

1-1 By: Eissler, Strama (Senate Sponsor - Carona) H.B. No. 412  
1-2 (In the Senate - Received from the House March 29, 2007;  
1-3 April 3, 2007, read first time and referred to Committee on  
1-4 Transportation and Homeland Security; May 10, 2007, reported  
1-5 adversely, with favorable Committee Substitute by the following  
1-6 vote: Yeas 8, Nays 0; May 10, 2007, sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR H.B. No. 412 By: Carona

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 lieu of ~~[addition to]~~ being subject to a criminal  
1-34 penalty ~~[or injunctive action]~~, a person who intentionally violates  
1-35 this subchapter or Subchapter C may be [is] liable to the state for  
1-36 a civil penalty. The attorney general or a district or county  
1-37 attorney of the county in which the violation is alleged to have  
1-38 occurred may 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. Section 394.003, Transportation Code, is amended  
1-45 by adding Subsection (d) to read as follows:

1-46 (d) This chapter does not apply to a temporary directional  
1-47 sign or kiosk erected by a political subdivision as part of a  
1-48 program approved by the department and administered by the  
1-49 political subdivision on a highway within the boundaries of the  
1-50 political subdivision.

1-51 SECTION 5. The heading to Section 394.021, Transportation  
1-52 Code, is amended to read as follows:

1-53 Sec. 394.021. ERECTING OFF-PREMISE SIGN WITHOUT PERMIT;  
1-54 OFFENSE.

1-55 SECTION 6. Section 394.021, Transportation Code, is amended  
1-56 by amending Subsection (a) and adding Subsections (c), (d), and (e)  
1-57 to read as follows:

1-58 (a) A person commits an offense if the person erects [may  
1-59 not erect] an off-premise sign unless the person first obtains a  
1-60 permit under this subchapter from the commission.

1-61 (c) A person commits an offense if the person:

1-62 (1) allows an off-premise sign to be erected on  
1-63 property owned by the person; and

2-1 (2) knows or should have known that the sign was  
2-2 erected in violation of this chapter.

2-3 (d) An offense under this section is a misdemeanor  
2-4 punishable by a fine of not less than \$500 or more than \$1,000. Each  
2-5 day of the proscribed conduct is a separate offense.

2-6 (e) It is a defense to prosecution for an offense under this  
2-7 chapter that the person removed the unauthorized sign not later  
2-8 than the 45th day after the date the person received a citation for  
2-9 the offense. If the court is satisfied with the evidence produced  
2-10 by the person to establish a defense under this subsection, the  
2-11 court shall dismiss the charge.

2-12 SECTION 7. Section 394.081, Transportation Code, is amended  
2-13 by amending Subsections (a) and (c) and adding Subsection (d) to  
2-14 read as follows:

2-15 (a) In lieu of being subject to a criminal penalty, a [A]  
2-16 person who intentionally violates this chapter or a rule adopted by  
2-17 the commission under this chapter may be [is] liable [to the state]  
2-18 for a civil penalty of not less than \$150 or more than \$1,000 for  
2-19 each violation, depending on the seriousness of the violation and  
2-20 whether the person has previously violated this chapter. Each day a  
2-21 violation continues is a separate violation.

2-22 (c) A civil penalty collected under this section shall be  
2-23 deposited to the credit of the state highway fund if collected by  
2-24 the attorney general and to the credit of the county road and bridge  
2-25 fund if collected by a district or county attorney.

2-26 (d) Before a suit may be brought against a property owner  
2-27 for a violation of Section 394.021(c), the attorney general or the  
2-28 district or county attorney for the county in which the violation is  
2-29 alleged to have occurred shall give the person charged with the  
2-30 violation a written notice that:

2-31 (1) describes the violation and specific location of  
2-32 the sign found to be in violation;

2-33 (2) states the amount of the proposed penalty for the  
2-34 violation; and

2-35 (3) gives the owner 45 days from receipt of the notice  
2-36 to remove the sign and cure the violation to avoid the penalty  
2-37 unless the person was found guilty or liable by a court for  
2-38 violating this chapter within the preceding six months.

2-39 SECTION 8. Subchapter E, Chapter 394, Transportation Code,  
2-40 is amended by adding Section 394.087 to read as follows:

2-41 Sec. 394.087. INJUNCTION. (a) A sign that is erected in  
2-42 violation of this chapter is a public nuisance.

2-43 (b) On written notice by certified mail from the department  
2-44 or the county, an owner of a sign that is a public nuisance under  
2-45 Subsection (a), or the owner of the property on which the sign is  
2-46 located, shall remove the sign. If the sign is not removed within  
2-47 45 days of the date of the notice, the department may direct the  
2-48 attorney general to apply for an injunction to require the removal  
2-49 of the sign or a district or county attorney may apply for an  
2-50 injunction to require the removal of the sign.

2-51 (c) The state or county is entitled to recover from the  
2-52 owner of a sign, or the owner of the property from which a sign is  
2-53 removed, under an action brought under Subsection (b) all  
2-54 administrative and legal costs and expenses incurred to remove the  
2-55 sign, including court costs and reasonable attorney's fees.

2-56 SECTION 9. (a) The change in law made by this Act to Section  
2-57 391.031, Transportation Code, applies only to an offense committed  
2-58 on or after the effective date of this Act. For purposes of this  
2-59 section, an offense is committed before the effective date of this  
2-60 Act if any element of the offense occurs before that date.

2-61 (b) An offense committed before the effective date of this  
2-62 Act is covered by the law in effect when the offense was committed,  
2-63 and the former law is continued in effect for that purpose.

2-64 SECTION 10. This Act takes effect September 1, 2007.

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