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TITLE 20

Military and Civil Defense

Civil Defense

CHAPTER 31. Emergency Management

Subchapter III. The Governor and Emergency Management

§ 3115. General authority of the Governor.

(a) The Governor shall be responsible for addressing the dangers to life, health, environment, property or public peace within the State presented by emergencies or disasters, and to this end shall have general direction and control of DEMA and shall be responsible for carrying out this chapter. In the event of an emergency or disaster beyond local control, the Governor may assume direct operational control over all or any part of the emergency management functions within the State.

(b) In performing the duties of the Governor under this chapter, the Governor may issue, amend and rescind all necessary executive orders, emergency orders, proclamations and regulations, which shall have the force and effect of law.

(c) In addition to the powers conferred upon the Governor by this chapter, a state of emergency may be proclaimed by emergency order of the Governor upon a finding that an emergency or disaster has occurred or that such occurrence or threat of that occurrence is imminent. The state of emergency shall continue until the Governor finds that the threat or danger has passed or the emergency or disaster has been dealt with to the extent that conditions necessitating a state of emergency no longer exist and terminates the state of emergency by subsequent order. No state of emergency can continue for more than 30 days without being renewed by the Governor. All orders issued under this chapter shall indicate the nature of the emergency or disaster, the geographical area or areas threatened, and the conditions which have brought the emergency or disaster about or which make possible termination of the state of emergency. An order terminating a state of emergency shall describe the reasons for termination, and shall be disseminated as promptly as is practicable by means calculated to bring its contents to the attention of the general public and, unless the circumstances attendant upon the emergency or disaster prevent or impede, shall be promptly logged with DEMA. Emergency action ordered by the Governor in accordance with the Governor's constitutional and statutory authority shall not be invalidated because of any failure to comply with the technical requirements for the logging or filing of emergency orders.

[48 Del. Laws, c. 189, § 6 \(https://web.archive.org/web/20210221215147/https://legis.delaware.gov/SessionLaws?volume=48&chapter=189\)](#); [20 Del. C. 1953, § 3105](#); [50 Del. Laws, c. 398, § 1 \(https://web.archive.org/web/20210221215147/https://legis.delaware.gov/SessionLaws?volume=50&chapter=398\)](#); [53 Del. Laws, c. 391 \(https://web.archive.org/web/20210221215147/https://legis.delaware.gov/SessionLaws?volume=53&chapter=391\)](#); [57 Del. Laws, c. 670, § 25F \(https://web.archive.org/web/20210221215147/https://legis.delaware.gov/SessionLaws?volume=57&chapter=670\)](#); [58 Del. Laws, c. 533 \(https://web.archive.org/web/20210221215147/https://legis.delaware.gov/SessionLaws?volume=58&chapter=533\)](#); [58 Del. Laws, c. 558, § 6 \(https://web.archive.org/web/20210221215147/https://legis.delaware.gov/SessionLaws?volume=58&chapter=558\)](#);

63 Del. Laws, c. 254, § 1 (<https://web.archive.org/web/20210221215147/https://legis.delaware.gov/SessionLaws?volume=63&chapter=254>); 69 Del. Laws, c. 78, § 3 (<https://web.archive.org/web/20210221215147/https://legis.delaware.gov/SessionLaws?volume=69&chapter=78>); 70 Del. Laws, c. 186, § 1 (<https://web.archive.org/web/20210221215147/https://legis.delaware.gov/SessionLaws?volume=70&chapter=186>); 71 Del. Laws, c. 207, § 1 (<https://web.archive.org/web/20210221215147/https://legis.delaware.gov/SessionLaws?volume=71&chapter=207>); 73 Del. Laws, c. 355, § 4 (<https://web.archive.org/web/20210221215147/https://legis.delaware.gov/SessionLaws?volume=73&chapter=355>);

§ 3116. Powers.

(a) In addition to any other powers conferred upon the Governor by law, the Governor may:

- (1) Delegate to the Secretary of Public Safety, the Director of DEMA, or such other person any authority vested under this chapter and provide for the subdelegation of any such authority;
- (2) Suspend the provisions of any regulatory statute prescribing the procedures for conduct of state business, or the orders, rules or regulations of any state agency, if strict compliance with the provisions of any statute, order, rule or regulation would in any way prevent, hinder or delay necessary action in coping with the emergency or disaster;
- (3) Utilize all available resources of the state government as reasonably necessary to cope with the emergency or disaster;
- (4) Transfer the personnel, functions, and/or responsibilities of state agencies or units for the purpose of performing or facilitating emergency or disaster services;
- (5) Request voluntary restrictions or conservation of water use by public or private users of water in the State. Mandatory restrictions may be imposed by the Governor by emergency order after declaration of a state of emergency. Unless the Governor issues an emergency order finding that it is essential that mandatory conservation measures be implemented without delay, before any mandatory water conservation measure shall be enforceable without a state of emergency, the Governor shall hold a public hearing on the issue of said mandatory measure. If conservation measures are ordered without a state of emergency, a hearing shall be held within 60 days upon 7 days' notice. Notice of the hearing shall be published at least 7 days before the hearing in no less than 2 Delaware newspapers of general circulation. A hearing officer, who shall be appointed by the Governor, shall preside over any hearings required by this subsection, and shall make a written report and recommendation about the evidence presented at the hearing to the Governor;
- (6) Request federal assistance as deemed necessary;
- (7) On behalf of this State, enter into reciprocal aid agreements or compacts with other states and the federal government, either on a statewide basis or local political subdivision basis or with a neighboring state or province or a foreign country, as deemed necessary;
- (8) Cooperate with the President, heads of armed forces and federal agencies regarding emergency management issues, particularly in matters pertaining to national security;
- (9) Take such action and give such directions to state and local law-enforcement officers and agencies as may be reasonable and necessary for the purpose of securing compliance with this chapter;
- (10) Employ such measures and make such recommendations to state or local health agencies, authorities or boards as may be reasonably necessary for the purpose of securing compliance with this chapter or with the findings or recommendations of such health entities by reason of conditions arising from emergencies or disasters;
- (11) With or without emergency orders, require the Delaware National Guard to provide services which may protect life and property from any effects from an actual or threatened emergency or disaster; and
- (12) With or without emergency orders, issue a Level 1 Driving Warning addressing the use or operation of motor vehicles on Delaware roads, including highways, express highways, roadways, and private roads as defined in § 101 of Title 21. A "Level 1 Driving Warning" means:
 - a. Any person operating a motor vehicle shall exercise extra caution in the operation of their motor vehicle.
 - b. Motorists are encouraged not to operate a motor vehicle on the State's roadways unless there is a significant safety, health, or business reason to do so.

(b) During an emergency or disaster, the Governor may:

- (1) Subject to any applicable requirements for compensation, utilize any private, public or quasi-public property if necessary to cope with the emergency or disaster;
- (2) Assign and make available for duty the employees, property or equipment of the subdivision relating to firefighting, engineering, rescue, health, medical and related services, police, similar items or services for emergency purposes within or outside of the physical limits;
- (3) Direct and compel the evacuation of all or part of the population from any stricken or threatened area within the State if this action is necessary for the preservation of life;
- (4) Prescribe routes, modes of transportation, and destinations throughout the State in connection with evacuation;
- (5) Control ingress and egress to and from a disaster area, the movement of persons within the area, and the occupancy of premises therein;
- (6) Suspend or limit the sale, dispensing or transportation of alcoholic beverages, firearms, explosives, combustibles and hazardous materials;
- (7) Notwithstanding any other provision of law, through the use of state agencies or instrumentalities thereof, clear or remove from publicly or privately owned land or water debris and wreckage which may threaten public health or safety, the environment, or public or private property;
- (8) Establish curfews;
- (9) Take appropriate measures as described in the Energy Emergency Contingency Plan in the event of an energy crisis such as an actual or impending acute shortage in useable energy resources, whether resulting from natural disasters, disruptions in fuel supplies, national defense circumstances, international trade obstructions, or other causes;
- (10) Request federal emergency or disaster declarations;
- (11) Upon a declaration of a major disaster or during an emergency, designate in a FEMA/State Agreement the Governor's Authorized Representative ("GAR"), who shall administer federal disaster assistance programs on behalf of the State and local governments and other grant or loan recipients, and a State Coordinating Officer ("SCO"), who shall coordinate state and local assistance efforts with those of the federal government;
- (12) Restrict the use or operation of motor vehicles on Delaware roads, including highways, express highways, roadways, and private roads as defined in § 101 of Title 21. The levels of restriction of the use or operation of motor vehicles during a state of emergency are as follows:
 - a. Level 3 Driving Ban: A "Level 3 Driving Ban" shall mean that no person shall operate a motor vehicle on Delaware roadways when a Level 3 Driving Ban has been activated, except for those persons designated as first responders and essential personnel, including public utilities as defined in § 102(2) of Title 26 and operators of snow removal equipment employed or contracted by a public or private entity, pursuant to this chapter and the plans set forth thereunder, and by executive order of the Governor. All businesses, professional offices, organizations, entities, etc. shall be encouraged to take appropriate protective actions to protect their citizens, customers, and employees by termination of operations or shelter in place. An employer of a public or private entity shall not terminate, reprimand, discipline, or in any way commit any adverse employment action against an employee who, as a result of the activation of a Level 3 Driving Ban, fails or refuses to report to work during the pendency of the driving ban. Any person or entity in violation of an activated Level 3 Driving Ban under this subsection shall be penalized pursuant to § 3125 of this title.
 - b. Level 2 Driving Restriction: A "Level 2 Driving Restriction" shall mean that no person shall operate a motor vehicle on Delaware roadways when a Level 2 Driving Restriction has been activated, except for persons designated as essential personnel including operators of snow removal equipment employed or contracted by a public or private entity. "Essential personnel" for purposes of this subsection shall mean those employees and/or personnel who are necessary to maintain the core functions of a government body or entity, and to maintain the health and safety of the people in Delaware by providing services provided by public utilities as defined in § 102(2) of Title 26, health-care services, and food and fuel deliveries during a state of emergency, regardless of whether they are employed by a public or private entity. A waiver from a Level 2 Driving Restriction may be granted when a significant safety, health or business necessity is shown for issuing such a waiver. The Secretary of the Department of Safety and Homeland Security shall promulgate rules and regulations necessary to carry out the provisions of this subsection. An employer or entity which

has not been granted a waiver shall not terminate, reprimand, discipline, or in any way commit any adverse employment action against an employee who, as a result of the activation of the a Level 2 Driving Restriction, fails or refuses to report to work during the pendency of the driving restriction. Any person or entity who violates an activated level 2 driving restriction under this subsection shall be in violation of § 4176D of Title 21.

c. [Repealed.]

The Governor may issue separate levels of driving restrictions throughout the State based on the severity of conditions in any given area within the State; and

(13) Take such other actions as the Governor reasonably believes necessary to help maintain life, health, property or public peace.

(c) During an emergency or disaster:

(1) Nothing contained in this section shall be construed as granting the power to suspend or limit the right of law abiding citizens to keep and bear arms for defense of self, family, home and State as guaranteed by article I, § 20 of the Delaware Constitution; and

(2) Nothing contained in this section shall prevent law-abiding citizens, during such emergency or disaster, from taking reasonable steps to safeguard their arms from destruction, looting or theft, including but not limited to their removal of such items from areas of danger to locations of relative safety.

48 Del. Laws, c. 189, § 6 (<https://web.archive.org/web/20210221215147/https://legis.delaware.gov/SessionLaws?volume=48&chapter=189>); 20 Del. C. 1953, § 3105; 50 Del. Laws, c. 398, § 1 (<https://web.archive.org/web/20210221215147/https://legis.delaware.gov/SessionLaws?volume=50&chapter=398>); 53 Del. Laws, c. 391 (<https://web.archive.org/web/20210221215147/https://legis.delaware.gov/SessionLaws?volume=53&chapter=391>); 57 Del. Laws, c. 670, § 25F (<https://web.archive.org/web/20210221215147/https://legis.delaware.gov/SessionLaws?volume=57&chapter=670>); 58 Del. Laws, c. 533 (<https://web.archive.org/web/20210221215147/https://legis.delaware.gov/SessionLaws?volume=58&chapter=533>); 58 Del. Laws, c. 558, § 6 (<https://web.archive.org/web/20210221215147/https://legis.delaware.gov/SessionLaws?volume=58&chapter=558>); 63 Del. Laws, c. 254, § 1 (<https://web.archive.org/web/20210221215147/https://legis.delaware.gov/SessionLaws?volume=63&chapter=254>); 69 Del. Laws, c. 78, § 3 (<https://web.archive.org/web/20210221215147/https://legis.delaware.gov/SessionLaws?volume=69&chapter=78>); 70 Del. Laws, c. 186, § 1 (<https://web.archive.org/web/20210221215147/https://legis.delaware.gov/SessionLaws?volume=70&chapter=186>); 71 Del. Laws, c. 207, § 1 (<https://web.archive.org/web/20210221215147/https://legis.delaware.gov/SessionLaws?volume=71&chapter=207>); 73 Del. Laws, c. 339, § 1 (<https://web.archive.org/web/20210221215147/https://legis.delaware.gov/SessionLaws?volume=73&chapter=339>); 76 Del. Laws, c. 69, § 1 (<https://web.archive.org/web/20210221215147/https://legis.delaware.gov/SessionLaws?volume=76&chapter=69>); 77 Del. Laws, c. 461, § 1 (<https://web.archive.org/web/20210221215147/https://legis.delaware.gov/SessionLaws?volume=77&chapter=461>); 81 Del. Laws, c. 84, § 1 (<https://web.archive.org/web/20210221215147/https://legis.delaware.gov/SessionLaws?volume=81&chapter=84>);

§ 3117. Activation of emergency or disaster response.

The response and recovery aspects of the state emergency or disaster plans shall be initiated by an emergency order or memorialized in the DEMA log of such proclamation of a state of emergency by the Governor, or at the discretion of the DEMA Director in consultation with the Secretary of the Department of Safety and Homeland Security.

20 Del. C. 1953, § 3125; 56 Del. Laws, c. 118, § 2 (<https://web.archive.org/web/20210221215147/https://legis.delaware.gov/SessionLaws?volume=56&chapter=118>); 63 Del. Laws, c. 340, §§ 1, 2 (<https://web.archive.org/web/20210221215147/https://legis.delaware.gov/SessionLaws?volume=63&chapter=340>); 67 Del. Laws, c. 104, §§ 1, 2 (<https://web.archive.org/web/20210221215147/https://legis.delaware.gov/SessionLaws?volume=67&chapter=104>); 71 Del. Laws, c. 207, § 1 (<https://web.archive.org/web/20210221215147/https://legis.delaware.gov/SessionLaws?volume=71&chapter=207>); 74 Del. Laws, c. 110, § 138 (<https://web.archive.org/web/20210221215147/https://legis.delaware.gov/SessionLaws?volume=74&chapter=110>);

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