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DELAWARE STATE SENATE  
151st GENERAL ASSEMBLY

SENATE BILL NO. 47

AN ACT TO AMEND TITLE 21 OF THE DELAWARE CODE RELATING TO DISCARDING YARD WASTE ON A HIGHWAY.

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

Section 1: Amend § 4189, Title 21 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 4189. Putting glass or other items on a highway prohibited.

(a) ~~No~~ A person shall ~~may not~~ throw or deposit ~~upon any~~ on a highway or adjacent property any glass bottle, glass, nails, tacks, wire, ~~eans~~ cans, or any other substance likely to injure ~~any a~~ a person, ~~animal~~ animal, or vehicle ~~upon~~ such on the highway or adjacent property.

(b) ~~Any~~ A person who drops, or permits to be dropped or thrown, ~~upon any~~ on a highway or adjacent property any destructive or injurious material shall immediately remove the ~~same~~ destructive or injurious material or cause it to be removed.

(c) ~~No~~ A person shall ~~may not~~ throw or deposit any goods, merchandise, ~~bundles~~ bundles, or litter of any ~~kind~~ kind, including yard waste, ~~upon~~ on a highway.

(d) ~~Any~~ A person removing a wrecked or damaged vehicle from a highway shall remove any glass or other injurious substance dropped ~~upon~~ on the highway from ~~such~~ the wrecked or damaged vehicle.

(e) ~~No~~ A person shall ~~may not~~ leave, drop, throw ~~away~~ away, or otherwise dispose of trash of any ~~description~~ description, including yard waste, in quantity to exceed 5 pounds or 1 cubic foot ~~upon~~ on or alongside ~~any a~~ a highway.

(f) If ~~any~~ a person witnesses the violation of subsection (a), ~~(b)~~ (b), or (c) of this section by a person in a vehicle, and the identity of the offender is not otherwise apparent, there ~~shall be~~ is a rebuttable presumption that the registered ~~owner~~ owner, if the driver's identity cannot be ~~ascertained~~ ascertained, or the driver of the vehicle is responsible for ~~such~~ the violation.

(g)(1) ~~Whoever violates this section shall be~~ A person who violates subsection (a),(b),(c), or (d) of this section is guilty of an unclassified misdemeanor, and ~~shall be fined~~ is subject to a fine of not less than \$115 nor more than \$277.50

and up to 8 hours of community service for a first offense and not less than \$125 nor more than \$287.50 and up to 25 hours of community service for a second offense within 2 years.

(2) A person who violates subsection (e) of this section is guilty of an unclassified misdemeanor, and is subject to a fine of not less than \$460 nor more than \$690. For each subsequent offense occurring within 3 years of a former offense, the person is subject to a fine of not less than \$575 nor more than \$1,150.

(3) The minimum fines for a violation of this section are not subject to suspension.

(4) A violation of this section, whether a first, second, or subsequent offense, that takes place on or along a “Delaware byway,” as defined in § 101 of Title 17, is subject to a mandatory penalty of \$500, which must be imposed in addition to the fine.

~~(h) The rebuttable presumption set forth in subsection (f) of this section shall does not apply to operators of buses carrying 9 or more persons. Whoever violates subsection (e) of this section shall be guilty of an unclassified misdemeanor, and shall be fined not less than \$460 nor more than \$690. For each subsequent offense occurring within 3 years of a former offense, the person shall be fined not less than \$575 nor more than \$1,150. The minimum fines for a violation of this section shall not be subject to suspension. A violation of this section, whether a first, second, or subsequent offense, that takes place on or along a “Delaware byway,” as defined in § 101 of Title 17, is subject to a mandatory penalty of \$500, which must be imposed in addition to the fine.~~

(i) As used in this section, “yard waste” means decomposable waste materials generated by yard and lawn care and includes leaves, grass trimmings, brush, wood chips, and shrub and tree trimmings.

#### SYNOPSIS

This Act clarifies that yard waste is included in the types of trash and litter that it is illegal to discard on a highway. This Act also defines “yard waste.” This Act also establishes an upper limit to the fine for a first violation of subsections (a),(b),(c), or (d) of § 4189 of Title 21.

When codifying the 130th General Assembly’s amendments to § 4189 of Title 21, a redesignating error occurred. The penalty for violating subsection (e), littering in a quantity in excess of 5 pounds or 1 cubic foot on or alongside a highway, was incorrectly placed into subsection (h). The redesignating error also resulted in the prohibition against suspending minimum fines being incorrectly placed into subsection (h). This Act corrects these codifying errors by moving the provisions from subsection (h) into subsection (g), which should contain all the penalty-related provisions. The 145th General Assembly amended § 4189 of Title 21 to add enhanced penalties for a violation that occurs on a Delaware byway. The enhancement was added to both subsections (g) and (h). This Act removes the penalty enhancement language from subsection (h). The removal from subsection (h) does not result in a functional change, but rather corrects what began with the redesignating error.

When the violation for littering in a quantity in excess of 5 pounds or 1 cubic foot on or alongside a highway was created, the General Assembly created a new, higher penalty that applied to anyone who committed that particular violation. However, the penalty provision for the other offenses in the section was not revised to indicate that it applied to all violations except the newly created violation. This Act makes that correction in subsection (g)(1) by striking the word “section,” inserting “subsection” and identifying the applicable subsections. This Act also revises subsection (g) for readability by breaking it into paragraphs by topic.

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

Author: Senator Lawson