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DELAWARE STATE SENATE
153rd GENERAL ASSEMBLY

SENATE BILL NO. 75

AN ACT TO AMEND TITLE 4 OF THE DELAWARE CODE RELATING TO LOCAL CONTROL OF RETAIL MARIJUANA STORES BY COUNTIES.

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

1 Section 1. Amend § 1302, Title 4 of the Delaware Code by making deletions as shown by strike through and
2 insertions as shown by underline as follows and redesignating accordingly:

3 § 1302. Definitions.

4 (24) “Park” means real property that is owned, developed, or controlled by a government entity for outdoor
5 passive or active recreational use. “Park” does not mean real property recorded on a plan as a development’s open
6 space.

7 Section 2. Amend § 1351, Title 4 of the Delaware Code by making deletions as shown by strike through and
8 insertions as shown by underline as follows:

9 § 1351. Local ~~control~~; control; municipalities.

10 (a) A municipality may prohibit the operation of marijuana ~~cultivation facilities, marijuana product manufacturing~~
11 ~~facilities, marijuana testing facilities, or retail marijuana stores~~ establishments through the enactment of an ordinance or
12 through an initiated or referred measure.

13 (b) A municipality ~~or county~~ may enact ordinances or regulations that ~~are~~ do not in conflict with this chapter ~~or in~~
14 ~~conflict with~~ chapter, including regulations enacted by the Commissioner, promulgated under this chapter, governing the
15 time, place, manner, and number of marijuana establishment operations. A municipality ~~or county~~ may establish civil
16 penalties for violation of an ordinance or regulations governing the time, place, and manner that a marijuana establishment
17 may operate in ~~such municipality or county.~~ the municipality.

18 Section 3. Amend Subchapter IV, Chapter 13, Title 4 of the Delaware Code by making deletions as shown by
19 strike through and insertions as shown by underline as follows:

20 § 1351A. Local control; counties.

21 (a)(1) A county may limit the operation of marijuana establishments by enacting ordinances or regulations that do
22 not conflict with this chapter, including regulations promulgated under this chapter.

23 (2) An ordinance or regulation governing the time or manner of marijuana establishment operations must
24 allow a retail marijuana store to be open no less than the following hours:

25 a. Monday through Saturday, between 9 a.m. and 9 p.m.

26 b. Sunday, between noon and 8 p.m.

27 (3) Notwithstanding Chapter 26, Chapter 49, or Chapter 69 of Title 9, this section preempts and supersedes all
28 existing and future county ordinances or regulations regarding the operation of marijuana establishments licensed
29 under this chapter.

30 (b) If a compassion center is granted a conversion license for a retail marijuana store under § 1335B of this title, a
31 county must allow the retail marijuana store to operate as a nonconforming use under § 2610, § 4920, or § 6920 of Title 9,
32 however a county may not deny a building permit to a licensee under § 1335B of this title if the improvements comply with
33 the physical requirements for properties in that zoning category.

34 (c) In an area that is zoned for agricultural or industrial use, a county may not prohibit a marijuana cultivation
35 facility that is indoors and fully enclosed.

36 (d) In an area that is zoned for commercial or industrial use, a county may not prohibit the operation of a retail
37 marijuana store except as follows:

38 (1) Within a ½ mile of another retail marijuana store.

39 (2) Within 500 feet of any of the following:

40 a. A place of worship, school, or institution of higher education.

41 b. A child care facility licensed under Chapter 30A of Title 14.

42 c. A residential treatment facility, as defined in § 2203 of Title 16.

43 d. A park or library.

44 (e) A marijuana establishment that is operating lawfully may continue to operate as a nonconforming use under §
45 2610, § 4920, or § 6920 of Title 9 after any of the following occur:

46 (1) The county enacts a change to the zoning of the location.

47 (2) An entity listed under subsection (d) of this section is established.

48 (f) A county may establish civil penalties for violation of an ordinance or regulations enacted under this section.

SYNOPSIS

This Act limits the restrictions a county may impose on the operation of marijuana establishments as follows:

- Requires that a medical marijuana compassion center that was granted a conversion license for a retail marijuana store under § 1335B of Title 4 must be allowed to operate the retail marijuana store as a nonconforming use.
- Prohibits the denial of a building permit to a licensee under § 1335B of Title 4 if the improvements comply with the physical requirements for property zoned for that use. The nonconforming use laws for each county, § 2610, § 4920, and § 6920 of Title 9 all prohibit structural alterations if a building is a nonconforming use but § 1335B(a)(1) requires that a

conversion licensee continue to operate the location as a medical dispensing location. Thus, it is extremely likely that a compassion center with a conversion license for a retail marijuana store will need to make structural alterations to operate both as a medical dispensing location and as a retail marijuana store.

- Requires that a county must allow the minimum hours of operation for a retail marijuana store to be 9 a.m. until 9 p.m. on Mondays through Saturdays and noon until 8 p.m. on Sundays.

- In areas zoned for agricultural or industrial use, indoor, fully enclosed cultivation facilities may not be prohibited.

- In areas zoned for commercial or industrial use, retail marijuana stores may be prohibited from operating only within a ½ mile of another retail marijuana store and within 500 feet of a place of worship, school, licensed child care, residential treatment facility, park, or library.

The limits on county restrictions under this Act preempt and supersede all existing and future county ordinances or regulations regarding the operation of marijuana establishments.

Section 2 makes corresponding changes to § 1351 of Title 4 so that section applies only to municipalities. This Act also makes technical changes to use consistent language in subsections (a) and (b) of § 1351 and § 1351A. Under § 1302(17) of Title 4, “marijuana establishment” means all 4 types of entities licensed under Chapter 13 of Title 4.

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