State of Delaware

Executive Department
Dover

TENTH MODIFICATION OF THE DECLARATION OF A STATE OF EMERGENCY FOR THE STATE OF DELAWARE DUE TO A PUBLIC HEALTH THREAT

WHEREAS, the Centers for Disease Control and Prevention ("CDC") has determined that a novel coronavirus ("COVID-19") presents a serious public health threat, and has advised the public that asymptomatic individuals may be carriers of the COVID-19 virus and may unknowingly spread the virus to other individuals in close proximity, and therefore, social distancing is required to help mitigate the individual exposure to (and community spread of) the COVID-19 virus; and

WHEREAS, it is in the best interests of the State to protect its citizens from a public health emergency that could threaten the lives of those who live and work here; and

WHEREAS, on March 12, 2020 at 3:00 p.m. E.D.T., I issued a State of Emergency due to the public health threat of COVID-19, which became effective as of 8:00 a.m. E.D.T. on March 13, 2020 (the "COVID-19 State of Emergency"); and

WHEREAS, on March 16, 2020 at 2:00 p.m. E.D.T., I issued the First Modification to the COVID-19 State of Emergency declaration to advise that the CDC issued new guidance for large events and mass gatherings, recommending that organizers halt gatherings of 50 people or more for the next eight weeks due to the public health threat of COVID-19, including conferences, social events, concerts and other types of assemblies; and

WHEREAS, on March 18, 2020 at 2:00 p.m. E.D.T., I issued the Second Modification to the COVID-19 State of Emergency declaration that modified the limitations on public gatherings of 50 or more people and, among other things, placed certain restrictions on the operation of certain businesses and facilities in the State of Delaware; and

WHEREAS, on March 21, 2020 at 12:00 p.m. E.D.T., I issued the Third Modification to the COVID-19 State of Emergency declaration to close all Delaware beaches, except to persons using the beaches for exercise or to walk their dogs, subject to certain precautions recommended by the CDC on COVID-19, which became effective as of 5:00 p.m. E.D.T.; and

WHEREAS, on March 23, 2020 at 4:00 p.m. E.D.T. and 4:02 p.m. E.D.T., respectively, I issued the Fourth and Fifth Modifications to the COVID-19 State of Emergency declaration to close all non-essential businesses in Delaware, except those that can offer goods and services on the Internet, and to order a Shelter in Place for Delaware residents; and

WHEREAS, on March 24, 2020 at 4:00 p.m. E.D.T., I issued the Sixth Modification to the COVID-19 State of Emergency declaration to provide a moratorium on evictions and

foreclosure proceedings to enable Delawareans to shelter in place safely, extended the presidential primary, provided for absentee balloting during the COVID-19 crisis, provided for a modified state procurement process, and placed a moratorium on cancellation of insurance policies for delay in premium payments caused by the economic uncertainty; and

WHEREAS, on March 29, 2020 at 4:30 p.m. E.D.T., I issued the Seventh Modification to the COVID-19 State of Emergency declaration to provide for the self-quarantine of travelers from areas severely impacted by COVID-19 outside the State of Delaware into the State; and

WHEREAS, on March 30, 2020 at 5:00 p.m. E.D.T., I issued the Eighth Modification to the State of Emergency declaration to permit a comprehensive approach to the provision of childcare in the State of Delaware during the State of Emergency to support essential workers; and

WHEREAS, on April 1, 2020 at 3:00 p.m. E.D.T., I issued the Ninth Modification to the COVID-19 State of Emergency declaration to put further restrictions on social gatherings, limiting to fewer than 10 persons, to restrict the number of patrons that may visit businesses facilities at one time to a percentage of fire occupancy requirements in order to enforce social distancing requirements, and to mark check-out aisles for proper social distancing; and

WHEREAS, it is necessary to further restrict the operation of businesses within the State of Delaware that continue to operate to ensure adequate social distancing and proper hygiene to adequately protect life and health in light of the public health threat posed by COVID-19; and

WHEREAS, since the issuance of my Fourth Modification to the COVID-19 State of Emergency, the CDC has issued further guidance for the COVID-19 crisis, including the CDC's "Interim Guidance for Businesses and Employers to Plan and Respond to Coronavirus Disease 2019" that recommends, among other things, states implement social distancing policies for

businesses to use flexible worksites (telework/work-from-home), flexible hours, increasing social distancing between employees and customers, downsizing operations, and providing services remotely; and

WHEREAS, person-to-person contact increases the risk of transmitting COVID-19, and in order to promote the safety and protection of the civilian population, it is necessary to adopt measures that reduce the number of in-person meetings; and

WHEREAS, a Delaware public corporation may have provided notice of an annual or special meeting of stockholders to be held at a physical location prior to the time at which the extent of the public health threat of COVID-19 became apparent; and

WHEREAS, as a result of travel bans in place in several states, a public corporation may wish to change a meeting noticed for a physical location to one held by remote communication; and

WHEREAS, it is currently advisable for a public corporation to change a stockholder meeting noticed for a physical location to one held solely by remote communication in order to promote the safety, health and wellbeing of participants; and

WHEREAS, I wish to facilitate changing stockholder meetings currently noticed for a physical location to meetings conducted solely by remote communication to the extent that it is permitted by law while the State of Emergency is in effect; and

WHEREAS, § 222(c) of Title 8 of the Delaware Code allows for adjournments of stockholder meetings, but does not address the method of adjournment of a meeting noticed for a physical location in the case of a public health threat and concomitant restrictions on personal mobility and travel; and

WHEREAS, § 232 of Title 8 of the Delaware Code provides that notice of stockholder meetings may be given by mail, courier service or electronic mail, but also suggests that there may be other means by which notice may be given effectively to stockholders; and

WHEREAS, during the COVID-19 pandemic, the Securities and Exchange Commission is allowing reporting companies to provide certain notices to stockholders via the companies' required public filings and a press release.

NOW, THEREFORE, I, JOHN C. CARNEY, pursuant to Title 20, Chapter 31 of the Delaware Code, in an effort to control and prevent the spread of COVID-19 within the State of Delaware, do hereby order that the COVID-19 State of Emergency, as modified by the First through Ninth Modifications, shall remain in effect until further notice, with the following modifications:

1. **UPDATING PROVISIONS OF THE FOURTH MODIFICATION OF THE COVID-19 STATE OF EMERGENCY:** ***[Substantive changes made since the Fourth Modification are italicized]***

a. Effective April 7, 2020, at 8:00 p.m. E.D.T., Paragraphs 4, 6, and 7 of the Fourth Modification to the COVID-19 State of Emergency declaration are modified as expressly set forth in Paragraphs 1.b, 1.c, 1.d, 1.e and 1.f. herein. For any matters addressed by both the Fourth and Tenth Modifications to the COVID-19 State of Emergency declaration, the provisions of this Tenth Modification of the COVID-19 State of Emergency declaration shall control.

b. Paragraph 4 of the Fourth Modification to the COVID-19 State of Emergency declaration is replaced entirely with the following: In addition to a delegation of authority to

issue emergency regulations consistent with the State of Emergency and Delaware law, the Division of Small Business shall have the discretion to make additions, amendments, clarifications, exceptions, and exclusions to this list of "Essential Businesses," "Non-Essential Businesses," *and "Limited Operation Non-Essential Businesses." In making its determinations, the Division of Small Businesses will not consider a NAICS code that is modified after March 12, 2020 when the COVID-19 State of Emergency declaration was issued.*

c. Paragraph 6.b. of the Fourth Modification to the COVID-19 State of Emergency declaration is hereby modified by adding the following:

7. Military Personnel; and

8. Any State of Delaware contracted vendor who supports law enforcement, military personnel and emergency service operations.

d. Paragraph 6.p.8. of the Fourth Modification to the COVID-19 State of Emergency declaration is hereby stricken in its entirety.

e. Paragraph 6.q.12 of the Fourth Modification to the COVID-19 State of Emergency declaration is stricken, and replaced with the following:

12. Houses of worship and other places of religious expression or fellowship, *which shall comply with all social distancing requirements set forth in the COVID-19 State of Emergency declaration and all modifications, including attendance of no more than 10 people for in-person services under any circumstances. Houses of worship are strongly encouraged to transition any in-person services to remote services broadcast by telephone or video.*

f. Paragraph 7. of the 4th Modification to the COVID-19 State of Emergency declaration is stricken and replaced with the following:

7. **Non-Essential Businesses**: Non-Essential Businesses as used herein means:

1. Hospitality and Recreation Facilities, *which shall include without limitation:*
   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. Pawn shops;
4. Door to door solicitations;
5. Customer service call centers and telemarketing operations;
6. *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;*
7. Electronics retailers;
8. Video, video game, or computer game rental or similar retail;
9. Craft or hobby retailers;
10. Libraries and bookstores;
11. Ice cream, water ice, custard, or similar shops (except for service by drive-thru), and ice cream trucks;
12. All licensed childcare facilities not designated as Emergency Childcare Sites by the Eighth Modification of the COVID-19 State of Emergency;
13. All other businesses not included within the definitions of Essential Businesses or Limited Operation Non-Essential Businesses.

g. Paragraph 8. of the 4th Modification to the COVID-19 State of Emergency declaration is stricken in its entirety.

2. CLOSURE OF NON-ESSENTIAL BUSINESSES: *Except as otherwise provided herein,*

all physical locations of Non-Essential Businesses and Limited Operation Non-Essential Businesses within the State of Delaware shall be closed until after May 15, 2020, or the public health threat of COVID-19 has been eliminated, **effective 8:00 p.m. E.D.T. April 7, 2020**. Such businesses may continue to offer goods and services over the Internet or by phone. *Non-Essential Businesses shall not transact business via curbside pickup. All Non-Essential or Limited Operation Non-Essential Businesses with employees or customers on the premises must also comply with the Responsibilities of Essential Businesses set forth in Paragraph 5 of the Fourth Modification to the COVID-19 State of Emergency declaration. Any business that fails to comply with the Declaration of a State of Emergency or any modification thereto, or that encourages or facilitates unauthorized interstate travel, shall be deemed in violation of the State of Emergency orders and subject to enforcement action.*

3. LIMITED OPERATION NON-ESSENTIAL BUSINESSES: Limited Operation Non-Essential Businesses may operate as follows:

a. Commercial Lodging is hereby closed to leisure guests from the date of this Order until after May 15, 2020, or the public health threat of COVID-19 has been eliminated, whichever is later. As used herein, Commercial Lodging shall include hotels, motels, inns, short-term accommodations, vacation homes, or condo rentals (such as Airbnb, VRBO, HomeAway or any other vacation or overnight accommodation rental), and other lodgings providing overnight accommodation. Commercial Lodging may only take reservations from Essential Guests.

i. Essential Guests means:

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.

ii. Essential Guests shall not include:
1. Those present for vacation or recreational use;
2. Any other use not within the definition of Essential Guests.

iii. All restaurants, bars, or other food and beverage service in Commercial Lodging shall operate only by take-out, room service or off premises delivery. No indoor or outdoor seating for food or beverage service, including the use of outdoor patios, is permitted;

iv. Fitness centers, pools, spas, or other similar amenities, and all indoor places of congregation, including conference rooms or meeting facilities, must be closed.

b. Campgrounds are closed, except solely for Essential Guests, who must comply with social distancing requirements set forth in the COVID-19 State of Emergency declaration and all modifications;

c. Automobile and other motor vehicle dealers may remain open only by appointment with no more than two appointments per half hour;

d. Dentist offices, by appointment only;

e. Repair shops for computers, household appliances, or otherwise, by appointment only;

f. Bicycle repair facilities or those engaged in the sale or distribution of equipment or parts necessary for the repair of bicycles, by appointment only;

g. 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;

h. Shooting ranges may continue to operate if they conform to social distancing requirements of the COVID-19 State of Emergency declaration and all modifications;

i. Golf courses may continue operation with the following restrictions:

i. 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;

ii. Golf courses are prohibited from providing guests with motorized carts, golf bag carts, pencils, scorecards, or snack carts;

iii. 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;

iv. Players are prohibited from accessing neighboring properties to retrieve stray balls.

j. 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**.**

4. REMOTE MEETINGS OF STOCKHOLDERS:

a. With respect to a corporation subject to the reporting requirements of § 13(a) or § 15(d) of the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder:

i. if, as a result of the public health threat caused by the COVID-19 pandemic or the COVID-19 outbreak in the United States, the board of directors wishes to change a meeting currently noticed for a physical location to a meeting conducted solely by remote communication, it may notify stockholders of the change solely by a document publicly filed by the corporation with the Securities and Exchange Commission pursuant to § 13, § 14 or § 15(d) of such Act and a press release, which shall be promptly posted on the corporation's website after release; and

ii. if it is impracticable to convene a currently noticed meeting of stockholders at the physical location for which it has been noticed due to the public health threat caused by the COVID-19 pandemic or the COVID-19 outbreak in the United States, such corporation may adjourn such meeting to another date or time, to be held by remote communication, by providing notice of the date and time and the means of remote communication in a document filed by the corporation with the Securities and Exchange Commission pursuant to § 13, § 14 or § 15(d) of such Act and a press release, which shall be promptly posted on the corporation's website after release.

b. Should a provision contained in Section 4.a. of this Tenth Modification to the COVID-19 State of Emergency be held invalid under the Constitution of the State

of Delaware, to violate Delaware law or to be unenforceable in any respect, such invalidity, violation or unenforceability shall not affect any other provision of Section 4.a. or of the remainder of this Tenth Modification, and the Tenth Modification shall be construed as if the offending provision had never been included.

5. ELECTIONS: Notwithstanding any provision of the COVID-19 State of Emergency or any modification, Section A.5 of the Sixth Modification to the COVID-19 State of Emergency (pertaining to the expansion of qualifications for absentee voting) shall remain in effect until expressly rescinded, which will in no event occur prior to June 16, 2020.

6. INSURANCE: Pursuant to the authority provided in 20 Del. C. § 3116(a)(2), requirements for the provision of telemedicine and telehealth under Title 24 of the Delaware Code that require both audio and visual technology are suspended, which will allow the use of non-smart phone or landline connections.

7. MISCELLANEOUS:

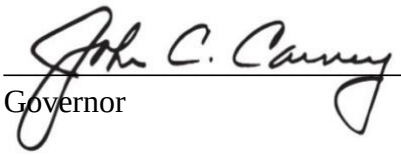
a. The Eighth Modification of the Declaration of the State of Emergency, dated March 30, 2020, is modified by adding a new sentence to the end of Paragraph 2.b. as follows: "This requirement shall not apply to hospitals that are subject to the requirements of EMTALA."

b. Paragraph 7.d. of the Fifth Modification of the Declaration of the State of Emergency, dated March 22, 2020, is expressly modified by the terms of this Tenth Modification.

8. ENFORCEMENT. This Order has the force and effect of law. Any failure to comply with the provisions contained in a Declaration of a State of Emergency or any modification to a

Declaration of the State of Emergency constitutes a criminal offense. 20 Del. C. §§ 3115 (b); 3116 (9); 3122; 3125. State and local law enforcement agencies are authorized to enforce the provisions of any Declaration of a State of Emergency.

APPROVED this 6th day of April 2020 at 6:00 p.m.



Governor