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Sokola, Walsh, Wilson

HOUSE OF REPRESENTATIVES
152nd GENERAL ASSEMBLY

HOUSE BILL NO. 175

AN ACT TO AMEND TITLES 9, 21, AND 22 OF THE DELAWARE CODE RELATING TO ACCESSIBLE PARKING SPACES.

1 WHEREAS, while federal, state, and local accessibility standards are in full force and effect, and entities who are
2 not in compliance are currently and will remain subject to liability and fines for violations, enforcement of these standards
3 by people with disabilities can be lengthy and difficult, and persons with disabilities need a state and local mechanism to
4 achieve access to facilities and businesses in the state, in addition to federal enforcement; and

5 WHEREAS, there is inconsistent application of existing standards for accessible parking spaces, and enforcement
6 of those standards is poor; and

7 WHEREAS, individuals in this State continue to park illegally in accessible parking spaces to the detriment of
8 persons with disabilities and the establishments that provide goods and services to those persons.

9 NOW, THEREFORE:

10 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (Two-thirds of all
11 members elected to each house thereof concurring therein):

12 Section 1. Amend § 4183, Title 21 of the Delaware Code by making deletions as shown by strike through and
13 insertions as shown by underline as follows:

14 § 4183. Parking areas for vehicles being used by persons with disabilities.

15 (a) For purposes of this ~~section~~, the term section:

16 (1) “Accessible parking space” means as defined in § 4183A of this title.

17 (2) ~~“vehicle”~~ “Vehicle being used by a person with a disability” means a vehicle: vehicle that meets both of the
18 following:

19 (1) ~~a. That displays~~ Displays a valid special license plate issued pursuant to § 2134 of this title on the rear
20 of the vehicle, or that displays a valid parking placard issued pursuant to § 2135 of this title on the front

21 windshield rearview mirror of the vehicle or, if there is no mirror, on the dashboard, or that displays a valid plate,
22 placard placard, or other item issued under a similar statute in another state or ~~country~~; and country.

23 (2) ~~b. In which the~~ The person for whom the plate or placard is issued is either the operator or a passenger
24 or, in the case of an organization, in which a person who is entitled to obtain a permanent or temporary placard is a
25 passenger.

26 (b) With the exception of a vehicle being used by a person with a disability, it is unlawful to park on public or
27 private property any vehicle in any area ~~under the control of the Department of Transportation or a local authority within its~~
28 ~~respective jurisdiction or under the control of an owner or lessee of private property~~ that is designated as a an accessible
29 parking space. ~~parking space or zone for persons with disabilities which limit or impair the ability to walk and that is~~
30 ~~conspicuously marked as such. For purposes of this section, "conspicuously marked" means that a vertical sign has been~~
31 ~~placed at an approximate height of at least 5 feet but no more than 7 feet when measured from the surface directly below~~
32 ~~the sign to the top of the sign for each parking space or zone. The sign must substantially follow federal specifications that~~
33 ~~identify a parking zone or space as one for persons with disabilities which limit or impair the ability to walk. A sign at least~~
34 ~~12 inches wide by 18 inches tall that includes the internationally recognized wheelchair symbol of access substantially~~
35 ~~follows federal specifications. These requirements may not be construed to preclude additional markings, such as the~~
36 ~~international wheelchair symbol or a striped extension area painted on the space or zone, or a tow away warning sign.~~

37 (c) Upon the discovery on private property of a vehicle, other than a vehicle being used by a person with a
38 disability, in a ~~designated~~ an accessible parking space ~~or zone for persons with disabilities~~, space, the owner or lessee of the
39 private property may cause the illegally parked vehicle to be removed to a private storage area maintained for the safe
40 storage of vehicles. Any costs of removal and storage must be borne by the owner or operator of the vehicle. Upon the
41 discovery of a vehicle illegally parked in a ~~designated~~ an accessible parking space ~~or zone for persons with disabilities~~ that
42 is under the control of the Department of Transportation or local authorities, the State Police, county ~~police~~ police, or
43 municipal police having jurisdiction may cause the illegally parked vehicle to be removed to a private storage area
44 maintained for the safe storage of vehicles. Any costs of removal and storage must be borne by the owner or operator of the
45 vehicle.

46 (d) In addition to unlawful parking on public or private property in a ~~space or zone designated for a vehicle being~~
47 ~~used by a person with a disability~~, an accessible parking space, all of the following acts are prohibited on both public and
48 private property and may be enforced pursuant to this section:

- 49 (1) Creating or using a counterfeit license plate or parking placard, as described in § 2134 or § 2135 of this
50 ~~title~~; title.

51 (2) Altering a license plate or parking placard issued pursuant to § 2134 or § 2135 of this ~~title~~; title.

52 (3) Parking on a striped area or access aisle within or adjacent to ~~a space or zone designated for a vehicle~~
53 ~~being used by a person with a disability~~; an accessible parking space.

54 (4) Being the person or organization to whom a license plate or parking placard has been issued pursuant
55 to § 2134 or § 2135 of this title, allowing another to use the plate or ~~placard~~; or placard.

56 (5) Parking a vehicle with a license plate or placard issued pursuant to § 2134 or § 2135 of this title in a
57 ~~space or zone defined in subsection (b) of this section~~ an accessible parking space unless a person on whose behalf a
58 special license plate or placard has been issued is being transported.

59 (f) (1) A person or organization who violates this section must receive a mandatory fine of ~~\$200~~ \$250 for a first
60 offense, and for a subsequent like offense, a mandatory fine of ~~\$300~~ \$500 or a term of imprisonment of not less than 10 nor
61 more than 30 days, or both.

62 (2) In addition, a person or organization who holds a valid special license plate or parking placard issued under
63 § 2134 or § 2135 of this title and who violates paragraph (d)(1), (2), or (4) of this section may receive an additional
64 penalty of up to a 6-month suspension or the permanent revocation of the plate or placard. If a plate is suspended or
65 revoked under this subsection, the person may apply for and be issued a regular license plate.

66 (3) Minor variations of accessible parking space features, including the absence of a sign, are not a defense to
67 prosecution under this section if the space is otherwise conspicuously marked.

68 Section 2. Amend Title 21 of the Delaware Code by making deletions as shown by strike through and insertions
69 as shown by underline as follows:

70 § 4183A. Requirements for design, construction, signage, and maintenance of accessible parking spaces.

71 (a) For purposes of this section:

72 (1) “Accessible parking space” means any parking space or parking zone designated by an owner or lessee of
73 any public or private property for use by a “vehicle being used by or for a person with disability”, as defined in § 4183
74 of this title.

75 (2) “Accessible route” means a continuous unobstructed path connecting all accessible elements.

76 (b) Where accessible parking spaces are provided, they shall be designed and constructed in compliance with the
77 requirements of this section and with applicable regulations promulgated by the United States Department of Justice and
78 the United States Department of Transportation under the Americans with Disabilities Act, Titles II and III; the Guidelines
79 for Pedestrian Facilities in Public Rights of Way, when such Guidelines are adopted and codified in the United States Code

80 of Federal Regulations; any applicable building code adopted by any county or municipality, and any statewide building
81 code.

82 (c) Signage and other visual markings.

83 (1) Except as set forth in paragraphs (c)(2) and (3) of this section, each accessible parking space must have a
84 sign at least 12 inches wide and 18 inches tall that must be clearly visible to a person parking in the space, at a
85 minimum height of 60 inches, must be marked with the international symbol of access, must indicate that the space is
86 reserved for a vehicle being used by a person with a disability, and must display the current maximum fines established
87 in § 4183(f) of this title.

88 (2) Where a total of four or fewer parking spaces, including accessible parking spaces, are provided on a site,
89 identification of accessible parking spaces is not required.

90 (3) In a facility where parking spaces are assigned to specific dwelling units or sleeping units, identification of
91 accessible spaces is not required. Such locations remain subject to applicable anti-discrimination provisions.

92 (4) A van accessible space must have a sign marked with the words “Van Accessible.”

93 (5) All access aisles must have conspicuous signage to indicate that parking in and obstruction of the access
94 aisle is prohibited. The sign may not be located within the aisle and may neither obstruct nor interfere with an
95 accessible route.

96 (6) All access aisles must be marked with a blue painted border around the perimeter, and the area within the
97 blue border must be marked by 4 inch hatched lines painted diagonally on a 45 % angle to the blue border, in a color
98 contrasting the aisle surface.

99 (7) Nothing in this subsection limits the use of signage with additional information, including a tow-away
100 warning.

101 (d) In addition to meeting the standards for accessible parking spaces in subsection (b) of this section, for any
102 applicable building code adopted by any county or municipality, and any statewide building code, all accessible parking
103 spaces must meet the following requirements:

104 (1) For every 5 accessible parking spaces required by federal law, 1 van accessible parking space must be
105 created and marked for use only by a wheelchair or scooter user. This is in addition to any van accessible parking
106 spaces required by federal law. Compliance with this subsection is not required if doing so would violate any
107 applicable zoning or building code requirement governing the minimum number of required parking spaces.

108 (2) Unless prevented by local fire codes, accessible parking spaces must be placed on the shortest
109 accessible route to the accessible entrance and must be the closest parking spaces on the shortest accessible route.

110 (3) Accessible parking spaces and access aisles must be maintained so as to meet the requirements of this
111 section. Snow, ice and debris must be removed as soon as is practicable. Access aisles must remain clear of
112 obstructions, including without limitation, plowed snow, bicycle racks, or shopping carts.

113 (e) (1) Except as set forth in paragraph (e)(2) of this section, the obligation to design and construct accessible
114 parking spaces consistent with this section extends to all new spaces installed after [the effective date of this Act], and to
115 any existing accessible parking spaces whenever they are restriped, repainted, resurfaced, or otherwise altered after [the
116 effective date of this Act], or within 5 years of [the effective date of this Act], whichever is sooner. Signage compliant with
117 subsection (c) of this section must be installed by [2 years after the effective date of this Act].

118 (2) Accessible parking spaces that are located in lots with 25 or fewer spaces or in a national register district
119 or national historic area are not required to comply with this section until they are restriped, repainted, resurfaced, or
120 otherwise altered after [the effective date of this Act].

121 (f) (1) No new accessible parking spaces may be installed, and no existing accessible parking spaces may be
122 restriped, repainted, resurfaced or otherwise altered, until the county or municipal authority having jurisdiction over the
123 construction or alteration of commercial buildings has issued a permit authorizing such action or a licensed engineer or
124 surveyor has submitted a certification that the parking plan complies with this section. A county or municipal authority may
125 allow subsequent restriping, repainting, or resurfacing of a lot that has been permitted or certified in accordance with this
126 section at least once after [the effective date of this Act] without a permit or certification where no change is made to the
127 parking plan and the property remains compliant with the requirements of this section.

128 (2) A person who restripes, repaves, resurfaces or otherwise alters a parking lot without complying with this
129 subsection may be assessed a civil penalty of up to \$50,000 by the applicable county or municipal authority.

130 (g) Upon completion of the work subject to permit, the public agency issuing the permit shall verify compliance by
131 either conducting an on-site inspection or independently confirming compliance by use of documentation and photographic
132 evidence submitted by the entity to whom the permit was issued, provided that the documentation and photographic
133 evidence is sufficient to adequately assess such compliance. The enforcement agency may adopt a model form published
134 by the State Council for Persons with Disabilities in consultation with the Architectural Accessibility Board to standardize
135 submission of verifying documentation and photographic evidence. If the submitted documentation and photographic
136 evidence is not sufficient to confirm compliance, an on-site inspection must be conducted.

137 (h) Each county shall coordinate with municipalities located therein so that every accessible parking space is
138 clearly marked with a contact number for the appropriate enforcement agency as well as a unique identifier that will allow
139 the enforcement agency to pinpoint the location of that accessible parking space.

140 (i) Nothing in this section requires a county or municipality to conduct code inspections apart from its usual and
141 customary practice for promoting building code compliance or prohibits such county or municipality from charging fees
142 associated with permits and compliance verification.

143 (j) Nothing in this section prohibits any state, municipal, or local government or agency from adopting more
144 stringent standards for accessible parking than those imposed by this section and applicable federal law, nor shall it prohibit
145 any private or public entity from providing more accessible parking spaces than are required by this section or other
146 applicable code or regulation.

147 Section 3. Amend §110, Title 22 of the Delaware Code by making deletions as shown by strike through and
148 insertions as shown by underline as follows and redesignating accordingly:

149 § 110. Parking spaces for use by persons with disabilities.

150 (a) The county government of each of the 3 Delaware counties ~~shall, on or before January 1, 2004,~~ and the
151 municipal government of each incorporated municipality within ~~each county shall, on or before March 1, 2004,~~ the State
152 shall adopt regulations or ordinances regarding the duty of individuals and artificial entities to ~~erect~~ construct and maintain
153 signage on parking spaces ~~or zones for use by persons with disabilities.~~ accessible parking spaces consistent with § 4183A
154 of Title 21.

155 (b) The county government of each of the 3 Delaware counties and the municipal government of each incorporated
156 municipality within the State shall adopt regulations or ordinances requiring that no new accessible parking space shall be
157 constructed and no existing accessible parking space shall be installed, restriped, repainted, resurfaced, or otherwise altered
158 until the county government or municipality has issued a permit authorizing such action. Upon completion, the entity
159 issuing the permit shall confirm compliance as set forth in § 4183A(f) of Title 21.

160 ~~(b)~~ (c) The signage regulations or ordinances adopted pursuant to subsection (a) and (b) of this section must
161 include an enforcement provision, a penalty provision, and a provision which requires an enforcement officer to first issue a
162 written warning to an individual or artificial entity who is required to ~~erect and maintain signage,~~ obtain a permit and to
163 construct and maintain accessible parking spaces, but has failed to do so; so, consistent with the obligations under § 4183A
164 of Title 21. If, after 30 days from the date that a warning is issued, the individual or artificial entity has not ~~erected and/or~~
165 maintained the required signage, obtained the appropriate permit or constructed or maintained the accessible parking
166 spaces, the enforcement officer may issue a summons or apply for a warrant in the name of the offending individual or
167 artificial entity.

168 Section 4. Amend §310, Title 9 of the Delaware Code by making deletions as shown by strike through and
169 insertions as shown by underline as follows and redesignating accordingly:

170 § 310. Parking spaces for use by persons with disabilities.

171 (a) The county government of each of the 3 Delaware counties ~~shall, on or before January 1, 2004,~~ and the
172 municipal government of each incorporated municipality within ~~each county shall, on or before March 1, 2004,~~ the State
173 shall adopt regulations or ordinances regarding the duty of individuals and artificial entities to ~~erect~~ construct and maintain
174 signage on parking spaces or zones for use by persons with disabilities. accessible parking spaces consistent with § 4183A
175 of Title 21.

176 (b) The county government of each of the 3 Delaware counties and the municipal government of each incorporated
177 municipality within the State shall adopt regulations or ordinances requiring that no new accessible parking space shall be
178 constructed and no existing accessible parking space shall be installed, restriped, repainted, resurfaced, or otherwise altered
179 until the county government or municipality has issued a permit authorizing such action. Upon completion, the entity
180 issuing the permit shall confirm compliance as set forth in § 4183A(f) of Title 21.

181 (b) (c) The ~~signage~~ regulations or ordinances adopted pursuant to subsection (a) and (b) of this section must
182 include an enforcement provision, a penalty provision, and a provision which requires an enforcement officer to first issue a
183 written warning to an individual or artificial entity who is required to ~~erect and maintain signage,~~ obtain a permit and to
184 construct and maintain accessible parking spaces, but has failed to do so, consistent with the obligations under § 4183A
185 of Title 21. If, after 30 days from the date that a warning is issued, the individual or artificial entity has not ~~erected and/or~~
186 maintained the required signage, obtained the appropriate permit or constructed or maintained the accessible parking
187 spaces, the enforcement officer may issue a summons or apply for a warrant in the name of the offending individual or
188 artificial entity.

SYNOPSIS

This Act adds provisions to Title 21 defining accessible parking spaces, incorporating federal standards for accessible parking spaces found in the Americans with Disabilities Act and applicable regulations. The Act also provides additional requirements that enhance these standards and better reflect the needs of persons with disabilities in Delaware. The Act increases the penalty associated with violating the statute that prohibits individuals who do not possess a parking placard or special license plate from parking in accessible parking spaces, or in the access aisles located next to accessible parking spaces. This Act adds provisions in Titles 9 and 22 to require county and municipal governments to adopt regulations and ordinances incorporating these requirements for accessible parking spaces, including the requirement that property owners have a permit and process to ensure compliance for new or modified accessible parking spaces, in order to increase compliance and uniformity statewide.