

CHAPTER 161
FORMERLY
SENATE BILL NO. 114

AN ACT TO AMEND TITLE 7 OF THE DELAWARE CODE RELATING TO VIOLATIONS OF RULES AND REGULATIONS.

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

Section 1. Amend § 4702, Title 7 of the Delaware Code as follows:

§ 4702. Violations of rules and regulations; penalties.

(a) Any person convicted of violating any rule or regulation promulgated by the Department of Natural Resources and Environmental Control pursuant to this chapter shall be:

(1) Fined not less than \$50 nor more than \$100, plus the costs of prosecution and court costs, for any rule or regulation designated by the Department of Natural Resources and Environmental Control as a class D environmental violation. Any person convicted of a class D environmental violation within 5 years of a prior conviction for a class D environmental violation shall be fined not less than \$100 nor more than \$500, plus the costs of prosecution and court costs.

(2) Fined not less than \$50 nor more than \$250, plus the costs of prosecution and court costs, or imprisoned not more than 10 days, or both, for any rule or regulation designated by the Department of Natural Resources and Environmental Control as an unclassified misdemeanor.

(3) Fined under subsection (k) of this section for parking violations contained in subsection (k) of this section.

(b) If an offense designated as a class D environmental violation or an unclassified misdemeanor under subsection (a) of this section involves the failure to acquire a surf fishing vehicle permit or failure to pay an entrance fee required under this chapter, the violator shall be assessed the cost of the permit, or fee, in addition to the fines and costs imposed under subsection (a) of this section.

(c) In addition to any fines, costs, or imprisonment imposed under subsection (a) of this section, any person who is convicted of any offense involving damaging, destroying, or removing state park property shall be required to make restitution to the Department of Natural Resources and Environmental Control for replacement or restoration of such property. Furthermore, in lieu of, or in addition to any fines, costs, or imprisonment imposed under subsection (a) of this section or any restitution imposed under this subsection, the court may order violators convicted of any offense involving damaging, destroying, or removing state park property to perform work projects in state parks.

(d) Any fine imposed for any violation pursuant to this chapter shall not be suspended to any amount less than the minimum prescribed fine.

(e) Any conviction of a class D environmental violation, for a first offense, shall not be reported on criminal history records provided by the State Bureau of Identification for employment purposes under § 8513(c) of Title 11. This provision shall not apply to a subsequent conviction of a class D environmental violation within 5 years, and any such subsequent conviction shall be reported on a criminal history record provided by the State Bureau of Identification for employment purposes under § 8513(c) of Title 11.

(f) This section shall not be construed as authorizing the Department of Natural Resources and Environmental Control to change any penalty for violating any rule or regulation of the Department of Natural Resources and Environmental Control.

(g) All rules and regulations of the Department of Natural Resources and Environmental Control promulgated pursuant to this chapter shall have the effect of law and shall be published in at least 2 newspapers of general circulation in the territory to be affected, at least 30 days prior to the time the rule or regulation becomes effective, except in case of an emergency when the Department of Natural Resources and Environmental Control shall give such advance notice as it deems necessary or desirable.

(h) The Justice of the Peace Court shall have jurisdiction over violations of the rules and regulations of the Department of Natural Resources and Environmental Control promulgated pursuant to this chapter with the

condition that any person arrested for such violation shall either be taken before the closest available justice of the peace in the county where such violation is alleged to have occurred or be provided a voluntary assessment form in accordance with § 1311 of this title.

(i) Notwithstanding subsection (h) of this section, an arresting officer may issue a summons to any person arrested for any violation delineated in this chapter to have said person appear at a subsequent date at the Justice of the Peace Court which is the nearest available Justice of the Peace Court to the place of the arrest, during the regularly scheduled hours of said Court. For the purpose of this section, the summons for later appearance shall be sufficient to grant jurisdiction over the offense to the said nearest available justice of the peace.

(j) For the purpose of this section, a justice of the peace is available when he or she is present at court.

(k) Notwithstanding subsection (h) of this section, a summons in the appropriate form to be adopted by the Department of Natural Resources and Environmental Control may be attached to an unattended vehicle found in violation of any rule or regulation for parking in state parks by an authorized officer.

(1) The Department of Natural Resources and Environmental Control may adopt a schedule of civil penalties, between a minimum of \$10 and a maximum of \$25, for all violations delineated by its rules and regulations for parking in state parks. No court costs or other administrative fee shall be assessed if a civil penalty is paid by voluntary assessment.

(2) Any violation of this subsection shall be subject to a civil penalty only. Such violations shall not be classified as a criminal offense and shall not qualify as a prior conviction for purposes of § 4218(c)(1)f. of Title 11, whether or not such violation occurred prior to the enactment of this paragraph.

(3) The process for disposition of a summons attached to an unattended vehicle shall be as follows:

a. *Payment by voluntary assessment.*— An owner or operator shall pay the amount on the summons to the voluntary assessment center listed on the summons, which center may be either a voluntary assessment center established by the Department of Natural Resources and Environmental Control or the Justice of the Peace Court Voluntary Assessment Center. In lieu of payment, an owner or operator may notify the applicable voluntary assessment center, within the time period specified on the summons, that the owner or operator requests a hearing in the Justice of the Peace Court. No court costs or other administrative fee shall be assessed if a civil penalty is paid by voluntary assessment. The penalty assessment pursuant to the Delaware Victim Compensation law, Chapter 90 of Title 11, shall not be assessed on civil penalties pursuant to this subsection. Moneys received either through voluntary assessment or after a hearing shall be disbursed in accordance with § 1307 of this title.

b. *Presumptions.*—

1. If any vehicle found to be in violation of this subsection is unattended at the time the violation is discovered and the identity of the operator is not otherwise apparent, the person in whose name such vehicle is registered as the owner shall be held responsible for such violation, unless the owner can furnish evidence that the vehicle was, at the time of the violation, in the care, custody, or control of another person. Such presumption shall be rebutted if the owner does one of the following:

A. Furnishes to the voluntary assessment center, prior to the due date, one of the following:

I. An affidavit stating that the owner was not the operator of the vehicle at the time of the alleged violation and provides the name and address of the person or company who leased, rented, or otherwise had the care, custody, or control of the vehicle.

II. A certified copy of a police report showing that the vehicle or license plate or plates thereof had been reported to the police as stolen prior to the time of the alleged violation.

B. Provides proof in court that the owner was not the operator of the vehicle at the time of the alleged violation.

2. A summons may be issued by the prosecuting agency to a person identified by affidavit or evidence in court as the actual operator of the vehicle shown to have violated this subsection. There shall be a presumption that the person so identified was the driver. The presumption may be rebutted as described in this subsection.

c. Procedure for contesting.—

1. A request for a hearing must be made no later than the due date indicated on the summons, which date shall not be sooner than 20 days from the date the summons was issued.

2. The voluntary assessment center shall notify the Justice of the Peace Court when a hearing is requested. Such notification shall be in accordance with policies and procedures developed by the Justice of the Peace Court.

d. Failure to pay or contest the violation. —

1. The Justice of the Peace Court may, upon motion, enter a default judgment against an owner or operator who does one of the following:

A. Fails to respond to the summons on or before the due date in any of the manners permitted by this section.

B. Requests a hearing and fails to appear.

2. When the default judgment is sought under paragraph (k)(3)d.1.A. of this section, no default judgment shall be entered until notice by first class mail is sent by the Justice of the Peace Court to such owner or operator providing the owner or operator with 10 days to pay the civil penalty to the Justice of the Peace Court or request a hearing to contest the charge. The applicable city, county, or State agency may seek execution on any judgment entered by the Justice of the Peace Court.

e. Referral to the Division of Motor Vehicles. — In addition, the voluntary assessment center or Justice of the Peace Court may forward to the Division of Motor Vehicles the name and address of any owner or operator who fails to respond to the summons in a timely manner, who requests a hearing and fails to appear, or who is found responsible and fails to pay in accordance with the order of the Court. The Division of Motor Vehicles may refuse to register or deny the renewal of the registration of any of the vehicles of such owner or operator.

(4) After payment of a civil penalty pursuant to this subsection is received by the Department of Natural Resources and Environmental Control or a Justice of the Peace Court, the Department or the Court shall mail a receipt indicating the payment of such civil penalty if the person paying such civil penalty makes a written request for a receipt and encloses a self-addressed envelope with proper postage affixed thereon.

(5) Any violation of this subsection shall be subject to a civil penalty only. Such violation shall not be classified as a criminal offense and shall not qualify as a prior conviction for purposes of § 4218(c)(1)f. of Title 11, whether or not such violation occurred prior to the enactment of this paragraph.

Section 2. This Act shall become effective not less than 10 days following publication of final regulations in the Register of Regulations promulgated consistent with the amendments made by this Act and notification provided by the Department of Natural Resources and Environmental Control to the Registrar of Regulations that this Act shall become effective under this Section, or on April 1, 2016, whichever comes first.

Approved August 14, 2015