

MEMORANDUM

TO: Delaware Law Enforcement Officers

FROM: Attorney General Kathy Jennings

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

DATE: April 30, 2020 (Effective April 28, 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 (the “Declaration”). Pursuant to the state of emergency, the Governor has issued thirteen declarations (the “Modifications”).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 and Limited Operational Non-Essential Businesses and maintaining the Minimum Basic Operations of Non-Essential Businesses (both Essential and Non-Essential Businesses are discussed below).

¹ Declaration of a State of Emergency for the State of Delaware Due to a Public Health Threat, dated March 12, 2020, and subsequent modifications, *available at* <https://governor.delaware.gov/health-soe/>.

² Second Modification, Paragraph 12; 20 *Del. C.* §§ 3115(b); 3116(9); 3122; 3125.

³ Fifth Modification, Paragraph 7.

- e. Traveling to and from an Essential Activity, including to comply with a court order.⁴
2. Public gatherings of ten (10) or more people 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, or essential workers.⁵
3. Every person over 12 years of age must wear a face covering when using public or private transportation services, in businesses and healthcare facilities, and in public places where social distancing is impracticable—unless wearing the face covering would inhibit their own health.⁶ Business must deny entry to any customer who refuses to wear a face-covering for non-medical reasons. Beginning Friday, May 1, 2020, businesses are required to provide employees with face coverings when working in areas open to the public or places where coming within 6 feet of other employees is likely.

In the event you are called to respond to complaints of persons refusing to wear face coverings as required you are encouraged to first give a warning. If they do not comply, a summons may be used. Arrests should be reserved as a last resort.

4. All beaches are closed except for exercise, dog walking, and surf fishing, unless otherwise prohibited by local orders.⁷ Anyone on the beach to exercise or walk a dog must stay six feet away from non-household members.
5. All businesses are now categorized as one of three types: Essential, Limited Operation Non-Essential, and Non-Essential.
 - a. Essential Businesses may remain open. The list of Essential businesses is long and located at Paragraph 6 of the Fourth Declaration. Essential Businesses that permit customers onto the premises may not allow more than twenty percent (20%) of stated fire occupancy requirements, or no more than

⁴ Fifth Modification, Paragraph 8.

⁵ Ninth Modification, Paragraph 1; *see also* Fifth Modification, definition of Essential Activities which excludes public gatherings.

⁶ Thirteenth Modification, Paragraphs 2–5.

⁷ Third Modification, Paragraph 1, and Eighth Modification, Paragraph 4.e.

ten percent (10%) during exclusive hours for high-risk populations (including seniors).⁸

- b. Limited Operation Non-Essential Businesses may remain open subject to certain restrictions.⁹ The list of Limited Operation Non-Essential Businesses and the restrictions they must adhere to are attached as Appendix A to this memo.
 - c. Non-Essential Businesses must close their physical locations and are prohibited from offering curbside pickup.¹⁰ Non-Essential Businesses may offer delivery and 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 are listed in Appendix B of this memo.
6. Commercial Lodging and campgrounds may only remain open for Essential Guests (see Appendix C) and closed for everyone else.¹¹ Commercial Lodging includes hotels, motels, inns, short-term accommodations, vacation homes, or condo rentals (such as Airbnb, VRBO, HomeAway or any other vacation or overnight accommodation rental).
 7. Bars, restaurants, and taverns may only serve food and drink through take-out, delivery, and drive-through.¹² Alcohol may not be sold via delivery. 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).
 8. Businesses are not allowed to “price gouge.”¹³ Price gouging is when a business raises its prices more than 10% simply because there is a state of emergency. It is not

⁸ Ninth Modification, Paragraph 2.

⁹ Tenth Modification, Paragraph 3.

¹⁰ Tenth Modification, Paragraphs 1.f–g., 2–3 (modifying March 22, Fourth Modification, Paragraphs 7–8).

¹¹ Tenth Modification, Paragraph 3.

¹² First Modification, Paragraph 2.

¹³ Declaration, Paragraph 9; Ninth Modification, Paragraph 3.

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 Out of State Travelers

As of March 30, 2020, at 8:00 a.m., any individual entering Delaware from out of state must immediately self-quarantine for 14 days while in Delaware.¹⁴ 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.

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. Any criminal case arising out of such a stop would be very difficult to prosecute. 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.

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

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, you may seek a cease-and-desist order from DEMA/DPH to serve upon that individual or business.¹⁵ 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, you may issue an E-warning, issue a summons, or a make criminal arrest, 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 relevant County Prosecutor.

¹⁴ Seventh Modification, Paragraph 1.

¹⁵ Contacts from DEMA/DPH are as follows: caryn.bennett@delaware.gov; jamie.mack@delaware.gov; lisa.morris@delaware.gov; joanna.suder@delaware.gov.

Your criminal arrest authorities include:

1. 20 Del. C. § 3121, Failing to Obey an Emergency Order (Unclassified 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.
3. 11 Del. C. §§ 821–23, Criminal Trespass in the Third, Second, and First Degrees (Unclassified through Class A Misdemeanors). These statutes apply whenever someone refuses to leave a building (including vehicles and watercraft) or land upon the owner's request—for example, when a business denies entry to someone who refuses to wear a face covering, and that person refuses to leave.

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.

Appendix A – Limited Operation Non-Essential Businesses and their restrictions

1. Commercial Lodging and Campgrounds, except solely for Essential Guests;
2. Automobile and other motor vehicle dealers, only by appointment with no more than two appointments per half hour;
3. Dentist offices, by appointment only;
4. Repair shops for computers, household appliances, or otherwise, by appointment only;
5. Bicycle repair facilities or those engaged in the sale or distribution of equipment or parts necessary for the repair of bicycles, by appointment only;
6. Firearms dealers may conduct sales of firearms, ammunition, and other goods directly related to responsible firearm storage and maintenance, by appointment only, with no more than two appointments per half hour, and dealers are limited to operating during normal working hours they operated on prior to the State of Emergency;
7. Shooting ranges may continue to operate if they conform to social distancing requirements of the COVID-19 State of Emergency declaration and all modifications;
8. Golf courses may continue operation with the following restrictions:
 - a. Clubhouses, indoor areas where people congregate, and locker rooms (with the exception of bathrooms) must be closed. Any food service must comply with the restrictions on restaurants set forth in the State of Emergency declaration and all modifications;
 - b. Golf courses are prohibited from providing guests with motorized carts, golf bag carts, pencils, scorecards, or snack carts;
 - c. Golf courses must monitor tee times and players to ensure adequate social distancing, and must raise flagsticks and holes to prevent players from touching cups;
 - d. Players are prohibited from accessing neighboring properties to retrieve stray balls.
9. Realtors of both residential and non-residential properties and associated industries, except that Realtors are permitted to work from home to the extent feasible, to do all necessary showings to perspective buyers/lessors, and to take any action necessary to complete any sales or rentals in progress prior to the Fourth Modification of the State of Emergency.
10. Pawn shops only by appointment with no more than two appointments per half hour.
11. Furniture stores only by appointment with no more than two appointments per half hour.

Appendix B – Non-Essential Businesses

1. Hospitality and Recreation Facilities, including:
 - a. Indoor community and recreation centers;
 - b. Casinos and racetracks;
 - c. Sporting facilities and venues (professional and amateur), including but not limited to arcades, bowling alleys, indoor skating rinks (ice and non-ice), martial arts studios, dance studios, indoor tennis and similar indoor athletic facilities;
 - d. Gyms, including yoga, barre and spin facilities and other indoor fitness facilities;
 - e. Swimming facilities (public or community);
 - f. Indoor play areas;
 - g. Concert halls and venues;
 - h. Theaters and performing arts venues;
 - i. Zoos; and
 - j. Museums;
2. Hair salons, barber shops, nail salons, and spas;
3. Door to door solicitations;
4. Customer service call centers and telemarketing operations;
5. Shopping malls, except that Essential Businesses and Limited Operation Non-Essential Businesses that are directly accessible through stand-alone exterior access points may remain open, subject to applicable requirements;
6. Electronics retailers;
7. Video, video game, or computer game rental or similar retail;
8. Craft or hobby retailers;
9. Libraries and bookstores;
10. Ice cream, water ice, custard, or similar shops (except for service by drive-thru), and ice cream trucks;
11. All licensed childcare facilities not designated as Emergency Childcare Sites by the Eighth Modification of the COVID-19 State of Emergency;
12. All other businesses not included within the definitions of Essential Businesses or Limited Operation Non-Essential Businesses.

Appendix C – Essential Guests Permitted in Commercial Lodging

1. Workers of an Essential Business whose work requires them to be in Delaware;
2. Persons placed by the DHSS, DEMA, FEMA, or other government agency or healthcare provider;
3. Persons acting as caretakers (ex. for family members) and who need the lodging to be near the person for whom they are caring;
4. Persons affected by domestic violence;
5. Section 8 residents;
6. Staff/personnel necessary to operate the lodging facility;
7. Travelers stranded by travel restrictions or who are currently residing in Commercial Lodging;
8. Journalists using Commercial Lodging due to their employment (not for personal use);
9. Persons displaced from their homes (ex. by fire, construction or renovation, or other extenuating circumstances), who are homeless, or who otherwise genuinely have no other viable place of residence;
10. Persons in Commercial Lodging in compliance with a court order.