

BILL ANALYSIS

Senate Research Center
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H.B. 412
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Transportation & Homeland Security
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Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The Texas Department of Transportation is responsible for regulating outdoor off-premise advertising that is visible from the roadway. A permit is required for such a sign but the reality is that many signs are erected without permits. The lack of adequate provisions in law has resulted in ineffective enforcement of these laws and has led to diminished quality of life in communities, visual blight, and negative impacts on regional economic development efforts.

H.B. 412 provides additional enforcement tools for illegal off-premise signs visible along certain Texas roads.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 391.031(a), Transportation Code, to provide that a person commits an offense if the person allows outdoor advertising to be erected or maintained on property owned by the person in certain locations.

SECTION 2. Amends the heading to Section 391.034, Transportation Code, to read as follows:

Sec. 391.034. NUISANCE OUTDOOR ADVERTISING; INJUNCTION.

SECTION 3. Amends Sections 391.035(a) and (c), Transportation Code, as follows:

(a) Provides that, in lieu of being subject to a criminal penalty, a person who intentionally violates this subchapter (Regulation of Outdoor Advertising Generally) or Subchapter C (License and Permit for Outdoor Advertising) may be, rather than is, liable to the state for a civil penalty. Authorizes the attorney general or a district or county attorney of the county in which the violation is alleged to have occurred to sue to collect the penalty.

(c) Requires a penalty collected under this section (Civil Penalty) to be deposited to the credit of the state highway fund if collected by the attorney general and to the credit of the county road and bridge fund of the county in which the violation occurred if collected by a district or county attorney.

SECTION 4. Amends Subchapter B, Chapter 391, Transportation Code, by adding Sections 391.038 and 391.039, as follows:

Sec. 391.038. ADMINISTRATIVE PENALTY. (a) Authorizes the Texas Transportation Commission (TTC), in lieu of civil or criminal enforcement by the attorney general or a district or county attorney and after notice and opportunity for a hearing before the Texas Department of Transportation (TxDOT), to impose an administrative penalty against a person who intentionally violates this chapter (Highway Beautification on Interstate and Primary Systems and Certain Roads) or rules adopted by TTC under this chapter. Provides that each day a violation continues is a separate offense.

(b) Prohibits the amount of the administrative penalty from exceeding the maximum amount of a civil penalty under Section 391.035 (Civil Penalty).

(c) Provides that a proceeding under this section is a contested case under Chapter 2001 (Administrative Procedure), Government Code.

(d) Requires an administrative fee collected under this section to be deposited to the credit of the state highway fund.

Sec. 391.039. REVOCATION OF PERMIT IN ADDITION TO OTHER PENALTY. (a) Requires a court to order the revocation of the permit issued under Section 391.068 (Issuance of Permit) that a person holds for a location at which a violation under this chapter occurs if it is shown at the trial of the person for the collection of a civil penalty or at an appeal of an administrative penalty that a judgment for civil penalty, the imposition of an administrative penalty, or a final order for an administrative penalty that was not timely appealed was previously imposed under this chapter against the person.

(b) Provides that the revocation of a permit under this section is in addition to any other penalty that may be imposed under this chapter.

SECTION 5. Amends Section 394.003, Transportation Code, by adding Subsection (d), to provide that this chapter (Regulation of Outdoor Signs on Rural Roads) does not apply to a temporary directional sign or kiosk erected by a political subdivision as part of a program approved by TxDOT and administered by the political subdivision on a highway within the boundaries of the political subdivision.

SECTION 6. Amends the heading to Section 394.021, Transportation Code, to read as follows:

Sec. 394.021. ERECTING OFF-PREMISE SIGN WITHOUT PERMIT; OFFENSE.

SECTION 7. Amends Section 394.021, Transportation Code, by amending Subsection (a) and adding Subsections (c), (d), and (e), as follows:

(a) Provides that a person commits an offense if the person erects an off-premise sign unless the person first obtains a permit under this subchapter from TTC.

(c) Provides that a person commits an offense if the person allows an off-premise sign to be erected on property owned by the person and knows or should have known that the sign was erected in violation of this chapter.

(d) Provides that an offense under this section is a misdemeanor punishable by a fine of not less than \$500 or more than \$1,000, and that each day of the proscribed conduct is a separate offense.

(e) Provide a defense to prosecution for an offense under this chapter if the person removed the unauthorized sign within a certain timeframe. Requires the court to dismiss the charge if the court is satisfied with the evidence produced by the person to establish a defense under this subsection.

SECTION 8. Amends Section 394.081, Transportation Code, by amending Subsections (a) and (c) and adding Subsection (d), as follows:

(a) and (c) Makes conforming changes.

(d) Requires the attorney general or the district or county attorney for the county in which the violation is alleged, before a suit may be brought for a violation of this chapter, to give the person charged with the violation a written notice that described the violation and specific location of the sign found to be in violation; states the amount of the proposed penalty for the violation; and gives the owner 45 days from receipt of the notice to remove the sign unless the person was given notice and opportunity to cure a similar violation within the preceding 12 months.

SECTION 9. Amends Subchapter E, Chapter 394, Transportation Code, by adding Section 394.087, as follows:

Sec. 394.087. INJUNCTION. (a) Provides that a sign that is erected in violation of this chapter is a public nuisance.

(b) Requires an owner of a sign that is a public nuisance, or the owner of the property on which the sign is located, to remove the sign on written notification by certified mail from TxDOT. Authorizes TxDOT to direct the attorney general to apply for an injunction if the sign is not removed within 45 days.

(c) Entitles the state to recover from the owner of a sign, or the owner of the property from which a sign is removed, under an action brought under Subsection (b) all administrative and legal costs and expenses incurred to remove the sign, including court costs and reasonable attorney's fees.

SECTION 10. Makes application of this Act prospective.

SECTION 11. Effective date: September 1, 2007.