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DELAWARE STATE SENATE
150th GENERAL ASSEMBLY

SENATE SUBSTITUTE NO. 1
FOR
SENATE BILL NO. 5
AS AMENDED BY
SENATE AMENDMENT NO. 1

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. It is also 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:

§ 1603. Definitions.

As used in this ~~chapter, unless the context clearly requires otherwise, the following words or phrases shall have the following meanings:~~ chapter:

(1) "Dumping" means the deposit of litter in a substantial quantity 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.

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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:

§ 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 either of the following 2 conditions is met:

(1) ~~Such~~ The property is designated by the State or by any of its agencies or political subdivisions for the ~~disposal of~~ management 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) Both of the following apply:

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

~~(3) Such~~ b. 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 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:

§ 1605. Penalties; jurisdiction; voluntary assessment form.

(a)(1) ~~Any~~ A person found guilty of ~~violating this chapter shall~~ 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 of the first offense.

(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 of the first offense. Each instance of dumping 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.~~ An additional mandatory penalty of $500 must be imposed, in addition to the fine, for every first, second, and subsequent offense, if the offense occurred in any of the following locations:

a. On or along a Delaware byway, as defined in § 101 of Title 17.

b. A State park, forestry area, or fish and wildlife area.

c. A federal wildlife refuge.

d. Land within the State that is administered by the United States Department of Interior, National Park Service.

(4) In ~~addition, any~~ addition to the penalties listed in paragraphs (a)(1) through (a)(3) of this section, 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 or~~ highway, public or private right-of-way, ~~or~~ public beach, stream, ~~bank~~ bank, or public park ~~any and~~ all litter deposited or dumped ~~thereon~~ on the property by anyone ~~prior~~ before to 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 the LIEF as a subaccount of the Special Law Enforcement Assistance Fund established under Subchapter II, Chapter 41, of Title 11. Disbursement of LIEF funds must be authorized under the procedures established under § 4113 of Title 11, for the purpose of investigation, enforcement, and remediation of unlawful littering or dumping.

(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~~ littering under ~~this chapter~~ § 1604(a) of this title 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~~ 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) and shall be paid only by check or money order.~~ Sunday.

b. Restitution made to the 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.

(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:

§ 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.

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

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

§ 1607. Receptacles to be provided.

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

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

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

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

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

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

§ 1608. Enforcement.

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