



94TH GENERAL ASSEMBLY
State of Illinois
2005 and 2006
SB2153

Introduced 11/2/2005, by Sen. Martin A. Sandoval

SYNOPSIS AS INTRODUCED:

New Act

Creates the Negative Use Restriction Act. Contains findings. Provides that a private agreement that purports to impose a recorded negative use restriction with a term of more than one year upon real property so as to prohibit or have the economic or practical effect of prohibiting the use of the real property for grocery store or drug store purposes after the owner or operator of a grocery store or drug store in excess of 7,500 square feet has terminated operations at the site is against public policy and is void and unenforceable. Creates an exception in the case of an owner or operator of a grocery store or drug store that terminates operations at a site for the purpose of relocating those operations into a comparable or larger grocery store or drug store located within one-half mile of the site if certain conditions are met, and permits a unit of local government that exercises zoning powers to change certain conditions under specified circumstances. Provides that a violation is a petty offense punishable by a fine of not less than \$500 and not more than \$1,000, and that a unit of local government may seek an injunction or other equitable relief to stop a violation. Effective immediately.

LRB094 14069 WGH 50102 b

1 AN ACT concerning property.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 1. Short title. This Act may be cited as the
5 Negative Use Restriction Act.

6 Section 5. Findings. The General Assembly finds:

7 (1) that the public health, safety, and general welfare
8 of residents of a community are compromised and the
9 benefits of competition in the marketplace are lost when
10 private parties impose use restrictions upon real property
11 that prohibit or materially limit the use of the property
12 for use as a grocery store or drug store after a grocery
13 store or drug store owner or operator has terminated
14 operations at the site;

15 (2) that the public health, safety, and general welfare
16 of residents of a community are furthered when residents
17 have access to grocery stores and drug stores, both of
18 which meet basic human needs;

19 (3) that negative use restrictions are separate and
20 distinct from a non-compete clause included in a shopping
21 center development agreement, in which a landlord agrees
22 with a tenant to not lease other space in the same shopping
23 center to another retail establishment of the same type in
24 order to induce the tenant to sign a long-term lease as an
25 anchor tenant at the shopping center, and that such
26 non-compete clauses are commercially reasonable;

27 (4) that negative use restrictions that enable a prior
28 owner or operator of a grocery store or drug store, after
29 terminating operations at a site, to prevent any competitor
30 from operating the same type of establishment at that site
31 in the future serve no public purpose, but instead have
32 significant deleterious and blighting effects on the

1 health, safety, and general welfare of the community in
2 which the site is located; and

3 (5) that, because grocery stores and drug stores
4 frequently occupy large tracts of land in the centers of
5 neighborhood business districts or at key intersections,
6 the continued presence of those stores serves as a catalyst
7 to other development and advances the health, safety, and
8 general welfare of residents of the community in which the
9 site is located, particularly the elderly and those who
10 walk or use public transportation to reach shopping
11 destinations.

12 Section 10. Definitions. As used in this Act:

13 "Grocery store" means a retail establishment that
14 primarily sells packaged food, rather than food prepared for
15 consumption on the premises.

16 "Drug store" means a retail establishment whose principal
17 business includes the sale of prescription and nonprescription
18 drugs, medicines, and medical products, as well as personal,
19 skin, and hair care products and miscellaneous items.

20 Section 15. Private negative use restrictions prohibited.

21 (a) Except as otherwise provided in this Section, a private
22 agreement that purports to impose a recorded negative use
23 restriction with a term of more than one year upon real
24 property so as to prohibit or have the economic or practical
25 effect of prohibiting the use of the real property for grocery
26 store or drug store purposes after the owner or operator of a
27 grocery store or drug store in excess of 7,500 square feet has
28 terminated operations at the site is against public policy and
29 is void and unenforceable. This subsection (a) applies
30 regardless of whether the private agreement is incorporated in
31 a deed restriction, a restrictive covenant, a lease or
32 memorandum of lease, or any other recorded instrument.

33 (b) Subsection (a) does not apply if:

34 (1) an owner or operator of a grocery store or drug

1 store terminates operations at a site for the purpose of
2 relocating those operations into a comparable or larger
3 grocery store or drug store located within one-half mile of
4 the site where operations have terminated;

5 (2) operations at the new site commence within 2 years;
6 and

7 (3) the negative use restriction imposed does not have
8 a term in excess of 3 years.

9 (c) A unit of local government that exercises zoning powers
10 with respect to a site may change the one-half mile limit set
11 forth in paragraph (1) of subsection (b) to a one-mile limit or
12 change the 2-year requirement set forth in paragraph (2) of
13 subsection (b) to a 3-year requirement if the relocating owner
14 or operator makes a written request to the unit of local
15 government and presents evidence setting forth extenuating
16 circumstances that establish good cause for the change. The
17 unit of local government may establish procedures for the
18 submission of requests and evidence under this subsection (c).

19 Section 20. Violations.

20 (a) A person who violates subsection (a) of Section 15
21 commits a petty offense punishable by a fine of not less than
22 \$500 and not more than \$1,000. Each day during which a
23 violation occurs or continues constitutes a separate offense.

24 (b) A unit of local government may seek an injunction or
25 other equitable relief to stop a violation of subsection (a) of
26 Section 15.

27 Section 99. Effective date. This Act takes effect upon
28 becoming law.