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Sens. Ennis, Henry; Reps. Brady, Briggs King, Osienski,
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DELAWARE STATE SENATE
149th GENERAL ASSEMBLY

SENATE BILL NO. 239

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

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

Section 1. Amend § 1602, Title 16 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 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 of this State. In addition, it is 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, ~~unless the context clearly requires otherwise, the following words or phrases shall have the following meanings:~~

(1) "Dumping" means the deposit of litter in substantial quantities on public or private property.

(2) "LIEF" means the Littering Investigation and Enforcement Fund.

(+ (3) "Litter" ~~shall include~~ includes all rubbish, waste material, refuse, cans, bottles, garbage, trash, debris, dead ~~animals~~ animals, or other discarded materials of every kind and description.

(2) (4) "Public or private property" ~~shall include~~ includes the right-of-way of any road or highway; any body of water or watercourse, or the shores or beaches thereof; any park, playground, building, ~~refuge~~ refuge, or conservation or recreation area; and any residential or farm properties, ~~timberlands~~ timberlands, or forests.

(5) "Substantial quantity" means a gross, uncompressed volume of litter equal to or greater than 32 gallons or 4.28 cubic feet, which is the capacity of a standard garbage can.

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 and by redesignating accordingly:

§ 1604. Unlawful activities.

(a) Littering. It ~~shall be~~ is unlawful for ~~any person or persons~~ a person to ~~dump~~, deposit, ~~throw~~ throw, or leave, or cause or permit the ~~dumping~~, depositing, placing, ~~throwing~~ throwing, or leaving of litter on any public or private property of this State, ~~or any waters in this State~~, unless all of the following conditions are met:

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

(2) ~~Such~~ The litter is placed in a litter receptacle or container installed on ~~such property~~; and or at the property.

(3) ~~Such~~ The person is the owner or tenant in lawful possession of ~~such~~ the property or has first obtained consent of the owner or tenant in lawful possession, or ~~unless~~ the act is done under the personal direction of ~~said~~ 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 any public or private property, except under paragraphs (a)(1) through (a)(3) of this section.

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) ~~Any~~ A person found guilty of ~~violating this chapter must~~ 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~~ offense, and \$75 and up to 25 hours of community service for a second offense within 2 years.

(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. Each dumping of a substantial quantity of litter constitutes a separate offense under this chapter.

(3) If the offense occurred on or along a "Delaware byway," as defined in § 101 of Title 17, an additional mandatory penalty of \$500 must be imposed for every first, second, and subsequent offense, in addition to the fine.

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

a. ~~pick~~ Pick up and remove from any public street, highway street, highway; or public or private right-of-way, or right-of-way; public beach, stream, bank or bank; or public park any and all litter deposited or dumped thereon on the property by anyone prior to before 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 LIEF for the use of law enforcement agencies for the investigation of littering and dumping offenses and the prosecution of offenders. Disbursement from LIEF may be made only at the discretion of a fund administrator who is named by and serves at the pleasure of the Governor.

~~(b) For the purposes of this chapter the Justices of the Peace Courts shall have jurisdiction. The Justice of the Peace Court has jurisdiction over a violation of this chapter.~~

(c) ~~The Court is hereby directed to~~ shall make public the names of persons convicted of violating this chapter.

~~(d)(1) Any duly constituted peace officer in the State, A peace officer of this State who charges any a person with any offense~~ an offense under this chapter may, in addition to issuing a summons for ~~such~~ the offense, 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 pursuant to this under paragraphs (a)(1) through (a)(3) of this section shall be remitted to the Court to which the summons is returnable and shall be~~ must be remitted to and received by the Court to which the summons is returnable within 10 days from the date of ~~arrest (excluding~~ arrest, excluding Saturday and ~~Sunday)~~ Sunday, and shall may be paid only by check or money order.

b. Restitution made to LIEF under paragraph (a)(4)b. 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, and may be paid in a manner approved by the Court.

(3) ~~The fine imposed pursuant to~~ under this subsection ~~shall~~ must be the minimum fine as provided for in subsection (a) of this section, plus other costs as may be assessed by law.

(4) ~~Voluntary assessment forms,~~ “Voluntary assessment form,” as used in this section, means the written agreement or document signed by the violator ~~wherein~~ in which the violator agrees to pay by mail the fine for the offense described ~~therein~~ in the agreement or document together with costs and penalty assessment.

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 and by redesignating accordingly:

§ 1606. Prima facie evidence.

~~(a)(1) Whenever litter is thrown, deposited, dropped or dumped from any~~ The throwing, depositing, dropping, or dumping of litter from a motor vehicle, boat, airplane airplane, or other conveyance in violation of this chapter, it shall be chapter is prima facie evidence that the operator of ~~said~~ the conveyance ~~shall have~~ violated this chapter and chapter.

(2) If, under paragraph (a)(1) of this section, a motor vehicle is used and the identity of the operator is not discernable, there is a rebuttable presumption that the registered owner of the motor vehicle caused or contributed to the violation.

87 (b) ~~licenses~~ A license to operate ~~such conveyances~~ a conveyance listed in paragraph (a)(1) of this section may be
88 suspended for a period not to exceed 30 days together with, or in lieu of, other penalties for littering ~~in the Code, under this~~
89 chapter or another law of this State, unless But, if littering or dumping from said vehicle a conveyance listed in subsection
90 (a) of this section is a first ~~offense in which case~~ offense, the license ~~shall~~ may not be suspended and the sanctions provided
91 in § 1605 of this title ~~shall apply~~ apply.

92 Section 6. Amend § 1607, Title 16 of the Delaware Code by making deletions as shown by strike through and
93 insertions as shown by underline as follows and by redesignating accordingly:

94 § 1607. Receptacles to be provided.

95 (a) ~~All A public authorities and agencies~~ authority or agency having supervision of ~~properties~~ a property of this
96 State ~~are authorized, empowered and instructed to~~ shall do all of the following:

97 (1) ~~establish~~ Establish and maintain receptacles for the deposit of litter at appropriate locations ~~where such if a~~
98 property is frequented by the public, and to public.

99 (2) ~~post signs~~ Post signs directing persons ~~to such receptacles and the public to the receptacles~~ serving notice
100 of this chapter, ~~and to~~ chapter.

101 (3) ~~otherwise~~ Otherwise publicize the availability of litter receptacles and the requirements of this chapter.

102 (b) A public authority or agency may designate a park or recreation area as a carry-in and carry-out facility, by
103 posting a notice to visitors, in which case the public authority or agency is not required to provide receptacles under
104 subsection (a) of this section.

105 Section 7. Amend § 1608, Title 16 of the Delaware Code by making deletions as shown by strike through and
106 insertions as shown by underline as follows:

107 § 1608. Enforcement.

108 All law-enforcement agencies of the State, including enforcement personnel of the Department of Natural
109 Resources and Environmental Control, ~~shall have authority to~~ may enforce this chapter.

SYNOPSIS

This Act addresses the serious problem of individuals dumping large quantities of trash on public and private property, by:

- Defining a “substantial quantity” of litter as being more than an amount contained in a standard garbage can.
- Providing enhanced penalties for the unlawful dumping of a substantial quantity of litter.
- Creating the Litter Investigation and Enforcement Fund, funded through restitution paid by offenders of this chapter, to support investigations to identify those who violate this chapter.

This Act clarifies that a public authority or agency is not required to provide litter receptacles in a park or recreation area that is designated as a carry-in and carry-out facility.

This Act also makes technical corrections to conform existing law to the Delaware Legislative Drafting Manual.

Author: Senator Hansen