

MEMORANDUM

TO: Delaware Law Enforcement Officers

FROM: Attorney General Kathy Jennings

RE: Second Updated Guidance to Law Enforcement Authorities Pursuant to the State of Emergency

DATE: March 29, 2020 (Effective March 30, 2020 at 8:00 a.m.)

On March 12, 2020, Governor Carney declared a state of emergency to protect the citizens of Delaware from the threat posed by the novel coronavirus. Pursuant to the state of emergency, the Governor has issued seven declarations (the “Declarations”).¹ The Declarations have the force of law and violating them is a criminal offense.² This memorandum summarizes what is prohibited and what to do if you encounter people or businesses violating the prohibitions in the Declarations.

The Following Activities Are Prohibited

- 1. Everyone living in Delaware must shelter in their home, except to perform Essential Activities, which are the following:³**
 - a. Those activities essential to household members’ health and safety;
 - b. Obtaining necessary services or supplies for people or households;
 - c. Engaging in outdoor activity and exercise, provided they stay six feet away from everyone who is not part of their household; and
 - d. Performing work for Essential Businesses (see the attached Appendix Listing Essential Businesses) and to maintain the Minimum Basic Operations of Non-Essential Businesses.
 - e. Traveling to and from an Essential Activity, including to comply with a court order.⁴

¹ Declaration of a State of Emergency for the State of Delaware Due to a Public Health Threat, dated March 12, 2020, and six Modifications, dated March 16, 18, 21, 22, 22, and 30 respectively. (Both the Fourth and Fifth modification are dated March 22, 2020.)

² March 18 Declaration, Paragraph 12; 20 *Del. C.* §§ 3115(b); 3116(9); 3122; 3125.

³ March 22, Fifth Modification to Declaration, Paragraph 7.

⁴ March 22, Fifth Modification to Declaration, Paragraph 8.

- 2. Public gatherings are prohibited, except where individuals are engaged in outdoor activities (such as exercise) and are maintaining at least a six foot distance between each other. The six foot social distancing requirement does not apply to immediate family, members of the same household, caregivers, and people who have close personal relationships, or to essential workers.⁵**
- 3. All beaches are closed except for exercise and dog walking.⁶ Anyone on the beach to exercise or walk a dog must stay six feet away from non-household members. If more restrictive local orders exist, they control.**
- 4. Non-Essential Businesses must close their physical locations.⁷ But they may keep a skeleton crew on hand to perform Minimum Basic Operations such as safeguarding the business, ensuring payroll functions, and preventing the physical stock of the business from degrading. Non-Essential Businesses that must close include:**
 - a. Community and recreation centers;
 - b. Casinos, racetracks, sports facilities (including skating rinks) and venues;
 - c. Fitness centers;
 - d. Hair salons, nail salons, and spas;
 - e. Concert venues and theaters;
 - f. Realtors (with exceptions – they may show homes, but not hold open houses);
 - g. Shopping malls, except malls may stay open to allow access to Essential Businesses;
 - h. Retail stores not included in the list of Essential Businesses; and
 - i. Gun shops (except that firearms dealers may conduct sales of firearms, ammunition, and other goods directly related to responsible firearm storage and maintenance, by appointment only. No more than two appointments per half hour shall occur, and sellers are limited to operating during normal working hours they operated on prior to the State of Emergency.).
- 5. Bars, restaurants, and taverns may only serve food and drink through take-out, delivery, and drive-through⁸. Alcohol may not be sold via delivery.**

⁵ March 22, Fifth Modification to Declaration, *see also* definition of Essential Activities which excludes public gatherings.

⁶ March 21 Declaration, Paragraph 1.

⁷ March 22, Fourth Modification to Declaration, Paragraphs 7–8.

⁸ March 16 Declaration, Paragraph 2.

Any concerns about alcohol delivery should be directed to Major Kevin Jones, Division of Alcohol and Tobacco Enforcement, by phone 302-741-2718 (office) or by email at kevin.jones@delaware.gov. For emergency circumstances, please contact Major Jones at 302-222-6627 (cell).

- 6. Businesses are not allowed to “price gouge.” Price gouging is when a business raises its prices more than 10% simply because there is a state of emergency. It is not price gouging if a business raises prices because the cost to the business of providing the good or service has gone up.**

Quarantine Mandate on Travelers from Areas with Substantial Community Spread

As of March 30, 2020, at 8:00 a.m., any individual entering Delaware from another state must immediately self-quarantine for 14 days while in Delaware.¹⁰ This requirement does not apply to public health, public safety, and healthcare workers, or to individuals commuting into Delaware to work for an Essential Business or to perform Minimal Business Operations.

At this time, there is no driving restriction for Delaware drivers, and Delaware drivers do not require any documentation for travel within the state. Delaware drivers should not be the subject of a traffic stop because they are on the road.

What Should You Do About the Quarantine Mandate

1. You may stop a vehicle with an out-of-state license plate simply because it has that license plate and is driving in Delaware (but NOT if driving on I-95, I-295, or I-495). During the stop you may not ask standard traffic stop questions but may ask limited questions related to the driver’s recent travel. You must then advise the driver of the Governor’s Declarations and specifically that if the driver is coming from out-of-state, then those Declarations require them to self-quarantine for 14 days while in Delaware.

NOTE: These types of stops are intended to serve the public welfare and are not part of ordinary criminal or traffic investigations. In the event you wish to charge a crime stemming from such a stop, you should contact the relevant County Prosecutor before preparing a warrant.

2. You are also empowered to investigate reports of individuals arriving from other states who are alleged to be failing to self-quarantine. Should an individual refuse to self-quarantine as required by the Declarations, your arrest authorities are outlined below.

What Should You Do if People or Businesses are Engaged in Prohibited Activities

⁹ March 12 Declaration, Paragraph 9.

¹⁰ March 30 Declaration, Paragraph 1.

We recommend that the initial response in any of the above situations is to advise the person or business of the Governor's Declarations and the penalties for non-compliance followed by a calm demand to comply. If non-compliance continues, law enforcement may seek a cease-and-desist order from DEMA/DPH to serve upon that individual or business.¹¹ Any questions about whether something constitutes a prohibited activity or business activity should be directed towards Lisa Morris at the Department of Justice at Lisa.Morris@delaware.gov. If the person or business refuses that cease-and-desist order, or if seeking a cease-and-desist order is impractical under the circumstances, law enforcement may make criminal arrests, depending on the situation. The overriding concern of enforcing the Declarations, however, is ensuring the health and safety of the public by preventing and breaking up prohibited gatherings of people. Thus, before executing any street warrant for arrest to enforce the Declarations, law enforcement should first contact and consult with the county prosecutor in the respective jurisdiction.

Your criminal arrest authorities include:

1. 20 Del. C. § 3125, Failing to Obey an Emergency Order (Class B Misdemeanor). This statute applies to anyone engaging in activities prohibited by the Declarations, including people being outside of their homes except for Essential Activities, social gatherings, prohibited use of the beaches, and prohibited business activities.
2. 11 Del. C. § 1301(1)(f), Disorderly Conduct (Unclassified Misdemeanor). This statute applies whenever there is a prohibited gathering of people because, during the novel coronavirus state of emergency, congregating in groups, except as permitted by the Declarations, creates a hazardous condition which serves no legitimate purpose.

If you believe a business is engaged in price gouging, inform the business that they could be engaged in an unlawful practice under Section 2513 of Title 6 of the Delaware Code and contact the DDOJ Consumer Protection Unit by completing a complaint, available at <https://attorneygeneral.delaware.gov/wp-content/uploads/sites/50/2019/04/CPU-Complaint-Form-2019.pdf>; by email, at consumer.protection@delaware.gov; or by phone, at (800) 220-5424.

¹¹ Contacts from DEMA/DPH are as follows: caryn.bennett@delaware.gov; jamie.mack@delaware.gov; lisa.morris@delaware.gov; joanna.suder@delaware.gov.