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Connor, Simpson, Still, Winslow

HOUSE OF REPRESENTATIVES

141st GENERAL ASSEMBLY

HOUSE BILL NO. 377

AN ACT TO AMEND TITLES 16 AND 20 OF THE DELAWARE CODE RELATING TO EMERGENCIES AND PUBLIC HEALTH.

WHEREAS, the national Centers for Disease Control has recommended that all states review their statutory schemes to ensure that those schemes provide specific procedures and authority in the event of a bioterrorism attack or other emergency involving communicable disease; and

WHEREAS, Delaware statute provides the government with broad authority in the event of a declared emergency, but does not provide sufficient specific procedures and authority for the government to use in the event of a bioterrorism attack or other emergency involving communicable disease; and

WHEREAS, model legislation has been proposed by legal and medical authorities to ensure that state governments are able to properly react to bioterrorism attacks; and

WHEREAS, the following legislation is based in part upon that model legislation, with alterations made to reflect existing Delaware law and situations unique to Delaware; and

WHEREAS, this legislation seeks to specify, not expand, emergency authority and procedures.

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

1           Section 1. Title. This Act may be cited as the "Delaware Emergency Health Powers Act."

2           Section 2. Amend Title 16, Section 122 of the Delaware Code by adding a new subparagraph (8) to read as  
3 follows:

4           “(8) the powers and duties of the Department are subject to the powers and duties granted other entities in Title  
5           20 of the Delaware Code. Provisions of Title 20 of the Delaware Code which conflict with provisions of  
6           this Section shall take precedence over this Section.”.

7           Section 3. Amend Title 16 of the Delaware Code by deleting the existing Section 129 it in its entirety and  
8 replacing it thereto with the following:

9           “§ 129. Threatened epidemics; appointment of officers to enforce regulations and orders.

10                   With the exception of circumstances encompassed by Title 20 of the Delaware Code, when any  
11           contagious or infectious disease shall become or threaten to become epidemic, and the local authorities shall  
12           neglect or refuse to enforce efficient measures for its prevention, the Secretary or the Secretary’s designee  
13           may appoint a medical or sanitary officer and such assistants as the Department or Division may require, and  
14           authorize such medical or sanitary officer to enforce such orders or regulations as the Secretary deems  
15           necessary. Provisions of Title 20 of the Delaware Code which conflict with provisions of this Section shall  
16           take precedence over this Section.”.

17           Section 4. Amend Title 20, Section 3115 of the Delaware Code by adding new subparagraphs (d) and (e) which  
18 shall read as follows:

19           “(d) If the Governor should determine that a public health emergency exists, as that term is defined at  
20           Section 3132 of this Title, the Governor shall so indicate in the issuance of a proclamation of a state of  
21           emergency pursuant to this Section

22           (e) The Governor’s decision to proclaim a State of Emergency and/or a public health emergency pursuant  
23           to this Section is not subject to judicial review.”.

24           Section 5. Amend Title 16, Section 130 of the Delaware Code by deleting it in its entirety and replacing it with a  
25 new Section 130 as follows:

26           “§130. Reporting of Potential or Existing Public Health Emergencies.

- (a) A health care provider, medical examiner, parent, superintendent of any institution, and any other person with knowledge shall report all cases of persons who harbor any illness or health condition that may be potential causes of a public health emergency. Reportable illnesses and health conditions include, but are not limited to, the diseases caused by the biological agents listed in 42 C.F.R. § 72.3 and any illnesses or health conditions identified by the Division of Public Health as notifiable diseases.
- (b) In addition to the foregoing requirements, a pharmacist shall report any unusual or increased prescription rates, unusual types of prescriptions, or unusual trends in pharmacy visits that may be potential causes of a public health emergency. Prescription-related events that require a report include, but are not limited to:
- (1) an unusual increase in the number of prescriptions to treat fever, respiratory, or gastrointestinal complaints;
  - (2) an unusual increase in the number of prescriptions for antibiotics; and
  - (3) any prescription that treats a disease that is relatively uncommon or may be associated with bioterrorism.
- (c) Reports pursuant to this section shall be made electronically or in writing within twenty-four hours to the Division of Public Health, or within such time less than twenty-four hours as may be established by the Division of Public Health by regulation. The report shall include as much of the following information as is available: the patient's name, date of birth, sex, and current address (including city and county); the name and address of the health care provider or medical examiner and of the reporting individual, if different; and any other information needed to locate the patient for follow-up. For cases related to animal or insect bites, the suspected locating information of the biting animal or insect, and the name and address of any known owner, shall be reported.
- (d) Every veterinarian, livestock owner, veterinary diagnostic laboratory director, or other person having the care of animals shall report animals having or suspected of having any disease that may be potential causes of a public health emergency. The report shall be made electronically or in writing within twenty-four hours to the Division of Public Health and shall include as much of the following information as is available: the suspected locating information of the animal, the name and address of any known owner, and the name and address of the reporting individual.

(e) For the purposes of this Section, the definition of ‘health care provider’ shall include out-of-state medical laboratories, provided that such laboratories have agreed to the reporting requirements of this State. Results must be reported by the laboratory that performs the test, but an in-state laboratory that sends specimens to an out-of-state laboratory is also responsible for reporting results.

(f) Definitions from Title 20, Section 3132 shall apply to this Section.

Section 6. Amend Title 16, Section 503 of the Delaware Code by deleting it in its entirety and replacing it with a new Section 503 as follows:

“§ 503. Unreported contagious disease.

When complaint is made or there is a reasonable belief of the existence of an infectious or contagious disease which has not been reported as required by § 502 of this Title, the Secretary of Health and Social Services or his designee shall inspect or cause the relevant house and locality to be inspected and, on discovering that such disease exists, shall immediately make a report as described in Section 130 of this Title.”.

Section 7. Amend Title 16 of the Delaware Code by deleting the existing Section 504 in its entirety and replacing it with a new Section 504 as follows:

“§ 504. Notifiable Diseases.

The Division of Public Health may by regulation declare any disease to be a notifiable disease, as that term is used in Section 130(a) of this Title.”.

Section 8. Add a new subsection to Title 16, Section 505 of the Delaware Code, to read as follows:

“(e) The powers and duties of the Division under this Section are subject to the powers and duties granted other entities in Title 20 of the Delaware Code. Provisions of Title 20 of the Delaware Code which conflict with provisions of this Section shall take precedence over this Section.”

Section 9. Amend Title 16 of the Delaware Code by deleting the existing Section 506 in its entirety and replacing it with a new Section 506 as follows:

“§ 506. Due Process Rights of Quarantined Individuals.

The Division of Public Health shall afford persons who are quarantined pursuant to Section 505 of this Title the same due process rights as those afforded to persons who are quarantined pursuant to 20 Del.C. § 3144.”.

Section 10. Amend Title 16 of the Delaware Code by deleting the existing Section 508 and replacing it with a new Section 508 to read as follows:

“§508. Tracking of Potential or Existing Public Health Emergencies.

The Division of Public Health shall ascertain the existence of cases of an illness or health condition which may be potential causes of a public health emergency; shall investigate all such cases for sources of infection and to ensure that they are subject to proper control measures; and shall define the distribution of the illness or health condition. To fulfill these duties, the Division of Public Health shall identify exposed individuals as follows:

- (a) Acting on information developed in accordance with Section 130 of this Title, or other reliable information, the Division shall identify all individuals thought to have been exposed to an illness or health condition, which may be potential causes of a public health emergency.
- (b) The Division shall counsel and interview such individuals as appropriate to assist in the positive identification of exposed individuals and develop information relating to the source and spread of the illness or health condition. Such information includes the name and address (including city and county) of any person from whom the illness or health condition may have been contracted and to whom the illness or health condition may have spread.
- (c) The Division shall close, evacuate, or decontaminate any facility or decontaminate or destroy any material when the Division reasonably suspects that such facility or material may endanger the public health.
- (d) An order of the Division given to effectuate the purposes of this Section shall be enforceable immediately.
- (e) Whenever any agency of the State learns of a case of a reportable illness or health condition, an unusual cluster, or a suspicious event, it shall immediately notify the Division.
- (f) Whenever the Division learns of a case of a reportable illness or health condition, an unusual cluster, or a suspicious event that it reasonably believes has the potential to be caused by bioterrorism, it must immediately notify the public safety authority and federal health and public safety authorities.
- (g) To the extent practicable consistent with the protection of public health, prior to the destruction of any material under subsection (c), the Division shall institute appropriate civil proceedings against the

material to be destroyed in accordance with the existing laws and rules of the Superior Court or any such rules that may be developed by the Superior Court.

(h) Definitions from Title 20, Section 3132 shall apply to this Section.

Section 11. Amend Title 16 of the Delaware Code by adding a new section 532 to read as follows:

“§532. Health Emergencies

The provisions of this subchapter are subject to the provisions of Title 20 of the Delaware Code.

Provisions of Title 20 of the Delaware Code which conflict with provisions of this subchapter shall take precedence over this subchapter.”.

Section 12. Amend Title 20 of the Delaware Code by adding a new subchapter to Chapter 31 to read as follows:

“Subchapter V. Public Health Emergencies.

§ 3131. Findings

The State of Delaware finds as follows:

(a) Government must do more to protect the health, safety, and general well being of citizens.

(b) New and emerging dangers, including emergent and resurgent infectious diseases and incidents of civilian mass casualties, pose serious and immediate threats.

(c) A renewed focus on the prevention, detection, management, and containment of public health emergencies is called for.

(d) Emergency health threats, including those caused by bioterrorism and epidemics, require the exercise of extraordinary government functions.

(e) Delaware must have the ability to respond, rapidly and effectively, to potential or actual public health emergencies.

(f) The exercise of emergency health powers must promote the common good.

(g) Emergency health powers must be grounded in a thorough scientific understanding of public health threats and disease transmission.

(h) The rights of people to liberty, bodily integrity, and privacy must be respected to the fullest extent possible consistent with the overriding importance of the public’s health and security.

(i) Guided by principles of justice, it is the duty of this State to act with fairness and tolerance towards individuals and groups.

(j) This subchapter is necessary to protect the health and safety of the citizens of this State.

§ 3132. Definitions.

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

- (a) 'Bioterrorism' is the intentional use of any microorganism, virus, infectious substance, or biological product that may be engineered as a result of biotechnology, or any naturally occurring or bioengineered component of any such microorganism, virus, infectious substance, or biological product, to cause death, disease, or other biological malfunction in a human, an animal, a plant, or another living organism in order to influence the conduct of government or to intimidate or coerce a civilian population.
- (b) 'Chain of custody' means the methodology of tracking specimens for the purpose of maintaining control and accountability from initial collection to final disposition of the specimens and providing for accountability at each stage of collecting, handling, testing, storing, and transporting the specimens and reporting test results.
- (c) 'Contagious disease' is an infectious disease that can be transmitted from person to person, animal to person, or insect to person.
- (d) 'Health care facility' means any non-federal institution, building, or agency or portion thereof, whether public or private (for-profit or nonprofit) that is used, operated, or designed to provide health services, medical treatment, or nursing, rehabilitative, or preventive care to any person or persons. This includes, but is not limited to: ambulatory surgical facilities, home health agencies, hospices, hospitals, infirmaries, intermediate care facilities, kidney treatment centers, long term care facilities, medical assistance facilities, mental health centers, outpatient facilities, public health centers, rehabilitation facilities, residential treatments facilities, skilled nursing facilities, and adult day-care centers. The term also includes, but is not limited to, the following related property when used for or in connection with the foregoing: laboratories; research facilities; pharmacies; laundry facilities; health personnel training and lodging facilities; patient, guest, and health personnel food service facilities; and offices and office buildings for persons engaged in health care professions or services.
- (e) 'Health care provider' means any person or entity who provides health care services including, but not limited to, hospitals, medical clinics and offices, special care facilities, medical laboratories, physicians,

pharmacists, dentists, physician assistants, nurse practitioners, registered and other nurses, paramedics, emergency medical or laboratory technicians, and ambulance and emergency medical workers.

(f) 'Infectious disease' is a disease caused by a living organism or other pathogen, including a fungus, bacillus, parasite, protozoan, or virus. An infectious disease may, or may not, be transmissible from person to person, animal to person, or insect to person.

(g) 'Infectious waste' means:

(i) 'biological waste,' which includes blood and blood products, excretions, exudates, secretions, suctioning and other body fluids, and waste materials saturated with blood or body fluids;

(ii) 'cultures and stocks,' which includes etiologic agents and associated biologicals, including specimen cultures and dishes and devices used to transfer, inoculate, and mix cultures, wastes from production of biologicals and serums, and discarded live and attenuated vaccines;

(iii) 'pathological waste,' which includes biopsy materials and all human tissues, anatomical parts that emanate from surgery, obstetrical procedures, autopsy and laboratory procedures and animal carcasses exposed to pathogens in research and the bedding and other waste from such animals, but does not include teeth or formaldehyde or other preservative agents; and

(iv) 'sharps,' which includes needles, IV tubing with needles attached, scalpel blades, lancets, breakable glass tubes, and syringes that have been removed from their original sterile containers.

(h) 'Isolation' is the physical separation and confinement of an individual or groups of individuals who are infected or reasonably believed to be infected with a contagious or possibly contagious disease from non-isolated individuals, to prevent or limit the transmission of the disease to non-isolated individuals.

(i) 'Mental health support personnel' includes, but is not limited to, psychiatrists, psychologists, social workers, and volunteer crisis counseling groups.

(j) 'Protected health information' means any information, whether oral, written, electronic, visual, pictorial, physical, or any other form, that relates to an individual's past, present, or future physical or mental health status, condition, treatment, service, products purchased, or provision of care, and that reveals the identity of the individual whose health care is the subject of the information, or where there is a reasonable basis to believe such information could be utilized (either alone or with other information



that is, or should reasonably be known to be, available to predictable recipients of such information) to reveal the identity of that individual.

(k) 'Public health authority' means the Secretary of Health and Social Services or such person as he may designate with the Governor's written consent.

(l) A 'public health emergency' is an occurrence or imminent threat of an illness or health condition that:

(i) is believed to be caused by any of the following:

(A) bioterrorism;

(B) the appearance of a novel or previously controlled or eradicated infectious agent or biological toxin;

(C) a chemical attack or accidental release; and

(ii) poses a high probability of any of the following harms:

(A) a large number of deaths in the affected population;

(B) a large number of serious or long-term disabilities in the affected population; or

(C) widespread exposure to an infectious or toxic agent that poses a significant risk of substantial future harm to a large number of people in the affected population.

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

(n) 'Quarantine' is the physical separation and confinement of an individual or groups of individuals, who are or may have been exposed to a contagious or possibly contagious disease and who do not show signs or symptoms of a contagious disease, from non-quarantined individuals, to prevent or limit the transmission of the disease to non-quarantined individuals.

(o) 'Specimens' include, but are not limited to, blood, sputum, urine, stool, other bodily fluids, wastes, tissues, and cultures necessary to perform required tests.

(p) 'Tests' include, but are not limited to, any diagnostic or investigative analyses necessary to prevent the spread of disease or protect the public's health, safety, and welfare.

#### § 3133. Declaration of Public Health Emergency

(a) If the Governor has specifically designated a state of emergency declared pursuant to Section 3115 of this Title as a 'public health emergency,' the public safety authority shall, in consultation with the

public health authority, coordinate all matters pertaining to the public health emergency response of the State. The public safety authority shall have primary jurisdiction, responsibility, and authority for:

- (1) Planning and executing public health emergency assessment, mitigation, preparedness response, and recovery for the State;
- (2) Coordinating public health emergency response between State and local authorities;
- (3) Collaborating with relevant federal government authorities, elected officials of other states, private organizations, or private sector companies;
- (4) Coordinating recovery operations and mitigation initiatives subsequent to public health emergencies; and
- (5) Organizing public information activities regarding State public health emergency response operations.

(b) After the declaration of a state of public health emergency, special identification for all public health personnel working during the emergency shall be issued as soon as possible by the public safety authority. The identification shall indicate the authority of the bearer to exercise public health functions and emergency powers during the state of public health emergency. Public health personnel shall wear the identification in plain view.

(c) After the declaration of a state of public health emergency, the public safety authority shall consult with the public health authority in the execution of all of its duties described in this subchapter.

#### § 3134. Emergency Measures Concerning Dangerous Facilities and Materials.

If the Governor has specifically designated a state of emergency declared pursuant to Section 3115 of this Title as a 'public health emergency,' the public safety authority may exercise, for such period as the state of public health emergency exists, the following powers over dangerous facilities or materials:

- (a) To close, direct and compel the evacuation of, or to decontaminate or cause to be decontaminated any facility of which there is reasonable cause to believe that it may endanger the public health.
- (b) To decontaminate or cause to be decontaminated, or destroy any material of which there is reasonable cause to believe that it may endanger the public health.
- (c) To issue an order closing the public schools and other public places for such time as may be deemed necessary for the public protection.

§ 3135. Access to and Control of Facilities and Property - Generally.

If the Governor has specifically designated a state of emergency declared pursuant to Section 3115 of this Title as a ‘public health emergency,’ the public safety authority may exercise, for such period as the state of public health emergency exists, the following powers concerning facilities, materials, roads, or public areas:

- (a) To procure, by condemnation or otherwise, construct, lease, transport, store, maintain, renovate, or distribute materials and facilities as may be reasonable and necessary for emergency response, with the right to take immediate possession thereof. Such materials and facilities include, but are not limited to, communication devices, carriers, real estate, fuels, food, and clothing.
- (b) To compel a health care facility to provide services or the use of its facility if such services or use are reasonable and necessary for emergency response. The use of the health care facility may include transferring the management and supervision of the health care facility to the public safety authority, but shall not exceed the termination of the state of public health emergency.
- (c) To prescribe routes, modes of transportation, and destinations in connection with evacuation of persons or the provision of emergency services.
- (d) To control ingress and egress to and from any stricken or threatened public area, the movement of persons within the area, and the occupancy of premises therein, if such action is reasonable and necessary for emergency response.

§ 3136. Safe Disposal of Infectious Waste.

If the Governor has specifically designated a state of emergency declared pursuant to Section 3115 of this Title as a ‘public health emergency,’ the public safety authority may exercise, for such period as the state of public health emergency exists, the following powers regarding the safe disposal of infectious waste:

- (a) To adopt and enforce measures to provide for the safe disposal of infectious waste as may be reasonable and necessary for emergency response. Such measures may include, but are not limited to, the collection, storage, handling, destruction, treatment, transportation, and disposal of infectious waste.
- (b) To compel any business or facility authorized to collect, store, handle, destroy, treat, transport, and dispose of infectious waste under the laws of this State, and any landfill business or other such property,

to accept infectious waste, or provide services or the use of the business, facility, or property if such action is reasonable and necessary for emergency response. The use of the business, facility, or property may include transferring the management and supervision of such business, facility, or property to the public safety authority, but shall not exceed the termination of the state of public health emergency.

(c) To procure, by condemnation or otherwise, any business or facility authorized to collect, store, handle, destroy, treat, transport, and dispose of infectious waste under the laws of this State and any landfill business or other such property as may be reasonable and necessary for emergency response, with the right to take immediate possession thereof.

(d) All bags, boxes, or other containers for infectious waste shall be clearly identified as containing infectious waste.

#### § 3137. Safe Disposal of Human Remains.

If the Governor has specifically designated a state of emergency declared pursuant to Section 3115 of this Title as a ‘public health emergency,’ the public safety authority may exercise, for such period as the state of public health emergency exists, the following powers regarding the safe disposal of human remains:

- (a) To adopt and enforce measures to provide for the safe disposal of human remains as may be reasonable and necessary for emergency response. Such measures may include, but are not limited to, the embalming, burial, cremation, interment, disinterment, transportation, and disposal of human remains.
- (b) To take possession or control of any human remains.
- (c) To order the disposal of any remains of a person who has died of an infectious disease through burial or cremation within twenty-four hours after death.
- (d) To compel any business or facility authorized to embalm, bury, cremate, inter, disinter, transport, and dispose of human remains under the laws of this State to accept any human remains or provide the use of its business or facility if such actions are reasonable and necessary for emergency response. The use of the business or facility may include transferring the management and supervision of such business or facility to the public safety authority, but shall not exceed the termination of the state of public health emergency.

- (e) To procure, by condemnation or otherwise, any business or facility authorized to embalm, bury, cremate, inter, disinter, transport, and dispose of human remains under the laws of this State as may be reasonable and necessary for emergency response, with the right to take immediate possession thereof.
- (f) All human remains prior to disposal shall be clearly labeled with all available information to identify the decedent and the circumstances of death. All human remains of a deceased person with an infectious disease shall have an external, clearly visible tag indicating that the remains are infected and, if known, the infectious disease.
- (g) Every person in charge of disposing of human remains shall maintain a written record of each corpse and all available information to identify the decedent and the circumstances of death and disposal. If human remains cannot be identified, prior to disposal a qualified person shall, to the extent possible, take fingerprints and one or more photographs of the human remains, and collect a DNA specimen. All information gathered under this paragraph shall be promptly forwarded to the public health authority.

§ 3138. Control of Health Care Supplies.

- (a) The public health authority may purchase and distribute anti-toxins, serums, vaccines, immunizing agents, antibiotics, and other pharmaceutical agents or medical supplies that it deems advisable in the interest of preparing for or controlling a public health emergency, without any additional legislative authorization.
- (b) If the Governor has specifically designated a state of emergency declared pursuant to Section 3115 of this Title as a 'public health emergency,' and the state of public health emergency results in a state-wide or regional shortage or threatened shortage of any product covered by Subsection (a), whether or not such product has been purchased by the public health authority, the public safety authority may control, restrict, and regulate by rationing and using quotas, prohibitions on shipments, allocation or other means, the use, sale, dispensing, distribution, or transportation of the relevant product necessary to protect the health, safety, and welfare of the people of the State. In making rationing or other supply and distribution decisions, the public safety authority may give preference to health care providers, disaster response personnel, and mortuary staff.
- (c) If the Governor has specifically designated a state of emergency declared pursuant to Section 3115 of this Title as a 'public health emergency,' the public safety authority may procure, store, or distribute any

anti-toxins, serums, vaccines, immunizing agents, antibiotics, and other pharmaceutical agents or medical supplies located within the State as may be reasonable and necessary for emergency response, with the right to take immediate possession thereof. If a public health emergency simultaneously affects more than one state, nothing in this Section shall be construed to allow the public safety authority to obtain anti-toxins, serums, vaccines, immunizing agents, antibiotics, and other pharmaceutical agents or medical supplies for the primary purpose of hoarding such items or preventing their fair and equitable distribution among affected states.

§ 3139. Compensation for Health Care Supplies.

The State shall pay just compensation to the owner of any facilities or materials that are lawfully taken or appropriated by the public safety authority for its temporary or permanent use under Sections 3135 through 3138 of this Title according to the procedures and standards set forth in Section 3153 of this Title. Compensation shall not be provided for facilities or materials that are closed, evacuated, decontaminated, or destroyed when there is reasonable cause to believe that they may endanger the public health. Except as otherwise indicated in this Chapter, 'just compensation' shall be used in the same manner that it is used in Title 10, Chapter 61 of the Delaware Code.

§ 3140. Destruction of Property.

To the extent practicable consistent with the protection of public health, prior to the destruction of any property under Sections 3134 through 3136 of this Title, the public safety authority shall institute appropriate civil proceedings against the property to be destroyed in accordance with the existing laws and rules of the Superior Court or any such rules that may be developed by the Superior Court for use during a state of public health emergency. Any property acquired by the public safety authority through such proceedings shall, after entry of the decree, be disposed of by destruction as the Court may direct. The public safety authority's determination as to the practicability of instituting civil proceedings prior to the destruction of property during a state of emergency shall not be subject to judicial review.

§ 3141. Control of Individuals during Public Health Emergency.

If the Governor has specifically designated a state of emergency declared pursuant to Section 3115 of this Title as a 'public health emergency,' the public safety authority shall use every available means to

prevent the transmission of infectious disease and to ensure that all cases of infectious disease are subject to proper control and treatment.

§ 3142. Medical Examination and Testing during Public Health Emergency.

If the Governor has specifically designated a state of emergency declared pursuant to Section 3115 of this Title as a ‘public health emergency,’ the following rules shall apply:

- (a) Medical examinations or tests may be performed by any qualified person authorized to do so by the public safety authority.
- (b) Medical examinations or tests must not be such as are reasonably likely to lead to serious harm to the affected individual.
- (c) The public safety authority may isolate or quarantine, subject to Section 3143, any person whose refusal of medical examination or testing results in uncertainty regarding whether he or she has been exposed to or is infected with a contagious or possibly contagious disease or otherwise poses a danger to public health.

§ 3143. Isolation and Quarantine during Public Health Emergency.

The following isolation and quarantine procedures shall be in effect if the Governor has specifically designated a state of emergency declared pursuant to Section 3115 of this Title as a ‘public health emergency.’

- (a) To the extent possible, the premises in which persons are isolated or quarantined shall be maintained in safe and hygienic manners, designed to minimize the likelihood of further transmission of infection or other harm to persons subject to isolation or quarantine. Adequate food, clothing, medication, and other necessities, and competent medical care shall be provided.
- (b) The public safety authority may exercise, for such period as the state of public health emergency exists, the following emergency powers over persons:
  - (1) To establish and maintain places of isolation and quarantine; and
  - (2) To require isolation or quarantine of any person by the least restrictive means necessary to protect the public health, subject to the other provisions of this Section. All reasonable means shall be taken to prevent the transmission of infection among the isolated or quarantined individuals.

- (c) A person subject to isolation or quarantine shall obey the public safety authority's rules and orders, shall not go beyond the isolation or quarantine premises, and shall not put himself or herself in contact with any person not subject to isolation or quarantine other than a physician or other health care provider, public health authority, or person authorized to enter an isolation or quarantine premises by the public safety authority. Failure to obey these provisions shall constitute a misdemeanor. Any person entering an isolation or quarantine premises may be isolated or quarantined.
- (d) Isolated individuals must be confined separately from quarantined individuals.
- (e) The health status of isolated and quarantined individuals must be monitored regularly to determine if their status should change. If a quarantined individual subsequently becomes infected or is reasonably believed to have become infected with a contagious or possibly contagious disease, he or she must promptly be moved to isolation.
- (f) No person, other than a person authorized by the public safety authority, shall enter an isolation or quarantine premises. If any person enters an isolation or quarantine premises without permission of the public safety authority, that person shall be liable for a misdemeanor. If, by reason of an unauthorized entry into an isolation or quarantine premises, the person poses a danger to public health, he or she may be subject to isolation or quarantine pursuant to the provisions of this Section.
- (g) Persons shall be isolated or quarantined if, by a preponderance of the evidence, isolation or quarantine is shown to be reasonably necessary to prevent or limit the transmission of a contagious or possibly contagious disease to others. A rebuttable presumption shall exist that persons who refuse medical examination, vaccination, or treatment pursuant to Sections 3142 and 3144 of this Title should be quarantined or isolated.
- (h) Isolation or quarantine of any person shall be terminated when the public safety authority determines that such isolation or quarantine of such person is no longer necessary to protect the public health.
- (i) The following procedures shall protect the due process rights of Delawareans:
- (1) The public safety authority may petition the Superior Court for an order authorizing the isolation or quarantine of an individual or groups of individuals.
  - (2) A petition pursuant to subsection (i)(1) shall specify the following
    - (aa) the identity of the individual(s) or groups of individuals subject to isolation or quarantine;



- (bb) the premises subject to isolation or quarantine;
- (cc) the date and time at which isolation or quarantine commences;
- (dd) the suspected contagious disease, if known;
- (ee) a statement of compliance with the conditions and principles for isolation and quarantine;
- and;
- (ff) a statement of the basis upon which isolation or quarantine is justified.

- (3) Before isolating or quarantining a person, the public safety authority shall obtain a written, *ex parte* order from the Superior Court authorizing such action. The Court shall grant such order upon finding that there is a reasonable likelihood that isolation or quarantine is warranted pursuant to the provisions of this Act. A copy of the authorizing order shall be given to the person isolated or quarantined, along with notification that the person has a right to a hearing under this paragraph.
- (4) Notwithstanding the preceding subparagraphs, the public safety authority may isolate or quarantine a person without first obtaining a written, *ex parte* order from the Court if any delay in the isolation or quarantine of the person would pose an immediate threat to the public health. Following such isolation or quarantine, the public health authority shall promptly obtain a written, *ex parte* order from the Superior Court authorizing the isolation or quarantine. If the public safety authority exercises its powers under this subsection, it must provide a written directive indicating the identities of the individuals or groups subject to the directive, the premises subject to isolation or quarantine, the date and time that the directive commences, the suspected contagious disease (if known), and a copy of Section 3143 of this Title.
- (5) A person isolated or quarantined pursuant to the provisions of subparagraph (3) or (4) shall have the right to a Court hearing to contest the *ex parte* order. If such person or his or her representative requests a hearing, the hearing shall be held within seventy-two hours of receipt of such request, excluding Saturdays, Sundays and legal holidays. The request must be in writing. A request for a hearing shall not stay the order of isolation or quarantine. At the hearing, the public safety authority must show that the isolation or quarantine is warranted pursuant to the provisions of this Section.

- (6) On or after thirty days following a hearing on the *ex parte* order or such hearing as is provided for in this subparagraph, a person isolated or quarantined pursuant to the provisions of this Section may request in writing a court hearing to contest his or her continued isolation or quarantine. The hearing shall be held within seventy-two hours of receipt of such request, excluding Saturdays, Sundays and legal holidays. A request for a hearing shall not alter the order of isolation or quarantine. At the hearing, the public safety authority must show that continuation of the isolation or quarantine is warranted pursuant to the provisions of this Section.
- (7) A person isolated or quarantined pursuant to the provisions of this Section may request a hearing in the Superior Court for remedies regarding his or her treatment and the terms and conditions of such quarantine or isolation. Upon receiving a request for either type of hearing described in this subparagraph, the Court shall fix a date for a hearing. The hearing shall take place within ten days of the receipt of the request by the Court. The request for a hearing shall not alter the order of isolation or quarantine.
- (8) If, upon a hearing, the Court finds that the isolation or quarantine of the individual is not warranted under the provisions of this Section, then the person shall be released from isolation or quarantine. If the Court finds that the isolation or quarantine of the individual is not in compliance with the provisions of paragraph (a), the court may then fashion remedies appropriate to the circumstances of the state of public health emergency and in keeping with the provisions of this Act.
- (9) A record of proceedings before the Court shall be made and retained. The petitioner shall have the right to be represented by counsel or other lawful representative, and the State shall provide counsel to indigent persons against whom proceedings are initiated. The manner in which the request for a hearing is filed and acted upon will be in accordance with the existing laws and rules of the Superior Court or any such rules that are developed by the courts for use during a state of public health emergency, provided that hearings should be held by any means that will allow all necessary persons to participate in the event that a public health emergency makes personal appearances impractical.
- (10) The Court may order consolidation of individual claims into a group of claims where

- (i) the number of individuals involved or to be affected is so large as to render individual participation impractical;
- (ii) there are questions of law or fact common to the individual claims or rights to be determined;
- (iii) the group claims or rights to be determined are typical of the affected individuals' claims or rights; and
- (iv) the entire group will be adequately represented in the consolidation, giving due regard to the rights of affected individuals.

§ 3144. Vaccination and Treatment during Public Health Emergency.

If the Governor has specifically designated a state of emergency declared pursuant to Section 3115 of this Title as a 'public health emergency,' the public safety authority may exercise, for such period as the state of public health emergency exists, the following emergency powers:

- (a) To vaccinate persons as protection against infectious disease and to prevent the spread of contagious or possibly contagious disease.
  - (1) Vaccination may be performed by any qualified person authorized to do so by the public safety authority.
  - (2) A vaccine to be administered must not be such as is reasonably likely to lead to serious harm to the affected individual.
  - (3) To prevent the spread of contagious or possibly contagious disease, the public safety authority may isolated or quarantine, pursuant to Section 3143, persons who are unable or unwilling for reasons of health, religion, or conscience to undergo vaccination pursuant to this Section.
- (b) To treat persons exposed to or infected with disease
  - (1) Treatment may be administered by any qualified person authorized to do so by the public safety authority.
  - (2) Treatment must not be such as is reasonably likely to lead to serious harm to the affected individual.

(3) To prevent the spread of contagious or possibly contagious disease, the public safety authority may isolated or quarantine, pursuant to Section 3143, persons who are unable or unwilling for reasons of health, religion, or conscience to undergo treatment pursuant to this Section.

§ 3145. Collection of Laboratory Specimens; Performance of Tests during Public Health Emergency

If the Governor has specifically designated a state of emergency declared pursuant to Section 3115 of this Title as a ‘public health emergency,’ the public health authority may, for such period as the state of public health emergency exists, collect specimens and perform tests on any person or animal, living or deceased, and acquire any previously collected specimens or test results that are reasonable and necessary for emergency response.

(a) All specimens shall be clearly marked.

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

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

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

§ 3146. Access and Disclosure of Patient Records.

(a) Access to protected health information of persons who have participated in medical testing, treatment, vaccination, isolation, or quarantine programs or efforts by the public health authority or public safety authority during a public health emergency shall be limited to those persons having a legitimate need to acquire or use the information to:

- (1) provide treatment to the individual who is the subject of the health information;
- (2) conduct epidemiological research; or
- (3) investigate the causes of transmission.

- (b) Protected health information held by the public health authority or public safety authority shall not be disclosed to others without individual written, informed consent, except for disclosures made:
- (1) directly to the individual;
  - (2) to the individual's immediate family members or personal representative;
  - (3) to appropriate federal agencies or authorities pursuant to federal law;
  - (4) pursuant to a court order to avert a clear danger to an individual or the public health; or
  - (5) to identify a deceased individual or determine the manner or cause of death.

§ 3147. Licensing and Appointment of Health Personnel during Public Health Emergency

If the Governor has specifically designated a state of emergency declared pursuant to Section 3115 of this Title as a 'public health emergency,' the public health authority may exercise, for such period as the state of public health emergency exists, the following emergency powers regarding licensing of health personnel:

- (a) To require in-state health care providers to assist in the performance of vaccination, treatment, examination, or testing of any individual as a condition of licensure, authorization, or the ability to continue to function as a health care provider in this State;
- (b) To appoint and prescribe the duties of such out-of-state emergency health care providers as may be reasonable and necessary for emergency response.
  - (1) The appointment of out-of-state emergency health care providers pursuant to this Section may be for a limited or unlimited time, but shall not exceed the termination of the state of public health emergency. The public health authority may terminate the out-of-state appointments at any time or for any reason provided that any such termination will not jeopardize the health, safety, and welfare of the people of this State.
  - (2) The public health authority may waive any or all licensing requirements, permits, or fees required by the State code and applicable orders, rules, or regulations for health care providers from other jurisdictions to practice in this State.
  - (3) Any out-of-state emergency health care provider appointed pursuant to this Section shall be considered a public employee under 10 Del.C. §§ 4001-4002.

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

(4) The appointment of emergency assistant medical examiners pursuant to this Section may be for a limited or unlimited time, but shall not exceed the termination of the state of public health emergency.

(5) The medical examiner may waive any or all licensing requirements, permits, or fees required by the State code and applicable orders, rules, or regulations for the performance of these duties.

(6) Any emergency assistant medical examiner appointed pursuant to this Section shall be considered a public employee under 10 Del.C. §§ 4001-4002.

§ 3148. Public Health Emergency Planning Commission.

The Public Health Emergency Planning Commission ('the Commission') shall consist of the Governor, the Speaker of the House of Representatives, the President Pro Tem of the State Senate, the Secretary of Health and Social Services, the Secretary of Public Safety, the Secretary of the Department of Natural Resources and Environmental Control, the Adjutant General of the Delaware National Guard, the Chief Justice of the Delaware Supreme Court, and the Director of the Delaware Emergency Management Association, or their designees. The Governor shall designate the chair of the Commission. The Governor shall also appoint representatives of affected constituencies, including the medical community, as *ex officio* members of the Commission.

§ 3149. Public Health Emergency Plan.

(a) The Commission shall, within three months of the enactment of this legislation into law, deliver to the Governor a plan for responding to a public health emergency, that includes provisions for the following:

- (1) A means of notifying and communicating with the population during a state of public health emergency in compliance with this Act;
- (2) Centralized coordination of resources, manpower, and services, including coordination of responses by State, local, and federal agencies;
- (3) The location, procurement, storage, transportation, maintenance, and distribution of essential materials, including medical supplies, drugs, vaccines, food, shelter, and beds;

- (4) The continued, effective operation of the judicial system including, if deemed necessary, the identification and training of personnel to serve as emergency judges regarding matters of isolation and quarantine as described in this Act;
- (5) The method of evacuating populations, and housing and feeding the evacuated populations;
- (6) The identification and training of health care providers to diagnose and treat persons with infectious diseases;
- (7) Guidelines for the vaccination of persons, in compliance with the provisions of this Act;
- (8) Guidelines for the treatment of persons who have been exposed to or who are infected with diseases or health conditions caused by bioterrorism, epidemic or pandemic disease, or novel and highly fatal infectious agents or biological toxins, that pose a substantial risk of a significant number of fatalities or incidents of permanent or long-term disability. The guidelines should cover, but not be limited to, the following diseases: anthrax, botulism, smallpox, plague, tularemia, and viral hemorrhagic fevers;
- (9) Guidelines for the safe disposal of human remains, in compliance with the provisions of this Act;
- (10) Guidelines for the safe disposal of infectious waste, in compliance with the provisions of this Act;
- (11) Guidelines for the safe and effective management of persons isolated, quarantined, vaccinated, or treated during a state of public health emergency;
- (12) Tracking the source and outcomes of infected persons;
- (13) Ensuring that each city and county within the State identifies the following:
- (i) sites where persons can be isolated or quarantined, with such sites complying with the provisions of this Act regarding the least restrictive means for isolation and quarantine, and the requirements for the safety, health and maintenance of personal dignity of those isolated or quarantined;
  - (ii) sites where medical supplies, food, and other essentials can be distributed to the population;
  - (iii) sites where emergency workers can be housed and fed;
  - (iv) routes and means of transportation of people and materials;

- (14) Coordination with other states and the federal government;
- (15) Taking into account cultural norms, values, and traditions that may be relevant;
- (16) Distribution of this plan and guidelines to those who will be responsible for implementing the plan; and
- (17) Other measures necessary to carry out the purposes of this Act.

(b) The Commission shall review its plan for responding to a public health emergency every two years.

§ 3150. Rules and Regulations.

The public health authority and public safety authority are authorized to promulgate and implement such rules and regulations as are reasonable and necessary to implement and effectuate the provisions of this Subchapter. The public health authority and public safety authority shall have the power to enforce the provisions of this Subchapter through the imposition of fines and penalties, the issuance of orders, and such other remedies as are provided by law, but nothing in this Subchapter shall be construed to limit specific enforcement powers enumerated in this Subchapter.

§ 3151. Financing and Expenses.

(a) If the Governor has specifically designated a state of emergency declared pursuant to Section 3115 of this Title as a ‘public health emergency,’ the Governor may transfer from any fund available to the Governor in the State treasury such sums as may be necessary to meet the public health emergency.

(b) Monies so transferred shall be repaid to the fund from which they were transferred when monies become available for that purpose, by legislative appropriation or otherwise.

§ 3152. Liability.

(a) If the Governor has specifically designated a state of emergency declared pursuant to Section 3115 of this Title as a ‘public health emergency,’ any person owning or controlling real estate or other premises who voluntarily and without compensation grants a license or privilege, or otherwise permits the designation or use of the whole or any part or parts of such real estate or premises for the purpose of sheltering persons, together with that person’s successors in interest, if any, shall be considered a public employee under 10 Del.C. §§ 4001-4002.

(b) If the Governor has specifically designated a state of emergency declared pursuant to Section 3115 of this Title as a ‘public health emergency,’ any private person, firm or corporation and employees



and agents of such person, firm or corporation in the performance of a contract with, and under the direction of, the State or its political subdivisions under the provisions of this subchapter shall be considered a public employee under 10 Del.C. §§ 4001-4002 for acts taken consistent with this subchapter.

(c) If the Governor has specifically designated a state of emergency declared pursuant to Section 3115 of this Title as a 'public health emergency,' any private person, firm or corporation and employees and agents of such person, firm or corporation, who renders assistance or advice at the request of the State or its political subdivisions under the provisions of this subchapter shall be considered a public employee under 10 Del.C. §§ 4001-4002.

(d) The immunities provided in this Section shall not apply to any private person, firm, or corporation or employees and agents of such person, firm, or corporation whose act or omission caused in whole or in part the public health emergency and who would otherwise be liable therefor.

#### § 3153. Compensation.

(a) Compensation for property shall be made only if private property is taken or appropriated by the public health authority or public safety authority for its temporary or permanent use during a state of public health emergency declared by the Governor pursuant to Section 3115 of this Title.

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

(c) The amount of compensation shall be calculated in the same manner as compensation due for taking of property pursuant to non-emergency eminent domain procedures, except that the amount of compensation calculated for items obtained under Section 3138-3139 shall not exceed the costs incurred to produce the items.

#### § 3154. Severability.

The provisions of this Act are severable. If any provision of this Act or its application to any person or circumstances is held invalid in a federal or state court having jurisdiction, the invalidity will not

affect other provisions or applications of this Act that can be given effect without the invalid provision or application, and to that end the provisions of this Act are declared to be severable.

§ 3155. Saving clause.

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

§ 3156. Conflicting laws.

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

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

Section 13. The provisions of this Act shall take effect upon signature of the Governor.

#### SYNOPSIS

This statute is designed to clarify the Government's emergency authority during public health emergencies—authority that already exists in general form in the state's existing emergency powers statute. It is also designed to specifically enumerate procedures that would be used during a public health emergency to exercise those powers. The legislation:

- a) expands and clarifies the duties of health care providers to report medical conditions that could lead to a public health emergency;
- b) Requires pharmacists to report prescription-related events that could lead to a public health emergency;
- c) Requires persons who deal with animals to report events that could lead to a public health emergency;
- d) Clarifies procedures for the Division of Public Health to track potential public health emergencies;
- e) Clarifies the Governor's emergency powers in the event of a public health emergency, including the control of dangerous facilities and materials, the safe disposal of infectious materials, the safe and respectful disposal of human remains, the availability of health care supplies, and the ability to implement effective vaccination, testing, and treatment programs.
- f) Establishes the procedures for quarantining and isolating individuals, with appropriate due process protections.
- g) Establishes the procedures for compensation of persons whose property is damaged or confiscated during a public health emergency.
- h) Establishes procedures for the protection of personal health information gathered during a public health emergency; and
- i) Requires the creation of a more detailed public health emergency plan.