



95TH GENERAL ASSEMBLY

State of Illinois

2007 and 2008

SB1449

Introduced 2/9/2007, 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.

LRB095 11072 WGH 31398 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

1 order to induce the tenant to sign a long-term lease as an
2 anchor tenant at the shopping center, and that such
3 non-compete clauses are commercially reasonable;

4 (4) that negative use restrictions that enable a prior
5 owner or operator of a grocery store or drug store, after
6 terminating operations at a site, to prevent any competitor
7 from operating the same type of establishment at that site
8 in the future serve no public purpose, but instead have
9 significant deleterious and blighting effects on the
10 health, safety, and general welfare of the community in
11 which the site is located; and

12 (5) that, because grocery stores and drug stores
13 frequently occupy large tracts of land in the centers of
14 neighborhood business districts or at key intersections,
15 the continued presence of those stores serves as a catalyst
16 to other development and advances the health, safety, and
17 general welfare of residents of the community in which the
18 site is located, particularly the elderly and those who
19 walk or use public transportation to reach shopping
20 destinations.

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

22 "Grocery store" means a retail establishment that
23 primarily sells packaged food, rather than food prepared for
24 consumption on the premises.

25 "Drug store" means a retail establishment whose principal

1 business includes the sale of prescription and nonprescription
2 drugs, medicines, and medical products, as well as personal,
3 skin, and hair care products and miscellaneous items.

4 Section 15. Private negative use restrictions prohibited.

5 (a) Except as otherwise provided in this Section, a private
6 agreement that purports to impose a recorded negative use
7 restriction with a term of more than one year upon real
8 property so as to prohibit or have the economic or practical
9 effect of prohibiting the use of the real property for grocery
10 store or drug store purposes after the owner or operator of a
11 grocery store or drug store in excess of 7,500 square feet has
12 terminated operations at the site is against public policy and
13 is void and unenforceable. This subsection (a) applies
14 regardless of whether the private agreement is incorporated in
15 a deed restriction, a restrictive covenant, a lease or
16 memorandum of lease, or any other recorded instrument.

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

18 (1) an owner or operator of a grocery store or drug
19 store terminates operations at a site for the purpose of
20 relocating those operations into a comparable or larger
21 grocery store or drug store located within one-half mile of
22 the site where operations have terminated;

23 (2) operations at the new site commence within 2 years;
24 and

25 (3) the negative use restriction imposed does not have

1 a term in excess of 3 years.

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

12 Section 20. Violations.

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

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

20 Section 99. Effective date. This Act takes effect upon
21 becoming law.