

**LAWS**  
*OF THE*  
**STATE OF DELAWARE**

*ONE HUNDRED AND FORTIETH*  
*GENERAL ASSEMBLY*  
*FIRST SESSION COMMENCED AND HELD AT DOVER*

**On Tuesday, January 13, A.D.**  
**1999**

*SECOND SESSION COMMENCED AND HELD AT DOVER*

**On Tuesday, January 11, A.D.**  
**2000**

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**VOLUME LXXII**  
**Part I**

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CHAPTER 1

FORMERLY

HOUSE BILL NO. 4

AN ACT TO AMEND § 923, TITLE 13 OF THE DELAWARE CODE AS AMENDED BY CHAPTER 481, VOLUME 71, LAWS OF DELAWARE RELATING TO ADOPTION.

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

Section 1. Amend Section 5, Chapter 481, Volume 71, Laws of Delaware, by adding thereto a new subsection, designated as subsection (c), which new subsection shall read as follows:

"(c) If an adoptee 21 years of age or older seeks vital records about any event occurring before January 18, 1999, the Office of Vital Statistics shall consult Family Court to determine whether there is an affidavit on file expressing a desire by either birthparent to keep information about the adoption confidential.

(1) If there is an affidavit on file with Family Court authorizing the release of information, the Office of Vital Statistics shall request a copy of the affidavit and, upon receipt of the affidavit, release the authorized records.

(2) If there is an affidavit on file with Family Court denying the release of information, or if there is no affidavit on file with Family Court, the Office of Vital Statistics shall send notice, as described below, by United States mail to the birthparent(s).

A. The Office of Vital Statistics shall search a computerized telephone or address database, as well as Delaware's Department of Motor Vehicles and voter records in order to determine the most likely address of the birthparent. Such notice shall be sent to that address. If no current address is available, then notice shall be sent to the last known address for the birthparent(s). Such notification shall be mailed within 30 days from when the adoptee requested release of the records.

B. The Office of Vital Statistics shall notify the birthparent(s) of the legal requirements for maintaining confidentiality and shall provide them with the appropriate forms. The Office of Vital Statistics shall also advise the birthparents(s) that in the event that a written notarized statement denying the release of information is not received within 35 days from the date of the mailing of the notification required in subparagraph A. of this subsection then the Office of Vital Statistics will release the records to the adoptee.

i) If the Office of vital Statistics receives a written notarized statement denying the release of information, then it shall not release the records.

ii) If no such written statement is received within 35 days from the date of the mailing of the notification required in subparagraph A. of this subsection or if the birthparent(s) specifically authorizes release, then the Office of Vital Statistics shall release the records to the adoptee."

Approved March 19, 1999

CHAPTER 2

FORMERLY

SENATE BILL NO. 13

AN ACT TO AMEND TITLE 16 OF THE DELAWARE CODE RELATING TO QUALITY IN HIRING OF EMPLOYEES AND OTHERS WHO PROVIDE SERVICES IN NURSING HOMES AND SIMILAR FACILITIES.

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

Section 1. Amend Subchapter IV, Chapter 11, Title 16, Delaware Code by deleting Sections 1141, "Criminal Background Checks", and 1142, "Mandatory Drug Testing", in their entirety and inserting in lieu thereof the following:

"§ 1141. Criminal Background Checks.

(a) Purpose.

It is the intent of the General Assembly that the primary purpose of the criminal background check and drug testing requirements of this section and § 1142 is the protection of the safety and well-being of residents of nursing homes and other facilities licensed pursuant to 16 Del. C. Ch. 11. These sections shall be construed broadly to accomplish this purpose.

(b) Definitions.

(1) 'Nursing home' means any facility licensed pursuant to 16 Del. C. Ch. 11, including but not limited to nursing facilities (commonly referred to as nursing homes), assisted living facilities, intermediate care facilities for persons with mental retardation, neighborhood group homes, family care homes, and rest residential facilities;

(2) 'Applicant' means any of the following:

- i.) A person seeking employment in a nursing home;
- ii.) A current employee of a nursing home who seeks a promotion in the facility;
- iii.) A person referred by a temporary agency to a nursing home.

(c) No employer who operates a nursing home or a management company or other business entity that contracts to operate a nursing home may hire any applicant without obtaining a report of the person's entire criminal history record from the State Bureau of Identification and a report from DHSS regarding its review of a report of the person's entire federal criminal history record pursuant to the Federal Bureau of Investigation appropriation of Title II of Public Law 92-544.

(d) No agency, including but not limited to temporary employment agencies, may refer an applicant to a nursing home without obtaining, at said agency's expense, a report of the person's entire criminal history record from the State Bureau of Identification and a written report from DHSS regarding its review of the person's entire federal criminal history record pursuant to the Federal Bureau of Investigation appropriation of Title II of Public Law 92-544.

(e) The State Bureau of Identification shall be the intermediary for the purposes of this section, and DHSS shall be the screening point for the receipt of said federal criminal history records. DHSS shall promulgate regulations regarding the criteria for unsuitability for employment, including the types of criminal convictions which automatically disqualify a person from working in a nursing home, and as to other criminal convictions, the criteria for determining whether a particular individual is unsuitable for such employment. These regulations shall also address the DHSS review of the federal criminal records, and the means for notifying employers of the results of that review.

(f) Conditional Hire.

Notwithstanding the provisions of subsection (c), the employer may hire an applicant on a conditional basis when the employer receives evidence that the applicant has requested his or her state and federal criminal history record, and has been fingerprinted by the State Bureau of Identification. 'Evidence' for purposes of this subsection shall be a verification from the State Bureau of Identification that the person has been fingerprinted and both the state and federal criminal history records have been requested.

The final employment of an applicant pursuant to this subsection shall be contingent upon the employer's receipt of the State Bureau of Identification criminal history record if there are no disqualifying convictions as defined by DHSS regulations and a report by DHSS that there are no disqualifying convictions in such person's federal criminal record. Thus, an employer must immediately terminate a conditionally hired employee upon notification of the employee's conviction of any disqualifying crime (as defined by DHSS regulations) -- whether the information is received from the State Bureau of Identification or from the DHSS report regarding the federal criminal history.

(g) Any employer who hires an applicant for employment and fails to request and/or fails to obtain a report of the person's entire criminal history record from the State Bureau of Identification and/or a written report regarding the suitability of the applicant based on his or her federal criminal history shall be subject to a civil penalty of not less than \$1,000 nor more than \$5,000 for each violation. Any such employer shall also be subject to this penalty if he or she conditionally hires an applicant before receiving verification from the State Bureau of Identification that the applicant has been fingerprinted and that the State and Federal criminal background checks have been requested.

(h) Notwithstanding any requirements of 11 Del. C. Ch. 85 to the contrary, the State Bureau of Identification shall furnish information to the employer, including but not limited to temporary agencies, pertaining to the entire Delaware criminal history record of any applicant to work in a nursing home. Such information shall be provided to the employer and to DHSS pursuant to the procedures established by the Superintendent of the State Police. The criminal history information provided to the employer, to a nursing home by the agency/employer referring an applicant to a nursing home, and to DHSS is strictly confidential. Its use is restricted to the purpose of determining suitability of an applicant for employment in a nursing home.

(i) Every application for employment with a nursing home or for referral to work in a nursing home shall require the applicant to provide any and all information necessary to obtain a report of the person's entire criminal history record from the State Bureau of Identification and a report of the person's entire federal criminal history record pursuant to the Federal Bureau of Investigation appropriation of Title II of Public Law 92-544. In addition, every application for employment shall contain a signed statement from the applicant that the applicant grants full release for the employer to request and obtain any such records or information contained on a criminal history record. If the employer is a temporary agency referring the applicant to work in a nursing home, the applicant must also sign a full release giving the employer permission to provide any criminal history information received about the applicant to any facility to which the applicant is referred to work.

(h) Any individual who either fails to make a full and complete disclosure on an application or a full and complete disclosure of any information required to obtain a criminal history record as required by subsection (c) of this section, shall be subject to a civil penalty of not less than \$1,000 nor more than \$5,000 for each violation.

(i) Except as otherwise noted in this section, the costs for the State Bureau of Identification and Federal Bureau of Investigation background checks made pursuant to this section shall be borne by the State. The State shall pay such costs one time per individual in a 5-year period. Additionally, the State shall pay for any criminal background checks conducted regarding DHSS employees who serve in a regulatory or advocacy capacity regarding nursing homes, again one time per individual in a 5-year period.

(j) Notwithstanding any provision of this Title to the contrary, any applicant who has been fingerprinted and received a qualifying state and federal background check, pursuant to the terms of this section within the previous 5 years, shall be exempt from the provisions of this section. However, employers, at their own discretion and expense, shall have the right to require more frequent background checks.

Section 1142. Mandatory Drug Testing.

(a) No employer who operates a nursing home, management company, other business entity contracted to operate a nursing home, or agency that refers employees to work in a nursing home may hire any applicant, as defined in § 1141 of this Title, without first obtaining the results of such applicant's mandatory drug screening.

(b) All applicants, as defined in § 1141 of this Title, shall submit to mandatory drug testing, as specified by regulations promulgated by DHSS.

(c) DHSS shall promulgate regulations, regarding the pre-employment testing of all applicants, for use of the following illegal drugs:

- (1) Marijuana/cannabis;
- (2) Cocaine;
- (3) Opiates;
- (4) Phencyclidine ("PCP");
- (5) Amphetamines;

(6) Any other illegal drug specified by DHSS, pursuant to regulations promulgated pursuant to this section.

(d) Conditional Hire.

Notwithstanding the provisions of Subsection (b), when exigent circumstances exist, and an employer must fill a position in order to maintain the required level of service, the employer may hire an applicant on a conditional basis when the employer receives evidence that the applicant has actually had the appropriate drug screening. The final employment of an applicant pursuant to this subsection shall be contingent upon receipt of the results of the drug screening. In addition, all persons hired pursuant to § 1141 of this Title shall be informed in writing and shall acknowledge, in writing, that his/her results have been requested. Under no circumstances shall an applicant hired on a conditional basis pursuant to this subsection be employed on a conditional basis for more than 2 months.

(e) An agency, including but not limited to temporary agencies, must provide the drug screening results it receives regarding a person referred to work in a nursing home to that particular nursing home so that the facility is better able to make an informed decision whether to accept the referral.

(f) The employer shall provide to DHSS copies of the results of any drug screening required by this section within 10 business days of receipt of the results.

(g) Any applicant or employer who fails to comply with the requirements of this section shall be subject to a civil penalty of not less than \$1,000 nor more than \$5,000 for each violation."

Section 2. If any provisions of this Act or the application thereof to any person, thing, or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this Act which can be given effect without the invalid provision or application. To that end, the provisions of this Act are declared to be severable.

Section 3. The DHSS Division of Long Term Care Residents Protection shall have authority to regulate and enforce the provisions of §§1141 and 1142 of Title 16, Delaware Code.

Section 4. The criminal background check (§1141) and drug testing requirements (§1142) of this Act shall become effective on March 31, 1999. However, except for temporary agency hires, the State will pay for the State Bureau of Identification and Federal Bureau of Investigation criminal background checks conducted between January 1, 1999, (when SB 303 passed by the 139th General Assembly and first took effect) and March 31, 1999, the date to which implementation is now extended.

Approved September 03, 1999

CHAPTER 3

FORMERLY

HOUSE BILL NO. 45

AN ACT TO AMEND TITLE 16 OF THE DELAWARE CODE RELATING TO THE REGULATION OF NURSING FACILITIES AND OR SIMILAR FACILITIES AND ABUSE, NEGLECT, MISTREATMENT, OR FINANCIAL EXPLOITATION OF PATIENTS OR RESIDENTS.

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

Section 1. Amend Section 1106, Chapter 11, Title 16 of the Delaware Code by deleting said section in its entirety and substituting in lieu thereof the following:

"§ 1106. Issuance of licenses.

(a) Fees for issuance and renewal of licenses issued pursuant to the provisions of this chapter shall be established as stated below and shall be remitted to the General Fund of the State.

(1) Application fees for nursing facilities shall be \$250 for nursing facilities with 100 beds or fewer, and \$375 for nursing facilities with more than 100 beds. Application fees for intermediate care group homes for mentally retarded persons shall be \$50; application fees for neighborhood group homes shall be \$25; application fees for family care homes shall be \$25. The fee must accompany an application for licensure.

(2) A license, unless sooner suspended or revoked, shall be renewed annually upon filing by the licensee and a payment of an annual licensure fee of: \$150 for nursing facilities with 100 beds or fewer; \$250 for nursing facilities with more than 100 beds; \$50 for intermediate care group homes for the mentally retarded; \$25 for neighborhood group homes; and \$25 for family care homes."

Section 2. Amend Section 1106, Chapter 11, Title 16 of the Delaware Code by deleting said section in its entirety and inserting in lieu thereof the following:

"§ 1106. License or renewal fees.

(a) The fees for issuance and renewal of licenses pursuant to this Chapter shall not exceed \$150 plus:

(1) \$250 for facilities with less than 100 units of capacity or bed space for which a license is sought, and \$400 for facilities with more than 100 units of capacity or bed space for which a license is sought; and

(2) A background examination fee for initial applications in an amount set by the Department necessary to defray its expenses in administering its duties under §1104(c) and (d), but not to exceed \$500.

(3) Notwithstanding paragraphs (1) and (2) above, the total fee shall be \$50 for facilities with ten or less units of capacity or bed space for which a license is sought.

(b) The license fee must be paid with each application for initial license, a renewal license, or a change of ownership license. An approved increase in bed space is subject to an additional fee.

(c) The State is not required to pay the license fee for any facilities it operates or owns which require licensure under this chapter.

(d) All license fees collected by the Department shall be remitted to the General Fund."

Section 3. Amend Section 1108, Chapter 11, Title 16 of the Delaware Code by inserting "This section shall become effective on March 31, 1999," after the last sentence therein.

Section 4. Amend Section 1134(d)(13), Chapter 11, Title 16 of the Delaware Code by inserting "This paragraph shall become effective March 31, 1999," after the first sentence of § 1134(d)(13).

Section 5. Sections 1, 3, 4 and 5 of this legislation shall be effective upon enactment. Section 2 of this legislation shall be effective as of March 31, 1999.

Approved September 03,1999

CHAPTER 4

FORMERLY

SENATE BILL NO. 31

AN ACT TO AMEND SECTION 17, CHAPTER 354, VOLUME 71, LAWS OF DELAWARE RELATING TO THE STATE EMPLOYER PENSION RATE FOR FISCAL YEAR 1999.

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

Section 1. Amend Section 17, Chapter 354, Volume 71, Laws of Delaware by deleting "9.68" from the first sentence and inserting in lieu thereof "10.97".

Section 2. Amend Section 17, Chapter 354, Volume 71, Laws of Delaware by deleting "3.90" from the second sentence and inserting in lieu thereof "5.19".

Section 3. This Act shall become effective February 1, 1999.

Approved September 03,1999

CHAPTER 5

FORMERLY

HOUSE BILL NO. 16  
AS AMENDED BY SENATE AMENDMENT NO. 1

AN ACT TO AMEND CHAPTER 189, VOLUME 43 OF THE LAWS OF DELAWARE, AS AMENDED, RELATING TO THE TOWN OF WYOMING.

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 14(J), Chapter 189, Volume 43 of the Laws of Delaware, as amended, by striking Section 14(J) in its entirety and substituting in lieu thereof a new Section 14(J) to be read as follows:

"POLICE FORCE

(J) The Council may appoint a Chief of Police and any number of subordinate police officers, whenever the Council may deem it wise to do so. The Chief of Police shall be subject to the direction of the Council, and may be removed by the Council in accordance with 11 Del. C. §9301 or other applicable law. Subordinate police officers may be removed for just cause, by a majority vote of the Council in accordance with 11 Del. C. Chapter 92.

The police force shall preserve peace and order and shall compel obedience within the Town limits to the ordinances of the Town and the laws of the State of Delaware. The police force shall have such other duties as the Council may from time to time prescribe. Operational control of the daily routine and responsibilities of the police force shall be the responsibility of the Chief of Police. The authority of the Chief of Police shall be subordinate and answerable to the Mayor and the Council. The Council may, from time to time, make rules and regulations as may be necessary for the organization, government, and control of the police force.

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Within the Town limits of the Town of Wyoming and one mile beyond said limits, each member of the police force shall have all the police powers and authority of a State Peace Officer and shall be conservators of the peace; they shall suppress all acts of violence and enforce all laws relating to the safety of persons and property; they shall compel the enforcement of all ordinances enacted by the Council, and all criminal laws and motor vehicle laws enacted by the State of Delaware; they shall suppress riotous, disorderly, or turbulent assemblages of persons in all public ways and places of the Town; and upon view of the above or upon view of any violation of any ordinance of the Town relating to the peace and good order thereof, the police force shall have the right and power to arrest without warrant. In the case of pursuit of an offender, the power and authority of the police force shall extend outside the territorial limits of the Town and to any part of the State of Delaware."

Section 2. If any provision of this Act shall be deemed or held to be invalid or unenforceable for any reason whatsoever, then such invalidity or unenforceability shall not affect any other provision of this Act which may be given effect without such invalid or unenforceable provision, and to this end, the provisions of this Act are hereby declared to be severable.

Section 3. This Act shall become effective upon its enactment into law.

Approved September 03,1999

CHAPTER 6

FORMERLY

HOUSE BILL NO. 43

AN ACT TO AMEND TITLE 14 OF THE DELAWARE CODE RELATING TO SCHOOL DISTRICT CALENDARS.

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

Section 1. Amend § 1049(1), Title 14 of the Delaware Code, by striking subsection (1) as it appears therein in its entirety and by substituting in lieu thereof the following:

"(1) Determine the hours of daily school sessions, the holidays when district schools shall be closed, and the days on which teachers attend educational improvement activities. This authority is subject to the requirement that all school district calendars must provide for school attendance of at least the following number of hours:

Kindergarten:	440 hours
Grades 1-11:	1060 hours
Grade 12:	1032 hours

The waiver provisions in § 1305 of this title also apply to the district calendar.

The number of hours in a school day for grades 1-12 shall be at least 3-1/2 hours exclusive of lunch, and abbreviated days shall not be scheduled on the last school day prior to a scheduled holiday. In the case of an unplanned delay, or early dismissal caused by weather or other unforeseen emergency conditions, such a delay or early dismissal shall be no more than 2 hours. All district calendars shall be adopted by April 30<sup>th</sup> for the following school year and may only be amended following a 30-day public notice."

Section 2. Amend § 1023, Title 14 of the Delaware Code, by striking § 1023 in its entirety.

Section 3. Amend § 2702(a), Title 14 of the Delaware Code, by striking the phrase "each day of the minimum school term of 180 days" as it appears in the first sentence therein and by substituting in lieu thereof the following:

"for all hours of school attendance required by the school district calendar".

Section 4. Amend § 2802 and § 2805, Title 14 of the Delaware Code, by striking those two sections in their entireties as they appear therein.

Section 5. Amend § 1703(e), Title 14 of the Delaware Code, by striking the phrase "217 pupil days" as it appears in the second sentence therein and by substituting in lieu thereof the phrase "1282 hours of school attendance"; and by striking the phrase "pupil days to 241." as it appears in the second sentence therein and by substituting in lieu thereof the phrase "school attendance to 1,426 hours."

Section 6. Amend § 1716A(g), Title 14 of the Delaware Code, by striking the phrase "180 pupil days" as it appears therein and by substituting in lieu thereof the phrase "1060 hours of school attendance".

Approved September 03, 1999

CHAPTER 7

FORMERLY

SENATE BILL NO. 32  
AS AMENDED BY SENATE AMENDMENT NO. 2

AN ACT TO AMEND CHAPTER 378, VOLUME 71, LAWS OF DELAWARE; AND PROVIDING FOR THE DEVELOPMENT AND OPERATION OF THE CIVIL AIR TERMINAL, KENT COUNTY AEROPARK AND THE DELAWARE AIR PARK.

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 §3, Chapter 378, Volume 71, Laws of Delaware, by deleting the words "One Hundred Two Million Fourteen Thousand Five Hundred Dollars (\$102,014,500)" as it appears therein and substituting in lieu thereof the following:

"One Hundred Two Million Eight Hundred Eighty Two Thousand Five Hundred Dollars (\$102,882,500)".

Section 2. Amend §3, Chapter 378, Volume 71, Laws of Delaware, by deleting the number "70,737,000" as it appears therein and substituting in lieu thereof the number "71,605,000" and by recalculating all totals as they appear therein.

Section 3. Amend §75, Chapter 378, Volume 71, Laws of Delaware by deleting said subsection in its entirety and substituting in lieu thereof the following:

"Section 75. The Department of Natural Resources and Environmental Control, Division of Parks and Recreation, shall complete the design of a bikeway in Cape Henlopen State Park during Fiscal Year 1999. It is the intent of the General Assembly that the bikeway shall connect the northern and southern facilities of Cape Henlopen State Park that are located east of the Lewes and Rehoboth Canal. The bikeway shall be designed so as not to allow motorized public transportation and in no case shall any road or public thoroughfare be constructed through Cape Henlopen State Park that will serve to connect the towns of Lewes and Rehoboth. The Co-Chairs of the Joint Legislative Committee on Capital Improvement Program shall approve any final alignment and plans before construction begins."

Section 4. Amend §128, Chapter 378, Volume 71 Laws of Delaware by deleting said section in its entirety and substituting in lieu thereof the following:

"Section 128. The Section 1 Addendum contains an appropriation of Three Million Dollars (\$3,000,000) for the Sussex Tech Expansion (60/40).

This appropriation shall be used for the construction of an addition not to exceed 60,883 square feet. This construction project shall be designed to construct sufficient classrooms to eliminate the use of 17 trailers currently used for classroom instruction, window replacement, library and parking facilities and for the completion of critical repairs and renovations to the school. The total cost of this project shall not exceed Ten Million Four Hundred Thousand Dollars (\$10,400,000) with the state share being Six Million Two Hundred Forty Thousand Dollars (\$6,240,000) or 60% of the total project cost, whichever is less. Any previous expenditures made on this project shall be considered appropriate and will be deducted from the Ten Million Four Hundred Thousand Dollar (\$10,400,000) total project cost."