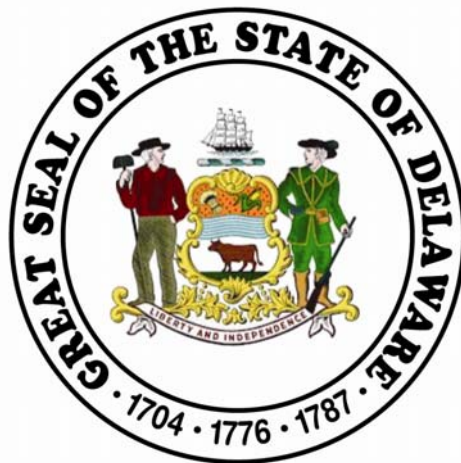


# DRAFTING DELAWARE LEGISLATION



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# DRAFTING

## DELAWARE LEGISLATION

2007 Edition

In preparing this manual, we have drawn upon *Drafting Rules for Uniform or Model Acts*, as approved by the Executive Committee of the National Conference of Commissioners on Uniform State Laws (1997), the *Wisconsin Bill Drafting Manual* (2007-2008), the *North Dakota Legislative Drafting Manual* (2007), Delaware's 1993 *Bill Drafting Manual*, manuals of other states, and other legal drafting publications as noted. Reed Dickerson's outstanding textbooks, *The Fundamentals of Legal Drafting* (1965) and *Materials on Legal Drafting* (1981), William Statsky's *Legislative Analysis and Drafting* (1984), Robert Martineau's *Drafting Legislation and Rules in Plain English* (1991), and Tobias A. Dorsey's *Legislative Drafter's Deskbook* (2006) were especially helpful. We gratefully acknowledge our debt to all of these sources.



*"To be sure, laws can measurably be improved with improvement in the mechanics of legislation, and the need for interpretation is usually in inverse ratio to the care and imagination of [drafters] . . . . "*

Felix Frankfurter, 1882-1965  
U.S. Supreme Court Justice, 1939-1962

# TABLE OF CONTENTS

	Page
Introduction.....	1
Drafting Rules.....	1
Rule 1. Sentence Structure .....	1
Rule 2. Subject of Sentence.....	2
Rule 3. Tense, Mood, Number, and Voice.....	2
Rule 4. Gender.....	3
Rule 5. Consistency .....	4
Rule 6. Brevity and Simplicity .....	5
Rule 7. Choice of Words and Phrases .....	5
Rule 8. Use of "Shall," "May," and "Must" .....	7
Rule 9. Use of "Which" and "That" .....	8
Rule 10. Use of "Such".....	9
Rule 11. Use of "If," "When," "Whenever," and "Where" .....	9
Rule 12. Punctuation .....	10
Rule 13. Definitions .....	11
Rule 14. Limitations, Exceptions, Qualifications, and Conditions .....	13
Rule 15. Series and Tabulations .....	14
Rule 16. Sections and Other Designations .....	14
Rule 17. References to Other Provisions of the Legislation .....	16
Rule 18. Creation of an Agency or Office .....	16
Rule 19. Savings Clauses and Transitional Provisions .....	16
Rule 20. Application to Existing Relationships; "Grandfather" Clauses .....	17
Rule 21. Order of Arrangement of Provisions of Legislation .....	17
Rule 22. Model Acts.....	18
Rule 23. Synopses .....	19
Rule 24. Footers .....	19
Additional Observations, Advice, and Guidelines.....	20
Creating Regulatory Boards and Agencies .....	21
Bills .....	24
Resolutions.....	25

Memorials .....	26
Amendments .....	27
Substitution Bills.....	28
Special Types of Legislation.....	28
Charter Amendments.....	28
Constitutional Amendments .....	29
Parts of a Bill.....	30
Caption .....	30
Bill Title.....	30
Preamble .....	31
Enactment Clause .....	31
Body of a Bill .....	31
Declaration of Purpose .....	33
Definitions .....	33
Basic Provisions .....	33
Penalties.....	33
Effective Date .....	34
Sunset Clause.....	35
Savings Clause.....	35
Grandfather Clause .....	36
Interpretation Clause .....	36
Severability Clause .....	36
Repealing Clause .....	37
Appropriations .....	38
Short Title .....	39
Synopsis.....	39
Footer.....	39
Super-majority Vote Requirements .....	41
Bill Check List .....	43
General Guidelines for Drafting .....	45
Words Frequently Confused .....	49

## APPENDIXES

A. Sample Legislation .....	51
A-1. Senate Bill.....	53
A-2. Senate Amendment to a Senate Bill.....	54
A-3. House Amendment to a Senate Bill .....	55
A-4. House Amendment to a House Amendment to a House Bill.....	56
A-5. Constitutional Amendment (First leg) .....	57
A-6. Constitutional Amendment (Second leg).....	58
A-7. Bill to Amend a Town Charter.....	59
A-8. Supplemental Appropriation Bill.....	60
A-9. Simple Resolution.....	61
A-10. Concurrent Resolution .....	62
A-11. Joint Resolution .....	63
 <b>The sample legislation in Appendix A has been edited to reflect the rules and guidelines of this manual. The samples are not exact reproductions of the original legislation.</b>	
B. Model Resolution To Establish a Task Force .....	65
C. Model Resolution to Extend the Final Date of a Task Force .....	69
D. Important Delaware Cases.....	71



# DRAFTING DELAWARE LEGISLATION

## INTRODUCTION

The following drafting rules are not intended to be exhaustive of guidelines to good drafting. They must be augmented by a variety of other rules, such as those for spelling, compounding, punctuation, capitalization, abbreviations, signs and symbols, and numerals. For generally accepted meanings and standard usage of words, a reputable dictionary should be consulted.

The purpose and effect of legislation should be evident from its language. Choose words that are plain and commonly understood. Use language that conveys the intended meaning to every reader. Omit unnecessary words. Use correct grammar.

The principal functions of legislation are (i) to *create* or *establish*, (ii) to *impose* a duty or obligation, (iii) to *confer* a power, *create* a right, or *grant* a privilege, and (iv) to *prohibit*. Legislation is often subject to conditions, qualifications, limitations, or exceptions. The clarity and precision of legislation is enhanced by plain and orderly expression of those functions.

*"In 1955, Reed Dickerson pointed out that 'legislative drafting is the most difficult form of legal drafting. The basic problems are the same but legislative problems are technically more complicated and socially more important.'" R.J. Martineau, Drafting Legislation and Rules in Plain English, 11 & n.13 (1991), quoting Dickerson, How to Write a Law, 31 Notre Dame Lawyer 14, 15 (1955).*

## DRAFTING RULES

### RULE 1. SENTENCE STRUCTURE.

Use short, simple sentences. Complex sentence structure often makes a statute ambiguous or its meaning obscure. A sentence that expresses a single thought is easier for the reader to understand. Avoid excessive use of dependent clauses, parallel clauses, compound sentences, or other complex sentence structures. Several short, simple sentences are preferable to one long, involved sentence. Try to keep sentences under 21 words.

#### Comment

Grammar, in its simplest sense, is a collection of rules imposed by each language to ensure, to as great an extent as possible, a complete understanding of what is written or spoken. Grammar, when used in drafting legislation, is a collection of rules developed to substantially decrease any confusion or ambiguity as to the meaning of a statute. Generally, the ordinary rules of grammar apply to legislative drafting, except that in a few instances a departure from common usage is desirable.

*"In the 16<sup>th</sup> Century, [England's] King Edward VI requested that statutes be 'more plain and short, to the intent that men might better understand them.'"*

R.J. Martineau, *Drafting Legislation and Rules in Plain English*, 2 (1991), quoting *The Preparation of Legislation*, ¶ 2.8, Command Document 6053 (1975).

## **RULE 2. SUBJECT OF SENTENCE.**

Unless it is clear from the context, use as the subject of each sentence the person or entity to whom a power, right, or privilege is granted or upon whom a duty, obligation, or prohibition is imposed. Be consistent. If you use "person," don't switch to "individual," "party," or "body." "In the U.S.C.A., a person seeking a writ of habeas corpus is referred to as a "prisoner," a "person in custody," a "person detained," a "petitioner," and an "applicant." Only confusion can be created by the use of five different terms to refer to the person seeking the writ." Martineau at 69.

## **RULE 3. TENSE, MOOD, NUMBER, AND VOICE.**

(a) Use the present tense and the indicative mood.

**Example:** An officer may arrest a criminal who is wanted by the FBI.

(b) Avoid use of the passive voice.

**Example:** A criminal who is wanted by the FBI may be arrested by an officer.

(c) Prefer the singular to the plural. Do not use the singular and plural of the same word joined by "or."

**Example:** Do not say: "The applicant shall submit the required fee or fees."  
And do not say ". . . fee(s)."

(d) The indicative mood expresses a fact or declaration. The imperative mood expresses a command. The subjunctive mood expresses a hypothetical situation or contingency. Draft in the indicative mood whenever possible. Avoid false imperatives, which are expressions that seem to direct behavior but do not.

**Example:** Do not say "The Authority shall be a Delaware corporation." Say "The Authority is a Delaware corporation."

(e) State a condition precedent in the perfect tense if its happening is required to be completed.

**Example:** "A person who has been honorably discharged from the military service is eligible for the benefit."

## Comment

A statute is regarded as speaking in the present and constantly. The use of "shall" in imposing a duty or prohibition does not indicate the future tense. Even if an action is required on a specified future date, the form of expression is not in the future tense.

In speaking in the present, a circumstance putting a provision of legislation in operation, if continuing to exist, is in the present tense.

**Example:** "A victim who is injured may bring an action."

If the triggering circumstance is completed, it is expressed in the perfect tense, but never in the future or future perfect.

**Example:** "If the issue has been litigated, the claimant is not eligible for the program."

The singular is simpler and clearer than the plural.

**For example:** "A possibility of reverter is subject to limitations in the document that creates it." is preferable to, "Possibilities of reverter are subject to limitations in the documents that create them."

## **RULE 4. GENDER.**

Avoid using gender-based personal pronouns.

## Comment

Consider drafting the sentence so as to minimize the need for gender-based pronouns. Repeat the noun or use the phrase "he or she," "his or her," or "himself or herself," selecting the least awkward solution. The passive voice may be used if the actor remains clear.

### Gender-neutral Statutory Terms

brother	sibling
chairman	chairperson, chair
clergyman	member of the clergy, minister
craftsman	artisan, craftsperson
committeemen	committee members
dairyman	dairy worker, dairy operator
draftsman	drafter
enlisted man	enlisted person
ex servicemen	veterans
fireman	fire fighter
handyman	handyperson

husband	spouse
layman	layperson
mailman	mail carrier
man	individual, person
mankind	humanity
manmade	artificial, synthetic
manned	staffed
manpower	personnel
policeman	police officer, law enforcement officer
salesman	salesperson
servicemen	military personnel
sister	sibling
unmanned	unstaffed
watchman	guard, security person
widow, widower	surviving spouse
wife	spouse
woman	individual, person

**RULE 5. CONSISTENCY.**

(a) Be consistent in the use of language throughout the legislation. Do not use the same word or phrase to convey different meanings. Do not use different language to convey the same meaning. See Rule 2.

(b) Be consistent in the arrangement of comparable provisions. Arrange in the same way as sections containing similar material.

(c) Occasionally a drafter must choose between following the rules of drafting and maintaining consistency with earlier statutes, between rewriting an entire section or chapter or amending a section or chapter by adding an awkward sentence. It is advisable to consult with the sponsor of the legislation about such an issue.

**Comment**

Consistency helps prevent different interpretations of similar provisions. Choose the best word and use it throughout the legislation. For example: attorney, lawyer, counsel; vehicle, car, automobile; ship, boat, vessel. Do not use "weapon" if you mean firearm; do not use "firearm" if you mean "handgun."

*"Unlike literary composition, legislative style should avoid variation in sentence form and should use identical words for the expression of identical ideas to the point of monotony." Sutherland, Stat. Const. §21.05 (4<sup>th</sup> ed.).*

## **RULE 6. BREVITY AND SIMPLICITY.**

- (a) Omit needless language.
- (b) If a word has the same meaning as a phrase, use the word. *See* pages 45-49.
- (c) Use the shortest sentence that conveys the intended meaning.

**Example:** (Bad) A person is prohibited from using curse words in a drinking establishment.  
(Good) A person may not swear in a tavern.

- (d) Try to use language used in normal conversation and correspondence.

### **Comment**

In construing legislation, courts consider each word and endeavor to give it meaning. Unnecessary language is more likely to mislead than to help.

*"It is traditional that statutes are unreadable, indefinite, confusing, and misleading. The very length of sentences and sections contributes to this result. The traditional belief that statutes must couch simple ideas capable of direct statement in pompous and verbose language adds greatly to confusion. The phrases 'hereinafter referred to,' 'the said' and 'the aforesaid,' 'unless otherwise provided by law,' and similar expressions add little to understanding, usually are meaningless, and are never necessary." Sutherland, Stat. Const. §21.05 (4<sup>th</sup> ed.).*

## **RULE 7. CHOICE OF WORDS AND PHRASES.**

- (a) Select short, familiar words and phrases that best express the intended meaning of the legislation according to common and approved usage. Avoid jargon, slang, overly technical language, "legalese," and foreign phrases (including Latin legal terms) unless the word or phrase is a "term of art" or is often used in case law.

**Examples:** Use "after" instead of "subsequent to;" use "before" instead of "prior to;" use "during" instead of "for the duration of."

- (b) Do not use both a word and its synonym; for example, null and void, power and authority, sole and exclusive.
- (c) Use a pronoun only if its antecedent is unmistakable and its use is gender neutral. Repeat the noun rather than use a pronoun unless the antecedent is a series of nouns. If the sentence structure is so complex that a possessive pronoun seems necessary, consider redrafting the sentence rather than using a possessive pronoun.

(d) Do not use "said," "aforesaid," "above," "below," "hereinbefore," "herein," "hereinafter," "aforementioned," "whatsoever," or similar words of reference or emphasis. Instead, refer to the relevant statutory or nonstatutory unit.

**Example:** "...pursuant to (or under) subsection (b) of this section."

(e) Do not use the modifiers "any," "each," "every," "all," or "some" if the articles "a," "an," or "the" can be used with the same result.

**Example:** "*Each* owner attending the meeting shall sign a registration card." In this example, "each" should be used only if the failure of an owner to attend the meeting has a legal consequence other than to an individual owner, such as the validity of the meeting. If the only legal consequence is to the owners as individuals, "an" should be used.

(f) Do not use "any and all" because the phrase is self-contradictory.

(g) Do not use "and/or." "And" is conjunctive and "or" is disjunctive. Decide whether you mean "and" or "or" and use the proper word, or recast the statement like a penalty provision (...or..., or both) (a fine or imprisonment, or both).

(h) Do not use "deem" for "consider." Use "deem" only to state that something is to be treated as true, even if contrary to fact.

(i) Do not use "duly." The word adds nothing to text that is designed to have a legal effect. It may, however, be appropriately used in resolutions, where more eloquent language is permissible.

(j) Avoid rhetorical flourishes such as "of any kind," "of any nature," or "under any circumstances." You may, however, use them in resolutions expressing praise or condolences.

(k) Try to avoid indefinite words such as "frequently," "untimely," "unseasonable," or "temporarily," except in resolutions. Instead, use precise references.

(l) Do not use "different than." Instead, use "different from."

(m) Do not write "The legislature intends that the Department shall . . . ." Use "The Department shall . . . ." or "The Department may . . . ." Expressions of intent make it unclear whether the statement is a command or an encouragement.

(n) If a provision of law is cited to indicate the source of a procedural directive, use "pursuant to."

**Example:** Within a reasonable time after demand *pursuant to* subsection (a). . . ."

(o) If a provision of law is cited to indicate the source of a right or duty, use "under."

**Example:** A lessor's right to restitution *under* subsection (a) is subject to . . . ."

(p) In a section without subsections, and in each subsection of a section, use the indefinite article "a" or "an" to impart particularity or specificity to the first mention of a noun indicative of a member of a class or group. Use the definite article "the" for further references to that noun. If the noun is compound, even if defined, use the complete term in the first mention of the term. In later references to that term in a section, subsection, or paragraph, use only the principal noun of the term.

**Example:** "A *qualified patient* may make decisions regarding life-sustaining treatment so long as *the patient* is able to do so."

## **RULE 8. USE OF "SHALL," "MAY," AND "MUST."**

(a) A duty, obligation, requirement, or condition precedent is best expressed by "shall" or "must:"

(1) Use "shall" if the verb it qualifies is a transitive verb in the active voice.

**Example:** "The aggrieved party *shall file* the application."

(2) Use "must" if the verb it qualifies is an active verb in the passive voice, or is an inanimate verb, or if the subject is inanimate.

**Examples:** "Any prior convictions *must be set forth* [active verb in the passive voice] in the application." "The applicant *must be* [inactive verb] an adult." "The order [inanimate subject] *must state* the time and place of the hearing."

(b) Use "may" to confer a power, privilege, or right.

**Examples:** "The applicant *may demand* [power] an extension of time." "The applicant *may renew* [privilege] the application." "The applicant *may appeal* [right] the decision."

(c) Use "may not" or "must not" to express a prohibition. Do not use "shall not."

(1) Use "may not" if the verb it qualifies is in the active voice.

**Example:** "The applicant *may not submit* [active voice] more than one application."

- (2) Use "must not" if the verb it qualifies is an inactive verb or an active verb in the passive voice.

**Examples:** "The applicant *must not be* [inactive verb] a convicted felon."  
"The application *must not be filed* [active verb in the passive voice] before the end of the reporting period."

- (d) Avoid using advisory qualifiers, such as "will," "should," and "ought," in the text of legislation. These qualifiers may, however, be used in resolutions.

### Comment

"When a drafter of legislation or a rule wishes to prohibit an action, the most common method is to combine the mandatory '*shall*' with the negative '*not*' and say the actor '*shall not ...*' (*a person shall not discharge a toxic substance into the air*). This form is incorrect . . . . [T]echnically the words '*shall not*' only mean that a person does not have a duty to engage in the action. The use of '*no person shall*' is just as incorrect because the phrase means only that there is no one who has a duty to engage in the action.

The proper way to express a prohibition to act is to say '*may not*' in connection with the action prohibited (*a person may not discharge a toxic substance into the air*). The effect of the words '*may not*' is to deny the actor the power or the authority to engage in the action. The denial of the power or authority accomplishes all that is necessary to establish the legal prohibition against a person performing an act. It also provides the legal basis for imposing a sanction for a violation of the prohibition." R. J. Martineau, *Drafting Legislation and Rules in Plain English*, 81-82 (1991).

#### Shall/May/Must Summary:

- (1) To create a right, say "is entitled to."
- (2) To create discretionary authority, say "may."
- (3) To create a duty, say "shall."
- (4) To create a mere condition precedent, say "must" (e.g., "To be eligible to occupy the office of mayor, a person must . . .").
- (5) To negate a right, say "is not entitled to."
- (6) To negate discretionary authority, say "may not."
- (7) To negate an inactive verb, say "must not."
- (8) To negate a duty or a mere condition precedent, say "is not required to."

### **RULE 9. USE OF "WHICH" AND "THAT."**

- (a) Use "which" to introduce a nonrestrictive clause.

**Example:** "The application, *which* need not be verified, must be signed by the applicant."

(b) Use "that" to introduce a restrictive clause that is intended to modify the nearer of two possible antecedents.

**Example:** "An application to renew a *license that* has been revoked . . . ."

(c) Use "which" to introduce a restrictive clause that is intended to modify the remote antecedent, rather than the nearer of two possible antecedents.

**Example:** "An *application* to renew a license *which* has been rejected."

If the antecedent is not clear, the drafter should consider rewording the sentence to avoid any misconstruction.

**Example:** "If an *application* to renew a license has been rejected, the applicant . . . ."

#### **RULE 10. USE OF "SUCH."**

Do not use "such" as a substitute for "the," "that," "it," "those," "them," or other similar words.

**Example:** "*The* [not *such*] application must be in the form the court prescribes."

Use "such" to express "for example" or "of that kind."

**Examples:** "A public park must include an area for games *such as* [for example] football and soccer." "*Such* [of that kind] a person is guilty."

#### **RULE 11. USE OF "IF," "WHEN," "WHENEVER," AND "WHERE."**

(a) Use "if" regarding a condition that may never occur. Use "when" regarding a condition that is certain to occur.

**Example:** An appeal may be made to district court *if* it is filed within thirty days.

**Example:** A court may order opening of the safety deposit box *when* the owner of the box dies.

(b) "Whenever" is appropriate usage if the condition may occur more than once.

**Example:** *Whenever* an offense is brought to the attention of the Attorney General, the Attorney General shall prosecute the offender.

(c) Do not use "where" as a replacement for "if," "when," or "whenever." Use "where" only regarding a place.

## **RULE 12. PUNCTUATION.**

(a) Punctuate carefully. Consider recasting a sentence if a change in punctuation might change its meaning.

(b) Use a comma followed by "or" to separate the last of a disjunctive series of three or more words, phrases, or clauses in a sentence.

**Example:** "men, women, or children . . . ."

(c) Use a comma followed by "and" to separate the last of a conjunctive series of three or more words, phrases, or clauses in a sentence.

**Example:** "men, women, *and* children . . . ."

(d) Use a colon to introduce a list of items. *See* Rule 15(b).

(e) Do not use quotation marks to designate colloquial or informal use of words or phrases. Quotation marks will not repair imprecise or undefined usage.

(f) Use parentheses only if necessary to make clear a reference to another statutory provision by indicating the nature of the referenced provision.

**Example:** "Subject to §2401(a)(3) (good faith purchasers) . . . ."

Otherwise do not use parentheses in statutes. Parentheses are often used by inexperienced drafters to give an example or to provide an alternative restatement of language used. If you feel the need to parenthesize, you should reconsider the language you are attempting to explain.

(g) Do not use brackets as punctuation.

(h) Do not use "where" when you mean "if."

(i) When in doubt about punctuation not addressed in this manual, refer to the *United States Government Printing Office Style Manual*, a modern dictionary, or the most recent edition of *Black's Law Dictionary*.

### **Comment**

"Always put a comma before the '*and*' or '*or*' in a series when the last two words in the series are intended to be separate (*a brief must contain a statement of issues, statement of the case, statement of facts, argument, and conclusion*). In this example, the comma before the '*and*' is necessary to show that the argument and conclusion are each a separate part of the brief. If there were no comma, it would be possible to read the words '*argument and conclusion*' to mean that the last section of the brief would include both an argument and a conclusion. The comma before the '*and*' eliminates the possibility of confusion and misinterpretation. Although this

principle was once a standard rule of grammar, it has fallen into disfavor. W. Strunk, Jr., and E. White, *The Elements of Style*, however, still recommend it." R. J. Martineau, *Drafting Legislation and Rules in Plain English*, 102 and 105 (1991).

### **RULE 13. DEFINITIONS.**

(a) Define a term, whether a single word or phrase, if:

- (1) the term has several different meanings and it is necessary to preclude any unintended construction of the legislation supported by a contradictory meaning;
- (2) the term is used in a sense that is broader or narrower than its common usage; or
- (3) use of the defined term will avoid repetition of a lengthy phrase and improve the clarity of the legislation.

(b) An example of language used to introduce a series of definitions is: "For purposes of this chapter (title, section), unless the context otherwise requires:".

(c) If a definition is intended to exhaust the meaning of a term, use "means." In an exhaustive definition, avoid using the term itself in the definitional language. If the term embraces more than one meaning, close the series with "or."

**Example:** "*Tribunal* means a court, agency, or other entity authorized to establish, enforce, or modify a child-custody determination."

In a definition, do not use the phrase "means and includes." "Means" is complete and "includes" is partial. Using "includes" allows a court or administering agency to adopt additional meanings; using "means" restricts them to reasonable constructions of your wording. Do not use "includes but is not limited to." That phrase is redundant; "includes" is not a term of limitation. Unless the intent is otherwise, use "means" rather than "includes."

(d) The meaning of a defined term, or of an undefined term having an ordinary meaning, may be expanded to embrace one or more additional meanings, by using "includes" in the qualifying language. For example: If "wages" is defined in the legislation, add the following to the definition: "The term *includes* gratuities received by an employee from patrons of the employer in the course of employment." If "wages" is not defined in the legislation, the example would read: "*Wages* includes gratuities received by the employee from patrons of the employer in the course of employment." If the definition embraces more than one additional meaning, close the series with "and."

**Example:** "The word 'animals' includes fish, reptiles, *and* birds."

(e) The meaning of a defined term, or of an undefined term having an ordinary meaning, may be narrowed by adding qualifying language.

**Example:** "The term 'wages' *does not include* birthday gifts and rewards for suggestions to enhance efficiency."

**Example:** "'*Instrument*' means a negotiable instrument."

(f) If a term can be used as more than one part of speech and is used in the legislation in an ordinary sense as well as a defined sense, a limitation to the definition should be added immediately after the term.

**Example:** "'*Record*,' used as a noun, means . . . ."

(g) Do not include substantive provisions in a definition. In a definition of "termination," for example, it is incorrect to add the following sentence: "On 'termination,' all obligations that are still executory on both sides are discharged and any rights based on prior breach of performance survive." The sentence is substantive law, not definitional.

(h) Arrange all defined terms in alphabetical order and place them at the beginning of the chapter if they are used generally in the chapter. If a defined term is used in only a single section or subchapter, locate the definition at the beginning of the subdivision highest in rank in which the term is used.

**Example:** If the term is used only in §§202, 205, and 208 of Subchapter II, place the definition in §201 of Subchapter II.

(i) Use the defined term whenever apt, not its definitional language.

(j) Use "person" if you want to apply a law to human beings and to nonhuman entities, such as corporations or governmental bodies. Use "person" if you want to apply a law only to human beings and the context clearly indicates that the law could not apply to nonhuman entities. For example, use "person" if the law relates to organ donors. Use "individual" if you want to limit the application of a law to human beings and the application is not apparent from the context. Avoid using the term "natural person" in place of "individual." Whether you use "person" or "individual," use the same form of reference in statutes relating to the same subject matter.

(k) If a definition of "person" or "state" is necessary and a different meaning is not intended, use the following definitions:

(1) The word "person" means an individual, corporation, business trust, estate trust, partnership, limited liability company, association, joint venture, [government; governmental subdivision, agency, or instrumentality; public corporation.] or any other legal or commercial entity. [The term does not include government; governmental subdivision, agency, or instrumentality; or public corporation.] Note:

Delete one of the bracketed phrases to ensure inclusion or exclusion of governmental entities. *See* 1 Del. C. §302(16).

- (2) The word "state" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States. *See* 1 Del. C. §302(18) and (21).
- (3) When referring to the State of Delaware use an upper case "S."

**Example:** "In this State . . . ." *See* 1 Del. C. §302(18).

#### **RULE 14. LIMITATIONS, EXCEPTIONS, QUALIFICATIONS, AND CONDITIONS.**

(a) A limitation, condition, or qualification to the applicability of a provision of legislation should be placed at the beginning of the subordinated provision, so that it will be readily noticed. The subordinated provision should reference the dominant provision.

**Examples:** "Except as otherwise provided in §201(a) . . ." or  
"Subject to §201(a) . . . ."

Use "Except as otherwise provided" to indicate that the dominant provision referred to, at least in some situations, limits or qualifies the rule stated in the subordinated provision. Use "Subject to" to indicate that the dominant provision, though not inconsistent with the subordinated provision, provides other criteria that should be considered in construing the subordinated provision.

(b) If a provision is limited in its application or is subject to an exception or condition, it generally promotes clarity to begin the provision with a statement of the limitation, exception, or condition or with a notice of its existence.

**Example:** "(a) Except as otherwise provided in subsection (b) . . . ."

Avoid using "notwithstanding" to express a limitation of a general provision of the same legislation.

**Example:** "(b) Notwithstanding subsection (a) . . . ."

(c) Do not use "provided that" or "provided however that," or a similar proviso. Use "but" instead of "except that."

(d) Negate only unintended and reasonably inferable implications of a provision of legislation.

**Example:** "*Person* means an individual, corporation, business trust, estate trust, partnership, association, joint venture, or any other legal or commercial entity. The term *does not include* a government; a governmental subdivision, agency, or instrumentality; or a public corporation."

Without the negating sentence in this example, one could reasonably infer that a governmental body is within the scope of the definition as "any other legal or commercial entity."

### Comment

Limitations or exceptions to legislation should be placed where they are noticed. Consistent placement in the first part of legislation or a provision serves to avoid surprises.

### **RULE 15. SERIES AND TABULATIONS.**

(a) Break a sentence into its parts and present them as a series in tabular form only if the meaning is made substantially clearer or if doing so makes it easier to cite to a part of the sentence.

(b) In lieu of using "or" or "and" to indicate the disjunctive or conjunctive in a tabulated series, a phrase in the introductory clause of the series may more clearly express how many of the items in the series are to be required, such as: "any of the following," "one of the following," "all of the following," or "one or more of the following," followed by a colon. Such an introductory clause also simplifies future amendments to the tabulated series.

(c) Do not include in the last item of a tabulation language meant to qualify all of the items.

(d) Do not place an undesignated sentence or paragraph after a tabulation. If the sentence or paragraph is not a part of the tabulated series, draft it as a separate provision.

### Comment

Tabulation is especially appropriate if the context precludes the use of short sentences. Consider using tabular form if a number of rights, powers, privileges, duties, or liabilities are granted to or imposed upon a person and in other situations if tabulation makes the meaning substantially clearer. *See* Rule 16 concerning the manner of designating items in a tabulation.

### **RULE 16. SECTIONS AND OTHER DESIGNATIONS.**

(a) Number sections by Arabic numerals consecutively or progressively throughout the legislation.

(b) A descriptive section heading is usually not relied upon to convey or ascertain the legislative purpose or sense of a section; it is merely a signpost. *See* 1 Del. C. §306. *But see Spielberg v. State*, 558 A.2d 291 (Del. 1989).

(c) Use short sections. Use a separate section for each separate topic.

(d) If a section covers a number of contingencies, alternatives, requirements, or conditions, divide the section into subsections and paragraphs, as necessary. A paragraph may be divided into subparagraphs and even subsubparagraphs, but try to avoid their use. Divide a section into several sections as an alternative to subparagraphs.

(e) Designate each subsection, paragraph, subparagraph, or subsubparagraph by a letter or number, as follows:

- (1) Designate subsections by lower case letters in parentheses. However, if prefatory language is used, for example, in a definition section, use Arabic numerals in parentheses. *See also* Rule 15(b).
- (2) Designate paragraphs by Arabic numerals in parentheses. However, if a subsection designation is an Arabic numeral, use lower case letters with a period after each letter.
- (3) Designate subparagraphs by upper case letters in parentheses.
- (4) Designate subsubparagraphs by lower case Roman numerals in parentheses.

**Example:**      §204(a)(1)(A)(i).                                      §402(1)a.(A)(i).

§204 (without prefatory language)	§402 (with prefatory language)
(a)	(1)
(1)	a.
(A)	(A)
(i)	(i)

(f) Use lower case Roman numerals for internally numbered clauses (where each clause remains within the run-on sentence structure and is not a separate paragraph or subparagraph) only if this makes the meaning substantially clearer.

(g) Use an upper case letter with a section or chapter number to squeeze in a new section or chapter.

**Examples:** §§2107, 2107A, 2107B, 2107C, and 2108.  
Chapter 50, Chapter 50A, and Chapter 51.

### Comment

Portions of a section that are not identified by a letter or number (undesigned paragraphs) often cause confusion and lead to problems with computer systems, citations, and amendments.

## **RULE 17. REFERENCES TO OTHER PROVISIONS OF THE LEGISLATION.**

(a) Do not make specific reference to another article, part, chapter, or section by letter or number unless the nature of the provision is indicated by the context or descriptive language.

**Examples:** "Subject to §27(a)(1) (good faith purchasers) . . . ."  
"An application that contains all of the information required  
by §27(a)(2) . . . ."

(b) Use an initial capital letter in referring to a specific article, part, chapter, or section number; use lower case in referring to a specific subsection, paragraph, or subparagraph.

**Examples:** "The requirements of Article III . . . ."  
"Except as otherwise provided in subsection (b) . . . ."

Use the section symbol (§) when referring to a section of the Delaware Code unless the section symbol (§) appears at the beginning of a sentence. In that case, use the word "Section." Use an initial capital letter when referring to a section of a bill (Section 1, Section 2, Sections 1 and 2) regardless of its placement in a sentence.

### **Comment**

If reference to not more than a few sections is intended, a specific reference is useful because it avoids the need to search the entire piece of legislation to locate the provisions to which reference is intended. But overuse of specific references to other provisions of legislation can make the legislation difficult to read and understand. Moreover, section numbers and subsections are sometimes changed without changing references to them. Computer technology has greatly reduced the difficulty of finding and changing those references.

## **RULE 18. CREATION OF AN AGENCY OR OFFICE.**

Use simple language in the present tense to create or establish an agency, commission, or office.

**Example:** "The office of \_\_\_\_\_ is [created] [established] in the  
Department of . . . ."

## **RULE 19. SAVINGS CLAUSES AND EFFECTIVE DATES.**

(a) An essential step in the preparation of legislation is to determine the effect that the enactment of the legislation will have on existing rights, liabilities, and proceedings. The function of a savings clause is to preserve a law that the legislation supersedes and which otherwise would apply with respect to described transactions and events that occur before the legislation takes effect to minimize disruption inherent in change from the old to the new law. Most savings clauses preserve the superseded law. However, the purpose of legislation may be better served by a clause that is tailored to meet the particular needs for continuation of the

superseded law. If existing rights are preserved, it may be desirable to require that they be asserted within a relatively short, specified period after the legislation takes effect.

(b) A bill becomes effective upon its enactment into law unless otherwise specified. An effective-date section is necessary only when the bill or part of the bill will not go into effect immediately.

(c) An effective-date provision may phase in certain sections of a bill over time.

**Example:** This Act is effective upon its enactment into law, except Sections 3 and 4, which become effective 6 months after the date of enactment.

### **Comment**

Appropriate savings clauses and transitional provisions make it possible for legislation to take effect with minimum disruption of existing expectations and obligations. They must be drafted with great care.

If a short statute of limitations is included in the savings clause, consider including a statement that it does not revive claims for relief already barred, or preclude the barring of existing claims for relief sooner by another statute of limitations.

### **RULE 20. APPLICATION TO EXISTING RELATIONSHIPS; "GRANDFATHER" CLAUSES.**

Give consideration to the effect of the legislation on existing relationships. When an existing relationship is allowed to continue even though new ones may not begin, a "grandfather" clause allows it.

### **Comment**

Careful consideration should be given to existing relationships, whether of a business, personal, or governmental nature.

**Example:** A state enacts the Uniform Marriage and Divorce Act, which prohibits common law marriages and cohabitation under them.

This presents problems of equal protection of the law and due process with respect to existing valid common law marriages, which may require solution through a "grandfather" clause. "Grandfather" provisions are commonly used to resolve similar conflicts.

### **RULE 21. ORDER OF ARRANGEMENT OF PROVISIONS OF LEGISLATION.**

(a) Organize legislation in the most useful and logical format for the reader. Avoid an organization that requires an understanding of a later section in order to understand an earlier section.

(b) The following is suggested as the order of arrangement of possible provisions in legislation which creates a new chapter:

- (1) Bill title (mandatory). *See* page 30.
- (2) "Whereas" clauses. *See* page 31 (Preamble).
- (3) Enactment clause (mandatory). *See* page 31.
- (4) Short title. The short title may also precede the severability clause. *See* page 38.
- (5) Definitions. *See* Rule 13 and page 33.
- (6) Scope (exceptions or exclusions, if any).
- (7) Creation of agency or office. *See* Rule 18 and pages 21-23.
- (8) Administrative and procedural provisions.
- (9) Substance; state positive requirements in order of time, importance, or other logical sequence.
- (10) Prohibitions and penalties. *See* page 33.
- (11) Severability clause. *See* page 36.
- (12) Savings provisions. *See* Rule 19 and page 35.
- (13) Effective date. *See* Rule 19 and page 34.
- (14) Synopsis (mandatory). *See* Rule 23.

Provisions (11), (12), and (13) should be placed in separate bill sections at the end of the bill for inclusion only in the Laws of Delaware and Code Revisor's notes.

(c) Order of arrangement for Code-amending bills:

- (1) Bill title (mandatory).
- (2) "Whereas" clauses.
- (3) Enactment clause (mandatory).
- (4) Section(s) of the bill adding and/or deleting text from the Code.
- (5) Severability and/or savings clauses.
- (6) Effective date(s) (only if the entire bill is not meant to go into effect upon enactment into law. Never use "upon signature of the Governor" in an effective-date section.)
- (7) Synopsis (mandatory).

#### **Comment**

The suggested order of arrangement of provisions is subject to the general requirement that legislation be organized in the format most useful to the reader.

#### **RULE 22. MODEL ACTS.**

When using a Model Act to draft legislation, ascertain that the Model Act is the most recent one and that it has not been repealed. Certain references, such as those to crimes, government entities, and penalties, may not be consistent with those used in the Delaware Code. Also, carefully watch for and remove "fill-in-the-blank" brackets. *See* Rule 11(g).

## **RULE 23. SYNOPSES.**

A synopsis is a clear and accurate statement at the end of a bill, which may include the intent of the bill, a brief history of why the bill was introduced, changes to existing statutes or a description of a proposed new law, and how the bill affects current law with its existing rights, liabilities, and proceedings. A synopsis should use terms that are objective, nonpartisan, and not judgmental. An itemization of every provision is not required as long as a reader can learn from the synopsis the effect of the legislation. Delaware courts have held that the synopsis of a bill is a proper source from which to obtain legislative intent. *NCCC v. State*, 688 A.2d 888 (Del. 1996).

When writing a synopsis, keep in mind that sometimes it is the only part of a bill that a legislator reads, in which case it is arguably the most important part of the bill.

A synopsis may also be necessary on an amendment to a bill and on resolutions.

At the beginning of each session, a drafter should refer to the Senate Rules and House Rules regarding synopses and other requirements.

### **Comment**

*"It is not uncommon for legislation to be passed in a crisis atmosphere where few legislators have the time, interest, or expertise to read and understand everything that they are voting for."* W. P. Statsky, *Legislative Analysis and Drafting*, 2<sup>nd</sup> ed., 15 (1984).

## **RULE 24. FOOTERS.**

Each piece of legislation has a group of letters and numbers in the bottom left corner. This is the "footer." It identifies the caucus or Legislative Hall agency through which the legislation was introduced, the bill drafter or the sponsor, and the person who typed most or all of the legislation. From time to time a bill drafter, in complying with a request for a specific type of legislation, copies a bill or resolution drafted by someone else in a previous General Assembly. There is nothing wrong in re-drafting a piece of legislation from a previous General Assembly word-for-word, but each bill drafter has an individual responsibility to closely examine such previous legislation for possible typographical errors, legal and grammatical flaws, and, particularly, for changes in the Code in the interim and for an expired effective date. After such examination, the drafter should change the footer by inserting his or her own initials in place of those of the former drafter.

## ADDITIONAL OBSERVATIONS, ADVICE, AND GUIDELINES

- (1) Before beginning to draft a bill, try to discover if a similar or conflicting law already exists in current federal or Delaware constitutional or statutory provisions.
- (2) It is not necessary to use the 1897 date or the term "as amended" when referring to the Delaware Constitution.
- (3) Certain words that are frequently misspelled but are not detected by Spell-check include "statue" for "statute," "untied" for "united," "change" for "charge," "county" for "country," "pubic" for "public," "phase" for "phrase," "saws" for "laws" (an example from a synopsis: "This Act strengthens *saws* regulating lobbyists."), "undeserved" for "underserved," "from" for "form," "or" for "of," "or" for "on," "it" for "is," "be" for "he."
- (4) The Enrolled Bill Doctrine holds that, once a bill passes a legislative body and is signed into law, the courts should assume that all rules of procedure were properly followed. The Delaware Supreme Court, however, has broadened the application of the Enrolled Bill Doctrine by holding that "clear and convincing evidence established by constitutionally required journals may be admissible when the validity of a statute defective on its face is under consideration." *Wilmington Sav. Fund Soc. v. Green*, 228 A.2d 273, 277 (Del. 1972) held that when a bill with less than a constitutionally mandated vote requirement on its face passes, the Court will check the Journals to see if it actually received the correct number of votes to pass.
- (5) The phrase "this Act" is a term of art which has a specific meaning in bill drafting. When language in a bill refers to "this Act," it means every provision contained in the bill. If language in a bill refers to "this chapter," it refers to the chapter of the Delaware Code in which the section is placed. In bills or bill sections creating new provisions for the Laws of Delaware, reference should be to "this Act," not "this chapter."
- (6) A bill drafter should double-check section (§) and chapter references, especially when resurrecting a bill from a previous General Assembly. A section (§) number usually includes the chapter of which it is a part (thus, §101 is the first section of Chapter 1), but not always. For example, Chapter 5 of Title 11 contains §501 through §1454; Chapter 1 of Title 26 contains §101 through §616; and Chapter 1 of Title 8 contains §101 through §398.
- (7) When a bill drafter is asked to amend a provision in the Delaware Code, he or she has two alternatives: the removal and complete re-writing of the provision, or the addition, subtraction, or substitution of words, phrases, or sentences in a very precise manner without disturbing the other words, phrases, or sentences before and after the amendment. The first method consumes bill space and can confuse a court as to the sponsor's intent – especially if the provision is not copied verbatim. This manual strongly recommends the second method.
- (8) Another drafting problem occurs when the drafter is perhaps too busy to search out the appropriate place in the Delaware Code for a newly-drafted provision. Rather than placing the new legislation with statutes relating to the same subject, sometimes a drafter designates the section as a whole new chapter, or places the new legislation at the end of a chapter without

regard to its proper place in the Code or chapter. Both practices are unacceptable and can cause unnecessary obstacles for researchers.

(9) Punctuation should be placed inside the quotation marks only when it is a part of the quoted material; otherwise, place it outside the quotation marks. Sometimes this rule results in two periods.

**Example:** Amend §2301(b), Title 19 of the Delaware Code by adding the following at the end of subsection (b): "Terms of office may vary."

The first period closes the quoted text; the second closes the directive sentence.

(10) Carefully review proposed legislation that originates in other State agencies or in the private sector. Often the drafters are not lawyers and are not aware of the rules and guidelines for legislative drafting. Even lawyers who do not regularly draft legislation may produce bills that need technical editing.

## **CREATING REGULATORY BOARDS AND AGENCIES**

Over the years the Joint Sunset Committee has established a consistent set of objectives and language for statutes governing regulatory boards and commissions. To eliminate the need for constant rewriting of bills which establish new boards or commissions, standardized language should include the following:

### **Suggested language for legislation which establishes a new regulatory agency**

"The primary objective of the [name of board or commission] , to which all other objectives and purposes are secondary, is to protect the general public, and, specifically, those persons who are direct recipients of services regulated by this chapter, from unsafe practices and from occupational practices which tend to reduce competition or fix the price of services rendered. The secondary objectives of the [name of board or commission] are to maintain minimum standards of practitioner competency and to maintain reasonable standards in the delivery of services by the practitioners to the public. In meeting its objectives, the [name of board or commission] shall develop standards assuring professional competence; shall monitor complaints brought against practitioners regulated by the [name of board or commission]; shall adjudicate at formal complaint hearings; shall promulgate rules and regulations; and shall impose sanctions, where necessary, against practitioners."

### **Suggested language for member qualifications**

Because the Joint Sunset Committee is very strict regarding conflicts of interest for members of regulatory boards or commissions, the following language should be used:

"To serve on the [name of board or commission], a public member may not be and may not ever have been a [name of profession or occupation to be regulated], nor a member of the immediate family of a [practitioner of the profession or occupation]; may not have ever been employed by a [practitioner of the profession or occupation]; may not ever have had a material or financial interest in the providing of goods and services to [practitioners of the profession or occupation]; and may not ever have been engaged in any activity directly related to [name of the profession or occupation]. A person may not be a public member of [name of board or commission] if a member of the person's immediate family is a [practitioner of the profession or occupation] or is an employee of a [practitioner of the profession or occupation]; or if a member of the person's immediate family has a material or financial interest in the providing of goods or services to [a practitioner of that occupation]. A public member must be accessible to inquiries, comments, and suggestions from the general public."

### **Suggested language for term limitations**

Term limitation language must be included in all regulatory bills.

"Each member of the [name of board or commission] serves for a term of 3 years, and may succeed himself or herself for one additional term; but if a member was initially appointed to fill a vacancy, the member may succeed himself or herself for only one additional full term. A person appointed to fill a vacancy on the [name of board or commission] holds office for the remainder of the unexpired term of the former member. Each term of office expires on the date specified in the appointment."

### **Suggested language for staggered terms**

In creating new boards, committees, or other entities, staggered terms are often used for the initial appointments to create a changing membership throughout the life of the entity.

**Example:** "Of the initial members, one must be appointed for a one-year term, one must be appointed for a two-year term, one must be appointed for a three-year term, and the remainder must be appointed for five-year terms. Thereafter, all members shall serve five-year terms."

### **Suggested conflict-of-interest language for officers**

"A member of the [name of board or commission], while serving on the [board or commission], may not be a president, chairperson, or other official of a professional [name of profession or occupation] association. The provisions of Chapter 58, Title 29 (State Employees', Officers' and Officials' Code of Conduct) apply to all members of the [board or commission] and to all agents appointed or otherwise employed by the [board or commission]."

**Suggested language for persons desiring to be licensed**

"An applicant who is applying for initial licensing under this chapter must provide the information requested on an application form approved by the Division of Professional Regulation. An application form may not request a photograph of the applicant, place of birth, length of state residency, or personal references."

**Suggested language for notice and service of process**

"Upon the receipt of a formal complaint from the Attorney General's office regarding a practitioner regulated by the [name of the board or commission], the [board or commission] shall schedule the time and place for a full hearing of the matter. The full hearing must take place as soon as practicable. The [board or commission] shall cause a copy of the complaint, together with a notice of the time and place scheduled for the hearing, to be personally delivered to or served upon the accused practitioner at least 20 days before the date of the scheduled hearing. If the accused practitioner cannot be located or if personal service cannot be affected, substitute service may be affected in the same manner as with other civil litigation."

## **BILLS**

A bill is a proposed law, introduced in either the Senate or the House by a Senator or Representative. After a bill has passed both houses and has received the approval of the Governor or has otherwise been enacted [*see* Article III §18 of the Delaware Constitution], it becomes a law. But until then, it is a bill, a draft of a proposed law.

There are two types of bills: general bills and special bills. The majority of bills introduced are general bills, but there are numerous special bills. Each requires a technical form of expression, specifically worded for its purpose. The following descriptions apply to general bills and special bills in Delaware.

### **General Bills**

A general bill, also known as a public bill, applies to all persons uniformly situated. A bill has a uniform operation if it operates equally or alike upon all persons, entities, or subjects within relations, conditions, and circumstances prescribed by the bill. A statute enacted from a general bill will repeal, by implication, a special Act on the same subject. However, a special bill enacted after a general Act on the same subject merely modifies the general law. Article II, §23 of the Delaware Constitution states that "every statute shall be a public law unless otherwise declared in the statute itself."

### **Special Bills**

A special bill relates to a particular person or thing, or is drafted for an individual case or for a particular place or district. A bill is "special" when it applies to fewer than all the members of a class, either by the omission of units falling naturally within the class or by the exception or reservation of enumerated units.

Article II, §19 of the Delaware Constitution provides, in part:

The General Assembly shall not pass any local or special law relating to fences; the straying of live stock; ditches; the creation or changing the boundaries of school districts; or the laying out, opening, alteration, maintenance or vacation, in whole or in part of any road, highway, street, lane or alley; provided, however, that the General Assembly may by a vote of two-thirds of all the members elected to each House pass laws relating to the laying out, opening, alteration or maintenance of any road or highway which forms a continuous road or highway extending through at least a portion of the three counties of the State.

The following are types of special bills used in Delaware and the circumstances in which special bills apply.

### **Local Bills**

A local bill is a special bill which is limited in its operation to members of a class who are in a certain part of or in a particular place within the State, instead of relating to and binding all persons or institutions of the class to which it may be applicable within the territorial boundaries of the State.

### **Private Bills**

A private bill is drafted solely for the benefit of a particular individual, corporation, association, or other group. Private bills are also used for supplementary appropriations, legalizing certain marriages, and granting certain retirement benefits.

### **Appropriation Bills**

An appropriation bill is one which earmarks a certain sum of money for a specified objective in such a manner that a person administering the use of the money is authorized to use that money and no more for that objective and no other.

## **RESOLUTIONS**

A resolution is the formal expression of the opinion, sentiment, or will of one or both houses of the General Assembly. The rules of the Senate contain some references to resolutions. House rules are more specific, but are not followed in practice.

A resolution is effective only during the existence of the General Assembly which promulgates it. Thus, a resolution purporting to affect another branch of government during a future General Assembly or purporting to continue the spending or appropriating of money in subsequent General Assemblies is only expressing a desire, with no authority to enforce compliance. And even during the current General Assembly, only joint resolutions can actually affect another branch of government. Simple and concurrent resolutions can merely congratulate or condemn persons, agencies, and/or actions in the executive and judicial branches of government. However, many task forces and commissions created by resolution continue to meet during the next General Assembly before a reauthorizing resolution is passed.

### **Simple Resolution**

A simple resolution is passed only by the chamber in which it is introduced. It wields no legal authority. It is most often used to establish task forces and study groups or to request changes in State or federal policy. A simple resolution may also be used to congratulate sports teams or individuals, to express condolences, to declare the "sense of house" on a specific issue, or to designate a day, week, or month, such as Administrative Professionals' Week or Domestic Violence Awareness Month.

## **Concurrent Resolution**

A concurrent resolution is used to accomplish the same purpose for the entire General Assembly that a simple resolution accomplishes for either the House or Senate singly. A concurrent resolution passed by both the House and the Senate does not become a statute, nor does it have the effect of law, nor can it be used for any purpose which requires the exercise of legislative power. It often creates joint (House and Senate) task forces and study groups. Concurrent resolutions are also used for the same purposes as simple resolutions, and may even be used to ratify amendments to the federal Constitution.

## **Joint Resolution**

A joint resolution is the most formal resolution and must go through the committee process, be passed by both the House and the Senate, and be signed by the Governor. Although not a law, a Joint Resolution has the force of law while in effect. It is effective only during the General Assembly in which it was passed and approved, unless the resolution explicitly designates a shorter timeframe.

A resolution does not have an enactment clause, but rather a "BE IT RESOLVED" clause at the end of the preamble (WHEREAS clauses).

### **Example:**

**"NOW, THEREFORE:  
BE IT RESOLVED by the Senate of the 144<sup>th</sup> General Assembly that . . . ."**

The text of a "BE IT RESOLVED" clause designates the type of resolution. A simple resolution's "BE IT RESOLVED" clause will name only one chamber; a concurrent resolution will have the second chamber concurring with the first; and a joint resolution adds the phrase "with the approval of the Governor" to the concurrent resolution language.

## **MEMORIALS**

A memorial is a petition or prayer usually addressed to the President of the United States, to members of the Delaware congressional delegation, or to the Chief Executive of a federal department or agency. In Delaware, a memorial is drafted as a simple, concurrent, or joint resolution to express the feelings, attitudes, or recommendations of part or all of the General Assembly in matters of national or international interest. Memorials are also employed to request that the person or entity petitioned take a specific position on an issue or act in a particular manner which the General Assembly believes to be in the best interest of the State or nation.

## AMENDMENTS

Some confusion occasionally exists between the meaning of the word "amendment" as found in Court decisions and the bill-drafting definition of the word. In many Court decisions, any legislation which changes an already-existing statute is an amendment, i.e., most bills "amend" the Delaware Code. In the actual drafting of legislation, however, an amendment is a separate piece of legislation having the limited purpose of substituting, inserting, and/or deleting text in a bill, a substitute bill, a resolution, or an amendment (House Amendment No. 1 to House Amendment No. 3 to Senate Substitute No. 1 for Senate Bill No. 288). Unless this manual provides otherwise, the amendments referred to herein are legislative amendments, not Code amendments.

Because of the purpose and highly specialized use of an amendment, the heading and general format of an amendment differ greatly from those used for other forms of legislation. In the drafting of a bill which amends the Delaware Code, all additions and deletions are based on the appropriate title and section of the Code. In the drafting of a legislative amendment, however, all changes made by the amendment relate specifically to the bill being amended, and not directly to the statute itself, because an amendment may alter any part of a bill except the bill title, not just the parts that may amend the Code. Thus, a bill that amends the Code will refer to specific sections, subsections, paragraphs, and on down the line. But an amendment to the bill itself will most often refer to the bill's line numbers, unless its purpose is to strike in its entirety another amendment already attached to the bill. In such an instance, it may simply strike the other amendment. For example: "Amend House Bill No. 404, as amended by House Amendment No. 2, by striking House Amendment No. 2 in its entirety." An amendment may also be stricken by striking the numbered lines of the amendment: "Amend Senate Bill No. 45, as amended by House Amendment No. 4, by striking lines 1 to 23 of House Amendment No. 4 in their entirety."

Either procedure has the effect of restoring the wording and punctuation of the bill as it existed immediately prior to the adoption of the stricken amendment.

An amendment may also add new sections to a bill. Those sections look just like the other sections of the bill except for prefatory language such as "FURTHER AMEND House Bill No. 32 by adding thereto the following new sections:".

When drafting an amendment to a bill, check for the possibility that it may, by implication, amend other provisions of the bill in a manner not intended. Implied amendments are lawful and possible, although they are not favored.

A Senate amendment may amend any Senate bill, House bill, or resolution that is before the Senate. A House amendment does likewise in the House.

The scope of an amendment may not be beyond the title of the bill. A drafter may not do indirectly what he or she may not do directly.

NOTE: **Never** attempt to amend an engrossed form of a bill.

## **SUBSTITUTE BILLS**

A substitute bill is the complete replacement of an original bill, often because it is so materially or substantially changed that a substitute is preferred to amending the original bill. The title of a substitute bill must be identical to the title of the original bill.

A substitute bill must be introduced in the house in which the original bill was introduced before final action has been taken. Unlike the rule for amendments, do not draft House Substitute No. 1 for Senate Bill No. 372. A substitute bill for a Senate bill must be a Senate substitute, and a substitute bill for a House bill must be a House substitute. Once a substitute bill has been introduced, the original bill is null.

## **SPECIAL TYPES OF LEGISLATION**

### **Charter Amendments**

Under the Delaware Constitution, the General Assembly has the power to enact and amend certain charters, including municipal charters, and some types of bank charters. In fact, these charters require General Assembly approval. Charter bills which change a municipal or bank charter require a two-thirds vote (Article IX, §1 of the Constitution of the State of Delaware).

One of the major problems relating to charters does not directly involve charter bills and yet it can be a trap for an unwary bill drafter. Many bills, especially those amending Title 22, directly affect incorporated municipalities. Often these bills indirectly amend the charter of one or more incorporated municipalities. The Delaware Supreme Court has held that a bill which indirectly amends a municipal charter requires the same 2/3 vote as a bill that directly amends one. *Buckingham v. Killaran*, 35 A.2d 903 (Del. 1944); *Opinion of the Justices*, 276 A.2d 736 (Del. 1971).

The title of a bill which amends a specific municipal charter should name the municipality and cite the current incorporation or reincorporation of the charter in the Laws of Delaware, along with the usual "relating to" language.

***Example:*** AN ACT TO AMEND AN ACT ENTITLED "AN ACT TO INCORPORATE THE CITY OF LEWES," BEING CHAPTER 305 OF VOLUME 27 OF THE LAWS OF DELAWARE, RELATING TO THE CONDUCT OF ELECTIONS.

## **Constitutional Amendments**

Unlike many states, amending Delaware's Constitution requires two pieces of legislation, usually referred to as "legs," which are enacted in successive General Assemblies. The first leg, in its title, proposes the amendment to the State Constitution. The second leg, enacted in the succeeding General Assembly, concurs in the amendment proposed in the first leg. A public referendum is not needed. The Governor may neither sign nor veto a Constitutional amendment. Such amendments become part of the Constitution immediately upon passage of the second leg, unless the constitutional amendment itself specifies a different time frame.

There are two different ways to draft a second leg. One version is to include the entire text of the first leg, bill title and all, in one "WHEREAS" clause and to state in another "WHEREAS" clause that the first leg passed the prior General Assembly with a 2/3 vote. The body of the bill then concurs with the prior General Assembly's action. Be careful when using this version: Don't forget the body of the bill altogether.

The second version simply passes the exact text of the first leg a second time, except that the bill title is "concurring" rather than "proposing."

## PARTS OF A BILL

Each bill has a caption, a title, an enactment clause, a main body which contains the basic provisions of the bill, and a synopsis. The title and enactment clause have become standard over time, in accordance with law and custom. The form and length of the body are determined by the individual requirements of the bill. Generally speaking, bills are organized in the following manner.

### Caption

The caption of a bill (also known as the "heading" of a bill) provides information such as the chamber of introduction, the specific General Assembly involved, e.g., the 144<sup>th</sup> General Assembly, and the number assigned to the bill.

For bills that have more than one prime sponsor, co-prime sponsors are connected to the prime sponsor with either "and" or an ampersand (&). Co-sponsors then follow, grouped alphabetically by chamber unless otherwise requested by the prime sponsor.

### Bill Title

The title of a bill is a concise statement of its general purpose. The bill title is located at the beginning of the bill, before the preamble and the enacting clause. The purposes of a bill title are to identify the bill and to give a general indication of its subject. A bill title may never be amended, even as the title of a substitute bill.

Article II, §16 of the Delaware Constitution provides that "[n]o bill or joint resolution, except bills appropriating money for public purposes, shall embrace more than one subject, which shall be expressed in its title." If a bill proposes to amend an existing statute, that fact should be indicated in the title by specific reference to the Code title. If the bill amends more than one title of the Code, it should contain a reference to each Code title being amended.

It is strongly suggested that the term "relating to" be used in the bill title rather than "creating" or "directing" or "establishing." This allows constitutional wiggle room if the body of the bill needs to be expanded to accomplish the sponsor's intent.

**Example:** AN ACT TO AMEND TITLE 6 OF THE DELAWARE CODE RELATING TO CERTAIN TRADE PRACTICES WHICH AFFECT THE DISTRIBUTION OF MOTOR FUELS.

If a bill title is narrowly written, the possibility for amendments to the bill narrows. A broad bill title allows for a broad range of amendments, sometimes beyond the scope of the sponsor's intent. But if a bill title is too narrowly written, it is sometimes necessary to introduce a new bill to accomplish what the sponsor actually wanted to accomplish.

## Preamble

With the advent of the synopsis, dependence upon a preamble for most types of bills has diminished considerably. But although use of the preamble for bills has declined, it is still an essential part of most resolutions. A preamble consists of a series of sentences in paragraph form which appear on the bill immediately after the title and before the enactment clause. A well-drafted preamble explains the cause or situation giving rise to the bill, attempts to gather support for the bill, and sets the tone for the proposed legislation that follows.

The preamble of a bill is easily identified by its succession of "WHEREAS" clauses which present a history or list the circumstances or facts which make the bill necessary.

### Example:

"WHEREAS, the hides and skins of endangered species bring large profits and thereby encourage the interstate transportation and sale of hides of wild animals killed in violation of state and national laws, and, in many cases, slaughtered in violation of the laws of foreign nations; and

WHEREAS . . . ."

## Enactment Clause

The enactment clause, or enabling clause, designates a bill and not a resolution. The enactment clause is located between the title of the bill and the first section of the bill. If the bill has a preamble, the preamble comes before the enactment clause. An enactment clause is always set off by itself. If the type of legislation contained within the bill requires other than a majority vote due to Constitutional mandate, the specific vote requirement should be set forth in parentheses as part of the enactment clause. However, the Delaware Supreme Court in *Wilmington Sav. Fund Soc. v. Green*, 288 A.2d 273 (Del. 1972) ruled that if the General Assembly passes a bill with the requisite super-majority vote, the bill has constitutionally passed – even if a super-majority parenthetical was not included in the enactment clause.

### Example:

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

## Body of the Bill

Although the body of a bill is one of its required parts, it is made up of a series of optional parts. Each optional part is usually designated as a "Section." The scope of the body of a bill may not be beyond the scope of the title of the bill, which is why the phrase "relating to" is so useful in a bill title. Bill sections (Section 1, Section 2, Section 3, etc.) divide up a bill and should never be confused with Code sections (§1201, §1202, §1203, etc.), which divide up chapters of the Code.

The various parts of the body of a bill are described in the subsections that follow on pages 33 to 39. The parts are listed in the order in which they usually occur, but there is nothing mandatory about the order in which the various parts of the body of a bill are presented. Please keep in mind, however, that few bills utilize all of the parts. The first four parts of a bill (declaration of purpose, definitions, basic provisions, and penalties) may be drafted in a single section of the bill, especially if a drafter is creating a new chapter or subchapter, even though they may constitute a dozen or more sections (§§) of the Code. Likewise, when dealing with smaller changes, a bill section may amend only a small part of a Code section (§) and another bill section may amend another part of that same Code section (§).

Think of your bill as a guide for the Delaware Code Revisors. Each section of the bill that amends the Delaware Code in some direct manner needs specificity. Whether the drafter is adding language to or deleting language from the Code, or both, the drafter must tell the Code Revisors exactly how to do it. Draft in logical order. If a project is complicated, make sure that the order in which the changes are made results in the outcome you desire.

**Examples:**

(1) Adding a subsection to a section(§) of the Code:

Section 1. Amend §1201, Title 11 of the Delaware Code by adding a new subsection to read:

"(d) This section does not apply to retired public servants."

(2) Deleting a subsection from a section(§) of the Code:

Section 1. Amend §1201(c), Title 11 of the Delaware Code by deleting [or striking] subsection (c) in its entirety.

(3) Changing a part of the text:

Section 1. Amend §1201(c), Title 11 of the Delaware Code by deleting [or striking] the phrase "attempt to commit" where it appears [or occurs] in the third sentence of subsection (c) and by substituting [or inserting] in lieu thereof the word "committed."

The quotation marks tell the Code Revisors exactly what to insert or delete, just as the prefatory language tells them exactly where to insert or delete the text. Be especially careful to insert necessary punctuation marks within and/or outside of the quotation marks.

**TIPS:** Don't use a chapter or subchapter citation unless you are adding an entirely new section (§) to the Code. If you are amending an existing section (§), the section number and title number will do the job. That way there is one less typographical error to worry about, especially because chapter numbers and section numbers don't always match; e.g., Chapter 5 of Title 11 contains §501 to §1473. Don't use a section or subsection designation in prefatory language when adding a new section or subsection because if you have to change the designation, you'll only have to change it once – not twice. *See* Example (1) on this page.

## Declaration of Purpose

A declaration of purpose, also known as a statement of policy, is most often found in a large, comprehensive bill which sets up a new chapter or subchapter. It is rarely used in a bill which amends an already-established chapter or subchapter. A declaration of purpose is very important for certain types of bills, such as professional and occupational regulation bills, because what the declaration says is important to legislative committees, especially the Joint Sunset Committee (*see* 29 Del. C. §10201).

**Example:** This chapter must be administered to allow medical services to be delivered promptly and expertly by physician assistants to the citizens of this State.

## Definitions

Although a definition section should appear as the first or second part of a comprehensive bill, experienced bill drafters have learned to double-check the definitions section after the bill has been completed. Often meanings and uses for defined words change during the drafting of a bill, especially if the drafting is done by a committee. Sometimes a defined word or term disappears completely. If a word or phrase is to be explicitly defined with no exceptions, the definition must use the word "means." In the example, "'Water' means a river," the term "water" does not include lakes or streams or bays. If the definition is intended to be partial only, the best practice is to use the word "includes." In the example, "'Water' includes rivers," the term "water" might also include lakes, streams, and bays. The definition of a word or phrase should not contain the word or phrase being defined. Once a word or phrase is defined, there should be no change in the manner in which it is used; the specific definition should remain constant throughout the bill.

A definition section may be used to:

- define a general term in order to avoid explaining it throughout the bill;
- avoid frequent repetition throughout the bill of the full title of an officer or agency;
- give an exact meaning to a word that has several dictionary meanings;
- define a technical word that is not commonly used or understood; and
- limit the meaning of a term that, if not defined, might be defined by a court in a manner different from the intent of the General Assembly.

## Basic Provisions

The basic provisions of a bill set forth the rights, powers, duties, and jurisdiction of those persons or entities that are the subject matter of the bill. In many bills, this part is the largest portion of the bill.

## Penalties

The Code contains three general types of penalties or sanctions: criminal, civil, and administrative. The latter two can usually be found in the same section which sets up the regulatory provision for which the penalties are imposed. Criminal penalties, however, are

treated differently in different parts of the Code. If a large portion of the Code (such as an entire title) regulates an activity or severely restricts an activity, one or more chapters within the title are often reserved for the imposition of penalties. Title 4 is such a regulatory title. If a chapter makes an activity illegal, severely restricts an activity, or differentiates between types and grades of illegality, separate penalties sections are usually reserved for each type of illegality (*see* Chapter 47 of Title 16 (Uniform Controlled Substances Act)). In cases where the prohibition of an activity or the legality of an activity is not the central purpose of the title or chapter, yet certain acts are made illegal, the penalty is most often attached directly to the section involved. Keep in mind that when crimes are created by legislation, any offense not specifically designated by statute to be a felony, a class A or class B misdemeanor, or a violation is an unclassified misdemeanor or an environmental misdemeanor. *See* 11 Del. C. §4202(b). Any felony not specified in a class is a class G felony. *See* 11 Del. C. §4201(b). An offense is not a violation unless expressly declared to be one. *See* 11 Del. C. §4203.

**Example of a criminal penalty:** "A person who violates a provision of this section [or chapter or title] is subject to a fine of not less than \$1,000 nor more than \$5,000, or to a period of imprisonment of up to 2 years, or both."

**Example of a civil penalty:** "If a person fails to comply with the provisions of §305 of this chapter, the person's driver's license must be suspended for a period of 90 days; if a person fails to comply with the provisions of §306 of this chapter, the person's driver's license must be forfeited for a period of 1 year, after which time application may be made to the Division for a new license."

### **Effective Date**

The time when a bill becomes law and the time when it goes into effect and begins to operate are not necessarily the same. The latter is known as the "effective date." It is sometimes necessary for the drafter to specify that the bill, even if enacted into law, does not become effective until a certain date, or until the happening of a certain event. All bills take effect immediately when a bill is enacted into law unless otherwise specified. The drafter, however, should be alert to the fact that it may be desirable that certain bills become effective at the beginning of a calendar year, at the beginning of a fiscal year, or at the beginning of a licensing year. If such an effective date is required, use the month and day followed by the phrase: "following its enactment into law." (See the third example.) It might also be advantageous that a bill take effect on a specific date, in order to coincide with other future events.

If an effective date is needed as a delay for notice or regulations or for similar reasons, do not use a specific future date, e.g., August 1, 2007, because if passage of the bill is delayed, you will have to amend it. Instead, use a specific amount of time (60 days, 6 months, 1 year) after the bill is enacted into law. Of course, if the bill's sponsor requests a specific date, you must use one, but try to explain why such a date is not in accord with legislative drafting rules and guidelines.

A drafter may designate that different parts of a bill become effective at different times. This is usually done by bill section numbers. Also, instructions may be included (especially with

changes in the criminal law) as to which version of the law governs and when (within *ex post facto* restraints, of course).

Do not use the phrase "effective upon the signature of the Governor." Not only is it unnecessary because all bills signed by the Governor become law immediately unless otherwise specified, but a bill can become law without the Governor's signature. *See* Article III, §18 of the Delaware Constitution. A drafter is well advised to follow one of these examples:

**Examples:**

"This Act becomes effective thirty days after its enactment into law."

"This Act becomes effective upon the enactment of the Constitutional Amendment proposed in Chapter 612, Volume 65, Laws of Delaware during the 133<sup>rd</sup> General Assembly."

"This Act takes effect on July 1 following its enactment into law."

**Sunset Clause**

A "sunset clause" provision is an expiration provision which is used to provide a time or circumstance upon which the power or effectiveness of an Act, a provision of an Act, or a specific agency expires.

**Example:** "This Act expires 3 years after its enactment into law unless otherwise provided by a subsequent Act of the General Assembly."

A variation on a sunset clause is legislation which speaks only to a certain point in time, or which is applicable only for a certain window in time that may occur in the future (e.g., "A person who purchases a dog or cat between January 1, 2006 and April 1, 2008 . . ."). If the time period or limitation involves only a few people, or if placing it in the Code is not required for the provision's effectiveness, the bill drafter should not include it within that portion of the Act intended for inclusion within the Code. It would be better, under such circumstances, to place it in a "non-Code" section at the end of the bill. If such a reference is placed in the Code, it can last for decades after the time period to which it refers has come and gone.

**Savings Clause**

Usually the provisions of a bill enacted into law become effective upon its enactment. There are instances, however, when changes made by a new law also affect existing rights, obligations, or procedures. In some of these instances, a savings clause can exempt existing rights, obligations, or procedures from the new law's provisions, thereby limiting the application of the bill when it becomes law. Because they are remedial in nature, savings clauses are afforded liberal interpretation by Delaware courts.

### **Examples:**

"This Act does not affect any cause of action or the remedy provided for it if the cause of action accrued and a lawsuit on the action was instituted prior to the effective date of this repeal."

"If a lawsuit is instituted on a cause of action accrued before the effective date of this Act and within one year of the effective date, this Act does not affect that cause of action."

### **Grandfather Clause**

A grandfather clause makes a statutory change inapplicable to persons whose rights were established, or to situations that occurred, before the date of change. A grandfather clause is sometimes drafted as a nonstatutory provision in a section for the Laws of Delaware because of the short period for which it applies.

### **Interpretation Clause**

Courts usually interpret laws strictly, limiting their operation to exactly what a statute says. In Delaware, a statute which is remedial in nature is given a liberal construction. There are times when a bill's sponsor realizes that the wording of an important provision may be open to interpretation by a court, and that the interpretation may change the meaning or outcome sought by the sponsor. At such times, the sponsor may wish to include either a "liberal" or "strict" interpretation clause. In other instances, a bill is written in broad, general terms because the sponsor has no way of determining possible future events which may affect the legislation. In such case, the sponsor may wish to add an interpretation clause which makes clear that the legislative intent is that the Act be construed either strictly or liberally.

**Example:** "The provisions of this Act must be liberally construed to effectively carry out the purposes of this Act in the interests of the public health, welfare, and safety."

### **Severability Clause**

Occasionally, part of an Act is declared unconstitutional, or the Court rules that the Act is unconstitutional if applied in a certain manner, though it may be constitutional if otherwise applied. In those cases, the Court must determine whether or not the alleged defect invalidates the entire Act.

A severability, or separability, clause is a statement of legislative intent that the separate sections or applications of an Act must be regarded separately if one or more sections of the Act are declared invalid. A well-drafted severability clause expresses the precise effect which the invalidity of a part or an application of the Act has upon the remaining parts or other applications of the Act. Sometimes it may be necessary to use a "partial severability" clause.

The opposite of a severability clause is a non-severability clause, which is rarely used. It provides that if one section or application is declared invalid, the whole Act fails.

**Example of a severability clause:** "If any provision of this Act or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the Act which can be given effect without the invalid provision or application; and, to that end, the provisions of this Act are declared to be severable."

**Example of a non-severability clause:** "If any provision of this Act or the application thereof to any person or circumstance is held invalid, the remainder of the Act is also invalid; and, to that end, the provisions of this Act are declared to be non-severable."

### Repealing Clause

There are two classes of repealers: express (usually statutory) and implied (usually court-imposed). The three types of statutory repealers are general, partial, and multiple. The most common, but least acceptable, form of general repealer is a statement that the section or bill being enacted repeals all prior laws which are inconsistent with the new Act. A partial repealer, which is very common in Delaware bill drafting, repeals only a portion of an existing section, subsection, or chapter. A multiple repealer usually appears in one of the last sections of the bill, and contains a list of specific repeals.

Because they create uncertainty, general repealers and implied repealers are not popular with the courts. From time to time, general repealers have even been held to be insufficient to effectuate a repeal. In most instances, a general repealer is a nullity, although it might still have some highly specialized uses, such as when the drafter wants to prevent the court from using *expressio unis exclusio alterius* ("to state one is to deny the others") or to prevent a reversion back to the common law. Implied repeals are not unlawful, but there is a very strong presumption against the repeal of a statute by implication.

**Example of a partial repealer:** "Sections (§§) 5101 through 5110 of Title 25 of the Delaware Code are hereby repealed."

Courts will approve of and impose implied repealers under one or more of the following circumstances:

- (1) when there is an irreconcilable inconsistency between a new enactment and a pre-existing statute;
- (2) when two provisions are irreconcilably inconsistent;
- (3) when a word, sentence, or phrase without a repealer would lead to an absurd conclusion.

The extent of a repealer may be limited so that it does not affect certain portions of the law which it might otherwise repeal.

**Example:** "This Act may not be construed as repealing any of the laws of this State relating to pollution of the State's waters or to any conservation laws, but must be held and construed as ancillary and supplemental to Delaware laws."

### **Appropriations**

An appropriation is the General Assembly's authorization for a person or organization, often a State agency, to receive a specified amount of money from the General Fund. The vast majority of appropriations are made by specific Acts, including the Annual Appropriation Act, or Budget Bill, drafted solely for the purpose of appropriating funds. The Delaware Code provides that each supplementary appropriation bill must, by its provisions, provide or designate the source from which the money appropriated is to be derived.

In addition to pure appropriation Acts, some bills are introduced in each General Assembly in which the appropriation, although an important part of the bill, is not its main purpose. If an appropriations section or clause is added to a bill, the bill is treated in the same manner as an appropriations bill. Appropriations made to counties, municipalities, or corporations require the concurrence of three-fourths of all the members elected to each House. *See* Article VIII, §4 of the Delaware Constitution.

If a legislator requests an appropriation, a drafter must remember that all appropriations are made by Act, except the internal operating expenses of the General Assembly, which may be authorized by resolution. If the drafter knows from the beginning that a bill will ultimately contain an appropriation section or clause, the appropriation should be indicated in the title. The following example shows typical language where an appropriation has been added to a bill.

#### **Examples:**

"This Act is a supplementary appropriation and the money so appropriated must be paid by the State Treasurer out of funds in the General Fund of the State of Delaware not otherwise appropriated."

"The sum of \$100,000 is hereby appropriated from the General Fund for the purpose of paying salaries, administrative expenses, and other costs necessary to carry out the provisions of this Act."

### **Short Title**

If a bill is lengthy and constitutes a comprehensive enactment of a given subject, and especially if the title is unduly verbose or confusing, it may be helpful to assign a "short title" to the legislation. A short title is sometimes used to dedicate a bill to a victim or to a person who has been instrumental in bringing attention to the topic addressed by the bill. A short title may be placed at the beginning of a bill, although the preferred placement is at the end of a bill.

**Example:** This Act may be cited as "The Delaware Direct Primary Act."

### **Synopsis**

*See* Rule 23.

### **Footer**

*See* Rule 24.



## SUPER-MAJORITY VOTE REQUIREMENTS

### *Constitutional Citation*

### *Vote Requirement*

#### *Three-fifths (3/5 of all the members elected to each House)*

Article III, §18

To override the Governor's veto

Article VIII, §6(c)

To appropriate funds from the 2% "Rainy Day Fund" "in the event of emergencies involving the health, safety or welfare" of Delaware's citizens

Article VIII, §6(d)

To appropriate from the Budget Reserve Account "such additional sums as may be necessary to fund any unanticipated deficit" or "to provide funds required as a result of any revenue reduction enacted by the General Assembly"

Article VIII, §10(a)

To increase the effective rate "of any tax levied or license fee imposed by the State"

Article VIII, §11(a)

To impose or levy a "tax or license fee"

#### *Two-thirds (2/3 of all the members elected to each House)*

Article II, §9

To expel a member of the House by House members or to expel a member of the Senate by Senate members

Article II, §19

To pass "laws relating to the laying out, opening, alteration or maintenance of any road or highway which forms a continuous road or highway extending through at least a portion of the three counties of the State"

Article III, §20(b)

To determine "that the Governor is unable to discharge the powers and duties of his or her office because of mental or physical disability"

Article IV, §1

To establish additional courts (not judges)

Article IV, §28

To give jurisdiction to inferior courts or justices of the peace of "such ... misdemeanors as the General Assembly may from time to time ... prescribe"

Article VI, §1

To impeach by the House; to convict by the Senate

***Constitutional  
Citation***

***Vote Requirement***

***Two-thirds (2/3 of all the members elected to each House)  
(continued)***

Article IX, §1

To enact general incorporation laws and special acts of incorporation

Article XVI, §1

To amend the State constitution, which requires passage by two consecutive General Assemblies

Article XVI, §2

To present to the voters the question of whether or not there should be a State constitutional convention

29 Del. C. §912

To ratify amendments to the U.S. Constitution (noting, however, that since one General Assembly cannot bind a future General Assembly except by amending the Delaware Constitution, this vote requirement is advisory only: i.e., a future General Assembly, either explicitly or implicitly, could negate this "requirement" by a vote by a simple majority)

***Three-fourths (3/4 of all the members elected to each House)***

Article VIII, §3

To borrow money or create a debt "by or on behalf of the State," except "to supply casual deficiencies of revenue, repel invasion, suppress insurrection, defend the State in war, or pay existing debts"

Article VIII, §4

To appropriate money to or issue or loan bonds of this State to any county, municipality or corporation; to pledge the credit of the State by guaranteeing or endorsing the bonds or other undertakings of any county, municipality or corporation

## BILL CHECK LIST

- Is the prime sponsor's name at upper right (Senator for Senate Bill, Representative for House Bill), along with the names of any co-prime sponsors and co-sponsors? (Do you have the agreement of all those named to serve as sponsors or co-sponsors?)
- Does the bill have the number of the proper General Assembly (i.e., 143<sup>rd</sup>, 144<sup>th</sup>, etc.)?
- Does the bill say "Senate Bill" if sponsored by a senator?
- Does the bill say "House Bill" if sponsored by a representative?
- Are the line numbers running down the left-hand side of the page on each page of the bill? (Bill title and enactment clause lines don't receive numbers).
- Are Code title(s) in the bill title the same as Code title(s) amended in the body of the bill?
- Are chapter title(s) in the bill title the same as chapter title(s) amended in the body of the bill?
- Are Code section(s) in the bill title the same as Code section(s) amended in the body of the bill?
- Is there an enactment clause? Does the enactment clause have the proper majority required for passage (simple majority, 3/5, 2/3, or 3/4)?
- Is the section number cited in agreement with the chapter number cited, if any?
- If a bill section deletes something from the Code by striking a word or phrase, does the word or phrase exist where cited? Does the word or phrase appear more than once? After the deletion, does the text still constitute a complete sentence?
- If a bill section adds one or more subsections to a Code section, do the existing subsections in the Code end where the new subsections are to begin?
- Does the text of the bill include quotation marks at the beginning and end of Code language to be inserted or deleted?
- Are punctuation marks properly placed both within and without the quoted text?
- Is the effective date one which has already passed, or is shortly forthcoming? Is such a date intentional? In most cases, a retroactive or shortly forthcoming effective date is due to either a typographical error or to a long delay in getting a bill worked. This is particularly important to note if a piece of legislation is a bill which was introduced in an earlier General Assembly and is being reintroduced.
- Is there a synopsis? Does it bear any resemblance to what the title and body of the bill seem to do? Are there any glaring omissions?



## GENERAL GUIDELINES FOR DRAFTING

<b>AVOID USING REDUNDANT COUPLETS</b>	
actual knowledge	final and conclusive
adjudge, determined, and decreed	from and after
alter and change	full and complete
among and between	full force and effect
any and all	made and entered into
authorize and direct	necessary or desirable
authorize and empower	null and void
both real and personal property	order and direct
by and with	over and above
constitute and appoint	power and authority
desire and require	shall have and exercise
each and all	sole and exclusive
each and every	type and kind
evidence, documentary and otherwise	unless and until
fail, refuse, and neglect	

<b>AVOID THE FOLLOWING INDEFINITE WORDS</b>	
aforementioned	heretofore
aforesaid	herewith
and/or (say "A" or "B," or both)	said (as a substitute for "it," "he," "she," etc.)
before (as an adjective)	same (as a substitute for "it," "he," "she," etc.)
before-mentioned	to wit
hereafter	whatsoever
hereby	whenssoever
herein	wheresoever
hereinabove	
hereinafter	

<b>USE PLAIN ENGLISH</b>	
<b>Questionable, superfluous, or verbose</b>	<b>Consider</b>
absolutely null and void and of no effect	void
accorded	given
adequate number of	enough
adjudged, ordered and decreed	adjudged
admit of	allow
afforded	given
among and between	among (for more than two), between (for two)

<b>Questionable, superfluous, or verbose</b>	<b>Consider</b>
anticipate	expect
approximately	about
ascertain	learn, find out
at the place	where
at the same time	when
attempt (as a verb)	try
both real and personal property	property
by means of	by
by virtue of	under, because
category	kind, class, group
cause it to be done	have it done
cease	stop
cognizant of	aware, knew
commence	begin, start
complete (as a verb)	finish
component	part
conceal	hide
consequence	result
constitute and appoint	appoint
contiguous to	next to, abutting
corporation organized and existing under the laws of Delaware	a Delaware corporation
deem	consider
different than	different from
disseminate	distribute, spread
do and perform	do
does not operate to	does not
donate	give
during such time as	while
during the course of	during
each and every	each
effectuate	bring about, carry out
employ	use, hire
endeavor (as a verb)	try
enter into a contract with	contract with
evidence, documentary and otherwise	evidence
evinced	show
except that	but
excessive number of	too many
execute	sign
expend	spend, disburse
expiration	end
fail, refuse, and neglect	fail
final and conclusive	either word, as appropriate
for the duration of	during or while

<b>Questionable, superfluous, or verbose</b>	<b>Consider</b>
for the purpose of holding (or other gerund)	to hold (or comparable infinitive)
for the reason that	because
forthwith	immediately
frequently	often
from and after	beginning on, after
from July 1	after June 30
full and complete	full
full force and effect	effect
give consideration to	consider
have knowledge of	know
hereafter	after this ... takes effect
heretofore	before this ... takes effect
however or provided	if, unless, or state the condition
in a case in which	when, where
in accordance with	pursuant to, as provided
in case	if
in excess of	more than
in lieu of	instead, in place of
in order to	to
in the amount	totaling
in the event that	if
in the interest of	for benefit of
in the manner of	how, method
indicate (in the sense of show)	show
inquire	ask
in Sections 2023 to 2039 inclusive	in §§2023 through 2039
institute	begin, start
interrogate	question
in the case of	whenever (only when emphasizing the exhausting or recurring applicability to the proposition)
in the event that	if
in the interest of	for
is able to	can
is applicable (shall be)	applies
is authorized and directed	shall
is authorized to	may
is binding upon	binds
is directed	shall
is entitled (in the sense of has the name)	is called
is unable to	cannot
it is the duty	shall
it shall be lawful to	may
law passed	law enacted
make application	apply

<b>Questionable, superfluous, or verbose</b>	<b>Consider</b>
make payment	pay
make provision for	arrange, provide
manner	way, method
maximum	most, largest, greatest
minimum	least, smallest
modify	change
necessary or appropriate	necessary
necessitate	require, need
negotiate	make, deal
no later than June 30	before July 1
nor	or (do not misuse "nor," "for," "or," after a negative expression)
numerous	many
obtain	get
occasion (as a verb)	cause
of a technical nature	technical
of each year	annually
on and after July 1	after June 30, beginning on July 1
on his or her own application	at his or her own request
on or before June 30	before July 1
on the part of	by
opt for	choose
optimum	best
or, in the alternative	or
over and above	exceed
paragraph (5) of subsection (a) of §2097	§2097(a)(5)
party of the first part	(the party's name)
per annum	per year
per centum	percent
period of time	period, time
portion	part
preceding	before
preserve	keep
prior or prior to	earlier or before
proceed	go, go ahead
procure	obtain, get
prosecute its business	carry on its business
provided that	if, unless, but, or except that
provision of law	law
purchase	buy
remainder	rest
render (in the sense of give)	give
render (in the sense of cause to be)	make
require (in the sense of need)	need
retain	keep

Questionable, superfluous, or verbose	Consider
shall be construed to mean	means
sole and exclusive	either word, as appropriate
specified (in the sense of expressly mentioned or listed)	named
State of Delaware	Delaware, this State
subsequent	later
subsequent to	after
successfully completes or passes	completes or passes
suffer (in the sense of permit)	permit
sufficient number of	enough
summon	send for, call
The Congress	Congress
the manner in which	how
to the effect that	that
under the provisions	under
unless and until	either word, as appropriate
until such time as	until
utilize, employ (in the sense of use)	use
when	if
where	in which
with reference to	as to, regarding, for
within or without the United States	inside or outside the United States
with the object of changing (or other gerund)	to change (or comparative infinitive)

### WORDS FREQUENTLY CONFUSED

*Affect* is both a noun and a verb. When used as a noun it means "feeling" or "emotion." When used as a verb it conveys action against or upon a person, or influence.

*Effect* is both a noun and a verb. When used as a noun it means that which is brought about as a result or an impression. When used as a verb it conveys accomplishment or achievement of a result.

*Biannual* means twice a year. Use "semiannual" instead.

*Biennial* means once every two years.

*Capital* means capital city, money or assets, first-rate, related to physical improvements.

*Capitol* means the statehouse.

*Continual* means frequently recurring. It refers to time and implies close succession.

*Continuous* means uninterrupted. It refers to time and space and implies continuity.

**Considered** means treating something as true because it is true.

**Deemed** means treating something as true, even if it is contrary to fact.

**Ensure** means to make certain or guarantee.

**Insure** means to procure insurance for something or to make certain.

NOTE: To avoid ambiguity, use "insure" in drafting only when you are discussing insurance.

**Assure** means to try to increase another's confidence, to make certain, or to remove doubt from a person's mind.

**Farther** pertains to actual distance.

**Further** means additional, more advanced.

**Partially** means in some degree (when speaking of a condition or state).

**Partly** means in part.

**Principal** is both a noun and an adjective. When used as a noun it means a controlling authority, employer, head officer of a school, or sum of money. When used as an adjective it means most important.

**Principle** means a fundamental law, fact, or assumption.

**Therefor** means in place of, for that, for it. In drafting, use one of those synonyms instead of "therefor."

**Therefore** means a conclusion, consequently, hence.

# APPENDIXES

## APPENDIX A. Samples of Legislation

A-1.	Senate Bill.....	53
A-2.	Senate Amendment to a Senate Bill.....	54
A-3.	House Amendment to a Senate Bill.....	55
A-4.	House Amendment to a House Amendment to a House Bill.....	56
A-5.	Constitutional Amendment (First leg).....	57
A-6.	Constitutional Amendment (Second leg).....	58
A-7.	Bill to Amend a Town Charter.....	59
A-8.	Supplemental Appropriation Bill.....	60
A-9.	Simple Resolution.....	61
A-10.	Concurrent Resolution.....	62
A-11.	Joint Resolution.....	63

**The sample legislation in Appendix A has been edited to reflect the rules and guidelines of this manual. The samples are not exact reproductions of the original legislation.**

APPENDIX B.	Model Resolution To Establish a Task Force.....	65
APPENDIX C.	Model Resolution to Extend the Final Date of a Task Force.....	69
APPENDIX D.	Important Delaware Cases.....	71





**A-1**

SPONSOR: Sen. Venables;  
Sen. Sokola

DELAWARE STATE SENATE

143rd GENERAL ASSEMBLY

SENATE BILL NO. 220

AN ACT TO AMEND TITLE 11 OF THE DELAWARE CODE RELATING TO CRIMINAL SENTENCES.

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

1 Section 1. Amend §4217 (d)(1), Title 11 of the Delaware Code by adding the following to the end of  
2 paragraph (1):

3 "A person sentenced to two years or more under the Truth In Sentencing laws who is confined to any  
4 correctional facility administered by the Department may submit an application for review by the Board of Parole  
5 for the modification of his or her sentence, if, before applying, the person has served at least 50% of his or her  
6 maximum sentence. The Board may promulgate reasonable regulations concerning the form and content of the  
7 application form, and may require the Department to provide it with any information in the possession of the  
8 Department reasonably necessary for the Board to assess the application. An inmate denied a sentence modification  
9 may reapply at a time determined by the Board of Parole."

SYNOPSIS

This Bill provides a mechanism for identifying candidates for sentence modification. In addition to assisting in the reduction of the prison population, the bill provides a controlled release of offenders. The controlled release by the Parole Board will help ensure an offender's successful transition back into society, reduce victimization, and increase public safety.

Author: Senator Venables



**A-2**

SPONSOR: Sen. Amick

DELAWARE STATE SENATE

143rd GENERAL ASSEMBLY

SENATE AMENDMENT NO. 1

TO

SENATE BILL NO. 30

1 AMEND Senate Bill No. 30 by inserting between lines 57 and 58 thereof the following:

2 "(g) The Institution shall create and implement equivalency standards for subsections (d) and (f) of this  
3 section in establishing eligibility of Delaware home-schooled students for grants under the Delaware SEED  
4 Program."

SYNOPSIS

This amendment ensures that home-schooled students may apply for the SEED Program.

Author: Senator Amick



**A-3**

SPONSOR: Rep. Hudson ;  
Reps. Smith, DiPinto, Maier, Roy,  
Ulbrich, Valihura

HOUSE OF REPRESENTATIVES

143rd GENERAL ASSEMBLY

HOUSE AMENDMENT NO. 1

TO

SENATE BILL NO. 80

1 AMEND Senate Bill No. 80 by striking lines 1 through 27 in their entirety.

2 FURTHER AMEND Senate Bill No. 80 on line 29 by striking the word "Chapter" and by substituting in  
3 lieu thereof the word "section".

4 FURTHER AMEND Senate Bill No. 80 by striking lines 30 through 80 in their entirety and by  
5 substituting in lieu thereof the following:

6 "§3001D. Prohibition regarding human reproductive cloning and the sale of human embryos.

7 (a) As used in this section, 'human reproductive cloning' means the asexual genetic replication of a  
8 human being by transferring a preimplantation embryo that has been created by somatic cell nuclear transfer,  
9 parthenogenesis, or by any other asexual means into a uterus, or a uterine-like or artificial environment, which has  
10 any potential to create, or for the purpose of creating, a human fetus or a human child.

11 (b) A person who, directly or indirectly, knowingly engages in or assists in human reproductive cloning  
12 or attempted human reproductive cloning is guilty of a class E felony and is subject to a fine of \$1,000,000 for each  
13 offense. The fine may not be suspended.

14 (c) A person, including a physician or fertility clinic, who knowingly sells or attempts to sell a human  
15 embryo is guilty of a class E felony and is subject to a fine of \$1,000,000 for each offense. The fine may not be  
16 suspended."

**SYNOPSIS**

This Amendment strikes all references to human embryonic stem cell research, amends the definition of "human reproductive cloning," and increases the fines.

Page 1 of 1

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2771430072



**A-4**

SPONSOR: Rep. Stone

HOUSE OF REPRESENTATIVES

143rd GENERAL ASSEMBLY

HOUSE AMENDMENT NO. 1

TO

HOUSE AMENDMENT NO. 1

TO

HOUSE BILL NO. 116

- 1           AMEND House Amendment No. 1 to House Bill No. 116 on line 73 by striking the phrase "to recover  
2 damages" and by substituting in lieu thereof:  
3           "to recover direct economic damages resulting from a violation".

SYNOPSIS

This amendment ensures that damages awarded for violations of the Act are for those damages resulting from the failure of an individual or a commercial entity to give proper notice, and not for damages resulting from the actual breach before notice is given. The amendment also ensures that speculative and noneconomic damages are excluded.



**A-5**

SPONSOR: Sen. Sharp & Rep. Wagner;  
Sens. Adams, Vaughn, Winslow;  
Reps. Valihura, DiLiberto

DELAWARE STATE SENATE

141st GENERAL ASSEMBLY

SENATE BILL NO. 158

AN ACT PROPOSING AN AMENDMENT TO ARTICLE IX, SECTION 3 OF THE CONSTITUTION OF THE STATE OF DELAWARE RELATING TO THE TYPES OF CONSIDERATION THAT MAY BE RECEIVED IN EXCHANGE FOR THE ISSUANCE OF STOCK.

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

1           Section 1. Amend Article IX, §3 of the Constitution of the State of Delaware by repealing Article IX, §3 in  
2 its entirety.

SYNOPSIS

This is the first leg of a constitutional amendment that eliminates the restrictions currently in place on the types of consideration that may be received in return for the issuance of stock.

Author: Senator Sharp



**A-6**

SPONSOR: Rep. Wagner & Rep. Valihura &  
Sen. Vaughn

HOUSE OF REPRESENTATIVES

142nd GENERAL ASSEMBLY

HOUSE BILL NO. 399

AN ACT CONCURRING IN A PROPOSED AMENDMENT TO ARTICLE IX, SECTION 3 OF THE CONSTITUTION OF THE STATE OF DELAWARE RELATING TO THE TYPES OF CONSIDERATION THAT MAY BE RECEIVED IN EXCHANGE FOR THE ISSUANCE OF STOCK.

1 WHEREAS, an amendment to the Constitution of the State of Delaware was proposed in the 141<sup>st</sup> General  
2 Assembly, being Chapter 101, Volume 73, Laws of Delaware, as follows:

3 "AN ACT PROPOSING AN AMENDMENT TO ARTICLE IX, SECTION 3 OF THE  
4 CONSTITUTION OF THE STATE OF DELAWARE RELATING TO THE TYPES OF  
5 CONSIDERATION THAT MAY BE RECEIVED IN EXCHANGE FOR THE ISSUANCE OF STOCK.

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

8 Section 1. Amend Article IX, §3 of the Constitution of the State of Delaware by repealing Article  
9 IX, §3 in its entirety."; and

10 WHEREAS, the proposed amendment was adopted by two-thirds of all members elected to each house of  
11 the 141<sup>st</sup> General Assembly;

12 NOW, THEREFORE:

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

15 Section 1. Amend Article IX, §3 of the Constitution of the State of Delaware by repealing Article IX, §3 in  
16 its entirety.

SYNOPSIS

This is the second leg of a constitutional amendment that eliminates the restrictions currently in place on the types of consideration that may be received in return for the issuance of stock.

Page 1 of 1

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**A-7**

SPONSOR: Sen. Blevins & Rep. VanSant

DELAWARE STATE SENATE

143rd GENERAL ASSEMBLY

SENATE BILL NO. 353

AN ACT TO AMEND VOLUME 68, CHAPTER 3, LAWS OF DELAWARE, AS AMENDED, ENTITLED "AN ACT TO REINCORPORATE THE TOWN OF ELSMERE" RELATING TO ELECTED OR APPOINTED OFFICIALS.

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 Volume 68, Chapter 3, Laws of Delaware, as amended, entitled "An Act to Reincorporate  
2 the Town of Elsmere." by inserting a new section therein to read:

3 "Section 302.1. Forfeiture of Elected or Appointed Office.

4 Any elected or appointed town official who files for a county, State, or federal elected office forfeits  
5 his or her position as an elected or appointed town official. The Mayor shall appoint a replacement to fill the  
6 remainder of the term or appointment, subject to confirmation by a majority of Council."

SYNOPSIS

This bill amends the Home Rule Charter of the Town of Elsmere by requiring an elected or appointed official of the Town to forfeit his or her office if he or she files for a county, State, or federal elected office.

Author: Senator Blevins



**A-8**

SPONSOR: Rep. Booth & Rep. Spence & Rep. Miro &  
Rep. DiPinto & Sen. McBride & Sen. Sorenson  
Reps. Buckworth, Fallon, Hocker, Lee, Lofink,  
Oberle, Outten, Stone, Ulbrich, Valihura

HOUSE OF REPRESENTATIVES

143rd GENERAL ASSEMBLY

HOUSE BILL NO. 321

AN ACT TO PROVIDE A SUPPLEMENTAL APPROPRIATION FOR THE FISCAL YEAR ENDING JUNE 30, 2006 TO THE DEPARTMENT OF HEALTH AND SOCIAL SERVICES, DIVISION OF COMMUNITY SERVICES, FOR THE PURPOSE OF FUNDING ADDITIONAL WEATHERIZATION PROJECTS.

1           WHEREAS, the Department of Health and Social Services, Division of Community Services, annually  
2 funds various weatherization projects; and

3           WHEREAS, there is a growing backlog of weatherization projects for which there are insufficient federal  
4 funds; and

5           WHEREAS, failure to fund weatherization projects results in a waste of energy and increases energy  
6 demand to the detriment of all citizens; and

7           WHEREAS, funding more weatherization projects would improve the health and welfare of the citizens of  
8 this State;

9           NOW, THEREFORE:

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

11          Section 1. The amount of two million dollars (\$2,000,000) is hereby appropriated to the Department of  
12 Health and Social Services, Division of Community Services, for the purpose of funding weatherization projects.

13          Section 2. This Act is a supplemental appropriation and the monies herein appropriated must be paid by  
14 the State Treasurer out of funds in the General Fund of the State of Delaware not otherwise appropriated.

15          Section 3. The funds herein appropriated which remain unencumbered on June 30, 2006 revert to the  
16 General Fund of the State of Delaware.

SYNOPSIS

This bill provides a supplemental appropriation of \$2,000,000 to the Department of Health and Social Services, Division of Community Services, to fund weatherization projects.



**A-9**

SPONSOR: Sen. Blevins

DELAWARE STATE SENATE  
143rd GENERAL ASSEMBLY  
SENATE RESOLUTION NO. 7

URGING THE DIVISION OF DEVELOPMENTAL DISABILITIES SERVICES TO REVIEW DART TRAINING PROCEDURES TO ENSURE DRIVERS HAVE SKILLS TO ADDRESS MEDICAL EMERGENCIES WHICH COULD OCCUR WITH DIVISION CLIENTS.

1           WHEREAS, the Division of Developmental Disabilities Services of the Department of Health and Social  
2 Services is responsible for transporting its clients, many of whom have severe developmental disabilities, such as  
3 cerebral palsy; and

4           WHEREAS, this population has special needs requiring proper training of all those charged with their care;  
5 and

6           WHEREAS, DART is responsible for providing the transportation of this population;

7           NOW, THEREFORE:

8           BE IT RESOLVED by the Senate of the 143<sup>rd</sup> General Assembly of the State of Delaware that the Division  
9 of Developmental Disabilities Services is hereby urged to carefully review DART's driver training procedures to  
10 ensure that those individuals driving Division clients have the proper training to deal with the range of medical  
11 emergencies, both large and small, that these clients can often present.

12           BE IT FURTHER RESOLVED that the Division of Developmental Disabilities Services is requested to  
13 determine what medical training, including CPR and seizure management, is necessary for those transporting  
14 Division clients, and that the Division advocate for inclusion of such training for all individuals driving their clients.

15           BE IT FURTHER RESOLVED that the Division of Developmental Disabilities Services is requested to  
16 provide a report of their findings to the members of the Senate.

SYNOPSIS

This Senate concurrent resolution urges the Division of Developmental Disabilities Services to review DART training procedures to ensure drivers have skills to address medical emergencies which could occur with Division clients.

Page 1 of 1

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1051430695



**A10**

SPONSOR: Rep. Ennis & Sen. Vaughn  
Rep. Outten

HOUSE OF REPRESENTATIVES

143rd GENERAL ASSEMBLY

HOUSE CONCURRENT RESOLUTION NO. 64

PROCLAIMING THE MONTH OF MAY 2006 AS "MOTORCYCLE AWARENESS MONTH" AND REQUESTING THE GOVERNOR TO ISSUE A PROCLAMATION FOR "MOTORCYCLE AWARENESS MONTH."

1 WHEREAS, motorcycles are an important, energy-efficient mode of transportation and a source of recreation; and

2 WHEREAS, motorcycles have been used in local and national government activities during peacetime and wartime;

3 and

4 WHEREAS, the manufacturers and distributors of new motorcycles, parts, and accessories, as well as the trades allied

5 to the motorcycle industry in Delaware, make major contributions to the economy through sales, personnel salaries, product

6 advertising, and corporate and personal income taxes; and

7 WHEREAS, the motorcycle industry in Delaware generates in excess of \$23 million per year in consumer sales,

8 services, and taxes; and

9 WHEREAS, in May there is annual renewal of motorcycling enthusiasm by riders and the motorcycling community in

10 general; and

11 WHEREAS, on May 21, 2006, the Delaware Motorcycle Awareness Ride will kick off from the Blue Hen Corporate

12 Center, Dover, Delaware to Legislative Hall, arriving at 12 noon, and will feature the reading of the Proclamation; and

13 WHEREAS, the State of Delaware recognizes that education of both motorcycle riders and operators of other motor

14 vehicles is necessary to reduce the pain, suffering, and economic losses of traffic accidents;

15 NOW, THEREFORE:

16 BE IT RESOLVED by the House of Representatives of the 143rd General Assembly of the State of Delaware, the

17 Senate concurring therein, that May 2006 is designated as "Motorcycle Awareness Month" and that the Governor is requested to

18 issue a proclamation calling upon all State agencies and the people of the State of Delaware to observe the month of May with

19 appropriate programs, ceremonies, and activities that will emphasize motorcycle awareness.

20 BE IT FURTHER RESOLVED that a suitably prepared copy of this resolution be delivered to the Governor of the

21 State of Delaware.

SYNOPSIS

This concurrent resolution proclaims the month of May as "Motorcycle Awareness Month" and requests that the Governor issue a proclamation calling upon all State agencies and the people of the State of Delaware to observe the month of May with appropriate programs, ceremonies, and activities that will emphasize motorcycle awareness.

Page 1 of 1

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**A11**

SPONSOR: Sen. Bonini & Sen. Cloutier & Sen. Connor & Sen. Copeland & Sen. Peterson & Sen. Simpson & Sen. Sokola & Rep. Atkins & Rep. Booth & Rep. Caulk & Rep. Hocker & Rep. Lavelle & Rep. Maier & Rep. Thornburg

DELAWARE STATE SENATE

143rd GENERAL ASSEMBLY

SENATE JOINT RESOLUTION NO. 5

REJECTING IN ITS ENTIRETY THE REPORT OF THE DELAWARE COMPENSATION COMMISSION.

1 WHEREAS, Chapter 33, Title 29 of the Delaware Code provides for the Delaware Compensation  
2 Commission; and

3 WHEREAS, the Commission was appointed, selected a chairman, met several times, collected information  
4 about comparable salaries in a number of States, prepared a report; and

5 WHEREAS, the report recommended salary increases for the members of the judiciary, members of the  
6 General Assembly, and for other State officers; and

7 WHEREAS, unless the Commission's report is rejected by joint resolution of the General Assembly, the  
8 increase in remuneration will become law;

9 NOW, THEREFORE:

10 BE IT RESOLVED by the Senate and the House of Representatives of the 143<sup>rd</sup> General Assembly of the  
11 State of Delaware, with the approval of the Governor, that the report submitted by the Delaware Compensation  
12 Commission pursuant to Chapter 33, Title 29 of the Delaware Code is hereby rejected in its entirety.

SYNOPSIS

This joint resolution rejects the report of the Delaware Compensation Commission in its entirety.

Author: Senator Bonini



## STANDARD FORM FOR A RESOLUTION TO ESTABLISH A TASK FORCE [or Study Committee or other *ad hoc* entity]

- House or Senate Simple Resolution
- House or Senate Concurrent Resolution
- House or Senate Joint Resolution (with the Governor)

[TITLE:] ESTABLISHING THE \_\_\_\_\_ (name) \_\_\_\_\_ TASK FORCE TO STUDY AND MAKE FINDINGS AND RECOMMENDATIONS REGARDING \_\_\_\_\_.

WHEREAS, \_\_\_\_\_; and

WHEREAS, \_\_\_\_\_; and

WHEREAS, \_\_\_\_\_;

NOW, THEREFORE:

- [SIMPLE RESOLUTION] BE IT RESOLVED by the House of Representatives [by the Senate] of the 144<sup>th</sup> General Assembly of the State of Delaware that . . . .
- [CONCURRENT RESOLUTION] BE IT RESOLVED by the House of Representatives [by the Senate] of the 144<sup>th</sup> General Assembly of the State of Delaware, the Senate [the House of Representatives] concurring therein, that . . . .
- [JOINT RESOLUTION] BE IT RESOLVED by the House of Representatives [by the Senate] and the Senate [and the House of Representatives] of the 144<sup>th</sup> General Assembly of the State of Delaware, with the approval of the Governor, that . . . .

. . . the \_\_\_\_\_ (name) \_\_\_\_\_ Task Force (Task Force) be established to study and make findings and recommendations regarding \_\_\_\_\_ (same wording as title) \_\_\_\_\_.

BE IT FURTHER RESOLVED that the Task Force be composed of the following members: [THE PRIME SPONSOR SHOULD PROVIDE THE LIST OF MEMBERS.]

### [EXAMPLES]

1. two members of the House of Representatives, appointed by the Speaker of the House;
2. two members of the Senate, appointed by the President *pro tempore* of the Senate;
3. a representative of the Department of Agriculture, appointed by the Secretary of the Department;
4. the Secretary of Public Safety, or the Secretary's designee; and
5. one citizen from each county, appointed by the Governor.

BE IT FURTHER RESOLVED that the chairperson of the Task Force be \_\_\_\_\_ (designate by name or by position) \_\_\_\_\_.

**[LESS PREFERABLE:]** BE IT FURTHER RESOLVED that the members of the Task Force choose a chairperson from among themselves at the initial organizational Task Force meeting.

**[IF A CHAIRPERSON IS DESIGNATED BY NAME OR POSITION IN THE RESOLUTION, USE THIS:]**

BE IT FURTHER RESOLVED that the chairperson of the Task Force be responsible for guiding the administration of the Task Force by, at a minimum:

1. setting a date, time, and place for the initial organizational meeting;
2. supervising the preparation and distribution of meeting notices, agendas, minutes, correspondence, and reports of the Task Force; and
3. ensuring that the final report of the Task Force is submitted to the President *pro tempore* of the Senate and the Speaker of the House of Representatives with a copy to [insert name of anyone else who should receive a copy, such as the Governor or a cabinet secretary] and to the Director of the Division of Research of Legislative Council and to the Delaware Public Archives.

**[IF A CHAIRPERSON IS NOT DESIGNATED IN THE RESOLUTION, USE THIS:]**

BE IT FURTHER RESOLVED that [insert name of the prime sponsor in the chamber where the resolution was introduced] set the date, time, and place for the initial meeting;

BE IT FURTHER RESOLVED that when a chairperson of the Task Force has been designated, the chairperson be responsible for guiding the administration of the Task Force by, at a minimum:

1. supervising the preparation and distribution of meeting notices, agendas, minutes, correspondence, and reports of the Task Force; and
2. ensuring that the final report of the Task Force is submitted to the President *pro tempore* of the Senate and the Speaker of the House of Representatives with a copy to \_\_\_\_\_ (name of anyone else who should receive a copy, such as the Governor or a cabinet secretary) \_\_\_\_\_ and to the Director and the librarian of the Division of Research of Legislative Council and to the Delaware Public Archives.

BE IT FURTHER RESOLVED that \_\_\_\_\_ (Senate/House caucus/other state agency) \_\_\_\_\_ be responsible for providing reasonable and necessary support staff and materials for the Task Force. **[IF A LEGISLATOR SERVES AS CHAIRPERSON, USE THE LEGISLATOR'S CAUCUS AS THE PROVIDER OF SUPPORT STAFF AND MATERIALS.]**

BE IT FURTHER RESOLVED that the Task Force report its findings and recommendations to \_\_\_\_\_ (the President *pro tempore* of the Senate and/or the Speaker of the House of Representatives) (on behalf of all members of (the House of Representatives/the Senate) the General Assembly) (the Governor/the Directors of the Division of Research and the Delaware Public Archives for public dissemination)/(other person or entity) \_\_\_\_\_ by \_\_\_\_\_ (date) \_\_\_\_\_.

#### SYNOPSIS

This resolution establishes the \_\_\_\_\_ (name) \_\_\_\_\_ Task Force to \_\_\_\_\_ (same wording as title) \_\_\_\_\_.

NOTE: Appointments to a task force, study committee, or similar *ad hoc* entity not made by the Senate President *pro tempore* or the Speaker of the House must be conveyed in writing to the Senate President *pro tempore*, the Speaker of the House, the Chair of the task force, study committee, or similar *ad hoc* entity, and to the Director of the Division of Research.

A task force, study committee, or similar *ad hoc* entity which the General Assembly wishes to continue must be reauthorized by an appropriate resolution at the start of a new two-year session of the General Assembly. Similarly, an entity which is unable to meet its originally authorized reporting deadline must prepare an appropriate resolution for introduction in the Senate or House to establish an extended reporting deadline.



**STANDARD FORM FOR A RESOLUTION  
EXTENDING THE DATE BY WHICH THE FINDINGS AND  
RECOMMENDATIONS REPORT OF A TASK FORCE, A STUDY  
COMMITTEE, OR SIMILAR *AD HOC* ENTITY IS DUE.**

**[THIS RESOLUTION SHOULD BE OF THE SAME TYPE AS THE RESOLUTION THAT ESTABLISHED THE TASK FORCE, STUDY COMMITTEE, OR SIMILAR *AD HOC* ENTITY AND WITH SAME SPONSORS, IF POSSIBLE.]**

**[TITLE:]** EXTENDING THE REPORTING DATE OF THE \_\_\_\_\_ (name) \_\_\_\_\_ TASK FORCE.

WHEREAS, the \_\_\_\_\_ (name) \_\_\_\_\_ Task Force was established under [HR/SR/HCR/SCR/HJR/SJR] No. \_\_\_\_\_ of the 144<sup>th</sup> General Assembly to study \_\_\_\_\_ and to make findings and recommendations based on the study; and

WHEREAS, the Task Force was directed to submit its findings and recommendations report to \_\_\_\_\_ (whomever) \_\_\_\_\_ by \_\_\_\_\_ (date) \_\_\_\_\_; and

WHEREAS, the Task Force has worked diligently on its study, but is not yet prepared to submit its report; and

WHEREAS, [AT SPONSOR'S REQUEST, INSERT ACTUAL REASON]; and

WHEREAS, the members of the Task Force sincerely believe that they will be able to submit the report by \_\_\_\_\_ (date) \_\_\_\_\_;

NOW, THEREFORE:

BE IT RESOLVED by the \_\_\_\_\_ (same as in original resolution) \_\_\_\_\_ that the date by which the findings and recommendations report of the \_\_\_\_\_ (name) \_\_\_\_\_ Task Force is due be extended to \_\_\_\_\_ (date) \_\_\_\_\_.

**SYNOPSIS**

This resolution extends the due date of the findings and recommendations report of the \_\_\_\_\_ (name) \_\_\_\_\_ Task Force from \_\_\_\_\_ (old date) \_\_\_\_\_ to \_\_\_\_\_ (new date) \_\_\_\_\_.

**[YOU MAY ADAPT THIS FORMAT TO EXTEND THE LIFE OF A TASK FORCE FROM ONE GENERAL ASSEMBLY TO THE NEXT.]**



# D

## IMPORTANT DELAWARE CASES

*News-Journal Co. v. Boulden*, 1978 WL 22024 (Del. Ch.); *Manigault v. Springs*, 199 U.S. 473 (1905); Opinion of the Justices (State of Maine), 673 A.2d 693 (1996): The current General Assembly cannot bind future General Assemblies or the House or Senate of a future General Assembly.

*State v. Dickerson*, 298 A.2d 761 (Del. 1973): Use of severability (1 Del. C. §308); ex post facto (U.S. Const. art 1, §10).

*New Castle County Council v. State*, 688 A.2d 888 (Del. 1996): Intent of bill may be found in synopsis.

*Wilmington Sav. Fund Soc. v. Green*, 288 A.2d 273 (Del. 1972): Enrolled bill doctrine exception for checking the vote count to determine if a bill received the constitutionally required number of votes for passage.

*Opinion of the Justices*, 276 A.2d 736 (Del. 1971): Two-thirds vote required if a bill impliedly amends a municipal charter. Del. Const. art. II, §19 and art. IX, §1.

*Klein v. National Pressure Cooker Co.*, 64 A.2d 529 (Del. 1949): Bill title requirement of fair and reasonable notice.

*Kennedy v. Truss*, 13 A.2d 431 (Del. Super. Ct. 1940): The body of a bill must be germane to the title of the bill.

*State v. Hobson*, 83 A.2d 846 (Del. 1951): Bill title need not include existing law being re-enacted in the bill.

*State v. Kopec*, Del. Super., C.A. Nos. 82C-JA-42 and 82C-JA-54, Walsh, V.C. (July 25, 1984): Statutory changes may be made by the Budget Bill; retrospective operation of a statute only when plainly and unmistakably expressed.

*Opinion of the Justices*, 575 A.2d 1186 (Del. 1990): Three-fifths vote required for State to increase permit fees or license fees of any nature.

*In re School Code of 1919* (Opinion of the Chancellor and Judges of Delaware on the Request of the Governor), 108 A. 39 (1919): Whether there is an unconstitutional delegation of legislative power.

*Opinion of the Justices*, 249 A.2d 869 (Del. 1968): Three-fourths vote requirement is limited to appropriations made to "any county, municipality or corporation." Del. Const. art 8, §4.

*In re: Request by the 138<sup>th</sup> General Assembly for an Advisory Opinion*, 672 A.2d 4 (Del. 1995): Members of Titles 23 and 24 boards or commissions are "public officers" for the purposes of holdover in Del. Const. art. XV, §5; therefore, they can't be denied the right to participate, despite the expiration of their terms, until their successors are qualified to replace them.

*Burpulis v. Director of Revenue*, 498 A.2d 1082 (Del. 1985): Statutory construction: If a literal interpretation leaves a result inconsistent with the general statutory result, look to general intent. Title 30, Tax Code.

*State ex rel. Ward v. Churchman*, 19 Del. 361 (1 Penne.) (Del. 1902): Statutory construction: "offices" and "officers" mean State or county "offices" or "officers" only.

*Griffin Dewatering Corp. v. B.W. Knox Constr. Corp.*, 2001 Del. LEXIS 176 (Del. Super.): Legislative history, bill synopsis, and Code section heading used in statutory construction. 1 Del. C. §§109(e) and 306.

*Spielberg v. State*, 558 A.2d 291 (Del. 1989): Statutory construction: Section headings are part of the law, despite the provisions of 1 Del. C. §306; "inartful drafting;" search for legislative intent.

*Brooks v. Taylor*, 154 A.2d 386 (Del. 1959): Two-thirds vote if a bill enlarges the criminal jurisdiction of an inferior court. Del. Const. art. IV, §28.

*State v. Cloud*, 159 A.2d 588 (Del. 1960): "[P]ower of General Assembly to confer jurisdiction upon inferior courts over all misdemeanors without...naming them severally."

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*Special acknowledgement to Rich Dillard for his diligence in compiling these cases.*