SPONSOR: Rep. Neal & Sen. Poore
Reps. Heffernan, Morrison, Romer, Ross Levin, Snyder-Hall, K. Johnson; Sens. Walsh, Wilson

HOUSE OF REPRESENTATIVES
153rd GENERAL ASSEMBLY

HOUSE SUBSTITUTE NO. 1
FOR
HOUSE BILL NO. 48

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

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

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

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

NOW, THEREFORE:

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

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

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

(a) For purposes of this ~~section, the term "vehicle being used by a person with a disability" means a vehicle:~~

~~(1) That displays~~ section:

(1) "Accessible parking space" means any parking space or parking zone designated by an owner or lessee of any public or private property for use by a "vehicle being used by a person with a disability."

(2) "Vehicle being used by a person with a disability means a vehicle that meets both of the following criteria:

a. Displays a valid special license plate issued pursuant to § 2134 of this title on the rear of the vehicle, or that displays a valid parking placard issued pursuant to § 2135 of this title on the front windshield rearview

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

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

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

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

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

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

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

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

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

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

(e) A uniform parking summons may be attached to an unattended vehicle found in violation of this section by a person authorized to issue a summons for a violation of this section. It is prima facie evidence that the person or organization in whose name the unattended vehicle is registered is responsible for the violation. The owner or operator of the unattended vehicle may mail or deliver the summons and the designated fine and costs directly to the court identified on the summons instead of appearing before the court for arraignment on the charge, provided that the owner or operator self identifies and that the summons and fine and costs are received by the court at least 2 days before the arraignment date designated on the summons.

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

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

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

Section 2. Amend Subchapter XI, Chapter 41, Title 21 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

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

(a) For purposes of this section:

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

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

(b) Where accessible parking spaces are provided, they must be designed and constructed in compliance with the requirements of this section and with applicable regulations promulgated by the United States Department of Justice and the United States Department of Transportation under the Americans with Disabilities Act, Titles II and III; any applicable building code adopted by any county or municipality; and any statewide building code.

(c) Signage and other visual markings.

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

(2) Where a total of 4 or fewer parking spaces, including accessible parking spaces, are provided on a site, identification of accessible parking spaces is not required.

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

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

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

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

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

(d) In addition to meeting the standards and requirements under subsections (b) and (c) of this section, all applicable building codes adopted by any county or municipality, and any statewide building code, must meet the following requirements:

(1) For every 3 van accessible parking spaces required by federal law, 1 van accessible parking space must be created and marked for use only by a wheelchair or scooter user. Compliance with this paragraph is not required if

doing so would violate any applicable zoning or building code requirement governing the minimum number of required parking spaces.

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

(3) Accessible parking spaces and access aisles must be maintained so as to meet the requirements of this section. Snow, ice and debris must be removed as soon as is practicable. Access aisles must remain clear of obstructions, including plowed snow, bicycle racks, or shopping carts.

(4) No time limit may be imposed on the amount of time a vehicle may park in an accessible parking space, unless the space is a metered parking space.

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

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

(f) (1) Except as provided by paragraph (f)(3) of this section, no new accessible parking spaces may be installed, and no existing accessible parking spaces may be restriped, repainted, resurfaced or otherwise altered, until the county or municipal authority having jurisdiction over the construction or alteration of commercial buildings has issued a permit authorizing such action. A county or municipal authority may allow subsequent restriping, repainting, or resurfacing of a lot that has been permitted in accordance with this section at least once after [the effective date of this Act] without a permit where no change is made to the parking plan and the property remains compliant with the requirements of this section.

(2) A county or municipal government may assess a civil penalty of up to $500 for a violation of this subsection. Before imposing a fine, the county or municipal government must allow 90 days for the responsible party to cure the violation.

(3) In lieu of a permit under paragraph (f)(1) of this section, any facility covered under the Architectural Accessibility Act, Chapter 73 of Title 29, must receive a letter of approval from the Architectural Accessibility Board that confirms compliance with this section.

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

(h) This section does not apply to on-street parking or any parking space where cars are parked on the side of a public road or street.

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

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

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

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

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

(b) The county government of each of the 3 Delaware counties and the municipal government of each incorporated municipality within the State shall adopt regulations or ordinances requiring that no new accessible parking space be constructed and no existing accessible parking space be installed, restriped, repainted, resurfaced, or otherwise altered until the county government or municipality issues a permit as required by § 4183A of Title 21. Upon completion, the entity issuing the permit shall confirm compliance as set forth in § 4183A(g) of Title 21.

~~(b)~~ (c) The ~~signage~~ regulations or ordinances adopted pursuant to ~~subsection (a)~~ subsections (a) and (b) of this section must include an enforcement provision, a penalty provision, and a provision which requires an enforcement officer to first issue a written warning to an individual or artificial entity who is required to ~~erect and maintain signage,~~ obtain a permit and to construct and maintain accessible parking spaces, but has failed to do ~~so.~~ so, consistent with the obligations of §4183A 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 maintained the required signage, the enforcement officer may issue a summons or apply for a warrant in the name of the offending individual or artificial entity.~~

~~(c) A~~ (d) To comply with this section, a municipality may elect to adopt the ~~signage~~ regulations or ordinances of the county government of the county in which the municipality is located. A municipality which elects to do so may also adopt additional regulations or ordinances as required by its own particular conditions. Whether a municipality adopts its own ~~signage~~ regulations or ordinances, or adopts the regulations or ordinances of the county along with additional regulations or ordinances to meet particular conditions, the municipality's adopted regulations or ordinances may not be less restrictive than those of the county.

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

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

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

(b) The county government of each of the 3 Delaware counties and the municipal government of each incorporated municipality within the State shall adopt regulations or ordinances requiring that no new accessible parking space be constructed and no existing accessible parking space be installed, restriped, repainted, resurfaced, or otherwise altered until the county government or municipality issues a permit as required by § 4183A of Title 21. Upon completion, the entity issuing the permit shall confirm compliance as set forth in § 4183A(g) of Title 21.

~~(b)~~ (c) The ~~signage~~ regulations or ordinances adopted pursuant to ~~subsection (a)~~ subsections (a) and (b) of this section must include an enforcement provision, a penalty provision, and a provision which requires an enforcement officer to first issue a written warning to an individual or artificial entity who is required to ~~erect and maintain signage,~~ obtain a permit and to construct and maintain accessible parking spaces, but has failed to do ~~so.~~ so, consistent with the obligations

under § 4183A 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 maintained the required signage, the enforcement officer may issue a summons or apply for a warrant in the name of the offending individual or artificial entity.~~

~~(c) A~~ (d) To comply with this section, a municipality may elect to adopt the signage regulations or ordinances of the county government of the county in which the municipality is located. A municipality which elects to do so may also adopt additional regulations or ordinances as required by its own particular conditions. Whether a municipality adopts its own signage regulations or ordinances, or adopts the regulations or ordinances of the county along with additional regulations or ordinances to meet particular conditions, the municipality's adopted regulations or ordinances may not be less restrictive than those of the county.

SYNOPSIS

HS 1 to HB 42 adds provisions to Title 21 to better regulate and enforce accessible parking spaces in Delaware. Although federal and state laws currently require specific design and construction requirements for accessible spaces, these laws are often ignored because of a lack of enforcement.

To that end, this Act largely adopts federal design and construction requirements under the Americans with Disabilities Act (ADA) and requires that a permit be issued by the local county or municipal authority to ensure that accessible parking spaces are compliant with accessibility laws. This Act permits a county or municipal government to assess a civil penalty of up to $500 on an individual or entity that does not comply with the design and construction requirements of this Act. This Act also increases the fine for unlawfully occupying an accessible parking space. Rather than imprisonment, the penalty for unlawfully occupying an accessible parking space may include community service.

This Act does create a new state requirement that 1 of every 3 accessible parking spaces be van accessible in large parking lots. Under the ADA, only 1 of every 6 accessible parking spaces must be van accessible in large parking lots.

This Act adds provisions in Titles 9 and 22 to require county and municipal governments to adopt regulations and ordinances incorporating Title 21's new accessible parking space requirements, including the requirement that property owners obtain a permit and that the permitting agency verify that the new or modified accessible parking spaces is compliant with the law.

HS1 to HB 42 differs from HB 42 in that it requires state facilities to obtain approval through the Architectural Accessibility Board in lieu of a permit. It also clarifies that this Act does not apply to on-street parking.