

LAWS OF DELAWARE
VOLUME 83
CHAPTER 180
151st GENERAL ASSEMBLY
FORMERLY
SENATE SUBSTITUTE NO. 1
FOR
SENATE BILL NO. 24

AN ACT TO AMEND TITLE 16 OF THE DELAWARE CODE RELATING TO THE DELAWARE LITTER CONTROL LAW.

WHEREAS, the General Assembly finds and declares that the release of balloons inflated with lighter-than-air gases poses a danger and nuisance to the environment, particularly to wildlife and marine animals; and

WHEREAS, many animals are attracted to the bright colors of balloons and mistake them for food which can cause an animal severe injury or death; and

WHEREAS, many more animals become entangled in balloon strings and are injured or strangled to death as a result; and

WHEREAS, thousands of balloons are found each year littering our beaches, public spaces, and marine environments; and

WHEREAS, other states have restricted the release of balloons inflated with lighter-than-air gases; and

WHEREAS, balloons have also been known to cause power outages; and

WHEREAS, balloons contribute to the depletion of our limited supply of helium, which is derived from extraction industries; and

WHEREAS, it is the intent of the General Assembly not to fine a person who negligently or unintentionally releases a balloon, but rather to raise awareness of the harmful nature of releasing balloons and prevent the dangers posed by releasing them.

NOW, THEREFORE:

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

Section 1. Amend § 1602, Title 16 by making deletions as shown by strike through and insertions as shown by underline as follows and by redesignating accordingly:

§ 1602. Declaration of intent.

It is the intention of this chapter to end littering on public or private property, including bodies of water, as a threat to the health and safety of the ~~citizens~~ citizens, fish, birds, and other animals of this State. It is also the intent of the General Assembly to single out for enhanced penalties those who dump a substantial quantity of litter in violation of this chapter.

Section 2. Amend § 1603, Title 16 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows and by redesignating accordingly:

§ 1603. Definitions.

As used in this chapter:

(1) “Balloon” means a bag made from rubber, latex, polychloroprene, nylon, mylar, or other material which is or can be filled with air, water, or a gas, including helium, hydrogen, nitrous oxide, or oxygen.

(~~1~~) (2) “Dumping” means the deposit of litter in a substantial quantity on public or private property.

(~~2~~) (3) “LIEF” means the Littering Investigation and Enforcement Fund.

(~~3~~) (4) “Litter” includes all rubbish, waste material, refuse, cans, bottles, garbage, trash, debris, dead animals, 1 to 4 balloons released at 1 time, or other discarded materials of every kind and description.

(5) “Mass release of balloons” means the intentional release of 5 or more balloons at 1 time.

Section 3. Amend § 1604, Title 16 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 1604. Unlawful activities.

(a) Littering. It is unlawful for a person to deposit, throw, release, or leave, or cause or permit the depositing, placing, throwing, or leaving of litter on public or private property of this State, unless either of the following 2 conditions is met:

(1) The property is designated by the State or by any of its agencies or political subdivisions for the management of litter, and the person is authorized by the proper public authority to use the property for that purpose.

(2) Both of the following apply:

a. The litter is placed in a litter receptacle or container installed on or at the property.

b. The person is the owner or tenant in lawful possession of the property or has first obtained consent of the owner or tenant in lawful possession, or the act is done under the personal direction of the owner or tenant, all in a manner consistent with the public welfare.

(b) Dumping. It is unlawful for a person to dump litter in substantial quantities on public or private property, except under paragraphs (a)(1) through ~~(a)(3)~~ (a)(2) of this section.

(c) Mass release of balloons. It is unlawful for a person to intentionally release, or intentionally cause or permit the release of, 5 or more balloons on private or public property of this State.

(d) This section does not apply to any of the following:

(1) A balloon that is released for scientific or meteorological purposes, on behalf of a governmental agency, or under a governmental contract.

(2) A hot air balloon that is recovered after launching.

(3) A balloon that is released and remains indoors.

(4) A balloon that, for recreational purposes, is filled with water and recovered after recreation.

(5) A balloon that is unintentionally or negligently released.

Section 4. Amend § 1605, Title 16 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows and by redesignating accordingly:

§ 1605. Penalties; jurisdiction; voluntary assessment form.

(a)(1) A person found guilty of littering under § 1604(a) of this title must be punished by a fine of not less than \$50 and up to 8 hours of community service for a first offense, and \$75 and up to 25 hours of community service for a second offense within 2 years of the first offense. This paragraph does not apply to the intentional release of 1 to 4 balloons. The penalty for intentionally releasing 1 to 4 balloons is provided in paragraph (a)(3)a. of this section.

(2) A person found guilty of dumping under § 1604(b) of this title must be punished by a fine of not less than \$500 and not less than 8 hours of community service for a first offense, and a fine of not less than \$1,000 and not less than 16 hours of community service for a second offense within 2 years of the first offense. Each instance of dumping constitutes a separate offense under this chapter.

(3) Balloons.

a. A person who is found in violation of § 1604(a) of this title by releasing 1 to 4 balloons must do the following:

1. For a first violation, pay a civil penalty of not less than \$25.

2. For a second or subsequent violation within 2 years of a first violation, pay a civil penalty of not less than \$75 and complete up to 8 hours of community service.

b. A person who is found in violation of § 1604(c) of this title through the mass release of balloons must do the following:

1. For a first violation, pay a civil penalty of not less than \$250 and complete up to 8 hours of community service.

2. For a second or subsequent violation, pay a civil penalty of not less than \$350 and complete up to 25 hours of community service.

~~(3)~~ (4) An additional mandatory penalty of \$500 must be imposed, in addition to the fine, for every first, second, and first or subsequent offense, or an additional mandatory civil penalty of \$500 must be imposed in addition to the civil penalty for every first or subsequent violation, if the offense or violation occurred in any of the following locations:

a. On or along a Delaware byway, as defined in § 101 of Title 17.

b. A State park, forestry area, or fish and wildlife area.

c. A federal wildlife refuge.

d. Land within the State that is administered by the United States Department of Interior, National Park Service.

~~(4)~~ (5) In addition to the penalties listed in paragraphs (a)(1) through ~~(a)(3)~~ (a)(4) of this section, the Court may require a person found guilty of violating this chapter to do ~~one~~ 1 or both of the following:

a. Pick up and remove from any public street, highway, public or private right-of-way, public beach, stream, bank, or public park all litter deposited or dumped on the property by anyone before ~~to~~ the date of execution of sentence.

b. Pay as restitution an amount determined by the Court to the Littering Investigation and Enforcement Fund. The State shall maintain the LIEF as a subaccount of the Special Law Enforcement Assistance Fund established under ~~subchapter II, Chapter 41, subchapter II of Chapter 41~~ of Title 11. Disbursement of LIEF funds must be authorized under the procedures established under § 4113 of Title 11, for the purpose of investigation, enforcement, and remediation of unlawful littering or dumping.

(d)(1) A peace officer of this State who charges a person with littering or mass release of balloons under ~~§ 1604(a)~~ § 1604 of this title may, in addition to issuing a summons for the offense or violation, provide the offender with a voluntary assessment form which, when properly executed by the officer and the offender, allows the offender to dispose of the charge without the necessity of personally appearing in the Court to which the summons is returnable.

(2)a. Payments made under paragraphs (a)(1) through ~~(a)(3)~~ (a)(4) of this section must be remitted to and received by the Court to which the summons is returnable within 10 days from the date of arrest or, for the release of 1 to 4 balloons or mass release of balloons, the date of the violation, excluding Saturday and Sunday.

b. Restitution made to the LIEF under ~~paragraph (a)(4)~~ paragraph (a)(5) of this section must be remitted to and received by the Court ordering restitution within 10 days from the date of the order for restitution, excluding Saturday and Sunday.

Section 5. Amend § 1606, Title 16 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 1606. Prima facie evidence.

(a)(1) The throwing, depositing, dropping, releasing, or dumping of litter from a motor vehicle, boat, airplane, or other conveyance in violation of this chapter is prima facie evidence that the operator of the conveyance violated chapter.

Section 6. Amend Chapter 16, Title 16 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 1609. Notice.

A retail or wholesale establishment that sells balloons must prominently display the following notice at the location in the establishment where balloons are sold or where payment is made:

“The intentional release of balloons into the air is a violation of Delaware law and is subject to penalties. 16 Del. Code Ch. 16.”

Section 7. The civil penalties under § 1605(a)(3)a., § 1605(a)(3)b., and § 1605(a)(4) of Title 24 do not apply to an individual who litters with balloons or conducts a mass release of balloons on or before April 30, 2022. For persons who are not individuals, the civil penalties under § 1605(a)(3)a., § 1605(a)(3)b., and § 1605(a)(4) of Title 24 apply in full as of [the effective date of this Act].

Approved September 17, 2021