DELAWARE STATE BAR ASSOCIATION

CONTINUING LEGAL EDUCATION

LABOR AND EMPLOYMENT LAW UPDATE 2022

DSBA WEBINAR VIA ZOOM

SPONSORED BY THE LABOR & EMPLOYMENT LAW SECTION OF THE DELAWARE STATE BAR ASSOCIATION

FRIDAY, MARCH 25, 2022 | 9:00 A.M. - 12:30 P.M.

3.3 Hours of DE CLE credit including 1 hour of Enhanced Ethics for Delaware Attorneys
3.0 Hours of PA CLE credit including 1 hour of Enhanced Ethics for Pennsylvania Attorneys

ABOUT THE PROGRAM

Join us for the annual Labor and Employment seminar! This year, the seminar will look at the facets of the lawyer/employer/employee relationships and how ethical behavior, honesty, and due diligence affect the work environment.

CLE SCHEDULE

<u>Moderator</u>
Aaron M. Shapiro, Esquire
Connolly Gallagher LLP

9:00 a.m. - 9:45 a.m.

Panel 1: Delaware Legislative Round-up

G. Kevin Fasic, Esquire Offitt Kurman, P. A. Timothy Holly, Esquire Connolly Gallagher LLP

9:45 a.m. - 10:45 a.m.

Panel 2: Recent Decisions Affecting the Trial Court's Authority to Limit an Attorney's Ability to Work in Delaware (Lessons from L. Lin Wood, Jr.) *

Matthew Boyer, Esquire Connolly Gallagher Break | 10:45 a.m. -11:00 a.m.

11:00 a.m. - 11:45 a.m.

Panel 3: False Claims Act/ Qui Tam Claims

Jesse Hoyer Estes, Esquire Hoyer Law Group, PLLC

11:45 a.m. – 12:30 p.m

Panel 4: Workplace Civility: Balancing an Employer's Duty to Provide a Harassment-Free Workplace against Employees' Right to Engage in Concerted Activity

Lauren Moak Russell, Esquire Young Conaway Stargatt & Taylor, LLP

*includes ethics

Visit https://www.dsba.org/event/labor-and-employment-law-update-2022/ for all the DSBA CLE seminar policies.

Panel 1: Delaware Legislative Round-up

G. Kevin Fasic, Esquire *Offitt Kurman, P. A.*

Timothy Holly, Esquire Connolly Gallagher LLP





kfasic@offitkurman.com (302) 351-0901 | Fax (302) 351-0915 1201 N. Orange St | Suite 10 East Wilmington, DE 19801



G. Kevin Fasic
Principal, Wilmington Office

PRACTICE AREAS

- · Labor And Employment Law
- · Construction Law
- Arbitration (Labor/Employment, Construction cases)
- Mediation (Labor/Employment, Construction cases)

EDUCATION & ADMISSIONS

- Widener University School of Law, J.D., 1995
- Lehigh University, B.A. 1988
- Delaware
- New Jersey
- Pennsylvania

PRACTICE FOCUS

Mr. Fasic has practiced employment and construction law for over 20 years. His practice is primarily management-based, and includes discrimination claims, wage and hour issues, Davis Bacon/Prevailing Wage claims, employment agreements (including restrictive covenant issues and severance agreements), hiring and firing guidance, unemployment claims, and legislative affairs. He appears frequently before various administrative boards and agencies, as well as private dispute resolution forums. He has experience practicing before all of Delaware's state and federal trial and appellate courts and has experience with trial and appellate matters in the state and federal courts of New Jersey and Pennsylvania. Mr. Fasic is certified by the Delaware Superior Court as both a Mediator and as an Arbitrator, and can serve in either capacity for labor/employment and construction law disputes

Mr. Fasic was born in Philadelphia, Pennsylvania in 1965, received his B.A. degree from Lehigh University in 1988 and his J.D. degree from the Widener University School of Law in 1995. He is a former investigator for the Delaware Department of Labor and a frequent speaker on employment and construction law topics for various professional and trade organizations. In addition, he also taught as an adjunct faculty member for Wilmington College.

POINTS OF DISTINCTION

Mr. Fasic was voted by his peers for the 2018 Martindale-Hubbell® Distinguished™ Rating. He was also voted by his peers as a Construction Law "Top Lawyer 2018", "Top Lawyer 2016" and a Labor Law "Top Lawyer 2012" in Delaware Today magazine.

In 2014, he received the "Associate/Supplier Member of the Year" award from the Associated Builders and Contractors, Delaware Chapter.

ACTIVITIES

- Delaware State Chamber of Commerce's Board of Governors elected member (2014 Present)
- Board of Managers of the Small Business Alliance for the Delaware State Chamber of Commerce (2008 Present, Co-Chair 2016 – 2017)
- · Joint Military Affairs Committee member for the Delaware State Chamber of Commerce (2015 Present)
- Past Co-Chair of the Employer Advocacy and Education Committee for the Delaware State Chamber of Commerce (2004 – 2016)
- National Legislative Committee member for the Associated Builders and Contractors (2014 Present)
- Legislative/Legal Affairs Committee member for the Associated Builders and Contractors Delaware Chapter (2007 Present)
- Past member of the Board of Directors for the Associated Builders and Contractors Delaware Chapter (2009 2014)
- Delaware Contractor's Association member
- Past Chair of the Delaware State Bar Association's Labor and Employment Law Section (2003 2004, Secretary 2002 2003)
- Active in legislative affairs for various business groups and trade associations and a frequent advocate for their interests before the Delaware General Assembly and other legislative forums





Education

- Villanova University School of Law (J.D.; 2001)
- Xavier University (M.A. Industrial/Organizational Psychology; 1998)
- Georgetown College (B.A., cum laude; 1996)

Bar Admissions

- Delaware, 2001
- District of Columbia, 2005
- United States District Court District of Delaware, 2002
- United States Court of Appeals for the Third Circuit, 2008

Honors

- Martindale-Hubbell AV®
 "Preeminent" Peer Review
 Rating and Client Review
 Rated 5 out of 5
- Chambers USA Delaware -Employment & Labor
- U.S. News & World Report Best Lawyers® - Employment Law
- Delaware Super Lawyers Employment & Labor
- Delaware Today Top Lawyers

 Labor and Employment law –
 top listing for management

 and individuals

Timothy M. Holly

302-252-4217

tholly@connollygallagher.com

As co-chair of the labor and employment law group and one of the firm's founding partners, Tim represents both employers and employees, including top executives, in a multitude of matters impacting the workplace generally and human resources and post-employment restrictions specifically. Tim's straight-forward approach to counseling, negotiation, and employment transactional services has enabled numerous clients to avoid legal disputes. When that has not been possible, Tim has successfully advocated for numerous clients in alternative dispute resolution, before administrative agencies, and in state and federal courts – including in pleading and motion practice, jury trial, and appeals.

With a master's degree in industrial / organizational psychology, Tim offers both employers and employees perspective from both his extensive experience and expertise with employment laws and his understanding of and focus on broader business concerns such as return on investment, leadership, team synergy, etc. Tim's clients also benefit from his knowledge of current and emerging issues in employment law, gleaned through his active involvement in labor and employment law legislative initiatives. At all steps and in all forums, Tim recognizes that even seemingly similar disputes are unique in numerous ways and that both companies and people are individuals that deserve to be treated as such. Clients experience this perspective by being made an active part of the decision-making process as to strategy, direction, and substance.

Tim has been repeatedly ranked as one of the top labor & employment practitioners in Delaware by *Chambers USA: Guide to America's Leading Lawyers for Business.* Tim has also been repeatedly selected for inclusion in *The Best Lawyers in America*® for employment law. And he is consistently rated as a top employment attorney by Delaware *Super Lawyers* and Delaware Today *Top Lawyers*, which has rated Tim as the top attorney in employment law for both individuals and for management. Tim is AV® rated in Martindale-Hubbell's Preeminent™ Peer Review and as a "Client Champion" based on client review.

A life member of the National Eagle Scout Association of the Boy Scouts of America, Tim has been recognized by the Del-Mar-Va Council, through the "Silver Beaver" award, for his positive impact on the lives of youth through distinguished self-sacrifice, dedication, and many years of service. Tim also serves on the Board of Directors for the Delaware Humane Association

Delaware State Bar Association Labor & Employment Section Legislative Action Subcommittee

2022 Legislative Update

Timothy M. Holly – Connolly Gallagher LLP G. Kevin Fasic – Offit Kurman, P.A.

NEWER DELAWARE LAW

TAB 1	SB 48	Electrician "Fraud" (Signed 10/5/21)
TAB 2	HB 88	Training Minimum Wage Take Back (Signed 9/30/21)
TAB 3	SB 51	Plumbing & HVAC Sanctions (Signed 9/30/21)
TAB 4	SB 15	Minimum Wage (Signed 7/19/21)
TAB 5	SB 32	Stereotype Discrimination (Signed 4/13/21)
TAB 6	HB 65	Unemployment (Signed 2/8/21)
TAB 7	SB 31	"Equal Rights" Amendment – Strict Scrutiny (Passed Senate 1/21/21; House 1/28/21)

PENDING NEWER DELAWARE LEGISLATIVE ACTION

TAB 8	HB 331	Lemonade Stands (not joking) (Introduced 3/8/22)
TAB 9	SS2 for SB1	Paid FMLA (Introduced 3/4/22, passed Senate3/8/22)
TAB 10	HB 311	Disabilities in Public Accommodation (Introduced 3/3/22)
TAB 11	SA2 for SB 211	Age Inquiry in Applications (Introduced 1/27/22)
TAB 12	SA1 for SB 208	Wage Payment Defense Removal (Introduced1/24/22)
TAB 13	HB 288	Paid Time Off to Vote (Introduced 1/18/22)
TAB 14	HB 277	Vicarious Liability For Employees (Introduced 1/6/22)
TAB 15	SB 201	PERB Timing for Decisions (Introduced 12/16/21)
TAB 16	HB 94	Tip Minimum Wage (Introduced 1/28/21) *substitute bill; still in committee since 6/30/21

FAILED NEWER DELAWARE LEGISLATIVE ACTION

TAB 17	HA1 for HB 305	Non-Medical Marijuana (Introduced 3/3/22)
TAB 18	SB 49	Prevailing Wage For Certain Colleges (Introduced 1/22/21) *reported out of committee on 3/4/21; nothing further

TAB 1

Delaware General Assembly (/)

Bill Progress Senate Bill 48 151st General Assembly (Present)

Current Status:

Lieu/Substituted 1/26/21

What happens next?

Adopted in Lieu of original; takes status of original

Bill Details

View Substitute

SS 1 for SB 48 (/BillDetail/48337)

Introduced on:

1/22/21

Primary Sponsor:

Walsh (/LegislatorDetail?personId=3131)

Additional Sponsor(s):

Rep. Osienski (/LegislatorDetail?personId=112)

Co-Sponsor(s):

Sen. Mantzavinos (/LegislatorDetail?personId=1272)

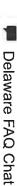
Long Title:

AN ACT TO AMEND TITLE 24 OF THE DELAWARE CODE RELATING TO DISCIPLINARY SANCTIONS BY THE BOARD OF ELECTRICAL EXAMINERS

Original Synopsis:

corrections to conform existing law to the standards of the Delaware Legislative Drafting Manual. This Act increases the maximum monetary penalty for a sanction by the Board of Electrical Examiners' from \$1,500 to not less than \$4,500. This Act makes technical

Volume:Chapter: 0





NA

Advisory Number:

N A

Fiscal Note/Fee Impact:

Not Required

Effective Date:

Takes effect upon being signed into law

Sunset Date:

N A

Bill Text

Original Text:

View HTML (/json/BillDetail/GenerateHtmlDocument?legislationId=48325&legislationTypeId=1&docTypeId=2&legislationName=SB48)

View PDF (/json/BillDetail/GeneratePdfDocument?legislationId=48325&legislationTypeId=1&docTypeId=2&legislationName=S348)

You may need to disable your browser's pop-up blocker to view linked documents.

Amendments

Amer	
\mendment	
Status	
Introduction Date	
Primary Sponsor	
View Details	

No Records Available

Committee Reports

	Date
No	Committee
No Records Available	# Members
	Favorable
	On Its Merits
	Unfavorable

Roll Calls



Absent

PDF

Chamber Result Date Vote Type Yes **8** Not Voting

No Records Available

Actions History

Date	Action
1/22/21	Introduced and Assigned to Labor Committee in Senate
1/26/21	Substituted in Senate by SS 1 for SB 48
1/27/21	SS 1 for SB 48 - Reported Out of Committee (Labor) in Senate with 3 Favorable, 2 On Its Merits
3/9/21	SS 1 for SB 48 - Passed By Senate. Votes: 21 YES
3/10/21	SS 1 for SB 48 - Assigned to Labor Committee in House
3/16/21	SS 1 for SB 48 - Reported Out of Committee (Labor) in House with 6 Favorable, 3 On Its Merits
6/30/21	SS 1 for SB 48 - Passed By House. Votes: 40 YES 1 ABSENT
10/5/21	SS 1 for SB 48 - Signed by Governor

Legislation Detail Feeds

Roll Calls (/rss/RssFeeds/RollCallsByLegislation?legislationId=48325)

View All Legislation (/AllLegislation)

View All Senate Legislation (/Legislation/Senate)

View All House Legislation (/Legislation/House)



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NCSL (/Footer/NCSL)

RSS Feeds (/RssFeed)

Legislative Notifications ([f669d9a7-009d-4d83-ddaa-00000000002]a913defe-af2a-6dfe-ae60-ff0000a39f38)

Other Resources

Accessibility_(https://legis.delaware.gov/docs/default-source/default-document-library/adapolicy.pdf?sfvrsn=3560b238_2)

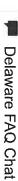
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SPONSOR: Sen. Walsh & Rep. Osienski Sen. Mantzavinos

DELAWARE STATE SENATE 151st GENERAL ASSEMBLY

SENATE BILL NO. 48

AN ACT TO AMEND TITLE 24 OF THE DELAWARE CODE RELATING TO DISCIPLINARY SANCTIONS BY THE BOARD OF ELECTRICAL EXAMINERS.

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

1	Section 1. Amend § 1414, Title 24 of the Delaware Code by making deletions as shown by strike through and
2	insertions as shown by underline as follows
3	§ 1414. Disciplinary sanctions.
4	(a) The Board may impose any of the following sanctions, singly or in combination, when it finds that 1 of the
5	conditions or violations set forth in § 1412 of this title applies to a practitioner or licensee regulated by this chapter:
6	(1) Issue a letter of reprimand; reprimand.
7	(2) Censure a practitioner; practitioner.
8	(3) Place a practitioner on probationary status, and require the practitioner to: to do 1 or more of the
9	following:
10	a. Report regularly to the Board upon the matters, which are the basis of the probation;
11	probation.
12	b. Limit all practice and professional activities to those areas prescribed by the Board; Board.
13	(4) Suspend any practitioner's license; license.
14	(5) Revoke any practitioner's license; license.
15	(6) Impose a monetary penalty not to exceed \$1,500 of not less than \$4.500 for each violation.
	SYNOPSIS
	This Act increases the maximum monetary penalty for a sanction by the Board of Electrical Examiners' from \$1,500 to not less than \$4,500.
	This Act makes technical corrections to conform existing law to the standards of the Delaware Legislative

Author: Senator Walsh

Page 1 of 1

Released: 01/22/2021 03:08 PM

Drafting Manual.

TAB 2

Delaware General Assembly (/)

2

House Bill 88

151st General Assembly (Present)

Bill Progress

Current Status:

Signed 9/30/21

What happens next?

Becomes effective upon date of signature of the Governor or upon date specified

Bill Details

Introduced on:

1/27/21

Primary Sponsor:

K. Williams (/LegislatorDetail?personId=198)

Additional Sponsor(s):

Sen. Walsh (/LegislatorDetail?personId=3131), Lockman (/LegislatorDetail?personId=13601)

Reps. Longhurst (/LegislatorDetail?personId=359), Kowalko (/LegislatorDetail?personId=176), Cooke (/LegislatorDetail?personId=13594), Heffernan (/LegislatorDetail?personId=97), Lynn (/LegislatorDetail?personId=317), Matthews (/LegislatorDetail?personId=318), Osienski (/LegislatorDetail?personId=112), <u>-ambert (/LegislatorDetail?personId=24002)</u>

Co-Sponsor(s):

Anton (/LegislatorDetail?personId=232) personId=13591), Minor-Brown (/LegislatorDetail?personId=13595), Mitchell (/LegislatorDetail?personId=178), Morrison (/LegislatorDetail?personId=24001), WilsonpersonId=124), Chukwuocha (/LegislatorDetail?personId=13589), Dorsey Walker (/LegislatorDetail?personId=13590), K. Johnson (/LegislatorDetail? Reps. <u>Baumbach (/LegislatorDetail?personId=252), Bennett (/LegislatorDetail?personId=55), Bentz (/LegislatorDetail?personId=42), Brady (/LegislatorDetail?</u> (/LegislatorDetail?personId=90), Sturgeon (/LegislatorDetail?personId=13602), Townsend (/LegislatorDetail?personId=13) Sen. S. McBride (/LegislatorDetail?personId=23999), Pinkney (/LegislatorDetail?personId=24000), Poore (/LegislatorDetail?personId=249), Sokola

Long Title

AN ACT TO AMEND TITLE 19 OF THE DELAWARE CODE RELATING TO MINIMUM WAGE.

Original Synopsis



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1/5

This bill removes the training minimum wage and youth minimum wage, which takes effect 90 days after enactment.

Volume:Chapter: 8

83:215

Advisory Number:

ž

Fiscal Note/Fee Impact:

Not Required

Effective Date: 0

12/29/21

Sunset Date:

Z

Bill Text

Original Text:

View PDF (/json/BillDetail/GeneratePdfDocument?legislationId=48343&legislationTypeId=1&docTypeId=2&legislationName=HB88) View HTML (/json/BillDetail/GenerateHtmlDocument?legislationId=48343&legislationTypeId=1&docTypeId=2&legislationName=HB88)

You may need to disable your browser's pop-up blocker to view linked documents.

Session Laws

Session Law:

View PDF (/SessionLaws/Chapter/GetPdfDocument?fileAttachmentId=438131) View HTML (/json/BillDetail/GenerateHtmlDocumentSessionLaw?sessionLawId=48343&docTypeId=13&sessionLawName=chp215)

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Amendments

Amendment
Status
Introduction Date
Primary Sponsor
View Details

No Records Available



Committee Reports

5/19/21	3/23/21	Date
<u>Labor (/CommitteeDetail?committeeId=571)</u>	Economic Development/Banking/Insurance & Commerce (/CommitteeDetail?committeeId=542)	Committee
တ	13	# Members
-1	O	Favorable
2	ω	On Its Merits
2	_	Unfavorable
view ()	<u>view ()</u>	

Roll Calls

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Chamber	Result	Date	Vote Type	Yes	N _o	Not Voting	Absent	PDF
Senate	Passed	6/8/21 2:52 PM	MS	13	œ	0	0	(/json/RollCallController/GenerateRollCallPdf?rollCallId=52176&chamberId=1) view ()
House	Passed	5/13/21 3:08 PM	M	26	15	0	0	(/json/RollCallController/GenerateRollCallPdf? rollCallId=52089&chamberId=2) view_()

Actions History

Date	Action
1/27/21	Introduced and Assigned to Economic Development/Banking/Insurance & Commerce Committee in House
3/23/21	Reported Out of Committee (Economic Development/Banking/Insurance & Commerce) in House with 6 Favorable, 3 On Its Merits, 1 Unfavorable
5/13/21	Passed By House. Votes: 26 YES 15 NO
5/13/21	Assigned to Labor Committee in Senate
5/19/21	Reported Out of Committee (Labor) in Senate with 1 Favorable, 2 On Its Merits, 2 Unfavorable
6/8/21	Passed By Senate. Votes: 13 YES 8 NO
9/30/21	Signed by Governor Nelaware FAO Chat

Delaware FAQ Chat

Legislation Detail Feeds

Roll Calls (Irss/RssFeeds/RollCallsByLegislation?legislationId=48343)

View All Legislation (/AllLegislation)

View All Senate Legislation (/Legislation/Senate).

View All House Legislation (/Legislation/House)

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- X (mailto:DivisionOfResearch@state.de.us) (mailto:DivisionOfResearch@delaware.gov)Legislative Hall (mailto:LC_reception@delaware.gov)

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CSG (/Footer/CSG)

ULC (/Footer/ULC)

NCSL (/Footer/NCSL)

RSS Feeds (/RssFeed)

Legislative Notifications ([f669d9a7-009d-4d83-ddaa-00000000002]a913defe-af2a-6dfe-ae60-ff0000a39f38)

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Delaware FAQ Chat

Other Resources

Accessibility_(https://legis.delaware.gov/docs/default-source/default-document-library/adapolicy.pdf?sfvrsn=3560b238_2)

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LAWS OF DELAWARE VOLUME 83 CHAPTER 215 151st GENERAL ASSEMBLY FORMERLY HOUSE BILL NO. 88

AN ACT TO AMEND TITLE 19 OF THE DELAWARE CODE RELATING TO MINIMUM WAGE.

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

Section 1. Amend § 902, Title 19 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

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

(e)(1) Training Wage in lieu of the minimum wage otherwise required under this section, an employer may pay an employee who is 18 years of age or older, during the first 90 consecutive calendar days after the employee is initially employed by the employer, a wage rate that is not more than \$.50 less than the wage rate prescribed in subsection (a) of this section.

Section 2. Amend § 902, Title 19 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

(e)(2) Youth Wage—in lieu of the minimum wage otherwise required by this section, an employer may pay an employee who is under 18 years of age a wage rate that is not more than \$.50 less than the wage rate prescribed in subsection (a) of this section.

Section 3. Sections 1 and 2 take effect 90 days after its enactment into law.

Approved September 30, 2021

TAB 3

Delaware General Assembly (/)

0

Senate Bill 51 151st General Assembly (Present)

Bill Progress

Current Status:

Signed 9/30/21

What happens next?

Becomes effective upon date of signature of the Governor or upon date specified

Bill Details

Introduced on:

1/22/21

Primary Sponsor:

Walsh (/LegislatorDetail?personId=3131)

Additional Sponsor(s):

Rep. Osienski (/LegislatorDetail?personId=112)

Co-Sponsor(s):

Sen. Mantzavinos (/LegislatorDetail?personId=1272).

Rep. Brady_(/LegislatorDetail?personId=124)

Long Title:

AN ACT TO AMEND TITLE 24 OF THE DELAWARE CODE RELATING TO DISCIPLINARY SANCTIONS BY THE BOARD OF PLUMBING, HEATING, VENTILATION, AIR CONDITIONING, AND REFRIGERATION EXAMINERS.

Original Synopsis:

This Act increases the monetary penalties for sanctions by the Board of Plumbing, Heating, Ventilation, Air Conditioning, and Refrigeration Examiners.

Volume:Chapter: 8

33:231



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1/5

Advisory Number:

21

Fiscal Note/Fee Impact:

Not Required

Effective Date: 0

9/30/21

Sunset Date:

N A

Bill Text

Original Text:

View HTML (/json/BillDetail/GenerateHtmlDocument?legislationId=48326&legislationTypeId=1&docTypeId=2&legislationName=SB51)

View PDF (/json/BillDetail/GeneratePdfDocument?legislationId=48326&legislationTypeId=1&docTypeId=2&legislationName=SB51)

You may need to disable your browser's pop-up blocker to view linked documents.

Session Laws

Session Law:

View HTML (/json/BillDetail/GenerateHtmlDocumentSessionLaw?sessionLawId=48326&docTypeId=13&sessionLawName=chp231)

View PDF (/SessionLaws/Chapter/GetPdfDocument?fileAttachmentId=438182)

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Amendments

Amendment
Status
Introduction Date
Amendment Status Introduction Date Primary Sponsor
View De

No Records Available

Committee Reports

■ Delawa	# Members
ware FAQ Chat	Favorable
Ň	On Its Merits
,	Unfavorable

Date	Committee	# Members	Favorable	On Its Merits	Unfavorable	
1/27/21	<u>Labor (/CommitteeDetail?committeeId=571)</u>	o	ω	2	0	<u>view ()</u>
3/16/21	<u>Labor (/CommitteeDetail?committeeId=551)</u>	11	6	ω	0	view ()

Roll Calls

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Chamber Result	Result	Date	Vote Type	Yes	N _o	Not Voting	Absent	PDF
House	Passed	6/30/21 2:43 PM	MS	40	0	0	_	(/json/RollCallController/GenerateRollCallPdf? rollCallId=52679&chamberId=2) view.()
Senate	Passed	3/9/21 2:15 PM	SM	21	0	0	0	(/json/RollCallController/GenerateRollCallPdf? rollCallId=41766&chamberId=1) view ()

Actions History

Date	Action
1/22/21	Introduced and Assigned to Labor Committee in Senate
1/27/21	Reported Out of Committee (Labor) in Senate with 3 Favorable, 2 On Its Merits
3/9/21	Passed By Senate. Votes: 21 YES
3/10/21	Assigned to Labor Committee in House
3/16/21	Reported Out of Committee (Labor) in House with 6 Favorable, 3 On Its Merits
6/29/21	Suspension of Rules in House
6/30/21	Passed By House. Votes: 40 YES 1 ABSENT
9/30/21	Signed by Governor

Legislation Detail Feeds

Roll Calls (/rss/RssFeeds/RollCallsByLegislation?legislationId=48326)

View All Legislation (/AllLegislation)

View All Senate Legislation (/Legislation/Senate)

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Useful links

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NCSL (/Footer/NCSL)

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RSS Feeds (/RssFeed)

Legislative Notifications ([f669d9a7-009d-4d83-ddaa-00000000002]a913defe-af2a-6dfe-ae60-ff0000a39f38)





Other Resources

Accessibility (https://legis.delaware.gov/docs/default-source/default-document-library/adapolicy.pdf?sfvrsn=3560b238_2)

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SPONSOR: Sen. Walsh & Rep. Osienski Sen. Mantzavinos; Rep. Brady

DELAWARE STATE SENATE 151st GENERAL ASSEMBLY

SENATE BILL NO. 51

AN ACT TO AMEND TITLE 24 OF THE DELAWARE CODE RELATING TO DISCIPLINARY SANCTIONS BY THE BOARD OF PLUMBING, HEATING, VENTILATION, AIR CONDITIONING, AND REFRIGERATION EXAMINERS.

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

1	Section 1. Amend Chapter 18 of Title 24 of the Delaware Code by making deletions as shown by strike through
2	and insertions as shown by underline as follows:
3	§ 1807 License required; exemptions.
4	(a) A person shall not provide plumbing services in this State nor hold himself or herself out to the public as being
5	a licensed master plumber, nor use "licensed plumber," "master plumber," or "licensed master plumber" in connection
6	with that person's name, nor otherwise assume or use any title or description conveying or tending to convey the
7	impression that the person is qualified to provide plumbing services, unless the person has been licensed as a master
8	plumber under this chapter, or exempted from the provisions of this chapter pursuant to subsection (c) of this section.
9	(b) If the license of a master plumber has expired or been suspended or revoked, it is unlawful for the holder of the
10	expired, suspended, or revoked license to perform plumbing services in this State.
11	(c) An individual may provide plumbing services without being licensed under this chapter if:
12	(1) The individual is an apprentice, journeyman, mechanic, or other person providing such services under
13	the supervision of a master plumber who is the individual's employer or who is employed full time by the same
14	business entity as the individual;
15	(2) The individual is a homeowner who is performing plumbing services other than gas piping in or about
16	that individual's own home that is not for sale or any part for rent or lease, provided that the individual has filed an
17	application for a permit with the authorized inspection authority;
18	(3) The individual is providing such services on property used exclusively for agricultural purposes and
19	the individual has filed an application for a permit with the authorized inspection authority; or
20	(4) The individual is providing such services pursuant to the provisions in § 1832 of this title.
21	(5) The individual is providing services authorized under subchapter III of this chapter.

Page 1 of 2

Released: 01/22/2021 03:09 PM

22	(d) The penalty for a violation of this section is, for a first offense, a fine of not less than \$500 \$1,500 nor more
23	than \$1000 \$3,000, and, for a second or subsequent offense, a fine of not less than \$1000 \$3,000 nor more than \$2000
24	<u>\$6,000</u> . Justice of the Peace Courts shall have jurisdiction over violations of this section.
25	§ 1820 License required; exemptions.
26	(a) A person shall not provide HVACR or HVACR restricted services in this State nor hold himself or herself out
27	to the public as being a master HVACR licensee or master HVACR restricted licensee, nor use "master HVACR
28	licensee", "master HVACR restricted licensee" in connection with that person's name nor otherwise assume or use any
29	title or description conveying or tending to convey the impression that that person is qualified to provide HVACR or
30	HVACR restricted services, unless that person has been licensed as a master HVACR licensee or a master HVACR
31	restricted licensee under this chapter or exempted from the provisions of this chapter pursuant to subsection (c) of this
32	section.
33	(b) If the license of a master HVACR licensee or master HVACR restricted licensee has expired or been
34	suspended or revoked, it is unlawful for the holder of the expired, suspended, or revoked license to act as a master
35	HVACR licensee, or master HVACR restricted licensee in this State.
36	(c) An individual may provide HVACR or HVACR restricted services without being licensed under this chapter if:
37	(1) The individual is an apprentice, journeyman, mechanic or other person providing such services under
38	the supervision of a master HVACR licensee or master HVACR restricted licensee, who is the individual's
39	employer or who is employed full time by the same business entity as the individual;
40	(2) The individual is a homeowner who is performing HVACR services other than gas piping in or about
41	that individual's own home that is not for sale or any part for rent or lease;
42	(3) The individual is providing such services on property used exclusively for agricultural purposes and
43	the individual has filed an application for a permit with the authorized inspection authority;

SYNOPSIS

\$6,000. Justice of the Peace Courts have jurisdiction over violations of this section.

than \$1000 \$3,000, and, for a second or subsequent offense, a fine of not less than \$1000 \$3,000 nor more than \$2000

(4) The individual is providing such services pursuant to the provisions in § 1831 of this title.

(d) The penalty for a violation of this section is, for a first offense, a fine of not less than \$500 \$1,500 nor more

This Act increases the monetary penalties for sanctions by the Board of Plumbing, Heating, Ventilation, Air Conditioning, and Refrigeration Examiners.

Author: Senator Walsh

44

45

46

47

TAB 4

Delaware General Assembly (/)

Senate Bill 15 **Bill Progress** 151st General Assembly (Present)

Current Status:

Signed 7/19/21

What happens next?

Becomes effective upon date of signature of the Governor or upon date specified

Bill Details

Introduced on:

3/9/21

Primary Sponsor:

Walsh (/LegislatorDetail?personId=3131)

Additional Sponsor(s)

personId=198) Reps. Brady (/LegislatorDetail?personId=124), Dorsey Walker (/LegislatorDetail?personId=13590), Kowalko (/LegislatorDetail?personId=176), Lambert Sen. Brown (/LegislatorDetail?personId=13600), Pinkney (/LegislatorDetail?personId=24000), Townsend (/LegislatorDetail?personId=13) (<u>/LegislatorDetail?personId=24002), Longhurst (/LegislatorDetail?personId=359), Osienski (/LegislatorDetail?personId=112), K. Williams (/LegislatorDetail?</u>

Co-Sponsor(s):

(/LegislatorDetail?personId=249), Sturgeon (/LegislatorDetail?personId=13602), Sokola (/LegislatorDetail?personId=90)
Reps. Baumbach (/LegislatorDetail?personId=252), Bolden (/LegislatorDetail?personId=332), Bentz (/LegislatorDetail?personId=42), Cooke (/LegislatorDetail?personId=42), Cooke (/LegislatorDetail?personId=332), Bentz (/LegislatorDetail?personId=42), Cooke (/LegislatorDetail?personId=42), Cook Sen. Ennis (/LegislatorDetail?personId=5), Gay (/LegislatorDetail?personId=13474), Lockman (/LegislatorDetail?personId=13601), Hansen (/LegislatorDetail?personId=13601), Hansen (/LegislatorDetail?personId=13601), Hansen (/LegislatorDetail?personId=13474), Lockman (/LegislatorDetail?personId=13474), Lockman (/LegislatorDetail?personId=13601), Hansen (/LegislatorDetail?personId=13474), Lockman (/LegislatorDetail?personId=13601), Hansen (/LegislatorDetail?personId=13474), Lockman (/LegislatorDetail?personId= personId=3212), Mantzavinos (/LegislatorDetail?personId=1272), S. McBride (/LegislatorDetail?personId=23999), Paradee (/LegislatorDetail?personId=355), Poore personId=13594), Chukwuocha (/LegisIatorDetail?personId=13589), Heffernan (/LegisIatorDetail?personId=97), Lynn (/LegisIatorDetail?personId=317), Minor-Brown (<u>/LegislatorDetail?personId=13595), Morrison (/LegislatorDetail?personId=24001), Mitchell (/LegislatorDetail?personId=178), Wilson-Anton (/LegislatorDetail?</u>

Long Title:

AN ACT TO AMEND TITLE 19 OF THE DELAWARE CODE RELATING TO MINIMUM 🔎 Delaware FAQ Chat





Original Synopsis:

This bill provides for gradual increases in the Delaware minimum wage to \$15 over a period of several years.

Volume:Chapter: 8

83:81

Advisory Number:

4

Fiscal Note/Fee Impact:

F/N (Complete) View PDF (/json/BillDetail/GetPdfDocument?fileAttachmentId=379055)

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Effective Date: 0

7/19/21

Sunset Date:

NA

Bill Text

Original Text:

View PDF (/json/BillDetail/GeneratePdfDocument?legislationId=48445&legislationTypeId=1&docTypeId=2&legislationName=SB15) View HTML (/json/BillDetail/GenerateHtmlDocument?legislationId=48445&legislationTypeId=1&docTypeId=2&legislationName=SB15)

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Final/Engrossed:

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Session Laws

Session Law:

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Amendments

	Status	Introduction Date	Fillialy apollsor	
SA 1	Passed	3/18/21	Walsh (/LegislatorDetail?personId=3131)	view amendment details (/BillDetail? legislationId=48481)
HA 1	Defeated	6/10/21	Yearick (/LegislatorDetail?personId=223)	view amendment details (/BillDetail? legislationId=78876)
HA 2	Defeated	6/10/21	Ramone (/LegislatorDetail?personId=243)	view amendment details (/BillDetail? legislationId=78877)
НА 3	Defeated	6/11/21	Michael Smith (/LegislatorDetail?personId=13596)	view amendment details (/BillDetail? legislationId=78888)
HA 4	Defeated	6/11/21	Briggs King (/LegislatorDetail?personId=3058)	view amendment details (/BilIDetail? legislationId=78887)
HA 5	Defeated	6/14/21	Shupe (/LegislatorDetail?personId=13599)	view amendment details (/BillDetail? legislationId=78900)
HA 6	Defeated	6/14/21	Shupe (/LegislatorDetail?personId=13599)	view amendment details (/BillDetail? legislationId=78901)
HA 7	Stricken	6/14/21	Shupe (/LegislatorDetail?personId=13599)	view amendment details (/BillDetail? legislationId=78903)
HA 8	Stricken	6/14/21	Shupe (/LegislatorDetail?personId=13599)	view amendment details (/BillDetail? legislationId=78902)
HA 9	Defeated	6/15/21	S. Moore (/LegislatorDetail?personId=3143) • Delaware FAO Chat	view amendment details (/BillDetail? l-gislationId=68669)

Committee Reports

Date	Committee	# Members	Favorable	On Its Merits	Unfavorable	#In
3/17/21	<u>Labor (/CommitteeDetail?committeeId=571)</u>	6	ω	_	0	view ()
3/18/21	Finance (/CommitteeDetail?committeeId=562)	6	4	0	0	<u>view ()</u>
4/22/21	Economic Development/Banking/Insurance & Commerce (/CommitteeDetail?committeeId=542)	3	6	2	0	<u>view ()</u>
6/4/21	Appropriations (/CommitteeDetail?committeeId=539)	O	4	0	0	view ()

Roll Calls

(/json/RollCallController/GenerateRollCallPdf? rollCallId=41810&chamberId=1) view ()	0	0	7	14	MS	3/18/21 3:13 PM	Passed	Senate
(/json/RollCallController/GenerateRollCallPdf? rollCallId=52359&chamberId=2) view ()	0	0	15	26	MS	6/17/21 6:46 PM	Passed	House
PDF	Absent	Not Voting	No	Yes	Vote Type Yes	Date	Result	Chamber

Actions History

Date	Action
3/9/21	Introduced and Assigned to Labor Committee in Senate
3/17/21	Reported Out of Committee (Labor) in Senate with 3 Favorable, 1 On Its Merits
3/18/21	Amendment SA 1 to SB 15 - Introduced and Placed With Bill
3/18/21	Assigned to Finance Committee in Senate
3/18/21	Reported Out of Committee (Finance) in Senate with 4 Favorable



Date	Action
3/18/21	Amendment SA 1 to SB 15 - Passed By Senate. Votes: 14 YES 6 NO 1 ABSENT
3/18/21	Passed By Senate. Votes: 14 YES 7 NO
3/18/21	Assigned to Economic Development/Banking/Insurance & Commerce Committee in House
4/22/21	Reported Out of Committee (Economic Development/Banking/Insurance & Commerce) in House with 6 Favorable, 2 On Its Merits
4/22/21	Assigned to Appropriations Committee in House
6/4/21	Reported Out of Committee (Appropriations) in House with 4 Favorable
6/10/21	Amendment HA 1 to SB 15 - Introduced and Placed With Bill
6/10/21	Amendment HA 2 to SB 15 - Introduced and Placed With Bill
6/11/21	Amendment HA 3 to SB 15 - Introduced and Placed With Bill
6/11/21	Amendment HA 4 to SB 15 - Introduced and Placed With Bill
6/14/21	Amendment HA 5 to SB 15 - Introduced and Placed With Bill
6/14/21	Amendment HA 6 to SB 15 - Introduced and Placed With Bill
6/14/21	Amendment HA 7 to SB 15 - Introduced and Placed With Bill
6/14/21	Amendment HA 8 to SB 15 - Introduced and Placed With Bill
6/15/21	Amendment HA 9 to SB 15 - Introduced and Placed With Bill
6/17/21	Amendment HA 1 to SB 15 - Defeated By House. Votes: 15 YES 26 NO
6/17/21	Amendment HA 2 to SB 15 - Defeated By House. Votes: 15 YES 26 NO
6/17/21	Amendment HA 3 to SB 15 - Defeated By House. Votes: 15 YES 26 NO
6/17/21	Amendment HA 4 to SB 15 - Defeated By House. Votes: 15 YES 26 NO

Delaware FAQ Chat

Date

Action

6/17/21	Amendment HA 5 to SB 15 - Defeated By House. Votes: 15 YES 26 NO
6/17/21	Amendment HA 6 to SB 15 - Defeated By House. Votes: 15 YES 26 NO
6/17/21	Amendment HA 9 to SB 15 - Defeated By House. Votes: 16 YES 25 NO
6/17/21	Passed By House. Votes: 26 YES 15 NO
7/19/21	Signed by Governor

Legislation Detail Feeds

Roll Calls (Irss/RssFeeds/RollCallsByLegislation?legislationId=48445)

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Other Resources

Accessibility_(https://legis.delaware.gov/docs/default-source/default-document-library/adapolicy.pdf?sfvrsn=3560b238_2)

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Wilson-Anton, Griffith

DELAWARE STATE SENATE 151st GENERAL ASSEMBLY

SENATE BILL NO. 15 AS AMENDED BY SENATE AMENDMENT NO. 1

AN ACT TO AMEND TITLE 19 OF THE DELAWARE CODE RELATING TO MINIMUM WAGE.

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

Section 1. Amend § 902, Title 19 of the Delaware Code by making deletions as shown by making deletions as shown by strike through and insertions as shown by underline as follows and by redesignating accordingly:

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

- (a) Except as may otherwise be provided under this chapter, every employer shall pay to every employee in any occupation wages of a rate:
 - (1) Not less than \$7.75 \$10.50 per hour effective June 1, 2014 January 1, 2022;
 - (2) Not less than \$8.25 \$11.75 per hour effective June 1, 2015 January 1, 2023;
 - (3) Not less than \$8.75 \$13.25 per hour effective January 1, 2019 January 1, 2024;
 - (4) Not less than \$9.25 \$15.00 per hour effective October 1, 2019 January 1, 2025;
 - (5) Not less than \$9.25 per hour until January 1, 2022.

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

Page 1 of 1

Released: 06/17/2021 06:49 PM

TAB 5

Delaware General Assembly (/)

Q

Senate Bill 32 151st General Assembly (Present)

Bill Progress

Current Status:

Signed 4/13/21

What happens next?

Becomes effective upon date of signature of the Governor or upon date specified

Bill Details

Introduced on:

1/12/21

Primary Sponsor:

Brown (/LegislatorDetail?personId=13600)

Additional Sponsor(s):

<u>(/LegislatorDetail?personId=3143)</u> Reps. K. Johnson (/LegislatorDetail?personId=13591), Cooke (/LegislatorDetail?personId=13594), Minor-Brown (/LegislatorDetail?personId=13595), S. Moore

Co-Sponsor(s):

Reps. Baumbach (/LegislatorDetail?personId=252), Bolden (/LegislatorDetail?personId=332), Brady (/LegislatorDetail?personId=124), Chukwuocha Sen. Gay (/LegislatorDetail?personId=13474), Lockman (/LegislatorDetail?personId=13601), Lopez (/LegislatorDetail?personId=117), S. McBride (/LegislatorDetail?personId=13601) personId=23999), Paradee (/LegislatorDetail?personId=355), Pinkney (/LegislatorDetail?personId=24000), Poore (/LegislatorDetail?personId=249), Richardson (/LegislatorDetail?personId=112), K. Williams (/LegislatorDetail?personId=198), Wilson-Anton (/LegislatorDetail?personId=232) personId=176), Lambert (/LegislatorDetail?personId=24002), Mitchell (/LegislatorDetail?personId=178), Morrison (/LegislatorDetail?personId=24001), Osienski (<u>/LegislatorDetail?personId=13589), Dorsey Walker (/LegislatorDetail?personId=13590), Griffith (/LegislatorDetail?personId=13593), Kowalko (/LegislatorDetail?</u> (/LegislatorDetail?personId=10), Sokola (/LegislatorDetail?personId=90), Sturgeon (/LegislatorDetail?personId=13602), Townsend (/LegislatorDetail?personId=13)

Long Title:

AN ACT TO AMEND THE DELAWARE CODE RELATING TO DISCRIMINATION.

Original Synopsis





are 50% more likely to be sent home or know of another Black woman sent home from work because of her hair. (3) Black women are 30% more likely to be made aware of a formal workplace appearance policy. Delaware law prohibits discrimination on the basis of race in a variety of settings. This Act makes clear that race also A 2019 study found the following: (1) Black women are 80% more likely to change their natural hair to meet social norms or expectations at work. (2) Black women technical corrections to conform existing law to the standards of the Delaware Legislative Drafting Manual. includes traits historically associated with race, including hair texture and a protective hairstyle, which includes braids, locks, and twists. This Act also makes

Volume:Chapter: 0

83:13

Advisory Number:

 ∞

Fiscal Note/Fee Impact:

Not Required

Effective Date: 0

4/13/21

Sunset Date:

N N

Bill Text

Original Text:

View HTML (/json/BillDetail/GenerateHtmlDocument?legislationId=48276&legislationTypeId=1&docTypeId=2&legislationName=SB32)

View PDF (/json/BillDetail/GeneratePdfDocument?legislationId=48276&legislationTypeId=1&docTypeId=2&legislationName=SB32)

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Session Laws

Session Law:

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Amendments

	Amendment
	Status
	Introduction Date
1	Primary Sponsor
Delaware FAQ Chat	View Details
>	View Details

No Records Available

Committee Reports

Date	Committee	# Members	Favorable	On Its Merits	Unfavorable	
1/27/21	Judiciary_(/CommitteeDetail?committeeId=570)	ഗ	4	0	0	<u>view ()</u>
3/9/21	Administration (/CommitteeDetail?committeeId=536)	បា	ω	0	0	<u>view ()</u>

Roll Calls

Senate	House	Chamber
Passed	Passed	Result
1/28/21 2:51 PM	4/1/21 3:52 PM	Date
SM	MS	Vote Type
21	41	Yes
0	0	No
0	0	Not Voting
0	0	Absent
(/json/RollCallController/GenerateRollCallPdf? rollCallId=41754&chamberId=1) view.()	(/json/RollCallController/GenerateRollCallPdf? rollCallId=41925&chamberId=2) view ()	PDF

Actions History

Date	Action
1/12/21	Introduced and Assigned to Judiciary Committee in Senate
1/27/21	Reported Out of Committee (Judiciary) in Senate with 4 Favorable
1/28/21	Passed By Senate. Votes: 21 YES
2/19/21	Assigned to Administration Committee in House
3/9/21	Reported Out of Committee (Administration) in House with 3 Favorable

Legislation Detail Feeds

Roll Calls (/rss/RssFeeds/RollCallsByLegislation?legislationId=48276)

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Wilson-Anton

DELAWARE STATE SENATE 151st GENERAL ASSEMBLY

SENATE BILL NO. 32

AN ACT TO AMEND THE DELAWARE CODE RELATING TO DISCRIMINATION.

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

1	Section 1. Amend § 1901, Title 2 of the Delaware Code by making deletions as shown by strike through and
2	insertions as shown by underline as follows and by redesignating accordingly:
3	§ 1901. Definitions.
4	As used in this chapter:
5	(4) "Protective hairstyle" includes braids, locks, and twists.
6	(5) "Race" includes traits historically associated with race, including hair texture and a protective hairstyle.
7	Section 2. Amend § 4502, Title 6 of the Delaware Code by making deletions as shown by strike through and
8	insertions as shown by underline as follows and by redesignating accordingly:
9	§ 4502. Definitions.
10	As used in this chapter:
11	(15) "Protective hairstyle" includes braids, locks, and twists.
12	(16) "Race" includes traits historically associated with race, including hair texture and a protective hairstyle.
13	Section 3. Amend § 4602, Title 6 of the Delaware Code by making deletions as shown by strike through and
14	insertions as shown by underline as follows and by redesignating accordingly:
15	§ 4602. Definitions.
16	As used in this chapter:
17	(22) "Protective hairstyle" includes braids, locks, and twists.
18	(23) "Race" includes traits historically associated with race, including hair texture and a protective hairstyle.
19	Section 4. Amend § 1183, Title 9 of the Delaware Code by making deletions as shown by strike through and
20	insertions as shown by underline as follows:

Page 1 of 10

21	§ 1183. Prohibitions and penalties.
22	(a) The following prohibitions shall be applicable: apply:
23	(1) No person shall A person may not be appointed to, or removed from, or in any way favored or
24	discriminated against with respect to, any county position, or appointive county administrative office, because of race
25	or color, or national origin, or political, political or religious opinions or affiliations, or sex, or sexual orientation, or
26	gender identity; identity. For purposes of this subsection:
27	a. "Protective hairstyle" includes braids, locks, and twists.
28	b. "Race" includes traits historically associated with race, including hair texture and a protective hairstyle.
29	(2) No person shall, A person may not, wilfully or corruptly, make any false statement, certificate, mark
30	rating rating or report in regard to any test, certification or appointment under the personnel provisions of this chapter
31	or in any manner commit or attempt to commit any fraud preventing the impartial execution of the personner
32	provisions or of the rules and regulations made under this chapter; chapter.
33	(3) No person A person who seeks appointment or promotion with respect to any county position or
34	appointive county administrative office-shall, may not, directly or indirectly, give, render_render_or pay any money
35	service service, or other valuable thing to any person for, or in connection with, that person's test, appointment
36	proposed appointment, promotion promotion, or proposed promotion.
37	Section 5. Amend § 9605, Title 9 of the Delaware Code by making deletions as shown by strike through and
38	insertions as shown by underline as follows:
39	§ 9605. Recordation of instruments.
40	(b)(1) A recorder may not knowingly record or receive for filing any contract, mortgage, lease, deed or
41	conveyance, or any other indenture or agreement affecting real property that contains any promise, covenant, or restriction
42	that limits, restrains, prohibits, or otherwise provides against the sale, gift, transfer, assignment, conveyance, ownership
43	lease, rental, use, or occupancy of real property to or by any person because of race, color, creed, religion, sex, sexual
44	orientation, gender identity, disability, age, marital status, familial status, source of income, national origin, or ancestry. For
45	purposes of this paragraph (b)(1):
46	a. "Protective hairstyle" includes braids, locks, and twists.
47	b. "Race" includes traits historically associated with race, including hair texture and a protective hairstyle
48	(2) Paragraph (b)(1) of this section does not prohibit a recorder from recording or receiving for filing any
49	contract, mortgage, lease, deed or conveyance, or any other indenture or agreement affecting real property that contains
50	a provision that is permitted by the exceptions to the Delaware Fair Housing Act under §§ 4603A and 4607 of Title 6.

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51	Section 6. Amend § 4503, Title 10 of the Delaware Code by making deletions as shown by strike through and
52	insertions as shown by underline as follows:
53	§ 4503. Definitions.
54	As used in this chapter:
55	(1) "Clerk" means the prothonotary of each county, and includes any deputy or clerk in the office of the
56	prothonotary; prothonotary.
57	(2) "Court" means the Superior Court of the State, and includes any Judge of the Court; Court.
58	(3) "Juror qualification form" means a form approved by the Court which shall elicit information relevant to
59	the selection of jurors in accordance with this chapter; and chapter.
60	(4) "Jury selection plan" means a written plan designed to carry out the policy and the provisions of this
61	chapter; chapter.
62	(5) "Master list" means a list or an electronic system for the storage of the names of prospective jurors
63	selected randomly from the source-list; list.
64	(6) "Protective hairstyle" includes braids, locks, and twists.
65	(6) (7) "Qualified jury wheel" means a device or an electronic system for the storage of the names of
66	prospective jurors on a master list who are not disqualified from jury service.
67	(8) "Race" includes traits historically associated with race, including hair texture and a protective hairstyle.
68	(7) (9) "Source list" means a list or an electronic system for the storage of the names on the voter registration
69	list which may be supplemented with names from other sources to foster the policy of this-chapter; chapter.
70	(8) (10) "Voter registration list" means the current official record of persons registered to vote in a general
71	election; election.
72	Section 7. Amend § 1213, Title 11 of the Delaware Code by making deletions as shown by strike through and
73	insertions as shown by underline as follows:
74	§ 1213. Definitions relating to abuse of office.
75	(a) In §§ 1211 and 1212 of this title, the The definitions given in under § 1209 of this title apply. apply to §§
76	1211 and 1212 of this title.
77	(b) As used in § 1211 of this title:
78	(1) "Protective hairstyle" includes braids, locks, and twists.
79	(2) "Race" includes traits historically associated with race, including hair texture and a protective hairstyle.

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80	Section 8. Amend § 1304, Title 11 of the Delaware Code by making deletions as shown by strike through and
81	insertions as shown by underline as follows:
82	§ 1304. Hate crimes; class A misdemeanor, class G felony, class F felony, class E felony, class D felony, class C
83	felony, class B felony, class A felony.
84	(a) Any person who commits, or attempts to commit, any crime as defined by the laws of this State, and who
85	intentionally:
86	(1) Commits said crime for the purpose of interfering with the victim's free exercise or enjoyment of any
87	right, privilege or immunity protected by the First Amendment to the United States Constitution, or commits said crime
88	because the victim has exercised or enjoyed said rights; or
89	(2) Selects the victim because of the victim's race, religion, color, disability, sexual orientation, gender
90	identity, national origin or ancestry, shall be guilty of a hate crime. For purposes of this-section, section:
91	a. the term "sexual orientation" means heterosexuality, bisexuality, or homosexuality, and the term
92	"gender-"Gender identity" means a gender-related identity, appearance, expression expression, or behavior of a
93	person, regardless of the person's assigned sex at birth.
94	b. "Protective hairstyle" includes braids, locks, and twists.
95	c. "Race" includes traits historically associated with race, including hair texture and a protective hairstyle.
96	d. "Sexual orientation" means heterosexuality, bisexuality, or homosexuality.
97	Section 9. Amend § 506, Title 14 of the Delaware Code by making deletions as shown by strike through and
98	insertions as shown by underline as follows:
99	§ 506. Restrictions.
100	(a) A charter school shall not: may not do any of the following:
101	(1) Charge tuition, except in accordance with Chapter 6 of this title, or collect fees not permitted to be
102	assessed by other school-districts; districts.
103	(2) Be home-based nor engage in any sectarian or religious practices in its educational program, admissions
104	policies, employment policies or operations; operations.
105	(3) Restrict student admissions except:
106	a. By age and grade;
107	b. By lottery in the case of over-enrollment;
108	c. By gender in the case of a same-gender school, except that there may not be more than 1 same-gender
109	school for each gender operating simultaneously, and any same-gender charter school authorized prior to June 30,

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110	2014, may have their charter renewed and continue to operate. Any subsequent same-gender charter school that
111	seeks to operate in the State shall make its application to the Department of Education and the State Board of
112	Education.
113	dg. [Repealed.]
114	(4) Discriminate against any student in the admissions process because of race, creed, color, sex (except in the
115	case of a same-gender school), handicap, or national origin, or because the student's school district of residence has a
116	per student local expenditure lower than another student seeking admission; or admission. For the purposes of this
117	subsection:
118	a. "Protective hairstyle" includes braids, locks, and twists.
119	b. "Race" includes traits historically associated with race, including hair texture and a protective hairstyle.
120	(5) Be formed to circumvent a court-ordered desegregation plan.
121	Section 10. Amend § 4161, Title 14 of the Delaware Code by making deletions as shown by strike through and
122	insertions as shown by underline as follows and by redesignating accordingly:
123	§ 4161. Definitions.
124	For purposes of this subchapter:
125	(9) "Protective hairstyle" includes braids, locks, and twists.
126	(10) "Race" includes traits historically associated with race, including hair texture and a protective hairstyle.
127	Section 11. Amend § 8501, Title 14 of the Delaware Code by making deletions as shown by strike through and
128	insertions as shown by underline as follows and by redesignating accordingly:
129	§ 8501. Definitions.
130	As used in this chapter, unless the context otherwise requires:
131	(4) "Protective hairstyle" includes braids, locks, and twists.
132	(5) "Race" includes traits historically associated with race, including hair texture and a protective hairstyle.
133	Section 12. Amend § 2304, Title 18 of the Delaware Code by making deletions as shown by strike through and
134	insertions as shown by underline as follows:
135	§ 2304. Unfair methods of competition and unfair or deceptive acts or practices defined.
136	The following are hereby defined as unfair methods of competition and unfair or deceptive acts or practices in the
137	business of insurance:
138	(22) Unfair discrimination in the value of insurance policies and premiums based on race, color, religion,
139	sexual orientation, gender identity or national origin; penalty. —

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a. It—shall—be is an unlawful practice for any insurance company licensed to do business in this State to discriminate in any way because of the insured's race, color, religion, sexual orientation, gender—identity identity, or national origin, or to make, publish, disseminate,—eireulate circulate, or place before the public, or cause, directly or indirectly, to be made, published, disseminated,—eireulated circulated, or placed before the public, in a newspaper,—magazine magazine, or other publication, or in the form of a notice, circular, pamphlet, letter letter, or poster, or over any radio or television station, or in any other way, to include the writing of any policy or the application therefor, an advertisement,—announcement announcement, or statement containing any assertion, representation representation, or statement with respect to the business of insurance or with respect to any person in the conduct of the insurance business, which discriminates in any way because of the insured's race, color, religion, sexual orientation, gender—identity identity, or national origin or to classify or refer to any individual on the basis of race, color, religion, sexual orientation, gender—identity identity identity, or national origin.

b. For purposes of this paragraph (22):

- 1. "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.
 - 2. "Protective hairstyle" includes braids, locks, and twists.
- 3. "Race" includes traits historically associated with race, including hair texture and a protective hairstyle.
 - 4. "Sexual orientation" exclusively means heterosexuality, homosexuality, or bisexuality.
- c. "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. [Transferred to paragraph (22)b. of this section.]
- Section 13. Amend § 204, Title 19 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:
 - § 204. Training and apprenticeship programs.

169	(g) The recruitment, selection selection, and training of apprentice trainees during their apprenticeship shall be
170	without discrimination because of race, color, religion, national origin national origin, or sex. The State will take
171	affirmative action to provide equal opportunity in apprenticeship programs and will operate the training program as
172	required under the State plan for equal employment in apprenticeship and training. For purposes of this subsection:
173	(1) "Protective hairstyle" includes braids, locks, and twists.
174	(2) "Race" includes traits historically associated with race, including hair texture and a protective hairstyle.
175	Section 14. Amend § 710, Title 19 of the Delaware Code by making deletions as shown by strike through and
176	insertions as shown by underline as follows and by redesignating accordingly:
177	§ 710. Definitions.
178	For the purposes of this subchapter:
179	(18) "Protective hairstyle" includes braids, locks, and twists.
180	(20) "Race" includes traits historically associated with race, including hair texture and a protective hairstyle.
181	Section 15. Amend § 502, Title 24 of the Delaware Code by making deletions as shown by strike through and
182	insertions as shown by underline as follows and by redesignating accordingly:
183	§ 502. Definitions [Effective Jan. 1, 2021; Effective until July 1, 2021].
184	The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them
185	under this section, except where the context clearly indicates a different meaning:
186	(14) "Protective hairstyle" includes braids, locks, and twists.
187	(15) "Race" includes traits historically associated with race, including hair texture and a protective hairstyle.
188	Section 16. Amend § 502, Title 24 of the Delaware Code by making deletions as shown by strike through and
189	insertions as shown by underline as follows and by redesignating accordingly:
190	§ 502. Definitions [Effective July 1, 2021].
191	The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them
192	under this section, except where the context clearly indicates a different meaning:
193	(14) "Protective hairstyle" includes braids, locks, and twists.
194	(15) "Race" includes traits historically associated with race, including hair texture and a protective hairstyle.
195	Section 17. Amend § 701, Title 24 of the Delaware Code by making deletions as shown by strike through and
196	insertions as shown by underline as follows and by redesignating accordingly:
197	§ 701. Chiropractic defined; limitation of chiropractic license [Effective until July 1, 2021].

198

(a) As used in this chapter:

199	(1) "Chiropractic" means a drugless system of health care based on the principle that interference with the
200	transmission of nerve impulses may cause disease.
201	(4) "Protective hairstyle" includes braids, locks, and twists.
202	(5) "Race" includes traits historically associated with race, including hair texture and a protective hairstyle.
203	Section 18. Amend § 701, Title 24 of the Delaware Code by making deletions as shown by strike through and
204	insertions as shown by underline as follows and by redesignating accordingly:
205	§ 701. Chiropractic defined; limitation of chiropractic license [Effective July 1, 2021].
206	(a) As used in this chapter:
207	(1) "Chiropractic" means a drugless system of health care based on the principle that interference with the
208	transmission of nerve impulses may cause disease.
209	(4) "Protective hairstyle" includes braids, locks, and twists.
210	(5) "Race" includes traits historically associated with race, including hair texture and a protective hairstyle.
211	Section 19. Amend § 1702, Title 24 of the Delaware Code by making deletions as shown by strike through and
212	insertions as shown by underline as follows and by redesignating accordingly:
213	§ 1702. Definitions [Effective Jan. 1, 2021; Effective until July 1, 2021].
214	The following definitions apply to this chapter unless otherwise expressly stated or implied by the context:
215	(14) "Protective hairstyle" includes braids, locks, and twists.
216	(15) "Race" includes traits historically associated with race, including hair texture and a protective hairstyle.
217	Section 20. Amend § 1702, Title 24 of the Delaware Code by making deletions as shown by strike through and
218	insertions as shown by underline as follows and by redesignating accordingly:
219	§ 1702. Definitions [Effective July 1, 2021].
220	The following definitions apply to this chapter unless otherwise expressly stated or implied by the context:
221	(14) "Protective hairstyle" includes braids, locks, and twists.
222	(15) "Race" includes traits historically associated with race, including hair texture and a protective hairstyle.
223	Section 21. Amend § 3101, Title 24 of the Delaware Code by making deletions as shown by strike through and
224	insertions as shown by underline as follows and by redesignating accordingly:
225	§ 3101. Definitions.
226	The following words, terms and phrases, when used in this chapter shall have the meanings ascribed to them under
227	this section, except where the context clearly indicates a different meaning:
228	(14) "Protective hairstyle" includes braids, locks, and twists.

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229	(15) "Race" includes traits historically associated with race, including hair texture and a protective hairstyle.
230	Section 22. Amend § 5141, Title 25 of the Delaware Code by making deletions as shown by strike through and
231	insertions as shown by underline as follows and by redesignating accordingly:
232	§ 5141. Definitions.
233	The following words, terms and phrases, when used in this part, shall have the meanings ascribed to them in this
234	section, except where the context clearly indicates a different meaning:
235	(24) "Protective hairstyle" includes braids, locks, and twists.
236	(25) "Race" includes traits historically associated with race, including hair texture and a protective hairstyle.
237	Section 23. Amend § 5953, Title 29 of the Delaware Code by making deletions as shown by strike through and
238	insertions as shown by underline as follows:
239	§ 5953. Discrimination prohibited.
240	(a) For purposes of this section:
241	(1) "Protective hairstyle" includes braids, locks, and twists.
242	(2) "Race" includes traits historically associated with race, including hair texture and a protective hairstyle.
243	(b) No person shall A person may not be appointed or promoted to, or demoted or dismissed from, any position in
244	the classified service, or be in any way favored or discriminated against with respect to employment in the classified service
245	service, because of political or religious opinions or affiliations, sexual orientation, gender identity, sex sex, or race.
246	Section 24. Amend § 6962, Title 29 of the Delaware Code by making deletions as shown by strike through and
247	insertions as shown by underline as follows:
248	§ 6962. Large public works contract procedures.
249	(d) Bid specifications and plans requirements. —
250	(7) Equality of employment opportunity and equal pay on public works. —
251	a. As a condition of the awarding of any contract for public works financed in whole or in part by state
252	appropriation, such contracts shall include the following provisions:
253	During the performance of this contract, the contractor agrees as follows:
254	1. The contractor will not discriminate against any employee or applicant for employment because of
255	race, creed, color, sex, sexual orientation, gender identity or national origin. The contractor will take positive
256	steps to ensure that applicants are employed and that employees are treated during employment without regard
257	to their race, creed, color, sex, sexual orientation, gender identity or national origin. Such action shall include,

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but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment

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259	advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training,
260	including apprenticeship. The contractor agrees to post in conspicuous places available to employees and
261	applicants for employment notices to be provided by the contracting agency setting forth this
262	nondiscrimination clause.
263	2. The contractor will, in all solicitations or advertisements for employees placed by or on behalf of
264	the contractor, state that all qualified applicants will receive consideration for employment without regard to
265	race, creed, color, sex, sexual orientation, gender identity or national origin.
266	3. The contractor will ensure employees receive equal pay for equal work, without regard to sex.
267	Employee pay differential is acceptable if pursuant to a seniority system, a merit system, a system which
268	measures earnings by quantity or quality of production, or if the differential is based on any other factor other
269	than sex.
270	b. The Secretary of the Department of Labor shall be responsible for the administration of this provision
271	and shall adopt such rules and regulations and issue such orders as deemed necessary to achieve the purposes
272	thereof; provided, that no requirement established hereby shall be in conflict with § 6904 of this title.
273	c. For the purposes of this section:
274	1. "Protective hairstyle" includes braids, locks, and twists.
275	2. "Race" includes traits historically associated with race, including hair texture and a protective

SYNOPSIS

A 2019 study found the following:

hairstyle.

- (1) Black women are 80% more likely to change their natural hair to meet social norms or expectations at work.
- (2) Black women are 50% more likely to be sent home or know of another Black woman sent home from work because of her hair.
 - (3) Black women are 30% more likely to be made aware of a formal workplace appearance policy.

Delaware law prohibits discrimination on the basis of race in a variety of settings. This Act makes clear that race also includes traits historically associated with race, including hair texture and a protective hairstyle, which includes braids, locks, and twists.

This Act also makes technical corrections to conform existing law to the standards of the Delaware Legislative Drafting Manual.

Author: Senator Brown

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LC: MJC: NMX 1241510004

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TAB 6

Delaware General Assembly (/)

151st General Assembly (Present) **House Bill 65**

Bill Progress

Current Status:

Signed 2/8/21

What happens next?

Becomes effective upon date of signature of the Governor or upon date specified

Bill Details

Introduced on:

1/11/21

Primary Sponsor:

Osienski (/LegislatorDetail?personId=112)

Additional Sponsor(s)

Sen. Walsh (/LegislatorDetail?personId=3131), Paradee (/LegislatorDetail?personId=355), Poore (/LegislatorDetail?personId=249), Townsend (/LegislatorDetail?personId=249), Townsend (/LegislatorDetail?personId=249), Townsend (/LegislatorDetail?personId=355), Poore (/LegislatorDetail?personId=249), Townsend (/LegislatorDetail?personId=355), Poore (/LegislatorDetail?personId=249), Townsend (/LegislatorDetail?personId=355), Poore (/LegislatorDetail?personId=249), Townsend (/LegislatorDetail?personId=355), Poore (/LegislatorDetail?personId=355), Poore (/LegislatorDetail?personId=249), Townsend (/LegislatorDetail?personId=355), Poore (/LegislatorDetail?personId=249), Townsend (/LegislatorDetail?personId=355), Poore (/LegislatorDetail?personId=249), Townsend (/LegislatorDetail?personId=355), Poore (/Leg personId=13), Brown (/LegislatorDetail?personId=13600), S. McBride (/LegislatorDetail?personId=23999)

(/LegislatorDetail?personId=359), Mitchell (/LegislatorDetail?personId=178), Matthews (/LegislatorDetail?personId=318), Baumbach (/LegislatorDetail? Reps. Bush (/LegislatorDetail?personId=369), K. Williams (/LegislatorDetail?personId=198), Schwartzkopf (/LegislatorDetail?personId=260), Longhurst (<u>/LegislatorDetail?personId=13591), Cooke (/LegislatorDetail?personId=13594), Wilson-Anton (/LegislatorDetail?personId=232)</u> personId=252), Bennett (/LegislatorDetail?personId=55), Heffernan (/LegislatorDetail?personId=97), Morrison (/LegislatorDetail?personId=24001), K. Johnson

Co-Sponsor(s):

Reps. Brady (/LegislatorDetail?personId=124), Briggs King (/LegislatorDetail?personId=3058), Carson (/LegislatorDetail?personId=370), Dorsey Walker Sen. Hansen (/LegislatorDetail?personId=3212), Sokola (/LegislatorDetail?personId=90), Wilson (/LegislatorDetail?personId=92) personId=13595), Ramone (/LegislatorDetail?personId=243), Michael Smith (/LegislatorDetail?personId=13596), Yearick (/LegislatorDetail?personId=223) (/LegislatorDetail?personId=13590), Griffith (/LegislatorDetail?personId=13593), Kowalko (/LegislatorDetail?personId=176), Minor-Brown (/LegislatorDetail?

AND RULEMAKING AUTHORITY. AN ACT TO AMEND TITLES 19, 29 AND 30 OF THE DELAWARE CODE RELATING TO COVID-19 RELATED UNEMPLOYMENT BENEFITS, ASSESSMENTS



1/5

Original Synopsis:

adjusted gross income so that unemployment claimants will not have to pay state taxes on the benefits they received during the pandemic. unemployment benefits to respond to COVID-19. Section 4 exempts unemployment compensation benefits received in 2020 from the calculation of Delaware to issue emergency rules amending the Delaware Unemployment Insurance Code to deal with the effects of COVID-19 and implement federal programs providing unemployment claims due to COVID-19. Section 3 extends the provisions in H.B. 352 from the 150th General Assembly authorizing the Delaware Secretary of Labor rate, and average construction industry assessment rate at the same rate as 2020 in order to avoid an increase in these rates as a result of the increase in extended unemployment benefits in periods of high unemployment. Section 2 establishes the 2021 new employer assessment rate, average industry assessment the end date of the Secretary of Labor's COVID-19 related rulemaking authority. Section 1 waives the 13-week waiting period for the state to "trigger on" to pay This bill provides COVID-19 related relief to both claimants receiving unemployment benefits and employers who are assessed unemployment taxes, and extends

Volume:Chapter: 0

83:2

Advisory Number:

_

Fiscal Note/Fee Impact:

F/N (Complete) View PDF (/json/BillDetail/GetPdfDocument?fileAttachmentId=377526)

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Effective Date: 0

2/8/21

Sunset Date: 0

3/31/22

Bill Text

Original Text:

View PDF (/json/BillDetail/GeneratePdfDocument?legislationId=48265&legislationTypeId=1&docTypeId=2&legislationName=HB65) View HTML (/json/BillDetail/GenerateHtmlDocument?legislationId=48265&legislationTypeId=1&docTypeId=2&legislationName=HB65)

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Session Laws

Session Law:

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Delaware FAQ Chat



Amendments

No Records Available

Committee Reports

	P					
Date	Committee	# Members	Favorable	On Its Merits	Unfavorable	
1/13/21	Administration (/CommitteeDetail?committeeId=536)	σ	4	0	0	<u>view ()</u>
1/27/21	Labor (/CommitteeDetail?committeeId=571)	O	ω	ω	0	view ()

Roll Calls

(/json/RollCallController/GenerateRollCallPdf? rollCallId=41703&chamberId=2) view ()	0	0	0	41	S	1/21/21 3:22 PM	Passed	House
(/json/RollCallController/GenerateRollCallPdf? rollCallId=41743&chamberId=1) view ().	0	0	0	21	3/5	1/28/21 2:07 PM	Passed	Senate
PDF	Absent	Not Voting	No	Yes	Vote Type	Date	Result	Chamber

Actions History

Date	Action			
1/11/21	Introduced and Assigned to Administration Committee in House			
1/13/21	Reported Out of Committee (Administration) in House with 4 Favorable	able		
1/21/21	Passed By House. Votes: 41 YES			
1/21/21	Assigned to Labor Committee in Senate	Delaware FAQ Chat	>	

1/21/21

Assigned to Labor Committee in Senate

Delaware FAQ Chat

Date	Action
1/27/21	Reported Out of Committee (Labor) in Senate with 3 Favorable, 3 On Its Merits
1/28/21	
2/8/21	Signed by Governor

Legislation Detail Feeds

Roll Calls (Irss/RssFeeds/RollCallsByLegislation?legislationId=48265)

View All Legislation (/AllLegislation)

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RSS Feeds (/RssFeed)

Legislative Notifications ([f669d9a7-009d-4d83-ddaa-00000000002]a913defe-af2a-6dfe-ae60-ff0000a39f38).

Other Resources

Accessibility_(https://legis.delaware.gov/docs/default-source/default-document-library/adapolicy.pdf?sfvrsn=3560b238_2)

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Michael Smith, Yearick; Sens. Hansen, Sokola, Wilson

HOUSE OF REPRESENTATIVES 151st GENERAL ASSEMBLY

HOUSE BILL NO. 65

AN ACT TO AMEND TITLES 19, 29 AND 30 OF THE DELAWARE CODE RELATING TO COVID-19 RELATED UNEMPLOYMENT BENEFITS, ASSESSMENTS AND RULEMAKING AUTHORITY.

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

Section 1. Amend § 3326, Title 19 of the Delaware Code by making deletions as shown by strike through and 1 insertions as shown by underline as follows: 2 3 § 3326 Extended Benefits. (n) With respect to determining whether the State is in an extended benefit period beginning on November 1, 4 2020, through December 31, 2021, the State shall disregard the requirement in subsection (a)(1) of this section that no 5 extended benefit period may begin before the fourteenth week following the end of a prior extended benefit period which 6 was in effect with respect to this State. 7 Section 2. Amend § 3348, Title 19 of the Delaware Code by making deletions as shown by strike through and 8 9 insertions as shown by underline as follows: § 3348 Average employer assessment rate; average industry assessment rate; average construction industry 10 assessment rate; new employer rate; standard rate of assessment. 11 (j) Notwithstanding the required computation of the average employer assessment rate, the average industry 12 assessment rate or the average construction industry assessment rate to be established by the Secretary of Labor on or 13 before December 31, 2020 for the next succeeding calendar year pursuant to subsections (a) through (c) of this section, for 14 calendar year 2021, all employers assigned an assessment rate under subsections (d) or (e) of this section shall have the 15 same rate as established by the Secretary of Labor for the calendar year 2020. 16 Section 3. Amend Title 29, Chapter 85 of the Delaware Code by making deletions as shown by strike through and 17

18

additions as shown by underline as follows:

19	Departments of Government
20	Chapter 85. Department of Labor
21	§ 8503 Powers, duties and functions of the Secretary.
22	(7) To establish and to promulgate such rules and regulations governing the operation of the Department as
23	may be deemed necessary by the Secretary and which are not inconsistent with the laws of this State. The Secretary is
24	authorized to develop emergency rules amending the Delaware Unemployment Insurance Code which enhance the
25	flexibility of the unemployment insurance program in response to COVID-19 and alleviate some of the burden of
26	temporary layoffs, isolation and quarantine by ensuring unemployment benefits are available to individuals whose
27	employment has been impacted directly by COVID-19.
28	Section 4. Amend § 1106(b), Title 30 of the Delaware Code by making deletions as shown by strike through and
29	insertions as shown by underline as follows:
30	§ 1106 Modifications.
31	(b) Subtractions There shall be subtracted from federal adjusted gross income:
32	(10) The amount of any unemployment benefits received in calendar year 2020, to the extent included in
33	federal adjusted gross income.
34	Section 5. Section 3 of this Act expires on March 31, 2022.

SYNOPSIS

This bill provides COVID-19 related relief to both claimants receiving unemployment benefits and employers who are assessed unemployment taxes, and extends the end date of the Secretary of Labor's COVID-19 related rulemaking authority. Section 1 waives the 13-week waiting period for the state to "trigger on" to pay extended unemployment benefits in periods of high unemployment. Section 2 establishes the 2021 new employer assessment rate, average industry assessment rate, and average construction industry assessment rate at the same rate as 2020 in order to avoid an increase in these rates as a result of the increase in unemployment claims due to COVID-19. Section 3 extends the provisions in H.B. 352 from the 150th General Assembly authorizing the Delaware Secretary of Labor to issue emergency rules amending the Delaware Unemployment Insurance Code to deal with the effects of COVID-19 and implement federal programs providing unemployment benefits to respond to COVID-19. Section 4 exempts unemployment compensation benefits received in 2020 from the calculation of Delaware adjusted gross income so that unemployment claimants will not have to pay state taxes on the benefits they received during the pandemic.

Page 2 of 2

Released: 01/11/2021 12:06 PM

TAB 7

Delaware General Assembly (/)

 \mathcal{L}

Senate Bill 31 151st General Assembly (Present)

Bill Progress

Current Status:

Approved 1/28/21

What happens next?

Becomes part of the Constitution upon approval or upon the date specified

Bill Details

Introduced on:

1/12/21

Primary Sponsor:

Brown (/LegislatorDetail?personId=13600)

Additional Sponsor(s):

Sen. Lopez (/LegislatorDetail?personId=117), Townsend (/LegislatorDetail?personId=13), Pinkney (/LegislatorDetail?personId=24000), Sturgeon (/LegislatorDetail?

Brown (/LegislatorDetail?personId=13595), S. Moore (/LegislatorDetail?personId=3143) Reps. Dorsey Walker (/LegislatorDetail?personId=13590), K. Johnson (/LegislatorDetail?personId=13591), Lambert (/LegislatorDetail?personId=24002), Minor-

Co-Sponsor(s):

personId=9), Poore (/LegislatorDetail?personId=249), Richardson (/LegislatorDetail?personId=10), Sokola (/LegislatorDetail?personId=90), Walsh (/LegislatorDetail?personId=90), Walsh (/LegislatorDetail?personId=90), Walsh (/LegislatorDetail?personId=90), Poore (/LegislatorDetail?personId=90), Walsh (/LegislatorDetail?personId=90) Sen. Bonini (/LegislatorDetail?personId=39), Ennis (/LegislatorDetail?personId=5), Gay_(/LegislatorDetail?personId=13474), Hansen (/LegislatorDetail? <u>personId=3131), Wilson (/LegislatorDetail?personId=92)</u> personId=3212), Hocker (/LegislatorDetail?personId=126), Lawson (/LegislatorDetail?personId=86), Lockman (/LegislatorDetail?personId=13601), Mantzavinos (<u>/LegislatorDetail?personId=1272), S. McBride (/LegislatorDetail?personId=23999), Paradee (/LegislatorDetail?personId=355), Pettyjohn (/LegislatorDetail?</u>

Reps. Baumbach (/LegislatorDetail?personId=252), Bennett (/LegislatorDetail?personId=55), Brady (/LegislatorDetail?personId=124), Briggs King (/LegislatorDetail?personId=124), Briggs King (/LegislatorDetail?personId=124), Briggs King (/LegislatorDetail?personId=55), Brady (/LegislatorDetail?personId=55), Brady (/LegislatorDetail?personId=124), Briggs King (/LegislatorDetail?personId=55), Brady (/LegislatorDetail?personId=124), Briggs King (/LegislatorDetail?personId=55), Brady (/LegislatorDet Matthews (/LegislatorDetail?personId=318), Mitchell (/LegislatorDetail?personId=178), Morrison (/LegislatorDetail?personId=24001), Osienski (/LegislatorDetail?personId=198), Wilson-personId=112), Ramone (/LegislatorDetail?personId=243), Schwartzkopf (/LegislatorDetail?personId=243), Osienski (/LegislatorDetail?personId=198), Wilson-personId=198), Wilson-person-person-person-person-person-person-person-person-person-person-person-person-person-person-person-person-person-person-pe personId=3058), Bush (/LegislatorDetail?personId=369), Cooke (/LegislatorDetail?personId=13594), Griffith (/LegislatorDetail?personId=13593), Heffernan personId=112), Ramone (/LegislatorDetail?personId=243), Schwartzkopf (/LegislatorDe (<u>/LegislatorDetail?personId=97), Kowalko (/LegislatorDetail?personId=176), Longhurst (/LegislatorDetail?personId=359), Lynn (/LegislatorDetail?personId=317), </u>

Anton (/LegislatorDetail?personId=232)



Long Title:

AN ACT CONCURRING IN A PROPOSED AMENDMENT TO ARTICLE I OF THE DELAWARE CONSTITUTION RELATING TO EQUAL RIGHTS

Original Synopsis:

of the Delaware Constitution requires the affirmative vote of two-thirds of the members elected to each house of the General Assembly when the General Assembly amends the Delaware Constitution. based on sex, but no such prohibition exists as to race, color, or national origin. This Act requires a greater than majority vote for passage because § 1 of Article XVI law based on race, color, or national origin. In 2019, Delaware amended the state constitution to prohibit the denial or abridgement of equal rights under the law with Delaware ratifying it in 1901, at least 15 states have added a provision to their state constitution that prohibits the denial or abridgement of equal rights under the was Senate Bill 191 of the 150th General Assembly, published in Chapter 287 of Volume 82 of the Laws of Delaware. On passage of this second leg by this General that protection against discrimination based on race, color, and national origin is one of Delaware's fundamental rights. The first leg of this constitutional amendment Assembly this amendment will become part of the Delaware Constitution. Since the 14th Amendment to the United States Constitution was adopted on July 9, 1868, This Act is the second leg of a constitutional amendment to add race, color, and national origin to § 21 of Article I of the Delaware Constitution to explicitly declare

Volume:Chapter: 8

Advisory Number:

Fiscal Note/Fee Impact:

Not Required

Effective Date: ②

1/28/21

Sunset Date:

N A

Bill Text

Original Text:

View HTML (/json/BillDetail/GenerateHtmlDocument?legislationId=48275&legislationTypeId=1&docTypeId=2&legislationName=SB31)

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Session Laws

Session Law:



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2/5

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Amendments

Amendment	
Status	
Introduction Date	1
Primary Sponsor	
View Details	

No Records Available

Committee Reports

1/26/21	1/21/21	Date
Administration (/CommitteeDetail?committeeId=536)	Executive (/CommitteeDetail?committeeId=537)	Committee
ហ	6	# Members
4	6	Favorable
۵.	0	On Its Merits
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Roll Calls

Se	ĭ	<u></u>
Senate	House	Chamber
Passed	Passed	Result
1/21/21 2:13 PM	1/28/21 2:43 PM	Date
2/3	2/3	Vote Type
21	41	Yes
0	0	N _o
0	0	Not Voting
0	0	Absent
(/json/RollCallController/GenerateRollCallPdf?	(/json/RollCallController/GenerateRollCallPdf? rollCallId=41753&chamberId=2) view.()	PDF

Actions History

Date
Action

Delaware FAQ Chat

Date

Action

Passed By House. Votes: 41 YES	1/28/21
Reported Out of Committee (Administration) in House with 4 Favorable, 1 On Its Merits	1/26/21
Assigned to Administration Committee in House	1/22/21
Passed By Senate. Votes: 21 YES	1/21/21
Reported Out of Committee (Executive) in Senate with 6 Favorable	1/21/21

Legislation Detail Feeds

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RSS Feeds (/RssFeed)

Legislative Notifications ([f669d9a7-009d-4d83-ddaa-00000000002]a913defe-af2a-6dfe-ae60-ff0000a39f38)

Other Resources

Accessibility_(https://legis.delaware.gov/docs/default-source/default-document-library/adapolicy.pdf?sfvrsn=3560b238_2)

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LAWS OF DELAWARE VOLUME 83 CHAPTER 1 151st GENERAL ASSEMBLY FORMERLY SENATE BILL NO. 31

AN ACT CONCURRING IN A PROPOSED AMENDMENT TO ARTICLE I OF THE DELAWARE CONSTITUTION RELATING TO EQUAL RIGHTS.

WHEREAS, an amendment to the Delaware Constitution was proposed in the 150th General Assembly, being Chapter 287 of Volume 82 of the Laws of Delaware; and

WHEREAS, the proposed amendment was adopted by two-thirds of all members elected to each house of the 150th General Assembly; and

WHEREAS, following adoption by the General Assembly, the proposed amendment was publicized in accordance with the Delaware Constitution; and

WHEREAS, when the 151st General Assembly concurs in the proposed amendment, the amendment will become part of the Delaware Constitution.

NOW, THEREFORE:

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

Section 1. Amend § 21, Article I of the Delaware Constitution by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 21.

Equality of rights under the law shall not be denied or abridged on account of <u>race, color, national origin, or</u> sex.

Approved January 28, 2021

TAB 8

Delaware General Assembly (/)

 \mathcal{L}

House Bill 331 151st General Assembly (Present)

Bill Progress

Current Status:

House Economic Development/Banking/Insurance & Commerce 3/8/22

What happens next?

Committee Hearing takes place within twelve legislative days.

Bill Details

Introduced on:

3/8/22

Primary Sponsor:

Bennett (/LegislatorDetail?personId=55)

Additional Sponsor(s):

Sen. Paradee (/LegislatorDetail?personId=355)

Rep. Bush (/LegislatorDetail?personId=369)

Co-Sponsor(s):

Sen. Ennis (/LegislatorDetail?personId=5), Hocker (/LegislatorDetail?personId=126), Lawson (/LegislatorDetail?personId=86), Lockman (/LegislatorDetail?personId= <u>personId=13601), Sokola (/LegislatorDetail?personId=90), Wilson (/LegislatorDetail?personId=92)</u>

Williams (/LegislatorDetail?personId=198) Reps. Baumbach (/LegislatorDetail?personId=252), Carson (/LegislatorDetail?personId=370), Collins (/LegislatorDetail?personId=284), Heffernan (/LegislatorDetail?personId=284), Heffernan (/LegislatorDetail?personId=284), Heffernan (/LegislatorDetail?personId=284), Heffernan (/LegislatorDetail?personId=284), Heffernan (/LegislatorDetail?personId=370), Collins (/LegislatorDetail?personId=284), Heffernan (/LegislatorDetail?personId=370), Collins (/LegislatorDetail?personId=284), Heffernan (/LegislatorDetail?personId=370), Collins (/LegislatorDetail?personId=284), Heffernan (/LegislatorDetail?personId=370), Collins (/LegislatorDetail?personId=380), Heffernan (/LegislatorDetail?personId=380), Heffernan (/LegislatorDetail?personId=380), Collins (/LegislatorDetail?personId=280), Heffernan (/LegislatorDetail?personId=380), Heffernan (/LegislatorDetail?per personId=97), Minor-Brown (/LegislatorDetail?personId=13595), Ramone (/LegislatorDetail?personId=243), Michael Smith (/LegislatorDetail?personId=13596), K.

Long Title:

AN ACT TO AMEND THE DELAWARE CODE RELATING TO STANDS OPERATED BY A CHILD.

Original Synopsis:

exempts a stand operated by a child from State, county, and municipal regulations and Stands operated by children that serve or sell lemonade or other beverages on a temporary occasional hasis are a summertime tradition for many children. This Act Delaware FAQ Chat y, this Act defines a

charge, or surcharge on, a stand operated by a child. Finally, this Act requires a greater than majority vote for passage because § 1 of Article IX of the Delaware establishments and soft drinks and other beverages, requirements related to child labor laws, and retail license requirements. Additionally, Sections 1 and 5 of this property with the permission of the private property owner. In Sections 2, 3, 4, and 6, this Act exempts a stand operated by a child from State regulations on food by amendment to a specific municipality's charter, or, as in this Act, indirectly, by a general law. Constitution requires the affirmative vote of two-thirds of the members elected to each house of the General Assembly to amend a municipal charter, whether directly Act broadly prohibit a county or municipality from enacting a law, ordinance, or regulation that prohibits, regulates, requires a license or permit for, or imposes a fee, "stand operated by a child" as one that operates on a temporary, occasional basis, serves or sells lemonade or other beverages to others, and is located on private

Volume:Chapter: 0

X

Advisory Number:

N N

Fiscal Note/Fee Impact:

Not Required

Effective Date:

Takes effect upon being signed into law

Sunset Date:

N N

Bill Text

Original Text:

View HTML (/json/BillDetail/GenerateHtmlDocument?legislationId=79198&legislationTypeId=1&docTypeId=2&legislationName=HB331)

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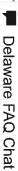
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Amendments

Amendment
Status
Introduction Date
Primary Sponsor
View Details

No Records Available

Committee Reports



Date
Date Committee
Members
Favorable
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Roll Calls

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Actions History

3/8/22	Date
Introduced and Assigned to Economic Development/Banking/Insurance & Commerce Committee in House	Action

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RSS Feeds (/RssFeed)

Legislative Notifications ([f669d9a7-009d-4d83-ddaa-00000000002]a913defe-af2a-6dfe-ae60-ff0000a39f38)

Other Resources

Accessibility (https://legis.delaware.gov/docs/default-source/default-document-library/adapolicy.pdf?sfvrsn=3560b238_2)

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SPONSOR: Rep. Bennett & Rep. Bush & Sen. Paradee Reps. Baumbach, Carson, Collins, Heffernan, Minor-Brown, Ramone, Michael Smith, K. Williams; Sens. Ennis, Hocker, Lawson, Lockman, Sokola, Wilson

HOUSE OF REPRESENTATIVES 151st GENERAL ASSEMBLY

HOUSE BILL NO. 331

AN ACT TO AMEND THE DELAWARE CODE RELATING TO STANDS OPERATED BY A CHILD.

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

1	Section 1. Amend Subchapter 1, Chapter 3, Title 9 of the Delaware Code by making defetions as shown by strike
2	through and insertions as shown by underline as follows:
3	§ 321. Authority to prohibit or regulate a stand operated by a child.
4	(a) For purposes of this section:
5	(1) "Food establishment" means as defined under the State of Delaware Food Code, Regulation 4458 of Title
6	16 of the Delaware Administrative Code.
7	(2) "Stand operated by a child" means a location operated by a child that meets all of the following:
8	a. Operates on a temporary, occasional basis.
9	b. Serves or sells to an individual a food or beverage that is not a time or temperature control for safety
10	food, including lemonade, or resells a prepackaged product to an individual.
11	c. Is located on private property with the permission of the private property owner.
12	d. Does not operate in a facility that is a food establishment.
13	(3) "Time or temperature control for safety food" means as "time/temperature control for safety food" is
14	defined under the State of Delaware Food Code, Regulation 4458 of Title 16 of the Delaware Administrative Code.
15	(b) A county may not do the following:
16	(1) Enact a law, ordinance, or regulation that prohibits or regulates a stand operated by a child.
17	(2) Require a license or permit for, or impose a fee, charge, or surcharge on, a stand operated by a child.
18	(c) If, on or before [the effective date of this Act], a county has enacted a law, ordinance, or regulation prohibited
19	under subsection (b) of this section, the law, ordinance, or regulation is invalid to the extent the law, ordinance, or
20	regulation applies to a stand operated by a child.

Page 1 of 5

Released: 03/08/2022 12:21 PM

21	Section 2. Amend § 122, Title 16 of the Delaware Code by making deletions as shown by strike through and
22	insertions as shown by underline as follows:
23	§ 122. Powers and duties of the Department of Health and Social Services.
24	The Department shall have the following general powers and duties:
25	(3) Adopt, promulgate, amend, and repeal regulations consistent with law, which regulations shall not extend,
26	modify or conflict with any law of this State or the reasonable implications thereof, and which shall be enforced by all
27	state and local public health officials, to do all of the following:
28	u.1. Promulgate and enforce standards to regulate food establishments, including restaurants, caterers,
29	temporary food vendors, grocery stores, food vending machines, ice manufacturers and cottage industries that
30	prepare or handle food for human consumption whenever it is determined that said food represents a hazard to the
31	public health.
32	2. To perform these functions, the Division of Public Health shall have the authority to collect
33	reasonable fees necessary to defray costs of functions identified in paragraph (3)u.1. of this section.
34	3. For each facility required by regulations to hold a permit, the following fee shall be assessed:
35	FOOD ESTABLISHMENT PERMIT
36	Type of Establishment Fee
37	Public Eating Place \$100
38	Retail Food Store \$100
39	Ice Manufacturers \$30
40	Commercial Food Processors \$30
41	Vending Machine Location \$25
42	4. For each facility required by regulation to have a plan review, the following fee shall be assessed:
43	FOOD ESTABLISHMENT PLAN REVIEW
44	Square Footage Fee
45	1000 or less \$50
46	1001-5000 \$100
47	5001-10000 \$150
48	10001-15000 \$200
49	15001-above \$250
50	5. Churches, schools, fire companies and other nonprofit organizations are exempt from these fees.

Page 2 of 5

Released: 03/08/2022 12:21 PM

51	6.A. For purposes of paragraph (3)u. of this section:
52	I. "Food establishment" means as defined under the State of Delaware Food Code,
53	Regulation 4458 of Title 16 of the Delaware Administrative Code.
54	II. "Stand operated by a child" means a location operated by a child that meets all of the
55	following:
56	(A) Operates on a temporary, occasional basis.
57	(B) Serves or sells to an individual a food or beverage that is not a time or temperature
58	control for safety food, including lemonade, or resells a prepackaged product to an individual.
59	(C) Is located on private property with the permission of the private property owner.
60	(D) Does not operate in a facility that is a food establishment.
61	III. "Time or temperature control for safety food" means as "time/temperature control for
62	safety food" is defined under the State of Delaware Food Code, Regulation 4458 of Title 16 of the
63	Delaware Administrative Code.
64	B. Paragraph (3)u. of this section does not apply to a stand operated by a child.
65	Section 3. Amend § 501, Title 19 of the Delaware Code by making deletions as shown by strike through and
66	insertions as shown by underline as follows:
67	§ 501. Applicability of chapter.
68	(a) For purposes of this section:
69	(1) "Food establishment" means as defined under the State of Delaware Food Code, Regulation 4458 of Title
70	16 of the Delaware Administrative Code.
71	(2) "Stand operated by a child" means a location operated by a child that meets all of the following:
72	a. Operates on a temporary, occasional basis.
73	b. Serves or sells to an individual a food or beverage that is not a time or temperature control for safety
74	food, including lemonade, or resells a prepackaged product to an individual.
75	c. Is located on private property with the permission of the private property owner.
76	d. Does not operate in a facility that is a food establishment.
77	(3) "Time or temperature control for safety food" means as "time/temperature control for safety food" is
78	defined under the State of Delaware Food Code, Regulation 4458 of Title 16 of the Delaware Administrative Code.
79	(b) This chapter shall apply applies to any place, establishment establishment, or occupation within this State
80	where work is done for compensation of any kind to whomever navable, except as otherwise specified in this chanter

81	(c) Nothing in this chapter shall prevent This chapter does not apply to any of the following:
82	(1) ehildren of any age from receiving A child who receives industrial education furnished by the United
83	States, the State State, or any city or town in the State, which is duly approved by a school board or committee or other duly
84	constituted public authority.
85	(2) Nothing in this chapter shall prevent children of any age from performing A child who performs
86	nonhazardous work as ordered by the Family Court as a condition of probation.
87	(3) A stand operated by a child.
88	Section 4. Amend Chapter 1, Title 22 of the Delaware Code by making deletions as shown by strike through and
89	insertions as shown by underline as follows:
90	§ 119. Authority to prohibit or regulate a stand operated by a child.
91	(a) For purposes of this section:
92	(1) "Food establishment" means as defined under the State of Delaware Food Code, Regulation 4458 of Title
93	16 of the Delaware Administrative Code.
94	(2) "Stand operated by a child" means a location operated by a child that meets all of the following:
95	a. Operates on a temporary, occasional basis.
96	b. Serves or sells to an individual a food or beverage that is not a time or temperature control for safety
97	food, including lemonade, or resells a prepackaged product to an individual.
98	c. Is located on private property with the permission of the private property owner.
99	d. Does not operate in a facility that is a food establishment.
100	(3) "Time or temperature control for safety food" means as "time/temperature control for safety food" is
101	defined under the State of Delaware Food Code, Regulation 4458 of Title 16 of the Delaware Administrative Code.
102	(b) A municipality may not do the following:
103	(1) Enact a law, ordinance, or regulation that prohibits or regulates a stand operated by a child.
104	(2) Require a license or permit for, or impose a fee, charge, or surcharge on, a stand operated by a child.
105	(c) If, on or before [the effective date of this Act], a municipality has enacted a law, ordinance, or regulation
106	prohibited under subsection (b) of this section, the law, ordinance, or regulation is invalid to the extent the law, ordinance,
107	or regulation applies to a stand operated by a child.
108	Section 5. Amend § 2909, Title 30 of the Delaware Code by making deletions as shown by strike through and
109	insertions as shown by underline as follows:
110	§ 2909. Exemptions.

111	$\underline{\text{(h)(1)}}$ [Repealed.] For purposes of this section:
112	a. "Food establishment" means as defined under the State of Delaware Food Code, Regulation 4458 of
113	Title 16 of the Delaware Administrative Code.
114	b. "Stand operated by a child" means a location operated by a child that meets all of the following:
115	1. Operates on a temporary, occasional basis.
116	2. Serves or sells to an individual a food or beverage that is not a time or temperature control for
117	safety food, including lemonade, or resells a prepackaged product to an individual.
118	3. Is located on private property with the permission of the private property owner.
119	4. Does not operate in a facility that is a food establishment.
120	c. "Time or temperature control for safety food" means as "time/temperature control for safety food" is
121	defined under the State of Delaware Food Code, Regulation 4458 of Title 16 of the Delaware Administrative
122	Code.
123	(2) This chapter does not apply to a stand operated by a child.
123	(2) This chapter does not apply to a stand operated by a child.

SYNOPSIS

Stands operated by children that serve or sell lemonade or other beverages on a temporary, occasional basis are a summertime tradition for many children. This Act exempts a stand operated by a child from State, county, and municipal regulations and licensing fees that might otherwise apply.

Specifically, this Act defines a "stand operated by a child" as one that operates on a temporary, occasional basis, serves or sells lemonade or other beverages to others, and is located on private property with the permission of the private property owner. In Sections 2, 3, 4, and 6, this Act exempts a stand operated by a child from State regulations on food establishments and soft drinks and other beverages, requirements related to child labor laws, and retail license requirements. Additionally, Sections 1 and 5 of this Act broadly prohibit a county or municipality from enacting a law, ordinance, or regulation that prohibits, regulates, requires a license or permit for, or imposes a fee, charge, or surcharge on, a stand operated by a child.

Finally, this Act requires a greater than majority vote for passage because § 1 of Article IX of the Delaware Constitution requires the affirmative vote of two-thirds of the members elected to each house of the General Assembly to amend a municipal charter, whether directly, by amendment to a specific municipality's charter, or, as in this Act, indirectly, by a general law.

Page 5 of 5

Released: 03/08/2022 12:21 PM

TAB 9

Delaware General Assembly (/)

Senate Substitute 2 for Senate Bill 1 151st General Assembly (Present)

Bill Progress

Current Status:

Passed Senate 3/8/22

What happens next?

Is now sent to the House for consideration

Bill Details

View Parent Bill:

SB 1 (/BillDetail/68659)

Introduced on:

Primary Sponsor:

S. McBride (/LegislatorDetail?personId=23999)

Additional Sponsor(s):

Sen. Townsend (/LegislatorDetail?personId=13), Brown (/LegislatorDetail?personId=13600), Gay_(/LegislatorDetail?personId=13474), Mantzavinos (/LegislatorDetail?personId=1272), Pinkney_(/LegislatorDetail?personId=24000)

Reps. Heffernan (/LegislatorDetail?personId=97), Longhurst (/LegislatorDetail?personId=359), Baumbach (/LegislatorDetail?personId=252), Dorsey Walker (/LegislatorDetail?personId=13590), Morrison (/LegislatorDetail?personId=24001), Osienski (/LegislatorDetail?personId=112)

Co-Sponsor(s):

Sen. Ennis (/LegislatorDetail?personId=5), Hansen (/LegislatorDetail?personId=3212), Lockman (/LegislatorDetail?personId=13601), Paradee (/LegislatorDetail?personId=3212), Lockman (/LegislatorDetail?personId=3212), Lockman (/LegislatorDetail?personId=13601), Paradee (/LegislatorDetail?personId=3212), Lockman (/LegislatorDetail?personId=13601), Paradee (/LegislatorDetail?personId=3212), Lockman (/LegislatorDetail?personId=13601), Paradee (/LegislatorDetail?personId=3212), Lockman (/LegislatorDetail?personId=32122), Lockman (/LegislatorDetail?personId=32122), Lockman (/LegislatorDetail?personId=321222), Lockman (/LegislatorDetail?personId=3212222), Lockman (/LegislatorDetail?personId=321222222222222222 personId=355), Poore (/LegisIatorDetail?personId=249), SokoIa (/LegisIatorDetail?personId=90), Sturgeon (/LegisIatorDetail?personId=13602), Walsh

<u>(/LegislatorDetail?personId=3131)</u>

Reps. Bentz (/LegislatorDetail?personId=42), Bolden (/LegislatorDetail?personId=332), Chukwuocha (/LegislatorDetail?personId=13589), Cooke (/LegislatorDetail? personId=13594), Griffith (/LegislatorDetail?personId=13593), K. Johnson (/LegislatorDetail?personId=13591), Kowalko (/LegislatorDetail?personId=176), Lambert /LegislatorDetail?personId=24002), Lynn (/LegislatorDetail?personId=317), Minor-Brown (/LegislatorDetail?personId=13595), Mitchell (/LegislatorDetail?

<u>personId=178), S. Moore (/LegislatorDetail?personId=3143), K. Williams (/LegislatorDe</u> Delaware FAQ Chat

personId=232

Long Title:

AN ACT TO AMEND TITLE 19 OF THE DELAWARE CODE RELATING TO THE FAMILY AND MEDICAL LEAVE INSURANCE PROGRAM

Original Synopsis:

of leave, forms of leave covered, cumulative leave, eligibility criteria, implementation timeline, appeal process, departmental powers, and not requiring participation of paid family and medical leave through the State's paid leave trust fund for a qualifying event, including for the following: (1) To address a worker's own serious providing greater statutory detail with regard to appeals, coordination of benefits, definitions, private plans, and departmental powers, and providing temporary from certain smaller businesses. This Substitute differs from Senate Substitute No. 1 to Senate Bill No. 1 by making technical corrections, clarifying intent and military deployment. This Substitute to Senate Bill No. 1 differs from Senate Bill No. 1 with regard to the eligibility determination process, covered relationships, length health condition. (2) To care for a family member with a serious health condition. (3) To bond and care for a new child. (4) To address the impact of a family member's This Act, the Healthy Delaware Families Act, creates a statewide paid family and medical leave insurance program. Delaware employees can access up to 12 weeks flexibility regarding implementation.

Volume:Chapter: 0

Z

Advisory Number:

N

Fiscal Note/Fee Impact:

F/N (Complete) View PDF (/json/BillDetail/GetPdfDocument?fileAttachmentId=469632)

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Effective Date:

Takes effect upon being signed into law

Sunset Date:

Z

Bill Text

Original Text:

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Amendments

	Amendment
	Status
	Introduction Date
Delaware FAQ Chat	Primary Sponsor
>	View Details

No Records Available

Committee Reports

3/8/22 <u>Finance (/CommitteeDetail?committeeId=562)</u> 6 4 0 0 <u>view ()</u>	Date	Committee	# Members	Favorable	On Its Merits	Unfavorable	
Finance (/CommitteeDetail?committeeId=562) 6 4 0							
	3/8/22	Finance (/CommitteeDetail?committeeId=562)	6	4	0	0	<u>view ()</u>

Roll Calls

TOTT OWITH								
Chamber	Result	Date	Vote Type	Yes	No	Not Voting	Absent	PDF
Senate	Passed	3/8/22	3/5	14	7	0	0	(/json/RollCallController/GenerateRollCallPdf?
		PM						

Actions History

Date	Action
3/4/22	was introduced and adopted in lieu of SB 1
3/4/22	Assigned to Finance Committee in Senate
3/8/22	Reported Out of Committee (Finance) in Senate with 4 Favorable
3/8/22	Passed By Senate. Votes: 14 YES 7 NO

Legislation Detail Feeds

Roll Calls (/rss/RssFeeds/RollCallsByLegislation?legislationId=79186)

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Other Resources

Accessibility_(https://legis.delaware.gov/docs/default-source/default-document-library/adapolicy.pdf?sfvrsn=3560b238_2)

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DELAWARE STATE SENATE 151st GENERAL ASSEMBLY

SENATE SUBSTITUTE NO. 2 FOR SENATE BILL NO. 1

AN ACT TO AMEND TITLE 19 OF THE DELAWARE CODE RELATING TO THE FAMILY AND MEDICAL LEAVE INSURANCE PROGRAM.

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

1	Section 1. Amend Title 19 of the Delaware Code by making deletions as shown by strike through and insertions as
2	shown by underline as follows:
3	Part V. Family and Medical Leave Insurance Program.
4	Chapter 37. Family and Medical Leave Insurance Program.
5	§ 3701. Definitions.
6	For purposes of this chapter:
7	(1) "Application year" means the 12-month period as defined in the FMLA.
8	(2) "Child" means "son or daughter" as defined in the FMLA.
9	(3) "Covered individual" means an individual who meets all of the following:
10	a. Has been employed for at least 12 months by the employer with respect to whom leave is requested.
11	b. Has been employed for at least 1,250 hours of service with the employer during the previous 12-month
12	period. For purposes of determining whether an individual meets the service hours requirement under this
13	paragraph (3)b., the legal standards established under the FMLA apply.
14	c. The administrative requirements under this chapter.
15	d. Has submitted an application under this chapter.
16	(4) "Covered leave" means leave provided under this chapter.

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LC: MJC: NMX 1241510031

17	(5) "Department" means the Department of Labor.
18	(6)a. "Employee" means an individual employed by an employer. For the purposes of this chapter, individuals
19	primarily reporting for work at a worksite in this State are employees unless otherwise excluded. Individuals primarily
20	reporting for work at a worksite outside of this State are not considered employees under this chapter unless the
21	employer elects to classify them as such. Employers may reclassify an employee as primarily reporting for work at a
22	worksite in another state for the purposes of this chapter through the duration of that individual's tenure at the out-of-
23	state worksite.
24	b. "Employee" does not include an individual covered under § 5903(17)a. of Title 29, an individual
25	employed by entities in Title 14 in a position that would be covered under § 5903(17)a. of Title 29, or an
26	individual in an equivalent position with an entity covered by State employee benefits.
27	(7)a. "Employer" means all those who employ employees working anywhere in this State.
28	1. Employers with 10 to 24 employees during the previous 12 months shall be subject to only the
29	parental leave provisions of this chapter. For purposes of this paragraph (7)a.1., "employees" includes those
30	who meet the requirements of a covered individual under § 3701(3)a. and (3)b. of this title or are reasonably
31	expected to meet the requirements of a covered individual under § 3701(3)a. and b. of this title during the
32	previous 12 months.
33	2. Employers with 25 or more employees during the previous 12 months shall be subject to all
34	parental, family caregiving, and medical leave provisions of this chapter. For purposes of this paragraph
35	(7)a.2., "employees" includes those who meet the requirements of a covered individual under § 3701(3)a. and
36	(3)b. of this title or are reasonably expected to meet the requirements of a covered individual under §
37	3701(3)a. and b. of this title during the previous 12 months.
38	b. "Employer" does not include any of the following:
39	1. Anyone who employs less than 10 employees in this State during the previous 12 months.
40	2. The federal government.
41	(8) "Family and medical leave benefits" means benefits provided under this chapter.
42	(9) "Family caregiving leave" includes leave under § 3702(a)(2) and (a)(4) of this title.
43	(10) "Family caregiving leave benefits" means benefits paid under § 3704 of this title and provided under §
44	3702(a) of this title to a covered individual while the covered individual is on family leave.
45	(11) "Family member" means all of the following:
46	a. A parent, as defined under the FMLA.

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47	b. A child.
48	c. A spouse, as defined under the FMLA.
49	(12) "FMLA" means the Family and Medical Leave Act, 29 U.S.C. Chapter 28.
50	(13) "Fund" means the Family and Medical Leave Insurance Account Fund created under this chapter.
51	(14) "Health care provider" means as defined under the FMLA.
52	(15) "Medical leave" includes leave under § 3702(a)(3) of this title.
53	(16) "Medical leave benefits" means benefits paid under § 3704 of this title and provided under § 3702(a) of
54	this title to a covered individual while the covered individual is on medical leave.
55	(17) "Parental leave" includes leave under § 3702(a)(1) of this title.
56	(18) "Parental leave benefits" means benefits paid under § 3704 of this title and provided under § 3702(a) of
57	this title to a covered individual while the covered individual is on parental leave.
58	(19) "Qualifying exigency" means as defined under the FMLA.
59	(20)a. "Retaliatory personnel action" means an adverse action against an employee for the exercise of, or good
60	faith attempt to exercise, a right guaranteed under this chapter, including any threat, discharge, suspension, demotion,
61	or reduction of hours, or report or threat to report an employee's suspected citizenship or immigration status or the
62	suspected citizenship or immigration status of a family member of the employee to a federal, state, or local agency.
63	b. "Retaliatory personnel action" includes interference with or punishment for participating or assisting,
64	in any manner, in an investigation, proceeding, or hearing under this chapter.
65	(21) "Secretary" means the Secretary of the Department.
66	(22) "Serious health condition" means as defined under the FMLA.
67	(23) "Small business" means all of the following:
68	a. For purposes of parental leave, all those that employ 9 or less employees working anywhere in this
69	State.
70	b. For purposes of family caregiving leave and medical leave, all those that employ 24 or less employees
71	working anywhere in this State.
72	(24) "Wages" means remuneration for employment as determined for purposes of old-age, survivors, and
73	disability insurance for employees and employers under the Federal Insurance Contribution Act, 26 U.S.C. Chapter 21.
74	§ 3702. Eligibility for benefits; serious health condition; certification or documentation of leave.
75	(a) Beginning 1 year after the start of contributions under § 3705 of this title, and subject to subsection (c) of this
76	section, family and medical leave benefits are payable to a covered individual who meets one of the following:

77	(1) Because of a birth, adoption, or placement through foster care of a child, is caring for the child during the
78	first year after the birth, adoption, or placement of the child.
79	(2) Is caring for a family member with a serious health condition.
80	(3) Has a serious health condition that makes the covered individual unable to perform the functions of the
81	covered individual's position.
82	(4) Has a qualifying exigency.
83	(b) In applying and construing serious health condition, consideration must be given to the application and
84	construction given to serious health condition under the FMLA.
85	(c)(1) An employer or an approved private plan under § 3716 of this title shall collect and retain information from
86	covered individuals verifying parental leave status, serious health condition, or qualifying exigency when a covered
87	individual submits an application under this chapter. An employer shall require that a request for leave based on a serious
88	health condition under paragraph (a)(2) or (a)(3) of this section be supported by a certification issued by the health care
89	provider of the covered individual or of the family member of the covered individual, as appropriate. The covered
90	individual shall provide, in a timely manner, a copy of the certification to the employer or an approved private plan under §
91	3716 of this title.
92	(2) A certification required under paragraph (c)(1) of this section is sufficient if it includes all of the
93	following:
94	a. The date on which the serious health condition commenced.
95	b. The probable duration of the condition.
96	c. The appropriate medical facts within the knowledge of the health care provider regarding the condition.
97	d. A statement of the following, as appropriate:
98	1. For purposes of leave under paragraph (a)(2) of this section, a statement that the covered
99	individual is needed to care for the family member who has a serious health condition and an estimate of the
100	time that the covered individual needs to care for the family member.
101	2. For purposes of leave under paragraph (a)(3) of this section, a statement that the covered
102	individual is unable to perform the functions of the covered individual's position.
103	e. If the leave is to be taken intermittently or on a reduced leave schedule under § 3706 of this title for
104	planned medical treatment, the dates on which the medical treatment is expected to be given and the duration of
105	the medical treatment.

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106	f. If the leave is to be taken intermittently or on a reduced leave schedule under § 3706 of this title for
107	purposes of leave under paragraph (a)(2) of this section, a statement that the covered individual's intermittent
108	leave or leave on a reduced leave schedule is necessary for the care of the family member who has the serious
109	health condition, or will assist in the family member's recovery, and the expected duration and schedule of the
110	intermittent leave or reduced leave schedule.
111	g. If the leave is to be taken intermittently or on a reduced leave schedule under § 3706 of this title for
112	purposes of leave under paragraph (a)(3) of this section, a statement of the medical necessity of the intermittent
113	leave or leave on a reduced leave schedule and the expected duration of the intermittent leave or reduced leave
114	schedule.
115	(3)a. If the employer or an approved private plan under § 3716 of this title has reason to doubt the validity of a
116	certification provided under this subsection, the employer or private plan may require, at the expense of the employer
117	or private plan, that the covered individual obtain the opinion of a second health care provider designated or approved
118	by the employer or private plan concerning any information certified under this subsection. A health care provider
119	designated under this paragraph (c)(3)a. may not be employed on a regular basis by the employer, Department or
120	private plan.
121	b. If the second opinion under paragraph (c)(3)a. of this section differs from the opinion in the original
122	certification provided by the covered individual under this subsection, the employer or private plan may require, at
123	the expense of the employer or private plan, that the employee obtain the opinion of a third health care provider
124	designated or approved jointly by the employer or private plan and the covered individual concerning any
125	information certified under this subsection. The third opinion is final and binding on the employer or private plan
126	and the covered individual.
127	(4)a. The employer or an approved private plan under § 3716 of this title may require that the covered
128	individual obtain subsequent recertifications on a reasonable basis.
129	b. The standards for determining what constitutes a reasonable basis for recertification may be governed
130	by a collective bargaining agreement between the employer or private plan and a labor organization which is the
131	collective bargaining representative of the unit of which the covered individual is a part if such a collective
132	bargaining agreement is in effect.
133	c. Unless otherwise required by the covered individual's health care provider, the employer or private
134	plan may not require recertification more than once during a 30-day period and, in any case, may not unreasonably

135

require recertification.

136	d. The employer or an approved private plan under § 3716 of this title shall pay for any recertification
137	that is not covered by the covered individual's health insurance.
138	(d) The employer or an approved private plan under § 3716 of this title shall require that a request for leave based
139	on a serious health condition under paragraph (a)(2) of this section of a family member be supported by documentation
140	demonstrating the nature and extent of the relationship.
141	§ 3703. Duration of benefits.
142	(a) A covered individual is eligible for a maximum of 12 weeks of family and medical leave benefits in an
143	application year.
144	(1) The maximum number of weeks during which parental leave benefits are payable under § 3702(a)(1) of
145	this title in an application year is 12 weeks.
146	(2) The maximum aggregate number of weeks during which medical leave and family caregiving leave
147	benefits are payable under § 3702(a)(2), (a)(3), and (a)(4) of this title in an application year is 6 weeks in any 24-month
148	period.
149	(b) If 2 parents are entitled to leave under § 3702(a)(1), (a)(2), or (a)(4) of this title and are employed by the same
150	employer, the aggregate number of weeks of leave to which both may be entitled may be limited by the employer to 12
151	weeks during any 12-month period. The Department may adopt regulations limiting aggregate family caregiving leave
152	claimed by multiple family members for the same qualifying event under § 3702(a) of this title.
153	(c) Except for parental leave benefits, and as permitted under § 3706 of this title, a covered individual is eligible
154	for benefits under this chapter not more than once in a 24-month period.
155	(d) An employer must approve or deny an application for benefits under this section within 5 business days of
156	receipt of a completed application that includes documentation necessary to review the claim. If the claim is denied, the
157	employer shall notify the covered individual of the reason for the denial.
158	(e) The employer must notify the Department, in a manner determined by the Department, within 3 business days
159	of a claim being approved under this chapter. The first payment of benefits to a covered individual must be made within 30
160	days after the employer has notified the Department of the approved claim. Subsequent payments must be made every 2
161	weeks.
162	(f) An employer with less than 25 employees may elect, with notice to the Department and employees, for each
163	employee to exercise not less than half of the employee's parental leave for 5 years from the start of benefits under § 3702
164	of this title.
165	§ 3704. Amount of benefits.

166	(a) The amount of family and medical leave benefits is to be determined as follows:
167	(1) The weekly benefit must be 80% of the covered individual's average weekly wages rounded up to the
168	nearest even \$1.00 increment during the 12 months preceding submission of the application.
169	(2) The minimum weekly benefit may not be less than \$100 a week, except that if the covered individual's
170	average weekly wage is less than \$100 a week, the weekly benefit must be the covered individual's full wage.
171	(3) The maximum weekly benefit in 2026 and 2027 must be \$900. In each year after 2027, the maximum
172	weekly benefit must increase in proportion to the annual average increase, if any, in the Consumer Price Index for All
173	Urban Consumers, Philadelphia-Camden-Wilmington Metropolitan area that is published by the Bureau of Labor
174	Statistics of the United States Department of Labor. In each year after 2027, the period of change must be calculated
175	from October 2026 to the October before the start of the calendar year. When the Department determines a maximum
176	weekly benefit amount using the Consumer Price Index under this paragraph (a)(3), the amount must be rounded to the
177	nearest even \$5.00 increment as determined in the discretion of the Secretary.
178	(b) Family and medical leave benefits are not payable for less than 1 work day of covered leave taken in 1 work
179	week.
180	(c) The Department shall determine, by regulation, how benefits are to be calculated for covered individuals with
181	more than 1 source of wages and when 12 months of wages preceding the submission of application for benefits are no
182	available to the Department.
183	§ 3705. Contributions.
184	(a) Payroll contributions are authorized to finance the payment of benefits under this chapter. The Departmen
185	shall regulate the deduction, withholding, and payment of the contribution.
186	(b) Beginning on January 1, 2025, for each employee, an employer shall quarterly, or more frequently as regulated
187	by the Department, remit to the Fund contributions in the form and manner determined by the Department.
188	(1) The contribution rate for medical leave benefits is as follows:
189	a. For 2025 and 2026, the contribution rate for medical leave benefits as a percentage of wages is 0.4%.
190	b. For 2027, and each calendar year after 2027, the Department shall set the contribution rate for medica
191	leave benefits as a percentage of wages based on sound actuarial principles. The Department may not set the
192	contribution rate higher than the rate necessary to obtain a total amount of contributions equal to 125% of the
193	medical leave benefits paid during the immediately preceding calendar year plus an amount equal to 125% of the
194	cost of administration of the payment of those benefits during the immediately preceding calendar year, less the
195	amount of net assets remaining in the Fund as of December 31 of the immediately preceding calendar year.

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196	(2) The contribution rate for family caregiving leave benefits is as follows:
197	a. For 2025 and 2026, the contribution rate for family caregiving leave benefits as a percentage of wages
198	<u>is 0.08%.</u>
199	b. For 2027, and each calendar year after 2027, the Department shall set the contribution rate for family
200	caregiving leave benefits based as a percentage of wages on sound actuarial principles. The Department may not
201	set the contribution rate higher than the rate necessary to obtain a total amount of contributions equal to 125% of
202	the family caregiving leave benefits paid during the immediately preceding calendar year plus an amount equal to
203	125% of the cost of administration of the payment of those benefits during the immediately preceding calendar
204	year, less the amount of net assets remaining in the Fund as of December 31 of the immediately preceding
205	calendar year.
206	(3) The contribution rate for parental leave benefits is as follows:
207	a. For 2025 and 2026, the contribution rate for parental leave benefits as a percentage of wages is 0.32%.
208	b. For 2027, and each calendar year after 2027, the Department shall set the contribution rate for parental
209	leave benefits as a percentage of wages based on sound actuarial principles. The Department may not set the
210	contribution rate higher than the rate necessary to obtain a total amount of contributions equal to 125% of the
211	parental leave benefits paid during the immediately preceding calendar year plus an amount equal to 125% of the
212	cost of administration of the payment of those benefits during the immediately preceding calendar year, less the
213	amount of net assets remaining in the Fund as of December 31 of the immediately preceding calendar year.
214	(c) Limitation on benefits and contribution rates; evidentiary standard.
215	(1) General. Notwithstanding a provision of this chapter to the contrary, this subsection controls with respect
216	to benefits available under, and contributions required by, this chapter.
217	(2) Contribution rate; limitation.
218	a. For purposes of this subsection, "contribution rate" means the sum of the contribution rate for medical,
219	family caregiving, and parental leave benefits.
220	b. If, after using the actuarial principles under § 3705(b) of this title, the Department determines that the
221	contribution rate would exceed 1.00%, paragraph (c)(3) of this section applies.
222	(3) Contribution redetermination; benefits reduction. If, under paragraph (c)(2)b. of this section, the
223	Department determines that the contribution rate effective as of the first day beginning on the next calendar year would
224	exceed 1.00%, effective as of and for such calendar year the Department shall reduce the percentage of average weekly

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225	wages for employees from 80% to the lowest percentage of average weekly wages for employees as necessary to
226	compute a contribution rate that does not exceed 1.00%.
227	(4) Preservation of Fund balance. Notwithstanding anything in this chapter to the contrary, after using the
228	actuarial principles under § 3705(b) of this title and considering other information deemed appropriate under the
229	circumstances by the Secretary, the Secretary may at any time reduce the percentage of average weekly wages for
230	employees to the lowest percentage of average weekly wages for employees as necessary to attempt to prevent the
231	projected balance of the Fund during the ensuing 12 month period from falling below a specific balance or other
232	actuarially sound measure adopted by the Department.
233	(5) Evidentiary standard. An allegation of abuse in the exercise of the discretion authorized by this section
234	must be established by clear and convincing evidence of actual abuse of discretion in the court then having primary
235	jurisdiction.
236	(d) From the wages of an employee for whom a contribution is required under subsection (b)(1) of this section, an
237	employer shall deduct not greater than 50% of the contribution required for the employee. However, an employer may elect
238	to pay all or any portion of the employee's share of the contribution listed in subsection (b)(1) of this section.
239	(e) From the wages of an employee for whom a contribution is required under subsection (b)(2) of this section, an
240	employer shall deduct not greater than 50% of the contribution required for the employee. However, an employer may elect
241	to pay all or any portion of the employee's share of the contribution listed in subsection (b)(2) of this section.
242	(f) From the wages of an employee for whom a contribution is required under subsection (b)(3) of this section, an
243	employer shall deduct not greater than 50% of the contribution required for the employee. However, an employer may elect
244	to pay all or any portion of the employee's share of the contribution listed in subsection (b)(3) of this section.
245	(g) An employer's deduction from an employee's wages under this section may only be made concurrent with, and
246	proportionate to, the liability incurred by the employer and the payment of wages to the employee. The employer is liable
247	for the contribution at the time that wages are paid and shall remit the total contribution required under subsection (b) of
248	this section to the Fund. If the employer fails to deduct wages of an employee when the wages are paid, the employer
249	remains liable for the full amount of the contribution, including that amount not deducted from an employee's wages.
250	(h) A contribution that remains unpaid on the date it is due and payable, as determined by the Department, accrues
251	interest, at a rate determined by the Department by regulation, from and after the due date until payment plus the accrued
252	interest is received by the Fund. Interest collected under this section must be paid into the Fund.
253	(i)(1) An employer with an approved private plan under § 3716 of this title for medical leave benefits may not be
254	required to remit the contributions required under subsection (b)(1) of this section.

255	(2) An employer with an approved private plan under § 3716 of this title for family caregiving leave benefits
256	may not be required to remit the contributions required under subsection (b)(2) of this section.
257	(3) An employer with an approved private plan under § 3716 of this title for parental leave benefits may not
258	be required to remit the contributions required under subsection(b)(3) of this section.
259	(j) The Department may require from an employer a sworn or unsworn report with respect to employees of the
260	employer which the Department deems necessary for the effective administration of this chapter. Information provided to
261	the Department in the report must be held confidential and must not be published or be open to public inspection, other than
262	to employees of the Department, in a manner that reveals an employee's or employer's identity. However, an employer or
263	employer's legal representative must be supplied with information from the report for purposes related to this chapter, and
264	an employee or employee's legal representative must be supplied with information from the report that relates only to the
265	employee for purposes related to this chapter.
266	(k) An employee and employer may opt to file a waiver of the payroll contributions required under this section
267	when an employee's work schedule or length of employment with the employer is not expected to meet the requirements
268	for eligibility for family and medical leave benefits.
269	(1) The employer shall provide notice to the employee that employee's work schedule or length of
270	employment with the employer is not expected to meet the requirements for eligibility for family and medical leave
271	benefits.
272	(2) The employee shall sign, and the employer shall submit to the Department, a form waiving the payroll
273	contributions required under this section because employee's work schedule or length of employment with the
274	employer is not expected to meet the requirements for eligibility for family and medical leave benefits.
275	(3) If, after an employee signs a waiver under paragraph (k)(2) of this section, the employee becomes eligible
276	for family and medical leave benefits, the employee shall sign, and the employer shall submit to the Department, a
277	form revoking the waiver under paragraph (k)(2) of this section. Deductions from wages may not begin until a waiver
278	is revoked.
279	(4) The Department shall adopt a form for the waiver under paragraph (k)(2) of this section and the revocation
280	of the waiver under paragraph (k)(3) of this section.
281	§ 3706. Reduced leave schedule.
282	(a) A covered individual may take covered leave on an intermittent or reduced leave schedule in which all of the
283	leave authorized under this chapter is not taken sequentially. Intermittent or reduced leave may be taken only when

284	medically necessary and supported by documentation as required by the certification requirements under § 3702 of this
285	title. Family and medical leave benefits for intermittent or reduced leave schedules must be prorated.
286	(b) The covered individual shall provide the employer with prior notice of the schedule on which the covered
287	individual will take the covered leave, to the extent practicable. Covered leave taken under this section may not result in a
288	reduction of the total amount of leave to which an employee is entitled beyond the amount of leave actually taken.
289	(c) Nothing in this section is to be construed to entitle a covered individual to more leave than required under §
290	3703 of this this title.
291	§ 3707. Leave and employment protection.
292	(a) A covered individual who exercises the covered individual's right to family and medical leave benefits shall,
293	on the expiration of the covered leave, be entitled to be restored by the employer to the position held by the covered
294	individual when the covered leave commenced, or to a position with equivalent seniority, status, employment benefits, pay,
295	and other terms and conditions of employment, including fringe benefits and service credits, which the covered individual
296	had been entitled to at the commencement of the covered leave.
297	(b) During covered leave, the employer shall maintain any health care benefits the covered individual had before
298	taking the leave for the duration of the leave as if the covered individual had continued in employment continuously from
299	the date the covered individual commenced the leave until the date the family and medical leave benefits terminate. The
300	covered individual shall continue to pay the covered individual's share of the cost of health care benefits as required before
301	the commencement of the leave.
302	(c) An employer who violates this section or § 3708 of this title is liable to an employee affected for all of the
303	following:
304	(1) Damages equal to all of the following:
305	a. The amount of any of the following:
306	1. Any wages or employment benefits denied or lost to the employee by reason of the violation.
307	2. In an action in which wages or employment benefits have not been denied or lost to the employee,
308	any actual monetary losses sustained by the employee as a direct result of the violation, such as the cost of
309	providing care, up to a sum equal to 12 weeks of wages or employment benefits for the employee.
310	b. Interest on the amount under paragraph (c)(1)a. of this section, calculated at the legal rate.
311	c. An additional amount as liquidated damages equal to the sum of the amount described in paragraph
312	(c)(1)a. of this section and the interest under paragraph (c)(1)b. of this section. If an employer who has violated
313	this section or § 3708 of this title proves to the satisfaction of the court that the act or omission that violated this

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314	section or § 3708 of this title was in good faith and that the employer had reasonable grounds for believing that the
315	act or omission was not a violation of this section or § 3708 of this title, the court may reduce the amount of the
316	liability to the amount and interest determined under paragraph(c)(1)a, and (c)(1)b, of this section, respectively.
317	(2) For equitable relief as may be appropriate, including employment, reinstatement, and promotion.
318	(d) An action under subsection (c) of this section may be maintained against an employer in a court of competent
319	jurisdiction in this State by any 1 or more employees for and on behalf of the employees or the employees and other
320	employees similarly situated.
321	(e)(1) The court in an action under subsection (c) of this section may, in addition to any judgment awarded to the
322	plaintiff, award reasonable attorney fees, reasonable expert witness fees, and other costs of the action to be paid by the
323	defendant.
324	(2) The court in an action under subsection (c) of this section shall award reasonable attorney fees to a
325	defendant if the court finds the action was brought in bad faith.
326	(f) Except as provided under subsection (g) of this section, an action may be brought for a violation of this section
327	or § 3708 of this title not later than 2 years after the date of the last event constituting the alleged violation for which the
328	action is brought.
329	(g) In an action brought for a wilful violation of this section or § 3708 of this title, the action may be brought not
330	later than 3 years after the date of the last event constituting the alleged violation for which the action is brought.
331	§ 3708. Retaliatory personnel actions prohibited.
332	(a) It is unlawful for an employer or any other person to interfere with, restrain, or deny the exercise of, or the
333	attempt to exercise, any right protected under this chapter.
334	(b) An employer, temporary help company, employment agency, employee organization, or other person may not
335	take a retaliatory personnel action or otherwise discriminate against an individual because the individual exercised rights
336	protected under this chapter.
337	(c) Rights protected under this chapter include the following:
338	(1) The right to request, file for, apply for, or use family and medical leave benefits or covered leave.
339	(2) The right to communicate to the employer or any other person or entity an intent to file a claim, a
340	complaint with the Department or courts, or an appeal, or testify or prepare to testify or assist in any investigation,
341	hearing, or proceeding under this chapter, at any time, including during the period in which the individual receives
342	family and medical leave benefits under this chapter.
343	(3) The right to inform a person about an employer's alleged violation of this chapter.

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344	(4) The right to inform an individual of the individual's rights under this chapter.
345	(d) It is unlawful for an employer's absence control policy to count covered leave taken under this chapter as an
346	absence that may lead to or result in discipline, discharge, demotion, suspension, or any other adverse action.
347	(e) Protections of this section apply to an individual who mistakenly but in good faith alleges violations of this
348	chapter.
349	(f) This section is to be enforced as provided in § 3707(c) through (g) of this title.
350	(g) This section applies only to an employee who has been employed by the employer for at least 90 days.
351	§ 3709. Coordination of benefits.
352	(a)(1) Covered leave that also qualifies as leave under the FMLA runs concurrently with leave taken under the
353	FMLA and may not be taken in addition to leave under the FMLA.
354	(2) An employer may require that payment made under this chapter be made concurrently or otherwise
355	coordinated with payment made or leave allowed under the terms of disability or family care leave under a collective
356	bargaining agreement or employer policy. The employer shall give employees written notice of this requirement.
357	(3) An employer may require the use of unused accrued paid time off before accessing family and medical
358	leave benefits, and the use of accrued paid time off may count toward the total length of leave provided under this
359	chapter, if the employee is not required to exhaust all paid time off. For purposes of this paragraph (a)(3) of this
360	section, "paid time off" includes an employer's provision of vacation and sick leave.
361	(4) A covered individual may not access family and medical leave benefits if the use of family and medical
362	leave benefits results in the covered individual receiving more than 100% of the covered individual's weekly wages.
363	(b)(1) This chapter does not diminish an employer's obligation to comply with any of the following that provide
364	more generous leave:
365	a. A collective bargaining agreement.
366	b. An employer policy.
367	c. Any other law.
368	(2) An individual's right to covered leave may not be diminished by a collective bargaining agreement entered
369	into or renewed, or an employer policy adopted or retained, after [the effective date of this Act].
370	(3) An agreement by an individual to waive the individual's rights under this chapter is void as against public
371	policy.
372	§ 3710. Notice.
373	(a) An employer shall provide written notice to each employee that includes all of the following:

374	(1) The employee's right to family and medical leave benefits under this chapter and the terms under which it
375	may be used.
376	(2) The amount of family and medical leave benefits.
377	(3) The procedure for filing a claim for family and medical leave benefits.
378	(4) The right to job protection and benefits continuation under § 3707 of this title.
379	(5) That discrimination and retaliatory personnel actions against the employee for requesting, applying for, or
380	using family and medical leave benefits is prohibited under § 3708 of this title.
381	(6) That the employee has a right to file a complaint for violations of this chapter.
382	(7) Whether family and medical leave benefits are available to the employee through the State or an approved
383	private plan under § 3716 of this title.
384	(b) An employer shall provide the notice required under subsection (a) of this section as follows:
385	(1) On hiring of the employee.
386	(2) When the employee requests covered leave or when the employer acquires knowledge that an employee's
387	leave may be for a qualifying event under § 3702(a) of this title.
388	(c) An employer shall display and maintain a poster in a conspicuous place accessible to employees at the
389	employer's place of business that contains the information required under subsection (a) of this section in English, Spanish,
390	and any language that is the first language spoken by at least 5% of the employer's workforce, if the poster has been
391	provided by the Department.
392	(d) The Department may adopt regulations to establish additional requirements concerning the means by which
393	employers shall provide notice of this chapter.
394	(e) An employee shall provide notice of the employee's intention to take covered leave to the employee's
395	employer 30 days in advance, if known, or as soon as practicable.
396	§ 3711. Appeal.
397	(a) The process for review of a denial of family and medical leave benefits is as follows:
398	(1) On a determination of an individual's claim for family and medical leave benefits under this chapter by the
399	employer, the individual may request review of the determination by the Department within 60 days of the issuance of
400	the determination. The Department shall review the denial and issue a determination to the individual in a time and
401	manner determined by the Department.
402	(2) On determination by the Department under paragraph (a)(1) of this subsection or final determination by a
403	private plan under § 3716 of this title, an individual may appeal the determination to the Family and Medical Leave

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404	Insurance Appeal Board established under subsection (b) of this section within 30 days of the issuance of the
405	determination.
406	(b)(1) There is established a Family and Medical Leave Insurance Appeal Board ("Board").
407	(2) The Board consists of 3 members, appointed by the Governor for a term of 6 years.
408	(3) The Governor shall fill a vacancy on the Board during a member's term for the unexpired portion of the
409	<u>term.</u>
410	(4) The Governor may, at any time, after notice and hearing, remove any Board member for gross
411	inefficiency, neglect of duty, malfeasance, misfeasance, or nonfeasance in office. For purposes of this section, a
412	member who is absent without adequate reason for 3 consecutive meetings or fails to attend at least half of all regular
413	meetings during any calendar year is deemed to be in neglect of duty.
414	(5) Two members of the Board constitute a quorum. A vacancy does not impair the right of the remaining
415	Board members to exercise all of the powers of the Board.
416	(6) The Governor shall designate 1 member of the Board as the Chair. If the term of the Chair expires or if the
417	Chair becomes vacant for any cause, the Governor shall designate another member as Chair.
418	(7)a. The Chair of the Board must be paid \$225 for each meeting attended, not to exceed 80 meetings each
419	year.
420	b. Each of the other members of the Board is to be paid \$175 for each meeting attended, not to exceed 80
421	meetings each year.
422	c. The members of the Board shall devote to the duties of the members' office the time necessary for the
423	satisfactory execution of the office.
424	(c) The decision of the Board with respect to an individual's claim for family and medical leave benefits is final
425	and binding on the parties.
426	(d) The Department shall implement procedures to ensure confidentiality of all information related to a claim filed
427	or an appeal taken, to the maximum extent permitted by applicable laws.
428	(e) The Board shall conduct hearings under the Administrative Procedures Act, Chapter 101 of Title 29, except
429	that the Board's hearings are exempt from the public meeting requirements of Chapter 100 of Title 29 to protect
430	confidential health and privacy information.
431	(f) The Board may adopt regulations to implement this section.
432	§ 3712. Erroneous payments; disqualification for benefits.

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433	(a) A covered individual is disqualified from family and medical leave benefits for 3 years if the covered
434	individual is determined by the Department to have wilfully made a false statement or misrepresentation regarding a
435	material fact, or wilfully failed to report a material fact, to obtain benefits under this chapter.
436	(b) If family and medical leave benefits are paid erroneously or as a result of wilful misrepresentation, or if a claim
437	for family and medical leave benefits is rejected after benefits are paid, the Department may seek repayment from the
438	recipient of benefits, with interest in an amount to be determined by the Department, consistent with § 3718 of this title. If
439	benefits are paid due to wilful misrepresentation, the Department may seek an additional penalty of up to 50% of the
440	overpayment and a penalty as permitted by § 3719 of this title.
441	(c) When the Department determines that an individual obtained an overpayment by fraud, in addition to any
442	disqualification under subsection (a) of this section, the individual is disqualified from receiving family and medical leave
443	benefits until the Department determines that all of the following have occurred:
444	(1) The total amount of the fraud overpayment, with interest, has been repaid in full.
445	(2) Any monetary penalty under this section has been paid in full.
446	§ 3713. Family and Medical Leave Insurance Program.
447	(a)(1) By January 1, 2025, the Department shall establish and administer a family and medical leave insurance
448	program.
449	(2) By not later than the date specified in § 3702(a) of this title, the Department shall pay family and medical
450	leave benefits as specified under this chapter.
451	(b) The Department shall establish, and make available to employers, reasonable procedures and forms for filing
452	claims for benefits under this chapter and shall specify the supporting documentation necessary to support a claim for
453	benefits, including any documentation required from a health care provider for proof of a serious health condition.
454	(c) The Department shall use information sharing and integration technology to facilitate the disclosure of relevant
455	information or records so long as a covered individual consents to the disclosure as required under state law.
456	(d) Information contained in the files and records pertaining to a covered individual under this chapter is
457	confidential and not open to public inspection, other than to public employees in the performance of their official duties.
458	However, the covered individual, or an authorized representative of the covered individual, may review the records or
459	receive specific information from the records on the presentation of the covered individual's signed authorization.
460	§ 3714. Federal and state income tax.
461	The employer or an approved private plan under § 3716 of this title shall advise a covered individual filing a new
462	claim for family and medical leave benefits, at the time of filing the claim, of all of the following:

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463	(1) Family and medical leave benefits may be subject to federal and state income taxes.
464	(2) Requirements exist pertaining to federal and state estimated tax payments on family and medical leave
465	benefits.
466	(3) Under regulations established by the Secretary, applicable taxes will be deducted and withheld from the
467	covered individual's payment of family and medical leave benefits.
468	§ 3715. Family and Medical Leave Insurance Account Fund; establishment and investment.
469	(a) A special fund designated as the Family and Medical Leave Insurance Fund is created. The Fund holds all
470	revenues collected under this chapter. All moneys credited to the Fund are continuously available for expenditure in
471	accordance with this chapter.
472	(b) The State Treasurer shall invest the Fund consistent with the investment policies established by the Cash
473	Management Policy Board. The State Treasurer shall credit interest to the Fund on a monthly basis consistent with the rate
474	established by the Cash Management Policy Board. Expenditures from the Fund may be used only for the purposes of the
475	family and medical leave benefits program under this chapter. Only the Secretary or the Secretary's designee may authorize
476	expenditures from the Fund.
477	(c) The Department may use expenditures from the Fund to pay for the costs associated with administering the
478	provisions of this chapter.
479	§ 3716. Private plans.
480	(a)(1) Except as provided under subsection (e) of this section, an employer may apply to the Department for
481	approval to meet the employer's obligations under this chapter through a private plan. To be approved as meeting an
482	employer's obligations under this chapter, a private plan must do all of the following:
483	a. Provide one or more of the following:
484	1. Family caregiving leave to a covered individual for the reasons under § 3702(a)(2) and (a)(4) of
485	this title for the maximum number of weeks in a benefit year required under § 3703(a)(2) of this title.
486	2. Medical leave to a covered individual for the reasons under § 3702(a)(3) of this title for the
487	maximum number of weeks in a benefit year required under § 3703(a)(2) of this title.
488	3. Parental leave to a covered individual for the reasons under § 3702(a)(1) of this title for the
489	maximum number of weeks in a benefit year required under § 3703(a)(1) of this title.
490	b. Allow a covered individual to take, in the aggregate, the maximum number of weeks of covered leave
491	in a benefit year or 24-month period as required under § 3703(a) and (d) of this title.

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492	c. If family caregiving leave is provided, allow family caregiving leave to be taken for all purposes
493	specified under § 3702(a)(2) and (a)(4) of this title.
494	d. If family caregiving leave is provided, allow family caregiving leave under § 3702(a)(2) and (a)(4) of
495	this title to be taken to care for any family member.
496	e. If medical leave is provided, allow medical leave under § 3702(a)(3) of this title to be taken by a
497	covered individual with any serious health condition.
498	f. Provide a wage replacement rate during all covered leave of at least the amount required under §
499	3704(a)(1) of this title.
500	g. Provide a maximum weekly benefit during all covered leave of at least the amount specified under §
501	3704(a)(3) of this title.
502	h. Provide a minimum weekly benefit during all covered leave of at least the amount specified under §
503	3704(a)(2) of this title.
504	i. Allow covered leave to be taken intermittently or on a reduced schedule as authorized under § 3706 of
505	this title.
506	j. Impose no additional conditions or restrictions on the use of covered leave beyond those explicitly
507	authorized by this chapter or regulations issued under this chapter.
508	k. Allow an employee covered under the private plan who is eligible to take covered leave under this
509	chapter to take covered leave under the private plan.
510	1. Providing that the cost to employees covered by a private plan is not greater than the cost charged to
511	employees under the State program.
512	m. Provide an internal administrative review process and notice to employees of the option to appeal a
513	final determination of the private plan to the Family and Medical Leave Insurance Appeal, consistent with § 3711
514	of this title.
515	(2) For a private plan to be approved as meeting an employer's obligations under this chapter, the private plan
516	must also comply with all of the following:
517	a. If the private plan is in the form of self-insurance, the employer must furnish a bond running to the
518	State, with a surety company authorized to transact business in this State as surety, in a form as may be approved
519	by the Department and in an amount as may be required by the Department. This paragraph (a)(2)a. does not apply
520	to public employers.
521	b. Provide for all eligible employees throughout their period of employment.

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522	c. If the private plan provides for insurance, the policy must be issued by an admitted insurer, as defined
523	under § 1904 of Title 18.
524	d. Submit a certification to the Department, in a form regulated by the Department, certifying that the
525	plan meets the obligations of this chapter
526	(b) An employer may provide all family and medical leave coverage through an approved private plan or may
527	provide 1 or more of medical leave coverage, family caregiving leave coverage, or parental leave coverage using an
528	approved private plan and provide the remaining coverage not provided through an approved private plan using the State
529	program.
530	(c) The Department may withdraw approval for an employer's use of a private plan granted under subsection (a) of
531	this section when terms or conditions of the plan have been violated. The Department may withdraw approval for an
532	employer's use of a private plan for any of the following:
533	(1) Failure to pay approved benefits.
534	(2) Failure to pay benefits timely and in a manner consistent with the State program.
535	(3) Failure to maintain an adequate security deposit.
536	(4) Misuse of private plan trust funds.
537	(5) Failure to submit reports to the Department as required by regulations adopted by the Department.
538	(6) Failure to comply with this chapter or the regulations adopted under this chapter.
539	(d) An employee covered by a private plan approved under this section retains all applicable rights under §§ 3707
540	and 3708 of this title.
541	(e)(1) Private benefits in existence on [the enactment date of this Act] that the Department deems to be comparable
542	to the Family and Medical Leave Program under § 3713 of this title qualify as a private plan under this chapter for a period
543	of 5 years from the start of contribution payments under § 3705 of this title if the Department's approval of private plans
544	under this subsection would not adversely impact the solvency of the Fund.
545	(2) The Department may determine comparable value through consideration of factors including wage
546	replacement, length of leave, interrelated benefits, eligibility criteria, or frequency of allowed leave.
547	(3) An employer seeking to qualify as a private plan under this subsection must notify the Department before
548	January 1, 2024.
549	(f) The Department's denial of an employer's application under subsection (a) of this section, withdrawal of
550	approval for an employer's use of a private plan under subsection (c) of this section, and decision under subsection (e) of
551	this section are subject to the appeal process under § 3711 of this title.

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552	(g) An employer that meets the employer's obligations under this chapter through a private plan may provide
553	benefits greater than those required under paragraph (a)(1) of this section.
554	§ 3717. Small business opt-in.
555	(a) A small business may opt-in to provide parental leave benefits to its employees who are covered individuals.
556	The small business may opt-in by providing notice to the Department in a manner determined by the Department. After the
557	small business opts-in, the small business must remain opted-in for a period of at least 3 years and may opt-out of coverage
558	for parental leave benefits with 12 months' notice to its employees and the Department, to take effect not sooner than the
559	end of the 3-year period.
560	(b) A small business may opt-in to provide medical leave benefits to its employees who are covered individuals.
561	The small business may opt-in by providing notice to the Department in a manner determined by the Department. After the
562	small business opts-in, the small business must remain opted-in for a period of at least 3 years and may opt-out of coverage
563	for medical leave benefits with 12 months' notice to its employees and the Department, to take effect not sooner than the
564	end of the 3-year period.
565	(c) A small business may opt-in to provide family caregiving leave benefits to its employees who are covered
566	individuals. The small business may opt-in by providing notice to the Department in a manner determined by the
567	Department. After the small business opts-in, the small business must remain opted-in for a period of at least 3 years and
568	may opt-out of coverage for family caregiving leave benefits with 12 months' notice to its employees and the Department,
569	to take effect not sooner than the end of the 3-year period.
570	§ 3718. Powers of the Department.
571	(a) The Department shall administer and enforce this chapter.
572	(b) A complaint, on a form created by the Department, may be filed with the Department for noncompliance with
573	this chapter.
574	(c)(1) The Department may audit employers for compliance with this chapter, as determined by the Department.
575	(2) Nothing in this chapter limits the Department of Insurance's jurisdiction over an insurer issuing an
576	approved private plan.
577	(d) The Department may do all of the following under the Department's audit and investigative authority to
578	determine noncompliance with this chapter:
579	(1) Enter and inspect, after 1 day's notice to the employer, the premises or place of business or employment
580	and, on demand, examine and copy, wholly or partly, any or all books, registers, payrolls, and other records, including
581	those required to be made, kept, and preserved under this chapter.

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582	(2) Question any employer, employee, or other person in the premises or place of business or employment.
583	(3) Require from an employer full and correct statements in writing, including sworn statements, on forms
584	prescribed or approved by the Department, with respect to the compliance with this chapter, as the Department may
585	deem necessary or appropriate.
586	(4) Investigate such facts, conditions, or matters as the Department may deem necessary or appropriate to
587	determine whether this chapter has been or is being violated.
588	(5) Hold hearings, administer oaths, and examine witnesses under oath, issue subpoenas, compel the
589	attendance of witnesses and the production of papers, books, accounts, records, payrolls, documents, and testimony,
590	and take depositions and affidavits in any proceeding before the Department. If a person fails to comply with a
591	subpoena lawfully issued or a witness refuses to testify to a matter that the witness may be lawfully interrogated, the
592	Superior Court, on application by the Department, shall compel obedience as in the case of disobedience of the
593	requirements of a subpoena issued from the Court or a refusal to testify to the Court.
594	(e)(1) Following an investigation in which the Department makes an initial determination that an employer has
595	violated 1 or more provisions of this chapter, or an initial determination that a covered individual received an overpayment
596	or violated § 3712 of this title, the Department shall notify the employer or covered individual of the initial determination
597	and of any amounts owed and shall provide the employer or covered individual with an opportunity to appeal the
598	Department's determination to the Family and Medical Leave Insurance Appeal Board ("Board"). If the Department finds a
599	violation of this chapter, the Department may issue civil penalties under § 3719 of this title.
600	(2) An initial determination that is not appealed within 15 days of the date of the notice is deemed a final
601	determination, and the employer or covered individual shall pay any payments or penalties included in the initia
602	determination to the Fund.
603	(3) If the initial determination is appealed within 15 days from the date of the notice, the Board shall hear the
604	appeal within a reasonable time.
605	(4) The Board shall conduct a hearing on appeal under the Administrative Procedures Act, Chapter 101 o
606	Title 29, and the regulations adopted by the Board. The decision of the Board is final unless appealed to the Superior
607	Court within 30 days.
608	(f) The Department may institute an action in a court of competent jurisdiction for overpayments, penalties, unpaid
609	contributions, or violations of this chapter. In an action brought by the Department under this subsection where judgment is
610	entered for the Department, a court may award costs and, when so awarded, the same amount of costs must be allowed
611	taxed, and collected as are allowed, taxed, and collected for like services in the court.

512	(g) The Department has exclusive authority to settle any claim related to noncompliance with this.
513	(h) Nothing in this chapter limits the Department's power or authority under other law of this State which may be
514	otherwise applicable to administer or enforce this chapter.
515	(i) The Department may not be required to pay the filing fee or other costs of the action or fees of any nature or to
516	file bond or other security of any nature in connection with an action under this chapter or with supplementary proceedings
517	as a condition precedent to the availability of any process in aid of the action or proceedings. The Department may join
518	various claimants in 1 cause of action.
519	(j) Nothing in this chapter prevents a person from pursuing an action at law or in equity against an employer
520	arising under other applicable law.
521	(k) In addition to the methods of collection authorized by this chapter, the Department may collect a final
522	determination of liability of an employer or covered individual to the Fund by any manner available under other law of this
523	State, including by any manner that unemployment tax assessments may be collected under Chapter 33 of this title,
524	including §§ 3358, 3360, 3361, 3363, 3368, and 3369 of this title.
525	§ 3719. Penalties.
626	(a) An employer who violates or fails to comply with any requirement of this chapter, including failing to file
527	reports as prescribed by the Department, failing to make contributions as required by this chapter, and failing to properly
528	handle and remit wage deductions from employees to the Department, is deemed in violation of this chapter and is subject
529	to a civil penalty of not less than \$1,000 nor more than \$5,000 for each violation.
630	(b) An employer who discharges or in any manner discriminates against an employee because that employee has
631	made a complaint or has given information to the Department under this chapter, or because the employee has caused to be
632	instituted or is about to cause to be instituted any proceedings under this chapter, or has testified or is about to testify in any
633	proceedings is deemed in violation of this chapter and is subject to a civil penalty of not less than \$1,000 nor more than
634	\$5,000 for each violation.
635	(c) A civil penalty claim may be filed in any court of competent jurisdiction.
636	(d) Funds from any civil penalty under this chapter, including an overpayment penalty as authorized by § 3712 of
637	this title, must be deposited in the Fund.
638	§ 3720. Regulations.
639	(a) The Department may adopt regulations as the Department deems necessary or appropriate to administer or
640	enforce this chapter. Except as may be otherwise provided by the Department, a regulation adopted under this section takes
6/1	effect on publication

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LC: MJC: NMX 1241510031

542	(b) The Department of Insurance may adopt regulations with respect to private plans under § 3716 of this title.
543	§ 3721. Reports.
544	Beginning in 2027, the Department shall report to the General Assembly by April 1 of each year on projected and
545	actual program participation by purpose under § 3702(a) of this title, gender of beneficiary, Fund balances, outreach efforts,
546	and total utilization and amounts paid out of the Fund by category.
547	§ 3722. Public education.
548	(a) The Department shall conduct a public education campaign to inform employees and employers regarding the
549	availability of family and medical leave benefits.
550	(b) The Department may use a portion of the funds collected for the family and medical leave benefits program in
551	a given year to pay for the public education program.
552	(c) Outreach information provided under this section must be available in English, Spanish, and other languages
553	spoken by more than 5% of the state's population.
554	§ 3723. Sharing technology.
555	The Department is encouraged to use State data collection and technology to the extent possible and to integrate
656	the family and medical leave benefits program with existing state policies.
657	Section 2. If any provision of this Act or the application of this Act to any person or circumstance is held invalid,
658	the remainder of this Act or the application of the provision to other persons or circumstances is not affected.
659	Section 3. This Act takes effect on July 1, 2022.
660	Section 4. This Act is known as the "Healthy Delaware Families Act".

SYNOPSIS

This Act, the Healthy Delaware Families Act, creates a statewide paid family and medical leave insurance program. Delaware employees can access up to 12 weeks of paid family and medical leave through the State's paid leave trust fund for a qualifying event, including for the following:

- (1) To address a worker's own serious health condition.
- (2) To care for a family member with a serious health condition.
- (3) To bond and care for a new child.
- (4) To address the impact of a family member's military deployment.

This Substitute to Senate Bill No. 1 differs from Senate Bill No. 1 with regard to the eligibility determination process, covered relationships, length of leave, forms of leave covered, cumulative leave, eligibility criteria, implementation timeline, appeal process, departmental powers, and not requiring participation from certain smaller businesses.

This Substitute differs from Senate Substitute No. 1 to Senate Bill No. 1 by making technical corrections, clarifying intent and providing greater statutory detail with regard to appeals, coordination of benefits, definitions, private plans, and departmental powers, and providing temporary flexibility regarding implementation.

Author: Senator S. McBride

TAB 10

Delaware General Assembly (/)

House Bill 311

151st General Assembly (Present)

Bill Progress

Current Status:

House Economic Development/Banking/Insurance & Commerce 3/3/22

What happens next?

Committee Hearing takes place within twelve legislative days.

Bill Details

Introduced on:

3/3/22

Primary Sponsor:

Griffith (/LegislatorDetail?personId=13593)

Additional Sponsor(s):

Reps. Heffernan (/LegislatorDetail?personId=97), Longhurst (/LegislatorDetail?personId=359) Sen. S. McBride (/LegislatorDetail?personId=23999), Gay (/LegislatorDetail?personId=13474)

Co-Sponsor(s):

Sen. Hansen (/LegislatorDetail?personId=3212), Paradee (/LegislatorDetail?personId=355), Pinkney (/LegislatorDetail?personId=24000), Townsend

(/LegislatorDetail?personId=13)

Reps. Bentz (/LegislatorDetail?personId=42), Hensley (/LegislatorDetail?personId=193), Kowalko (/LegislatorDetail?personId=176), Lambert (/LegislatorDetail? (/LegislatorDetail?personId=112) personId=24002), Lynn (/LegislatorDetail?personId=317), Mitchell (/LegislatorDetail?personId=178), Morrison (/LegislatorDetail?personId=24001), Osienski

Long Title:

AN ACT TO AMEND TITLE 6 AND TITLE 29 OF THE DELAWARE CODE RELATING TO EQUAL ACCOMMODATIONS

Original Synopsis:

scope of DEAL with federal law protecting individuals with disabilities from discriminatic This Act clarifies the scope and protections for individuals with disabilities under the Delaware Equal Accommodations I aw (DEAL) and further aligns definitions and Delaware FAQ Chat Americans with

alignment with federal law includes all of the following: 1. Using the same terms and definitions for those terms. 2. Clarifying that places of public accommodation interpretation to suggest the legislature made a choice to narrow DEAL's protection ignores both the express mandates and comprehensive guidance under DEAL. It Disabilities Act. This Act is consistent with the Superior Court's decision in Ray v. State Human Rels. Comm'n, 2021 Del. Super. LEXIS 668, which held that "[a]ny must make reasonable modifications in policies, practices, and procedures, sometimes referred to as "reasonable accommodations", unless doing so would takes away the right of a protected class member to be heard. As interpreted, Delaware law would need to reject what has been universally accepted." This doing so is readily achievable. 5. Clarifying that state investigations of complaints must apply the requirements under state law in a manner consistent with equivalent fundamentally alter the program, business, or service. 3. Clarifying that a public accommodation must provide auxiliary aids and services, unless doing so would under § 4504 of Title 6. The term "reasonable accommodation" is retained because that is the term used under state and federal law in employment contexts, which public body allow a member with a disability to use electronic means of communication to attend a meeting because "reasonable modification" is the term now used the Commission to waive the cost of transcript, upon application by a party. 4. Makes corresponding changes to the requirement under § 10006A of Title 29 that a reasonable modification or auxiliary aids and services for the request to be covered by DEAL. 2. Extends the time to file a complaint under DEAL to 1 year. 3. Allows requirements under federal laws. This Act also does all of the following 1. Clarifies that an individual does not have to use the exact terms in DEAL to request a fundamentally alter the program, business, or service or be an undue burden. 4. Clarifying that places of public accommodation must remove physical barriers if might apply to a member of public body. 5. Makes technical corrections to clarify existing law and conform existing law to the standards of the Delaware Legislative

Volume:Chapter: 8

Drafting Manual.

<u>Z</u>

Advisory Number:

2

Fiscal Note/Fee Impact:

Not Required

Effective Date:

Takes effect upon being signed into law

Sunset Date:

Z

Bill Text

Original Text: View HTML (/json/BillDetail/GenerateHtmlDocument?legislationId=79173&legislationTypeId=1&docTypeId=2&legislationName=HB311)

View PDF (/json/BillDetail/GeneratePdfDocument?legislationId=79173&legislationTypeId=1&docTypeId=2&legislationName=HB311)

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Amendments

Amendment

Introduction Date

Status

Primary Spons

Delaware FAQ Chat

> ew Details

No Records Available

Committee Reports	Reports						
Date	Committee	# Members	Favorable	On	On Its Merits	Unfavorable	
		No Records Available					
Roll Calls							
Chamber	Result	Date Vote Type	Yes	o N	Not Voting	Absent	PDF
1		No Records Available					
Actions History	story						
Date	Action						
3/3/22	Introduced :	Introduced and Assigned to Economic Development/Banking/Insurance & Commerce Committee in House	ж Committee	e in Hous	šě		
Legislatio	Legislation Detail Feeds	ds					
Roll Calls	(<u>/rss/RssFeeds/</u>	Roll Calls (/rss/RssFeeds/RollCallsByLegislation?legislationId=79173)					

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SPONSOR: Rep. Griffith & Rep. Heffernan & Rep. Longhurst &

Sen. S. McBride & Sen. Gay

Reps. Bentz, Hensley, Kowalko, Lambert, Lynn, Mitchell, Morrison, Osienski; Sens. Hansen, Paradee,

Pinkney, Townsend

HOUSE OF REPRESENTATIVES 151st GENERAL ASSEMBLY

HOUSE BILL NO. 311

AN ACT TO AMEND TITLE 6 AND TITLE 29 OF THE DELAWARE CODE RELATING TO EQUAL ACCOMMODATIONS.

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

1	Section 1. Amend § 4501, Title 6 of the Delaware Code by making deletions as shown by strike through and
2	insertions as shown by underline as follows and redesignating accordingly:
3	§ 4501. Purpose and construction.
4	This chapter is intended to prevent, in places of public accommodations, practices of discrimination against any
5	person because of race, age, marital status, creed, religion, color, sex, disability, sexual orientation, gender identity, or
6	national origin. This chapter shall be liberally construed to the end that the rights herein provided for all people, without
7	regard to race, age, marital status, creed, religion, color, sex, disability, sexual orientation, gender identity, or national
8	origin, may be effectively safeguarded. Furthermore, in defining the scope or extent of any duty imposed by this chapter, it
9	is appropriate for the Commission to consult with, consider, and apply higher or more comprehensive obligations
10	established by otherwise applicable federal, state, or local enactments may be considered. law in defining the scope or
11	extent of any duty imposed by this chapter.
12	Section 2. Amend § 4502, Title 6 of the Delaware Code by making deletions as shown by strike through and
13	insertions as shown by underline as follows and redesignating accordingly:
14	§ 4502. Definitions.
15	For purposes of this chapter:
16	(2) "Auxiliary aid or service" means a device or service that enables effective communication. Appropriate
17	auxiliary aids and services may include services and devices such as qualified interpreters, assistive listening devices,
18	notetakers, or written materials for individuals with hearing impairments; and qualified readers, taped texts, or brailled or
19	large print materials for individuals with vision impairments.
20	(7) "Disability" means any condition or characteristic that renders a person a person with a disability as defined in

this section.

21

22	(17) "Person with a disability" means any person who satisfies any 1 of the following:
23	a. Has a physical or mental impairment which substantially limits 1 or more major life activities.
24	b. Has a record of such impairment.
25	c. Is regarded as having such an impairment.
26	(18) "Place of public accommodation" means any establishment which caters to or offers goods or services or
27	facilities goods, services, facilities, privileges, advantages, or accommodations to, or solicits patronage from, the general
28	public. This definition includes public, including state agencies, local government agencies, and state-funded agencies
29	performing public functions. This definition includes functions, and hotels and motels catering to the transient public, but it
30	does not apply to the public. "Place of public accommodation" does not include any of the following:
31	a. The sale or rental of houses, housing units, apartments, rooming houses, or other dwellings, nor to tourist
32	homes with less than 10 rental units catering to the transient public.
33	b. Religious organizations, unless the goods, services, or facilities are being provided to the general public.
34	() "Readily achievable" means easily accomplishable without much difficulty or expense. "Readily achievable"
35	means that an action is not an undue burden as defined in this section.
36	() "Reasonable modification" means a change in policies, practices, or procedures when the modification is
37	necessary to avoid discrimination on the basis of disability, unless the covered entity can demonstrate that making the
38	modifications would fundamentally alter the nature of the service, program, or activity.
39	(23) "Service animal" means a dog individually trained to do work or perform tasks for the benefit of a person
40	with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability.
41	() "Undue burden" means an action requiring significant difficulty or expense, when considered in light of all of
42	the following factors:
43	a. The nature and cost of the action needed under this chapter.
44	b. The overall financial resources of the place of public accommodation involved in the action; the
45	number of persons employed at the place of public accommodation; the effect on expenses and resources;
46	legitimate safety requirements that are necessary for safe operation, including crime prevention measures; or the
47	impact otherwise of the action upon the operation of the place of public accommodation.
48	c. The geographic separateness, and the administrative or fiscal relationship of the place of public
40	accommodation in question to any parent corporation or ownership entity.

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50	d. If applicable, the overall financial resources of any parent corporation or ownership entity; the overall
51	size of the parent corporation or ownership entity with respect to the number of its employees; the number, type,
52	and location of its facilities.
53	e. If applicable, the type of operation or operations of any parent corporation or ownership entity,
54	including the composition, structure, and functions of the workforce of the parent corporation or ownership entity.
55	Section 3. Amend § 4503, Title 6 of the Delaware Code by making deletions as shown by strike through and
56	insertions as shown by underline as follows:
57	§ 4503. Persons entitled to protection.
58	All persons within the jurisdiction of this State are entitled to the full and equal accommodations, facilities,
59	advantages and privileges of any place of public accommodation regardless of the race, age, marital status, creed, religion,
60	color, sex, handicap, disability, sexual orientation, gender identity, or national origin of such persons.
61	Section 4. Amend § 4504, Title 6 of the Delaware Code by making deletions as shown by strike through and
62	insertions as shown by underline as follows and redesignating accordingly:
63	§ 4504. Unlawful practices.
64	(a)(1)a. No person being the owner, lessee, proprietor, manager, director, supervisor, superintendent, agent, or
65	employee of any place of public accommodation, may directly or indirectly refuse, withhold from, or deny to any person,
66	on account of race, age, marital status, creed, religion, color, sex, disability, sexual orientation, gender identity, or national
67	origin, any of the accommodations, facilities, advantages, or privileges thereof. of the public accommodation.
68	b. A person who does not allow parking by a holder of a special license plate or permit for persons with
69	disabilities as allowed under § 2134 through § 2135 of Title 21 is engaged in an unlawful practice under this
70	chapter.
71	(3) A place of public accommodation must permit service animals as follows:
72	a. An individual with a disability accompanied by a service animal in any place of public
73	accommodation.
74	b. An individual training a service animal to be used by persons with disabilities accompanied by a
75	service animal in any place of public accommodation.
76	(4) It is a violation of paragraph (a)(1)a. of this section for a person to do any of the following:
77	a. To impose or apply eligibility criteria that screen out or tend to screen out an individual with a
78	disability or any class of individuals with disabilities from fully and equally enjoying any goods, services,
79	facilities, privileges, advantages, or accommodations of a place of public accommodation, unless the criteria can

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80	be shown to be necessary for the provision of the goods, services, facilities, privileges, advantages, or
81	accommodations being offered.
82	b. To fail to make reasonable modifications in policies, practices, or procedures to afford goods, services,
83	facilities, privileges, advantages, or accommodations to individuals with disabilities, unless the place of public
84	accommodation can demonstrate that making the modifications would fundamentally alter the nature of the goods
85	services, facilities, privileges, advantages, or accommodations.
86	c. To fail to take measures that may be necessary to ensure that no individual with a disability is
87	excluded, denied services, segregated, or otherwise treated differently than other individuals because of the
88	absence of auxiliary aids and services, unless the place of public accommodation can demonstrate that taking the
89	steps would fundamentally alter the nature of the goods, services, facilities, privileges, advantages, or
90	accommodations being offered or would result in an undue burden.
91	d.1. To fail to remove architectural barriers and communication barriers that are structural in nature,
92	where such removal is readily achievable, in existing facilities,
93	2. Where a place of public accommodation can demonstrate that the removal of a barrier under
94	paragraph (a)(4)d.1. of this section is not readily achievable, to fail to make goods, services, facilities,
95	privileges, advantages, or accommodations available through alternative methods if such methods are readily
96	achievable.
97	(5) Nothing in paragraph (a)(4) of this section may be construed to require either of the following:
98	a. An individual with a disability to accept an accommodation, modification, aid, service, opportunity, o
99	benefit that the individual chooses not to accept.
100	b. A place of public accommodation to provide individuals with disabilities with personal devices, such
101	as wheelchairs, eyeglasses, hearing aids, or readers for personal use or study, or personal services to assist with
102	feeding, toileting, or dressing.
103	(c) It shall be is unlawful to assist, induce, incite incite, or coerce another person to commit any discriminatory
104	public accommodations practice prohibited by under subsection (a) or (b) of this section.
105	(e) Nothing in this section shall may be interpreted as an abrogation of any requirements otherwise imposed by
106	applicable federal or state laws or regulations. If federal or state law provide additional rights to members of a protected
107	class or requirements for a place of public accommodation, this section must be interpreted as providing that right or
108	requirement.

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109	(f) A person, being the owner, lessee, proprietor, manager, director, supervisor, superintendent, agent, or employee
110	of any place of public accommodation, may not engage in an act or practice that is unlawful under subsections (a) through
111	(d) of this section or otherwise retaliate against an individual because the individual has done 1 of the following:
112	(1) Opposed an act or practice that is unlawful under subsections (a) through (d) of this section.
113	(2) Made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing
114	to enforce subsections (a) through (d) of this section.
115	(g) A place of public accommodation may not deny a request by an individual with a disability for a reasonable
116	modification or for auxiliary aids or services solely because the individual did not use the exact terms under this chapter
117	when making the request, such as by requesting a "reasonable accommodation" or for the auxiliary aid or service.
118	Section 5. Amend § 4508, Title 6 of the Delaware Code by making deletions as shown by strike through and
119	insertions as shown by underline as follows and redesignating accordingly:
120	§ 4508. Procedure on complaint.
121	(a) A person believing himself or herself An individual who believes they have been aggrieved by a discriminatory
122	public accommodation practice proscribed by prohibited under § 4504 of this title may, by himself or herself or by his or
123	her attorney at law, file with the Division a complaint in writing stating: may file a written complaint with the Division. A
124	complaint under this chapter may be filed by the individual or by the individual's attorney and must include all of the
125	following:
126	(1) His or her The individual's name and address; address.
127	(2) The name and location of the place of public accommodation at which the discriminatory public
128	accommodation practice occurred, and the date, time time, and an explanation thereof; of the discriminatory practice.
129	(3) If known, the name and address of each respondent and, if different, the name of the owner, lessee,
130	proprietor, manager manager, or superintendent of the place of public accommodation; and accommodation.
131	(4) Such All other information as the Division requires.
132	(b) No A complaint shall must be filed with the Division no more than 90 days 1 year after the occurrence of the
133	alleged discriminatory public accommodation practice.
134	(c)(1) Within 120 days after the complaint is filed, the Division shall investigate the complaint and endeavor to
135	eliminate any unlawful discriminatory practice discovered through during the investigation, using conciliation.
136	a. When investigating a complaint, the Division shall apply the requirements of this chapter in a manner
137	consistent with equivalent requirements under federal laws.

138	b. Insofar as possible, conciliation meetings shall be held in the county where the alleged discriminatory
139	public accommodations practice occurred.
140	(2) If the matter is resolved through conciliation, the parties shall enter a conciliation agreement stating the
141	terms of the resolution of the matter.
142	(3) If the Division determines that the allegations in the complaint do not state a claim for which relief is
143	available under this chapter or that the claim is not within the scope of the Division's jurisdiction, it may petition the
144	Commission, with notice to the complainant, to dismiss the complaint. A notice under this paragraph (c)(3) must
145	include, with specificity, the reasons for the Division's determination.
146	(d) Whenever the Division has reasonable cause to believe that a respondent has breached a conciliation
147	agreement, the Division shall refer the matter to the Attorney General with a recommendation that a civil action be filed
148	under § 4512 of this title for the enforcement of such agreement.
149	(e) If a complaint cannot be resolved through conciliation as provided in under subsection (c) of this section, the
150	Commission shall appoint a panel to hold a public hearing within 60 days after the expiration of 120-day period for
151	investigation and conciliation. The deadlines provided in under subsection (c) of this section and this subsection may be
152	extended by the Chairperson or the Panel Chair at the request of any party or an employee of the Commission of Human
153	Relations upon a showing of good cause.
154	(f)(1) Public hearings shall must be conducted in accordance with rules prescribed by the Commission. Each party
155	may appear in person, be represented by counsel, present evidence, cross-examine witnesses witnesses, and obtain the
156	issuance of subpoenas under § 4510 of this title. The Delaware Rules of Evidence shall apply to the presentation of
157	evidence in a public hearing as they would in an administrative hearing conducted in accordance with subchapter III of the
158	Administrative Procedures Act in Title 29 [subchapter III of Chapter 101 of Title 29]. A record shall be kept
159	(2)a. The Commission shall keep a record of all public hearings, hearings and shall provide a transcript of
160	which shall be provided a hearing, at cost upon request of a party.
161	b. A party may apply to the Commission to waive the cost of a transcript. The Commission may waive all
162	or part of the cost of the transcript if the party meets the criteria to proceed in forma pauperis in the Superior
163	Court.
164	(3) Decisions of the panel shall must be made by a majority of the members of the panel.
165	(g) If the panel determines that a violation of § 4504 of this title has not occurred, it shall issue an order dismissing
166	the complaint. The panel may award reasonable attorneys' fees, costs, and expenses to the respondent pursuant to

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167	under this subsection if it the panel determines that the complaint was brought for an improper purpose, such as to harass or
168	embarrass the respondent.
169	(h) If the panel determines that a violation of § 4504 of this title has occurred, it shall issue an order stating its
170	findings of fact and conclusions of law and containing such relief as may be appropriate, including actual any of the
171	following:
172	(1) Actual damages suffered by the aggrieved person "including person, including damages caused by
173	humiliation and embarrassment," costs embarrassment.
174	(2) Costs, expenses, reasonable attorneys' fees and injunctive fees.
175	(3) Injunctive or other equitable relief.
176	(4) To vindicate the public interest, the panel may assess a civil penalty against the respondent or respondents,
177	to be paid to the Special Administration Fund; Fund, as follows:
178	(1) a. In an amount not exceeding \$5,000 for each discriminatory public accommodations practice if the
179	respondent has not been adjudged to have committed any prior discriminatory public accommodations practice;
180	practice.
181	(2) b. In an amount not exceeding \$15,000 for each discriminatory public accommodations practice if the
182	respondent has been adjudged to have committed 1 other discriminatory public accommodations practice during the 5-
183	year period ending on the date of the complaint; and complaint.
184	(3) c. In an amount not exceeding \$25,000 for each discriminatory public accommodations practice if the
185	respondent has been adjudged to have committed 2 or more discriminatory public accommodations practices during the
186	7-year period ending on the date of the complaint.
187	(i) Copies The Commission shall serve copies of orders entered pursuant to under subsections (g) and (h) of this
188	section shall be served personally or by registered or certified mail to each party or their counsel.
189	Section 6. Amend § 10006A, Title 29 of the Delaware Code by making deletions as shown by strike through and
190	insertions as shown by underline as follows and redesignating accordingly:
191	§ 10006A. Open meetings; virtual meetings; reasonable accommodations for members with a disability.
192	(a) A public body shall allow a member of the public body with a disability to attend a meeting of the public body
193	through the use of an electronic means of communication, instead of being required to attend in-person at a physical
194	location, as a reasonable accommodation modification under § 4504 of Title 6, 6 or a reasonable accommodation under §
195	723 of Title 19, unless it imposes an undue burden. A member attending a meeting through the use of an electronic means

- of communication as a reasonable modification or reasonable accommodation is considered present for all purposes as if
- the member is physically attending, including for quorum and voting.

196

SYNOPSIS

This Act clarifies the scope and protections for individuals with disabilities under the Delaware Equal Accommodations Law (DEAL) and further aligns definitions and scope of DEAL with federal law protecting individuals with disabilities from discrimination by places of public accommodation, including the Americans with Disabilities Act. This Act is consistent with the Superior Court's decision in Ray v. State Human Rels. Comm'n, 2021 Del. Super. LEXIS 668, which held that "[a]ny interpretation to suggest the legislature made a choice to narrow DEAL's protection ignores both the express mandates and comprehensive guidance under DEAL. It takes away the right of a protected class member to be heard. As interpreted, Delaware law would need to reject what has been universally accepted."

This alignment with federal law includes all of the following:

- 1. Using the same terms and definitions for those terms.
- 2. Clarifying that places of public accommodation must make reasonable modifications in policies, practices, and procedures, sometimes referred to as "reasonable accommodations", unless doing so would fundamentally alter the program, business, or service.
- 3. Clarifying that a public accommodation must provide auxiliary aids and services, unless doing so would fundamentally alter the program, business, or service or be an undue burden.
 - 4. Clarifying that places of public accommodation must remove physical barriers if doing so is readily achievable.
- 5. Clarifying that state investigations of complaints must apply the requirements under state law in a manner consistent with equivalent requirements under federal laws.

This Act also does all of the following

- 1. Clarifies that an individual does not have to use the exact terms in DEAL to request a reasonable modification or auxiliary aids and services for the request to be covered by DEAL.
 - 2. Extends the time to file a complaint under DEAL to 1 year.
 - 3. Allows the Commission to waive the cost of transcript, upon application by a party.
- 4. Makes corresponding changes to the requirement under § 10006A of Title 29 that a public body allow a member with a disability to use electronic means of communication to attend a meeting because "reasonable modification" is the term now used under § 4504 of Title 6. The term "reasonable accommodation" is retained because that is the term used under state and federal law in employment contexts, which might apply to a member of public body.
- 5. Makes technical corrections to clarify existing law and conform existing law to the standards of the Delaware Legislative Drafting Manual.

LC : DIG : CM Released: 03/02/2022 03:20 PM 5971510174

TAB 11

Delaware General Assembly (/)

Q

Senate Bill 211

151st General Assembly (Present)

Bill Progress

Current Status:

House Labor 2/11/22

What happens next?

Committee Hearing takes place within twelve legislative days.

Bill Details

Introduced on:

1/11/22

Primary Sponsor:

Mantzavinos (/LegislatorDetail?personId=1272)

Additional Sponsor(s):

Rep. Griffith (/LegislatorDetail?personId=13593)

Co-Sponsor(s):

personId=3212), Lockman (/LegislatorDetail?personId=13601), S. McBride (/LegislatorDetail?personId=23999), Pinkney (/LegislatorDetail?personId=24000), Sokola (<u>/LegislatorDetail?personId=90), Sturgeon (/LegislatorDetail?personId=13602), Townsend (/LegislatorDetail?personId=13)</u>

Reps. Heffernan (/LegislatorDetail?personId=97), Longhurst (/LegislatorDetail?personId=359), K. Williams (/LegislatorDetail?personId=198)

Long Title:

AN ACT TO AMEND TITLE 19 OF THE DELAWARE CODE RELATING TO EMPLOYMENT PRACTICES

Original Synopsis:

occupational qualification or to comply with state or federal law. graduation from an educational institution in an initial application for employment, unless the employer is requesting the information because of a bona fide This Act prohibits employers from requesting or requiring that an applicant for employment disclose the applicant's age, date of birth, or dates of attendance or





Volume:Chapter: **②** N/A

Advisory Number:

Z N

Fiscal Note/Fee Impact:

Not Required

Effective Date:

Takes effect upon being signed into law

Sunset Date:

NA

Bill Text

Original Text:

View PDF (/json/BillDetail/GeneratePdfDocument?legislationId=79070&legislationTypeId=1&docTypeId=2&legislationName=SB211). View HTML (/json/BillDetail/GenerateHtmlDocument?legislationId=79070&legislationTypeId=1&docTypeId=2&legislationName=SB211)

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Amendments

view amendment details (/BillDetail? legislationId=79128)	Mantzavinos (/LegislatorDetail?personId=1272)	1/26/22	Passed	SA 2
view amendment details (/BillDetail? legislationId=79110)	Mantzavinos (/LegislatorDetail?personId=1272)	1/19/22	Passed	SA 1
View Details	Primary Sponsor	Introduction Date	Status	Amendment

Committee Reports

1/19/22	Date
Labor (/CommitteeDetail?committeeId=571)	Committee
Delawa	# Members
vare FAQ Chat	Favorable
>	On Its Merits
0	Unfavorable
view ()	

Roll Calls

Senate Passed 1/27/22 SM 16 5 0 0 (/json/RollCa	Chamber Result Date Vote Type Yes No Not Voting Absent PDF
0 (/json/RollCallController/GenerateRollCallPdf? rollCallId=52837&chamberId=1) view ()	sent

Actions History

Date	Action
1/11/22	Introduced and Assigned to Labor Committee in Senate
1/19/22	Reported Out of Committee (Labor) in Senate with 3 Favorable, 3 On Its Merits
1/19/22	Amendment SA 1 to SB 211 - Introduced and Placed With Bill
1/26/22	Amendment SA 2 to SB 211 - Introduced and Placed With Bill
1/27/22	Amendment SA 1 to SB 211 - Passed By Senate. Votes: 21 YES
1/27/22	Amendment SA 2 to SB 211 - Passed By Senate. Votes: 19 YES 2 NO
1/27/22	Passed By Senate. Votes: 16 YES 5 NO
2/11/22	Assigned to Labor Committee in House

Legislation Detail Feeds

Roll Calls (/rss/RssFeeds/RollCallsByLegislation?legislationId=79070)

View All Legislation (/AllLegislation)





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3/9/22, 10:02 AM



SPONSOR: Sen. Mantzavinos & Rep. Griffith
Sens. Bonini, Brown, Gay, Hansen, Lockman,
S. McBride, Pinkney, Sokola, Sturgeon, Townsend; Reps.
Heffernan, Longhurst, K. Williams

DELAWARE STATE SENATE 151st GENERAL ASSEMBLY

SENATE BILL NO. 211

AN ACT TO AMEND TITLE 19 OF THE DELAWARE CODE RELATING TO EMPLOYMENT PRACTICES.

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

- Section 1. Amend Chapter 7, Title 19 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows and by redesignating accordingly:
- 3 § 711. Unlawful employment practices, employer practices.
 - (1) It shall be an unlawful employment practice for an employer to require a prospective employee's age, date of birth, dates of attendance at or date of graduation from an educational institution on an initial employment application, provided that the provisions of this subsection shall not apply to any employer requesting or requiring such information (1) based on a bona fide occupational qualification or need, or (2) when such information is required to comply with any provision of state or federal law.
 - (1) (m) Notwithstanding any other provision of this subchapter:
 - (1) It shall not be an unlawful employment practice for an employer to hire and employ employees, for an employment agency to classify or refer for employment any individual, for a labor organization to classify its membership or to classify or refer for employment any individual or for an employer, labor organization or joint labor-management committee controlling apprenticeship or other training or retraining programs to admit or employ any individual in any such program on the basis of religion, genetic information, age, sex (including pregnancy), sexual orientation, gender identity, or national origin in those certain instances where religion, genetic information, age, sex (including pregnancy), sexual orientation, gender identity, or national origin is a bona fide occupational qualification reasonably necessary to the normal operation of that particular business or enterprise; and

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

Page 1 of 3

Released: 01/10/2022 01:18 PM

22	curriculum of such school, college, university or other educational institution or institution of learning is directed
23	toward the propagation of a particular religion.
24	(m) (n) Notwithstanding any other provision of this subchapter, it shall not be an unlawful employment practice for an
25	employer to apply different standards of compensation or different terms, conditions or privileges of employment
26	pursuant to a bona fide seniority or merit system or a system which measures earnings by quantity or quality of
27	production or to employees who work in different locations, provided that such differences are not the result of an
28	intention to discriminate because of race, marital status, genetic information, color, age, religion, sex (including
29	pregnancy), sexual orientation, gender identity, or national origin, nor shall it be an unlawful employment practice for
30	an employer to give and to act upon the results of any professionally developed ability test provided that such test, its
31	administration or action upon the results is not designed, intended or used to discriminate because of race, marital
32	status, genetic information, color, religion, age, sex (including pregnancy), sexual orientation, gender identity, or
33	national origin.
34	(n) (o) Nothing contained in this subchapter as it applies to discrimination because of age or sex shall be interpreted to
35	affect or interfere with the retirement policy or system of any employer or the underwriting or administration of a bona
36	fide employee welfare or benefit plan, provided that such policy, system or plan is not merely a subterfuge to evade the
37	purpose of this subchapter.
38	(e) (p) (1) Nothing in this subchapter shall be construed to prohibit compulsory retirement of any employee who has
39	attained 65 years of age, and who, for the 2-year period immediately before retirement, is employed in a bona fide
40	executive or a high policy-making position, if such employee is entitled to an immediate nonforfeitable annual
41	retirement benefit from a pension, profit sharing, savings or deferred compensation plan, or any combination of such
42	plans, of the employer of such an employee, which equals, in the aggregate, at least \$44,000.
43	(2) In applying the retirement benefit test of paragraph (o)(1) of this section, if any such retirement benefit is in a
44	form other than a straight life annuity (with no ancillary benefits), or if employees contribute to any such plan or
45	make rollover contributions, such benefit shall be adjusted in accordance with regulations prescribed by the
46	Secretary, United States Department of Labor, pursuant to 29 U.S.C. § 631(c)(2), so that the benefit is the
47	equivalent of a straight life annuity (with no ancillary benefits) under a plan to which employees do not contribute

(p) (q) Nothing in this subchapter shall be interpreted to require employers to offer health, welfare, pension or other

benefits to persons associated with employees on the basis as such benefits are afforded to the spouses of married

employees.

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and under which no rollover contributions are made.

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

SYNOPSIS

This Act prohibits employers from requesting or requiring that an applicant for employment disclose the applicant's age, date of birth, or dates of attendance or graduation from an educational institution in an initial application for employment, unless the employer is requesting the information because of a bona fide occupational qualification or to comply with state or federal law.

Author: Senator Mantzavinos

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Released: 01/10/2022 01:18 PM

52

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TAB 12

Delaware General Assembly (/)

Q

Senate Bill 208 151st General Assembly (Present)

Bill Progress

Current Status:

Out of Committee 1/27/22

What happens next?

Reported from Committee; to list ready for consideration (Ready List)

Bill Details

Introduced on:

1/6/22

Primary Sponsor:

Walsh (/LegislatorDetail?personId=3131)

Additional Sponsor(s):

Rep. Osienski (/LegislatorDetail?personId=112)

Co-Sponsor(s):

personId=355), Sokola (/LegislatorDetail?personId=90) Sen. Ennis (/LegislatorDetail?personId=5), Gay (/LegislatorDetail?personId=13474), Hansen (/LegislatorDetail?personId=3212), Paradee (/LegislatorDetail?personId=3212), Paradee (/LegislatorDetail?personId=13474), Hansen (/LegislatorDetail?personId=3212), Paradee (/LegislatorDetail?personId=13474), Hansen (/LegislatorDetail?personId=3212), Paradee (/LegislatorDetail?personId=13474), Hansen (/LegislatorDetail?personId=3212), Paradee (/LegislatorDetail?personId=3474), Hansen (/Legisl

Reps. Morrison (/LegislatorDetail?personId=24001), K. Williams (/LegislatorDetail?personId=198), Wilson-Anton (/LegislatorDetail?personId=232)

Long Title

AN ACT TO AMEND TITLE 19 OF THE DELAWARE CODE RELATING TO AN EMPLOYER'S FAILURE TO PAY WAGES

Original Synopsis:

employee quits, resigns, is discharged, suspended, or laid off. This Act also makes technical corrections to conform existing law to the standards of the Delaware This Act clarifies that an employer is liable to an employee for liquidated damages if the employer does not make wages available on the next payday after an Legislative Drafting Manual and revises the section heading to accurately describe the content of the section.

Volume:Chapter: 0





1/4

N/A

Advisory Number:

Z

Fiscal Note/Fee Impact:

Not Required

Effective Date:

Takes effect upon being signed into law

Sunset Date:

NA

Bill Text

Original Text:

View PDF (/json/BillDetail/GeneratePdfDocument?legislationId=79057&legislationTypeId=1&docTypeId=2&legislationName=SB208) View HTML (/json/BillDetail/GenerateHtmlDocument?legislationId=79057&legislationTypeId=1&docTypeId=2&legislationName=SB208)

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Amendments

view amendment details (/BillDetail? legislationId=79116)	Walsh (/LegislatorDetail?personId=3131)	1/24/22	PWB	SA 1
View Details	Primary Sponsor	Introduction Date	Status	Amendment

Committee Reports

Date Committee		# Members	Favorable	On Its Merits	Unfavorable	
1/27/22 <u>Labor (/Commi</u>	Labor (ICommitteeDetail?committeeId=571)	6	1	3	0	view ()

Roll Calls



>

2/4

<u>8</u>

Not Voting

Absent

PDF

Chamber Result Date Vote Type Yes

No Records Available

Actions History

Date	Action
1/6/22	Introduced and Assigned to Labor Committee in Senate
1/24/22	Amendment SA 1 to SB 208 - Introduced and Placed With Bill
1/27/22	

Legislation Detail Feeds

Roll Calls (/rss/RssFeeds/RollCallsByLegislation?legislationId=79057)

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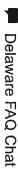
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SPONSOR: Sen. Walsh

DELAWARE STATE SENATE 151st GENERAL ASSEMBLY

SENATE AMENDMENT NO. 1 TO SENATE BILL NO. 208

1	AMEND Senate Bill No. 208 by deleting lines 4 through 7 in their entirety and inserting in lieu thereof the
2	following:
3	"(a)(1) Whenever an employee quits, resigns, is discharged, suspended suspended, or laid off, the wages earned by
4	the employee shall become due and payable by the employer on the next regularly scheduled payday(s) either through the
5	later of the following:
6	a. The next date the wages would be paid through the last day worked under the employer's regular pay
7	cycle as if the employment had not stopped.
8	b. Three business days after the last day worked.
9	(2) The employer must make the payment due under paragraph (a)(1) this section using either of the following
10	methods:
11	a. The usual pay channels or by mail, if requested by the employee, as if the employment had not been
12	suspended or terminated.
13	b. If requested by the employee, by mail to the address provided in the employee's request or if no
14	address is provided, the most recent address provided to the employer.".

SYNOPSIS

This Amendment provides the date when the final wages earned by a former employee are due and clarifies how that payment must be provided.

Author: Senator Walsh

Page 1 of 1

LC: DIG: CM 5971510191

Released: 01/24/2022 01:18 PM

TAB 13

Delaware General Assembly (/)

C

House Bill 288 151st General Assembly (Present)

Bill Progress

Current Status:

House Administration 1/18/22

What happens next?

Committee Hearing takes place within twelve legislative days.

Bill Details

Introduced on:

1/18/22

Primary Sponsor:

Morrison (/LegislatorDetail?personId=24001)

Additional Sponsor(s):

Sen. Gay (/LegislatorDetail?personId=13474), Lockman (/LegislatorDetail?personId=13601)

(/LegislatorDetail?personId=3143) Reps. Bentz (/LegislatorDetail?personId=42), Dorsey Walker (/LegislatorDetail?personId=13590), Minor-Brown (/LegislatorDetail?personId=13595), S. Moore

Co-Sponsor(s):

Sen. Pinkney (/LegislatorDetail?personId=24000), Poore (/LegislatorDetail?personId=249), Sturgeon (/LegislatorDetail?personId=13602), Townsend

Reps. Baumbach (/LegislatorDetail?personId=252), Brady (/LegislatorDetail?personId=124), Heffernan (/LegislatorDetail?personId=97), Kowalko (/LegislatorDetail?personId=97), Kowalko (/LegislatorDetail?personId=97), Kowalko (/LegislatorDetail?personId=124), Heffernan (/LegislatorDetail?personId=97), Kowalko (/LegislatorDetail?personId=124), Heffernan (/LegislatorDetail?personId=97), Kowalko (/LegislatorDetail?personId=124), Heffernan (/LegislatorDetail?personId=97), Kowalko (/LegislatorDetail?personId=124), Heffernan (/LegislatorDetail?personId=124), Heffernan (/LegislatorDetail?personId=97), Kowalko (/LegislatorDetail?personId=124), Heffernan (/LegislatorDetail?personId=97), Kowalko (/LegislatorDetail?personId=124), Heffernan (/LegislatorDetail?personId=97), Kowalko (/LegislatorDetail?personId=124), Heffernan (/LegislatorDetail?personId=124), Heffernan (/LegislatorDetail?personId=124), Heffernan (/LegislatorDetail?personId=124), Heffernan (/LegislatorDetail?personId=97), Heffernan (/LegislatorDetail?personId=124), Heffe (/LegislatorDetail?personId=13) personId=176), Lambert (/LegislatorDetail?personId=24002), Osienski (/LegislatorDetail?personId=112), Wilson-Anton (/LegislatorDetail?personId=232)

Long Title:

AN ACT TO AMEND TITLE 19 OF THE DELAWARE CODE RELATING TO EMPLOYER PAID TIME OFF TO VOTE

Original Synopsis:

in order for the employee to exercise the right to vote. The Act excludes individuals enc 📮 Delaware FAQ Chat This Act requires private and public employers in the State to give any employee who is scheduled to work at least 8 hours on an election day 2 hours of paid leave > or nonprofit organizations

employee intends to use paid time off to vote. Employers must post notice of the rights created in the Act. Enforcement of the Act is through the Department of Labor. bargaining agreement in which paid time off to vote has been waived. Employees must give employers 2 working days notice in advance of an election that the when the employment relationship does not exist or where services are rendered to such organizations gratuitously; employees who are party to a collective exercising the rights created by this Act. Employees may bring a civil lawsuit for equitable relief and monetary damages. A prevailing employee may also recover Employers who violate the Act are subject to civil penalties ranging from \$500-\$1,000 and from \$1,000-\$5,000 if found to have retaliated against an employee for costs and attorney's fees.

Volume:Chapter: 0

N/A

Advisory Number:

Z

Fiscal Note/Fee Impact:

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Effective Date:

Takes effect upon being signed into law

Sunset Date:

NA

Bill Text

Original Text:

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Amendments

Amendment	
Status	
Introduction Date	
Primary Sponsor	
View Details	View Details

No Records Available





Date	Committee		# V				Untavorable	
		P	No Records Available					
Roll Calls								
Chamber	Result	Date	Vote Type	Yes	No	Not Voting	Absent	PDF
			Nia Dagarda Augilahla					
Actions History			NO Records Available					
Date	tory		NO Records Available					
1/18/22	tory Action		NO Records Available					
	Action Introduced	No Record Action Introduced and Assigned to Administration Committee in House	in House					

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SPONSOR: Rep. Morrison & Rep. Bentz & Rep. Dorsey Walker & Rep. Minor-Brown & Rep. S. Moore & Sen. Gay &

Sen. Lockman

Reps. Baumbach, Brady, Heffernan, Kowalko, Lambert, Osienski, Wilson-Anton; Sens. Pinkney, Poore, Sturgeon, Townsend

HOUSE OF REPRESENTATIVES 151st GENERAL ASSEMBLY

HOUSE BILL NO. 288

AN ACT TO AMEND TITLE 19 OF THE DELAWARE CODE RELATING TO EMPLOYER PAID TIME OFF TO VOTE.

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

1	Section 1. Amend Title 19 of the Delaware Code by adding a new Chapter 12 by making insertions as shown by
2	underline as follows:
3	CHAPTER 12. EMPLOYER PAID LEAVE
4	SUBCHAPTER I. EMPLOYER PAID TIME OFF TO VOTE
5	§1201. Purpose.
6	The Constitution of the State provides that all elections shall be free and equal. To that end, the full exercise of the
7	right to vote requires that citizens who are qualified to vote be afforded the opportunity to do so without losing pay. It is the
8	purpose of this chapter to ensure that persons employed in Delaware who are qualified to vote in Delaware elections be
9	given time off with pay to exercise their right to vote.
10	§1202. Definitions.
11	As used in this subchapter:
12	(1) "Department" means the Department of Labor or its authorized representatives.
13	(2) "Election" means any municipal, county, state, or federal general election, political primary election, or
14	public school election as defined by Title 14, held in this State.
15	(3) "Employ" means to suffer or permit to work by an employer under a contract of employment either made
16	in this State or to be performed wholly or partly in this State.
17	(4) "Employee" means an individual employed by an employer but shall not include:
18	a. Any individual engaged in the activities of an educational, charitable, religious or nonprofit
19	organization where the employment relationship does not in fact exist or where the services are rendered to such
20	organization gratuitously.

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21	b. Any individual who is covered by a valid collective bargaining agreement with an employer to the
22	extent that paid time off to vote is expressly waived in the collective bargaining agreement in clear and
23	unambiguous terms.
24	(5) "Employer" means any individual, partnership, association, corporation, statutory trust, business trust,
25	entity, administrator or executor of the estate of a deceased individual, or the receiver, trustee or successor of any
26	person or entity, or any person or group of persons acting directly or indirectly in the interest of an employer in relation
27	to an employee.
28	(6) "Wage" means compensation due to an employee by reason of the employee's employment, payable in
29	legal tender of the United States or check or bank convertible into cash on demand at full face value, subject to such
30	deductions, charges or allowances as may be permitted by the regulations of the Department under Chapter 11 of this
31	<u>title.</u>
32	(7) "Retaliation" includes any threat, discharge, discipline, suspension, demotion, non-promotion, less
33	favorable scheduling, reduction of hours or application of absence control policies that count an employee's use of paid
34	time off to vote as absence that may lead to adverse action, or other adverse action against employees for the exercise
35	of a right guaranteed pursuant to this chapter, including sanctions against an employee who is a recipient of benefits or
36	rights pursuant to this subchapter. "Retaliation" also includes interference with or punishment for participating in an
37	investigation, proceeding or hearing pursuant to this subchapter.
38	§1203. Paid time off to vote.
39	(a) An employer must provide 2 hours of paid time off to an employee for the purpose of voting in an election in
40	the State if the employee is scheduled to work at least 8 hours on the day of the election. An employer may not require ar
41	employee to provide proof of being registered or qualified to vote. Pay for leave to vote shall be at the employee's regular
42	wage rate or the full state minimum wage if higher, and with the same benefits, including healthcare benefits, as the
43	employee normally earns during hours worked and provided to an employee. An employer shall not require an employee to
44	exhaust any other paid leave before the employee uses 2 hours of paid time off to vote.
45	(b) The employer may specify the hours on the day of the election during which the employee may take paid time
46	off for voting, as long as the specified time falls within the time the employee is scheduled to work. The employer may
47	specify the employee take time off to vote at the beginning or at the end of the employee's shift but may not designate
48	lunch or other break as the specified time off for the employee to exercise the right to vote.
49	(c) An employee who has a request for time off to vote shall notify the employer not less than 2 working day

before the day of an election of the request for paid time off. If the employer does not specify the hours the employee will

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51	be given for paid time to vote, the employee shall make a reasonable effort to schedule time off to vote in a manner that
52	does not unduly disrupt the operations of the employer.
53	(d) If the employee must take more than 2 hours to get to the polling place from work, vote, and return to work due
54	to circumstances beyond the employee's control, the employer must permit the employee to use any accrued paid leave to
55	cover the excess time away from work.
56	(e) Not less than 10 working days before every election, an employer shall display written notice in a conspicuous
57	location in the workplace of the provisions contained in §1203 (a), (b), (c) and (d) of this subchapter. The notice must
58	remain posted until the polls close on the day of the election to which the notice pertains.
59	(f) An employer may not engage in retaliation against an employee who exercises the right to take paid time off to
60	vote.
61	(g) An employer's failure to provide paid time off to vote based on the employer's misclassification of the
62	employee as an independent contractor is a violation of this subchapter.
63	§ 1204. Enforcement and Remedies.
64	(a) The Department shall administer and enforce this subchapter by:
65	(1) Establishing a system to receive complaints, in writing, by telephone, and online, regarding alleged
66	violations of this subchapter.
67	(2) Establishing a process for investigating and resolving complaints in a timely manner and keeping
68	complainants notified regarding the status of the investigation of their complaint.
69	(3) Ensuring employer compliance with this subchapter through the use of audits, investigations, record
70	keeping requirements or other measures.
71	(4) Establishing a system for reviewing complaints.
72	(b) The Department shall keep confidential the identity of complainants unless disclosure is necessary for
73	resolution of the investigation or required by law. The Department shall notify a complainant that the Department will be
74	disclosing the complainant's identity prior to such disclosure and to the extent practicable.
75	(c) The Department shall have the power to make, revise and rescind regulations it deems necessary to administer
76	and enforce this subchapter.
77	(d) Any individual or persons may file a civil action for an alleged violation of this subchapter without first filing
78	an administrative complaint with the Department. In the event of an investigation by the Department the time period to file
79	a civil action against an employer shall be tolled pending the conclusion of the same employer by the Department. A lack of
80	investigation by the Department shall not act as a bar to a civil action against the employer. A plaintiff in a civil action

Page 3 of 4

Released: 01/18/2022 10:07 AM

81	brought under this subchapter, may seek both equitable and legal relief. A plaintiff prevailing in a legal action, brought
82	under this subchapter, shall be entitled to recover the costs and expenses of the lawsuit including reasonable attorney's fees.
83	§1205. Penalties.
84	(a) Any employer who violates or fails to comply with any requirement of this subchapter shall be subject to a
85	civil penalty of not less than \$500 nor more than \$1,000 for each violation. In addition the employer shall be assessed
86	actual damages incurred by the employee for lost wages or lost benefits as well as any equitable relief, such as
87	reinstatement, of the employee.
88	(b) Any employer who discharges or in any manner engages in retaliation against an employee because the
89	employee has made a complaint or has given information to the Department related to an alleged violation of this
90	subchapter by an employer shall be subject to a civil penalty of not less than \$1,000 nor more than \$5,000. In addition the
91	employer shall be assessed actual damages incurred by the employee for lost wages or lost benefits as well as any equitable
92	relief, such as reinstatement, of the employee.
93	§1206. Short title.
94	This subchapter shall be known as the "Paid Time Off To Vote Act".
95	Section 2. This Act takes effect upon promulgation of regulations adopted under this subchapter or 6 months after

SYNOPSIS

This Act requires private and public employers in the State to give any employee who is scheduled to work at least 8 hours on an election day 2 hours of paid leave in order for the employee to exercise the right to vote. The Act excludes individuals engaged in activities for education, charitable, religious, or nonprofit organizations when the employment relationship does not exist or where services are rendered to such organizations gratuitously; employees who are party to a collective bargaining agreement in which paid time off to vote has been waived. Employees must give employers 2 working days notice in advance of an election that the employee intends to use paid time off to vote. Employers must post notice of the rights created in the Act. Enforcement of the Act is through the Department of Labor. Employers who violate the Act are subject to civil penalties ranging from \$500-\$1,000 and from \$1,000-\$5,000 if found to have retaliated against an employee for exercising the rights created by this Act. Employees may bring a civil lawsuit for equitable relief and monetary damages. A prevailing employee may also recover costs and attorney's fees.

HD: MS: MAW

enactment, whichever occurs first.

96

4 Released: 01/18/2022 10:07 AM



SPONSOR: Sen. Walsh & Rep. Osienski Sens. Ennis, Gay, Hansen, Paradee, Sokola; Reps. Morrison, K. Williams, Wilson-Anton

DELAWARE STATE SENATE 151st GENERAL ASSEMBLY

SENATE BILL NO. 208

AN ACT TO AMEND TITLE 19 OF THE DELAWARE CODE RELATING TO AN EMPLOYER'S FAILURE TO PAY WAGES.

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

1	Section 1. Amend § 1103, Title 19 of the Delaware Code by making deletions as shown by strike through and
2	insertions as shown by underline as follows:
3	§ 1103. Employees separated from the payroll before regular paydays. payday; damages for failure to pay wages.
4	(a) Whenever an employee quits, resigns, is discharged, suspended suspended, or laid off, the wages earned by the
5	employee shall become due and payable by the employer on the next regularly scheduled payday(s) payday either through
6	the usual pay channels or by mail, if requested by the employee, as if the employment had not been suspended or
7	terminated.
8	(b)(1) If an employer, without any reasonable grounds for dispute, employer fails to pay an employee wages
9	wages as required under this chapter, the employer shall, in addition, be is also liable to the employee for liquidated
10	damages in the amount of 10 the lower of the following:
11	a. Ten percent of the unpaid wages for each day, except Sunday and legal holidays, upon which such the
12	failure continues after the day upon which payment is required or in an required.
13	b. An amount equal to the unpaid wages, whichever is smaller, except that, for the purpose of such
14	liquidated damages, such wages.
15	(2) For purposes of liquidated damages under paragraph (b)(1) of this section, the failure to pay shall is not be
16	deemed to continue after the date of the filing of a petition of bankruptcy with respect to the employer if the employer
17	is adjudicated bankrupt thereupon. bankrupt.
18	(c) An employer who is unable to prepare the payroll due to a labor dispute, power failure, blizzard blizzard, or
19	like weather catastrophe, epidemic, fire fire, or explosion shall may not be deemed to have violated this chapter.

SYNOPSIS

This Act clarifies that an employer is liable to an employee for liquidated damages if the employer does not make wages available on the next payday after an employee quits, resigns, is discharged, suspended, or laid off.

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This Act also makes technical corrections to conform existing law to the standards of the Delaware Legislative Drafting Manual and revises the section heading to accurately describe the content of the section.

Author: Senator Walsh

Page 2 of 2

LC: DIG: CM 5971510066

TAB 14

Delaware General Assembly (/)

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House Bill 277 151st General Assembly (Present)

Bill Progress

Current Status:

House Judiciary 1/6/22

What happens next?

Committee Hearing takes place within twelve legislative days.

Bill Details

Introduced on:

1/6/22

Primary Sponsor:

Lynn (/LegislatorDetail?personId=317)

Additional Sponsor(s):

Sen. Poore (/LegislatorDetail?personId=249), Pettyjohn (/LegislatorDetail?personId=9)

Reps. Longhurst (/LegislatorDetail?personId=359), Dorsey Walker (/LegislatorDetail?personId=13590), Dukes (/LegislatorDetail?personId=352)

Co-Sponsor(s):

Sen. Richardson (/LegislatorDetail?personId=10), Sokola (/LegislatorDetail?personId=90), Sturgeon (/LegislatorDetail?personId=13602)

Reps. Bennett (/LegislatorDetail?personId=55), Griffith (/LegislatorDetail?personId=13593), Heffernan (/LegislatorDetail?personId=97)

Long Title:

SCHOOL, ORGANIZATION, OR BUSINESS AN ACT TO AMEND TITLE 10 OF THE DELAWARE CODE RELATING TO LIABILITY FOR SEXUAL ABUSE OF A CHILD BY AN ADULT EMPLOYEE OF A

Original Synopsis

of childhood sexual abuse by an employee of a school, organization, or business that serves or cares for children, the perpetrator often has authority and power over the child victim, which can be enabled by the perpetrator's position in that institution. If a child is ahused while the perpetrator is doing the perpetrator's job, the This Act codifies the principle set forth in Doe v. Bicking, 2020 Del. Super. LEXIS 43, *32, 2020 WL 374677 (Del. Super. Jan. 22, 2020) that recognizes that in cases employer should be responsible. This Act also changes the standard of culpability from Delaware FAQ Chat > s in civil claims based on

childhood sexual abuse. Children who are sexually abused by private employer employees (e.g. daycare providers, private schools, etc.) have more protection than children abused by their teachers and coaches at public schools. There should be one standard of care that holds schools and businesses equally accountable when no legal responsibility. This Act takes effect 90 days after its enactment into law. Rodney Sch. Dist., No. 13, 2021, 2021 Del. LEXIS 315 (Del. Oct. 6, 2021), a case which held that when a student is abused at school by a teacher, the school has their recklessness, inattention, or failure to act causes a student to be sexually abused. This Act seeks to avoid future instances of the result in Bates v. Caesar

Volume:Chapter: 8

N N

Advisory Number:

N N

Fiscal Note/Fee Impact:

Not Required

Effective Date:

Takes effect upon being signed into law

Sunset Date:

N N

Bill Text

Original Text:

View HTML (/json/BillDetail/GenerateHtmlDocument?legislationId=79054&legislationTypeId=1&docTypeId=2&legislationName=HB277)

View PDF (/json/BillDetail/GeneratePdfDocument?legislationId=79054&legislationTypeId=1&docTypeId=2&legislationName=HB277)

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Amendments

Amendment
Status
Introduction Date
Primary Sponsor
View Details

No Records Available

Committee Reports

	Date Com
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	Unfavorable

No Records Available

Roll Calls

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Result	
Date	
Vote Type	
Yes	
N _o	
Not Voting	
Absent	
PDF	

No Records Available

Actions History

1/6/22	Date
Introduced and Assigned to Judiciary Committee in House	Action

Legislation Detail Feeds

Roll Calls (/rss/RssFeeds/RollCallsByLegislation?legislationId=79054)

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View All House Legislation (/Legislation/House)

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SPONSOR: Rep. Lynn & Rep. Longhurst & Rep. Dorsey Walker & Rep. Dukes & Sen. Poore & Sen. Pettyjohn Reps. Bennett, Griffith, Heffernan; Sens. Richardson, Sokola, Sturgeon

HOUSE OF REPRESENTATIVES 151st GENERAL ASSEMBLY

HOUSE BILL NO. 277

AN ACT TO AMEND TITLE 10 OF THE DELAWARE CODE RELATING TO LIABILITY FOR SEXUAL ABUSE OF A CHILD BY AN ADULT EMPLOYEE OF A SCHOOL, ORGANIZATION, OR BUSINESS.

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

1	Section 1. Amend Chapter 39, Title 10 of the Delaware Code by making deletions as shown by strike through and
2	insertions as shown by underline as follows:
3	§ 3928. Liability for sexual abuse of child by adult employee of a school, organization, or business.
4	(a) A school, organization, or business that provides goods or services specifically targeted to or primarily used by
5	children is vicariously responsible for the sexual abuse of a child by an adult employed by, or an agent of, the school,
6	organization, or business when any of the following apply:
7	(1) The employee or agent was acting in the ordinary course of business during the time frame within which
8	the abuse was committed, regardless of the employee's or agent's motivation.
9	(2) The school, organization, or business intended the conduct or consequences.
10	(3) The school, organization, or business was negligent, grossly negligent, or reckless.
11	(4) The conduct violated a non-delegable duty of the school, organization, or business.
12	(5) The employee or agent purported to act or speak on behalf of the school, organization, or business and
13	there was a reliance on apparent authority, or the employee or agent was aided in accomplishing the sexual abuse by
14	the existence of the employment or agency relationship.
15	(b) The privileges and immunities from liability under §§ 4001 and 4003 of this title do not apply to schools in
16	civil suits for damages based on sexual abuse of a child by a school employee.
17	(c) A civil cause of action for sexual abuse of a child under this section must be based on sexual acts that would
18	constitute a criminal offense under the Delaware Code.
19	Section 2. This Act takes effect 90 days after its enactment into law.
	SYNOPSIS

This Act codifies the principle set forth in Doe v. Bicking, 2020 Del. Super. LEXIS 43, *32, 2020 WL 374677 (Del. Super. Jan. 22, 2020) that recognizes that in cases of childhood sexual abuse by an employee of a school,

organization, or business that serves or cares for children, the perpetrator often has authority and power over the child victim, which can be enabled by the perpetrator's position in that institution. If a child is abused while the perpetrator is doing the perpetrator's job, the employer should be responsible.

This Act also changes the standard of culpability from "gross negligence" to "negligence" for public schools in civil claims based on childhood sexual abuse. Children who are sexually abused by private employer employees (e.g. daycare providers, private schools, etc.) have more protection than children abused by their teachers and coaches at public schools. There should be one standard of care that holds schools and businesses equally accountable when their recklessness, inattention, or failure to act causes a student to be sexually abused.

This Act seeks to avoid future instances of the result in Bates v. Caesar Rodney Sch. Dist., No. 13, 2021, 2021 Del. LEXIS 315 (Del. Oct. 6, 2021), a case which held that when a student is abused at school by a teacher, the school has no legal responsibility.

This Act takes effect 90 days after its enactment into law.

Page 2 of 2

Released: 01/06/2022 09:03 AM

TAB 15

Delaware General Assembly (/)

151st General Assembly (Present) Senate Bill 201

Bill Progress

Current Status:

Senate Labor 12/16/21

What happens next?

Awaiting consideration in Committee

Bill Details

Introduced on:

12/16/21

Primary Sponsor:

Walsh (/LegislatorDetail?personId=3131)

Additional Sponsor(s):

Rep. Osienski (/LegislatorDetail?personId=112)

Co-Sponsor(s):

Sen. Lockman (/LegislatorDetail?personId=13601), Mantzavinos (/LegislatorDetail?personId=1272), S. McBride (/LegislatorDetail?personId=23999), Townsend

<u>(/LegislatorDetail?personId=13)</u>

Reps. Carson (/LegislatorDetail?personId=370), Cooke (/LegislatorDetail?personId=13594), Griffth (/LegislatorDetail?personId=13593), Heffernan (/LegislatorDetail?personId=13594), Griffth (/L personId=97), Kowalko (/LegislatorDetail?personId=176), Longhurst (/LegislatorDetail?personId=359), Minor-Brown (/LegislatorDetail?personId=13595)

Long Title:

AN ACT TO AMEND TITLE 19 OF THE DELAWARE CODE RELATING TO THE PUBLIC EMPLOYMENT RELATIONS ACT

Original Synopsis:

close of the record, or, if the Board requires more time to issue its decision, it must provide a written notice to the narties advising of the same within the 180 day employees and as few as 10. Second, it requires the Board either to issue written decisions following hearings on unfair labor practice charges within 180 days of the period and every 30 days thereafter. This bill amends the Delaware Public Employment Relations Act in two ways. First, it expands the jurisdictional application of the Act to employers with less than 100 Delaware FAQ Chat

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Advisory Number:

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Fiscal Note/Fee Impact:

Not Required

Effective Date:

Takes effect upon being signed into law

Sunset Date:

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Bill Text

Original Text:

View PDF (/json/BillDetail/GeneratePdfDocument?legislationId=79041&legislationTypeId=1&docTypeId=2&legislationName=SB201) View HTML (/json/BillDetail/GenerateHtmlDocument?legislationId=79041&legislationTypeId=1&docTypeId=2&legislationName=SB201)

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Amendments

	Amendment
	Status
	Introduction Date Primary Sponsor
No Records Available	Primary Sponsor
	View Details

Committee Reports

Date
Committee
Members
Favorable
On Its Merits
Unfavorable

No Records Available





PDF

Chamber Result Date Vote Type Yes N_O **Not Voting Absent**

No Records Available

Actions History

12/16/21	Date
Introduced and Assigned to Labor Committee in Senate	Action

Legislation Detail Feeds

Roll Calls (/rss/RssFeeds/RollCallsByLegislation?legislationId=79041)

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SPONSOR: Sen. Walsh & Rep. Osienski

Sens. Lockman, Mantzavinos, S. McBride, Townsend; Reps. Carson, Cooke, Griffith, Heffernan, Kowalko,

Longhurst, Minor-Brown

DELAWARE STATE SENATE 151st GENERAL ASSEMBLY

SENATE BILL NO. 201

AN ACT TO AMEND TITLE 19 OF THE DELAWARE CODE RELATING TO THE PUBLIC EMPLOYMENT RELATIONS ACT.

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

- Section 1. Amend Chapter 13, Title 19 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:
- § 1302. Definitions.

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- (p) "Public employer" or "employer" means the State, any county of the State or any agency thereof, and/or any municipal corporation, municipality, city or town located within the State or any agency thereof, which upon the affirmative legislative act of its common council or other governing body has elected to come within the former Chapter 13 of this title or which hereafter elects to come within this chapter, or which employs $\frac{100}{10}$ or more full-time employees.
 - § 1308. Disposition of complaints.
- (a) The Board is empowered and directed to prevent any unfair labor practice described in § 1307(a) and (b) of this title and to issue appropriate remedial orders. Whenever it is charged that anyone has engaged or is engaging in any unfair practice as described in § 1307(a) and (b) of this title, the Board or any designated agent thereof shall have authority to issue and cause to be served upon such party a complaint stating the specific unfair practice charge and including a notice of hearing containing the date and place of hearing before the Board or any designated agent thereof. Evidence shall be taken and filed with the Board; provided, that no complaint shall issue based on any unfair labor practice occurring more than 180 days prior to the filing of the charge with the Board.
- (b) (1) If, upon all the evidence taken, the Board shall determine that any party charged has engaged or is engaging in any such unfair practice, the Board shall state its findings of fact and conclusions of law and issue and cause to be served on such party an order requiring such party to cease and desist from such unfair practice, and to take such reasonable affirmative action as will effectuate the policies of this chapter, such as payment of damages and/or the reinstatement of an employee; provided however, that the Board shall not issue:
 - a. Any order providing for binding interest arbitration on any or all issues arising in collective bargaining

Page 1 of 2

Released: 12/15/2021 10:15 AM

- between the parties involved; or

 b. Any order, the effect of which is to compel concessions on any items arising in collective bargaining

 between the parties involved.

 (2) If, upon the evidence taken, the Board shall determine that any party charged has not engaged or is not

 engaging in any such unfair practice, the Board shall state, in writing, its findings of fact and conclusions of law and issues
 - (3) The Board or any designated agent thereof shall either issue its findings of fact and conclusions of law referenced in (b)(1) and (2) of this section within 180 days of the close of the record, or shall advise the parties of the status of the matter within 180 days of the close of the record, and every 30 days thereafter.
 - (c) In addition to the powers granted by this section, the Board shall have the power, at any time during proceedings authorized by this section, to issue orders providing such temporary or preliminary relief as the Board deems just and proper subject to the limitations of subsection (b) of this section.

SYNOPSIS

This bill amends the Delaware Public Employment Relations Act in two ways. First, it expands the jurisdictional application of the Act to employers with less than 100 employees and as few as 10. Second, it requires the Board either to issue written decisions following hearings on unfair labor practice charges within 180 days of the close of the record, or, if the Board requires more time to issue its decision, it must provide a written notice to the parties advising of the same within the 180 day period and every 30 days thereafter.

Author: Senator Walsh

Page 2 of 2

Released: 12/15/2021 10:15 AM

and dismiss the complaint.

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TAB 16

Delaware General Assembly (/)

151st General Assembly (Present) **House Substitute 1 for House Bill 94**

Bill Progress

Current Status:

House Economic Development/Banking/Insurance & Commerce 6/30/21

What happens next?

Committee Hearing takes place within twelve legislative days.

Bill Details

View Parent Bill:

HB 94 (/BillDetail/48357)

Introduced on:

6/30/21

Primary Sponsor:

K. Williams (/LegislatorDetail?personId=198)

Additional Sponsor(s):

Sen. Walsh (/LegislatorDetail?personId=3131), Pinkney (/LegislatorDetail?personId=24000)

Rep. Kowalko (/LegislatorDetail?personId=176)

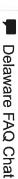
Co-Sponsor(s):

Reps. Bentz (/LegislatorDetail?personId=42), Brady (/LegislatorDetail?personId=124), Lambert (/LegislatorDetail?personId=24002), Lynn (/LegislatorDetail?personId=124), Lambert (/LegislatorDetail?personId=24002), Lynn (/LegislatorDetail?person Anton (/LegislatorDetail?personId=232) personId=317), Minor-Brown (/LegisIatorDetail?personId=13595), Morrison (/LegisIatorDetail?personId=24001), Osienski (/LegisIatorDetail?personId=112), Wilson-

Long Title:

GRATUITIES AN ACT TO AMEND TITLE 19 OF THE DELAWARE CODE RELATING TO THE DELAWARE MINIMUM WAGE FOR EMPLOYEES RECEIVING TIPS OR

Original Synopsis:





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wage workers at that time were paid a percentage - 66.67% - of the minimum wage, which was \$2.23 per hour. In 1989, the General Assembly changed the hourly wage. Therefore, this bill ensures that employees who receive tips or gratuities also receive a minimum wage increase when other employees in the State receive a wage to a flat \$2.23 per hour, where it has remained since. Had the calculation been left unchanged, the tipped wage would have increased along with the minimum The minimum wage for employees who receive tips or gratuities has not changed since 1983, when the overall state minimum wage was \$3.35 per hour. Tipped minimum wage increase.

Volume:Chapter: 0

N

Advisory Number:

N

Fiscal Note/Fee Impact:

Not Required

Effective Date:

Takes effect upon being signed into law

Sunset Date:

N N

Bill Text

Original Text:

View PDF (/json/BillDetail/GetPdfDocument?fileAttachmentId=402113)

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Amendments

No Records Available

Committee Reports

Date	
Committee	
# Members	
Favorable	
On Its Merits	
Unfavorable	

Delaware FAQ Chat

No Records Available

Roll Calls

C	
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Result	
Vote Type	
Yes	
N _o	
Not Voting	
Absent	

PDF

No Records Available

Actions History

6/30/21	Date
Adopted in lieu of the original bill HB 94, and Assigned to Economic Development/Banking/Insurance & Commerce Committee in House	ate Action

Legislation Detail Feeds

Roll Calls (/rss/RssFeeds/RollCallsByLegislation?legislationId=79029)

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SPONSOR: Rep. K. Williams & Sen. Walsh & Sen. Pinkney & Rep. Kowalko
Reps. Bentz, Brady, Lambert, Lynn, Minor-Brown,

Morrison, Osienski, Wilson-Anton

HOUSE OF REPRESENTATIVES 151st GENERAL ASSEMBLY

HOUSE SUBSTITUTE NO. 1 FOR HOUSE BILL NO. 94

AN ACT TO AMEND TITLE 19 OF THE DELAWARE CODE RELATING TO THE DELAWARE MINIMUM WAGE FOR EMPLOYEES RECEIVING TIPS OR GRATUITIES.

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

Section 1. Amend Chapter 9, Title 19 of the Delaware Code by making deletions as shown by strike through and 1 2 insertions as shown by underline as follows: § 902 Minimum wage rate (For current federal minimum wage, see 29 U.S.C. § 206(a)(1)(A)) 3 (a) Except as may otherwise be provided under this chapter, every employer shall pay to every employee in any 4 5 occupation wages of a rate: (1) Not less than \$7.75 per hour effective June 1, 2014; 6 (2) Not less than \$8.25 per hour effective June 1, 2015; 7 (3) Not less than \$8.75 per hour effective January 1, 2019; 8 (4) Not less than \$9.25 per hour effective October 1, 2019; 9 Upon the establishment of a federal minimum wage in excess of the state minimum wage, the minimum wage in 10 this State shall be equal in amount to the federal minimum wage, except as may otherwise be provided under this chapter. 11 (b) Gratuities received by employees engaged in occupations in which gratuities customarily constitute part of the 12 remuneration may be considered wages for purposes of this chapter in an amount equal to the tip credit percentage, as set 13 by the federal government as of June 15, 2006, of the minimum rate as set forth in subsection (a) of this section. In no event 14 shall the minimum rate, under this subsection, be less than \$2.23 per hour 65% of the minimum rate as set forth in 15

SYNOPSIS

The minimum wage for employees who receive tips or gratuities has not changed since 1983, when the overall state minimum wage was \$3.35 per hour. Tipped wage workers at that time were paid a percentage – 66.67% – of the minimum wage, which was \$2.23 per hour. In 1989, the General Assembly changed the hourly wage to a flat \$2.23 per hour, where it has remained since. Had the calculation been left unchanged, the tipped wage would have increased along with the minimum wage. Therefore, this bill ensures that employees who receive tips or gratuities also receive a minimum wage increase when other employees in the State receive a minimum wage increase.

Page 1 of 1

Released: 06/30/2021 12:35 PM

subsection (a).

16

TAB 17

Delaware General Assembly (/)

Q

House Amendment 1 to House Bill 305

151st General Assembly (Present)

Bill Progress

Current Status:

PWB 3/3/22

What happens next?

Amendment is attached to the legislation and awaits consideration

Bill Details

View Parent Bill:

HB 305 -HA 1 (/BillDetail/79083)

Introduced on:

3/3/22

Primary Sponsor:

Osienski (/LegislatorDetail?personId=112)

Additional Sponsor(s):

Co-Sponsor(s):

Original Synopsis:

expenses for pass-through entities comparable to the one already in the bill for corportaions. 8. Exempts marijuana taxes paid from calculations of the gross receipts Clarifies costs and expenses that will be covered out of the Marijuana Regulation Fund. 7. Creates a state tax deduction for marijuana establishment business qualified applicants than there are available licenses for a particular type of marijuana establishment, the Commissioner should use a lottery process to award contractors, and volunteers who will be following state law under this Act which may be in contravention of federal law. 2. Specifies that in the event there are more tax. 9. Makes administrative corrections requested by the Department of Finance. 10. Makes a technical correction to effective date clause to eliminate potential Assigns responsibility for license refunds to the Department of Homeland Security, as is current practice for alcohol licenses. 5. Clarifies certain civil penalties. 6. licenses. 3. For marijuana cultivation facility licenses, specifies that the fee is based on the cannabis grow area and sets forth rules for calculating that area. 4. This amendment makes several technical corrections. In addition, it does all of the following: 1. Adds explicit language protecting and indemnifying state employees,

Bill Text

Original Text:

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Amendments

Amendment	
Status	
Introduction Date	
Primary Sponsor	
View Details	

No Records Available

Roll Calls

	Chamber	
	Result	
	Date	
1		
	Vote Type	
	Yes	
	N _o	
	Not Voting	
	Absent	
	PDF	

No Records Available

Actions History

Date Action 3/3/22 Introduced and Placed With Bill			
	Date	Action	
	3/3/22	Introduced and Placed With Bill	

Legislation Detail Feeds

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3/9/22, 9:36 AM



SPONSOR: Rep. Osienski

HOUSE OF REPRESENTATIVES 151st GENERAL ASSEMBLY

HOUSE AMENDMENT NO. 1 TO HOUSE BILL NO. 305

1	AMEND House Bill No. 305 by deleting lines 93 through 96 in their entirety.
2	FURTHER AMEND House Bill No. 305 by deleting line 375 and substituting in lieu thereof the following:
3	"§ 1316. Protections for conduct authorized by this chapter.
4	(a) A public officer or employee of the State, including the members of any board, commission, conservation
5	district or agency of the State, whether elected or appointed, and whether now or previously serving as such, and any
6	contractor or volunteer performing work for the State, whose job functions include, assist, support, regulate, approve, or
7	authorize any of the conduct authorized by this chapter are not subject to arrest, prosecution, or the denial of any right or
8	privilege, including any criminal or civil penalty or disciplinary action by a court or occupational or professional licensing
9	board or bureau where the conduct of the public officer or employee, contractor, or volunteer meets all of the following:
10	(1) The conduct arises out of or relates to activities required or authorized by this chapter.
11	(2) The conduct was carried out as authorized by this chapter or regulations authorized by this chapter.
12	(3) The conduct was carried out in good faith.
13	(b) A public officer or employee of the State, including the members of any board, commission, conservation
14	district or agency of the State, whether elected or appointed, and whether now or previously serving as such, and any
15	contractor or volunteer performing work for the State, whose job functions include, assist, support, regulate, approve, or
16	authorize any of the conduct authorized by this chapter is entitled to the same rights and privileges set forth in § 3925 and §
17	4002 of Title 10.
18	§§ 1317-1320. Reserved.".
19	FURTHER AMEND House Bill No. 305 on line 403 by deleting "or hemp" as it appears therein.
20	FURTHER AMEND House Bill No. 305 by inserting after line 507 and before line 508 the following:
21	"All property owned by the office of the Commissioner and all associated profits are the property of the State.".
22	FURTHER AMEND House Bill No. 305 on line 522 by inserting the following after the period thereon: "Should
23	the Commissioner determine that there are more qualified applicants than allotted licenses for a particular marijuana

24	establishment, the Commissioner shall employ a lottery system to determine which of the qualified applicants receive a
25	license.".
26	FURTHER AMEND House Bill No. 305 on line 659 and 660 by deleting "peace or police officer" as it appears
27	therein and substituting in lieu thereof "law enforcement officer".
28	FURTHER AMEND House Bill No. 305 by deleting lines 712 through 721 and substituting in lieu thereof the
29	following:
30	"(b)(1) A marijuana cultivation facility shall pay the Commissioner biennially for a marijuana cultivation facility
31	license as set forth in this subsection (b). A marijuana cultivation facility licensee must renew the license bienially by
32	paying the fee set forth in this subsection (b) and by providing documentation of a labor peace agreement.
33	(2) The license fee is based on the cannabis plant grow canopy area, which is calculated as follows:
34	a. Square footage of a cannabis plant grow canopy area is measured horizontally starting from the
35	outermost point of the furthest plant in a cannabis plant grow canopy area and continuing around the outside of all
36	plants located within the cannabis plant grow canopy area.
37	b. If a vertically tiered or shelving system is included in the cultivation area, the surface area of each tier
38	or shelf must be included in calculating the cannabis plant grow canopy area. Vertical tiers or shelving systems
39	may not exceed 24 feet in height.
40	c. A cannabis plant grow canopy area is the total square feet in which a cannabis cultivator plants and
41	grows cannabis plants, and does not include areas exclusively used for harvesting, drying, curing, packaging,
42	labeling, or storing cannabis.
43	(3) a. For an indoor facility with a cannabis plant grow canopy area equal to or between 2,501 and 7,500
44	square feet or for an outdoor facility with a cannabis plant grow canopy area is equal to or between 1.1 and 2.5 acres,
45	the fee is \$5,000.
46	b. For an indoor facility with a cannabis plant grow canopy area between 7,501 and 10,000 square feet or
47	for an outdoor facility with a cannabis plant grow canopy area equal to or between 2.6 and 5 acres, the fee is
48	<u>\$7,500.</u>
49	c. For an indoor facility with a cannabis plant grow canopy area equal to or greater than 10,001 square
50	feet or for an outdoor facility with a cannabis plant grow canopy area equal to or greater than 5.1 acres, the fee is
51	<u>\$10,000.</u> ".
52	FURTHER AMEND House Bill No. 305 on line 722 and 723 by deleting "wholesale purchase" as it appears
53	thereon and substituting in lieu thereof "sale pursuant to subsection (a) of this section".

54	FURTHER AMEND House Bill No. 305 on line 735 by deleting "§ 1331(a)(3)b." as it appears thereon and
55	substituting in lieu thereof "§ 1331(a)(3)c.".
56	FURTHER AMEND House Bill No. 305 on line 813 by deleting "§ 1328" as it appears thereon and substituting in
57	lieu thereof "§ 1336 of this title".
58	FURTHER AMEND House Bill No. 305 on line 846 by deleting "and" as it appears therein and substituting ir
59	lieu thereof "or".
60	FURTHER AMEND House Bill No. 305 on line 878 and 882 by deleting "subsection (c) of" as it appears thereon.
61	FURTHER AMEND House Bill No. 305 on line 957 by inserting after "Subchapter VI" as it appears thereon, the
62	following: ", Chapter 5".
63	FURTHER AMEND House Bill No. 305 on line 981 by deleting "for consumption on or off the premises" as i
64	appears therein.
65	FURTHER AMEND House Bill No. 305 on line 1036 by deleting "7r" as it appears therein and substituting in lieu
66	thereof "or".
67	FURTHER AMEND House Bill No. 305 on line 1065 by deleting "subsection (d)" and substituting in lieu thereo
68	"subsection (c)".
69	FURTHER AMEND House Bill No. 305 by deleting "Department of Finance" as it appears on lines 1098 and 1122
70	and substituting in lieu thereof "Commissioner".
71	FURTHER AMEND House Bill No. 305 by deleting lines 1201 and 1202 in their entirety and substituting in lieu
72	thereof the following:
73	"(b) A person who violates this section is subject to a civil penalty of up to \$1,000 and may be charged the costs of
74	an enforcement action.".
75	FURTHER AMEND House Bill No. 305 by deleting lines 1213 and 1214 in their entirety and substituting in lies
76	thereof the following:
77	"(c) A person who violates this section is subject to a civil penalty of not less than \$50 nor more than \$500."
78	FURTHER AMEND House Bill No. 305 by deleting lines 1215 through 1218 in their entirety and substituting in
7 9	lieu thereof:
80	"§ 1386. [Reserved]".
81	FURTHER AMEND House Bill No. 305 by deleting lines 1233 through 1236 in their entirety and substituting in
82	lieu thereof the following:

83	"(2) To the administrative costs and expenses of the Department of Justice incurred to administer the Justice
84	Reinvestment Fund.
85	(3) After the payment under paragraphs (a)(1) and (2) of this section, and the transfer to the Justice
86	Reinvestment Fund set forth in § 1387(a)(2)of this title, any remainder shall be appropriated as determined by the
87	General Assembly.".
88	FURTHER AMEND House Bill No. 305 by deleting lines 1254 through 1258 in their entirety and substituting in
89	lieu thereof the following:
90	"§ 1903. Computation of taxable income.
91	(a) The "entire net income" of a corporation for any income year means the amount of its federal taxable income
92	for such year as computed for purposes of the federal income tax increased by:
93	(1) Any interest income (including discount) on obligations issued by states of the United States or political
94	subdivisions thereof other than this State and its subdivisions, and
95	(2) The amount of any deduction allowed for purposes of the federal income tax pursuant to § 164 of the
96	Internal Revenue Code (26 U.S.C. § 164) for taxes paid on, or according to or measured by, in whole or in part, such
97	corporation's net income or profits, to any state (including this State), territory, county or political subdivision thereof,
98	or any tax paid in lieu of such income tax, and its federal taxable income shall be further adjusted by eliminating:
99	j. An amount equal to the ordinary and necessary business expenses paid or incurred for the taxable year
100	by a marijuana business operating pursuant to Chapter 13 of Title 4 or Chapter 49A of Title 16, which is
101	disallowed as a deduction for federal purposes pursuant to § 280E of the Internal Revenue Code.".
102	FURTHER AMEND House Bill No. 305 by inserting after line 1258 and before line 1259 the following and
103	redesignating accordingly:
104	Section 7. Amend Subchapter II, Chapter 16, Title 30 of the Delaware Code by making deletions as shown by
105	strike through and insertions as shown by underline as follows:
106	"§ 1625. Special rules for certain tax deductions for pass-through entities.
107	(a) Definitions. As used in this section:
108	(1) "Qualified business" means a pass-through entity operating a marijuana establishment pursuant to Chapter
109	13 of Title 4 or Chapter 49A of Title 16.
110	(2) "Qualified expenses" mean the ordinary and necessary business expenses paid or incurred for the taxable
111	year in carrying on a qualified business, which are disallowed as a deduction for federal purposes pursuant to § 280E of
112	the Internal Revenue Code.

113	(b) Deduction. A pass-through entity operating a qualified business may deduct its qualified expenses in
114	computing its total income.
115	Section 8. Amend § 581, Title 30 of the Delaware Code by making deletions as shown by strike through and
116	insertions as shown by underline as follows:
117	§ 581. Inspection of returns by federal, state and local officials.
118	(b) Notwithstanding any other provision of this section or § 368 of this title, the Director is specifically authorized
119	to enter into an agreement with the Department of Labor, the Office of the State Bank Commissioner, the Department of
120	Natural Resources and Environmental Control, the Division of Motor Vehicles, the Division of Alcohol and Tobacco
121	Enforcement, the Division of Medicaid and Medical Assistance, the Enhanced 911 Emergency Service Board, the
122	Marijuana Commissioner, or the Alcoholic Beverage Control Commissioner to provide for the inspection of any tax return
123	filed under this title (other than Chapters 30, 51, and 52) or under Title 4; provided, however, that such inspection shall be
124	pursuant to the Department of Labor's duties under Title 19, the Office of the State Bank Commissioner's duties under
125	Title 5, the Department of Natural Resources and Environmental Control's duties under Title 7, the Division of Motor
126	Vehicles' duties under Title 21, the Division of Alcohol and Tobacco Enforcement's duties under Titles 4 and 11, the
127	Division of Medicaid and Medical Assistance's duties under Title 16, the Enhanced 911 Emergency Service Board's duties
128	under Title 16, the Marijuana Commissioner's duties under Title 4, or the Alcoholic Beverage Control Commissioner's
129	duties under Title 4, and may be subject to such additional requirements as may be imposed by the Director.
130	Section 9. Amend § 2901, Title 30 of the Delaware Code by making deletions as shown by strike through and
131	insertions as shown by underline as follows:
132	§ 2901. Definitions.
133	As used in this chapter:
134	(8) "Gross receipts":

a. In the case of a retailer, "gross receipts" includes total consideration received for all goods sold or services rendered within this State, but shall not include tobacco products taxes or motor fuel taxes paid or payable to the State under Part IV of this title title, marijuana products taxes paid or payable to the Statue under Title 4, or gasoline and special fuel taxes paid or payable to the federal government under Internal Revenue Code § 4041 [26 U.S.C. § 4041] or § 4081 [26 U.S.C. § 4081]; or receipts derived from the sale of petroleum products provided such products were sold to the retailer by a person who is licensed under this chapter and such sale is described in the definition of "gross receipts" with regard to such person."

142	FURTHER AMEND House Bill No. 305 by deleting lines 1271 and 1272 in their entirety and substituting in lieu
143	thereof the following:
144	"Section 13. When funds have been appropriated for implementation of this Act, the Controller General shall
145	provide notice to the Registrar of Regulations that the funds required to implement this Act have been appropriated. This
146	Act takes effect on publication in the Register of Regulations of a notice by the Controller General the funds required to
147	implement this Act have been appropriated.
148	Section 14. If the notice under Section 13 of this Act is published before this Act is enacted, this Act takes effect
149	on enactment.".

SYNOPSIS

This amendment makes several technical corrections. In addition, it does all of the following:

1. Adds explicit language protecting and indemnifying state employees, contractors, and volunteers who will be following state law under this Act which may be in contravention of federal law.

2. Specifies that in the event there are more qualified applicants than there are available licenses for a particular type of marijuana establishment, the Commissioner should use a lottery process to award licenses.

3. For marijuana cultivation facility licenses, specifies that the fee is based on the cannabis grow area and sets forth rules for calculating that area.

4. Assigns responsibility for license refunds to the Department of Homeland Security, as is current practice for alcohol licenses.

5. Clarifies certain civil penalties.

6. Clarifies costs and expenses that will be covered out of the Marijuana Regulation Fund.

- 7. Creates a state tax deduction for marijuana establishment business expenses for pass-through entities comparable to the one already in the bill for corportaions.
 - 8. Exempts marijuana taxes paid from calculations of the gross receipts tax.
 - 9. Makes administrative corrections requested by the Department of Finance.
 - 10. Makes a technical correction to effective date clause to eliminate potential ambiguity.

Page 6 of 6

Delaware General Assembly (/)

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House Bill 305 151st General Assembly (Present)

Bill Progress

Current Status:

Out of Committee 2/17/22

What happens next?

Legislation has been voted out of Committee; now placed on the Ready List

Bill Details

Introduced on:

1/12/22

Primary Sponsor:

Osienski (/LegislatorDetail?personId=112)

Additional Sponsor(s):

Sen. Paradee (/LegislatorDetail?personId=355), Lockman (/LegislatorDetail?personId=13601), S. McBride (/LegislatorDetail?personId=23999), Pinkney Reps. Baumbach (/LegislatorDetail?personId=252), Brady (/LegislatorDetail?personId=124), Heffernan (/LegislatorDetail?personId=97), Kowalko (/LegislatorDetail?personId=97), Kowalko (/LegislatorDetail?personId=97), Kowalko (/LegislatorDetail?personId=124), Heffernan (/LegislatorDetail?personId=97), Kowalko (/LegislatorDetail?personId=124), Heffernan (/LegislatorDetail?personId=97), Kowalko (/LegislatorDetail?personId=124), Heffernan (/LegislatorDetail?personId=124), Heffernan (/LegislatorDetail?personId=97), Kowalko (/LegislatorDetail?personId=124), Heffernan (/LegislatorDetail?personId=97), Heffernan (/LegislatorDetail?personId=124), Heffernan (/LegislatorDetail?personId=97), Kowalko (/LegislatorDetail?personId=124), Heffernan (/LegislatorDetail?personId=124), (/LegislatorDetail?personId=24000), Sturgeon (/LegislatorDetail?personId=13602), Townsend (/LegislatorDetail?personId=13) personid=176), Longhurst (/LegislatorDetail?personid=359), Lynn (/LegislatorDetail?personid=317), Minor-Brown (/LegislatorDetail?personid=13595)

Co-Sponsor(s):

Sen. Gay_(/LegislatorDetail?personId=13474), Poore (/LegislatorDetail?personId=249), Sokola (/LegislatorDetail?personId=90), Walsh (/LegislatorDetail?personId=90), Walsh (/LegislatorDetail?personId=90), Walsh (/LegislatorDetail?personId=249), Sokola (/LegislatorDetail?personId=90), Walsh (/

personId=3143), Morrison (/LegislatorDetail?personId=24001), K. Williams (/LegislatorDetail?personId=198), Wilson-Anton (/LegislatorDetail?personId=232) Reps. Bentz (/LegislatorDetail?personId=42), Chukwuocha (/LegislatorDetail?personId=13589), Griffith (/LegislatorDetail?personId=13593), Lambert (LegislatorDetail?personId=24002), Matthews (LegislatorDetail?personId=318), Mitchell (LegislatorDetail?personId=178), S. Moore (LegislatorDetail?

Long Title:

AN ACT TO AMEND TITLES 4, 11, 16, AND 30 OF THE DELAWARE CODE RELATING TO CREATION OF THE DELAWARE MARIJUANA CONTROL ACT.

Original Synopsis:

Delaware FAQ Chat

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1/6

consume under 1 ounce of marijuana for personal use. It does not permit people to grow their own marijuana. Section 1: Amends Chapter 47 of Title 16 to provide that the offenses and penalties under Uniform Controlled Substances Act do not apply to marijuana-related conduct allowed under the Delaware Marijuana Control The Delaware Marijuana Control Act regulates and taxes marijuana in the same manner as alcohol. It allows adults over the age of 21 to legally possess and Act or the Delaware Medical Marijuana Act, Chapter 49A of Title 16. Section 2: Amends § 4764 of Title 16 to eliminate any penalty for possessing 1 ounce or less of and consumption. There are specific provisions imposing the same penalties as with alcohol sales, for individuals under the age of 21 using false identification to purchase marijuana, and for businesses that fail to verify the age of marijuana consumers. This Act creates the Delaware Marijuana Control Act Oversight operate under licenses granted under Chapter 49A of Title 16, but imposes the same limits on hours and holiday sales as apply to sales of alcohol. It prohibits the concentrated, by individuals 21 years of age or older if the individuals are in compliance with this chapter. It permits the operation of marijuana businesses if they permits individuals over age 21 to possess, use, purchase, or transport 1 ounce (28 grams) or less of marijuana, no more than 5 grams of which may be definitions or analogous provisions exist in the Delaware Code, the definitions are referenced and the language from existing statutes is used. This section of the Act Marijuana Control Act. Section 5: This section creates the Delaware Marijuana Control Act. Subchapter I contains definitions and general provisions. Where Marijuana Control Act. Section 4: Amends Chapter 4 of Title 4 to expand the Division of Alcohol and Tobacco Enforcement's duties and powers to the Delaware that the definition of a registered safety compliance facility includes not just marijuana produced for medical use but also marijuana produced under the Delaware marijuana for individuals over the age of 21 but maintains the existing civil penalty or civil citation for individuals under 21. Section 3: Amends § 4902A of Title 16 so permitted. Marijuana may not be sold in an establishment licensed to sell alcohol. It delineates the rights of property owners with respect to marijuana possession use of marijuana in public, by drivers or passengers in vehicles, and prohibits the smoking of marijuana anywhere that smoking tobacco or ecigarettes is not an annual report to the Governor and the members of the General Assembly setting forth all matters of interest and all statistics concerning marijuana regulation and safe operation of facilities licensed under this Act, the impact of this Act on public safety, and the impact of this Act on public health. The Commissioner must submit Substance Abuse and Mental Health, and the public. The Oversight Committee will review the effectiveness of the Delaware Marijuana Control Act in regard to the Committee. This Oversight Committee will coordinate the implementation of this Act with the Medical Marijuana Program, the Division of Public Health, the Division of cultivation that are consistent with applicable rules and regulations established by the Department of Natural Resources and Environmental Control and the position of Marijuana Commissioner and an Appeals Commission. The Commissioner has the power to establish health and safety regulations for marijuana each kind granted and the number cancelled during the year, and the outcomes and effective of the issuance of social equity licenses. Subchapter II creates the manufacture, or sell marijuana or marijuana products in the State; the amount of marijuana and marijuana products sold within the State; the number of licenses of control in the State including: the number of licenses of each variety issued with the State; including the name and address of each person licensed to cultivate, standard measurement to be used on all marijuana products so they are easily identified as containing marijuana and consumers can identify the amount of requirements that marijuana establishments must meet to obtain licenses. Regulations must require that products containing marijuana use of a symbol and a licenses under the Delaware Marijuana Control Act. The Marijuana Commissioner has the authority to adopt regulations to implement this Act and includes specific Act have access to programs, particularly those that support small businesses owned by minorities, women, and veterans. Subchapter III sets up the regulations and concern enforcement. Finally, they must coordinate with the Division of Small Business, Development, and Tourism so that potential businesses licensed under this Department of Agriculture. The Commissioner must consult with the Division of Alcohol and Tobacco Enforcement before adopting or establishing policies that sustainability plan, as well as attestations affirming that (1) the applicant has a project labor agreement with a bona fide labor organization, and (2) the applicant has applicant may obtain licenses to operate each type of marijuana establishment, applicants for open licenses will submit a business plan, an environmental and microbusiness licenses. There is a \$10,000 biennial fee for most open licenses, with reduced licensing fees for microbusinesses and social equity licenses. cultivation facilities, and marijuana product manufacturing facilities. Licensing requirements also differ between open licenses, social equity licenses, and including the impact on developing brains. The regulations must also contain security requirements, testing requirements, advertising restrictions, and require that marijuana in different products; be in opaque, child-resistant packaging; and contain a warning label explaining evidence-based harms from consuming marijuana, assistance and technical assistance programming to aid social equity applicants. It also establishes the criteria for a microbusiness license. Subchapter VII provides or will utilize a project labor agreement. Subchapter III establishes the criteria for a social equity applicant, requires the Commissioner to develop a financial Cultivation licenses are determined square footage of the grow rates. As part of the competitive scoring process the Commissioner will use to determine which food products comply with State food safety laws. There are separate licensing requirements for retail marijuana stores, marijuana testing facilities, marijuana consist of fees collected, penalties imposed, and taxes collected under this Act. It creat financial interest of a license or licensee. Subchapter VIII creates the Marijuana Regulation Fund and the Justice Reinvestment Fund. The Regulation Fund will subchapter also details the requirements when there is a change in ownership of a license or licensee, a change in officers and directors, and changes in the the Commission the authority to refuse approval of changes in the ownership, officers, or directors, financial interest or lease in connection with any license. The 15%. 7% of the tax revenue collected will be allocated to the Justice Reinvestment Fun 🟴 Delaware FAQ Chat arijuana in the amount of

where it will be used for

projects to improve quality of life for communities most impacted by the prohibition of marijuana and "war on drugs" era policies. Section 6: Creates a State tax of activities that prohibits a person from at the same time possessing a handgun. Section 9: Makes the provisions of the bill severable. Section 10: Makes the bill deduct these expenses from federal taxes and thus state taxes. This creates a more level playing field with other businesses. Section 7: Provides that the initial deduction for all ordinary and necessary expenses paid or incurred by a marijuana establishment to reflect the inability of a business licensed under this Act to standardization of assessments and accreditation processes. Adds the requirement of a comprehensive business plan to the competitive scoring criteria for licenses effective upon appropriation of funds for implementation. This bill differs from House Bill No. 150 in the following ways: Incorporates HA1 and 2 to HB150 regarding applicants and instead authorizing the Commissioner to explore opportunities for public and private financial assistance. Incorporates HA7 regarding safety administration portion of the Control Act. Incorporates HA5 to HB150 regarding rights of employers. Incorporates HA6 removing financial assistance for social equity cultivation, allowing for the grant of a conditional license for an applicant who is working to secure a physical location, making technical changes to the revenue regulations required under this Act be adopted not later than 12 months after the effective date of this Act. Section 8: Removes possession of marijuana from the list or will utilize a project labor agreement for construction of a marijuana cultivation facility. Directs 7% of the marijuana tax revenue to a Justice Reinvestment Fund to packaging requirements. Incorporates HA10, removing the requirement that an applicant submit an attestation affirming the applicant has a project labor agreement Incorporates HA4 to HB150, requiring ongoing communication between the Commissioner and the Department of Agriculture regarding marijuana and hemp they were rendered duplicative by the passage of Senate Bills 111 and 112. be used for programs and initiatives meant to restore and benefit communities most harmed by "war on drug" era policies. Removes expungement provisions, as

Volume:Chapter: 8

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2

Fiscal Note/Fee Impact:

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Bill Text

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Amendment	Status	Introduction Date Primary Sponsor	Primary Sponsor
HA 1	PWB	3/3/22	Osienski (/LegislatorDetail?personId=112)

Committee Reports

Date Committee # Members Favorable On Its Merits Unfavorable 1/26/22 Health & Human Development (/CommitteeDetail? committeeld=547). 15 6 3 0 view.() 2/17/22 Appropriations (/CommitteeDetail?committeeld=539) 6 0 4 0 view.()	Communec reporce	Keporta					
Health & Human Development (/CommitteeDetail? 15 6 3 0 committeeId=547). Appropriations (/CommitteeDetail?committeeId=539) 6 0 4 0	Date	Committee	# Members	Favorable	On Its Merits	Unfavorable	
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Roll Calls

Chamber
Result
Date
Vote Type
Yes
res No
Not Voting
Absent
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No Records Available

Actions History

Date	Action
1/12/22	Introduced and Assigned to Health & Human Development Committee in House
1/26/22	Reported Out of Committee (Health & Human Development) in House with 6 Favorable, 3 On Its Merits
1/27/22	Assigned to Appropriations Committee in House
2/17/22	Reported Out of Committee (Appropriations) in House with 4 On Its Merits
3/3/22	Amendment HA 1 to HB 305 - Introduced and Placed With Bill

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HOUSE OF REPRESENTATIVES 151st GENERAL ASSEMBLY

HOUSE BILL NO. 305

AN ACT TO AMEND TITLES 4, 11, 16, AND 30 OF THE DELAWARE CODE RELATING TO CREATION OF THE DELAWARE MARIJUANA CONTROL ACT.

1	WHEREAS, current federal and state policies prohibiting the use of marijuana inadequately control the use of the
2	substance and instead, contribute to the development of a robust illegal market; and
3	WHEREAS, the legalization of marijuana would effectively eliminate the illegal market for marijuana in Delaware
4	by diverting demand away from such illicit cartels and enterprises, and provide law enforcement officials the legal means
5	necessary to ensure the safe legal use of marijuana in Delaware; and
6	WHEREAS, the legalization of marijuana would address criminal justice concerns related to criminalization and
7	prohibitions on the production, possession, and transportation of the substance, recognizing a Black individual is four times
8	more likely to be arrested for marijuana possession than a white individual despite equal rates of use; and
9	WHEREAS, it is the responsibility of the General Assembly to ensure that Delawareans most impacted by
10	prohibition are guaranteed access to the legal marijuana market; and
11	WHEREAS, the creation of a legal framework to regulate the production and sale of marijuana in the State of
12	Colorado and the State of Washington has generated a \$1 billion industry and yielded more than 18,000 well-paying jobs in
13	each state; and
14	WHEREAS, Delaware recognizes the economic benefits of a legal marijuana market as well as the importance of
15	regulating the substance in a manner similar to alcohol and restricting its use to persons over 21 years old.
16	NOW, THEREFORE:
17	BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (Three-fifths of all
18	members elected to each house thereof concurring therein):
19	Section 1. Amend Subchapter IV, Chapter 47, Title 16 of the Delaware Code by making deletions as shown by

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strikethrough and insertions as shown by underline as follows:

21	§ 4750. State-legal marijuana activities.
22	The offenses and penalties provided for in this chapter do not apply to marijuana-related conduct allowed under
23	the Delaware Medical Marijuana Act, Chapter 49A of this title or the Delaware Marijuana Control Act, Chapter 13 of Title
24	<u>4.</u>
25	Section 2. Amend Chapter 47, Title 16 of the Delaware Code by making deletions as shown by strike through and
26	insertions as shown by underline as follows:
27	§ 4701. Definitions.
28	As used in this chapter:
29	(28) a. "Marijuana" means all parts of the plant Cannabis sativa L., whether growing or not, the seeds thereof,
30	the resin extracted from any part of the plant, and every compound, manufacture, salt, derivative, mixture or
31	preparation of the plant, its seeds or resin.
32	b. H-"Marijuana" does not include any of the following:
33	1. the The mature stalks of the plant, fiber produced from the stalks, oil or cake made from the
34	seeds of the plant, or any other compound, manufacture, salt, derivative, mixture or preparation of the
35	mature stalks (except the resin extracted therefrom), fiber, oil or cake, or the sterilized seed of the plant
36	which is incapable of germination.
37	2. Marijuana does not include products Products approved by the US Food and Drug
38	Administration.
39	3. Industrial hemp as defined in § 2801 of Title 3.
40	§ 4764. Possession of marijuana; class B misdemeanor, unclassified misdemeanor, or civil violation.
41	(b) Any person who knowingly or intentionally uses, consumes, or possesses other than a personal use quantity of
42	a controlled substance or a counterfeit controlled substance classified in § 4714(d)(19) of this title, except as otherwise
43	authorized by this chapter, shall be guilty of an unclassified misdemeanor and be fined not more than \$575, imprisoned not
44	more than 3 months, or both.
45	(c) (1) Any person who knowingly or intentionally possesses a personal use quantity of a controlled substance or a
46	counterfeit controlled substance classified in § 4714(d)(19) of this title, except as otherwise authorized by this chapter, must
47	be assessed a civil penalty of \$100 in addition to such routine assessments necessary for the administration of civil
48	violations and the marijuana must be forfeited.

4 9	(2) Private use or consumption by a person of a personal use quantity of a controlled substance or a
50	counterfeit controlled substance classified in § 4714(d)(19) of this title is likewise punishable by a civil penalty under
51	this subsection.
52	(3) Notwithstanding paragraph (c)(1) or (c)(2) of this section, any Any person under 21 years of age who
53	commits a violation of this subsection knowingly or intentionally possesses, uses or consumes a personal use quantity
54	of a controlled substance or counterfeit controlled substance classified in § 4714(d)(19) of this title, except as otherwise
55	authorized by this chapter, must be assessed a civil penalty of \$100 for a first violation of this subsection and a civil
56	penalty of not less than \$200 nor more than \$500 for a second violation of this subsection and is guilty of an
57	unclassified misdemeanor and must be fined \$100 for a third or subsequent violation of this subsection. A peace officer
58	having reasonable grounds to believe that a juvenile has committed a violation of paragraph (c)(1) or (c)(2) of this
59	section may issue the juvenile a civil citation in lieu of a civil penalty.
60	Section 3. Amend § 4902A, Title 16 of the Delaware Code by making deletions as shown by strike through and
61	insertions as shown by underline as follows:
62	§ 4902A. Definitions.
63	(17) "Registered safety compliance facility" means a nonprofit entity registered under § 4915A of this title by
64	the Department to provide 1 or more of the following services: testing marijuana produced for medical use or under
65	Chapter 13 of Title 4 for potency and contaminants; and training eardholders and prospective compassion center
66	agents. cardholders, compassion center agents, and owners and employees of entities operating under Chapter 13 of
67	Title 4. The training may include, but need not be limited to, information related to 1 or more of the following:
68	a. The safe and efficient cultivation, harvesting, packaging, labeling, and distribution of marijuana;
69	b. Security and inventory accountability procedures; and
70	c. Up-to-date scientific and medical research findings related to medical marijuana.
71	Section 4. Amend Chapter 4, Title 4 of the Delaware Code by making deletions as shown by strike through and
72	insertions as shown by underline as follows:
73	§ 401. Division of Alcohol and Tobacco Enforcement.
74	The Division of Alcohol and Tobacco Enforcement of the Department of Safety and Homeland Security is
75	established as follows for the administrative, ministerial, budgetary and clerical functions for the enforcement of the alcohol
76	laws of this Code and Code, youth access to tobacco laws in §§ 1115 through 1127 of Title 11, and the marijuana laws of
77	this title.

 \S 403. Duties and powers of the Division.

79	The Division shall:
30	(1) Investigate, prevent, and arrest for violations of this title, make seizure of alcoholic liquor, manufactured,
81	sold, kept, or transported in contravention thereof, and confiscate such alcoholic liquor whenever required by any
82	provision of this title;
83	(2) Arrange for the proper sampling, testing and analyzing of alcoholic liquor offered for sale in this State
84	upon receipt of a complaint regarding health by entering into an agreement with the Director of Forensic Science
85	Laboratories of the Department of Health and Social Services Department of Safety and Homeland Security Division
86	of Forensic Science to test alcoholic liquor product when requested by the Division. This subsection does not apply to
87	home breweries.
88	(3) Only require an inventory by a package store licensee if it has evidence to support a finding that such
89	licensee has violated this title.
90	(4) Investigate, prevent, and arrest for violations of this title; seize marijuana, including marijuana products
91	and accessories that are manufactured, sold, kept, or transported in contravention thereof; and confiscate such
92	marijuana, including marijuana products and accessories, whenever required by any provision of this title;
93	(5) Arrange for the proper sampling, testing, and analyzing of marijuana, including marijuana products and
94	accessories, that is offered for sale in this State upon receipt of a complaint regarding health by entering into an
95	agreement with the Department of Safety and Homeland Security Division of Forensic Science to test marijuana and
96	marijuana products when requested by the Division.
97	Section 5. Amend Title 4 of the Delaware Code by making deletions as shown by strike through and insertions as
98	shown by underline as follows:
99	Title 4
100	Alcoholic Liquors and Marijuana
101	Chapter 13. The Delaware Marijuana Control Act.
102	Subchapter I. General Provisions.
103	§ 1301. Purpose and findings.
104	(a) In the interest of creating jobs with community benefits, eliminating the cannabis illegal market to allow law
105	enforcement to focus on violent crime and property crimes, and promoting individual freedom, the General Assembly finds
106	and declares that the personal use of marijuana should be legal for persons 21 years of age or older and taxed in a manner
107	similar to alcohol.

108	(b) In the interest of the health and public safety of our citizenry, the General Assembly further finds and declares
109	that marijuana must be regulated in a manner similar to alcohol to ensure all of the following:
110	(1) Individuals will have to show proof of age before purchasing marijuana.
111	(2) Selling, distributing, or transferring marijuana individuals under the age of 21 remains illegal.
112	(3) Driving under the influence of marijuana remains illegal.
113	(4) Legitimate, taxpaying businesspeople, not criminal actors, conduct sales of marijuana.
114	(5) Marijuana sold in this State will be tested, labeled, and subject to additional regulations to ensure that
115	consumers are informed and protected.
116	(c) The General Assembly further finds and declares that it is necessary to ensure consistency and fairness
117	throughout this State, and therefore, that the matters addressed by this chapter are of statewide concern, except as specified
118	in this chapter.
119	§ 1302. Definitions.
120	As used in this chapter:
121	(1) "Appeals Commission" means 3 persons, 1 from each County, appointed by the Governor with the advice
122	and consent of the majority of the Senate.
123	(2) "Commissioner" means the person appointed by the Governor and confirmed by the Senate who serves as
124	the Marijuana Commissioner for the State.
125	(3) "Compassion center" means an entity registered as a compassion center under § 4914A of Title 16.
126	(4) "Consumer" means an individual 21 years of age or older who purchases marijuana, marijuana products,
127	or marijuana accessories for personal use by the individual or other individuals 21 years of age or older, but not for
128	resale to others.
129	(5) "Department" means the Department of Safety and Homeland Security.
130	(6) "Disproportionately impacted area" means census tracts identified by the Commissioner in collaboration
131	with state and local agencies that have high rates of arrest, conviction, and incarceration relating to the sale, possession,
132	use, cultivation, manufacture, or transport of marijuana.
133	(7) "Division" means the Division of Alcohol and Tobacco Enforcement.
134	(8) "Immature plant" means a nonflowering marijuana plant, no taller than 8 inches and no wider than 8
135	inches; that is produced from a cutting, clipping, or seedling; is in a cultivating container; and which does not have
136	buds that may be observed by visual examination.

137	(9) "Labor peace agreement" means an agreement between a licensee and any bona fide labor organization
138	that prohibits labor organizations and members from engaging in picketing, work stoppages, boycotts, and any other
139	economic interference with the licensee's business. This agreement means that the licensee has agreed not to disrupt
140	efforts by the bona fide labor organization to communicate with, and attempt to organize and represent, the licensee's
141	employees. The agreement shall provide a bona fide labor organization access at reasonable times to areas in which the
142	licensee's employees work, for the purpose of meeting with employees to discuss the employees' right to
143	representation, employment rights under state law, and terms and conditions of employment. This type of agreement
144	shall not mandate a particular method of election or certification of the bona fide labor organization.
145	(10) "License" means any license or permit to cultivate, possess, manufacture, sell, transport, or test marijuana
146	or marijuana products and accessories authorized or issued by the Commissioner under this chapter.
147	(11) "Marijuana" means as defined in § 4701 of Title 16.
148	(12) "Marijuana accessories" means any equipment, products, or materials of any kind which are used,
149	intended for use, or designed for use in planting, propagating, cultivating, growing, harvesting, composting,
150	manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging,
151	repackaging, storing, vaporizing, or containing marijuana; or for ingesting, inhaling, or otherwise introducing
152	marijuana into the human body.
153	(13) "Marijuana cultivation facility" or "cultivation facility" means an entity licensed to cultivate, prepare,
154	and package marijuana and sell marijuana to retail marijuana stores, to marijuana product manufacturing facilities, and
155	to other marijuana cultivation facilities, but not to consumers. A marijuana cultivation facility may not produce
156	marijuana concentrates, tinctures, extracts, or other marijuana products.
157	(14) "Marijuana establishment" means an entity licensed as a marijuana cultivation facility, a marijuana
158	testing facility, a marijuana product manufacturing facility, or a retail marijuana store.
159	(15) "Marijuana product manufacturing facility" means an entity licensed to purchase marijuana;
160	manufacture, prepare, and package marijuana products; and sell marijuana and marijuana products to other marijuana
161	product manufacturing facilities and retail marijuana stores, but not to consumers.
162	(16) "Marijuana products" means products that are comprised of marijuana, including concentrated marijuana.
163	and other ingredients and are intended for use or consumption, such as edible products, ointments, and tinetures.
164	(17) "Marijuana testing facility" means an entity licensed to test marijuana for potency and contaminants.
165	(18) "Microbusiness license" means a license issued pursuant to Part B of Subchapter III of this title which
166	includes any of the following:

167	a. Marijuana cultivation facility license.
168	b. Marijuana product manufacturing license.
169	(19) "Open license" means a license issued pursuant to Part A of Subchapter III of this title that is not a social
170	equity license or microbusiness license which includes all of the following:
171	a. Retail marijuana store license
172	b. Marijuana testing facility license.
173	c. Marijuana cultivation facility license.
174	d. Marijuana product manufacturing license.
175	(20) "Person" means as defined in § 302 of Title 1.
176	(21) "Possession limit" means the amount of marijuana that may be possessed at any one time by an
177	individual 21 years of age or older who is not a registered qualifying patient or a registered designated caregiver under
178	Chapter 49A of Title 16.
179	(22) "Public place" means any indoor or outdoor area or portion thereof generally accessible to the public.
180	(23) "Retail marijuana" means "marijuana", as defined in § 4701 of Title 16, that is cultivated, manufactured,
181	distributed, or sold by a licensed retail marijuana establishment.
182	(24) "Retail marijuana store" means an entity licensed to purchase marijuana from marijuana cultivation
183	facilities; to purchase marijuana and marijuana products from marijuana product manufacturing facilities; and to sell
184	marijuana and marijuana products to consumers.
185	(25) "Social equity license" means a license issued pursuant to Part B of Subchapter III of this title for any of
186	the following:
187	a. Retail marijuana store license.
188	b. Marijuana testing facility license.
189	c. Marijuana cultivation facility license.
190	d. Marijuana product manufacturing license.
191	(26) "Smoking" means both of the following:
192	a. The burning of a lighted cigarette, cigar, pipe, or any other matter or substance that contains marijuana.
193	b. The use of an electronic smoking device which creates an aerosol or vapor, in any manner or in any
194	form.

195	(27) "Unreasonably impracticable" means that the measures necessary to comply with the regulations require
196	such a high investment of risk, money, time, or any other resource or asset that the operation of a marijuana
197	establishment is not worthy of being carried out in practice by a reasonably prudent businessperson.
198	(28) "Work" means as defined in § 3302 of Title 19.
199	§ 1303. Personal use of marijuana.
200	(a) All of the following acts are lawful and are not an offense under the law of this State or the law of any
201	municipality or county within this State and are not the basis for seizure or forfeiture of assets under the law of this State
202	for an individual 21 years of age or older:
203	(1) Possessing, using, displaying, purchasing, or transporting marijuana accessories or 1 ounce or less of
204	marijuana, of which no more than 5 grams may be concentrated marijuana, outside of a motor vehicle.
205	(2) Possessing and transporting marijuana accessories or 1 ounce or less of marijuana, of which no more than
206	5 grams may be concentrated marijuana, inside of a motor vehicle as long as the marijuana accessories or marijuana is
207	in a closed container or is not readily accessible to anyone inside the motor vehicle.
208	(3) Transferring 1 ounce or less of marijuana without remuneration to an individual who is 21 years of age or
209	older so long as the transferor reasonably believes the transfer will not cause the other person to possess more than 1
210	ounce of marijuana.
211	(4) Assisting another individual who is 21 years of age or older in any of the acts described in paragraphs (1),
212	(2), and (3) of this subsection.
213	(b) The following acts remain unlawful and an offense under the law of this State:
214	(1) Consuming marijuana in an area accessible to the public or in a moving vehicle, as defined and punished
215	under § 4764(d) of Title 16.
216	(2) Growing, manufacturing, selling, or cultivating marijuana without a license granted under this chapter or
217	Chapter 49A of Title 16, as defined and punished under Chapter 47 of Title 16.
218	(3) Unlawfully using a license or identification card as defined and punished under § 2751 of Title 21.
219	§ 1304. Marijuana accessories authorized.
220	An individual who is 21 years of age or older is authorized to manufacture, possess, and purchase marijuana
221	accessories, and to distribute or sell marijuana accessories, to an individual who is 21 years of age or older.
222	§ 1305. [Reserved]
223	§ 1306. Driving under the influence prohibited.

224	Nothing in this chapter is intended to allow driving under the influence of marijuana or driving while impaired by
225	marijuana or to supersede laws related to driving under the influence of marijuana or driving while impaired by marijuana.
226	This chapter is not intended to prevent the State from enacting and imposing penalties for driving under the influence of or
227	while impaired by marijuana.
228	§ 1307. Individuals under age 21; prohibitions.
229	(a) Nothing in this chapter is intended to permit the transfer of marijuana, with or without remuneration, to an
230	individual under the age of 21 or to allow an individual under the age of 21 to purchase, possess, use, transport, or consume
231	marijuana.
232	(b) It is unlawful for an individual under the age of 21 years to knowingly enter or remain in an establishment
233	licensed under this chapter. A violation of this subsection is a civil offense punishable by a civil penalty of \$50.
234	§ 1308. Private property rights.
235	Nothing in this chapter prohibits a person, employer, school, hospital, detention facility, corporation, or any other
236	entity who occupies, owns, or controls a property from prohibiting or otherwise regulating the possession, consumption,
237	use, display, transfer, distribution, sale, transportation, or growing of marijuana on or in that property, except that in the
238	case of the rental of a residential dwelling, a landlord may only prohibit the possession of marijuana or the consumption of
239	marijuana by non-smoked means if one or more of the following applies:
240	(1) The building is the primary residence of the landlord, no more than 3 rooms in the building are rented to
241	tenants, and no more than 3 tenants occupy such building.
242	(2) Residence is merely incidental to detention or to the provision of medical, geriatric, educational,
243	counseling, religious, or similar services, including prisons, student housing provided by a college or school, long term
244	care facilities, and hospitals.
245	(3) Failing to prohibit marijuana possession or consumption would violate federal law or regulations or cause
246	the landlord to lose a monetary or licensing-related benefit under federal law or regulations.
247	§ 1309. Unlawful marijuana extraction, penalties.
248	(a) It is unlawful for a person, other than a marijuana product manufacturer complying with this chapter and
249	department regulations, to extract compounds from marijuana using solvents other than water, glycerin, propylene glycol,
250	vegetable oil, or food grade ethanol (ethyl alcohol).
251	(b) It is unlawful for a person to extract compounds from marijuana using ethanol in the presence or vicinity of
252	open flame.

253	(c) Violation of this section is a class G felony punishable by up to 3 years' incarceration and a fine of up to
254	<u>\$5,000.</u>
255	§ 1310. Lawful operation of marijuana-related establishments.
256	(a) It is lawful and may not be an offense under the law of this State, or be the basis for seizure or forfeiture of
257	assets under the law of this State, for an individual 21 years of age or older to do any of the following:
258	(1) Manufacture, possess, or purchase marijuana accessories or sell marijuana accessories to an individual
259	who is 21 years of age or older in a manner set forth in this chapter.
260	(2) Possess, display, or transport marijuana or marijuana products; purchase marijuana from a marijuana
261	cultivation facility; purchase marijuana or marijuana products from a marijuana product manufacturing facility; or sell
262	marijuana or marijuana products to consumers if the person conducting the activities described in this paragraph (a)(2)
263	of this section holds a valid license to operate a retail marijuana store or is acting in the person's capacity as an owner,
264	employee, or agent of a licensed retail marijuana store.
265	(3) Cultivate, harvest, process, package, transport, display, or possess marijuana; deliver or transfer marijuana
266	to a marijuana testing facility; sell marijuana to a marijuana cultivation facility, a marijuana product manufacturing
267	facility, or a retail marijuana store; or purchase marijuana from a marijuana cultivation facility if the person conducting
268	the activities described in this paragraph (a)(3) of this section holds a valid license to operate a marijuana cultivation
269	facility or is acting in the person's capacity as an owner, employee, or agent of a licensed marijuana cultivation facility.
270	(4) Package, process, transport, manufacture, display, or possess marijuana or marijuana products; deliver or
271	transfer marijuana or marijuana products to a marijuana testing facility; sell marijuana or marijuana products to a retail
272	marijuana store or a marijuana product manufacturing facility; purchase marijuana from a marijuana cultivation
273	facility; or purchase marijuana or marijuana products from a marijuana product manufacturing facility if the person
274	conducting the activities described in this paragraph (a)(4) of this section holds a valid license to operate a marijuana
275	product manufacturing facility or is acting in the person's capacity as an owner, employee, or agent of a licensed
276	marijuana product manufacturing facility.
277	(5) Possess, cultivate, process, repackage, store, transport, display, transfer, or deliver marijuana or marijuana
278	products if the person holds a valid license to operate a marijuana testing facility or is acting in the person's capacity as
279	an owner, employee, or agent of a licensed marijuana testing facility.
280	(6) Lease or otherwise allow the use of property owned, occupied, or controlled by any person, for any of the
281	activities conducted lawfully under this chapter.

282	(b)(1) An entity licensed under this chapter may not sell or deliver marijuana or marijuana products on
283	Thanksgiving, Easter, or Christmas or at hours other than those prescribed by the rules or regulations of the Commissioner.
284	(2) A holder of license for a retail marijuana store may not sell or deliver marijuana or marijuana products on
285	Thanksgiving, Easter, or Christmas or between the hours of 1:00 a.m. and 9:00 a.m. on Mondays through Saturdays,
286	and on Sundays before noon or after 8:00 p.m. Any municipality with a population of 50,000 or more may limit sales
287	under this subsection within the boundaries of the municipality to a maximum of 4 hours on Sundays as established by
288	ordinance of the municipality. The closing hours for days of the week other than Sunday may be made earlier in any
289	municipality having a population of 50,000 or more persons, by ordinance of the municipality; provided however, that
290	such ordinance be consistent with the State and federal constitutions and must treat all businesses fairly. During the
291	months of October through December, a holder of a license for a retail marijuana store may have sales take place
292	beginning at 8:00 a.m. on Fridays through Saturdays and 10:00 a.m. on Sundays.
293	(3) Any holder of a license for a retail marijuana store who wishes to sell marijuana or marijuana products on
294	Sundays must pay a biennial license fee of \$500.00 for the issuance of a special license to sell marijuana and marijuana
295	products on Sundays, which is in addition to any other license fees which may be required of the holder.
296	(c) Marijuana and marijuana products may not be sold in an establishment licensed to sell alcoholic liquors under
297	this title.
298	§ 1311. Enforcement.
299	Inspections and enforcement activities are to be conducted under Subchapter VI of Chapter 47 of Title 16.
300	§ 1312. Contracts enforceable.
301	Contracts related to the operation of a marijuana establishment licensed under this chapter are enforceable. A
302	contract entered into by a licensed marijuana establishment or its employees or agents as permitted under a valid license, or
303	by those who allow property to be used by a licensed marijuana establishment, its employees, or its agents as permitted
304	under a valid license, is not unenforceable on the basis that cultivating, obtaining, manufacturing, distributing, dispensing,
305	transporting, selling, possessing, or using marijuana is prohibited by federal law.
306	§ 1313. Verifying the age of marijuana consumers.
307	(a) Whoever sells any marijuana to a person who has not reached the age of 21 years, or sells to any person of
308	more than such age any marijuana knowing that such marijuana is bought for a person who is less than 21 years of age shall
309	be subject to a civil penalty not less than \$250 nor more than \$500.
310	(b) In any enforcement action under this section, it is an affirmative defense that the individual who is under 21

years old presented identification, with a photograph of such individual affixed thereon, to the accused and the

312	identification set forth information which would lead a reasonable person to believe such individual was 21 years old or
313	older.
314	§ 1314. Medical marijuana provision not affected.
315	Nothing in this chapter may be construed to limit any privileges or rights of a medical marijuana patient, primary
316	caregiver, or medical marijuana compassion center under the Delaware Medical Marijuana Act, Chapter 49A of Title 16.
317	§ 1315. Oversight Committee; annual report by the Commissioner.
318	(a) The Delaware Marijuana Control Act Oversight Committee is established to evaluate and make
319	recommendations regarding the implementation of this chapter.
320	(1) The Oversight Committee shall consist of 15 members who possess the qualifications and are appointed as
321	follows:
322	a. The Secretary of the Department, or designee appointed by the Secretary.
323	b. The Director of the Division of Revenue, or designee appointed by the Director of the Division of
324	Revenue.
325	c. The Director of the Division of Public Health, or designee appointed by the Director of the Division of
326	Public Health.
327	d. The Director of the Division of Substance Abuse and Mental Health, or designee appointed by the
328	Director of the Division of Substance Abuse and Mental Health.
329	e. The Director of the Delaware Medical Marijuana Program.
330	f. The Chief Officer of the Division of Diversity and Inclusion.
331	g. The Director of the Small Business Division.
332	h. 1 member, appointed by the Speaker of the House of Representatives.
333	i. 1 member, appointed by the President Pro Tempore of the Senate.
334	j. 1 marijuana advocate from each county appointed by the Speaker of the House of Representatives.
335	k. 1 marijuana advocate from each county appointed by the President Pro Tempore of the Senate.
336	(2) The members of the Oversight Committee shall serve at the pleasure of the appointing authority.
337	(3) A quorum shall consist of a majority of the membership of the Oversight Committee.
338	(4) The Oversight Committee shall select a chair and vice chair from among its members.
339	(5) Staff support for the Oversight Committee shall be provided by the Division.
340	(6) The Oversight Committee shall meet at least 2 times per year for the purpose of evaluating and making
341	recommendations to the Governor, the General Assembly, and the Department regarding the following:

342	a. The ability of consumers in all areas of the State to obtain legal marijuana.
343	b. The sufficiency of the regulatory and security safeguards under this chapter and adopted by the
344	Commissioner to ensure that access to and use of marijuana cultivated is provided only to individuals age 21 or
345	over.
346	c. Any recommended additions or revisions to the Commissioner's regulations or this chapter, including
347	relating to security, safe handling, labeling, and nomenclature.
348	d. Any research studies regarding health effects of using marijuana.
349	e. The impact of the Delaware Marijuana Control Act on decreasing the illegal sales and production of
350	marijuana.
351	f. The impact of the Delaware Marijuana Control Act on other aspects of public safety, including the
352	incidence of people driving under the influence, using marijuana in places or in a manner prohibited by this
353	chapter, and the use of prescription opioids and illegal opioids.
354	g. Any research and recommendations to implement current best practices for the development of a
355	diverse workforce among marijuana establishments, including diversity among employees, licensees, and owners
356	of marijuana establishments.
357	(b) The Commissioner shall submit to the Governor and members of the General Assembly an annual report
358	setting forth all matters of interest and all statistics concerning marijuana regulation and control in the State, including the
359	following:
360	(1) The number of licenses of each kind issued within the State and the number cancelled during the year.
361	(2) The amount of marijuana and marijuana products sold within the State.
362	(3) Statistics regarding diversity among marijuana establishments, including diversity of employees, licensees,
363	and owners of marijuana establishments.
364	(4) Outcomes and effectiveness of the issuance of social equity licenses which shall include all of the
365	following:
366	a. The number of and types of social equity licenses issued.
367	b. The number of persons or entities receiving financial assistance, and from what source.
368	c. The location of the social equity licenses.
369	d. If applicable, the number of new jobs or other forms of economic output created as a result of the
370	social equity licenses.
371	(5) Other data as may make a complete report to the people of this State.

372	(c) If marijuana is decriminalized under federal law, the Commissioner shall submit a report to the Governor and
373	the General Assembly evaluating the state's compliance with federal law and make recommendations as to any changes
374	needed in this State's marijuana law to be compliant with federal law.
375	§§ 1316-1320. Reserved.
376	Subchapter II. Marijuana Commissioner and Appeals Commission.
377	§ 1321. Marijuana Commissioner; Appeals Commission; qualifications; appointment; term; compensation.
378	(a) The Commissioner must be a resident of this State and suitably educated and experienced to carry out the
379	duties and responsibilities set forth in this chapter.
380	(b) The Commissioner and the 3 members of the Appeals Commission, consisting of 1 member from each County,
381	shall be appointed by the Governor and confirmed by a majority of the members elected to the Senate and shall serve at the
382	pleasure of the Governor.
383	(c) The Commissioner may name a Deputy Commissioner. The Commissioner may, during an absence from the
384	State, appoint the Deputy Commissioner to serve as Acting Commissioner during such absence. In the event of death,
385	resignation, temporary incapacity, or removal of the Commissioner, and prior to the appointment of a successor, the
386	Governor may appoint the Deputy Commissioner, or such other person as deemed qualified by the Governor, to serve as
387	Acting Commissioner. The Acting Commissioner has all the powers and shall perform all the duties and functions of the
388	Commissioner during the Commissioner's absence or incapacity or until a successor is qualified and appointed.
389	(d) The Commissioner is to be compensated as provided for in the Annual Budget Act.
390	(e) The members of the Appeals Commission are to be compensated at the rate of \$150 per meeting together with
391	the reasonable expenses for no more than 12 meetings per year.
392	(f) The Appeals Commission shall meet and elect a chair who shall convene meetings of the Commission as
393	frequently as needed to consider appeals of the Commissioner's decision.
394	§ 1322. Duties and powers of the Commissioner.
395	(a) The Commissioner, in accordance with the Administrative Procedures Act, Chapter 101 of Title 29, shall do all
396	of the following:
397	(1) Adopt rules and regulations consistent with § 1331 of this title and other provisions of this chapter or of
398	any other law of this State, and all such rules and regulations have the force and effect of law. A rule or regulation may
399	not extend, modify, or conflict with any law of this State or the reasonable implications thereof. A rule or regulation
400	adopted under this paragraph (a)(1) of this section must focus primarily on public safety and the best interests of the
401	consumer and may not unduly restrict competition within the marijuana industry.

402	(2) Maintain ongoing communication with the Department of Agriculture regarding the physical address
403	where marijuana or hemp is cultivated. Prior to issuing any license for cultivation of marijuana, the Commissioner
404	shall notify the Department of Agriculture of a proposed location of any marijuana cultivation establishment, and take
405	into consideration any concerns by the Department of Agriculture as it relates to the indoor and outdoor cultivation of
406	marijuana.
407	(3) Establish rules and regulations for the effective control of the business of cultivation, manufacture, and
408	sale of marijuana and marijuana products within the State, including the time, place, and manner in which marijuana
409	and marijuana products may be sold and dispensed, not inconsistent with § 1331 of this title and other provisions of
410	this chapter or with any other law of this State.
411	(4) Establish health and safety regulations for the indoor and outdoor cultivation of marijuana by marijuana
412	establishments under this chapter. Such rules and regulations under this section must be consistent with applicable
413	rules and regulations established under the regulatory authority of the Department of Agriculture and the Department
414	of Natural Resources and Environmental Control and may include all of the following:
415	a. Prohibition of the use of pesticides that are neither organic nor federally approved for marijuana.
416	b. Standards for the use of carbon dioxide.
417	c. Standards for water use.
418	d. Standards for disposal of waste.
419	e. Standards for indoor and outdoor air quality.
420	(5) Grant, refuse, or cancel licenses required by this chapter for the cultivation, manufacture, or sale of
421	marijuana and marijuana products, or other licenses required by this chapter in regard thereto and to transfer any
422	license granted. The Commissioner must provide the applicant or licensee with written communication regarding any
423	decision to grant, refuse, or cancel licenses required by this chapter for the cultivation, manufacture, or sale of
424	marijuana and marijuana products, or other licenses required by this chapter in regard thereto, and when transferring
425	any license granted.
426	(6) Hear complaints in regard to the appointments of, or the conduct of business in, any establishment where
427	marijuana or marijuana products are licensed to be sold upon receipt of a petition signed by at least 10 individuals who
428	are residents of the same neighborhood. Ten days' notice of such hearings, together with a recital of the complaint,
429	must be sent by the Commissioner's office by registered mail to the address of the holder of the license for the
430	establishment. Like notice must be delivered at the establishment by affixing the notice addressed to the holder of the
431	license to the outside of an entrance door to the establishment. The hearings must be public and conducted by the

132	Commissioner. The Commissioner, for the purpose of such hearings, has the power to issue subpoenas, compel the
433	attendance of witnesses, administer oaths, take testimony, and compel the production of pertinent books, payrolls,
134	accounts, papers, records, and documents. In case any person summoned to testify or to produce any such written or
435	printed evidence refuses, without reasonable cause, to be examined, to answer a legal and pertinent question, or to
436	produce any such written or printed evidence, the Commissioner conducting the hearing may certify the fact of any
437	such refusal to the Superior Court of the county in which such hearing is held and the court may proceed against the
438	person so refusing as for a contempt and punish such person in the same manner as persons are punished for contempt
439	of court.
140	(7) Compel the attendance of witnesses and the production of contracts, papers, books, accounts, and other
441	documents. Subpoenas issued must be signed by the Commissioner and may be served by any sheriff, deputy sheriff,
142	constable, or any agent of the Division and return thereof made to the Commissioner. The Commissioner may enforce
143	compliance with a subpoena issued under this subsection by filing a motion to compel in the Superior Court, which
144	shall have jurisdiction over the matter. The court may award costs and attorney fees if it determines that
445	noncompliance with a Commissioner subpoena was unjustified, intentional, or in bad faith.
446	(8) Act, for purposes of this chapter, as the competent authority in connection with other matters pertinent
447	thereto.
448	(9) Provide such special seals, labels, and wrappers as deemed necessary for protection of the public against
449	imitations, adulterations, and frauds, and prescribe the proper use of the seals, labels, and wrappers.
450	(10) Provide such warning signs as may be required by this chapter and distribute such signs to license holders
451	and promulgate regulations with respect to the posting of said signs. The Commissioner may charge a nominal fee to
452	cover printing, handling, and distribution costs.
453	(11) Coordinate with the Division of Small Business, Development and Tourism to connect potential
454	marijuana establishments licensed under this chapter with programs that support business development, including
455	farms and programs that support small businesses owned by minorities, women, and veterans.
456	(12) Establish rules and regulations for the effective collection of data regarding retail sales of marijuana and
457	marijuana products by consumers to track compliance of possession limits.
458	(13) Consult with the Division of Alcohol and Tobacco Enforcement before adopting or establishing any rules
459	or regulations that concern enforcement.
460	(b) The Commissioner's decision on any appeal or hearing under this chapter must be in writing and is final and

conclusive unless a party to such hearing files an appeal within 30 days from the date of the postmark on the

462	Commissioner's decision by mailing notice of the appeal to the Commissioner's office. Upon receipt of the appeal, the
463	Commissioner shall notify the chair of the Appeals Commission of the pending appeal and the chair shall convene the
464	Appeals Commission with at least 20 days' notice to all parties. The Appeals Commission shall hear the appeal and shall
465	review the matter on the record; act in accordance with the Administrative Procedures Act, Chapter 101 of Title 29; and
466	affirm, reverse, or modify the decision of the Commissioner. A decision of the Commissioner may only be reversed upon a
467	finding of abuse of discretion.
468	(c) The Commissioner may appear before the Appeals Commission for any appeal of a Commissioner's decision
469	and may appeal any decision of the Appeals Commission or any decision of the Superior Court on appeal from the Appeals
470	Commission.
471	§ 1323. Oath of Office of Commissioner and employees.
472	The Commissioner, members of the Appeals Commission, and any hearing officer shall, on entering office, take
473	the oath or affirmation set forth in Article XIV of the Constitution of this State. Any other employee may be required to
474	take the oath or affirmation set forth in Article XIV of the Constitution of this State at the discretion of the Secretary of the
475	Department of Safety and Homeland Security.
476	§ 1324. Conflict of interest.
477	(a) The Commissioner, members of the Appeals Commission, and any hearing officer or such person's spouse, or
478	such person's parent, son, or daughter residing at such person's residence, may not have a financial interest in any entity
479	that sells, manufactures, cultivates, or uses marijuana; provided, however, such persons may invest in mutual funds or
480	similar financial instruments that hold no more than a 10% interest in any such entity.
481	(b) Neither the Commissioner nor any person employed in the office of the Commissioner shall receive any
482	commission or profit whatsoever from, or have any interest whatsoever in a business licensed under this chapter to
483	cultivate, manufacture, purchase, or sell marijuana or marijuana products; provided, however, that nothing in this section
484	shall prevent the Commissioner, a member of the Appeals Commission, a hearing officer, or an employee from purchasing
485	and keeping marijuana or marijuana products for the personal use of him or herself, or members of his or her family or his
486	or her guests if such purchase is otherwise permitted by this chapter.
487	(c) The Commissioner and the members of the Appeals Commission shall annually file the Financial Report
488	required under § 5813 of Title 29 with the Public Integrity Commission.
489	§ 1325. Commissioner's statement of interest in marijuana business.
490	When notified of appointment as Commissioner or to the Appeals Commission, the individual so notified shall

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furnish in duplicate and in writing to the Governor and to the President Pro Tempore of the Senate a statement of every

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492	interest, direct or indirect, and however small, held or owned by the individual as a member or as a stockholder in any
493	partnership, corporation, or other association engaged in the sale or in the cultivation or manufacture of marijuana or
494	marijuana products or in any undertaking, industry, or business in which marijuana or marijuana products are used or
495	required. Prior to taking the oath of office, the Commissioner and members of the Appeals Commission must wholly and
496	fully dispose of all interests, except those permitted by § 1324 of this chapter. One copy of the statement must be inserted in
497	the permanent records of the office of the Commissioner open to public inspection.
498	§ 1326. Employees of the Division; Commissioner.
499	The Department of Safety and Homeland Security shall appoint, employ, or dismiss every officer or employee, not
500	appointed by the Governor, necessary for carrying out the work of the Division, Appeals Commission, and Commissioner;
501	establish salaries, subject to the annual appropriation in the Budget Act; and assign official titles and duties. The
502	Department may engage the services of experts and persons engaged in the practice of a relevant profession. At the
503	discretion of the Secretary of the Department of Safety and Homeland Security, officers and employees of the Division
504	shall have the police powers of constables and other police officers of the State, counties, and other subdivisions of the
505	State; shall be conservators of the peace throughout the State; shall be eligible for certification by the Council on Police
506	Training; and may suppress all acts of violence and enforce the provisions of this chapter.
507	§ 1327. Property and profits of the office of the Commissioner.
508	§§ 1328-1330, Reserved.
509	Subchapter III. Regulation and Licensure.
510	§ 1331. Regulations.
511	(a) The Commissioner shall adopt regulations necessary for implementation of this chapter. The regulations may
512	not prohibit the operation of marijuana establishments, either expressly or through regulations that make their operation
513	unreasonably impracticable. Regulations and fees for marijuana cultivation facilities may be varied based on the size of the
514	facility to ensure that the operation of smaller facilities is not made unreasonably impracticable. The Commissioner shall
515	include all of the following in the regulations:
516	(1) Procedures for the issuance, renewal, suspension, transfer, and revocation of a license to operate a
517	marijuana establishment with all procedures subject to the Administrative Procedures Act, Chapter 101 of Title 29.
518	(2) A competitive scoring process to determine which applicants may obtain licenses to operate each type of
519	marijuana establishment if more qualified applicants apply than the Commissioner may license under this subchapter
520	and that ensures applicants will follow best practices for community engagement, consumer protection, food safety,

521	worker safety, family support jobs, diversity, public safety, and environmental stewardship. The competitive scoring
522	process for retail marijuana stores must be varied to account for geographic distribution or population density, or both.
523	(3) The criteria for the competitive scoring process for all license types must include the following:
524	a. The applicants comprehensive business plan, including an annual budget and pro forma financial
525	statements.
526	b. The experience, training, and expertise of the applicant and managing officers.
527	c. The applicant's plans for safety, security, and the prevention of diversion.
528	d. The applicant's plans for operations, training, and staffing, including all of the following:
529	1. A social responsibility plan outlining diversity goals, including plans to recruit and hire people of
530	color, women, and veterans and to support their ownership and promotion within the organization, as well as
531	the percent of employees it plans to hire from within the respective city or region of the State.
532	2. A plan to provide a safe, healthy, and economically beneficial working environment with fair
533	scheduling practices, family-supporting wages, and benefits for its employees.
534	3. Any criminal, civil, or regulatory history encountered by other entities the applicant and managing
535	officers have previously controlled or managed.
536	4. The suitability of the proposed location for the facilities.
537	5. Any other criteria deemed appropriate by the Commissioner.
538	(4) The criteria for the competitive scoring process for open license types must include the following:
539	a. The applicant's submission of an attestation signed by a bona fide labor organization stating that the
540	applicant has entered into a labor peace agreement with such bona fide labor organization.
541	b. For applications for marijuana cultivation facility license and marijuana product manufacturing facility
542	license only, an environment and sustainability plan, including efforts it will take to minimize the environmental
543	impact, and resources needs of its facilities and other business operations, such as plans to minimize water usage,
544	employing organic cultivation methods, and adoption of other sustainable business practices.
545	(5) Except as provided in subpart B of this subchapter III of this chapter, a non-refundable \$5,000 application
546	fee for all marijuana establishments that may be adjusted annually for inflation.
547	(6) Qualifications for licensure that are directly and demonstrably related to the operation of a marijuana
548	establishment.
549	(7) Procedures for how establishments licensed under this chapter must track marijuana from seed to sale.

550	(8) Security requirements for marijuana establishments, including lighting, physical security, video, and alarm
551	requirements.
552	(9) Requirements for the transportation and storage of marijuana and marijuana products by marijuana
553	establishments.
554	(10) Employment and training requirements for licensees, employees, and agents of marijuana establishments,
555	including the following:
556	a. That each marijuana establishment create an identification badge for each employee or agent.
557	b. That employees of retail marijuana store establishments be trained in recognizing valid identification
558	<u>cards.</u>
559	(11) Requirements to prevent the sale or diversion of marijuana and marijuana products to individuals under
560	the age of 21. To protect individual privacy, the Commissioner may not require a consumer to provide a retail
561	marijuana store with personal information other than government-issued identification to determine the consumer's age
562	and a retail marijuana store may not be required to acquire and record personal information about consumers.
563	(12) Standards for marijuana product manufacturers to use so that consumers can determine the amount of
564	marijuana in each product and compare the amount of marijuana in different products based upon the standard
565	measurements, including a definition of the amount of delta-9 tetrahydrocannabinol that constitutes a single serving in
566	a marijuana product.
567	(13) Requirements for marijuana and marijuana products sold or distributed by marijuana establishments,
568	including information for consumers and labeling requirements for marijuana products that include all of the following:
569	a. The length of time it typically takes for a product to take effect.
570	b. The amount of marijuana in the product using the standard established in this section, not to exceed 10
571	mg per serving.
572	c. The serving size and the number of servings in each package, not to exceed 5 servings.
573	d. Ingredients and possible allergens.
574	e. A nutritional fact panel.
575	f. The requirement that information on the packaging may not mislead consumers.
576	g. The specific batch number of the product.
577	h. Educational information for consumers to educate consumers, including evidence-based information
578	about how to interpret the information on the label, health effects, and potential interactions with prescription and
579	nonprescription medications.

580	i. Opaque, resealable, and continually child-resistant packaging, which must be designed or constructed to
581	be significantly difficult for children under 5 years of age to open and not difficult for normal adults to use
582	properly as defined by 16 C.F.R. § 1700.20.
583	j. A standard symbol indicating edible marijuana products contain marijuana so that marijuana products
584	are clearly identifiable.
585	k. A warning label that explains evidence-based harms from consuming marijuana, including the impact
586	on developing brains, the impact on an individual's ability to operate machinery, the impact on pregnant and
587	breastfeeding women, and any interference with prescription drugs.
588	1. A label that indicates the product is not for children.
589	m. All required information must be in typed, legible font that is easy to read, is unobstructed and
590	conspicuous, and contrasts sufficiently with the background. The information must be in English, but may also
591	include translations in additional languages.
592	(14) Health and safety regulations and standards for the manufacture of marijuana products by marijuana
593	establishments consistent with other State requirements for food, including all of the following:
594	a. Prohibition of the manufacture of products that look like candy or cartoon characters.
595	b. Restrictions or prohibitions on additives to marijuana and marijuana-infused products, including
596	additives that are toxic, designed to make the product more addictive, or designed to make the product more
597	appealing to children, but not including common baking and cooking items.
598	c. Standards for the safe manufacture of marijuana extracts and concentrates.
599	d. Requirements for random sample testing, including the manner and frequency of testing, to ensure
600	quality control, including by ensuring that marijuana and marijuana-infused products are accurately labeled for
601	potency. The testing analysis must include testing for residual solvents, poisons, or toxins; harmful chemicals;
602	dangerous molds or mildew; filth; harmful microbials such as E. Coli or salmonella; and pesticides.
603	(15) Restrictions on the advertising, marketing, and signage of marijuana and marijuana products, including a
604	prohibition on mass-market campaigns that have a high likelihood of reaching minors.
605	(16) Restrictions on the display of marijuana and marijuana products, including requirements that marijuana
606	and marijuana products may not be displayed in a manner that is visible to the general public from a public right-of
607	way.
608	(17) Requirements governing visits to cultivation facilities and product manufacturers, including the
609	requirement that these marijuana establishment log visitors.

610	(18) Requirements that educational materials be disseminated to consumers who purchase marijuana-infused
611	products.
612	(19) Standards for the operation of marijuana testing facilities, including requirements for equipment and
613	qualifications for personnel, which shall be based upon international standard ISO/IEC 17025. Marijuana testing
614	facilities shall achieve and maintain accreditation to ISO/IEC 17025 by an International Laboratory Accreditation
615	Corporation (ILAC) recognized accreditation body. The marijuana testing facilities shall achieve and maintain
616	accreditation within the first applicable licensing period.
617	(20) Civil penalties for the failure to comply with regulations made under this chapter.
618	(21) Procedures for receiving and processing consumer complaints about marijuana establishments.
619	Part A. Open Licenses.
620	§ 1332. Retail marijuana store licenses.
621	(a) A retail marijuana store license may only be issued to a person selling retail marijuana or retail marijuana
622	products under the terms and conditions of this chapter. A license issued under this section is valid for 2 years. Each
623	application for a retail marijuana store license must contain all of the following:
624	(1) The application materials required by the Commissioner, including the location where the retail marijuana
625	store will operate.
626	(2) The application fee in an amount determined by the Commissioner.
627	(3) Materials required by § 1331(a)(3) and (4) of this chapter.
628	(b) A retail marijuana store licensee shall pay the Commissioner \$10,000 biennially for the retail marijuana store
629	license. A retail marijuana store licensee must renew the license biennially by paying the fee required by this subsection
630	and by providing documentation of a labor peace agreement.
631	(c) A retail marijuana store may purchase retail marijuana from a licensed retail marijuana cultivation facility or
632	may cultivate its own retail marijuana if it obtains a retail marijuana cultivation facility license under § 1334 of this chapter.
633	(d) A retail marijuana store shall track all of its retail marijuana and retail marijuana products from the point that
634	they are transferred from a retail marijuana cultivation facility or retail marijuana products manufacturer to the point of sale.
635	(e)(1) A retail marijuana store licensee may also sell retail marijuana products that are prepackaged and labeled as
636	required by this chapter.
637	(2) A retail marijuana store licensee may transact with a retail marijuana products manufacturing licensee for
638	the purchase of retail marijuana products upon a retail marijuana products manufacturing licensee's licensed premises
639	or a retail marijuana store's licensed premises.

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640	(f)(1) A retail marijuana store may not sell more than 1 ounce of retail marijuana or its equivalent in retail
641	marijuana products, including retail marijuana concentrate, except for nonedible, nonpsychoactive retail marijuana
642	products, including ointments, lotions, balms, and other nontransdermal topical products, during a single transaction to an
643	<u>individual.</u>
644	(2) Prior to initiating a sale to an individual, an employee of the retail marijuana store making the sale shall
645	verify that the purchaser has a valid government-issued photo identification card showing that the individual is 21
646	years of age or older. If an individual under 21 years of age presents a fraudulent proof of age, any action relying on
647	the fraudulent proof of age is not grounds for the revocation or suspension of any license issued under this section.
648	a. If a retail marijuana store licensee or employee has reasonable cause to believe that an individual is
649	under 21 years of age and is exhibiting fraudulent proof of age in an attempt to obtain any retail marijuana or
650	marijuana product, the licensee or employee is authorized to confiscate such fraudulent proof of age, if possible,
651	and shall, within 72 hours after the confiscation, remit it to a state or local law enforcement agency. The failure to
652	confiscate such fraudulent proof of age or to remit to a state or local law enforcement agency within 72 hours after
653	the confiscation does not constitute a criminal offense.
654	b. If a retail marijuana store licensee or employee believes that an individual is under 21 years of age and
655	is exhibiting fraudulent proof of age in an attempt to obtain any retail marijuana or retail marijuana product, the
656	licensee or employee, employee of the Division, or any law enforcement officer as defined in § 222 of Title 11,
657	acting in good faith and upon reasonable grounds therefor, may detain and question such person in a reasonable
658	manner for the purpose of ascertaining whether the person is guilty of any unlawful act regarding the purchase of
659	retail marijuana. The questioning of an individual by an employee or a peace or police officer does not render the
660	licensee, the employee, or the peace or police officer civilly or criminally liable for slander, false arrest, false
661	imprisonment, malicious prosecution, or unlawful detention.
662	(h) A retail marijuana store must provide a sample of its products to a facility that has a marijuana testing facility
663	license for testing and research purposes as required by regulations adopted under this chapter. A retail marijuana store
664	shall maintain a record of what was provided to the testing facility, the identity of the testing facility, and the results of the
665	testing.
666	(i) All retail marijuana and retail marijuana products sold at a licensed retail marijuana store must be packaged and
667	labeled as required by this chapter.
668	(j) A retail marijuana store shall comply with all provisions of State and federal law in regard to individuals with

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disabilities.

670	(k)(1) A retail marijuana store may only sell retail marijuana; retail marijuana products; marijuana accessories;
671	nonconsumable products such as apparel; and marijuana related products, such as childproof packaging containers. A retail
672	marijuana store is prohibited from selling or giving away any consumable product, including cigarettes or alcohol, or any
673	edible product that does not contain marijuana, including sodas, candies, or baked goods.
674	(2) A retail marijuana store may not sell any retail marijuana or retail marijuana products that contain nicotine
675	or alcohol if the sale of the alcohol would require a license under this title.
676	(3) A retail marijuana store may not sell retail marijuana or retail marijuana products over the Internet or
677	deliver retail marijuana or retail marijuana products to a person not physically present in the retail marijuana store's
678	licensed premises.
679	(1) A display case containing marijuana concentrate must include the potency of the marijuana concentrate next to
680	the name of the product using the standard established under this chapter.
681	(m) A properly registered compassion center under § 4914A of Title 16 who is issued a retail marijuana store
682	license issued under this subsection is considered a business registration separate and distinct from the registration issued
683	under § 4914A of Title 16.
684	§ 1333. Marijuana testing facility licenses.
685	(a) A marijuana testing facility license may be issued to a person who performs testing and research on retail
686	marijuana under the terms and conditions of this chapter. A license issued under this section is valid for 2 years. Each
687	application for a marijuana testing facility license must contain all of the following:
688	(1) The application materials required by the Commissioner, including the location where the marijuana
689	testing facility will operate.
690	(2) The application fee in an amount determined by the Commissioner.
691	(3) Materials required by § 1331(a)(3) and (4) of this chapter.
692	(b) A marijuana testing facility licensee shall pay the Commissioner \$10,000 biennially for the marijuana testing
693	facility license. A marijuana testing facility licensee must renew the license biennially by paying the fee required by this
694	subsection and by providing documentation of a labor peace agreement.
695	(c) The Commissioner shall promulgate rules related to acceptable testing and research practices, including testing,
696	standards; quality control analysis; equipment certification and calibration; chemical identification; identifying other
697	substances; and other measurers used in bona fide research methods.
698	(d) A person who has a financial interest in a marijuana testing facility license from the Commissioner for testing
699	purposes may not have a financial interest in a registered compassion center, a marijuana cultivation facility, a marijuana

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700	products manufacturing facility, or a retail marijuana store. A person that has a financial interest in a registered compassion
701	center, a marijuana cultivation facility, a marijuana products manufacturing facility, or a retail marijuana store may not
702	have a financial interest in a facility that has a marijuana testing facility license or is a registered safety compliance facility.
703	§ 1334. Marijuana cultivation facility licenses.
704	(a) A marijuana cultivation facility license may be issued only to a person who cultivates retail marijuana for sale
705	and distribution to licensed retail marijuana stores, marijuana products manufacturing licensees, or other marijuana
706	cultivation facilities under the terms and conditions of this chapter. A license issued under this section is valid for 2 years.
707	Each application for a marijuana cultivation facility license must contain all of the following:
708	(1) The application materials required by the Commissioner, including the location where the marijuana
709	cultivation facility will operate.
710	(2) The application fee in an amount determined by the Commissioner.
711	(3) Materials required by § 1331(a)(3) and (4) of this chapter.
712	(b) A marijuana cultivation facility licensee shall pay the Commissioner biennially for the marijuana cultivation
713	facility license according to the rates below. A marijuana cultivation facility licensee must renew the license biennially by
714	paying the fee required by this subsection and by providing documentation of a labor peace agreement. The license fee for a
715	marijuana cultivation facility shall be as follows:
716	(1) For an indoor facility that is equal to or between 2,501 and 7,500 square feet or for an outdoor facility that
717	is equal to or between 1.1 and 2.5 acres, the fee is \$5,000.
718	(2) For an indoor facility that is between 7,501 and 10,000 square feet or for an outdoor facility that is equal to
719	or between 2.6 and 5 acres, the fee is \$7,500.
720	(3) For an indoor facility that is equal to or greater than 10,001 square feet or for an outdoor facility that is
721	equal to or greater than 5.1 acres, the fee is \$10,000.
722	(c) A marijuana cultivation facility shall track the marijuana it cultivates from seed or immature plant to wholesale
723	purchase.
724	(d) A marijuana cultivation facility must provide a sample of its products to a facility that has a marijuana testing
725	facility license for testing and research purposes as required by regulations adopted under this chapter. A marijuana
726	cultivation facility shall maintain a record of what was provided to the testing facility, the identity of the testing facility, and
727	the testing results.
728	(e) Retail marijuana or retail marijuana products may not be consumed on the premises of a marijuana cultivation
729	facility.

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730	(f) No marijuana cultivation facility license may be issued for an indoor facility exceeding 12,500 square feet or
731	for an outdoor facility exceeding 7.5 acres unless additional tiers are created by the Commissioner under § 1334(h) of this
732	chapter.
733	(g) At the time of renewal under § 1334(b) of this chapter, a marijuana cultivation facility licensee may request a
734	one tier increase in size each renewal period, as long as an updated safety, security and prevention of diversion plan is
735	provided as required under § 1331(a)(3)b. of this chapter.
736	(h) The Commissioner may create additional tiers under § 1334(b)(1) of this chapter anytime 2 years after [the
737	effective date of this Act] if demand requires additional tiers.
738	§ 1335. Marijuana product manufacturing facility license.
739	(a) A marijuana product manufacturing facility license may be issued only to a person who manufactures and
740	distributes marijuana products under the terms and conditions of this chapter. A license issued under this section is valid for
741	2 years. Each application for a marijuana product manufacturing facility license must contain all of the following:
742	(1) The application materials required by the Commissioner, including the location where the marijuana
743	product manufacturing facility will operate.
744	(2) The application fee in an amount determined by the Commissioner.
745	(3) Materials required by § 1331(a)(3) and (4) of this chapter.
746	(b) A marijuana product manufacturing facility licensee shall pay the Commissioner \$10,000 biennially for the
747	marijuana product manufacturing facility license. A marijuana product manufacturing facility licensee must renew the
748	license biennially by paying the fee required by this subsection and by providing documentation of a labor peace
749	agreement.
750	(c) A marijuana product manufacturing facility shall track all of its marijuana products from the point the
751	marijuana is received from the retail marijuana cultivation facility until the products are transferred to a retail marijuana
752	store.
753	(d) A marijuana product manufacturing facility may not do any of the following:
754	(1) Add any marijuana to a food product where the manufacturer of the food product holds a trademark to the
755	food product's name; except that a manufacturer may use a trademarked food product if the manufacturer uses the
756	product as a component or as part of a recipe and where the marijuana product manufacturer does not state or advertise
757	to the consumer that the final retail marijuana product contains a trademarked food product.
758	(2) Intentionally or knowingly label or package a retail marijuana product in a manner that would cause a
750	reasonable consumer confusion as to whether the retail marijuana product was a trademarked food product.

760	(3) Label or package a product in a manner that violates any federal trademark law or regulation.
761	(e) Retail marijuana products shall be prepared in a marijuana product manufacturing facility that is used
762	exclusively for the manufacture and preparation of retail marijuana or retail marijuana products and using equipment that is
763	used exclusively for the manufacture and preparation of retail marijuana products.
764	(f) All licensed premises on which retail marijuana products are manufactured must meet the sanitary standards for
765	retail marijuana product preparation promulgated under this chapter and as applicable under all of the following:
766	(1) Section 122(3)u of Title 16 and related regulations, the State of Delaware Food Code, § 4458 of Title 16 of
767	the Delaware Administrative Code, and the Cottage Food Regulations, § 4458A of Title 16 of the Delaware
768	Administrative Code.
769	(2) Chapter 35 of Title 16.
770	(3) Chapter 41 of Title 16.
771	(4) Chapter 43 of Title 16.
772	(g) All retail marijuana products must be shelf-stable and not require refrigeration to prevent spoilage.
773	(h) A retail marijuana product must be sealed and conspicuously labeled in compliance with this article and any
774	rules promulgated under this chapter.
775	(1) A marijuana product manufacturing facility shall package and label each product manufactured as required
776	by the rules established by the Commissioner, including the use of the standard symbol.
777	(2) An edible retail marijuana product must list its ingredients and may list its compatibility with dietary
778	practices.
779	(3) The standard symbol requirements as established by the Commissioner do not apply to a multi-serving
780	liquid retail marijuana product that is impracticable to mark if the product complies with all statutory and rule
781	packaging requirements for multi-serving edibles and with all of the following enhanced requirements to reduce the
782	risk of accidental ingestion:
783	a. A multi-serving liquid is packaged in a structure that uses a single mechanism to achieve both child-
784	resistance and accurate pouring measurement of each liquid serving in increments equal to or less than 10
785	milligrams of active THC per serving, with no more than 500 milligrams of active THC total per package.
786	b. The measurement component is within the child-resistant cap or closure of the bottle and is not a
787	separate component.
788	(i) Retail marijuana or retail marijuana products may not be consumed on the premises of a marijuana product
789	manufacturing facility.

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790	(j) A marijuana product manufacturing facility must provide a sample of its products to a facility that has a
791	marijuana testing facility license for testing and research purposes as required by regulations adopted under this chapter. A
792	marijuana product manufacturing facility shall maintain a record of what was provided to the testing facility, the identity of
793	the testing facility, and the results of the testing.
794	Part B. Social Equity and Microbusiness Licenses.
795	§ 1336. Social equity applicant.
796	A social equity applicant is a Delaware resident that meets one of the following criteria:
797	(a) An applicant for any type of license with at least 51% ownership and control by 1 or more individuals who
798	have resided for at least 5 of the preceding 10 years in a disproportionately impacted area.
799	(b) An applicant for any type of license with at least 51% ownership and control by 1 or more individuals who
800	meets one of the following criteria:
801	(1) Was convicted of or adjudicated delinquent for any marijuana-related offense except for delivery to a
802	minor.
803	(2) Is married to or the child of a person who was convicted of or adjudicated delinquent for any marijuana-
804	related offense.
805	§ 1337. Social equity application and fees.
806	(a) A social equity license issued under Part B of this subchapter is valid for 2 years. Each application for a social
807	equity license must contain all of the following:
808	(1) The application materials required by the Commissioner.
809	(2) The discounted application fee in the amount of \$1,000.
810	(3) Materials required by § 1331(a)(3) and (a)(4) of this chapter.
811	(b) A social equity licensee shall pay the Commissioner biennially for the social equity license at a discounted rate
812	of 40% of the applicable open license. A social equity licensee must renew the license biennially by paying the fee required
813	by this subsection, providing confirmation that all of the criteria in § 1328 are satisfied, and by providing documentation of
814	a labor peace agreement.
815	§ 1338. Technical assistance.
816	The Commissioner shall develop a technical assistance program to aid social equity applicants in applying for a
817	license and finding financial resources. The Commissioner may partner with the Division of Small Business to administer
818	workshops to assist social equity applicants and licensees in applying for a license and operating a business.
819	§ 1339. Financial assistance.

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Part C. Issuance of All Licenses.

850	§ 1343. Licensing Process.
851	(a) Beginning 13 months after [the effective date of this Act], the Commissioner shall begin accepting applications
852	for all licenses, including open, social equity, and microbusiness licenses.
853	(b) Beginning 14 months after [the effective date of this Act], the Commissioner shall begin issuing licenses.
854	(c) Beginning 15 months after [the effective date of this Act], the Commissioner shall issue the following number
855	of cultivation facility licenses provided a sufficient number of qualified applicants exist:
856	(1) Facility less than 2500 square feet:
857	a. 20 microbusiness licenses.
858	b. 10 social equity licenses.
859	(2) Facility more than 2500 square feet:
860	a. 20 open licenses.
861	b. 10 social equity licenses.
862	(d) Beginning 16 months after [the effective date of this Act], the Commissioner shall issue the following number
863	of product manufacturing facility licenses:
864	(1) 10 open licenses.
865	(2) 10 social equity licenses.
866	(3) 10 microbusiness licenses.
867	(e) Beginning 19 months after [the effective date of this Act], the Commissioner shall issue the following number
868	of licenses provided a sufficient number of qualified applicants exist:
869	(1) Retail store licenses:
870	a. 15 open licenses.
871	b. 15 social equity licenses.
872	(2) Testing facility licenses:
873	a. 3 open licenses.
874	b. 2 social equity licenses.
875	(f) Impossibility of performance because of opposition by localities or lack of qualified applications is a defense to
876	any lawsuit brought against the Commissioner to comply with the issuance of the required number of licenses.
877	(g) At any time 2 years after [the effective date of this Act], the Commissioner may accept applications for any
878	type of license and issue licenses in excess of the numbers identified in subsection (c) of this section for any of the
879	following reasons:

880	(1) The Commissioner determines that additional stores or facilities are needed.
881	(2) The number of licenses for a particular type of license is less than the number permitted for that type of
882	license in subsection (c) of this section.
883	§§ 1344-1350. Reserved.
884	Subchapter IV. Determination of Applications.
885	§ 1351. Local control.
886	(a) A municipality may prohibit the operation of marijuana cultivation facilities, marijuana product manufacturing
887	facilities, marijuana testing facilities, or retail marijuana stores through the enactment of an ordinance or through an
888	initiated or referred measure.
889	(b) A municipality or county may enact ordinances or regulations that are not in conflict with this chapter or in
890	conflict with regulations enacted under this chapter, governing the time, place, manner, and number of marijuana
891	establishment operations. A municipality or county may establish civil penalties for violation of an ordinance or regulations
892	governing the time, place, and manner that a marijuana establishment may operate in such municipality or county.
893	§ 1352. Procedural requirements governing Commissioner's action; hearing; appeal.
894	(a) The Commissioner shall distribute and receive all of the applications for licensure under this chapter and shall
895	refer an application to the Division for investigation. If it appears that any application should not be granted, the
896	Commissioner shall so notify the applicant stating the reason for denial.
897	(b) Hearings on applications for licensure under this chapter.
898	(1) If 10 or more persons who reside or own property within 1 mile of the premises where the license is to
899	operate or in any incorporated areas located within 1 mile of the premises where the license is to operate file a protest
900	against the issuance of the license with the Commissioner within 30 days from the filing of the application, then a
901	hearing must be held to consider the application and protest and, specifically, the concerns of the members of the
902	community within which the license is to operate.
903	(2) The Commissioner may hold a hearing in the absence of a protest.
904	(3) The Commissioner shall cause notice of the time and location of the hearing to be published in 2
905	consecutive issues of the same newspapers within which the applicant published notice of the applicant's application
906	for the license.
907	(4) The Commissioner shall send notice of the time and location of the hearing to the applicant and to each of
908	the persons who signed the protest and provided a legible name and address; provided, however, that it is sufficient for
909	the Commissioner to send notice to a legal agent representing a person.

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910	(5) The Commissioner shall conduct the hearing and shall make and keep a record of the hearing. The record
911	must include the evidence, the Commissioner's findings of fact, the Commissioner's decision, and a brief statement of
912	the reasons for the decision.
913	(6) The Commissioner shall issue a written decision after the hearing. The Commissioner's decision must
914	show the manner in which the Commissioner construed the law and applied it to the facts, must recite any objections
915	presented by the community, and must show how and the extent to which the Commissioner took community concerns
916	into account and gave them due consideration when making the decision.
917	(c) The Commissioner's decision on an application must be in writing and is final and conclusive unless a party to
918	such hearing files an appeal within 30 days from the date of the postmark on the Commissioner's decision by mailing notice
919	of the appeal to the Commissioner's office. Upon receipt of the appeal, the Commissioner shall notify the chair of the
920	Appeals Commission of the pending appeal and the chair shall convene the Appeals Commission with at least 20 days
921	notice to all parties. The Appeals Commission shall hear the appeal and shall review the matter on the record; act in
922	accordance with the Administrative Procedures Act, Chapter 101 of Title 29; and affirm, reverse, or modify the decision of
923	the Commissioner. A decision of the Commissioner may only be reversed upon a finding of abuse of discretion.
924	(d) A party who is aggrieved by a final decision of the Appeals Commission may file a written appeal with the
925	Superior Court within 30 days of the date that the Appeals Commission's decision was mailed. The Superior Court's review
926	of an appeal shall be on the record and in accordance with the Administrative Procedures Act, subchapter V of Chapter 101
927	of Title 29. The Superior Court's review shall take into account the experience and specialized competence of the
928	Commissioner and the purpose under which the Commissioner acted. Further, the Superior Court's review, in the absence
929	of fraud, shall be limited to whether the Commissioner's decision is supported by substantial evidence on the record and is
930	free from legal error.
931	§ 1353. Decision upon application for renewal of license; time of making.
932	On or before the first day of the month preceding the biennial expiration date of a license, the Commissioner shall
933	render a decision upon every application properly and completely made to it on or before the first day of the third month
934	preceding the biennial expiration date of a license.
935	§ 1354. Grounds for refusal of license; transfer or extension of premises.
936	(a) The Commissioner may not grant a license under this chapter in any county or subdivision thereof, if granting
937	license is contrary to the law of any municipality or county adopted under § 1351 of this chapter.
938	(b) The Commissioner may refuse to license an applicant if the Commissioner has substantial evidence that would
939	reasonably support a belief that any of the following apply:

940	(1) There are sufficient licensed premises in the municipality or county, or the granting of a license in the
941	municipality or county stated in the application is not otherwise demanded by public interest or convenience.
942	(2) The applicant appears to be financially irresponsible.
943	(3) The applicant has made false statements to the Commissioner.
944	(4) The applicant, including any of the applicant's directors or officers, or any of the applicant's shareholders
945	who hold more than 10% of the outstanding issued shares, has been convicted of an offense that may impact the
946	qualifications, functions, or duties of the business or profession for which the application is made, except that if the
947	Commissioner determines that the applicant is otherwise suitable to be issued a license, and granting the license would
948	not compromise public safety, the Commissioner shall conduct a thorough review of the nature of the crime,
949	conviction, circumstances, and evidence of rehabilitation of the applicant, and shall evaluate the suitability of the
950	applicant to be issued a license based on the evidence found through the review. In determining which offenses may
951	impact the qualifications, functions, or duties of the business or profession for which the application is made, the
952	Commissioner shall include the following:
953	a. A violent Title 11 or Title 31 felony conviction as defined in §4201(c) of Title 11 or its functional
954	equivalent under the laws of the United States, any state or territory of the United States, or any other country.
955	b. Any Class A through C felony conviction as defined in Title 11 or its functional equivalent under the
956	laws of the United States, any state or territory of the United States, or any other country.
957	c. Any felony conviction regarding an offense against public administration as defined in Subchapter VI
958	of Title 11 or its functional equivalent under the laws of the United States, any state or territory of the United
959	States, or any other country.
960	d. A felony conviction for hiring, employing, or using a minor in transporting, carrying, selling, giving
961	away, preparing for sale, or peddling, any controlled substance to a minor; or selling, offering to sell, furnishing,
962	offering to furnish, administering, or giving any controlled substance to a minor.
963	(5) A substantial objection to the granting of the license has been presented by the community within which
964	the license is to operate, or that the granting of such license is otherwise not in the public interest. For the purposes of
965	this subsection, the term "substantial objection" includes 1 or more of the following:
966	a. Any objection, or group of objections, presented to the Commissioner either individually or as a group,
967	by persons who reside within 5 miles of where the licensee is to operate, sufficient to give the Commissioner
968	reason to believe that a majority of the residents in that 5 mile radius within which the licensee is to operate
969	oppose the issuance of the license.

970	b. Any objection, or group of objections, presented to the Commissioner either individually or as a group,
971	the content of which gives the Commissioner reason to believe the quality of life of the community within which
972	the licensee is to operate will be adversely affected by the granting of the license.
973	(c) A prior conviction, for possession of, possession for sale, sale, manufacture, transportation, or cultivation of a
974	controlled substance may not be a ground for denial of a license.
975	(d) The Commissioner may refuse to grant a license to sell marijuana, marijuana products, or marijuana
976	accessories to any new establishment to be located in the vicinity of a church, school, college or substance abuse treatment
977	facility as defined under § 2203 of Title 16. The Commissioner may issue a license to any establishment located in the
978	vicinity of a church, school, or college when such establishment has been located in a place prior to the time any church,
979	school, or college may thereafter be located in the vicinity of such establishment.
980	(e) The Commissioner shall refuse to grant a license for the sale of marijuana, marijuana products, or marijuana
981	accessories for consumption on or off the premises when there is an existing licensed establishment of the same type within
982	1200 feet by accessible public road or street in any incorporated city or town, or within 1 mile by accessible public road or
983	street in any unincorporated or rural area. If there is an existing licensed establishment less than 1 mile but more than nine
984	tenths of 1 mile by accessible public road or street in any unincorporated or rural area, the Commissioner may grant such
985	license. This subsection does not apply to any of the following:
986	(1) Any existing license or to the sale, transfer of ownership, or renewal of an existing license.
987	(2) Any licensee who desires to move the location of the licensee's license to a location within 500 feet
988	thereof by accessible public road or street or any licensee located in a shopping center or shopping mall who desires to
989	move the location of the licensee's license any distance within the same shopping center or shopping mall, whether
990	such center or mall consists of 1 or more than 1 separate buildings.
991	(f) Any holder of an existing license who desires to move the location of the existing license due to the destruction
992	of the building, loss of lease, diversion of highway traffic pattern, or other reason beyond the control of the licensee, shall
993	have preference in the issuance of a new license provided that the application satisfies this section and all other
994	requirements under this chapter.
995	(g) The Commissioner may not grant a new license of any type and may not grant an extension of premises of an
996	existing license of any type unless the application for said new license or for said extension is accompanied by a Certificate
997	of Compliance from the appropriate political subdivision showing all of the following:
998	(1) That the premises where the license is to be used are properly zoned for the applicant's intended use.
999	(2) That all necessary permits have been approved.

1000	(3) That the applicant has complied with all other applicable licensing requirements of the appropriate
1001	political subdivision.
1002	(h) Subsection (g) of this section does not apply to any application for a temporary extension of premises as
1003	authorized by Commissioner rule if such application has not been objected to by the appropriate political subdivision and
1004	the political subdivision was provided with notice of the application by the applicant within 7 days of the date the
1005	application is filed with the Commissioner.
1006	§ 1355. Finality of Commissioner's decision refusing license.
1007	If an application is not timely protested, but the Commissioner determines that the application should nevertheless
1008	be denied, the Commissioner shall render the decision promptly in writing. The Commissioner's decision shall be final and
1009	conclusive unless, within 30 days after notice thereof has been mailed by the Commissioner's office, the applicant files an
1010	appeal in the office of the Commissioner. The appeal shall follow the procedure outlined in § 1362 of this chapter.
1011	§ 1356. Improvements to premises.
1012	The Commissioner may not require an applicant to make improvements to the premises before the issuance of a
1013	license; however, the Commissioner may issue a license to sell marijuana, marijuana products, or marijuana accessories
1014	upon the condition that certain improvements shall be made to the premises.
1015	Subchapter V. Cancellation or Suspension of License.
1016	§ 1361. Grounds for cancellation, suspension, or fines.
1017	(a) The Commissioner may cancel every license made use of on behalf of any person other than the one to whom
1018	or on behalf of whom it has been issued.
1019	(b) If the Commissioner has reasonable grounds to believe that a licensee has committed any of the violations in
1020	subsection (c) of this section, the Commissioner may do one or more of the following:
1021	(1) Suspend the licensee's license.
1022	(2) Cancel the licensee's license if the Commissioner determines the violations to be repeated and continuous,
1023	or egregious.
1024	(3) Fine the licensee.
1025	(c) It is a violation for a licensee to do any of the following:
1026	(1) Violate any provision of this chapter or any regulation of the Commissioner or the Department of Health
1027	and Social Services under this chapter.
1028	(2) Make any false representation or statement to the Commissioner in order to induce or prevent action by the
1029	Commissioner.

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1030	(3) Not maintain an acceptable bond, if a bond is required.
1031	(4) Maintain a noisy, lewd, disorderly, or unsanitary establishment or supply impure or otherwise deleterious
1032	marijuana or marijuana products.
1033	(5) Habitually use dangerous or narcotic drugs, or is in the habitually use alcoholic beverages or marijuana
1034	products to excess.
1035	(6) Sell marijuana or marijuana products to minors in contravention of § 1313 of this chapter.
1036	(7) Possess on the licensee's licensed premises or sell or offer for sale any marijuana 7r marijuana products not
1037	purchased or sold in compliance with this chapter.
1038	(8) Use any seal, labels, or wrapper not purchased from or through the Commissioner which are deceptively
1039	similar to those used by the Commissioner.
1040	(9) Be convicted of a felony or be convicted of violating any of the marijuana laws of this State, general or
1041	local, including the provisions of this chapter.
1042	(10) Admit guilt or be adjudged guilty of violations of local, municipal, county, or State regulations,
1043	ordinances, or codes related to the operation of a licensed premises.
1044	(11) Discipline, threaten, or otherwise penalize any person for refusing to violate or aiding the enforcement of
1045	the provisions of this chapter or the rules of the Commissioner.
1046	(d) Notwithstanding subsection (b) of this section, the Commissioner may cancel or suspend a license if there is
1047	any other reason which, in the opinion of the Commissioner, warrants cancelling or suspending the license.
1048	(e) The Commissioner may not cancel or suspend any license for the sale of marijuana products or impose any fine
1049	for an alleged violation of § 1307 or § 1313 of this chapter where the licensee or its employee has made a reasonable effort
1050	to determine the age of a purchaser of the marijuana products. For purposes of this subsection, a licensee or its employee is
1051	deemed to have made a reasonable effort to determine the age of a purchaser if, prior to any sale of marijuana products, the
1052	licensee or its employee requires the purchaser to display identification, with a photograph of the purchaser thereon affixed.
1053	which sets forth information that would lead a reasonable person to believe the purchaser to be 21 years of age or older.
1054	(f) The Commissioner may also suspend a license for any of the grounds for refusal of a license under § 1354 of
1055	this chapter.
1056	(g) The Commissioner may cancel any retail license if it has reasonable grounds to believe that the license was
1057	granted in violation of this chapter, or any regulation enacted pursuant to § 1331 of this chapter.
1058	§ 1362. Public hearing and right of appeal.
1059	(a) The Commissioner may not cancel or suspend a license, or fine a licensee, before both of the following occur:

1060	(1) The licensee has been given a public hearing by the Commissioner at which time the licensee is entitled to
1061	legal representation and to present witnesses.
1062	(2) The ground for canceling or suspending a license is established by clear and convincing evidence.
1063	(b) The Commissioner shall keep a full and complete record of all proceedings incident to a hearing under
1064	subsection (a) of this section. The Commissioner shall record all testimony at such hearing, but need not have it transcribed
1065	unless an order of the Commissioner is appealed to the Superior Court under subsection (d) of this section.
1066	(c) An order of the Commissioner relative to suspension or cancellation of a license, or fining a licensee, becomes
1067	final 10 days after the licensee receives notice thereof, unless, within 10 days of the date of the postmark on the
1068	Commissioner's decision, a written appeal is filed in the Superior Court. No bond may be required for filing such appeal.
1069	(d) The appeal must state the grounds upon which a review is sought. After the appeal is filed, service shall be
1070	made by the Sheriff upon the Commissioner. The Commissioner shall certify and file with the court all documents and
1071	papers and a transcript of all testimony taken in the matter, together with the Commissioner's findings therein as soon as
1072	practicable but in no event later than 20 calendar days from the date of service of the appeal. The Superior Court's review of
1073	an appeal shall be on the record and the Superior Court shall take into account the experience and specialized competence
1074	of the Commissioner and the purpose under which the Commissioner acted. Further, the Superior Court's review, in the
1075	absence of fraud, shall be limited to whether the Commissioner's decision is supported by substantial evidence on the
1076	record and is free from legal error.
1077	(e) An appeal without bond may be taken from the decision of the Superior Court to the Supreme Court in the
1078	same manner as is provided in civil cases. Upon the final determination of judicial proceedings, the Commissioner shall
1079	enter an order in accordance with such determination, or shall take such further or other action as the Court may order. A
1080	petition for Supreme Court review shall act as a supersedeas.
1081	§ 1363. Effect of cancellation or surrender of license; notice.
1082	(a) The cancellation or acceptance of a surrender of a license entails the loss of the privilege conferred by the
1083	license and entails the acceptance of or the seizure by the Commissioner of any marijuana or marijuana products found in
1084	the possession of the licensee, except those which occur solely by reason of the death of the licensee.
1085	(b) Notice of the order of the cancellation or acceptance of the surrender of a license may be served by an officer
1086	designated by the Commissioner; by affixing a duplicate thereof to the outside of the entrance door of the licensed
1087	premises; by leaving a duplicate with the holder of the license, or with any member of the family of the holder over the age
1088	of 18 years at the residence of the holder; or otherwise as in the judgment of the Commissioner will give notice of such

1089	cancellation or acceptance of the surrender. All cancellations or acceptances of surrender of a license take effect as soon as
1090	the order is served.
1091	(c) The cancellation or acceptance of surrender of a license does not prevent the filing of any criminal proceedings
1092	for any offense against the licensee while the license was in force. No conviction obtained for any offense prevents the
1093	Commissioner from cancelling a license or from making at the same time a seizure of marijuana or marijuana products as
1094	provided in this title.
1095	(d) The Commissioner shall adopt regulations for seizure of marijuana and marijuana products that preserves and
1096	does not destroy the marijuana or marijuana products.
1097	§ 1364. Payments to former licensee.
1098	The Department of Finance shall, within 30 days of the date of the cancellation or acceptance of surrender of a
1099	license, remit to the former licensee a part of the license fee which has been paid and pertains to the unexpired term of the
1100	license. In addition, the Commissioner shall remit to the former licensee the amount originally received by the
1101	Commissioner from the former licensee in payment for such marijuana or marijuana products accepted or seized as remains
1102	in packages sealed by the Commissioner, after paying or deducting therefrom all costs and expenses incurred by the
1103	Commissioner by reason of the acceptance or seizure of the marijuana or marijuana products of the former licensee. When
1104	other legally acquired marijuana or marijuana products have been accepted or seized under this section, the value thereof as
1105	determined by the Commissioner must be remitted by the Commissioner to the former licensee, after paying or deducting
1106	therefrom all costs and expenses incurred by the Commissioner by reason of the acceptance or seizure of the marijuana or
1107	marijuana products of the former licensee. No payment may be made for illegally acquired marijuana or marijuana products
1108	that have been seized under this section.
1109	Subchapter VI. Transfer of License; Death of Licensee
1110	§ 1366. Transfer of license.
1111	(a) The rights conferred by a license may be transferred by the Commissioner to any representative designated by
1112	the person to whom or on behalf of whom the license was originally granted, if such representative is a person approved by
1113	the Commissioner. In the case of death of a licensee, the Commissioner may transfer the license to a qualified person
1114	recommended by the executor or administrator of the estate of the deceased licensee.
1115	(b) In instances where the Commissioner has approved the transfer of a license, all matters concerning marijuana
1116	inventories must be handled directly between the transferor and the transferee and all payments must be made directly and
1117	not through the Commissioner.

1118	(c) A social equity or microbusiness license may not be transferred to a person who would not meet the criteria for
1119	the issuance of an original social equity or microbusiness license.
1120	§ 1367. Death of licensee; payments to licensee's estate.
1121	If any licensee dies and no application is made for transfer of the license, or the Commissioner refuses to permit
1122	the transfer of the license to another person, the Department of Finance shall return to the legal representative of such
1123	deceased licensee a share of the license fee received by the Department proportionate to the number of full calendar months
1124	of the unexpired term. If the marijuana or marijuana products in possession of the licensee at the time of the licensee's death
1125	are delivered to the Commissioner and the Commissioner ascertains that such marijuana or marijuana products have been
1126	received by the deceased licensee according to law, the Commissioner must pay to the legal representative the amount
1127	originally received by the Commissioner for such marijuana or marijuana products less 10% thereof, or the appraised value
1128	less 10% thereof.
1129	§§ 1368-1370. Reserved.
1130	Subchapter VII. Owner and Financial Interests of Licensee.
1131	§ 1371. Commissioner approval.
1132	The commissioner may refuse approval of changes in the ownership, officers, or directors, financial interest, or
1133	lease in connection with any license. No such change shall be implemented until reported to and approved by the
1134	Commissioner.
1135	§ 1372. Change in ownership.
1136	(a) In order to change ownership of a license of a licensee, all of the following must be filed with the
1137	Commissioner on behalf of the new owner or owners:
1138	(1) An application.
1139	(2) A financial statement of the new owner or owners.
1140	(3) Personal financial statements of all individuals, partners, or stockholders holding at least 10 percent of the
1141	corporate stock.
1142	(4) A copy of the agreement of the terms of the sale or other exchange of financial interest, including stock
1143	distribution.
1144	(5) Copy of all documents explaining interest and profit/loss distribution.
1145	(6) Any application fee required by the Commissioner.
1146	(7) Any other documents requested by the Commissioner.

1147	(b) A change in ownership includes a change in the entire ownership, change in the partial ownership, or the sale
1148	or exchange of shares of stock by stockholders.
1149	§ 1373. Change in officers or directors.
1150	(a) Each person elected as an officer or director of a licensee shall notify the Commissioner within 7 days after the
1151	election and provide all information requested by the Commissioner.
1152	(b) No new officer or director may act as an officer or director until approved by the Commissioner.
1153	§ 1374. Changes in financial interest.
1154	No person may obtain a financial interest in a license or licensee without doing all of the following:
1155	(1) Notification to the Commissioner.
1156	(2) Providing all information and documents requested by the Commissioner.
1157	§ 1375. Fees.
1158	If there is a change in ownership or financial interest more than 10%, a fee of \$5,000 or 15% of the value of the
1159	transaction, whichever is higher, is required.
1160	Subchapter VIII. Marijuana Regulation Fund; Taxes.
1161	§ 1381. Marijuana Regulation Fund; Justice Reinvestment Fund.
1162	(a) The Marijuana Regulation Fund is established as a special fund of the State consisting of fees collected, civil
1163	penalties imposed under this chapter, and a portion of taxes imposed under this subchapter. The Office of the State
1164	Treasurer shall administer the Fund.
1165	(b) The Justice Reinvestment Fund is established as a special fund of the State consisting of a portion of taxes
1166	imposed under this subchapter as set forth in § 1387 of this subchapter.
1167	§ 1382. Levy and rate of marijuana tax; collection.
1168	(a) A tax is imposed on the retail sale of marijuana products under this chapter in this State. This tax is not
1169	imposed on the sale of medical marijuana products under Chapter 49A of Title 16.
1170	(b) The tax imposed under this section is at the rate of 15% of the retail sales price of the marijuana product.
1171	(c) If the tax imposed under this section does not equal an amount calculable to a whole cent, the tax shall be equal
1172	to the next higher whole cent.
1173	(d) Except as otherwise provided by the Commissioner, the amount of the tax shall be separately stated on an
1174	invoice, receipt, or other similar document that the marijuana retailer provides to the consumer at the time the retail sale
1175	occurs.

176	(e) A person may not knowingly sell, purchase, install, transfer, or possess electronic devices or software programs
177	for the purposes of either of the following:
1178	(1) Hiding or removing records of retail sales of marijuana products.
1179	(2) Falsifying records of retail sales of marijuana products.
1180	(f) A marijuana retailer may not discount a marijuana item or offer a marijuana item for free if the retail sale of the
1181	marijuana item is made in conjunction with the retail sale of any other item.
1182	§ 1383. Collection and administration of the marijuana tax; mandatory reports; preemption.
1183	(a) The marijuana tax imposed on the consumer under § 1382 of this chapter shall be collected at the point of sale
1184	and remitted by each retail marijuana store licensee that engages in the retail sale of marijuana products. The marijuana tax
1185	is considered a tax upon the retail marijuana store licensee that is required to collect the tax, and the retail marijuana store
1186	licensee is considered a taxpayer.
1187	(b) A retail marijuana store licensee shall file a monthly report to the Commissioner, the Division of Revenue, and
1188	the Division of Alcohol and Tobacco Enforcement.
1189	(c) A retail marijuana store licensee shall pay the marijuana tax to the Division of Revenue in the form and manner
1190	prescribed by the Commissioner, but not later than with each monthly report.
1191	(d) Except to the extent inconsistent with specific provisions of this chapter, the provisions of Chapter 5 of Title 30
1192	shall govern the assessment, collection, review, and appeal of deficiencies of tax imposed by this title, and any interest and
1193	penalties thereon, and claims for refund of overpayment of taxes imposed by this chapter.
1194	(e) The fees, charges, and taxes imposed by the State under this chapter shall be in lieu of all county and municipal
1195	license fees and taxes upon the business of selling, growing, and manufacturing marijuana as such. Provided however,
1196	general occupational licenses fees and general taxes imposed uniformly on everyone within the class are not preempted.
1197	§ 1384. Retention of records by retail marijuana store licensee; penalties.
1198	(a) Each retail marijuana store licensee shall maintain and keep, for a period of 3 years, such records of marijuana
1199	products sold within this State by such retail marijuana store licensee, together with invoices, bills of lading, and other
1200	pertinent records and papers as may be required by the Commissioner for the reasonable administration of this chapter.
1201	(b) Whoever violates this section shall be fined not more than \$1,000 and the costs of prosecution, or imprisoned
1202	not more than 1 year, or both.
1203	§ 1385, Discontinuance, sale, or transfer of business by retail marijuana store licensee; penalties.
1204	(a) Whenever a person ceases to engage in business as retail marijuana store licensee within this State, all taxes,
1205	penalties, and interest under this chapter not yet due and payable under the provisions of this chapter shall, notwithstanding

1206	such provisions, become due and payable concurrently with the discontinuance, sale, or transfer, and the retail marijuana		
1207	store licensee shall concurrently with such discontinuance, sale, or transfer make a report and pay all such taxes, interest,		
1208	and penalties.		
1209	(b) If a retail marijuana store license is transferred under § 1366 of this chapter, the purchaser or transferee shall be		
1210	liable to this State for the amount of all taxes, penalties, and interest under this chapter, accrued against any retail marijuana		
1211	store licensee selling or transferring a business, on the date of such sale or transfer, but only to the extent of the value of the		
1212	property and business thereby acquired from such distributor or retailer.		
1213	(c) A person who violates this section is punished with a fine of not less than \$50 and the costs of the prosecution,		
1214	or imprisoned not more than 1 year, or both.		
1215	§ 1386. Rules and regulations.		
1216	The Commissioner shall make and publish such rules and regulations with respect to the collection and payment of		
1217	the taxes imposed by this chapter as it deems proper, and all such rules and regulations that are not inconsistent with the		
1218	provisions of this chapter have the force and effect of law.		
1219	§ 1387. Deposit of receipts.		
1220	(a) All money received by the Division of Revenue under this chapter shall be allocated as follows:		
1221	(1) All marijuana tax money and all money received through fees or other mechanisms must be deposited in		
1222	accordance with § 6103(a) of Title 29 and credited to the Marijuana Regulation Fund.		
1223	(2) Each month, 7% of total marijuana tax money received from the preceding month shall be withdrawn from		
1224	the Marijuana Regulation Fund and credited to the Justice Reinvestment Fund.		
1225	(b) The State Treasurer shall invest the Funds consistent with the investment policies established by the Cash		
1226	Management Policy Board. The State Treasurer shall credit interest to the Funds on a monthly basis consistent with the rate		
1227	established by the Cash Management Policy Board.		
1228	§ 1388. Appropriation of revenue.		
1229	(a) The funds in the Marijuana Regulation Fund in each fiscal year must be appropriated by the General Assembly		
1230	as follows:		
1231	(1) To the administrative costs and expenses of the Commissioner and the Division, including administrative		
1232	expenses, including payroll and other employment costs.		
1233	(2) To the administrative costs and expenses of the Department of Justice incurred to administer		

1234	(2) After the payment under paragraph (1) and (2) of this section, and the transfer to the Justice Reinvestment		
1235	Fund set forth in § 1387(a)(2) of this subchapter, any remainder shall be appropriated as determined by the General		
1236	Assembly.		
1237	(b) The funds in the Justice Reinvestment Fund in each fiscal year shall be appropriated to the Department of		
1238	Justice to administer grants, contracts, services, or initiatives that focus on any of the following:		
1239	(1) Restorative justice, jail diversion, workforce development, industry specific technical assistance or		
1240	mentoring services for economically disadvantaged persons in disproportionately impacted areas.		
1241	(2) Addressing the underlying causes of crime, reducing drug-related arrests, and reducing the prison		
1242	population in this state.		
1243	(3) Creating or developing technology to assist with the restoration of civil rights and expungement of		
1244	criminal records.		
1245	Any remainder in the Fund at the end of a fiscal year is not subject to reversion.		
1246	§ 1389. Financial statements of the Commissioner.		
1247	The Commissioner shall render an account to the State Treasurer, in the manner and at the time required by the		
1248	latter, of its receipts and disbursements, and of its assets and liabilities. The State Treasurer may not, however, require such		
1249	reports to be rendered more often than quarterly.		
1250	§ 1390. Annual audit.		
1251	The State Auditor of Accounts shall annually examine and audit the operation of the Office of the Commissioner.		
1252	Section 6. Amend § 1903, Title 30 of the Delaware Code by making deletions as shown by strike through and		
1253	insertions as shown by underline as follows:		
1254	§ 1903. Computation of taxable income.		
1255	(e) In computing net income for businesses operating in compliance with Chapter 49A of Title 16 or Chapter 13 of		
1256	Title 4, there is allowed as a deduction from state taxes all the ordinary and necessary expenses paid or incurred during the		
1257	taxable year in carrying on any trade or business, including reasonable allowance for salaries or other compensation for		
1258	personal services actually rendered.		
1259	Section 7. The regulations required by § 1331 of Title 4 must be adopted not later than 1 year after the effective		
1260	date of this Act.		
1261	Section 8. Amend § 1448, Title 11 of the Delaware Code by making deletions as shown by strike through and		
1262	insertions as shown by underline as follows:		
1263	§ 1448. Possession and purchase of deadly weapons by persons prohibited; penalties.		

(a) Except as otherwise provided in this section, the following persons are prohibited from purchasing, owning, 1264 possessing, or controlling a deadly weapon or ammunition for a firearm within the State: 1265 (9) Any person, if the deadly weapon is a semi-automatic or automatic firearm, or a handgun, who, at the 1266 same time, possesses a controlled substance in violation of § 4763, or § 4764 4763 of Title 16. 1267 Section 9. If any provision of this Act or the application of this Act to any person or circumstance is held invalid, 1268 the provisions of this Act are severable if the invalidity does not affect the other provisions of this Act that can be given 1269 effect without the invalid provision or the application of this Act that can be given effect without the invalid application. 1270 Section 10. This Act shall become effective upon appropriation of funds to implement its provisions. 1271

SYNOPSIS

The Delaware Marijuana Control Act regulates and taxes marijuana in the same manner as alcohol. It allows adults over the age of 21 to legally possess and consume under 1 ounce of marijuana for personal use. It does not permit people to grow their own marijuana.

Section 1: Amends Chapter 47 of Title 16 to provide that the offenses and penalties under Uniform Controlled Substances Act do not apply to marijuana-related conduct allowed under the Delaware Marijuana Control Act or the Delaware Medical Marijuana Act, Chapter 49A of Title 16.

Section 2: Amends § 4764 of Title 16 to eliminate any penalty for possessing 1 ounce or less of marijuana for individuals over the age of 21 but maintains the existing civil penalty or civil citation for individuals under 21.

Section 3: Amends § 4902A of Title 16 so that the definition of a registered safety compliance facility includes not just marijuana produced for medical use but also marijuana produced under the Delaware Marijuana Control Act.

Section 4: Amends Chapter 4 of Title 4 to expand the Division of Alcohol and Tobacco Enforcement's duties and powers to the Delaware Marijuana Control Act.

Section 5: This section creates the Delaware Marijuana Control Act. Subchapter I contains definitions and general provisions. Where definitions or analogous provisions exist in the Delaware Code, the definitions are referenced and the language from existing statutes is used. This section of the Act permits individuals over age 21 to possess, use, purchase, or transport 1 ounce (28 grams) or less of marijuana, no more than 5 grams of which may be concentrated, by individuals 21 years of age or older if the individuals are in compliance with this chapter. It permits the operation of marijuana businesses if they operate under licenses granted under Chapter 49A of Title 16, but imposes the same limits on hours and holiday sales as apply to sales of alcohol. It prohibits the use of marijuana in public, by drivers or passengers in vehicles, and prohibits the smoking of marijuana anywhere that smoking tobacco or ecigarettes is not permitted. Marijuana may not be sold in an establishment licensed to sell alcohol. It delineates the rights of property owners with respect to marijuana possession and consumption. There are specific provisions imposing the same penalties as with alcohol sales, for individuals under the age of 21 using false identification to purchase marijuana, and for businesses that fail to verify the age of marijuana consumers.

This Act creates the Delaware Marijuana Control Act Oversight Committee. This Oversight Committee will coordinate the implementation of this Act with the Medical Marijuana Program, the Division of Public Health, the Division of Substance Abuse and Mental Health, and the public. The Oversight Committee will review the effectiveness of the Delaware Marijuana Control Act in regard to the safe operation of facilities licensed under this Act, the impact of this Act on public safety, and the impact of this Act on public health. The Commissioner must submit an annual report to the Governor and the members of the General Assembly setting forth all matters of interest and all statistics concerning marijuana regulation and control in the State including: the number of licenses of each variety issued with the State; including the name and address of each person licensed to cultivate, manufacture, or sell marijuana or marijuana products in the State; the amount of marijuana and marijuana products sold within the State; the number of licenses of each kind granted and the number cancelled during the year, and the outcomes and effective of the issuance of social equity licenses.

Subchapter II creates the position of Marijuana Commissioner and an Appeals Commission. The Commissioner has the power to establish health and safety regulations for marijuana cultivation that are consistent with applicable rules and regulations established by the Department of Natural Resources and Environmental Control and the Department of Agriculture. The Commissioner must consult with the Division of Alcohol and Tobacco Enforcement before adopting or establishing policies that concern enforcement. Finally, they must coordinate with the Division of Small Business,

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Development, and Tourism so that potential businesses licensed under this Act have access to programs, particularly those that support small businesses owned by minorities, women, and veterans.

Subchapter III sets up the regulations and licenses under the Delaware Marijuana Control Act. The Marijuana Commissioner has the authority to adopt regulations to implement this Act and includes specific requirements that marijuana establishments must meet to obtain licenses. Regulations must require that products containing marijuana use of a symbol and a standard measurement to be used on all marijuana products so they are easily identified as containing marijuana and consumers can identify the amount of marijuana in different products; be in opaque, child-resistant packaging; and contain a warning label explaining evidence-based harms from consuming marijuana, including the impact on developing brains. The regulations must also contain security requirements, testing requirements, advertising restrictions, and require that food products comply with State food safety laws.

There are separate licensing requirements for retail marijuana stores, marijuana testing facilities, marijuana cultivation facilities, and marijuana product manufacturing facilities. Licensing requirements also differ between open licenses, social equity licenses, and microbusiness licenses. There is a \$10,000 biennial fee for most open licenses, with reduced licensing fees for microbusinesses and social equity licenses. Cultivation licenses are determined square footage of the grow rates. As part of the competitive scoring process the Commissioner will use to determine which applicant may obtain licenses to operate each type of marijuana establishment, applicants for open licenses will submit a business plan, an environmental and sustainability plan, as well as attestations affirming that (1) the applicant has a project labor agreement with a bona fide labor organization, and (2) the applicant has or will utilize a project labor agreement.

Subchapter III establishes the criteria for a social equity applicant, requires the Commissioner to develop a financial assistance and technical assistance programming to aid social equity applicants. It also establishes the criteria for a microbusiness license.

Subchapter VII provides the Commission the authority to refuse approval of changes in the ownership, officers, or directors, financial interest or lease in connection with any license. The subchapter also details the requirements when there is a change in ownership of a license or licensee, a change in officers and directors, and changes in the financial interest of a license or licensee.

Subchapter VIII creates the Marijuana Regulation Fund and the Justice Reinvestment Fund. The Regulation Fund will consist of fees collected, penalties imposed, and taxes collected under this Act. It creates the marijuana control enforcement tax on retail marijuana in the amount of 15%. 7% of the tax revenue collected will be allocated to the Justice Reinvestment Fund, under the management of [state agency/division] where it will be used for projects to improve quality of life for communities most impacted by the prohibition of marijuana and "war on drugs" era policies.

Section 6: Creates a State tax deduction for all ordinary and necessary expenses paid or incurred by a marijuana establishment to reflect the inability of a business licensed under this Act to deduct these expenses from federal taxes and thus state taxes. This creates a more level playing field with other businesses.

Section 7: Provides that the initial regulations required under this Act be adopted not later than 12 months after the effective date of this Act.

Section 8: Removes possession of marijuana from the list of activities that prohibits a person from at the same time possessing a handgun.

Section 9: Makes the provisions of the bill severable.

Section 10: Makes the bill effective upon appropriation of funds for implementation.

This bill differs from House Bill No. 150 in the following ways:

Incorporates HA1 and 2 to HB150 regarding standardization of assessments and accreditation processes.

Adds the requirement of a comprehensive business plan to the competitive scoring criteria for licenses,

Incorporates HA4 to HB150, requiring ongoing communication between the Commissioner and the Department of Agriculture regarding marijuana and hemp cultivation, allowing for the grant of a conditional license for an applicant who is working to secure a physical location, making technical changes to the revenue administration portion of the Control Act.

Incorporates HA5 to HB150 regarding rights of employers.

Incorporates HA6 removing financial assistance for social equity applicants and instead authorizing the Commissioner to explore opportunities for public and private financial assistance.

Incorporates HA7 regarding safety packaging requirements.

Incorporates HA10, removing the requirement that an applicant submit an attestation affirming the applicant has a project labor agreement or will utilize a project labor agreement for construction of a marijuana cultivation facility.

Directs 7% of the marijuana tax revenue to a Justice Reinvestment Fund to be used for programs and initiatives meant to restore and benefit communities most harmed by "war on drug" era policies.

Removes expungement provisions, as they were rendered duplicative by the passage of Senate Bills 111 and 112.

Delaware General Assembly (/)

151st General Assembly (Present) **House Amendment 7 to House Bill 305**

Bill Progress

Current Status:

Introduced 3/10/22

What happens next?

Amendment is attached to the legislation and awaits consideration

Bill Details

View Parent Bill

HB 305 -HA 7 w/ HA 1, HA 1 to HA 1 (/BillDetail/79083)

Introduced on:

3/10/22

Primary Sponsor:

Michael Smith (/LegislatorDetail?personId=13596)

Additional Sponsor(s):

Co-Sponsor(s):

Original Synopsis:

conditions of employment including but not limited to accommodation, policies, or discipline This amendment is intended to ensure that the Delaware Marijuana Control Act does not impact or impose requirements on employers with respect to terms and

Bill Text

Original Text:

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Amendments

	Amendment
	Status
	Introduction Date
No Records Available	Primary Sponsor
	View Details

Roll Calls

	Chamber Result Date	
No Records Available	Vote Type	
	Yes	
	No	
	Not Voting	
	Absent	
	PDF	
	1	

Actions History

Ĭ	Date	
	Action	
*		

No Records Available

Legislation Detail Feeds

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SPONSOR: Rep. Michael Smith

HOUSE OF REPRESENTATIVES 151st GENERAL ASSEMBLY

HOUSE AMENDMENT NO. 7 TO HOUSE BILL NO. 305

1 AMEND House Bill No. 305 by inserting after line 118 the following:

- 2 "(d) Nothing in this chapter is intended to impact or impose any requirement or restriction on employers with
- 3 respect to terms and conditions of employment including but not limited to accommodation, policies, or discipline.".

SYNOPSIS

This amendment is intended to ensure that the Delaware Marijuana Control Act does not impact or impose requirements on employers with respect to terms and conditions of employment including but not limited to accommodation, policies, or discipline.

TAB 18

Delaware General Assembly (/)

Q

Senate Bill 49

151st General Assembly (Present)

Bill Progress

Current Status:

Out of Committee 3/24/21

What happens next?

Reported from Committee; to list ready for consideration (Ready List)

Bill Details

Introduced on:

1/22/21

Primary Sponsor:

Walsh (/LegislatorDetail?personId=3131)

Additional Sponsor(s):

Sen. Brown (/LegislatorDetail?personId=13600)

Rep. Osienski (/LegislatorDetail?personId=112)

Co-Sponsor(s):

Pinkney_(/LegislatorDetail?personId=24000), Poore_(/LegislatorDetail?personId=249), Sokola_(/LegislatorDetail?personId=90), Sturgeon_(/LegislatorDetail?personId=240), Sturgeon_(/LegislatorDetail?personId=90), Sturgeon_(/LegislatorDetail?personId=240), Sokola_(/LegislatorDetail?personId=90), Sturgeon_(/LegislatorDetail?personId=240), Sokola_(/LegislatorDetail?personId=90), Sturgeon_(/LegislatorDetail?personId=240), Sokola_(/LegislatorDetail?personId=240), Sokola_(/LegislatorDetail?personId=90), Sturgeon_(/LegislatorDetail?personId=240), Sokola_(/LegislatorDetail?personId=90), Sokola_(/LegislatorDetai Sen. Ennis (/LegislatorDetail?personId=5), Gay (/LegislatorDetail?personId=13474), Hansen (/LegislatorDetail?personId=3212), Lockman (/LegislatorDetail? personId=13602), Townsend (/LegislatorDetail?personId=13) personId=13601), Mantzavinos (/LegislatorDetail?personId=1272), S. McBride (/LegislatorDetail?personId=23999), Paradee (/LegislatorDetail?personId=355)

personId=24001), K. Williams (/LegislatorDetail?personId=198) Reps. Brady (/LegislatorDetail?personId=124), Kowalko (/LegislatorDetail?personId=176), Lambert (/LegislatorDetail?personId=24002), Morrison (/LegislatorDetail?

Long Title:

PROCUREMENT ACT. AN ACT TO AMEND TITLE 29 OF THE DELAWARE CODE RELATING TO THE PREVAILING WAGE LAW AND ITS APPLICABILITY TO THE STATE

Original Synopsis:





1/4

Prevailing Wage Law, and does not otherwise expand or limit the entity's duties and liabilities under any other governing statute. This Act makes technical corrections governed by the SPA. The bill is curtailed such that it will only apply to the University's designation as a "state agency" for the limited purpose of the application of the unions working on public work projects at or for the University of Delaware enjoy the same protections of the Prevailing Wage Law as they would on any other project College, must comply with the terms of the Prevailing Wage Law for projects secured under the State Procurement Act. This Act ensures that laborers and trade included in this Act. to conform existing law to the standards of the Delaware Legislative Drafting Manual, including to ensure the consistency of language throughout the provisions This act clarifies that the University of Delaware, like other institutes of higher learning including Delaware State University and Delaware Technical and Community

Volume:Chapter: 0

X

Advisory Number:

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Fiscal Note/Fee Impact:

Not Required

Effective Date:

Takes effect upon being signed into law

Sunset Date:

NA

Bill Text

Original Text:

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Amendments

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Committee Reports



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Roll Calls								
Chamber	Result	Date	Vote Type	Yes	O	Not Voting	Absent	PDF

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Actions History

ACTIOITS TITISCOTY	ысту
Date	Action
1/22/21	Introduced and Assigned to Labor Committee in Senate
3/24/21	Reported Out of Committee (Labor) in Senate with 2 Favorable, 2 On Its Merits

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SPONSOR: Sen. Walsh & Sen. Brown & Rep. Osienski
Sens. Ennis, Gay, Hansen, Lockman, Mantzavinos,
S. McBride, Paradee, Pinkney, Poore, Sokola, Sturgeon,
Townsend; Reps. Brady, Kowalko, Lambert, Morrison,
K. Williams

DELAWARE STATE SENATE 151st GENERAL ASSEMBLY

SENATE BILL NO. 49

AN ACT TO AMEND TITLE 29 OF THE DELAWARE CODE RELATING TO THE PREVAILING WAGE LAW AND ITS APPLICABILITY TO THE STATE PROCUREMENT ACT.

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

1	Section 1. Amend § 6902, Title 29 of the Delaware Code by making deletions as shown by strike through and
2	insertions as shown by underline as follows and by redesignating accordingly:
3	§ 6902 Definitions
4	(1) "Agency" means every board, department, bureau, commission, person or group of persons or other authority
5	which directly receives moneys under any budget appropriation act or supplemental appropriation act and which was
6	created and now exists or hereafter is created to:
7	a. Execute, supervise, control and/or administer governmental functions under the laws of this State;
8	a nd/ or
9	b. To perform Such governmental functions under the laws of this State, or to perform such other
10	duties as may be prescribed; and/or
11	c. To collect Collect and/or use any taxes, fees, licenses, permits or other receipts for service or otherwise
12	for the performance of any function or related to or supported in whole or in part by the laws of this State; and/or
13	d. To administer Administer any laws providing for the collection of taxes, fees, permits, licenses or other
14	forms of receipts from any sources whatsoever for the use of the State or any agency of the State.
15	"Agency" shall-include includes the University of Delaware, Delaware Technical and Community College, and the
16	Delaware State University but shall not include any local government unit or agency receiving only grants-in-aid
17	appropriations from the State and no other appropriations, as described herein, the University of Delaware, volunteer
18	ambulance/rescue companies, volunteer fire departments and the Delaware Transit Corporation. Nothing in this paragraph
19	shall be deemed to exempt any entity that is otherwise required to comply with § 6960 of this title.
20	(6) "Covered agency" means any agency except school districts, Delaware Technical & Community College, the
21	Delaware State University, the University of Delaware, and the Legislative Branch of State government.

Page 1 of 3

SD: FJM: CBK Released: 01/22/2021 03:08 PM 4761510007

Section 2.	Amend § 6960,	Title 29 of the	Delaware	Code by making	deletions	as shown by	strike	through and
insertions as shown	by underline as f	ollows.						

- (a) The specifications for every contract or aggregate of contracts relating to a public works project in excess of \$500,000 for new construction (including painting and decorating) or \$45,000 for alteration, repair, renovation, rehabilitation, demolition or reconstruction (including painting and decorating of buildings or works) to which this State or any subdivision thereof, for which State funds are appropriated, including the University of Delaware, is a party and for which the State appropriated any part of the funds and which requires or involves the employment of mechanics and/or laborers shall contain a provision stating the minimum wages to be paid various classes of laborers and mechanics which shall be based upon the wages that will be determined by the Delaware Department of Labor, Division of Industrial Affairs, to be prevailing in the county in which the work is to be performed.
- Section 3. Amend § 7419 of Chapter 29 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 7419 Approval of plans, specifications, estimates and cash flows of projects.

- (a) <u>University of Delaware</u>, Delaware Technical and Community College, Delaware State University and all state departments and agencies shall submit to Facilities Management of the Office of Management and Budget all proposed contracts for architectural services and all architectural, structural, electrical and mechanical plans, specifications and cost estimates. Facilities Management of the Office of Management and Budget shall be responsible for reviewing and approving such plans, specifications and cost estimates prior to bid advertisement, and no such contracts nor contracts for construction and reconstruction of such projects (except highway construction and reconstruction contracts and school district minor capital improvements contracts) shall be executed without the prior approval of Facilities Management of the Office of Management and Budget. All such contracts shall be let on the condition, among others, that the contractor comply with the State's equal opportunity laws. Facilities Management of the Office of Management and Budget shall insure that approved projects are not inconsistent with any authorization of budget act.
- (b) Each state agency, department and institution of higher learning to which proceeds of bonds or notes are appropriated, must, on an annual basis, report to the Director of the Office of Management and Budget the status and anticipated cash flow for each project which is not complete.

SYNOPSIS

This act clarifies that the University of Delaware, like other institutes of higher learning including Delaware State University and Delaware Technical and Community College, must comply with the terms of the Prevailing Wage Law for projects secured under the State Procurement Act. This Act ensures that laborers and trade unions working on public work projects at or for the University of Delaware enjoy the same protections of the Prevailing Wage Law as they would on any

Page 2 of 3

other project governed by the SPA. The bill is curtailed such that it will only apply to the University's designation as a "state agency" for the limited purpose of the application of the Prevailing Wage Law, and does not otherwise expand or limit the entity's duties and liabilities under any other governing statute.

This Act makes technical corrections to conform existing law to the standards of the Delaware Legislative Drafting Manual, including to ensure the consistency of language throughout the provisions included in this Act.

Author: Senator Walsh

Page 3 of 3

SD: FJM: CBK Released: 01/22/2021 03:08 PM 4761510007

Panel 2: Recent Decisions Affecting the Trial Court's Authority to Limit an Attorney's Ability to Work in Delaware (Lessons from L. Lin Wood, Jr.)

Matthew Boyer, Esquire Connolly Gallagher





- University of Virginia School of Law (J.D., 1986)
- Harvard College (B.A., 1980)
 Major: English and American
 Literature and Language
 Honors: cum laude
- Newark High School, Newark, Delaware (1975)

Bar Admissions

Education

- Delaware, 1987
- United States District Court District of Delaware, 1987
- United States Supreme Court, 1994
- United States Court of Appeals Federal Circuit, 2002
- United States Court of Appeals 3rd Circuit, 2003

Professional Experience

 Law Clerk to The Honorable Chief Justice Andrew D.
 Christie, Delaware Supreme Court (1986 - 1987)

Honors

- Delaware Today Top Lawyers
 Employment-Labor Law,
 Employee
- The Best Lawyers in America® -Ethics and Professional Responsibility Law, Employment Law -Management, Employment Law - Individuals

Matthew F. Boyer

302-884-6585

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As co-chair of the firm's labor and employment group, Matt provides legal counsel and litigation services on a broad range of employment law issues. His employment practice includes compliance counseling, employment discrimination litigation, drafting and enforcement of employment agreements and restrictive covenants, internal investigations, and employment-related mediations. Matt also works closely with the firm's Government Law Group in defending Delaware State agencies and municipalities in high-profile litigation. Most recently, he assisted in successfully defending the constitutionality of the Delaware's vote-by-mail statute in two separate expedited litigations prior to the 2020 general election. Republican State Comm. v. Dep't of Elections, 2020 WL 5758695 (Del. Ch. Sept. 28, 2020); League of Women Voters of Delaware, Inc. v. Dep't of Elections, 2020 WL 5998161 (Del. Ch. Oct. 9, 2020). Previously, Matt was part of the team that successfully defended the State of Delaware before the United States Supreme Court in an original jurisdiction action brought by New Jersey that challenged Delaware's sovereignty over the Delaware River within its historic Twelve-Mile Circle. New Jersey v. Delaware, 552 U.S. 597 (2008). Since 2008, Matt has served as a special master by appointment of the Delaware Superior Court including in cases pending in its Complex Commercial Litigation Division and he is a Superior Court mediator.

Drawing on his prior service with the Delaware Supreme Court's Office of Disciplinary Counsel and the Board of Bar Examiners, Matt also represents attorneys, physicians, social workers, and other professionals in regulatory and disciplinary proceedings. He provides advice on legal ethics issues and is a frequent speaker at continuing legal education programs on legal ethics. Matt has been selected for inclusion in The Best Lawyers in America® for employment law since 2011, and in 2018 he earned the "Lawyer of the Year" designation for ethics and professional responsibility law, Delaware. Matt has been identified in Delaware Super Lawyers and Delaware Today's Top Lawyers for employment law. In 2019, he was presented with the Delaware State Bar Association's Daniel L. Herrmann Professional Conduct Award.

Representative Experience

- League of Women Voters v. State of Delaware Department of Elections, 250 A.3d 922 (Del. Ch. 2020)
- Eaton Corp. v. Geisenberger, 2020 WL 5531589, at *1 (D. Del. Sept. 30, 2020)
- Republican State Committee v. State of Delaware Department of Elections, 250 A.3d 911 (Del. Ch. 2020)

Publications

- Practical Law State Q&A Employee Privacy Laws: Delaware Thomson Reuters, September 2019
- The Role of Historical Context in *New Jersey v. Delaware III* Delaware Law Review, 2008

Limiting Trial Court Sanctions Delaware Supreme Court Decisions Addressing Attorney Misconduct 2022

DSBA CLE -- Thursday, February 24, 2022 Luke W. Mette, Esq.

The Delaware Supreme Court has the inherent and exclusive authority to discipline lawyers under the Delaware Lawyers' Rules of Professional Conduct ("DLRPC").

- Delaware Lawyers' Rules of Disciplinary Procedure ("DLRDP") 1(a) (Inherent power and authority)
- In re Tenenbaum, 880 A.2d 1025, 1026 (Del. 2005); In re Landis, 850 A.2d 291, 293 (Del. 2004); In re Appeal of Infotechnology Inc. Shareholder Litigation, 582 A.2d 215 (Del. 1990)

But Delaware trial courts also have the inherent power and duty to resolve motions, enforce their own orders, revoke *pro hac vice* orders, sanction bad faith and delay, demand respect and decorum, and protect judicial officers from insult (generally, to protect the integrity and fairness of the proceedings, to protect the administration of justice, and to vindicate the authority of the court itself).

• In re Hurley, 257 A.3d 1012 (Del. 2021); Hunt v. Court of Chancery, 254 A.3d 396 (Del. 2021); Crumplar v. Superior Court, 56 A.3d 1000 (Del. 2012); Disabatino v. Salicete, 671 A.2d 1344 (Del. 1996); In re Appeal of Infotechnology Inc. Shareholder Litigation, 582 A.2d 215 (Del. 1990)

There is some substantive overlap between the DLRPC and the power of the trial court in respect of controlling certain attorney conduct.

- Compare motions to disqualify opposing counsel with DLRPC 1.7-1.11
- Compare Rule 11 with DLRPC 3.1
- Compare discovery sanctions with DLRPC 3.4(a, c, d)
- Compare motions to withdraw with DLRPC 1.16
- Compare motions for pretrial and trial gag orders re trial publicity with DLRPC 3.6
- Compare pro hac vice motions with DLRPC 5.5(c)(2)
- Compare inherent contempt power with DLRPC 3.2, 3.3, 3.4(c), 3.5(d), 4.4(a), 8.2, 8.4(d)

But the regimes are also different in purpose, substance and procedure.

Within these rails, how far can or should a Delaware trial court go to address attorney conduct?

- Motion practice; *pro hac vice*; contempt
- Professionalism, civility (and disability)?
 - In re Shorenstein Hays-Nederlander Theatres LLC Appeals, 213 A.3d 39 (Del. 2019)
 (Addendum); Paramount Communications Inc. v. QVC Network Inc., 637 A.2d 34 (Del. 1994) (Addendum)
 - DLRDP 19 (Disability proceedings in which a lawyer is alleged or declared to be incompetent or incapacitated)
- Attorney conduct that may have occurred outside the presence of the court (such as, in a transaction giving rise to litigation)?
- Referring lawyer conduct to ODC?

What does all of this mean for Delaware trial courts and lawyers practicing/appearing in Delaware?

CARTER PAGE, an individual,

•

Plaintiff,

: C.A. No. S20C-07-030 CAK

V.

.

OATH INC., a corporation,

•

Defendant.

Date Submitted: January 6, 2021 Date Decided: January 11, 2021

MEMORANDUM OPINION AND ORDER

Opinion following the Issuance of a Rule to Show Cause

Sean J. Bellew, Esquire, BELLEW LLC, 2961 Centerville Road, Suite 302, Wilmington, DE 19808. Attorney for Plaintiff.

John M. Pierce, Esquire, PIERCE BAINBRIDGE P.C., 355 S. Grand Ave., 44th Floor, Los Angeles, CA 90071. Attorney for Plaintiff. *Pro Hac Vice*

K. Lawson Pedigo, Esquire, MILLER KEFFER & PEDIGO PLLC, 3400 Carlisle Street, Suite 550, Dallas, TX 75204. Attorney for Plaintiff. *Pro Hac Vice*

L. Lin Wood, Esquire, L. Lin Wood, P.C., P.O. Box 52584, Atlanta, GA 30355. Attorney for Plaintiff. *Pro Hac Vice*

T. Brad Davey, Esquire and Jonathan A. Choa, Esquire, Potter Anderson & Corroon LLP, Hercules Plaza, P.O. Box 951, Wilmington, DE 19899. Attorney for Defendant

Elbert Lin, Esquire and David M. Parker, Equire, Hunton Andrews Kurth LLP, 951 E. Byrd Street, Richmond, VA 23219. Attorney for Defendant. *Pro Hac Vice*

Jonathan D. Reichman, Esquire and Jennifer Bloom, Esquire, Hunton Andrews Kurth LLP, 200 Park Avenue, New York, NY 10166. Attorney for Defendant. *Pro Hac Vice*.

Several weeks ago, and pursuant to Superior Court Civil Rule 90.1, I issued a Rule to Show Cause why the approval I had given to L. Lin Wood, Esquire to practice before this Court in this case should not be revoked. Mr. Wood is not licensed to practice law in Delaware. Practicing *pro hac vice* is a privilege and not a right. I respect the desire of litigants to select counsel of their choice. When out of state counsel is selected, however, I am required to ensure the appropriate level of integrity and competence.

During the course of this litigation, a number of high profile cases have been filed around the country challenging the Presidential election. The cases included, *inter alia*, suits in Georgia, Wisconsin and Michigan. Opinions were delivered in all of the States which were critical in various ways of the lawyering by the proponents of the lawsuits. In the Rule to Show Cause, I raised concerns I had after reviewing written decisions from Georgia and Wisconsin. Specifically, in Georgia, a lawsuit filed by Mr. Wood resulted in a determination that the suit was without basis in law or fact. The initial pleadings in the Wisconsin case were riddled with errors. I had concerns as listed in the Rule to Show Cause.

I gave Mr. Wood until January 6, 2021 to file a response. He did so at 10:09 p.m., January 6. The response focused primarily upon the fact that none

of the conduct I questioned occurred in my Court. The claim is factually correct.

In his response, Mr. Wood writes:

Absent conduct that prejudicially disrupts the proceedings, trial judges have no independent jurisdiction to enforce the Rules of Professional Conduct.

Mr. Wood also tells me it is the province of the Delaware Supreme Court to supervise the practice of law in Delaware and enforce our Rules of Professional Conduct. With that proposition I have no disagreement. In my view it misses the point and ignores the clear language of Rule 90.1. The response also contains the declaration of Charles Slanina, Esquire. I know Mr. Slanina and have the highest respect for him, especially for his work and expertise in the area of legal ethics. His declaration here focused on my lack of a role in lawyer discipline and was not helpful regarding the issue of the appropriateness and advisability of continuing *pro hac vice* permission.

Rule 90.1(e) reads in full:

Withdrawal of attorneys admitted *pro hac vice* shall be governed by the provisions of Rule 90(b). The Court may revoke a *pro hac vice* admission *sua sponte* or upon the motion of a party, if it determines, after a hearing or other meaningful opportunity to respond, the continued admission *pro hac vice* to be inappropriate or inadvisable.

The standard then I am to apply is if the continued admission would

be inappropriate or inadvisable.

I have no intention to litigate here, or make any findings, as to whether or not Mr. Wood violated other States' Rules of Professional Conduct. I agree that is outside my authority. It is the province of the Delaware Office of Disciplinary Counsel, and ultimately the Delaware Supreme Court, or their counterparts in other jurisdictions, to make a factual determination as to whether Mr. Wood violated the Rules of Professional Conduct. Thus, the cases cited by Mr. Wood are inapposite and of no avail. In Lendus, LLC v. Goode, 2018 WL 6498674 (Del. Ch. Dec. 10, 2018) and Crumpler v. Superior Court, ex. rel New Castle County, Del. Supr., 56 A.3d 1000 (Del. 2012), the courts allowed the foreign lawyer to withdraw as pro hac vice counsel and referred alleged ethical violations to the Office of Disciplinary Counsel. Neither of those is happening here. Similarly, in Kaplan v. Wyatt, 1984 WL 8274 (Del. Ch. Jan. 18, 1984), Chancellor Brown, on very different facts, allowed pro hac vice counsel to continue his representation but stressed that this did not constitute approval of his conduct and that ethical violations could be addressed elsewhere.

What I am always required to do is ensure that those practicing before me are of sufficient character, and conduct themselves with sufficient civility and truthfulness. Violations of Rules of Professional Conduct are for other entities to

judge based upon an appropriate record following guidelines of due process. My role here is much more limited.

In response to my inquiry regarding the Georgia litigation Mr. Wood tells me he was (only) a party, and the case is on appeal. He also tells me that the affidavit filed in support of the case only contained errors. Neither defense holds merit with me. As an attorney, Mr. Wood has an obligation, whether on his own or for clients, to file only cases which have a good faith basis in fact or law. The Court's finding in Georgia otherwise indicates that the Georgia case was textbook frivolous litigation.

I am also troubled that an error-ridden affidavit of an expert witness would be filed in support of Mr. Wood's case. An attorney as experienced as Mr. Wood knows expert affidavits must be reviewed in detail to ensure accuracy before filing. Failure to do so is either mendacious or incompetent.

The response to the Rule with regard to the Wisconsin complaint calls the failings "proof reading errors". Failure to certify a complaint for

injunction or even serve the Defendants are not proof reading errors. The Complaint would not survive a law school civil procedure class.

Prior to the pandemic, I watched daily counsel practice before me in a civil, ethical way to tirelessly advance the interests of their clients. It would dishonor them were I to allow this *pro hac vice* order to stand. The conduct of Mr. Wood, albeit not in my jurisdiction, exhibited a toxic stew of mendacity, prevarication and surprising incompetence. What has been shown in Court decisions of our sister States satisfies me that it would be inappropriate and inadvisable to continue Mr. Wood's permission to practice before this Court. I acknowledge that I preside over a small part of the legal world in a small state. However, we take pride in our bar.

One final matter. A number of events have occurred since the filing of the Rule to Show Cause. I have seen reports of "tweets" attributable to Mr. Wood. At least one tweet called for the arrest and execution of our Vice-President. Another alleged claims against the Chief Justice of the Supreme Court of the United States which are too disgusting and outrageous to repeat. Following

¹Mr. Wood in his response tells me he is not responsible, as he is listed as "Counsel for Notice". My reading of the docket is he was one of the counsel of record for the Plaintiffs, and thus fully responsible for the filing. Moreover, since I am not addressing choice of law issues with respect to professional misconduct, Delaware Rule of Professional Conduct 8.5 need not be discussed. Nor am I imposing any sanctions under Delaware Superior Court Civil Rule 11.

on top of these are the events of January 6, 2021 in our Nation's Capitol. No doubt these tweets, and many other things, incited these riots.

I am not here to litigate if Mr. Wood was ultimately the source of the incitement. I make no finding with regard to this conduct, and it does not form any part of the basis for my ruling. I reaffirm my limited role.

I am revoking my order granting Lin Wood, Esquire the privilege of representing the Plaintiff in this case. Given my ruling, here the hearing scheduled for January 13, 2021 is cancelled.² My staff will contact the parties to schedule as soon as possible a date for argument on the Defendant's Motion to Dismiss.

IT IS SO ORDERED.

Craig A. Karsnitz

cc: Prothonotary

FILED PROTHONOTARY SUSSEX COUNTY

²Rule 90.1 requires either a hearing on the issue or other meaningful opportunity to respond. Mr. Wood was afforded the latter.

EFiled: Jul 16 2021 04:52PM EDT Filing ID 66771351
Case Number 69,2021

IN THE SUPREME COURT OF THE STATE OF DELAWARE

CARTER PAGE, an individual, Plaintiff-Below, Appellant,))))
V.) No.: 69, 2021
OATH INC., a corporation, Defendant-Below, Appellee.	Appeal from the Superior Court of the State of Delaware in C.A. No. S20C-07-030 CAK

ANSWERING BRIEF OF AMICUS CURIAE IN SUPPORT OF AFFIRMANCE OF THE SUPERIOR COURT'S MEMORANDUM OPINION AND ORDER DATED JANUARY 11, 2021

Matthew F. Boyer (Del. Bar No. 2564) Lauren P. DeLuca (Del. Bar No. 6024) CONNOLLY GALLAGHER LLP 1201 North Market Street, 20th Floor Wilmington, DE 19801 (302) 757-7300 mboyer@connollygallagher.com ldeluca@connollygallagher.com

Dated: July 16, 2021 Amicus Curiae

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IDENTITY OF AMICUS, INTEREST, AND AUTHORITY TO FILE

By Order dated May 6, 2021, the Court appointed the undersigned member of the Delaware Bar, Matthew F. Boyer, as *amicus curiae* to file an answering brief in opposition to the opening brief of counsel for plaintiff-below appellant.¹

¹ Trans. I.D. 66578815.

NATURE AND STAGE OF THE PROCEEDINGS

The Nature and Stage of the Proceedings as set forth in Appellant's Amended Opening Brief is generally accurate, with two exceptions. First, while on January 6, 2021, Delaware counsel for L. Lin Wood, Jr., Esquire ("Wood") filed a Response to the Rule to Show Cause issued on December 18, 2021,² Wood did not respond "by affidavit." Second, while Wood apparently attempted to file a motion for reargument on January 19, 2021, without Delaware counsel, such motion does not appear on the docket.⁴ This is because he did not comply with the requirements set forth in Superior Court Rules of Civil Procedure 90.1(d) and 79.1(h).⁵

Appellant's Opening Appendix, at A9-68. References herein to the (Amended) Opening Brief are designated "OB at [page number]"; references to the Appendix to Appellant's Opening Brief are designated "A[page number]"; and references to the Appendix to Answering Brief of *Amicus Curiae* in Support of Affirmance are designated "AC[page number]."

³ *Cf.* OB at 1.

⁴ See OB at 2; A3-4.

⁵ See A77.

SUMMARY OF ARGUMENT

1. Denied. Wood contends that the Superior Court abused its discretion in revoking his admission pro hac vice under Superior Court Civil Rule 90.1 ("Rule 90.1") because (i) the revocation was based on conduct unrelated to this case, (ii) courts in the jurisdictions where the conduct occurred had not ruled that he had violated the applicable rules of professional conduct, and (iii) Wood's conduct in this case did not violate the Delaware Lawyers' Rules of Professional Conduct ("DLRPC") or prejudice the fairness of the proceedings. While each of these factual assertions is true, none of them suggests that the trial court misapplied Rule 90.1 or abused its discretion in revoking Wood's admission pro hac vice. The trial court applied Rule 90.1 as written and properly exercised its discretion in concluding that Wood's continued admission would be "inappropriate and inadvisable" based on his conduct in federal litigation in Georgia and Wisconsin contesting the 2020 presidential election, as addressed in the trial court's Memorandum Opinion and Order dated January 11, 2021 ("January 11 Order"). Wood's appeal should be denied and the January 11 Order affirmed.

⁶ OB at 3.

⁷ A69-76.

STATEMENT OF FACTS

A. The Rule to Show Cause

On December 18, 2020, the court issued *sua sponte* a Rule to Show Cause "why the permission to practice in this case issued to L. Lin Wood, Jr., Esquire should not be revoked." The Rule to Show Cause specifically identified numerous concerns regarding Wood's conduct in litigation in Georgia and Wisconsin following the initial granting of his admission *pro hac vice* by order dated August 18, 2021. Both the Georgia and Wisconsin cases sought expedited injunctive relief related to the general election on November 3, 2020.

The Rule to Show Cause first addressed a decision issued by the U.S. District Court for the Northern District of Georgia in *Wood v. Rattensperger* on November 20, 2020.¹⁰ Wood had challenged the constitutionality of the Georgia election process and filed a motion seeking a temporary restraining order enjoining certification of the United States general election results. In considering two factors relevant to the motion, *i.e.*, the balancing of the equities and the public interest, the *Wood* court found that "the threatened injury to Defendants as state officials and the

⁸ A5.

⁹ A5-8.

¹⁰ 501 F. Supp. 3d 1310 (N.D. Ga. Nov. 20, 2021), *aff'd*, 981 F.3d 1307 (11th Cir. 2020), *cert. denied*, 141 S. Ct. 1379 (2021).

public at large far outweigh any minimal burden on Wood."¹¹ As such, the court concluded that, "[v]iewed in comparison to the lack of any demonstrable harm to Wood, this Court finds no basis in fact or law to grant him the relief he seeks."¹² Quoting this language, the Rule to Show Cause reflected the court's concern that Wood's filing of a case without basis in fact or law may violate DLRPC 3.1, which states that a lawyer "shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis in law and fact for doing so"¹³

The Rule to Show Cause also reflected concern that Wood had "filed or caused to be filed" an affidavit in the Georgia litigation containing "materially false information." Specifically, the affidavit "misidentif[ied] the counties as to which claimed fraudulent voting information occurred." The Rule to Show Cause raised the issue of whether the filing of this false affidavit (had it occurred in Delaware) would violate certain provisions of the DLRPC. 16

¹¹ 501 F. Supp. 3d at 1331.

¹² *Id*.

A7. The Rule to Show Cause clarified that it was raising concerns related to conduct "which, had it occurred in Delaware, would violate" the DLRPC. A5.

¹⁴ A7.

¹⁵ *Id*.

A5, A7 (Page 1 of the Rule to Show Cause appears as A5; page 2 appears as A7; and page 3 appears as A6). The Rule to Show Cause cited DLRPC 1.1 (Competence); 3.1 (Meritorious Claims and Contentions); 3.3 (Candor to the Tribunal); 4.1(a) (Truthfulness in Statements/False statement of Material Fact), and alluded to DLRPC 8.4(c) (Dishonesty and Deceit). A7.

The Rule to Show Cause also cited a decision issued by the U.S. District Court for the Eastern District of Wisconsin in *Feehan v. Wisconsin Elections Commission*, on December 9, 2020.¹⁷ In that case Wood appeared as "one of the counsel of record."¹⁸ The Rule to Show Cause raised numerous concerns related to the pleadings filed therein, including those addressed by the Wisconsin court in an order dated December 2, 2020.¹⁹ Specifically, the Rule to Show Case states that it appeared that: (1) "[t]he suit was filed on behalf of a person who had not authorized it"²⁰; (2) "[t]he Complaint and related papers had multiple deficiencies"²¹; and (3) in

¹⁷ A6. The December 9 decision is reported at 506 F. Supp. 3d 596 (E.D. Wis. Dec. 9, 2020), *app. dismissed*, 2020 WL 9936901 (7th Cir. Dec. 21, 2020).

¹⁸ A6-7.

The December 2 order is attached hereto at AC7.

The unauthorized filing on behalf of an alleged co-plaintiff was not denied by Wood in this case and was reflected in later pleadings in the Wisconsin case. *See* Defendant Governor Evers's Brief in Support of His Petition for Attorneys' Fees and Sanctions (AC30). Wood's opposition to the defendant's motion for sanctions (AC60) does not deny that the complaint "named a co-plaintiff who reportedly had never consented to participating in this lawsuit" (AC32).

The deficiencies were first identified in the Wisconsin court's order dated December 2, 2020, which was discussed in the court's December 9, 2020 order. A6. The specific deficiencies identified in the December 2 order (and cited in the Rule to Show Cause) are as follows: (i) filings had been forwarded to defense counsel "at the following address" with no addresses listed (AC7-8); (ii) documents were allegedly filed under seal, but were not (AC8); (iii) while requesting a temporary restraining order, the complaint was not verified or supported by an appropriate affidavit, as required by court rules (AC8); (iv) the complaint contained no certification of efforts to notify the adverse parties, as required by court rules (AC8); (v) a motion for declaratory judgment was apparently filed in draft form (AC8); (vi) the papers asked for injunctive remedies but did not ask for a hearing (AC9); and

a response to defendant's motion to dismiss, a citation to a decision on a point of law "critical to the case," was found by the Wisconsin court "to be fictitious." The Rule to Show Cause noted that the foregoing conduct would appear to violate the DLRPC, specifically Rules 1.1, 3.1, 3.3, 4.1(a), and 8.4(c).

In sum, the Rule to Show Cause advised Wood and his Delaware counsel that the conduct cited therein "gives the Court concerns as to the appropriateness of continuing the order granting Mr. Wood authorization to appear in this Court *pro hac vice.*" The court gave both Wood and his Delaware counsel (as well as the defendant) until January 6, 2021 to respond to the Rule to Show Cause in writing, and indicated that counsel also would have an additional opportunity to address the Rule to Show Cause at a hearing on January 13, 2021. 24

B. The Response to the Rule to Show Cause

On January 6, 2021, Wood, through Delaware counsel, filed an eight-page Response to Rule to Show Cause (the "Response").²⁵ Therein, Wood stated that: (i) he was an attorney in good standing in the State of Georgia, including the federal

⁽vii) while the pleadings requested an "expedited" injunction, nothing therein indicated whether the plaintiffs were asking the court "to act more quickly than normal or why (AC9). See also A6.

²² A6.

²³ A8.

²⁴ *Id*.

²⁵ A9-16.

courts therein; and (ii) he had neither violated the DLRPC nor been cited for any performance deficiency, Rule 11 violation, or other violation of applicable rules, in this matter. While contending that his conduct in Georgia (and presumably in Wisconsin) was "not properly before the Court," he addressed briefly the concerns raised in the Rule to Show Cause. He then argued that the trial court had no jurisdiction to enforce the rules of professional conduct absent conduct that prejudicially disrupts the proceedings before it, and that it should not revoke his admission *pro hac vice* based on conduct in other jurisdictions. In support of these contentions, Wood relied in part on the Declaration of Charles Slanina, who opined that "it would likely be determined to be inappropriate for a Delaware trial judge to impose attorney discipline . . . for conduct which did not occur during or otherwise affecting a proceeding before the trial court."

With regard to the Georgia litigation, Wood claimed (incorrectly) that the court misapprehended that he was the plaintiff, not counsel, therein.³⁰ He also contended that the Georgia court determined only that there was an "insufficient basis to support the requested injunctive relief" and "did not criticize the merits of

²⁶ A10.

²⁷ A11-12.

²⁸ A12-13.

²⁹ A68.

³⁰ A11.

the underlying complaint."³¹ He acknowledged that the expert affidavit filed on his behalf therein contained an error but asserted that the affidavit was filed by his counsel without any intent to mislead the court.³²

With regard to the Wisconsin litigation, Wood contended that he was not the attorney of record but only "Counsel to be Noticed." He also stated he had never formally appeared during the eight-day period between the filing of complaint on December 1, 2020 and the order dismissing the case on December 9, 2020. He Beyond these general disclaimers, however, Wood provided no specific support for his current contention that the trial court erred by focusing on "factors, many of which were not directly attributable to Wood."

While Wood now contends that "it is unclear what, if any involvement he had in drafting the initial pleadings" in the Wisconsin case, ³⁶ he surely knew of his own

³¹ *Id*.

³² A11-12.

³³ A12.

³⁴ *Id.* The docket in the Wisconsin litigation shows that two Wisconsin attorneys, Daniel J. Eastman and Michael D. Dean, were designated as "*LEAD ATTORNEY*" and "*ATTORNEY TO BE NOTICED*," while Wood, along with six other non-Wisconsin attorneys, were designated as "*ATTORNEY TO BE NOTICED*." A49-50. Sidney Powell, whom Wood contended was the "attorney of record," is listed as an "*ATTORNEY TO BE NOTICED*" along with Wood. A12, A50.

OB at 5-6.

³⁶ OB at 6.

involvement. Yet, in his Response, he did not provide an affidavit or other evidence as to why he should not be held responsible for the numerous deficiencies and errors that the trial court invited him to address. Instead, Wood offered to withdraw his appearance as counsel admitted *pro hac vice*.³⁷

C. The Memorandum Opinion and Order Revoking Wood's Admission *Pro Hac Vice*

On January 11, 2021, the trial court issued a Memorandum Opinion and Order revoking its prior order granting Wood's admission *pro hac vice* in this case (the "January 11 Order" or "Order"). In so ruling, the court stressed that admission *pro hac vice* "is a privilege and not a right," and that it is the court's continuing obligation to "ensure the appropriate level of integrity and competence." ³⁸

The court noted in its Order that the Response (i) "focused primarily upon the fact that none of the conduct that [the trial judge] questioned occurred" in the court,³⁹ and (ii) argued that, "absent conduct that prejudicially disrupts the proceedings, trial judges have no independent jurisdiction to enforce the Rules of Professional Conduct."⁴⁰ The court did not dispute either the fact that the conduct in question occurred elsewhere, or the proposition regarding the court's limited jurisdiction to

³⁷ A14.

³⁸ A72.

³⁹ A71-72.

⁴⁰ A72.

enforce the DLRPC. However, the court found that these contentions "misse[d] the point" because they "ignore[d] the clear language of Rule 90.1."⁴¹

Quoting Rule 90.1, the court pointed out that applicable standard required it to determine "if the continued admission would be inappropriate or inadvisable."⁴² While the court agreed that it would be outside its authority to make a finding as to whether Wood violated the rules of professional conduct of Delaware or another State, ⁴³ the court had no intention of doing so. ⁴⁴ The court stressed that, while violations of the rules of professional conduct were "for other entities to judge based on an appropriate record," its role was "much more limited."⁴⁵ Under Rule 90.1, the

Id. Wood mistakenly contends that the court's Order "ignored" the Declaration of Charles Slanina. OB at 6. In fact, the Order specifically addressed the Slanina Declaration, finding it "unhelpful" regarding the specific issue before it, i.e., whether under Rule 90.1 it would be inappropriate or inadvisable to continue Wood's pro hac vice status. A72. The court also agreed with the Slanina Declaration insofar as it stated that it is "the province of authorities other than the Superior Court to make determinations respecting ethical violations." OB at 6; see A73 ("I have no intention to . . . make any findings[] as to whether or not Mr. Wood violated other States' Rules of Professional Conduct. I agree that is outside my authority. It is the province of the Delaware Office of Disciplinary Counsel, and ultimately the Delaware Supreme Court, or their counterparts in other jurisdictions, to make a factual determination as to whether Mr. Wood violated the Rules of Professional Conduct.").

⁴² A72.

⁴³ A73.

⁴⁴ *Id*.

⁴⁵ A72-73.

court's role is to "ensure that those practicing before [it] are of sufficient character, and conduct themselves with sufficient civility and truthfulness." 46

Turning to the specific concerns raised in the Rule to Show Cause, the court found unavailing Wood's contentions regarding his status as a party in the Georgia litigation and the errors in the affidavit filed therein.⁴⁷ Whether acting on his own or for clients, Wood had an obligation to file only cases that have a good faith basis in fact or law.⁴⁸ The finding of the Georgia court indicated instead that the Georgia litigation was "textbook frivolous litigation."⁴⁹ Similarly, the court did not find persuasive Wood's contention regarding the erroneous expert affidavit. The court stated that affidavits "must be reviewed in detail to ensure accuracy before filing" and that Wood's failure to conduct such a review was "either mendacious or incompetent."⁵⁰ The Order also rejected Wood's contentions relating to the Wisconsin proceeding, finding that the deficiencies therein went far beyond the "proof reading errors" that Wood acknowledged.⁵¹

⁴⁶ A73.

⁴⁷ A74.

⁴⁸ *Id*.

⁴⁹ *Id*.

⁵⁰ *Id*.

A74-75. The Trial Court also rejected Wood's contention that he was only "Counsel for Notice," finding that as he was one of the counsel of record, he was "fully responsible for the filing." A75 (footnote 1).

In all, the court found that "the conduct of Wood, albeit not in my jurisdiction, exhibited a toxic stew of mendacity, prevarication, and surprising incompetence." The conduct reflected in the decisions of the courts in Georgia and Wisconsin satisfied the court that "it would be inappropriate and inadvisable to continue Wood's permission to practice before this Court." While the court did not specifically address Wood's offer to withdraw in lieu of revocation, the Order recognized that other courts had accepted such offers while referring matters to disciplinary counsel, or raising that possibility, which the court stopped short of doing here. 54

Finally, in its Memorandum Opinion and Order granting plaintiff's motion to dismiss, dated February 11, 2021 (the "February 11 Order"), the trial court noted that Wood had attempted to file a motion to reargue the January 11 Order, but had failed to comply with the court's rules in doing so.⁵⁵

⁵² A75.

⁵³ *Id*.

A73. The court also noted certain additional conduct attributed to Wood since the filing of the Rule but made no finding with regard to it. On the contrary, the court stated that such conduct "does not form any part of the basis for [its] ruling," and reaffirmed its limited role. A76. With regard to its decision to issue the Order prior to the January 13 hearing, the court noted that Rule 90.1 requires "either a hearing on the issue or other meaningful opportunity to respond," and that Wood was afforded the latter. A76 (footnote 2).

⁵⁵ A77 (footnote 1).

ARGUMENT

I. The Court Correctly Applied Rule 90.1 and Properly Exercised Its Discretion in Determining That Wood's Continued *Pro Hac Vice* Admission Would Be Inappropriate and Inadvisable.

A. The Question Presented

The question presented is whether the Superior Court abused its discretion in revoking the admission *pro hac vice* of an out-of-state attorney under Rule 90.1 in light of the concerns set forth in the court's Rule to Show Cause regarding the attorney's conduct in two litigations in other jurisdictions, after giving the attorney a meaningful opportunity to respond in writing to the court's concerns, and after concluding that continued admission *pro hac vice* would be inappropriate and inadvisable.⁵⁶

To the extent Wood seeks to raise a constitutional issue by referring to "procedural due process measures" (OB at 8), Wood did not raise that issue in the court below and so cannot raise it here for the first time. Supr. Ct. R. 8.

B. The Standard and Scope of Review

The Court reviews questions of law *de novo* and therefore independently determines what Rule 90.1 requires.⁵⁷ The trial court's exercise of discretion in determining whether to grant or revoke the *pro hac vice* admission of out-of-state counsel is reviewed for abuse of discretion.⁵⁸ Wood does not contest that the abuse of discretion standard applies to the revocation of his admission *pro hac vice*.⁵⁹

In applying the abuse of discretion standard of review, the Court does not substitute its "own notions of what is right for those of the trial judge, if his [or her] judgment was based upon conscience and reason, as opposed to capriciousness or arbitrariness." When the trial court "has not exceeded the bounds of reason in view of the circumstances and has not so ignored recognized rules of law or practice so as to produce injustice, its legal discretion has not been abused." The question is not whether we agree with the court below, but rather if we believe 'that the judicial

⁵⁷ See Crumplar v. Superior Ct. ex rel. New Castle Cnty., 56 A.3d 1000, 1005 (Del. 2012).

Vrem v. Pitts, 2012 WL 1622644, at *2 (Del. May 7, 2012). Vrem involved an analogous appeal of a decision to revoke multiple admissions pro hac vice after learning of the attorneys' firm's extensive activities in Delaware. Therein, the Court noted that "Rule 90.1(a) provides that the decision whether to admit an out-of-state attorney pro hac vice lies within the discretion of the Superior Court" and applied the abuse of discretion standard of review.

⁵⁹ OB at 8-9.

⁶⁰ In re Asbestos Litig., 228 A.3d 676, 681 (Del. 2020).

⁶¹ *Id*.

mind in view of the relevant rules of law and upon due consideration of the facts of the case could reasonably have reached the conclusion of which complaint is made."62

⁶² *Id*.

C. The Merits of the Argument

The trial court's January 11 Order should be affirmed because the trial court complied with Rule 90.1 and properly exercised its discretion in determining that Wood's continued admission *pro hac vice* would be inappropriate and inadvisable under the circumstances. Wood's primary contention on appeal is that the court was required to apply, and effectively incorporate into Rule 90.1, case law that governs issues that arise in different contexts, in which a trial court purports to enforce the DLRPC (principally, In re: Infotechnology, Inc. 63) or seeks to impose sanctions under Rule 11 (principally, Crumplar v. Superior Court ex rel. New Castle County⁶⁴). Wood's contention fails because Rule 90.1 governs the unique issues that arise in the context of granting, and considering whether to continue, the admission pro hac vice of an out-of-state attorney. Wood's remaining contention, that the court abused its discretion in concluding his continued admission pro hac vice would be inappropriate and inadvisable in light of his conduct in the Georgia and Wisconsin litigations, is also without merit for the reasons discussed below.

⁶³ 582 A.2d 215 (Del. 1990).

⁶⁴ 56 A.3d 1000 (Del. 2012).

1. The Trial Court Properly Applied Rule 90.1 in Addressing Whether Wood's Admission *Pro Hac Vice* Should Be Continued.

Rule 90.1 grants the trial court broad discretion to determine whether attorneys who are not members of the Delaware Bar should be permitted to appear, and to continue to participate, in a proceeding before the court. This discretion includes consideration of an attorney's conduct in other jurisdictions, whether before or after admission *pro hac vice*. Here, the trial court complied with Rule 90.1 by identifying its concerns with Wood's conduct in its December 18 Rule to Show Cause, by offering him a meaningful opportunity to respond, and by properly exercising its discretion in determining that his continued admission *pro hac vice* would be inappropriate and inadvisable under the circumstances.

The text of Rule 90.1, as adopted on March 1, 1987, provided that attorneys who are not members of the Delaware Bar may be admitted *pro hac vice* in the discretion of the court; however, no provision was made at that time for the revocation of an admission *pro hac vice*. In 1992, the Court amended Rule 90.1 to fill that gap. Subpart (d), regarding withdrawal of attorneys admitted *pro hac vice*, was re-designated as subpart (e), and the following provision was added to subpart (e) to address revocation of a *pro hac vice* admission:

⁶⁵ See Super. Ct. Civ. R. 90.1 (1987 Interim Supplement). The original version of the rule is included in the appendix to this brief at AC1-3.

The Court may revoke a pro hac vice admission sua sponte or upon the motion of a party, if it determines, after a hearing or other meaningful opportunity to respond, the continued admission pro hac vice to be inappropriate or inadvisable.⁶⁶

This provision remains the same today. Thus, under Rule 90.1(e), the court may revoke an admission *pro hac vice sua sponte* if it (1) provides the attorney "a hearing or other meaningful opportunity to respond," and then (2) determines within its discretion that the continued admission is "inappropriate or inadvisable."

Rule 90.1 does not require a hearing, as its directive to grant a "hearing or other meaningful opportunity to respond" makes clear. Rule 90.1(e) also does not require that the court find a violation of the DLRPC, or determine that conduct at issue threatens the fairness of the proceeding before it. Rather, the Rule authorizes the court to determine whether an admission *pro hac vice*, having been granted in the court's discretion as a privilege,⁶⁷ should be "continued" in the court's discretion,

⁶⁶ See Super. Ct. Civ. R. 90.1 (1992 Supplement). The 1992 amendment rule is included in the appendix to this brief at AC4.

See, e.g., Manning v. Vellardita, 2012 WL 1072233, at *3 (Del. Ch. Mar. 28, 2012) ("[T]he appointment of an attorney admitted to the bar of a sister state to the Delaware bar pro hac vice is a privilege. Such admissions are typically granted as a matter of course, on the assumption that the prospective admittee has represented himself openly and honestly before the Court. Thus, to maintain the value to this Court of extending the privilege of pro hac vice admission to attorneys from other jurisdictions, it is necessary that those attorneys accorded this privilege are held to a high level of conduct including, importantly, candor with the Court.").

or whether continued admission would be "inappropriate or inadvisable" in light of information that comes to the court's attention following the initial admission.

The "inappropriate or inadvisable" standard is notably broad, as befits a decision entrusted to the court's discretion.⁶⁸ These terms give the court wide latitude to consider and determine the appropriateness and advisability of continuing (or not) the admission *pro hac vice* of out-of-state attorneys who have not been subject to the Court's application process for admission to the Delaware Bar. The trial court's delegated discretion under Rule 90.1(e) to consider the appropriateness and advisability of continued admission *pro hac vice* parallels its discretion under Rule 90.1(a), governing the initial admission *pro hac vice*.⁶⁹

Rule 90.1 requires the court to consider a broad array of information in connection with a motion for admission *pro hac vice*, including the applicant attorney's conduct in other jurisdictions. Attorneys seeking such admission must

Continued admission is "inappropriate" if it would be "unsuitable." https://www.merriam-webster.com/dictionary/inappropriate. It is "inadvisable" if it would be "not wise or prudent. https://www.merriam-webster.com/dictionary/inadvisable. See Wiggins v. State, 227 A.3d 1062, 1077 (Del. 2020) ("Under well-settled case law, Delaware courts look to dictionaries for assistance in determining the plain meaning of terms which are not defined [in a statute]," as they can "serve as helpful guides in determining the plain or commonly accepted meaning of a word.").

Rule 90.1(a) states that out-of-state attorneys "may be admitted *pro hac vice* in the discretion of the Court." *See also* Rule 90.1(g) (noting that, in "exercising its discretion in ruling on a motion for admission *pro hac vice*," the court considers the nature and extent of the attorney's conduct in Delaware).

identify all states or other jurisdictions in which they have at any time been admitted generally, and they must certify whether they have "been disbarred or suspended or [are] the subject of pending disciplinary proceedings in any jurisdiction where [they have] been admitted generally, pro hac vice, or in any other way." In addition, Delaware counsel must "certify that the Delaware attorney finds the applicant to be a reputable and competent attorney and is in a position to recommend the applicant's admission." Thus, while an-out-of-state attorney is not subject to the full examination conducted by the Board of Bar Examiners, Rule 90.1(e) authorizes the trial court to perform an analogous function in assessing whether such an attorney should be admitted *pro hac vice*, and whether such admission should continue, in light of a range of factors that include the attorney's conduct in other jurisdictions.

Insofar as Wood is contending that the trial court must put on blinders as to an attorney's conduct in other jurisdictions following an initial admission *pro hac* vice, such a contention runs contrary to the purpose of Rule 90.1. Why would the court be required to consider conduct in other jurisdictions prior to admission *pro hac vice* but barred from considering such conduct afterwards? Why would it be required to ignore that attorney's subsequent disbarment by another jurisdiction?

Rule 90.1(b)(7). Thus, if Wood's admission had not been revoked, he would have been required to amend his certification to identify any pending disciplinary proceeding. *See* DLRPC 3.3(a)

⁷¹ Rule 90.1(h).

Why would it be barred from considering serious misconduct in another jurisdiction that has not yet resulted in a sanction? Wood offers no explanation.

Here, the court properly applied Rule 90.1, as written, by giving Wood specific notice of its concerns, by affording him a meaningful opportunity to be heard on them, and by exercising its discretion to revoke upon finding that continued admission would be inappropriate or inadvisable. The approach was consistent with the court's precedent applying Rule 90.1 and its analog, Rule 63(e) of the Superior Court Rules of Criminal Procedure ("Criminal Rule 63(e)"). For example, in *State* v. Grossberg, then-President Judge Ridgely relied on Criminal Rule 63(e) in holding that the admission *pro hac vice* of a New York attorney "should be revoked as inappropriate and inadvisable" after that attorney violated a court order governing pre-trial publicity. 72 Similarly, in *State v. Mumford*, the court revoked the admission pro hac vice of a Maryland attorney who failed to take steps to stop his client's hostile and profane behavior at a deposition, finding the "continued admission of" such attorney to be "inappropriate and inadvisable."⁷³

In *LendUS LLC v. Goede*, the Court of Chancery found the conduct of an attorney admitted *pro hac vice* at a deposition in the case sufficiently egregious to warrant a finding that "continued admission *pro hac vice* to be both inappropriate

⁷² 705 A.2d 608, 613 (Del. Super. Ct. 1997).

⁷³ 731 A.2d 831, 835-36 (Del. Super. Ct. 1999).

and inadvisable."⁷⁴ However, in light of the "potential for abuse" where disqualification motions are brought by opposing counsel, the court stated that the party seeking disqualification "must show, by clear and convincing evidence, that the behavior of the attorney in question 'is so extreme that it calls into question the fairness or efficiency of the administration of justice."⁷⁵ In lieu of revoking the attorney's admission *pro hac vice*, the *LendUS* court chose to award the moving party attorney's fees in connection with the motion for sanctions, to grant the attorney's motion to withdraw, and to refer the matter to the Office of Disciplinary Counsel.⁷⁶

Wood's primary challenge to the trial court's Order is grounded on his contention that Rule 90.1 required the trial court to apply the same clear and convincing standard and fairness of the proceeding scope of review that the *LendUS* court applied in addressing a motion to revoke by an opposing party. That standard

⁷⁴ 2018 WL 6498674, at *8-9 (Del. Ch. Dec. 10, 2018) (quoting Court of Chancery Rule 170(e), which tracks Rule 90.1).

Id. (citing Manning v. Vellardita, 2012 WL 1072233, at *2 (Del. Ch. Mar. 28, 2012) (quoting Dunlap v. State Farm Fire & Cas. Co. Disqualification of Counsel, 2008 WL 2415043, at *1 (Del. May 6, 2008)). This standard is ultimately derived from the Court's decision in *In re: Infotechnology, Inc.*, 582 A.2d 215 (Del. 1990), discussed below.

Id. at *9-10. The court also briefly discussed allegations regarding the attorney's conduct in Ohio and Florida, finding the record insufficiently developed to warrant a sanction but referring the matters to disciplinary authorities in those jurisdictions. *Id.* at *10.

and scope of review is ultimately drawn from this Court's seminal decision in *In re: Infotechnology, Inc.*, which defined the limited circumstances in which trial courts have jurisdiction to consider and rule on alleged violations of the DLRPC in the context of a motion to disqualify. Specifically, Wood contends that the court was required to limit the scope of its review to whether his continued participation would threaten the fairness of the proceeding before it, and should have applied a clear and convincing standard of review. This contention is without merit for the reasons discussed below.

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⁷⁷ 582 A.2d at 221.

OB at 10 ("Where a party to litigation seeks the sanction of revocation of an out-of-state attorney's *pro hac vice* privileges, the moving party must demonstrate by clear and convincing evidence that the out-of-state attorney's behavior is sufficiently egregious to 'call into question the fairness or efficiency of the administration of justice."); OB at 22 (same); OB at 31 (same); OB at 32 ("The Superior Court made no finding by clear and convincing evidence that Wood's continued representation would prejudicially impact the fairness of the proceedings before it.").

2. Infotechnology Does Not Limit the Trial Court's Discretion under Rule 90.1 to Determine Whether Continued Admission Pro Hac Vice Is Inappropriate or Inadvisable in Light of Conduct in Other Jurisdictions.

For two reasons, the Court should reject Wood's contention that, in applying Rule 90.1, the trial court was required to (i) limit the scope of its review to conduct that prejudiced the proceeding before the court (and therefore be barred from considering Wood's conduct in other jurisdictions) and (ii) apply a "clear and convincing" standard of proof.

First, neither requirement appears in Rule 90.1, and both requirements conflict with its spirit if not its letter. As noted above, given that the court is required to consider an attorney's conduct in other jurisdictions in granting admission *pro hac vice* under Rule 90.1(a), the court may also consider such conduct in determining under Rule 90.1(e) whether such admission should continue. As to the proposed clear and convincing standard, Rule 90.1 repeatedly refers to the trial court's authority to exercise its discretion and sets forth an "inappropriate or inadvisable" standard, without suggesting the "clear and convincing" burden urged by Wood. In 1990, *Infotechnology* imposed on non-client litigants the burden to demonstrate by clear and convincing evidence how the conduct at issue would prejudice the fairness of the proceedings due to the "potential abuses of the [DLRPC] in litigation.⁷⁹ Had

⁷⁹ 582 A.2d at 221.

the Court intended to impose a "clear and convincing" burden of proof in the context of a determination as to whether admission *pro hac vice* should be granted, or should be discontinued as inappropriate or inadvisable, presumably it would have done so through the 1992 amendment to Rule 90.1.

Second, *Infotechnology* and Rule 90.1 address different concerns. *Infotechnology* limits the trial court's authority to enforce the DLRPC to circumstances in which misconduct "taints the fairness of judicial proceedings." *Infotechnology* holds that:

While we recognize and confirm a trial court's power to ensure the orderly and fair administration of justice in matters before it, including the conduct of counsel, the [DLRPC] may not be applied in extra-disciplinary proceedings solely to vindicate the legal profession's concerns in such affairs. Unless the challenged conduct prejudices the fairness of the proceedings, such that it adversely affects the fair and efficient administration of justice, only this Court has the power and responsibility to govern the Bar, and in pursuance of that authority to enforce the Rules for disciplinary purposes.⁸¹

Thus, *Infotechnology* sought to clarify that this Court alone has power to govern the Bar and to enforce the DLRPC for disciplinary purposes.⁸²

Rule 90.1, by contrast, addresses the trial court's authority to act as a gatekeeper regarding out-of-state attorneys who wish to appear in Delaware

⁸¹ *See id.* at 216-217.

⁸⁰ *See id.*

⁸² *See id.* at 217.

proceedings. With respect to whether the admission *pro hac vice* of an attorney should continue, the question is whether continued appearance would be inappropriate or inadvisable in light of that attorney's conduct. If a court, in applying Rule 90.1, sought to enforce the DLRPC, it would be exceeding its jurisdiction under *Infotechnology* unless the conduct of such attorney called into question the fair or efficient administration of justice in the case before it.⁸³ But that is not what happened here. On the contrary, the trial court could not have been clearer in stating:

I have no intention to . . . make any findings [] as to whether or not Mr. Wood violated other States' Rules of Professional Conduct. I agree that is outside my authority. It is the province of the Delaware Office of Disciplinary Counsel, and ultimately the Delaware Supreme Court, or their counterparts in other jurisdictions, to make a factual determination as to whether Mr. Wood violated the Rules of Professional Conduct.⁸⁴

Wood's contention that the trial court erred in failing to apply a "clear and convincing" standard of proof⁸⁵ is also contrary to the spirit of Rule 90.1, especially with regard to the trial court's ability to consider *sua sponte* whether continued admission is warranted. *Infotechnology* directed that the clear and convincing standard be applied to discourage litigants from using motions to disqualify opposing counsel as procedural weapons.⁸⁶ Neither the text nor the purpose of Rule

⁸³ *Id.* at 221.

⁸⁴ A73.

⁸⁵ See, e.g., OB at 22.

See Infotechnology, 582 A.2d at 221 ("Recognizing the potential abuses of the [DLRPC] in litigation, we conclude that the burden of proof must be on the non-

90.1 suggests that the trial judge must apply that standard either in considering a motion to admit an attorney *pro hac vice* or in considering whether to continue that admission. Wood's argument for restricting the trial court's discretion under Rule 90.1(e) is inconsistent with the broad language of the Rule instructing the court to consider whether continued admission is "inadvisable" or "inappropriate."

As Wood points out, some decisions have applied a "clear and convincing" standard in addressing *pro hac vice* issues. Where this occurs, however, the decisions sometimes apply an *Infotechnology* analysis without reference to Rule 90.1 or its analogs. For example, in *Crowhorn v. Nationwide Mutual Insurance Co.*, ⁸⁷ involving a motion to revoke the admission *pro hac vice* of a Pennsylvania attorney, the Superior Court did not cite to Rule 90.1. Instead, the court relied solely on *Infotechnology* in requiring "clear and convincing evidence that the behavior of the attorney in question will "affect the fairness of the proceedings" in the case before it. ⁸⁸ While the *Crowhorn* court would have been required to apply the *Infotechnology* standard if it intended to enforce the DLRPC, such an approach does

client litigation to prove by clear and convincing evidence (1) the existence of a conflict and (2) to demonstrate how the conflict will prejudice the fairness of the proceeding.").

⁸⁷ 2002 WL 1274052 (Del. Super. Ct. May 6, 2002).

⁸⁸ *Id.* at *4.

not suggest that the court in this case could not rely on Rule 90.1, particularly where it expressly disavowed any intent to find violations of rules of professional conduct.

Similarly, in a brief letter ruling in *Sequoia v. Presidential Yatch Group LLC* v. *FE Partners LLC*, ⁸⁹ the Court of Chancery did not cite or apply the applicable *pro hac vice* rule (Court of Chancery Rule 170(e)) in deciding to defer a motion to revoke opposing counsel's admission *pro hac vice*. Rather, the court briefly stated that its "jurisdiction to police attorney behavior only extends to conduct which may prejudice the 'fair and efficient administration of justice." As such, *Crowhorn* and *Sequoia* do not support Wood's contention that, in order for continued admission to be "inappropriate or inadvisable, the conduct must be prejudicial to the fundamental fairness of the proceeding before the court. ⁹¹ Rather, these cases suggest that, while *Infotechnology* is "top of mind," particularly where courts are asked to adjudicate the DLRPC, the rules governing admission *pro hac vice* are less so.

Wood's reliance on this Court's 1990 decision in *National Union Fire Insurance Company of Pittsburgh, Pa. v. Stauffer Chemical Co.* 92 is also misplaced.

That decision, concerning misconduct by attorneys admitted *pro hac vice* in the case

⁸⁹ 2013 WL 3362056, at *1 (Del. Ch. July 5, 2013).

⁹⁰ *Id.*

⁹¹ OB at 31.

⁹² 1990 WL 197859 (Del. Nov. 9, 1990).

before the trial court, held that the trial court had properly exercised its discretion in revoking their admissions. ⁹³ In 1992, the Court effectively codified this delegation of discretion to the trial court via its amendment to Rule 90.1(e), without importing a prohibition against considering conduct in other jurisdictions or requiring application of a clear and convincing standard. ⁹⁴

In sum, *Infotechnology* does not conflict with, let alone override, the Court's 1992 amendment of Rule 90.1. *Infotechnology* bars a trial court from enforcing the DLRPC or issuing sanctions for violations thereof unless the conduct in question undermines the fairness of the proceeding before the court. Rule 90.1 does not authorize the trial court to enforce the DLRPC. Rather, Rule 90.1 delegates to the trial court the authority to exercise discretion to determine whether out-of-state attorneys should be admitted to practice *pro hac vice* and, as a corollary thereto, whether such privilege should continue in light of concerns that may render continued admission inappropriate or inadvisable. The restrictions imposed by *Infotechnology* on a trial court's jurisdiction to enforce the DLRPC do not apply where a court is not engaging in such an effort but is exercising its discretion over the admission *pro hac vice* of attorneys under the parameters set forth in Rule 90.1.

⁹³ *Id*.

See AC4-6 (Superior Court of Delaware Civil Rule 90.1, as amended in the 1992 Supplement); compare with AC1-3 (original version of Superior Court of Delaware Civil Rule 90.1).

3. Crumplar Does Not Nullify the Provision in Rule 90.1 Permitting the Trial Court to Provide a Hearing "or Other Meaningful Opportunity to Respond."

Based on this Court's decision in *Crumplar*, construing Rule 11, Wood also mistakenly contends that the trial court improperly failed (i) to grant Wood "an opportunity to present evidence and respond orally," and (ii) to apply an "objective standard" to determine whether the offending conduct warranted revocation.⁹⁵ Like his contentions based on *Infotechnology*, Wood's effort to fault the court for failing to incorporate the holdings in *Crumplar* into Rule 90.1 are without merit.

Wood's claimed right to "present evidence and respond orally" fails for at least two reasons. First, in *Crumplar*, the Court was called upon to construe language in Rule 11(c) that allows the trial court to impose sanctions only "after notice and a reasonable opportunity to be heard." Rule 90.1, by contrast, is more specific than Rule 11 in stating that the court must afford the attorney "a hearing *or other meaningful opportunity to be heard.*" Unlike Rule 11, Rule 90.1 expressly authorizes the court to offer a meaningful opportunity other than a hearing.

Second, the Court in *Crumplar* held that a "reasonable opportunity" included the ability to present evidence and be heard orally largely because Rule 11 sanctions

⁹⁵ OB at 20-21.

OB at 21, see also Crumplar, 56 A.3d at 1011-12.

⁹⁷ 56 A.3d at 1011.

include elements of a finding of criminal contempt, such as an intent to punish the attorney's past conduct. 98 By contrast, in Rule 90.1, an order that "continued admission" *pro hac vice* would in inappropriate removes a privilege to participate in a proceeding in the future but does not "punish" the attorney through a penalty, a financial sanction, or a finding of violation of the rules of professional conduct.

Recently, in *Hunt v. Court of Chancery*, 99 this Court extended its ruling in *Crumplar* to apply to a trial court's authority to impose monetary sanctions under its inherent power. 100 Because the Texas attorney in *Hunt* was not given advance notice that his opponent's sanctions request would be addressed at an upcoming hearing, was not given an opportunity to be heard at the sanctions hearing, and was not asked about his ability to pay the monetary sanction, the Court reversed the imposition of a fine of nearly \$15,000. 101 In addition, the Court held that the insulting email in question did not affect the proceedings before the trial court so as to warrant its finding of a violation of 8.4(d) of the DLRPC. 102

As with *Infotechnology* and *Crumplar*, *Hunt* does not bear on the trial court's application of Rule 90.1 to *pro hac vice* matters. Just as the trial court here eschewed

⁹⁸ *Id.* at 1011.

⁹⁹ 2021 WL 2418984, at *1 (Del. June 10, 2021).

¹⁰⁰ *Id.* at *5.

¹⁰¹ *Id.* at *4-5.

¹⁰² *Id.* at *6.

any claim to enforce the DLRPC or any other rules of professional conduct, and declined to impose any monetary sanction under Rule 11, so also it declined to impose a sanction under its inherent power. Its only action was to revoke the privilege of continued admission pro hac vice, as Rule 90.1 authorized it to do.

Finally, Wood's "objective standard" argument fails because the trial court did in fact apply an objective standard in declining to accept as dispositive Wood's contentions as to his subjective intend. For example, the trial court declined to accept as dispositive Wood's denial of any "intent of the parties, including himself," to mislead the Georgia court by means of an inaccurate expert report. 103 Instead, the court relied on the objective facts of Wood's extensive experience, and his duty to ensure the accuracy of the report before filing, in concluding that his failure to do so was objectively "incompetent" if not subjectively "mendacious." Similarly, with respect the Wisconsin case, the court did not accept Wood's subjective defense that, because he was not "the attorney of record," he was not personally responsible for the errors in the pleadings. 105 The court held that, as one of the counsel listed on the docket, he was fully responsible for the filing of the complaint. 106

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A12.

¹⁰⁴ A74.

¹⁰⁵ A12.

¹⁰⁶ A75.

4. The Court Properly Exercised Its Discretion in Determining That Continuing Wood's Admission *Pro Hac Vice* Would Be Inappropriate and Inadvisable Based on His Conduct in the Georgia and Wisconsin Cases.

Finally, the trial court acted within its discretion by (i) specifically identifying in the Rule to Show Cause the numerous concerns that Wood needed to address; (ii) providing Wood with a meaningful opportunity to respond to the Rule to Show Cause, and (iii) basing its decision "upon conscience and reason, as opposed to capriciousness or arbitrariness." 107

<u>Proper Notice.</u> In its Rule to Show Cause, the court specifically itemized the findings and deficiencies that Wood needed to address. Wood does not contest that he was fairly put on notice of the conduct in the Georgia and Wisconsin cases that had raised concerns regarding the appropriateness of his continued admission *pro hac vice*.

Meaningful Opportunity to Respond. As discussed above, the court applied the plain language of Rule 90.1(e), which required that Wood be given "a hearing or other meaningful opportunity to respond." While the trial court originally intended to allow both a written submission from Wood and his Delaware counsel and an opportunity to be heard orally, the nature of the Response led the court to reconsider whether a hearing was warranted. As the court noted, the Response "focused"

¹⁰⁷ *In re Asbestos Litig.*, 228 A.3d 676, 681 (Del. 2020).

primarily upon the fact that none of the conduct . . . questioned occurred in [the trial court]."¹⁰⁸ Wood relied on a legal argument, supported by a declaration from a legal ethics expert, that the court had no jurisdiction to enforce the DLRPC – a contention with which the court had "no disagreement."¹⁰⁹ This proposition missed the point of the Rule to Show Cause and ignored the clear language of Rule 90.1 that required the court determine whether his continued admission would be inappropriate or inadvisable in light of his conduct and not whether Wood had violated the rules of professional conduct. Because the strategy employed in the Response was "not helpful regarding the issue of the appropriateness and advisability of continuing admission *pro hac vice*,"¹¹⁰ the court acted within the broad scope of its discretion in concluding that oral argument would not have been fruitful.

In addition, while Wood took issue with a few of the trial court's characterizations of the facts, he did not contest the facts as set forth in the Rule to Show Cause and as found by the courts in Georgia and Wisconsin. Wood chose not to provide a detailed response to the concerns raised by the trial court, and filed no affidavit presenting evidence in this defense. On the contrary, Wood requested that

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A72.

 109 *Id*.

¹¹⁰ *Id*.

he be permitted to withdraw from the case.¹¹¹ Ultimately, the court found that continued admission would be inappropriate regardless of whether Wood's conduct was "mendacious" or merely "incompetent," so there was no reason to hold a hearing to assess Wood's credibility.

Wood claims that at "no point" was he given a meaningful opportunity to respond. However, he does not explain why the opportunity to respond in writing was not meaningful or what he would have said at a hearing other than what he chose to argue in the Response. Rather, his concern appears to be, not that his opportunity was not meaningful, but that the court allegedly gave his Response "little weight." 114

Wood also claims that if he had been given an opportunity to respond orally, "the allegations in the January 11 Opinion and Order could have been corrected and put in proper context." This contention ignores the fact that the "allegations" were set forth in the Rule to Show Cause in order for him to correct them or put them in proper context in his Response. It is not enough for Wood to say, on appeal, that "[i]t is unclear what, if any involvement Wood had in drafting the initial pleadings"

¹¹¹ A14.

A74. See also A74-75 (commenting that the complaint in the Wisconsin case "would not survive a law school civil procedure class").

OB at 29.

¹¹⁴ *Id*.

OB at 32.

in the Wisconsin case.¹¹⁶ It was Wood's obligation, in response to the Rule to Show Cause, to make clear the extent of his involvement and "show cause" why he should not be held responsible for those pleadings.

No Abuse of Discretion. Finally, the court's conclusion that Wood's continued admission would be "inappropriate and inadvisable" was based "upon conscience and reason, as opposed to capriciousness or arbitrariness." With regard to the court's specific concerns as enumerated in the Rule to Show Cause, Wood offered nothing to show why such concerns did not render his continued admission inappropriate or inadvisable. For example, the court did not misapprehend Wood's involvement in the Georgia case as a litigant, as Wood claimed in his Response. The court did not accept his litigant status as a defense, reasoning that, as an attorney, Wood has "an obligation, whether on his own or for clients, to file only cases which have a good faith basis in fact or law." The Wood court's holding that there was "no basis in fact or law" to grant Wood the relief he sought also remained a concern, which Wood did nothing to negate by characterizing

OB at 6; see also OB at 24 ("Wood's level of participation in the drafting and filing of the initial pleading in the Wisconsin litigation is unclear").

OB at 29.

All. The Rule to Show Cause identified Wood as the "Plaintiff in the case of *L. Lin Wood Jr. v. Brad Rattensperger, et al.*" A7.

¹¹⁹ A74.

the holding as "merely determin[ing] there was an insufficient basis to support to requested injunctive relief." The court also remained justifiably troubled by the erroneous affidavit of an expert witness that was filed in support of Wood's case, despite Wood's denial of any intent to mislead. 121

Similarly, the trial court acted within the scope of its discretion in rejecting Wood's contention that he was not responsible for the numerous errors in the Wisconsin pleadings. The court's review of the docket showed that he was counsel of record and therefore responsible for filings. The trial court also acted within the scope of its discretion by rejecting Wood's attempt to minimize the many mistakes and deficiencies – including filing a complaint on behalf of someone who did not authorize that action – as "proof reading errors." 123

In finding Wood's continued admission inappropriate and inadvisable, the January 11 Order properly noted the stark contrast between counsel who practice daily in a civil, ethical way before it, and the conduct that Wood engaged in as reflected in the decisions of the courts in Georgia and Wisconsin. ¹²⁴ In light of that contrast, the court's conclusion that Wood's continued admission *pro hac vice* would

 $^{^{120}}$ A11

¹²¹ *Id*.

¹²² A75 (footnote 1).

¹²³ A12; A74.

¹²⁴ A75.

be inappropriate and inadvisable was well within its discretion. By way of further comparison, in *Mumford* and *LendUS*, Delaware trial courts found that the egregious behavior of an attorney admitted *pro hac vice* at a deposition (and, in *LendUS*, the attorney's lack of candor to the court about it) warranted revocation. Here, Wood's conduct was comparably egregious, even if considered simply incompetent rather than mendacious, as it occurred repeatedly in two high profile litigations of great public import.

Finally, Wood argues that the January 11 Order "has been working considerable hardship" upon him. ¹²⁶ In support of this contention, he cites a memorandum of law filed in the Eastern District of New York in support of a motion to revoke his admission *pro hac vice*, wherein the movant relied, "among other things," upon the January 11 Order. ¹²⁷ The "other things" addressed in the memorandum include numerous other instances of misconduct – including his attacks on Chief Justice John Roberts, false and frivolous filings around the country, and false statements to the Eastern District of New York. ¹²⁸ As just one matter among many, the January 11 Order cannot fairly be blamed for any loss of

¹²⁵ See State v. Mumford, 731 A.2d 831, 835-36 (Del. Super. Ct. 1999); LendUS LLC v. Goede, 2018 WL 6498674, at *9 (Del. Ch. Dec. 10, 2018).

OB at 29-30.

OB 29-30; A140-143.

See A136-37, 139-40, 143-48.

reputation.¹²⁹ Courts that consider the Order in connection with future motions for admission *pro hac vice* will exercise their own discretion, according to their own court rules and case law standards, as to the weight the Order should be given in relation to other considerations.

Motions to disqualify and motions for sanctions against Wood have been filed in multiple jurisdictions. Two motions for sanctions were filed in *King v. Whitmer*, No. 20-cv-13134 (E.D. Mich. Dec. 22, 2020) (AC11, 23); a motion to disqualify and revoke appearance *pro hac vice* was filed in *La Liberte v. Joy Reid*, No. 18-cv-05398 (E.D.N.Y. Jan. 25, 2021) (AC25); and a motion for attorney fees and sanctions was filed in *Feehan v. Wis. Elections Comm'n*, No. 20-cv-1771 (E.D. Wis. Mar. 31, 2021) (AC27). Most recently, a motion for order to show cause why Wood should not be held in criminal contempt for violating local rules prohibiting recording and broadcasting of judicial proceedings was filed in *King*, 20-cv-13134 (E.D. Mich. Jul. 13, 2021) (AC85).

CONCLUSION

The Superior Court's January 11 Order revoking the admission pro hac vice of Wood should be affirmed because the court applied Rule 90.1 as written and properly acted within the scope of its discretion. Wood's contentions on appeal, drawn from case law addressing a trial court's jurisdiction to enforce the DLRPC and to impose monetary sanctions under Rule 11, lack merit because they are inconsistent with the language and purpose of Rule 90.1. Wood's proposal that the court should be barred from considering conduct in other jurisdictions after admission pro hac vice is inconsistent with provisions in Rule 90.1 requiring the court to consider such conduct prior to granting admission. Wood's proposal that a "clear and convincing" standard be imposed be is contrary to the existing broad "inappropriate or inadvisable" standard in Rule 90.1(e). Wood's argument for a mandatory opportunity to present evidence and respond orally is contrary to the plain language in Rule 90.1(e) permitting the court to provide a hearing "or other meaningful opportunity to be heard."

Where, as here, the trial court does not attempt to enforce the rules of professional conduct, and does not impose monetary sanctions (either under Rule 11 or its inherent powers), the trial court is entitled to rely on Rule 90.1 to guide its discretion in determining whether an admission *pro hac vice*, once granted, should be continued or revoked. For the reasons set forth above, the trial court properly

applied Rule 90.1(e) and acted within its discretion in revoking Wood's admission *pro hac vice*.

Respectfully submitted,

/s/ Matthew F. Boyer

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Dated: July 16, 2021 Amicus Curiae

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Case Number 69,2021

IN THE SUPREME COURT OF THE STATE OF DELAWARE

CARTER PAGE,		§	
		§	No. 69, 2021
]	Defendant Below,	§	
	Appellant,	§	Court Below—Superior Court
		§	of the State of Delaware
•	V.	§	
		§	C.A. No: S20C-07-030
OATH INC.,		§	
		§	
]	Plaintiff Below,	§	
	Appellee.	§	

Submitted: November 10, 2021 Decided: January 19, 2022

Before **SEITZ**, Chief Justice; **VALIHURA**, **VAUGHN**, **TRAYNOR**, and **MONTGOMERY-REEVES**, Justices, constituting the Court *en banc*.

PER CURIAM:

ORDER

This 19th day of January, 2022, the Court has considered the parties' briefs, the record on appeal, and the argument of counsel, and it appears that:

- (1) In July 2020, Carter Page filed a defamation action in the Superior Court against Oath, Inc., alleging that certain of Oath's subsidiaries had published articles falsely accusing him of colluding with Russian agents to interfere with the 2016 presidential election.
- (2) Shortly after that, Page's Delaware counsel moved under Delaware Superior Court Civil Rule 90.1 for the admission *pro hac vice* of L. Lin Wood, a

lawyer licensed to practice in Georgia, so that he could appear as Page's attorney in Page's defamation action. The court granted the motion.

- (3) After Page filed an amended complaint, Oath moved to dismiss it. The parties briefed the motion and, on December 16, 2020, the court notified counsel that the court would hear oral argument on the motion on January 13, 2021.
- (4) Two days later, the Superior Court *sua sponte* issued a Rule to Show Cause directing Wood to show why his admission *pro hac vice* should not be revoked. According to the Rule, "[i]t appear[ed] to the Court that, since the granting of Mr. Wood's [*pro hac vice*] motion, he ha[d] engaged in conduct in other jurisdictions, which, had it occurred in Delaware, would violate the Delaware Lawyers' Rules of Professional Conduct. . . ."
- (5) The Rule identified specific concerns regarding Wood's conduct in litigation in Georgia and Wisconsin related to the recent 2020 presidential election on November 3, 2020. Specifically, the court pointed to several pleading irregularities in an action filed in the United States District Court for the Eastern District of Wisconsin. As far as we can tell, the pleadings in that case were not signed by Wood but named him as an "attorney to be noticed." The court also referred to a complaint of questionable merit filed in the United States District Court for the Northern District of Georgia, in which, the court suspected, "Wood filed or

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¹ App. to Opening Br. at A5.

caused to be filed [an expert affidavit] . . . [,] which contained materially false information. . . ."² In the Georgia case, Wood was the named plaintiff and was represented by counsel.

- (6) The court directed Wood and his Delaware counsel to respond to the Rule to Show Cause by January 6, 2021, and stated that it would "hear counsel on [January 13, 2021—the date set for oral argument on the pending motion to dismiss] in response to the Rule to Show Cause." The court also invited Oath to state its position, if it had one, but Oath declined.
- (7) In his response, Wood denied generally that he had violated "any of the Delaware Professional Conduct Rules or conduct rules in any other jurisdiction in connection with his involvement in the matters cited by the Court." More specifically, he noted that he had not appeared as counsel in the Georgia litigation but was the plaintiff and represented by counsel in that matter. And he further stated that there had been "no claim of sanctionable or disciplinary conduct against [his counsel] or his firm and certainly none against Wood as plaintiff" in the Georgia litigation. In connection with a questionable affidavit referred to in the Rule to Show

² App. to Opening Br. at A7.

³ *Id.* at A8.

⁴ Id at Δ12

⁵ *Id.* at A11.

Cause, Wood "denied any intent of the parties, including himself, to mislead the Court."

- (8) As to the Wisconsin litigation, Wood pointed out that he was not the attorney of record in that matter and was merely listed as "Counsel to be Noticed" on the court's docket sheet. He further stated that he "never appeared" in the case during the brief eight-day period between the filing date and the date of dismissal.
- (9) Despite legal argument that revocation of his *pro hac vice* admission was not warranted, Wood "request[ed] to withdraw his application for *pro hac vice* admission and his appearance" in this case.
- (10) On January 11, 2021, two days before the hearing on the defendant's motion to dismiss and the court's Rule to Show Cause, the Superior Court issued a Memorandum Opinion and Order revoking its prior order admitting Wood *pro hac vice* and cancelling the January 13 argument on the motion to dismiss. As of that date, neither the Georgia nor the Wisconsin court had cited Wood for sanctionable conduct.

⁶ *Id.* at A12.

⁷ Id

⁸ *Id.* at A14.

- (11) After Wood appealed to this Court, we appointed Matthew F. Boyer, Esquire as *amicus curiae* to file an answering brief in opposition to Wood's opening brief.⁹
- (12) Superior Court Civil Rule 90.1(e) provides that "[t]he Court may revoke a pro hac vice admission sua sponte or upon the motion of a party, if it determines, after a hearing or other meaningful opportunity to respond, the continued admission pro hac vice to be inappropriate or inadvisable." We review a trial court's decision to revoke a lawyer's *pro hac vice* motion for abuse of discretion.¹⁰
- (13) Despite the concerns expressed by the Superior Court in its Rule to Show Cause regarding whether Wood's conduct in the Georgia and Wisconsin case, had it occurred in Delaware, violated the Delaware Lawyers' Rule of Professional Conduct, it insisted in its opinion and order that it was not engaging in lawyer discipline. Instead, according to the court, it was merely making a determination under Superior Court Civil Rule 90.1(e) of the appropriateness and advisability of Wood's continued *pro hac vice* admission.
- (14) The court did not explain, however, why Wood's request to withdraw his *pro hac vice* application and appearance did not adequately address the court's

⁹ We thank Mr. Boyer and his associate, Lauren P. DeLuca, for their assistance, which was professionally rendered in the best traditions of the Delaware Bar.

¹⁰ Vrem v. Pitts, 44 A. 3d 923, 2012 WL 1622644, at *2 (Del. May 7, 2012) (TABLE) (noting that "the decision whether to admit an out-of-state attorney *pro hac vice* lies within the discretion of the Superior Court" and reviewing the trial court's revisiting and vacating of its prior order admitting attorney under abuse-of-discretion standard).

putatively limited concern. Instead, without affording Wood the opportunity to appear at the hearing that was scheduled two days hence, the stated purpose of which was to hear his response to the Rule to Show Cause, the court made factual findings adverse to Wood. For instance, the Court found that Wood's conduct in the Georgia and Wisconsin litigation, "albeit not in [the court's] jurisdiction, exhibited a toxic stew of mendacity, prevarication and surprising incompetence."11

The Court also found that the Georgia court's conclusion that there was "no basis in fact or law to grant [Wood] the [injunctive] relief he [sought],"12 "indicate[d] that the Georgia case was textbook frivolous litigation." 13 Yet neither the Georgia trial court nor the Eleventh Circuit Court of Appeals, ¹⁴ to which Wood appealed, made any findings that Wood's complaint was frivolous or filed in bad faith. As to this point, we do not view the Georgia court's determination that Wood's request for injunctive relief was without factual or legal merit as equivalent to a finding that his complaint was frivolous. To the contrary, our own ethical rules, by prohibiting a lawyer from asserting claims "unless there is a basis in law for doing so that is not frivolous,"15 implicitly recognize that a claim ultimately found to lack a basis in law and fact can nonetheless be non-frivolous.

¹¹ Page v. Oath, Inc., 2021 WL 82383, at *2 (Del. Super. Ct. Jan. 11, 2021).

¹²501 F. Supp. 3d at 1331.

¹³ 2021 WL 82383 at *2.

¹⁴ See Wood v. Raffensperger, 981 F.3d 1307 (11th Cir. 2020).

¹⁵ DPCR Rule 3.1.

(16) More questionable yet was the court's insinuation that Wood was at least partially responsible for the troubling events that occurred at the United States Capitol on January 6, 2021—a topic not addressed in the Rule to Show Cause.

(17) In reaching these conclusions, the Superior Court resolved factual issues raised in Wood's written response and did so on a paper record and in advance of a hearing that had been scheduled to address the matter. And though the court said that its decision was not influenced by its conjecture that Wood's conduct had precipitated the traumatic events of January 6, its willingness to pin that on Wood without any evidence or giving Wood an opportunity to respond is indicative of an unfair process.

(18) Both the tone and the explicit language of the Superior Court's memorandum opinion and order suggest that the court's interest extended beyond the mere propriety and advisability of Wood's continued involvement in the case before it. In fact, one cannot read the court's order without concluding that the court intended to cast aspersions on Wood's character, referring to him as "either mendacious or incompetent" and determining that he was not "of sufficient character" to practice in the courts of our State. We offer no opinion on the accuracy of these characterizations, but we see no evidence in the Superior Court's

¹⁶ 2021 WL 82383 at *2.

 $^{^{17}}$ *Id*.

record that supports them. Similarly, the court's foray into the events of January 6 and its unequivocal finding that "[n]o doubt [Wood's] tweets . . . incited the [] riots," was not justified given the scope of the Rule to Show Cause and the record.

- (19) Because the Superior Court's revocation order is based on factual findings for which there is no support in the record and because the court failed to explain why Wood's withdrawal would not moot the court's concerns about the appropriateness or advisability of Wood's continued admission, we find that the court's revocation order was an abuse of discretion.
- (20) To be clear, when a lawyer admitted *pro hac vice* to practice in a trial court of this state is accused of serious misconduct in another state, the admitting trial court is not powerless to act. It might be appropriate to issue—as the court did in this case—a rule to show cause why the out-of-state lawyer's *pro hac vice* status should not be revoked, and to act upon that rule if cause is not shown. But when, as here, the allegations of misconduct in another state have not yet been adjudicated, there is no assertion that the alleged misconduct has disrupted or adversely affected the proceedings in this State, and the lawyer agrees to withdraw his appearance and *pro hac vice* admission, it is an abuse of discretion to preclude the lawyer's motion to withdraw in favor of an involuntary revocation of the lawyer's admission.

¹⁸ *Id*.

NOW, THEREFORE, the Superior Court's January 11, 2021 Memorandum Opinion and Order revoking its August 18, 2020 Order granting Wood's application for admission to practice in this action *pro hac vice* is hereby VACATED.

Panel 3: False Claims Act/ Qui Tam Claims

Jesse Hoyer Estes, Esquire Hoyer Law Group, PLLC

Jesse Hoyer Estes—Biography

Jesse Hoyer Estes is a founding member of Hoyer Law Group, PLLC. Jesse works in the firm's Tampa, Florida office, where she oversees the False Claims Act qui tam division, with a focus on education and healthcare fraud.

Jesse formed Hoyer Law Group with her partners after nearly a decade at James Hoyer, P.A., where she also prosecuted numerous qui tam cases in the education fraud arena, earning herself a reputation as one of the leading authorities in for-profit college whistleblower cases.

She has successfully guided clients in their battles against for-profit education entities, including EDMC, one of the largest for-profit college systems in the country, Corinthian Colleges, which ultimately was forced to shutter its campuses, and Ed4Mil, a company that targeted active duty military and veterans to get their Tuition Assistance and G.I. Bill dollars. In addition to for-profit college cases, she focuses her practice on healthcare fraud and defense contractor fraud.

At the University of Florida, Jesse received her undergraduate degrees in Criminology (B.A., 2006) and Psychology (B.S., 2006), and her law degree with honors (J.D., 2009). In law school, Jesse focused her attention on the practice of international law and spent one summer abroad studying international business law and white-collar crime in Paris and Montpellier, France.

Jesse is licensed to practice in Florida state courts, the Middle District of Florida and the Southern District of Florida.

Hoyer Law Group practices nationwide, with focuses on False Claims Act cases, Employment Law and Business Law.



The False Claims Act

Jesse Hoyer Estes, Partner

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Tampa- Washington, D.C.- Detroit

Origins of the False Claims Act

- The False Claims Act ("FCA"), 31 U.S.C. §§ 3729 3733 was enacted in 1863 by a Congress concerned that suppliers of goods to the Union Army during the Civil War were defrauding the Army.
- Dubbed the "Lincoln Law," the FCA was passed in response
 to rampant fraud by private contractors who were billing the
 government for goods that were not actually delivered. The
 Lincoln Law version of the FCA went through a number of
 changes between the Civil War and World War II.
- Unfortunately, each set of amendments weakened the
 effectiveness of the False Claims Act, resulting in its
 diminished use as a weapon for qui tam whistleblowers to
 combat fraud against government programs. Because the
 amendments to the FCA drastically reduced the potential
 rewards for qui tam whistleblowers, many people were no
 longer willing to bring a qui tam action and risk their jobs by
 accusing their employers of illegal behavior.

Evolution of the FCA- Reform Act of 1986

- When increased federal expenditures throughout the 1970s and 1980s led to an increase in fraud against the government, the need to amend the False Claims Act became clear. In response to growing concerns about the FCA's ability to stem fraud, Senator Charles Grassley and Representative Howard Berman sponsored the False Claims Reform Act of 1985.
- This law, passed in 1986, made sweeping changes to the FCA. These amendments made it easier for the government to investigate FCA cases, lowered the required burden of proof, increased the potential whistleblower's share to 15-30%, imposed treble (triple) damages for fraud, lengthened the statute of limitations for filing qui tam suits, and required defendants to pay reasonable fees to the whistleblower's attorneys in successful qui tam prosecutions.

- Most importantly, the amendments underscored Congress' intent to forge a powerful partnership between government enforcement authorities and the citizen-whistleblower in qui tam actions. Congress expanded the role of whistleblowers and their counsel in qui tam actions and allowed them to supplement the government's resources in the investigation and prosecution of qui tam actions. The amendments also included provisions to protect qui tam whistleblowers from employer retaliation.
- With the exception of minor changes in 1988 and 1990, the 1986 version of the False Claims Act was in effect through early 2009. This version substantially increased the government's power to combat fraud, as shown by the increase in the number of qui tam cases filed and tax dollars recovered. The number of qui tam cases filed each year increased more than tenfold, from 31 cases in 1987 to 356 cases in 2007. The 1986 amendments also allowed the federal government to collect more than \$13.6 billion in qui tam cases.

Fraud Enforcement and Recovery Act of 2009 ("FERA")

- The economic crisis of the past several years, combined with some judicial decisions that circumscribed the effectiveness of *qui tam* actions, again prompted Congress to reevaluate the FCA. Recognizing the key role the False Claims Act plays in both deterring and uncovering fraud, Congress strengthened the law in early 2009 through FERA
- The FERA amendments encompass significant improvements to the False Claims Act. These improvements include, among other things, broadening the scope of fraud covered by the FCA, enhancing the government's ability to investigate fraud and false claims, allowing the government to recover its costs expended in investigating and prosecuting FCA cases, and reducing defendants' ability to escape liability through technicalities.

- Moreover, the FERA amendments included changes that underscored the importance of qui tam whistleblowers in combating fraud. In addition to the changes outlined above, the FERA amendments provided for freer exchange of information between federal, state, and local government attorneys and whistleblowers' attorneys, and also expanded whistleblowers' protection from employer retaliation.
- The FERA amendments reflect the ever-growing importance the government places on the FCA's role in combating fraud. With dramatically increased federal spending under the stimulus package, the FCA has played a vital role in ensuring the integrity of government programs and contracts for over a decade.

State FCAs

- A majority of states (along with the District of Columbia and Puerto Rico) have passed their own False Claims Act laws to combat fraud against their taxpayers.
- Most of these FCA statutes are structured similarly to the federal FCA and include *qui tam* provisions that allow whistleblowers to sue in the name of the state and receive a share of any recovery

FCA Liability

- § 3729(a)(1)(A) and (B) set forth FCA liability for any person who knowingly submits a false claim to the government or causes another to submit a false claim to the government or knowingly makes a false record or statement to get a false claim paid by the government.
- Section 3729(a)(1)(C) creates liability for those who conspire to violate the FCA.
- Section 3729(a)(1)(G) is known as the <u>reverse false claims</u> section; it provides liability where one acts improperly not to get money from the government, but to avoid having to pay money to the government.

Award to the Relator

- If the government intervenes in the qui tam action, the relator is entitled to receive between 15 and 25 percent of the amount recovered by the government through the qui tam action. If the government declines to intervene in the action, the relator's share is increased to 25 to 30 percent.
- Under certain circumstances, the relator's share may be reduced to no more than ten percent--if the relator planned and initiated he fraud (i.e. if the Relator was an architect of the fraud), the court may reduce the award without limitation.
- The relator's share is paid to the relator by the government out of the payment received by the government from the defendant. If a qui tam action is successful, the relator also is entitled to legal fees and other expenses of the action by the defendant.

Statutory Bars to qui tam Actions

The FCA provides several circumstances in which a relator **cannot** file or pursue a *qui tam* action:

- 1. The relator was convicted of criminal conduct arising from his or her role in the FCA violation. § 3730(d)(3). (He/she was the "architect of the fraud").
- 2. Another qui tam concerning the same conduct already has been filed (this is known as the "first to file bar"). §3730(b)(5).
- 3. The government already is a party to a civil or administrative money proceeding concerning the same conduct. (i.e.: the proverbial whistle has already been blown). §3730(e)(3).

4. The qui tam action is based upon information that has been disclosed to the public through any of several means: criminal, civil, or administrative hearings in which the government is a party, government hearings, audits, reports, or investigations, or through the news media (this is known as the "public disclosure bar.") §3730(e)(4)(A).

There is an exception to the public disclosure bar where the relator was the **original source of the information.

Overlap of the FCA and Employment Law ("Section (h) Claims")

- IN GENERAL—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, or agent on behalf of the employee, contractor, or agent or associated others in furtherance of other efforts to stop one or more violations of this subchapter. . . .
- RELIEF—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.

Common Types of FCA Fraud

- Medicare/Medicaid/TRICARE
 - ► Hospitals/Doctors
 - Upcoding/Unbundling
 - Unnecessary Services
 - Services not Performed
 - Medical Necessity**
 - SNFs
 - ► Home Health Care
 - Mental Health Care
 - Durable Medical Equipment
 - Laboratory Testing
 - Kickbacks
 - Anti-Kickback Statute

- Pharmaceutical
 - Off-label prescriptions
 - Over-prescription
- Education
 - Title IV
 - Pell Grants
- Environmental
 - Failure to comply with environmental regulations
- Government Grants
 - Misuse of Grant Funding
- Government Contracting
 - Small Business Association Fraud
 - Charging for equipment/services never provided

FCA Healthcare Case Examples

- Prime Healthcare (2018: Up-coding): Prime Healthcare Services, Inc. and Prime's Founder and CEO, Dr. Prem Reddy, agreed to pay the U.S. \$65 million to settle allegations that 14 Prime hospitals in California knowingly submitted false claims to Medicare by admitting patients who required less costly, outpatient care, and by billing for more expensive, unnecessary patient diagnoses (a practice known as "up-coding").
- ▶ Endo Pharmaceuticals (2015: Off-label marketing): Endo Pharmaceuticals agreed to settle a healthcare whistleblower case for \$192.7 million. The company's Lidoderm pain patch was originally approved to treat symptoms of Post Herpetic Neuralgia ("PHN"), but Endo Pharmaceuticals also marketed the patch for lower back pain, diabetic neuropathy and carpal tunnel syndromenone of which were FDA-approved uses.

Education Fraud Case Examples

- ► Education Management Corporation (2015: Illegal Recruiting, Consumer Fraud): The U.S. reached a \$95.5 million global settlement with EDMC, the second-largest for-profit education company in the country at the time of settlement. It resolved allegations that EDMC violated federal and state FCA provisions by falsely certifying that it was in compliance with Title IV of the Higher Education Act (HEA) and parallel state statutes.
- The primary allegation was that EDMC unlawfully recruited students, in contravention of the HEA's Incentive Compensation Ban (ICB), by running a high pressure boiler room where admissions personnel were paid based purely on the number of students they enrolled and failing to report accurate job statistics for student graduates, which is required by the HEA.

Education Fraud Case Examples cont.

- Caldwell University: (Abusing VA Dollars to Stay within DoEd's 90/10 Rule): Caldwell submitted false claims for payment to the Department of Veterans Affairs (VA) in order to receive education benefits and funds pursuant to the Post-9/11 Veterans Education Assistance Act (Post 9/11 GI Bill) to which it was not entitled. The Post 9/11 GI bill was designed specifically to help veterans who served in the armed forces following the terrorist attacks on Sept. 11, 2001.
- Caldwell contracted with Ed4Mil to recruit and enroll eligible military veterans in non-degree fully online classes that were purportedly provided by Caldwell. The VA approved the online courses for education benefits under the Post-9/11 GI Bill based upon the representations in Caldwell's applications.
- However, Caldwell did not participate in developing or teaching the online courses. The courses were developed, taught, and administered by a subcontractor of Ed4Mil, an online correspondence school in Pennsylvania that was not approved to receive education benefits under the Post-9/11 GI Bill.
- Thousands of veterans were ultimately enrolled in the unapproved online correspondence courses without their knowledge while Caldwell and Ed4Mil profited. Even though Caldwell contributed no content or value to the courses, Caldwell charged the Post 9/11 GI Bill 10 to 30 times the prices charged by the online correspondence school for the same courses. As a result, the government paid over \$24 million in tuition benefits to the university.
- ► The case settled for \$4.8 million in 2020.

Emerging FCA Issues

Many new areas of FCA fraud are emerging due to the COVID pandemic

- ▶ PPP (Paycheck Protection Program) Loan Fraud
 - ► The Pandemic Response Accountablity Committee ("PRAC") was formed by D.O.J in 2020
 - > PPP loans have accounted for more than \$800 billion in spending to date
 - ▶ PPP is one of approximately 420 programs that have been funded due to COVID
 - ▶ Many PPP loans are granted based on self-certification, which opens the program up to fraud
 - ▶ In 2021, 51,000 grants were awarded (worth approximately \$250 billion)- many applications turned out to have meaningless descriptions that were used just to receive the funding and/or used fraudulent identifying information in order to receive the funding
 - Largely due to the Government's rush to roll out the program in a time of crisis
 - ▶ PPP loan fraud is ongoing, and although the Government has put oversight committees in place, it still values assistance and information from insiders

Emerging FCA Issues Cont.

Telehealth Fraud

- Easy target for fraud
- Billing for medically unnecessary services and/or items (DME)
- Telemarketers contacting patients to provide leads to doctors in exchange for kickbacks (violation of the Anti-Kickback Statute)
- Orthotics (DME) and Laboratories (fake testing) are huge fraud targets

CARES Act Fraud

- ► The CARES Act (Coronavirus Aid, Relief and Economic Security Act) is a \$2.2 trillion stimulus bill passed in 2020
- ▶ D.O.J. has already settled 5 CARES Act fraud cases
- EX: In 2021, Oasis Healthcare and its owner settled to resolve allegations that the Defendants knowingly falsified documents in order to receive CARES Act funds (certified that Oasis was eligible to participate in the Medicare program; however, its Medicare privileges had been revoked a year prior to the submission of the CARES Act application)

Benefits of Consulting with a *Qui Tam*Attorney

- Qui Tam practice is a very small niche; oftentimes, clients and attorneys are unaware of the False Claims Act
- ► FCA attorneys frequently work closely with employment attorneys
- Many times, clients are focused on their termination, and do not know they have witnessed fraud and/or they do not think there's anything they can do about it; it is critical to know what types of guestions to ask
- Jurisdiction is *very* important- certain types of cases are more likely to be successful in certain Circuits or with certain USAOs
 - Qui tam cases are frequently complicated and take years to investigate; it is important to file in the right office if there are jurisdictional options
 - ► The size of the case, the caseload of the USAO and the USAO's experience with the type of case to be filed are all very important factors

Jesse Hoyer Estes

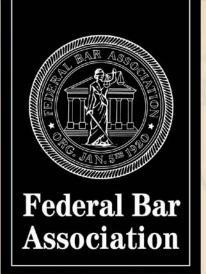
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Tampa- Washington D.C.- Detroit

HoyerLawGroup.com

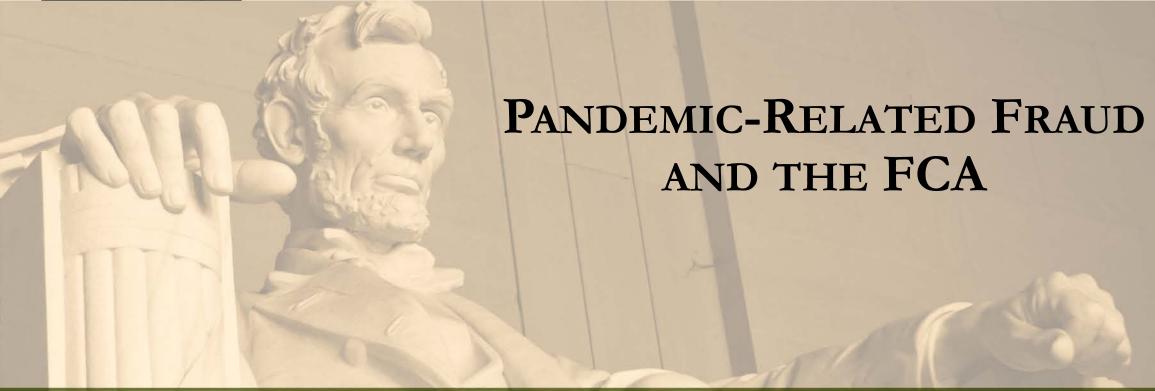
(813) 375-3700 (Office)

(813) 375-3701 (Direct)



VIRTUAL QUI TAM CONFERENCE

FEBRUARY 23-25, 2022







DISCUSSION TOPICS

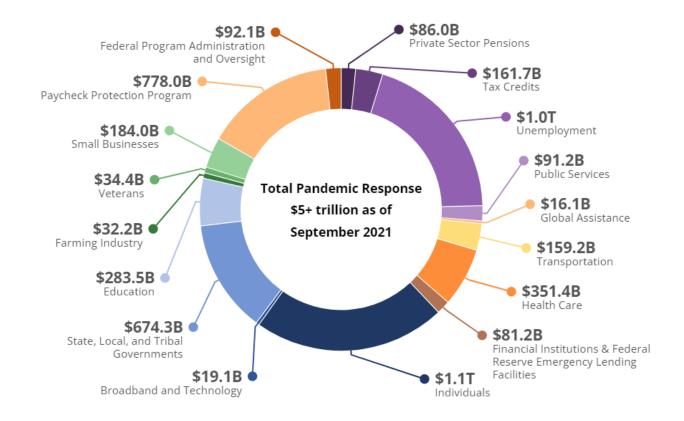


- Overview of Pandemic Spending
- Typology of FCA Cases
- FCA Issue Spotting
- Addressing Misconceptions
- Trends to Watch
- Resources



PANDEMIC SPENDING





Details and Interactive tools available at www.pandemicoversight.gov



NEW OVERSIGHT MECHANISMS





- Pandemic Response Accountability Committee (PRAC)
 - A committee of the Council of the Inspectors General on Integrity and Efficiency (CIGIE)
 - Committee comprised of 22 Inspectors General



- Special Inspector General for Pandemic Recovery (SIGPR)
 - Audits and investigates of the making, purchase, management, and sale of certain loans, loan guarantees, and other investments by the Secretary of the Treasury under certain subparts of the CARES Act
 - DOJ Office of Legal Counsel Memorandum Regarding SIGPR Jurisdiction April 29, 2021



FCA Typology — SBA Programs



- Paycheck Protection Program (PPP)
- More than 11.4 million loans totaling more than \$790 billion
- More than 5,000 lenders
- More than 9.2 loan forgiveness payments totaling nearly \$670 billion
- Average loan approx. \$100K in 2020, and well under for 2021
- Economic Injury Disaster Loans (EIDL)
- Nearly 3.9 million loans totaling more than \$316 billion
- Average loan approx. \$80K
- Shuttered Venue Operators Grants (SVOG)
- Grants equal 45% of their gross earned revenue; capped at \$10 million
- ❖ Restaurant Revitalization Fund (RRF)

Common Question:
Can person participate in more than 1 program?

Answer: It depends ...





Cross-Program Eligibility

	Paycheck Protection Program Applicant	Shuttered Venue Operators Grant Applicant	COVID-19 EIDL Applicant	Restaurant Revitalization Fund Applicant
PPP recipient	First Draw PPP borrowers may be eligible to apply for Second Draw PPP loans	May apply for SVOG if received a PPP loan; if PPP loan received after Dec. 27, 2020, the PPP loan amount will be deducted from the SVOG. May not apply for PPP after receiving SVOG	May apply for EIDL and PPP, but cannot be used for the same purpose/costs	PPP loans received by the RRF applicant will affect the applicant's funding calculation
Shuttered Venue Operators Grant recipient	May not apply for PPP loan after receiving SVOG	May be eligible to receive a supplemental SVOG award	May apply for EIDL and SVOG, but cannot be used for the same purpose/costs	Entities that have a pending application for or received a Shuttered Venue Operators Grant are not eligible to apply for RRF
COVID -19 EIDL recipient	May apply for PPP, but cannot be used for the same purpose/costs as EIDL	May apply for SVOG, but cannot be used for the same purpose/costs as EIDL	The same business cannot apply for more than one EIDL	May apply for EIDL and RRF
RRF recipient	PPP loans received by the RRF applicant will affect the applicant's funding calculation	Entities that have a pending application for or received an RRF are not eligible to apply for Shuttered Venue Operators Grants	May apply for EIDL and RRF	The same business cannot apply fo RRF more than once



Paycheck Protection Program

- Established by the CARES Act (March 2020)
- Modified by PPP Flexibility Act (June 2020); Economic Aid Act (December 2020); and American Rescue Plan Act (February 2021)
- 20+ Interim Final Rules and extensive subregulatory guidance (e.g., FAQs)
- Purpose give small businesses capital needed to keep employees on payroll and meet other obligations (e.g., rent, mortgage interest, utilities)
- Not a direct SBA loan program; SBA administers the program, but borrowers must apply through SBA-accredited lenders



PPP Loan Basics

- Businesses can borrow 2.5x their average monthly payroll up to \$10m maximum
- Independent contractors, sole proprietors, and other selfemployed workers can borrower 2.5x average monthly earnings* up to \$100k
- No collateral or personal guarantees
- 100% guaranteed by SBA
- Maturity 2 years or 5 years, with 1% interest
- 100% Forgiveness <u>if</u> at least 60% spent on payroll and other 40% on eligible uses within 24* weeks of disbursement



PPP – First Draw

- Borrower in operation as of February 15, 2020 and has not permanently closed
- Borrower satisfies size standard (500/ 300; industry size standard or alternative size standard; SBA affiliation rules apply)
- Borrower not suspended/ debarred/ excluded and not "presently involved in any bankruptcy"
- U.S. is primary residence of all employees included in the loan applicant's calculation
- Borrower "is not engaged in any activity that is illegal under federal, state or local law"; no owner of 20% or greater has had certain criminal convictions
- Borrower certifies in good faith that "current economic uncertainty" necessitates the loan
- Will obtain only one loan prior to December 31, 2020



PPP – Second Draw

- "Targeted Eligibility"
 - Previously received First Draw PPP loan and used the full amount only for authorized uses;
 - Has no more than 300 employees; and
 - Can demonstrate at least 25% reduction in gross receipts between comparable quarters 2019 v. 2020
- Applicants with significant ties to the PRC are not eligible for PPP2
- For most borrowers, 2.5x their average monthly payroll from 2019 or 2020, but maximum lowered to \$2m
- Other eligibility criteria similar to First Draw



PPP – Forgiveness

- Borrower must submit forgiveness application to lender (e.g., SBA Form 3508, 3508EZ)
- Lender required to make decision within 60 days of receipt of forgiveness application
- If lender determines that borrower is entitled to full or partial forgiveness, lender requests issues decision to SBA and requests payment
- SBA has 90 days to review and make final forgiveness determination
- If forgiveness request is denied in full or in part, any remaining balance must be repaid by the borrower on or before maturity date on the loan



PPP – "Safe Harbors"

- For loans under \$2m, borrowers will be presumed to have certified in good faith that "current economic uncertainty" necessitates the loan.
- More flexibility added for reductions in FTEs
 - If business were required to be fully or partially shut down due to public health guidelines
 - FTEs initially reduced but then restored by December 31, 2020.
 - Certain employees can be excluded from FTE calculation if, for example, you made a good-faith written offer to restore reduced hours/ position but employee rejected it.



FCA Typology — SBA Programs



Potential Defendants

- 1. Borrowers/ Grantees
- 2. Lenders (PPP)
- 3. Third-Party Agents



FCA Typology — Borrowers/ Grantees



- Eligibility
 - Not operating as of February 15, 2020
 - Size/ concealed affiliations
 - Suspended/ Debarred/ Excluded

SlideBelts, Inc. (E.D. Cal.) – January 2021

Involved in Bankruptcy

- Received duplicate loans in same draw or received PPP2 + SVO
- Ineligible entity (e.g., certain 501(c)'s; state agencies/ components)
- Criminal Convictions
 Significant ties to the PRC (second draw)

Christopher Construction (D.N.J.) – Feb. 2022

- Lack of "economic uncertainty"
- Loan/ Grant Calculation
 - Inflating salaries or net/ gross income
 - Inflating headcount/ including 1099s
- Use of Loan/ Grant Funds

Bernstein/ All in Jets LLC (S.D. Fla.) – August 2021

- Paying executive bonuses
- Reducing FTEs
- Impermissible uses





Walia PMC (E.D. Cal.) - April 2021

Sextant Marine (S.D. Fla.) - October 2021

Zen Solutions (E.D. Va.) - February 2022

FCA Typology — Lenders (PPP)



- Loan Review/ Verification
 - Failure to collect required documents from borrower
 - Failure to review/ verify info provided by borrower
 - Failure to require certifications/ attestations
- Improper retention/ use of borrower funds
 - Offset existing business debt
- "Hold Harmless" Provisions See First Interim Final Rule, 85 Fed. Reg. 73 (April 15, 2020)



FCA Typology — Third-Party Agents



- Borrower Agents
 - CPAs/ accountants
 - Tax Preparers
 - Payroll companies
- Lender Agents
 - Fintechs



SBA Programs — Issue Spotting



- PPP Damages
- Alternate Remedy, 31 U.S.C. § 3730(c)(5)
- Public Disclosure Bar, 31 U.S.C. § 3730(e)(4)(A)
- Materiality
 - U.S. ex rel. Bibby v. Mortgage Investors Corp.987 F.3d 1340 (11th Cir. 2021)
- Scienter, 31 U.S.C. § 3729(b)(1)
 - "Regulatory Ambiguity"
 - Reasonable (but incorrect) interpretation



Paycheck Protection Program
Borrower Application Form Revised June 24, 2020

By Signing Below, You Make the Following Representations, Authorizations, and Certifications

CERTIFICATIONS AND AUTHORIZATIONS

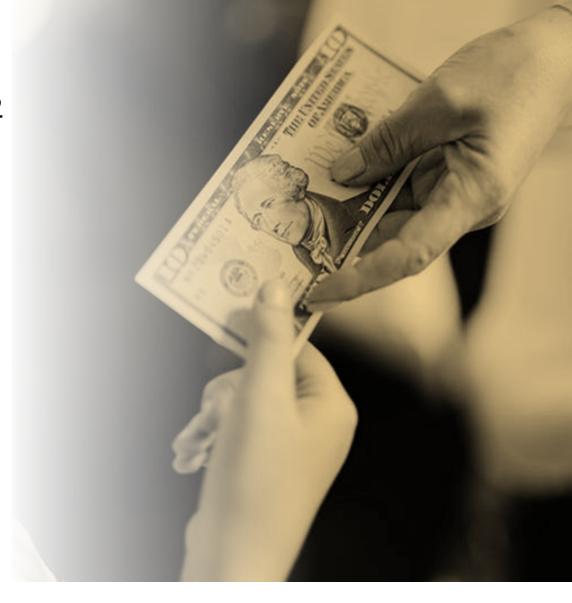
I certify that:

- I have read the statements included in this form, including the Statements Required by Law and Executive Orders, and I understand them
- The Applicant is eligible to receive a loan under the rules in effect at the time this application is submitted that have been issued by the Small Business Administration (SBA) implementing the Paycheck Protection Program under Division A, Title I of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) (the Paycheck Protection Program Rule).



FCA Typology — Treasury Programs

- Coronavirus State and Local Fiscal Recovery Funds (SLFRF)
 - \$350 billion
 - Replace lost public sector revenue
 - Premium pay for essential workers
 - Invest in water, sewer, and broadband infrastructure
- Coronavirus Relief Fund (CRF)
 - \$150 billion
 - Covers necessary expenditures
 - 1. incurred due to the public health emergency with respect to the Coronavirus Disease 2019 (COVID–19);
 - 2. were not accounted for in the budget most recently approved as of March 27, 2020 (the date of enactment of the CARES Act) for the State or government; and
 - 3. were incurred during the period that begins on March 1, 2020, and ends on December 31, 2021.







Treasury Programs — Issue Spotting



- Amenability to Suit Under FCA
 - Vermont Agency of Natural Resources v. United States ex rel. Stevens, 529 U.S. 765 (2000)
 - Cook County, Illinois v. United States ex rel. Chandler, 538 U.S. 119 (2003)
- FCA Reach to Sub-Grantees / Sub-Recipient
 - United States v. Neifert-White Co., 390 U.S. 228 (1968)
 - United States ex rel. Marcus v. Hess, 317 U.S. 537 (1943)



FCA Typology — Healthcare



Advanced/ Accelerated Payments (AAP)

- Accelerated Payment Program (for Part A providers)
- Advance Payment Program (for Part B suppliers)
- Payments were made "available to any Medicare provider/supplier who submits a request to the appropriate Medicare Administrative Contractor (MAC) and meets the required qualifications," which include:
 - Have billed Medicare for claims within 180 days immediately prior to the date of signature on the provider's/supplier's request form
 - Not be in bankruptcy
 - Not be under active medical review or program integrity investigation
 - Not have any outstanding delinquent Medicare overpayments
- Payments are **not** grants or awards of federal funding; amounts must be repaid.

Provider Relief Fund (PRF)

- \$175 billion in general and targeted distributions for healthcare-related expenses or lost revenue due to COVID-19
- Providers must certify:
 - PRF payments would "only be used to prevent, prepare for, and respond to coronavirus" and to "reimburse the [r]ecipient only for health care related expenses or lost revenues that are attributable to coronavirus,"
 - PRF payments would not be used "to reimburse expenses or losses that have been reimbursed from other sources or that other sources are obligated to reimburse."
- Unlike AAP payments, PRF distributions are not subject to repayment if terms/ conditions met



FCA Typology — Healthcare



COVID Uninsured Program (UIP)

- Reimbursement to health care providers generally at Medicare rates for
 - testing uninsured individuals for COVID-19,
 - treating uninsured individuals with a COVID-19 primary diagnosis, and
 - for COVID-19 vaccine administration to the uninsured.

COVID Coverage Assistance Fund (CAF)

• Reimbursement for COVID-19 vaccine administration to <u>under</u>insured individuals whose health plan either does not include COVID-19 vaccination as a covered benefit or covers COVID-19 vaccine administration but with cost-sharing.



FCA Typology — Healthcare





- Kickbacks for referrals
- Services never rendered
- Services not reasonable and necessary
- Upcoding

Press release

New HHS Study Shows <u>63-Fold</u> <u>Increase</u> in Medicare Telehealth Utilization During the Pandemic

Dec 03, 2021 | Telehealth

Share









A new report from the U.S. Department of Health and Human Services (HHS) found that massive increases in the use of telehealth helped maintain some health care access during the COVID-19 pandemic, with specialists like behavioral health providers seeing the highest telehealth utilization relative to other providers. The report, which was produced by researchers in HHS's Office of the Assistant Secretary for Planning and Evaluation (ASPE) and analyzes Medicare fee for service (FFS) data in 2019 and 2020, also highlights that telehealth services were accessed more in urban areas than rural communities, and Black Medicare beneficiaries were less likely than White beneficiaries to utilize telehealth.



FCA Typology — Procurement



❖ Defective/ Nonconforming Products

- PPE
- Ventilators
- Testing Kits/ Supplies
- Counterfeit goods

Worthless Services

- COVID Testing/ Tracing
- Vaccine Administration

Overcharging



The False Claims Act: A Primer

The False Claims Act (FCA), 31 U.S.C. §§ 3729 - 3733 was enacted in 1863 by a Congress concerned that suppliers of goods to the Union Army during the Civil War were defrauding the Army. The FCA provided that any person who knowingly submitted false claims to the government was liable for double the government's damages plus a penalty of \$2,000 for each false claim. Since then, the FCA has been amended several times. In 1986, there were significant changes to the FCA, including increasing damages from double damages to treble damages and raising the penalties from \$2,000 to a range of \$5,000 to \$10,000. The FCA has been amended three times since 1986. Over the life of the statute it has been interpreted on hundreds of occasions by federal courts (which sometimes issue conflicting interpretations of the statute). The purpose of this primer is not to explain how the FCA evolved over the decades or to discuss judicial interpretations of its provisions. Rather, in this primer we simply explain the most significant elements of the FCA to give one new to the statute an introductory understanding of the FCA and how it works. The complete text of the False Claims Act is provided at the end of this primer.

Liability

The statute begins, in § 3729(a), by explaining the conduct that creates FCA liability. In very general terms, §§ 3729(a)(1)(A) and (B) set forth FCA liability for any person who knowingly submits a false claim to the government or causes another to submit a false claim to the government or knowingly makes a false record or statement to get a false claim paid by the government. Section 3729(a)(1)(G) is known as the reverse false claims section; it provides liability where one acts improperly – not to get money from the government, but to avoid having to pay money to the government. Section 3729(a)(1)(C) creates liability for those who conspire to violate the FCA. Sections 3729(a)(1)(D), (E), and (F) are rarely invoked.

Damages and penalties

After listing the seven types of conduct that result in FCA liability, the statute provides that one who is liable must pay a civil penalty of between \$5,000 and \$10,000 for each false claim (those amounts are adjusted from time to time; the current amounts are \$5,500 to \$11,000) and treble the amount of the government's damages. Where a person who has violated the FCA reports the violation to the government under certain conditions, the FCA provides that the person shall be liable for not less than double damages.

The knowledge requirement

A person does not violate the False Claims Act by submitting a false claim to the government; to violate the FCA a person must have submitted, or caused the submission of, the false claim (or made a false statement or record) with knowledge of the falsity. In § 3729(b)(1), knowledge of false information is defined as being (1) actual knowledge, (2) deliberate ignorance of the truth or falsity of the information, or (3) reckless disregard of the truth or falsity of the information.

Definition of a claim

The FCA also defines what a claim is and says that it is a demand for money or property made directly to the Federal Government or to a contractor, grantee, or other recipient if the money is to spent on the government's behalf and if the Federal Government provides any of the money demanded or if the Federal Government will reimburse the contractor or grantee.

Tax claims exclusion

In § 3729(d), the FCA states that the statute does not apply to tax claims under the Internal Revenue Code.

The *qui tam* provisions

The FCA allows private persons to file suit for violations of the FCA on behalf of the government. A suit filed by an individual on behalf of the government is known as a "qui tam" action, and the person bringing the action is referred to as a "relator."

a. Filing a qui tam complaint

The *qui tam* provisions begin at § 3730(b) of the FCA; § 3730(b)(1) states that a person may file a *qui tam* action. Section 3730(b)(2) provides that a *qui tam* complaint must be filed with the court under seal. The complaint and a written disclosure of all the relevant information known to the relator must be served on the U.S. Attorney for the judicial district where the *qui tam* was filed and on the Attorney General of the United States.

b. Government investigation

The *qui tam* complaint is initially sealed for 60 days. The government is required to investigate the allegations in the complaint; if the government cannot complete its investigation in 60 days, it can seek extensions of the seal period while it continues its investigation. The government must then notify the court that it is proceeding with the action (generally referred to as "intervening" in the action) or declining to take over the action, in which case the relator can proceed with the action.

c. Rights of the parties in a qui tam action

If the government intervenes in the *qui tam* action it has the primary responsibility for prosecuting the action. § 3730(c)(1). It can dismiss the action, even over the objection of the relator, so long as the court gives the relator an opportunity for a hearing (§ 3730(c)(2)(A)) and it can settle the action even if the relator objects so long as the relator is given a hearing and the court determines that the settlement is fair. § 3730(c)(2)(B). If a relator seeks to settle or dismiss a *qui tam* action, it must obtain the consent of the government. § 3730(b)(1). When the case is proceeding, the government (§ 3730(c)(2)(C)) and the defendant (§ 3730(c)(2)(D)) can ask the court to limit the relator's participation in the litigation.

d. Award to the relator

If the government intervenes in the *qui tam* action, the relator is entitled to receive between 15 and 25 percent of the amount recovered by the government through the *qui tam* action. If the government declines to intervene in the action, the relator's share is increased to 25 to 30 percent. Under certain circumstances, the relator's share may be reduced to no more than ten percent. If the relator planned and initiated the fraud, the court may reduce the award without limitation. The relator's share is paid to the relator by the government out of the payment received by the government from the defendant. If a *qui tam* action is successful, the relator also is entitled to legal fees and other expenses of the action by the defendant. All of these provisions are in § 3730(d) of the FCA. The FCA also provides that if the government chooses to obtain a recovery from the defendant in certain types of proceedings other than the relator's FCA suit, this is known as an alternate remedy and the relator is entitled to the same share of the recovery as if the recovery was obtained through the relator's FCA suit. §3730(c)(5).

e. Statutory bars to qui tam actions

The FCA provides several circumstances in which a relator cannot file or pursue a *qui tam* action:

- 1. The relator was convicted of criminal conduct arising from his or her role in the FCA violation. § 3730(d)(3).
- 2. Another *qui tam* concerning the same conduct already has been filed (this is known as the "first to file bar"). §3730(b)(5).
- 3. The government already is a party to a civil or administrative money proceeding concerning the same conduct. §3730(e)(3).
- 4. The *qui tam* action is based upon information that has been disclosed to the public through any of several means: criminal, civil, or administrative hearings in which the government is a party, government hearings, audits, reports, or investigations, or through the news media (this is known as the "public disclosure bar.") §3730(e)(4)(A). There is an exception to the public disclosure bar where the relator was the original source of the information.

We repeat that this primer does not discuss every section of the False Claims Act and is not intended to provide legal advice or take formal positions. It is intended only to provide a general introduction to the False Claims Act to those new to the area.

Below is the complete text of the False Claims Act:

§ 3729. False claims

- (a) LIABILITY FOR CERTAIN ACTS.—
 - (1) IN GENERAL.—Subject to paragraph (2), any person who—
 - (A) knowingly presents, or causes to be presented, a false or fraudulent claim for payment or approval;
 - (B) knowingly makes, uses, or causes to be made or used, a false record or statement material to a false or fraudulent;
 - (C) conspires to commit a violation of subparagraph (A), (B), (D), (E), (F), or (G);
 - (D) 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;
 - (E) 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;
 - (F) knowingly buys, or receives as a pledge of an obligation or debt, public property from an officer or employee of the Government, or a member of the Armed Forces, who lawfully may not sell or pledge property; or
 - (G) 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,

is liable to the United States Government for a civil penalty of not less than \$5,000 and not more than \$10,000, as adjusted by the Federal Civil Penalties Inflation Adjustment Act of 1990 (28 U.S.C. 2461 note; Public Law 104-410), plus 3 times the amount of damages which the Government sustains because of the act of that person.

- (2) REDUCED DAMAGES.—If the court finds that—
 - (A) the person committing the violation of this subsection furnished officials of the United States 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;
 - (B) such person fully cooperated with any Government investigation of such violation; and
 - (C) at the time such person furnished the United States with the information about the violation, no criminal prosecution, civil action, 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 violation,

the court may assess not less than 2 times the amount of damages which the Government sustains because of the act of that person.

- (3) COSTS OF CIVIL ACTIONS.—A person violating this subsection shall also be liable to the United States Government for the costs of a civil action brought to recover any such penalty or damages.
- (b) DEFINITIONS.—For purposes of this section—
 - (1) the terms "knowing" and "knowingly"—
 - (A) mean that a person, with respect to information—
 - (i) has actual knowledge of the information;
 - (ii) acts in deliberate ignorance of the truth or falsity of the information; or
 - (iii) acts in reckless disregard of the truth or falsity of the information;; and
 - (B) require no proof of specific intent to defraud;
 - (2) the term "claim"—

- (A) means any request or demand, whether under a contract or otherwise, for money or property and whether or not the United States has title to the money or property, that—
 - (i) is presented to an officer, employee, or agent of the United States; or
 - (ii) 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 United States Government
 - (I) provides or has provided any portion of the money or property requested or demanded; or
 - (II) will reimburse such contractor, grantee, or other recipient for any portion of the money or property which is requested or demanded; and
- (B) does not include requests or demands for money or property that the Government has paid to an individual as compensation for Federal employment or as an income subsidy with no restrictions on that individual's use of the money or property;
- (3) the term "obligation" means 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; and
- (4) the term "material" means having a natural tendency to influence, or be capable of influencing, the payment or receipt of money or property.
- (c) EXEMPTION FROM DISCLOSURE.—Any information furnished pursuant to subsection (a)(2) shall be exempt from disclosure under section 552 of title 5.
- (d) EXCLUSION.—This section does not apply to claims, records, or statements made under the Internal Revenue Code of 1986.

§ 3730. Civil actions for false claims

- (a) RESPONSIBILITIES OF THE ATTORNEY GENERAL.—The Attorney General diligently shall investigate a violation under section 3729. If the Attorney General finds that a person has violated or is violating section 3729, the Attorney General may bring a civil action under this section against the person.
- (b) ACTIONS BY PRIVATE PERSONS.—
 - (1) A person may bring a civil action for a violation of section 3729 for the person and for the United States Government. The action shall be brought in the name of the Government. The action may be dismissed only if the court and the Attorney General 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 person possesses shall be served on the Government pursuant to Rule 4(d)(4) of the Federal Rules of Civil Procedure. The complaint shall be filed in camera, shall remain under seal for at least 60 days, and shall not be served on the defendant until the court so orders. The Government may elect to intervene and proceed with the action within 60 days after it receives both the complaint and the material evidence and information.
 - (3) The Government may, for good cause shown, move the court for extensions of the time during which the complaint remains under seal under paragraph (2). Any such motions 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 Federal Rules of Civil Procedure.
 - (4) Before the expiration of the 60-day period or any extensions obtained under paragraph (3), the Government shall—
 - (A) proceed with the action, in which case the action shall be conducted by the Government; or
 - (B) notify the court that it declines to take over the action, in which case the person bringing the action shall have the right to conduct the action.

(5) When a person brings an action under this subsection, no person other than the Government may intervene or bring a related action based on the facts underlying the pending action.

(c) RIGHTS OF THE PARTIES TO QUI TAM ACTIONS.—

- (1) If the Government proceeds with the action, it shall have the primary responsibility for prosecuting the action, and shall not be bound by an act of the person bringing the action. Such person shall have the right to continue as a party to the action, subject to the limitations set forth in paragraph (2).
- (2) (A) The Government may dismiss the action notwithstanding the objections of the person initiating the action if the person has been notified by the Government of the filing of the motion and the court has provided the person with an opportunity for a hearing on the motion.
 - (B) The Government may settle the action with the defendant notwithstanding the objections of the person 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.
 - (C) Upon a showing by the Government that unrestricted participation during the course of the litigation by the person initiating the action would interfere with or unduly delay the Government's prosecution of the case, or would be repetitious, irrelevant, or for purposes of harassment, the court may, in its discretion, impose limitations on the person's participation, such as—
 - (i) limiting the number of witnesses the person may call;
 - (ii) limiting the length of the testimony of such witnesses:
 - (iii) limiting the person's cross-examination of witnesses; or
 - (iv) otherwise limiting the participation by the person in the litigation.

- (D) Upon a showing by the defendant that unrestricted participation during the course of the litigation by the person initiating the action would be for purposes of harassment or would cause the defendant undue burden or unnecessary expense, the court may limit the participation by the person in the litigation.
- (3) If the Government elects not to proceed with the action, the person who initiated the action shall have the right to conduct the action. If the Government so requests, it shall be served with copies of all pleadings filed in the action and shall be supplied with copies of all deposition transcripts (at the Government's expense). When a person proceeds with the action, the court, without limiting the status and rights of the person initiating the action, may nevertheless permit the Government to intervene at a later date upon a showing of good cause.
- (4) Whether or not the Government proceeds with the action, upon a showing by the Government that certain actions of discovery by the person initiating the action would interfere with the Government'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 Government 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.
- (5) Notwithstanding subsection (b), the Government may elect to pursue its claim through any alternate remedy available to the Government, including any administrative proceeding to determine a civil money penalty. If any such alternate remedy is pursued in another proceeding, the person initiating the action shall have the same rights in such proceeding as such person would have had if the action had continued under this section. 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 section. For purposes of the preceding sentence, a finding or conclusion is final if it has been finally determined on appeal to the appropriate court of the United States, if all time for filing such an appeal with respect to the finding or conclusion has expired, or if the finding or conclusion is not subject to judicial review.

(d) AWARD TO QUI TAM PLAINTIFF.—

- (1) If the Government proceeds with an action brought by a person under subsection (b), such person shall, subject to the second sentence of this paragraph, 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 person 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 person bringing the action) relating to allegations or transactions in a criminal, civil, or administrative hearing, in a congressional, administrative, or Government [General] Accounting Office report, hearing, audit, or investigation, 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 person bringing the action in advancing the case to litigation. Any payment to a person under the first or second sentence of this paragraph shall be made from the proceeds. Any such person shall also receive an amount for reasonable expenses which the court finds to have been necessarily incurred, plus reasonable attorneys' fees and costs. All such expenses, fees, and costs shall be awarded against the defendant.
- (2) If the Government does not proceed with an action under this section, the person 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 person shall also receive an amount for reasonable expenses which the court finds to have been necessarily incurred, plus reasonable attorneys' fees and costs. All such expenses, fees, and costs shall be awarded against the defendant.
- (3) Whether or not the Government proceeds with the action, if the court finds that the action was brought by a person who planned and initiated the violation of section 3729 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 person would otherwise receive under paragraph (1) or (2) of this subsection, taking into account the role of that person in advancing the case to litigation and any relevant circumstances pertaining to the violation. If the person bringing the action is convicted of criminal conduct arising from his or her role in the

violation of section 3729, that person 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 United States to continue the action, represented by the Department of Justice.

(4) If the Government 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.

(e) CERTAIN ACTIONS BARRED.—

- (1) No court shall have jurisdiction over an action brought by a former or present member of the armed forces under subsection (b) of this section against a member of the armed forces arising out of such person's service in the armed forces.
- (2) (A) No court shall have jurisdiction over an action brought under subsection (b) against a Member of Congress, a member of the judiciary, or a senior executive branch official if the action is based on evidence or information known to the Government when the action was brought.
 - (B) For purposes of this paragraph, "senior executive branch official" means any officer or employee listed in paragraphs (1) through (8) of section 101(f) of the Ethics in Government Act of 1978 (5 U.S.C. App.).
- (3) In no event may a person bring an action under subsection (b) which is based upon allegations or transactions which are the subject of a civil suit or an administrative civil money penalty proceeding in which the Government is already a party.
- (4) (A) 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--
 - (i) in a Federal criminal, civil, or administrative hearing, in which the Government or its agent is a party;
 - (ii) in a congressional, Government Accountability Office, or other Federal report, hearing, audit, or investigation: or

(iii) from the news media,

unless the action is brought by the Attorney General or the person bringing the action is an original source of the information.

- (B) For purposes of this paragraph, "original source" means an individual who either (i) prior to a public disclosure under subsection (e)(4)(a), 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.
- (f) GOVERNMENT NOT LIABLE FOR CERTAIN EXPENSES.—The Government is not liable for expenses which a person incurs in bringing an action under this section.
- (g) FEES AND EXPENSES TO PREVAILING DEFENDANT.—In civil actions brought under this section by the United States, the provisions of section 2412(d) of title 28 shall apply.
- (h) RELIEF FROM RETALIATORY ACTIONS.—
 - (1) IN GENERAL.—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, or agent on behalf of the employee, contractor, or agent or associated others in furtherance of other efforts to stop 1 or more violations of this subchapter.
 - (2) RELIEF.—Relief under paragraph (1) 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 appropriate district court of the United States for the relief provided in this subsection.

§ 3731. False claims procedure

- (a) A subpena [subpoena] requiring the attendance of a witness at a trial or hearing conducted under section 3730 of this title may be served at any place in the United States.
 - (b) A civil action under section 3730 may not be brought—
 - (1) more than 6 years after the date on which the violation of section 3729 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 United States 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.
- (c) If the Government elects to intervene and proceed with an action brought under 3730(b), the Government may file its own complaint or amend the complaint of a person who has brought an action under section 3730(b) to clarify or add detail to the claims in which the Government is intervening and to add any additional claims with respect to which the Government contends it is entitled to relief. For statute of limitations purposes, any such 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.
- (d) In any action brought under section 3730, the United States shall be required to prove all essential elements of the cause of action, including damages, by a preponderance of the evidence.
- (e) Notwithstanding any other provision of law, the Federal Rules of Criminal Procedure, or the Federal Rules of Evidence, a final judgment rendered in favor of the United States in any criminal proceeding charging fraud or false statements, whether upon a verdict after trial or upon a plea of guilty or nolo contendere, 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 subsection (a) or (b) of section 3730.

§ 3732. False claims jurisdiction

- (a) ACTIONS UNDER SECTION 3730.—Any action under section 3730 may be brought in any judicial district in which the defendant or, in the case of multiple defendants, any one defendant can be found, resides, transacts business, or in which any act proscribed by section 3729 occurred. A summons as required by the Federal Rules of Civil Procedure shall be issued by the appropriate district court and served at any place within or outside the United States.
- (b) CLAIMS UNDER STATE LAW.—The district courts shall have jurisdiction over any action brought under the laws of any State for the recovery of funds paid by a State or local

government if the action arises from the same transaction or occurrence as an action brought under section 3730.

government that is named as a co-plaintiff with the United States in an action brought under subsection (b), a seal on the action ordered by the court under section 3730(b) shall not preclude the Government or the person bringing the action from serving the complaint, any other pleadings, or the written disclosure of substantially all material evidence and information possessed by the person bringing the action on the law enforcement authorities that are authorized under the law of that State or local government to investigate and prosecute such actions on behalf of such governments, except that such seal applies to the law enforcement authorities so served to the same extent as the seal applies to other parties in the action.

§ 3733. Civil investigative demands

(a) IN GENERAL.—

- (1) ISSUANCE AND SERVICE.—Whenever the Attorney General, or a designee (for purposes of this section), has reason to believe that any person may be in possession, custody, or control of any documentary material or information relevant to a false claims law investigation, the Attorney General, or a designee, may, before commencing a civil proceeding under section 3730(a) or other false claims law, or making an election under section 3730(b), issue in writing and cause to be served upon such person, a civil investigative demand requiring such person—
 - (A) to produce such documentary material for inspection and copying,
 - (B) to answer in writing written interrogatories with respect to such documentary material or information,
 - (C) to give oral testimony concerning such documentary material or information, or
 - (D) to furnish any combination of such material, answers, or testimony.

The Attorney General may delegate the authority to issue civil investigative demands under this subsection. Whenever a civil investigative demand is an express demand for any product of discovery, the Attorney General, the Deputy Attorney General, or an Assistant Attorney General shall cause to be served, in any manner authorized by this section, a copy of such demand upon the person from whom the discovery was obtained and shall notify the person to whom such demand is issued of the date on which such copy was served. Any information obtained by the Attorney

General or a designee of the Attorney General under this section may be shared with any qui tam relator if the Attorney General or designee determine it is necessary as part of any false claims act investigation.

(2) CONTENTS AND DEADLINES.—

- (A) Each civil investigative demand issued under paragraph (1) shall state the nature of the conduct constituting the alleged violation of a false claims law which is under investigation, and the applicable provision of law alleged to be violated.
- (B) If such demand is for the production of documentary material, the demand shall—
 - (i) describe each class of documentary material to be produced with such definiteness and certainty as to permit such material to be fairly identified;
 - (ii) prescribe a return date for each such class which will provide a reasonable period of time within which the material so demanded may be assembled and made available for inspection and copying; and
 - (iii) identify the false claims law investigator to whom such material shall be made available.
- (C) If such demand is for answers to written interrogatories, the demand shall—
 - (i) set forth with specificity the written interrogatories to be answered:
 - (ii) prescribe dates at which time answers to written interrogatories shall be submitted; and
 - (iii) identify the false claims law investigator to whom such answers shall be submitted.
- (D) If such demand is for the giving of oral testimony, the demand shall—
 - (i) prescribe a date, time, and place at which oral testimony shall be commenced;
 - (ii) identify a false claims law investigator who shall conduct the examination and the custodian to whom

- the transcript of such examination shall be submitted;
- (iii) specify that such attendance and testimony are necessary to the conduct of the investigation;
- (iv) notify the person receiving the demand of the right to be accompanied by an attorney and any other representative; and
- (v) describe the general purpose for which the demand is being issued and the general nature of the testimony, including the primary areas of inquiry, which will be taken pursuant to the demand.
- (E) Any civil investigative demand issued under this section which is an express demand for any product of discovery shall not be returned or returnable until 20 days after a copy of such demand has been served upon the person from whom the discovery was obtained.
- (F) The date prescribed for the commencement of oral testimony pursuant to a civil investigative demand issued under this section shall be a date which is not less than seven days after the date on which demand is received, unless the Attorney General or an Assistant Attorney General designated by the Attorney General determines that exceptional circumstances are present which warrant the commencement of such testimony within a lesser period of time.
- (G) The Attorney General shall not authorize the issuance under this section of more than one civil investigative demand for oral testimony by the same person unless the person requests otherwise or unless the Attorney General, after investigation, notifies that person in writing that an additional demand for oral testimony is necessary.
- (b) PROTECTED MATERIAL OR INFORMATION.—
 - (1) IN GENERAL.—A civil investigative demand issued under subsection (a) may not require the production of any documentary material, the submission of any answers to written interrogatories, or the giving of any oral testimony if such material, answers, or testimony would be protected from disclosure under—

- (A) the standards applicable to subpoenas or subpoenas duces tecum issued by a court of the United States to aid in a grand jury investigation; or
- (B) the standards applicable to discovery requests under the Federal Rules of Civil Procedure, to the extent that the application of such standards to any such demand is appropriate and consistent with the provisions and purposes of this section.
- (2) EFFECT ON OTHER ORDERS, RULES, AND LAWS.—Any such demand which is an express demand for any product of discovery supersedes any inconsistent order, rule, or provision of law (other than this section) preventing or restraining disclosure of such product of discovery to any person. Disclosure of any product of discovery pursuant to any such express demand does not constitute a waiver of any right or privilege which the person making such disclosure may be entitled to invoke to resist discovery of trial preparation materials.

(c) Service; Jurisdiction.—

- (1) BY WHOM SERVED.—Any civil investigative demand issued under subsection (a) may be served by a false claims law investigator, or by a United States marshal or a deputy marshal, at any place within the territorial jurisdiction of any court of the United States.
- (2) Service in Foreign Countries.—Any such demand or any petition filed under subsection (j) may be served upon any person who is not found within the territorial jurisdiction of any court of the United States in such manner as the Federal Rules of Civil Procedure prescribe for service in a foreign country. To the extent that the courts of the United States can assert jurisdiction over any such person consistent with due process, the United States District Court for the District of Columbia shall have the same jurisdiction to take any action respecting compliance with this section by any such person that such court would have if such person were personally within the jurisdiction of such court.

(d) Service Upon Legal Entities and Natural Persons.—

- (1) LEGAL ENTITIES.—Service of any civil investigative demand issued under subsection (a) or of any petition filed under subsection (j) may be made upon a partnership, corporation, association, or other legal entity by—
 - (A) delivering an executed copy of such demand or petition to any partner, executive officer, managing agent, or general

- agent of the partnership, corporation, association, or entity, or to any agent authorized by appointment or by law to receive service of process on behalf of such partnership, corporation, association, or entity;
- (B) delivering an executed copy of such demand or petition to the principal office or place of business of the partnership, corporation, association, or entity; or
- (C) depositing an executed copy of such demand or petition in the United States mails by registered or certified mail, with a return receipt requested, addressed to such partnership, corporation, association, or entity at its principal office or place of business.
- (2) NATURAL PERSONS.—Service of any such demand or petition may be made upon any natural person by—
 - (A) delivering an executed copy of such demand or petition to the person; or
 - (B) depositing an executed copy of such demand or petition in the United States mails by registered or certified mail, with a return receipt requested, addressed to the person at the person's residence or principal office or place of business.
- (e) PROOF OF SERVICE.—A verified return by the individual serving any civil investigative demand issued under subsection (a) or any petition filed under subsection (j) setting forth the manner of such service shall be proof of such service. In the case of service by registered or certified mail, such return shall be accompanied by the return post office receipt of delivery of such demand.

(f) DOCUMENTARY MATERIAL.—

- (1) SWORN CERTIFICATES.—The production of documentary material in response to a civil investigative demand served under this section shall be made under a sworn certificate, in such form as the demand designates, by—
 - (A) in the case of a natural person, the person to whom the demand is directed, or
 - (B) in the case of a person other than a natural person, a person having knowledge of the facts and circumstances relating to such production and authorized to act on behalf of such person.

The certificate shall state that all of the documentary material required by the demand and in the possession, custody, or control of the person to whom the demand is directed has been produced and made available to the false claims law investigator identified in the demand.

- (2) PRODUCTION OF MATERIALS.—Any person upon whom any civil investigative demand for the production of documentary material has been served under this section shall make such material available for inspection and copying to the false claims law investigator identified in such demand at the principal place of business of such person, or at such other place as the false claims law investigator and the person thereafter may agree and prescribe in writing, or as the court may direct under subsection (j)(1). Such material shall be made so available on the return date specified in such demand, or on such later date as the false claims law investigator may prescribe in writing. Such person may, upon written agreement between the person and the false claims law investigator, substitute copies for originals of all or any part of such material.
- (g) INTERROGATORIES.—Each interrogatory in a civil investigative demand served under this section shall be answered separately and fully in writing under oath and shall be submitted under a sworn certificate, in such form as the demand designates, by—
 - (1) in the case of a natural person, the person to whom the demand is directed, or
 - (2) in the case of a person other than a natural person, the person or persons responsible for answering each interrogatory.

If any interrogatory is objected to, the reasons for the objection shall be stated in the certificate instead of an answer. The certificate shall state that all information required by the demand and in the possession, custody, control, or knowledge of the person to whom the demand is directed has been submitted. To the extent that any information is not furnished, the information shall be identified and reasons set forth with particularity regarding the reasons why the information was not furnished.

(h) ORAL EXAMINATIONS.—

(1) PROCEDURES.—The examination of any person pursuant to a civil investigative demand for oral testimony served under this section shall be taken before an officer authorized to administer oaths and affirmations by the laws of the United States or of the place where the examination is held. The officer before whom the testimony is to be taken shall put the witness on oath or affirmation and shall, personally or by someone acting under the direction of the officer

and in the officer's presence, record the testimony of the witness. The testimony shall be taken stenographically and shall be transcribed. When the testimony is fully transcribed, the officer before whom the testimony is taken shall promptly transmit a copy of the transcript of the testimony to the custodian. This subsection shall not preclude the taking of testimony by any means authorized by, and in a manner consistent with, the Federal Rules of Civil Procedure.

- (2) PERSONS PRESENT.—The false claims law investigator conducting the examination shall exclude from the place where the examination is held all persons except the person giving the testimony, the attorney for and any other representative of the person giving the testimony, the attorney for the Government, any person who may be agreed upon by the attorney for the Government and the person giving the testimony, the officer before whom the testimony is to be taken, and any stenographer taking such testimony.
- (3) Where testimony taken.—The oral testimony of any person taken pursuant to a civil investigative demand served under this section shall be taken in the judicial district of the United States within which such person resides, is found, or transacts business, or in such other place as may be agreed upon by the false claims law investigator conducting the examination and such person.
- (4) TRANSCRIPT OF TESTIMONY.—When the testimony is fully transcribed, the false claims law investigator or the officer before whom the testimony is taken shall afford the witness, who may be accompanied by counsel, a reasonable opportunity to examine and read the transcript, unless such examination and reading are waived by the witness. Any changes in form or substance which the witness desires to make shall be entered and identified upon the transcript by the officer or the false claims law investigator, with a statement of the reasons given by the witness for making such changes. The transcript shall then be signed by the witness, unless the witness in writing waives the signing, is ill, cannot be found, or refuses to sign. If the transcript is not signed by the witness within 30 days after being afforded a reasonable opportunity to examine it, the officer or the false claims law investigator shall sign it and state on the record the fact of the waiver, illness, absence of the witness, or the refusal to sign, together with the reasons, if any, given therefor.
- (5) CERTIFICATION AND DELIVERY TO CUSTODIAN.—The officer before whom the testimony is taken shall certify on the transcript that the witness was sworn by the officer and that the transcript is a true

record of the testimony given by the witness, and the officer or false claims law investigator shall promptly deliver the transcript, or send the transcript by registered or certified mail, to the custodian.

(6) FURNISHING OR INSPECTION OF TRANSCRIPT BY WITNESS.—Upon payment of reasonable charges therefor, the false claims law investigator shall furnish a copy of the transcript to the witness only, except that the Attorney General, the Deputy Attorney General, or an Assistant Attorney General may, for good cause, limit such witness to inspection of the official transcript of the witness' testimony.

(7) CONDUCT OF ORAL TESTIMONY.—

- (A) Any person compelled to appear for oral testimony under a civil investigative demand issued under subsection (a) may be accompanied, represented, and advised by counsel. Counsel may advise such person, in confidence, with respect to any question asked of such person. Such person or counsel may object on the record to any question, in whole or in part, and shall briefly state for the record the reason for the objection. An objection may be made, received, and entered upon the record when it is claimed that such person is entitled to refuse to answer the question on the grounds of any constitutional or other legal right or privilege, including the privilege against self-incrimination. Such person may not otherwise object to or refuse to answer any question, and may not directly or through counsel otherwise interrupt the oral examination. If such person refuses to answer any question, a petition may be filed in the district court of the United States under subsection (j)(1) for an order compelling such person to answer such question.
- (B) If such person refuses to answer any question on the grounds of the privilege against self-incrimination, the testimony of such person may be compelled in accordance with the provisions of part V of title 18 [18 USCS §§ 6001 et seq.].
- (8) WITNESS FEES AND ALLOWANCES.—Any person appearing for oral testimony under a civil investigative demand issued under subsection (a) shall be entitled to the same fees and allowances which are paid to witnesses in the district courts of the United States.

- (i) CUSTODIANS OF DOCUMENTS, ANSWERS, AND TRANSCRIPTS.—
 - (1) DESIGNATION.—The Attorney General shall designate a false claims law investigator to serve as custodian of documentary material, answers to interrogatories, and transcripts of oral testimony received under this section, and shall designate such additional false claims law investigators as the Attorney General determines from time to time to be necessary to serve as deputies to the custodian.
 - (2) RESPONSIBILITY FOR MATERIALS; DISCLOSURE.—
 - (A) A false claims law investigator who receives any documentary material, answers to interrogatories, or transcripts of oral testimony under this section shall transmit them to the custodian. The custodian shall take physical possession of such material, answers, or transcripts and shall be responsible for the use made of them and for the return of documentary material under paragraph (4).
 - (B) The custodian may cause the preparation of such copies of such documentary material, answers to interrogatories, or transcripts of oral testimony as may be required for official use by any false claims law investigator, or other officer or employee of the Department of Justice. Such material, answers, and transcripts may be used by any such authorized false claims law investigator or other officer or employee in connection with the taking of oral testimony under this section.
 - (C) Except as otherwise provided in this subsection, no documentary material, answers to interrogatories, or transcripts of oral testimony, or copies thereof, while in the possession of the custodian, shall be available for examination by any individual other than a false claims law investigator or other officer or employee of the Department of Justice authorized under subparagraph (B). The prohibition in the preceding sentence on the availability of material, answers, or transcripts shall not apply if consent is given by the person who produced such material, answers, or transcripts, or, in the case of any product of discovery produced pursuant to an express demand for such material, consent is given by the person from whom the discovery was obtained. Nothing in this subparagraph is intended to prevent disclosure to the Congress, including any committee or subcommittee of the Congress, or to any

- other agency of the United States for use by such agency in furtherance of its statutory responsibilities.
- (D) While in the possession of the custodian and under such reasonable terms and conditions as the Attorney General shall prescribe—
 - (i) documentary material and answers to interrogatories shall be available for examination by the person who produced such material or answers, or by a representative of that person authorized by that person to examine such material and answers; and
 - (ii) transcripts of oral testimony shall be available for examination by the person who produced such testimony, or by a representative of that person authorized by that person to examine such transcripts.
- (3) USE OF MATERIAL, ANSWERS, OR TRANSCRIPTS IN OTHER PROCEEDINGS.—Whenever any attorney of the Department of Justice has been designated to appear before any court, grand jury, or Federal agency in any case or proceeding, the custodian of any documentary material, answers to interrogatories, or transcripts of oral testimony received under this section may deliver to such attorney such material, answers, or transcripts for official use in connection with any such case or proceeding as such attorney determines to be required. Upon the completion of any such case or proceeding, such attorney shall return to the custodian any such material, answers, or transcripts so delivered which have not passed into the control of such court, grand jury, or agency through introduction into the record of such case or proceeding.
- (4) CONDITIONS FOR RETURN OF MATERIAL.—If any documentary material has been produced by any person in the course of any false claims law investigation pursuant to a civil investigative demand under this section, and—
 - (A) any case or proceeding before the court or grand jury arising out of such investigation, or any proceeding before any Federal agency involving such material, has been completed, or
 - (B) no case or proceeding in which such material may be used has been commenced within a reasonable time after completion of the examination and analysis of all

documentary material and other information assembled in the course of such investigation,

the custodian shall, upon written request of the person who produced such material, return to such person any such material (other than copies furnished to the false claims law investigator under subsection (f)(2) or made for the Department of Justice under paragraph (2)(B)) which has not passed into the control of any court, grand jury, or agency through introduction into the record of such case or proceeding.

- (5) APPOINTMENT OF SUCCESSOR CUSTODIANS.—In the event of the death, disability, or separation from service in the Department of Justice of the custodian of any documentary material, answers to interrogatories, or transcripts of oral testimony produced pursuant to a civil investigative demand under this section, or in the event of the official relief of such custodian from responsibility for the custody and control of such material, answers, or transcripts, the Attorney General shall promptly—
 - (A) designate another false claims law investigator to serve as custodian of such material, answers, or transcripts, and
 - (B) transmit in writing to the person who produced such material, answers, or testimony notice of the identity and address of the successor so designated.

Any person who is designated to be a successor under this paragraph shall have, with regard to such material, answers, or transcripts, the same duties and responsibilities as were imposed by this section upon that person's predecessor in office, except that the successor shall not be held responsible for any default or dereliction which occurred before that designation.

(j) JUDICIAL PROCEEDINGS.—

- (1) PETITION FOR ENFORCEMENT.—Whenever any person fails to comply with any civil investigative demand issued under subsection (a), or whenever satisfactory copying or reproduction of any material requested in such demand cannot be done and such person refuses to surrender such material, the Attorney General may file, in the district court of the United States for any judicial district in which such person resides, is found, or transacts business, and serve upon such person a petition for an order of such court for the enforcement of the civil investigative demand.
- (2) PETITION TO MODIFY OR SET ASIDE DEMAND.—

- (A) Any person who has received a civil investigative demand issued under subsection (a) may file, in the district court of the United States for the judicial district within which such person resides, is found, or transacts business, and serve upon the false claims law investigator identified in such demand a petition for an order of the court to modify or set aside such demand. In the case of a petition addressed to an express demand for any product of discovery, a petition to modify or set aside such demand may be brought only in the district court of the United States for the judicial district in which the proceeding in which such discovery was obtained is or was last pending. Any petition under this subparagraph must be filed—
 - (i) within 20 days after the date of service of the civil investigative demand, or at any time before the return date specified in the demand, whichever date is earlier, or
 - (ii) within such longer period as may be prescribed in writing by any false claims law investigator identified in the demand.
- (B) The petition shall specify each ground upon which the petitioner relies in seeking relief under subparagraph (A), and may be based upon any failure of the demand to comply with the provisions of this section or upon any constitutional or other legal right or privilege of such person. During the pendency of the petition in the court, the court may stay, as it deems proper, the running of the time allowed for compliance with the demand, in whole or in part, except that the person filing the petition shall comply with any portions of the demand not sought to be modified or set aside.
- (3) PETITION TO MODIFY OR SET ASIDE DEMAND FOR PRODUCT OF DISCOVERY.—
 - (A) In the case of any civil investigative demand issued under subsection (a) which is an express demand for any product of discovery, the person from whom such discovery was obtained may file, in the district court of the United States for the judicial district in which the proceeding in which such discovery was obtained is or was last pending, and serve upon any false claims law investigator identified in the demand and upon the recipient of the demand, a petition for an order of such court to modify or set aside

those portions of the demand requiring production of any such product of discovery. Any petition under this subparagraph must be filed—

- (i) within 20 days after the date of service of the civil investigative demand, or at any time before the return date specified in the demand, whichever date is earlier, or
- (ii) within such longer period as may be prescribed in writing by any false claims law investigator identified in the demand.
- (B) The petition shall specify each ground upon which the petitioner relies in seeking relief under subparagraph (A), and may be based upon any failure of the portions of the demand from which relief is sought to comply with the provisions of this section, or upon any constitutional or other legal right or privilege of the petitioner. During the pendency of the petition, the court may stay, as it deems proper, compliance with the demand and the running of the time allowed for compliance with the demand.
- (4) PETITION TO REQUIRE PERFORMANCE BY CUSTODIAN OF DUTIES.—
 At any time during which any custodian is in custody or control of any documentary material or answers to interrogatories produced, or transcripts of oral testimony given, by any person in compliance with any civil investigative demand issued under subsection (a), such person, and in the case of an express demand for any product of discovery, the person from whom such discovery was obtained, may file, in the district court of the United States for the judicial district within which the office of such custodian is situated, and serve upon such custodian, a petition for an order of such court to require the performance by the custodian of any duty imposed upon the custodian by this section.
- (5) JURISDICTION.—Whenever any petition is filed in any district court of the United States under this subsection, such court shall have jurisdiction to hear and determine the matter so presented, and to enter such order or orders as may be required to carry out the provisions of this section. Any final order so entered shall be subject to appeal under section 1291 of title 28. Any disobedience of any final order entered under this section by any court shall be punished as a contempt of the court.
- (6) APPLICABILITY OF FEDERAL RULES OF CIVIL PROCEDURE.—The Federal Rules of Civil Procedure shall apply to any petition under

this subsection, to the extent that such rules are not inconsistent with the provisions of this section.

- (k) DISCLOSURE EXEMPTION.—Any documentary material, answers to written interrogatories, or oral testimony provided under any civil investigative demand issued under subsection (a) shall be exempt from disclosure under section 552 of title 5.
 - (l) DEFINITIONS.—For purposes of this section—
 - (1) the term "false claims law" means—
 - (A) this section and sections 3729 through 3732; and
 - (B) any Act of Congress enacted after the date of the enactment of this section [enacted Oct. 27, 1986] which prohibits, or makes available to the United States in any court of the United States any civil remedy with respect to, any false claim against, bribery of, or corruption of any officer or employee of the United States;
 - (2) the term "false claims law investigation" means any inquiry conducted by any false claims law investigator for the purpose of ascertaining whether any person is or has been engaged in any violation of a false claims law:
 - (3) the term "false claims law investigator" means any attorney or investigator employed by the Department of Justice who is charged with the duty of enforcing or carrying into effect any false claims law, or any officer or employee of the United States acting under the direction and supervision of such attorney or investigator in connection with a false claims law investigation;
 - (4) the term "person" means any natural person, partnership, corporation, association, or other legal entity, including any State or political subdivision of a State;
 - (5) the term "documentary material" includes the original or any copy of any book, record, report, memorandum, paper, communication, tabulation, chart, or other document, or data compilations stored in or accessible through computer or other information retrieval systems, together with instructions and all other materials necessary to use or interpret such data compilations, and any product of discovery;
 - (6) the term "custodian" means the custodian, or any deputy custodian, designated by the Attorney General under subsection (i)(1);
 - (7) the term "product of discovery" includes—

- (A) the original or duplicate of any deposition, interrogatory, document, thing, result of the inspection of land or other property, examination, or admission, which is obtained by any method of discovery in any judicial or administrative proceeding of an adversarial nature;
- (B) any digest, analysis, selection, compilation, or derivation of any item listed in subparagraph (A); and
- (C) any index or other manner of access to any item listed in subparagraph (A); and
- the term "official use" means any use that is consistent with the (8) law, and the regulations and policies of the Department of Justice, including use in connection with internal Department of Justice memoranda and reports; communications between the Department of Justice and a Federal, State, or local government agency, or a contractor of a Federal, State, or local government agency, undertaken in furtherance of a Department of Justice investigation or prosecution of a case; interviews of any qui tam relator or other witness; oral examinations; depositions; preparation for and response to civil discovery requests; introduction into the record of a case or proceeding; applications, motions, memoranda and briefs submitted to a court or other tribunal; and communications with Government investigators, auditors, consultants and experts, the counsel of other parties, arbitrators and mediators, concerning an investigation, case or proceeding.

FEDERAL FALSE CLAIMS ACT RETALIATION PROVISION

31 U.S.C. 3730 (h) RELIEF FROM RETALIATORY ACTIONS.—

- (1) In general. 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 section or other efforts to stop 1 or more violations of this subchapter [31 USCS §§ 3721 et seq.].
- (2) Relief. Relief under paragraph (1) 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 appropriate district court of the United States for the relief provided in this subsection.
- (3) Limitation on bringing civil action. A civil action under this subsection may not be brought more than 3 years after the date when the retaliation occurred.

Panel 4: Workplace Civility: Balancing an Employer's Duty to Provide a Harassment-Free Workplace against Employees' Right to Engage in Concerted Activity

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Lauren specializes in the representation of employers on a range of issues relating to compliance with local, state, and federal labor and employment laws and constitutional provisions. She provides compassionate and responsive counsel, targeted at achieving client goals while minimizing cost and risk.

Lauren emphasizes client counseling—on issues ranging from wage and hour compliance, to workplace training and investigations, to effective employee terminations—with the goal of avoiding litigation before it begins. Her counseling practice includes handbook revisions, effective policy implementation, and on-site training on legal compliance.

Lauren has developed and conducts specialized in-house training for emerging legal issues including the pregnancy, reproductive rights, and family care provisions of the Delaware Discrimination in Employment Act. One of her current programs outlines the complexities of the #MeToo movement and offers executives essential information on harassment avoidance and modifying corporate culture. Lauren also conducts high-level investigations of discrimination and harassment on behalf of employers.

When litigation becomes necessary, Lauren is a dedicated advocate, aggressively pursuing her clients' best interests and providing clear guidance at each stage of the proceeding. Lauren has litigated a wide variety of employment-related matters to successful resolutions, including employment discrimination, non-competition, and constitutional law cases. Lauren has experience in each of Delaware's state and federal courts, as well as the U.S. Court of Appeals for the Third Circuit. Lauren also regularly assists clients in administrative proceedings before state and federal administrative agencies, including the EEOC, the Delaware Office of Anti-Discrimination, and the Delaware Unemployment Insurance Appeals Board.

Education

- Temple University Beasley School of Law (J.D.)
- Wesleyan University (B.A.)
 - With Honors

Bar Admissions

Delaware

Court Admissions

- U.S. District Court for the District of Delaware
- U.S. Court of Appeals for the Third Circuit

Distinctions

- Chambers USA: America's Leading Lawyers for Business, Labor and Employment, 2020
- Volunteer of the Year, Siegel JCC Delaware, 2021

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Workplace Civility: Balancing an Employer's Duty to Provide a Harassment-Free Workplace against Employees' Right to Engage in Concerted Activity

By Lauren E.M. Russell, Esq.

Agenda

- The National Labor Relations Act, and Its Application in Non-Unionized Workplaces
- NLRB Enforcement Priorities
- What This Means for You



Coverage:

- The Board has statutory jurisdiction over private sector employers whose activity in interstate commerce exceeds a minimal level (\$50,000-\$1m)
- "As a practical matter, the Board's jurisdiction is very broad and covers the great majority of non-government employers with a workplace in the United States, including non-profits, employee-owned businesses, labor organizations, non-union businesses, and businesses in states with 'Right to Work'
 laws."

Exclusions:

- Federal, state and local governments, including public schools, libraries, and parks, Federal Reserve banks, and wholly-owned government corporations.
 - Delaware Public Employment Relations Board
- Employers who employ only agricultural laborers, those engaged in farming operations that cultivate or harvest agricultural commodities or prepare commodities for delivery.
- Employers subject to the Railway Labor Act, such as interstate
 railroads and airlines.

Section 7 Rights:

- Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 8(a)(3)
- There is <u>NO</u> requirement that a workplace be unionized for an employee to be protected under the NLRA



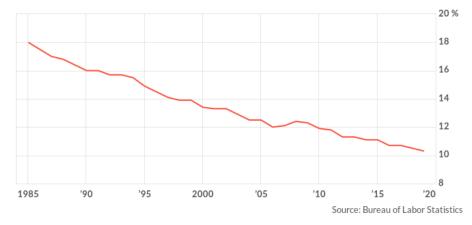
Unfair Labor Practices:

- Section 8(a) It shall be an unfair labor practice for an employer--(1) to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7
- Whenever it is charged that any person has engaged in or is engaging in any such unfair labor practice, the Board, or any agent or agency designated by the Board for such purposes, shall have power to issue and cause to be served upon such person a complaint stating the charges in that respect, and containing a notice of hearing before the Board or a member thereof, or before a designated agent or agency, at a place therein fixed, not less than five days after the serving of said complaint
- 6 month statutory filing deadline

NLRB: Unionization in America

Rate of U.S. unionization falls to record low

10.3% of all working Americans were union members in 2019



1983: 20.1%

2019: 10.3%

2020: 10.8%*

 jump due to mass layoffs of nonunionized workers related to the COVID-19 pandemic

2021: 10.3%

Source: Bureau of Labor Statistics



NLRB Enforcement Priorities

- So What's the Board to Do?
 - Enforce the NLRA against Non-Unionized Employers
 - General Counsel Memo 21-04
- NLRB General Counsel Jennifer Abruzzo
 - Priorities also Expressed in Briefing
 - Seeking reversal of American Federation for Children, which held that an employee's expressed concerns were not protected, concerted activity because other employees did not join in the activities and some employees were offended by them



NLRB Enforcement Priorities

- GC Memo 21-04
 - Targeting Policies and Procedures
 - May be unlawful, on their face, if a cautious employee could interpret them to interfere with Section 7 rights to engage in protected concerted activity
 - Key Focus: confidentiality, non-disparagement, social media, media communication, civility, respectful and professional manner, offensive language, and "no cameras at work" rules



NLRB Enforcement Priorities

- GC Memo 21-04
 - Reversal of NLRB's Authority Regarding Confidentiality
 - Apogee: goal to prohibit employers from requiring employees to keep internal investigations confidential, even during sensitive investigations, like those involving harassment claims
 - Baylor University: making lawful severance agreements that contain confidentiality and non-disparagement clauses, or prohibit employees from initiating civil enforcement actions



What This Means for You

- Policies and Procedures—Work Arounds
 - General Civility Is Out
 - Targeted Policies
 - Knowingly False Communications (Objective Standard)
 - Harassment, Discrimination and Retaliation Prohibited
 - Unlawful Conduct, Threats, or Acts of Violence
 - Offensive Language Should Be Targeted—racially and sexually offensive language, or language that targets an individual on the basis of protected status
 - Shop Talk in Aid of Concerted Activity



What This Means for You

- Internal Investigation
 - Define the Issues
 - There is a specific, credible concern of retaliation because...
 - Set Expectations
 - Encourage confidentiality
 - Explain an employee's rights
 - Address concerns with workplace gossip and damage it can do
 - Let employees feel agency and involvement

