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HOUSE OF REPRESENTATIVES
153rd GENERAL ASSEMBLY

HOUSE BILL NO. 135

AN ACT TO AMEND TITLE 10 OF THE DELAWARE CODE RELATING TO HOMELESSNESS.

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

1 Section 1. Amend Part V, Title 10 of the Delaware Code by making deletions as shown by strike through and
2 insertions as shown by underline as follows:

3 Chapter 82. Protections for Delawareans Experiencing Homelessness

4 §8201. Definitions.

5 For purposes of this chapter:

6 (1) “Adequate alternative indoor space” means a space that is legally and physically accessible to an
7 individual, and that does not require an individual to sacrifice any other personal right afforded to the individual under
8 federal, state, or local law.

9 a. An adequate alternative indoor space must do all of the following:

10 1. Be available indefinitely to the individual without requiring daily re-application.

11 2. Be free of charge.

12 3. Accommodate any disabilities.

13 4. Accept pets.

14 5. Accommodate partners (whether legally married or not), family members, or other support
15 persons.

16 6. Accommodate the individual’s personal property.

17 b. Tiny homes or similar structures may be an alternative indoor space if they are climate-controlled, as
18 appropriate to the local climate conditions and possess the following:

19 1. Locking doors.

20 2. Individual sanitary and cooking facilities or common facilities sufficient to meet the needs of the
21 tiny home community.

22 c. An alternative indoor space in a neighboring municipality or county in the State is presumptively
23 inaccessible, unless adequate transportation is available, at no cost to the individual, to ensure the individual can
24 attend to any personal or professional business in the jurisdiction of origin.

25 (2) “Individual experiencing homelessness” means an individual lacking a fixed, regular, and adequate
26 nighttime residence, and includes the following:

27 a. Individuals sharing the housing of other persons due to loss of housing, economic hardship or a
28 similar reason.

29 b. Individuals living in motels, hotels, recreational vehicle parks, or camping grounds due to the lack
30 of alternative adequate accommodations.

31 c. Individuals living in emergency or transitional shelters.

32 d. Individuals abandoned in hospitals.

33 e. Individuals awaiting foster care placement.

34 f. Individuals living in a private place not designed for or ordinarily used as a regular sleeping
35 accommodation for human beings, within the meaning of 42 U.S.C. § 11302(a)(2).

36 g. Individuals living in cars, parks, public spaces, abandoned buildings, substandard housing, bus or
37 train stations, or similar settings.

38 h. Individuals who would meet the definition of homelessness under 42 U.S.C. § 11434a(2) but for
39 not being a child or youth.

40 (3) “Life sustaining activities” includes moving, resting, sitting, standing, lying down, sleeping, protecting
41 oneself from the natural elements, eating, drinking, and storing personal property as needed to safely shelter oneself.

42 (4) “Public space” means any property that is owned or leased, in whole or in part, by any state or local
43 government entity or any property, upon which there is an easement for public use and that is held open to the public,
44 or any federal land that is open to the public, where local or state law enforcement has jurisdiction to enforce local or
45 state laws, including plazas, courtyards, parking lots, sidewalks, public transportation facilities and services, public
46 buildings, shopping centers, underpasses and lands adjacent to roadways, and parks.

47 (5) “Recreational vehicle” means a travel trailer, camping trailer, park trailer, camper, camper motor home, or
48 similar accommodation, which is primarily designed as temporary living quarters for recreational camping or for
49 seasonal or travel use and either has its own motor power or is mounted on, or drawn by, another vehicle.

50 § 8202. Permitted use of public space.

51 (a) All individuals experiencing homelessness may use public spaces for life sustaining activities, provided that
52 such activities do not obstruct the normal movement of pedestrian or vehicular traffic in such a manner that creates a hazard
53 to others, unless sufficient adequate alternative indoor space is available to the homeless individual in a given jurisdiction
54 and has been offered to the individual, including transportation for the individual and their belongings.

55 (b) An individual experiencing homelessness must receive the same degree of protection for personal property
56 stored in public places as personal property stored in a private dwelling, which includes protections against unreasonable
57 search and seizure.

58 (c) An individual experiencing homelessness may not be required to move a motor vehicle or a recreational
59 vehicle provided that the vehicle is parked on public property and the vehicle is not parked in a position so as to obstruct
60 the normal movement of traffic or create a hazard to other traffic upon the highway.

61 (d) If a motor vehicle or recreational vehicle must be moved because the vehicle is obstructing normal movement
62 of traffic or creates a hazard to other traffic on the roadway, the individual experiencing homelessness must be permitted to
63 relocate the vehicle before a parking ticket is issued or the vehicle is towed. The individual experiencing homelessness must
64 be permitted to retrieve items from a towed vehicle and to retrieve the vehicle from storage free of charge or at a reduced
65 rate, upon consideration of ability to pay.

66 (e) Notwithstanding subsections (a) through (c) of this section, State and local governments may make and enforce
67 reasonable time restrictions on public spaces so long as the time restrictions apply to all individuals in the same manner and
68 are not disproportionately enforced against individuals experiencing homelessness.

69 § 8203. Affirmative defense.

70 It is an affirmative defense to a charge of violating a statute or ordinance criminalizing life-sustaining activity
71 permitted under § 8202 of this chapter that the individual had no access to an adequate alternative indoor space in which to
72 undertake the prohibited conduct. It is the responsibility of the court to notify the charged individual of the availability of
73 this defense and how to raise the defense before a plea is entered. Once the defense is raised, there is a rebuttable
74 presumption that adequate alternative indoor space did not exist, and the prosecution carries the burden of proving the
75 availability of an adequate alternative indoor space.

76 § 8204. Enforcement.

77 The attorney general may commence a civil action, on its own initiative or in response to a complaint, in Superior
78 Court on behalf of the State against any State or local government, government agency, or government official, that violates
79 this chapter.

80 § 8205. Private right of action.

81 (a) Any individual or organization adversely affected by a violation of this chapter, may commence a civil action
82 in Superior Court against the State or local government, government agency, or any government official that implements or
83 enforces a rule, ordinance, regulation, law, policy, or practice that violates this chapter.

84 (b) In any civil action under this section, the court shall hold unlawful and set aside the limitation or practice that
85 violates this chapter.

86 (c) In any civil action under this section, the court may award appropriate equitable relief, including temporary,
87 preliminary, or permanent injunctive relief.

88 (d) The court shall award the cost of litigation and reasonable attorney's fees to a prevailing plaintiff. A plaintiff
89 may not be liable to a defendant for costs or attorney's fees in a non-frivolous action under this section.

90 §8206. Abrogation of state immunity.

91 A State or local government, government agency, or government official that enforces or maintains a limitation or
92 requirement that violates this chapter does not have sovereign immunity from suit. For any suit brought under this chapter,
93 the General Assembly expressly waives sovereign immunity under the 11th Amendment of the Federal Constitution, Section
94 9 of Article I of the Delaware Constitution, Chapter 40 of Title 10 of the Delaware Code, or any similar provision.

95 §8207. Severability.

96 If a provision of this Act or the application of this Act to a person or circumstance is held invalid, the provisions of
97 this Act are severable if the invalidity does not affect the other provisions of this Act that can be given effect without the
98 invalid provision or the application of this Act that can be given effect without the invalid application.

99 Section 2. This Act is known as the Dr. DeBorah Gilbert White Anti-Cruelty to Delawareans Experiencing
100 Homelessness Act.

SYNOPSIS

Because Delaware lacks an adequate amount of emergency shelter beds, housing support services, and affordable housing units, only 952 out of 7,131 households that contacted the Housing Alliance Delaware's homelessness hotline in 2024 were referred to housing assistance. Without adequate shelter available, thousands of individuals experiencing homelessness are forced to seek shelter on the streets, parks, parking lots, and sidewalks, which puts them in constant conflict with local residents, businesses, and the police. Instead of providing adequate housing, local governments are using emergency services, hospital services, and the criminal justice system to remove unhoused individuals from public spaces, exacerbating the barriers unhoused individuals face to achieve stable housing and wasting taxpayer money. This Act seeks to incentivize localities to coordinate or create adequate emergency housing, permanent housing, and wrap-around services for individuals experiencing homelessness, which will ease the financial burden placed on emergency services, hospitals, and the criminal justice system, while providing unhoused individuals stability and dignity.

To that end, this Act does the following:

1. Permits an individual experiencing homelessness to conduct life sustaining activities in public, so long as such activities do not obstruct the normal movement of pedestrian or vehicular traffic in such a manner that creates a hazard to others, unless adequate alternative indoor space is available to the individual in a given jurisdiction and has been offered to the individual, including transportation for the individual and their belongings.

2. Mandates that an individual experiencing homelessness receive the same degree of protection for personal property stored in public places as personal property stored in a private dwelling, which includes protections against unreasonable search and seizure.

3. Prohibits the State or local jurisdiction from requiring an individual experiencing homelessness to move a motor vehicle or a recreational vehicle provided that the vehicle is parked on public property and the vehicle is not parked in a position to obstruct the normal movement of traffic or create a hazard to other traffic upon the highway.

4. Provides that, if a motor vehicle or recreational vehicle must be moved because the vehicle is obstructing normal movement of traffic or creates a hazard to other traffic on the roadway, the individual experiencing homelessness must be permitted to relocate the vehicle before a parking ticket is issued or the vehicle is towed.

This Act does not prohibit State and local governments from making and enforcing reasonable time restrictions on public spaces (including public parks and parking lots) so long as those time restrictions apply to everyone and are not disproportionately enforced against individuals experiencing homelessness.

This Act further permits an individual experiencing homelessness to raise a violation of this Act as an affirmative defense to any charge of violating a statute or ordinance that prohibits life-sustaining activities protected under this Act. The attorney general may commence a civil action against any State or local government, government agency, or government official that violates this Act and this Act also contains a private right of action. This Act specifically waives sovereign immunity.

This Act is named in honor of Dr. DeBorah Gilbert White.