard Weights and Measures

§ 5101 Definitions; meaning of terms.

When used in this chapter:

(1) A "certificate of conformance" means a document issued by the National Institute of Standards and Technology based on testing in participating laboratories that indicates that the weights and measures or weighing and measuring device or devices conform with the requirements of National Institute of Standards and Technology Handbook 44 and supplements thereto, or in any publication superseding these publications.

(2) The term "commodity in package form" means commodity put up or packaged in any manner in advance of sale in units suitable for either wholesale or retail sale, exclusive, however of an auxiliary shipping container enclosing packages that individually conform to the requirements of this chapter. An individual item or lot of any commodity not in package form as defined in this section, but on which there is marked a selling price based on an established price per unit of weight or of measure, shall be commodity in package form.

(3) A "consumer package" or "package of consumer commodity" shall be construed to mean a commodity in package form that is customarily produced or distributed for sale through retail sales agencies or instrumentalities for consumption by individuals or use by individuals for the purposes of personal care or in the performance of services ordinarily rendered in or about the household or in connection with personal possessions.

(4) The term "inspector" means a state inspector of weights and measures.

(5) The term "intrastate commerce" means any and all commerce or trade that is begun, carried on, and completed wholly within the limits of this State, and the phrase "introduced into intrastate commerce" defines the time and place at which the first sale and delivery of a commodity is made within the State, the delivery being made either directly to the purchaser or to a common carrier for shipment to the purchaser.

(6) A "nonconsumer package" or "package of nonconsumer commodity" shall be construed to mean any commodity in package form other than a consumer package, and particularly a package designed solely for industrial or institutional use or for wholesale distribution only.

(7) The word "person" means both the plural and singular, as the case demands, and shall include individuals, partnerships, corporations, companies, societies, and associations.

(8) "Ready-to-eat food" is restaurant-style food offered or exposed for sale, whether in restaurants, supermarkets or similar food service establishments, that is ready for consumption, though not necessarily on the premises where sold. "Ready-to-eat food" does not include sliced luncheon products, such as meat, poultry or cheese when sold separately.

(9) The words "sell" and "sale" mean barter and exchange.

(10) The words "weight(s) and (or) measure(s)" mean any weight or measure or weighing or measuring device commercially used or employed in establishing size, quantity, extent, area, or measurement of quantities, things, produce, or articles for distribution or consumption which are purchased, offered, or submitted for sale, hire, or award, or in computing any basic charge or payment for services rendered and shall also include any accessory attached to or used in connection with a commercial weighing device when such accessory is so designed or installed that its operation affects, or may affect, the accuracy of the device. This term shall not be construed to include meters for the measurement of electricity, gas (natural or manufactured), telephone service or water when the same are operated in a public utility system. Such electricity, gas, telephone and water meters are specifically excluded from the purview of this chapter, and none of the provisions of this chapter shall apply to such meters or to any appliances or accessories associated therewith.

(6 Del. C. 1953, § 5101; 53 Del. Laws, c. 187, § 3; 58 Del. Laws, c. 281, § 1; 70 Del. Laws, c. 370, §§ 1-3.)

§ 5102 Systems of weights and measures.

The system of weights and measures in customary use in the United States and the metric system of weights and measures are jointly recognized, and 1 or both of these systems shall be used for all commercial purposes in this State. The definitions of basic units of weight and measure, the tables of weight and measure and weights and measures equivalents, as published by the National Institute of Standards and Technology, are recognized and shall govern weighing and measuring equipment and transactions in this State.

(6 Del. C. 1953, § 5102; 53 Del. Laws, c. 187, § 3; 58 Del. Laws, c. 281, § 2; 70 Del. Laws, c. 370, § 4.)

§ 5103 Definitions of special units of measure.

The term "barrel," when used in connection with fermented liquor, shall mean a unit of 31 gallons. The term "ton" shall mean a unit of 2,000 pounds avoirdupois weight. The term "cord," when used in connection with wood intended for fuel purposes, shall mean the amount of wood that is contained in a space of 128 cubic feet when the wood is ranked and well stowed.

(6 Del. C. 1953, § 5103; 53 Del. Laws, c. 187, § 3.)

§ 5104 State standards of weights and measures.

Such weights and measures in conformity with the standards of the United States as have been supplied to the State by the federal government or otherwise obtained by the State for use as state standards shall, when the same shall have been approved as being satisfactory for use as such by the National Institute of Standards and Technology, be the state standards of weight and measure. The state standards shall be kept in a safe and suitable place in the office or laboratory of the Department of Agriculture, they shall not be removed from the said office or laboratory except for repairs or for calibration and approval. The state standards shall be used only in verifying the office standards and for scientific purposes.

(6 Del. C. 1953, § 5104; 53 Del. Laws, c. 187, § 3; 57 Del. Laws, c. 764, § 31A; 58 Del. Laws, c. 281, § 3; 70 Del. Laws, c. 370, § 5.)

§ 5105 Field standards and equipment.

In addition to the state standards provided for in § 5104 of this title, there shall be supplied by the State such "field standards" and such equipment as may be found necessary to carry out the provisions of this chapter. The field standards shall be verified upon their initial receipt and thereafter as often as deemed necessary by the Secretary by comparison with state standards. The specifications and tolerances for reference standard and field standard weights and measures shall be those as specified in Handbooks 105-1, 105-2 and 105-3 of the National Institute of Standards and Technology and supplements thereto, or in any publication superseding these publications.

(6 Del. C. 1953, § 5105; 53 Del. Laws, c. 187, § 3; 58 Del. Laws, c. 281, § 4; 70 Del. Laws, c. 370, § 6.)

§ 5106 General powers and duties of Secretary of Agriculture.

The Secretary of Agriculture shall have the custody of the state standards of weight and measure and of the other standards and equipment provided for by this chapter, and shall keep accurate records of the same. The Secretary of Agriculture shall enforce the provisions of this chapter. The Secretary of Agriculture shall have and keep a general supervision over the weights and measures offered for sale, sold, or in use in the State.

(6 Del. C. 1953, § 5108; 53 Del. Laws, c. 187, § 3; 57 Del. Laws, c. 764, §§ 31C, D; 70 Del. Laws, c. 186, § 1.)

§ 5107 Specific powers and duties of Secretary of Agriculture; regulations.

The Secretary shall issue from time to time reasonable regulations for the enforcement of this chapter, which regulations shall have the force and effect of law. These regulations may include (1) standards of net weight, measure, or count, and reasonable standards of fill, for any commodity in package form, (2) rules governing the technical and reporting procedures to be followed and the report and record forms and marks of approval and rejection to be used by inspectors of weights and measures in the discharge of their official duties, (3) exemptions from the sealing or marking requirements of § 5113 of this chapter with respect to weights and measures of such character or size that such sealing or marking would be inappropriate, impracticable or damaging to the apparatus in question, and (4) rules governing the voluntary registration of service people and service agencies. These regulations shall include specifications, tolerances and other technical requirements for weights and measures of the character of those specified in § 5109 of this chapter, designed to eliminate from use, without prejudice to apparatus that conforms as closely as practicable to the official standards, those (1) that are not accurate, (2) that are of such construction that they are faulty — that is, that are not reasonably permanent in their adjustment or will not repeat their indications correctly — or (3) that facilitate the perpetration of fraud. The specifications, tolerances and other technical requirements for commercial weighing and measuring devices, together with amendments thereto, as recommended by the National Bureau of Standards and published in the National Bureau of Standards Handbook 44 and supplements thereto, or in any publication revising or superseding Handbook 44, shall be the specifications, tolerances and other technical requirements for commercial weighing and measuring devices of the State, except insofar as specifically modified, amended or rejected by a regulation issued by the Secretary. For the purposes of this chapter, apparatus shall be deemed to be "correct," when it conforms to the requirements of the National Type Evaluation Program of the National Institute of Standards and Technology. A certificate of conformance must be issued prior to the use of such weight(s) and measure(s) or weighing and measuring device for commercial or law-enforcement purposes, except insofar as specifically modified, amended, or rejected by a regulation issued by the Secretary of Agriculture. Pending the issuance of a certificate of conformance, the Department may permit such weight(s) and measure(s) or weighing and measuring device to be used provided it meets the specifications and tolerances for that particular weight and measure or weighing device as set forth in the National Institute of Standards and Technology Handbook 44.

(6 Del. C. 1953, § 5109; 53 Del. Laws, c. 187, § 3; 57 Del. Laws, c. 764, §§ 31C, E, F; 58 Del. Laws, c. 281, § 5; 70 Del. Laws, c. 186, § 1; 70 Del. Laws, c. 370, § 7.)

§ 5108 Testing at state-supported institutions.

The Secretary of Agriculture shall from time to time test all weights and measures used in checking the receipt or disbursement of supplies in every institution for the maintenance of which moneys are appropriated by the General Assembly, reporting those findings in writing to the supervisory board and to the executive officer of the institution concerned.

(6 Del. C. 1953, § 5110; 53 Del. Laws, c. 187, § 3; 57 Del. Laws, c. 764, § 31C; 70 Del. Laws, c. 186, § 1.)

§ 5109 General testing.

When not otherwise provided by law, the Secretary of Agriculture shall have the power to inspect and test, to ascertain if they are correct, all weights and measures kept, offered, or exposed for sale. It shall be the duty of the Secretary of Agriculture, within a 12-month period or less frequently if in accordance with a schedule issued by the Secretary of Agriculture, and as much more often as deemed necessary to inspect and test, to ascertain if they are correct, all weights and measures commercially used (1) in determining the weight, measurement, or count of commodities or things sold, or offered or exposed for sale, on the basis of weight, measure, or of count, or (2) in computing the basic charge or payment for services rendered on the basis of weight, measure, or of count; provided, that with respect to single-service devices — that is, devices designed to be used commercially only once and to be then discarded — and with respect to devices uniformly mass-produced, as by means of a mold or die, and not susceptible of individual adjustment, tests may be made on representative samples of such devices; and the lots of which such samples are representative shall be held to be correct or incorrect upon the basis of the results of the inspections and tests on such samples.

(6 Del. C. 1953, § 5111; 53 Del. Laws, c. 187, § 3; 57 Del. Laws, c. 764, § 31C; 70 Del. Laws, c. 186, § 1.)

§ 5110 Investigations.

The Secretary of Agriculture shall investigate complaints concerning violations of the provisions of this chapter, and shall, upon the Secretary of Agriculture's own initiative, conduct such investigations as deemed appropriate and advisable to develop information on prevailing procedures in commercial quantity determination and on possible violations of the provisions of this chapter and to promote the general objective of accuracy in the determination and representation of quantity in commercial transactions.

(6 Del. C. 1953, § 5112; 53 Del. Laws, c. 187, § 3; 57 Del. Laws, c. 764, § 31C; 70 Del. Laws, c. 186, § 1.)

§ 5111 Inspection of packages.

The Secretary of Agriculture shall, as often as necessary to provide adequate protection, weigh or measure and inspect packages or amounts of commodities kept, offered, or exposed for sale, sold, or in the process of delivery, to determine whether the same contain the amounts represented and whether they be kept, offered, or exposed for sale, or sold, in accordance with law; and when such packages or amounts of commodities are found not to contain the amounts represented, or are found to be kept, offered, or exposed for sale in violation of law, the Secretary of Agriculture may order them off sale and may so mark or tag them as to show them to be illegal. In carrying out the provisions of this section, the Secretary of Agriculture may employ recognized sampling procedures under which the compliance of a given lot of packages will be determined on the basis of the result obtained on a sample selected from and representative of such lot. No person shall (1) sell, or keep, offer, or expose for sale in intrastate commerce any package or amount of commodity that has been ordered off sale or marked or tagged as provided in this section unless and until such package or amount of commodity has been brought into full compliance with all legal requirements, or (2) dispose of any package or amount of commodity that has been ordered off sale or marked or tagged as provided in this section and that has not been brought into compliance with legal requirements, in any manner except with the specific approval of the Secretary of Agriculture.

(6 Del. C. 1953, § 5113; 53 Del. Laws, c. 187, § 3; 57 Del. Laws, c. 764, § 31C; 58 Del. Laws, c. 281, § 6.)

§ 5112 Stop-use, stop-removal, and removal orders.

The Secretary of Agriculture shall have the power to issue stop-use orders, stop-removal orders, and removal orders with respect to weights and measures being, or susceptible of being, commercially used, and to issue stop-removal orders and removal orders with respect to packages or amounts of commodities kept, offered, or exposed for sale, sold, or in process of delivery, whenever in the course of enforcement of the provisions of this chapter the Secretary of Agriculture deems it necessary or expedient to issue such orders, and no person shall use, remove from the premises specified, or fail to remove from the premises specified any weight, measure, or package or amount of commodity contrary to the terms of a stop-use order, stop-removal order, or removal order issued under the authority of this section.

(6 Del. C. 1953, § 5114; 53 Del. Laws, c. 187, § 3; 57 Del. Laws, c. 764, § 31C; 70 Del. Laws, c. 186, § 1.)

§ 5113 Disposition of correct and incorrect apparatus.

The Secretary of Agriculture shall approve for use and seal or mark with appropriate devices such weights and measures found upon inspection and test to be "correct" as defined in § 5107 of this title, and shall reject and mark or tag as "rejected" such weights and measures found, upon inspection or test, to be "incorrect" as defined in § 5107 of this title, but which in the Secretary of Agriculture's best judgment are susceptible of satisfactory repair; provided that, such sealing or marking shall not be required with respect to such weights and measures as may be exempted therefrom by a regulation of the Secretary of Agriculture issued under the authority of § 5107 of this title. The Secretary of Agriculture shall condemn, and may seize and may destroy, weights and measures found to be incorrect that, in the Secretary of Agriculture's best judgment, are not susceptible of satisfactory repair. Weights and measures that have been rejected may be confiscated and may be destroyed by the Secretary of Agriculture if not corrected as required by § 5116 of this title, or if used or disposed of contrary to the requirements of § 5116 of this title.

(6 Del. C. 1953, § 5115; 53 Del. Laws, c. 187, § 3; 57 Del. Laws, c. 764, § 31C; 70 Del. Laws, c. 186, § 1.)

§ 5114 Police powers; right of entry and stoppage.

With respect to the enforcement of this chapter and any other chapters dealing with weights and measures that the Secretary of Agriculture is, or may be, empowered to enforce, the Secretary of Agriculture is hereby vested with police powers, and shall have police powers similar to those of constables and other police officers and may arrest any violator of the said chapters, and seize for use as evidence, incorrect or unsealed weights and measures or amounts or packages of commodity, found to be used, retained, offered or exposed for sale, or sold in violation of law. In the performance of official duties, the Secretary of Agriculture may enter and go into or upon, any structure or premises, and stop any person whatsoever and require that person to proceed, with or without any vehicle of which he or she may be in charge, to some place which the Secretary of Agriculture may specify.

(6 Del. C. 1953, § 5116; 53 Del. Laws, c. 187, § 3; 57 Del. Laws, c. 764, § 31C; 70 Del. Laws, c. 186, § 1; 78 Del. Laws, c. 266, § 11.)

§ 5115 Powers and duties of inspectors.

The powers and duties given to and imposed upon the Secretary of Agriculture by §§ 5108, 5109, 5110, 5111, 5112, 5113, 5114 and 5137 of this title are given to and imposed upon the inspectors also, when acting under the instructions and at the direction of the Secretary of Agriculture.

(6 Del. C. 1953, § 5117; 53 Del. Laws, c. 187, § 3; 57 Del. Laws, c. 764, § 31C.)

§ 5116 Duty of owners of incorrect apparatus.

Weights and measures that have been rejected under the authority of the Secretary of Agriculture shall remain subject to the control of the rejecting authority until such time as suitable repair or disposition thereof has been made as required by this section. The owners of such rejected weights and measures shall cause the same to be made correct within 30 days or such longer period as may be authorized by the rejecting authority; or, in lieu of this, may dispose of the same, but only in such manner as is specifically authorized by the rejecting authority. Weights and measures that have been rejected shall not again be used commercially until they have been officially reexamined and found to be correct or until specific written permission for such use is issued by the rejecting authority or until the rejection tag has been removed and the rejected device repaired and placed in service by a person duly registered to perform such acts under a regulation issued by the Secretary for the registration of weights and measures, servicemen and service agencies.

(6 Del. C. 1953, § 5118; 53 Del. Laws, c. 187, § 3; 57 Del. Laws, c. 764, § 31C; 58 Del. Laws, c. 281, § 7; 70 Del. Laws, c. 186, § 1.)

§ 5117 Method of sale of commodities.

Commodities in liquid form shall be sold only by liquid measure or by weight, and, except as otherwise provided in this chapter, commodities not in liquid form shall be sold only by weight, by measure of length or area, or by count; provided, that liquid commodities may be sold by weight and commodities not in liquid form may be sold by count only if such methods give accurate information as to the quantity of commodity sold; and provided further, that the provisions of this section shall not apply:

(1) To commodities when sold for immediate consumption on the premises where sold,

(2) To vegetables when sold by the head or bunch,

(3) To commodities in containers standardized by a law of this State or by federal law,

(4) To commodities in package form when there exists a general consumer usage to express the quantity in some other manner,

(5) To concrete aggregates, concrete mixtures, and loose solid materials such as earth, soil, gravel, crushed stone, and the like, when sold by cubic measure, or

(6) To unprocessed vegetable and animal fertilizer when sold by cubic measure.

The Secretary of Agriculture, subject to the approval of the Department of Agriculture, may issue such reasonable regulations as are necessary to assure that amounts of commodity sold are determined in accordance with good commercial practice and are so determined and represented as to be accurate and informative to all parties at interest.

(6 Del. C. 1953, § 5119; 53 Del. Laws, c. 187, § 3; 57 Del. Laws, c. 764, §§ 31C, 31F.)

§ 5118 Packages; declarations of quantity and origin; variations; exemptions.

Except as otherwise provided in this chapter, any commodity in package form introduced or delivered for introduction into or received in intrastate commerce, kept for the purpose of sale, or offered or exposed for sale in intrastate commerce shall bear on the outside of the package a definite, plain, and conspicuous declaration of (1) the identity of the commodity in the package unless the same can easily be identified through the wrapper or container, (2) the net quantity of the contents in terms of weight, measure, or count, and (3) in the case of any package kept, offered, or exposed for sale, or sold any place other than on the premises where packed, the name and place of business of the manufacturer, packer, or distributor as may be prescribed by regulation issued by the Secretary; provided, that in connection with the declaration required under clause (2), neither the qualifying term “when packed” or any words of similar import, nor any term qualifying a unit of weight, measure, or count (for example, “jumbo,” “giant,” “full,” and the like) that tends to exaggerate the amount of commodity in a package, shall be used; and provided further, that under clause (2) the Secretary of Agriculture shall, by

regulation, establish (a) reasonable variations to be allowed, which may include variations below the declared weight or measure caused by ordinary and customary exposure, only after the commodity is introduced into intrastate commerce, to conditions that normally occur in good distribution practice and that unavoidably result in decreased weight or measure, (b) exemptions as to small packages, and (c) exemptions as to commodities put up in variable weights or sizes for sale intact and either customarily not sold as individual units or customarily weighed or measured at time of sale to the consumer.

(6 Del. C. 1953, § 5120; 53 Del. Laws, c. 187, § 3; 57 Del. Laws, c. 764, § 31C; 58 Del. Laws, c. 281, §§ 8, 9.)

§ 5119 Declarations of unit price on random packages.

In addition to the declarations required by § 5118 of this title, any commodity in package form, the package being one of a lot containing random weights, measures or counts of the same commodity and bearing the total selling price of the package, shall bear on the outside of the package a plain and conspicuous declaration of the price per single unit of weight, measure, or count.

(6 Del. C. 1953, § 5121; 53 Del. Laws, c. 187, § 3.)

§ 5120 Uniform packaging and labeling.

The standards and requirements for Uniform Packaging and Labeling will be those contained in Handbook 130 of the National Institute of Standards and Technology and supplements thereto, or in any publication revising or superseding Handbook 130, except insofar as specifically modified, amended or rejected by a regulation issued by the Secretary.

(6 Del. C. 1953, § 5122; 53 Del. Laws, c. 187, § 3; 58 Del. Laws, c. 281, § 10; 70 Del. Laws, c. 370, § 8.)

§ 5121 Advertising packages for sale.

Whenever a commodity in package form is advertised in any manner and the retail price of the package is stated in the advertisement, there shall be closely and conspicuously associated with such statement of price a declaration of the basic quantity of contents of the package as is required by law or regulation to appear on the package; provided, that, where the law or regulation requires a dual declaration of net quantity to appear on the package, only the declaration that sets forth the quantity in terms of the smaller unit of weight or measure (the declaration that is required to appear first and without parentheses on the package) need appear in the advertisement; and provided further, that there shall not be included as part of the declaration required under this section such qualifying terms as “when packed,” “minimum,” “not less than,” or any other terms of similar import, nor any term qualifying a unit of weight, measure, or count (for example, “jumbo,” “giant,” “full,” and the like) that tends to exaggerate the amount of commodity in the package.

(6 Del. C. 1953, § 5123; 53 Del. Laws, c. 187, § 3; 58 Del. Laws, c. 281, § 11.)

§ 5122 Sale by net weight.

The word “weight” as used in this chapter in connection with any commodity shall mean net weight. Whenever any commodity is sold on the basis of weight, the net weight of the commodity shall be employed, and all contracts concerning commodities shall be so construed.

(6 Del. C. 1953, § 5124; 53 Del. Laws, c. 187, § 3.)

§ 5123 Misrepresentation of price.

Whenever any commodity or service is sold or is offered, exposed or advertised for sale, by weight, measure or count, the price shall not be misrepresented, nor shall the price be represented in any manner calculated or tending to mislead or deceive an actual or prospective purchaser. Whenever an advertised, posted or labeled price per unit of weight, measure or count includes a fraction of a cent, all elements of the fraction shall be prominently displayed and the numeral or numerals expressing the fraction shall be immediately adjacent to, of the same general design and style as and at least $^1/_2$ the height and width of the numerals representing the whole cents. The procedures used for price verification shall be those recommended by the National Institute of Standards and Technology in the Examination Procedure for Price Verification in Handbook 130 and supplements thereto, or in any publication superseding these publications.

(6 Del. C. 1953, § 5125; 53 Del. Laws, c. 187, § 3; 70 Del. Laws, c. 370, § 9.)

§ 5124 Meat, poultry and seafood.

Meat, poultry and seafood shall be sold by weight, except that whole shellfish in the shell and ready to eat food may be sold by weight, measure and/or count.

(6 Del. C. 1953, § 5126; 53 Del. Laws, c. 187, § 3; 58 Del. Laws, c. 281, § 12; 66 Del. Laws, c. 164, § 1; 70 Del. Laws, c. 370, § 10.)

§ 5125 Clams, mussels, oysters, and other mollusks.

Whole clams, oysters, mussels or other mollusks in the shell, whether fresh or frozen, shall be sold by weight including the weight of the shell, but not including the liquid of ice packed with them, dry measure and/or count. In addition, size designations may be provided. Fresh oysters removed from the shell shall be sold by weight or by fluid volume. For oysters sold by weight or by volume, a maximum of 15 percent free liquid by weight is permitted.

(6 Del. c. 1953, § 5128; 53 Del. Laws, c. 187, § 3; 70 Del. Laws, c. 370, § 11.)

§ 5126 Non-food products.

The specifications and requirements for non-food products shall be those specified by the National Institute of Standards and Technology, Handbook 130 and supplements thereto, or in any publication revising or superseding Handbook 130, except insofar as specifically modified, amended or rejected by a regulation issued by the Secretary of Agriculture.

(70 Del. Laws, c. 370, § 13.)

§ 5127 Bulk deliveries of commodities sold in terms of weight.

Whenever a vehicle delivers to an individual purchaser a commodity in bulk and the commodity is sold in terms of weight units, the delivery shall be accompanied by duplicate delivery tickets on which, in ink or other indelible substance, there shall be clearly stated:

(1) The name and address of the vendor;

(2) The name and address of the purchaser, and

(3) The net weight of the delivery and the gross and tare weights from which the net weight is computed, each expressed in pounds.

One of these tickets shall be retained by the vendor and the other shall be delivered to the purchaser at the time of delivery of the commodity or shall be left at a safe place at the place of delivery or shall be surrendered, on demand, to the Secretary of Agriculture, or an inspector, who, if the inspector desires to retain it as evidence, shall issue a weight slip in lieu thereof for delivery to the purchaser; provided, that if the purchaser carries away the purchase, the vendor shall be required only to give to the purchaser at the time of sale a delivery ticket stating the number of pounds of commodity delivered.

(6 Del. C. 1953, § 5131; 53 Del. Laws, c. 187, § 3; 57 Del. Laws, c. 764, §§ 31C, 31G; 58 Del. Laws, c. 281, § 15; 70 Del. Laws, c. 370, § 12.)

§ 5128 Furnace and stove oil.

(a) Whoever sells or delivers fuel oil or propane in quantities of 20 gallons or more for heating or cooking purposes shall issue a delivery ticket which shall consist of an original and at least 1 carbon copy. Said ticket shall be serially numbered for the purpose of identification and shall have the date of delivery as well as the names and addresses of the vendor and the purchaser legibly recorded on the ticket prior to delivery of the fuel oil or propane. A statement of the quantity of fuel oil or propane delivered, in terms of gallons and fractions thereof, if any, the price per gallon, the grade of fuel and the identity of the person making such delivery shall also appear on the ticket. One copy of said ticket shall be delivered to the purchaser or the purchaser's agent at the time of delivery of such fuel oil or propane, unless the purchaser initiates a request in writing that the vendor deliver such ticket to another person, to another location or at another time. Another copy of said ticket shall be retained by the vendor for a period of 1 year. The number printed on the delivery ticket that is presented to the purchaser of the fuel oil or propane shall be listed on the records kept by the individual or company that sells or delivers the fuel oil or propane.

(b) The Administrator or Inspector of the weights and measures section of the Department of Agriculture shall have the authority, at any time after the delivery of any fuel oil or propane, to enter and go into or upon, without warrant, any delivery vehicle in order to inspect or examine the metering system, vehicle tank compartment or delivery tickets then in the actual possession of or under the control of the person making the delivery, and said Administrator or Inspector shall also have the authority to seize, without warrant, any delivery tickets or devices suspected of constituting or contributing to a deceptive or fraudulent delivery practice. No retained delivery ticket or copy thereof which is so seized shall be destroyed, but may be voided by said Administrator or Inspector and kept on file with the Department of Agriculture.

(c) On deliveries of fuel oil or propane made through a meter, the quantity determinations of the fuel oil or propane delivered shall be mechanically printed on a meter ticket at the time of delivery. A sales sequence number shall also be mechanically printed on the ticket by the ticket printing mechanism of the metering system, unless the printing mechanism is of the cumulative type. The sales sequence number shall not be returnable to 0 until it has reached its highest attainable number.

(d) Only 1 delivery ticket shall be inserted into the printing mechanism at any given time, and in the case of vehicle tank meters, said ticket shall not be inserted until immediately before a delivery is begun, and in no case shall a ticket be left in the printing mechanism while the vehicle is in motion on a public street, highway or thoroughfare.

(e) The possession of a preprinted ticket imprinted with a gallonage amount in advance of delivery shall be prima facia evidence of intent to use such ticket in violation of this section.

(f) Any person who, by himself or herself, or by his or her employee or agent or as the employee or agent of another person, alters or substitutes a delivery ticket in violation of this section, or for otherwise fraudulent or deceptive purposes, shall be punished by a fine of not more than $1,000 or by imprisonment of not more than 1 year, or both.

(6 Del. C. 1953, § 5132; 53 Del. Laws, c. 187, § 3; 58 Del. Laws, c. 281, § 17; 69 Del. Laws, c. 100, § 1; 70 Del. Laws, c. 186, § 1; 70 Del. Laws, c. 370, §§ 12, 14.)

§ 5129 Berries and small fruits.

Berries and small fruits shall be offered and exposed for sale and sold by weight or by measure in open containers having capacities of $^{1}/_{2}$ dry pint, 1 dry pint or 1 dry quart; provided, that the marking provisions of § 5118 of this title shall not apply to such containers.

(6 Del. C. 1953, § 5134; 53 Del. Laws, c. 187, § 3; 70 Del. Laws, c. 370, § 12.)

§ 5130 Construction of contracts.

Fractional parts of any unit of weight or measure shall mean like fractional parts of the value of such unit as prescribed or defined in §§ 5101 and 5102 of this title, and all contracts concerning the sale of commodities and services shall be construed in accordance with this requirement.

(6 Del. C. 1953, § 5135; 53 Del. Laws, c. 187, § 3; 70 Del. Laws, c. 370, § 12.)

§ 5131 Licensed weighmasters; appointment; tenure; license fee; seal; charges; records.

(a) The Secretary shall appoint as a licensed weighmaster any person who possesses the qualifications provided for in this section and shall make application for the appointment, assigning to each licensee an official number. Any person may be appointed a weighmaster who is a person of good character and capable of operating a stationary scale. Licenses shall be issued to individuals only and not to firms or corporations, but any firm or corporation may have as many members or employees licensed as it desires.

(b) The term of appointment of each weighmaster shall be for a term of 3 years. The appointment period will run concurrent with the calendar years. Any weighmaster may have the license revoked by the Secretary of Agriculture by whom the weighmaster was appointed, or by a successor, for misconduct in office, dishonesty, incompetency, violation of a provision of this chapter or if the weighmaster ceases to possess the qualifications specified for the original appointment.

(c) For each appointment or reappointment made, the Department of Agriculture shall receive from the licensee a fee of $25. All fees so received shall be promptly transferred to the State Treasurer and paid into the General Fund of the State.

(d) Each weighmaster shall provide himself or herself at personal expense, with a seal or stamp containing on the outer margin, the weighmaster's name, followed by the word "Delaware," and also containing the word "weighmaster" and the weighmaster's official number.

(e) No weighmaster shall delegate authority to another person.

(f) No weighmaster shall receive any salary or other compensation from the State for the performance of duties.

(g) A licensed weighmaster shall keep a permanent record of all vehicles weighed by the weighmaster other than the vehicles owned and operated by the owner of the scale, showing the date, the name and address of the seller, the state registration number of the vehicle and the tare and gross weight of the delivery, such records to be available at all times during business hours for the inspection of the Secretary of Agriculture in the county wherein the scale is located.

(h) All solid fuels, live poultry, grain, livestock and commodities requiring a certificate of weight by the purchaser shall be weighed by a duly licensed weighmaster.

(i) The license shall be displayed in a conspicuous place where the weighmaster is engaged in weighing.

(j) The Secretary may, upon request and without charge, issue a limited license as a licensed weighmaster to any qualified officer or employee of a city or county of this State or of a state commission, board, institution or agency, authorizing such officer or employee to act as a licensed weighmaster only within the scope of official employment in the case of an officer or employee of a city or county or only for and on behalf of the state commission, board, institution or agency in the case of an officer or employee thereof.

(k) When making a weight determination as provided for by this section, a licensed weighmaster shall use a weighing device that is of a type suitable for the weighing of the amount and kind of material to be weighed and that has been tested and approved for use by a weights and measures officer of this State.

(l) A licensed weighmaster shall not use any scale to weigh a load the value of which exceeds the nominal or rated capacity of the scale. When the gross or tare weight of any vehicle or combination of vehicles is to be determined, the weighing shall be performed upon a scale having a platform of sufficient size to accommodate such vehicle or combination of vehicles fully, completely and as one entire unit. If a combination of vehicles must be broken up into separate units in order to be weighed as prescribed herein, each such separate unit shall be entirely disconnected before weighing and a separate weight certificate shall be issued for such separate unit.

(6 Del. C. 1953, § 5136; 53 Del. Laws, c. 187, § 3; 54 Del. Laws, c. 101; 57 Del. Laws, c. 764, §§ 31C, 31F; 58 Del. Laws, c. 281, § 18; 66 Del. Laws, c. 80, §§ 1, 2; 70 Del. Laws, c. 186, § 1; 70 Del. Laws, c. 370, § 12.)

§ 5132 Hindering or obstructing officer; penalties.

Any person who shall hinder or obstruct in any way the Secretary of Agriculture, or any 1 of the inspectors, in the performance of official duties, shall, upon conviction thereof, be punished by a fine of not less than $100 or more than $500, or by imprisonment for not more than 3 months, or by both such fine and imprisonment.

(6 Del. C. 1953, § 5137; 53 Del. Laws, c. 187, § 3; 57 Del. Laws, c. 764, § 31C; 70 Del. Laws, c. 186, § 1; 70 Del. Laws, c. 370, §§ 12, 15.)

§ 5133 Impersonation of officer; penalties.

Any person who shall impersonate in any way the Secretary of Agriculture or any one of the inspectors by the use of the Secretary's seal or a counterfeit of the Secretary's seal, or in any other manner, upon conviction thereof, shall be punished by a fine of not less than $100 or more than $500, or by imprisonment for not more than 6 months, or by both such fine and imprisonment.

(6 Del. C. 1953, § 5138; 53 Del. Laws, c. 187, § 3; 57 Del. Laws, c. 764, § 31C; 70 Del. Laws, c. 186, § 1; 70 Del. Laws, c. 370, § 12.)

§ 5134 Offenses and penalties.

(a) No person shall:

(1) Use or have in possession for the purpose of using for any commercial purpose specified in § 5109 of this title, sell, offer, or expose for sale or hire, or have in possession for the purpose of selling or hiring, an incorrect weight or measure or any device or instrument used to or calculated to falsify any weight or measure;

(2) Use, or have in possession for the purpose of current use for any commercial purpose specified in § 5109 of this title, a weight or measure that does not bear a seal or mark such as is specified in § 5113 of this title, unless such weight or measure has been exempted from testing by the provisions of § 5109 of this title, or by a regulation of the Secretary of Agriculture issued under the authority of § 5107 of this title unless the device has been placed in service as provided by a regulation of the Secretary issued under the authority of § 5107 of this title;

(3) Dispose of any rejected or condemned weight or measure in a manner contrary to law or regulation;

(4) Remove from any weight or measure, contrary to law or regulation, any tag, seal or mark placed thereon by the appropriate authority;

(5) Sell, or offer or expose for sale, less than the quantity the person represents of any commodity, thing or service;

(6) Take more than the quantity the person represents of any commodity, thing or service when, as buyer, the person furnishes the weight or measure by means of which the amount of the commodity, thing or service is determined;

(7) Keep for the purpose of sale, advertise, or offer or expose for sale, or sell any commodity, thing or service in a condition or manner contrary to law or regulation;

(8) Use in retail trade, except in the preparation of packages put up in advance of sale and of medical prescriptions, a weight or measure that is not so positioned that its indications may be accurately read and the weighing or measuring operation observed from some position which may reasonably be assumed by a customer;

(9) Violate any provision of this chapter or of the regulations promulgated under this chapter for which a specific penalty has not been prescribed.

(b) Any person who, by himself or herself or by his or her employee or agent or as the employee or agent of another person, performs any one of the acts enumerated in paragraphs (a)(1) through (9) of this section, upon a first conviction thereof, shall be punished by a fine of not less than $50 nor more than $500 and upon any subsequent conviction thereof occurring within 2 years from the first conviction, shall be punished by a fine of not less than $250 nor more than $1000.

(6 Del. C. 1953, § 5139; 53 Del. Laws, c. 187, § 3; 57 Del. Laws, c. 764, § 31C; 58 Del. Laws, c. 281, §§ 19, 20; 69 Del. Laws, c. 102, §§ 1, 2; 70 Del. Laws, c. 186, § 1; 70 Del. Laws, c. 370, §§ 12, 16.)

§ 5135 Injunction.

The Secretary of Agriculture may apply to any court of competent jurisdiction for, and such court upon hearing and for cause shown may grant, a temporary or permanent injunction restraining any person from violating this chapter.

(6 Del. C. 1953, § 5140; 53 Del. Laws, c. 187, § 3; 57 Del. Laws, c. 764, § 31C; 70 Del. Laws, c. 370, § 12.)

§ 5136 Presumptive evidence.

For the purposes of this chapter, proof of the existence of a weight or measure or a weighing or measuring device in or about any building, enclosure, stand or vehicle in which or from which it is shown that buying or selling is commonly carried on, shall, in the absence of conclusive evidence to the contrary, be presumptive proof of the regular use of such weight or measure or weighing or measuring device for commercial purposes and of such use by the person in charge of such building, enclosure, stand or vehicle.

(6 Del. C. 1953, § 5141; 53 Del. Laws, c. 187, § 3; 70 Del. Laws, c. 370, § 12.)

§ 5137 Validity of prosecutions.

Prosecutions for violation of this chapter shall be valid and proper notwithstanding the existence of any other valid general or specific chapter of the Delaware Laws dealing with matters that may be the same as or similar to those covered by this chapter.

(6 Del. C. 1953, § 5142; 53 Del. Laws, c. 187, § 3; 70 Del. Laws, c. 370, § 12.)

§ 5138 Concurrent jurisdiction of justices of the peace and Court of Common Pleas.

Justices of the peace and the Court of Common Pleas shall have concurrent jurisdiction over violations of this chapter.

(6 Del. C. 1953, § 5143; 53 Del. Laws, c. 187, § 3; 58 Del. Laws, c. 281, § 21; 70 Del. Laws, c. 370, § 12.)

§ 5139 Citation.

This chapter may be cited as the “Weights and Measures Act of Delaware.”

(6 Del. C. 1953, § 5144; 53 Del. Laws, c. 187, § 3; 70 Del. Laws, c. 370, § 12.)

§ 5140 Fees for services for out-of-state companies.

The following fees shall be charged for the services listed below to those firms which do not possess a current Delaware business license:

(1) *Cast iron and steel weights — Class F tolerances.* — The Department shall charge the following fees to test cast iron and steel weights (class F tolerances):

a. If the weight is less than or equal to 30 kilograms (66 pounds), the fee is $8.00 a unit;

b. If the weight is greater than 30 kilograms (66 pounds) but less than or equal to 1,200 kilograms (2,646 pounds), the fee is $25 a unit;

c. If the weight is greater than 1,200 kilograms (2,646 pounds) but less than or equal to 2,268 kilograms (5,000 pounds), the fee is $45 a unit; and

d. If the weight is greater than 2,268 kilograms (5,000 pounds) but less than or equal to 9,072 kilograms (20,000 pounds), the fee is $90 a unit.

(2) *Class F tolerances — Test weight sets.* — The Department shall charge the following fees to test a class F tolerances test weight set; provided however, that the set does not have a total capacity that is greater than 16 kilograms (35 pounds):

a. If the number of weights in the set is less than or equal to 18, the fee is $40 a set;

b. If the number of weights in the set is greater than 18 but less than or equal to 36, the fee is $60 a set; and

c. If the number of weights in the set is greater than 36 but less than or equal to 50, the fee is $80 a set.

(3) *Other weighing services.* — The Department may provide other weighing services not otherwise noted in this chapter at a rate of $49 an hour.

(4) *Equipment refurbishing.* — If equipment needs refurbishing before it can be tested and if the Department agrees to refurbish the equipment, the Department shall do this work at the rate of $49 an hour plus materials cost.

(5) *Weight-moving equipment for vehicle scales.* — The Department shall charge $115 a unit plus an additional $10 for shop supplies and material to test weight-moving equipment for vehicle scales.

(6) *Mass laboratory standards.* — The Department shall charge the following fees to test mass laboratory standards:

a. If the standard is less than or equal to 3 kilograms (7 pounds), the fee is $20 a unit;

b. If the standard is greater than 3 kilograms (7 pounds) but less than or equal to 30 kilograms (66 pounds), the fee is $60 a unit; and

c. If the standard is greater than 30 kilograms but less than or equal to 1,200 kilograms (2,646 pounds), the fee is $70 a unit.

(7) *Laboratory standards — Test weight sets.* — The Department shall charge the following fees to test a laboratory standards test weight set; provided, however, the set does not have a total capacity that is greater than 16 kilograms (35 pounds):

a. If the number of weights in the set is 18 or less, the fee is $160 a set;

b. If the number of weights in the set is greater than 18 but less than or equal to 36, the fee is $180 a set; and

c. If the number of weights in the set is greater than 36 but less than or equal to 50, the fee is $200 a set.

(8) *Other services related to laboratory standards of mass.* — The Department shall provide other services related to laboratory standards of mass at a rate of $49 an hour.

(9) *Volumetric field standards.* — The Department shall charge the following fees to test volumetric field standards:

a. If the standard is less than or equal to 20 liters (5 gallons), the fee is $20 a unit;

b. If the standard is greater than 20 liters (5 gallons) but less than or equal to 100 liters (26 gallons), the fee is $40 a unit;

c. If the standard is greater than 100 liters (26 gallons) but less than or equal to 1,000 liters (264 gallons), the fee is $90 a unit;

d. If the standard is greater than 1,000 liters (264 gallons) but less than or equal to 5,000 liters (1,321 gallons), the fee is $160 a unit; and

e. If the standard is greater than 5,000 liters (1,321 gallons), the fee is $200 a unit.

(10) *Other volumetric calibrations.* — The Department shall perform other volumetric calibrations not otherwise noted in this chapter at a rate of $49 an hour.

(11) *Volumetric laboratory standards.* — The Department shall charge the following fees to test volumetric laboratory standards:

a. If the standard is less than or equal to 4 liters (1 gallon), the fee is $30 each; and

b. If the standard is greater than 4 liters (1 gallon) but less than or equal to 40 liters (11 gallons), the fee is $90 each.

(12) *Other volumetric laboratory services.* — The Department shall perform other volumetric laboratory services at a rate of $49 an hour.

(13) *Thermometry and calibration services.* — The Department shall perform thermometry and calibration services at a rate of $49 an hour.

(14) *Environmental chamber services.* — For performing environmental chamber services, the Department shall charge as follows:

a. $250 per device for use of the chamber; and

b. $45 per hour for each technician required for testing the device.

(15) *Linear measures and surveyor tapes testing.* — The Department shall test linear measures at the following rates:

a. The fee for testing rules shall be $15 a unit.

b. Tapes:

1. If the tape is less than or equal to 25 feet, the fee shall be $25.

2. If the tape is greater than 25 feet but less than or equal to 100 feet, the fee shall be $45.

3. If the tape is greater than 100 feet, the fee shall be $75.

c. The fee for testing other linear devices shall be $49 an hour.

(70 Del. Laws, c. 284, § 1; 70 Del. Laws, c. 370, § 12.)

§ 5141 Fines payable by mail.

(a) *Applicability.* — Any weights and measures inspector in this State, who issues a citation for any of the offenses which are violations of laws or regulations established or promulgated under the authority of this chapter, may, in addition to issuing a summons for any such offenses, provide the violator with a voluntary assessment form which, when properly executed by the weights and measures inspector and the offender, allows the offender to dispose of the charges without the necessity of personally appearing in the court to which the summons is returnable.

(b) *Definitions.* — (1) "Payment" as used in this section shall mean the total amount of the fine and of the costs as herein provided and of the penalty assessment added to the fine pursuant to the Delaware Victim Compensation Law, Chapter 90 of Title 11.

(2) "Voluntary assessment form" as used in this section means the written agreement or document signed by the violator wherein the violator agrees to pay by mail the fine for the offense described therein together with costs and penalty assessment.

(c) *Places and time of payment.* — Payments made pursuant to this section shall be remitted to the court to which the summons is returnable and shall be disbursed to the General Fund of the State. The payment must be received by the court within 10 days from the date the citation was issued (excluding Saturday and Sunday) and shall be paid only by check or money order.

(d) *Offenses designated as "offenses subject to voluntary assessment"; exceptions.* — All offenses, as now or hereafter set forth in this title or regulations promulgated under the authority of this title, are hereby designated as offenses subject to voluntary assessment except the following offenses: violation of § 5133 and § 5134 of this title.

(e) *Offer and acceptance of voluntary assessment; effect; withdrawal of acceptance; request for hearing.* — (1) At the time of issuing a citation for any offense subject to this section, the weights and measures inspector may offer the alleged violator the option of accepting a voluntary assessment. The alleged violator's signature on the voluntary assessment form constitutes an acknowledgment of guilt of the offense stated in the form, and on agreement to pay the fine as herein provided, together with the costs and penalty assessment, within 10 days from the date of the issuance of the citation (excluding Saturday and Sunday), during which time payment must be received by the court.

(2) The alleged violator, after signing and receiving the voluntary assessment form, may withdraw the violator's acceptance of the voluntary assessment and request a hearing on the charge stated in such form, provided that the alleged violator, within 10 days from the date of the issuance of the citation (excluding Saturday and Sunday), personally or in writing notifies the court to which payment of the penalty assessment was to be made that the violator wishes to withdraw the violator's acceptance of the voluntary assessment and requests a hearing on the charge stated in the voluntary assessment form. If the alleged violator notifies the court of such withdrawal and request for hearing as aforesaid, the violator shall be prosecuted for the charge stated in the voluntary assessment form as if such form had not been issued.

(f) *Penalty.* — If an alleged violator elects the option of accepting a voluntary assessment in accordance with subsection (e) of this section, the penalty for offenses designated as offenses subject to voluntary assessment shall be the minimum fine for each specific offense charged, and fines shall be cumulative if more than 1 offense is charged.

(g) *Court costs and applicability of Delaware Victim Compensation Law.* — In lieu of any court costs, and provided the offense is not subject to other proceedings under this section, each fine for an offense under this section shall be subject to court costs of $8.50. Each fine for an offense under this section shall be subject also to the penalty assessment which is or may be provided for in the Delaware Victim Compensation Law, Chapter 90 of Title 11.

(h) *Agreement to accept voluntary assessment; procedure.* — Whenever a person is issued a citation for an offense subject to voluntary assessment and has elected to make payment as herein provided, the weights and measures inspector, using the weights and measures citation, shall complete the information section and prepare the voluntary assessment form indicating the amount of the fine, have the alleged violator sign the voluntary assessment form, and give a copy of the citation and form to the individual cited for violating the requirements of this chapter or the rules and regulations promulgated thereunder. The weights and measures inspector issuing the citation shall also inform the individual cited of the court to which payment shall be submitted. No weights and measures inspector shall receive or accept custody of a payment. If the person declines to accept the voluntary assessment, the weights and measures inspector shall follow the procedures outlined in § 5134 of this title.

(i) *Payment of fine as complete satisfaction; repeat offenders.* — (1) Payment of the prescribed fine, costs and penalty assessment is a complete satisfaction of the violation, except as provided in paragraph (i)(2) of this section.

(2) In the event that following compliance with the payment provisions of this section, it is determined that within the 2-year period immediately preceding the violation, the violator was convicted of or made a payment pursuant to this section in satisfaction of a violation of the same section of this title, personal appearance before the court to which summons is returnable shall be required. Notice of the time and place for the required court appearance shall be given to the violator to which the summons for the offense would be returnable.

(j) *Removal from applicability of section.* — If a payment due pursuant to this section is not received by the court to which the summons is returnable within 10 days from the date of the issuance of the citation, the violator shall be prosecuted for the offense charged on the voluntary assessment form in a manner as if a voluntary assessment form had not been used. Upon conviction in such prosecution, the court shall impose penalties as provided for by this title or other law relating to the particular violation charged, and this section, as to payment of fines under voluntary assessments, shall not apply.

(k) *Nonexclusive procedure.* — The procedure prescribed is not exclusive of any other method prescribed by law for the prosecution of persons violating this title.

(70 Del. Laws, c. 370, § 17; 70 Del. Laws, c. 186, § 1.)

§ 5142 Administrative penalties.

(a) In addition to proceeding under any other remedy available at law or in equity for a violation of this chapter or a rule or regulation adopted thereunder, or any order issued pursuant to this chapter, the Secretary, in the Secretary's discretion, may assess an administrative penalty not less than $500 nor more than $10,000 for each offense.

(b) Prior to assessment of an administrative penalty, written notice of the Secretary's proposal to impose such penalty shall be given to the violator, and the violator shall have 30 days from receipt of said notice to request a hearing. Any hearing, if requested, right of appeal and judicial appeal shall be conducted in accordance with Chapter 101 of Title 29. The Secretary shall render an opinion within 30 days of said hearing.

(c) In determining the amount of the penalty, the Secretary shall consider the appropriateness of such penalty to the size of the person's ability to continue in business and the gravity of the violation. Whenever the Secretary finds the violation occurred despite the exercise of due care, the Secretary may issue a warning in lieu of assessing a penalty.

(72 Del. Laws, c. 377, § 1; 70 Del. Laws, c. 186, § 1.)

Subtitle III
Weights, Measures and Standards

Chapter 53
Standards for Mason Work

§ 5301 Standards for measurement.

The following shall be the rules for the measurement of mason work in this State:

The units of measurement shall be as follows:

(1) *Generally.* — For excavation, the cubic yard.

For concrete foundation, the cubic yard.

For concrete floors, the superficial foot.

For dimension stone footings, the superficial foot.

For dimension stone bridge masonry, the cubic foot.

For dimension stone surface dressing, the superficial foot, extra price.

For rubble work, the perch of 24¾ cubic feet.

For rubble work surface dressing, the superficial foot, extra price.

For brick work, the thousand brick.

For plastering plain surfaces, the superficial yard.

For plastering cornices, the running and superficial foot.

(2) *Perch of stone.* — A perch of stone shall contain, when measured in the wall, $24^3/_4$ cubic feet; when measured in square piles on the ground, 27 cubic feet.

When measured in boats, 30 cubic feet.

When measured in cars, $31^1/_2$ cubic feet.

All stone to be measured in the wall when practicable.

Any mason work contracted for, in which the contractor agrees to furnish both materials and labor at a stated sum per perch, shall be measured and computed according to the following rules governing the measurement of mason work, i.e., mason measure shall be the basis of settlement;

(3) *Excavation.* — All excavation to be measured and computed by the actual amount of material displaced. No allowance for rehandling. Walls to be measured by the lineal foot in depth.

(4) *Concrete.* — Foundation, measure actual contents. Floor, measure actual surface laid, except that no deduction be made for open tile drains.

(5) *Dimension stone.* — Footings to be measured each course separately. No deductions for drain or other openings under walls 2 feet, or less, in width.

Bridge masonry, compute actual cubic contents.

Surface dressing of all kinds extra.

(6) *Rubble work.* — Footings to be measured by actual cubic contents.

Footings are all such foundation courses not exceeding 16 inches in height as are wider than the body of wall above.

(7) *Walls.* — Compute actual contents and for each angle or corner of 90 degrees in a vertical wall, add 2 cubic feet for each foot in height of the wall, if the wall is battered add $2^1/_2$ cubic feet for each foot in height.

For each angle of more or less than 90 degrees in any wall, add 2 feet in length of wall.

(8) *Partition walls.* — Intersections of walls, measure actual contents of the walls and add 1 cubic foot for each foot in height for each angle made by the faces of the intersecting walls.

(9) *Circular walls.* — For round walls, for length of walls, take $1^1/_4$ times the girt measure.

(10) *Pilasters and projections.* — All projections, such as chimney breasts, piers connected with walls and pilasters, to be measured actual cubic contents and add thereto 1 cubic foot for each intersection of the sides of such projection with the wall, and 2 cubic feet for each outer corner for each foot in height. If such projections are battered on the outer face, add $2^1/_2$ cubic feet instead of 2 cubic feet for each outer corner for each foot in height.

(11) *Square or polygon piers.* — Square or polygon piers, to be measured actual cubic contents; if vertical, 2 cubic feet to be added for each corner for each foot in height. If battered, add instead $2^1/_2$ cubic feet for each corner for each foot in height.

(12) *Round piers.* — Round piers, add 3 feet to the measured diameter of the pier, and compute the contents, with this sum used as the diameter, the height to be taken as measured.

(13) *Stepped piers or piers with vertical offsets.* — Stepped piers or piers diminishing from the bottom by offsets shall be computed by rule No. 10, and also add the sum of the areas of the level surface of the several steps (excepting the top of the pier) multiply by 1 foot in height.

All parts of independent piers as are 6 inches or more below the surface of the ground are to be computed actual contents, and 1 cubic foot added for each foot in height or depth.

(14) *Recesses and slots.* — All recesses and slots to be measured solid, and in addition thereto allow 1 cubic foot for each foot in height.

(15) *Arches.* — Stone arches are classed as cut stone work.

(16) *Openings.* — Deduct contents of windows, doors and other openings, measuring from top of sill to spring of arch, and add 3 cubic feet for each jamb for each foot in height of opening. No deduction to be made for cut stone trimmings and lintels.

(17) *Jambs.* — For any jamb, caused by differences in heights in parts of the same wall, or in adjacent walls, except in junctions of partition walls, add 2 cubic feet for each foot in height.

(18) *Change in height of walls after having been leveled.* — Compute the additional amount of masonry and add thereto 1 foot in height of wall.

(19) *Gables.* — Gables to be computed $1^1/_2$ times the actual contents.

(20) *Beam filling.* — For beam filling, on level walls, add 1 foot in height of wall; on gable add 1 foot in height of wall by the extreme width of gable at its base.

(21) *Minimum height and thickness of wall.* — No wall to be computed at less than 18 inches in thickness, nor 1 foot in height.

(22) *Brickwork.* — Compute the actual number of bricks laid.

When in the wall and practicable, the number of bricks to be estimated by actual count; when not practicable to so count them the following rule to be taken as a basis for estimating the number, viz.:

Every superficial foot of one-half brick ($4^1/_2$ inches) wall to be estimated as $6^1/_2$ bricks; of 1 brick (9 inches) wall at 13 bricks, etc. Increase the number of bricks by $6^1/_2$ bricks for every additional $^1/_2$ brick in thickness of wall.

(23) *Measurement of party walls.* — Party walls to be measured according to the above rules, and joist holes to be charged at the rate of 15 cents each.

(24) *Plastering and lathing.* — To be measured by the superficial yard from floor to ceiling for walls, and from wall to wall of ceiling.

(25) *Corners, beads, etc.* — All corners, angles, beads, quinks, rule joints and mouldings to be measured by the lineal foot on their longest extension.

Add 1 foot for each stop or mitre.

(26) *Cornices.* — Length of cornices to be measured on walls. Plain cornices, of 2 feet girt, or less, to be measured on walls by the lineal foot.

Plain cornices exceeding 2 feet girt to be measured by the superficial foot.

Add 1 lineal foot by girt for each stop or mitre.

Enriched cornices (cast work) by the lineal foot for each enrichment.

(27) *Arches, corbels, etc.* — Arches, corbels, brackets, rings, centre pieces, pilasters, capitals, vases, resettes, basses, pendants and niches, by the piece.

(28) *Openings.* — Openings in plastering to be measured between grounds. No deduction to be made for opening of 9 feet or less.

For openings of more than 9 feet square, deduct contents of openings.

(19 Del. Laws, c. 697; Code 1915, § 2931; Code 1935, § 3435; 6 Del. C. 1953, § 5321.)

Subtitle III
Weights, Measures and Standards

Chapter 55
Plane Coordinate System

§ 5501 Delaware Coordinate System.

The systems of plane coordinates which have been established by the National Ocean Service/National Geodetic Survey (formerly the United States Coast and Geodetic Survey) or its successors for defining and stating the geographic positions or locations of points on the surface of the Earth within the State are hereafter to be known and designated as the Delaware Coordinate System of 1927 and the Delaware Coordinate System of 1983, respectively.

(45 Del. Laws, c. 266, § 1; 6 Del. C. 1953, § 5501; 72 Del. Laws, c. 95, § 1.)

§ 5502 Definition of Delaware Coordinate System.

(a) For defining the Delaware Coordinate System of 1927, the following definition by the National Ocean Service/National Geodetic Survey (formerly the United States Coast and Geodetic Survey) is adopted:

The "Delaware Coordinate System of 1927" is a transverse Mercator projection of the Clarke spheroid of 1866, having a central position meridian 75° 25# west of Greenwich, on which meridian the scale is set at 1 part in 200,000 too small. The origin of the coordinates is at the intersection of the meridian 75° 25# west of Greenwich and the parallel 38° 20# north latitude. This origin is given the coordinates: x = 500,000 feet and y = 0 feet.

(b) For defining the Delaware Coordinate System of 1983, the following definition by the National Ocean Service/National Geodetic survey is adopted:

The "Delaware Coordinate System of 1983" is a transverse Mercator projection of the North American Datum of 1983, having a central meridian 75° 25# west of Greenwich, on which meridian the scale is set at 1 part in 200,000 too small. The origin of coordinates is at the intersection of the meridian 75° 25# west of Greenwich and the parallel 38° 00# north latitude. This origin is given the coordinates: N = 0 meters and E = 200,000 meters.

(45 Del. Laws, c. 266, § 3; 6 Del. C. 1953, § 5502; 72 Del. Laws, c. 95, § 1.)

§ 5503 Description of plane coordinates.

The plane coordinate values for a point on the Earth's surface, used to express the geographic position or location of such point in the appropriate zone of this system, shall consist of 2 distances, expressed in U.S. Survey Feet and expressed in meters and decimals of a meter when using the Delaware Coordinate System of 1983. When using the Delaware Coordinate System of 1927, 1 of these distances, to be known as the "x-coordinate," shall give the position in an east-and-west direction; the other, to be known as the "y-coordinate," shall give the position in a north-and-south direction. When using the Delaware Coordinate System of 1983, 1 of the distances, to be known as the "northing," of "N," shall give the position in a north-and-south direction; the other, to be known as the "easting" or "E," shall give the position in an east-and-west directional. In both cases these coordinates shall be made to depend upon and conform to plane rectangular coordinate values for the monument points of the North American National Geodetic Horizontal Network as published by the National Ocean Service/National Geodetic survey (formerly the United States Coast and Geodetic Survey) or its successors, and whose plane coordinates have been computed on the systems defined in this chapter. Any such station may be used for establishing a survey connection to either Delaware Coordinate System. The unit used to convert feet to meters shall be the United States survey foot, which is 39.37/12 feet for each meter.

(45 Del. Laws, c. 266, § 2; 6 Del. C. 1953, § 5503; 72 Del. Laws, c. 95, § 1.)

§ 5504 Triangulation or traverse stations.

The position of the Delaware Coordinate System shall be as marked on the ground by Global Positioning System (GPS) of horizontal control stations established in conformity with standards adopted by the North American National Geodetic Horizontal Network as published by the National Ocean Service/National Geodetic Survey (formerly the United States Coast and Geodetic Survey) for first-order and second-order work, whose geodetic positions have been rigidly adjusted on the North American Datum of 1927 or the North American Datum of 1983, and whose coordinates have been computed on the systems defined in this chapter. Any such station may be used for establishing a survey connection with either Delaware Coordinate System.

(45 Del. Laws, c. 266, § 3; 6 Del. C. 1953, § 5504; 72 Del. Laws, c. 95, § 1.)

§ 5505 Standard for recording coordinates in public records.

No coordinates based on either Delaware Coordinate System, purporting to define the position of a point on a land boundary, shall be presented to be recorded in any public land records or deed records unless such point is established in conformity with the standards of accuracy and specifications for first- or second-order geodetic surveying as prepared and published by the Federal Geodetic Control

Committee (FGCC) of the United States Department of Commerce. Standards and specifications of the FGCC or its successor in force on the date of said survey shall apply. Publishing existing control stations, or the acceptance with intent to publish the newly established stations, by the National Ocean Service/National Geodetic Survey, shall constitute evidence of adherence to FGCC specifications. To meet local conditions, these limitations may be modified by the Secretary of the Department of Transportation in compliance with Chapter 101 of Title 29 after consultation with the Office of State Planning Coordination, the Delaware Geographic Data committee and the State Mapping Advisory Committee.

(45 Del. Laws, c. 266, § 4; 6 Del. C. 1953, § 5505; 72 Del. Laws, c. 95, § 1.)

§ 5506 Use of term "Delaware Coordinate System".

As established for use, the Delaware Coordinate System of 1927 or the Delaware Coordinate System of 1983 shall be named; and in any land description in which it is used, it shall be designated the "Delaware Coordinate System of 1927" or "Delaware Coordinate System of 1983," as applicable.

The use of the term "Delaware Coordinate System of 1927" or "Delaware Coordinate System of 1983" on any map, report of survey or other document shall be limited to coordinates based on the Delaware Coordinate System as defined in this chapter.

(45 Del. Laws, c. 266, § 5; 6 Del. C. 1953, § 5506; 72 Del. Laws, c. 95, § 1.)

§ 5507 Reliance on description.

(a) For purposes of describing the location of any survey station or land boundary corner in the State, it shall be considered a complete, legal and satisfactory description of such location to give the position of said survey station or land boundary corner on the system of plane coordinates defined in this chapter.

(b) Nothing contained in this chapter shall require a purchaser or mortgagee of real property to rely wholly on a land description, any part of which depends exclusively upon either Delaware Coordinate System.

(c) Nothing contained in this chapter shall require the exclusive use of the metric system as a descriptive element of official maps.

(45 Del. Laws, c. 266, § 6; 6 Del. C. 1953, § 5507; 72 Del. Laws, c. 95, § 1.)

§ 5508 Transitional use of Delaware Coordinate System of 1927; effective date of exclusive use of Delaware Coordinate System of 1983.

The Delaware Coordinate System of 1927 shall not be used after a period beginning 12 months after July 1, 2000. Beginning on the date 12 months after July 1, 2000, the Delaware Coordinate System of 1983 shall be the sole system of plane coordinates used in this State.

(72 Del. Laws, c. 95, § 1.)

Subtitle IV
Commercial Development

Chapter 70

Delaware Economic Development Authority [Transferred].

§§ 7001-7017 Findings; declaration of policy; definitions; Delaware Economic Development Authority — Established; organization; powers; application for assistance; findings and determinations; bonds; covenants with bondholders; pledge of revenues or other property; limitation on liability of State; negotiability of bonds; default in payment of state guaranteed bonds; insufficient revenues to make payment; limitation of powers of State; bonds as legal investments for institutions and fiduciaries; exemption from taxation; property of Authority exempt from judicial process; liberal construction of chapter; inconsistent laws inapplicable.

Transferred.

Subtitle IV
Commercial Development
Chapter 73
Securities Act
Subchapter I
Introductory Provisions

§ 73-101 Short title; purpose.

(a) This chapter shall be known and may be cited as the "Delaware Securities Act."

(b) The purpose of the Delaware Securities Act is to prevent the public from being victimized by unscrupulous or overreaching broker-dealers, investment advisers or agents in the context of selling securities or giving investment advice, as well as to remedy any harm caused by securities law violations. This prophylactic and remedial purpose shall be deemed of paramount importance in the interpretation of the provisions of this chapter and particularly in any judicial review of sanctions or penalties imposed by the Investor Protection Director and of motions or requests by persons affected to stay such sanctions or penalties.

(6 Del. C. 1953, § 7301; 59 Del. Laws, c. 208, § 1; 68 Del. Laws, c. 181, § 17; 78 Del. Laws, c. 175, §§ 86, 118; 79 Del. Laws, c. 182, § 2.)

§ 73-102 Administration of chapter.

(a) This chapter shall be administered by the Attorney General who may designate a Deputy Attorney General to act as Investor Protection Director to be the principal executive officer of an Investor Protection Unit of the Department of Justice to act for the Attorney General administering this chapter. The Investor Protection Director shall have the qualifications of and his or her salary shall be fixed as that of a Deputy Attorney General.

(b) The Director may make, amend and rescind rules, regulations, forms and orders to carry out and define the provisions of this chapter. The Director shall publish such rules, regulations, forms and orders as such rules specify.

(c) The Director may, by rule, regulation or order, delegate the Director's powers, duties and authority to issue orders, pursuant to §§ 73-501 through 73-601 of this title or otherwise in this chapter, to an administrative hearing officer appointed by the Attorney General (or his or her designee).

(d) [Repealed.]

(6 Del. C. 1953, § 7325; 59 Del. Laws, c. 208, § 1; 67 Del. Laws, c. 274, § 12; 68 Del. Laws, c. 181, § 30; 70 Del. Laws, c. 186, § 1; 78 Del. Laws, c. 175, §§ 77-80, 109, 118; 79 Del. Laws, c. 182, §§ 1-3, 7.)

§ 73-103 Definitions.

(a) *Generally*. — When used in this chapter, unless the context otherwise requires:

(1) "Agent" means any individual, other than a broker-dealer, who represents a broker-dealer or issuer in effecting or attempting to effect purchases or sales of securities. "Agent" does not include an individual who represents:

a. An issuer in:

1. Effecting transactions in a security exempted by § 73-207(a)(1), (2), (3), (10), or (11) of this title;

2. Effecting transactions exempted by § 73-207(b) of this title;

3. Effecting transactions in a covered security as described in §§ 18(b)(3) and 18(b)(4)(E) (or as the same may be renumbered by a future act of the United States Congress) of the Securities Act of 1933 [15 U.S.C. § 77r]; or

4. Effecting transactions with existing employees, partners or directors of the issuer if no commission or other remuneration is paid or given directly or indirectly for soliciting any person in this State;

b. A broker-dealer in effecting transactions in this State limited to those transactions described in § 15(h)(2) of the Securities Exchange Act of 1934 [15 U.S.C. § 78o]; or

c. An issuer or a member of a bona fide agricultural cooperative whose securities are exempt from registration under § 73-207(a)(12) of this title.

A partner, officer or director of a broker-dealer or issuer, or a person occupying a similar status or performing similar functions, is an agent only if such person otherwise comes within this definition.

(2) "Attorney General" means the Attorney General of the State or the Attorney General's duly appointed deputy.

(3) "Broker-dealer" means any person engaged in the business of effecting transactions in securities for the account of others or for the broker-dealer's own account. "Broker-dealer" does not include:

a. An agent;

b. An issuer;

c. A bank, savings institution or trust company, to the extent that these entities are exempt or excluded from broker-dealer registration requirements under federal securities law;

d. A person who has no place of business in this State and effects transactions in this State exclusively with or through (i) the issuers of the securities involved in the transactions, (ii) other broker-dealers, or (iii) banks, savings institutions, trust companies, insurance companies, investment companies as defined in the Investment Company Act of 1940 [15 U.S.C. § 80a-1 et seq.], pension or profit-sharing trust, or other financial institutions or institutional buyers, whether acting for themselves or as trustees;

e. An issuer or an individual who represents an issuer or a member of such issuer provided said issuer is exempt from registration under § 73-207(a)(12) of this title.

(4) "Director" means the Investor Protection Director, the principal executive officer of the Investor Protection Unit designated in § 73-102 of this title.

(5) "Eligible adult" means:

a. An "elderly person" as defined in § 222 of Title 11; or

b. A "vulnerable adult" as defined in § 1105 of Title 11.

(6) "Federal covered adviser" means a person who is registered under § 203 of the Investment Advisers Act of 1940 [15 U.S.C. § 80b-3].

(7) "Federal covered security" means any security that is a covered security under § 18(b) of the Securities Act of 1933 [15 U.S.C. § 77r(b)] or rules or regulations promulgated thereunder.

(8) "Financial exploitation" means the illegal or improper use, control over, or withholding of the property, income, resources, or trust funds of the eligible adult by any person or entity for any person's or entity's profit or advantage other than for the eligible adult's profit or advantage. "Financial exploitation" includes, but is not limited to:

a. The use of deception, intimidation, or undue influence by a person or entity in a position of trust and confidence with an eligible adult to obtain or use the property, income, resources, or trust funds of the eligible adult for the benefit of a person or entity other than the eligible adult;

b. The breach of a fiduciary duty, including but not limited to, the misuse of a power of attorney, trust, or a guardianship appointment, that results in the unauthorized appropriation, sale, or transfer of the property, income, resources, or trust funds of the eligible adult for the benefit of a person or entity other than the eligible adult; and

c. Obtaining or using an eligible adult's property, income, resources, or trust funds without lawful authority, by a person or entity who knows or clearly should know that the eligible adult lacks the capacity to consent to the release or use of his or her property, income, resources or trust funds.

(9) "Fraud," "deceit," and "defraud" are not limited to common-law deceit.

(10) "Investment adviser" means any person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing or selling securities, or who, for compensation and as a part of a regular business, issues or promulgates analyses or reports concerning securities. "Investment adviser" also includes financial planners and other persons who, as an integral component of other financially related services, provide the foregoing investment advisory services to others for compensation and as part of a business or who hold themselves out as providing the foregoing investment advisory services to others for compensation. "Investment adviser" does not include (A) an investment adviser representative; (B) a bank, savings institution or trust company; (C) a lawyer, accountant, engineer or teacher whose performance of these services is solely incidental to the practice of such person's profession; (D) a broker-dealer or its agent whose performance of these services is solely incidental to the conduct of its business as a broker-dealer and who receives no special compensation for them; (E) a publisher of any bona fide newspaper, news column, newsletter, news magazine or business or financial publication or service, whether communicated in hard copy form or by electronic means, or otherwise, that does not consist of the rendering of advice on the basis of the specific investment situation of each client; (F) any person who is a federal covered adviser; or (G) such other persons not within the intent of this subsection as the Commissioner may by rule or order designate.

(11) "Investment adviser representative" means any partner, officer, director (or a person occupying a similar status or performing similar functions) or other individual, except clerical or ministerial personnel, who is employed by or associated with an investment adviser that is registered or required to be registered under this chapter, or who has a place of business located in this State and is employed by or associated with a federal covered adviser; and who does any of following: (A) makes any recommendations or otherwise renders advice regarding securities, (B) manages accounts or portfolios of clients, (C) determines which recommendation or advice regarding securities should be given, (D) solicits, offers or negotiates for the sale of or sells investment advisory services, or (E) supervises employees who perform any of the foregoing.

(12) "Investment Company Act of 1940" means the federal statute of that name, 15 U.S.C. § 80a-1 et seq.

(13) "Issuer" means any person who issues or proposes to issue any security.

(14) "Nonissuer" means not directly or indirectly for the benefit of the issuer.

(15) "Person" means an individual, a corporation, a partnership, an association, a joint stock company, a trust where the interests of the beneficiaries are evidenced by a security, an unincorporated organization, a government, or a political subdivision of a government.

(16) "Promoter" includes:

a. Any person who, acting alone or in conjunction with 1 or more other persons, directly or indirectly takes the initiative in founding and organizing the business or enterprise of an issuer;

b. Any person who, in connection with the founding or organizing of the business or enterprise of an issuer, directly or indirectly receives in consideration of services or property, or both services and property, 10 percent or more of any class of securities of the issuer or 10 percent or more of the proceeds from the sale of any class of securities. However, a person who receives such securities or proceeds either solely as underwriting commissions or solely in consideration of property shall not be deemed a promoter within the meaning of this paragraph if such person does not otherwise take part in founding and organizing the enterprise.

(17) "Public interest" means that it shall appear to the Commissioner that the action taken or sanction imposed will further the purpose of this chapter.

(18) "Public Utility Holding Company Act of 2005" means the federal statute of that name, 42 U.S.C. § 16451 et seq.

(19) "Qualified individual" means any agent, broker-dealer, investment adviser, investment adviser representative or person who serves in a supervisory, compliance, or legal capacity for a broker-dealer or investment adviser.

(20) "Sale" or "sell" includes every contract of sale of, contract to sell or disposition of a security or interest in a security for value.

a. "Offer" or "offer to sell" includes every attempt or offer to dispose of, or solicitation of an offer to buy, a security or interest in a security for value.

b. A purported gift of assessable stock is considered to involve an offer and sale.

c. Every sale or offer of a warrant or right to purchase or subscribe to another security of the same or another issuer, as well as every sale or offer of a security which gives the holder a present or future right or privilege to convert into another security of the same or another issuer, is considered to include an offer of the other security.

d. The terms defined in this subsection do not include any bona fide pledge or loan; any stock dividend whether the corporation distributing the dividend is the issuer of the stock or not, if nothing of value is given by stockholders for the dividend other than the surrender of a right to a cash or property dividend when each stockholder may elect to take the dividend in cash or property or in stock; any act incident to a vote by stockholders (or approval pursuant to § 228 of Title 8) pursuant to the certificate of incorporation, or the provisions of Title 8, on a merger, consolidation, reclassification of securities, dissolution, or sale of corporate assets in consideration of the issuance of securities of the same or another corporation; or any act incident to a judicially approved reorganization in which a security is issued in exchange for one or more outstanding securities, claims or property interests, or partly in such exchange and partly for cash.

(21) "Securities Act of 1933" means the federal statute of that name, 15 U.S.C. § 77r et seq.

(22) "Securities Exchange Act of 1934" means the federal statute of that name, 15 U.S.C. § 78a et seq.

(23) "Security" means any note; stock; treasury stock; bond; debenture; evidence of indebtedness; certificate of interest or participation in any profit-sharing agreement; collateral-trust certificate; preorganization certificate or subscription; transferable share; investment contract, including pyramid promotion which includes any plan or operation for the sale or distribution of property, services, or any other thing of value wherein a person for a consideration is offered an opportunity to obtain a benefit which is based in whole or in part on the inducement, by himself or herself or by others, of additional persons to purchase the same or a similar opportunity; voting-trust certificate; certificate of deposit for a security; certificate of interest of participation in an oil, gas or mining title or lease or in payments out of production under such a title or lease; options on commodities; viatical settlement investment; or, in general, any interest or instrument commonly known as a "security," or any certificate of interest or participation in, temporary or interim certificate, for, receipt for guarantee of, or warrant or right to subscribe to or purchase, any of the aforegoing. "Security" does not include any insurance or endowment policy or annuity contract under which an insurance company promises to pay money either in a lump sum or periodically for life or for some other specified period.

(24) "Viatical settlement investment" means the contractual right to receive any portion of the death benefit or ownership of a life insurance policy or certificate for consideration that is less than the expected death benefit of the life insurance policy or certificate. "Viatical settlement investment" does not include:

a. The assignment, transfer, sale, devise, or bequest of a death benefit, life insurance policy or certificate of insurance by the viator to the viatical settlement provider pursuant to the Delaware Viatical Settlements Act (Chapter 75 of Title 18), the subsequent sale by such life settlement provider of such death benefit, life insurance policy or certificate of insurance, but not fractional interests therein, to any person who is a qualified purchaser (as such term is defined in the Investment Company Act of 1940), or any other lawful assignment, transfer, sale, devise or bequest of a death benefit, life insurance policy or certificate of insurance by an owner of a policy;

b. An assignment of a life insurance policy to a bank, savings bank, savings and loan association, credit union or other licensed lending institution as collateral for a loan, or the foreclosure upon, or relinquishment of, such life insurance policy in connection with such loan;

c. Any transfer of ownership and/or beneficial interest in a life insurance policy from a viatical settlement provider to another viatical settlement provider as defined by the Delaware Viatical Settlements Act (Chapter 75 of Title 18) or to any legal entity formed solely for the purpose of holding ownership and/or beneficial interest in a life insurance policy or policies; or

d. The exercise of accelerated benefits pursuant to the terms of the life insurance policy.

(b) *Principles of definition.* — (1) In this chapter when the word "means" is employed in defining a word or term, the definition is limited to the meaning given.

(2) In this chapter when the word "includes" is employed in defining a word or term, the definition is not limited to the meaning given, but in appropriate cases the word or term may be defined in any way not inconsistent with the definition given.

(3) If a word used in this chapter is not defined herein, it has its commonly accepted meaning, and may be defined as appropriate under § 73-102(b) of this title.

(6 Del. C. 1953, § 7302; 59 Del. Laws, c. 208, § 1; 67 Del. Laws, c. 274, § 1; 68 Del. Laws, c. 181, §§ 18, 21, 27, 29; 70 Del. Laws, c. 186, § 1; 70 Del. Laws, c. 560, §§ 3, 5; 71 Del. Laws, c. 162, §§ 1-5; 78 Del. Laws, c. 175, §§ 1-5, 87, 109, 118; 79 Del. Laws, c. 182, §§ 1-3, 5, 8, 9; 81 Del. Laws, c. 387, § 2.)

Subchapter II

Provisions Relating to the Offer, Sale, and Purchase of Securities

§ 73-201 Fraud.

It is unlawful for any person, in connection with the offer, sale or purchase of any security, directly or indirectly:

(1) To employ any device, scheme or artifice to defraud;

(2) To make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading; or

(3) To engage in any act, practice or course of business which operates or would operate as a fraud or deceit upon any person.

In interpreting this section, courts will be guided by the interpretations given by federal courts to similar language set forth in § 17(a) of the Securities Act of 1933 [15 U.S.C. § 77q] and Rule 10b-5 [17 C.F.R. § 240.10b-5] promulgated under the Securities Exchange Act of 1934, to include, without limitation, any difference in pleading requirements governing actions brought by securities regulators as opposed to private litigants.

(6 Del. C. 1953, § 7303; 59 Del. Laws, c. 208, § 1; 68 Del. Laws, c. 181, § 16; 78 Del. Laws, c. 175, §§ 118, 122; 79 Del. Laws, c. 182, § 4.)

§ 73-202 Registration of and notice filing for securities.

It is unlawful for any person to offer or sell any security in this State unless:

(1) It is registered under this chapter;

(2) The security or transaction is exempted under § 73-207 of this title; or

(3) It is a federal covered security for which a notice filing has been made pursuant to the provisions of § 73-208 of this title.

(6 Del. C. 1953, § 7304; 59 Del. Laws, c. 208, § 1; 71 Del. Laws, c. 162, § 6; 78 Del. Laws, c. 175, §§ 6, 7, 88, 118.)

§ 73-203 Registration of securities by coordination.

(a) Any security for which a registration statement has been filed under the Securities Act of 1933 [15 U.S.C. § 77a et seq.] in connection with the same offering may be registered by coordination.

(b) A registration statement under this section shall contain the following information and be accompanied by the following documents, in addition to the information specified in § 73-205(b) of this title and the consent to service of process required by § 73-702 of this title, and a filing fee as established by the Director under § 73-204(e) of this title:

(1) One copy of the latest form of prospectus filed under the Securities Act of 1933 [15 U.S.C. § 77a et seq.], unless the Director requires additional copies;

(2) If the Director by rule or otherwise requires, a copy of the articles of incorporation and bylaws (or their substantial equivalents) currently in effect, a copy of any agreements with or among underwriters, a copy of any indenture or other instrument governing the issuance of the security to be registered, and a specimen or copy of the security;

(3) If the Director requests, any other information, or copies of other documents, filed under the Securities Act of 1933 [15 U.S.C. § 77a et seq.] or with other states or regulatory agencies;

(4) An undertaking to forward all future amendments to the federal prospectus, other than an amendment which merely delays the effective date of the registration statement, promptly and in any event not later than the first business day after the day they are forwarded to or filed with the Securities and Exchange Commission, whichever first occurs.

(c) A registration statement under this section automatically becomes effective at the moment the federal registration statement becomes effective if all the following conditions are satisfied:

(1) No stop order is in effect and no proceeding is pending under § 73-206 of this title;

(2) The registration statement has been on file with the Director for at least 10 days; and

(3) A statement of the maximum and minimum proposed offering prices and the maximum underwriting discounts and commissions is then on file and the offering is made within those limitations. The registrant shall promptly notify the Director by telephone or

telegram of the date and time when the federal registration statement became effective and the content of the price amendment, if any, and shall promptly file posteffective amendment containing the information and documents in the price amendment. "Price amendment" means the final federal amendment which includes a statement of the offering price, underwriting and selling discounts or commissions, amount of proceeds, conversion rates, call prices and other matters dependent upon the offering price. Upon failure to receive the required notification posteffective amendment with the respect to the price amendment, the Director may enter a stop order, without notice or hearing, retroactively denying effectiveness to the registration statement or suspending its effectiveness until compliance with this paragraph, if the Director promptly notifies the registrant by telephone or telegram (and promptly confirms by letter or telegram when notifying by telephone) of the issuance of the order. If the registrant proves compliance with the requirements of this paragraph as to notice and posteffective amendment, the stop order is void as of the time of its entry.

The Director may by rule or otherwise waive either or both of the conditions specified in paragraphs (c)(2) and (c)(3) of this section. If the federal registration statement becomes effective before all the conditions in this paragraph are satisfied and they are not waived, the registration statement automatically becomes effective as soon as all the conditions are satisfied.

(d) Any security for which the documents required by any regulation adopted by the Securities and Exchange Commission under § 3(b) or (c) of the Securities Act of 1933 [15 U.S.C. § 77c(b) or (c)] have been filed with said Commission in connection with the same offering may be registered by coordination upon compliance with subsections (b) and (c) of this section in such manner as the Director by rule or order may prescribe. For purposes of this subsection, the terms "federal registration statement" and "federal prospectus" shall include the documents (including the offering circular, if any) which may be filed with the Securities and Exchange Commission pursuant to any such regulation.

(6 Del. C. 1953, § 7305; 59 Del. Laws, c. 208, § 1; 67 Del. Laws, c. 274, § 2; 68 Del. Laws, c. 181, § 2; 70 Del. Laws, c. 186, § 1; 78 Del. Laws, c. 175, §§ 8-13, 89, 118; 79 Del. Laws, c. 182, § 3.)

§ 73-204 Registration of securities by qualification.

(a) Any security may be registered by qualification.

(b) A registration statement under this section shall contain the following information and be accompanied by the following documents in addition to the information specified in § 73-205(b) of this title and the consent to service of process required by § 73-702 of this title:

(1) The name of the issuer, its address, and form of organization; the state and date of its organization; the general character and location of its business; a description of its physical properties and equipment; and a statement of the general competitive conditions in the industry or business in which it is or will be engaged;

(2) With respect to every director and officer of the issuer, or person occupying a similar status or performing similar functions: The person's name, address and principal occupation for the past 5 years; the amount of securities of the issuer held by the person as of a specified date within 30 days of the filing; the amount of the securities covered by the filing to which the person has indicated an intention to subscribe; and a description of any material interest in any material transaction with the issuer or any significant subsidiary effected within the past 3 years or proposed to be effected;

(3) With respect to persons covered by paragraph (b)(2) of this section: The remuneration paid during the past 12 months and estimated to be paid during the next 12 months, directly or indirectly, by the issuer (together with all predecessors, parents, subsidiaries and affiliates) to all those persons in the aggregate;

(4) With respect to any person owning of record, or beneficially 10 percent or more of the outstanding shares of any class or equity security of the issuer; the information specified in paragraph (b)(2) of this section other than the person's occupation;

(5) With respect to every promoter if the issuer was organized within the past 3 years; the information specified in paragraph (b)(2) of this section, any amount paid within that period or intended to be paid to him or her, and the consideration for any such payment;

(6) With respect to any person on whose behalf any part of the offering is to be made in a nonissuer distribution or in a distribution in which only part of the securities are being distributed by the issuer: The person's name and address; the amount of securities of the issuer held as of the date of the filing; a description of any material interest in any material transaction with the issuer or any significant subsidiary effected within the past 3 years or proposed to be effected; and a statement of the person's reasons for making the offering;

(7) The capitalization and long-term debt (on both a current and a pro forma basis) of the issuer and any significant subsidiary, including a description of each security outstanding or being registered or otherwise offered, and a statement of the amount and kind of consideration (whether in the form of cash, physical assets, services, patents, goodwill, or anything else) for which the issuer or any subsidiary has issued any of its securities within the past 2 years or is obligated to issue any of its securities;

(8) The kind and amount of securities to be offered; the proposed offering price or the method by which it is to be computed; any variation therefrom at which any proportion of the offering is to be made to any person or class or persons other than the underwriters with a specification of any such person or class; the basis upon which the offering is to be made if otherwise than for cash; the estimated aggregate underwriting and selling discounts or commissions and finders' fees (including separately cash, securities, contracts, or anything else of value to accrue to the underwriters or finders in connection with the offering) or, if the selling discounts or commissions are variable, the basis of determining them and their maximum and minimum amounts; the estimated amounts of other selling expenses, including legal, engineering, and accounting charges; the name and address of every underwriter and every recipient of a finder's fee; a copy of any underwriting or selling-group agreement pursuant to which the distribution is to be made, or the proposed form of any

such agreement whose terms have not yet been determined, and a description of the plan of distribution of any securities which are to be offered otherwise than through an underwriter;

(9) The estimated cash proceeds to be received by the issuer from the offering; the purposes for which the proceeds are to be used by the issuer; the amount to be used for each purpose; the order or priority in which the proceeds will be used for the purposes stated; the amounts of any funds to be raised from other sources to achieve the purposes stating the sources of any such funds; and, if any part of the proceeds is to be used to acquire any property (including goodwill) otherwise than in the ordinary course of business, the names and addresses of the vendors, the purchase price, the names of any persons who have received commissions in connection with the acquisition, and the amounts of any such commissions and any other expense in connection with the acquisition (including the cost of borrowing money to finance the acquisition);

(10) A description of any stock options or other security options outstanding or to be created in connection with the offering, together with the amount of any such options held or to be held by every person required to be named in paragraph (b)(2), (4), (5), (6), or (8) of this section and by any person who holds or will hold 10 percent or more in the aggregate of any such options;

(11) The dates of, parties to, and general effect concisely stated of, every management or other material contract made or to be made otherwise than in the ordinary course of business if it is to be performed in whole or in part at or after the filing of the registration statement or was made within the past 2 years, together with a copy of every such contract; and a description of any pending litigation or proceeding to which the issuer is a party and which materially affects its business or assets (including any such litigation or proceeding known to be contemplated by governmental authorities);

(12) Three copies of the prospectus required by subsection (d) of this section, together with a copy of any other prospectus, pamphlet, circular, form letter, advertisement, or other sales literature intended as of the effective date to be used in connection with the offering;

(13) A specimen or copy of the security being registered; a copy of the issuer's articles of incorporation and bylaws, or their substantial equivalents, as currently in effect; and a copy of any indenture or other instrument covering the security to be registered;

(14) A signed or conformed copy of an opinion of counsel as to the legality of the security being registered (with an English translation if it is in a foreign language), which shall state whether the security when sold will be legally issued, fully paid, and nonassessable, and if a debt security, a binding obligation of the issuer;

(15) The written consent of any accountant, engineer, appraiser, or other person whose profession gives authority to a statement made by him or her, if any such person is named as having prepared or certified the report or evaluation (other than a public and official document or statement) which is used in connection with the registration statement;

(16) A balance sheet of the issuer as of a date within the last quarter prior to the filing of the registration statement; a profit and loss statement and analysis of surplus for each of the 3 fiscal years preceding the date of the balance sheet and for any period between the close of the last fiscal year and the date of the balance sheet, or for the period of the issuer's and predecessor's existence of less than 3 years; and, if any part of the proceeds of the offering is to be applied to the purchase of any business, the same financial statements which would be required of that business for the registrant;

(17) Such additional information as the Director requires by rule, regulation, or order.

(c) A registration statement under this section becomes effective when the Director so orders.

(d) As a condition of registration under this section, a prospectus containing any designated part of the information specified in subsection (b) of this section shall be sent or given to each person to whom an offer is made before or concurrently with:

(1) The first written offer made to the person (otherwise than by means of a public advertisement) by or for the account of the issuer or any other person on whose behalf the offering is being made, or by any other writer or broker-dealer who is offering part of an unsold allotment or subscription taken by the person as a participant in the distribution;

(2) The confirmation of any sale made by or for the account of any such person;

(3) Payment pursuant to any such sale; or

(4) Delivery of the security pursuant to any such sale, whichever first occurs; provided, however, that paragraph (d)(1) of this section may be satisfied by the use of a preliminary prospectus, so designated and bearing such legend as the Director may prescribe, if a final prospectus is sent or given to each recipient of the preliminary prospectus before or concurrently with whichever event in paragraphs (d)(2), (3) and (4) of this section first occurs.

(e) Every person filing a registration statement under this section, or under § 73-203 of this title, shall pay a filing fee as provided by rule or regulation, but in no case shall the fee be less than $200 or more than $1,000. In addition, the Director may require reasonable fees for miscellaneous costs absorbed by the Investor Protection Unit for the printing, copying, filing or transcription of other documents.

(f) The Director may exercise rule making authority under § 73-102(b) of this title to establish special registration procedures for limited offerings. These procedures, including filing requirements and fees, may differ from the qualification procedures set forth above.

(6 Del. C. 1953, § 7306; 59 Del. Laws, c. 208, § 1; 68 Del. Laws, c. 181, §§ 1, 13; 70 Del. Laws, c. 186, § 1; 70 Del. Laws, c. 560, §§ 1, 6; 78 Del. Laws, c. 175, §§ 14-20, 90, 118; 79 Del. Laws, c. 182, §§ 1, 3.)

§ 73-205 Provisions applicable to registration of securities generally.

(a) A registration statement may be filed by the issuer, and the other person on whose behalf the offering is to be made, or a registered broker-dealer.

(b) Every registration statement shall specify the amount of securities to be offered in this State; the states in which a registration statement or similar document in connection with the offering has been or is to be filed; and any adverse order, judgment, or decree entered in connection with the offering by the regulatory authorities in each state or by any court or the Securities and Exchange Commission.

(c) The Director may by rule or otherwise permit the omission of any item of information or document from any registration statement.

(d) Every registration statement is effective for any period during which the security is being offered or distributed in a nonexempted transaction by or for the account of the issuer or other person on whose behalf the offering is being made or by any underwriter or broker-dealer who is still offering part of an unsold allotment or subscription taken by him or her as a participant in the distribution, except during the time a stop order is in effect under § 73-206 of this title. The registration statement may be withdrawn only in the discretion of the Director.

(e) So long as a registration statement is effective, the Director may by rule or order require the person who filed the registration statement to file reports, not more often than quarterly, to keep reasonably current the information contained in the registration statement and to disclose the progress of the offering.

(f) (1) A registration statement relating to a security issued by a face-amount certificate company or a redeemable security issued by an open-end management company or unit investment trust, as those terms are defined in the Investment Company Act of 1940 [15 U.S.C. § 80a-1 et seq.], may be amended after its effective date so as to increase the securities specified as proposed to be offered. Such an amendment becomes effective when the Director so orders. Every person filing such an amendment shall pay a filing fee, in accordance with § 73-204(e) of this title, with respect to the additional securities proposed to be offered.

(2) The Director may require that registrations of securities be renewed annually. Where the Director finds that an additional security from the same issuer has different characteristics from the security first registered, such as being a separate portfolio or series of an investment company or mutual fund, the Director may require separate registration and renewal of the additional security.

(g) The Director may require by rule, regulation or order any issuer of securities registered under this chapter or those offered pursuant to § 73-207 of this title to file periodic reports with the Director, and to provide them to holders of those securities.

(6 Del. C. 1953, § 7307; 59 Del. Laws, c. 208, § 1; 68 Del. Laws, c. 181, § 3; 70 Del. Laws, c. 186, § 1; 78 Del. Laws, c. 175, §§ 21, 22, 91, 92, 118; 79 Del. Laws, c. 182, § 3.)

§ 73-206 Stop orders.

(a) Subject to § 73-208(e) of this title, the Director may issue a stop order prohibiting the offering and sale of a security, or the Director may issue a stop order denying effectiveness to, or suspending or revoking the effectiveness of, any registration statement, if the Director finds that the order is in the public interest and that:

(1) The registration statement as of its effective date or as of any earlier date in the case of an order denying effectiveness, or any amendment or renewal under § 73-205(f) of this title as of its effective date, or any report under § 73-205(e) of this title is incomplete in any material respect or contains any statement which was, in the light of the circumstances under which it was made, false or misleading with respect to any material fact;

(2) Any provision of this chapter or any rule, order, or condition lawfully imposed under this chapter has been violated, in connection with the offering, by:

a. The person filing the registration statement;

b. The issuer, any partner, officer, or director of the issuer, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling or controlled by the issuer, but only if the person filing the registration statement is directly or indirectly controlled by or acting for the issuer; or

c. Any underwriter;

(3) The security registered or sought to be registered is the subject of an administrative stop order or similar order or permit or temporary injunction of any court of competent jurisdiction entered under any federal or state act applicable to the offering; but the Director may not institute the proceeding against an effective registration statement under this subsection more than one year from the date of the order or injunction relied on, and may not enter an order under this subsection on the basis of an order or injunction entered under any other state act unless that order or injunction is based on facts which would currently constitute a ground for stop order under this section;

(4) The issuer's enterprise or method of business includes or would include activities which are illegal where performed;

(5) The offering has worked or tended to work a fraud upon purchasers or would so operate;

(6) The offering has been or would be made with unreasonable amounts of underwriters' and sellers' discounts, commissions, or other compensation, or promoters' profits or participation, or unreasonable amounts or kinds of options;

(7) The applicant or registrant has failed to pay the proper filing fee; but the Director shall vacate any such order when the deficiency has been corrected; or

(8) When a security is sought to be registered by coordination, there has been a failure to comply with the undertaking required by § 73-203(b)(4) of this title.

(b) The Director may not institute a stop-order proceeding against an effective registration statement on the basis of a fact or transaction known to the Director when the registration statement became effective, unless the proceeding is instituted within the next 90 days.

(c) The Director may by order summarily postpone or suspend the effectiveness of the registration statement pending final determination of any proceeding under this section. Upon the entry of the order, the Director shall promptly notify each person specified in subsection (d) of this section that it has been entered and of the reasons therefor and that within 15 days after the receipt of a written request the matter will be set down for hearing. If no hearing is requested and none is ordered by the Director, the order will remain in effect until it is modified or vacated by the Director. If a hearing is requested or ordered, the Director, after notice of and opportunity for hearing to each person specified in subsection (d) of this section, may modify or vacate the order or extend it until final determination.

(d) No stop order may be entered under any part of this section, except the first sentence of subsection (c) of this section, without appropriate prior notice to the applicant making the filing, the issuer, and the person on whose behalf the securities are to be or have been offered, opportunity for hearing, and written findings of fact and conclusions of law.

(e) The Director may vacate or modify a stop order upon finding that the conditions which prompted entry have changed or that it is otherwise in the public interest to do so.

(6 Del. C. 1953, § 7308; 59 Del. Laws, c. 208, § 1; 68 Del. Laws, c. 181, § 13; 70 Del. Laws, c. 186, § 1; 70 Del. Laws, c. 560, § 2; 71 Del. Laws, c. 162, § 7; 78 Del. Laws, c. 175, §§ 23-27, 92, 118; 79 Del. Laws, c. 182, § 3.)

§ 73-207 Exemptions.

(a) The following securities are exempted from §§ 73-202, 73-208 and 73-211 of this title:

(1) Any security (including a revenue obligation) issued or guaranteed by the United States, any state, any political subdivision of a state, or any agency or corporation or other instrumentality of one or more of the foregoing, or any certificate of deposit for any of the foregoing;

(2) Any security issued or guaranteed by Canada, any Canadian province, any political subdivision of any such province, any agency or corporate or other instrumentality of 1 or more of the foregoing, or any other foreign government with which the United States currently maintains diplomatic relations, if the security is recognized as a valid obligation by the issuer or guarantor;

(3) Any security issued by and representing an interest in or a debt of, or guaranteed by, any bank organized under the laws of the United States, or any bank, savings institution, or trust company organized and supervised under the laws of any state;

(4) Any security issued by and representing an interest in or a debt of, or guaranteed by, any federal savings and loan association, or any building and loan association organized and supervised under the laws of any state and authorized to do business in this State;

(5) Any security issued by and representing an interest in or a debt of, or guaranteed by, any insurance company organized under the laws of any state and authorized to do business in this State;

(6) Any security issued or guaranteed by any federal credit union or any credit union, industrial loan association, or similar association organized and supervised under the laws of this State;

(7) Any security issued or guaranteed by any railroad, other common carrier, public utility, or holding company which is subject to the jurisdiction of the United States Department of Transportation; a registered holding company under the Public Utility Holding Company Act of 2005 [42 U.S.C. § 16451 et seq.] or a subsidiary of such a company within the meaning of that Act; regulated in respect of its rates and charges by a governmental authority of the United States or any state; or regulated in respect of the issuance or guarantee of the security by a governmental authority of the United States, any state, Canada, or any Canadian province;

(8) Any security listed or approved for listing upon notice of issuance on the New York Stock Exchange, the NYSE Amex Equities, the Pacific Exchange, Inc., the Chicago Stock Exchange, or the NASDAQ OMX PHLX or any other exchange which the Director deems to have substantially the same standards for listing as required by the above mentioned exchanges; any other security of the same issuer which is of senior or substantially equal rank; any security called for by subscription rights or warrants so listed or approved; or any warrant or right to purchase or subscribe to any of the foregoing;

(9) Any security issued by any person organized and operated not for private profit but exclusively for religious, educational, benevolent, charitable, fraternal, social, athletic, or reformatory purposes, or as a chamber of commerce, local industrial development corporation, or trade or professional association;

(10) Any commercial paper which arises out of a current transaction or the proceeds of which have been or are to be used for current transactions, and which evidences an obligation to pay cash within 9 months of the date of issuance, exclusive of days of grace, or any renewal of such paper which is likewise limited, or any guarantee of such paper or of any such renewal;

(11) Any investment contract issued after the effective date of this act in connection with an employee's stock purchase, savings, pension, profit-sharing or similar benefit plan;

(12) Any security issued by a bona fide agricultural cooperative operating in this State that is organized under Chapter 85 of Title 3 or as a foreign cooperative association organized under the law of another state that has been duly qualified to transact business in this State;

(13) Any security traded pursuant to the National Association of Securities Dealers Automated Quotations System for which the Director by rule has determined that registration is not necessary for the protection of investors.

(b) The following transactions are exempted from §§ 73-202, 73-208 and 73-211 of this title:

(1) Any isolated nonissuer transaction, whether effected through a broker-dealer or not;

(2) Any nonissuer transaction by a registered agent of a registered broker-dealer, and any resale transaction by a sponsor of a unit investment trust registered under the Investment Company Act of 1940 [15 U.S.C. § 80a-1 et seq.], in a security of a class that has been outstanding in the hands of the public for at least 90 days, provided, at the time of the transaction:

a. The issuer of the security is actually engaged in business and not in the organization stage or in bankruptcy or receivership and is not a blank check, blind pool or shell company whose primary plan of business is to engage in a merger or combination of the business with, or an acquisition of, an unidentified person or persons;

b. The security is sold at a price reasonably related to the current market price of the security;

c. The security does not constitute the whole or part of an unsold allotment to, or a subscription or participation by, the broker-dealer as an underwriter of the security;

d. A nationally recognized securities manual designated by rule or order of the Director or a document filed with the Securities and Exchange Commission that is publicly available through the SEC's Electronic Data Gathering and Retrieval System (EDGAR) and contains:

1. A description of the business and operations of the issuer;

2. The names of the issuer's officers and directors, if any, or, in the case of an issuer not domiciled in the United States, the corporate equivalents of such persons in the issuer's country of domicile;

3. An audited balance sheet of the issuer as of a date within 18 months or, in the case of a reorganization or merger where parties to the reorganization or merger had such audited balance sheet, a pro forma balance sheet; and

4. An audited income statement for each of the issuer's immediately preceding 2 fiscal years, or for the period of existence of the issuer, if in existence for less than 2 years or, in the case of a reorganization or merger where the parties to the reorganization or merger had such audited income statement, a pro forma income statement; and

e. The issuer of the security has a class of equity securities listed on a national securities exchange registered under the Securities Exchange Act of 1934 [15 U.S.C. § 78a et seq.], or designated for trading on the National Association of Securities Dealers Automated Quotation System (NASDAQ), unless:

1. The issuer of the security is a unit investment trust registered under the Investment Company Act of 1940 [15 U.S.C. § 80a-1 et seq.];

2. The issuer of the security has been engaged in continuous business (including predecessors) for at least 3 years; or

3. The issuer of the security has total assets of at least $2,000,000 based on an audited balance sheet as of a date within 18 months or, in the case of a reorganization or merger where parties to the reorganization or merger had such audited balance sheet, a pro forma balance sheet.

(3) Any nonissuer transaction effected by or through a registered broker-dealer pursuant to an unsolicited order or offer to buy; but the Director may by rule require that the customer acknowledge upon a specified form that the sale was unsolicited, and that a signed copy of each such form be preserved by the broker-dealer for a specified period;

(4) Any transaction between the issuer or other person on whose behalf the offering is made and an underwriter, or among underwriters;

(5) Any transaction in a bond or other evidence of indebtedness secured by a real or chattel mortgage or deed of trust, or by an agreement for the sale of real estate or chattels, if the entire mortgage, deed of trust or agreement, together with all the bonds or other evidences of indebtedness secured thereby, is offered and sold as a unit;

(6) Any transaction by an executor, administrator, sheriff, marshal, receiver, trustee in bankruptcy, guardian, or conservator;

(7) Any transaction executed by a bona fide pledgee without any purpose of evading this chapter;

(8) Any offer or sale to a bank, savings institution, trust company, insurance company, investment company as defined in the Investment Company Act of 1940 [15 U.S.C. § 80a-1 et seq.], pension or profit-sharing trust, or other financial institution or institutional buyer, or to a broker-dealer, whether the purchaser is acting for itself or in some fiduciary capacity;

(9) Any transaction pursuant to an offer directed by the offerer to not more than 25 persons (other than those designated in paragraph (b)(8) of this section) in this State during any period of 12 consecutive months, whether or not the offerer or any of the offerees is then present in this State, if the seller reasonably believes that all the buyers in this State, other than those designated in paragraph (b)(8) of this section, are purchasing for investment; but the Director may by rule or order, as to any security or transaction or any type of security or transaction, withdraw or further condition this exemption, or increase or decrease the number of offerees permitted, or waive the condition relating to investment intent; provided, however, the Director may by rule or order exempt transactions that are exempt under federal securities laws or regulations;

(10) Any offer or sale of a preorganization certificate or subscription if no commission or other remuneration is paid or given directly or indirectly for soliciting any prospective subscriber, the number of subscribers does not exceed 10, and no payment is made by any subscriber;

(11) Any transaction pursuant to an offer to existing security holders of the issuer, including persons who at the time of the transaction are holders of the convertible securities, nontransferable warrants, or transferable warrants exercisable within not more than 90 days

of their issuance, if no commission or other remuneration (other than a standby commission) is paid or given directly or indirectly for soliciting any security holder in this State, or the issuer first files a notice specifying the terms of the offer and the Director does not by order disallow the exemption within the next 5 full business days;

(12) Any offer (but not a sale) of a security for which a registration statement has been filed under this chapter if no stop order or refusal order is in effect and no public proceeding or examination looking toward such an order is pending, and if the offerer complies with § 73-204(d) of this title;

(13) Any offer or sale of a security by or through a registered broker-dealer if such offer or sale is not directly or indirectly for the benefit of the issuer or a person who is known or should reasonably be known to such broker-dealer to be the record or beneficial owner of 10 percent or more of the outstanding voting securities of the issuer; the security is not part of an unsold allotment or subscription taken by a participant in a distribution directly or indirectly for the benefit of the issuer or a person who is known or should reasonably be known by such broker-dealer to be the record or beneficial owner of 10 percent or more of the outstanding voting securities of the issuer; and no administrative stop order or similar order or permanent or temporary injunction of any court of competent jurisdiction is in effect under this subtitle or under any federal or state act against the offering or sale of the security or any security of the same class.

(14) Any offer or sale of a viatical settlement investment, if:

a. Such disclosure documents as the Director, by rule or order, requires are delivered to each offeree or purchaser; and

b. The Director is notified in writing of the offer at least 30 days before the offer is made.

(15) Any offer or sale of securities conducted solely in this State to residents of this State in which each of the following conditions is met:

a. The issuer of the security shall be a for-profit entity organized under the laws of the State of Delaware and registered with the Secretary of State with its principal place of business in the State of Delaware.

b. The transaction shall meet the requirements of the federal exemption for intrastate offerings in § 3(a)(11) of the Securities Act of 1933, 15 U.S.C. § 77c(a)(11), and SEC Rule 147, 17 C.F.R. § 230.147. Among other things, these laws and regulations require that such securities must be offered to and sold only to persons who are residents of the State of Delaware at the time of purchase. Prior to any offer or sale pursuant to this exemption, the seller shall obtain documentary evidence from each prospective purchaser that provides the seller with a reasonable basis to believe that such investor is a resident of the State of Delaware.

c. The sum of all cash and other consideration to be received for all sales of the security in reliance upon this exemption shall not exceed $1,000,000, less the aggregate amount received for all sales of securities by the issuer pursuant to this exemption within the 12 months before the first offer or sale made in reliance upon this exemption.

d. The issuer shall not accept more than $5,000 from any single purchaser unless the purchaser is an accredited investor as defined by SEC Rule 501, 17 C.F.R. § 230.501.

e. The issuer must reasonably believe that all purchasers of securities are purchasing for investment and not for sale in connection with a distribution of the security.

f. A commission or other form of remuneration shall not be paid or given, directly or indirectly, for any person's participation in the offer or sale of securities for the issuer unless the person is registered as a broker-dealer or agent under this chapter.

g. All funds received from investors shall be deposited into a bank or depository institution authorized to do business in the State of Delaware, and all the funds shall be used in accordance with representations made to investors.

h. Not less than 10 days prior to the commencement of an offering pursuant to this exemption the issuer shall provide the Investor Protection Unit of the Delaware Department of Justice a notice in a form required by the Director by rule or order. The notice shall specify that the issuer is conducting an offering in reliance upon this exemption and shall contain, among any other requirements set forth by the Director, a copy of the disclosure document to be provided to prospective investors pursuant to paragraph (b)(15)j. of this section and the names and addresses of all of the following persons:

1. The issuer.

2. Officers, directors and any control person of the issuer.

3. All persons who will be involved in the offer or sale of securities on behalf of the issuer.

4. The bank or other depository institution in which investor funds will be deposited.

i. The issuer shall not be, either before or as a result of the offering:

1. An investment company as defined in § 3 of the Investment Company Act of 1940, 15 U.S.C. § 80a-3, or subject to the reporting requirements of §§ 13 or 15(d) of the Securities Exchange Act of 1934, 15 U.S.C. §§ 78m and 78o(d); or

2. An investment advisor as defined at § 73-103 of this title, nor a person who otherwise provides investment advice as a service or as a fee.

j. The issuer shall provide the following information to each prospective investor at the time the offer of securities is made:

1. A disclosure document that, at a minimum, contains the following information:

A. Evidence that the issuer is a business organization organized under the laws of this State and is authorized to do business in this State;

B. A description of the company, its form and date of business organization, the address and telephone number of its principal office, its history, its business plan, a description of material agreements and the intended use of the offering proceeds, at least 65 percent of which shall be specifically disclosed in dollar amount and percentage terms in a use of proceeds section and which shall also include any amounts to be paid, as compensation or otherwise, to any owner, executive officer, director, managing member, or other person occupying a similar status or performing similar functions on behalf of the issuer;

C. The identity of all persons owning more than 10 percent of the ownership interests of any class of securities of the company, with a description of options or other contingent securities outstanding and a description of the amount of those options or other contingent securities that those persons own;

D. The identity of the executive officers, directors, managing members, and other persons occupying a similar status or performing similar functions in the name of and on behalf of the issuer, including their titles and their prior experience, with a description of options or other contingent securities outstanding and a description of the amount of those options or other contingent securities that those persons own;

E. The terms and conditions of the securities being offered and of any outstanding securities of the company, the minimum and maximum amount of securities being offered, if any, and the percentage ownership of the company represented by the offered securities and the valuation of the company implied by the price of the offered securities;

F. The minimum offering amount that is necessary to implement the business plan, and a notice that the funds will only be released to the issuer if the minimum offering amount is reached;

G. The time and date, which may be no more than 12 months from the date of the offering, by which the minimum offering amount must be reached before the funds will be returned to investors;

H. A description of any litigation or legal proceedings involving the company or its management;

I. A discussion of significant factors that make the offering speculative or risky;

J. A description of any conflicts of interest;

K. Financial statements, including a balance sheet, income statement, cash flow statement, and capitalization of issuer;

L. Any additional information material to the offering.

2. A notice informing all purchasers that the securities have not been registered under this chapter and, therefore, cannot be resold unless the purchaser registers the securities or they qualify for an exemption from registration under this section at the time of the subsequent sale by the purchaser. In addition, the notice shall make the disclosures required by SEC Rule 147(f), 17 C.F.R. § 230.147(f).

3. The issuer shall be responsible for timely updating this disclosure document in the event that there is a material change to any of the information required by paragraph (b)(15)j.1. of this section before the offering closes. The issuer shall distribute any such update to investors in the offering and provide an opportunity for those investors to review the updated disclosure and consent to maintaining their investment or request a refund of their investment. The issuer shall provide the Investor Protection Unit with a copy of all updated disclosure documents at or before the time they are distributed to investors.

k. An offer or sale pursuant to this exemption may be made through 1 or more internet sites subject to the following requirements:

1. Each internet site operator shall register with the Investor Protection Unit by filing an application for registration in a form required by the Director by rule or order. In addition to any other information required by the Director, such registration shall include the following:

A. That the internet site operator is a business entity organized under the laws of this State and authorized to do business in this State;

B. That the internet site is being utilized to offer and sell securities pursuant to this exemption; and

C. The identity and location of, and contact information for, the internet site operator;

2. Each internet site operator will be required to register with the Investor Protection Unit as a broker dealer unless:

A. The internet site operator is registered as a broker-dealer under the Securities Exchange Act of 1934 [15 U.S.C. § 78a et seq.];

B. Is a funding portal registered under the Securities Act of 1933 [15 U.S.C. § 77a et seq.]and provides copies of all documents submitted to the SEC in connection with such registration to the Director; or

C. All of the following apply:

I. It does not offer investment advice or recommendations;

II. It does not solicit purchases, sales, or offers to buy the securities offered or displayed on the internet site;

III. It does not compensate employees, agents, or other persons for the solicitation or based on the sale of securities displayed or referenced on the internet site;

IV. It is not compensated based on the amount of securities sold, and it does not hold, manage, possess, or otherwise handle investor funds or securities;

V. The fee it charges an issuer for an offering of securities on the internet site is a fixed amount for each offering, a variable amount based on the length of time that the securities are offered on the internet site, or a combination of such fixed and variable amounts;

VI. It does not identify, promote, or otherwise refer to any individual security offered on the internet site in any advertising for the internet site; and

VII. It does not engage in other activities the Director determines to be prohibited.

3. The issuer and the internet site operator shall maintain records of all offers and sales of securities effected through the internet site and shall provide ready access to the records to representatives of the Director, upon request. Representatives of the Director may access, inspect, and review any internet site registered under this section as well as its records.

l. This exemption shall not be used in conjunction with any other exemption under this chapter except the exemption to institutional investors at paragraph (b)(8) of this section and for offers and sales to controlling persons of the issuer. Sales to controlling persons shall not count toward the limitation in paragraph (b)(15)c. of this section.

m. This exemption shall not be available if the issuer, or any director, executive officer, general partner, managing member, or other person with management authority over the issuer, or any internet site operator, or any director, executive officer, general partner, managing member, or other person with management authority over the internet site operator, has been subject to any conviction, order, judgment, decree, or other action specified in SEC Rule 506(d)(1) adopted under the Securities Act of 1933 (17 C.F.R. § 230.506(d)(1)) that would disqualify an issuer under SEC Rule 506(d) adopted under the Securities Act of 1933 (17 C.F.R. § 230.506(d)) from claiming an exemption specified in SEC Rule 506(a) to (c) adopted under the Securities Act of 1933 (17 C.F.R. § 230.506(a) to (c)).

n. Nothing in this exemption shall be construed to alleviate any person from the anti-fraud provisions at § 73-201 of this title, nor shall such exemption be construed to provide relief from any other provisions of this chapter other than as expressly stated.

o. Every notice of exemption provided for in paragraph (b)(15)h. of this section shall be accompanied by a nonrefundable filing fee as required by rule or order of the Director.

(c) The Director may by rule or order deny or revoke any exemption in paragraph (a)(9) or (a)(11) or in subsection (b) of this section, either generally or with respect to a specific security or transaction. No such order may be entered without appropriate prior notice to all interested parties, opportunity for hearing, and written findings of fact and conclusions of law, except that the Director may by order summarily deny or revoke any of the specified exemptions pending final determination of any proceeding under this subsection. Upon the entry of a summary order the Director shall promptly notify all interested parties that it has been entered and of the reasons therefor and that within 15 days of the receipt of a written request the matter will be set down for a hearing. If no hearing is requested and none is ordered by the Director, the order will remain in effect until it is modified or vacated by the Director. If a hearing is requested or ordered, the Director, after notice of and opportunity for hearing to all interested persons, may modify or vacate the order or extend it until final determination. No order under this subsection may operate retroactively. No person may be considered to have violated § 73-202 or § 73-211 of this title by reason of any offer or sale effected after the entry of an order under this subsection if that person sustains the burden of proof that he or she did not know, and in the exercise of reasonable care could not have known, of the order.

(d) In any proceeding under this chapter, the burden of proving an exemption or an exception from a definition is upon the person claiming it.

(6 Del. C. 1953, § 7309; 59 Del. Laws, c. 208, § 1; 63 Del. Laws, c. 160, §§ 1, 2; 64 Del. Laws, c. 112, § 1; 68 Del. Laws, c. 181, §§ 12, 13; 70 Del. Laws, c. 186, § 1; 70 Del. Laws, c. 560, § 1; 71 Del. Laws, c. 162, §§ 8-10; 78 Del. Laws, c. 175, §§ 28-39, 93, 118; 79 Del. Laws, c. 182, §§ 3, 10, 11; 80 Del. Laws, c. 301, § 1.)

§ 73-208 Federal covered securities.

(a) The Director, by rule or order, may require the filing of any or all of the following documents with respect to a covered security under § 18(b)(2) of the Securities Act of 1933 [15 U.S.C. § 77r(b)(2)]:

(1) Prior to the initial offer of such federal covered security in this State, all documents that are part of a federal registration statement filed with the Securities and Exchange Commission under the Securities Act of 1933 [15 U.S.C. § 77a et seq.] (or, in lieu of filing such registration statement, a notice as prescribed by the Director by rule or order), together with a consent to service of process signed by the issuer and with a filing fee as provided by rule or regulation, but in no case shall the fee be less than $200 or more than $1,000. In addition, the Director may require reasonable fees for miscellaneous costs absorbed by the Investor Protection Unit for printing, copying, filing or transcription of other documents;

(2) After the initial offer of such federal covered security in this state, all documents that are part of an amendment to a federal registration statement filed with the Securities and Exchange Commission under the Securities Act of 1933 [15 U.S.C. § 77a et seq.], which shall be filed concurrently with the Director; and

(3) A report of the value of such covered securities offered or sold in this State, together with a filing fee as provided by rule or regulation, but in no case shall the fee be less than $200 or more than $1,000; provided, however, that if the filing fee paid is equal to $1,000, no report of the value of such covered securities offered or sold in this State need be filed.

(b) With respect to any security that is a covered security under § 18(b)(4)(E) (or as the same may be renumbered by a future act of the United States Congress) of the Securities Act of 1933 (15 U.S.C. § 77r(b)(4)(E)) (or as the same may be renumbered by a future act of the United States Congress), the Director, by rule or order, may require the issuer to file a notice on SEC Form D and a consent to service of process signed by the issuer no later than 15 days after the first sale of such covered security in this State, together with a filing fee as provided by rule or regulation, but in no case shall the fee be less than $200 or more than $1,000.

(c) The Director, by rule or otherwise, may require the filing of any document filed with the Securities and Exchange Commission under the Securities Act of 1933 [15 U.S.C. § 77a et seq.], with respect to a covered security under § 18(b)(3) or (4) of the Securities Act of 1933 [15 U.S.C. § 77r(b)(3) or (4)], together with a filing fee as provided by rule or regulation, but in no case shall the fee be less than $ 200 or more than $ 1,000.

(d) The Director may require that filings made and fees paid pursuant to subsections (a), (b) and (c) of this section be renewed annually. Where the Director finds that an additional security from the same issuer has different characteristics from the security as to which the first filing was made, such as being a separate portfolio or series of an investment company or mutual fund, the Director may require separate filing, fee payment and renewal for the additional security.

(e) The Director may issue a stop order suspending the offer and sale of a covered security, except a covered security under § 18(b)(1) of the Securities Act of 1933 [15 U.S.C. § 77r(b)(1)], if it finds that:

(1) The order is in the public interest; and

(2) There is a failure to comply with any condition established under this section.

(f) The Director, by rule or order, may waive any and all provisions of this section.

(g) Notwithstanding the provisions of this section, until October 10, 1999, the Director may require the registration of any federal covered security for which the fees required by this section have not been paid promptly following written notification from the Director regarding any nonpayment or underpayment of such fees. An issuer shall be considered to have promptly paid such fees if they are remitted to the Director within 15 days following such person's receipt of written notification from the Director.

(71 Del. Laws, c. 162, § 11; 78 Del. Laws, c. 175, §§ 94, 118; 79 Del. Laws, c. 182, §§ 1, 3, 6.)

§ 73-209 Misleading filings.

It is unlawful for any person to make or cause to be made, in any document filed with the Director or in any proceeding under this chapter, any statement which is, at the time and in the light of the circumstances under which it is made, false or misleading in any material respect.

(6 Del. C. 1953, § 7310; 59 Del. Laws, c. 208, § 1; 78 Del. Laws, c. 175, §§ 95, 118; 79 Del. Laws, c. 182, § 3.)

§ 73-210 Unlawful representations concerning registration, notice filing or exemption.

(a) Neither the fact that a notice filing under this chapter, an application for registration under this chapter, or a registration statement under this chapter has been filed, nor the fact that a person or security is effectively registered, constitutes a finding by the Director that any document filed under this chapter is true, complete and not misleading. Neither any such fact nor the fact that an exemption or exception is available for a security or a transaction means that the Director has passed in any way upon the merits or qualifications of, or recommended or given approval to, any person, security, or transaction.

(b) It is unlawful to make, or cause to be made, to any prospective purchaser, customer, or client any representation inconsistent with subsection (a) of this section.

(6 Del. C. 1953, § 7311; 59 Del. Laws, c. 208, § 1; 71 Del. Laws, c. 162, §§ 12, 13; 78 Del. Laws, c. 175, §§ 96, 118; 79 Del. Laws, c. 182, § 3.)

§ 73-211 Filing of sales and advertising literature.

The Director may by rule or order require the filing of any prospectus, pamphlet, circular, form letter, advertisement or other sales literature or advertising communication addressed or intended for distribution to prospective investors, including clients or prospective clients of an investment adviser unless the security or transaction is exempted by § 73-207 of this title or is a federal covered security.

(6 Del. C. 1953, § 7312; 59 Del. Laws, c. 208, § 1; 71 Del. Laws, c. 162, § 14; 78 Del. Laws, c. 175, §§ 40, 97, 118; 79 Del. Laws, c. 182, § 3.)

Subchapter III

Provisions Relating to Broker-Dealers, Broker-Dealer Agents, Issuer Agents, Investment Advisers, Federal Covered Advisers, and Investment Adviser Representatives

§ 73-301 Unlawful conduct for broker-dealers, agents, investment advisers, federal covered advisers and investment adviser representatives.

(a) It is unlawful for any person to transact business in this State as a broker-dealer or agent unless the person is registered under this chapter.

(b) It is unlawful for any broker-dealer or issuer to employ an agent unless the agent is registered.

(c) It is unlawful for any person to transact business in this State as an investment adviser or as an investment adviser representative unless:

(1) The person is registered under this chapter; or

(2) The person has no place of business in this State; and

a. The person's only clients in this State are investment companies as defined in the Investment Company Act of 1940 [15 U.S.C. § 80a-1 et seq.], other investment advisers, federal covered advisers, broker-dealers, banks, trust companies, savings and loan associations, insurance companies, employee benefit plans with assets of not less than $1,000,000, and governmental agencies or instrumentalities, whether acting for themselves or as trustees with investment control, or other institutional investors as are designated by rule or order of the Director; or

b. During the preceding 12-month period has had not more than 5 clients, other than those specified in paragraph (c)(2)a. of this section, who are residents of this State.

(d) It is unlawful for any person required to be registered as an investment adviser under this chapter to employ an investment adviser representative unless the investment adviser representative is registered under this chapter.

(e) It is unlawful for any federal covered adviser to employ, supervise or associate with an investment adviser representative having a place of business located in this State unless such investment adviser representative is registered under this chapter or is exempt from registration.

(f) Except with respect to advisers whose only clients are those described in paragraph (c)(2) of this section, it is unlawful for any federal covered adviser to conduct advisory business in this State unless such person complies with the provisions of § 73-302(g) through (k) of this title. Notwithstanding the provisions of this subsection, until October 10, 1999, the Director may require the registration of any federal covered adviser for which fees required by § 73-302 have not been paid promptly following written notification from the Director regarding the nonpayment or underpayment of any such fee. A federal covered adviser shall be considered to have promptly paid such fees if they are remitted to the Director within 15 days following such person's receipt of written notification from the Director.

(6 Del. C. 1953, § 7313; 59 Del. Laws, c. 208, § 1; 63 Del. Laws, c. 161, § 1; 68 Del. Laws, c. 181, § 14; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 162, § 15; 78 Del. Laws, c. 175, §§ 41-48, 98, 118; 79 Del. Laws, c. 182, § 3.)

§ 73-302 Registration and notice filing procedure for broker-dealers, agents, investment advisers, federal covered advisers and investment adviser representatives.

(a) A broker-dealer, agent, investment adviser or investment adviser representative may obtain an initial registration by filing with the Director or the Director's designee an application together with a consent to service of process pursuant to § 73-702 of this title. The application shall contain whatever information the Director by rule requires concerning such matters as:

(1) The applicant's form and place of organization;

(2) The applicant's proposed method of doing business;

(3) The qualifications and business history of the applicant; in the case of the broker-dealer or investment adviser, the qualifications and business history of any partner, officer or director, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling the broker-dealer or investment adviser;

(4) Any injunction or administrative order or conviction of a misdemeanor involving a security or any aspect of the securities business and any conviction of a felony;

(5) Subject to the limitations of § 15 of the Securities Exchange Act of 1934 [15 U.S.C. § 78*o*] and § 222 of the Investment Advisers Act of 1940 [15 U.S.C. § 80b-18a], the applicant's financial condition and history; and

(6) any information to be furnished or disseminated to any client or prospective client, if the applicant is an investment adviser.

The Director may by rule or order require an applicant for initial registration to publish an announcement of the application in 1 or more specified newspapers published in this State. If no denial order is in effect and no proceeding is pending under § 73-304 of this title, registration becomes effective at noon of the thirtieth day after a complete application is filed. The Director may by rule or order specify an earlier effective date, and may by order defer the effective date until noon of the thirtieth day after the filing of any amendment.

(b) When an agent begins or terminates a connection with a broker-dealer or issuer, or begins or terminates those activities which make said person an agent, the agent as well as the broker-dealer or issuer shall promptly notify the Director. Every registration of an agent expires when the agent terminates the agent's connection with a broker-dealer or issuer, though the person may still be subject to disciplinary action by the Director under § 73-304(e) of this title. When such an agent begins a connection with another broker-dealer or another issuer, the agent shall file an application for initial registration as provided in subsection (a) of this section and shall pay a filing fee prescribed by subsection (l) of this section. Unless the Director takes action under § 73-303 or § 73-304 of this title, the agent's registration shall become effective 30 days after receipt of a complete application by the Director (or by the Director's designee) and shall continue in effect until it expires under the provisions of subsection (e) of this section, or under the provisions of this subsection, whichever would earlier occur. The Director shall be empowered to waive the 30-day period at the Director's discretion.

(c) When an investment adviser representative begins or terminates employment with an investment adviser, the investment adviser representative as well as the investment adviser shall promptly notify the Director. Every registration of an investment adviser

representative expires when the investment adviser representative terminates the investment adviser's connection with an investment adviser, though the person may still be subject to disciplinary action by the Director under § 73-304(e) of this title. When such an investment adviser representative begins a connection with another investment adviser or federal covered adviser, the representative shall, unless exempt from registration, file an application for initial registration as provided in subsection (a) of this section and shall pay a filing fee prescribed by subsection (l) of this section. Unless the Director takes action under § 73-303 or § 73-304 of this title, the said investment adviser representative registration shall become effective 30 days after receipt of a complete application by the Director (or by the Director's designee) and shall continue in effect until it expires under the provisions of subsection (e) of this section, or under the provisions of this subsection, whichever would earlier occur. The Director shall be empowered to waive the 30-day period at the Director's discretion.

(d) When an investment adviser representative for a federal covered adviser begins or terminates employment with the federal covered adviser, the investment adviser representative shall promptly notify the Director. Every registration of such an investment adviser representative expires when the investment adviser representative terminates his or her connection with the federal covered adviser, though the person may still be subject to disciplinary action by the Director under § 73-304(e) of this title. When such an investment adviser representative begins a connection with another federal covered adviser or investment adviser, the representative shall, unless exempt from registration, file an application for initial registration as provided in subsection (a) of this section and shall pay a filing fee prescribed by subsection (l) of this section. Unless the Director takes action under § 73-303 or § 73-304 of this title, the said investment adviser representative registration shall become effective 30 days after the receipt of a complete application by the Director (or by the Director's designee) and shall continue in effect until it expires under the provisions of subsection (e) of this section, or under the provisions of this subsection, whichever would earlier occur. The Director shall be empowered to waive the 30-day period at the Director's discretion.

(e) Every registration or notice filing under this section expires December 31 unless renewed.

(f) A broker-dealer or investment adviser may obtain a renewal registration by filing with the Director an application containing whatever information the Director by rule requires to keep current the information contained in the application for initial registration. A broker-dealer, investment adviser or issuer may obtain a renewal registration for the agents or investment adviser representatives associated with it by filing with the Director an application containing the names of the agents or investment adviser representatives associated with it and a certification that, to the best knowledge, information and belief of such broker-dealer, investment adviser or issuer, there has been no change in the information contained in such agent's or investment adviser representative's application for registration then currently in effect, or if there has been any change, specifying the same. Every application for renewal registration shall become effective on the date it is received by the Director or upon the expiration of the previous registration, whichever date is later.

(g) Except with respect to federal covered advisers whose only clients are those described in § 73-301(c)(2) of this title, a federal covered adviser shall file with the Director, prior to acting as a federal covered adviser in this State, such documents as have been filed with the Securities and Exchange Commission as the Director, by rule or order, may require.

(h) A notice filing under this section expires on December 31 (unless renewed) and may be renewed by filing prior to its expiration such documents as have been filed with the Securities and Exchange Commission as required by the Director, along with a renewal fee.

(i) A federal covered adviser may terminate a notice filing by providing the Director notice of such termination, which shall be effective upon receipt by the Director.

(j) The Director, by rule or order, may waive any or all of the provisions of this section.

(k) The Director may suspend the investment advisory activities in this State of any federal covered adviser that fails to comply with the requirements of this section.

(l) *Fees.* — (1) *Broker-dealers and agents.* — Every applicant for initial or renewal registration as a broker-dealer shall pay a filing fee of $300 and every applicant for initial, transfer or renewal registration as an agent shall pay a registration fee of $65.

(2) *Investment advisers and investment adviser representatives.* — Every applicant for initial or renewal registration as an investment adviser who is subject to registration under this chapter shall pay a filing fee of $300, and every applicant for initial, transfer or renewal registration as an investment adviser representative who is subject to registration under this chapter shall pay a registration fee of $65.

(3) *Federal covered advisers.* — Every person acting as a federal covered adviser in this State shall pay an initial and renewal notice filing fee of $300.

(m) A registered broker-dealer or investment adviser may file an application for registration of a successor, whether or not the successor is then in existence, for the unexpired portion of the year. There shall be no filing fee.

(n) The Director may, by rule or order, require a minimum capital for registered broker-dealers, subject to the limitations of § 15 of the Securities Exchange Act of 1934 [15 U.S.C. § 78*o*], and establish minimum financial requirements for investment advisers, subject to the limitations of § 222 of the Investment Advisers Act of 1940 [15 U.S.C. § 80b-18a], which may include different requirements for those investment advisers who maintain custody of clients' funds or securities or who have discretionary authority over same and those investment advisers who do not.

(o) The Director may, by rule or order, require registered broker-dealers, agents and investment advisers who have custody of or discretionary authority over client funds or securities, to post bonds in amounts as the Director may prescribe, subject to the limitations of § 15 of the Securities Exchange Act of 1934 [15 U.S.C. § 78*o*] (for broker-dealers) and § 222 of the Investment Advisers Act of 1940

[15 U.S.C. § 80b-18a] (for investment advisers), and may determine their conditions. Any appropriate deposit of cash or securities shall be accepted in lieu of any bond so required. No bond may be required of any registrant whose net capital, or, in the case of an investment adviser, whose minimum financial requirements, which may be defined by rule, exceeds the amounts required by the Director. Every bond shall provide for suit thereon by any person who has a cause of action under § 73-605 of this title and, if the Director by rule or order requires, by any person who has a cause of action not arising under this chapter. Every bond shall provide that no suit may be maintained to enforce any liability on the bond unless brought within the time limitations of § 73-605(e) of this title.

(6 Del. C. 1953, § 7314; 59 Del. Laws, c. 208, § 1; 65 Del. Laws, c. 220, §§ 1-3; 67 Del. Laws, c. 274, §§ 3-5; 68 Del. Laws, c. 181, §§ 4, 15, 28; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 162, § 16; 78 Del. Laws, c. 175, §§ 49-68, 99, 118; 79 Del. Laws, c. 182, § 3.)

§ 73-303 Post-registration provisions for broker-dealers, investment advisers and federal covered advisers.

(a) Every registered broker-dealer and investment adviser shall make and keep such accounts, correspondence, memoranda, papers, books and other records as the Director prescribes by rule or order, except as provided by § 15 of the Securities Exchange Act 1934 [15 U.S.C. § 78*o*] (in the case of a broker-dealer) and § 222 of the Investment Advisers Act of 1940 [15 U.S.C. § 80b-18a] (in the case of an investment adviser). All records so required, with respect to an investment adviser, shall be preserved for such period as the Director prescribes by rule or order.

(b) With respect to investment advisers, the Director may require that certain information be furnished or disseminated as necessary or appropriate in the public interest or for the protection of investors and advisory clients. To the extent determined by the Director in the Director's discretion, information furnished to clients or prospective clients of an investment adviser that would be in compliance with the Investment Advisers Act of 1940 [15 U.S.C. § 80b-1 et seq.] and the rules thereunder may be used in whole or partial satisfaction of this requirement.

(c) Every registered broker-dealer and every registered investment adviser shall file such financial reports as the Director may prescribe by rule or order, except as provided by § 15 of the Securities Exchange Act of 1934 [15 U.S.C. § 78*o*] (in the case of a broker-dealer) and § 222 of the Investment Advisers Act of 1940 [15 U.S.C. § 80b-18a] (in the case of an investment adviser).

(d) If the information contained in any document filed with the Director is or becomes inaccurate or incomplete in any material respect, the registrant or federal covered adviser shall file a correcting amendment promptly if the document is filed with respect to a registrant, or when such amendment is required to be filed with the Securities and Exchange Commission if the document is filed with respect to a federal covered adviser, unless notification of the correction has been given under § 73-302(b), (c) or (d) of this title.

(e) All the records referred to in subsection (a) of this section are subject at any time or from time to time to such reasonable periodic, special or other examinations by representatives of the Director, within or without this State, as the Director deems necessary or appropriate in the public interest or for the protection of investors. For the purpose of avoiding unnecessary duplication of examinations, the Director, insofar as the Director deems it practicable in administering this subsection, may cooperate with the securities administrators of other states, the Securities and Exchange Commission, and any national securities exchange or national securities association registered under the Securities Exchange Act of 1934 [15 U.S.C. § 78a et seq.].

(6 Del. C. 1953, § 7315; 59 Del. Laws, c. 208, § 1; 67 Del. Laws, c. 274, § 6; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 162, § 17; 78 Del. Laws, c. 175, §§ 69, 100, 118; 79 Del. Laws, c. 182, § 3.)

§ 73-304 Denial, revocation, suspension, cancellation and withdrawal of registration of broker-dealers, agents, investment advisers and investment adviser representatives.

(a) The Director may by order deny, suspend or revoke any registration if the Director finds that the order is in the public interest and that the applicant or registrant or, in the case of a broker-dealer or investment adviser, any partner, officer, director or any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling the broker-dealer or investment adviser:

(1) Has filed an application for registration which as of its effective date, or as of any date after filing in the case of an order denying effectiveness, was incomplete in any material respect or contained any statement which was, in light of the circumstances under which it was made, false or misleading with respect to any material fact; or

(2) Has wilfully violated or wilfully failed to comply with any provision of this chapter; or

(3) Has been convicted of a felony, infamous crime, or other crime involving moral turpitude; or

(4) Is permanently or temporarily enjoined by any court of competent jurisdiction from engaging in or continuing any conduct or practice involving any aspect of the securities business; or

(5) Is the subject of a cease and desist order of the Director or of an order of the Director denying, suspending or revoking registration as a broker-dealer, agent, investment adviser or investment adviser representative; or

(6) Is the subject of an order entered within the past 10 years by the securities administrator of any other state or by the Securities and Exchange Commission either ordering the person to cease and desist from engaging in or continuing any conduct or practice involving any aspect of the securities business, or suspending, denying or revoking registration as a broker-dealer, agent, investment adviser, or investment adviser representative, or the substantial equivalent of those terms as defined in this chapter; or is suspended or expelled

from a national securities exchange or national securities association registered under the Securities Exchange Act of 1934 [15 U.S.C. § 78a et seq.] either by action of a national securities exchange or national securities association, the effect of which action has not been stayed by administrative or judicial order; or is the subject of a United States post office fraud order; or

(7) Has engaged in dishonest or unethical practices within or outside this State; or

(8) Is insolvent, either in the sense that the person's liabilities exceed the person's assets or in the sense that the person cannot meet the person's obligations as they mature; or

(9) Is not qualified on the basis of such factors as training, experience, and knowledge of the securities business, except as otherwise provided in subsection (b) of this section; or

(10) Has failed reasonably to supervise (A) the person's agents or employees if the person is a broker-dealer or broker-dealer agent with supervisory responsibilities, or (B) the person's adviser representatives or employees if the person is an investment adviser or investment adviser representative with supervisory responsibilities, and the Director may infer such failure from an agent's, investment adviser representative's or employee's violations; or

(11) Has failed to pay the proper filing fee, but the Director shall vacate any denial or suspension order when the deficiency has been corrected; or

(12) Has violated or failed to comply with any lawful order issued by the Director; or

(13) Has within the past 10 years been a partner, officer, director, controlling person or any person occupying a similar status or performing similar functions in a broker-dealer or investment adviser whose registration in this State or any state, or with the Securities and Exchange Commission, has been revoked for disciplinary reasons, or whose membership in a national securities exchange or national securities association has been terminated for disciplinary reasons.

(b) The following provisions govern the application of paragraph (a)(9) of this section:

(1) The Director may not enter an order against a broker-dealer or investment adviser on the basis of the lack of qualification of any person other than:

a. The broker-dealer or investment adviser himself or herself (if the person is an individual);

b. An agent of the broker-dealer; or

c. An investment adviser representative.

(2) The Director may not enter an order solely on the basis of lack of experience if the applicant or registrant is qualified by training in or knowledge of securities, or both.

(3) The Director shall consider that an agent who will work under the supervision of a registered broker-dealer need not have the same qualifications as a broker-dealer and that an investment adviser representative who will work under the supervision of a registered investment adviser or federal covered adviser need not have the same qualifications as an investment adviser or federal covered adviser.

(4) The Director may by rule provide for an examination, which may be written or oral or both, to be taken by any class of or all applicants.

(c) The Director may by order summarily postpone or suspend registration pending final determination of any proceeding under this section. Upon the entry of an order, the Director shall promptly notify the applicant or registrant, as well as the employer or prospective employer if the applicant or registrant is an agent or investment adviser representative, that it has been entered and of the reasons therefore and that within 15 days after the receipt of a written request the matter will be set down for a hearing. If no hearing is requested and none is ordered by the Director, the order will remain in effect until it is modified or vacated by the Director. If a hearing is requested or ordered, the Director, after notice of and opportunity for hearing, may modify or vacate the order or extend it until final determination.

(d) If the Director finds that any registrant or applicant for registration is no longer in existence or has ceased to do business as a broker-dealer, agent, investment adviser or investment adviser representative, or is subject to an adjudication of mental incompetence or to the control of a committee, conservator or guardian, or cannot be located after reasonable search, the Director may by order cancel the registration or application.

(e) Withdrawal from registration as a broker-dealer, agent, investment adviser or investment adviser representative becomes effective 90 days after receipt of an application to withdraw or within such shorter period of time as the Director may determine, unless a revocation or suspension proceeding is pending when the application is filed or a proceeding to revoke or suspend or impose conditions upon the withdrawal is instituted within 90 days after the application is filed. If a proceeding is pending or instituted, withdrawal becomes effective at such time and upon such conditions as the Director by order determines. If no proceeding is pending or instituted, a withdrawal automatically becomes effective, but the Director may nevertheless institute a revocation or suspension proceeding, and impose fines, costs and restitution, within 2 years after withdrawal becomes effective and enter a revocation or suspension as of the last date on which registration was effective.

(f) No order may be entered under any part of this section except the first sentence of subsection (c) of this section without:

(1) Appropriate prior notice to the applicant or registrant (as well as the employer or prospective employer if the applicant or registrant is an agent or investment adviser representative);

(2) Opportunity for a hearing; and

(3) Written findings of fact and conclusions of law.

The Director or the Director's designee shall control the procedures and the conduct of the parties at the hearing.

(g) [Repealed.]

(6 Del. C. 1953, § 7316; 59 Del. Laws, c. 208, § 1; 67 Del. Laws, c. 274, §§ 7-9; 68 Del. Laws, c. 181, §§ 5-11, 13, 25; 70 Del. Laws, c. 186, § 1; 70 Del. Laws, c. 560, § 4; 71 Del. Laws, c. 162, §§ 18-22; 78 Del. Laws, c. 175, §§ 70, 101, 118; 79 Del. Laws, c. 182, § 3.)

§ 73-305 Advisory activities.

(a) It is unlawful for an investment adviser, federal covered adviser or investment adviser representative, all as defined in this chapter, to employ any device, scheme or artifice to defraud another person, or to engage in any act, practice or course of business which operates or would operate as a fraud or deceit upon another person.

(b) It is unlawful for an investment adviser, federal covered adviser or investment adviser representative, all as defined in this chapter, in connection with giving investment advice or otherwise acting as an investment adviser, federal covered adviser or investment adviser representative to make any untrue statement of fact that a reasonable client or prospective client would deem material or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading.

(c) It is unlawful for any investment adviser or investment adviser representative to enter into, extend or renew any investment advisory contract unless it provides in writing:

(1) That the investment adviser or investment adviser representative shall not be compensated on the basis of a share of capital gains upon or capital appreciation of the funds or any portion of the funds of the client;

(2) That no assignment of a contract may be made by the investment adviser or investment adviser representative without the consent of the other party to the contract; and

(3) That the investment adviser or investment adviser representative, if a partnership, shall notify the other party to the contract of any change in the membership or the partnership within a reasonable time after the change.

(d) Subsection (c) of this section does not prohibit an investment advisory contract which provides for compensation based upon the total value of a fund averaged over a definite period, or as of definite dates or taken as of a definite date. "Assignment," as used in subsection (c) of this section, includes any direct or indirect transfer or hypothecation of an investment advisory contract by the assignor or of a controlling block of the assignor's outstanding voting securities by a security holder of the assignor; but if the investment adviser is a partnership, no assignment of an investment contract is considered to result from the death or withdrawal of a minority of the members of the investment adviser having only a minority interest in the business of the investment adviser, or from the admission to the investment adviser of 1 or more members who, after admission, will be only a minority of the members and will have only a minority interest in the business.

(e) It is unlawful for any investment adviser or investment adviser representative to take or have custody of any securities or funds of a client if:

(1) The Director by rule prohibits custody; or

(2) In the absence of rule, the investment adviser or investment adviser representative fails to notify the Director that such adviser or representative has or may have custody.

(6 Del. C. 1953, § 7317; 59 Del. Laws, c. 208, § 1; 68 Del. Laws, c. 181, § 26; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 162, § 23; 78 Del. Laws, c. 175, §§ 71-73, 102, 118; 79 Del. Laws, c. 182, § 3.)

§ 73-306 Trading markets.

(a) It is unlawful for any broker-dealer, agent, investment adviser or investment adviser representative to effect transactions in, trade or quote any security unless such security is covered by regulations under the Securities Exchange Act of 1934 [15 U.S.C. § 78a et seq.] or unless the filing provisions of this chapter have been complied with in regard to such security.

(b) Except as provided otherwise by § 18 of the Securities Act of 1933 [15 U.S.C. § 77r], the Director is empowered to suspend trading in any security for a period of 10 days in the public interest.

(6 Del. C. 1953, § 7318; 59 Del. Laws, c. 208, § 1; 71 Del. Laws, c. 162, § 24; 78 Del. Laws, c. 175, §§ 103, 118; 79 Del. Laws, c. 182, § 3.)

§ 73-307 Protection of vulnerable adults from financial exploitation.

(a) If a qualified individual reasonably believes that financial exploitation of an eligible adult may have occurred, may have been attempted, or is being attempted, the qualified individual shall promptly, but in no event more than 5 business days after the suspicion of financial exploitation, notify both the Director and the Department of Health and Social Services as consistent with § 3910 of Title 31. If more than 1 qualified individual working at the same broker-dealer or investment adviser suspects financial exploitation, that broker-dealer or investment adviser does not need to make more than 1 notification to the Director and one notification to the Department of Health and Social Services.

(b) If a qualified individual reasonably believes that financial exploitation of an eligible adult may have occurred, may have been attempted, or is being attempted, a qualified individual may notify any third party previously designated by the eligible adult, or otherwise permitted under existing law, rule, or regulation. Disclosure may not be made to any designated third party that is suspected of financial exploitation or other abuse of the eligible adult.

(c) A broker-dealer or investment adviser may delay a disbursement from an account of an eligible adult or an account on which an eligible adult is a beneficiary if:

(1) A qualified individual reasonably believes, after initiating an internal review of the requested disbursement and the suspected financial exploitation, that the requested disbursement may result in financial exploitation of an eligible adult; and

(2) The broker-dealer or investment adviser:

a. Immediately, but in no event more than 2 business days after the delayed disbursement, provides written notification of the delay and the reason for the delay to all parties authorized to transact business on the account, unless any such party is reasonably believed to have engaged in suspected or attempted financial exploitation of the eligible adult;

b. Immediately, but in no event more than 2 business days after the delayed disbursement, notifies the Director and the Department of Health and Social Services as consistent with § 3910 of Title 31; and

c. Continues its internal review of the suspected or attempted financial exploitation of the eligible adult, as necessary, and provides a status report to the Director and Adult Protective Services (as consistent with § 3910 of Title 31) upon the request of the Director or the Department of Health and Social Services.

(3) Any delay of a disbursement as authorized by this section will expire upon the sooner of:

a. A determination by the broker-dealer or investment adviser that the disbursement will not result in financial exploitation of the eligible adults; or

b. Ten business days after the date on which the broker-dealer or investment adviser first delayed disbursement of the funds, unless the Director requests that the broker dealer or investment adviser extend the delay or the broker-dealer or investment adviser has not heard from either the Director or the Department of Health and Social Services. In either case, the delay shall expire no more than 40 business days after the date on which the broker-dealer or investment adviser first delayed the disbursement of the funds unless otherwise terminated or extended by the Director or an order of a court of competent jurisdiction.

(4) A court of competent jurisdiction may enter an order extending the delay of the disbursement of funds or may order other protective relief based on the petition of the Director, the broker-dealer or investment adviser that initiated the delay, or other interested party.

(d) A broker-dealer or investment adviser shall provide access to or copies of records that are relevant to the suspected or attempted financial exploitation of an eligible adult to agencies charged with administering state adult protective services laws and to law enforcement, either as part of a referral to the agency or to law enforcement, or upon request of the agency or law enforcement pursuant to an investigation. The records may include historical records as well as records relating to the most recent transaction or transactions that may comprise financial exploitation of an eligible adult. Records made available under this section are not public records. Nothing in this provision shall limit or otherwise impede the authority of the Director to access or examine the books and records of broker-dealers and investment advisers as otherwise provided by law.

(e) A qualified individual that, in good faith and exercising reasonable care, complies with subsection (a), (b), or (c) of this section shall be immune from any administrative or civil liability that might otherwise arise from such action.

(81 Del. Laws, c. 387, § 3.)

Subchapter IV
Provisions Relating to Investigations

§ 73-401 Authority to investigate.

The Director, in the Director's own discretion, may make such public or private investigations within or outside of this State as the Director deems necessary to determine whether any person has violated or is about to violate any provision of this chapter or any rule or order hereunder, or to aid in the enforcement of this chapter or in the prescribing of rules and forms hereunder, may require or permit any person to file a statement in writing, under oath or otherwise as the Director determines, as to all the facts and circumstances concerning the matter to be investigated, and may publish information concerning any violation of this chapter or any rule or order hereunder.

(78 Del. Laws, c. 175, §§ 115. 118; 79 Del. Laws, c. 182, § 3.)

§ 73-402 Subpoena power.

For the purpose of any investigation or proceeding under this chapter, the Director, or any officer designated by the Director, may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, agreements, or other documents or records which the Director deems relevant or material to the inquiry. The Director's authority to subpoena witnesses and documents outside the State shall exist to the maximum extent permissible under federal constitutional law.

(78 Del. Laws, c. 175, §§ 115. 118; 79 Del. Laws, c. 182, § 3.)

§ 73-403 Failure to comply with subpoena.

In case of contumacy by, or refusal to obey a subpoena issued to, any person, the Court of Chancery, upon application by the Director, may issue to the person an order requiring that person to appear before the Court of Chancery or the designated officer, there to produce documentary evidence if so ordered or to give evidence touching the matter under investigation or in question. Failure to obey the order of the Court may be punished by the Court as a contempt of Court.

(78 Del. Laws, c. 175, §§ 115, 118; 79 Del. Laws, c. 182, § 3.)

§ 73-404 Immunity from prosecution.

No person is excused from attending and testifying or from producing any document or record before the Director, or in obedience to the subpoena of the Director or any designated officer or in any proceeding instituted by the Director, on the ground that the testimony or evidence (documentary or otherwise) required of that person may tend to incriminate or subject that person to penalty or forfeiture; but no individual may be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which the person is compelled, after claiming privilege against self-incrimination, to testify or produce evidence (documentary or otherwise), except that the individual testifying is not exempt from prosecution and punishment for perjury or contempt committed in testifying.

(78 Del. Laws, c. 175, §§ 115, 118; 79 Del. Laws, c. 182, § 3.)

Subchapter V

Administrative Enforcement Proceedings

§ 73-501 Authority to prosecute administrative enforcement proceedings.

The Investor Protection Unit, under the direction of the Director, shall have the authority to prosecute administrative proceedings to enforce the provisions of this chapter.

(78 Del. Laws, c. 175, §§ 116, 118; 79 Del. Laws, c. 182, §§ 1, 3.)

§ 73-502 Judicial review.

(a) Any party aggrieved by an order of the Director may appeal such order to the Court of Chancery as follows:

(1) The party must file a notice of appeal with the Court, and serve a copy thereof on the Director, within 30 days of the date the notice of the order was sent to the party.

(2) Upon receiving service of a copy of the notice of appeal, the Director shall cause a transcription of the record to be prepared. Upon the completion of the transcription of the record, the Director shall present to the appellant or appellants a demand for the payment of the cost of transcribing the record. Where there are multiple appellants, the cost of transcribing the record shall be charged to the appellants on a pro rata basis.

(3) Within 10 days of receipt of the demand for payment of the cost of transcribing the record, each appellant shall present to the Director the payment demanded. If any appellant fails within the 10-day period to present such payment, the Court shall dismiss that appellant's appeal for lack of jurisdiction.

(4) Within 20 days of receipt of a payment required by paragraph (a)(3) of this section from any appellant, the Director shall certify and file the record with the Court.

(b) When the record has been filed and certified by the Director, the Court of Chancery has exclusive jurisdiction to affirm, modify, enforce or set aside the order, in whole or in part. The findings of the Director as to the facts, if supported by material and substantial evidence, are conclusive. If, within 20 days of the filing of the record by the Director, either party applies to the Court for leave to adduce material evidence, and shows to the satisfaction of the Court that there were reasonable grounds for failure to adduce the evidence in the hearing before the Director, the Court may order the additional evidence to be taken before the Director and to be adduced upon the hearing in such manner and upon such conditions as the Court considers proper.

(c) The commencement of the proceedings under subsection (a) of this section does not, unless specifically ordered by the Court, operate as a stay of the Director's order.

(6 Del. C. 1953, § 7324; 59 Del. Laws, c. 208, § 1; 67 Del. Laws, c. 274, § 11; 68 Del. Laws, c. 181, § 31; 78 Del. Laws, c. 175, §§ 76, 108, 118; 79 Del. Laws, c. 182, § 3.)

§ 73-503 Statute of limitations.

(a) In any administrative, civil or criminal action brought by the Director seeking registration suspension or revocation, fines, costs, restitution or imprisonment, no more than 5 years shall have passed from the date of the violation to the date of the initiation of the proceeding.

(b) This 5-year limit shall not apply to registration denial proceedings.

(68 Del. Laws, c. 181, § 23; 78 Del. Laws, c. 175, §§ 114, 118; 79 Del. Laws, c. 182, § 3.)

Subchapter VI
Remedies for Violations

§ 73-601 Administrative remedies.

(a) In any administrative proceeding before the Director, the Director may issue orders providing for the following remedies: cease and desist; fine, assessment of costs; restitution to investors; conditional or probationary registration; censure or reprimand; special reporting requirements; or other remedies which the Director determines to be in the public interest.

(b) In addition to the remedies set forth in subsection (a) of this section, the Director may order the payment of fines and other monetary sanctions for any violation of any provision of this chapter in an amount not to exceed $10,000 for each and every violation, plus the costs of investigation and prosecution.

(c) Whenever it appears that a person has violated or is about to violate this chapter by failing to register or engaging in fraud or other prohibited conduct, the Director may summarily issue a cease and desist order against that person.

(1) Any person who is the subject of such an order shall be given notice of it as soon as practicable and may request a hearing before the Director, which hearing shall be scheduled within 15 days from the date the request is received.

(2) If any person who is the subject of a cease and desist order, or any agent or employee of such person, subsequent to the issuance of the order engages in the prohibited conduct, the Director may certify the facts and apply for a contempt order to any Judge of the Superior Court, who shall upon such application hear the evidence as to the acts complained of. If the evidence 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.

(78 Del. Laws, c. 175, §§ 117, 118; 79 Del. Laws, c. 182, § 3.)

§ 73-602 Injunctions.

Whenever it appears to the Director that any person has engaged or is about to engage in any act or practice constituting a violation of any provision of this chapter or any rule or order hereunder, the Director may in the Director's own discretion bring an action in the Court of Chancery to temporarily restrain or to enjoin the acts or practices and to enforce compliance with this chapter or any rule or order hereunder. The Director may also seek, and the Court of Chancery shall upon proper showing grant, such other ancillary relief as is in the public interest including the appointment of a receiver, temporary receiver, conservator, obtaining of an accounting, orders of rescission, orders of restitution, or other relief as may be appropriate in the public interest. The Court shall not require the Director to post a bond.

(6 Del. C. 1953, § 7320; 59 Del. Laws, c. 208, § 1; 70 Del. Laws, c. 186, § 1; 78 Del. Laws, c. 175, §§ 104, 118; 79 Del. Laws, c. 182, § 3.)

§ 73-603 Escrow of funds.

Whenever the Director shall deem it necessary in the public interest the Director may require that the proceeds of sale of the securities of an issuer be held intact until such proceeds aggregate a fixed amount and that such proceeds be held intact under an appropriate agreement of escrow with a bank or trust company approved by the Director.

(6 Del. C. 1953, § 7321; 59 Del. Laws, c. 208, § 1; 70 Del. Laws, c. 186, § 1; 78 Del. Laws, c. 175, §§ 105, 118; 79 Del. Laws, c. 182, § 3.)

§ 73-604 Criminal penalties.

(a) *Fraud of $50,000 or more; class E felony.* — Any person who wilfully violates § 73-201 of this title, thereby causing any investor or investors to lose $50,000 or more, shall upon conviction be fined not more than $200,000 or imprisoned not more than 5 years at Level V incarceration, or both, per violation.

(b) *Fraud of $10,000 or more; class F felony.* — Any person who wilfully violates § 73-201 of this title, thereby causing any investor or investors to lose $10,000 or more, though less than $50,000, shall upon conviction be fined not more than $100,000 or imprisoned not more than 3 years at Level V incarceration, or both, per violation.

(c) *Other violations; class G felony.* — Any person who wilfully violates any provision of this chapter, and whose offense is not covered by subsection (a) or (b) of this section, shall upon conviction be fined not more than $100,000 or imprisoned not more than 2 years at Level V incarceration, or both, per violation.

(d) No indictment or information may be returned under this chapter more than 5 years after the alleged violation. The Superior Court shall have exclusive jurisdiction of any criminal violations of this chapter.

(e) In addition to the penalties stated above, restitution to any investor or investors may be ordered. Nothing in this chapter limits the power of the State to punish any person for any conduct which otherwise constitutes a crime by statute.

(6 Del. C. 1953, § 7322; 59 Del. Laws, c. 208, § 1; 67 Del. Laws, c. 274, § 10; 68 Del. Laws, c. 181, § 19; 78 Del. Laws, c. 175, §§ 106, 118, 122.)

§ 73-605 Civil liabilities.

(a) Any person who:

(1) Offers or sells a security in violation of § 73-302, § 73-301 or § 73-210(b) of this title, or of any rule or order under § 73-211 of this title which requires the affirmative approval of sales literature before it is used, or of any condition imposed under § 73-204(d) of this title.

(2) Offers, sells or purchases a security by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statement made, in the light of the circumstances under which they are made, not misleading (the buyer or seller not knowing of the untruth or omission), and who does not sustain the burden of proof that the person did not know, and in the exercise of reasonable care could not have known of the untruth or omission, is liable to the person buying or selling the security from or to him or her, who may sue either at law or in equity to recover the consideration paid for the security, together with the interest at the legal rate from the date of payment costs, and reasonable attorneys' fees, less the amount of any income received on the security, upon the tender of the security, or for damages if he or she no longer owns the security.

(b) Every person who directly or indirectly controls a seller or buyer liable under subsection (a) of this section, every partner, officer, or director of such a seller or buyer, every person occupying a similar status or performing similar functions, every employee of such seller or buyer who materially aids in the sale, and every broker-dealer or agent who materially aids in the sale or purchase are also liable jointly and severally with and to the same extent as the seller or buyer, unless the nonseller or nonbuyer who is so liable sustains the burden of proof that the person did not know, and in exercise of reasonable care could not have known, of the existence of the facts by reason of which the liability is alleged to exist. There is contribution as in cases of contract among the several persons so liable.

(c) Any tender specified in this section may be made at any time before entry of judgment.

(d) Every cause of action under this chapter survives the death of any person who might have been a plaintiff or defendant.

(e) No person may sue under this section more than 3 years after the contract of sale. No person may sue under this section if the buyer received a written offer, before suit and at a time when the buyer owned the security, or if a seller received a written offer before suit, to refund the consideration paid together with interest at the legal rate from the date of payment, less the amount of any income received on the security, and the seller failed to accept the offer within 30 days of its receipt, or if the buyer received such an offer before suit and at a time when the buyer did not own the security, unless the buyer rejected the offer in writing within 30 days of its receipt.

(f) No person who has made or engaged in the performance of any contract in violation of any provision of this chapter or any rule or order hereunder, or who has acquired any purported right under any such contract with knowledge of the facts by reason of which its making or performance was in violation may base any suit on the contract.

(g) Any condition, stipulation, or provision binding any person acquiring any security to waive compliance with any provision of this chapter or any rule or order hereunder is void.

(h) The rights and remedies provided by this chapter are in addition to any other rights or remedies that may exist at law or in equity.

(6 Del. C. 1953, § 7323; 59 Del. Laws, c. 208, § 1; 68 Del. Laws, c. 181, §§ 13, 22; 70 Del. Laws, c. 186, § 1; 70 Del. Laws, c. 560, § 1; 71 Del. Laws, c. 162, § 25; 78 Del. Laws, c. 175, §§ 75, 107. 118.)

Subchapter VII

Miscellaneous Provisions

§ 73-701 Administrative files.

(a) A document is filed when it is received by the Director or a designee as stipulated by rule or order. Other than filing fees, the Director may waive document filing requirements.

(b) The information contained in or filed with any registration statement, application, report or filing may be made available to the public under such rules as the Director prescribes.

(c) It is unlawful for the Director or any employee to use for personal benefit any information which is filed with or obtained by the Director and which is not made public. No provision of this chapter authorizes the Director or any employee to disclose any such information except among themselves or when necessary or appropriate in a proceeding or investigation under this chapter except as provided in subsection (b) of this section above.

(d) No provision of this chapter either creates or derogates from any privilege which exists at common law or otherwise when documentary or other evidence is sought under a subpoena directed to the Director or any of the Director's employees.

(6 Del. C. 1953, § 7326; 59 Del. Laws, c. 208, § 1; 63 Del. Laws, c. 161, § 2; 68 Del. Laws, c. 181, § 24; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 162, § 26; 78 Del. Laws, c. 175, §§ 110. 118; 79 Del. Laws, c. 182, § 3.)

§ 73-702 Service of process.

Every applicant for registration under this chapter, every person making a notice filing pursuant to this chapter, and every issuer which proposes to offer a security in this State through any person acting on an agency basis in the common-law sense shall file with the Director, in such form as the Director by rule prescribes, an irrevocable consent appointing the Director or the Director's successor in office to

be the person's attorney to receive service of any lawful process in any noncriminal suit, action or proceeding against the person or the person's successor executor or administrator which arises under this chapter or any rule or order hereunder after the consent has been filed, with the same force and validity as if served personally on the person filing the consent. A person who has filed such a consent in connection with a previous registration or notice filing need not file another. Service may be made by leaving a copy of the process in the office of the Director, but it is not effective unless the plaintiff, who may be the Director in a suit, action or proceeding instituted by the Director, forthwith sends notice of the service and a copy of the process by registered mail to the defendant or respondent at the defendant's or respondent's last address on file with the Director, and the plaintiff's affidavit of compliance with this section is filed in the case on or before the return day of the process, if any, or within such further time as the Court allows.

When any person, including any nonresident of this State, engages in conduct prohibited or made actionable by this chapter or any rule or order hereunder, and the person has not filed a consent to service of process under this section and personal jurisdiction over the person cannot otherwise be obtained in this State, that conduct shall be considered equivalent to the person's appointment of the Director or the Director's successor in office to be the person's attorney to receive service of any lawful process in any noncriminal suit, action or proceeding against the person or the person's successor, executor or administrator which grows out of that conduct and which is brought under this chapter or any rule or order hereunder, with the same force and validity as if served on the person personally. Service may be made in the same manner as stated above.

(6 Del. C. 1953, § 7327; 59 Del. Laws, c. 208, § 1; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 162, § 27; 78 Del. Laws, c. 175, §§ 111, 118; 79 Del. Laws, c. 182, § 3.)

§ 73-703 Investor protection fund.

(a) All moneys as described in subsection (b) of this section shall be credited by the State Treasurer to a fund to be known as the "Investor Protection Fund."

(b) The Investor Protection Fund will be a revolving fund and shall be funded as follows:

(1) Beginning on July 1 of each year (after the funds for the operations of the Investor Protection Unit have been deposited and credited to the Securities Administrative Payroll Appropriation pursuant to the Budget Act for that fiscal year) any moneys collected by the Unit shall be credited to the Investor Protection Fund and shall continue to be credited to the fund until such time as the amount so credited to the fund equals $100,000. Such $100,000 shall be in addition to any moneys credited to the Investor Protection Fund under any other provision in this section.

(2) Any moneys paid pursuant to court order or judgment, including costs and attorney's fees, in a securities action brought by the Attorney General or the Investor Protection Director pursuant to this chapter shall be credited to the Investor Protection Fund; and

(3) Any moneys received by the Director pursuant to any settlement agreement shall be credited to the Investor Protection Fund.

(c) Any fines, costs or other moneys (except those obtained as restitution or rescission) received by the Director as a result of an administrative order (other than a consent order) shall be credited to the General Fund.

(d) If, at the end of any fiscal year, the balance in the Investor Protection Fund exceeds $300,000, the excess shall be withdrawn from the Investor Protection Fund and deposited in the General Fund.

(e) The Attorney General is authorized to expend from the Investor Protection Fund such moneys as are necessary for:

(1) The payment of costs, expenses and charges incurred in the preparation, institution and maintenance of administrative and court actions authorized under this chapter;

(2) The payment of costs, expenses and charges incurred in the training and education of Investor Protection Unit personnel; and

(3) The payment of costs, expenses and charges incurred in connection with the dissemination of information to the public, to include the costs of printing copies of this statute and the Director's administrative rules. Moneys from the Investor Protection Fund may not be used for any purpose unrelated to the administration or enforcement of this chapter.

(f) The Attorney General and the Investor Protection Director shall provide such reports as to the expenditure of moneys from the Investor Protection Fund to the Director of the Office of Management and Budget and the Controller General, and in such detail as they require.

(67 Del. Laws, c. 274, § 13; 69 Del. Laws, c. 64, § 99; 70 Del. Laws, c. 560, § 7; 75 Del. Laws, c. 88, § 21(3); 78 Del. Laws, c. 175, §§ 81-85, 113, 118; 79 Del. Laws, c. 182, §§ 1-3.)

§ 73-704 Liability of Attorney General.

In no case shall the Attorney General or the Director, or any person designated by them, in the administration of this chapter incur any official or personal liability by instituting an injunction or any judicial proceeding, or administrative order or proceeding.

(6 Del. C. 1953, § 7328; 59 Del. Laws, c. 208, § 1; 78 Del. Laws, c. 175, §§ 112, 118; 79 Del. Laws, c. 182, § 3.)

Subtitle IV
Commercial Development

Chapter 74
Export Trading Companies [Repealed].

§§ 7401-7404 Definitions; Income and mercantile tax exemption authorized; qualification for exemption; rules and regulations; action upon violation of; applicable remedies and causes of action [Repealed].

Repealed by 75 Del. Laws, c. 412, § 4, effective July 10, 2006.

Subtitle IV
Commercial Development

Chapter 75
Foreign Trade Zones

§ 7501 Definitions.

As used in this chapter, unless the context requires otherwise, the following words and phrases shall mean:

(1) "Private corporation" shall mean a general and business or a general not-for-profit corporation organized under the laws of this State.

(2) "Public corporation" shall mean this State, a political subdivision thereof, a corporate instrumentality of this State and 1 or more other states, or a bistate compact.

(61 Del. Laws, c. 167, § 1.)

§ 7502 Federal grants.

All public and private corporations shall have the power to apply to the proper authorities of the United States government for a grant, and when such a grant is issued, to establish and operate foreign trade zones under the Foreign Trade Zones Act of 1934, as amended, on July 20, 1977.

(61 Del. Laws, c. 167, § 1.)

Subtitle IV
Commercial Development

Chapter 76
Delaware Lease-Purchase Agreement Act

§ 7601 Definitions.

Unless the context or subject matter otherwise clearly requires, the following definitions shall govern construction of this chapter:

(1) "Advertisement" means a commercial message in any medium that aids, promotes or assists, directly or indirectly, a lease-purchase agreement.

(2) "Cash price" means that price at which the lessor would have sold the property to the lessee for cash on the date of the lease-purchase agreement if the transaction were a sale instead of a lease-purchase agreement.

(3) "Consummation" means the time a lessee becomes contractually obligated on a lease-purchase agreement.

(4) "Lease-purchase agreement" means an agreement for the use of personal property by a natural person primarily for personal, family or household purposes, for an initial period of 4 months or less that is automatically renewable with each payment after the initial period, but does not obligate or require the lessee to continue leasing or using the property beyond the initial period, and that permits the lessee to become the owner of the property.

(5) "Lessee" means a natural person who rents personal property under a lease-purchase agreement to be used primarily for personal, family or household purposes.

(6) "Lessor" means a person who regularly provides the use of property through lease-purchase agreements and to whom lease payments are initially payable on the face of the lease-purchase agreement.

(68 Del. Laws, c. 59, § 1.)

§ 7602 Inapplicability of other laws; exempted transactions.

(a) Lease-purchase agreements which comply with this chapter are not governed by the laws relating to:

(1) A "retail installment contract" or "contract" as defined in § 4301(9) of this title.

(2) A "security interest" as defined in § 1-201(35) of this title.

(b) This chapter does not apply to the following:

(1) Lease-purchase agreements primarily for business, commercial or agricultural purposes, or those made with governmental agencies or instrumentalities or with organizations;

(2) A lease of safe deposit box;

(3) A lease or bailment of personal property along with the lease of real property;

(4) A lease of an automobile; or

(5) The lease of real property and/or the fixed improvements thereon.

(68 Del. Laws, c. 59, § 1.)

§ 7603 Disclosures.

(a) For each lease-purchase agreement, the lessor shall disclose in the agreement the following items, as applicable:

(1) The total number, total amount and timing of all payments necessary to acquire ownership of the property;

(2) A statement that the lessee will not own the property until the lessee has made the total amount of the payments necessary to acquire ownership;

(3) A statement that the lessee is responsible for the fair market value of the property if, and as of the time, it is lost, stolen, damaged or destroyed;

(4) A brief description of the leased property, sufficient to identify the property to the lessee and the lessor, including an identification number, if applicable, and a statement indicating whether the property is new or used, but a statement that indicates new property is used is not a violation of this chapter;

(5) A statement of the cash price of the property;

(6) The total of the initial lease payment paid or required at or before consummation of the agreement or delivery of the property, whichever is later;

(7) A statement that the total of lease payments necessary to acquire ownership does not include other charges, such as late payment, default and reinstatement fees, which fees shall be separately disclosed in the contract;

(8) A statement clearly summarizing the terms of the lessee's option to purchase, including a statement that the lessee has the right to exercise an early purchase option using the formula or method for determining the price at which the property may be so purchased in accordance with § 7609 of this title;

(9) A statement identifying the party responsible for maintaining or servicing the property while it is being leased, together with a description of that responsibility, and a statement that if any part of a manufacturer's express warranty covers the lease property at the time the lessee acquires ownership of the property, it shall be transferred to the lessee, if allowed by the terms of the warranty;

(10) A statement that the lessee may terminate the agreement without penalty by voluntarily surrendering or returning the property in good repair upon expiration of any lease term along with any past due rental payments; and

(11) Notice of the right to reinstate an agreement as herein provided.

(b) With respect to matters specifically governed by the federal Consumer Credit Protection Act [15 U.S.C. § 1601 et seq.], compliance with such act satisfies the requirements of this section.

(68 Del. Laws, c. 59, § 1.)

§ 7604 Form requirements.

(a) The disclosure information required by this chapter must be disclosed in a lease-purchase agreement, and must:

(1) Be made clearly and conspicuously with items appearing in logical order and segregated as appropriate for readability and clarity;

(2) Be made in writing;

(3) Need not be contained in a single writing or made in the order set forth in § 7603 of this title; and

(4) May be supplemented by additional information or explanations supplied by the lessor, but none shall be stated, used or placed so as to mislead or confuse the lessee, or to contradict, obscure or detract attention from the information required by § 7603 of this title, and so long as the additional information or explanations do not have the effect of circumventing, evading or unduly complicating the information required to be disclosed by § 7603 of this title.

(b) Every lease-purchase agreement shall contain a notice in at least 8-point standard type, reading as follows:

"NOTICE TO THE LESSEE: (1) DO NOT SIGN THIS LEASE-PURCHASE AGREEMENT BEFORE YOU READ IT OR IF IT CONTAINS ANY BLANK SPACE. (2) YOU ARE ENTITLED TO A COMPLETELY FILLED-IN COPY OF THIS AGREEMENT. (3) UNDER THE LAW, YOU HAVE THE RIGHT TO EXERCISE AN EARLY PURCHASE OPTION WHICH WILL RESULT IN A LOWER COST TO ACQUIRE OWNERSHIP."

(c) *Timing.* — The lessor shall disclose all information required by § 7603 of this title before the lease-purchase agreement is executed. These disclosures must be made on the face of the writing evidencing the lease-purchase agreement.

(d) *Copy to lessee.* — (1) Before any payment is due, the lessor shall furnish the lessee with an exact copy of each lease-purchase agreement. The agreement shall be signed by the lessee and is evidence of the lessee's agreement. If there is more than 1 lessee in a lease-purchase agreement, delivery of a copy of the lease-purchase agreement to 1 of the lessees constitutes compliance with this paragraph; however, a lessee not signing the agreement is not liable under it.

(2) Any acknowledgement by the lessee of delivery of a copy of the lease-purchase agreement shall be printed or written in a size equal to at least 10-point bold type and, if contained in the lease-purchase agreement, shall also appear directly above the space reserved for the lessee's signature.

(3) The lessee's written acknowledgement, conforming to the requirements of this section for delivery of a copy of the lease-purchase agreement, shall create a conclusive presumption of such delivery and of compliance with this section, in any action or proceeding by or against an assignee of the lease-purchase agreement without knowledge to the contrary when the assignee purchases the contract.

(e) *Type size.* — The terms of the lease-purchase agreement, except as otherwise provided in this section, must be set forth in not less than 8-point standard type.

(68 Del. Laws, c. 59, § 1; 70 Del. Laws, c. 186, § 1.)

§ 7605 Blank spaces.

All blank spaces on lease-purchase agreement forms must be filled in before the lease-purchase agreement is executed. Blank spaces that are provided for items or terms not applicable to the agreement must be crossed out.

(68 Del. Laws, c. 59, § 1.)

§ 7606 Advertising.

(a) *Prohibition.* — An advertisement for a lease-purchase agreement may not state or imply that a specific item is available at specific amounts or terms unless the lessor usually and customarily offers or will offer that item at those amounts or terms.

(b) *Disclosures.* — If an advertisement for the lease-purchase agreement of a specific item refers to or states the amount of any payment, or the right to acquire ownership, the advertisement must also clearly and conspicuously state the following terms as applicable:

(1) That the transaction advertised is a lease-purchase agreement;

(2) The total amount of the lease payments necessary to acquire ownership; and

(3) That the lessee will not own the property until the total amount necessary to acquire ownership is paid in full or by prepayment as provided for by law.

(c) *Item price disclosures.* — Every item displayed or offered under a lease-purchase agreement shall have clearly and conspicuously indicated in Arabic numerals, so as to be readable and understandable by visual inspection, each of the following affixed to the item:

(1) The cash price of the item; and

(2) The amount of the lease payment and the total amount of the lease payments necessary to acquire ownership.

(d) *Nonapplication.* — This section does not apply to the owner or personnel, as such, of any medium in which an advertisement appears or through which it is disseminated.

(68 Del. Laws, c. 59, § 1.)

§ 7607 Lessee's reinstatement rights.

(a) A lessee who fails to make timely lease payments may reinstate the original lease-purchase agreement without losing any rights or options previously acquired under the lease-purchase agreement if both of the following apply:

(1) After having failed to make a timely payment, the lessee has surrendered the property to the lessor, if and when requested by the lessor; and

(2) In the case of a lessee that has paid less than 60 percent of the total of payments necessary to acquire ownership of the property, not more than 60 days has passed since the lessee returned the property. If the lessee has paid more than 60 percent of the total of payments necessary to acquire ownership of the property, the lessee's rights to reinstate shall be extended for a period of not less than l80 days after the lessee has returned the property.

(b) *Charges.* — As a condition to reinstating a lease-purchase agreement, a lessor may charge the outstanding balance of any accrued payments and delinquency charges, a reinstatement fee not to exceed $5.00, and a reasonable delivery charge, if redelivery of the item is necessary.

(c) *Substitute items.* — If reinstatement occurs pursuant to this section, the lessor shall provide the lessee with the same item, if available, leased by the lessee before reinstatement. If the same item is not available, a substitute item of comparable worth, quality and condition may be used. If a substitute item is provided, the lessor shall provide the lessee with all the information required by § 7603 of this title.

(68 Del. Laws, c. 59, § 1.)

§ 7608 Prohibited provisions.

A lease-purchase agreement may not contain a provision:

(1) Requiring a confession of judgment;

(2) Authorizing a lessor or an agent of the lessor to commit a breach of the peace in the repossession of property;

(3) Waiving a defense, counterclaim or right the lessor may have against the lessor or an agent of the lessor or any assignee of lessor;

(4) Requiring the payment of a late charge unless a lease payment is delinquent for more than 2 business days, and the charge or fee shall not be in an amount more than the greater of 10 percent of the delinquent lease payment or $3.00;

(5) Requiring a separate payment in addition to lease payments in order to acquire ownership of the property, other than by exercising an early purchase option pursuant to § 7609 of this title;

(6) Requiring a waiver of any right of action against the lessor or holder of the lease-purchase agreement or other person acting on the lessor's or holder's behalf, for any illegal act committed in the collection of payment or recover under the lease-purchase agreement or in the repossession of goods.

(68 Del. Laws, c. 59, § 1; 70 Del. Laws, c. 186, § 1.)

§ 7609 Early purchase option.

A lease purchase agreement must provide that at any time after the initial rental payment, the lessee may acquire ownership of the property by tendering 55 percent of the difference between the total of rental payments necessary to acquire ownership of the property and the total amount of rent paid for use of the property at that time.

(68 Del. Laws, c. 59, § 1.)

§ 7610 Exempted transaction.

This chapter does not apply to agreements for the rental of property in which the person who rents the property has no legal right to become the owner of the rented property.

(68 Del. Laws, c. 59, § 1.)

§ 7611 Prohibited provisions in lease-purchase agreement as void.

Any provision in a lease-purchase agreement which is prohibited by this chapter shall be void but shall not otherwise affect the validity of the lease-purchase agreement.

(68 Del. Laws, c. 59, § 1.)

§ 7612 Receipts; acknowledgement of payment in full for ownership.

(a) If a lessee so requests, the lessor must give or forward to the lessee a receipt for any payment made in cash. The lessor must also furnish, upon the lessee's request, an accounting of all charges, payments and their dates in connection with a lease-purchase agreement. A charge of $5.00 may be imposed upon the lessee by the lessor for the second and each subsequent accounting request by the lessee in a 12-month period.

(b) After all lease payments necessary to acquire ownership have been made by a lessee or the lessee has exercised an early purchase option pursuant to § 7603(a)(8) of this title, and upon demand by the lessee, the lessor shall deliver, or mail to the lessee's last known address, such 1 or more good and sufficient instruments as shall be necessary to acknowledge the lessee's full ownership in the property to which the lessee acquired ownership pursuant to the lease-purchase agreement.

(68 Del. Laws, c. 59, § 1; 70 Del. Laws, c. 186, § 1.)

§ 7613 Award of reasonable attorneys' fees and court costs to prevailing party.

A lease-purchase agreement may provide for the payment of reasonable attorneys' fees and actual court costs if it is referred to an attorney for collection. Reasonable attorneys' fees and costs shall be awarded to the prevailing party in any action on a lease-purchase agreement subject to this chapter regardless of whether such action is instituted by the lessor or lessee. Where the defendant alleges in an answer that the defendant tendered either the full amount to which the plaintiff was entitled or possession of the property, and the allegation is found to be true, then the defendant is deemed to be a prevailing party within the meaning of this section.

(68 Del. Laws, c. 59, § 1; 70 Del. Laws, c. 186, § 1.)

§ 7614 Waiver prohibited; severability.

(a) Any waiver by the lessee of this chapter shall be deemed contrary to public policy and shall be unenforceable and void.

(b) If this chapter or the application thereof to any person or circumstances is held unconstitutional, the remainder of the chapter and the application of such provision to other persons or circumstances shall not be affected thereby.

(68 Del. Laws, c. 59, § 1.)

§ 7615 Penalties; grace period for compliance; limitation of liability.

(a) Any person who shall wilfully violate this chapter shall be guilty of a misdemeanor.

(b) In case of a violation of this chapter with respect to any transaction, the lessee in such transaction may recover from the person committing the violation, or may set off or counterclaim in any action by such person, actual damages with a minimum recovery of $300 or 25 percent of the lease payment necessary to acquire ownership, whichever is greater, attorneys' fees and court costs.

(c) Notwithstanding this section, any failure to comply with this chapter may be corrected within 10 days after the date of execution of the lease-purchase agreement by the lessee, and, if so corrected, neither the lessor nor any holder is subject to any penalty under this section.

(d) A lessor is not liable under this section for damages in excess of the actual damage sustained by the lessee if the lessor shows by a preponderance of the evidence that the violation resulted from a bona fide error notwithstanding the maintenance by the lessor of procedures reasonably adopted to avoid the error. As used in this section, "bona fide error" includes, but is not limited to: Clerical, calculation, computer malfunction and programming and printing errors.

(68 Del. Laws, c. 59, § 1.)

§ 7616 Enforcement.

A violation of this chapter shall be within the scope of the enforcement duties and powers of the Division of Consumer Protection, as described in Chapter 25 of Title 29.

(68 Del. Laws, c. 59, § 1; 69 Del. Laws, c. 291, § 98(a), (c); 77 Del. Laws, c. 282, § 14.)

Subtitle IV
Commercial Development
Chapter 77
Voluntary Alternative Dispute Resolution

§ 7701 Short title; purpose.

(a) This chapter shall be known and may be cited as the "Delaware Voluntary Alternative Dispute Resolution Act."

(b) The purposes of the Delaware Voluntary Alternative Dispute Resolution Act are to provide a means to resolve business disputes without litigation and to permit parties to agree, prior to any disputes arising between them, to utilize alternative dispute resolution techniques if a dispute occurs. An interpretation of the provisions of this chapter shall seek to achieve these purposes.

(70 Del. Laws, c. 151, § 1.)

§ 7702 Definitions.

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

(1) "ADR" means the alternative dispute resolution method provided for by this chapter unless the parties to a dispute adopt by written agreement some other method of ADR in which event "ADR" shall refer to the method they adopt.

(2) "ADR Specialist" means an individual who has the qualifications provided for in § 7708 of this title to conduct an ADR proceeding.

(3) A "dispute subject to ADR" means any dispute that:

a. Involves at least $100,000 in contention; and

b. Is not a summary proceeding under § 211, § 215, § 220 or § 225 of Title 8.

(4) "Person" means any individual, corporation, association, partnership, statutory trust, business trust, limited liability company or other entity whether or not organized for profit.

(70 Del. Laws, c. 151, § 1; 73 Del. Laws, c. 329, § 40.)

§ 7703 How ADR is selected.

(a) Any person, by filing the certificate provided for in § 7704 of this title, shall be deemed to have agreed to submit all disputes subject to ADR to the ADR provided for by this chapter. Upon the filing of such certificate, the filer shall be bound by the provisions of this chapter until a certificate of revocation has become effective under § 7707 of this title.

(b) In addition to persons covered by subsection (a) of this section, any person who enter into a written agreement with a person who has filed the certificate provided for in § 7704 of this title, when such agreement incorporates (by reference or otherwise) the ADR requirements of this chapter, will be bound by the ADR requirements of this chapter with regard to disputes arising out of the subject matter of such written agreement. For purposes of compliance with this provision, it shall be sufficient for such writing to state:

"The undersigned hereby agree to be bound by the provisions of the Delaware Voluntary Alternative Dispute Resolution Act with respect to any dispute which arises out of the subject matter of this agreement."

(70 Del. Laws, c. 151, § 1.)

§ 7704 Contents of certificate.

(a) The certificate of agreement to submit to ADR shall set forth:

(1) The name of the person filing the certificate,

(2) The address of such person (which shall include the street, number, city and state) at which it shall be given notice of any dispute, and

(3) The agreement of such person that by filing the certificate that person is bound to follow the provisions of this chapter and submits to the power of any court with jurisdiction over it to require it to participate in ADR with any other person who invokes the provisions of this chapter for any dispute subject to ADR.

(b) Any provision in a certificate that purports to limit the disputes that are subject to ADR shall be of no force or effect.

(70 Del. Laws, c. 151, § 1.)

§ 7705 Place of filing.

(a) The certificate accepting ADR shall be filed with the Secretary of State of the State of Delaware and shall be executed and acknowledged by the chairperson or vice-chairperson of the board of directors or by the president or vice-president of any corporation, by a general partner of any partnership, or by a person with equivalent authority in any other entity.

(b) The Secretary of State shall keep such records as are required to determine who has filed a certificate accepting ADR or revoking such a certificate, together with the date of any such filing.

(70 Del. Laws, c. 151, § 1; 70 Del. Laws, c. 186, § 1.)

§ 7706 Filing fee.

No certificate accepting ADR or revoking ADR shall be filed unless it shall be accompanied by the payment of $1,000 to the State, except that the filing fee shall be $100 for every corporation, limited partnership, statutory trust, limited liability company or other entity organized under the laws of the State.

(70 Del. Laws, c. 151, § 1; 73 Del. Laws, c. 329, § 41.)

§ 7707 Revocation of ADR.

A certificate accepting ADR may be revoked by the filing of a certificate stating that it revokes a previously filed certificate. A certificate of revocation shall be executed and acknowledged in the same manner as a certificate accepting ADR. A certificate of revocation shall be effective upon filing and payment of the filing fee, except with respect to disputes arising under contracts requiring ADR and which were entered into prior to the filing of the certificate of revocation.

(70 Del. Laws, c. 151, § 1.)

§ 7708 Qualifications of ADR Specialist.

The ADR proceedings shall be conducted by any individual meeting one of the following criteria:

(a) Successful completion of 25 hours of training in resolving civil disputes in a course approved by the department or division of the government authority charged with responsibility over adult education in the jurisdiction where that individual resides, or

(b) Admission to the bar of the jurisdiction in which that individual resides, together with a minimum of 5 years experience as a practicing attorney.

(70 Del. Laws, c. 151, § 1.)

§ 7709 Selection of ADR Specialist.

(a) In the case of ADR proceedings that are to be held in the State, the party who initiates the proceedings shall select a panel of 3 ADR Specialists in Delaware to be considered by the parties. Unless the parties otherwise agree in writing, the ADR Specialist shall thereafter be chosen in accordance with the procedures set forth in subsections (c) through (f) of this section below.

(b) In all disputes not to be submitted to ADR in the State and unless the parties otherwise agree in writing, the ADR Specialist shall be selected by the following procedure:

(1) When there are 2 parties to the dispute, the party who initiates the ADR proceedings shall choose a panel of 3 ADR Specialists from those qualified persons who reside or have an office in either:

a. The state of incorporation or domicile of the other party to the dispute; or

b. The jurisdiction where the other party to the dispute resides as determined from the address stated on the ADR certificate on file with the Secretary of State.

(2) When there are more than 2 parties to the dispute, the party who initiates the ADR proceedings shall choose a panel of 3 ADR Specialists from those qualified persons who reside or have an office in the jurisdiction where the greatest number of the other parties to the ADR proceeding:

a. Are incorporated or domiciled; or

b. Reside as determined from the address stated on any ADR certificate on file with the Secretary of State.

If no jurisdiction has the greatest number of parties then the person initiating ADR shall choose panelists from any of the states of incorporation, domicile or residence of the other parties.

(c) The identity of the panel of the ADR Specialists shall be included in the ADR notice provided for in § 7710 of this title.

(d) Within 14 days of receiving the ADR notice provided for in § 7710 of this title a person receiving such notice shall:

(1) Select 1 of the members of the panel of ADR Specialists contained in the notice by advising the person initiating the ADR in writing of the selection; or

(2) Advise the party initiating the ADR that none of the members of the panel are acceptable.

When more than 2 persons are involved in the ADR proceedings, the ADR Specialist shall be the person chosen by the greatest number of parties and in the case of a tie in a vote, the person initiating the ADR proceedings shall choose the ADR Specialist from the ADR Specialists who received the same number of votes.

(e) Upon receiving the selection of the ADR Specialist by the other person or persons to the dispute, the person initiating the ADR proceedings shall promptly notify the ADR Specialist of that person's selection and send copies of such notice to the other parties. If a party receiving an ADR notice provided for in § 7710 of the title does not select an ADR Specialist in a timely manner, or advise that none of the members of the panel are acceptable, the person sending the ADR notice:

(1) May select the ADR Specialist, or

(2) In the case of more than 2 parties to a dispute, may cast a vote for the ADR Specialist on behalf of the party who failed to respond to the ADR notice.

(f) If none of the ADR Specialists selected by the party initiating the ADR proceedings are acceptable to the other parties to the dispute, in the ADR proceedings that are to be held in Delaware the ADR Specialist shall be selected in accordance with the rules of the Superior Court of the State as may be adopted by that Court and approved by the Delaware Supreme Court. In ADR proceedings to be conducted outside of Delaware, in the case of a failure of the parties to agree on the ADR Specialist the Specialist shall be selected in accordance with such rules as may apply in the jurisdiction where the ADR proceedings are to be conducted or, if no such rules have been adopted, then by the American Arbitration Association.

(70 Del. Laws, c. 151, § 1; 70 Del. Laws, c. 186, § 1.)

§ 7710 Initiation of ADR proceeding.

ADR proceedings are initiated by written notice to the other parties to a dispute who have filed an ADR certificate in accordance with § 7704 of this title or who have agreed to be bound by the ADR requirements of this chapter. The notice shall state in summary form:

(1) The dispute is subject to the provisions of this chapter,

(2) The nature of the dispute to be submitted to ADR and

(3) The identities of the members of the panel of ADR Specialists chosen pursuant to § 7709 of this title.

A failure to send such a notice to a person who has an interest in the dispute shall not prevent the ADR proceedings from going forward between or among parties who did receive such notice.

(70 Del. Laws, c. 151, § 1.)

§ 7711 Participation by other parties.

When not all the parties to a dispute have filed an ADR certificate or have agreed to be bound by the Delaware Voluntary Dispute Resolution Act, such other parties may be given the opportunity to participate in the ADR proceedings by delivering to them the notice provided for in § 7710 of this title. Parties to the dispute who are not bound to participate in the ADR proceedings may elect to participate in the ADR by selecting an ADR Specialist in accordance with § 7709 of this title. Such selection shall constitute the agreement of the party to be subject to the provisions of this chapter for purposes of the dispute in which the election to participate is made. After the passage of the time for selection of the ADR Specialist, the ADR shall proceed without further notice to or involvement by those parties to the dispute who have not elected ADR.

(70 Del. Laws, c. 151, § 1.)

§ 7712 Scheduling of ADR proceedings.

Promptly after notification of appointment, the ADR Specialist shall: (1) advise the parties of a willingness to serve as the ADR Specialist for this dispute, (2) notify the parties of the expected rate of compensation, and (3) set the time and date of the ADR proceedings which shall be within 60 days of notice of appointment unless the parties and the ADR Specialist agree to another date. Unless otherwise agreed, the ADR proceedings shall be held in the offices of the ADR Specialist.

(70 Del. Laws, c. 151, § 1; 70 Del. Laws, c. 186, § 1.)

§ 7713 Compensation of ADR Specialist.

(a) The ADR Specialist shall be reimbursed for all reasonable out-of-pocket expenses. The ADR Specialist shall be compensated on the basis of the Specialist's regular hourly fees for professional services for time spent during the day of the actual ADR proceeding and for any subsequent continuation of the proceedings agreed to by parties. In addition to this compensation for the actual ADR proceeding, the ADR Specialist may charge for up to 10 hours spent in preparing for the ADR proceeding, unless the parties agree to additional preparation time.

(b) The ADR Specialist may require the parties, on a pro rata basis, to advance the Specialist's fees for preparation and the actual proceeding within 10 days of the notice of the scheduling of the ADR proceedings.

(c) Unless otherwise agreed, the fees and expenses of the ADR Specialist shall be divided among the parties to the proceedings on a pro rata basis.

(d) The parties and the ADR Specialist may agree on any method or rate of compensation other than as set forth in this section, provided that such agreement is in a writing signed by the parties to the agreement.

(70 Del. Laws, c. 151, § 1; 70 Del. Laws, c. 186, § 1.)

§ 7714 Conduct of the ADR proceedings.

Subject to any agreement of the parties to adopt different rules of proceeding and the power of the ADR Specialist to modify these procedures in appropriate instances, the ADR shall be conducted as follows:

(a) No later than 7 days prior to the commencement of the ADR, each party shall submit to the ADR Specialist and the other parties a statement of its position in the dispute and such supporting documents as it deems appropriate, provided that such statement of position shall not exceed 25 pages in length.

(b) Upon the commencement of the ADR, each party shall have no more than 1 hour to present its position to the ADR Specialist in the presence of the other parties. This presentation may be made by counsel, by examining witnesses or by any other means that

is reasonable under the circumstances. Upon conclusion of any party's presentation, the ADR Specialist may permit the other parties to have up to 1 hour to ask questions of the presenting party, with such hour to be divided among the other parties as determined by the ADR Specialist.

(c) Upon conclusion of the initial presentations of positions by all the parties and such questioning of the parties as thereafter occurs pursuant to subsection (b) of this section, the ADR Specialist as soon as possible shall attempt to resolve the dispute by meeting with the parties, either separately or as a group as the Specialist determines is appropriate. Such meetings shall conclude when the dispute is resolved or at the regular close of business on the day the ADR commenced, whichever first occurs.

(d) If the parties thereafter agree, the ADR Specialist may continue to discuss the resolution of the dispute with them, either separately or together, until any party notifies the ADR Specialist that such discussions are at an impasse.

(70 Del. Laws, c. 151, § 1.)

§ 7715 Conclusion of ADR.

Any settlement of the dispute submitted to ADR shall be reduced to writing as soon as possible after the settlement is reached, with such writing to be prepared by the ADR Specialist (unless the parties otherwise agree as part of their settlement that they will prepare the writing) and shall be signed by the parties to be valid and binding upon them. If no settlement is reached at the close of business on the day the ADR is commenced or after further mediation at the parties request until an impasse is declared, the ADR Specialist shall declare the ADR has concluded by advising the parties in writing.

(70 Del. Laws, c. 151, § 1.)

§ 7716 Confidentiality.

All ADR proceedings shall be confidential and any memoranda submitted to the ADR Specialist, any statements made during the ADR and any notes or other materials made by the ADR Specialist or any party in connection with the ADR shall not be subject to discovery or introduced into evidence in any proceeding and shall not be construed to be a waiver of any otherwise applicable privilege. Nothing in this section shall limit the discovery or use as evidence of documents that would have otherwise been discoverable or admissible as evidence but for the use of such documents in the ADR proceeding.

(70 Del. Laws, c. 151, § 1.)

§ 7717 Immunity.

The ADR Specialist shall have such immunity as if the Specialist were a judge acting in a court with jurisdiction over the subject matter and the parties involved in the dispute that led to ADR.

(70 Del. Laws, c. 151, § 1; 70 Del. Laws, c. 186, § 1.)

§ 7718 Attendance at ADR.

A person may be represented by counsel in all stages of the ADR proceeding. In addition to its counsel, each party must attend the initial ADR proceeding in which the parties make their presentations and submit to questioning and meet with the ADR Specialist. A person may attend through its chief executive officer (or person holding an equivalent position in such entity) or through any other person authorized in writing by the entity's governing body to so attend, provided such authorized person files a written authorization to attend with the ADR Specialist. The authorization shall state that the representative has the authority to settle the dispute (subject to any limits that are deemed appropriate by the governing body and which limits need not be revealed) and such person is charged with the responsibility of reporting to the party's governing body on what occurred during the ADR proceedings. Any such report shall be confidential in accordance with § 7716 of this title.

(70 Del. Laws, c. 151, § 1; 70 Del. Laws, c. 186, § 1.)

§ 7719 Enforcement of ADR rights.

(a) The right to ADR provided for under this chapter may be enforced by any court with jurisdiction over the parties. Any person who files a certificate under § 7704 of this title thereby consents to the jurisdiction of the Court of Chancery of the State for the purpose of enforcing in a summary proceeding the rights provided for by this chapter.

(b) In addition to the right to compel ADR provided by subsection (a) of this section, any party to an ADR proceeding to be conducted pursuant to this chapter shall be entitled to reasonable attorneys' fees incurred in compelling ADR.

(c) Any party failing to pay the reasonable fees and expenses of an ADR Specialist shall be subject to suit by the ADR Specialist for 3 times the amount of such fees and expenses, together with the attorneys' fees and other costs incurred in such litigation.

(70 Del. Laws, c. 151, § 1.)

§ 7720 Tolling of limitations.

The initiation of ADR under § 7710 of this title shall suspend the running of the statute of limitations applicable to the dispute that is the subject of the ADR until 14 days after the ADR is concluded in accordance with § 7715 of this title.

(70 Del. Laws, c. 151, § 1.)

§ 7721 Effect of commencing litigation.

Other than a proceeding to require ADR under § 7719 of this title, this chapter and the procedures provided for herein shall cease to have any force or effect upon the commencement of litigation concerning the dispute that is the subject of the ADR proceedings. The parties to any such litigation shall be exclusively subject to the rules of the tribunal in which such litigation has been commenced and nothing in this chapter shall be construed to infringe upon or otherwise affect the jurisdiction of the courts over such disputes.

(70 Del. Laws, c. 151, § 1.)