

By: Eissler

H.B. No. 412

A BILL TO BE ENTITLED

1 AN ACT

2 relating to erecting or maintaining certain outdoor signs or
3 advertising; creating an offense; providing penalties.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

5 SECTION 1. Section 391.031(a), Transportation Code, is
6 amended to read as follows:

7 (a) A person commits an offense if the person [~~wilfully~~]
8 erects or maintains outdoor advertising, or allows outdoor
9 advertising to be erected or maintained on property owned by the
10 person:

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

14 (2) outside an urban area if the advertising is
15 located more than 660 feet from the nearest edge of a right-of-way,
16 is visible from the main-traveled way of the interstate or primary
17 system, and is erected for the purpose of having its message seen
18 from the main-traveled way of the interstate or primary system.

19 SECTION 2. The heading to Section 391.034, Transportation
20 Code, is amended to read as follows:

21 Sec. 391.034. [~~REMOVAL OF~~] NUISANCE OUTDOOR ADVERTISING;
22 INJUNCTION [~~BY COMMISSION~~].

23 SECTION 3. Sections 391.035(a) and (c), Transportation
24 Code, are amended to read as follows:

1 (a) In addition to being subject to a criminal penalty or
2 injunctive action, a person who intentionally violates this
3 subchapter or Subchapter C is liable to the state for a civil
4 penalty. The attorney general or a district or county attorney of
5 the county in which the violation is alleged to have occurred may
6 sue to collect the penalty.

7 (c) A penalty collected under this section shall be
8 deposited to the credit of the state highway fund if collected by
9 the attorney general and to the credit of the county road and bridge
10 fund of the county in which the violation occurred if collected by a
11 district or county attorney.

12 SECTION 4. Subchapter B, Chapter 391, Transportation Code,
13 is amended by adding Sections 391.038 and 391.039 to read as
14 follows:

15 Sec. 391.038. ADMINISTRATIVE PENALTY. (a) In lieu of a
16 suit to collect a civil penalty, the commission, after notice and an
17 opportunity for a hearing before the department, may impose an
18 administrative penalty against a person who intentionally violates
19 this chapter or a rule adopted by the commission under this chapter.
20 Each day a violation continues is a separate violation.

21 (b) The amount of the administrative penalty may not exceed
22 the maximum amount of a civil penalty under Section 391.035.

23 (c) A proceeding under this section is a contested case
24 under Chapter 2001, Government Code.

25 (d) An administrative penalty collected under this section
26 shall be deposited to the credit of the state highway fund.

27 Sec. 391.039. REVOCATION OF PERMIT IN ADDITION TO OTHER

1 PENALTY. (a) A court shall order the revocation of the permit
2 issued under Section 391.068 that a person holds for a location at
3 which a violation under this chapter occurs if it is shown at the
4 trial of the person for the collection of a civil penalty under
5 Section 391.035 or at an appeal of an administrative penalty under
6 Section 391.038 that a judgment for a civil penalty, the imposition
7 of an administrative penalty, or a final order for an
8 administrative penalty that was not timely appealed was previously
9 imposed under this chapter against the person.

10 (b) The revocation of a permit under this section is in
11 addition to any other penalty that may be imposed under this
12 chapter.

13 SECTION 5. Section 394.003, Transportation Code, is amended
14 by adding Subsection (d) to read as follows:

15 (d) This chapter does not apply to a temporary directional
16 sign or kiosk erected by a political subdivision as part of a
17 program approved by the commission and administered by the
18 political subdivision on a highway within the boundaries of the
19 political subdivision.

20 SECTION 6. The heading to Section 394.021, Transportation
21 Code, is amended to read as follows:

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

24 SECTION 7. Section 394.021, Transportation Code, is amended
25 by amending Subsection (a) and adding Subsections (c), (d), and (e)
26 to read as follows:

27 (a) A person commits an offense if the person erects ~~may~~

1 ~~not erect]~~ an off-premise sign unless the person first obtains a
2 permit under this subchapter from the commission.

3 (c) A person commits an offense if the person:

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

6 (2) knows or should have known that the sign was
7 erected in violation of this chapter.

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

11 (e) It is a defense to prosecution for an offense under this
12 chapter that the person removed the unauthorized sign not later
13 than the 45th day after the date the person received a citation for
14 the offense. If the court is satisfied with the evidence produced
15 by the person to establish a defense under this subsection, the
16 court shall dismiss the charge.

17 SECTION 8. Section 394.081, Transportation Code, is amended
18 by amending Subsections (a) and (c) and adding Subsection (d) to
19 read as follows:

20 (a) In addition to being subject to a criminal penalty or
21 injunctive action, a [A] person who intentionally violates this
22 chapter or a rule adopted by the commission under this chapter is
23 liable [~~to the state~~] for a civil penalty of not less than \$150 or
24 more than \$1,000 for each violation, depending on the seriousness
25 of the violation and whether the person has previously violated
26 this chapter. Each day a violation continues is a separate
27 violation.

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

5 (d) Before a suit may be brought for a violation of this
6 chapter, the attorney general or the district or county attorney
7 for the county in which the violation is alleged to have occurred
8 shall give the person charged with the violation a written notice
9 that:

10 (1) describes the violation and specific location of
11 the sign found to be in violation;

12 (2) states the amount of the proposed penalty for the
13 violation; and

14 (3) gives the owner 45 days from receipt of the notice
15 to remove the sign and cure the violation to avoid the penalty
16 unless the person was given notice and opportunity to cure a similar
17 violation within the preceding 12 months.

18 SECTION 9. Subchapter E, Chapter 394, Transportation Code,
19 is amended by adding Section 394.087 to read as follows:

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

22 (b) On written notice by certified mail from the department,
23 an owner of a sign that is a public nuisance under Subsection (a),
24 or the owner of the property on which the sign is located, shall
25 remove the sign. If the sign is not removed within 45 days of the
26 date of the notice, the department may direct the attorney general
27 to apply for an injunction to require the removal of the sign.

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

6 SECTION 10. (a) The change in law made by this Act to
7 Section 391.031, Transportation Code, applies only to an offense
8 committed on or after the effective date of this Act. For purposes
9 of this section, an offense is committed before the effective date
10 of this Act if any element of the offense occurs before that date.

11 (b) An offense committed before the effective date of this
12 Act is covered by the law in effect when the offense was committed,
13 and the former law is continued in effect for that purpose.

14 SECTION 11. This Act takes effect September 1, 2007.