

1-1 By: Eissler (Senate Sponsor - Wentworth) H.B. No. 599
1-2 (In the Senate - Received from the House April 22, 2005;
1-3 April 25, 2005, read first time and referred to Committee on
1-4 Transportation and Homeland Security; May 23, 2005, reported
1-5 adversely, with favorable Committee Substitute by the following
1-6 vote: Yeas 5, Nays 0; May 23, 2005, sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR H.B. No. 599 By: Wentworth

1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to erecting or maintaining certain outdoor signs or
1-11 advertising; creating an offense; providing penalties.

1-12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-13 SECTION 1. Section 391.031(a), Transportation Code, is
1-14 amended to read as follows:

1-15 (a) A person commits an offense if the person [~~wilfully~~]
1-16 erects or maintains outdoor advertising, or allows outdoor
1-17 advertising to be erected or maintained on property owned by the
1-18 person:

1-19 (1) within 660 feet of the nearest edge of a
1-20 right-of-way if the advertising is visible from the main-traveled
1-21 way of the interstate or primary system; or

1-22 (2) outside an urban area if the advertising is
1-23 located more than 660 feet from the nearest edge of a right-of-way,
1-24 is visible from the main-traveled way of the interstate or primary
1-25 system, and is erected for the purpose of having its message seen
1-26 from the main-traveled way of the interstate or primary system.

1-27 SECTION 2. The heading to Section 391.034, Transportation
1-28 Code, is amended to read as follows:

1-29 Sec. 391.034. [~~REMOVAL OF~~] NUISANCE OUTDOOR ADVERTISING;
1-30 INJUNCTION [BY COMMISSION].

1-31 SECTION 3. Sections 391.035(a) and (c), Transportation
1-32 Code, are amended to read as follows:

1-33 (a) In addition to being subject to a criminal penalty or
1-34 injunctive action, a person who intentionally violates this
1-35 subchapter or Subchapter C is liable to the state for a civil
1-36 penalty. The attorney general or a district or county attorney of
1-37 the county in which the violation is alleged to have occurred may
1-38 sue to collect the penalty.

1-39 (c) A penalty collected under this section shall be
1-40 deposited to the credit of the state highway fund if collected by
1-41 the attorney general and to the credit of the county road and bridge
1-42 fund of the county in which the violation occurred if collected by a
1-43 district or county attorney.

1-44 SECTION 4. Subchapter B, Chapter 391, Transportation Code,
1-45 is amended by adding Sections 391.038 and 391.039 to read as
1-46 follows:

1-47 Sec. 391.038. ADMINISTRATIVE PENALTY. (a) In lieu of a
1-48 suit to collect a civil penalty, the commission, after notice and an
1-49 opportunity for a hearing before the department, may impose an
1-50 administrative penalty against a person who intentionally violates
1-51 this chapter or a rule adopted by the commission under this chapter.
1-52 Each day a violation continues is a separate violation.

1-53 (b) The amount of the administrative penalty may not exceed
1-54 the maximum amount of a civil penalty under Section 391.035.

1-55 (c) A proceeding under this section is a contested case
1-56 under Chapter 2001, Government Code.

1-57 (d) An administrative penalty collected under this section
1-58 shall be deposited to the credit of the state highway fund.

1-59 Sec. 391.039. REVOCATION OF PERMIT IN ADDITION TO OTHER
1-60 PENALTY. (a) A court shall order the revocation of the permit
1-61 issued under Section 391.068 that a person holds for a location at
1-62 which a violation under this chapter occurs if it is shown at the
1-63 trial of the person for the collection of a civil penalty under

2-1 Section 391.035 or at an appeal of an administrative penalty under
 2-2 Section 391.038 that a judgment for a civil penalty, the imposition
 2-3 of an administrative penalty, or a final order for an
 2-4 administrative penalty that was not timely appealed was previously
 2-5 imposed under this chapter against the person.

2-6 (b) The revocation of a permit under this section is in
 2-7 addition to any other penalty that may be imposed under this
 2-8 chapter.

2-9 SECTION 5. Section 394.003, Transportation Code, is amended
 2-10 by adding Subsection (d) to read as follows:

2-11 (d) This chapter does not apply to a temporary directional
 2-12 sign or kiosk erected by a political subdivision as part of a
 2-13 program approved by the commission and administered by the
 2-14 political subdivision on a highway within the boundaries of the
 2-15 political subdivision.

2-16 SECTION 6. The heading to Section 394.021, Transportation
 2-17 Code, is amended to read as follows:

2-18 Sec. 394.021. ERECTING OFF-PREMISE SIGN WITHOUT PERMIT;
 2-19 OFFENSE.

2-20 SECTION 7. Section 394.021, Transportation Code, is amended
 2-21 by amending Subsection (a) and adding Subsections (c), (d), and (e)
 2-22 to read as follows:

2-23 (a) A person commits an offense if the person erects [~~may~~
 2-24 ~~not erect~~] an off-premise sign unless the person first obtains a
 2-25 permit under this subchapter from the commission.

2-26 (c) A person commits an offense if the person:

2-27 (1) allows an off-premise sign to be erected on
 2-28 property owned by the person; and

2-29 (2) knows or should have known that the sign was
 2-30 erected in violation of this chapter.

2-31 (d) An offense under this section is a misdemeanor
 2-32 punishable by a fine of not less than \$500 or more than \$1,000. Each
 2-33 day of the proscribed conduct is a separate offense.

2-34 (e) It is a defense to prosecution for an offense under this
 2-35 chapter that the person removed the unauthorized sign not later
 2-36 than the 45th day after the date the person received a citation for
 2-37 the offense. If the court is satisfied with the evidence produced
 2-38 by the person to establish a defense under this subsection, the
 2-39 court shall dismiss the charge.

2-40 SECTION 8. Section 394.081, Transportation Code, is amended
 2-41 by amending Subsections (a) and (c) and adding Subsection (d) to
 2-42 read as follows:

2-43 (a) In addition to being subject to a criminal penalty or
 2-44 injunctive action, a [A] person who intentionally violates this
 2-45 chapter or a rule adopted by the commission under this chapter is
 2-46 liable [~~to the state~~] for a civil penalty of not less than \$150 or
 2-47 more than \$1,000 for each violation, depending on the seriousness
 2-48 of the violation and whether the person has previously violated
 2-49 this chapter. Each day a violation continues is a separate
 2-50 violation.

2-51 (c) A civil penalty collected under this section shall be
 2-52 deposited to the credit of the state highway fund if collected by
 2-53 the attorney general and to the credit of the county road and bridge
 2-54 fund if collected by a district or county attorney.

2-55 (d) Before a suit may be brought for a violation of this
 2-56 chapter, the attorney general or the district or county attorney
 2-57 for the county in which the violation is alleged to have occurred
 2-58 shall give the person charged with the violation a written notice
 2-59 that:

2-60 (1) describes the violation and specific location of
 2-61 the sign found to be in violation;

2-62 (2) states the amount of the proposed penalty for the
 2-63 violation; and

2-64 (3) gives the owner 45 days from receipt of the notice
 2-65 to remove the sign and cure the violation to avoid the penalty
 2-66 unless the person was given notice and opportunity to cure a similar
 2-67 violation within the preceding 12 months.

2-68 SECTION 9. Subchapter E, Chapter 394, Transportation Code,
 2-69 is amended by adding Section 394.087 to read as follows:

3-1 Sec. 394.087. INJUNCTION. (a) A sign that is erected in
3-2 violation of this chapter is a public nuisance.

3-3 (b) On written notice by certified mail from the department,
3-4 an owner of a sign that is a public nuisance under Subsection (a),
3-5 or the owner of the property on which the sign is located, shall
3-6 remove the sign. If the sign is not removed within 45 days of the
3-7 date of the notice, the department may direct the attorney general
3-8 to apply for an injunction to require the removal of the sign.

3-9 (c) The state is entitled to recover from the owner of a
3-10 sign, or the owner of the property from which a sign is removed,
3-11 under an action brought under Subsection (b) all administrative and
3-12 legal costs and expenses incurred to remove the sign, including
3-13 court costs and reasonable attorney's fees.

3-14 SECTION 10. (a) The change in law made by this Act to
3-15 Section 391.031, Transportation Code, applies only to an offense
3-16 committed on or after the effective date of this Act. For purposes
3-17 of this section, an offense is committed before the effective date
3-18 of this Act if any element of the offense occurs before that date.

3-19 (b) An offense committed before the effective date of this
3-20 Act is covered by the law in effect when the offense was committed,
3-21 and the former law is continued in effect for that purpose.

3-22 SECTION 11. This Act takes effect September 1, 2005.

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