SPONSOR: Sen. Paradee & Rep. Osienski
Sens. Hoffner, Sokola, Townsend; Reps. Morrison, Snyder-Hall

DELAWARE STATE SENATE
153rd GENERAL ASSEMBLY

SENATE BILL NO. 75
AS AMENDED BY
SENATE AMENDMENT NO. 1
AND
SENATE AMENDMENT NO. 2

AN ACT TO AMEND TITLE 4 OF THE DELAWARE CODE RELATING TO LOCAL CONTROL OF RETAIL MARIJUANA STORES BY COUNTIES.

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

Section 1. Amend § 1302, Title 4 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows and redesignating accordingly:

§ 1302. Definitions.

(24) "Park" means real property that is owned, developed, or controlled by a government entity for outdoor passive or active recreational use. "Park" does not mean real property recorded on a plan as a development's open space.

Section 2. Amend § 1351, Title 4 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 1351. Local ~~control.~~ control; municipalities.

(a) A municipality may prohibit the operation of marijuana ~~cultivation facilities, marijuana product manufacturing facilities, marijuana testing facilities, or retail marijuana stores~~ establishments through the enactment of an ordinance or through an initiated or referred measure.

(b) A municipality ~~or county~~ may enact ordinances or regulations that ~~are~~ do not ~~in~~ conflict with this ~~chapter or in conflict with~~ chapter, including regulations ~~enacted by the Commissioner,~~ promulgated under this chapter, governing the time, place, manner, and number of marijuana establishment operations. A municipality ~~or county~~ may establish civil penalties for violation of an ordinance or regulations governing the time, place, and manner that a marijuana establishment may operate in ~~such municipality or county.~~ the municipality.

Section 3. Amend Subchapter IV, Chapter 13, Title 4 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 1351A. Local control; counties.

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(a)(1) A county may limit the operation of marijuana establishments by enacting ordinances or regulations that do not conflict with this chapter, including regulations promulgated under this chapter.

(2) An ordinance or regulation governing the time or manner of marijuana establishment operations must allow a retail marijuana store to be open no less than the following hours:

a. Monday through Saturday, between 9 a.m. and 9 p.m.

b. Sunday, between noon and 8 p.m.

(3) Notwithstanding Chapter 26, Chapter 49, or Chapter 69 of Title 9, this section preempts and supersedes all existing and future county ordinances or regulations regarding the operation of marijuana establishments licensed under this chapter.

(b) If a compassion center is granted a conversion license for a retail marijuana store under § 1335A and § 1335B of this title, a county must allow the retail marijuana store to operate as a nonconforming use under § 2610, § 4920, or § 6920 of Title 9, however a county may not deny a building permit to a licensee under § 1335A and § 1335B of this title if the improvements comply with the physical requirements for properties in that zoning category.

(c) In an area that is zoned for agricultural or industrial use, a county may not prohibit a marijuana cultivation facility that is indoors and fully enclosed.

(d) In an area that is zoned for commercial or industrial use, a county may not prohibit the operation of a retail marijuana store except as follows:

(1) Within a ½ mile of another retail marijuana store.

(2) Within 500 feet of any of the following:

a. A school or institution of higher education.

b. A child care facility licensed under Chapter 30A of Title 14.

c. A residential treatment facility, as defined in § 2203 of Title 16.

d. A park or library.

(e) A marijuana establishment that is operating lawfully may continue to operate as a nonconforming use under § 2610, § 4920, or § 6920 of Title 9 after any of the following occur:

(1) The county enacts a change to the zoning of the location.

(2) An entity listed under subsection (d) of this section is established.

(f) A county may establish civil penalties for violation of an ordinance or regulations enacted under this section.

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