DELAWARE LEGISLATIVE DRAFTING MANUAL

2024 Edition

DELAWARE GENERAL ASSEMBLY

Division of Legislative Services

THIS PAGE INTENTIONALLY LEFT BLANK

DELAWARE LEGISLATIVE DRAFTING MANUAL

2024 Edition

Published by

Mark J. Cutrona, Director

Edited by
Holly Vaughn Wagner, Deputy Director

Parliamentary Procedure Advisors
Bernard Brady, Secretary of the Senate Emeritus
Rich Puffer, Chief Clerk of the House of Representatives

Proofreaders – Division of Legislative Services[1]
Deborah Gottschalk, Senior Legislative Attorney
Rich Dillard, Legislative Drafting Advisor

Word Processors – Division of Legislative Services
Colinda Marker

Legislative Graphics and Printing Services
Robert Lupo, Nathan Poore, and Quran Hernandez

Additional copies of this publication are available online at
http://legis.delaware.gov/LawsOfDE/BillDraftingManual or by
contacting the Division of Legislative Service's Legislative Information Office

411 Legislative Avenue
Dover, Delaware 19901
302-744-4114
Originally Approved by Legislative Council on September 18, 2013

[1] In 2024, House Bill No. 288 of the 152nd General Assembly was enacted and the Division of Research was renamed the "Division of Legislative Services."

THIS PAGE INTENTIONALLY LEFT BLANK

PREFACE

Welcome to the 2024 edition of the *Delaware Legislative Drafting Manual*, which we hope you will find even more user-friendly and packed with even more drafting guidelines than the 2022 edition.

The first thing we recommend is that you turn on the navigation pane in Word: go to View -> Show -> click the Navigation Pane box. This will allow you to easily jump to any part, chapter, section, or titled paragraph within, and makes it easier to flip back and forth between concepts.

Similarly, in the table of contents, each entry is still hyperlinked to its corresponding page. Hold the cursor over the link and press "control" to use the hyperlinks in the table of contents.

Don't forget to use the index! We've tried to capture all the common words or phrases that a drafter may want to seek.

You'll also find several additions to substantive drafting standards, including:

- Discussion of and boilerplate language for drafting health insurance bills or specialty license plates bills.
- How to draft an amendment that removes or adds a bill Section to its originating bill.
- The use of gender-silent language and avoiding gender-based personal pronouns.

We want to shout out to and thank our fellow Division drafters, Debbie Gottschalk and Cara Wilson, for their hard work on completing the new rules for drafting bills for health insurance and specialty license plates.

Finally, we hope this edition continues to help you construct legally sound, well-written laws, and engender a love for our craft.

Holly Vaughn Wagner and Mark J. Cutrona
Holly.Vaughn_Wagner@delaware.gov
and Mark.Cutrona@delaware.gov
X (formerly Twitter): @DEDivResearch
Division of Legislative Services
December 2024

TABLE OF CONTENTS

Preface 1
Table of Contents 2
Part I: Introduction 9
Chapter 1: Purpose, Audience, and Organization of this Manual. 9
Chapter 2: Notes to Drafters Outside Legislative Hall. 10
Part II: Initial Considerations in the Drafting Process 13
Chapter 1: Understanding Legislative Drafting. 13
Chapter 2: Basic Steps in the Drafting Process. 14
Chapter 3: The Proper Legal Source Material. 15
Part III: Choosing the Correct Legislative Vehicle 17
Chapter 1: Legislative Vehicles. 17
Chapter 2: Bills. 17
Section 1: Types of Bills. 17
A. General Bills. 17
B. Special Bills. 18
1. Local Bills. 18
2. Private Bills. 18
3. Appropriation Bills. 18
Section 2: Parts of a Bill. 19
A. Caption. 19
B. Bill Title. 19
C. Preamble. 22
D. Enactment Clause. 23
E. Body of the Bill. 24
F. Declaration of Purpose. 25
G. Definitions. 25
H. Basic Provisions. 27
I. Penalties. 28
J. Effective Date, Contingent Effective Date, and Implementation Date. 29
K. Applicability Clause. 34
L. Sunset Clause and Contingent Sunset Clause. 35
M. Savings Clause. 36

N. Grandfather Clause. 37
O. Interpretation Clause. 37
P. Severability Clause. 38
Q. Repealing Clause. 39
R. Appropriations. 40
S. Short Title. 41
T. Synopsis. 41
U. Author. 42
V. Footer. 43
Section 3: Special Types of Bills. 43
A. Constitutional Amendments. 43
B. Charter Amendments. 45
Section 4: Bills with Special Provisions. 46
A. Bills with Super-Majority Vote Requirements. 46
B. Bills Creating Regulatory Agencies, Boards, Commissions, Councils, or Similar Entities. 48
1. Language for legislation establishing a new regulatory entity. 49
2. Language for member qualifications. 49
3. Language for term limitations, including staggered terms. 49
5. Conflict-of-interest language for officers. 50
6. Language for persons desiring to be licensed. 50
7. Language for notice and service of process. 50
8. Using “appoint” and required language for granting authority to name a person to serve on a board, commission, task force, etc. 50
9. Defining quorum. 51
10. Other provisions common to boards, commissions, councils, etc. 51
C. Bills with Fiscal Impacts. 51
D. Bills Amending the Laws of Delaware. 53
Chapter 3: Substitute Bills. 55
Chapter 4: Amendments. 56
Chapter 5: Resolutions. 58
Section 1: Resolutions. 58
A. Simple Resolution. 59
B. Concurrent Resolution 60
C. Joint Resolution. 60
Section 2: Resolutions Creating Task Forces. 60

Part IV: Strike Through and Underline....64
Chapter 1: Bills. 64
1. Prefatory language. 64
2. Amount of existing text to include. 65
3. Amending "listing" sections....66
4. Show deleted text first. 66
5. How much text to delete. 66
6. Make changes to entire words, numbers, and internal hierarchy designations....66
7. When underline is required. 67
8. When underline is not required. 67
Chapter 2: Resolutions. 68
Part V: Amendment Format....70
A. Rules for drafting amendments, generally. 70
B. Rules for drafting amendments, specific examples. 72
1. Deleting new text added by the bill. 72
2. Replace new text added by the bill. 72
3. Reinserting source material text deleted by the bill. 72
4. Deleting additional source material text in the bill. 73
5. Deleting additional source material text in the bill and replacing it with new text. 73
6. Inserting additional text into a source material provision. 73
7. Deleting additional source material text not in a bill. 73
8. Inserting an additional new provision into the bill. 74
9. Deleting multiple lines or an entire Section from the bill. 74
10. Inserting multiple words into a sentence or provision....75
11. Striking other amendments. 75
12. Amending the enactment clause. 76
13. Adding whereas clauses to a bill introduced without them. 76
14. Adding or removing a bill section. 76
D. Amendment to an amendment. 76
E. Amendment to a bill, as amended. 77
Part VI: Formatting, Style, Grammar, and Other Principles of Good Legislative Drafting 78
Chapter 1: Formatting Rules. 78
Rule 1. Use Microsoft Word. 78
Rule 2. Track Changes Function. 79
Rule 3. Fonts. 79

Rule 4. Paragraphing and Spacing. 79
Rule 5. Hierarchy and Indentation. 80
Rule 6. Auto Numbering and Auto Lettering. 81
Rule 7. Line Numbers, Page Numbers, Tables, and Section Breaks. 81
Chapter 2: Drafting Rules. 81
Rule 1. Clarity and Readability. 82
Rule 2. Brevity and Simplicity. 83
Rule 3. Consistency. 83
Rule 4. Sentence Structure. 84
Rule 5. Subject of Sentence. 84
Rule 6. Tense, Voice, Number, and Mood. 84
Rule 7. Gender. 87
Rule 8. People First Language. 88
Rule 8A. Referencing Delaware Governmental Bodies in Delaware Law. 88
Rule 9. Choice of Words and Phrases. 88
Rule 10. Use of “And,” “Or,” and “And/Or.” 90
Rule 11. Use of “Shall,” “Must,” “May,” and Substitutes. 92
Rule 12. Use of “Shall Not,” “May Not,” and “Must Not.” 95
Rule 13. Use of “Which” and “That.” 95
Rule 13A. Use of “Who” Versus Use of “That” and “Which.” 96
Rule 14. Use of “Such.” 97
Rule 15. Use of “If,” “When,” “Whenever,” and “Where.” 97
Rule 16. Use of “Only” and Other Modifiers. 98
Rule 17. Abbreviations. 98
Rule 18. Capitalization. 99
Rule 19. Numbers. 99
Rule 20. Plurals. 102
Rule 21. Possessives. 102
Rule 22. Prefixes. 102
Rule 23. Punctuation. 103
Rule 24. Compounding Words and Hyphenation. 105
Rule 25. Definitions: Generally. 105
Rule 26. Definitions: Use of “Means” and “Includes.” 108
Rule 27. Parallel Construction. 110

Rule 28. Limitations, Exceptions, Qualifications, and Conditions. 110
Rule 29. Series and Tabulations. 112
Rule 29A. Amending a Tabulated List. 113
Rule 29B. Amending an Undesignated List. 114
Rule 29C. Enumeration Provisions and "Include." 115
Rule 29D. Drafting Series, Tabulations, and Enumeration Provisions to Avoid the Doctrine of the Last Antecedent. 117
Rule 30. Maintaining the Stability of the Code. 118
Rule 30A. Amending a Code Section "Versioned" by an Effective Date. 121
Rule 30B. Transferring an Entire Unit of the Code. 122
Rule 31. Internal References to Code Provisions or Sections of Legislation: Generally. 123
Rule 31A. Internal References to the Delaware Constitution, Delaware Regulations, or Federal Law. 125
Rule 32. Internal References to Code Provisions or Sections of Legislation: Incorporation by Reference. 125
Rule 32A. Internal References to Code Provisions or Sections of Legislation: Checking for Accuracy. 126
Rule 33. Order of Arrangement of Legislative Provisions. 128
Rule 34. Model Acts. 129
Rule 35. Interstate Compacts. 130
Rule 36. Drafting Criminal Laws. 132
Rule 37. Proofreading. 133
Rule 38. Drafting Health Insurance Laws. 134
Rule 39. Drafting Special License Plate Laws. 134
Chapter 3: Additional Observations, Guidelines, and Word Usage Examples. 135
Section 1: Additional Observations. 135
Section 2: General Guidelines for Drafting. 137
Section 3: Word Usage Examples. 141
A. Capitalization Examples. 141
B. Compounding, Hyphenation, and Spelling Examples. 143
C. Words Frequently Confused. 145
Part VII: The Legislative Process 148
Chapter 1: Draft Release, Numbering, Printing, and Preparation. 148
Chapter 2: Action in the Chamber of Origin. 149
Chapter 3: Action in the Second Chamber. 152

Chapter 4: Additional Action in the Chamber of Origin or Second Chamber. 152
Chapter 5: Engrossment. 152
Chapter 6: Enrollment. 153
Chapter 7: The Role of the Governor. 154
Chapter 8. Veto Override. 156
Chapter 9. Role of Lieutenant Governor in Breaking a Tie. 159
Chapter 10: The Role of the Code Revisors. 163
Appendices 166
Appendix A-1: Senate Bill 167
Appendix A-2: House Bill 168
Appendix A-3: Senate Amendment to a Senate Bill 169
Appendix A-4: House Amendment to a House Bill 170
Appendix A-5: House Amendment to a House Amendment to a House Bill 171
Appendix A-6: Senate Amendment to a House Bill, as Amended 172
Appendix A-7: Bill to Amend the Laws of Delaware 173
Appendix A-8: Substitute and Original Bill 174
Appendix A-9: Constitutional Amendment – First Leg 176
Appendix A-10: Constitutional Amendment – Second Leg 177
Appendix A-11: Bill to Amend Town Charter 179
Appendix A-12: Supplemental Appropriations Bill 180
Appendix A-13: Simple Resolution Proclaiming a Week of Honor 181
Appendix A-14: Simple Resolution Requesting a Government Body Act 182
Appendix A-15: Concurrent Resolution 183
Appendix A-16: Joint Resolution 184
Appendix A-17: Frequently Used Boilerplate Language 186
Appendix A-17.1: Frequently Used Boilerplate Language for Provisions Common to Updating or Creating a Board, Commission, Council, or Similar Entity. 195
Appendix A-18: Background License Plate – Proceeds Benefit a Corporation, County, or Municipality 198
Appendix A-19: Background License Plate – Proceeds Benefit a State Entity or the General Fund 201
Appendix A-20: Organizational License Plate 204
Appendix B: Standard Form for a Resolution to Establish a Task Force (or other *ad hoc* entity) 207
Appendix C: Standard Form for a Resolution Extending the Date by which the Findings and Recommendations Report of a Task Force is Due (or other *ad hoc* entity) 212

Appendix D: Important Delaware Cases for Bill Drafting 213
Appendix E-1: Check List – Bill Drafting 217
Appendix E-2: Check List – Amendment Drafting.....219
Appendix E-3: Check List – Resolution Drafting.....221
Appendix F: Interpretations of Statutes (Title 1, Chapter 3) 223
Appendix G: Super-Majority Vote Requirements.....226
Appendix H: Glossary of Legislative Terms.....229
Appendix I: Memorandum and Model Language for Drafting Health Insurance Laws.....241
Index.....248

Introduction

PART I: INTRODUCTION

Chapter 1: Purpose, Audience, and Organization of this Manual.

> *[T]he right in the people to participate in the Legislature, is the foundation of liberty and of all free government…*[2]

Since 1704, the General Assembly has been the root of democracy in this State and the citizens' voice in their government. Nearly 320 years since its first meeting, the General Assembly continues to exercise the legislative power of this State to preserve the peace and good order of society through the legislative process.

This manual, the latest in a long line of bill drafting manuals prepared by the Legislative Council's Division of Legislative Services, is intended to serve as a resource for legislators, legislative staff, and others who desire to participate in their government. As such, its dual purpose is to serve as a primer for the novice drafter and a reference manual for the veteran drafter. Above all, for both the novice and the veteran, this manual is intended to serve as a guide to the creation of an accurate, clear, and uniform legislative product. The alternative is inaccurate or careless drafting, which can produce bad laws or lead to legislation being invalidated, frustrating legislative intent.

Over the years, drafters outside Legislative Hall have grown to expect drafters inside Legislative Hall to fix "technical issues" with their drafts, while inside drafters presume that outside drafters have taken care of everything and therefore may not look as closely as they should or as outside drafters assumed. **Regardless of your stage in the drafting process, apply the standards of this manual and do not assume the drafter before you did so or the drafter after you will do so.**

While legislative drafting is the chief purpose of this manual, this edition reimagines this manual as a guide through the legislative process from the formulation of the legislative idea to its incorporation into the Delaware Code ("the Code"). After the introductory material in this part, this manual begins in Part II with a discussion of the meaning of legislative drafting, the basic steps in the drafting process, and the search for current governing law. Next, Part III discusses the drafter's selection of the correct legislative vehicle for the idea and provides insight into the form and format of the legislative vehicles. Part III also incorporates into the text and footnotes[3] the legal backdrop of the legislation drafting process. Part IV provides a thorough description of the strike through and underline

[2] Declaration of Rights and Fundamental Rules of the Delaware State, as enacted September 11, 1776.

[3] Footnotes containing citations to Delaware specific material follow the legal citation rules in *Delaware Uniform Citation* (2007). According to the rules, citation references to Delaware courts are abbreviated as follows: "Del." for the Supreme Court, "Del. Super." for the Superior Court, "Del. Ch." for the Court of Chancery, "Del. Fam." for the Family Court, and "Del. Com. Pl." for the Court of Common Pleas.

process adopted with the enactment of Senate Bill 63 of the 146th General Assembly, which amended § 109(d) of Title 1. Part V discusses the proper amendment format for legislation, specifically legislation drafted using the strike through and underline process. Relatedly, the sample legislation provided in the Appendix contains legislation drafted using the strike through and underline process and the proper amendment format. Part VI serves as the style guide for Delaware legislation and provides principles for good drafting aimed at increasing the accuracy, clarity, and uniformity of legislation. Part VII consists of a review of the legislative process after the drafter's legislation is finalized and ready for introduction. Finally, this manual closes with the Appendix, which contains sample legislation reflecting the rules and standards in this manual; model legislation related to task forces; important Delaware cases; legislation drafting checklists for bills, amendments, and resolutions; the provisions of Chapter 3 of Title 1 regarding interpretation of statutes; a removable version of the super-majority vote requirements; a glossary of legislative terms; and an index.

To the extent a drafting or parliamentary topic is not discussed in this manual or questions remain, additional reference materials are instructive, including the drafting guides or state manuals discussed in the Preface to the 2013 Edition, Justice Randy Holland's *The Delaware Constitution a Reference Guide* (2002), the Code, the Rules of the Senate, the Rules of the House, *Mason's Manual of Legislative Procedure* (2010), and Sutherland's *Statutes and Statutory Construction*. Many of these resources are available in the General Assembly's Legislative Library on the ground floor of Legislative Hall. Additionally, the staff of the Division of Legislative Services is available to answer questions.

Chapter 2: Notes to Drafters Outside Legislative Hall.

The General Assembly welcomes draft legislation prepared by those outside of Legislative Hall. When submitting draft legislation to legislators or legislative staff, outside drafters should keep in mind that the General Assembly uses an electronic document management system, called the Legislative Information System ("DELIS"). Draft legislation submitted by an outside drafter must be entered into DELIS in order to be introduced. Therefore, the process can be expedited greatly if the outside drafter is aware of the following:

(1) Use Microsoft Word. Microsoft Word is the word processing program used by DELIS and the General Assembly's processes are expedited by having the draft legislation in electronic form.

(2) Use the Delaware Code Online (http://delcode.delaware.gov/) as the source material for Code provisions included in the legislation. This free resource is the most accurate and up-to-date source for the Code. See Part II, Ch. 3.

(3) Do not use the "track changes" or "highlight changes" function in Microsoft Word to show additions and deletions to the law or between multiple drafters of the piece of legislation. The General Assembly cannot input into DELIS a Word document created using these functions. These documents will have to be retyped into DELIS, delaying the processing of and risking new errors in the legislation.

(4) Follow the formatting requirements discussed in detail in Part VI, Ch. 1. Keep the document formatting as simple as possible since, just as with the "track changes" function above, failure to comply with the formatting requirements will delay the processing of

the legislation. Important formatting considerations that deserve extra mention here include:

a. Use only one font throughout the entire document – Times New Roman 10 point.
b. Do not use **bold** or *italics*.
c. Turn off or do not use the auto numbering/auto lettering feature.

(5) If the legislation changes Delaware law, remember to show deletions by ~~strike through~~ and insertions by underline. This process is discussed more in Part IV.

(6) Ensure the draft legislation is free from viruses.

(7) Proofread before submitting draft legislation for introduction by a legislator.

THIS PAGE INTENTIONALLY LEFT BLANK

Initial Considerations

PART II: INITIAL CONSIDERATIONS IN THE DRAFTING PROCESS

Chapter 1: Understanding Legislative Drafting.

> *Legislative drafting requires more definite, more exacting qualities of language, and demands greater skill in composition than other writing. Bill drafting must have the accuracy of engineering, for it is law engineering; it must have the detail and the consistency of architecture, for it is law architecture.*[4]

"Legislative drafting," "bill drafting," or, simply, "drafting" are terms often used narrowly to refer to the act of writing legislation. However, more broadly, drafting includes the process of taking an idea, refining it, and developing the language to implement it. So, a good drafter must possess analytical capabilities in addition to the ability to write. As the above quotation suggests, for as much as legislative drafting has in common with other forms of writing, such as in its conveyance of ideas and adherence to the principles of grammar, it also has as many differences. This is because legislative drafting must be precise and internally consistent, must ensure what is new fits within what is existing, must adhere to a certain form and style, and must be written to withstand the whirlwind of the legislative process and the test of time.

A manual cannot attempt to capture all of the intricacies involved in legislative drafting. Good drafting comes with experience and knowledge, both of which need to be pursued. A good drafter has and hones these skills:

(1) Good writing skills, including a knowledge of accepted grammar and punctuation.

(2) Good critical thinking skills. Most drafting is thinking, not writing.[5] Drafters need to think about the subject matter of the legislation, the existing law, the organization of the legislation, and how the legislation will work in practice.

(3) Knowledge of the drafting conventions in this manual.

(4) Knowledge of the legislative process; the history, if any, of the issue in the General Assembly; and how state government is organized and functions.

(5) Knowledge of existing constitutional, statutory, and case law and an understanding of the rules of statutory construction.

The players involved in drafting are also different than in other forms of writing. The writer here is called the "drafter." Within Legislative Hall, the drafter may be the attorney who prepares the legislation or the administrative assistant who assists in that function. Outside of Legislative Hall, the drafter may be an agency's deputy attorney general or a lobbyist. Unlike with other forms of writing, the drafter's product is not the drafter's own. Instead, the drafter works with the originator of the idea. Within Legislative Hall, the originator is typically the sponsor of the legislation. Outside Legislative Hall, the originator can be the head of an agency

[4] Charles Nutting and Reed Dickerson, *Cases and Materials on Legislation* (1978).
[5] Tobias Dorsey, Presentation on Legal Thinking for Drafters, October 2012.

or an interest group. For consistency, this manual, like other manuals and legislative drafting texts, refers to the originator of the idea as the "client."

Chapter 2: Basic Steps in the Drafting Process.

The drafting process begins after the client forms the general idea for the legislation. The idea for legislation is often generated in response to a specific issue that has arisen due to the absence of legislation or because of a statute or regulation. It is then that the drafter becomes involved in the process. Once involved, the drafter works closely with the client to transform the idea into an effective piece of legislation. While that transformation is often a complex process, there are some basic steps to consider:

(1) Request the client's timeline or deadline, and establish a reasonable timeframe based on the complexity of the drafting project.

(2) Understand the issue to be solved or the underlying purpose of the legislation by gathering as much information about the issue from the client as is possible and, with the client's permission, seek out others who may be able to add information. Also, understand how the client proposes to deal with the issue. The drafter does not set the purpose, but must understand it for the legislation to fulfill the client's intent.

   a. Understand the level of confidentiality that the client wishes to maintain.

   b. Do not break the client's confidentiality, even under the theory that doing so will produce a better legislative product.

(3) Research the existing constitutional, statutory, and regulatory situation to determine if the issue is already controlled or impacted by a legal framework. Determine if the existing legal framework will need to be changed and consider collateral impacts of those changes.

(4) Discuss with the client the methods of resolving the issue, pointing out alternatives and their impacts.

(5) Determine the legislative vehicle, discussed in detail in Part III, which best fulfills the client's chosen method. Consider the impact of constitutional requirements or parliamentary procedures implicated by the chosen legislative vehicle.

(6) Develop the organization and arrangement for the legislation and contact the client to discuss existing potential problems.

(7) Prepare a draft of the proposed legislation keeping in mind the formatting, style, and grammatical principles in this manual.

(8) Proofread the draft for content, style, and grammar to ensure accuracy, clarity, and uniformity with this manual as a guide.

(9) Share the draft with the client and make additional edits proposed by the client.

(10) Proofread the draft again (see number 8, above).

(11) When authorized by the client, drafters outside of Legislative Hall typically release the legislation to a legislator or to legislative staff while drafters within Legislative Hall release the legislation for numbering and printing.

If permitted by the client, include people with expertise in the area and impacted constituencies for input into the process. However, even if allowed, time constraints may limit the ability to do this.

Chapter 3: The Proper Legal Source Material.

In drafting legislation, a drafter must understand all of the possible sources of Delaware law. This is an important consideration, as the legislation should be based on the law in effect when it is drafted and consider a law that is pending before the General Assembly. Using out-of-date materials or not considering other sources of law can result in legislation incompatible with the existing Code when the Code Revisors codify the legislation. This will frustrate the client's legislative intent and may result in the issue not being resolved until the next session of the General Assembly, if ever.

> One of the most important steps in drafting legislation is ensuring the bill uses the most up-to-date version of the law. Don't blindly trust that the draft you received is using the most accurate version of the law; always ask or compare it against the Delaware Code Online yourself. Code Revisors cannot fix errors that result from using the wrong version of the Code.

Below is a list of the proper legal source material in Delaware and how to locate their electronic versions:

(1) Delaware Constitution of 1897
http://delcode.delaware.gov/constitution/index.shtml

(2) Delaware Code of 1974
http://delcode.delaware.gov/
This is often referred to as the "Delaware Code Online."

(3) Laws of Delaware
http://delcode.delaware.gov/SessionLaws/
Links to the applicable session laws that are available electronically (those dating back to the 105th General Assembly in 1935, Volume 40 of the Laws of Delaware); can also be accessed at the end of every Code provision.

(4) Municipal Charters
http://charters.delaware.gov/

(5) Delaware Administrative Code
http://regulations.delaware.gov/AdminCode/

Register of Regulations (monthly):
http://regulations.delaware.gov/services/current_issue.shtml

The electronic versions of the Delaware Constitution ("the Constitution"), the Code, the Laws of Delaware, and the Administrative Code are maintained by the Division of Legislative Services

("Division").[6] Many of the municipal charters are also maintained by the Division; however, since some are maintained by outside vendors on non-State websites, the Division cannot assure the accuracy of these charters.

Many of these materials may also be found through LexisNexis and Westlaw and in hard copy (the Legislative Library maintains these materials in hard copy, should a drafter wish to consult them in this form). However, drafters within Legislative Hall use the electronic versions of these materials provided by the Division as these are the most up to date materials. The latest revision date for the Constitution, the Code, and the Laws of Delaware can be found at the bottom of this webpage: http://delcode.delaware.gov/. The Administrative Code works differently. While the Delaware Code is updated as a whole, the Administrative Code is updated by individual amendment. The date the regulation was added, deleted, or amended is found at the end of each regulation with a reference back to the monthly Register of Regulations where it first appeared.

Legislation submitted by outside drafters should be compared by drafters inside Legislative Hall to the electronic versions of the Constitution and Code before being entered into DELIS to ensure the integrity of these materials.

Additionally, understand the impact federal law can have on state legislation. Federal sources may also need to be consulted in drafting Delaware legislation. Start by consulting https://law.duke.edu/lib/federal/ for access to these sources.

[6] In 2014, Delaware enacted the Uniform Electronic Legal Material Act ("UELMA"). When UELMA became effective on October 21, 2014, Delaware became the first state to publish UELMA compliant versions of its constitution, code, administrative code, and session laws.

Legislative Vehicle

PART III: CHOOSING THE CORRECT LEGISLATIVE VEHICLE

Chapter 1: Legislative Vehicles.

When the drafter has determined that legislation is the appropriate mechanism to resolve an issue, the drafter needs to determine the correct legislative vehicle to encapsulate the solution. There are two main legislative vehicles: bills and resolutions. Both are explored in detail below, as are substitute bills and amendments.

Chapter 2: Bills.

A bill is the most common legislative vehicle as it can be used to create a new law, amend an existing law, repeal an existing law, or make an amendment to the Delaware Constitution. A bill is a proposed law, introduced in either the Senate by a Senator or the House by a Representative. An example of a Senate bill is provided in Appendix A-1 and an example of a House bill is provided in Appendix A-2. After a bill has passed both chambers[7] in identical form[8] and has received the approval of the Governor or has otherwise been enacted, it becomes a law (this process is discussed in more detail in Part VII). Until then, it is a bill, a draft of a proposed law.

Section 1: Types of Bills.

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 bill type requires a technical form of expression, specifically worded for its purpose. The following descriptions apply to general bills and special bills in Delaware.

A. General Bills.

A general bill, also known as a public bill, applies to all persons uniformly situated.[9] A bill has a uniform operation if it operates equally or alike on 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. Section 23 of Article II of the Delaware Constitution creates a presumption that statutes are public laws; it states, "every statute shall be a public law unless otherwise declared in the statute itself."

[7] This manual refers to the Senate and House collectively as "both chambers" and generically as "chamber." This is the accepted parlance within Legislative Hall.
[8] This is required as, unlike Congress and several states, the General Assembly does not use the conference committee process.
[9] *See Opinion of the Justices*, 252 A.2d 164, 165 (Del. 1969); *Smith v. Baltimore & O.R. Co.*, 85 A.2d 73, 74-75 (Del. Super. 1951).

B. 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.[10] A bill is "special" when it applies to fewer than all the members of a class or place, either by the omission of units falling naturally within the class or place, or by the exception or reservation of enumerated units or places.

In Delaware, some special topics are prohibited by the Constitution. Section 18 of Article II removed the General Assembly's power to grant a divorce. Section 19 of Article II limits the General Assembly's power with respect to special bills as it 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.[11]

The reason for such a prohibition is that before the enactment of this provision the General Assembly spent a great deal of time "upon private matters with which the public have no concern whatever and which ought to be dealt with by general laws committing to some department of the Government the consideration of those questions."[12]

The following are types of special bills used in Delaware and the circumstances in which special bills apply. It is important to note that, structurally, these types of special bills are no different from general bills and often are not specifically designated as special, local, or private bills. An appropriation bill will typically be designated by name.

1. Local Bills.

A local bill 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.[13]

2. 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.

3. Appropriation Bills.

An appropriation bill earmarks a specified sum of money for a specified objective.

---

[10] *See id*.

[11] Note: An existing highway may be named or renamed through a bill. Do not name or rename a highway via resolution.

[12] 3 *Debates and Proceedings of the Constitutional Convention of the State of Delaware* 2261 (1958).

[13] See *Opinion of the Justices*, 252 A.2d at 165.

Section 2: Parts of a Bill.

Each bill has a caption, title, enactment clause, main body containing the basic provisions of the bill, and 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 parts discussed in the rest of this section.

A. Caption.

The caption of a bill, also known as the "heading," provides information such as the sponsors, chamber of introduction, specific General Assembly involved, e.g., the 147th General Assembly, and number assigned to the bill.

All bills must list the sponsor. A bill can have one or more sponsors. The originator of the bill is referred to as the "prime sponsor." There can be only one prime sponsor. Sometimes, others may be listed along with the prime sponsor. These people are referred to as "co-prime sponsors."[14] In such cases, co-prime sponsors are connected to the prime sponsor, and each other, with an ampersand (&). Additional supporters of the bill are referred to as "co-sponsors." Co-sponsors follow prime and co-prime sponsors in the list of sponsors and are grouped alphabetically by chamber unless otherwise requested by the prime sponsor. Co-sponsors begin on a separate line from the prime and co-prime sponsors. Co-sponsors of the same chamber are connected by a comma and separated from co-sponsors of the other chamber by a semi-colon. Senate co-sponsors appear before House co-sponsors in Senate legislation while House co-sponsors appear before Senate co-sponsors in House legislation. DELIS automatically provides the new line and commas needed to separate co-sponsors.

Co-Prime Sponsors Line:
Sponsor: Sen. Emerson & Sen. Thoreau & Sen. Longfellow & Rep. Whitman & Rep. Dickinson

Co-Sponsors Line (Shown Below Sponsor):
Sponsor: Sen. Emerson
Sens. Thoreau, Longfellow; Reps. Whitman, Dickinson

The caption also includes the state seal, which DELIS automatically attaches to the bill during the drafting process.

This discussion also pertains to, and these elements are required to be included in, a substitute bill, an amendment, and a resolution.

B. Bill Title.

The bill title, or long title, is a concise statement of its general purpose. The bill title is located at the beginning of the bill, before the preamble and the enactment clause.

[14] It is the practice to use the term "co-prime sponsor" to refer to those amphersanded in the sponsor line to legislation in both chambers. However, House Rule 19(f) indicates that a Senator cannot be the co-prime sponsor of legislation in the House and is instead referred to as the "joint sponsor."

The inclusion and content of a bill title is a constitutional requirement found in Section 16 of Article II of the Delaware Constitution, which provides: "[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." This provision contains two separate requirements, that (1) a bill encompass a single subject and (2) the subject be expressed in the bill's title.

The Delaware Supreme Court addressed the single subject portion of Section 16 of Article II in two cases, *Evans v. State*, 872 A.2d 539 (Del. 2005) and *Smith v. Guest*, 16 A.3d 920 (Del. 2011), with differing results.

In *Evans v. State*, the General Assembly passed a bill entitled "An Act to Amend Title 10 of the Delaware Code Relating to the Case of Ward T. Evans v. State of Delaware, 2004 WL 2743546 (Del. Supr.) and Generally the Interpretation and Construction of Delaware Laws by Delaware Judicial Officers." The Court held that the bill "constitute[d] two distinct and separate subjects of legislation," the first being the General Assembly declaring the Court's 2004 decision in *Evans v. State* "'null and void'" and the second being the "establishment of prospective standards for judicial interpretation and application to Delaware laws."[15]

In contrast, in *Smith v. Guest*, the Court upheld the General Assembly's passage of a bill entitled "An Act to Amend Title 13 of the Delaware Code Relating to Parents." The Appellant, Smith, challenged the Family Court's decision to grant the Appellee, Guest, joint custody of the Appellant's child.[16] Smith argued in part that the grant of joint custody should be overturned because the legislation on which the grant was based was an unconstitutional violation of the single subject provision of Delaware's Constitution.[17] The Court compared the bill at issue in this case to the bill at issue in *Evans* and found that it did not address multiple subjects as did the bill in *Evans*.[18] The Court held that each Section of the bill, even those sections dealing with retroactivity and the judicial doctrines of collateral estoppel and *res judicata*, related to the single subject of the bill, *de facto* parenthood, and so did not violate Delaware's Constitution.[19]

The requirement that the subject be expressed in the bill's title is, in essence, a notice requirement, providing notice to both the legislators who vote on the law and the people who will be governed by it. In regard to legislators, these requirements prevent "log-rolling"[20] legislation and surprise as to the content of legislation.[21] In regard to the people, these requirements prevent "sleeper legislation," that is, legislation passed without fair notice to the people.[22] As the Supreme Court noted in *Opinion of the Justices*, 177 A.2d 205, 208 (Del. 1962):

> Article II, Section 16 does not require the title of a bill to be an index of its details, or a synopsis of the means by which the bill's object is to be accomplished.

---

[15] *Evans*, 872 A.2d at 550.
[16] *Smith*, 16 A.3d at 923.
[17] *Id*. at 928.
[18] *Id*. at 929.
[19] *Id*.
[20] *Black's Law Dictionary* 953 (7th ed. 1999) ("The legislative practice of including several propositions in one measure . . . so that the legislature . . . will pass all of them, even though these propositions might not have passed if they had been submitted separately.").
[21] *State ex rel. Craven v. Shaw*, 126 A.2d 542 (Del. Super. 1956), *affirmed* 131 A.2d 158 (Del. 1957).
[22] *Opinion of the Justices*, 194 A.2d 855, 856 (Del. 1963).

> The requirements of the section are satisfied if the title of the bill is sufficiently informative so as to put on notice parties interested in the general subject matter in such manner as would lead them to inquire into it.

Take care when drafting the bill title, as it is nearly impossible to amend the bill title, even as the title of a substitute bill. House rules[23] strictly prohibit the use of an amendment[24] or substitute[25] to alter a bill title, while Senate rules allow for a motion to be made to amend or substitute a bill title to correct typographical errors only.[26] Therefore, the following considerations are important.

First, if a bill proposes to amend an existing Code provision, law, or constitutional provision, indicate so in the bill title by specific reference to the Code title, volume and chapter of the law in the Laws of Delaware, or article and section in the Constitution. If the bill amends more than one title of the Code, volume and chapter of the Laws of Delaware, or article and section of the Constitution, the bill title should contain a reference to each Code title, volume and chapter of the Laws of Delaware, or article and section of the Constitution being amended.

There may be circumstances, however, in which it is appropriate to reference the Code, Laws of Delaware, or the Constitution generally instead.

General Reference to the Delaware Code:
AN ACT TO AMEND THE DELAWARE CODE RELATING TO CRIMINAL DEFENSE FOR INDIGENT INDIVIDUALS.

General Reference to the Delaware Constitution:
AN ACT PROPOSING AMENDMENTS TO THE DELAWARE CONSTITUTION RELATING TO CONTINUITY OF GOVERNMENT.

One circumstance in which a general reference to the legal source material makes sense is amending multiple titles in the Delaware Code to change the name of a state official or state agency. One reason a more general reference is preferred is to allow for the addition, by an amendment, of other references to the state official or state agency in the Delaware Code that may not have been included in the initial bill. If a more specific title is used, for example, "AN ACT TO AMEND TITLES 1, 2, 6, 9, 29 OF THE DELAWARE CODE . . . .", then when a reference is found in Title 14 an amendment to the name in that title would not be permitted as it would exceed the scope of the bill title. As a result, separate legislation would need to be introduced to make the change in Title 14. As indicated below, however, there are reasons to be cautious in drafting a broad bill title.

Second, the scope of the bill title should also be considered, as it can pose drafting and political concerns. A bill title can be either broad or narrow in scope.

Broad Bill Title:
AN ACT TO AMEND TITLE 4 OF THE DELAWARE CODE RELATING TO ALCOHOLIC LIQUORS.

[23] Citations to House and Senate Rules are for the rules of the 151st General Assembly.
[24] House Rule 23(d).
[25] House Rule 24(c).
[26] Senate Rule 37(c).

Narrow Bill Title:
AN ACT TO AMEND TITLE 4 OF THE DELAWARE CODE RELATING TO LICENSEE RELATIONSHIPS WITH IN-STATE AND OUT-OF-STATE ENTITIES.

If a bill title is narrowly written, the possibility for amendments to the bill narrows. From a drafting perspective, this can cause problems as it could necessitate the introduction of a new bill to fulfill a legislator's policy goal. From a political perspective, however, this could restrict unfriendly amendments. Conversely, a broad bill title allows for a broad range of amendments. From a drafting perspective, this allows for some freedom in fulfilling the legislator's policy goal but, from a political perspective, this could lead to amendments that go beyond the scope of the sponsor's intent.

Finally, the best strategy is to use the term "relating to" in the bill title rather than "creating" or "directing" or "establishing." Like a broad bill title, use of "relating to" allows constitutional wiggle room if the body of the bill later needs to be expanded to accomplish the sponsor's intent.

C. Preamble.

A preamble, often referred to as the "whereas clauses," consists of a series of sentences appearing in the bill immediately after the title and before the enactment clause. The preamble of a bill is easily identified by its succession of whereas clauses.

WHEREAS, the hides and skins of endangered species bring large profits and 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…

A well-drafted preamble explains the cause or situation giving rise to the bill, attempts to gather support for the bill, and sets the policy behind or tone for the bill. Once rarely seen outside of resolutions, preambles now appear regularly in bills.

With the advent of the synopsis, an alternative was created that often serves the same purpose as the preamble. [27] Additionally, a declaration of purpose section within the body of the bill can be used to accomplish the same goals. [28]

That said, there are good reasons for the continued use of a preamble:

[27] *Eliasen v. Englehart*, 733 A.2d 944, 946 (Del. 1999). *See generally Carper v. New Castle County Bd. of Educ.*, 432 A.2d 1202, 1205 (Del. 1981) ("[t]he synopsis of the [legislative bill is] a proper source from which to glean legislative intent."); *Leatherbury v. Greenspun,* 939 A.2d 1284, 1291 (Del. 2007) (stating that "the preamble of [an act]" and "the synopsis accompanying the amendment" are instructive in determining the General Assembly's intent).

[28] In deciding whether to draft a preamble or a declaration of purpose, consider the *D.C. v. Hiller*, 554 U.S. 570 (2008) (enacting part of the bill is operative and the preamble is inoperative prologue) and *State v. Crane Hook Oil Storage Co.*, 18 A.2d 427 (Del. Super. 1941) ("[w]here the enacting part of the statute is unambiguous, its meaning will not be controlled or affected by anything in the preamble." (additional citations omitted)).

(1) Since facts or policy determinations may be included in a preamble, it can serve as a source of legislative history for a reviewing court in interpreting the meaning of the legislation or assessing its constitutionality.

(2) The preamble serves a purpose when a new idea is legislated or in cases of local or private bills.

(3) Resolutions count a preamble as an essential aspect to the draft.

Be aware that although the preamble is a part of the bill and will be published in the Laws of Delaware, it is not part of the law and will not become a part of the Code.

D. Enactment Clause.

The enactment clause is located between the title of the bill and the first section of the body 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 so that there is space between the enactment clause and the parts of the bill that precede and follow it.

The enactment clause is the part of a bill that declares its enactment and identifies it as an act of legislation. If the Delaware Constitution requires that the type of legislation contained within the bill pass by a super-majority vote, the specific vote requirement should be set forth in parentheses as part of the enactment clause. See Part III, Ch. 2, Sec. 4, A. for a chart containing the super-majority vote requirements.

Simple Majority Enactment Clause:
BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

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

It is important to note that the Delaware Constitution is silent on the requirement for and wording of an enactment clause. While Delaware is one of only four states without a constitutional basis for the enactment clause, do not view the enactment clause as unimportant or consider its exclusion as inconsequential. The enactment clause has been a part of Delaware legislation dating back to the first entry appearing in Volume 1 of the Laws of Delaware in 1700. The current form of the enactment clause made its first appearance in 1953 in Volume 49, Chapter 1 of the Laws of Delaware. The Delaware Supreme Court, in *Opinion of the Justices*, 232 A.2d 103, 105 (Del. 1967), found the inclusion of an enactment clause to be a "long standing custom." This long-standing custom has been recognized by the rules for the Senate and House, which both require an enactment clause be included in a bill.[29]

No Delaware cases address the situation where an enactment clause has been omitted from a bill. However, in 1978 the Delaware Attorney General provided an opinion that the exclusion of an enactment clause did not render a piece of legislation a nullity.[30] The opinion noted that,

[29] *See* Senate Rule 20(5) and House Rule 18(b). House Rule 18(b) indicates that super-majority vote requirements should be included in the enactment clause.
[30] Del. Op. Att'y. Gen. 78-017, 1978 WL 22484 (October 5, 1978).

in those states like Delaware without a constitutional provision regarding enactment clauses, some courts had voided legislation without enactment clauses and others had vindicated them. The opinion indicated that a "careful draftsman should heed the advice of the Bill Drafting Manual and include an enactment clause" along with a notation of a super-majority vote requirement where applicable. However, the Delaware Supreme Court in *Wilmington Sav. Fund Soc. v. Green*, 288 A.2d 273 (Del. 1972), created an exception to the Enrolled Bill Doctrine by finding that if clear and convincing evidence established by the House or Senate Journals that the General Assembly passed 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.

In keeping with the bill drafting manual cited by the Attorney General, this manual recommends complying with the rules of the Senate and the House by including an enactment clause and, when appropriate, a super-majority parenthetical. Inclusion of this language declares the authority under which the legislation is enacted and, in the case of a super-majority parenthetical, provides notice to the public and the General Assembly to assure the appropriate vote for constitutional passage occurs.

If an enactment clause must be amended to reflect the correct super-majority vote requirement, use the following language:

> AMEND House Bill No. 123 by inserting in the enactment clause after "DELAWARE" and before the colon the following: "(Two-thirds of all members elected to each house thereof concurring therein)".

E. 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 bill "Section," with a capital "s." Bill Sections (Section 1, Section 2, Section 3, etc.) divide a bill and should never be confused with Code sections (§ 1201, § 1202, § 1203, etc.), which divide a chapter of the Code. The body of the bill must always contain at least one bill Section, which must be labeled as "Section 1."

In dividing the body of a bill into Sections, use care in crafting clear, logical divisions. And, if amending the Code, include only those portions of the Code that belong within the division created by the Section. For example, if the intent is to create a new chapter of the Code, the bill should have one Section, which should include only those new Code sections intended to be part of the new chapter. However, if the intent is to amend multiple Code sections within an existing chapter, the drafter should create one Section for each individual Code section to be changed within the existing chapter. Take care to prevent additional Code sections from being added to a Section in the drafting process before introduction or by an amendment. When crafting the prefatory language for a Section, cite to the Code section, rather than a subsection or paragraph, even if planning to amend just one subsection or paragraph.

The body of the bill carries constitutional implications with it as well. The single subject rule, discussed previously in Part III, Ch. 2, Sec. 2, B., requires that the body of the bill be germane

to the subject of the legislation to which the bill title refers.[31] Thus, 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.

The various parts of the body of a bill are described in the subsections that follow. 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 the body 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 Section may amend only a small part of a Code section (§) and another Section may amend another part of that same Code section (§). The remaining parts of the body of a bill (effective date, applicability clause, sunset clause, savings clause, grandfather clause, interpretation clause, severability clause, repealing clause, appropriations, and short title) are almost always included in separate Sections of the bill as it is usually not necessary to include them in the Code.

Finally, additions or deletions contained within the body of the bill must be in conformity with 1 *Del. C.* § 109(c) regarding the strike through and underline process for deletions from or insertions into the Code. This process is discussed in Part IV.

F. Declaration of Purpose.

A declaration of purpose, also known as a statement of policy or objectives, 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. It typically states the general objectives of the act to provide guidance to the regulatory bodies that enforce the act and the courts that interpret the act and give meaning to ambiguous portions.

A declaration of purpose is very important for certain types of bills, such as professional and occupational regulation bills, because legislative committees, such as the Joint Legislative Oversight and Sunset Committee, refer to it to ensure that the agency the bill regulates is fulfilling its purpose.[32] A declaration of purpose is akin to the preamble in its purpose, however, it does not include "whereas" clauses.[33]

G. Definitions.

Definitions are an important tool in the drafter's arsenal as they can be used for the following purposes:

---

[31] *See Wilmington Trust Co. v. Highfield*, 153 A. 864, 869 (Del. 1931); *Kennedy v. Truss*, 13 A.2d 431, 435 (Del. Super. 1940).
[32] *See* 29 *Del. C.* § 10201, which defines the Joint Legislative Oversight and Sunset Committee's task in evaluating agencies.
[33] In deciding whether to draft a preamble or a declaration of purpose, consider the *D.C. v. Hiller*, 554 U.S. 570 (2008) (enacting part of the bill is operative and the preamble is inoperative prologue) and *State v. Crane Hook Oil Storage Co.*, 18 A.2d 427 (Del. Super. 1941) ("[w]here the enacting part of the statute is unambiguous, its meaning will not be controlled or affected by anything in the preamble." (additional citations omitted)).

(1) To define a general term in order to avoid explaining it throughout the bill.

(2) To avoid frequent repetition throughout the bill of the full title of an officer or agency.

(3) To give an exact meaning to a word that has several dictionary meanings.

(4) To define a technical word that is not commonly used or understood.

(5) To 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.

Through these uses, definitions can aid the quest for clarity.

Place definitions where they can be most easily found and will be most helpful to the reader, at the beginning of the chapter or section, or after the declaration of purpose. If the definitions will be used throughout the bill or eventual statute, group them together in a definition section. When a definition will be used in only one Code section, define the term in that Code section.

Arrange a definition section in alphabetical order and designate each term by a number when preceded by introductory language.[34] Add a new term to an existing definition section in its appropriate alphabetical location. See example on next page.

Definition Section Preceded by Introductory Language:

§ 222. General definitions.

When used in this Criminal Code:

(1) "Building," in addition to its ordinary meaning, includes a structure, vehicle, or watercraft. If a building consists of 2 or more units separately secured or occupied, each unit is deemed a separate building.

(2) "Controlled substance" or "counterfeit substance" means as defined in Chapter 47 of Title 16.

(3) "Conviction" means a verdict of guilty by the trier of fact, whether judge or jury, or a plea of guilty or a plea of nolo contendere accepted by the court.

Defined terms are capitalized to satisfy grammatical requirements imposed on words coming at the beginning of sentences, not because they are to be capitalized in other portions of the legislation. Therefore, just because the word is capitalized in the definition section does not mean it must be capitalized in other portions of the legislation. Follow the standard capitalization rules when the defined term appears in another portion of the legislation.

When using an acronym to reference a defined term, include the acronym in the definition.

"Automated external defibrillator" or "AED" means…

When drafting in an existing chapter that does not have a definitions section and adding a definitions section is not desired, and the short form for a state agency is needed, include the acronym in each Code section within the chapter or subchapter. The acronym is then valid for

[34] When used in relation to the Delaware Code, "introductory language" refers to language in the Code that precedes a list. For example, in "Definition Section Preceded by Introductory Language," the introductory language is "When used in this Criminal Code:".

the entire level of the Code in which it was first defined. In the example below, the acronyms defined in subsection (a) of § 7914A are valid for all other subsections and paragraphs within § 7914A.

§ 7914A. The Governor's Commission on Community and Volunteer Services.
(a) The Governor's Commission on Community and Volunteer Services Commission ("Commission") is established and serves in an advisory capacity to the Administrator of the State Office of Volunteerism ("Administrator").

When drafting language that refers back to a term in a definition section, the reference must be to the definition section as a whole rather than to the specific term. Since definition sections in the Code are arranged alphabetically, a term's designation is subject to change with the addition or deletion of another term. A reference to the definition section as a whole reduces the possibility that the drafter will neglect to amend a specific reference to the term's designation creating erroneous references. The examples highlight the differences in approaches.

Do:
§ 1448B. Criminal history record checks for sales of firearms -- Unlicensed persons.
(a) An unlicensed person may not sell or transfer **a firearm, as defined in § 222 of this title**, to another unlicensed person without having conducted a criminal history background check through a licensed firearms dealer under § 1448A of this title and § 904A of Title 24, to determine whether the sale or transfer is in violation of federal or state law.

Don't:
§ 1457. Possession of a weapon in a Safe School and Recreation Zone; class D, E, or F felony; class A or B misdemeanor.
(i) For purposes of this section only, "deadly weapon" includes an object described in § 222(5) or (12) of this title or BB guns.

Experienced drafters have learned to double-check the definition section after the bill has been completed. Meanings and uses for defined words often change during the drafting of a bill, especially if the drafting is done by a committee. If, in the drafting process, a defined word is removed from the substantive portion of the legislation, be sure to remove it from the definition section.

Additional considerations for drafting definitions or definition sections are included in the discussion on Definitions found in Part VI, Ch. 2, Drafting Rule 25 and Part VI, Ch. 2, Drafting Rule 26.

H. Basic Provisions.

The basic provisions of a bill provide the substantive provisions of the body of the bill. In many bills, this part is the largest portion of the bill as it sets forth the rights, powers, duties, immunities, and jurisdiction of those persons or entities that are the subject matter of the bill. It is also the most difficult portion to draft, as it is the portion of the bill that requires the drafter to decide between specific requirements or general prohibitions to facilitate the client's policy. These are choices unique to each situation and thus the drafter would not be aided by the general discussion this manual could provide.

I. Penalties.

Penalty provisions are often included in a bill to promote compliance with and assist in enforcement of the client's desired policy. The Code contains three general types of penalties: criminal, civil, and administrative. Courts impose criminal and civil penalties, while administrative agencies impose administrative penalties.

Review legislation to ensure that when a prohibition is created, a penalty or other sanction for a violation of the prohibition is provided. Otherwise, there may be no recourse for a violation.

Criminal Penalty:
A person who violates 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 1 year, or both.

Civil Penalty:
If a person is found to have violated this chapter, and the violation is committed against an elder person or a person with a disability, in addition to a criminal or civil penalty otherwise imposed, the court may impose an additional civil penalty not to exceed $10,000 for each violation.

Administrative Penalty:
If a person fails to comply with § 305 of this title, the person's driver's license must be suspended for a period of 90 days; if a person fails to comply with § 306 of this title, 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.

Civil and administrative penalties 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 sections containing penalties are usually reserved for each type of illegality (*see* Chapter 47 of Title 16, The 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 legislation creates a crime, an 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 or violation.[35] A felony not specified in a class or given its own specific penalty is a class G felony.[36] An offense is not a violation unless expressly declared to be one.[37]

[35] *See* 11 *Del. C.* § 4202(b).
[36] *See id.* § 4201(b).
[37] *See id.* § 4203.

J. Effective Date, Contingent Effective Date, and Implementation Date.

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."

> The effective date should not be included in the Code, because it is a waste of a Code section number and ultimately a waste of space in the Code.

A bill becomes law when signed by the Governor; when not signed by the Governor within 10 days of presentment, Sundays excepted; or when passed over the Governor's veto by a three-fifths majority in both chambers.[38] The bill is effective immediately on the occurrence of one of these three events unless otherwise specified.[39] Therefore, it is necessary to consider if there are reasons to delay the effect of the bill. If so, draft a provision specifying that the bill, even if enacted into law, does not become effective until a certain date, or until the happening of a certain event. **This is the purpose of an effective date Section, which should be included as a separate Section of a bill.**

There are at least three types of effective date provisions: a delayed effective date provision, a retroactive effective date provision, and a contingent effective date provision. A delayed effective date provision postpones the effect of the law until a future date.[40] A retroactive effective date makes a law effective on a past date.[41] Contingent effective dates, which make an enacted law effective based on the occurrence of a specified event, are discussed in detail later in this section. All types require close attention to prevent practical and legal problems.

Delayed effective dates are also useful because they allow the General Assembly to pass the law now, but for the law to take effect on a future date. Spend a few minutes to focus on what the legislation does and whether it is a good idea to delay the law's effective date.

For example, it may be desirable that the effect of the legislation is delayed to provide sufficient time for notice to the public or for an agency to enact regulations. If so, use the month and day on which the legislation is desired to take effect or a specific amount of time (60 days, 6 months, 1 year) followed by the phrase: "following its enactment into law." Thus, ordinarily, follow one of the following effective date formats:

> This Act takes effect on July 1 following its enactment into law.
>
> This Act takes effect 30 days after its enactment into law.

However, it might be advantageous that a bill take effect on a specific date, in order to coincide with other future events, including the beginning of a calendar year, school year, fiscal year, or licensing year. Avoid, if possible, selecting a specific future date, e.g., August 1, 2017, because

---

[38] Section 18 of Article III of the Delaware Constitution.

[39] *Conway v. Wolf Liquor Co.*, 200 A.2d 831, 834 (Del. 1964) ("Where there exists no controlling constitutional or general statutory provision, as is true in Delaware, the authorities support the proposition that an Act takes effect immediately upon its approval by the Governor unless the Legislature has manifested a contrary intention in the Act itself.").

[40] *See* Lawrence Filson & Sandra Strokoff, *The Legislative Drafter's Desk Reference*, 341 (2nd ed. 2008).

[41] *Id*. at 342.

it will need to be amended if passage of the legislation is delayed and, more importantly, because use of a specific enactment date could inadvertently result in the creation of a retroactive effective date. If the law is enacted after the specific date provided by the effective date, the law will apply retroactively; in cases of a criminal law, this might create an unconstitutional *ex post facto* law. In other cases, it may mean that a benefit is conferred or restricted before intended, resulting in the expenditure of State funds before intended or the requirement that the benefit already paid be repaid.

Bracketing instructions to the Code Revisors in language being added to the Code is a method to avoid using a specific effective date in the text of the Code, especially when effectiveness hinges on the occurrence of an event that the drafter cannot know.

> …has been licensed in the profession for 5 out of the last 10 years preceding [the effective date of the regulations implementing this Act].

Consider explaining in the synopsis why an effective date is retroactive, to signal to readers that the date is not an error.

If the specific date on which the legislation will become effective is important, try to draft the effective date provision using the specific date and accommodating for all possible enactment dates. For example, legislation introduced during the 2075 legislative session with the desire that it become effective on August 1, 2076, should use the specific date of August 1 and accommodate all possible enactment scenarios.

> **Specific Effective Date:**
> If this Act is enacted before or on August 1, 2075, this Act takes effect on August 1 of the first full year following its enactment into law. If this Act is enacted after August 1, 2075, this Act takes effect on August 1 following its enactment into law.

Be mindful, however, not to draft an effective date that is *too* specific, or it may be interpreted more narrowly than intended.

> **Don't:**
> This Act takes effect for the 2015-2016 school year.
>
> Drafted this specifically, the act applies *only* to the 2015-2016 school year, although the intent was to take effect *starting with* the 2015-2016 school year.

Do not use the phrase "effective upon the signature of the Governor." First, a bill can become law without the Governor's signature. Additionally, "effective upon enactment into law" is unnecessary because all bills enacted into law become effective immediately, unless otherwise specified. While informative, this phrase is legally surplusage and often leads to confusion.

A delayed effective date may be used to designate different parts of a bill that should become effective at different times. This is usually done within the effective date Section through reference to the specific 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.

Limited Effective Date Sections:
Section 12 of this Act takes effect on July 1 following its enactment into law.

Sections 2603(32) and 2604 of Title 16, as contained in Section 1 of this Act, take effect 30 days after the Act's enactment into law.

This Act takes effect immediately and must be implemented not later than [date].

When constructing a limited effective date section, make clear that all other Code provisions or bill Sections become effective on the act's enactment into law. If the drafter does this by specifically calling out the Sections that become effective on the act's enactment into law, the drafter should also include the effective date provision itself to make it clear the effective date provision takes effect on enactment as well.

Limited Effective Date Applying Only to Specific Provisions:
Section 209(a) and § 209(b) of Title 14, as contained in Section 1 of this Act, do not apply to an individual who is a member of the board of a public school district on the effective date of this Act until the expiration of the individual's term.

Contingent Effective Date. A contingent effective date, also known as a contingency, is a drafting mechanism used to provide that a bill or Section takes effect on the happening of a specified future event. The future event can be the appropriation of funding, promulgation of regulations, selection of a third-party vendor to implement a program that has been created by the bill, or an event occurring outside the State (the enactment of a federal law or the enactment of uniform legislation by a specific number of states) or the United States (the depositing of a treaty with the Hague). A contingent effective date can be included in the substantive provisions intended for inclusion in the Code or in a separate Section.

An effective date can also be made contingent on the passage of the second leg of a constitutional amendment. See example on next page.

Effective Date Contingent on the Passage of 2nd Leg of Constitutional Amendment:
This Act takes effect on the date of final passage of an act of the 151st General Assembly concurring in the amendment to the Delaware Constitution proposed by House Bill No. XXX of the 150th General Assembly. The Director of the Division of Legislative Services shall provide written notice to the Registrar of Regulations that the contingency in this section has been fulfilled. The Registrar shall publish the notice in the Register of Regulations.

If possible, avoid creating a contingent effective date because it may cause difficulties for:

(1) Those who must comply with the law, as they may not be able to determine what the law currently is or when the law will change.

(2) The Code Revisors, who must spend time trying to determine whether and when a provision is effective.

(3) Drafters, who may need to amend a provision with an existing contingent effective date and may not be able to determine what the law is and so may have to draft around the contingent effective date increasing the complexity of the law.

For an effective date contingent on the occurrence of an event or production of a document, be sure to require that the Registrar of Regulations is made aware when the contingency has been met. Otherwise, the Code Revisors may never know the contingency was met and the law has taken effect, and therefore can't update the Code to that effect.

Carefully consider the implications of creating a contingent effective date that grants to a state agency the authority to determine the fulfillment of the contingency. Doing so takes control away from the General Assembly and enables the state agency to determine when the law takes effect, if ever, and may create an unconstitutional delegation of legislative powers.

If a contingent effective date is required, do the following:

(1) Draft a clear contingent effective date that is contingent on knowable events that are easily verified and that vest a specific person or entity, preferably within the state government, with determining the fulfillment of the contingency.

Don't:

This Act takes effect on enactment of comparable federal law.

This Act takes effect on promulgation of regulations adopted under this Act, or 6 months after enactment, whichever occurs first.

(2) Include, as part of the contingent effective date, language requiring a specific person, state agency, or other appropriate person or entity to notify the Registrar of Regulations when the contingency is met and requiring the Registrar of Regulations to publish notice in the Register of Regulations. Include language that the notice must be published in the Register of Regulations before the legislation can become effective.

This Act takes effect [insert # of days not less than 10] following the date of publication in the Register of Regulations of a notice that both of the following have occurred:

(1) The State of Delaware and a third-party vendor have entered into a contract to administer this Act.

(2) The Department has provided notice to the Registrar of Regulations that the contingency in (1) has been fulfilled.

This Act takes effect 10 days following the date of publication in the Register of Regulations of a notice that both of the following have occurred:

(1) Funds have been appropriated to implement the provisions of this Act.

(2) Notice by the Controller General published in the Register of Regulations that the contingency in paragraph (1) has been fulfilled.

(3) Draft a contingent effective date that is certain to occur in a short time frame after the legislation is enacted or ensure that the law is not uncertain indefinitely by doing one of the following:

a. Providing that the legislation becomes effective on a specified date after the notice is published in the Register of Regulations or on some other date certain, whichever occurs first.

> This Act is effective immediately and is to be implemented the earlier of the following:
> (1) 1 year from the date of the Act's enactment.
> (2) Notice by the Secretary of [insert agency] published in the Register of Regulations that final regulations to implement this Act have been promulgated.

b. Including language stating that the provisions assigned a contingent effective date are void unless a notice is published in the Register of Regulations by a date certain.

> This Act is void unless the Department notifies the Registrar of Regulations of the fulfillment of the contingency in this Section and a notice is published in the monthly Register of Regulations by January 1, 2016.

Implementation Date. Sometimes regulations, rules, forms, or procedures need to be developed before a law can be implemented, but the law needs to be in effect for the agency to have the authority to promulgate the regulations, rules, forms, or procedures. If the implementation date needs to be later than the effective date, include language to that effect in the enactment clause.

> Section 3. This Act is effective immediately and is to be implemented the earlier of the following:
> (1) 1 year from the date of the Act's enactment.
> (2) Notice by the Secretary of [insert agency] published in the Register of Regulations that final regulations to implement this Act have been promulgated.

The following are examples of how the Code Revisors add language to the Code online, based on how a bill is drafted, to indicate a law's effective date.

Straightforward Effective Date:

As drafted in the bill: This Act takes effect 1 year after enactment.

As appears in Code online: § 3901. Objectives of the Board. [Effective until June 11, 2019]

Delayed Effective Date for Only 1 Provision:

As drafted in the bill: Section 8915 of Title 19, as contained in Section 1 of this Act, takes effect on enactment. The remainder of this Act takes effect 180 days from the date of enactment.

As appears in Code online: § 8915. Delaware personal credential card. [Effective Mar. 30, 2019; except subsection (d), effective Oct. 1, 2018]

K. Applicability Clause.

Related to an effective date is an applicability clause.

> This Act is applicable to all policies issued on or after November 30 after its enactment into law.

In this example, the legislation is effective immediately on enactment, but it applies only to policies issued on or after November 30. If the goal is to avoid the legislation taking effect immediately, combine an effective date and an applicability clause.

> This Act takes effect on July 1 following its enactment into law and is applicable to all policies issued on or after November 30 following its taking effect.

When a statute states that the law is applicable to situations that arise before or after the effective date of the act, use brackets around the words "the effective date of this Act." The Code Revisors will insert the actual date the law takes effect, to make it clear when the law is applicable. If there is a delayed implementation date, the applicability may be based on the implementation date. The term "effective date" includes an enactment date and an implementation date, whichever is applicable.

> **As drafted in the bill:**
> This Act takes effect for decedents on or after January 1, 2014.
> Beginning [the effective date of this Act],…
>
> **As appears in Code online:**
> CHAPTER 29. APPORTIONMENT OF ESTATE TAXES. [EFFECTIVE UNTIL JAN. 1, 2014, BUT SEE § 2914 OF THIS TITLE FOR FUTURE APPLICABILITY]
> Beginning August 15, 2021…

Generally, a statutory amendment is applied prospectively, unless expressly indicated otherwise in the legislation.[42] But, keep in mind that a Delaware court may make an exception for remedial or procedural changes.[43]

L. Sunset Clause and Contingent Sunset Clause.

A "sunset clause" provision is an expiration provision used to provide a time or circumstance on which the power or effectiveness of an act, provision, or specific agency expires. As such, a sunset clause can be a useful political device to temporarily raise revenues or enact a program allowing for review by a later General Assembly to determine if the revenues or program are still needed.

Do not include a separate sunset clause or contingent sunset clause in the Code; it is a waste of a Code Section number and ultimately a waste of space in the Code.

This Act expires 3 years after its enactment into law, unless otherwise provided by a subsequent act of the General Assembly.[44]

The following is an example of how the Code Revisors add language to the Code online, based on how a bill is drafted, to indicate that a law has a sunset date.

As drafted in the bill: The Trust Fund expires on July 1, 2024, unless terminated sooner or extended by the General Assembly.

As appears in Code online: § 7012. Delaware Manufactured Home Relocation Trust Fund. [Expires effective July 1, 2024]

A variation on a sunset clause is a provision 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. In essence, such a variant creates a hidden sunset clause, as once the time period passes, the rest of the provision is no longer operative.

Hidden Sunset Clauses:

A person who purchases a dog or cat between January 1, 2006, and April 1, 2008, must pay $15 for a license for the dog or cat.

The Department shall collect annual fees, payable annually or in quarterly installments, during calendar years 2012, 2013, and 2014 from each source that is required to register with the Department under subsection (a) of this section.

[42] *See Fountain v. State*, 139 A.3d 837 (Del. 2016).

[43] See id. at 841 ("A statutory amendment is remedial, and may apply retroactively, when [the amendment] relates to practice, procedure or remedies and does not affect substantive or vested rights." quoting Hubbard v. Hibbard Brown & Co., 633 A.2d 345, 354 (Del. 1993), which quoted 2 Norman J. Singer, Sutherland Statutes and Statutory Construction, § 41:9 (5th ed. 1993)).

[44] This is the best way to draft a sunset clause, because it allows for the removal of a sunset clause even if the subsequent act to remove it passes the General Assembly before the sunset date but is enacted *after* the sunset date. In that event, the subsequent act of the General Assembly occurred before the sunset date. If, however, a sunset date states that an act sunsets "2 years from the date of enactment" or uses similar phrasing, the sunset takes effect on the date specified, regardless of a subsequent act to remove it, if the subsequent act is not enacted before the sunset date.

If a client chooses to employ such a mechanism, advise the client that the language, and language associated with it, will not be operative beyond the established time period and will require a new bill to amend or remove the hidden sunset date. If possible, avoid drafting a hidden sunset date as it can last in the Code for decades after the class of people or the time period to which it refers have come and gone.

If the time period or limitation involves only a few people or if the time period itself will be limited in nature, do not include it within that portion of the bill intended for inclusion within the Code. Instead, place it in a separate Section at the end of the bill.

Just as there are contingent effective dates, there may be contingent sunset dates. To create a contingent sunset date, review this section as well as the Contingent Effective Date provisions of Section J of this chapter.

Contingent Sunset Date:
If the Government of New Castle County conducts a general reassessment of all real estate within New Castle County, the deletion of the existing version of § 2601(a)(3) of Title 14 and the insertion of the new version of § 2601(a)(3) of Title 14 by this Act expires on the Secretary of the Board of Education of the New Castle County Vocational Technical School District notifying the Registrar of Regulations of the reassessment for computing New Castle County property taxes operative retroactive to the date of reassessment. The Registrar of Regulations shall publish notice of the date of fulfillment of this contingency in the monthly Register of Regulations.

A sunset clause or a contingent sunset clause should appear in a separate Section at the end of the bill.

When drafting a bill to extend or remove a sunset date provision, be mindful of the sunset date. Introduce the legislation well in advance of the sunset date. Bills have sunsetted waiting for the Governor to sign amendments to the sunset date.

If a sunset date in legislation passed by a constitutionally mandated super-majority vote needs to be extended or removed, the legislation doing so must be passed by the same super-majority vote.

M. Savings Clause.

A savings clause is used to exempt existing rights, obligations, or procedures from the new law's provisions, thus limiting the application of the bill when it becomes law. A savings clause is remedial in nature. Remedial laws are those that provide a means to enforce rights or redress injury, or correct or modify an existing law when the existing remedy is inadequate.[45] Because they are remedial in nature, Delaware courts afford savings clauses liberal interpretation.[46]

[45] *Black's Law Dictionary* 1296 (7th ed. 1999) (defining "remedial law").
[46] *See Sheehan v. Oblates of St. Francis de Sales*, 15 A.3d 1247, 1256 (Del. 2011) ("Under Delaware law, remedial statutes should be liberally construed to effectuate their purpose.").

A savings clause may be drafted either as a part of the Code, if the clause is intended to be permanent, or as a separate Section of the bill, if the clause is intended to be temporary.

> This Act does not affect a cause of action or the remedy provided for it if the cause of action accrued and a lawsuit on the action was instituted before 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 1 year of the effective date, this Act does not affect that cause of action.

N. Grandfather Clause.

A grandfather clause is a form of a savings clause that 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 often drafted as a nonstatutory Section of the Laws of Delaware because of the short period for which it applies.

O. Interpretation Clause.

Courts usually interpret laws strictly, limiting their operation to exactly what a statute says. One exception to that in Delaware is that a statute which is remedial in nature is given a liberal construction.

There are times when the wording of an important provision may be open to interpretation by a court and the interpretation may change the meaning or outcome sought by the client. At such times, consider whether to include either a "liberal" or "strict" interpretation clause.

In other instances, a bill is written in broad, general terms because the client has no way of determining possible future events which may affect the legislation. In such case, the client may wish to add an interpretation clause which makes clear that the legislative intent is that the Act be construed either strictly or liberally.

An interpretation clause may be included either in the substantive portion of the bill to be codified[47] or within a separate Section to be included in the Laws of Delaware.[48]

Interpretation Clause to be Codified:

§ 929. Construction of chapter.
This chapter and the regulations promulgated under it must be construed liberally to effectuate the legislative intent and as complete authority for the performance of each act and thing herein authorized.

Interpretation Clause Included in Laws of Delaware:

Section 9. Rules of Construction.
(a) The rule of construction that statutes in derogation of the common law are to be strictly construed does not apply to the provisions of this Act. This Act must be broadly construed to accomplish its intended purposes.
(b) The rule of construction that specific statutory provisions should prevail over general statutory provisions does not apply to this Act except to the extent that the provisions of this Act are considered specific as opposed to general provisions.

Be aware of the Delaware Supreme Court's decision in *Evans v. State*, 872 A.2d 539 (Del. 2005) as it relates to interpretation clauses. The Court reviewed the interpretation clauses currently

[47] *See* 3 *Del. C.* § 929 and "Interpretation Clause to be Codified."
[48] *See* 79 Del. Laws, ch. 19 (2013) and "Interpretation Clause Included in the Laws of Delaware."

in Chapter 54 of Title 10 in which "the General Assembly asserts its 'right and prerogative to be the ultimate arbiter of the intent, meaning, and construction of its laws and to vigorously defend them.'"[49] The Court ruled that these clauses were an attempt by the General Assembly "to confer upon [itself] fundamental judicial powers" and, as such, violated the provisions found in Article IV of the Delaware Constitution regarding the judicial powers, thus violating the separation of powers doctrine described in *Marbury v. Madison*.[50] The Court made clear there is a line it is not willing to allow the General Assembly to cross when it comes to interpretation clauses.

P. Severability Clause.

Occasionally, part of an act is declared unconstitutional or a 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 the alleged defect invalidates the entire act or if the provisions are severable.

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 on the remaining parts or other applications of the act. Sometimes it may be necessary to use a "partial severability" clause.

Generally, a severability clause is enforceable by a court.[51] One instance in which such a provision is not enforceable is when the bill is found to have violated the single subject rule in Section 16 of Article II of the Delaware Constitution.[52] Also, the provisions must in fact be capable of separation.[53]

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.

Severability Clause:
This Act is severable. If a provision of this Act or the application of this Act to a person or circumstance is held invalid, the invalidity does not affect the provisions or applications of this Act that can be given effect without the invalid provision or application.

Non-Severability Clause:
If a provision of this Act or the application of this Act to a person or circumstance is held invalid, the other provisions of this Act are non-severable and the remainder of this Act is also invalid.

The Code contains a general severability clause, which is found in § 308 of Title 1 and states:

> If any provision of this Code or amendments hereto, or the application thereof to any person, thing or circumstances is held invalid, such invalidity shall not

[49] *Evans* at 550.
[50] *Id*. (citing *Marbury v. Madison*, 5 U.S. 137 (1803)).
[51] *See Evans*, 872 at 552.
[52] *See id*. at 552-53.
[53] *See Reese v. Hartnett*, 73 A.2d 782, 784 (Del. Super. 1950) ("To determine separability, two questions must be answered affirmatively: (1) is the unobjectionable object, standing alone, capable of enforcement; (2) did the Legislature intend it to stand alone in case the other should fall.").

affect the provisions or application of this Code or such amendments that can be given effect without the invalid provisions or application, and to this end the provisions of this Code and such amendments are declared to be severable.

Delaware courts have used § 308 to sever portions of a law in the absence of a severability clause.[54] The courts have held that the absence of a severability clause is not fatal as "where the legislative intent is not clear from the statute itself, the Delaware courts derive the necessary intent from § 308."[55] The better drafting practice is to include a specific severability clause within a bill when it is deemed necessary, as this is a clearer expression of legislative intent than simply relying on § 308.

Q. Repealing Clause.

There are two classes of repealing clauses: express, which are usually statutory, and implied, which are usually court-imposed. Express repealers are typically created through a legislative enactment containing an express provision repealing a particular act or portion of an act. Express repealers generally leave no uncertainty as to what is to be repealed. Implied repealers are usually court imposed due to a conflict between existing law and subsequent enactments. The courts are often called on to determine whether and to what extent a repeal by implication has occurred.

There are three types of express repealers: general, partial, and multiple. A general repealer consists of 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 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.

General Repealer (general repealers are not recommended):
A previous Act inconsistent with the provisions of this Act is repealed to the extent of the inconsistency.

Partial Repealer:
Sections (§§) 5101 through 5110 of Title 25 of the Delaware Code are repealed.

Because they create uncertainty, general repealers and implied repealers are not popular with the courts. From time to time, general repealers have been held to be insufficient to effectuate a repeal. In most instances, a general repealer is considered by courts to be a nullity,[56] although it might still have some highly specialized uses, such as preventing the court from using *expressio unis exclusio alterius* ("to state one is to deny the others") or a reversion back to the common law.

[54] *See Stiftel v. Malarkey*, 384 A.2d 9, 17 (Del. 1977).
[55] *C.M.G. v. L.M.S.*, 2009 Del. Fam. Ct. LEXIS 73 at *29 (Del. Fam.) (citing *Rappa v. New Castle County*, 18 F.3d 1043, 1072 (3rd Cir. 1994).
[56] *See Artesian Water Co. v. State Dept. of Highways & Transp.*, 330 A.2d 432, 439 (Del. Super. 1974).

Implied repeals are legal, but there is a strong presumption against the repeal of a statute by implication.[57] 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.[58]

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

Limiting Repealer:
This Act may not be construed as repealing a law of this State relating to pollution of the State's waters or to a conservation law, but must be held and construed as ancillary and supplemental to Delaware laws.

R. Appropriations.

It is the sole province of the General Assembly to appropriate State funds.[59] 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, which include the Annual Appropriation Act (Budget Bill), the Capital Improvements Act (Bond Bill), and the Grants-in-Aid Bill, drafted solely for the purpose of appropriating funds. All appropriations are made by act, except the internal operating expenses of the General Assembly, which may be authorized by resolution.[60]

In addition to pure appropriation acts, some bills are introduced in each General Assembly in which the appropriation is not its main purpose. The Code provides that these supplementary appropriation bills must designate the source from which the money appropriated is to be derived.[61] Additionally, when an appropriation is included in a bill, the bill is treated in the same manner as an appropriations bill for vote requirement purposes. For example, appropriations made to counties, municipalities, or corporations require the concurrence of three-fourths of all the members elected to each chamber.[62]

The following example shows typical language for a supplementary appropriation.

Supplementary Appropriation Clause:
This Act is a supplementary appropriation and the money appropriated must be paid by the State Treasurer out of funds in the General Fund of the State of Delaware not otherwise appropriated. *(cont. on next page)*

[57] *See Olson v. Halvorsen*, 986 A.2d 1150, 1160 (Del. 2009).
[58] *See Bd. of Assessment Review of New Castle County v. Silverbrook Cemetery Co.*, 378 A.2d 619, 621-22 (Del. 1977).
[59] *See* Section 6 of Article VIII of the Delaware Constitution ("No money shall be drawn from the treasury but pursuant to an appropriation made by Act of the General Assembly.").
[60] *See id*.
[61] *See* 29 *Del. C.* § 6339.
[62] *See* Section 4 of article VIII of the Delaware Constitution.

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

An example of a supplemental appropriation is provided in Appendix A-12.

S. Short Title.

A short title may be used if a bill is lengthy and constitutes a comprehensive enactment of a given subject, especially if the title is unduly verbose or confusing. A short title is sometimes used to dedicate a bill to a victim or person who has been instrumental in bringing attention to the topic addressed by the bill. As the name implies, brevity and simplicity are the hallmarks of a well-drafted short title.

When part of a comprehensive enactment, the short title typically appears in its own section at the beginning of the comprehensive enactment before the declaration of purpose and definition sections and, therefore, it will appear as a codified provision in the Code.[63] When used as a dedication, the short title typically appears as a separate Section of the bill and, therefore, it typically appears only in the Code in the "Revisor's note" section.[64]

Short Title in a Comprehensive Enactment:
§ 401. Short Title.
This chapter is known and may be cited as "The Delaware Aquaculture Act."

Short Title Used as a Dedication:
Section 3. This Act is known as the Warren G.H. Pritchett Act.

T. Synopsis.

A synopsis is a clear and accurate statement that includes 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, or how the bill affects current law with its existing rights, liabilities, and proceedings. Because of this level of detail, Delaware courts have held that the synopsis of a bill is a proper source from which to discern legislative intent.[65] Additionally, legislators and the public often look to the synopsis as a source of information about legislation's purpose and impact. Therefore, use terms that are objective, nonpartisan, and not judgmental.

While an itemization of every provision is not required, draft a synopsis so that a reader can learn from the synopsis the effect of the legislation. The synopsis should note when the legislation is a reaction to or codification of a court decision and include a citation to the case so the reader can locate it. If a bill originated from or is approved by the Delaware Bar Association or one of its sections, best practice is to include a statement to that effect in the synopsis. When the legislation is a substitute bill, include in the synopsis in detail the differences between the substitute and the original bill.[66]

[63] *See* Del. H.B. 160, 147th Gen. Assem. (2013) and "Short Title in a Comprehensive Enactment."
[64] *See* 74 Del. Laws, ch. 99 (2003) and "Short Title Used as a Dedication."
[65] *See New Castle County Council v. State*, 688 A.2d 888 (Del. 1997).
[66] *See* Part III, Ch. 3. on substitute bills.

Both chambers recognize the importance of the synopsis, by requiring one be included on most types of legislation. The Rules of the Senate require that all bills, joint resolutions, and amendments contain a synopsis.[67] The Rules of the House require a synopsis be attached at the end of each bill, joint resolution, and substantive amendment.[68] A synopsis is customarily included on technical amendments in the House and simple and concurrent resolutions in both chambers.

Despite the importance of the synopsis to legislators, courts, and the public, it is not published with the bill in the Laws of Delaware. At that point, the only source for finding the synopsis is the General Assembly's website, which contains original legislation since the 140th General Assembly, or the Legislative Library, which contains legislation since the 127th General Assembly.[69]

When drafting a synopsis, do not include autoformatting such as outline numbering or lettering or bullet points. These features can wreak havoc with DELIS, cause printing issues, or not display properly on the General Assembly's website. Additionally, do not draft an amendment that purports to amend the synopsis. A synopsis is unique to the legislation to which it is attached. Once attached, it is permanently connected to that piece of legislation. An amendment may alter the legislation and, in so doing, change the meaning of that legislation; however, the amendment's synopsis is the vehicle through which to indicate the changes that have occurred to the original legislation.[70] Thus, take care in drafting a synopsis to ensure it accurately describes the legislation as that legislation appears at the time of introduction.

> This Act will facilitate the growth of Delaware licensed farm wineries, brewery-pubs, microbreweries, and craft distilleries by allowing them to expand their businesses within and outside of the State, provided they continue to meet the production limitations under the statute. It will also permit brewery-pubs to distill products which are not malt-based.

As noted in the example, refer to "This Act" rather than to "This bill" when drafting a synopsis to a bill.

U. Author.

Senate bills, joint resolutions, and amendments must include the name of the author responsible for writing the legislation.[71] Senate simple and concurrent resolutions may include the name of the author and, with the exception of the organizational resolutions, typically do.

---

[67] *See* Senate Rule 20(3).
[68] *See* House Rule 18(b) and 23(b).
[69] *Eliasen v. Englehart*, 733 A.2d 944, 946 (Del. 1999). *See generally Carper v. New Castle County Bd. of Educ.*, 432 A.2d 1202, 1205 (Del. 1981) ("[t]he synopsis of the [legislative bill is] a proper source from which to glean legislative intent."); *Leatherbury v. Greenspun,* 939 A.2d 1284, 1291 (Del. 2007) (stating that "the preamble of [an act]" and "the synopsis accompanying the amendment" are instructive in determining the General Assembly's intent).
[70] The *body* of a bill can be amended but, because the synopsis is in the body of the bill, a *synopsis* cannot be amended. In addition, an amendment to a bill must indicate the lines affected and the synopsis does not have line numbers. See § 109(d)(2), Title 1. For more details, see Part III, Ch. 4. on amendments.
[71] *See* Senate Rule 20(3).

The practice of naming a state agency as the author is supported by the Senate Rule on the topic, but has fallen into disuse and now the author is almost exclusively the prime sponsor of the legislation.

Legislation originating in the House does not require the name of the author of the legislation.

V. Footer.

Each piece of legislation has a group of letters and numbers in the bottom left corner. This is the "footer." The letters identify, through the use of initials, the caucus or legislative agency through which the legislation was introduced, the bill drafter, and the typist. DELIS automatically adds this information when a draft is created.

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 redrafting a piece of legislation from a previous General Assembly word-for-word, but each bill drafter has an individual responsibility to closely examine such legislation for possible typographical errors, legal and grammatical flaws, and, particularly, for changes in the Code in the interim and an expired effective date. After such examination, change the footer by inserting the new drafter's initials in place of those of the former drafter.

Section 3: Special Types of Bills.

In conjunction with the power to make the laws for the State, the General Assembly is constitutionally authorized to amend the Constitution and certain charters. A discussion of that authority and its implication on drafting legislation follows.

A. Constitutional Amendments.

The General Assembly's power to amend the Delaware Constitution requires a two-thirds vote.[72] Unlike many states, amending Delaware's Constitution requires two pieces of legislation, referred to as "legs," which are enacted in successive General Assemblies (e.g. the 147th and the 148th). The first leg proposes, in its title, an amendment to the Delaware Constitution. The second leg, enacted in the succeeding General Assembly, concurs in the amendment proposed in the first leg.[73] Delaware is the only state that does not have public referendums on constitutional amendments. Furthermore, the Governor may not sign or veto a constitutional amendment. The amendments become part of the Constitution immediately on passage of the second leg, unless the constitutional amendment itself specifies a different time frame.[74] See examples on the next page.

---

[72] *See* Section 1 of the Article XVI of the Delaware Constitution.

[73] The Delaware Supreme Court has held that defects in the title of the second leg of a constitutional amendment, such as the exclusion of the word "concurring" or "agreeing," are not fatal as Section 16 of Article II (relating to bill titles as serving to notify the public of legislation) is inapplicable to constitutional amendments, which have their own notice requirements under Section 1 of Article XVI. See *Opinion of the Justices*, 194 A.2d 855 (Del. 1963).

[74] *Opinion of the Justices*, 190 A.2d 519 (Del. 1963) ("Article XVI, Section 1 [of the Delaware Constitution] provides that when final passage of a proposed amendment by yea and nay vote has taken place in both Houses of the General Assembly, 'the same shall thereupon become part of the Constitution.' This final passage [in the second Chamber] . . . is therefore the effective date of the amendment.").

Bill Title for a Constitutional Amendment in the First Leg:
AN ACT PROPOSING AN AMENDMENT TO ARTICLE IV, § 11 OF THE DELAWARE CONSTITUTION RELATING TO CERTIFICATION OF QUESTIONS OF LAW TO THE SUPREME COURT.

Bill Title for a Constitutional Amendment in the Second Leg:
AN ACT CONCURRING IN A PROPOSED AMENDMENT TO ARTICLE IV, § 11 OF THE DELAWARE CONSTITUTION RELATING TO CERTIFICATION OF QUESTIONS OF LAW TO THE SUPREME COURT.

An example of the first leg of a constitutional amendment is provided in Appendix A-9.

An example of the second leg of a constitutional amendment is provided in Appendix 10. A second leg must do all of the following:

(1) State in the bill title that it is "concurring" in the amendment proposed by the first leg. For example: "AN ACT CONCURRING IN A PROPOSED AMENDMENT TO ARTICLE I OF THE DELAWARE CONSTITUTION RELATING TO EQUAL RIGHTS."

(2) State in a whereas clause that the first leg was proposed by the previous General Assembly and give the Laws of Delaware citation for the first leg.

(3) State in a whereas clause that the proposed amendment received the constitutionally required two-thirds vote. The legislative drafter must confirm the accuracy of this statement.

(4) State in a whereas clause that, following adoption of the first leg, the proposed amendment was publicized as required by Section 1 of Article XVI of the Delaware Constitution. The legislative drafter must confirm the accuracy of this statement.

(5) State in a whereas clause that when the current General Assembly concurs in the proposed amendment it will become a part of the Delaware Constitution.

When preparing legislation for a second leg, include in the synopsis the bill number for the amendment's first leg, for ease of reference.

Although some constitutional amendment bill titles include the year that the current Constitution was created, it is unnecessary and just allows for the possibility of another number typo. Further, no one cites the year the current Code was enacted when including "Delaware Code" in a bill title.

Drafting amendments to the Constitution differs from drafting Code provisions in the following ways:

(1) The Constitution should be more abstract than the Code and should be drafted as such. This often requires avoiding the detail of a Code provision and instead choosing brief, general language.

(2) In drafting amendments to the Constitution, take the long view. The Constitution has been in place for over 100 years. Amendments should be drafted with this in mind.

There is at least one similarity, however. All constitutional amendments should be drafted using the strike through and underline process. While § 109 of Title 1 does not require this process be used for constitutional amendments, it is the preferred process among legislators and Legislative Hall drafters. This process is discussed in detail in Part IV.

B. 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 through special acts of incorporation. Charter bills which change a municipal or bank charter require a two-thirds vote.[75]

While the General Assembly retains the ultimate power to enact and amend municipal charters, in 1961 the General Assembly delegated some of that authority through the home rule statute, 22 *Del. C.* § 801 through § 836. The General Assembly required municipalities desiring to exercise the authority granted by the home rule statute to file a copy of their existing charter with the Secretary of State and the Director of the Legislative Reference Bureau, the predecessor to the Division of Legislative Services, before June 1, 1963. Eleven municipalities availed themselves of this invitation: Bellefonte, Delaware City, Elsmere, Harrington, Middletown, Milton, Newark, New Castle, Smyrna, Wilmington, and Wyoming. Having met the filing requirement, these 11 municipalities may amend their own charters rather than coming to the General Assembly and requesting their charter be amended. The process for a municipality to amend its own charter is set out in the home rule statute, specifically in 29 *Del. C.* §§ 811 through 813.

Bills that indirectly amend the charter of one or more incorporated municipalities are one of the major legal issues relating to charters. Some bills, especially those amending Title 22, directly affect incorporated municipalities and therefore may be an indirect amendment to a municipal charter. If a bill indirectly amends the charter of one or more incorporated municipalities, then a super-majority vote is needed for the provisions to be effective on the municipalities.[76]

It is important to note that the client has a choice in such a situation. If the client does not mind that a conflicting provision in a municipal charter will control over the legislation, the legislation may be enacted with a simple majority. This situation is reflected in *City of Newark v. Weldin*, 1987 WL 7536 (Del. Ch. 1987), when the Chancery Court concluded, with respect to the Law Enforcement Officers' Bill of Rights, that because the legislation received only a simple majority, yet it impliedly impacted a municipal charter, it was "ineffective where it comes into contact with specific provisions of that charter."

When a bill amends a specific municipal charter, the bill title should name the municipality and state that it is amending the charter, along with the usual "relating to" language. A reference to the chapter and volume of the Laws of Delaware containing the entire charter, with the notation "as amended," may be included; however, drafters increasingly prefer to draft the

[75] *See* Section 1 of Article IX of the Delaware Constitution.
[76] *See Buckingham v. Killaran*, 35 A.2d 903 (Del. 1944) and *Opinion of the Justices*, 276 A.2d 736 (Del. 1971) (holding a bill which indirectly amends a municipal charter requires the same two-thirds vote as a bill that directly amends one).

title without the reference to the Laws of Delaware, as this lessens the possibility for creating an error in the Laws of Delaware reference. It also saves time, as the drafter no longer has to locate the date of the last reincorporation and search for the appropriate Laws of Delaware citation. And, there is only one current charter per municipality, just as there is only one current Constitution and Code for Delaware, so going to the charter as it was last reincorporated, which could be years or decades old, will not provide an accurate version.

Bill Title for a Charter Amendment:
AN ACT TO AMEND THE CHARTER OF THE CITY OF LEWES RELATING TO THE CONDUCT OF ELECTIONS.

Bill Title for a Charter Amendment (with reference to the Laws of Delaware):
AN ACT TO AMEND CHAPTER 278, VOLUME 72, LAWS OF DELAWARE, AS AMENDED, ENTITLED "AN ACT TO REINCORPORATE THE TOWN OF MILLVILLE," RELATING TO THE TOWN MANAGER.

When amending a charter, be aware of other provisions of the Code that restrict municipal power, such as Chapter 75 of Title 15 (regarding elections), § 111 of Title 22 (regarding limitations on firearm regulations), and § 5802(4) of Title 29 (regarding the Public Integrity Commission's review of a municipality's code of ethics).

An example of a bill to amend a town charter is provided in Appendix A-11.

Section 4: Bills with Special Provisions.

In addition to special types of bills, be aware of bills with special provisions. Specifically, be mindful of bills with super-majority vote requirements, creating regulatory boards and agencies, with fiscal impacts, or amending the Laws of Delaware.

A. Bills with Super-Majority Vote Requirements.

As discussed in Part III, Ch. 2, Sec. 2, D., when a legislative act requires a super-majority vote, the requirement must be included in the enactment clause. There are three kinds of super-majority votes in Delaware: three-fifths, two-thirds, and three-fourths. For ease of reference, a list of the different types of legislation requiring a super-majority vote follows.

CONSTITUTIONAL CITATION	***VOTE REQUIREMENT***
	three-fifths (3/5) of all members elected to each house
Section 18 of Article III	To override the Governor's veto.
Section 6(c) of Article VIII	To appropriate funds from the 2% "Rainy Day Fund" "in the event of emergencies involving the health, safety or welfare" of Delaware's citizens.

cont. on next page

CONSTITUTIONAL CITATION	*VOTE REQUIREMENT*
Section 6(d) of Article VIII	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."
Section 10(a) of Article VIII	To increase the effective rate "of any tax levied or license fee imposed by the State."
Section 11(a) of Article VIII	To impose or levy a "tax or license fee."
	two-thirds (2/3) of all members elected to each house
Section 9 of Article II	To expel a member of the House by House members or to expel a member of the Senate by Senate members.
Section 19 of Article II	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."
Section 13 of Article III	To "address" the Governor to request removal of an officer for reasonable cause.
Section 20(b) of Article III	To determine "that the Governor is unable to discharge the powers and duties of his or her office because of mental or physical disability."
Section 1 of Article IV	To establish additional courts (not judges).
Section 12 of Article IV	To require the entire Supreme Court to sit in a civil or criminal matter other than one in which the accused has been sentenced to death.
Section 28 of Article IV	To give jurisdiction to inferior courts or justices of the peace of "such … misdemeanors as the General Assembly may from time to time … prescribe."
Section 1 of Article VI	To impeach by the House; to convict by the Senate.
Section 1 of Article IX	To enact or amend general incorporation laws and special acts of incorporation, including municipal charters.
Section 1 of Article XVI	To amend the Delaware Constitution, which requires passage by two consecutive General Assemblies. *cont. on next page*

CONSTITUTIONAL CITATION	***VOTE REQUIREMENT***
Section 2 of Article XVI	To present to the voters the question of whether there should be a State constitutional convention.
	three-fourths (3/4) of all members elected to each house
Section 3 of Article VIII	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."
Section 4 of Article VIII	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.
Section 12 of Article VIII	To appropriate money in the Transportation Trust Fund for a purpose not listed in § 12(b).
Section 12 of Article VIII	If money in the Transportation Trust Fund ceases to be appropriated for a purpose under § 12(b)(3), to again appropriate it for such a purpose.
2 *Del. C.* § 1405(i)	The Delaware Transportation Authority may not issue bonds unless the General Assembly approves of the purpose for which the bonds are issued and the maximum amount of such bonds (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).

B. Bills Creating Regulatory Agencies, Boards, Commissions, Councils, or Similar Entities.

Over the years, the Joint Legislative Oversight and 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 entities, boards, or commissions, use the following standardized language. Please note that, although drafting task forces is addressed in Part III, Chapter 5, Section 2, many of these provisions can also be used to draft task forces.

1. Language for legislation establishing a new regulatory entity.

The primary objective of the [name of agency, 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 agency, 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 agency, board, or commission] shall develop standards assuring professional competence; shall monitor complaints brought against practitioners regulated by the [name of agency, board, or commission]; shall adjudicate at formal complaint hearings; shall promulgate rules and regulations; and shall impose sanctions, where necessary, against practitioners.

2. Language for member qualifications.

To avoid conflicts of interest for members of regulatory entities, use the following language when conflicts may arise:

To serve on the [name of agency, 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 an activity directly related to [name of the profession or occupation]. A person may not be a public member of [name of agency, 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.

3. Language for term limitations, including staggered terms.

Term limitation language must be included in all regulatory bills. In creating new agencies, boards, commissions, or other entities, staggered terms are often used for the initial appointments, to create a changing membership throughout the life of the entity. The following are examples of several options that may be used, depending on the needs of the bill being drafted.

Each member is appointed for a period of 3 years and may serve 1 additional term. Each term of office expires on the date specified in the appointment; however, a member remains eligible to participate in Board proceedings until the Governor replaces that member.

Each member serves for a term of up to 3 years. The Governor may appoint a member for a term of less than 3 years to ensure terms expire on a staggered basis.

A member serves until a replacement is appointed under the same process as the member's appointment.

An individual who has served on the Board for 6 years may not be appointed to the Board again until the expiration of an interim period of at least 3 years since the individual was last served.

Of the initial members, 1 must be appointed for a 1-year term, 1 must be appointed for a 2-year term, 1 must be appointed for a 3-year term, and the remainder must be appointed for 5-year terms. Thereafter, all members shall serve 5-year terms.

5. Conflict-of-interest language for officers.

A member of the [name of agency, board, or commission], while serving on the [agency, board, or commission], may not be a president, chairperson, or other official of a professional [name of profession or occupation] association. Chapter 58, Title 29 (State Employees', Officer' and Officials' Code of Conduct) applies to each member of the [agency, board, or commission] and to each agent appointed or otherwise employed by the [agency, board, or commission].

6. 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.

7. Language for notice and service of process.

On the receipt of a formal complaint from the Attorney General's office regarding a practitioner regulated by the [name of the agency, board, or commission], the [agency, 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 [agency, 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 on 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.

8. Using "appoint" and required language for granting authority to name a person to serve on a board, commission, task force, etc.

In 2013, the President Pro Tempore of the Senate and Speaker of the House issued a joint memorandum directing that future legislation creating boards, commissions, task forces, etc. and granting authority to the President Pro Tempore, Speaker, Minority Leaders, or another member of the General Assembly to name a person to serve on such an entity use the word "appoint" rather than "designate," "name," or another word.

Further, include language that states who has the appointment authority regarding each member of the board, commission, task force, etc. Appointments made without a named appointing authority may not be valid.[77] Non-governmental entities cannot appoint members to government-created boards, commissions, task forces, etc.[78]

[77] Justice Holland explained that the governor's power to make appointments "is a grant rather than a limitation on an inherent power of the governor" and that "the governor must rely on an express or implied constitutional or statutory authority as the basis for the right to appoint." It is unclear what Justice Holland's reference to an "implied" power would actually look like. However, it is unlikely to "save" an appointment that is made but does not have an appointing authority specifically named to make the appointment. Randy J. Holland, The Delaware Constitution: A Reference Guide 108 (G. Alan Tarr ed., Greenwood Press 2002).

[78] *See State ex. rel. James v. Schoor*, 65 A.2d 810, 812 (Del. 1948) ("… the Legislature can not [sic] delegate to . . . a voluntary organization of individuals, accountable to no one except its own organization, having no connection with the three branches of government in which the sovereign power of government is lodged by the Constitution, the power to appoint the members of a state agency.".)

9. Defining quorum.

It is best practice to define quorum and, if applicable, make clear that a vacancy on the board, commission, or task force is not to be counted toward quorum. The following are examples of options that may be used, depending on the needs of the bill being drafted.

> A majority of the members must be present at a Commission meeting in order to have quorum and conduct official business. A vacancy on the Commission is not counted for quorum.
>
> A majority of members constitutes a quorum for the purpose of transacting business. The Board may not take disciplinary action without the affirmative vote of at least 4 members.

A quorum is determined by the number of members present, not by the number who vote.[79] If some of the members are non-voting members:

- Create 2 lists of members and state in the sentence before each list if the members in the list are voting members or non-voting members.
- State whether quorum for meetings requires a majority of all members or voting members.
- State whether official action by the group requires a majority of all members or all voting members.

In the absence of defining quorum in legislation, quorum is a simple majority of members.[80] Note that a member's status as an "ex officio" member does not impact that member's authority to vote. An ex officio member may vote unless the statute states that the ex officio member may not vote.

10. Other provisions common to boards, commissions, councils, etc.

Several other provisions are important to consider when drafting a board, commission, council, or similar entity, including membership makeup, designees, selecting a chair, and removal from office. A list of these provisions, along with the provisions already included in this section, is provided in Appendix A-17.2. The appendix includes the list of provisions to consider including in the legislation, and boilerplate language created in collaboration with the Governor's office. The Governor's office is often responsible for filling appointments to these entities, and the collaboration ensures provisions that are consistent and ease the task of making appointments.

C. Bills with Fiscal Impacts.

An important requirement to remember when drafting a bill with fiscal impacts is in Section 2 of Article VIII of the Constitution, which provides that "[a]ll bills for raising revenue shall originate in the House of Representatives." The Delaware Supreme Court has indicated that "to qualify as a revenue-raising bill, within the purview of this constitutional provision [Section 2

[79] *Mason's Legislative Manual*, Sec. 503.1.
[80] *Lammot v. Walz*, 107 A.2d 905 (Del. Super. 1954).

of Article VIII], the money derived from the tax imposed must be available for the general government uses and purposes of the taxing sovereignty . . . ."[81] Additionally, the Court has noted that there is a much quoted "statement in 1 Story on the Constitution (5th Ed.) Sec. 880, that the constitutional limitation here under consideration 'has been confined to bills to levy taxes in the strict sense of the words.'"[82] Earlier, the Delaware Superior Court stated, "[r]evenue bills are . . . those which take money from the people without giving a direct equivalent in return therefor."[83] The Court noted, "[i]f this is the correct meaning of revenue it is not something which people may pay at their option but which they are compelled to pay and for which they receive nothing in return, other than the rights of government which are enjoyed by all citizens alike."[84]

Furthermore, Section 11(a) of Article VIII of the Constitution requires the affirmative vote of 3/5 of all the members elected to each chamber to pass a bill enabling the State to impose or levy a new tax or fee.[85] In addition to including a super-majority parenthetical in the enactment clause of legislation imposing a new tax or fee, when creating a new fee to be imposed by a State agency, also include language in the Code limiting the agency's authority in setting the fee to that which reasonably reflects the costs necessary to defray the expenses of the agency in performing the activity for which the fee is authorized. If the agency's expenses are defined in advance, draft language that imposes a limit on the fee that can be imposed. However, this information is often not available and so more general language limiting the fee to that which is needed to defray "reasonable costs" is typically used.

> The amount to be charged for the fee imposed under this paragraph must approximate and reasonably reflect the costs necessary to defray the expenses of the Department.
>
> The amount to be charged for each fee imposed under this chapter must approximate and reasonably reflect all costs necessary to defray the expenses of the Board, and the proportional expenses incurred by the Division in its service on behalf of the Board.

There are also statutory requirements for bills with fiscal impacts. For example, when a bill or joint resolution would authorize expenditures not specifically provided for in the bill or specifically appropriates money not authorized within the annual budget, a three-year fiscal projection is attached before committee consideration in the chamber of origin.[86] The fiscal projection is also required when revenue is reduced.[87]

The fiscal projection is commonly referred to as a "fiscal note" and is prepared by the Controller General's Office. After introduction of a bill, the Controller General's Office determines if a fiscal note is necessary and, if so, an analyst will prepare a fiscal note to be attached to the bill. The fiscal note includes: (1) full cost data such as salaries, operating costs, other employment

[81] *Opinion of the Justices*, 233 A.2d 59, 62 (Del. 1967).
[82] *Id*.
[83] *Yourison v. State*, 140 A. 691, 692 (Del. Super. 1928).
[84] *Id*.
[85] Section 10(a) of Article VIII requires the same super-majority vote to increase the effective rate of any tax levied or fee imposed by the State.
[86] *See* 29 *Del. C.* § 1901(a) and House Rule 21(a).
[87] *See* 29 *Del. C.* § 1903.

costs, capital outlays, and debt service,[88] and (2) projections on an impact related to a pension or retirement plan.[89] A fiscal note may be amended after amendments are added to a bill that would impact the fiscal note.[90] The requirement for a fiscal note may be waived by a majority vote of the chamber in which the legislation is pending.[91]

In addition, when a bill would impose a new fee or increase existing fees, a fee impact statement is required.[92] The Controller General's Office is responsible for preparing a fee impact statement to be attached to the bill. A fee impact statement includes: (1) the purpose of the proposed new fee or fee increase; (2) a general identification of the persons, business entities or organizations affected by the legislation; (3) the impact of the proposed new fee or fee increase on these affected persons, business entities or organizations; and (4) the intended use by the agency of the revenues generated by the new fee or fee increase.[93] As with a fiscal note, a fee impact statement must be added before the bill is considered in committee in the chamber of origin and it may be waived by a majority vote of the chamber where the legislation is pending.[94]

D. Bills Amending the Laws of Delaware.

Even after a bill has been enacted, it may be necessary to amend the bill itself. In such a situation, one way to do so is to amend the bill as it exists within the Laws of Delaware. Do this only when the bill is one that was not meant for inclusion in the Code or the reason for amending the bill is to alter a Section not intended to be included in the Code, for example, a sunset date. Otherwise, amend the Code. In drafting a bill amending the Laws of Delaware, do the following four steps:

(1) Draft the title of the bill that amends the Laws of Delaware to include the chapter and volume of the bill being amended.

> **To amend Chapter 349, Volume 78 of the Laws of Delaware:**
> AN ACT TO AMEND CHAPTER 349, VOLUME 78 OF THE LAWS OF DELAWARE RELATING TO DRIVING A VEHICLE UNDER THE INFLUENCE.

(2) Include in the prefatory language for the bill amending the Laws of Delaware the Section of the bill being amended.

> **To amend Section 5 of Chapter 349, Volume 78 of the Laws of Delaware:**
> Section 1. Amend Section 5, Chapter 349, Volume 78 of the Laws of Delaware…

[88] *See id.* at § 1902.
[89] *See id.* at § 1901(b).
[90] *See id.* at § 1904.
[91] *See id.* at § 1908.
[92] *See id.* at § 913 and House Rule 21(b).
[93] *See id*.
[94] *See id*.

When drafting a bill to amend the Laws of Delaware to extend or remove a sunset date provision, be mindful of the sunset date. The bill should be introduced well in advance of the sunset date, or the client should be aware of the impending nature of the sunset date in shepherding the bill through the process. And, the Governor must be made aware of the sunset date. Bills have sunsetted waiting for the Governor to sign amendments to the sunset date. Finally, if a sunset date in legislation passed by a constitutionally mandated super-majority vote needs to be extended or removed, the legislation doing so must be passed by the same super-majority vote.

(3) To make the needed change to the Laws of Delaware, generally use the strike through and underline process and note such in the prefatory language.

(4) Draft the synopsis to clearly state the purpose of the amendment.

> This Act extends the sunset provision contained in Volume 78, Chapter 349, of the Laws of Delaware by 2 years, to June 30, 2016. Volume 78, Chapter 349 of the Laws of Delaware provided the State the same statutory transfer rights afforded a defendant charged with Driving Under the Influence.

Although the strike through and underline process is used to show amendments made to the Laws of Delaware, the Code Revisors do not apply the changes to the Laws of Delaware being amended. Instead, the amendment will be reflected in the Laws of Delaware of the year of the amendment. For example, an amendment which is made in 2015 to Laws of Delaware of 2009-2010 will be reflected only in the Laws of Delaware of 2015-2016. **Be mindful when a further amendment to a provision contained only in the Laws of Delaware is necessary and go by the following example:**

> **Assume Chapter 349, Volume 78 of the Laws of Delaware states:** Section 5. This Act expires at the end of June 30, 2014, unless it is reestablished by a subsequent act of the General Assembly.
>
> **Further assume that in 2014 the General Assembly acted to extend the sunset to June 30, 2016, and the Governor signed the legislation, which is found in Chapter 235, Volume 79 of the Laws of Delaware. To extend the sunset date again:**
>
> **(1) Draft a bill title that references Chapter 235, Volume 79 of the Laws of Delaware.**

(2) Draft the bill body using the language of Chapter 235, Volume 79 of the Laws of Delaware and making the additional changes using

(cont. on next page)

strike through to indicate existing language being removed by the bill and italicized double underline to indicate new language added by the bill, as follows:

Section 1. Amend Section 1, Chapter 235, Volume 79 of the Laws of Delaware by making deletions as shown by strike through and insertions as shown by underline as follows:

Section 5. This Act expires at the end of ~~June 30, 2014~~ ~~June 30, 2016~~ *June 30, 2017*, unless it is reestablished by a subsequent act of the General Assembly.

An example of a bill amending the Laws of Delaware is provided in Appendix A-7.

Chapter 3: Substitute Bills.

A substitute bill is the complete replacement of an original bill, often because the original needs to be so materially or substantially changed that a substitute is preferred to amending the original bill. Remember the following when drafting a substitute bill:

(1) A substitute bill may have all of the same parts as the original bill.

(2) The title of a substitute bill must be identical to the title of the original bill per rules of the House and custom of the Senate.[95]

(3) A substitute bill must be introduced by the prime sponsor in the chamber in which the original bill was introduced before third reading of the original bill.[96]

(4) Once a substitute bill has been introduced, which is done without a vote, the original bill is void.

(5) In the Senate, a substitute bill takes the place of the original bill wherever the original bill is in the process. In the House, a substitute bill is assigned to committee following introduction.[97]

(6) House Rule 24(a) requires the substitute to be "assigned to committee and follow the same procedure as other bills."

The major difference in structure between a substitute bill and an original bill is that the bill caption changes from "House [or Senate] Bill No. 123" to "House [or Senate] Substitute No. 1 for House [or Senate] Bill 123."

A synopsis to a substitute bill should detail the differences between the substitute bill and the original bill, in addition to explaining what the substitute bill does. Sometimes, the differences between a substitute bill and the original bill can be slight; including the differences in the synopsis to the substitute bill aids the reader.

[95] *See* Part III, Ch. 2, Sec. 2, B. on Bill Titles and House Rule 24(c).
[96] *But see* Senate and House Rules regarding exceptions to the third reading requirement.
[97] *See* House Rule 24.

An example of a substitute bill, with its original bill, is provided in Appendix A-8.

Chapter 4: Amendments.

The word "amendment" means something different in the legislative drafting context than it does in the context of court decisions. In many court decisions, legislation which changes an already existing statute considered is an amendment, i.e., most bills "amend" the Code. In the actual drafting of legislation, however, an amendment is a separate piece of legislation having the limited purpose of deleting or inserting text in a bill, a substitute bill, a resolution,[98] or another amendment. Unless stated otherwise, when this manual refers to an amendment, it means within the context of legislative drafting.

> In drafting an amendment, create the amendment based on the original legislative vehicle being amended. **Never attempt to amend the engrossed form of a piece of legislation.** Even so, consider the engrossment process when drafting an amendment.````` Only if an amendment is "engrossable" is it really correct. Consult Part VII, Ch.5 on engrossments.

A Senate amendment may amend a Senate bill, House bill, or resolution that is before the Senate. A House amendment does likewise in the House. Remember, only a Representative can co-sponsor a House amendment and only a Senator can co-sponsor a Senate Amendment.

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

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. An amendment typically does not contain the provisions discussed in Part III, Ch. 2, Sec. 2, except to the extent the amendment changes those provisions and it must contain a synopsis[99] detailing the changes made to the bill by the amendment. An amendment's synopsis describes the impact of each amendatory instruction on the bill and whether the amendment is technical or substantive in nature.

Furthermore, in drafting a bill which amends the Code, all deletions and insertions are based on the appropriate title and section of the Code. In contrast, drafting an amendment requires all changes made by the amendment relate specifically to the legislative vehicle being amended, and not directly to the statute itself. This is 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 will refer to specific sections, subsections, or paragraphs of the Code, but an amendment to the bill usually refers to the bill's line numbers. The exception is when the amendment's purpose is to strike in its entirety another amendment already attached to the bill. In such an instance,

[98] To amend a resolution that has already passed, draft a new resolution that makes the changes to the original resolution using the process given for bills amending the Laws of Delaware, in Part III, Chapter 4: Amendments.
[99] *See* Senate Rule 20(3) and House Rule 23(b).

it may simply strike the other amendment in its entirety, or it may strike the numbered lines of the amendment; both methods are indicated in the following example.

Amendment Striking an Entire Amendment:
Amend House Bill No. 404, as amended, by striking House Amendment No. 2 in its entirety.

Amendment Striking an Amendment by Line Numbers:
Amend Senate Bill No. 45, as amended, by deleting lines 1 to 23 of House Amendment No. 4 in their entirety.

Both of these methods have the effect of restoring the wording and punctuation of the bill as it existed immediately before 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 instructional language.

Specific additions or deletions contained within the body of the amendment must be in conformity with the amendment format for deleting text from or inserting text into a bill. This format is discussed in Part V.

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

Additionally, determine if the amendment seeks to amend a portion of the bill already addressed in another amendment. Conflicting amendments may be out of order and will cause critical problems for both engrossing the amendment and codifying the bill. Consult Part VII, Ch. 5 for further information on engrossments.

An amendment *to* an amendment (called an amendment of the second degree) is allowed, but an amendment to an amendment to an amendment (called an amendment of the third degree) is disfavored in the Senate and forbidden in the House.[100]

Of particular note when considering whether an amendment is an option, a synopsis cannot be amended because it is not in the body of the bill. If it is necessary to revise the synopsis of a bill once it has been released, the only way to do so is to release a substitute bill that contains the revised synopsis. If there are no other changes to make in the substitute bill, the revised synopsis can be the only change in the substitute from the original bill.

A synopsis cannot be amended but can be revised through a substitute bill.

Revised Synopsis in Substitute Bill, Explaining the Revision:
This Act clarifies that an employer is liable to an employee for liquidated damages if the employer does not make wages available during the next payday after an employee quits, resigns, is discharged, suspended, or laid off.

[100] *See* House Rule 40(a)(11).

The only difference between Senate Substitute No. 1 for Senate Bill No. 212 and Senate Bill No. 212 is this revised Synopsis.

Examples of amendments are provided in Appendix A-3 and Appendix A-4, an example of an amendment to an amendment is provided in Appendix A-5, and an example of an amendment to a bill, as amended, is provided in Appendix A-6.

Chapter 5: Resolutions.

Resolutions are legislative vehicles that enable the General Assembly to express itself rather than to amend the Code.[101]

Section 1: Resolutions.

A resolution is the formal expression of the opinion, sentiment, or will of one or both chambers of the General Assembly. The Senate rules contain general references to the preparation of resolutions.[102] The House rules specifically describe the three types of resolutions[103] and also contain information on the preparation of resolutions.[104]

A resolution is effective only during the existence of the General Assembly which promulgates it.[105] Thus, a resolution purporting to take effect during a future General Assembly or to continue the spending or appropriating of money in subsequent General Assemblies is expressing only a desire, with no authority to enforce compliance. Simple and concurrent resolutions merely congratulate, condemn, or request persons, agencies, or actions in the executive and judicial branches of state government or at the federal level. Many task forces created by resolution, however, continue to meet during the next General Assembly before a reauthorizing resolution is passed.

Like bills, resolutions must have titles. Because resolutions do not amend or propose Delaware law, however, they do not require references to Delaware law. Instead, titles to resolutions typically begin with a present participle, such as: relating, designating, appointing, requesting, commending, establishing, or directing.

CREATING AN AUTISM EDUCATIONAL TASK FORCE.

When drafting a resolution title proclaiming a day, week, or month, set off the proclaimed day, week, or month by including it within quotation marks. When the proclaimed day, week, or month ends a sentence, whether in the title or elsewhere in the resolution, **ignore the grammatical convention regarding the placement of punctuation within quotation marks and instead follow the rules established by this manual**, which require the punctuation to be placed outside of the quotation marks, unless it is required to be included in Delaware law. See Part

[101] The three types of resolutions are discussed in detail later in this Section.
[102] *See* Senate Rules 20 and 22.
[103] *See* House Rule 17.
[104] *See* House Rules 18 and 19.
[105] There is a difference of opinion as to whether the effect of a resolution extends beyond the General Assembly that created it. This manual takes the view that it does not.

V, paragraph (a)(6) and Part VI, Ch. 2, Drafting Rule 23(h). This promotes consistency in all legislative drafting. See example on next page.

> RECOGNIZING THE WEEK OF APRIL 8-14, 2012, AS "NATIONAL LIBRARY WEEK".

Alternatively, avoid the punctuation issue by ending the sentence with "in the State of Delaware."

> DESIGNATING FEBRUARY 6, 2011, AS "RONALD REAGAN DAY" IN THE STATE OF DELAWARE.

Since resolutions do not amend the Code, they do not include many of the provisions discussed in Part III, Ch. 2, Sec. 2 on Parts of Bills. While a resolution does not have an enactment clause, it does have a "BE IT RESOLVED" clause that follows at the end of the preamble (whereas clauses).

> **Resolving Clause:**
> NOW, THEREFORE:
> BE IT RESOLVED by the Senate of the 147th 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.

The "BE IT RESOLVED" clauses should actually resolve that something be done rather than simply referring generally to the whereas clauses. The "BE IT RESOLVED" clauses are the mechanism by which a chamber or the entire General Assembly speaks and so should be a clear statement of the desired action.

A joint resolution must have a synopsis, while simple and concurrent resolutions contain a synopsis by custom.[106]

As of June 2018, the Senate discourages using the word "shall" in a Senate resolution.

A. 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 a chamber's procedures, create single chamber task forces, or request changes in state or federal policy. A simple resolution may also be used to congratulate sports teams or individuals, express condolences, declare the "sense of the chamber" on a specific issue, or designate a day, week, or month, such as Administrative Professionals' Week or Domestic Violence Awareness Month (see Appendix A-13). It may also be used to request a government body take action (see Appendix A-14).

[106] *See* Senate Rule 20(3) and House Rule 18(b). House Rule 18(c) requires it of any resolution creating a task force.

B. 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 a purpose which requires the exercise of legislative power. It can create joint (House and Senate) task forces. Concurrent resolutions may even be used to ratify amendments to the federal Constitution. An example of a concurrent resolution is provided in Appendix A-15.

C. Joint Resolution.

A joint resolution is the most formal resolution. This type of resolution must go through the committee process, be passed by both the House and the Senate, and be signed by the Governor.[107] Although not a law, a joint resolution has the force of law while in effect. Where a simple or concurrent resolution would "request" a change in policy by a state agency, joint resolutions typically "direct" a change. However, as with simple and concurrent resolutions, a joint resolution is effective only during the General Assembly in which it was passed and approved,[108] unless the resolution explicitly designates a shorter timeframe. An example of a joint resolution is provided in Appendix A-16.

Section 2: Resolutions Creating Task Forces.

A task force is a body created by the General Assembly to study an issue of concern among legislators and report findings and recommendations to the General Assembly. A task force should generally be created by resolution, rather than by a bill, since a task force is not intended to be permanent and so should not be memorialized in the Code. Task forces are frequently composed of members appointed by the governor, legislators, agency heads, or those outside of government. Typically, a resolution creating a task force requires the task force to meet to establish itself, discuss the topic of concern, and draft a report to be provided to the General Assembly and others. The resolution also provides a date by which a report is due.

The creation of a task force requires attention to a number of details to ensure it will operate as intended.

When drafting legislation that creates a task force, do all of the following:

(1) Ensure the success of the task force by **clearly identifying who will provide its staff**. The practice is for the state agency most closely aligned with the purpose of the task force to staff it. Failing to clearly delegate this responsibility causes confusion and can hamper the work of the task force.

[107] *See* Section 18 of Article III of the Delaware Constitution.

[108] This manual takes the view that the effect of a resolution does not extend beyond the General Assembly that created it. Therefore, if the client intends for the legislation to extend beyond the life of a General Assembly, the better practice is to draft a bill.

(2) **Designate a permanent chair** to facilitate the task force's initial organizational meeting by working with the task force's staff to set a date for the meeting, contact members, and contact the Division of Legislative Services ("Division") to publish the proper notices for this and future meetings. If designating a permanent chair in the legislation is not feasible, identify an individual to act as chair to facilitate the initial organizational meeting and the selection of a permanent chair.

(3) **Set a deadline by which the task force must hold its initial organizational meeting**, to help ensure the work of the task force begins in a timely manner. This can be done by either requiring that the initial organizational meeting be held within a certain number of days after final passage or enactment of the legislation, or by requiring that the meeting be held by a specific date.

(4) **Use the word "appoint"** when granting the authority to name an individual as a member of a task force, as discussed in Chapter 2, Section 4, B.

(5) **Assign appointing authority for each appointee** to a specific person or agency singularly. Avoid joint appointing authority.

The State's database for tracking and managing boards, commissions, and task forces requires the legislation creating any entity establish 1 chair and 1 vice-chair. The database cannot reconcile 2 co-chairs.

(6) If providing for an individual to designate another to serve in their place, **make clear the power that the designated individual holds**. For example, specify if the designated individual has voting rights.

(7) For recording keeping purposes, **require that the task force provide certain information to the Director of the Division,** including a list of the members of the task force, with the name of the person who appointed them, and meeting notices, agendas, and minutes. Also require the task force provide information on the members of the task force to the Pro Tempore of the Senate and the Speaker of the House of Representatives.

(8) Avoid the need for a resolution to extend the reporting date for the task force by **providing the task force with a reasonable amount of time to conduct their business and produce a report**. The reporting date should occur before the end of the General Assembly creating the task force.

(9) In addition to the information discussed in paragraph number 7 of this list, specify that the task force is to deliver a copy of required report, if any, when completed, to the attention of the Director and the Librarian of the Division.

(10) **Grant the task force clear authority to adopt rules to govern its proceedings**. Specify that if the task force does not adopt rules to govern its proceedings or if the rules adopted do not address a given situation, *Mason's Manual of Legislative Procedure* controls.

(11) Make clear that official action of the task force, including making findings and recommendations, **requires the approval of a majority of the members** of the task force. A

quorum is determined by the number of members present, not by the number who vote.[109] If some of the members are non-voting members:

a. Create 2 lists of members and state in the sentence before each list if the members in the list are voting members or non-voting members.

b. State whether quorum for meetings requires a majority of all members or voting members.

c. State whether official action by the group requires a majority of all members or all voting members.

(12) Consider including language clearly **sunsetting the task force** once it completes its work.

(13) **Specify who is required to notify individuals of their selection to serve on the task force or their ability to appoint members to the task force**. For example, this responsibility could be assigned to the permanent or temporary chair, or the Secretary of the Senate or Chief Clerk of the House of Representatives. If assigned to the chair, consider requiring the Secretary or Chief Clerk to notify the chair of the passage of the legislation creating the task force and to provide the chair with a copy of the legislation.

(14) **Specify the task force's mission** and issues the sponsor wants the task force to specifically address.

(15) **Review Senate Rule 22 and House Rule 18** to ensure compliance with the chamber requirements for legislation creating a task force or similar entity contained in these rules.

Additionally, when the membership of a task force is to be constituted by virtue of the position of the members, **draft the membership list using one reference to the members and enabling them to appoint a designee,** rather than multiple references to the appointment power following each member.

Task Force Membership Where Members Serve by Virtue of Position:

Do:

BE IT FURTHER RESOLVED that the Task Force is composed of the following members, or a designee appointed by the member serving by virtue of position:

(1) The Chair of the Developmental Disabilities Council.
(2) The Chair of the Criminal Justice Council.
(3) The Speaker of the House.
(4) The President Pro Tempore of the Senate.

Don't:

BE IT FURTHER RESOLVED that the Task Force is composed of the following members:

(1) The Chair of the Developmental Disabilities Council, or a designee appointed by the Chair.
(2) The Chair of the Criminal Justice Council, or a designee appointed by the Chair.
(3) The Speaker of the House, or a designee appointed by the Speaker.
(4) The President Pro Tempore of the Senate, or a designee appointed by the President Pro Tempore.

[109] *Mason's Legislative Manual*, Sec. 503.1.

While all of these requirements are important for the success of a task force, from the perspective of the Division of Legislative Services, numbers 7 and 9 are vitally important as the Division is charged with tracking task force composition and with storing records and reports for later use by legislators and the public. When received, this information is also posted on the General Assembly's website at http://legis.delaware.gov/TaskForces.

Model legislation to establish a task force is provided in Appendix B. This model reflects the requirements set forth above. Model legislation to extend the final date of a task force is provided in Appendix C.

Strike Through
and Underline

PART IV: STRIKE THROUGH AND UNDERLINE

The General Assembly began using the strike through and underline process in January 2012 after the enactment of Senate Bill 63, 78 Del. Laws, ch. 90. This portion of the manual explains that process as applied to bills and discusses why resolutions fall outside this process.

Chapter 1: Bills.

(a) A bill must show the changes it proposes to make to the Constitution, the Code, the Laws of Delaware, or another body of law by using the strike through and underline process.

Failure to underline the language you want added to the Code cannot be fixed by the Code Revisors and will result in the language *not* being added to the Code.

(1) This process first requires that the source material be accurate and current. The only way to ensure the source material is accurate and current is to use the Delaware Code Online or the other resources listed in Part II, Chapter 3 as the source material for bills.

(2) A change to the existing source material must be shown using either the ~~strike through~~ or underline font attribute. If the bill deletes text from the existing source material, the deletion must be shown using the ~~strike through~~ font attribute. If the bill inserts text into the existing source material, the insertion must be shown using the underline font attribute.

> The General Assembly further declares aquaculture in a closed system to be an agricultural activity ~~and that~~ under the authority of the Department of Agriculture which shall coordinate these types of aquacultural activities in the State.

(b) Using the strike through and underline process requires a drafter to consider and adhere to the following techniques to produce accurate, clear, and uniform legislative products.

1. Prefatory language.

Prefatory language is the key component to the strike through and underline process. It serves as the instruction manual for the Code Revisors. Well-drafted prefatory language tells the Code Revisors where and how to change the Constitution or the Code and simultaneously furthers the client's intent and saves the drafter's time.

(1) The prefatory language should, at a minimum, state the exact portion of the Constitution, Code, Laws of Delaware, or other body of law being amended and include the phrase "by making deletions as shown by strike through and insertions as shown by underline as follows:". The deletions and insertions language should be included even if making only deletions *or* insertions. See example on next page.

> Section 1. Amend § 101, Title 1 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

(2) "Strike through" is two words. Use "underline" rather than "underlining," since "underlining" is often misspelled or spell-check transforms it into "underling" or "underlying."

(3) Use prefatory language to include additional instructions that would aid the task of the engrosser or the Code Revisors.

> Section 1. Amend § 101, Title 1 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows and by redesignating accordingly:…
>
> **See Part VI, Ch. 2, Drafting Rule 25(b) for a discussion of this language relating to Definitions.**

(4) Section 109(d)(1) of Title 1 states that "[i]f the changes are such as do not lend themselves easily to this type of amendment [strike through and underline], the amending act may state that the section (specifying it by section and title number) is amended to read as thereinafter set forth." The prefatory language would be an important part of this process. However, using this process is disfavored by Legislative Hall drafters, except in rare circumstances, as it does not provide the context that the strike through and underline process provides. Instead, show the section to be deleted as struck through and the new section underlined. Doing so provides the needed context.

2. Amount of existing text to include.

It is difficult to construct a general rule regarding how much existing text to include within a bill, as each situation is unique. Take a surgical approach, however, and include only the smallest portion of text possible based on the changes made and the need for context in understanding the changes made. For example, if making changes only to a subsection, rather than the whole section, include only the subsection. Setting out large, unchanged portions of existing text makes finding the changes much more difficult and wastes printing resources.

> Always include the section heading for the Constitution or Code provision being amended, even when the section of the Constitution or section and title of the Code is already listed in the prefatory language and is changing a subsection far removed from the heading. Including the section heading adds context to the bill that enables the reader to locate the provision within the Constitution or Code.

But, always include the introductory language to a listing provision, even when changing an item in the list far removed from the introductory language. Including the introductory language adds context to the bill that enables the reader to better understand the item changed. See example on next page.

§ 222. General definitions.
As used in this chapter:
(1) "Cat" means a feline, either domestic or undomesticated.

When used in the Criminal Code:
§ 102. General definitions.
As used in this chapter:
(3) "Conviction" means a verdict of guilty by the trier of fact, whether judge or jury, or a plea of guilty or a plea of nolo contendere accepted by the court.

3. Amending "listing" sections.

When amending "listing" sections, such as definition sections, begin by including the introductory language of the definition section, even if it is not being changed. Then, include the paragraphs actually being amended. If paragraphs are being inserted, do not include all of the paragraphs following the insertion simply to change the number or letter designation. As discussed previously, and in Part VI, Ch. 2, Drafting Rule 25(b), this should be accomplished using the prefatory language. See Part VI, Ch. 2, Drafting Rule 29A for more discussion on this topic and an example.

Always include the introductory language to a list, even if not including the entire list.

4. Show deleted text first.

If existing text is being deleted and replaced, show the deleted text first, then the inserted text.

The Department ~~may~~ shall conduct a study of the deer population in the State.

5. How much text to delete.

Ordinarily, strike through only the text that is to be deleted from the existing law. Sometimes, however, clarity may be aided by deleting additional existing text and then adding the new text. In such a case, consider the following:

Do: The ~~applicant must file an~~ department must receive the application and filing fee within 15 days.

Don't: The ~~applicant~~ department must ~~file an~~ receive the application and filing fee within 15 days.

6. Make changes to entire words, numbers, and internal hierarchy designations.

The following techniques enable the reader to better see and comprehend the changes that are being made.

a. Make changes to entire words.

Do: ~~Because the~~ The department…

Don't: ~~Because t~~The department…

Do: ~~applicant~~ applicants

Don't: applicants

b. Make changes to entire numbers.

Do: The tenant has ~~30~~ 35 days…

Don't: The tenant has 3~~0~~5 days…

c. When renumbering or relettering is required, include the parentheses enclosing the existing number or letter in the deletion.

Do: ~~(3)~~ (4)

Don't: (~~3~~ 4)

7. When underline is required.

When a Section of a bill inserts text into the Constitution, Code, Laws of Delaware, or a charter, the inserted text must be underlined to indicate it is new text.

8. When underline is not required.

Do not underline portions of the bill that are not intended for inclusion in the Constitution or Code. Provisions such as a preamble (whereas clauses), effective date or applicability clause, sunset clause, savings clause, severability clause, repealing clause, appropriations clause, or short title are typically not included in the Constitution or Code and, therefore, are not underlined. However, if the drafter intends to include one of these provisions in the Constitution or the Code, it must be underlined.

(c) **Drafting Tips.**

(1) Do not use a chapter citation in the prefatory language unless you are adding an entirely new section (§) to the Code or amending multiple sections within a chapter. When amending multiple sections within a chapter, a reference to the chapter allows a drafter to include multiple Code sections within one bill Section. When amending a single existing section (§), the section number and title number will do the job. This ensures one less typographical error to worry about, especially because chapter numbers and section numbers do not always match; e.g., Chapter 5 of Title 11 begins with § 501 and continues through sections in the 1400s.

(2) Do not use a section or subsection designation in prefatory language when adding a new section or subsection because if you have to change the designation, it will need to be changed only once – not twice.

(3) Sometimes the Delaware Code Online may contain two of the same Code section. This is sometimes referred to as "versioning" and should occur only when one is effective currently and the other will be effective on some future date. Include both versions in the bill to make clear which version should include the changes made in the bill. See Part VI, Ch. 2, Drafting Rule 30A for additional information on this issue.

(4) **Do not return to the old deleting and replacing method of amending the Code**, which was in place before the current strike through and underline process. Aside from confusing the reader who is accustomed to the strike through and underline process, a return to the old method may not accomplish the drafter's intent, especially when removing specific phrases throughout the Code and replacing them with new phrases. Do not presume that the Code always refers to a governmental unit, or another phrase, in the same way every time. Variations in style can occur which must be accounted for. The only way to ensure accuracy is for each drafter to do individual searches to determine all possible variations and correct those variations using the strike through and underline process.

Chapter 2: Resolutions.

Resolutions do not use the strike through and underline process, because they do not make additions or deletions to the Constitution, Code, Laws of Delaware, or a charter.

Resolutions sometimes require an amendment to correct technical errors or make additions, particularly with respect to the membership of a task force. In these instances, use the instructional language contained in Part V to indicate changes being made to the resolution, but do not use strike through and underline.

THIS PAGE INTENTIONALLY LEFT BLANK

Amendment
Format

PART V: AMENDMENT FORMAT

Beginning in January 2014, in light of the newly adopted strike through and underline process, Legislative Hall drafters began using a simpler, clearer format for legislative amendments. This portion of the manual discusses the proper format for legislative amendments.

A. Rules for drafting amendments, generally.

(1) Just as with the prefatory language for bills, the instructional language in amendments is key to the amendment markup process, as it is the instruction manual for the engrosser and the Code Revisors. Well-drafted instructional language furthers the client's intent, saves the drafter's time, and aids the task of the engrosser and the Code Revisors. And, even more so than with bills, poorly-drafted instructional language can result in a client's intent not being fulfilled, if the language does not provide correct instruction or the amendment is unengrossable.

(2) Always provide the line number of the text to be deleted from or inserted into the bill. If more context is needed to locate the appropriate text, indicate the location by reference to other text within the line number. When including a punctuation mark in the instructional language, write out the name of the punctuation mark as it is easier to read its name than to see its representation.

> AMEND House Bill No. 123 on line 7 by deleting "and the alleged violator" which appears after "officer" and before the comma therein.

(3) In the instructional language, use the term "deleting" to remove text and "inserting" to add text.

(4) In the instructional language, use the font attribute used in the bill. If the bill deletes text, show it in the instructional language as ~~struck through~~. If the bill inserts text, show it in the instructional language with an underline. If the text had no font attribute in the bill, show it that way in the instructional language. The text being deleted from the bill must include the proper font attribute, or lack thereof, so the engrosser understands how, if at all, to alter the bill.

(5) In the instructional language, use the appropriate font attribute for text being inserted into the bill. If the text being inserted is new to the source material, it should be shown underlined. If the text is existing source material being deleted from the source material by the amendment, it should be deleted by showing it without a font attribute and then by showing it ~~struck through~~. (See example 4 in Section B of this Part.) However, if the inserted text is existing source material that the bill deleted but the amendment is now reinstating, it should be shown without a font attribute. (See example 3 in Section B of this Part.) The inserted language must fit seamlessly into the bill to tell the engrosser how to alter the bill and Code Revisors how to alter the Code.

(6) Use quotation marks to indicate the text being deleted from or inserted into the bill, or to indicate bill text used for context within the instructional language. In doing so, ignore the grammatical convention requiring certain punctuation be placed within the quotation marks. A period, comma, or other punctuation mark should be within the

quotation marks if it appeared in the existing source material or must appear in the bill to properly amend the existing source material. A period, comma, or other punctuation mark should be outside of the quotation marks if it is part of the punctuation necessary for the instructional language sentence. See Part VI, Ch. 2, Drafting Rule 23(h) regarding quotation marks.

If Senate Bill No. 465 states on line 45:
The ~~applicant must file his or her application~~ department must receive the application, proof of ownership, and the filing fee within 15 days.

and the amendment is to remove "proof of ownership," use the following instructional language:
AMEND Senate Bill No. 465 on line 45 by deleting "application, proof of ownership," and inserting in lieu thereof the following: "application".

Be aware that if material within the quotation marks is quoted, as in the case of defined terms, it should be set off with double quotes, just as it does or would appear in the Delaware Code (ex. "water").

(7) Use "redesignating accordingly" in the instructional language when making a deletion from or insertion into an alphabetized listing section. This language enables the drafter to quickly make changes to designations that are needed after the drafter makes a deletion or insertion.

If House Bill No. 417 creates a new definition section on lines 105 through 122 of the bill, designates the definitions (1) through (10), and a new defined term, "individual," is to be inserted after line 115 and before line 116, draft the following instructional language and amendment:

AMEND House Bill No. 417 after line 115 and before line 116 by inserting the following and redesignating accordingly:

"(4) "Individual" means a human being."

(8) Drafting an instruction to delete entire lines and insert in lieu thereof new lines is a dangerous proposition that should be undertaken with extreme care.

(9) Always include a synopsis to the amendment and accurately describe how the amendment impacts the bill.

(10) Do not amend the bill's synopsis. Remember, the bill's synopsis will not be published in the Constitution, Code, or Laws of Delaware.

B. Rules for drafting amendments, specific examples.

1. Deleting new text added by the bill.

If Senate Bill No. 465 states on line 45:
The ~~applicant must file his or her application~~ department must receive the application, proof of ownership, and the filing fee within 15 days.

to remove "proof of ownership," use the following instructional language:
AMEND Senate Bill No. 465 on line 45 by deleting "application, proof of ownership," as it appears therein and inserting in lieu thereof the following: "application".

2. Replace new text added by the bill.

Use the following technique for replacing text (new text, existing text, deleted existing text) within the bill.

If Senate Bill No. 465 states on line 45:
The ~~applicant must file his or her application~~ department must receive the application, proof of ownership, and the filing fee within 15 days.

to replace "proof of ownership" with "current business license," use the following instructional language:
AMEND Senate Bill No. 465 on line 45 by deleting "proof of ownership," as it appears therein and inserting in lieu thereof "current business license,".

3. Reinserting source material text deleted by the bill.

If House Bill No. 417 states on lines 17 through 19:
The court shall~~, for an individual with an alcohol concentration of .15 or more or who refused a chemical test,~~ prohibit a person convicted of driving under the influence from operating a motor vehicle unless such motor vehicle is equipped with a functioning ignition interlock device.

to reinsert the deleted text, use the following instructional language:
AMEND House Bill No. 417 on lines 17 through 19 by deleting "shall~~, for an individual with an alcohol concentration of .15 or more or who refused a chemical test,~~" as it appears therein and inserting in lieu thereof "shall, for an individual with an alcohol concentration of .15 or more or who refused a chemical test,".

4. Deleting additional source material text in the bill.

If Senate Bill No. 465 states on line 45:
The ~~applicant must file his or her~~ department must receive the application and the filing fee within 15 days.

to remove "and the filing fee" from the source material, use the following instructional language:
AMEND Senate Bill No. 465 on line 45 by deleting "and the filing fee" as it appears therein and inserting in lieu thereof "~~and the filing fee~~".

5. Deleting additional source material text in the bill and replacing it with new text.

If Senate Bill No. 465 states on line 45:
The ~~applicant must file his or her~~ department must receive the application and the filing fee within 15 days.

to delete "15" and replace it with "20," use the following instructional language:
AMEND Senate Bill No. 465 on line 45 by deleting "15" as it appears therein and inserting in lieu thereof "~~15~~ 20".

6. Inserting additional text into a source material provision.

If Senate Bill No. 465 states on line 45:
The ~~applicant must file his or her~~ department must receive the application and the filing fee within 15 days.

to add "proof of ownership" to the items to be provided to the department, use the following instructional language:
AMEND Senate Bill No. 465 on line 45 by inserting ", proof of ownership," after "application" and before "and" therein.

7. Deleting additional source material text not in a bill.

If the bill has amended only a portion of a section of the Code and now the amendment drafter wishes to delete a portion of the section that was not in the bill, determine the appropriate place for the deletion of the additional source material and use the appropriate instructional language.

If a bill that amends § 101(d) beginning on line 3 of the bill where the amendment drafter now wants to delete a portion of subsection (c), the appropriate instructional language is:

AMEND House Bill No. 234 after line 2 by inserting the following:
"(c) The Director shall set the filing fee on new license applications based on the average filing fee for similar applications in Maryland~~, Pennsylvania, and New Jersey~~."

Note: In the example above, if the prefatory language referred only to § 101(d), the prefatory language would also need to be amended to accomplish the amendment to subsection (c).

8. Inserting an additional new provision into the bill.

To insert an additional new Code provision into a Section of a bill, determine the appropriate place for the insertion of the new provision and use the appropriate instructional language.

In a bill that adds a new Code section with subsections (a) through (c) and ends on line 55 before another bill Section beginning on line 56, the appropriate instructional language is:

AMEND Senate Bill No. 465 after line 55 and before line 56 by inserting the following:
"(d) The person licensed under this chapter that provides outpatient treatment to a minor shall note in the minor's medical record the name of each person present when the treatment is provided.".

To insert an additional Section into a bill, determine the appropriate place for the insertion (typically the end) and use the appropriate instructional language. If the new Section needs to be inserted between existing Sections rather than at the end, do not renumber the Sections that follow. Instead, use the method discussed in Part VI, Ch. 2, Drafting Rule 30(h).

To include an effective date in the bill, the appropriate instructional language is:

AMEND Senate Bill No. 234 by inserting a new Section after line 55 as follows:
"Section 3. This act takes effect on July 1 following its enactment into law.".

This language can also be used to insert an additional Section containing changes to the Code whether text is being deleted or inserted, or both. Remember to follow the rules for bills in Part IV, Ch. 1.

9. Deleting multiple lines or an entire Section from the bill.

To delete multiple lines or an entire Section, whether original source material or new text, do so using only instructional language.

AMEND House Bill No. 123 by deleting lines 6 through 9 in their entirety.
AMEND House Bill No. 123 by deleting Section 4 in its entirety.

With regard to deleting multiple lines of original source material in the bill, use this technique to replace the lines with original source material that has been stricken through (to effectuate a deletion of the original source material) by adding "and inserting in lieu thereof the following" and applying the strike through font attribute to the original source material.

AMEND House Bill No. 123 by deleting lines 6 through 9 in their entirety and inserting in lieu thereof the following:

"A person sentenced to 2 years or more under the Truth in Sentencing laws who is confined to a correctional facility administered by the Department may submit an application for review by the Board of Parole for the modification of the sentence.".

With regard to deleting an entire Section, use this technique to replace the Section with a new Section containing new text by adding "and inserting in lieu thereof the following" to the instructional language followed by the text of the new Section.

> AMEND House Bill No. 123 by deleting Section 4 of the Bill in its entirety and inserting in lieu thereof the following:
> "Section 4. Amend § 101, Title 11 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:
> (e) A person sentenced to 2 years or more under the Truth in Sentencing laws who is confined to a correctional facility administered by the Department may submit an application for review by the Board of Parole for the modification of the sentence.".

10. Inserting multiple words into a sentence or provision.

To insert multiple words into a sentence or provision containing new text, use instructional language to delete the provision in its entirety by reference to the appropriate line numbers. Then, insert in lieu thereof the desired text, which must be set forth following the instructional language and must be shown using the underline font attribute.

> AMEND House Bill No. 123 by deleting lines 6 through 8 in their entirety and inserting in lieu thereof the following:
> "A person sentenced to 2 years or more under the Truth in Sentencing laws who is confined to a correctional facility administered by the Department may submit an application for review by the Board of Parole for the modification of the sentence.".

Also use this technique for a large amount of text to be deleted from or inserted into an existing Code provision. Remember to apply the correct font attribute to the amendatory text.

While this technique is useful when piecemeal deletion or insertion of text would be cumbersome, exercise caution, as deleting too little or too much text (by reference to the line numbers) can result in problems with integrating the inserted text into the bill.

11. Striking other amendments.

To undo all of the changes made by a previous amendment, use only instructional language to strike an amendment in its entirety. This process was discussed and sample instructional language was provided in Part III, Ch. 4. The language is repeated in the example on the next page for convenience.

> **Amendment Striking an Entire Amendment:**
> AMEND House Bill No. 504, as amended, by striking House Amendment No. 2 in its entirety.
>
> **Amendment Striking an Amendment by Line Numbers:**
> AMEND Senate Bill No. 606, as amended, by deleting lines 1 to 23 of House Amendment No. 4 in their entirety.

12. Amending the enactment clause.

It may be necessary to amend an enactment clause to include a super-majority vote parenthetical. To do so, instructional language is used to place the super-majority vote parenthetical after "DELAWARE" and before the colon.

> AMEND House Bill No. 123 by inserting in the enactment clause after "DELAWARE" and before the colon the following: "(Two-thirds of all members elected to each house thereof concurring therein)".

It may be necessary to amend an enactment clause to remove a super-majority vote parenthetical. To do so, instructional language is used to remove the super-majority vote parenthetical after "DELAWARE" and before the colon.

> **Amendment to the Enactment Clause:**
> AMEND Senate Bill No. 164 by deleting in the enactment clause after "DELAWARE" and before the colon the following: "(Three-fifths of all members elected to each house thereof concurring therein)".

13. Adding whereas clauses to a bill introduced without them.

It may be necessary to amend a bill introduced without whereas clauses in order to include whereas clauses. To do so, instructional language is used to remove the enactment clause and insert the necessary whereas clauses followed by a new enactment clause.

> **Amendment to Add Whereas Clauses:**
> AMEND Senate Bill No. 164 by deleting the enactment clause and inserting before "Section 1." on line 1 the following:
>
> "WHEREAS, small dogs are the best dogs of all; and
> WHEREAS, small dogs should be honored with their own provision in the Delaware Code.
> NOW, THEREFORE:
> BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:".

14. Adding or removing a bill section.

When inserting a bill Section to a bill, add a letter, beginning with "A", to the new bill Section preceding the addition. When removing a bill Section from a bill, do not renumber the remaining bill Sections.

D. Amendment to an amendment.

An amendment to an amendment (called an amendment of the second degree) is used to make a change to an amendment that has been introduced. The House Rules specifically mention the use of an amendment to an amendment;[110] however, the Senate rules make no mention of an amendment to an amendment. Additionally, history indicates that amendments to an amendment are more likely to occur in the House rather than the Senate. This is likely because the House allows voice votes on amendments and amendments to amendments and the Senate does not.

[110] House Rule 23(g). House Rule 40(a)(11) prohibits an amendment to an amendment to an amendment.

When drafting an amendment to an amendment, all of the requirements for drafting an amendment listed in subsection (a) of this chapter apply. In addition:

(1) Include in the instructional language that the amendment to the amendment is amending the amendment.

AMEND House Amendment No. 1. to House Bill No. 504 on line 2 by deleting "and" and inserting in lieu thereof "or".

(2) Carefully consider how the amendment to the amendment will impact the bill, to ensure proper integration by the engrosser.

An example of an amendment to an amendment is provided in Appendix A-5.

E. Amendment to a bill, as amended.

If a bill has already been amended it is known as "a bill, as amended." To prepare an amendment to a bill, as amended, do the following:

(1) When drafting the instructional language for an amendment to a bill that has already been amended, ensure the instructional language recognizes that the bill has been amended.

AMEND House Bill No. 606, as amended, on line 31 of House Bill No. 606. . .

(2) Carefully consider whether the amendment to be made is to the original bill or an attached amendment to the bill made by the other chamber, as it determines how the instructional language for an amendment should be drafted. Amend the original bill when the amendment to the bill has not impacted the language in the original bill that needs to be amended. Amend the amendment to the bill when the amendment to the bill has impacted the language in the original bill that needs to be amended; in this case an amendment to the original bill is not possible because the line numbers of that portion of the original bill technically are no longer accurate and the language is likely not accurate.

Instructional Language for an Amendment to the Original Bill:
AMEND House Bill No. 504, as amended, after line 78 and before line 79 of House Bill No. 504 by inserting the following:

Instructional Language for an Amendment to the Amendment to Original Bill Made by the Other Chamber:
AMEND House Bill No. 504, as amended, by deleting lines 8 and 9 of House Amendment No. 1 to House Bill No. 504 in its entirety and inserting in lieu thereof the following:

(3) Be alert for amendments which have been introduced but not yet considered by the chamber. If possible, the proposed amendment should be drafted to avoid a technical drafting conflict with an already-introduced amendment. From a purely technical perspective, the goal is that all known amendments become part of the bill without interference from each other.

An example of an amendment to a bill, as amended, is provided in Appendix A-6.

Formatting and
Drafting Rules

PART VI: FORMATTING, STYLE, GRAMMAR, AND OTHER PRINCIPLES OF GOOD LEGISLATIVE DRAFTING

> *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."*[111]

The principal functions of legislation are: (1) to *create* or *establish*; (2) to *impose* a duty or obligation; (3) to *confer* a power, *create* a right, or *grant* a privilege; and (4) to *prohibit* conduct. The clarity and precision of legislation is enhanced by plain and orderly expression of these functions. This is the focus of this manual, to improve the accuracy, clarity, and uniformity of the General Assembly's legislative product. No place does that focus become clearer than in the formatting, style, and grammar used in the creation of legislation. Adherence to the principles in this manual will ensure legislation mirrors the format, style, and grammar of the Code and will, in turn, create for this State a code of laws that its citizens can understand. Furthermore, we have a statutory obligation to draft consistently:

> In the enactment of new laws, the plan, scheme, style, format[,] and arrangement of this Code shall be followed as closely as possible to the end that the Code and all amendments thereto will comprise a harmonious entity containing all the laws of this State, then in effect, of a public and general nature.[112]

Chapter 1: Formatting Rules.

In drafting legislation, "formatting" is used to describe the layout of the legislation or Code. All legislation, particularly bills, should be drafted to reflect the formatting found in the Code. This promotes uniformity with the Code and between pending legislation, accuracy in the process of amending or codifying legislation, and readability.

The following rules serve as a guide to proper formatting.

Rule 1. Use Microsoft Word.

The DELIS computer drafting system functions in conjunction with Microsoft Word. Draft all legislation using Microsoft Word to ensure access to the formatting features discussed in this chapter. Additionally, using Word enables the transfer of drafts prepared outside of Legislative Hall into DELIS.

---

[111] 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)).

[112] 1 *Del. Code* § 109(g).

Rule 2. Track Changes Function.

Do not draft legislation using track changes or similar function in Microsoft Word.

A note for drafters outside of Legislative Hall: **do not send draft legislation to a legislator or legislative staffer if the draft has been composed using track changes**, as these documents cannot be directly entered into DELIS without causing significant issues.

Rule 3. Fonts.

All legislation must be drafted using the Times New Roman font style in 10 point, using black font only.

Do not add font styles, such as **bold** or *italics*, to the text of a legislative vehicle. Further, do not use all capital letters for emphasis. Capitalization must be used only in conformity with the rules for capitalization. See Chapter 2, Drafting Rule 18.

Rule 4. Paragraphing and Spacing.

"Paragraphing" means the alignment, indentation, and spacing of the body of the legislation. Paragraphing in legislation should be set as follows, using the "Paragraph" dialog box in Microsoft Word:

(1) Alignment: Justified

(2) Indentation: Left, 0"
Right, 0"
Special Indentation Rule: First line by 0.5"

(3) Spacing: Before, 0 pt
After, 0 pt
Line Spacing: Double

For drafters within Legislative Hall, these paragraphing rules are the default settings within DELIS. These settings must be applied to legislation drafted outside DELIS before importing it into DELIS. Again, these rules apply to the body of the legislation. The synopsis conforms to these settings, except it is single spaced.

Additional spacing rules are as follows:

(1) One space after the period at the end of a sentence and before the start of a new sentence.[113]

[113] Typographers have universally agreed that one should use one space after a period. Typewriters, with their use of monospaced type, required the use of two spaces after a period to aid in spotting the space between sentences. The return to proportional typesetting of today's fonts, with the exception of Courier, means that adding two spaces after a period no longer enhances readability. See Farhad Manjoo*, Space Invaders: Why you should never, ever use two spaces after a period*, Slate*, at* http://www.slate.com/articles/technology/technology/2011/01/space_invaders.html (last visited September 23, 2021).

(2) One space after a comma, a colon, or a semicolon.

Use only 1 space after punctuation.

(3) One space after a period or parentheses when those punctuation marks are used in the hierarchy of a statute (as discussed in Formatting Rule 5).

(4) One space after the section symbol (§) and before the section number.

Review the draft to ensure that there are not blank line numbers at the end of the legislation or extra pages with no text. This saves time and printing costs.

Rule 5. Hierarchy and Indentation.

The internal hierarchy of legislation amending the Delaware Code should be consistent with the internal hierarchy of the Delaware Code, which is as follows:

For a Code section with a designated first subsection:

§ 101.
(a)
(1)
a.
1.
A.
I.
(A)
(I)

Following Rule 5 is one of the easiest ways to ensure you're drafting consistently and making your bill readable. Where a provision is indented allows readers to quickly identify where the provision fits in the statute's overall scheme.

For a Code section with an undesignated first subsection, typically a section with introductory language such as that found in a definition section:

§ 101.
[Introductory language]
(1)
a.
1.
A.
I.
(A)
(I)

Both examples are shown indented following the format to use, which is applied using the Paragraph function in Microsoft Word as follows:

§ 101. [Indentation, Left, 0'; Special, First line By 0.5"]
(a) [Indentation, Left, 0"; Special, First line By 0.5"]
(1) [Indentation, Left, 0.25"; Special, First line By 0.5"]
a. [Indentation, Left, 0.50"; Special, First line By 0.5"]
1. [Indentation, Left, 0.75"; Special, First line By 0.5"]
A. [Indentation, Left, 1"; Special, First line By 0.5"]
I. [Indentation, Left, 1.25"; Special, First line By 0.5"]
(A) [Indentation, Left, 1.50"; Special, First line By 0.5"]
(I) [Indentation, Left, 1.75"; Special, First line By 0.5"]

Do not use auto numbering or auto lettering; draft the internal hierarchy manually.

Rule 6. Auto Numbering and Auto Lettering.

Draft legislation without auto numbering or auto lettering of the text. The default setting in DELIS is to suppress this automatic function. Outside drafters can turn off this feature in their Word document by using the following instructions:

(1) Go to the "File" tab.

(2) Click "Options."

(3) Click "Proofing."

(4) Click the "Auto Correct Options" button.

(5) Click the "Auto Format" tab.

(6) Remove the checks from "Automatic bulleted list" and "Automatic numbered list" boxes.

(7) Click the "Auto Format As You Type" tab.

(8) Click "OK."

Rule 7. Line Numbers, Page Numbers, Tables, and Section Breaks.

When opening a new Word Document in DELIS, line numbers, page numbers, tables, and section breaks are automatically created. Take care to ensure that these automatic features are not altered, as these features serve important functions for the working of DELIS.

Line numbers appear on the left hand side of the document and page numbers at the bottom. Section breaks are invisible unless the "Show Paragraph Markings" function in Word has been selected.

Chapter 2: Drafting Rules.

The Drafting Rules establish the conventions for style and grammar in drafting legislation. The purpose of the rules is to promote accuracy, clarity, and uniformity, with the goal being the best possible legislative product that is in harmony with the existing Code. This goal is important, not only because it is statutorily required, but also because laws should be written

with the understanding of their place within the existing Code and an eye toward the future of the Code. This can be accomplished if drafters adhere to these conventions.

Legislative drafting is an art, not a science. While these rules should be followed to the extent possible given the task at hand, there are occasions when the complexity of the legislation or its uniformity with other laws in the Delaware Code, or outside the Code in cases of a uniform law, requires deviation from these rules. Do not deviate from these rules, however, absent a conscious decision and sound reason.

These rules are not intended to be an exhaustive list of guidelines to good legislative drafting. To the extent that questions remain on topics such as spelling, compounding, punctuation, capitalization, abbreviations, signs and symbols, and numerals, augment these rules by reference to outside sources. For general style questions outside the scope of this Manual, consult a style guide such as Strunk and White's *The Elements of Style*. For generally accepted meanings and standard usage of words, consult a reputable dictionary, such as the latest edition of *Webster's Collegiate Dictionary* and *Webster's Third New International Dictionary*. Additionally, the staff of the Division of Legislative Services is always available for assistance.

Rule 1. Clarity and Readability.

(a) The purpose and effect of legislation should be evident from its language.

(b) Choose words that are plain and commonly understood.

(c) Use language that conveys the intended meaning to every reader.

(d) Omit unnecessary words.

(e) Use correct grammar.

(f) Use references, citations, lists, formulas, and tables to promote clarity and readability.

Comment

Clarity and readability are the hallmark of good legislative drafting. From this rule all others naturally flow. If legislation is not clear and readable, it is less likely to be read or supported, frustrating a client's efforts to pass legislation as much as an incorrect vote count or a parliamentary maneuver by the opposition.

Rule 2. Brevity and Simplicity.

(a) Use the shortest sentence that conveys the intended meaning.

(b) Omit needless language.

(c) If a word has the same meaning as a phrase, use the word. See the "Use Plain English" table in Part VI, Ch. 3, Sec. 2 regarding General Guidelines for Drafting.

(d) Avoid archaic words or legalese.

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.[114]

Rule 3. Consistency.

> *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.*[115]

(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.[116]

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

(c) When a choice must be made between following the rules of drafting and

> "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."
>
> R.J. Martineau at page 69.

[114] 1A Singer, *Sutherland Statutory Construction*. § 21:5 (7th ed. 2012).
[115] *Id.*
[116] *See also* Part VI, Ch. 2, Drafting Rule 5.

maintaining consistency with earlier statutes, or between rewriting an entire section or chapter or amending a section or chapter by adding an awkward sentence, consult with the client about how to resolve the issue.

Comment

Consistency helps prevent different interpretations of similar provisions. Choose the best word and use it throughout the legislation. Do not switch between different words for the same idea as in: 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." **Embrace monotony.**

Rule 4. Sentence Structure.

> *In the 16th Century, [England's] King Edward VI requested that statutes be "more plain and short, to the intent that men might better understand them."*[117]

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 in legislation to 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. In contrast, grammar, when used in drafting legislation, is a collection of rules developed to substantially decrease 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, as discussed in these rules, a departure from common usage is desirable.

Rule 5. Subject of Sentence.

Unless it is clear from the context, use as the subject of each sentence the actor (the person or entity) to whom a power, right, or privilege is granted or on whom a duty, obligation, or prohibition is imposed. Again, be consistent. If you use "person," do not switch to "individual," "party," or "body." And, use "individual" when you mean a human being, because "person" is defined in § 302 of Title 1 as including entities and human beings.

Rule 6. Tense, Voice, Number, and Mood.

(a) **Use the present tense;** the law speaks when it is read.

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

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

(b) **Use the active voice instead of the passive voice,** unless the actor cannot be identified or the statement is intended to be universal. See the Comment for an explanation of active and passive voice.

> **Do:** An officer may arrest a criminal who is wanted by the FBI.
>
> **Don't:** A criminal who is wanted by the FBI may be arrested by an officer.

(c) **Prefer the singular to the plural.** A statute is intended to speak to each person who is subject to it and should be drafted that way. The singular form is not limiting, as § 304(a) of Title 1 makes it clear that "[w]ords used in the singular include the plural." Therefore, do not use the singular and plural of the same word joined by "or" or make a singular word plural by adding "(s)" or "(es)."

> **Do:** The applicant shall submit the required fee.
>
> **Don't:** The applicant or applicants shall submit the required fee.
>
> **Don't:** The applicant(s) shall submit the required fee.

The singular is clearer than the plural.

> **Do:** A reversionary interest is subject to a limitation in the document that creates the interest.
>
> **Don't:** Reversionary interests are subject to limitations in the documents that create the interests.

However, do not write "one" when "one or more" is intended.

> **Do:** Notice must be posted on the person's website, if the person maintains one or more.
>
> **Don't:** Notice must be posted on the person's website, if the person maintains one.

(d) **Draft in the indicative mood whenever possible.** The English language has three moods. The indicative mood expresses a fact or declaration. The imperative mood expresses a command. The subjunctive mood expresses a hypothetical situation or contingency.

Relatedly, avoid "false imperatives," which are expressions that seem to direct behavior but do not. These expressions often include the use of "shall" or "shall not," which are used to declare a legal result rather than to prescribe a rule of conduct.

> **Do:** The Authority is a Delaware corporation.
>
> **Don't:** The Authority shall be a Delaware corporation.

Avoiding false imperatives like the one above ensures that "shall" is used only to command (as a duty). This avoids the weakening of "shall" through interpretation by the courts.[118]

[118] *See* Part VI, Ch. 2, Drafting Rule 11.

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

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 violate this convention as it 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.

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.

If the issue has been litigated, the claimant is not eligible for the program.

Active v. Passive Voice

In the active voice, the subject of the sentence does the action. A sentence in the active voice can be identified by the typical doer of the action, action, receiver of the action structure of the sentence.

The committee reached a decision.

In the passive voice, the subject receives the action. A sentence in the passive voice reverses the structure of the sentence so that the receiver of the action is first, then the action itself, then the doer of the action usually preceded by the words "by" or "by the."

A decision was reached by the committee.

As indicated by the rule, use the active voice instead of the passive voice. Using the active voice identifies more clearly who is to do what. Avoiding vagueness as to the required actor is especially important when the sentence grants a power or a privilege or imposes a duty.

There may be times, however, when drafting legislation that using the passive voice is appropriate. For example, penalty provisions are often drafted in the passive voice. And, it may be appropriate to use the passive voice in a later sentence or provision if the actor and the action have already been identified.

(a) A person who receives a grant under this section shall submit a report to the Secretary. (f) The report submitted under subsection (a) is due by March 1 each year.

Rule 7. Gender.

Do not use gender-based personal pronouns.

Comment

In 2023, Senate Bill No. 97 of the 152nd General Assembly, enacted as Chapter 42 of Volume 84 of the Laws of Delaware, directed the Code Revisors to use gender silent techniques to ensure masculine or feminine pronouns are not used in Delaware Code unless the usage requires otherwise. Drafters can comply with gender silent requirements by minimizing the need for gender-based pronouns. These pronouns can be avoided by repeating the noun. Do not use the phrase "he or she," "his or her," or "his/her," or "himself or herself." The passive voice may be used if the actor remains clear.

Guide to Gender-Silencing Statutory Terms

Avoid the Gender-Based Term	Use the Gender-Neutral Term
brother	sibling
chairman	chair
clergyman	member of the clergy, minister
craftsman	artisan, craftsperson
committeemen	committee members
draftsman	drafter
enlisted man	enlisted person
ex servicemen	veterans
feminine hygiene	menstrual
fireman	fire fighter
himself or herself	oneself[119]
husband	spouse
layman	layperson
mailman	mail carrier
man	individual
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

[119] Or, use "the [actor's] own self."

widow, widower	surviving spouse
wife	spouse
woman	individual

Rule 8. People First Language.

Section 608 of Title 29 requires drafters to construct statutes using language that emphasizes that individuals are people first and that their disabilities or conditions are secondary.

Avoid These Terms and Phrases	**Use These Terms and Phrases Instead**
disabled person	individual with a disability
developmentally disabled person	individual with a developmental disability
mentally ill person	individual with a mental illness
mentally disabled person, mentally retarded person	individual with a cognitive disability
autistic person	individual with autism

Rule 8A. Referencing Delaware Governmental Bodies in Delaware Law.

References in Delaware law to Delaware governmental bodies, such as state agencies, do not require the use of "Delaware" before the name of the state agency. It is understood that, unless otherwise noted, references to these governmental bodies mean the Delaware body.

Do: The Department of Transportation shall…

Don't: The Delaware Department of Transportation shall…

References in Delaware law to a governmental body outside of Delaware do require use of the governmental body's affiliation to make clear that a reference to a governmental body outside of this State is intended.

References in Delaware law to a Delaware governmental body must be to the body's proper name, not an acronym for the body, unless the acronym has been defined. See Part VI, Ch. 2, Drafting Rule 17.

Do: The Department of Transportation shall…

Don't: DelDOT shall…

Rule 9. 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.

(b) Do not use redundant couplets, such as "null and void," "power and authority," "sole and exclusive." See the "Avoiding Redundant Couplets" table in Part VI, Ch. 3, Sec. 2, General Guidelines for Drafting.

(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.

Use:

"after" instead of "subsequent to"

"before" instead of "prior to"

"during" instead of "for the duration of"

"under" instead of "pursuant to"

(d) Do not use "pursuant to," "said," "aforesaid," "above," "below," "hereinbefore," "herein," "hereinafter," "aforementioned," "whatsoever," or similar words of reference or emphasis. Instead, refer to the relevant statutory or non-statutory unit with language like "by" or "under" as discussed in subsections (e) and (f).

> ...*under* subsection (b) of this section.

(e) If the result being sought is to be achieved through the operation of that provision itself without the necessity of an administrator taking a particular action, use "by."

> **...**the reduction required *by* this section.

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

> A lessor's right to restitution *under* subsection (a) is subject to…

(g) Do not use "same" as a pronoun; use "it" instead.

> **Do**: I have received your notice and acknowledge it.
>
> **Don't:** I have received your notice and acknowledge same.

(h) 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.

> *Each* owner attending the meeting shall sign a registration card.
>
> **In this example, "each" is appropriate 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, use "an" instead.**

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

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

(k) 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.

(l) 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.

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

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

(o) 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.

A *qualified patient* may make decisions regarding life-sustaining treatment if *the patient* is able to do so.

(p) Do not include "the provisions of" when referring to a provision of an act. For example, do not say "subject to the provisions of this [act]" or "subject to the provisions of Section 2." Instead, say "subject to this [act] or "subject to Section 2." The phrase "the provisions of" adds nothing to the phrase "this [act]." However, it is correct to say, "the procedural provisions of this [act]," because the phrase refers to a subset of the provisions of the act.

(q) Do not begin a sentence with the word "no."

Do: A person may not claim a credit more than once.
Don't: No person may claim a credit more than once.

(r) Use "health care" when the phrase is used as a noun, and "health-care" when it is used as an adjective.

Noun: The nurse works in health care.
Adjective: The nurse works in a health-care facility.

Rule 10. Use of "And," "Or," and "And/Or."

(a) Use "and" when you mean "in addition to" and want to connote togetherness.

(b) Use "or" when you mean "as an alternative to" and the reader must not choose more than one of the two listed alternatives.

(c) **Do not ever use "and/or."** Decide whether "and" or "or" is appropriate and use the proper word or recast the statement like a penalty provision using the phrasing "A" or "B," or both. If there are three or more options, consider rephrasing the text preceding the options to include the language "one or more of the following:".

Comment

"And" and "or" are conjunctions. Conjunctions join words, phrases, or clauses, and they indicate the relation between the elements joined. "And" is conjunctive and means in addition to and connotes togetherness. "Or" is disjunctive and means as an alternative to and tells the reader to "take your pick." Recognize that these words can have different senses depending on the surrounding context and draft to ensure the context fits the desired use of the word.

"And," based on context, can mean:

(1) **Joint.** In this sense, "A" and "B" are considered together as one unit.

(2) **Several.** In this sense, "A" and "B" are considered separately.

(3) **Joint or several.** In this sense, "A" and "B" are considered together as one unit or separately.

(4) **Joint and several.** In this sense, "A" and "B" are considered together as one unit and separately.

Do not ever use "and/or."

"Or," based on context, can mean:

(1) **Inclusive.** In this sense, "or" tells the reader "A" but not "B," "B" but not "A," or both "A" and "B." This is the sense in which drafters often use "and/or."

(2) **Exclusive.** In this sense, "or" tells the reader "A" but not "B," "B" but not "A," but not "A" and "B."

Courts have called "and/or" a "meaningless symbol," a "verbal monstrosity," and an "abominable invention."[120] The Supreme Court of Kentucky called it a "much condemned conjunctive-disjunctive crutch of sloppy thinkers."[121] The Supreme Court of Wisconsin had even more unkind words for it, calling it:

> [T]hat befuddling, nameless thing, that Janus-faced verbal monstrosity, neither word nor phrase, the child of a brain of someone too lazy or too dull to express his precise meaning, or too dull to know what he did mean, now commonly used by lawyers in drafting legal documents, through carelessness or ignorance or as a cunning device to conceal rather than express meaning with view to furthering the interest of their clients.[122]

[120] *See Librach v. Litzinger*, 401 S.W.2d 433, 437 (Mo. 1966); *Retro Television Network, Inc. v. Luken Commc'ns, LLC*, 2012 WL 28689, at *4 n. 7 (E.D. Ark. 2012); *R&R Marine, Inc. v. Max Access, Inc.*, 377 S.W.3d 780, 785 n. 5 (Tex. App. 2012).
[121] *Raine v. Drasin*, 621 S.W.2d 895, 904 (Ky. 1981).
[122] *Employers' Mut. Liab. Ins. Co. of Wisconsin v. Tollefsen*, 263 N.W. 376, 377 (Wis. 1935).

While Delaware Courts have been kinder, they have been no less critical. The Court of Chancery has stated that "[t]he use of the words 'and/or' is forbidden to a careful draftsman and is always to be avoided by a drafter of statutes."[123] The Supreme Court has, in the context of a criminal indictment, held that the use of "and/or" to join criminal offenses in an indictment is "a very problematic method of charging . . . and is unwise and should be avoided."[124]

Bryan Garner, editor-in-chief of *Black's Law Dictionary* and a noted author on legal writing, in making his case that he has never needed it and urging drafters to "kill it" has said:

> If a sign says "No food or drink allowed," nobody would argue that it's OK to have both. (*Or* includes *and*.) And if a sign says "No admission for lawyers and law students," would you argue that either could go in alone? You'd be thrown out of court.
>
> The real problem with *and/or* is that it plays into the hands of a bad-faith reader. Which one is favorable? *And* or *or* ? The bad-faith reader can pick whatever reading seems favorable.[125]

Rule 11. Use of "Shall," "Must," "May," and Substitutes.

The rules for using "shall," "must," and "may" in legislative drafting are precise and often require extra attention.

(a) "Shall" means that a person has a duty. Consider the following when using "shall":

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

(2) A transitive verb is a verb that takes, or precedes, a direct object. In sentences in the active voice, a direct object is the part of the sentence receiving the transitive verb's action. For a discussion of the active voice, see Part VI, Ch. 2, Drafting Rule 6.

(3) A subject is animate when it can respond to a statutory command. For example, an individual, a corporation, and a court are animate.

Proper use of "shall":
The court shall enforce the collection of a tax judgment.

(4) Use the following substitute words instead of "shall":[126]

Use	To Mean
must	is required to
must not	is required not to *(cont. on next page)*

[123] *State ex. rel. State Bd. of Exam'rs in Optometry*, 372 A.2d 214, 217 (Del. Ch. 1977).
[124] *Brown v. State*, 729 A.2d 259, 266 (Del. 1999) (citing *State v. Baker*, 679 A.2d 1002, 1006 n. 2 (Del. Super. 1996)).
[125] Bryan Garner, *Bryan Garner On Words, Ax these terms from your legal writing*, ABA Journal (April 2014), *available at* http://goo.gl/LuKvZk (last visited September 23, 2021).
[126] *See* Bryan Garner, Guidelines for Drafting and Editing Legislation (RosePen Books 2015) and The Uniform Law Commission Drafting Rules (National Conference of Commissioners on Uniform State Laws 2012 Edition).

may	is permitted to, has discretion to, has a right to, is authorized to
is entitled to	has a right to
will	(to express a policy or a future contingency in the manner of normal English)
can	is legally or physically capable
cannot	is legally or physically incapable

(b) "Must" means that a person or thing is required to meet a condition for a consequence to apply. "Must" does not mean that a person has a duty. Consider the following when using "must":

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

(2) An active verb expresses meaning more emphatically and vigorously than its weaker counterpart, an inactive verb. Furthermore, an active verb is "in the passive voice" when it is preceded by a form of the verb "be," examples of which include "is," "was," "has been," "had been," and "will have been."

(3) An inactive verb is one that expresses no action, but simply expresses a state of being. Inactive verbs are also known as "linking verbs". Some of the most common inactive verbs are: "is," "are," "was," "were," "am," "be," "being," "been," "became," "become," "remains," "appears," or "seems."

(4) A subject is inanimate when it cannot response to a command. For example, a contract, a record, and an order are inanimate.

How to Use "Must"

Active Verb in the Passive Voice:
A prior convictions *must* **be set forth** in the application.

Inactive Verb:
The applicant *must* **be** an adult.

Inanimate Subject:
The order *must* state the time and place of the hearing.

(c) "May" means a person is permitted, has discretion, has a right, or is authorized to do something. Use "may" to confer a power, privilege, or right.

How to Use "May"

Granting Power:
The applicant *may* demand an extension of time.

Granting Privilege:
The applicant *may* renew the application.

Granting a Right:
The applicant *may* appeal the decision.

(d) Do not use "shall" or "may" to state a rule of law. Instead, rewrite the sentence using the present tense.

Do: All agents are bound by the decision of the Director.

Don't: All agents shall be bound by the decision of the Director.

(e) Do not use "will," "should," or "ought" as a substitute for "shall" or "must" and do not use "can" as a substitute for "may."

"Should" is properly used in legislative drafting to state a duty to take an action or to have knowledge.

If payment is due and demanded on the delivery to the buyer of the goods, the seller may reclaim the goods delivered on a demand made within a reasonable time after the seller discovers or should have discovered that payment was not made.

Comment

The definitions of "shall" and "must" provided in this rule are derived from 2-4-401(6.5) and (13.7) of the Colorado Revised Statutes. These definitions were adopted by the Colorado General Assembly "in order to clarify the General Assembly's use of [these] authority verbs" as "it is useful to use different words to distinguish between . . . the imposition of a duty on a person . . . and . . . the creation of a condition to which a person or thing is subject but as to which there is no duty to act."[127] While the Colorado act created standard definitions for "must" and "shall," it intended that "the determination of the proper meanings to be attributed to [these words] should include consideration of the context in which [these] words were enacted and are used."[128] The Colorado General Assembly's attempt to clarify the appropriate usage of "must" and "shall" offers a reasonable solution to the issues presented by these words.[129] Going forward, use "must" and "shall" in conformity with this rule.

The editor of this manual agrees with the findings of the Colorado General Assembly and argues that like "and" and "or," "shall," "must," and "may" have multiple senses impacted by the context that surrounds them in a sentence. Therefore, it is imperative that a drafter treat these words with care and use them only as outlined in this rule. Otherwise, a court called on to interpret a provision can find these words have a meaning different from what a drafter intended, undermining these words in other portions of the Code and frustrating legislative intent.

One example of this situation is a "false imperative" discussed in Part VI, Ch. 2, Drafting Rule 6(d). Another example is an "expression of intent." Expressions of intent make it unclear whether the statement is a command or an encouragement. Save expressions of intent for declaration of purpose sections.

Do: The Department shall [or may]…

Don't: The legislature intends that the Department shall…

---

[127] H.B. 13-1029, 69th Gen. Assem., Reg. Sess. (Colo. 2013). See also Jery Payne, *Shall we? We must!*, Colorado LegiSource (Jan. 2, 2014), https://legisource.net/2014/01/02/shall-we-we-must/ (last visited September 23, 2021).

[128] *Id*.

[129] Compare Bryan Garner, *Bryan Garner On Words, Ax these terms from your legal writing*, ABA Journal (April 2014), *available at* http://goo.gl/LuKvZk (last visited September 23, 2021) (Mr. Garner advocates abandoning the use of "shall" entirely.).

Rule 12. Use of "Shall Not," "May Not," and "Must Not."

(a) Use "may not" or "must not" to express a prohibition.

(1) Use "may not" if the verb it qualifies is in the active voice.[130] "May not" means a person is not permitted, does not have discretion, does not have a right, or is not authorized to do something.

The applicant *may not* **submit** more than one application.

(2) Use "must not" if the verb it qualifies is an inactive verb[131] or an active verb in the passive voice.[132] "Must not" means a person is required not to do something.

Inactive Verb:
The applicant *must* not **be** a convicted felon.

Active Verb in the Passive Voice:
The application *must* not **be filed** before the end of the reporting period.

(b) **Do not use "shall not" in legislative drafting.**

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.[133]

Rule 13. Use of "Which" and "That."

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

Which, introducing a nonrestrictive relative clause:
The application, *which* need not be verified, must be signed by the applicant.

[130] *See* comment section to Part VI, Ch. 2, Drafting Rule 6 for a discussion of the active voice.
[131] *See* Part VI, Ch. 2, Drafting Rule 11(a)(2) for a discussion of inactive verbs.
[132] *See id.* for a discussion of active verbs in the passive voice.
[133] R. J. Martineau, *Drafting Legislation and Rules in Plain English,* 81-82 (1991).

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

That, introducing a restrictive clause intended to modify the nearer of two possible antecedents:
An application to renew a *license that* has been revoked…

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

Which, introducing a restrictive relative clause intended to modify the remote antecedent:
An *application* to renew a license, *which* has been rejected…

(d) If the antecedent is not clear, consider rewording the sentence to avoid misconstruction. See example on next page.

If an *application* to renew a license has been rejected, the applicant…

Comment

"Which" is nondefining. It prefaces a relative clause that explains or gives a reason, or adds a new fact, but does not limit or restrict the antecedent. It is almost always preceded by a comma. It is used when the relative clause is informative only and the thought would be complete without it. It is used in a series of terms when one of those terms must be stated prepositionally.[134]

"That" is defining. It prefaces a relative clause that limits or restricts its antecedent. It is almost never preceded by a comma. It is used when the relative clause is needed to complete the thought being expressed.[135]

Rule 13A. Use of "Who" Versus Use of "That" and "Which."

(a) Generally, use "who," "whom," or "whose" to refer to people.

(b) Generally, use "that" and "which" to refer to objects or animals.

(c) There are two notable exceptions:

(1) "Whose," the possessive form of "who," may be used to refer to both people and objects because the English language lacks a possessive form of "that." This use of "whose" avoids an awkward sentence constructed using "of which."

Do: Look, it is the dog whose name I have forgotten.

Don't: Look, it is the dog the name of which I have forgotten.

[134] *See* Lawrence Filson & Sandra Strokoff, *The Legislative Drafter's Desk Reference*, 277-79 (2nd ed. 2008). *See also* Mary Norris, *Comma Queen: Whichcraft – That vs. Which*, The New Yorker, June 6, 2016, *available at* http://www.newyorker.com/culture/culture-desk/comma-queen-whichcraft-that-vs-which (last visited September 24, 2021).
[135] *See* Filson, *The Legislative Drafter's Desk Reference*, 277-79. *See also* Norris, *Comma Queen: Whichcraft – That vs. Which*.

(2) "That" may be used instead of "who" to refer to a group or class of people.

The two teams that win the most games will go on to the championship round.

Rule 14. Use of "Such."

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

Do: The application must be in the form the court prescribes. **Don't:** Such application must be in the form the court prescribes.

(b) Use "such" only to express "for example" or "of that kind."

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

Comment

The problem with the use of "such" is that it may be used in both ways described in this rule. Lawyers typically use the word in both ways and this is a source of confusion for the nonlawyer, as the nonlawyer typically only expects it to be used to mean "of that kind."

There may be situations where it is advisable to break this rule and use "such" in place of "the" or similar words. If "the" fails to identify the antecedent unambiguously, for example when the word being referred to has multiple modifiers, use "such" for clarity. Additionally, if "that" would be confusing or awkward because the provision contains too many "thats" being used in other senses, use "such" instead.[136] However, seriously consider if clarity would be better aided by redrafting the sentence to avoid the need to use "such" in this way.

Rule 15. Use of "If," "When," "Whenever," and "Where."

(a) Use "if" regarding a condition based on the existence or nonexistence of a fact or on the occurrence or nonoccurrence of an event. These conditions may never occur.

"If" – regarding a condition that may never occur: An appeal may be made to district court *if* it is filed within thirty days.

(b) Use "when" regarding a condition that is certain to occur.

"When" – regarding a condition that is certain to occur: A court may order opening of the safety deposit box *when* the owner of the box dies.

[136] Filson, *The Legislative Drafter's Desk Reference* at 288.

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

"Whenever" – if a condition may occur more than once:
Whenever an offense is brought to the attention of the Attorney General, the Attorney General shall prosecute the offender.

(d) Do not use "where" as a replacement for "if," "when," or "whenever." It expresses a condition as to place. For the purposes of drafting, "place" may be stretched to allow "where" to be used as a synonym for "in which" in phrases like "in any case in which."

Rule 16. Use of "Only" and Other Modifiers.

Ensure that "only" and other modifiers are placed immediately before what is modified. "Only" is misplaced more often than any other modifier and can have dramatic results, as illustrated by the following examples.

The Department may place traffic-control devices only at intersections.
"Only" modifies "intersections" and commands the Department to placing traffic-control devices at intersections and not elsewhere.

The Department may place only traffic-control devices at intersections.
"Only" modifies "traffic-control devices" and prohibits the Department from placing other items at intersections.

The Department may only place traffic-control devices at intersections.
"Only" modifies "place" and limits the Department to placing traffic-control devices as opposed to operating or maintaining them.

Comment

Modifiers are words, phrases, and clauses that can bring life to a sentence when used appropriately. Modifiers are as important to legislative drafting as to other forms of writing; the need for accurate use increases, however, due to the harm a misplaced modifier can cause in legislation.

Misplaced modifiers occur frequently in writing and are perhaps the main contributor to ambiguity in statutes.

Rule 17. Abbreviations.

Generally, abbreviations should be avoided.

Do: United States

Don't: U.S.

Do: Department of Justice **or, if the context will support its usage,** Department.

Don't: DOJ

Rule 18. Capitalization.

(a) Generally, capitalize:

(1) The first word of a sentence.

(2) The first word in a new line indented as a paragraph, regardless of whether it follows a colon, except within the Uniform Commercial Code.

(3) The first word after a colon, regardless of whether what follows is a complete sentence.

(4) The first word of a quoted sentence, unless the quoted material is incorporated into the sentence that introduces it.

(5) Proper nouns or words derived from proper nouns.[137]

(6) Calendar divisions or names of holidays.

(7) Names of organized bodies.

(b) Capitalize defined terms only in the definition section unless otherwise required by this rule.

Comment

Code-specific capitalization examples are provided in Part VI, Ch. 3, Sec. 3, A.

If questions remain, consult the *United States Government Printing Office Government Style Manual*, which can be found at http://goo.gl/JWpPc0.

Rule 19. Numbers.

(a) Generally, use the numerical form rather than the word for the number. When a number begins a sentence, however, use the word instead of the numerical form.

A 2-axle vehicle must be inspected yearly.

A new licensee is required to pay the 1-time fee.

The Attorney General shall assign 1 or more Deputy Attorneys General to prosecute homicides in each county.

Eighteen members constitute a quorum.

(b) Do not express a number as both its word and numerical form in parentheses.

Do: After reaching 65 years old, an individual is exempt from all vehicle registration fees.

(cont. on next page)

[137] The trend is moving toward capitalizing "Black," "Indigenous," and other culturally significant identifiers. Adopting this usage for legislative drafting is not yet the standard, but it is something to be aware of. See *Associated Press changes influential style guide to capitalize 'Black,'* The Guardian, available at https://www.theguardian.com/media/2020/jun/20/associated-press-style-guide-capitalize-black and *Why we capitalize 'Black' (and not 'white'),* Columbia Journalism Review, available at https://www.cjr.org/analysis/capital-b-black-styleguide.php (both last visited September 24, 2021).

Don't: After reaching sixty-five (65) years old, an individual is exempt from all vehicle registration fees.

(c) Write fractions as numerals, including half a year when drafting an age.

Do: The tax rate increase for 2014 is 3/4 of a percent.

Don't: The tax rate increase for 2014 is three-fourths [or 3/4ths] of a percent.

Do: The exemption applies to an individual who is 17 ½ years old or older.

Don't: The exemption applies to an individual who is 17 and one half [or 17.5] years old or older.

(d) Write measurements as numerals:

12 inches
400 feet
4,000 pounds
30 miles per hour
20 degrees

(e) Write money as numerals:

Values over $999.99 include commas as appropriate: "$1,000"

Values under $10 are written as dollars and cents: "$3.00"

Values under $1.00 are expressed as cents: "50 cents"

Note: The plural form of money is "moneys," not "monies."

(f) Percentages should generally be expressed as the style of the unit of the Code (title, chapter, section, etc.) dictates. However, when drafting a new unit of the Code or amending an existing unit of the Code with no existing style, the preference is to express percentages by using numerals with the percent symbol (%). For example, write "95%", not "ninety-five percent."

(g) Express dates as numerals for the day and year.

Do: June 30, 2014

Don't: June 30th, 2014

(h) Express time as numerals in all forms (clock time and when writing hours or minutes), except for midnight or noon, which should be expressed as words.

Do: 8 p.m.

Don't: eight o'clock at night

(i) When creating a numeric or temporal sequence, use "through" instead of a dash to connect the first and last items in the sequence.[138]

The license fee for vehicles from 1,001 through 5,000 pounds is $100.

In sequences connected by "through" the sequence includes the first and last number mentioned. In this example, 1,001 is the first, or lowest, weight covered by the fee and 5,000 is last, or highest, weight covered by the fee.

(j) When writing an ordinal number, a word representing position or rank in a sequential order (first, second, third, etc.), use the word for the ordinal number, not the numerical expression for the ordinal number.

Do: The Commissioner shall mail each response by the twenty-first of each month.

Don't: The Commissioner shall mail each response by the 21st of each month.

(k) Write ages as numerals. Follow subsection (c) of this Drafting Rule 19 and use modern American English forms and hyphenate only when appropriate.

Don't hyphenate when the age is part of an adjective phrase after the noun:
…the individual is 10 years old.

Do hyphenate when the age is an adjective that comes before the noun and modifies the noun, or when the age is a noun:
A 21-year-old may…

When indicating a specific starting age, be sure to indicate that it is the start of a range.
Do: …the mayor must be 21 years or older.

Don't: The mayor must be 21 years old.

This wording means that only 21-year-olds can be the mayor.

Don't use antiquated language of writing an age:
…the individual is 10 or more years of age.

[138] The use of "inclusive" following the sequence is unnecessary as "through" means "up to and including."

Comment

These rules are designed to ensure uniformity with the existing Code usages.

Regardless of the rules in this chapter, when using the word "one" as a pronoun, write it only as a word, not a numeral.

Rule 20. Plurals.

(a) Follow the general grammatical rule of adding "s" or "es" to a noun to form its plural.

(b) An exception to the general rule in (a) is words borrowed from another language that lack an Anglicized plural form.

(c) For titles of two or more words, make the important word plural.

Singular	Plural
attorney general	attorneys general
general counsel	general counsels
notary public	notaries public

(d) Remember, the subject and verb should agree. Plural subjects require plural verbs. However, also remember that collective nouns are singular unless the meaning of the sentence indicates the members are functioning as individuals; then, they are plural.

Rule 21. Possessives.

(a) To form the possessive of a singular noun, irregular plural noun, or indefinite pronoun, add an apostrophe (') and an "s" to the word.

Singular Noun: One month's worth

Irregular Plural Noun: The women's hammers

Indefinite Pronoun: Someone's raincoat

(b) To form the possessive of a plural noun that ends in "s," add an apostrophe (') to the word.

Possessive Form of a Plural Noun Ending in "S":
Six days' worth
The cats' noses

Rule 22. Prefixes.

Join a prefix to a noun without a hyphen in most cases. See the examples on the next page.

Prefixes Without Hyphens:
anti, co, de, extra, hyper, hypo, infra, inter, intra, macro, micro, mid, mis, multi, non, over, post, pre, pro, pseudo, re, semi, sub, super, supra, un, under

Comment

A hyphen is added between a prefix and a noun if the omission may cause confusion about the meaning of a word, it seems awkward, or it affects the pronunciation. A hyphen is also added when a proper noun has a prefix.

Do: re-creation, re-present, co-owner, intra-agency, mid-Atlantic

Don't: recreation, represent, coowner, intraagency, midAtlantic

Rule 23. Punctuation.

(a) **Generally.** Punctuate carefully. Follow modern, American rules of punctuation.

(b) **Brackets.** Brackets are most commonly used to enclose words or phrases inserted into a quotation. Do not use brackets as a form of punctuation in legislation. Brackets may be used to highlight for the Code Revisors that a date, usually an effective date, needs to be inserted into a Code provision.

(c) **Colons.** Colons can be used after an independent clause, usually introductory language, to direct attention to a list; an appositive, a noun or noun phrase that explains, identifies, or renames another noun right beside it; or a quotation or between independent clauses where the second summarizes or explains the first.

(d) **Commas.** Commas are the workhorse of the punctuation world and are drafted into service to assist the reader's understanding.

(1) **Dates.** Use commas to set off the year of a date when month, day, and year are given. Do not use commas when only the month and year are given.

(2) **Numbers.** Use a comma in numerals of 1,000 or more.

(3) **Series.** Use the serial, or Oxford, comma to separate words in a series.

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.

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.

(4) **Parenthetically.** Use commas to set off clauses that describe a subject already identified or provide supplemental information or to set off appositives.

(5) **Coordinating Conjunctions**. Use commas before a coordinating conjunction ("and," "but," "or," "nor," "for," "so," and "yet") when the coordinating conjunction connects two or more independent clauses.

(e) **Dashes.** Dashes, formed by typing two hyphens next to each other (--) are used to set off parenthetical material deserving emphasis, to mark appositives that contain commas, or to prepare for a list. Dashes are rarely used in legislation.

(f) **Ellipses.** The ellipsis mark consists of spaced periods and indicates that words have been deleted from a quotation. Three periods are used to delete from within a quoted sentence. Four periods are used when what is deleted comes at the end of the sentence; the fourth period is the period ending the sentence. Ellipses are rarely used in legislation.

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

Subject to § 2401(a)(3) (good faith purchasers)…

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

(h) **Quotation Marks.** When drafting legislation, many grammatical conventions regarding quotation marks are ignored:

(1) Use quotation marks to indicate text either being deleted from or inserted into a bill by an amendment or used within the instructional language of an amendment.

(2) In drafting an amendment, ignore the grammatical convention regarding punctuation placed within or outside of quotation marks. Instead, place punctuation marks within quotation marks only when the punctuation mark either appeared in the existing source material or must appear in the bill to properly amend the existing source material. See Part V.

For consistency, comply with this rule even when drafting something that does not amend the Code, Constitution, or other codified language, such as a resolution or synopsis.

(i) **Semicolons.**

(1) Use semicolons between items in a series containing internal punctuation, such as commas.

(2) Use semicolons between closely-related independent clauses not connected by a coordinating conjunction.

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

Comment

Because clarity is especially important when drafting legislation, use the Oxford (or serial) comma.

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. B. White, *The Elements of Style*, however, still recommend it.[139]

Rule 24. Compounding Words and Hyphenation.

(a) Consult a reputable dictionary to determine how to treat a compound word.

(b) When two words are combined to form an adjective, the two words are typically hyphenated.

(c) When in doubt, use a hyphen in words when doing so will aid clarity and readability by avoiding confusion, awkwardness, or pronunciation problems.

Comment

Compounding, hyphenation, and spelling examples are provided in Part VI, Ch. 3, Sec. 3, B..

Rule 25. Definitions: Generally.

(a) Define a term, whether a single word or phrase, if any of the following apply:

(1) The term has several meanings and it is necessary to preclude unintended construction of the legislation supported by a contradictory meaning. [140]

(2) The term is used in a sense that is broader or narrower than its common or dictionary usage.

(3) Use of the defined term will avoid repetition of a lengthy phrase and improve the clarity of the legislation.

Don't formally define a term that is familiar, clear, and used in its dictionary sense.

(b) Example of prefatory language used to amend a definition section:

[139] R. J. Martineau, *Drafting Legislation and Rules in Plain English*, 102 and 105 (1991).

[140] *See Andrews v. State*, 34 A.3d 1061 (Del. 2011) (using a dictionary to define "residence" as it appears in a provision regarding sex offender registration, rather than adopt the State's definition, which was based on the definition of "reside" as found elsewhere in Title 11 but not cited to by the sex offender registration statute. The General Assembly then passed legislation defining "residence" in the statute – *see* 78 Del. Laws, c. 367 (2012).).

Section 1. Amend § 222, Title 11 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows and by redesignating accordingly:

This general instruction informs the Code Revisors to make additional changes (redesignating) to the definition section without the need for the drafter to spend multiple lines (or pages) specifically indicating the redesignating of the entire definition section. Doing so saves time for the drafter and the reader, and printing costs for the General Assembly.

(c) Example of introductory language used to introduce a series of definitions:

For purposes of this chapter (title, section, etc.):

Do not use the phrase "unless the context requires otherwise" when drafting a definition section, as this phrase undermines the integrity of the defined terms because it invites administrators and courts to interpret the term.

If a term is used only in §§ 202, 205, and 208 of a Subchapter II, define the term in § 201 of Subchapter II.

(d) 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.

"Record," used as a noun, means…

(e) Do not include substantive provisions in a definition.

Don't: On "termination" all obligations that are still executory on both sides are discharged and rights based on prior breach of performance survive."
That sentence is substantive law, not definitional.

(f) 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 portion of the Code highest in rank in which the term is used.

(g) Begin the definitional sentence with the defined term. This requires the defined term to be capitalized. However, when the term is repeated within the text, it should not be capitalized unless the capitalization rules in Chapter 2, Drafting Rule 18 demand it.

(h) Use the defined term in the substantive provision, rather than its definitional language.

(i) The definition of a word or phrase should not contain the word or phrase being defined.

(j) Once a word or phrase is defined, do not change the manner in which it is used; the specific definition should remain constant throughout the bill.

Note: Section 302, Title 1 defines 24 general words that apply throughout the Code – including "person" and "State" – unless context or another definition requires a different meaning. It's good practice to check § 302 before drafting a definition.

(k) **Person v. Individual.** In the wake of *Burwell v. Hobby Lobby Stores, Inc.*, 134 S. Ct. 2751 (2014), be cautious when using the term "person." Like the U.S. Code's Dictionary Act, which defines "person" to include corporations, companies, and other entities, as well as individuals, the Delaware Code contains a similar definition provision, § 302 of Title 1, which is intended to apply throughout the Delaware Code unless superseded by a definition provision in the applicable division of the Code (title, chapter, section, etc.). A drafter, and the General Assembly, is presumed to know the existence of § 302 of Title 1 and the definition of "person" contained within it.[141] Therefore, unless the division of the Code contains an alternative definition of "person" to mean only human beings and specifically exclude nonhuman entities, or an alternative definition of "person" is drafted into the legislation:

(1) Use "person" to apply a law to both human beings and nonhuman entities, such as corporations or governmental bodies.

(2) Use "individual" to limit the application of a law to human beings. Avoid using the term "natural person" in place of "individual."

(3) Whether using "person" or "individual," use the same form of reference in statutes relating to the same subject matter.

(l) If a definition of "person" or "state" is necessary, consider using the following definitions:

(1) "Person" includes an individual, corporation, business trust, estate trust, partnership, limited liability company, association, joint venture, [government; governmental subdivision, agency, or instrumentality.] or another legal or commercial entity. [The term does not include government; or governmental subdivision, agency, or instrumentality.]

(2) "State" means the State of Delaware and, when applied to different parts of the United States, includes the District of Columbia and the several territories and possessions of the United States.[142]

This definition of "person" is an amalgamation of definitions for "person" throughout the Code. The unbracketed portion is from § 302(15) , Title 1. The bracketed portion is from § 1-201, Title 6 in the Uniform Commercial Code. Delete one of the bracketed phrases to ensure inclusion or exclusion of governmental entities.

[141] *State ex rel. Milby v. Gibson*, 140 A.2d 774 (Del. Super. 1958).
[142] *See* 1 *Del. C.* § 302(18).

(3) When referring to the State of Delaware write "State."[143]

(m) A defined term may be defined by reference.

(1) Defining a term by reference is accomplished in the same way as any other reference, by providing the Code citation for the definition being referenced. And, the reference can be included in a definition section or following the term in a Code provision.

Definition Section Example:
"Bylaws" means as defined in § 81-103 of Title 25.

Code Provision Example:
An unlicensed person may not sell or transfer a firearm, as defined in § 222 of this title…

(2) When defining a term by reference, take into account the discussion in Chapter 2, Drafting Rule 32 regarding the effect of incorporation by reference and consider whether the term used and the term to be referenced are so closely related that a future change in the definition of the term referenced will be acceptable for the term used.

Comment

The Delaware Superior Court held that the Delaware Department of Natural Resources and Environmental Control did not have standing to bring a claim against the Delaware Public Service Commission regarding the Commission's regulations because it was clear from the relevant law that the General Assembly intended to distinguish a person from an agency.[144]

The Delaware Supreme Court suggested caution against defining words too narrowly, because doing so can defeat the purpose of the definition and the law in which it is included: "It is best, perhaps, not to define the word 'lottery' too precisely, for the reason that the human ingenuity is too frequently successful in evolving a scheme entirely within the mischief, but not quite within the letter of the definition."[145] Additional considerations regarding drafting definition sections can be found in Part III, Ch. 2, Sec. 2, G.

Rule 26. Definitions: Use of "Means" and "Includes."

Knowing how and when to use "means" or "includes" is critical to legislative drafting.

The word "means" is seldom misused, but the word "includes" is frequently found where it should not be or is accompanied by language that prevents it from playing its part as the dictionary intended.[146]

(a) Use "means" if a definition is intended to exhaust the meaning of a term. In an exhaustive definition,

[143] *See* 1 *Del. C.* § 302(18)
[144] *See State v. Del. Pub. Serv. Comm'n*, 2020 Super. LEXIS 101, 2020 WL 888493 (Del. Super. Ct. 2020).
[145] *See Affiliated Enterprises, Inc. v. Waller*, 5 A.2d 257, 259 (Del. 1939).
[146] Lawrence Filson & Sandra Strokoff, *The Legislative Drafter's Desk Reference*, 133 (2nd ed., 2008).

avoid using the term itself in the definitional language. If the term embraces more than one meaning, close the series with "or."

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

(b) Use "includes" if a definition is intended to make clear that the term encompasses only some of the specific matter. If the definition embraces more than one additional meaning, close the series with "and."

Includes:
"Animals" includes fish, reptiles, *and* birds.

The meaning of a defined term, or an undefined term having an ordinary meaning, may be expanded to embrace one or more additional meanings by using "includes" in the qualifying language.

If "wages" is defined in the legislation, add the following to the definition: "Wages" includes gratuities received by an employee from patrons of the employer in the course of employment.

If "wages" is not defined in the legislation: "Wages" includes gratuities received by the employee from patrons of the employer in the course of employment.

(c) Do not use the phrase "means and includes" in a definition. This phrase is a nullity, as "means" is complete and "includes" is partial.

(d) **Do not use "includes [or including] but is not limited to."** This phrase is redundant, as "includes" is not a term of limitation. Its use weakens the meaning of the term "includes" and invites misinterpretation by the courts.

Do not ever use "including but not limited to"

(e) Unless the intent is otherwise, use "means" rather than "includes."

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

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

"Instrument" *means* a negotiable instrument.

Comment

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. Therefore, using "includes" allows a court or administering

agency to adopt additional meanings; using "means" restricts them to reasonable constructions of your wording. The Delaware Supreme Court recognized this rule in *Coastal Barge Corp. v. Coastal Zone Indus. Control Bd.*, 492 A.2d 1242, 1246-1247 (Del. 1985), when the Court noted that "a term whose statutory definition declares what it 'includes' is more susceptible to extension of meaning by construction than where the definition declares what a term 'means.'"

Rule 27. Parallel Construction.

Sentences, paragraphs, subsections, sections, and other units of the Code that serve a parallel function should be organized and written in a parallel fashion.

Do: The Department shall collect fees for renewing a license, amending a license, and *inspecting* a license holder's premises.

Don't: The Department shall collect fees for renewing a license, amending a license, and an inspection of a license holder's premises.

Comment

Parallel construction is another technique employed to ensure accuracy, clarity, and uniformity within the legislation and the Code.

Rule 28. Limitations, Exceptions, Qualifications, and Conditions.

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

Except as otherwise provided in § 201(a)….
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 promotes clarity to begin the provision with a statement of the limitation, exception, or condition or with a notice of its existence.

Begin the sentence with the limitation:
(a) Except as otherwise provided in subsection (b)…

(c) Avoid using "notwithstanding" to generally override an existing Code provision. This was a technique used before computers, when searching for related laws that were not intended to be changed by the bill could not be performed with a few extra minutes and keystrokes. It is almost always used today when the drafter is not certain they have found all of the related

laws, and is a sign that more attention should be paid to drafting the bill. If another statute may be in conflict, know what that statute is and cite it.

Don't: (b) Notwithstanding anything in the Code to the contrary….

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

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

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

. . . are not public records under Chapter 100 of Title 29.

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

Place limitations or exceptions to legislation where they are noticed. Consistent placement in the first part of legislation or a provision serves to avoid surprises.

Using "notwithstanding" as a general override of an existing Code provision does not aid clarity:

> Congress sometimes seeks to underscore the primacy of a statutory directive by stating that it is to apply "notwithstanding" the provisions of another, specified statute or class of statutes. Courts consider this expressed intent to override the provisions specified in a "notwithstanding" clause, but when the clause purports to override "any other provision of law," its preclusive scope often is unclear. One court, for example, ruled that a directive to proceed with timber sale contracts "notwithstanding any other provision of law" meant only "notwithstanding any provision of environmental law," and did not relieve the Forest Service from complying with federal contracting law requirements governing such matters as non-discrimination, small business set-asides, and export restrictions. "We have repeatedly held that the phrase 'notwithstanding any other law' is not always construed literally . . . and does not require the agency to disregard all otherwise applicable laws." Still, there are cases that have given full measure to "any other provision of law."[147]

Thus, provide for the specific provisions of the law that are intended not to apply to the given circumstance being drafted.

As indicated in subsection (d) of this rule, "provided that" and "provided, however, that" should be purged from a drafter's toolkit because the phrases violate Drafting Rules 1 and 2;

[147] Larry M. Eig, Cong. Research Serv., *Statutory Interpretation: General Principles and Recent Trends* 37 (2011).

they are unclear, uncertain in their reach, and create unwieldy sentences. Replace the terms by ending the sentence and beginning a new one with "But,". As Bryan Garner notes, "[t]hat's how the drafters of the U.S. Constitution did it – eight times –and they were grammatically unimpeachable on that score."[148]

Rule 29. Series and Tabulations.

(a) Break a sentence into its parts and present them as a series in tabular form – in other words, in a list[149] – if the meaning is made substantially clearer or if doing so makes it easier to cite to a part of the sentence.

(b) In drafting a tabulated list intended for inclusion within the Delaware Code, the following standards apply:

(1) Paragraph and indent each item in conformity with Part VI, Ch. 1, Rule 5.

(2) Capitalize the first word in each item.

(3) End each item with a period.

(4) In lieu of using "or" or "and" to indicate the disjunctive or conjunctive in a tabulated series, a phrase in the introductory language of the tabulation more clearly expresses how many of the items in the tabulation are to be required, such as: "the following," "any of the following," "one of the following," "all of the following," or "one or more of the following," followed by a colon.

Do: (a) A fruit is any of the following:
(1) A banana.
(2) An apple.
(3) A bunch of grapes.

Don't: (a) A fruit is:
(1) A banana**;**
(2) An apple**; and**
(3) A bunch of grapes.

Do: (a) A patron may bring one of the following into the theater:
(1) A banana.
(2) An apple.
(3) A bunch of grapes.

Don't: (a) A patron may bring into the theater:
(1) A banana**;**
(2) An apple**; or**
(3) A bunch of grapes.

[148] Bryan Garner, *Bryan Garner On Words, Ax these terms from your legal writing*, ABA Journal (April 2014), *available at* http://goo.gl/LuKvZk (last visited October 23, 2018).

[149] In the legislative drafting context, "tabulation" and "tabular form" refer to breaking down a provision into an introductory phrase followed by a list of related but distinct subsections. It rarely means to literally incorporate a table into legislation, in no small part because doing so is difficult to accomplish in DELIS.

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

(d) Do not place an undesignated sentence or paragraph after a tabulated list. If the sentence or paragraph is not a part of the tabulated series, draft it as a separate provision. If it is part of the tabulated series, reformulate the introductory language to include it.

Do not draft an undesignated paragraph or sentence; it is difficult, if not impossible, to interpret to which part of the provision the undesignated portion applies.

Do:
(a) The following are dangerous dogs and must be licensed:
(1) German shepherds.
(2) Mastiffs.
(3) Rottweilers.

Don't: § 101. Licensing of dangerous dogs.
(a) The following are dangerous dogs: (1) German shepherds, (2) mastiffs, and (3) Rottweilers, which must be licensed.

Don't leave an undesignated paragraph:
§ 101. Licensing of dangerous dogs.
(a) The following are dangerous dogs:
(1) German shepherds.
(2) Mastiffs.
(3) Rottweilers.
These dogs must be licensed.

Comment

Tabulation is useful for lists. 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 on a person and in other situations if tabulation makes the meaning substantially clearer.

Constructing a tabulated list in conformity with this rule also simplifies future amendments to the tabulated series and avoids improper interpretation by courts of the disjunctive or conjunctive nature of the series.

See Drafting Rule 30 concerning the manner of designating items in a tabulation.

Rule 29A. Amending a Tabulated List.

(a) When drafting legislation that amends a tabulated list, including a definition section, begin by including the introductory language of the tabulated list, even if it is not being changed. An example of introductory language follows:

(a) The following are dangerous dogs and must be licensed:

(b) After the introductory language, include only the paragraphs being deleted from or inserted into the list. The Code Revisors assume that language not included in a bill is not amended, so including language that is not being amended wastes space and reading time.

If a statute states:

§ 101. Licensing of dangerous dogs.
(a) The following are dangerous dogs and must be licensed:
(1) German shepherds.
(2) Mastiffs.
(3) Rottweilers.

To remove only mastiffs from the list:

§ 101. Licensing of dangerous dogs.
(a) The following are dangerous dogs and must be licensed:
~~(2) Mastiffs.~~

(c) If paragraphs are being deleted from a tabulated list, do not use the "redesignate accordingly" prefatory language or redesignate by hand within the bill. Redesignating tabulated lists hides a repeal and introduces instability into the Code for the reasons explained in Part VI, Ch. 2, Drafting Rule 30.

Following Drafting Rule 29 by ending each listed item with a period makes this type of amendment much cleaner, because the punctuation of the listed items that are otherwise unchanged will not have to be amended to accommodate changes to only 1 item in the list.

(d) If paragraphs are being inserted into a tabulated list, try to add the inserted items to the end of the tabulated list. Insert new items between existing items only as a last resort and only after first determining the impact to internal references and the agency charged with administering the provision. See Part VI, Ch. 2, Drafting Rule 30. If new items must be inserted between existing items, use the sample prefatory language for redesignating in Part VI, Ch. 2, Drafting Rule 25(b).

Comment

When applying subsection (b) of this drafting rule, do not use ellipses or other symbols to indicate that other items have been omitted from the list. The prefatory language ensures that the Code Revisors will alter the Code only as directed. Omitting portions of the Code from legislation will not result in a repeal of the omitted portions, because changes to the Code occur only in accordance with the prefatory language, i.e., "by making deletions as shown by strike through and insertions as shown by underline."

Rule 29B. Amending an Undesignated List.

(a) An "undesignated list" is a tabulated list that does not use the hierarchy of the Delaware Code to organize the items in the list. An example from Title 11 follows:

§ 4201. Transition provisions. *(cont. on next page)*

(c) The following felonies are designated as violent felonies:

Title 11, Section	Crime
513	Conspiracy First Degree
602	Aggravated Menacing
604	Reckless Endangering First Degree
605	Abuse of a Pregnant Female in the Second Degree
606	Abuse of a Pregnant Female in the First Degree
612	Assault in the Second Degree
613	Assault in the First Degree

(b) When amending an undesignated list, make the amendment through a separate bill Section so that the only change made by the Section is to the undesignated list. Include only the list item being changed. And, when removing from or adding to an undesignated list, include in the prefatory language for that Section language used in the following three examples:

Section 1. Amend § 4201, Title 11 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows and by reorganizing accordingly:

§ 4201. Transition provisions.
(c) The following felonies are designated as violent felonies:

Title 11, Section	Crime
787	Trafficking of Persons and Involuntary Servitude

Section 1. Amend § 4201, Title 11 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows and by reorganizing accordingly:
§ 4201. Transition provisions.
(c) The following felonies are designated as violent felonies:

Title 11, Section	Crime
~~630A~~	~~Vehicular Homicide in the First Degree~~

Section 1. Amend § 4201, Title 11 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows and by reorganizing accordingly:
§ 4201. Transition provisions.
(c) The following felonies are designated as violent felonies:

Title 11, Section	Crime
~~630A~~	~~Vehicular Homicide in the First Degree~~
787	Trafficking of Persons and Involuntary Servitude

(c) Include in the synopsis a clear indication of the intent to remove from or add to the undesignated list.

Rule 29C. Enumeration Provisions and "Include."

(a) An "enumeration provision" is a list created within the law. It differs from a tabulation, as in Part VI, Ch. 2, Drafting Rule 29, in that it is a list within a sentence.

> The Commissioner shall refuse to grant a license for the sale of alcoholic liquor by a restaurant, tavern, taproom, hotel, store, or other establishment…

(b) Before drafting an enumeration provision, determine the intent of the provision, as administrators or the courts may expand or limit the provision, depending on how it is constructed.

(c) To create an exclusive enumeration provision, construct it using only the specific terms intended to be included and omit "includes" or "including" and all general terms (terms usually preceded by "other," "any other," or similar terms).

> **Exclusive Enumeration Provision:**
> The Court may not find military, correctional, or police-owned dogs dangerous or potentially dangerous if the attack or injury to a person or domestic animal occurs while the dog is performing duties as expected.

(d) To create a nonexclusive enumeration provision, construct it so that the list is preceded by "include." In such a case, use both specific terms and general terms in constructing the list.

> **Nonexclusive Enumeration Provision:**
> "Improvement" includes buildings, highways, roads, streets, bridges, entrances and walkways of any type constructed thereon, and other structures affixed to and on land, as well as the land itself…

(e) To create a nonexclusive enumeration provision with some limitation, construct the provision using specific and general terms which are of the same type or nature as each other. Furthermore, the general term must be one that clearly belongs to the same class as the specific terms. This enables the general term to expand the list beyond what is specifically included, but limits the items included within the general term to items of the same class created by the specific terms.

> **Nonexclusive Enumeration Provision with Some Limitation:**
> The public health authority may purchase and distribute antitoxins, serums, vaccines, immunizing agents, antibiotics, and other pharmaceutical agents…

Comment

Delaware decisional law and the accepted canons of statutory construction form the foundation for this rule. Specifically, subsection (c) of this rule follows the canon of statutory construction *expressio unis est exclusion alterius*, meaning "the expression of one thing is the exclusion of another," which "provides that where a form of conduct, the manner of its performance and operation, and the persons and things to which it refers are affirmatively or negatively designated, there is an inference that all omissions were intended by the legislature."[150] And, the rule provided in subsection (d) of this rule is established by two Delaware Supreme Court cases, each finding that prefacing a list with "include" makes the listing "exemplary, not exclusive"[151] and "the doctrine of *ejusdem generis* does not require [the general term to] be limited in its

[150] *Brown v. State*, 36 A.3d 321, 325 (Del. 2012) (quoting *Leatherby v. Greenspun*, 939 A.2d 1284, 1291 (Del. 2007)).
[151] *City of Dover v. Int'l Tel. & Tel. Corp.*, 514 A.2d 1086, 1089-90 (1986) citing *Gage v. City of Wilmington*, 293 A.2d 555 (Del. 1972).

scope to the things specifically named in [the list]."[152] Finally, subsection (e) of this rule is in keeping with the canon of statutory construction *ejusdem generis*, meaning "of the same class." The Delaware Superior Court has stated:

> Where general words follow the enumeration of particular classes of things they will be construed as having reference to matters or things of the same general nature. The particular word may be said to be the genus, the general word used for including other species of the same genus. The rule manifestly rests upon the reason that, if the Legislature had intended the general word to be used in an unrestricted sense, no mention would have been made at all of the particular classes, and it is very generally held that the words "other" or "any other" following an enumeration of particular classes are to be read as meaning "other such like" and include only words of like kind or character.[153]

Rule 29D. Drafting Series, Tabulations, and Enumeration Provisions to Avoid the Doctrine of the Last Antecedent.

(a) The doctrine of the last antecedent is a canon of statutory construction applied to statutes that include a list of words or phrases followed by a qualifying word or phrase.

List Followed by a Qualifying Phrase:
A commercial vehicular license does not apply to boats, tractors, and trucks under 3 tons.

"Under 3 tons" is the qualifying phrase.

(b) When the doctrine is applied by courts, the courts find that the qualifying word or phrase refers to the word or phrase immediately preceding the qualifier, not to more distant words or phrases. The doctrine is not absolute and courts will not apply it when common sense and other indicia of meaning demonstrate that the qualifying word or phrase was meant to apply to more distant or less obvious words or phrases.

In the example above, statutory construction would hold that "under 3 tons" applies only to "trucks," not "boats" or "tractors."

(c) The Delaware Supreme Court has employed the doctrine as a method of statutory construction, finding in one case that the doctrine applied and the qualifying phrase referred solely to the last antecedent[154] and in another that other indicia of meaning demonstrated the qualifying phrase applied to all antecedents.[155] In 2016, the U.S. Supreme Court, by a vote of 7 to 2, reaffirmed its support for the doctrine over a dissent advocating that the Court look to the ordinary understanding of how English works.[156]

---

[152] *Id.* at 1089.
[153] *Bigger v. Unemployment Comp. Comm.*, 46 A.2d 137, 141 (Del. Super. 1946), aff'd 53 A.2d 761 (Del. 1947). See also *Del. Bd. of Nursing v. Gillespie*, 41 A.3d 423, 427 (Del. 2012).
[154] *Rubick v. Security Instrument Corp.*, 766 A.2d 15, 18 (Del. 2000).
[155] *E.I. DuPont de Nemours & Co. v. Green*, 411 A.2d 953, 956 (Del. 1980).
[156] *Lockhart v. U.S.*, 136 S.Ct. 958 (2016).

(d) As the doctrine does not produce certainty in interpretation, draft series, tabulations, and enumeration provisions to prevent a court from having to apply the doctrine by using the following methods:

(1) If the qualifying phrase applies only to one item, change the order of the items in the list.[157]

Drafting a Qualifying Phrase that Applies Only to 1 Item

Given:
To get dessert, you must eat ham and eggs that are green.

Draft as:
To get dessert, you must eat all of the following:
(1) Eggs that are green.
(2) Ham.

(2) If the qualifying phrase applies to each item in the list, move the qualifying phrase to the front of the generic term or repeat the qualifying phrase.[158]

Drafting a Qualifying Phrase that Applies to Each Item in the List

Given:
To get dessert, you must eat ham and eggs that are green.

Draft as:
To get dessert, you must eat all of the following, which must be green:
(1) Eggs.
(2) Ham.

or
To get dessert, you must eat all of the following:
(1) Green eggs.
(2) Green ham.

Rule 30. Maintaining the Stability of the Code.

(a) Use the accepted names for the units of the Code when drafting legislation.

Units of the Code:
Title
Part
Chapter
Subchapter
Subpart (extremely rare)
Section

(b) Number the bill Sections and the proposed Code sections with Arabic numerals consecutively or progressively throughout the legislation.

[157] Jery Payne, *The Doctrine of the Last Antecedent*, The Legislative Lawyer (May 2014).
[158] *Id*.

(c) A descriptive Code section heading is usually not relied on to convey or ascertain the legislative purpose or sense of a section; it is merely a signpost.[159]

(d) Use short Code sections. Use a separate Code section for each distinct topic.

(e) Follow the established internal hierarchy for a Code section and use the accepted names for the parts of the internal hierarchy. See Part VI, Ch. 1, Formatting Rule 5 for more details on hierarchy and indention.

Structure of and Names for the Internal Hierarchy of a Section (See Formatting Rule 5 for more details):

§ 101. **[this level is called a section]**
(a) **[this level is call a subsection]**
(1) **[this and all subsequent levels are called paragraphs]**

In sections with an undesignated first subsection (no "subsection" designation, typical with definition sections), the first level is still referred to as "paragraph."

(f) If a section covers a number of contingencies, alternatives, requirements, or conditions, divide the section into smaller parts, as necessary, following the internal hierarchy set forth in Part VI, Ch. 1, Formatting Rule 5. A paragraph may be divided into one or more lower levels of a paragraph, but try to avoid using anything below the initial paragraph level. Instead, divide a section into several sections as an alternative.

(g) Do not use internally numbered clauses where each clause remains within the run-on sentence structure and is not a separate paragraph in a tabulated list or sentence. Burying designations in this way leads to uncertainty within the Code. If there is no other way to draft it, however, romanettes should be used to prevent confusion with the internal hierarchy.[160]

(h) If there is no available section or chapter number where a drafter desires to insert a new section or chapter, use an upper-case letter with an existing section or chapter number to squeeze in a new section or chapter, rather than inserting a new section or chapter in an existing section or chapter and to redesignate existing sections or chapters. This technique can also be used to add a new Section to a bill.

Inserting a New Section or Chapter:
§§ 2107, *2107A*, and 2108.
Chapter 50, *Chapter 50A*, and Chapter 51.
Section 5, *Section 5A*, Section 6.

(i) Avoid redesignating existing chapters, sections, or other parts of the internal hierarchy, excluding definition sections, due to the impact on internal references.

[159] *See* 1 *Del. C.* § 306. *But see Spielberg v. State*, 558 A.2d 291 (Del. 1989).
[160] The term is the plural form of romanette, which means a lower-case Roman numeral, such as "ii."

(j) The Code Revisors place a "repealed" designation in the Code to indicate when a portion of the Code has been repealed and provide notice to readers of the repeal. A repealed section may be reused five years after the repeal occurs.

(k) Historically, when an entire chapter or subchapter was repealed and a new chapter or subchapter on the same topic was created, but with less subchapters or sections than previously, the Code Revisors would continue to include the full complement of subchapters or sections but would place a "reserved" designation on the unused portions to allow for future growth. This practice has been abandoned in recent years. Regardless, "reserved" provisions may be used whenever necessary.

(l) Avoid drafting a portion of a Code section that is not identified by an internal hierarchy designation, called an "undesignated subsection" or "undesignated paragraph."

(m) Begin a new chapter or subchapter with a Code section number that ends in "1."

Comment

Maintaining the stability of the Code is one of the many tasks the drafter assumes when drafting legislation. Drafters must be guided by the doctors' axiom, "first, do no harm." To fulfill this axiom, a drafter must have a working knowledge of the structure of the Code and an understanding of the importance in maintaining a stable structure.

Subsections (a) and (e) of this drafting rule give a brief introduction into the basic structure of the Code. This structure is one that, with rare exception, must be followed to preserve the Code's uniformity and predictability. The rare exception to the structure outlined in subsections (a) and (e) occurs with portions of the Code based on uniform laws developed by the Uniform Law Commission. The Code Revisors give up uniformity within the Delaware Code to uniformity across the laws of the states.

Subsections (b) through (d) and (f) and (g) offer basic insight and rules into the structuring of a Code section.

Subsection (h) provides a mechanism to insert a new section or chapter when a Code chapter or title seemingly has no additional space for a new chapter or section. This method, in addition to repurposing repealed sections [subsection (j)], is preferred to make additional space for new sections or chapters and, along with subsection (i), assures the stability of the Code. Most importantly, following the rules in subsection (h) and (i) also ensures that the drafter affects no internal references elsewhere in the Code.

Subsection (l) directs drafters not to create undesignated subsections or paragraphs as undesignated portions of a section cause confusion for those reading and interpreting the Code, especially courts, and can lead to difficulty citing or amending the undesignated portion or may cause the undesignated portion of a section to be unintentionally, if not inaccurately, absorbed by the designated portion above it in the drafting or revision process.

Rule 30A. Amending a Code Section "Versioned" by an Effective Date.

(a) To ensure the stability of the Code, properly amend a Code section that has been "versioned" due to an effective date provision in previously enacted legislation. When a bill amending the Delaware Code contains an effective date and is enacted, it results in Code sections in the bill becoming versioned in the Code. The Code Revisors do the versioning.

A "versioned" section of the Code consists of at least 2 of the same Code sections appearing in the Code at the same time, a currently effective section and one or more sections that are effective on a future date and different in some material way from the Code section that is effective now.

(b) A versioned section of the Code can be identified in the Delaware Code Online by the appearance of two or more copies of the same Code section with brackets in the Code section heading indicating when a given version is effective.

§ 10003. Examination and copying of public records. [Effective until Jan. 1, 2015]

§ 10003. Examination and copying of public records. [Effective Jan. 1, 2015, until July 1, 2015]

§ 10003. Examination and copying of public records. [Effective July 1, 2015]

(c) It is the drafter's obligation to inform the client that a Code section is versioned and to ascertain whether the client's desired change is one that is to be effective only in the currently effective version, or in the version to be effective in the future, or both.

(d) If the client desires a change to be effective only in the currently effective version or only in the version to be effective in the future, include only the currently effective version, or the version to be effective in the future, in the bill and make the necessary changes to that version using the strike through and underline process.

(e) Include both versions and make the necessary changes to both versions using the strike through and underline process. Include the effective date bracket in the bill to differentiate the versions and consider noting in the synopsis the existence of the two versions so that readers are less likely to be confused by what appears to be the same Code language included in the bill more than once.

Comment

Abiding by this rule ensures that the client's intent is clear to the reader and the Code Revisors. This avoids the situation where a drafter amends only the currently effective version, intending for the change to carry on to the version to be effective in the future, only to find the change is not carried through because the two versions conflict in some material way that makes the change incompatible in the version to be effective in the future.

Be aware that if a bill amends a given Code section that was not versioned and the given Code section becomes versioned by another bill that was introduced later in time but enacted first,

the Code Revisors will amend both versions of the Code section, as they presume the intent of the bill, when drafted, was for the change to carry on into the future.

Rule 30B. Transferring an Entire Unit of the Code.

(a) When called on to transfer an entire unit of the Code (part, chapter, subchapter, section, etc.), avoid using the strike through and underline method to delete the unit from its current location in the Code and insert it in its new location. Instead, follow the example below to accomplish the transfer:

Transferring an Entire Unit of the Code:

Given a need to transfer Chapter 80 from Title 3 to Title 16, where Chapter 80 will become Chapter 30E, draft the following prefatory language:

Section 1. Amend Title 3 **[the next highest unit of the Code where the unit to be transferred currently exists;]** and Title 16 **[the highest unit of the Code receiving the existing Chapter]** of the Delaware Code by transferring Chapter 80 of Title 3 **[the location of unit to be transferred]** to Title 16, **[the next highest unit of the Code receiving the existing Chapter]** redesignating present §§ 8001 through 8007 of Title 3 as §§ 3001E through 3007E of Chapter 30E of Title 16.

Note: The bolded, bracketed text is provided as additional context for purposes of this example and should not appear in legislation.

(b) If, in addition to transferring an entire unit of the Code, the bill makes changes to the unit, first use the example prefatory language from subsection (a) of this rule to make the transfer and then use the strike through and underline process to make the necessary changes, noting in the prefatory language that the process is being used.

Transferring an Entire Unit of the Code and Making Changes to the Language in the Unit (based on the example in subsection (a) of this rule):
Section 1. Amend Title 3 and Title 16 of the Delaware Code by transferring Chapter 80 of Title 3 to Title 16, redesignating present §§ 8001 through 8007 of Title 3 as §§ 3001E through 3007E of Chapter 30E of Title 16 and making deletions as shown by strike through and insertions as shown by underline as follows:

Comment

Abide by subsection (a) of this drafting rule when transferring a unit of the Code from one location to another location, rather than using strike through to delete the unit from one location and underline to insert it into another location, as this ensures that no additions or subtractions are made to the unit in the process of inserting it into its new location. Additionally, this method saves printing resources by not producing an entire unit twice, one struck through and once underlined, to transfer a unit unchanged.

Abide by subsection (b) of this rule when transferring a unit of the Code from one location to another and making changes to the unit, rather than using strike through to delete the unit

from one location and underline to insert it into another location and to show changes to the unit, as this ensures the reader can clearly understand the changes that are being made.

Rule 31. Internal References to Code Provisions or Sections of Legislation: Generally.

(a) Internal references, also called cross-references, may be used for one of several specific purposes:

(1) To call attention to another provision or its effect on the provision at hand.

…as defined in § 123…

(2) To describe and identify a concept or relationship that is established in another provision.

Benefits under § 123…

An action taken under § 123…

The rates in effect under § 123…

(3) To indicate that another provision is to also apply to the provision at hand.

Section 123 applies [in this situation]…

The rules that apply under § 123 also apply [in this situation]…

If the definition involved will not otherwise apply:
…as defined in § 123…

(4) To indicate that another provision is to be read as making an exception to or modification of the rules in the provision at hand.

Except as provided in § 123…

Subject to § 123…

The uses described in (1) and (2) are primarily informative; the use described in (3) is substantive and is typically used for incorporation by reference; the use described in (4) can be either substantive or informative.[161]

(b) For internal references to a provision of the Code, use the correct name for the portion of the section's internal hierarchy referenced. See Part VI, Ch. 2, Drafting Rule 30(e).

(c) Use an initial capital letter in referring to a specific article of the Constitution or title, part, or chapter of the Code; use lower case in referring to a specific subsection or paragraph.

The requirements of Article III…

Except as otherwise provided in subsection (b)…

(d) Use the section symbol (§) when referring to a section of the Code, unless the section symbol (§) appears at the beginning of a sentence. In that case, use the word "Section." Use

[161] Lawrence Filson & Sandra Strokoff, *The Legislative Drafter's Desk Reference*, 289 (2nd ed., 2008).

an initial capital letter when referring to a bill Section (Section 1, Section 2; Sections 1 and 2; this Section) regardless of its placement in a sentence.

(e) Internal references to a portion of the same section should be followed up with the words "of this section." Internal references to a portion of the same title should be followed up with the words "of this title." Follow up internal references to a portion of another title with the words "of Title [insert number]." Do not direct an internal reference to the chapter level of a portion of the Code.

> **Do:** "§ 101 of this title" **or** "§ 101 of Title 1."
>
> **Don't:** "1 *Del. C.* § 101," "Title 1, Section 101 of the Delaware Code," "Title 1, § 101," "§ 101 of this chapter," **or similar form of internal reference.**

(f) Do not write an internal reference using "above" or "below," such as "subsection (b), above." What is above today may be below tomorrow. Instead, write "subsection (b) of this section."

(g) To reference a paragraph, begin with the subsection designation and include each paragraph designation before, and including, the paragraph to be reference.

> **Do:** "paragraph (a)(1)a.1." **A reference to simply "paragraph (a)(1)" is unclear because it could mean that paragraph or "(a)(1)a.", "(a)(1)a.1.", "(a)(1)a.1.A.", or "(a)(1)a.1.A.I."**
>
> **Don't:** "paragraph (a)(1)" **to reference a paragraph lower in the hierarchy.**

Note: Provisions at the (a) level are referred to as "subsections." All lower levels, from (1) forward, are referred to as "paragraphs." See example under Part VI, Ch. 2, Drafting Rule 30(e).

(h) To reference another subsection of the same section, follow the internal reference with "of this section". To reference the same subsection as the reference is in, use "this subsection" and do not identify the specific subsection or follow with the words "of this section".

> **Do:**
> (a) Under subsection (b) of this section.
> (a) Under this subsection.
>
> **Don't:**
> (a) Under this subsection (a) of this section.

(i) To reference another paragraph of the same section, follow the internal reference with "of this section". In (a)(1)a., if you merely said "this paragraph" it could mean either (a)(1) or (a)(1)a., so you have to directly reference the paragraph you're within: this paragraph (a)(1)a. To reference the same para-

Don't refer to a paragraph or subsection "above" or "below." What's above today may be below tomorrow.

graph as the reference is in, use the specific designation of the paragraph after "this paragraph" but do not include "of this section".

In paragraph (a)(1), and referring to paragraph (a)(1)a.:
paragraph (a)(1)a. of this section.

If referencing paragraph (a)(1)a. in paragraph (a)(1)a.:
this paragraph (a)(1)a.

Comment

When referencing a few sections, 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, this tool can create issues as sections, subsections, or paragraphs are sometimes changed. When a Code provision has been substantially altered, check internal references to that Code provision, to ensure that no unintended consequences will occur elsewhere due to that amendment. Technology has greatly reduced the difficulty of finding and changing internal references.

Rule 31A. Internal References to the Delaware Constitution, Delaware Regulations, or Federal Law.

(a) Cite to the Delaware Constitution by section number, then article number.

Section 1 of Article II of the Delaware Constitution

(b) Cite to a Delaware regulation by the regulation's number and the title number in the Delaware Administrative Code. However, keep in mind that regulations sections do get renumbered, and some are renumbered more often than others. So, be careful when citing to a specific section of a regulation.[162]

Regulation 4458 of Title 16 of the Delaware Administrative Code

(c) When citing to a federal law, cite to the statute; do not use Bluebook-style.

Under the Individuals with Disabilities Act, 20 U.S.C. § 1431 et seq.

Rule 32. Internal References to Code Provisions or Sections of Legislation: Incorporation by Reference.

Recognize the positives and the negatives in using a cross-reference for "incorporation by reference," which are discussed in detail in the Comment.

[162] Be aware that Lexis has historically changed these references to the "CDR" or "Code of Delaware Regulations." These references should be corrected in the Delaware Code Online by the publication of this manual, but the physical Delaware Code books may still have the incorrect references. Follow the citation instruction of this manual.

Comment

Be aware of the impact an incorporation by reference can have when drafting legislation. Incorporation by reference is recognized by Delaware courts as a valid drafting technique. The courts have held that a statute may, by a special and descriptive "reference[,] adopt a part or all of another statute which will have the same effect as though the adopted statute had been written into it."[163] Incorporation by reference is a useful tool because it assures uniformity, clarity, and consistency between the provisions while saving space and time.

Also be aware of a conflict between the Code and Delaware case law. Section 307(b) of Title 1 states, "Whenever any reference is made to any portion of this Code or any other law, the reference applies to all amendments thereto." In 1967, our Supreme Court stated that "the adopted statute is incorporated as of the time of reference and subsequent amendments to it will have no effect upon the adopting statute."[164] This statement encompasses the general, common law rule.[165] However, § 307(b) was in the 1953 Code when the Supreme Court repeated the common law rule, so it is unclear why the Supreme Court made this statement without citing and refuting the substance of § 307(b). A close reading of the case suggests the appellee simply acceded to the Court's rule. The editors maintain this decision is an outlier and § 307(b) controls, as, seven years later, the General Assembly recodified § 307(b) containing the same legislative interpretation rule in the Delaware Code of 1974.

Delaware courts have not addressed the constitutionality of incorporated by reference. At least one state supreme court held that incorporation by reference is valid in the absence of a constitutional prohibition.[166] The Delaware Constitution does not contain such prohibition.

Rule 32A. Internal References to Code Provisions or Sections of Legislation: Checking for Accuracy.

(a) Check all references, internal and external, for accuracy before releasing the draft legislation for introduction.

(b) A corollary to subsection (a) of this rule is to check references elsewhere in the Constitution, Code, or Charter to provisions in the draft that may no longer be accurate due to redesignation done in the draft. Include in the draft legislation additional Constitution, Code, or charter provisions as necessary to ensure these references remain accurate.

Assuming all of the following:

1. A hypothetical § 101 of the Delaware Code with subsections (a), (b), and (c). *(cont. on next page)*

[163] *State Ins. Coverage Office v. Choudry*, 2013 WL 3928226, at *4, n.25 (Del. Super.) (citing *Dupont v. Mills*, 196 A. 168, 176 (Del. 1937) and 2A Singer, *Sutherland Statutory Construction*, § 51:7 (7th ed. 2012)).

[164] *Powell v. Levy Court of Kent County*, 235 A.2d 374, 375 (Del. 1967) (citing 2 *Sutherland, Statutory Construction,* § 5208 (3rd ed.)).

[165] *Perkins v. Winslow*, 133 A. 235, 236 (Del. Super. 1926) (citing *Sutherland on Statutory Construction*, § 405). Under the common law rule, when using a specific reference (like "Section 123 applies . . . ."), as opposed to a general reference ("in the manner now provided by law") the incorporated material may essentially be frozen in time on incorporation. *See Hassett v. Welch*, 303 U.S. 303 (1938) for a discussion by the U.S. Supreme Court on the difference between a specific and general reference.

[166] *Gen. Installation Co. v. University City*, 379 S.W.2d 601, 604 (Mo. 1964).

2. The drafter inserts a new subsection (a) and directs the remaining provisions to be redesignated.
3. The existing § 101(a) is referenced by 3 other provisions in the Delaware Code, §§ 201(b), 434(d), and 704(e).

Include §§ 201(b), 434(d), and 704(e) in the draft legislation and change the reference from § 101(a) to § 101(b).

Or, add the new subsection as § 101(d) instead of § 101(a), which avoids the need to amend internal references to the existing § 101(a).

(c) When creating a new unit of the Code, check all internal references in the new unit of the Code, as the drafting and editing process can alter the meaning of internal references through the deletion or addition of subsections or paragraphs.

(d) Also check all internal references in an existing provision that is amended by the legislation for the same reason expressed in subsection (c) of this rule.

(e) Double check references to criminal provisions, as the Code Revisors are least likely to exercise their code revision authority to correct a reference to a criminal provision.

(f) If you are repealing a section of the Code that is referenced in another section, either repeal the reference in the other section or insert "[repealed]" after the reference. Most of the time, it will be appropriate to repeal the reference, but there are areas of law where the reference needs to be retained, usually in criminal law, because the reference may be necessary for a pending cases, appeal, or review of sentencing orders.

Assume all of the following:
1. A bill repeals § 1124 of Title 11.
2. Section 1125 has a reference to § 1124.

The bill should include a section repealing § 1124 that makes the following corresponding revision to § 1125:

~~§ 1116 1120 and 1124~~ §§ 1116 through 1120 of this title

Assume all of the following:
1. A bill repeals § 835 of Title 11.
2. Section 835 is referenced in § 4201 of Title 11.

The bill should include a section that inserts "[repealed]" after the reference to § 835 in § 4201:

§ 835 [repealed]

Comment

Part VI, Ch. 2, Drafting Rule 31 and Part VI, Ch. 2, Drafting Rule 32 explain why internal references are so important. However, drafters must ensure that internal references continue to

accurately reference the intended provisions. The Code Revisors cannot correct an incorrect reference when the drafter's intent is not clear. Therefore, before the introduction of the draft legislation, check all references for accuracy. Technology has greatly reduced the difficulty of finding and changing internal references and should be used in the proofreading process to check references.

Rule 33. Order of Arrangement of Legislative Provisions.

(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 Part III, Ch. 2, Sec. 2, B.

(2) Preamble or whereas clauses. See Part III, Ch. 2, Sec. 2, C.

(3) Enactment clause (mandatory). See Part III, Chapter 2, Section 2, D.

(4) Short title (The short title may also precede the severability clause.). See Part III, Ch. 2, Sec. 2, S.

(5) Definitions. See Part VI, Ch. 2, Drafting Rule 25, Part VI, Ch. 2, Drafting Rule 26 and Part III, Chapter 2, Section 2, G.

(6) Scope (exceptions or exclusions, if any).

(7) Creation of agency or office. See Part III, Ch. 2, Sec. 4, B.

(8) Administrative and procedural provisions.

(9) Substantive provisions (state positive requirements in order of time, importance, or other logical sequence.).

(10) Prohibitions and penalties. See Part III, Ch. 2, Sec. 2, I.

(11) Severability clause. See Part III, Ch. 2, Sec. 2, P.

(12) Savings provisions. See Part III, Ch. 2, Sec. 2, M.

(13) Effective date, contingent effective date, and applicability clause. See Part III, Ch. 2, Sec. 2, J. and Part III, Ch. 2, Sec. 2, K.

(14) Synopsis (mandatory). See Part III, Ch. 2, Sec. 2, T.

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

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

(1) Bill title (mandatory).

(2) Preamble or whereas clauses.

(3) Enactment clause (mandatory).

(4) Sections of the bill adding or deleting text from the Code.

(5) Severability or savings clauses.

(6) Effective date (only if other than its enactment into law), contingent effective date, and applicability clause.

(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 34. Model Acts.

When using a model act to draft legislation, determine all of the following before introduction:

(1) If the model act accomplishes the goals of the sponsor.

(2) If the model act conflicts with the Delaware Constitution and, if it does, if the conflict may be resolved.

(3) If the model act conflicts with existing Delaware law and, if it does, if the conflict may be resolved.

(4) If the sponsor wants the model act modified to comply with the substance and style of Delaware law, as little as possible, or at all.

(5) Where in Delaware law the model act belongs.

(6) If the model act may be enforced or administered by an existing state agency or if the model act requires the creation of a new state agency.

(7) If there are problems with the model act's definitions that need to be resolved. Model acts may suggest definitions that are at odds with existing definitions in Delaware law. Search Delaware law for conflicts and determine how to resolve them.

(8) If the model act is organized to put similar concepts together and separate concepts that are not similar.

(9) If all issues left to enacting states are resolved. Model acts often include alternative language for states to choose from. Decisions on these alternatives must be addressed before introduction.

(10) If unnecessary language in the model act has been deleted. Model acts often include "blanks" to be filled in by each state. To avoid embarrassment to the sponsor and the drafter, do not introduce legislation with these "blanks" still in the legislation.

(11) If gaps in the legislation have been filled in. Model acts may create agencies or set standards without providing for the duties of the agency or how standards are to be enforced. Fill in these gaps.

(12) If the language of the act has been modified to match the substance and style of Delaware law, if permitted by the sponsor. Many references, including those to crimes,

government entities, and penalties, may not be consistent with those used in Delaware laws and should be altered to fit the sponsor's circumstances.

Rule 35. Interstate Compacts.

(a) An interstate compact is a contract between two or more states to do one or more of the following:

(1) Create a formal, legal relationship to address a common problem.

(2) Create independent, multistate governmental authorities (commissions) to address issues more effectively than a state agency acting independently.

(3) Establish uniform guidelines, standards, or procedures for agencies in the compact's member states.

(b) Clause 3 of Section 10 of Article 1 of the U.S. Constitution grants states the right to enter into multistate agreements for their common benefit. Congress must approve a compact that would increase the states' political power in a manner that would encroach on the federal government's power.

When entering compacts, states must adhere to state constitutional requirements, particularly regarding separation of powers, delegation of power, and debt limitations. Congressional consent to interstate compacts is only necessary when "a compact tends to increase the political power of the States in a way that 'may encroach upon or interfere with the just supremacy of the United States.'"[167] States have the authority to enter into compacts and to delegate authority to an interstate agency.[168]

(c) General purposes for creating an interstate compact include the following:

(1) Establish a formal, legal relationship among states to address common problems or promote a common agenda.

(2) Create independent, multistate governmental authorities (e.g., commissions) that can address issues more effectively than a state agency acting independently, or when no state has the authority to act unilaterally.

(3) Establish uniform guidelines, standards, or procedures for agencies in the compact's member states.

(4) Create economies of scale to reduce administrative and other costs.

(5) Respond to national priorities in consultation or in partnership with the federal government.

(6) Retain state sovereignty in matters traditionally reserved for the states.

---

[167] *U.S. Steel Corp. v. Multistate Tax Comm'n*. 434 U.S. 452 (1978) (stating that, "[a]bsent a threat of encroachment or interference through enhanced State power, the existence of a federal interest is irrelevant. Indeed, every State cooperative action touching interstate or foreign commerce implicates some federal interest. Were that the test under the Compact Clause, virtually all interstate agreements and reciprocal legislation would require congressional approval.").

[168] *West Virginia ex rel v. Sims,* 341 U.S. 22 (1951).

(7) Settle interstate disputes.

(d) Over 200 interstate compacts are active in the U.S., with 20 enacted in Delaware, including the Nurse Multistate Licensure Compact (Chapter 19A, Title 24), the Interstate Compact on Education for Children of Military Families (Subchapter III-A, Chapter 1, Title 14), and the Interstate Compact for the Supervision of Adult Offenders (Subchapter V, Chapter 43, Title 11).

(e) When drafting an interstate compact, the general guideline is to follow the compact itself if it is likely to make a difference to someone reading or interpreting it in another state.

(1) Follow as closely as possible to the standard format of hierarchy within the original compact. This makes it easier for attorneys to move more seamlessly between member states if everyone is quoting the same provision with the same citation.

(2) Give deference to style within a legal form or notice, presuming again that the style should be the same among the states. Thus, do not alter language within a form or a notice one is asked to post.

Generally, follow the drafting style of the interstate compact if it is likely to make a difference to a reader seeking to compare one state's version of the compact to another, or may muddy interpretation of the compact.

But, change anything stylistic that's unlikely to cause problems with reading or interpreting the compact.

(f) However, if a change is merely stylistic, use the Delaware style. Change anything stylistic that is unlikely to be compared among states, for example:

(1) Capitalization. Do not capitalize words that ordinary grammar standards do not require to be capitalized. In particular, look for the word "state" and check the context.

(2) Substitute actual code numbers for nomenclature such as "section 5" or "article." Instead of a statute with the entire compact, the compact should be its own chapter and each article or section of the compact should be a statute within that chapter.

(3) Change a number not at the beginning of a sentence or paragraph from a word to a numeral.

(4) Change ordering numbers to a word ("second," not "2nd").

(5) Say "January 1" and not "January 1st."

(6) Use "moneys" instead of "monies."

(g) Be careful with the effective date clause. An interstate compact takes effect when a certain number of states join it, so the effective date needs to provide for notice that it has taken effect but may also need to provide the State with the authority to attend meetings and draft rules and regulations, prior to the compact becoming applicable. Further, when drafting the effective date, consider the possibility that the required number of member states will be reached

before the bill is enacted. Specifying an effective date based on the requisite number of member states could cause the unintended result of the Delaware law being retroactive, if the number of states is met before the Delaware law is enacted.

In addition, if the compact is replacing an existing compact, the current law may need to stay in effect until the new compact is either in effect or fully implemented. In that situation, make the repeal of the existing compact a separate section and use the enactment clauses to provide separate instructions for the repeal of the existing compact and applicability of the new compact. See Part III, Ch. 2, Sec. 2, J. on effective dates.

Rule 36. Drafting Criminal Laws.

The Delaware Code is not consistent with the language used to prohibit conduct and impose punishment. To better comply with Part VI, Ch. 2, Drafting Rule 1 on clarity and readability and Part III, Ch. 2, Drafting Rule 3 on consistency, and the general purpose of this manual to impose standards on legislative drafting to produce an accurate, clear, and uniform legislative product, criminal laws should be drafted using the following standardized language:

When reference to the class of offense sufficiently provides the penalty:
It is unlawful to [adverbial mens rea] [actus reus]. Violation of this [Code provision reference] is a [class of offense].

When a specific penalty, different from the general penalty for a class of offense, is needed:
It is unlawful to [adverbial mens rea] [actus reus]. Violation of this [Code provision reference: section, paragraph, etc.] is a [class of offense] punishable by [penalty].

Legislative drafting guru Bryan Garner asserts that this language "has many advantages over other possibilities by avoiding: (1) overlong sentences, (2) subject–verb separation, (3) sexist language (or the ungainly avoidance thereof), and (4) circumlocutions in which unlawfulness is only implied. Again and again, this approach's clarity and consistent utility will be evident." [169]

Mr. Garner notes, "[f]or criminal sanctions to be effective, they must do three essential things: (1) identify the prohibited conduct, (2) signify that it is disapproved, and (3) specify the penalty for engaging in the prohibited conduct."[170] The standardized language provided by this rule meets this requirement and does so in a way that provides for clarity and consistency in our law.

While the standardized language will lead to splitting an infinitive, the benefits to the law greatly outweigh strict adherence to an old grammatical construct that may now be broken in

[169] Bryan Garner, *Bryan Garner On Words, Lawmakers should work toward adopting strong, standard language in criminal statutes*, ABA Journal (July 2015), available at http://www.abajournal.com/magazine/article/lawmakers_should_work_toward_adopting_strong_standardized_language/ (last visited September 24, 2021).
[170] Bryan Garner, Guidelines for Drafting and Editing Legislation, 171 (RosePen Books 2015).

certain circumstances.[171] In the case of the standardized language, by splitting the infinitive a drafter keeps the adverbial mens rea modifying each of the infinitives[172] as in the following:

> It is unlawful to *knowingly* push, shove, or otherwise touch another person in an offensive manner.
>
> **Here, "knowingly" is the adverbial mens rea and "push," "shove," and "touch" are infinitives.**

By splitting the infinitives in this example, it is clear to the reader that "knowingly" modifies "push," "shove," and "touch."

For more information on drafting a penalty provision as part of a criminal law, see Part III, Ch. 2, Sec. 2, I. on penalties.

Rule 37. Proofreading.

(a) **One of the most important steps in drafting legislation is to proofread the legislation before releasing it for numbering and printing.**

(b) Have someone who has not been involved in the drafting proofread it before releasing it for numbering and printing.

(c) Proofreading must consist of checking the legislation for conformity with the formatting, style, and grammar rules of this manual and other generally accepted rules for style and grammar. Additionally, read the legislation for missing words or wrong words; spell check will not catch either.

Delaware does not have a centralized proofreading office; one of the most important steps for a legislative drafter is to

proofread
proofread
proofread

before releasing legislation for numbering and printing.

(d) Check every reference, internal and external, for accuracy.

(e) When amending the Constitution or Code, ensure that the context language accurately reflects the current version of the Constitution or Code.

(f) Proofreading entails checking the draft for conflicts with introduced but not yet enacted legislation, and correcting those conflicts if possible. Also be aware of other legislation subsequently introduced, which may cause a conflict with your drafted legislation.

---

[171] See *id.* at 175, quoting *The Chicago Manual of Style* § 5.106, at 233 (16th ed. 2010) ("Although from about 1850 to 1925 many grammarians stated it otherwise, it is now widely acknowledged that adverbs sometimes justifiably separate an infinitive's "to" from its principle verb.").

[172] See *id.* at 174, quoting R.G. Ralph, Put It Plainly 41 (1952) ("A split infinitive will sometimes give a meaning that is destroyed if the intruding word is removed.").

Comment

Proofreading is the last substantive step performed before releasing the legislation to the public, and it is the most important. Proofreading serves as a final check to ensure accuracy, clarity, and uniformity of the legislative product. Proofreading also enables the drafter to correct mistakes that may slow down or even kill legislation.

It is essential that someone other than the drafter review the legislation before release. An independent proofreader may better be able to focus on what the draft legislation actually says, rather than on what it is intended to say.

Do not skim the legislation. Skimming is not proofreading. Missing or extraneous words or nonsensical phrases will not be caught by skimming the legislation.

See Part VI, Ch. 2, Drafting Rule 32A for more discussion of the importance of proofreading references.

As discussed in Part II, Ch. 3, use the most up-to-date legal materials in preparing draft legislation. The legal materials published online by the Division of Legislative Services are the most accurate, up-to-date legal materials available to a drafter and should be used over another source. Because draft legislation can come from many sources, including draft or introduced legislation from previous General Assemblies, take the time to compare draft legislation to the current version of the legal material in the legislation and correct issues before releasing the draft legislation for introduction. This prevents issues that can, and all too frequently do, arise when the draft legislation conflicts with the existing legal material language, and may ultimately result in enacted legislation that is incapable of being harmonized with the existing legal material language.

Just as out-of-date legal materials can cause issues with harmonizing the legislation with the existing legal material language, so too can conflicting legislation. Therefore, before release check for introduced legislation that conflicts with the draft legislation. And, follow the progress of the legislation once it is introduced to determine if new legislation is introduced that could create a conflict.

Rule 38. Drafting Health Insurance Laws.

The Division of Legislative Services and the Department of Insurance collaborated to develop model language for health insurance legislation. See Appendix I for model language and a memorandum of key considerations to use when drafting legislation that creates a coverage requirement for health insurance and explains the language used in the model legislation.

Rule 39. Drafting Special License Plate Laws.

The Division of Legislative Services and the Division of Motor Vehicles ("DMV") collaborated to develop templates for drafting legislation for a background license plate and an organizational license plate. The purpose of these templates is to demonstrate DMV's requirements for these

types of specialty plates and vehicles eligible for these plates and to provide consistent statutory language approved by DMV for use by legislative drafters.

(a) A **background plate** supports a cause and is open to members of the public with an eligible vehicle type. Proceeds from the sale of these plates are used to support a cause. Most commonly, the proceeds benefit a State entity or a nonprofit corporation. The template in Appendix A-18 may be used if the proceeds benefit a nonprofit corporation, for-profit corporation, county, or municipality. Appendix A-19 provides a template for use if the proceeds benefit a State entity or the General Fund. Keep in mind the following for background plates:

(1) The design is added to the background of existing numbers and letters.

(2) The organization must have a primary contact person for funding and contact about any changes.

(b) An **organizational plate** is available only for members of an organization or for those satisfying particular service or alumni group requirements. The example in Appendix A-20 includes the required DMV language for an organizational plate. Also keep in mind the following requirements:

(1) The plate must be blue/gold with alpha/numeric with the organization's logo to the left.

(2) The organization must have a primary contact person responsible for approving, tracking, and assigning the plate numbers to its eligible members.

(3) DMV will not review documents for eligibility of an organizational plate.

(4) A prefix to represent the organization must be approved by DMV to avoid conflicts with vanities and other specialty plates.

(5) The organization may add the language required, such as what type of documents (example DD214) for approval. They may also include specific numbers reserved for certain members in the bill.

(6) Example: Department may issue a special license plate if the U.S. Department of Defense certifies that the applicant is a veteran of World War I, World War II, the Korean Conflict, the Vietnam Conflict, Operation Desert Storm, or other military conflict on foreign soil in which United States armed forces were formally engaged in battle. The organization can include what documents are needed to determine the eligibility described in this section.

Chapter 3: Additional Observations, Guidelines, and Word Usage Examples.

Section 1: Additional Observations.

(a) Before beginning to draft a bill, research if a similar or conflicting law already exists in current federal or Delaware constitutional or statutory provisions.

(b) It is not necessary to use the 1897 date or the term "as amended" when referring to the Delaware Constitution or the 1974 date or the term "as amended" when referring to the Delaware Code.

(c) Certain words that are frequently misspelled but are not detected by Word's spell check function include:

be / he	phase / phrase
change / charge	pubic for public
county / country	saws for laws
from / form	statue for statute
it / is	undeserved for underserved
or / of	untied for united
or / on	

(d) 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."[173]

(e) 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 in the bill. If language in a bill refers to "this title" it refers to the title of the 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 title."

(f) Double-check section (§), chapter, and title references, especially when resurrecting a bill from a previous General Assembly. A section (§) number usually indicates 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 sections beyond the 500s; Chapter 1 of Title 26 contains sections beyond the 100s; and Chapter 1 of Title 8 contains beyond the 100s.

(g) Another drafting problem occurs when the drafter does not search out the appropriate place in the 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 are likely to cause unnecessary obstacles for researchers.

[173] *See Wilmington Sav. Fund Soc. v. Green*, 288 A.2d 273, 277 (Del. 1972) (holding 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 necessary votes to pass constitutionally.).

(h) Carefully review proposed legislation that originates in other State agencies or the private sector. Outside drafters often are not lawyers or aware of legislative drafting rules and guidelines. Furthermore, even lawyers who do regularly draft legislation may produce bills that need technical editing.

Section 2: General Guidelines for Drafting.

AVOID USING REDUNDANT COUPLETS

actual knowledge	final and conclusive
adjudge, determined, and decreed	full and complete
alter and change	full force and effect
among and between	made and entered into
any and all	necessary or desirable
authorize and direct	null and void
authorize and empower	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	

AVOID THE FOLLOWING INDEFINITE WORDS

aforementioned	heretofore
aforesaid	herewith
and/or (say "A" or "B", or both)	said (as a substitute for "it," "he," "she")
before (as an adjective)	same (as a substitute for "it," "he," "she,")
before-mentioned	to wit
hereafter	whatsoever
hereby	whensoever
herein	wheresoever
hereinabove	

USE PLAIN ENGLISH

Questionable, superfluous, or verbose	**Use instead**
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 2), between (for 2)
anticipate	expect
Questionable, superfluous, or verbose	**Use instead**
approximately	about
ascertain	learn, find out
at the place	where
at the same time	when
attempt (as a verb)	try
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
court of competent jurisdiction	court (and, be sure the statute includes a provision specifying which court has jurisdiction)
different than	different from
do and perform	do
does not operate to	does not
during such time as	while
during the course of	during
each and every	each
effectuate	bring about, carry out
endeavor (as a verb)	try
enter into a contract with	contract with
evidence, documentary and otherwise	evidence
evince	show
except that	but
excessive number of	too many
expend	spend, disburse
fail, refuse, and neglect	fail
final and conclusive	either word, as appropriate

for the duration of	during or while
for the purpose of holding (or other gerund)	to hold (or comparable infinitive)
Questionable, superfluous, or verbose	**Use instead**
for the reason that	because
forthwith	immediately
frequently	often
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	under, by
in case	if
in excess of	more than
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
Questionable, superfluous, or verbose	**Use instead**
make payment	pay
make provision for	arrange, provide
manner	way, method
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 his or her own application	at his or her request
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
proceed	go, go ahead
procure	obtain, get
prosecute its business	carry on its business
provided that	if, unless, or but
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
shall be construed to mean	means
sole and exclusive	either word, as appropriate
Questionable, superfluous, or verbose	**Use instead**
specified (in the sense of expressly mentioned or listed)	named
State of Delaware	"Delaware" or "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
upon	on
utilize, employ (in the sense of use)	use
when	if
where	in which
with reference to	as to, regarding, for
with the object of changing (or other gerund)	to change (or comparative infinitive)

Section 3: Word Usage Examples.

This section offers word usage examples for correct capitalization, compounding, hyphenation, and spelling for words frequently used within the Code. These examples have been provided by LexisNexis, the publisher of the Code, and were created in conjunction with and are used by the Code Revisors in the codification process. To the extent possible, follow these examples in drafting legislation to aid the Code Revisors in maintaining uniformity within the Code.

Additionally, this section includes a discussion on drafting words with similar spellings that are frequently confused.

A. Capitalization Examples.

Capitalize or use lowercase as shown:

act, unless part of a named act or referred to as "This Act"

a.m.

armed forces

associations (lowercase if used generally or as an adjective; capitalize if referring to a specific association or used in the full name of an association)

Bill of Rights

Chapter 29, but "of this chapter" when part of an internal reference

Class I

class A felony

Code (when referring to the Delaware Code)

code (when referring to the Criminal Code, etc.)

committees (lowercase if used generally; capitalize if referring to a specific committee or used in the full name of a committee)

compact (lowercase if used generally or in section catchlines; capitalize if referring to a specific compact or used in the full name of a compact)

constitution (lowercase for "federal constitution" or if used generally; capitalize if referring to specific constitution or in "Constitution, article X, § 1," "§ 2, article X of the Constitution of this State," and "Constitution of Delaware")

county or counties (lowercase if used as an adjective or used generally; capitalize if referring to a specific county or counties)

county agencies, boards, commissions, departments or officials of a specific county (lowercase generally; capitalize if identifying the office or board in such a way as to name it as a proper title of office)

> "Kent County Comptroller" **or** "Comptroller of Kent County"
>
> **But:** "the comptroller in Kent County," **and** "comptroller" **(even if the section limits itself to one county, earlier in the section)**

courts (lowercase if used generally; capitalize if referring back to a specific court (as in "Supreme Court")

Criminal Code

Delaware Code

Delaware Code Revisors

Dover Air Force Base

federal government

Fourteenth Amendment

fund (lowercase generally; capitalize if referring to the proper name of a fund)

General Assembly

> **Do:** General Assembly
>
> **Don't:** "legislature" or "The Legislature"

chamber (if used to generally refer to either Senate or House of Representatives; capitalize if referring to a specific chamber)

Internet

justice of the peace

Justice of the Peace Court; Justices of the Peace Courts

Municipal Home Rule Amendment

national consumer price index average

non-Delaware

non-state-aid

office ("office of the Secretary of State")

officers of private associations and corporations

organizations (lowercase if used generally or as an adjective; capitalize if referring to a specific organization)

Part V, but "of this part" when part of an internal reference

p.m.

provided (lowercase following semicolon)

Rules (of Procedure) of Court of Chancery

State (lowercase if used generally or as an adjective; capitalize if referring to "State of Delaware." May use "State" to refer to "State of Delaware" unless it would be confusing, then should add "of Delaware.")

state and federal agencies, boards, commissions, departments, officers, etc., (lowercase if used generally ; capitalize if used to identify a specific agency, board, commission, etc.)

statewide

Subchapter I, but "of this subchapter" when part of an internal reference

that (lowercase when following "Provided")

Title 14, but "of this title" when part of an internal reference

United States government

B. Compounding, Hyphenation, and Spelling Examples.

above mentioned	e-mail	nonresident	secretary-treasurer
above-mentioned (adj.)	endorsement	non-state (adj.)	semiannually
after-born (adj.)	engine-driven aircraft	noon, midnight	semitrailer
attorney-at-law	ex officio	nowise	setoff (adj. & n.)
attorneys' fees	fire boss	officeholder	set off (verb)
barbershops	fire fighters	one half (n.)	short-term
beehive, beekeeper,	fire-fighting	one-half	sidetrack

beekeeping	apparatus	(as modifier)	
barroom	fore-and-aft position	one half of 1 percent	SOS
boardinghouse	fortunetelling	out-of-state	state-supported
boreholes	full-paid	overdraft	statewide (adj. & adv.)
bullfrogs	full-time (adj.)	overproduction	steamboat
bylaws	gas-bearing (adj.)	overripe	stepchild
by-products	gill net	paid-up stock	subcommittee
canceled	grants-in-aid	pari-mutuel	subspecies
checkup	hard-shell (adj.)	part-time (adj.)	tail lamp
coal-cutting (adj.)	head lamps	passbook	taillight
coastline	head-on (adj.)	payroll	takeoff (n.)
co-chair	head on (adv.)	percent	10-day
co-defendant	heirs at law	pipeline	10 days' service
co-heirs	in no wise	poolrooms	theater
co-indorsers	inservice education	postmortem	timberland
coin-operated	insofar	post office (n.)	toll roads
common-law court	land books	post-office address	tort-feasor
cooperate	landmark	post-office department	to wit
co-tenant	landowners	postpaid	trademark (n. & verb)
courthouse	last known	privately owned	trawlnet
court-martial	law-enforcement officer	pro rata	12-month period
cover-up	layoff	rearrest	two-thirds majority
crab pot	instead	recordkeeping	underway
crossbars	livestock	reelected	vice chair
crossbill	loose-leaf (adj.)	reemployment	vice-president
crosscut	low-income housing	reenactment	vice principal
cross-examination	man-made	reenlistment	vocational-technical high school
cross mark	moneys	reenters	watermark
daytime	motorboat	re-label	website
day-to-day operation	motor-driven (adj.)	repayments	well-being
decision-making	next-of-kin	reregistration	well-settled rule
decision maker	nighttime	right-of-way (rights-of-way, right-of-ways)	wilful, wilfully
dragnet	*non* (prefix forms one word, with exceptions listed here)	safe-deposit (adj. & n.)	write-in vote
eastbound	nonjudicial	safekeeping	X ray (n.)

eastern standard time	nonmembers (and other similar words)	sawlogs	X-ray therapy
eFile, eFiling	nonprofit	seafood	

C. Words Frequently Confused.

1. **Affect v. Effect.**
    a. *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 on a person, or influence.
    b. *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.

2. **Biannual v. Biennial.**
    a. *Biannual* means twice a year. Use "semiannual" instead.
    b. *Biennial* means every other year.

3. **Capital v. Capitol.**
    a. *Capital* means capital city, money or assets, first-rate, related to physical improvements.
    b. *Capitol* means the statehouse.

4. **Continual v. Continuous.**
    a. *Continual* means frequently recurring. It refers to time and implies close succession.
    b. *Continuous* means uninterrupted. It refers to time and space and implies continuity.

5. **Considered v. Deemed.**
    a. *Considered* means treating something as true because it is true.
    b. *Deemed* means treating something as true, even if it is contrary to fact.

6. **Ensure v. Insure v. Assure.**
    a. *Ensure* means to make certain or guarantee.
    b. *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.
    c. *Assure* means to try to increase another's confidence, to make certain, or to remove doubt from a person's mind.

7. **Farther v. Further.**
    a. *Farther* pertains to actual distance.
    b. *Further* means additional, more advanced.

8. **Partially v. Partly.**

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

    b. *Partly* means in part.

9. **Principal v. Principle.**

    a. *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.

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

10. **Therefor v. Therefore.**

    a. *Therefor* means in place of, for that, for it. Avoid using "therefor" in drafting; instead, use a synonym.

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

THIS PAGE INTENTIONALLY LEFT BLANK

Legislative Process

PART VII: THE LEGISLATIVE PROCESS

Releasing draft legislation for introduction may be the end of the *drafting* process, but the drafter's involvement is not complete, as the *legislative* process has just begun. The legislative process from the draft's release to codification has implications for the drafting process. The following chapters explore that process and, where pertinent, discuss where the drafter's participation may be required and how an accurate, clear, and uniform legislative product can reduce the need to involve the drafter later in the process.

Chapter 1: Draft Release, Numbering, Printing, and Preparation.

Once legislation is released, the drafter loses control over the legislation and the ability to alter it without either the sponsor striking it or the sponsor or another legislator amending it. This underscores the importance of ensuring the legislation is accurate, clear, and uniform before release. In the fast-paced world of Legislative Hall drafters, **proofreading is key** to safeguarding against many problems with the legislation in the course of the legislative process.

> In the fast-paced world of Legislative Hall drafters, proofreading is key to safeguarding against many potential problems with the legislation.

Once the drafter has released legislation in DELIS, the Secretary of the Senate ("Secretary") or the Chief Clerk of the House ("Chief Clerk") may view it, depending on the chamber for which the legislation is drafted. At this point, the Secretary or Chief Clerk assigns a number to the legislation. The Print Shop may now view the legislation in DELIS.

After numbering, the Print Shop prints the bonded copies of the legislation and the required number of regular copies. When printing is complete, Bill Prep in the appropriate chamber can view the legislation in DELIS.

Bill Prep collects the bonded and regular copies of the legislation from the Print Shop. Bill Prep prints the "backers" for the bonded copies of the legislation. Backers are required under Senate and House rules.[174] One backer is the original, which is used to document the prime sponsor, co-prime sponsors, or co-sponsors[175] of the legislation and each step of the legislative process. In particular, the original backer provides space to note the actions in each chamber including: first reading of the legislation, committee action, amendments, and the vote on third reading. The original backer also records the certification of the Secretary and Bill Clerk or Chief Clerk and Bill Clerk when passed in one chamber.

[174] Senate Rule 23(a) and House Rule 18(a).

[175] But see House Rule 19(f), which states that a "joint sponsor" is a person whose name is printed on the measure after the name of all prime and co-prime sponsors and a "co-sponsor" is a person whose name is not shown on the measure but signs the backer.

House Rule 19(a) and Senate practice require the signatures of all legislators who are listed as the sponsors. When the backers are prepared, Bill Prep is responsible for gathering these signatures. It is not required that this process be completed before introduction of the legislation.

At this point, the legislation is placed on the "Consideration List" in its chamber of origin.

Chapter 2: Action in the Chamber of Origin.

After release, numbering, printing, and preparation, the legislation is ready for consideration and action in the chamber of origin, beginning with the introduction of the legislation. In each chamber, legislation may be introduced in one of two ways: either from the floor while the chamber is in session or through inclusion in what is known as "the prefile" before session begins.[176] The vast majority of legislation is introduced through the prefile.

Introduction through either method constitutes the first reading of the legislation. Once introduced, the legislation is handed out to legislators and is publicly available in electronic form on the General Assembly's website and in hard copy from the Division of Legislative Service's Legislative Information Office, sometimes referred to as the Bill Room, on the ground floor of Legislative Hall.

With introduction normally comes committee assignment for all bills and joint resolutions. Simple and concurrent resolutions are not required to be assigned to committee. The President Pro Tem in the Senate and the Speaker in the House decide, in their respective chamber, to which committee to assign a bill or joint resolution. Typically, a bill or joint resolution is assigned to the committee dealing with oversight for the title of the Code to be amended or the predominate subject matter of the legislation.

Committee meetings in both chambers are held on Wednesdays when the General Assembly is in session. Senate and House rules require that a notice be posted on the Thursday before a committee meeting detailing the time and location for the meeting (and future meetings) and the committee agenda, including legislation to be considered and other announcements.[177] Items may be added to the agenda after it is posted.

Committee meetings are generally held in Legislative Hall and broadcasted online, and are open to the public. The prime sponsor of the legislation may be available to explain the legislation and answer questions along with representatives of an agency or entity impacted by the legislation. Comments from the public are also accepted. The drafter may be present at the sponsor's request to answer questions.

Senate Rule 46(a) provides that a quorum does not have to be present to constitute a committee meeting. However, House Rule 32 requires a quorum of four members, or a majority of the members of the committee, whichever is less.

[176] *See* Senate Rule 25(b)(1), (2), and (3); House Rule 19(b)(1)-(2).
[177] Senate Rule 45(a) and House Rule 34(b).

Legislation is acted on within the committee by motion to release or to table the legislation. While a motion to release may be made and a vote on such motion may be taken, at the committee meeting, the legislation may not be reported out of the committee until a majority of the members of the committee have signed the backer.[178] House Rule 35(a) states that legislation may be tabled in committee by a majority vote of the full committee.

> Don't confuse the vote on a motion to release legislation from committee ("Favorable," "Merits," or "Unfavorable") and the signatures required to actually release the legislation.
>
> If a majority of the committee members sign the original backer, the legislation is released from committee. The act of signing is the vote to release. The legislator's selection of "Favorable," "Merits," or "Unfavorable" is simply an opinion that does not impact the legislation's release. Legislation could conceivably be released with the majority of the committee signing the backer and indicating an "Unfavorable" opinion.

Both Senate and House rules require that minutes be kept by each standing committee.[179] The minutes usually contain a list of those in attendance at the meeting, the results of committee votes taken, and comments from those present. Minutes for the current legislative session are published on the General Assembly's website. Minutes for prior sessions are available from Public Archives.

An amendment to legislation may be technical or substantive. Amendments are not added by the committee, but the release of legislation can be conditioned on the promise of an amendment.[180]

Both Senate and House rules provide that legislation must be acted on within 12 legislative days after being assigned to committee.[181] An action, such as tabling the bill, suspends the clock. After that time, the legislation may be petitioned out of committee.[182] The petition process has not been used within memory of the Secretary or Chief Clerk.

If the legislation is released from committee, the committee report is read by the Secretary or Chief Clerk during session, indicating the legislation is released and the opinions of the committee. This constitutes the legislation's second reading. The legislation is now placed on the Ready List and may be added to an agenda.

In the Senate, the agenda is set based on requests by the prime sponsor of Senate legislation or the floor manager of House legislation (typically the chair of the committee it is reported from or the Senate co-prime sponsor). In the House, the Speaker sets the agenda from items on the Ready List that have been requested to be placed on the agenda by the prime sponsor

[178] Senate Rule 46(c) [and Senate practice] and House Rule 35(a).
[179] Senate Rule 45(b) and House Rule 34(c).
[180] House Rule 35(d) indicates a committee chair can offer an amendment to legislation from the committee that will take precedence over all other amendments and if the amendment fails, the Speaker may reassign the legislation to committee.
[181] Senate Rule 42(c) and House Rule 35(b).
[182] Senate Rules 42(c) and 47 and House Rule 25.

of House legislation or the floor manager of Senate legislation (typically the House co-prime sponsor, if none, the chair of the committee it is reported from).[183] Even after legislation is added to an agenda, it is important to remember that the majority leader runs the agenda on the floor in each chamber and can chose, for numerous reasons, not to work legislation even if it is on the agenda.

When legislation on an agenda is worked, it is read for the third time. It is during the third reading that the legislation is considered for final passage out of that chamber. The drafter may be expected to be available for questions from legislators during floor debate on the legislation.

While amendments may be introduced and placed with the legislation in a chamber any time before third reading, amendments are acted on only when the legislation is considered for final passage. Although legislation may need to be amended for policy reasons, a good drafter can reduce the need for technical amendments by following this manual and submitting the legislation for proofreading.

A member of a chamber may introduce an amendment to a House or Senate Bill in that chamber. An amendment does not become part of a bill unless that chamber, by majority vote, agrees to the amendment. In the Senate, amendments are attached to the legislation with the consent of the majority of the members as determined by a roll call vote, which is available on the General Assembly's website. In the House, the process is typically completed by a voice vote for technical amendments and non-controversial substantive amendments; however, a roll call vote may be requested by any member.[184] While the Senate has no rules on when an amendment needs to be introduced, the House requires that substantive amendments be prefiled and allows technical amendments to be introduced from the floor.[185] If an amendment will substantially change legislation, the Speaker may reassign the legislation to committee.[186] In the House, amendments are considered in numerical order, except that amendments to an amendment are considered before the adoption of the amendment it is amending.[187]

In both the Senate and the House, the vote for final passage is taken by a roll call vote, the results of which are available on the General Assembly's website. The Constitution requires that, for the passage of bills and joint resolutions, a quorum be present and have the concurrence of a majority of the members elected to the chamber, unless the Constitution requires another vote type. See Part III, Chapter 2, Section 4, A. on super-majority vote requirements. As it relates to the quorum requirement, the Delaware Supreme Court has held that "a majority of the members elected to the chamber" means "a majority of that [chamber] prescribed by law, irrespective of whether or not one or more vacancies have occurred by reason of death, resignation, or otherwise."[188] The number of members provided by law in the Senate is 21 and in the House is 41, thus, a majority is 11 in the Senate and 21 in the House, irrespective of deaths, resignations, or otherwise.

[183] Senate Rule 26(b) and House Rule 10.
[184] House Rule 39(d).
[185] House Rule 23(a).
[186] House Rule 23(d).
[187] House Rule 23(g), except as provided by House Rule 35(d).
[188] *Opinion of the Justices*, 251 A.2d 827 (Del. 1969).

Chapter 3: Action in the Second Chamber.

Once legislation has passed the chamber of origin, it is transmitted to the second chamber where the process discussed in Part VII, Ch. 2 is repeated.

While in the second chamber, the legislation is shepherded by a floor manager who may be either the co-prime sponsor in the second chamber or the chair of the committee the legislation is assigned to in the second chamber. When the legislation reaches third reading, it may be amended just like in the chamber of origin. If the legislation passes without an amendment in the second chamber, it has passed the General Assembly and will be prepared for delivery to the Governor. If the legislation passes with an amendment, it must return to the chamber of origin.

Chapter 4: Additional Action in the Chamber of Origin or Second Chamber.

Unlike Congress and the legislatures of some other states, the General Assembly does not use conference committees. Thus, if the second chamber places an amendment on legislation, the legislation returns to the chamber of origin for additional action. At this point, the legislation is not required to be heard in committee in the Senate. Instead, it can be heard any time after being placed on an agenda.[189] In the House, the Speaker chooses whether to place a House Bill as amended by the Senate on an agenda or into committee.[190] If the legislation passes without further amendment, it has passed the General Assembly and will be prepared for delivery to the Governor. Where the legislation passes with another amendment, it must return to the second chamber. In other words, legislation does not pass the General Assembly until both chambers have voted on the legislation and every amendment added to it.

Chapter 5: Engrossment.

Engrossment is the process by which legislation is updated to incorporate amendments made as the legislation progresses through the General Assembly. The Division of Legislative Services is responsible for engrossing all legislation. If an amendment passes but the legislation does not, the legislation is not engrossed.

The engrosser's job is to follow the amendment's instructions to alter the legislation being amended. Therefore, it is vital to consider and properly craft instructions when drafting an amendment. Some important considerations for drafting amendments are:

(1) Ensure references to line numbers in the original bill are accurate. Inaccuracies may result in amendatory language being improperly placed.

[189] Senate Rule 27(f) .
[190] House Rule 45(c).

An engrosser can't fix errors – style or otherwise – so don't rely on the engrosser to correct an error in a bill or amendment.

(2) Proofread instructions to delete certain lines or text and replace with specified lines or text, to ensure that harmony is maintained between the legislation and the amending text. Instructions calling for too much or too little deletion can result in amendatory language not harmonizing with the existing legislation.

(3) Multiple amendments added to legislation can lead to chaos in engrossing, especially when multiple drafters are involved. This is especially true when multiple amendments instruct changes be made to the same language in the existing legislation or when amendments add more than one of the same type of bill Section (as in an effective date provision).

Failure to consider this information may result in the amendment being unengrossable. If the legislation has passed both chambers, it may also not be possible for the Code Revisors to codify the amendment.

Keep in mind that amendments are typically considered by the chamber in numerical order, but the engrosser will engross amendments in the order in which they passed. If a conflict arises and amendments are irreconcilable (incapable of being read together and giving effect to each), the later amendment will prevail over the previously adopted amendment.

In addition to simply following instructions the engrosser will, when possible, notify the drafter of issues with grammar, style, structure, conflict, or when the amendment is unengrossable.

An engrossment is available only to Division of Legislative Services ("Division") drafters until the underlying legislation passes both chambers, at which point the engrossed legislation is released to the public. The engrossment is available on the General Assembly's website and in the Legislative Information Office of the Division. Additionally, bonded copies are prepared and delivered by the Division to the Secretary or Chief Clerk, as appropriate. The engrossment is provided as a courtesy within the original backer when it is delivered to the Governor. The engrossed legislation has no official status, as the Governor acts on the original legislation with its amendments. However, the codifiers at Lexis and the Code Revisors rely on engrossments as their source for amending the Code.

When legislation is engrossed, line numbers and synopsis are removed; however, the sponsorship list remains. The sponsorship list will be removed when the legislation is published in the Laws of Delaware.

Chapter 6: Enrollment.

Once a bill or joint resolution has passed both chambers in identical form, it is prepared for transmission to the Governor. In many states, this process involves putting the legislation into its final format through a process called enrollment. In Delaware, this process is managed by the Secretary for Senate legislation and the Chief Clerk for House legislation. The Secretary or Chief Clerk begin by confirming that the backer is properly constituted by checking to ensure that all sponsors have signed the legislation, that the backer is properly documented, and that

the proper signatures and seals are placed on the backer. A "governor's backer" is then prepared. The governor's backer contains the signatures of the Speaker and President Pro Tem and certifies that the legislation has properly passed the General Assembly. If the legislation was amended, a bond copy of the engrossment is also attached. Once the process is complete, the legislation is then presented to the Governor for action.

Chapter 7: The Role of the Governor.

Section 18 of Article III of the Delaware Constitution controls the process once legislation is presented to the Governor.[191] Section 18 provides that the Governor may approve or veto legislation. If approved, the legislation becomes law. If vetoed, the Governor must return the legislation to the chamber in which it originated. The chamber of origin may reconsider the legislation. If three-fifths of the members of that chamber agree to pass the legislation, it is then sent to the other chamber. If three-fifths of the members of the other chamber agree to pass the legislation, it becomes law without the Governor's signature.

Governor's Choices Under Section 18 of Article III:

1. Sign the legislation within 10 days, Sundays excepted (when signed, the legislation becomes law).

2. Ignore the legislation for more than 10 days, Sundays excepted (when ignored, the legislation becomes law as if the Governor had signed it).

3. Veto and return the legislation within 10 days, Sundays excepted, to the chamber of origin (if vetoed and returned, the legislation becomes law only if 3/5 of the members of each chamber re-approve it).

Section 18 provides that the Governor must sign or veto a bill within 10 days of presentment, excluding Sundays. If the Governor does not act within that time, then the bill becomes law as if the Governor signed it. The section contains an exception, which states that the rule does not apply if "the General Assembly shall, by final adjournment, prevent [the bill's] return, in which case it shall not become a law without the approval of the Governor."

[191] For purposes of this chapter, and for this section of the Constitution, legislation is defined as every bill, order, resolution, or vote to which the concurrence of both chambers of the General Assembly is necessary, except those matters dealing with internal or administrative affairs of the General Assembly.

Relatedly, if the General Assembly is in "final adjournment," the Governor may exercise the "pocket veto" power as "[n]o bill shall become law after the final adjournment of the General Assembly, unless approved by the Governor within thirty days after such adjournment." "Final adjournment" has been interpreted by the Delaware Supreme Court to mean only "the final adjournment of the second regular session of a General Assembly."[192] And, final adjournment occurs by the "adjournment sine die of the second regular session, or, in the absence of such adjournment, the extinguishment of that particular General Assembly by reason of the expiration of the terms of office of the members, whichever is earlier in point of time."[193] Therefore, it is now practically impossible for the Governor to use the pocket veto power because the chambers each recess to the call of the chair rather than adjourn *sine die*.[194]

While not directly related to the Governor's role in the legislative process, the discussion of "final adjournment" raises the following points:

1. Section 4 of Article II states that a legislative session "shall not extend beyond the last day of June" unless certain procedures are followed. This does not make the last day of June the day of final adjournment. Section 4 allows the General Assembly to stop its procedures at midnight on June 30th and continue by mutual call of the presiding officers of both chambers. See *Opinion of Justices*, 405 A.2d 694, 699 (Del. 1979).

2. When the General Assembly is "recessed to the call of the Chair" it does not mean, or result in, an adjournment *sine die* or end of the legislative session, even though no date certain is specified for reconvening. See *State ex. rel. Battaglia v. Delaware Dep't of Elections for New Castle County*, 344 A.2d 225, 228 (Del. 1975).

A note of caution for clients and drafters: it is a long-standing custom for the Secretary and Chief Clerk to hold legislation until the Governor calls for them to take action.[195] Therefore, as the second session of a General Assembly draws to a close, clients and drafters need to remain vigilant to ensure their legislation is presented to the Governor 10 or more days, Sundays excluded, before Election Day. Otherwise, the Governor may exercise the pocket veto power.[196]

---

[192] *Opinion of the Justices*, 405 A.2d 694, 698 (Del. 1979) (quoting *Opinion of the Justices*, 175 A.2d 543, 545 (Del. 1961)).

[193] *Id*. And, the Supreme Court, in *Opinion of the Justices*, 330 A.2d 764, 768 (Del. 1974), stated that the terms of office of members begins on the day next after their election, so the terms of those previously holding the position expire simultaneously.

[194] *Id*. at 700.

[195] In fact, this long-standing practice was broken only once in recent history; see https://www.delawareonline.com/story/news/politics/2018/10/26/gov-carney-veto-two-bills-backed-house-democrats/1772370002/ (last visited September 24, 2021).

[196] *See Opinion of the Justices*, 175 A.2d 405, 408 (Del. 1961) (citing *State v. Homiak*, 172 A. 838 (Ct. Gen. Sess. 1934) for the proposition that if the General Assembly is not in session on the tenth day under the first paragraph of Art. III, § 18, the first sentence of the third paragraph of Art. III, § 18 applies.).

Chapter 8. Veto Override.

While veto overrides were common in Delaware in the 1950s, with 55 overridden vetoes out of a total of 59 vetoes issued in the mid-1950s,[197] the General Assembly has not voted on a veto override since 1990.[198]

Section 18 of Article III of the Delaware Constitution governs the veto and veto override process. Section 18 provides, in pertinent part:

> Every bill which shall have passed both Houses of the General Assembly shall, before it becomes law, be presented to the Governor; if he or she approves, he or she shall sign it; but if he or she shall not approve, he or she shall return it with his or her objections to the House in which it shall have originated, which House shall enter the objections at large on the journal and proceed to reconsider it. If, after such reconsideration, three-fifths of all the members elected to that House shall agree to pass the bill, it shall be sent together with the objections to the other House, by which it shall likewise be reconsidered, and if approved by three-fifths of all the members elected to that House, it shall become a law; but in neither House shall the vote be taken on the day on which the bill shall be returned to it. In all such cases the votes of both Houses shall be determined by yeas and nays, and the names of the members voting for and against the bill shall be entered on the journal of each House respectively.

A reading of § 18, as supplemented by Delaware case law, House and Senate Rules, and *Mason's Manual of Legislative Procedure* ("*Mason's*"), reveals that the reconsideration of a vetoed bill by the house in which a vetoed bill originated ("house of origin") should proceed as follows:

(1) **The house of origin may not take a vote to override a Governor's veto "on the day on which the bill shall be returned to it."**[199] In 1963, § 18 was amended to include:

> "For purposes of return of Bills not approved by the Governor the General Assembly shall be considered to be continuously in Session until final adjournment and the Clerk of the House of Representatives and the Secretary of the Senate shall be deemed proper recipients of such returned bills during recess or adjournment of the General Assembly other than final adjournment."[200]
>
> Thus, when the General Assembly is in recess or adjournment, other than final adjournment, "the day on which the bill shall be returned to it" likely means the calendar day on which the bill is returned to the Chief Clerk of

[197] Carol Hoffecker, *Democracy in Delaware: The Story of the First State's General Assembly* 203 (Cedar Tree Books 2004).
[198] Del. H.J., 135th Gen. Assem. 199-200 (1990). The Division of Legislative Services's former legislative librarian, Sara Zimmerman, found information relating to the last known successful veto override, which occurred on July 6, 1977, when the House and the Senate voted to override Governor Pierre S. du Pont's veto of House Bill No. 300, as amended by House Amendment No. 27 and Senate Amendment No. 1 (the Fiscal Year 1978 Budget).
[199] Section 18 of Article III of the Delaware Constitution.
[200] See 54 Del. Laws, c. 11 (1963). This provision was enacted in response to *Opinion of the Justices*, 175 A.2d 405 (Del. 1961), sometimes referred to as the "First Pocket Veto Opinion."

the House or the Secretary of the Senate.[201] The vetoed bill may then be considered on any calendar day between the calendar day after it is received and the statewide general election day falling during the second session of a General Assembly, which is the date of final adjournment unless the General Assembly has adjourned *sine die*.[202] In addition, it should be noted that the § 18 requirement that "in neither house shall the vote [to override a veto] be taken on the day on which the bill shall be returned to it" covers only the house of origin; it has no application to the house to which the bill is sent once the house of origin votes to override the veto ("second house").[203] Thus, the second house may consider a bill the house of origin has overridden the veto of immediately after a vote by the house of origin to override a veto.

(2) **Both chambers should read the Governor's entire veto message in open session, especially when a veto override is contemplated,** to meet the requirement of § 18 that "the house shall enter the [Governor's] objections at large on the journal."[204] While this provision contemplates only publication in the journal, during the override of House Bill No. 300 in July 1977, both chambers read the entire veto message from the Governor in open session. The house of origin read the veto message twice: once on the legislative day it first convened following the Governor's veto (the day the Governor's veto was actually returned to it)[205] and once on the legislative day it voted to override the Governor's veto.[206] The Senate read the entire veto message once, on the legislative day it voted to override the Governor's veto.[207] A review of veto override procedures in Maine and Minnesota, states with the similar constitutional provisions as Delaware's, indicates that the General Assemblies in those states also read the Governor's veto message in open session. Therefore, it is recommended that both the house of origin and the second house read the Governor's entire veto message in open session, especially when a veto override is contemplated.

(3) **A veto message received must be read during the communications portion of the order of business on the next legislative day the house of origin is in session.**[208]

---

[201] See *Opinion of the Justices*, 405 A.2d 694, 698 (Del. 1979) (Finding that "the General Assembly is always in session for 'veto purposes,' until 'final adjournment.'").

[202] See *Id*. (Final adjournment occurs by the "adjournment sine die of the second regular session, or, in the absence of such adjournment, the extinguishment of the particular General Assembly by reason of the expiration of the terms of office of the members, whichever is earlier in point of time") and *Opinion of the Justices*, 330 A.2d 764, 768 (Del. 1974) (Where the Court stated that the terms of office of members begins on the day next after their election, so the terms of those previously holding the position expire simultaneously.).

[203] *Seeney v. State*, 277 A.2d 670, 674 (Del. 1971)(citing *In re Session Laws*, 121 A. 736 (N.J. 1923), in which the New Jersey Supreme Court construed a similar provision of the New Jersey Constitution and found that the use of the word "returned" in reference to the Governor's action and "sent" in reference to the house of origin's action in transmitting notice of its override to the second house indicated an intention on the part of the Framers that the house of origin be prevented from voting to override the veto on the day it was returned by the Governor and that no such limitation applied to the second house on receipt of the notice of the veto override by the house of origin.).

[204] Section 19 of Article III of the Delaware Constitution.

[205] Del. H.J., 129th Gen. Assem. 377-381 (1977).

[206] *Id*. at 383-387.

[207] Del. S.J., 129th Gen. Assem. 341-345 (1977).

[208] *Mason's Manual of Legislative Procedure*, Sec. 755-3., at 563 (National Conference of State Legislatures 2020 ed.) ("Legislation returned by the executive with objections is usually considered promptly . . . .").

(4) **After the veto message is read, the vetoed bill may be brought before the house of origin.**[209] To bring the vetoed bill before the house of origin, a member must seek recognition by the presiding officer.[210] If the day on which the veto message is read in the house of origin is a day after the veto message was received by it, the member must seek recognition immediately following the reading of the veto message. If the day on which the veto message is read in the house of origin is the day it was received by it, the member must wait until the next calendar day and then must seek recognition at an appropriate time during the order of business.

When recognized, the member should: (1) begin by indicating that the member would like to propose the following question to the chamber: "Shall the [House or Senate] repass [insert legislation type and number] despite the objections of the Governor?" and (2) request that the legislation be read by title only before debate or a vote on the question.

Once the legislation has been read by title only, the question is before the house of origin for consideration and, as a main motion,[211] is debatable.[212] During this time, it is appropriate to make certain other motions, including motions to adjourn, recess, table, postpone to a day certain, or commit to committee, as these motions take precedence over the question.[213] Alternatively, it is in order for a member to make other motions regarding the vetoed bill, including a motion to commit the vetoed bill to committee, table consideration of the vetoed bill, or postpone consideration of the vetoed bill until a day certain.

It should be noted that a suspension of the House or Senate Rules is not necessary, as the House and Senate Rules are directed at the initial passage of legislation, not its repassage following a veto. Further, the Delaware Constitution specifically calls for the body to reconsider a vetoed bill.[214] Finally, other states do not suspend rules before overriding a veto. While both chambers of the General Assembly suspended their rules before overriding the Governor's veto of House Bill No. 300 in 1977, this procedure was erroneous, counter to the Constitution, and must not be used in the future.

Of note is *Mason's* assertion that "the further consideration of [a vetoed bill] is not itself a reconsideration in the parliamentary sense"[215] This means that a motion to

---

[209] *Id*., Sec. 148-4. at 116 ("When a communication . . . is received, it may be acted upon as any other business.").

[210] *Id*., Sec. 155-1. at 119 ("Generally, any member who has been recognized by the presiding officer may present a motion or other proposal to the body."). See also House Rule 14(a) (151st Gen. Assem.) and Senate Rule 9(a) (151st Gen. Assem.).

[211] The question to override a Governor's veto is a main question because "[a]ll general questions of a substantive are main questions" and "[m]ain questions or main motions before a legislative body usually relate to the final disposition of bills or certain resolutions that, upon approval, become law . . . ." See *Mason's*, Sec. 179-1. and 2. at 141.

[212] *Mason's*, Sec. 63-3. and 4. at 54.("3. Members have a right to debate main questions subject to the right of the body itself to limit or restrict debate. 4. All main questions, amendments, and appeals are debatable because they represent substantive questions requiring the judgment of the group.").

[213] *Id*., Sec. 175-6 at 134, Secs. 176 to 178 at 134-141, and Sec. 187 at 146-149 (Regarding the type of motions that take precedence over a main motion.). See also House Rule 40 (151st Gen. Assem.).

[214] See Section 18 of Article III of the Delaware Constitution (The Governor "shall return [the vetoed bill] with his or her objections to the House in which it shall have originated, which House shall enter the objections at large on the journal and proceed to reconsider it."). Absent a specific House or Senate Rule governing the handling of vetoed legislation, or a specific requirement in the rules that the rules for passage apply on repassage, the House and Senate Rules do not apply.

[215] *Id.*, Sec. 458 at 305.

reconsider is not the appropriate mechanism by which to reconsider the vetoed legislation. However, *Mason's* also states that "a vote taken on further consideration of [a vetoed bill], whether in the affirmative or negative, can be reconsidered."[216] In Delaware, such a vote to reconsider would be subject to House Rule 41 or Senate Rule 39 regarding motions for reconsideration.

(5) **The vote on the motion to repass, or override the Governor's veto, must be taken by "the yeas and nays."[217] Passage requires the affirmative vote of three-fifths of all the members elected to that house.**[218] A 3/5 vote equates to 25 affirmative votes in the House of Representatives and 13 affirmative votes in the Senate.

A 3/5 vote equates to 25 affirmative votes in the House and 13 affirmative votes in the Senate.

(6) **If the vetoed bill repasses in the house of origin, that house must send the bill with the Governor's objections to the second house, which must then follow many of the same procedures to override the Governor's veto.**[219] If the second house concurs, the vetoed bill becomes law.[220] If the house of origin fails to override the veto, the second house may not consider it.

Chapter 9. Role of Lieutenant Governor in Breaking a Tie.

The Framers of the Delaware Constitution provided a solution for when a tie vote occurs in the Senate, by giving the Lieutenant Governor the power, in Section 19 of Article III of the Constitution, to vote in such a situation, a power called "the casting vote."[221]

The Nature and Extent of "The Casting Vote." In 1966, Delaware Governor Charles Terry requested of our Supreme Court an opinion on the nature and extent of the casting vote.[222] Specifically, Governor Terry asked: (1) whether the Lieutenant Governor is a member of the Senate for purposes of quorum and (2) on what legislative matters a Lieutenant Governor may exercise the casting vote.[223]

---

[216] *Id*.
[217] See *Mason's*, Sec. 530-4. at 362 (Indicating that the "yeas and nays" means a roll call vote.).
[218] Section 18 of Article III of the Delaware Constitution.
[219] *Id*.
[220] *Id*.
[221] Section 19 of Article III of the Delaware Constitution ("[The Lieutenant Governor] shall be President of the Senate, but shall have no vote unless the Senate be equally divided.").
[222] *Opinion of the Justices*, 225 A.2d 481, 482 (Del. 1966).
[223] *Id*.

Delaware's Supreme Court found that a method to break deadlocks and avoid impasse in the Senate was in the public's best interest, especially given the Framers' desire to end the ability under Delaware's prior Constitution to enact legislation by the vote of a majority of the quorum of a chamber, which they believed failed to express the will of the majority of the people of Delaware.

On the first question, the Supreme Court opined that the Lieutenant Governor is not a member of the Senate for quorum purposes because (1) the Constitution connects membership in the Senate with representation of a senatorial district;[224] (2) the Constitution carefully distinguishes between members of the General Assembly and the President of the Senate;[225] and (3) the office was modeled after the Vice President of the United States, who is not considered a member of the United States Senate, and the Framer's did not intend to deviate from the vice presidential model.[226] Therefore, because the Lieutenant Governor is not a member of the Senate, the Lieutenant Governor may not be counted to establish the constitutionally required quorum, which is "a majority of all the members elected to each House . . . ."[227]

On the second question, the Supreme Court first addressed the apparent conflict created between its conclusion that the Lieutenant Governor is not a member of the Senate and constitutional language requiring that passage of many legislative matters be by "a majority of all the members elected" to the Senate.[228] The Supreme Court resolved the conflict based on the rule of constitutional construction "that effect be given, if possible, to the whole Constitution and every word of it."[229] The Supreme Court concluded that Section 19 of Article III could be harmonized with the other constitutional provisions requiring that passage of many legislative matters be by "a majority of all the members elected" because it is unreasonable to assume that the Framers of the Constitution vested with the Lieutenant Governor the power of the casting vote simply to vote on relatively few and unimportant matters left by the Constitution for action by a majority of the quorum, especially given the Framers' desire that position be equivalent to the Vice President.[230]

---

[224] *Id*. at 483. See Section 2 of Article II of the Delaware Constitution and 29 *Del. C.* § 801.

[225] *Id*. See Section 15 of Article II of the Delaware Constitution ("The President of the Senate and the members of the General Assembly shall receive an annual salary and an annual expense allowance for transportation and such other necessary and proper purposes as the General Assembly shall by law provide.).

[226] *Id*. See 3 *Debates and Proceedings of the Constitutional Convention of the State of Delaware* 2253 (1958) (statement of David Clark and William Spruance). Specifically, the dialogue as follows:

> David Clark: "[I]t looks to me that the Lieutenant-Governor, as presiding officer of the Senate and having a vote in the case of a tie, is virtually a Member of that body. Would not the fact of his having the casting vote make him a member?"
>
> William Spruance: "No, no more than it would make the Vice-President of the United States a Member of the Senate over which he presides."

[227] *Id*. See Section 8 of Article II of the Delaware Constitution.

[228] *Id*. at 484.

[229] *Id*.

[230] *Id.* at 484-485.

Further, the Supreme Court found that it was in the public interest that there be a method to break deadlocks and avoid impasse in the Senate, especially on important matters[231] and especially given that the reason for the "majority of members" language was the Framers' desire to end the ability under the prior Constitution to enact legislation by the vote of a majority of the quorum of a chamber, which they believed failed to express the will of the majority of the people of this State.[232] The Supreme Court concluded:

> Implicit in Article III, § 19, we think, is the unqualified power of the Lieutenant Governor to vote on any question, large or small, whenever the Senate is equally divided. This conclusion maintains the underlying principle of the 'majority of members' provisions: the expression of the will of the majority of the people of the State.[233]

Based on the Supreme Court's opinion, the Lieutenant Governor's casting vote may be used on all of the following:

(1) Senate and House Bills.

(2) Senate and House Joint Resolutions.

(3) Senate and House Concurrent Resolutions.

(4) Senate Resolutions.

(5) Senate motions of a procedural nature.

(6) Confirmation of gubernatorial appointments.[234]

Meaning of "Equally Divided." Critical to determining when the Lieutenant Governor may use the casting vote is an understanding of the meaning of "equally divided." Neither the Delaware Constitution nor Delaware case law define "equally divided" as used in Section 19 of Article III. *Mason's* states that a "tie vote" occurs "when the vote for and the vote against any proposition are equal."[235] *Mason's* notes that "[a] casting vote is in order only when there is a tie vote, as . . . when there is an equal number for and against a proposition."[236] This suggests that the Senate is "equally divided" on an issue when the "yeas" and "nays" are equal, and that members who are "not voting" or "absent" are not counted for purposes of an equal division on a given vote.

Equally Divided: Impact of a Senator Who is Present but Not Voting. *Mason's* makes clear that "[m]embers present but not voting are disregarded in determining whether an action carried."[237] Further, as *Mason's* notes, "[i]t would not seem to be correct to say that members not

[231] *Id*. at 485.
[232] *Id*. at 484.
[233] *Id*. at 485.
[234] *Id*.
[235] *Id*. at Sec. 513(1), p. 347.
[236] *Id*. at Sec. 514(1), p. 349.
[237] *Id*. at Sec. 510(1), p. 341.

voting are presumed to be voting in the negative, although in this situation that is the effect of the failure to vote."[238]

Mason's idea that one cannot presume that members "not voting" are voting "no" finds support in Delaware case law. In *Smith v. Sussex County Council*, 632 A.2d 1387 (Del. Ch. 1993), the Court of Chancery was faced with a motion for summary judgment in a case where a plaintiff sued over an ordinance before Sussex County Council that failed for a lack of 3 affirmative votes.[239] The plaintiff contended that the Sussex County Council erred in finding that the ordinance failed.[240] Sussex County Council's enabling law states, "[n]o action of the county government, except as otherwise provided in this title, shall be valid and binding unless adopted with the concurrence of a majority of all members of the county government."[241] The vote on the ordinance at issue was two affirmative, one negative, two abstentions.[242] The plaintiff argued that Sussex County Council and the Court of Chancery must follow the "general common law rule that those who refuse to vote are regarded as having voted with the majority."[243] The Court, however, rejected the common law rule for two reasons. First, the Court held that the question presented was one of statutory construction, not common law adjudication. Because the language of the statute itself controlled, the Court must determine what the General Assembly intended by its language and so was not bound by the common law rule.[244] Second, the Court held that a "concurrence" is not satisfied by an abstention. The Court stated:

> [L]egislative bodies . . . act through the vote of the body. Whether an action constitutes valid legislative law creation is to a large extent a question of formality. Whether a particular member "concurs" in any action within the meaning of § 7002(k)(3) – which may determine whether a statement (ordinance) constitutes valid law – ought not to be a question of subjective intention of a member. Whether he or she concurs in action is determined by his or her vote. If a member votes for an ordinance he or she concurs in its enactment. If she does not vote for it, that member cannot, in my opinion, be said to have concurred in it in the formal way that legislative law creation requires.[245]

The Court reasoned that this construction of "concurrence" is more advantageous compared to the common law rule because: (1) it is closer to a standard English interpretation of the language; (2) it can be applied uniformly while the common law rule cannot as there are some cases in which abstentions are required by conflicts of interest rules; and (3) it is supported by persuasive case law in other jurisdictions.[246]

It is clear, therefore, that the act of voting is an affirmative act, "yea" or "nay." So, a member who is present and not voting on a vote where there are 10 yeas and 9 nays denies the potential majority both an affirmative vote for passage and a negative vote that would produce a Senate

---

[238] *Id*.
[239] *Smith v. Sussex County Council*, 632 A.2d 1387, 1388 (Del. Ch. 1993).
[240] *Id*.
[241] *Id*. (citing 9 *Del. C.* 7002(k)(3)).
[242] *Id.*
[243] *Id*.
[244] *Id.*
[245] *Id.* at 1389.
[246] *Id*.

that is equally divided for purposes of triggering the Lieutenant Governor's casting vote. In such a circumstance, the Lieutenant Governor may not exercise the casting vote and, without 11 affirmative votes, the legislative action may not be taken.[247]

Issues with "Not Voting" Defeating the Casting Vote Power. It may be argued that a conclusion of the effect of "not voting" on the ability of the Lieutenant Governor to use the casting vote eviscerates the power of the casting vote. In response, the Idaho Supreme Court's discussion of the mechanisms the drafters of Idaho's constitution devised to address exigencies that could arise that would prevent its Senate from organizing itself is instructive. The Court noted that "an equally divided Senate [was] not the only contingency the drafters contemplated."[248] However, the Court stated that not all contingencies could "be solved by giving the Lieutenant Governor a deciding vote."[249]

Such is the case presented by this manual's conclusion. The drafters of the Delaware Constitution provided a solution for the Senate when it found itself equally divided on a vote. The drafters did not provide a solution in the Constitution for when the body was not equally divided because of insufficient "yea" or "nay" votes to reach an equal division, the absence of a Senator, or a Senator's choice to not vote. It seems that in these situations, the Senate is left to find its own way to resolve an issue when there are insufficient votes for the Senate to act. That does not mean the casting vote power is eviscerated; it just means that a constitution cannot anticipate or resolve all questions.[250]

Chapter 10: The Role of the Code Revisors.

Delaware statutes have been revised and collected into bound volumes, a process referred to as codification, under the legislatively-mandated supervision of revisors. The first codification of Delaware laws in 1915 and the second in 1935 were products of this process. However, these Codes were not updated. Continuous code revision began in 1953 and continues to this day.

Under current law, two people who are licensed to practice law in Delaware are appointed by the Governor to serve as Code Revisors. Section 211 of Title 1 restricts the Code Revisors from altering the sense, meaning, or effect of an act of the General Assembly, but provides them with the power to do all of the following:

(1) Renumber and rearrange sections or parts of sections.

(2) Transfer sections or divide sections so as to give to distinct subject matters a separate section number, but without changing the meaning.

---

[247] There seems to be some Senate precedent for the idea that the casting vote is to be used when the "yeas" and "nays" are equally divided, irrespective of absent Senators. The vote on Senate Amendment No. 2 to House Bill No. 519 in the 138th General Assembly resulted in 10 Senators voting "yea," 10 Senators voting "nay," and 1 Senator being marked absent. Del. S.J., 138th Gen. Assem. 344 (1996). At this point, Lt. Governor Minner "needed to vote." *Id*. Lt. Governor Minner voted "nay" and the amendment was declared defeated. *Id*.

[248] *Sweeny v. Otter*, 804 P.2d 308, 317 (Idaho 1990).

[249] *Id*. at 318.

[250] This conclusion is supported by the fact that the drafters of the Delaware Constitution very likely understood that a member of a legislative body could be counted as "present but not voting," as the Journal for the Delaware State Senate from 1899, two years after Delaware's current constitution was drafted, notes many votes in which members were counted as "not voting." *See* Del. S.J. 129 (1899).

(3) Insert or change the wording of headnotes.

(4) Change reference numbers to agree with renumbered chapters or sections.

(5) Substitute the proper section or chapter number for the terms "this act," "the preceding section," and the like.

(6) Strike out figures where they are merely a repetition of written words and vice versa.

(7) Change capitalization for the purpose of uniformity.

(8) Correct manifest typographical and grammatical errors.

(9) Make any other purely formal or clerical changes in keeping with the purpose of the revision.

Section 211 provides that the Code Revisors should "omit all titles of acts, all enacting, resolving, and repealing clauses, all appropriation measures, all temporary or local statutes, all declarations of emergency, and all validity, declaration of policy, and construction clauses, except when the retention thereof is necessary to preserve the full meaning and intent of the law." While these provisions may not be codified, the Code Revisors may direct they be provided in the annotations to the printed versions of the Code as Revisor's Notes. The Laws of Delaware also contain all the provisions of a piece of legislation as enacted.

The Code Revisors may not correct issues with the legislation. Even if corrected, the decision of the Code Revisors may not fulfill the intention of the drafter or the client. Poorly drafted legislation that requires the Code Revisors' attention is subject to the Code Revisors' choices. If presented with grammatically incorrect language or conflicts within the legislation, the legislation and its amendments, or the legislation and the Code, the Code Revisors must make a choice. Sometimes that choice will coincide with the drafter's intention, sometimes it will not. In the worst cases, the Code Revisors will choose to not make a decision and the legislation will not be codified at all. Since the bulk of the General Assembly's legislation is passed in weeks leading up to June 30th, the Code Revisors' decision is often made months after the General Assembly's June 30th recess. This makes it difficult, if not impossible, for the General Assembly to quickly correct the problem.

> Code Revisors' powers are limited, so don't rely on the Code Revisors to correct what skilled drafting and proofreading should avoid.

Moreover, legislation is often enacted because specific coalitions form at the necessary time for passage. Those coalitions may not be available to make the necessary changes to the Code Revisors' decisions when the General Assembly reconvenes. Therefore, relying on a belief that the "Code Revisors will fix it" may result in the intent of the legislation being frustrated. A better course of action is to think of the legislation as the instruction manual for the Code Revisors and to ensure the instruction manual is accurate, clear, and uniform. This can be accomplished through adherence to this manual and good proofreading practices.

The number of errors in legislative drafting which the Code Revisors cannot correct has grown so large that Legislative Council authorized the Division of Legislative Services to draft annual technical corrections bills. The development of an annual in-house drafting workshop conducted by the Division of Legislative Services has endeavored to reduce the frequency of technical drafting errors.

Appendices

APPENDICES

Appendix A. Examples of Legislation

The sample legislation in Appendix A have been edited to reflect the rules and standards of this manual and, in some instances, edited for space. These examples are not exact reproductions of original legislation.

A-1. Senate Bill 167
A-2. House Bill 168
A-3. Senate Amendment to a Senate Bill 169
A-4. House Amendment to a House Bill 170
A-5. House Amendment to a House Amendment to a House Bill 171
A-6. Senate Amendment to a House Bill, as Amended 172
A-7. Bill to Amend the Laws of Delaware 173
A-8. Substitute Bill and the Original Bill 174
A-9. Constitutional Amendment (First leg) 176
A-10. Constitutional Amendment (Second leg) 177
A-11. Bill to Amend a Town Charter 179
A-12. Supplemental Appropriation Bill 180
A-13. Simple Resolution Proclaiming a Week of Honor 181
A-14. Simple Resolution Requesting a Government Body Act 182
A-15. Concurrent Resolution 183
A-16. Joint Resolution 184
A-17. Frequently Used Boilerplate Language 186

Appendix B. Standard Form for Resolution Establishing Task Force 207

Appendix C. Standard Form for Resolution Extending Date of Task Force 212

Appendix D. Important Delaware Cases 213

Appendix E. Drafting Checklists

E-1. Bill Drafting Checklist 217
E-2. Amendment Drafting Checklist 220
E-3. Resolution Drafting Checklist 222

Appendix F. Interpretation of Statutes 224

Appendix G. Bills with Super-Majority Vote Requirements 227

Appendix H. Glossary of Legislative Terms 230

Appendix A-1: Senate Bill

SPONSOR: Sen. Washington & Rep. Adams

DELAWARE STATE SENATE

174th GENERAL ASSEMBLY

SENATE BILL NO. 101

AN ACT TO AMEND TITLE 50 OF THE DELAWARE CODE RELATING TO SUBJECT MATTER OR TITLE OF THE CHAPTER.

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

Section 1. Amend § 01, Title 50 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows and by redesignating accordingly:

§ 01. Definitions.

As used in this chapter:

(1) "This word" means:

a. Use "means" if a definition is intended to exhaust the meaning of the defined word.

b. More language defining the word, ~~including, but not limited to~~ including all of the following:

1. Remembering to end lists with periods instead of semicolons.

2. Remembering never to use "including, but not limited to" because using the language used in line 7 is the preferred drafting method if you mean "and".

3. If, however, you mean "or," the language on line 5 would read, "including any of the following".

Section 2. This Act takes effect on January 1, 2120.

SYNOPSIS

This Act does X, Y, and Z by requiring A, B, and C.

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

Author: Sen. Washington

AB: CDE: FGH
55512345678

February 30, 2109

Appendix A-2: House Bill

SPONSOR: Rep. Van Buren & Rep. Harrison & Sen. Tyler;
Reps. Polk, Taylor, Fillmore; Sen. Pierce

HOUSE OF REPRESENTATIVES

174th GENERAL ASSEMBLY

HOUSE BILL NO. 101

AN ACT TO AMEND TITLE 50 OF THE DELAWARE CODE RELATING TO SUBJECT MATTER OR TITLE OF THE CHAPTER.

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

Section 1. Amend § 01, Title 50 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows and by redesignating accordingly:

§ 01. Definitions.

As used in this chapter:

(1) "This word" means:

a. Use "means" if a definition is intended to exhaust the meaning of the defined word.

b. More language defining the word, ~~including, but not limited to~~ <u>including</u> all of the following:

1. Remembering to end lists with periods instead of semicolons.

2. Remembering never to use "including, but not limited to" because using the language used in line 7 is the preferred drafting method if you mean "and".

<u>3. If, however, you mean "or," the language on line 5 would read, "including any of the following".</u>

<u>SYNOPSIS</u>

This Act does X, Y, and Z by requiring A, B, and C.

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

AB: CDE: FGH February 30, 2109
55512345678

Appendix A-3: Senate Amendment to a Senate Bill

SPONSOR: Sen. Buchanan

DELAWARE STATE SENATE

174th GENERAL ASSEMBLY

SENATE BILL NO. 101

SENATE AMENDMENT NO. 2

TO

SENATE BILL 101

AMEND Senate Bill No. 101 by deleting Section 4 thereof in its entirety and inserting in lieu thereof the following:

"Section 4. Amend § 02 of Title 50 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underlining as follows:

§ 02. Title of Section.

(d) This is the new language.".

FURTHER AMEND Senate Bill No. 101 by deleting Section 5 thereof in its entirety.

FURTHER AMEND Senate Bill No. 101 on line 66 by deleting "Delware" as it appears therein and inserting in lieu thereof "Delaware".

SYNOPSIS

This Amendment does X, Y, and Z by requiring A, B, and C.

Author: Sen. Buchanan

AB: CDE: FGH
55512345678

February 30, 2109

Appendix A-4: House Amendment to a House Bill

SPONSOR:Sen. Lincoln

HOUSE OF REPRESENTATIVES

174th GENERAL ASSEMBLY

HOUSE AMENDMENT NO. 3

TO

HOUSE BILL NO. 101

AMEND House Bill No. 101 by deleting lines 24 through 27 in their entirety and inserting in lieu thereof the following:

"(f) This is a new subsection, including all of the following:

(1) Remember to format your lists properly. This indentation level is at .5".

(2) Remembering to end lists with periods instead of semicolons.

(3) Remembering never to use "including, but not limited to" because using the language used in line 5 is the preferred drafting method if you mean "and".

(4) If you mean "or," the language on line 5 should read, "including any of the following" to indicate that any one item in the list can apply on its own."

SYNOPSIS

This Amendment does X, Y, and Z by requiring A, B, and C.

AB: CDE: FGH
55512345678

February 30, 2109

Appendix A-5: House Amendment to a House Amendment to a House Bill

SPONSOR: Rep. Johnson

HOUSE OF REPRESENTATIVES

174th GENERAL ASSEMBLY

HOUSE AMENDMENT NO. 1

TO

HOUSE AMENDMENT NO. 1

TO

HOUSE BILL NO. 101

AMEND House Amendment No. 1 to House Bill No. 101 by deleting lines 1 through 3 in their entirety and inserting in lieu thereof the following:

"AMEND House Bill No. 101 by deleting lines 13 and 14 in their entirety and substituting in lieu thereof the following:

(a) This is the new language.".

SYNOPSIS

This Amendment provides that X, Y, and Z shall occur, by requiring A, B, and C.

AB: CDE: FGH
55512345678

February 30, 2109

Appendix A-6: Senate Amendment to a House Bill, as Amended

SPONSOR: Sen. Grant

DELAWARE STATE SENATE

174th GENERAL ASSEMBLY

SENATE AMENDMENT NO. 1

TO

HOUSE BILL NO. 101

AMEND House Bill No. 101, as amended, on line 82 of House Bill No. 101 by inserting "This new language and" after the period therein.

FURTHER AMEND House Bill No. 101, as amended, by deleting lines 8 and 9 of House Amendment No. 1 to House Bill No. 101 in their entirety and inserting in lieu thereof the following:

"(11) Remember to format your lists properly. This indentation level is at .5 inches.

(12) Remembering to end lists with periods instead of semicolons.".

SYNOPSIS

This Amendment provides that X, Y, and Z shall occur, by requiring A, B, and C.

Author: Sen. Grant

AB: CDE: FGH
55512345678

February 30, 2109

Appendix A-7: Bill to Amend the Laws of Delaware

SPONSOR: Rep. Hayes & Sen. Garfield
Rep. Arthur; Sens. Cleveland, Harrison

HOUSE OF REPRESENTATIVES

174th GENERAL ASSEMBLY

HOUSE BILL NO. 101

AN ACT TO AMEND CHAPTER 001, VOLUME 100 OF THE LAWS OF DELAWARE RELATING TO SUBJECT MATTER OR TITLE OF CHAPTER.

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

Section 1. Amend § 01, Chapter 001, Volume 100 of the Laws of Delaware by making deletions as shown by strike through and insertions as shown by underline as follows:

This Act expires at 11:59 p.m. on ~~June 30, 2014~~ June 30, 2020, unless this Act is reestablished by a subsequent act of the General Assembly.

SYNOPSIS

This Act extends the sunset provision in Chapter 001, Volume 100 of the Laws of Delaware from June 30, 2014 to June 30, 2020.

AB: CDE: FGH
55512345678

February 30, 2109

Appendix A-8: Substitute and Original Bill

SPONSOR: Sen. Cleveland & Rep. McKinley & Rep. Roosevelt

DELAWARE STATE SENATE

174th GENERAL ASSEMBLY

SENATE SUBSTITUTE NO. 1

FOR

SENATE BILL NO. 102

AN ACT TO AMEND TITLE 52 OF THE DELAWARE CODE RELATED TO SUBJECT MATTER OR TITLE OF CHAPTER BEING AMENDED, WHICH IS AN EXACT COPY OF THE TITLE OF THE ORIGINAL BILL.

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

Section 1. Amend § 001 of Title 52 by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 005. Title of subsection.

(a) Remember to format lists properly. This indentation level is at .00".

(1) This indentation level is at .25".

(2) Remember to end lists with periods instead of semicolons.

(b) This is another sentence that distinguishes this substitute from the original bill.

SYNOPSIS

This Act provides that X, Y, and Z shall occur, by requiring A, B, and C.

This Act is a substitute for and differs from Senate Bill No. 2 by providing, stating, or specifying D and E.

Author: Sen. Cleveland

AB: CDE: FGH
55512345678

February 30, 2109

APPENDIX A-8, cont. (ORIGINAL BILL)

SPONSOR: Sen. Cleveland & Rep. McKinley & Rep. Roosevelt

DELAWARE STATE SENATE

174th GENERAL ASSEMBLY

SENATE BILL NO. 102

AN ACT TO AMEND TITLE 52 OF THE DELAWARE CODE RELATED TO SUBJECT MATTER OR TITLE OF CHAPTER BEING AMENDED.

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

Section 1. Amend § 001 of Title 52 by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 005. Title of subsection.

This is introductory language.

(a) Remember to format lists properly. This indentation level is at .00".

(1) Remember to end lists with periods instead of semicolons.

(2) This indentation level is at .25".

(b) This is another sentence because new Code language has no (a) without a (b).

SYNOPSIS

This Act provides that X, Y, and Z shall occur, by requiring A, B, and C.

Author: Sen. Cleveland

AB: CDE: FGH
55512345678

February 30, 2019

Appendix A-9: Constitutional Amendment – First Leg

SPONSOR: Rep. Taft & Sen. Wilson;
Reps. Harding, Coolidge; Sens. Hoover, F.D. Roosevelt

HOUSE OF REPRESENTATIVES

174th GENERAL ASSEMBLY

HOUSE BILL NO. 101

AN ACT PROPOSING AN AMENDMENT TO SECTION 01 OF ARTICLE MCL OF THE DELAWARE CONSTITUTION RELATING TO SUBJECT MATTER.

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

Section 1. Amend Section § 01 of Article MCL § 01, Article MCL of the Delaware Constitution by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 01. Title of section.

Section 01. ~~Language being deleted.~~ Language being added.

SYNOPSIS

This Act is the first leg of a constitutional amendment that would [brief statement on what amendment does].

This Act requires a greater than majority vote for passage because § 1 of Article XVI of the Delaware Constitution requires the affirmative vote of two-thirds of the members elected to each house of the General Assembly to amend the Delaware Constitution.

In addition, as the first leg of a constitutional amendment, the next General Assembly must pass an act concurring with this Act for it to become part of the Delaware Constitution.

AB: CDE: FGH
55512345678

February 30, 2109

Appendix A-10: Constitutional Amendment – Second Leg

SPONSOR: Rep. Truman & Sen. Eisenhower;
Reps. Kennedy, Johnson; Sen. Nixon

HOUSE OF REPRESENTATIVES

175th GENERAL ASSEMBLY

HOUSE BILL NO. 101

AN ACT CONCURRING IN A PROPOSED AMENDMENT TO SECTION 01 OF ARTICLE MCL OF THE DELAWARE CONSTITUTION RELATING TO SUBJECT MATTER.

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

WHEREAS, an amendment to the Delaware Constitution was proposed in the 173rd General Assembly, being Chapter 287 of Volume 82 of the Laws of Delaware; and

WHEREAS, the proposed amendment was adopted by two-thirds of all members elected to each house of the 173rd General Assembly; and

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

WHEREAS, when the 174th General Assembly concurs in the proposed amendment, the amendment will become part of the Delaware Constitution.

NOW, THEREFORE:

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

Section 1. Amend Section 01 of Article MCL of the Delaware Constitution by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 01. Title of section.

Section 01. Introductory language:

(8) Already-existing language, <u>added language,</u> the rest of this paragraph is already-existing language.

SYNOPSIS

This Act is the second leg of a constitutional amendment to do A, B, and C.

The first leg of this constitutional amendment was Senate Bill 191 of the 173rd General Assembly, published in Chapter 287 of Volume 82 of the Laws of Delaware. On passage of this second leg by this General Assembly this amendment will become part of the Delaware Constitution.

This Act requires a greater than majority vote for passage because § 1 of Article XVI of the Delaware Constitution requires the affirmative vote of two-thirds of the members elected to each house of the General Assembly when the General Assembly amends the Delaware Constitution.

AB: CDE: FGH
55512345678

February 30, 2109

Appendix A-11: Bill to Amend Town Charter

SPONSOR: Rep. Madison & Sen. Monroe
Rep. Quincy Adams

HOUSE OF REPRESENTATIVES

174th GENERAL ASSEMBLY

HOUSE BILL NO. 101

AN ACT TO AMEND THE CHARTER OF THE TOWN OF WHOVILLE RELATING TO SUBJECT MATTER.

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

Section 1. Amend Section 01 of the Charter of the Town of Whoville by making deletions as shown by strike through and insertions as shown by underline as follows:

Section 01. Title of Section.

(c) The mayor of Whoville shall**Error! Bookmark not defined.** encourage all residents to drink hot ~~toddies~~ tea with lemon before the annual carol singing event.

SYNOPSIS

This Act amends the Whoville Charter to provide that the mayor shall encourage all residents to drink hot tea with lemon before the annual singing event.

AB: CDE: FGH
55512345678

February 30, 2109

Appendix A-12: Supplemental Appropriations Bill

SPONSOR: Rep. Jackson & Sen. Van Buren; Reps. Harrison, Tyler; Sens. Polk, Taylor

HOUSE OF REPRESENTATIVES

174th GENERAL ASSEMBLY

HOUSE BILL NO. 101

AN ACT TO PROVIDE A SUPPLEMENTAL APPROPRIATION FOR THE FISCAL YEAR ENDING JUNE 30, 2020 TO THE DEPARTMENT OF GOVERNMENTAL GOINGS-ON FOR THE PURPOSE OF PROVIDING ADDITIONAL FUNDING FOR THIS AND THAT.

Section 1. An amount equal to [percentage or specified amount] of [specified fund, such as the General Fund] is appropriated to the Department of Governmental Goings-On for the purpose of providing additional funding for This and That.

Section 2. The funds appropriated by this Act which remain unencumbered on June 30, 2020, revert to the General Fund of the State of Delaware.

SYNOPSIS

This Act provides a supplemental appropriation of up to [percentage or specified amount] of [specified fund, such as the General Fund] for This and That. These funds are in addition to the budget appropriation and are intended to assist This and That, which lost such funding last year.

AB: CDE: FGH
55512345678

February 30, 2109

Appendix A-13: Simple Resolution Proclaiming a Week of Honor

SPONSOR: Rep. Fillmore & Rep. Pierce

HOUSE OF REPRESENTATIVES

174th GENERAL ASSEMBLY

HOUSE RESOLUTION NO. 101

PROCLAIMING THE WEEK OF FEBRUARY 30 THROUGH FEBRUARY 37 AS "IMPOSSIBLE BUT ILLUSTRATIVE WEEK".

WHEREAS, the purpose of this sample resolution is to demonstrate how to draft a simple resolution proclaiming a week of honor; and

WHEREAS, all "Whereas" clauses except the last one end with a semi-colon and the word "and"; and

WHEREAS, the last "Whereas" clause ends with a period.

NOW, THEREFORE:

BE IT RESOLVED by the House of Representatives of the 174th General Assembly of the State of Delaware that the week of February 30 through February 37 is proclaimed "Impossible but Illustrative Week".

BE IT FURTHER RESOLVED that there can be multiple "Be It Resolved" lines.

SYNOPSIS

This Resolution declares the week of February 30 through February 37 as "Impossible but Illustrative Week".

AB: CDE: FGH
55512345678

February 30, 2109

Appendix A-14: Simple Resolution Requesting a Government Body Act

SPONSOR: Rep. Buchanan

HOUSE OF REPRESENTATIVES

174th GENERAL ASSEMBLY

HOUSE RESOLUTION NO. 101

REQUESTING THE SECRETARY OF DOODADS TO ISSUE A REPORT ASSESSING HOW THE OPENING OF A WIDGET FACTORY IN WHOVILLE WILL IMPACT THE WHOVILLE ECONOMY.

WHEREAS, the purpose of this sample resolution is to demonstrate how to draft a simple resolution requestion a government body to act; and

WHEREAS, all "Whereas" clauses except the last one end with a semi-colon and the word "and"; and

WHEREAS, the last "Whereas" clause ends with a period.

NOW, THEREFORE:

BE IT RESOLVED by the House of Representatives of the 174th General Assembly of the State of Delaware that the Secretary of Doodads is requested to provide a report to the General Assembly by December 31, 2020, assessing how the opening of a widget factory in Whoville will impact the Whoville economy.

BE IT FURTHER RESOLVED that there can be multiple "Be It Resolved" lines.

SYNOPSIS

Whoville is planning to build a widget factory, which could have a significant financial impact on Whoville's economy. This Resolution asks the Secretary of Doodads to provide a report assessing how building a widget factory in Whoville will impact the Whoville economy.

AB: CDE: FGH
55512345678

February 30, 2109

Appendix A-15: Concurrent Resolution

SPONSOR: Rep. Lincoln & Sen. Johnson
on behalf of all Representatives;
on behalf of all Senators

HOUSE OF REPRESENTATIVES

174th GENERAL ASSEMBLY

HOUSE CONCURRENT RESOLUTION NO. 101

COMMENDING THE EFFORTS OF WHOVILLE'S CITIZENS FOR ALWAYS REMAINING POSITIVE.

WHEREAS, the purpose of this sample resolution is to demonstrate how to draft a concurrent resolution; and

WHEREAS, all "Whereas" clauses except the last one end with a semi-colon and the word "and"; and

WHEREAS, the last "Whereas" clause ends with a period.

NOW, THEREFORE:

BE IT RESOLVED by the House of Representatives of the 174th General Assembly of the State of Whoville, the Senate concurring therein, that citizens of Whoville are commended for always remaining positive.

BE IT FURTHER RESOLVED that there can be multiple "Be It Resolved" lines.

SYNOPSIS

This Concurrent Resolution commends Whoville's citizens for always remaining positive.

AB: CDE: FGH
55512345678

February 30, 2109

Appendix A-16: Joint Resolution

SPONSOR: Sen. Grant & Rep. Hayes

HOUSE OF REPRESENTATIVES

174th GENERAL ASSEMBLY

SENATE JOINT RESOLUTION NO. 101

DIRECTING THE DEPARTMENT OF HAPPINESS TO ESTABLISH A PARTY COMMITTEE; DIRECTING THE DIVISION OF COFFEE TO ESTABLISH A FRAMEWORK FOR THE FREE DELIVERY OF COFFEE TO EVERY WHOVILLE CITIZEN; AND EXTENDING THE WORK OF THE KITTENS FOR EVERYONE TASK FORCE

WHEREAS, the purpose of this joint resolution is to demonstrate how to draft a joint resolution; and

WHEREAS, all "Whereas" clauses except the last one end with a semi-colon and the word "and"; and

WHEREAS, the last "Whereas" clause ends with a period.

NOW, THEREFORE:

BE IT RESOLVED by the Senate and the House of Representatives of the 174th General Assembly of the State of Delaware, with the approval of the Governor, that the Department of Happiness shall establish a Party Committee, the Division of Coffee shall determine how best to implement a program to deliver coffee to every Whoville citizen free of charge, and the work of the Kittens for Everyone Task Force is extended to February 30, 2020.

BE IT FURTHER RESOLVED that there can be multiple "Be It Resolved" lines.

SYNOPSIS

This Joint Resolution directs the Department of Happiness to establish a Party Committee, in order to avoid further confusion over which state agency is responsible for the happiness of Whoville citizens; directs the Division of Coffee to determine how best to implement a program of free coffee delivery; and extends the authority of the Kittens for Everyone Task Force through February 30, 2120. In its last report to the General Assembly, it was revealed that 3 Whoville citizens still do not have kittens, as their pets have now grown into cats.

AB: CDE: FGH
55512345678

February 30, 2109

Appendix A-17: Frequently Used Boilerplate Language

Boxes to Check in DELIS When Drafting Legislation

□ If legislation creates an appointment.
□ If legislation creates a report.

Prefatory or Instructional Language

Amend existing Delaware Code section

Section [number]. Amend § [number], Title [number] of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

Add new Delaware Code section to existing subchapter

Section [number]. Amend Subchapter [number], Chapter [number], Title [number] of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

Add new Delaware Code section to existing chapter

Section [number]. Amend Chapter [number], Title [number] of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

Add new Delaware Code chapter to existing title

Section [number]. Amend [Part [number],] Title [number] of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

Amend existing definition section in Delaware Code

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

Repeal existing portion of Delaware Code without using strike through; use only to repeal large amount of text

Section [number]. [portion to be repealed], Title [number] of the Delaware Code is repealed in its entirety.

Repeal existing provision of Delaware Code and make new additions

Section [number]. Amend Chapter [number], Title [number] of the Delaware Code by repealing [provision to be repealed] in its entirety and by making insertions as shown by underline as follows:

Reorganize the Delaware Code

Section [number]. Amend § [number], Title [number] of the Delaware Code by transferring § [number] to § [number] of Title [number] and by making deletions as shown by strike through and insertions as shown by underline as follows:

Commonly Used Language

Introductory language to create definition section or subsection

For purposes of this [title/chapter/subchapter/section]:

Give Act specific name or short title

This Act is known as "[name of Act]".

Create state agency's authority to regulate

The [Secretary/Other Highest Administrative Officer/Board/Commission] [shall/may] adopt regulations to implement this [chapter/subchapter/section].

Ages

the individual is [number] years old or older.

the individual is under [number] years old.

the individual is [number] years old or under.

Cite to named federal law

under the [name of Act], [number] USC §§ [number], et seq.,

Signal to Code Revisors to insert a date into the law, once enacted

When inserted date is date law is effective based on effective date or contingent effective date provision in bill

On or after [the effective date of this Act]

When inserted date is date law is implemented based on implementation date provision in bill

On or after [the implementation date of this Act]

When inserted date is date the law is enacted

On or after [the enactment date of this Act]

> **Note:** Indicating "implementation date" in brackets is usually sufficient; however, if the effective date is different than the enactment date it may be necessary to use "enactment date" instead.

Create government official's authority to appoint member to state entity based on list of names provided by nongovernmental entity

The Governor shall appoint [number] members from the [nongovernmental entity]. The Governor may consider potential nominees from a list that the [specific person from the nongovernmental entity] provides.

Delayed Effective Date, Delayed Implementation Date, Contingent Effective Date

Delay effect of bill or bill Section for specific amount of time or until date certain

Section [number]. [This Act] [Section [number] of this Act] takes effect [number] [days, weeks, months, years] after its enactment into law.

Section [number]. [This Act] [Section [number] of this Act] takes effect on [month and day] following its enactment into law.

> **Note:** The example immediately above is useful if the legislation should take effect on the next calendar or tax year following enactment and it is unclear when the legislation will pass.

Section [number]. [This Act] [Section [number] of this Act] takes effect on [month, day, and year].

Section [number]. If [this Act] [Section [number] of this Act] is enacted before or on [month, day, and year], [this Act] [Section [number] of this Act] takes effect on [month and day] of the first full year following its enactment into law. If [this Act] [Section [number] of this Act] is enacted after [month, day, and year], this Act takes effect on [month and day] following its enactment into law.

Delay effect of bill or bill Section to give state agency time to create needed regulations

Section [number]. [This Act] [Section [number] of this Act] is effective immediately and is to be implemented the earlier of the following:

(1) [Insert maximum delay you want] from the date of the Act's enactment.

(2) Notice by [Secretary/Other Highest Administrative Officer/Board/Commission] published in the Register of Regulations that final regulations to implement this Act have been adopted.

Make effective date of bill or bill Section contingent on happening of future action or event

Section [number]. [This Act] [Section [number] of this Act] takes effect [number] [days, weeks, months, years] following the date of publication in the Register of Regulations of a notice by the [name of person who would know when the future action or event has occurred] that [insert future action or event].

Permit bill or bill Section to become effective when state agency is prepared for implementation

Section [number]. [This Act] [Section [number] of this Act] is effective immediately and is implemented on the date of publication in the Register of Regulations of a notice of implementation by [Secretary/Other Highest Administrative Officer/Board/Commission].

Delay implementation for specific amount of time or until date certain

Section [number]. [This Act] [Section [number] of this Act] is effective immediately and is implemented [{number} days, weeks, months, years after its enactment into law] [{month and day} following its enactment into law] [on {month, day, and year}].

Contingent effective date to address a conflict or intersection with another bill

Section [number]. If [bill number] of the [number] General Assembly does pass both chambers of the General Assembly by [date], Section [number] of this Act takes effect [date or number of days after the referenced bill] of the [number] General Assembly takes effect.

Section [number]. If [bill number] of the [number] General Assembly does not pass both chambers of the General Assembly by [date], Section [number] of this Act does not take effect.

OR

Section [number]. If [bill number] of the [number] General Assembly is enacted into law, Section [number] of this Act takes effect [date or number of days after the referenced bill] of the [number] General Assembly takes effect.

Section [number]. If [bill number] of the [number] General Assembly is not enacted into law, Section [number] of this Act does not take effect.

Sunset Clause

Section [number]. [This Act] [Section [number]; or, if necessary, citation for Delaware Code provision contained in the Act] of this Act] expires [amount of time] after the Act's enactment into law, unless extended by subsequent action of the General Assembly.

Immunity

A [noun] who [action] under this section must do so in good faith and with reasonable care. Unless it is established that the [noun] caused injuries or death as a result of unreasonable care, willfully, wantonly, or by gross negligence, a [noun] is not subject to any of the following as a result of [action]:

(1) Disciplinary or other adverse action under the professional licensing laws of this State.

(2) Criminal liability.

(3) Civil liability for damages for injuries or death.

Civil Penalties

A [noun] who refuses, fails, or neglects to comply with [Code citation reference] is subject to a civil penalty as follows:

(1) For a first occurrence, [specific amount or range of civil penalty], in addition to costs.

(2) For a second occurrence, [specific amount or range of civil penalty], in addition to costs.

(3) For a third or subsequent occurrence, [specific amount or range of civil penalty], in addition to costs.

Creating Crimes or Criminal Penalties

Create a crime

It is unlawful to [adverbial mens rea] [actus reus].

It is unlawful to knowingly push, shove, or otherwise touch another person in an offensive manner

Create criminal penalty when reference to the class of offense is sufficient to provide the penalty

Violation of [Code citation reference] is a [class of offense].

Create criminal penalty when a specific penalty, different from the general penalty for a class of offense is needed

Violation of [Code citation reference] is a [class of offense] punishable by [some specific mandatory or minimum penalty within the range of the class of offense].

Violation of [Code citation reference] is punishable by [specific amount or range of fine or incarceration].

Citation to the Delaware Administrative Code, in the Delaware Code

Citation to a specific regulation as a whole

Regulation [number] of Title [number] of the Delaware Administrative Code

Regulation 1202 of Title 19 of the Delaware Administrative Code

Citation to a specific section of a specific regulation

Regulation [number of the regulation followed by a dash and the number of the specific section to be cited] of Title [number] of the Delaware Administrative Code

Regulation 1202-18.0 of Title 19 of the Delaware Administrative Code

Note: Lexis will translate the drafted citation to the Delaware Code into a citation to the "CDR" which is the Code of Delaware Regulations, a Lexis product, making the citation read, "CDR 19-1000-1202". The correct way to draft these citations in a bill, however, are in the examples in this section.

Report required

(a) The [Department] shall annually prepare a report detailing [or including] all of the following:

(1) [Required information].

(2) [Required information].

(b) The [Department] shall submit the report to all of the following not later than [date] of each year:

(1) The President Pro Tempore and Secretary of the Senate, for distribution to all Senators.

(2) The Speaker and Chief Clerk of the House of Representatives, for distribution to all Representatives.

(3) The Director and Librarian of the Division of Legislative Services.

(4) The Director of the Delaware Public Archives.

(5) The Governor.

OR

The [Department] shall submit its annual report to the Governor, the General Assembly, and the Director and Librarian of the Division of Legislative Services no later than [date].

Resolution "Be it Resolved" Boilerplate

Note: Use the autopopulating language in DELIS by clicking the "Resolution Type" button. Based on the type of resolution selected on the "Draft Legislation" page, you should get the following:

Simple resolution

BE IT RESOLVED by the [House of Representatives or Senate] of the 151st General Assembly of the State of Delaware that . . .

Concurrent resolution

BE IT RESOLVED by the [House of Representatives or Senate] of the 151st General Assembly of the State of Delaware, the [Senate or House of Representatives] concurring therein, . . .

Joint resolution

BE IT RESOLVED by the [House of Representatives or Senate] and the [Senate or House of Representatives] of the 151st General Assembly of the State of Delaware, with the approval of the Governor, that . . .

Synopsis

When making changes to existing law to conform to the Drafting Manual

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

When including a delayed effective date, delayed implementation date, or a contingent effective date, include similar language in the synopsis

[This Act] [Section [number] of this Act] takes effect [number] [days, weeks, months, years] after its enactment into law.

In a substitute to a bill, include the following to note what has changed:

House Substitute No. [number] for House Bill No. [number] differs from House Bill No. [number] as follows:

First leg of an amendment to the Delaware Constitution

This Act is the first leg of a constitutional amendment that would [brief explanation of amendment].

This Act requires a greater than majority vote for passage because § 1 of Article XVI of the Delaware Constitution requires the affirmative vote of two-thirds of the members elected to each house of the General Assembly to amend the Delaware Constitution.

Amending the Delaware Constitution requires not only the passing of the changes in this Act, but also passage of the same changes after the next general election by the next General Assembly.

Second leg of an amendment to the Delaware Constitution

This Act is the second leg of a constitutional amendment that would [brief statement on what amendment does]. The first leg of this amendment, [bill number] of the [number] General Assembly, passed both Houses with the two-thirds vote required by, and was publicized in accordance with, the Delaware Constitution.

Bill requiring a super-majority vote

General language to tailor to specific situation

This Act requires a greater than majority vote for passage because [cite to applicable provision of the Constitution] of the Delaware Constitution requires the affirmative vote of [the amount of the super-majority vote required] of the members elected to each house of the General Assembly to [the action which requires the super-majority vote].

Create a new crime or expand an existing crime that is within the criminal jurisdiction of an inferior court

This Act requires a greater than majority vote for passage because § 28 of Article IV of the Delaware Constitution requires the affirmative vote of two-thirds of the members elected to each house of the General Assembly to [create a new crime within the jurisdiction of the Court of Common Pleas, Family Court, or Justice of the Peace Court] [expand the scope of an existing crime within the jurisdiction of the Court of Common Pleas, Family Court, or Justice of the Peace Court].

Note: These are 2 different actions requiring a 2/3 vote, set off in this example by brackets.

Borrow money or create a debt

This Act requires a greater than majority vote for passage because § 3 of Article VIII of the Delaware Constitution requires the affirmative vote of three-fourths of the members elected to each house of the General Assembly to borrow money or create a debt by or on behalf of the State.

Note: The exception to the requirement of using this language is when supplying casual deficiencies of revenue, repelling invasion, suppressing insurrection, defending the State in war, or paying existing debts.

Appropriate money to or issue or loan bonds of this State to a county, municipality, or corporation, or pledge the credit of this State to guarantee or endorse the bonds of a county, municipality, or corporation

This Act requires a greater than majority vote for passage because § 4 of Article VIII of the Delaware Constitution requires the affirmative vote of three-fourths of the members elected to each house of the General Assembly to [appropriate public money to a county, municipality, or corporation] [issue or loan bonds of this State to a county, municipality, or corporation] [pledge the credit of this State to guarantee or endorse the bonds or other undertakings of a county, municipality, or corporation].

Note: These are 3 different actions requiring a ¾ vote, set off here by bracketed phrases.

Appropriation, money not reverting

Section [number]. The General Assembly appropriates [dollar amount] from the General Fund in Fiscal Year [number] to fund the [name of fund] created by the Act. Notwithstanding another law of this State to the contrary, money in the [name of fund] that is unencumbered on [date], or [month, day] of a subsequent year, does not revert to the State's General Fund.

Note: Avoid specifying a dollar amount, if possible.

Increase existing tax or license fee

This Act requires a greater than majority vote for passage because § 10 of Article VIII of the Delaware Constitution requires the affirmative vote of three-fifths of the members elected to each house of the General Assembly to increase the effective rate of any tax levied or license fee imposed.

Create new tax or license fee

This Act requires a greater than majority vote for passage because § 11 of Article VIII of the Delaware Constitution requires the affirmative vote of three-fifths of the members elected to each house of the General Assembly to impose or levy a tax or license fee.

Amend general corporation law

This Act requires a greater than majority vote for passage because § 1 of Article IX of the Delaware Constitution requires the affirmative vote of two-thirds of the members elected to each house of the General Assembly to amend the general corporation law.

Amend municipal charter directly

This Act requires a greater than majority vote for passage because § 1 of Article IX of the Delaware Constitution requires the affirmative vote of two-thirds of the members elected to each house of the General Assembly to amend a municipal charter.

Amend municipal charter indirectly

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

Amend Delaware Constitution

This Act requires a greater than majority vote for passage because § 1 of Article XVI of the Delaware Constitution requires the affirmative vote of two-thirds of the members elected to each house of the General Assembly to amend the Delaware Constitution.

Appendix A-17.1: Frequently Used Boilerplate Language for Provisions Common to Updating or Creating a Board, Commission, Council, or Similar Entity.[251]

APPOINTMENTS WITH INPUT FROM NON-GOVERNMENTAL ENTITIES

The Governor shall appoint 2 members from the [name of organization]. The Governor may consider potential nominees from a list that [name of person in organization] provides.

COMPENSATION/REIMBURSEMENT

A member receives no compensation but may be reimbursed for the member's actual and necessary expenses incurred in the performance of the member's official duties.

OR

Each member of the Board must be reimbursed for all expenses involved in each meeting, including travel, and in addition must receive compensation per meeting attended in an ament determined by the Division under Section 9 of Article III of the Delaware Constitution.

NOTE: Senate confirmation for a Governor's appointment is needed only if the salary exceeds $1500 per year. See Sec. 9 of Article III of the Delaware Constitution.

COUNCIL MAKEUP

The Board consists of 7 members who are appointed by the Governor and meet the following qualifications:

OR

The Advisory Council ("Council") consists of 19 members. Membership is composed as follows:

(1) The Governor shall appoint 3 members of the public who are residents of this State, 1 from each county.
(2) The Mayor of the City of Wilmington.
(3) The Speaker of the House of Representatives shall appoint 3 members.

DESIGNEES

A member who serves on the Council by virtue of position may select a designee from the organization that the member represents to serve in their stead and at their pleasure. A member must provide the designation to the chair in writing. A designee has the same duties and rights as the member the designee represents.

NOTES: A Governor's appointee may not send a designee.

State if a member's designee does not receive the compensation or reimbursement that the member would receive.

GEOGRAPHIC AND OTHER DIVERSITIES AS A PRIORITY

The Governor shall consider geographical and other diversities when appointing a member to the Council.

[251] Specific entities or actors that are included in these boilerplate provisions are for example purposes only.

PARTY BALANCE

The Governor-appointed members must be balanced so that no more than [4] members are from 1 political party. An individual who declines to announce a political affiliation is eligible for appointment as a member of the Council.

NOTE: Remove reference to party balance if possible. Most boards, commissions, or councils do not need political balance.

POWERS

The Board may adopt procedural rules to carry out its functions under this chapter.

QUORUM

A majority of the [voting] members must be present at a Council meeting in order to have a quorum and conduct official business. A vacancy on the Board is not counted for quorum.

OR

A majority of the [voting] members must be present at a Council meeting in order to have a quorum and conduct official business. A majority of the [voting] members present is sufficient to approve an action of the Council.

OR

A majority of [voting] members constitutes a quorum for the purpose of transacting business. The Board may not take disciplinary action without the affirmative vote of at least 4 members.

NOTE: "Ex officio" does not mean "not voting." An ex officio member can vote and therefore be counted for quorum unless the statute specifies otherwise.

REMOVAL FROM OFFICE

A member may be removed by the member's appointing authority/The Governor may remove a member for gross inefficiency, misfeasance, nonfeasance, malfeasance, or neglect of duty in office.

(1) A member is deemed in neglect of duty if the member is absent from 3 consecutive Board meetings without good cause or fails to attend at least 50% of all regular Board meetings in a calendar year.

(2) A member who is deemed in neglect of duty is considered to have resigned.

OR

A member may be removed by the member's appointing authority/The Governor may remove a member for gross inefficiency, misfeasance, nonfeasance, malfeasance, or neglect of duty in office. A member is deemed in neglect of duty if the member is absent from 3 consecutive, regular Board meetings or attends less than 50% of Board meetings in a calendar year. The Governor/member's appointing authority may consider the member to have resigned and may accept the member's resignation.

REPORTS

The Council shall submit its annual report to the Governor, the General Assembly, and the Director and the Librarian of the Division of Legislative Services not later than January 1.

SELECTING CHAIR

The Governor shall *appoint* the chair, who serves as chair at the pleasure of the Governor.

OR

The Board shall *elect* a chair from among its members.

OR

The Attorney General shall *designate* a chair from among the Council members.

NOTES: Use only 1 chair and 1 vice-chair, not 2 co-chairs, due to limitations in appointment computer system.

If the Governor appoints the chair, the chair should serve at the Governor's pleasure and be dismissed from the entire board if removed.

The better practice is to have the board to elect the chair unless the board strongly wants the Governor to appoint the chair.

If the position of an executive director is included in the board, commission, or council's statute, the board, commission, or council should select or hire the executive director and put the hiring procedure in their bylaws. Do not give this authority solely to the chair. Address who supervises the executive director; the supervisor must be a state agency.

STAFFING

The Department, through the Secretary, shall provide reasonable staff support to assist the Board in performing its duties under this title.

STATEWIDE MEETINGS REQUIRED

At least 2 months before submitting the Plan required under this chapter, the Office shall hold a public meeting to allow public input regarding the Plan. The meeting must be held in all 3 counties in this State. The Office may hold separate meetings in each county or hold 1 meeting and, through the use of technology, provide the public with access to attend and participate in the meeting simultaneously from each of the 3 counties.

TERM LIMITS

Each member is appointed for a period of 3 years and may serve 1 additional term. Each term of office expires on the date specified in the appointment; however, a member remains eligible to participate in Board proceedings until the Governor replaces that member.

OR

Each member serves for a term of up to 3 years. The Governor may appoint a member for a term of less than 3 years to ensure terms expire on a staggered basis.

OR

A member serves until a replacement is appointed under the same process as the member's appointment.

OR

An individual who has served on the Board for 6 years may not be appointed to the Board again until the expiration of an interim period of at least 3 years since the individual was last served.

Appendix A-18: Background License Plate – Proceeds Benefit a Corporation, County, or Municipality

SPONSOR: Rep. Taft & Sen. Hoover

HOUSE OF REPRESENTATIVES
174th GENERAL ASSEMBLY
HOUSE BILL NO. 101

AN ACT TO AMEND TITLE 21 OF THE DELAWARE CODE RELATING TO SPECIAL LICENSE PLATES.

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

Section 1. Amend Title 21 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 2140next letter. Name of cause special license plate.

(a) The owner of any vehicle described in subsection (b) of this section may apply to the Division of Motor Vehicles ("Division") for a special name of plate, ex: pollinator license plate. The Division shall issue the plate only if the Division receives at least 200 applications for the plate.

(b) This section only applies to the following:

(1) A private passenger vehicle.

(2) Subject to paragraph (b)(2)b. of this section, a motor vehicle or trailer with a manufacturer's gross vehicle weight rating ("GVWR") of 26,000 pounds or less.

a. The motor vehicle or trailer described in this paragraph (b)(2) may be owned by an individual or an artificial entity, including a corporation, company, association, firm, partnership, society, or joint-stock company.

b. A motor vehicle that qualifies to register for the International Registration Plan ("IRP"), individually, or as part of a combination of vehicles, may not be issued a special plate

under this section.

(c)(1) On the initial application for a plate to be issued under this section, a 1-time fee of $ the organization wants to charge plus $15 to cover the administrative fee, ex: $50, which includes an administrative fee of $ 15, is required in addition to the annual registration fee required by this title.

(2) The initial application fee under paragraph (c)(1) of this section is required for any person applying for the plate, including a member of a non-profit organization, even if the member is exempt from registration fees under § 2159 of this title.

(3) A replacement plate may be obtained on payment of a fee to be set by the Division, which must cover the cost of the plate.

(d) The Division shall deposit the 1-time administrative fee collected under subsection (c) of this section into a special fund and use the fund for the purpose of promoting the sale of the plate and administering this section. Proceeds remaining after the Division has covered the costs of promoting the sale of the plate and administering this section must be applied under subsection (e) of this section.

(e) The funds derived by the State from the portion of the 1-time fee of $ amount listed above by organization under subsection (c) of this section other than the funds spent by the Division under subsection (d) of this section must be deposited by the Division with the State Treasurer and must be specifically set aside in the organization's name Fund for use by the organization's name to support the organization's cause.

(f) The design for all plates issued under this section must be submitted by organization's name for final color and design approval by the Division, and are subject to the following:

(1) The wording, "The First State", may be dropped and substituted with the wording "name of plate, ex: Support Pollinators".

(2) A plate may not be solely black and white in color.

(3) The Division may refuse any design that it believes would cause a public safety enforcement problem.

(g) The numbers, letters, or both, assigned will be the same as the license plate assigned to the

owner's vehicle at the time of the application for the plate.

(h) The Division may promulgate regulations as required to administer this section.

SYNOPSIS:

This Act creates a background special license plate for organization and brief description.

A background special license plate supports a cause and is available for purchase by the public at large, including members of the organization. The numbers, letters, or both, assigned will be the same as the license plate assigned to the owner's vehicle at the time of the application for the plate.

This Act requires a greater-than-majority vote for passage because Article § 4 of VIII of the Delaware Constitution requires the affirmative vote of three-fourths of the members elected to each house of the General Assembly to appropriate money to any county, municipality, or corporation.

Drafter's note:

The Division of Legislative Services' legal opinion is that if a county, municipality, or corporation, including a non-profit corporation or a legal entity similar to a corporation, receives money under this bill, the bill requires the affirmative vote of three-fourths of the members elected to each house of the General Assembly under § 4 of Article VIII of the Delaware Constitution.

The Division recognizes that there is disagreement on this legal issue. Therefore, the vote required may be changed to a three-fifths vote.

Additionally, if the entity receiving money is not a county, municipality, or corporation, then change the vote requirement to three-fifths and use the following language in place of the last paragraph in the synopsis:

This Act requires a greater-than-majority vote for passage because § 11 of Article VIII of the Delaware Constitution requires the affirmative vote of three-fifths of the members elected to each house of the General Assembly when a new tax or license fee is imposed.

More information from DMV:

A specialty "background plate" supports any cause and is open to the public with a vehicle type eligible to apply.
- This template includes the required DMV language for a background plate.
- The design is added to the background of existing numbers.
- The organization must have a primary contact person for funding and contact of any changes.
- The template's purpose is to demonstrate DMV's requirements for this type of specialty plate, vehicle eligibility, consistent DMV language, and other DMV rules.

Appendix A-19: Background License Plate – Proceeds Benefit a State Entity or the General Fund

SPONSOR: Rep. Taft & Sen. Hoover

HOUSE OF REPRESENTATIVES
174th GENERAL ASSEMBLY
HOUSE BILL NO. 101

AN ACT TO AMEND TITLE 21 OF THE DELAWARE CODE RELATING TO SPECIAL LICENSE PLATES.

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

Section 1. Amend Title 21 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 2140next letter. Name of cause special license plate.

(a) The owner of any vehicle described in subsection (b) of this section may apply to the Division of Motor Vehicles ("Division") for a special name of plate, ex: pollinator license plate. The Division shall issue the plate only if the Division receives at least 200 applications for the plate.

(b) This section only applies to the following:

(1) A private passenger vehicle.

(2) Subject to paragraph (b)(2)b. of this section, a motor vehicle or trailer with a manufacturer's gross vehicle weight rating ("GVWR") of 26,000 pounds or less.

a. The motor vehicle or trailer described in this paragraph (b)(2) may be owned by an individual or an artificial entity, including a corporation, company, association, firm, partnership, society, or joint-stock company.

b. A motor vehicle that qualifies to register for the International Registration Plan ("IRP"), individually, or as part of a combination of vehicles, may not be issued a special plate

under this section.

(c)(1) On the initial application for a plate to be issued under this section, a 1-time fee of $ amount to support cause plus $15 to cover the administrative fee, ex: $50, which includes an administrative fee of $ 15, is required in addition to the annual registration fee required by this title.

(2) The initial application fee under paragraph (c)(1) of this section is required for any person applying for the plate, including a member of a non-profit organization, even if the member is exempt from registration fees under § 2159 of this title.

(3) A replacement plate may be obtained on payment of a fee to be set by the Division, which must cover the cost of the plate.

(d) The Division shall deposit the 1-time administrative fee collected under subsection (c) of this section into a special fund and use the fund for the purpose of promoting the sale of the plate and administering this section. Proceeds remaining after the Division has covered the costs of promoting the sale of the plate and administering this section must be applied under subsection (e) of this section.

(e)(1) The funds derived by the State from the portion of the 1-time fee of $ amount used in subsection (c) under subsection (c) of this section, other than the funds spent by the Division under subsection (d) of this section, must be deposited by the Division with the State Treasurer and must be specifically set aside in the name of plate Fund for use by State agency in support of issue related to cause e.g., pollinator plantings; foster children.

(2) The State agency may determine how to spend the moneys in the name of plate Fund, including which expenditures support issue related to cause e.g., pollinator plantings; foster children.

(f) The design for all plates issued under this section must be submitted by organization's name/title of responsible party for final color and design approval by the Division, and are subject to the following:

(1) The wording, "The First State", may be dropped and substituted with the wording "name of plate, ex: Support Pollinators".

(2) A plate may not be solely black and white in color.

(3) The Division may refuse any design that it believes would cause a public safety enforcement problem.

(g) The numbers, letters, or both, assigned will be the same as the license plate assigned to the owner's vehicle at the time of the application for the plate.

(h) The Division may promulgate regulations as required to administer this section.

SYNOPSIS:

This Act creates a background special license plate for cause and brief description.

A background special license plate supports a cause and is available for purchase by the public at large. The numbers, letters, or both, assigned will be the same as the license plate assigned to the owner's vehicle at the time of the application for the plate.

This Act requires a greater-than-majority vote for passage because Article VIII, § 11 of the Delaware Constitution requires the affirmative vote of 3/5 of the members elected to each house of the General Assembly when a new tax or license fee is imposed.

Drafter's Note

Sometimes, the purpose of a background plate is to support a broad cause rather than a particular organization's work on an issue. For instance, the pollinator plate supports pollinator work, broadly, not a particular organization's pollinator work.

This version of the background template may be helpful for you in these instances. The proceeds stay with the State rather than being given to a particular organization.

Before your bill is released, make sure:

(1) You consult the State agency that will be receiving the proceeds of this plate to ensure they will accept the responsibility to administer funds in support of the cause.

(2) You know the title of a responsible party or an organization that has agreed to assist with the design of the plate.

More information from DMV:

A specialty "background plate" supports any cause and is open to the public with a vehicle type eligible to apply.

- This template includes the required DMV language for a background plate.
- The design is added to the background of existing numbers.
- There must be a contact person for plate design.
- The template's purpose is to demonstrate DMV's requirements for this type of specialty plate, vehicle eligibility, consistent DMV language, and other DMV rules.

Appendix A-20: Organizational License Plate

SPONSOR: Rep. Taft & Sen. Hoover

HOUSE OF REPRESENTATIVES
174th GENERAL ASSEMBLY
HOUSE BILL NO. 101

AN ACT TO AMEND TITLE 21 OF THE DELAWARE CODE RELATING TO SPECIAL LICENSE PLATES.

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

Section 1. Amend Title 21 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 2140next letter. Name of organization special license plate.

(a) The owner of any vehicle described in subsection (b) of this section may apply to the Division of Motor Vehicles ("Division") for a special name of plate, ex: Ducks Unlimited license plate. The Division shall issue the plate only if the Division receives at least 200 applications for the plate.

(b)(1) This section only applies to the following vehicles:

a. A private passenger vehicle.

b. A motor vehicle with a manufacturer's gross vehicle weight rating ("GVWR") of 26,000 pounds or less except that a motor vehicle that qualifies to register for the International Registration Plan ("IRP"), individually, or as part of a combination of vehicles, may not be issued a special plate under this section.

(2) A special license plate under this section may only be issued to individuals who satisfy all of the following:

The organization can add language about elgibility requirements and the types of

documents required to demonstrate eligibility, (Examples: DD214, type of war, or application signed by appointee of the organization)

List eligibility requirements using lowercase alphabet letters (e.g., a., b., c., etc.).

If only 1 eligibility requirement, then change paragraph (b)(2) to the following "A special license plate under this section may only be issued to individuals who..." and add eligibility requirement.

(c)(1) On the initial application for a plate to be issued under this section, a 1-time administrative fee of $10 is required in addition to the annual registration fee required by this title.

(2) The initial application fee under paragraph (c)(1) of this section is required for a member of a non-profit organization, even if the member is exempt from registration fees under § 2159 of this title.

(3) A replacement plate may be obtained on payment of a fee set by the Division, which must cover the cost of the plate.

(d) The Division shall deposit the 1-time administrative fee collected under subsection (c) of this section into a special fund and use the fund for the purpose of promoting the sale of the plate and administering this section.

(e) The Division shall reserve sufficient license plates starting with the prefix approved DMV prefix and numbered consecutively beginning with the numeral approved DMV starting number.

(f) All plates issued under this section must satisfy all of the following color and design requirements:

(1) Be blue and gold.

(2) Have the organization logo placed on the left side of the plate.

(3) Have the word "Delaware" listed at the top or bottom of the plate, as determined by the Division in conjunction with the name of organization.

(g) The Division may refuse any design that it believes would cause a public safety enforcement problem.

(h) The Division may promulgate regulations as required to administer this section.

SYNOPSIS

This Act creates an organizational special license plate for add organization's name and a brief description of what the organization supports, and the membership/service requirements.

An organizational special license plate has various service or membership requirements and is a blue and gold plate with a new prefix and number.

This Act requires a greater-than-majority vote for passage because Article VIII, §11 of the Delaware Constitution requires the affirmative vote of 3/5 of the members elected to each house of the General Assembly when a new tax or license fee is imposed.

More information from DMV:

- This specialty plate is for members only supporting their organization.
- This template includes the required DMV language for an **organizational plate.**
- Blue/gold with alpha/numeric with the organization's logo to the left.
- The organization must have a primary contact person responsible for approving, tracking, and assigning the plate numbers to its eligible members.
- DMV will not review documents for eligibility of these plates.
- All prefixes to represent the organization must be approved by DMV to avoid conflicts with vanities and other specialty plates.
- The template's purpose is to demonstrate DMV's requirements for this type of specialty plate, vehicle eligibility, consistent DMV language, and other DMV rules.

Additional information: the organization can add the language required, such as what type of documents (example DD214) for approval. They can also include specific numbers reserved for certain members in the bill if they choose.

Example: Department may issue a special license plate if the United States Department of Defense certifies that the applicant is a veteran of World War I, World War II, the Korean Conflict, the Vietnam Conflict, Operation Desert Storm, or other military conflict on foreign soil in which United States armed forces were formally engaged in battle. They can include what documents are needed to determine the eligibility described in this section.

Appendix B: Standard Form for a Resolution to Establish a Task Force (or other *ad hoc* entity)

NOTE: This form provides the standard language to use when drafting a resolution to establish a task force or other similar entity, along with notes on when to use the language and what to consider as you draft. Drafting notes are in blue, as are areas that should be replaced with the specific language for your resolution.

To continue a task force over General Assemblies, it must be reauthorized by an appropriate resolution at the start of a new two-year session of the second General Assembly. Similarly, a task force which is unable to meet its originally authorized reporting deadline must prepare an appropriate resolution for introduction in the Senate or House to extend the reporting deadline. A standard form to extend a task force over General Assemblies or a reporting deadline is provided in Appendix C.

The following standard form does not comply with the requirement to double space legislation. This is a conscious decision of the editor in order to save space. When drafting in conformity with this standard form, double space the legislation.

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

ESTABLISHING THE [name] TASK FORCE TO STUDY AND MAKE FINDINGS AND RECOMMENDATIONS REGARDING [issue to be studied].

WHEREAS, _____; and
WHEREAS, _____;

reasons task force is needed, stated in whereas clauses

NOW, THEREFORE:

simple resolution

❑ BE IT RESOLVED by the House of Representatives [by the Senate] of the [#] General Assembly of the State of Delaware that…

concurrent resolution

❑ BE IT RESOLVED by the House of Representatives [by the Senate] of the [#] 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 [the Senate] and the Senate [the House of Representatives] of the [#] General Assembly of the State of Delaware, with the approval of the Governor, that…

create task force and state its purpose

…the [name] Task Force ("Task Force") is established to study and make findings and recommendations regarding [same wording as in title].

list members when members *are not* serving by virtue of position

specify "voting members" if have non-voting members and create separate list for non-voting members

BE IT FURTHER RESOLVED that the Task Force be comprised of the following [voting] members:

as provided by the prime sponsor; these are examples only

(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) [One citizen from each county, appointed by the Governor].

list of members when members *are* serving by virtue of position *and* are authorized to appoint a designee to serve in their place

BE IT FURTHER RESOLVED that the Task Force be comprised of the following members:
(1) The following members serving by virtue of position, or a designee appointed by the member:
a. [*Member, often a cabinet secretary or legislator*].
b. [*Member, often a cabinet secretary or legislator*].
(2) [*Member not serving by virtue of position*].
(3) [*Create separate list for any non-voting members*].

if providing for an individual to designate another to serve in their place, make clear the authority of the designated individual

BE IT FURTHER RESOLVED that members serving by virtue of position who are granted the ability to designate another individual to attend a Task Force meeting must provide the designation in writing to the Chair. An individual attending a meeting for a member serving by virtue of position has the same duties and rights as the member serving by virtue of position.

specify who will notify members of their selection to serve on or ability to appoint members; use model language in the sections on duties of the chair if giving the duty to the chair, or use the model language in this section to give this duty to the Secretary of the Senate or Chief Clerk of the House

BE IT FURTHER RESOLVED that the [Secretary of the Senate/Chief Clerk of the House] notify members of the Task Force serving by virtue of their position of selection to serve on the Task Force and notify individuals authorized to appoint members to the Task Force of their appointing authority.

if the chair is designated to notify members that the task force has been created, consider requiring the Secretary or Chief Clerk to notify the chair that the resolution has passed and provide the chair with a copy of the resolution

BE IT FURTHER RESOLVED that the [Secretary of the Senate/Chief Clerk of the House] notify [the chair's name] of the Task Force's creation and provide [the chair's name] with a copy of the legislation creating the Task Force.

designate a chair

BE IT FURTHER RESOLVED that [designate by name or by position] is the chair of the Task Force.

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

(1) Notifying the individuals who are members of the Task Force and, if applicable, notifying a person of the need to nominate or appoint a member.

(2) Setting a date, time, and place for the initial organizational meeting.

(3) Supervising the preparation and distribution of Task Force meeting notices, agendas, minutes, correspondence, and reports.

(4) Sending to the President Pro Tempore of the Senate, the Speaker of the House of Representatives, and the Director of the Division of Legislative Services, after the first meeting of the Task Force, a list of the members of the Task Force and the person who appointed them.

(5) Providing meeting notices, agendas, and minutes to the Director of the Division of Legislative Services.

(6) 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 copies to all members of the General Assembly, the Governor, the Director and the Librarian of the Division of Legislative Services, and the Delaware Public Archives.

designating a chair is best practice; if not possible, use the following language

BE IT FURTHER RESOLVED that [name of the temporary chair, often the prime sponsor in the chamber where the resolution was introduced] serve as temporary chair to guide the initial organization of the task force by doing all of the following:

(1) Notifying the individuals of the formation of the Task Force and, if applicable, notifying a person of the need to nominate or appoint a member.

(2) Setting a date, time, and place for the initial organizational meeting.

(3) Supervising the preparation and distribution of the meeting notice and agenda for the initial organizational meeting of the Task Force.

(4) Providing the meeting notice and agenda for the initial organizational meeting to the Director of the Division of Legislative Services.

(5) Notifying the Director of the Division of Legislative Services of the individual chosen to be Chair of the Task Force and providing contact information for that individual.

BE IT FURTHER RESOLVED that the members of the Task Force choose a chair from among themselves at the initial organizational meeting.

BE IT FURTHER RESOLVED that when a chair of the Task Force has been designated, the chair is responsible for guiding the administration of the Task Force by, at a minimum, doing all of the following:

(1) Supervising the preparation and distribution of meeting notices, agendas, minutes, correspondence, and reports of the Task Force.

(2) Sending to the President Pro Tempore of the Senate, the Speaker of the House of Representatives, and the Director of the Division of Legislative Services, after the first meeting of the Task Force, a list of the members of the Task Force and the person who appointed them, and providing notice of any changes in the make up of the Task Force to the President Pro Tempore of the Senate, the Speaker of the House of Representatives, and the Director of the Division of Legislative Services.

(3) Providing meeting notices, agendas, and minutes to the Director of the Division of Legislative Services.

(4) 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 copies to all members of the General Assembly, the Governor, the Director and the Librarian of the Division of Legislative Services, and the Delaware Public Archives.

set deadline by which the task force must meet for the first time; base the deadline on the number of day after passage or enactment or set a specific date

BE IT FURTHER RESOLVED that the Task Force must hold its first meeting not later than [number of days after passage or enactment/specific date].

specify the mission and issues the sponsor wants specifically addressed

BE IT FURTHER RESOLVED that the Task Force study [purpose of study] and report its findings and recommendations.

define quorum and provide the vote requirement for action and creation of procedural rules

specify "voting members" if have non-voting members and wish to exclude them from quorum

BE IT FURTHER RESOLVED that a quorum of the Task Force is a majority of its [voting] members.

BE IT FURTHER RESOLVED that:

(1) Official action by the Task Force, including making findings and recommendations, requires the approval of a quorum of the Task Force.

(2) The Task Force may adopt rules necessary for its operation. If the Task Force does not adopt rules or if the adopted rules do not govern a given situation, *Mason's Manual of Legislative Procedure* controls

provide support staff; if a legislator serves as permanent chair, consider using the legislator's caucus to provide support staff and materials

BE IT FURTHER RESOLVED that the [Senate caucus/House caucus/Division of Legislative Services/Controller General/other state agency] is responsible for providing reasonable and necessary support staff and materials for the Task Force.

set the report's required information and deadline

BE IT FURTHER RESOLVED that the [chair/co-chairs] must compile a report containing a summary of the Task Force's work regarding the issues assigned to it under this Resolution, including any findings and recommendations by, and submit the report to the General Assembly, the Governor, and the Director and the Librarian of the Division of Legislative Services not later than [specific date].

sunset date

BE IT FURTHER RESOLVED that this [type of resolution] Resolution expires on the date the Task Force submits its findings and recommendations.

SYNOPSIS

This resolution establishes the [name] Task Force to [same wording as title]. Include historical information that may help explain the origination, purpose, and goals of the task force.

Appendix C: Standard Form for a Resolution Extending the Date by which the Findings and Recommendations Report of a Task Force is Due (or other *ad hoc* entity)

NOTE: This resolution should be the same type as the resolution that created the task force or similar ad hoc entity, and with the same sponsors, if possible. This form can be adapted to extend the life of an entity from one general assembly to the next.

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 [#] General Assembly to study [purpose of 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 [name of person] by [date]; and

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

WHEREAS, [sponsor's reason for extension]; and

WHEREAS, the members of the Task Force 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 [date in original resolution] to [new date].

Appendix D: Important Delaware Cases for Bill Drafting

Legislative drafters should review the following Delaware cases, listed by subject matter.

Bill Title Requirements

Opinion of the Justices, 194 A.2d 855 (Del. 1963): A constitutional amendment's bill title is not restrained by Section 16 of Article II. However, the bill title needs to give fair and reasonable notice to the public and the General Assembly of the bill's subject matter.

Abrahams v. Superior Court of New Castle County 131 A.2d 662 (Del. 1957): A bill's title can just reference the subject matter and area in the Code that will be changed.

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

Opinion of the Justices, 246 A.2d 90 (Del. 1968) A bill's title need not be an index of its contents.

Binding; One General Assembly May Not Bind Another

News-Journal Co. v. Boulden, 1978 Del Ch LEXIS 536; *Glassco v County Council of Sussex County*, 1993 Del Ch LEXIS 34; *Manigault v. Springs*, 199 U.S. 473 (1905); *Ohio Life Ins. & Trust Co. v Debolt*, 57 U.S. 416 (1859); *Opinion of the Justices of the Supreme Judicial Court of Maine*, 673 A.2d 693 (Me. 1996): The current General Assembly cannot bind future General Assemblies or the House or Senate of a future General Assembly. No Delaware Supreme Court cases have been located.

Drafting Manual Cited in Case Law

City of Lewes v. Nepa, 212 A.3d 270 (Del. 2019): Citing the Delaware Legislative Drafting Manual in the Court's explanation that "shall" and "may" is a "meaningful variation."

Enactment Clauses & Constitutional Super-majority Vote Requirements

Opinion of the Justices, 276 A.2d 736 (Del. 1971): Two-thirds vote required if a bill even impliedly amends a municipal charter, not just charter change bills. See *City of Newark v. Weldin*, 1987 Del. Ch. LEXIS 539 (Del. Ch. 1987) (holding that, while an act of the General Assembly was a valid general act, because the act lacked a two-thirds vote the act could not impliedly repeal a conflicting portion of the Newark Charter).

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.

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

Brooks v. Taylor, 154 A.2d 386 (Del. 1959): The two-thirds vote requirement if a bill enlarges the criminal jurisdiction of an inferior court includes Family Court.

AETNA Casualty and Surety Company v. Smith, 131 A.2d 168 (Del. 1957): After finding the fire companies to be an arm of the county, the Supreme Court held that any appropriation of public money to a county, municipality, or corporation must receive a vote of three-fourths of the members elected to each branch of the legislature, whether that appropriation is direct or, as in this case, indirect.

State Agency as "Person"

State v. Del. Pub. Serv. Comm'n, 2020 Super. LEXIS 101, 2020 WL 888493 (Del. Super. Ct. 2020): The Delaware Department of Natural Resources and Environmental Control lacked standing to file an action seeking to declare regulations of the Delaware Public Service Commission because DNREC is not a "person" under the Administrative Procedures Act, Del. Code Ann. tit. 29, § 10141(a), and Del. Code Ann. tit. 1, § 302(15). The definition of "party" under Del. Code Ann. tit. § 10102(a) made clear that the General Assembly intended to distinguish a "person" from an "agency."

State Offices and Officers

State ex rel. Craven v. Schorr, 131 A.2d 158 (Del. 1957): "Under our present Constitution the Governor of Delaware has no vested constitutional power to appoint to statutory offices. The decision to grant or withhold from him such power rests with the General Assembly." Thus, it was permissible for the statute at issue to amend an existing statutory board by increasing its membership and designating the members in the legislation making the amendment.

State ex rel. James v. Schorr, 65 A.2d 810 (Del. 1948): The General Assembly can pass an act creating a state agency or board and name the members thereof in the act and authorize a state agency to make certain appointments; the General Assembly cannot delegate to a voluntary organization of individuals [a political party in this case] the power to appoint the members of a state agency; a statute expressly repealed in order to be replaced by a statute then declared unconstitutional is in fact held not to have been repealed.

New Castle County Council v. State, 688 A.2d 888 (Del. 1996): The General Assembly is afforded significant latitude when legislation restructures or modifies a statutory office and removal of incumbents is contingent and a necessary by-product of the restructuring or modification, the power of the General Assembly is limited only by Section 4 of Article XV of the Delaware Constitution (have to pay their emoluments of office).

State ex rel. Ward v. Churchman, 51 A. 49 (Del. 1902): Statutory construction of statutes and constitutions: "offices" and "officers" mean state or county "offices" or "officers" only, unless explicitly or by necessary implication extended to officers of municipal corporations.

In re: Request by the 138th General Assembly for an Advisory Opinion, 672 A.2d 4 (Del. 1996): Members of Title 23 and Title 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 in board or commission action, despite the expiration of their terms, until their successors are qualified to replace them.

Statutory Interpretation

State v. Dickerson, 298 A.2d 761 (Del. 1972): Section 308 of Title 1 grants a court the ability to uphold remaining provisions of a bill whenever a court strikes down part of a bill even when the bill itself does not include a severability section. But, see *Rappa v. New Castle County,* 18 F. 3rd 1043 (3rd Cir. 1994) (declined to follow because it would have resulted in greater free speech restrictions) and *Evans v. State,* 872 A.2d 539 (Del. 2005).

Wilmington Sav. Fund Soc. v. Green, 288 A.2d 273 (Del. 1972): Enrolled bill doctrine exception allows checking the vote count to determine if a bill received the constitutionally required number of votes for passage when the bill's enactment clause requires a lesser amount.

State v. Hobson, 83 A.2d 846 (Del. 1951): When there are two possible ways to interpret a statute, the court is required to adopt the one which would uphold its validity.

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

Spielberg v. State, 558 A.2d 291 (Del. 1989): 1 *Del. C.* § 306 [Code section headings are not part of the Law] has only "historical significance" and does not foreclose questions of manifest intent of the General Assembly; where literal application of a statute yields an unreasonable or absurd result, don't take it literally.

Daniels v. State, 538 A.2d 1104 (Del. 1988): "The unreasonableness of the result produced by one among alternative interpretations of a statute is just cause for rejecting that interpretation in favor of the interpretation that would produce a reasonable result."

Wilmington Medical Center, Inc. v. Bradford, 382 A.2d 1338 (Del. 1978): If the question of the reasonable necessity for regulation is fairly debatable, legislative judgment must be allowed to control.

Sierra v. DSCYF, 2020 Del. Lexis 280 (Del. 2020): Statutes are presumed constitutional unless there is clear and convincing evidence of unconstitutionality.

Carper v. New Castle County Board of Education, 432 A.2d 1202 (Del. 1981): The synopsis is a "proper source from which to glean legislative intent."

Board of Adjustment v. Verleysen, 36 A.3rd 326 (Del. 2012): "It is well established that a statutory synopsis cannot change the meaning of an unambiguous statute."

Nigro v. Flinn, 192 A.2d 685 (Del. Super. Ct. 1937): The meaning and effect of 10 Del. C. § 8119 providing for limitation of actions in personal injury cases was not changed by its embodiment in the 1915 revision containing the present section; and thus action for injuries to infant brought on arriving at age twenty-one but fourteen years after injuries occurred was barred. Regarding the former 1-year statute of limitations found in 10 Del. C. § 8119.

City of Lewes v. Nepa, 212 A.3d 270 (Del. 2019): Citing the Delaware Legislative Drafting Manual in the Court's explanation that "shall" and "may" is a "meaningful variation."

Separation of Powers: Limits on Delegation of Legislative Power

In re School Code of 1919 (Opinion of the Chancellor and Judges of Delaware on the Request of the Governor), 108 A. 39 (1919): "If the existence of the law depends on the vote of the people or the will of one man even, it is an unconstitutional delegation of legislative power; but if the law is complete in and of itself, the fact that it provides for an acceptance of any of its provisions by certain states agencies does not make it a delegation of legislative power and, therefore, invalid."

Separation of Powers: Limit on Power of the General Assembly

Evans v. State, 872 A.2d 539 (Del. 2005): The General Assembly cannot reverse a determination in a particular case, though it may prescribe a new rule for future cases; severability clause not usable when the Bill Title violates the single subject Constitutional mandate.

* * * * *

Appendix E-1: Check List – Bill Drafting

DELISError! Bookmark not defined. **Draft Legislation Form**

- Does the bill create a report or an appointment to a board, commission, task force, etc.? If so, the "Creates Report" or "Creates Appointment" box on the DELIS draft legislation form must be checked.

Caption Issues

- ❑ Check that the correct prime sponsor is listed on the legislation.
- ❑ Check those listed as sponsors against the list of those who agreed to sponsor, especially as to who are co-prime (and any agreed order).

Formatting Issues

- ❑ **Mandatory Parts: Title; Enactment Clause; at least 1 Bill Section; Synopsis.**
- ❑ Enactment clause must begin "BE IT ENACTED" and if a preamble (whereas clauses) is included, the whereas clauses must precede the enactment clause. The initial creation of a bill includes an enactment clause, so any enactment clause above the whereas clauses must be deleted.
- ❑ Check that the line numbers run down the left-hand side of the page on each page of the bill, but not beside the bill title, enactment clause, or synopsis.
- ❑ All lines, except synopsis, must be double spaced.
- ❑ "Track changes" formatting must be removed from "freeform" drafts.
- ❑ All blank lines and pages must be removed.
- ❑ If a Senate bill, it must have an "Author."
- ❑ Lists formatting requirements:
  - ❑ Introductory language states how many items required (ex. "1 or more," "any," or "all").
  - ❑ First word of each item capitalized.
  - ❑ Each item ends with period.

Prefatory Language Issues

- ❑ The prefatory language must cite the amended portion of the Constitution, Code, or Laws of Delaware, and include "by making deletions as shown by strike through and insertions as shown by underline as follows."
- ❑ References to the portion of the Constitution (article), Code (title), or Laws of Delaware (volume and chapter) in the prefatory language must accurately reflect what is amended in the body of the bill.

Underline and Strike Through Issues

- ❑ Use ~~strike through~~ to reflect deleted text and <u>underline</u> to reflect inserted text.
- ❑ If a bill Section deletes text, make sure the text exists where cited. After the deletion, the remaining text must still constitute a complete sentence.
- ❑ If a bill Section inserts text, make sure that the inserted text makes sense where inserted. After the insertion, make sure the augmented text still constitutes a complete sentence.

Drafting Manual Compliance Checks

- ❑ Make sure the section heading for the Constitution or Code provision being amended or created is included after the prefatory language and before the provision being amended or created.
- ❑ Make sure that the internal hierarchy of new and existing Code text complies with the Drafting Manual's formatting requirements. See Drafting Rule 5.
- ❑ When separating words in a series, use serial commas (Oxford commas). See Drafting Rule 23.
- ❑ Check that "shall," "must," and "may" are used in compliance with Drafting Rules 11 and 12.
- ❑ Do not use "shall not." See Drafting Rule 12.
- ❑ Do not use "and/or" and "including, but not limited to," or related forms. See Drafting Rules 10(c) and 26(d).
- ❑ Make sure tabulations are drafted in compliance with Drafting Rule 29.
- ❑ Check that the bill complies with other requirements of the Drafting Manual not noted in this Checklist, especially the Formatting and Drafting Rules.

Reference Checks

- ❑ Do deletions or insertions impact internal references? If so, make corrections.
- ❑ Check every reference, internal and external, for accuracy.
- ❑ Search the Code for citations to the provision amended, to ensure changes in the provision do not have

greater impact than intended or the sponsor is aware of the impact.

Conflict and Validity Checks

- ❑ Perform a conflict check to determine if there is a conflict with already-introduced legislation.
- ❑ Make sure the text in the bill is the current version of the law.

Effective Date, Contingent Effective Date, and Sunset Date Checks

- ❑ Check the effective date, contingent effective date, and sunset date. If it already passed or is shortly forthcoming is it intentional?
- ❑ If there is no effective date or contingent effective date, is there a problem with the bill going into effect immediately?
- ❑ If there are multiple effective dates, check that the entire bill is covered.
- ❑ Check that the effective date, contingent effective date, and sunset date comply with the Drafting Manual's requirements.

Legal Issues

- ❑ Check the bill title for compliance with the single subject rule, Sec. 16 of Art. II. See Drafting Manual, Part III, Ch. 2, Sec. 2, B.
- ❑ Make sure the enactment clause has the proper majority required for passage (simple majority, 3/5, 2/3, or 3/4). See Drafting Manual, Part III, Ch. 2, Sec. 4, E.
- ❑ Make sure the synopsis accurately describes what the title and body of the bill do.

Final Checks

- ❑ Double check the bill title for errors (Bill titles cannot be amended once introduced).
- ❑ Make sure the bill title references each Code title, Constitution article, and provision of the Laws of Delaware that is amended in the bill body.
- ❑ The synopsis must include boilerplate language if Drafting Manual required changes are made. See Drafting Manual, Part III, Ch. 2, Sec. 2, T.
- ❑ Run spell check.
- ❑ Have the bill proofread by someone not involved in its drafting.

Notes to Drafter:

Appendix E-2: Check List – Amendment Drafting

DELIS Draft Legislation Form

- ❑ Does the bill create a report or an appointment to a board, commission, task force, etc.? If so, the "Creates Report" or "Creates Appointment" box on the DELIS draft legislation form must be checked.

Caption Issues

- ❑ **Mandatory Parts: At least 1 AMEND; Synopsis.**
- ❑ Check that the correct prime sponsor is listed on the legislation.
- ❑ Check those listed against the list of those who agreed to sponsor, especially as to who are co-prime (and any agreed order). No co-sponsors from the other Chamber allowed.

Formatting Issues

- ❑ Check that line numbers run down the left-hand side of the page on each page of the amendment, but not beside the synopsis.
- ❑ All lines, except synopsis, must be double spaced.
- ❑ "Track changes" formatting must be removed from "freeform" drafts.
- ❑ All blank lines and pages must be removed.
- ❑ If a Senate amendment, it must have an "Author".

Amendment Instructional Language Issues

- ❑ The first portion of an amendment to the legislation must begin "AMEND." All additional portions in that amendment must begin "FURTHER AMEND."
- ❑ Check that the instructional language tells where in the legislation (what line number; before or after what word) text is to be deleted or inserted.
- ❑ Check that quotation marks are at the beginning and end of text to be inserted into or deleted from the legislation.
- ❑ Punctuation marks must be placed within the quoted text when intended to be included in the legislation, and outside the quoted text when intended to be part of the instructional language.

Underline and Strike Through Issues

- ❑ Use ~~strike through~~ to reflect deleted text and <u>underline</u> to reflect inserted text.
- ❑ If an amendment deletes text, make sure the text exists where cited. After the deletion, the remaining text must still constitute a complete sentence.
- ❑ If an amendment inserts text, the inserted text must make sense where inserted. After the insertion, the augmented text must still constitute a complete sentence.

Drafting Manual Compliance Checks

- ❑ Make sure the internal hierarchy of new and existing Code text added to the bill by the amendment complies with the Drafting Manual's formatting requirements. See Formatting Rule 5, Delaware Legislative Drafting Manual (Drafting Manual).
- ❑ When separating words in a series, use serial commas (Oxford commas). See Drafting Rule 23.
- ❑ Use "shall", "must", and "may" in compliance with Drafting Rules 11 and 12.
- ❑ Do not use "shall not." See Drafting Rule 12.
- ❑ Do not use "and/or" and "including, but not limited to," or related forms. See Drafting Rules 10(c) and 26(d).
- ❑ Make sure tabulations are drafted in compliance with Drafting Rule 29.
- ❑ Check that the amendment complies with other requirements of the Drafting Manual not noted in this Checklist, especially the Formatting and Drafting Rules.

Reference Checks

- ❑ Do deletions or insertions by the amendment impact internal references? If so, make corrections.
- ❑ Make sure every reference, internal and external, contained in the amendment has been checked for accuracy.
- ❑ Search the Code for citations to the provision amended, to ensure changes in the provision do not have greater impact than intended or the sponsor is aware of the impact.

Conflict and Validity Checks

- ❑ Does the amendment seek to amend the same portion of the bill as another amendment? Can the amendment be re-drafted so as not to conflict with another amendment (unless conflict is the sponsor's intent)?
- ❑ Perform a conflict check to determine if the amendment conflicts with already-introduced legislation.
- ❑ Are further amendments to the bill needed to account for any conflicting legislation that is already introduced or changes to the law since introduction of the bill?
- ❑ Make sure the text in the bill and the amendment is still the current version of the law.

Effective Date, Contingent Effective Date, and Sunset Date Checks

- ❑ Check the effective date, contingent effective date, and sunset date. If it already passed or is shortly forthcoming, is that intentional?
- ❑ If there is no effective date or contingent effective date, is there a problem with the bill going into effect immediately?
- ❑ If there are multiple effective dates, check that the entire bill is covered.
- ❑ Check that the effective date, contingent effective date, and sunset date comply with the Drafting Manual's requirements.

Legal Issues

- ❑ Does the enactment clause for the bill being amended have the proper majority required for passage (simple majority, 3/5, 2/3, or 3/4) given any changes to the bill being made by the amendment?
- ❑ Make sure the amendment falls within the single subject of the bill title. See Drafting Manual, Part III, Ch. 2, Sec. 2, B.
- ❑ Make sure the synopsis accurately describes how the amendment has changed the bill.

Final Checks

- ❑ Make sure the amendment amends a portion of a Code title, Constitution article, or provision of the Laws of Delaware that is referenced in the bill title.
- ❑ The synopsis must include boilerplate language if Drafting Manual required changes are made See Drafting Manual, Part III, Ch. 2, Sec. 2, T.
- ❑ Run a spell check.
- ❑ Have the amendment proofread by someone not involved in its drafting.

Notes to Drafter:

Appendix E-3: Check List – Resolution Drafting

DELIS Draft Legislation Form

- ❑ Does the bill create a report or an appointment to a board, commission, task force, etc.? If so, the "Creates Report" or "Creates Appointment" box on the DELIS draft legislation form must be checked.

Caption Issues

- ❑ Check that the correct prime sponsor is listed on the legislation.
- ❑ Check those listed as sponsors against the list of those who agreed to sponsor, especially as to who are co-prime (and any agreed order).

Formatting Issues

- ❑ **Mandatory Parts: Title; Preamble [Whereas's are virtually mandatory]; at least 1 BE IT RESOLVED; Synopsis.**
- ❑ Make sure that if the resolution proclaims a day, week, or month, that the day, week, or month is set off using quotation marks.
- ❑ Check that if the proclaimed day, week, or month ends the resolution title sentence, that the period is located outside of the quotation marks.
- ❑ Make sure the inevitable preamble (whereas clauses) precedes the resolved clause.
- ❑ Check that the line numbers run down the left-hand side of the page on each page of the resolution, but not beside the title or synopsis.
- ❑ All lines, except synopsis, must be double spaced.
- ❑ "Track changes" formatting must be removed from "freeform" drafts.
- ❑ All blank lines and pages must be removed.
- ❑ If a Senate resolution, must have an "Author".

Drafting Manual Compliance Checks Generally

- ❑ When separating words in a series, use serial commas (Oxford commas). See Drafting Rule 23, Delaware Legislative Drafting Manual (Drafting Manual).
- ❑ Use "shall," "must," and "may" in compliance with Drafting Rules 11 and 12, remembering that simple and concurrent resolutions are not law and so "shall" and "must" are not usable for them.
- ❑ Do not use "shall not." See Drafting Rule 12.
- ❑ Do not use "and/or" and "including, but not limited to," or related forms. See Drafting Rules 10(c) and 26(d).
- ❑ Make sure tabulations are drafted in compliance with Drafting Rule 29.
- ❑ Have the resolution proofread by someone not involved in its drafting.
- ❑ Check that the resolution complies with other requirements of the Drafting Manual not noted in this Checklist, especially the Formatting and Drafting Rules.

Drafting Manual Compliance Checks for Task Forces, Study Commissions and Similar Temporary Entities ("task force")

- ❑ Make sure that the resolution states the purpose of the task force.
- ❑ If staff support will be required, make sure the resolution states who is responsible for providing it.
- ❑ Make sure that the resolution provides who the members of the task force are or how members of the task force are appointed.
- ❑ If the resolution provides for an individual serving by virtue of position to designate another to serve in their place, the resolution must require notice to the task force chair when such a designation takes place and what authority the designated individual has.
- ❑ If the resolution grants authority to the Governor, President Pro Tempore, Speaker, Minority Leaders, or any other government official to name a person to serve on a task force, make sure the resolution uses the word "appoint" rather than "designate", "name", or another word.
- ❑ Check that the resolution either designates a permanent chair or that it designates a temporary chair and provides for the selection of a permanent chair.

- ❑ Make sure the resolution includes a provision directing the chair to provide a list of the task force's members, and the person who appointed them, to the President Pro Tempore, Speaker, and Director of the Division of Legislative Services following the task force's first meeting.
- ❑ Make sure the resolution includes provisions directing the chair to provide meeting notices, agendas, and meeting minutes, to the Director of the Division of Legislative Services.
- ❑ Check that the resolution provides that a majority of members is necessary to constitute a quorum and take official action.
- ❑ The resolution must grant the task force authority to adopt rules to govern its proceedings.
- ❑ The resolution must set a deadline for the first meeting.
- ❑ The resolution must set a date for any report that is required which gives the task force enough time to complete its work.
- ❑ The resolution must include a provision requiring the task force to deliver a copy of any required report to the Director and the Librarian of the Division of Legislative Services.
- ❑ The resolution must comply with Senate Rule 22 and House Rule 18.
- ❑ Is the Drafting Manual's standard task force language used in the resolution? If not, is the departure from the standard language reasonable?

Effective Date, Contingent Effective Date, and Sunset Date Checks

- ❑ Check the effective date, contingent effective date, and sunset date. If it already passed or is shortly forthcoming is that intentional?
- ❑ If there is no effective date or contingent effective date, is there a problem with the resolution going into effect immediately?
- ❑ If there are multiple effective dates, check that all provisions of entire resolution are covered.
- ❑ Check that the effective date, contingent effective date, and sunset date complies with the Drafting Manual's requirements.

Legal Issues

- ❑ If a simple or concurrent resolution, do not use language that directs or requires action. Simple and concurrent resolutions are not law and so cannot direct or require action.
- ❑ If the resolution creates a task force, do not grant authority to appoint members of the task force to a nongovernmental entity or individual. Nongovernmental entities or individuals cannot appoint members of a task force.
- ❑ Make sure the synopsis accurately describes what the title and body of the resolution do.

Final Checks

- ❑ Confirm that the caption, "BE IT RESOLVED" clause, and synopsis all reference the same resolution type (simple, concurrent, or joint).
- ❑ Confirm that the language used in the resolution title, "BE IT RESOLVED" clause, and synopsis is consistent.
- ❑ Double check all names and dates included in the resolution.
- ❑ Run spell check.
- ❑ Have the resolution proofread by someone not involved in its drafting.

Notes to Drafter:

Appendix F: Interpretations of Statutes (Title 1, Chapter 3)

NOTE: *This section has been added to provide an easy reference to a chapter of the Code that all drafters should read and reference.*

TITLE 1. General Provisions.

CHAPTER 3. Interpretations of Statutes.

§ 301. Rules of construction and definitions.

The rules of construction and the definitions set forth in this chapter shall be observed in the construction of this Code and all other statutes, unless such construction would be inconsistent with the manifest intent of the General Assembly, or repugnant to the Code or to the context of the same statute.

§ 302. Definitions.

In the construction of this Code and of all other statutes of this State, unless the context requires a different meaning:

(1) “Adult” or “adult person” means a person of the age of 18 years or older.

(2) “Child” means a person who has not reached the age of 18 years.

(3) “Full age” means the age of 18 years or older.

(4) “Grantee” includes every person to whom a freehold estate or interest is conveyed.

(5) “Grantor” includes every person by whom a freehold estate or interest is conveyed.

(6) “Infancy” means an age of less than 18 years.

(7) “Infant” means a person who has not reached the age of 18 years.

(8) “Inhabitant” means a resident in any place.

(9) “Kin” and “kindred,” as applied to the descent of estates, signify kin or kindred by blood, and the degrees of consanguinity shall be computed by the civil law method; but collateral kindred claiming through a nearer common ancestor, shall be preferred to those claiming through a more remote common ancestor.

(10) “Lawful age” means the age of 18 years or older.

(11) “Minor” or “minor child” means a person who has not reached the age of 18 years.

(12) “Money” or “dollars” means lawful money of the United States.

(13) “Month” means a calendar month, unless otherwise expressed.

(14) “Oath” includes affirmation in all cases where an affirmation may be substituted for an oath, and "sworn" includes affirmed; and the forms shall be varied accordingly.

(15) “Person” and “whoever” respectively include corporations, companies, associations, firms, partnerships, societies and joint-stock companies, as well as individuals.

(16) “Person with a mental condition” includes every person with an emotional or psychiatric disorder or disability.

(17) “Real estate” or “real property” is synonymous with the phrase “lands, tenements and hereditaments.”

(18) “State” means the State of Delaware; and when applied to different parts of the United States, it includes the District of Columbia and the several territories and possessions of the United States.

(19) “Tavern” includes inn.

(20) “Under age” means an age of less than 18 years.

(21) “United States” includes its territories and possessions and the District of Columbia.

(22) “Will” means “last will and testament” and includes “codicil.”

(23) “Written” and “writing” respectively include printing and typewriting and reproductions of visual symbols by photographing, lithographing, multigraphing, mimeographing, manifolding or otherwise; but in all cases where the written signature of any person is by law required, it shall be the proper handwriting of such person, or if the person cannot write the person’s name, the person’s mark.

(24) “Year” means a calendar year, and is equivalent to the words “year of our Lord.”

§ 303. Words and phrases.

Words and phrases shall be read with their context and shall be construed according to the common and approved usage of the English language. Technical words and phrases, and such others as may have acquired a peculiar and appropriate meaning in the law, shall be construed and understood according to such peculiar and appropriate meaning.

§ 304. Words of number and gender.

(a) Words used in the singular number include the plural and the plural includes the singular.

(b) Words importing the masculine gender include the feminine as well, except as otherwise clearly indicated by the context.

(c) All forms prescribed by law may be varied according to subsections (a) and (b) of this section.

§ 305. Classification and arrangement.

The classification and organization of the titles, parts, chapters, subchapters, and sections of this Code, and the headings thereto, are made for the purpose of convenient reference and orderly arrangement, and no implication, inference or presumption of a legislative construction shall be drawn therefrom.

§ 306. Analyses of titles, parts, chapters, subchapters and sections; section headings; notes.

The various analyses set out in this Code, constituting enumerations or lists of the titles, parts, chapters, subchapters and sections of this Code, and the descriptive headings or catchlines immediately preceding or within the texts of the individual sections of this Code, except the section

numbers included in the headings or catchlines immediately preceding the texts of such sections, do not constitute part of the law. All derivation and other notes set out in this Code are given for the purpose of convenient reference, and do not constitute part of the law.

§ 307. References.

(a) Unless otherwise indicated in the context, references in this Code to titles, parts, chapters, subchapters or sections shall mean titles, parts, chapters, subchapters or sections of this Code.

(b) Whenever any reference is made to any portion of this Code or any other law, the reference applies to all amendments thereto.

§ 308. Severability of provisions.

If any provision of this Code or amendments hereto, or the application thereof to any person, thing or circumstances is held invalid, such invalidity shall not affect the provisions or application of this Code or such amendments that can be given effect without the invalid provisions or application, and to this end the provisions of this Code and such amendments are declared to be severable.

Appendix G: Super-Majority Vote Requirements

CONSTITUTIONAL CITATION	*VOTE REQUIREMENT*
	three-fifths (3/5) of all the members elected to each house
Section 18 of Article III	To override the Governor's veto.
Section 6(c) of Article VIII	To appropriate funds from the 2% "Rainy Day Fund" "in the event of emergencies involving the health, safety or welfare" of Delaware's citizens.
Section 6(d) of Article VIII	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."
Section 10(a) of Article VIII	To increase the effective rate "of any tax levied or license fee imposed by the State."
Section 11(a) of Article VIII	To impose or levy a "tax or license fee."
	two-thirds (2/3) of all the members elected to each house
Section 9 of Article II	To expel a member of the House by House members or to expel a member of the Senate by Senate members.
Section 19 of Article II	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."
Section 13 of Article III	To "address" the Governor to request removal of an officer for reasonable cause.
Section 20(b) of Article III	To determine "that the Governor is unable to discharge the powers and duties of his or her office because of mental or physical disability."
Section 1 of Article IV	To establish additional courts (not judges).
Section 12 of Article IV	To require the entire Supreme Court to sit in a civil or criminal matter other than one in which the accused has been sentenced to death.

CONSTITUTIONAL CITATION	*VOTE REQUIREMENT*
	two-thirds (2/3) of all the members elected to each house (cont'd)
Section 28 of Article IV	To give jurisdiction to inferior courts or justices of the peace of "such … misdemeanors as the General Assembly may from time to time … prescribe."
Section 1 of Article VI	To impeach by the House; to convict by the Senate.
Section 1 of Article IX	To enact or amend general incorporation laws and special acts of incorporation, including municipal charters.
Section 1 of Article XVI	To amend the Delaware Constitution, which requires passage by two consecutive General Assemblies.
Section 2 of Article XVI	To present to the voters the question of whether there should be a State constitutional convention.
	three-fourths (3/4) of all the members elected to each house
Section 3 of Article VIII	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."
Section 4 of Article VIII	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.
Section 12 of Article VIII	To appropriate money in the Transportation Trust Fund for a purpose not listed in § 12(b).
Section 12 of Article VIII	If money in the Transportation Trust Fund ceases to be appropriated for a purpose under § 12(b)(3), to again appropriate it for such a purpose.
	The Delaware Transportation Authority may not issue bonds unless the General Assembly approves of the purpose for which the

CONSTITUTIONAL CITATION	*VOTE REQUIREMENT*
2 *Del. C.* § 1405(i)	bonds are issued and the maximum amount of such bonds (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).

Required Super-Majority Votes

Super-Majority Vote	Senate	House
3/5	13	25
2/3	14	28
3/4	16	31

Appendix H: Glossary of Legislative Terms

AAB – An acronym meaning "as amended by." It is used to indicate that legislation has been changed by an amendment.

ACT – A bill that has passed both chambers of the General Assembly in identical form and has become law, with or without the Governor's signature.

ADJOURNMENT – The termination of a legislative day or session. "Adjournment sine die" marks the final closing of a legislative session, which has been informally replaced by "recess to the call of the chair" in Delaware.

ADMINISTRATIVE CODE – A compilation of Delaware's regulations. The Delaware Administrative Code is published entirely online by the Registrar of Regulations, who is an employee of the Division of Legislative Services, and is organized according to subject matter by title and section.

ADVISORY (LEGISLATIVE ADVISORY) – A list of the actions taken by the Governor on legislation that has passed both chambers and been presented to the Governor for review and action. In terms of actions that may be taken, the legislation may be signed by the Governor, vetoed by the Governor, or neither signed nor vetoed by the Governor in which case it is enacted without the Governor's signature. Each list includes the legislation's bill number, title, sponsors, date of action, and, if applicable, the Laws of Delaware volume and chapter number assigned to the legislation. Constitutional amendments are included on this list even though the Governor may neither sign nor veto them.

AGENDA – A list published daily by each chamber of those bills and resolutions which have been scheduled for consideration.

AMENDMENT – A separate piece of legislation having the limited purpose of deleting or inserting text, or both, in an piece of legislation, which is usually a bill but can be another amendment that has yet to be attached to a bill.

APPROPRIATED SPECIAL FUNDS (ASF) – Fees that are collected and designated for a specific purpose to support program functions.

APPROPRIATION – A budget act that authorizes the spending of public money for specific purposes. The three major appropriation bills are:

BUDGET BILL – Legislation authorizing expenditures for all branches of State government. It is the main financial plan for the State in a given fiscal year.

BOND BILL – Also known as the Bond and Capital Improvements Act, it authorizes the issuance of bonds and funding for State infrastructure projects in a given fiscal year.

GRANT-IN-AID BILL – An appropriation made by the General Assembly to help support the activities of any county, municipality, corporation, non-profit organization, or person providing services to Delawareans in a given fiscal year.

BILL – A proposed law under consideration by the General Assembly. Bills usually propose changes or additions to the existing statutory law, but can also be used to propose an appropriation, charter change, or constitutional amendment.

BODY (OF THE LEGISLATION) – The substantive and necessary portion of any legislation. The "Body" follows the "Be it enacted . . ." if it is a bill and the "Be it resolved . . ." if it is a resolution. If it is a bill, it may set forth the changes to the Delaware Code, the Delaware Constitution, the Laws of Delaware, or a municipal charter with one or more separate parts which are designated as "Section 1.", "Section 2.", etc. They are usually separated when they alter different portions of the Delaware Code, Delaware Constitution, Laws of Delaware, or a municipal charter. The body of the bill shows such changes to the current law by a strike through for deletions and an underline for insertions. If it is a resolution, it accomplishes one of the purposes assigned to resolutions. If it is a bill, it may include optional parts also designated as "Sections". The optional Sections of the body of a bill include the effective date, applicability clause, sunset clause, savings clause, grandfather clause, interpretation clause, severability clause, repealing clause, appropriations, and short title.

CALENDAR – A daily listing of legislative actions on bills and resolutions beginning with introduction and including those which have been reported from committee and are ready for final reading, debate, and vote by the full membership of a chamber.

CAPTION – Also known as the "heading" of the legislation, it provides information such as the sponsors, chamber of introduction, the specific General Assembly involved, e.g., the 148th General Assembly, the type of legislation, and the number assigned to the legislation.

CAUCUS – A group of legislators who associate together on the basis of membership in a political party or common interests and meet to discuss policy and strategy and coordinate legislative efforts.

CHAMBER – (1) Generic term for the House or Senate; in its plural form it refers to both the House and Senate; (2) official room for the meeting of the House or Senate.

CHARTER – The Act legally creating, known as "incorporating," a municipality which lists general powers and restrictions of powers of that municipality.

CHARTER AMENDMENT – The mechanism used to change the charter of a municipality. A charter amendment takes the form of a bill.

CHIEF CLERK OF THE HOUSE – The chief administrative officer of the House of Representatives who is elected by that body. The Chief Clerk is not a Representative, but a full-time staff official whose duties include receiving and releasing all bills introduced in the House, recording all votes taken on the floor, and certifying the daily record of legislative action on bills and resolutions.

CODE – A compilation of Delaware's laws. The Delaware Code is contained in a series of volumes organized according to subject matter by title, chapter, and section (e.g. Title 3, Chapter 11, and § 1102).

COMMITTEE – An appointed group of legislators who meet to consider and make recommendations concerning the disposition of legislation and conduct investigations on behalf of the House or Senate. The Speaker of the House and President Pro Tem appoint their members to the following types of committees:

INTERIM COMMITTEE – A committee established to study or investigate certain matters between regular sessions and to report its recommendation or findings at the next regular session.

JOINT COMMITTEE – A committee composed of members from both chambers (e.g., the Joint Legislative Oversight and Sunset Committee).

STANDING COMMITTEE – A committee appointed with continuing responsibility in a general issue area or field of legislative activity. (e.g. House Judiciary or Senate Executive). These committees are specific to and composed of members from one chamber.

COMMITTEE REPORT – The official release of legislation from a committee signed by the members of the committee and indicating their opinions of the legislation as follows:

M – Legislation voted out of committee on its merits, meaning that a legislator recommends the chamber take action on the legislation, but the legislator does not take a position on what action should be taken.

U – Legislation voted out of committee as unfavorable, meaning that a legislator recommends the full chamber defeat the legislation.

F – Legislation voted out of committee as favorable, meaning that a legislator recommends the full chamber pass the legislation.

CONSTITUTION – The document containing Delaware's founding principles and establishing the basic structure and power of Delaware's government. The Delaware Constitution is divided into 17 Articles labeled using Roman numerals and each Article is subdivided into sections (§).

CONSTITUTIONAL AMENDMENT – The mechanism by which changes are made to the Delaware Constitution. The Delaware Constitution is amended by a bill passed by two-thirds of the members elected to one General Assembly (this is called an Act proposing or the "first leg" of the amendment) that is then passed by two-thirds of the members elected to the next succeeding General Assembly (this is called an Act concurring in or the "second leg" of the amendment). The Governor may neither sign nor veto a constitutional amendment.

CONSTITUENT – A citizen residing within the district of a legislator.

CONTROLLER GENERAL – The Controller General's Office is a nonpartisan legislative agency that provides fiscal research and advice for the General Assembly. The Office's responsibilities include participating in all hearings held by the Joint Finance Committee, Budget Director, and State agencies in connection with State finances and assisting the General Assembly in the discharge of its fiscal responsibility.

DEFEATED – Legislation which does not pass because an insufficient number of "aye" votes are accrued. Defeated legislation can be restored within three legislative days through a motion for reconsideration.

DEFERRED – Legislation which is delayed because of any number of reasons, including that insufficient information is on hand to deal with the matter; such legislation may require an expert witness, fiscal note, etc.

DIVISION OF LEGISLATIVE SERVICES – The Division of Legislative Services is a nonpartisan, confidential legislative agency that provides bill drafting, legal research, bill service, and other legislative assistance and services to members of the General Assembly, state agencies, and the public.

EFFECTIVE DATE – The time when legislation goes into effect and begins to operate. In Delaware, unless there is a specific direction in the legislation itself, legislation is effective on enactment. Enactment occurs when one of following three events occur:

(1) The Governor signs the legislation.
(2) The Governor has failed to act on presented legislation within 10 days, Sundays excluded.
(3) Three-fifths of the members of both chambers have overridden the Governor's veto.

ENACTED – Legislation that has received the required vote of both chambers and has then been signed by the Governor, not signed by the Governor in accordance with Article III, § 18 of the Delaware Constitution (see "Enacted Without Signature"), or veto overridden by three-fifths of the total membership of each chamber.

ENACTED WITHOUT SIGNATURE – Article III, § 18 of the Delaware Constitution provides that legislation that the Governor has not acted on, by either signing or vetoing, within 10 days of being presented to him or her, excluding Sundays, becomes law.

ENACTMENT CLAUSE – Located between the title of legislation and the body of the legislation, it formally expresses the General Assembly's will. The clause begins, "Be it enacted by the General Assembly of the State of Delaware".

ENACTMENT DATE – The date legislation becomes law. In Delaware, the enactment date is the date when one of three events occur: (1) the Governor signs the legislation; (2) 10 days, excluding Sundays, pass and the Governor fails to act on legislation that has been presented by the General Assembly; or (3) three-fifths of the members of both chambers override the Governor's veto.

ENGROSSED LEGISLATION – Legislation in its final and official form with all approved amendments incorporated into the text of the original legislation.

ENGROSSMENT – (1) The process by which legislation is updated to incorporate amendments made to legislation as it progresses through the General Assembly.
(2) A copy of engrossed legislation.

ENROLLMENT – The process by which a bill or joint resolution that has passed both chambers is put into its final format and is prepared for transmission to the Governor. Such preparation includes certification by the President Pro Tempore of the Senate, the Speaker of the House, the Secretary of the Senate, and the Chief Clerk of the House.

EXECUTIVE ORDER – Action by the Governor implementing his or her authority under the law.

EX OFFICIO – By virtue or because of office; by virtue of the authority implied by office. As it relates to boards, commissions, and other voting entities, ex officio status is unrelated to a person's power to vote.

FEE IMPACT STATEMENT (F/I) – An analysis of the financial impact to the public and state agencies based on legislation that creates a new fee or increases an existing fee. It is prepared by the Controller General's Office under § 913, Title 29 of the Delaware Code and attached to legislation that creates a new fee or increases an existing fee. A fee impact statement must contain all of the following:

(1) An explanation of the purpose of the proposed new fee or fee increase.
(2) A general identification of the persons, business entities, or organizations affected by the legislation.
(3) The impact of the proposed new fees or fee increases on these affected persons, business entities or organizations.
(4) The intended use by the agency of the revenues generated by the new fees or fee increases.

FISCAL NOTE (FN) – An analysis of the financial impact to the State of a piece of legislation. It is prepared by the Controller General's Office under Chapter 19, Title 29 of the Delaware Code. It is attached to legislation that authorizes expenditures not previously authorized within the annual budget or reduces revenues. If the legislation authorizes expenditures not previously authorized, the fiscal note must contain a 3 year projection of the fiscal impact of the legislation. If the legislation reduces state revenue, the fiscal note must include a 1 year projection of the impact of the loss of revenue.

FISCAL YEAR – The State's accounting period, which begins July 1st.

FLOOR – The physical part of the chamber reserved for legislators, current and former public officers, staff, and others granted "privilege of the floor" or permission to be in this part of the chamber. In contrast, members of the public and other visitors are permitted to observe sessions from the gallery.

FLOOR MANAGER – The legislator in charge of discussing on the floor a specific piece of legislation from the other chamber. The floor manager is usually the chair of the committee from which it was released.

GALLERY – The balcony of the chamber from which visitors may view the proceedings.

GENERAL ASSEMBLY – The state's legislative body. This, the correct name for Delaware's legislative body, is the name assigned to the body by the Delaware Constitution.

HA or **SA** – An acronym for House Amendment or Senate Amendment.

HB or **SB** – An acronym for House Bill or Senate Bill.

HR or **SR** – An acronym for House Resolution or Senate Resolution, both are simple resolutions. HCR or SCR are acronyms for House Concurrent Resolution or Senate Concurrent Resolution. HJR or SJR are acronyms for House Joint Resolution or Senate Joint Resolution.

HS or **SS –** An acronym for House Substitute or Senate Substitute. A substitute bill replaces the original bill. A substitute bill addresses the same subject as the bill it replaces, but makes significant revisions.

HOUSE – The shortened name for the House of Representatives. It consists of 41 members, each of whom is elected to a two-year term. All revenue generating legislation must begin in the House.

INTRODUCTION – The public presentation of legislation into the legislative process.

JOINT RULES – Rules governing joint procedures or operations of the House and Senate.

JOINT SESSION – A meeting of both the House and Senate in one chamber.

JOURNAL – The official record of legislative proceedings in each chamber.

LAW – The general term usually used for official acts of the General Assembly.

LAWS OF DELAWARE – Also known as Session Laws, a book and online compilation containing copies of all the bills enacted during a General Assembly and any other legislative or executive document required by Legislative Council. Once a bill is enacted, it is assigned its own chapter number within the current volume of the Laws of Delaware. Chapter numbers are assigned chronologically as bills are enacted. Example: Chapter 103 of Volume 79 is the 103rd piece of legislation enacted in the 147th General Assembly.

LEGISLATIVE COUNCIL – A joint committee made up of the leadership of both chambers. The Chair alternates between the President Pro Tempore of the Senate in odd numbered years and the Speaker of the House in even numbered years. The Council oversees the work of the Division of Legislative Services, Controller General's Office, and Legislative Hall as a whole.

LEGISLATIVE DAY – The convening of a chamber to conduct official business. It differs from a calendar day in that it does not begin and end at a set time and can span multiple calendar days.

LEGISLATIVE SESSION (or SESSION) –

(1) The period of time in which the General Assembly is convened in a calendar year for the purpose of lawmaking and consists of a regular session and may consist of one or more special sessions or extraordinary sessions.

(2) The daily meeting of a chamber.

REGULAR SESSION – The constitutionally required legislative session beginning on the second Tuesday of January and ending not later than the last day of June.

SPECIAL SESSION – A constitutionally permitted legislative session which requires the mutual call of the presiding officers of both chambers. This routinely occurs as June 30 turns into July 1 and is done by mutual call of the presiding officers of both chambers under Article II, § 4 of the Delaware Constitution.

EXTRAORDINARY SESSION – A constitutionally permitted legislative session which requires the call of the Governor. Typically, this involves only the Senate as its purpose is usually to deal with judicial nominations. See Article III, § 16 of the Delaware Constitution.

LOBBYING – Attempts made by a person or group acting on behalf of themselves or others to influence legislation.

LOBBYIST – A person engaging in lobbying, either for pay or as a volunteer.

LOT – An acronym meaning "laid on the table." It is an action that occurs on the floor for various legislative reasons, including a missing witness or a needed amendment.

LFT (or Lifted) – An acronym meaning "lifted from the table." Legislation previously LOT is lifted for action by the chamber or committee.

MAJORITY/MINORITY LEADER – The member chosen by each chamber's political party caucus to lead it.

MAJORITY/MINORITY WHIP – The member chosen by each chamber's political party caucus to encourage membership attendance, count votes, and sometimes oversee personnel.

MINUTES – Record of the proceedings of a committee. These must include attendance and the results of any committee votes, and may include the reason for a member's dissent from a committee decision.

MOTION – A formal proposal made by a legislator on the floor or in committee requesting the Chamber or committee take a procedural action such as to table legislation or suspend rules.

MOTION TO LIFT DEFEATED – Legislation previously LOT failed to receive the vote required to lift it from the table for action by the chamber or committee.

MTSR – An acronym meaning "motion to suspend the rules" (see "Suspension of the Rules").

MUST LIST – A compilation of legislation prepared by the leadership of each chamber's majority caucus as the regular session draws to a close that the leadership determines must pass the other chamber before legislative business is concluded on July 1.

NON-APPROPRIATED FUNDS (NSF) – Federal funds or grants used to support programs.

ORDER OF BUSINESS – The defined routine followed by a chamber each legislative day.

OUT OF ORDER – Not in keeping with the chamber's parliamentary rules and procedures.

PER DIEM – Refers to attorneys and other staff who are hired on an as-needed basis, typically working only on legislative session days.

PETITIONED OUT – When a majority of the members elected to the chamber sign a petition to remove legislation from a committee for action by the chamber.

POINT OF ORDER – A question by a legislator to the presiding officer calling attention to a breach of order or the rules. This results in a ruling by the chair.

PWB – An acronym meaning "placed with the bill." It is in reference to an amendment that has been introduced to be considered with the legislation and, therefore, it goes wherever in the process the legislation is.

PRE-FILE – (1) A mechanism used to introduce legislation before the opening of the legislative day. It takes the place of an introduction from the floor.

(2) A list of all legislation that has used this mechanism to replace introduction from the floor.

PRESIDING OFFICER – The person designated to preside at a legislative session. Typically, the presiding officer is the Speaker in the House and the President (Lt. Governor) in the Senate.

PRESIDENT OF THE SENATE – The title given to the Lieutenant Governor in his or her capacity as the presiding officer in the Senate.

PRESIDENT PRO TEMPORE OF THE SENATE – The Senator elected to the position by a majority of the members elected to the Senate to run the mechanics of the Senate, including appointing committees and their members and assigning legislation to committee. The President Pro Tempore is commonly referred to as the "Pro Tem."

QUORUM – The minimum number of members required to be present for the chamber or a committee to perform its business. In the General Assembly, the quorum for each chamber is a majority of all the members elected to the chamber.

REGISTER OF REGULATIONS – A monthly publication available in print and online that provides notice of changes in state agency regulations, whether new, modified, or repealed, together with supplemental information deemed appropriate by the Registrar of Regulations, an employee of the Division of Legislative Services.

REGULATION – A rule adopted by a state agency to implement, interpret, or prescribe law or policy or describe its procedure or practice requirements.

READING – The presentation of legislation before a chamber. This is a formal procedure which requires the legislation be read by title. Unless rules are suspended, bills and joint resolutions must receive three readings:

FIRST READING – The first presentation of legislation by its title for consideration. This coincides with introduction and assignment to committee. Pre-filing legislation constitutes the first reading.

SECOND READING – The second presentation of legislation. This coincides with the reading of the committee report for the bill or joint resolution. Legislation is now placed on the Ready List.

THIRD READING – The final presentation of legislation by its title before discussion and a possible vote by the chamber. Any amendments are considered at this stage before action on the legislation.

READY LIST – A compilation of legislation that, if required to go through committee, has been released by committee, and is available to be placed on an agenda for its third and final reading.

REASSIGNED – Legislation is moved from one committee to a different committee.

RECALLED – When legislation is returned to the originating chamber, at its request, from the other chamber or from the Governor.

RECESS – A temporary suspension of the proceedings during a legislative session. It usually lasts "until the call of the Chair."

RECONSIDERATION, MOTION FOR – The process of reviving legislation that has been defeated. This must occur within three legislative days.

RESCINDED – Erases a roll call vote.

RESOLUTION – A resolution is the formal expression of the opinion, sentiment, or will of one or both chambers of the General Assembly. There are three types of resolutions:

SIMPLE RESOLUTION – A simple resolution is passed by only one chamber. The effect of its passage does not go beyond the bounds and the authority of that chamber. It is used to govern the internal affairs of the chambers, express congratulations or condolences, declare the sense of a chamber on an issue, or create a task force.

CONCURRENT RESOLUTION – A concurrent resolution is used to accomplish the same purpose in relation to the entire General Assembly that a simple resolution accomplishes for either the House or Senate singly. A concurrent resolution adopted by the General Assembly does not become a law, nor does it have the force and effect of law, nor can it be used for any purpose that requires the exercise of legislative power. It may create a joint task force.

JOINT RESOLUTION – A joint resolution is the most formal type of resolution. It has legal effect when it is passed by both chambers and signed by the Governor. A joint resolution is not a law but is used to employ temporary measures and has the force of law while in effect.

RETURNED – Legislation is sent back to committee, the ready list, or to the other chamber.

ROLL CALL – Names of the members, called in alphabetical order, used to establish a quorum or take a vote on legislation or a motion before the chamber.

RULES OF EACH CHAMBER – The parliamentary rules or procedure adopted by each chamber to govern its legislative conduct and action.

RULING OF THE CHAIR – The decision of the presiding officer on a point of order or procedure.

SECRETARY OF THE SENATE – The chief administrative officer of the Senate who is elected by that body. The Secretary of the Senate is not a Senator, but is a full time staff official whose duties and status are equivalent to the Clerk of the House.

SENATE – Consists of 21 members. Each decade, each Senate district elects a Senator for two 4 year terms and one 2 year term (with the 2 year term either at the beginning or end of each decade to allow for staggered terms) so as to allow for redistricting following the federal census. The Senate is responsible for confirming the Governor's appointments.

SIMPLE MAJORITY – (1) For a bill or joint resolution, simple majority refers to the requirement in Article II, § 10 of the Delaware Constitution that a bill or joint resolution may not pass a chamber without the concurrence of a majority of all the members elected to that chamber. Under the Constitution, a simple majority is 11 votes in the Senate and 21 votes in the House and is unaffected by vacancies in a chamber.

(2) For simple and concurrent resolutions and motions regarding internal procedure of a chamber, simple majority may mean a majority of the members present.

SPEAKER OF THE HOUSE – The presiding officer of the House. The Speaker is a member who is elected to the position by a majority of the members elected to the House to run the mechanics of the House, including appointing committees and their members and assigning legislation to committee.

SPONSOR – A legislator who introduces or supports legislation and whose name is attached to the legislation. A sponsor may be any of the following:

PRIME SPONSOR – The originator of legislation. Legislation can only have one prime sponsor. This person introduces the legislation, shepherds it through committee, and is responsible for floor managing it in the person's chamber.

CO-PRIME SPONSOR – Additional originators of legislation who may have worked with the prime sponsor on the legislation or may assist with shepherding it in the same or the other chamber.

CO-SPONSOR – Additional supporters of a bill.

STRICKEN – Legislation removed from the legislative process by the prime sponsor.

SUBSTITUTE – A substitute replaces an introduced bill, but keeps the introduced bill's number and title.

SUNSET – The expiration of a law, not to be confused with the Joint Legislative Oversight and Sunset Committee.

SUPER MAJORITY – The Delaware constitutional requirement that a specific bill must pass a chamber with the concurrence of three-fifths, two-thirds, or three-fourths of all of the members elected to the Chamber.

SUSPENSION OF THE RULES – A majority of all of the members of a chamber may vote to take an action that otherwise would be prohibited by a rule of that chamber.

SYNOPSIS – The final section of legislation that contains a statement that may include the intent of the legislation, a brief history of why the legislation was introduced, changes to existing laws or a description of the proposed new law, and how the legislation affects current law with its existing rights, liabilities, and proceedings. Because of this level of detail, Delaware courts have held that the synopsis of a bill is a proper source from which to obtain legislative intent.

TABLED IN COMMITTEE – The decision of a majority of the members of a committee that the legislation should not be released from the committee. The legislation is subject to being petitioned out of the committee.

TEMPORARILY DEFERRED – Legislation holding position on the agenda without being worked; probably awaiting an amendment.

TITLE – A statement of legislation's general purpose located at the very beginning of the legislation, in capital letters. The purpose of a title is to provide notice to the public of the subject matter of the legislation and the laws, if any, it affects.

VETO – The Governor's disapproval of a bill passed by the General Assembly. Unless overridden by a three-fifths vote of the total membership of each chamber, a veto prevents a bill from becoming law.

VOICE VOTE – An oral expression of the members of the House when an amendment is presented. Members respond "aye" or "nay." The Speaker determines which side prevails. Under House Rule 39(d), any member can request a roll call vote be taken instead of a voice vote.

VOTE REQUIREMENT – The minimum number of votes required by the Delaware Constitution for a piece of legislation to pass one or both chambers (See "Simple Majority" and "Super Majority").

Appendix I: Memorandum and Model Language for Drafting Health Insurance Laws

TO: **Drafting Attorneys**
CC: **Department of Insurance**
FROM: **Debbie Gottschalk, Senior Legislative Attorney**
DATE: **December 29, 2023**
RE: **Drafting Heath Insurance Coverage Requirement Legislation**

This memo contains key considerations to use when drafting legislation that creates a coverage requirement for health insurance and explains the language used in the model legislation.

State and Federal Authority

- States do not have authority over requirements for health insurance plans governed by federal law under any of the following:
  - ERISA.[1]
  - Medicare.
- Changes to state requirements for health insurance plans may be limited under the federal Patient Protection and Affordable Care Act (ACA)[2].
- Title 18 does not govern the State employee/retiree health plans or Medicaid.

To add a health insurance coverage requirement to all health plans under the jurisdiction of this State, the requirement needs to be added to all of the following:

- Title 18, Ch. 33. Individual plans.[3]
- Title 18, Ch. 35. Group plans.
- Title 29, Ch. 52. State employee/retiree health plans.
- Title 31, Ch. 5. Medicaid.

Exception Language

Title 18

- Because different exceptions apply to requirements that require coverage only and coverage requirements that include cost-sharing limitations, the requirement subsection needs to be drafted differently for each type of requirement.

Examples:

For requirement-only legislation in both Ch. 33 & Ch. 35:

(b) All *[Ch. 33: individual; Ch. 35; group and blanket]* health insurance policies, contracts, or certificates that are delivered, issued for delivery, renewed, extended, or modified in this State shall provide coverage for medically necessary *[name of medication/treatment/test]*.

For requirement legislation that includes a cost-sharing limitation, in both Ch. 33 & Ch. 35:

(b)(1) All *[Ch. 33: individual; Ch. 35; group and blanket]* health insurance policies, contracts, or certificates that are delivered, issued for delivery, renewed, extended, or modified in this State shall provide coverage for medically necessary *[name of medication/treatment/test]*.

(2) The coverage required under paragraph (b)(1) of this section must be provided at no cost to a covered individual, including deductible payments and cost-sharing amounts charged once a deductible is met.

---

[1] Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1002(32) et seq.
[2] 42 U.S.C. §§ 18022 – 18063.
[3] See also Title 18, Ch. 36 for ACA-specific requirements.

- Most health insurance requirement statutes have a subsection stating that the requirement does not impact the application of other provisions in a health insurance policy.
  - In application, **this means**
    - If the legislation requires that a type of care must be provided at **no cost**, if a policy requires that a deductible be met or has an allowable charge limitation, that care must be provided at no cost whether or not the deductible has been met or after the allowable charge limitation has been met. "No cost" legislation should include the phrase "Except as provided under subsection (X) of this section, nothing".
    - If the legislation **limits the cost** of a type of care, the care is still subject to other policy provisions, such as a deductible or allowable charge limitation.

Examples: Ch. 33 & Ch. 35

If coverage only requirement

(c) Nothing in this section prevents the operation of a policy provision required by this section as a deductible, coinsurance, allowable charge limitation, coordination of benefits, or a provision restricting coverage to services by a licensed, certified, or carrier-approved provider or facility.

If coverage requirement with a cost-sharing limitation

(c) Except as provided under subsection (b) of this section, nothing in this section prevents the operation of a policy provision required by this section as a deductible, coinsurance, allowable charge limitation, coordination of benefits, or a provision restricting coverage to services by a licensed, certified, or carrier-approved provider or facility.

- Most health insurance legislation is intended to apply to regulated individual, small group, and large group plans that offer comprehensive coverage, and thus **other plans regulated under Title 18** are carved out. (Medicaid, ERISA plans, and state plans are not explicitly carved out in this way in bills, because Title 18 does not regulate them.)

Examples: Ch. 33 & Ch. 35

(d)(1) This section does not apply to accident-only, specified disease, hospital indemnity, Medicare supplement, long-term care, disability income, or other limited benefit health insurance policies.

ACA

IRS rules govern what can be included in Marketplace health insurance plans to qualify as a High Deductible Health Plan (HDHP) or Catastrophic Plan (only available as individual plans). A conflict is created if state law requires coverage that exceeds the IRS guidelines because these plans may lose their status as HDHPs or Catastrophic Plans if they include the additional coverage. This is more likely to be triggered when the coverage requirement includes limitations on cost-sharing.

Examples:

Model language for Ch. 33

(2) The cost-sharing limitation under paragraph (b)(2) of this section does not apply to a catastrophic health plan to the extent this cost-sharing limitation would cause the plan to fail to be treated as a catastrophic plan under § 1302(e) of the Patient Protection and Affordable Care Act, 42 U.S.C. § 18022(e).

Model language for Ch. 33 & Ch. 35

(d)(#)a. The cost-sharing limitation under paragraph (b)(2) of this section does not apply to a high deductible health plan to the extent this cost-sharing limitation would cause the plan to fail to be treated as a high deductible health plan under § 223(c)(2) of the Internal Revenue Code.

b. If the cost-sharing limitation under paragraph (b)(2) of this section would result in an enrollee becoming ineligible for a health savings account under federal law, this cost-sharing limitation only applies to a qualified high deductible health plan after the enrollee's deductible has been met.

Effective Dates

Under federal law, rate filings for the next calendar year are generally final in May and approved by the Insurance Commissioner in July. If legislation is not enacted before May, it **must take effect a year from the next January 1st**, so that the increased cost of the coverage is included in the next rate filing. (ex: legislation introduced in 2023 and not signed before May should be effective for plans on or after January 1, 2025.)

Examples:

If applies to all Sections in bill, at end per usual drafting standards:

Section 5. This Act applies to all policies, contracts, or certificates issued, renewed, modified, altered, amended, or reissued after December 31, 202#.

If only applies to some Sections in bill (usually because State employee plans and/or Medicaid already provide the coverage):

(e) This section applies to all policies, contracts, or certificates issued, renewed, modified, altered, amended, or reissued after December 31, 202#.

If only applies to new provisions being added to existing law:

(e)(#) The requirements under this subsection [*or paragraph (x)(#) of this section*] apply to all policies, contracts, or certificates issued, renewed, modified, altered, amended, or reissued after December 31, 202#.

Potential fiscal impacts

- Generally, may increase costs under the State General Operating Budget if the required coverage is not already part of these plans:
  - Title 29, Ch. 52. State employee/retiree health plans.
  - Title 31, Ch. 5. Medicaid.
- The ACA may create a fiscal impact to the state for new requirements for **individual plans**.
  - If the requirement is not included in the state's essential health benefits, the state may face fiscal implications in terms of ACA tax credits related to the costs of additional coverage. This is called "defrayal" and defrayal determinations are the state's responsibility[4].
    - DOI does not manage the state's benchmark plan or essential health benefits, nor are they tied to DOI funds, thus DOI is not responsible for completing such determinations.
    - The Office of the Controller General stays aware of the updated understanding of determinations.
  - ***One option is to include protective language that negates the law if defrayal is required:***
    (x) If, at any time, the State is required under federal law[5] to defray the cost of any coverage required under this section, the requirements under this section are inoperative and the State does not assume any obligation for the cost of coverage.

[4] 45 CFR 155.170.

[5] 45 C.F.R. § 155.170.

TO: Drafting Attorneys
CC: Department of Insurance
FROM: Debbie Gottschalk, Senior Legislative Attorney
DATE: December 29, 2023
RE: Model Legislation, Health Insurance Coverage Requirements

Below are examples of legislation establishing health insurance coverage requirements using the language explained in my companion memo. This language is revised from the January 2023 models to reflect changes in federal law and to narrow the exception language so it only applies to cost-sharing provisions to prevent loopholes insurers can use to deny all coverage.

The earlier version of these examples distinguished between the language necessary for a requirement to cover medication and a requirement to cover anything else, such as a treatment or test. Changes in federal law eliminate the need for those distinctions.

Instead, these examples distinguish between the language to use for a bill that only requires coverage and a bill that also includes a cost-sharing limitation on that coverage. These examples are followed by examples for the applicability date provisions and optional language that may help reduce the fiscal note if defrayal costs are triggered.

Health Insurance, Required Coverage, Requirement Only (Introduced during 2024 Session)

Note: Language for Ch. 33 & Ch. 35 is identical except for the type of policies under (b).

Section 1. Amend Chapter 33 of Title 18 . . .

Definitions, if necessary

(a) For purposes of this section:

(1) "Covid-19" means an acute disease in humans caused by a coronavirus.

(2) "FDA" means the Food and Drug Administration.

(3) "Paxlovid" means the antiviral medication approved by the FDA for the treatment of Covid-19 and any generic formulation of Paxlovid approved by the FDA.

Requirement & Applicability to rest of policy.

(b) All individual health insurance policies, contracts, or certificates that are delivered, issued for delivery, renewed, extended, or modified in this State shall provide coverage for medically necessary *[name of medication/treatment/test]*.

(c) Nothing in this section prevents the operation of a policy provision required by this section as a deductible, coinsurance, allowable charge limitation, coordination of benefits, or a provision restricting coverage to services by a licensed, certified, or carrier-approved provider or facility.

Exceptions

(d) This section does not apply to accident-only, specified disease, hospital indemnity, Medicare supplement, long-term care, disability income, or other limited benefit health insurance policies.

Section 2. Amend Chapter 35 of Title 18 . . .

Definitions, if necessary

(a) For purposes of this section:

(1) "Covid-19" means an acute disease in humans caused by a coronavirus.

(2) "FDA" means the Food and Drug Administration.

(3) "Paxlovid" means the antiviral medication approved by the FDA for the treatment of Covid-19 and any generic formulation of Paxlovid approved by the FDA.

Requirement & Applicability to rest of policy

(b) All group and blanket health insurance policies, contracts, or certificates that are delivered, issued for delivery, renewed, extended, or modified in this State shall provide coverage for medically necessary *[name of medication/treatment/test]*.

(c) Nothing in this section prevents the operation of a policy provision required by this section as a deductible, coinsurance, allowable charge limitation, coordination of benefits, or a provision restricting coverage to services by a licensed, certified, or carrier-approved provider or facility.

Exceptions

(d) This section does not apply to accident-only, specified disease, hospital indemnity, Medicare supplement, long-term care, disability income, or other limited benefit health insurance policies.

Section 3. Amend Chapter 52 of Title 29 . . .

Definitions, if necessary

(a) For purposes of this section:

(1) "Covid-19" means an acute disease in humans caused by a coronavirus.

(2) "FDA" means the Food and Drug Administration.

(3) "Paxlovid" means the antiviral medication approved by the FDA for the treatment of Covid-19 and any generic formulation of Paxlovid approved by the FDA.

Requirement & Applicability to rest of policy

(b) The plan shall provide coverage for medically necessary *[name of medication/treatment/test]*.

Section 4. Amend Chapter 5 of Title 31 . . .

Definitions, if necessary

(a) For purposes of this section:

(1) "Covid-19" means an acute disease in humans caused by a coronavirus.

(2) "FDA" means the Food and Drug Administration.

(3) "Paxlovid" means the antiviral medication approved by the FDA for the treatment of Covid-19 and any generic formulation of Paxlovid approved by the FDA.

Requirement & Applicability to rest of policy

(b) Carriers shall provide coverage for medically necessary *[name of medication/treatment/test]* in all health benefit plans delivered or issued for delivery under § 505(3) of this title.

***Section 5.** This Act applies to all policies, contracts, or certificates issued, renewed, modified, altered, amended, or reissued after December 31, 2025.

Health Insurance, Required Coverage with Cost-Sharing Limitation (Introduced during 2024 Session)

Note: Language for Ch. 33 & Ch. 35 is different.

Section 1. Amend Chapter 33 of Title 18 . . .

Definitions, if necessary

(a) For purposes of this section:

(1) "Covid-19" means an acute disease in humans caused by a coronavirus.

(2) "FDA" means the Food and Drug Administration.

(3) "Paxlovid" means the antiviral medication approved by the FDA for the treatment of Covid-19 and any generic formulation of Paxlovid approved by the FDA.

Requirement & Applicability to rest of policy.

(b)(1) All individual health insurance policies, contracts, or certificates that are delivered, issued for delivery, renewed, extended, or modified in this State shall provide coverage for medically necessary *[name of medication/treatment/test]*.

(2) The coverage required under paragraph (b)(1) of this section must be provided at no cost to a covered individual, including deductible payments and cost-sharing amounts charged once a deductible is met.

(c) Except as provided under subsection (b) of this section, nothing in this section prevents the operation of a policy provision required by this section as a deductible, coinsurance, allowable charge limitation, coordination of benefits, or a provision restricting coverage to services by a licensed, certified, or carrier-approved provider or facility.

Exceptions

(d)(1) This section does not apply to accident-only, specified disease, hospital indemnity, Medicare supplement, long-term care, disability income, or other limited benefit health insurance policies.

(2) The cost-sharing limitation under paragraph (b)(2) of this section does not apply to a catastrophic health plan to the extent this cost-sharing limitation would cause the plan to fail to be treated as a catastrophic plan under § 1302(e) of the Patient Protection and Affordable Care Act, 42 U.S.C. § 18022(e).

(3)a. The cost-sharing limitation under paragraph (b)(2) of this section does not apply to a high deductible health plan to the extent this cost-sharing limitation would cause the plan to fail to be treated as a high deductible health plan under § 223(c)(2) of the Internal Revenue Code.

b. If the cost-sharing limitation under paragraph (b)(2) of this section would result in an enrollee becoming ineligible for a health savings account under federal law, this cost-sharing limitation only applies to a qualified high deductible health plan after the enrollee's deductible has been met.

Section 2. Amend Chapter 35 of Title 18 . . .

Definitions, if necessary

(a) For purposes of this section:

(1) "Covid-19" means an acute disease in humans caused by a coronavirus.

(2) "FDA" means the Food and Drug Administration.

(3) "Paxlovid" means the antiviral medication approved by the FDA for the treatment of Covid-19 and any generic formulation of Paxlovid approved by the FDA.

Requirement & Applicability to rest of policy.

(b)(1) All group and blanket health insurance policies, contracts, or certificates that are delivered, issued for delivery, renewed, extended, or modified in this State shall provide coverage for medically necessary *[name of medication/treatment/test]*.

(2) The coverage required under paragraph (b)(1) of this section must be provided at no cost to a covered individual, including deductible payments and cost-sharing amounts charged once a deductible is met.

(c) Except as provided under subsection (b) of this section, nothing in this section prevents the operation of a policy provision required by this section as a deductible, coinsurance, allowable charge limitation, coordination of benefits, or a provision restricting coverage to services by a licensed, certified, or carrier-approved provider or facility.

Exceptions

(d)(1) This section does not apply to accident-only, specified disease, hospital indemnity, Medicare supplement, long-term care, disability income, or other limited benefit health insurance policies.

(2)a. The cost-sharing limitation under paragraph (b)(2) of this section does not apply to a high deductible health plan to the extent this cost-sharing limitation would cause the plan to fail to be treated as a high deductible health plan under § 223(c)(2) of the Internal Revenue Code.

b. If the cost-sharing limitation under paragraph (b)(2) of this section would result in an enrollee becoming ineligible for a health savings account under federal law, this cost-sharing limitation only applies to a qualified high deductible health plan after the enrollee's deductible has been met.

Section 3. Amend Chapter 52 of Title 29 . . .

Definitions, if necessary

(a) For purposes of this section:

(1) "Covid-19" means an acute disease in humans caused by a coronavirus.

(2) "FDA" means the Food and Drug Administration.

(3) "Paxlovid" means the antiviral medication approved by the FDA for the treatment of Covid-19 and any generic formulation of Paxlovid approved by the FDA.

Requirement & Applicability to rest of policy

(b) The plan shall provide coverage for medically necessary *[name of medication/treatment/test]* at no cost to a covered individual, including deductible payments and cost-sharing amounts charged once a deductible is met.

Section 4. Amend Chapter 5 of Title 31 . . .

Definitions, if necessary

(a) For purposes of this section:

(1) "Covid-19" means an acute disease in humans caused by a coronavirus.

(2) "FDA" means the Food and Drug Administration.

(3) "Paxlovid" means the antiviral medication approved by the FDA for the treatment of Covid-19 and any generic formulation of Paxlovid approved by the FDA.

Requirement & Applicability to rest of policy

(b) Carriers shall provide coverage for medically necessary *[name of medication/treatment/test]* at no cost in all health benefit plans delivered or issued for delivery under § 505(3) of this title.

***Section 5.** This Act applies to all policies, contracts, or certificates issued, renewed, modified, altered, amended, or reissued after December 31, 2025.

<u>Applicability Date, Options</u>

***If applies to all Sections in bill, at end under usual drafting standards (Section 5 in these examples)**

Section 5. This Act applies to all policies, contracts, or certificates issued, renewed, modified, altered, amended, or reissued after December 31, 2025.

If only applies to some Sections in bill, add to each Code section where necessary (usually in Title 18)

(e) This section applies to all policies, contracts, or certificates issued, renewed, modified, altered, amended, or reissued after December 31, 2025.

If only applies to new provisions being added to existing law, add to each Code section where necessary.

(e)(#) The requirements under this subsection [*or paragraph (x)(#) of this section*] apply to all policies, contracts, or certificates issued, renewed, modified, altered, amended, or reissued after December 31, 2025.

<u>Optional Contingent Language to Avoid Defrayal Costs, Ch. 33 & Ch. 35</u>

(e) If, at any time, the State is required under federal law to defray the cost of any coverage required under this section, the requirements under this section are inoperative and the State does not assume any obligation for the cost of coverage.

Index

INDEX

abbreviations, 82, 98
accuracy, 10, 13, 14, 16, 44, 68, 78, 81, 110, 126, 128, 133, 134
accurate, 9, 10, 41, 46, 64, 77, 98, 126, 132, 134, 148, 152, 164
acronyms, 26, 88
Act, this, 136
amending multiple titles, 21
and. *See* And & Or
And & Or, 90, 91, 92
  and, 90, 91, 94, 103, 112
  and/or, 91, 92
  or, 91
antecedents, 89, 96, 97, 117
appointments
  nongovernmental entity, 188
archaic words, 83
backers, 148, 150, 153
Bill Parts, 19
  applicability clauses, 25, 34, 67, 128, 129
  author, 42, 43
  basic provisions, 19, 25, 27
  body, 24, 25
  caption, 19, 55
  declaration of purpose, 22, 25, 26, 41, 94
  definitions, 25, 26, 27, 41, 66, 71, 80, 88, 90, 99, 105, 106, 107, 108, 109, 110, 111, 113, 119, 128, 129
  effective dates. *See* Effective Dates
  enactment clauses, 19, 22, 23, 24, 33, 44, 46, 52, 59, 76, 128, 132, 164, 215
  enumeration provisions, 115, 116, 117
  footer, 43
  grandfather clauses, 25, 37
  initials, 43
  instructional language, 57, 68, 70, 71, 72, 73, 74, 75, 76, 77, 104
  interpretation clauses, 25, 37
  introductory language, 26, 65, 66, 80, 103, 106, 112, 113, 114
  line numbers, 42, 56, 70, 75, 77, 80, 81, 152, 153
  long title, 19
  organized, gen., 128, 129
  preamble, 19, 22, 23, 25, 42, 59, 67
  prefatory language, 64
  repealing clauses. *See* Repealing
  resolving clauses, 59
  savings clauses, 25, 36, 37, 67, 128, 129
  Section, 20, 24, 25, 29, 30, 31, 36, 37, 41, 44, 53, 67, 74, 75, 76, 81, 88, 115, 119, 123, 153, 215
    capitalized, 24
  section headings, 119
  severability clauses, 25, 38, 39, 67, 128, 129, 215, 216
    non-severability, 38
    partial, 38
  short title, 25
  sunset clauses, 25, 35, 36, 62, 67
    amend date, 54
    contingent, 36
    hidden, 35
  synopsis, 19, 20, 22, 30, 41, 42, 44, 54, 55, 56, 57, 59, 71, 79, 104, 115, 121, 128, 129, 153, 215
    cannot be amended, 57
  title, 19, 20, 21, 22, 23, 25, 26, 27, 28, 41, 43, 44, 45, 46, 53, 54, 55, 56, 58, 67, 100, 107, 120, 128, 136, 213
  whereas clauses, 22, 25, 44, 59, 67, 76, 128
Bill Prep, 148, 149
Bill Types, 17
  amending Laws of Delaware, 53
  amendments, 10, 17, 19, 21, 22, 24, 31, 42, 43, 44, 45, 46, 53, 54, 56, 57, 58, 59, 60, 65, 68, 70, 71, 73, 75, 76, 77, 104, 105, 126, 148, 150, 151, 152, 153, 158, 163, 164

add new bill Section, 57
amendment to an amendment, 57, 58, 76, 77
as amended, bill, 77
conflicting, 57
implied, 57
scope, 56
strike another amendment, 56, 57
synopsis cannot be amended, 57
appropriation bills, 18, 20, 25, 31, 40, 41, 46, 47, 48, 51, 52, 67, 164, 213, 214
bills, gen., 17, 36, 45, 59, 64, 161
general bills, 17, 18
legislative vehicles, 9, 14, 17, 56, 79
local bills, 18
private bills, 18
public bills, 17
resolutions
concurrent resolutions, 42, 58, 59, 60, 149, 161
duration of authority, 58
gen., 18, 19, 40, 43, 56, 58, 59, 60, 61, 64, 68, 90, 104, 154, 161
joint resolutions, 20, 42, 52, 59, 60, 149, 151, 153, 161
simple resolutions, 42, 58, 59, 60, 149
special bills, 17, 18
substitute bills, 17, 19, 21, 41, 55, 56, 57, 94
Black's Law Dictionary, 20, 36, 92, 104
boards and commissions, 48, 49, 50
Bond Bill, 40
brackets, 34, 103, 121
brevity, 83
Budget Bill, 40
but, 111
Cases and Materials on Legislation, 13
casting vote, 159, 160, 161, 163
chair, co-chair, or vice chair, 61, 62, 144, 150, 152, 155
Chambers, 17, 19, 40, 52, 53, 55, 59, 62, 77, 143, 148, 149, 151, 152, 153, 154, 158, 161
Charters
bank charters, 45
gen., 43, 45
municipal charters, 15, 16, 45, 46, 47, 213
municipal charters , indirect amendment to, 45
town charters, 46
citation, 9, 41, 44, 46, 67, 108, 131
clarity, 10, 14, 26, 66, 78, 81, 82, 97, 104, 105, 110, 111, 126, 132, 134
client, 14, 15, 27, 28, 36, 37, 45, 60, 64, 70, 82, 84, 121, 164
Code Revisors, 15, 30, 32, 33, 34, 35, 41, 54, 64, 65, 70, 103, 106, 114, 120, 121, 122, 127, 128, 141, 142, 153, 163, 164, 165
commas, 19, 70, 71, 80, 96, 100, 103, 104, 105
Oxford or serial, 103, 104
committee assignments, 149
compound sentences, 84
compound words, 105
conjunctions, 78, 91, 103, 104
Consideration List, 149
consistency, 83, 84
constitutional requirements, 14, 20, 130, 151
Controller General's Office, 52, 53
corporations, 18, 48, 92, 107, 111, 213, 214
counties, 48, 162, 213, 214
crimes, 26, 28, 30, 66, 127, 129, 132, 133
dashes, 104
Delaware Administrative Code, 15, 16, 125
Delaware Code, 9, 10, 15, 16, 21, 23, 24, 25, 26, 27, 28, 31, 33, 35, 36, 37, 38, 40, 41, 43, 44, 46, 52, 53, 56, 57, 58, 59, 60, 64, 67, 68, 70, 71, 73, 74, 78, 107, 118, 120, 121, 122, 123, 125, 126, 127, 128, 129, 136, 142, 213
creating a new unit within, 127, 128
transferring an entire unit in, 122
transferring and amending an entire unit in, 122
where to place new language, 136
Delaware Constitution, 10, 15, 16, 17, 18, 20, 21, 23, 31, 38, 43, 44, 45, 46, 47, 51,

52, 64, 67, 71, 123, 125, 126, 129, 130, 136, 154, 156, 158, 159, 160, 214
Delaware Uniform Citation, 9
delegation of legislative powers, 32, 214, 216
DELIS, 10, 16, 19, 42, 43, 78, 79, 81, 112, 148
dependent clauses, 84
dictionaries, 26, 82, 104, 105, 108
disabilities, 88
Division of Legislative Services, 9, 10, 16, 45, 61, 63, 82, 134, 149, 152, 153, 156, 165
Effective Dates
contingent effective dates, 29, 31, 32, 33, 36, 128, 129
contingent effective dates, reasons to avoid, 31
delayed effective dates, 29, 33
effective upon the signature of the Governor, 30
expiration provisions, 35
future dates, 29, 68, 86
future events, 31
gen., 25, 29, 30, 31, 32, 33, 34, 43, 67, 74, 103, 121, 131, 153
implementation, 33
past dates, 29
retroactive effective dates, 29
specific dates, 29, 30, 61
versioning, due to effective date, 30, 46, 68, 121
Elements of Style, The, 82, 105
ellipses, 104
enacting & enactment, 10, 18, 23, 29, 30, 31, 32, 33, 34, 41, 59, 61, 78, 162
comprehensive enactment, 41
See also Bill Parts, enacting clauses, 19
engrossments, 57, 65, 70, 77, 152, 153, 154
enrolled bill doctrine, 24, 136
enrollment, 153
ex officio, 51, 143, 196, 234
ex post facto, 30
except as otherwise provided, 110
existing law, 13, 14, 15, 17, 18, 21, 24, 26, 32, 36, 39, 40, 41, 45, 48, 53, 55, 56, 64, 65, 66, 67, 70, 71, 72, 74, 75, 81, 100, 102, 104, 110, 111, 114, 119, 127, 129, 132, 134, 135, 153, 213, 214, 230
false imperatives, 85
federal, 16, 27, 31, 32, 58, 59, 60, 125, 130, 135, 142, 143
final adjournment, 154, 155, 156, 157
fiscal notes, 52, 53
Formatting, 10, 14, 78, 133
ages, 100, 101
auto lettering, 11, 81
auto numbering, 11, 81
autoformatting, 42
bold, 11, 79
capitalization, 26, 79, 82, 99, 106, 112, 131, 141, 164
dates, 100, 131
font, 11, 64, 70, 75, 79
fractions, 100
hierarchy (Code indentation), 66, 80, 81, 112, 114, 119, 120, 123, 131
italics, 11, 79
measurements, 100
money, 40, 48, 52, 100, 131, 145, 146, 214
numbers, 26, 31, 44, 61, 66, 67, 80, 82, 99, 100, 101, 102, 103, 118, 119, 125, 131
numbers, numeric or temporal sequence, 101
paragraphing (indentation), 79
percentages, 100
plural, 85, 100, 102
possessives, 89, 96, 102
prefixes, 102, 103, 144
strike through, 9, 11, 25, 45, 54, 55, 64, 65, 66, 68, 70, 74, 114, 121, 122
time, 29, 46, 99, 101, 145, 152
underline, 9, 11, 25, 45, 54, 55, 64, 65, 67, 68, 70, 75, 114, 121, 122, 123
frequently misspelled words, 136
gender, 87, 89

gender silent, 87
General Assembly, relating to its powers or procedures, 9, 15, 17, 18, 19, 22, 24, 32, 35, 40, 42, 43, 44, 45, 47, 48, 50, 58, 59, 60, 61, 63, 78, 107, 142, 149, 152, 154, 155, 156, 157, 158, 160, 162, 164, 213, 214
General Fund, 40, 41
general laws, 18
Governor, 17, 29, 30, 36, 43, 46, 47, 54, 59, 60, 152, 153, 154, 155, 156, 157, 158, 159, 161, 163, 214
Governor, Lt., 159, 160, 161, 163
grammar, gen., 13, 14, 78, 81, 82, 84, 105, 133, 153
Grants-in-Aid Bill, 40
health insurance, 134, 242
highways, 18, 47
home rule, 45
House
  Chief Clerk, 62, 148, 150, 153, 155, 156
  gen., 19, 51, 56, 61, 62, 151, 159
  rules of the House, 10, 19, 21, 23, 42, 52, 53, 55, 56, 57, 58, 59, 62, 76, 148, 149, 150, 151, 152, 158, 159
  Speaker of the House, 50, 61, 149, 150, 151, 152, 154
hyphens, 102, 103, 105
if, 97, 98
imperative mood, 85
includes and means, 109
  includes and including, gen., 109, 115, 116
  includes v. means, 108
  including but not limited to, 109
  means v. includes, 109
  means, gen., 108, 109, 110
indicative mood, 85
individuals, 18, 71, 72, 84, 87, 92, 107, 111
insurance. *See* health insurance
internal references, 114, 119, 120, 123, 124, 125, 126, 127, 133, 142, 143
interstate compacts, 130, 131
Joint Legislative Oversight and Sunset Committee, 25, 48
Laws of Delaware, 15, 16, 21, 23, 37, 42, 44, 45, 46, 53, 54, 55, 64, 67, 71, 128, 136, 153, 164
legalese, 83, 88
Legislative Council, 9
Legislative Drafter's Desk Reference, 29, 96, 97, 108, 123
Legislative Hall, 10, 13, 14, 16, 17, 45, 148, 149
Legislative Library, 10, 16, 42
legislative process, 9, 13, 148, 149, 152, 156, 161
legislative vehicles, 58
license plates, 134, 135
licensing, 50
line numbers, 81
lists (series and tabulations), 26, 65, 103, 104, 112, 113, 114, 115, 116, 117, 118, 119, 153
  undesignated lists, 114, 115
log-rolling, 20
Lt. Governor. *See* Governor, Lt.
Mason's Manual of Legislative Procedure, 10, 61, 156, 157, 158, 159, 161, 162
may, 47, 86, 90, 92, 93, 94, 95, 112, 139, 140
may not, 90, 95
means. *See* includes and means
Microsoft Word, 10, 78, 79, 80
minutes, 150
model acts, 129
modifiers, 89, 97, 98
municipalities, 45, 46, 48, 213, 214
must, 28, 92, 93, 94, 95, 215
must not, 92, 95
new chapter or subchapter, 25, 120
non-governmental entities, 50
nonpartisan, 41
notice, 20, 24, 29, 31, 32, 33, 36, 43, 50, 110, 120, 131, 149, 157, 213
notwithstanding, 110, 111

only, 98
or. *See* And & Or
outside drafters, 10, 14, 16
paragraphs, 24, 90, 99, 113, 119, 120, 123, 124, 140
parallel clauses, 84
parallel construction, 110
parentheses, 23, 67, 80, 99, 104
parliamentary, 10, 14, 82, 158
penalties, 25, 28, 86, 91, 128, 130, 132, 133
people first language, 88
person, 107, 111, 214
prefatory language, 24, 53, 54, 64, 65, 66, 67, 70, 73, 105, 114, 115, 122
present but not voting, 161, 163
presumptions, 17, 40, 107, 162, 215
Print Shop, the, 148
pronouns, 87
proofreading, 11, 14, 128, 133, 134, 137, 148, 151, 153, 164
provided that and provided however, 111
public laws, 17
public offices & officials, 21, 50, 143, 214
punctuation, 13, 57, 58, 59, 70, 80, 82, 103, 104
pursuant to, don't use, 89
quorum, 51, 99, 149, 151, 159, 160, 161, 196, 210, 223, 238, 239
quotation marks, 58, 70, 71, 104
readability, 78, 79, 82, 105, 132
Ready List, 150
redesignating, 65, 71, 106, 114, 119, 122
redundant, 89, 109, 137
Register of Regulations, 15, 16, 32, 33
  Registrar of Regulations, 31, 32, 33, 36
regulations, 14, 15, 16, 25, 28, 29, 30, 31, 32, 33, 46, 48, 49, 108, 125, 131, 214, 215
relating to, 18, 22, 25, 43, 45, 107
releasing bills, 148
Repealing
  by implication, 17
  Code Revisors, marking a section repealed, 120
  of an existing law, 17, 127
  repealing clauses, 25, 39, 67, 164
    express, 39
    express, general repealer, 39
    express, multiple repealer, 39
    express, partial repealer, 39
    implied, 39, 40
    limiting, 40
reports, 60, 61, 86, 150
retroactivity, 20
scope, 21, 22, 25, 56, 111, 117, 128
semicolons, 104
Senate
  gen., 19, 56, 61, 151, 159, 160, 161, 163
  President Pro Tempore, 50, 149, 154
  rules of the Senate, 10, 21, 42, 55, 56, 58, 76, 148, 149, 150, 152, 158
  Secretary, 45, 62, 148, 150, 153, 155, 156, 157
session laws, 15
shall, 59, 92, 93, 94, 95, 139, 140, 141
  words to use instead, 92
shall not, do not use, 95
simplicity, 83, 84
single subject rule, 20, 24, 38, 216
singular v. plural, 85, 102
sleeper legislation, 20
source material, 10, 15, 21, 64, 70, 71, 72, 73, 74, 104, 134
special license plates, 134
split infinitives, 132
Sponsors, 19, 149, 153
  co-prime sponsors, 19, 148, 150, 152
  co-sponsors, 19, 148
  prime joint sponsors, 19
  prime sponsors, 19, 43, 55, 148, 149, 150
stability, 120, 121
State, 107
state agencies, 13, 21, 25, 26, 29, 32, 33, 35, 40, 43, 48, 49, 50, 52, 53, 60, 61, 88, 103, 107, 108, 110, 114, 128, 129, 130, 143, 149, 214
state seal, 19
State., 143
style. *See* Formatting

subject of sentence, 84
subject to, 110
subjunctive mood, 85
subsections, 24, 33, 39, 65, 67, 73, 80, 90, 114, 119, 120, 123, 124, 140
such, 97
Sutherland's *Statutes and Statutory Construction*, 10, 83, 126
task forces, 10, 50, 58, 59, 60, 61, 62, 63, 68
term limits, 49
  staggered terms, 49
that, 96, 97
tie vote, 159, 161
track changes, 10, 79
typographical errors, 21, 43, 164
Uniform Commercial Code, 99
uniformity, 10, 14, 78, 81, 82, 102, 110, 120, 126, 134, 141, 164
United States Government Printing Office Government Style Manual, 99, 104
Verb Tenses
  active tense, 85, 86, 92, 93, 95
  future tense, 86
  inactive verb, 93, 95
  passive voice, 85, 86, 93, 95
  present tense, 84, 86, 93
veto, 29, 43, 46, 154, 155, 156, 157, 158, 159
virtue of the position, 62
Vote requirements
  simple majority, 45, 48, 53
  super-majority, gen., 10, 23, 24, 36, 45, 46, 52, 76
  three-fifths, 29, 46, 52, 154, 156, 159, 213
  three-fourths, 40, 46, 48, 214
  two-thirds, 43, 44, 45, 46, 47, 144, 213
when, 97, 98
whenever, 98
where, 98
which, 95, 96
who, whom, or whose, 96, 97
word usage, 141
words frequently confused, 145