

SENATE AMENDMENTS

2nd Printing

By: Eissler, Strama

H.B. No. 412

A BILL TO BE ENTITLED

AN ACT

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

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

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

(a) A person commits an offense if the person ~~willfully~~ erects or maintains outdoor advertising, or allows outdoor advertising to be erected or maintained on property owned by the person:

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

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

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

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

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

1 (a) In lieu of [~~addition to~~] being subject to a criminal
2 penalty [~~or injunctive action~~], a person who intentionally violates
3 this subchapter or Subchapter C may be [~~is~~] liable to the state for
4 a civil penalty. The attorney general or a district or county
5 attorney of the county in which the violation is alleged to have
6 occurred may 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 civil
16 or criminal enforcement by the attorney general or a district or
17 county attorney, the commission, after notice and an opportunity
18 for a hearing before the department, may impose an administrative
19 penalty against a person who intentionally violates this chapter or
20 a rule adopted by the commission under this chapter. Each day a
21 violation continues is a separate violation.

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

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

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

1 Sec. 391.039. REVOCATION OF PERMIT IN ADDITION TO OTHER
2 PENALTY. (a) A court shall order the revocation of the permit
3 issued under Section 391.068 that a person holds for a location at
4 which a violation under this chapter occurs if it is shown at the
5 trial of the person for the collection of a civil penalty under
6 Section 391.035 or at an appeal of an administrative penalty under
7 Section 391.038 that a judgment for a civil penalty, the imposition
8 of an administrative penalty, or a final order for an
9 administrative penalty that was not timely appealed was previously
10 imposed under this chapter against the person.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ADOPTED

MAY 18 2007

Lotay Spaw
Secretary of the Senate
H.B. NO. 412

By: Eissler/Carona

Substitute the following for H.B. No. 412 :

By: Carona

C.S. H.B. No. 412

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

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7 erects or maintains outdoor advertising, or allows outdoor
8 advertising to be erected or maintained on property owned by the
9 person:

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

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

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

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

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

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

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

19 SECTION 5. The heading to Section 394.021, Transportation
20 Code, is amended to read as follows:

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

23 SECTION 6. Section 394.021, Transportation Code, is amended
24 by amending Subsection (a) and adding Subsections (c); (d), and (e)
25 to read as follows:

26 (a) A person commits an offense if the person erects [~~may~~
27 ~~not erect~~] an off-premise sign unless the person first obtains a

8

1 permit under this subchapter from the commission.

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

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

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

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

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

16 SECTION 7. Section 394.081, Transportation Code, is amended
17 by amending Subsections (a) and (c) and adding Subsection (d) to
18 read as follows:

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

26 (c) A civil penalty collected under this section shall be
27 deposited to the credit of the state highway fund if collected by

1 the attorney general and to the credit of the county road and bridge
2 fund if collected by a district or county attorney.

3 (d) Before a suit may be brought against a property owner
4 for a violation of Section 394.021(c), the attorney general or the
5 district or county attorney for the county in which the violation is
6 alleged to have occurred shall give the person charged with the
7 violation a written notice that:

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

10 (2) states the amount of the proposed penalty for the
11 violation; and

12 (3) gives the owner 45 days from receipt of the notice
13 to remove the sign and cure the violation to avoid the penalty
14 unless the person was found guilty or liable by a court for
15 violating this chapter within the preceding six months.

16 SECTION 8. Subchapter E, Chapter 394, Transportation Code,
17 is amended by adding Section 394.087 to read as follows:

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

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

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

6 SECTION 9. (a) The change in law made by this Act to Section
7 391.031, Transportation Code, applies only to an offense committed
8 on or after the effective date of this Act. For purposes of this
9 section, an offense is committed before the effective date of this
10 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 10. This Act takes effect September 1, 2007.

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 80TH LEGISLATIVE REGULAR SESSION

May 9, 2007

TO: Honorable John Carona, Chair, Senate Committee on Transportation & Homeland Security

FROM: John S. O'Brien, Director, Legislative Budget Board

IN RE: HB412 by Eissler (Relating to erecting or maintaining certain outdoor signs or advertising; creating an offense; providing penalties.), **Committee Report 2nd House, Substituted**

No significant fiscal implication to the State is anticipated.

The bill would amend the Transportation Code as it relates to erecting or maintaining outdoor signs and advertising and erecting off-premise signs without a permit under Chapters 391 and 394.

Under current statute, a person who commits a violation under Chapter 391 is subject to a criminal penalty and is liable to the state for a civil penalty. Provisions of the bill would result in a violator being subject to one or the other, and possibly both instead of automatically both. If a criminal penalty is imposed, violations of statutes related to off-premise signs would be a misdemeanor offense punishable by a fine of between \$500 and \$1,000. Each day of violation would count as a separate offense.

The bill would establish procedures related to enforcement of provisions of Chapter 394. In addition, for violations of Chapter 394, Transportation Code, the state or county would be authorized to recover administrative and legal costs and expenses from a sign owner or the owner of the property on which a sign is removed as a nuisance.

Provisions of the bill would authorize when civil penalties are pursued under either Chapter 391 or Chapter 394, which under current statute may be pursued and collected only by the Office of the Attorney General (OAG) for deposit into the state highway fund, that penalties could be collected by a district or county attorney for deposit into the county road and bridge fund.

The OAG indicates any expenses associated with enforcement could be absorbed using existing resources. In addition, it is assumed that the amount in penalties collected would not be significant. The same is anticipated for local government entities.

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies: 302 Office of the Attorney General, 601 Department of Transportation

LBB Staff: JOB, KJG, DB

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 80TH LEGISLATIVE REGULAR SESSION

April 20, 2007

TO: Honorable John Carona, Chair, Senate Committee on Transportation & Homeland Security

FROM: John S. O'Brien, Director, Legislative Budget Board

IN RE: HB412 by Eissler (Relating to erecting or maintaining certain outdoor signs or advertising; creating an offense; providing penalties.), **As Engrossed**

No significant fiscal implication to the State is anticipated.

The bill would amend the Transportation Code as it relates to erecting or maintaining outdoor signs and advertising and erecting off-premise signs without a permit under Chapters 391 and 394.

Under current statute, a person who commits a violation under Chapter 391 is subject to a criminal penalty and is liable to the state for a civil penalty. Provisions of the bill would result in a violator being subject to one or the other, and possibly both instead of automatically both. If a criminal penalty is imposed, violations of statutes related to off-premise signs would be a misdemeanor offense punishable by a fine of between \$500 and \$1,000. Each day of violation would count as a separate offense.

In lieu of a civil penalty or criminal enforcement under Chapter 391, the bill would authorize the Texas Department of Transportation (TxDOT) to impose an administrative penalty against a person who commits an offense. The penalty could not exceed the amount for which a civil penalty may be imposed and would be deposited to the credit of the state highway fund.

The bill would establish procedures related to enforcement of provisions of Chapter 394. In addition, for violations of Chapter 394, Transportation Code, the state would be authorized to recover administrative and legal costs and expenses from a sign owner or the owner of the property on which a sign is removed as a nuisance.

Provisions of the bill would authorize when civil penalties are pursued under either Chapter 391 or Chapter 394, which under current statute may be pursued and collected only by the Office of the Attorney General (OAG) for deposit into the state highway fund, that penalties could be collected by a district or county attorney for deposit into the county road and bridge fund.

The OAG and TxDOT both indicate any expenses associated with enforcement and civil actions could be absorbed using existing resources. In addition, it is assumed that the amount in penalties collected would not be significant. The same is anticipated for local government entities.

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies: 302 Office of the Attorney General, 601 Department of Transportation

LBB Staff: JOB, KJG, DB

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE, 80TH LEGISLATIVE REGULAR SESSION

March 7, 2007

TO: Honorable Mike Krusee, Chair, House Committee on Transportation

FROM: John S. O'Brien, Director, Legislative Budget Board

IN RE: HB412 by Eissler (Relating to erecting or maintaining certain outdoor signs or advertising; creating an offense; providing penalties.), **Committee Report 1st House, Substituted**

No significant fiscal implication to the State is anticipated.

The bill would amend the Transportation Code as it relates to erecting or maintaining outdoor signs and advertising and erecting off-premise signs without a permit under Chapters 391 and 394.

Under current statute, a person who commits a violation under Chapter 391 is subject to a criminal penalty and is liable to the state for a civil penalty. Provisions of the bill would result in a violator being subject to one or the other, and possibly both instead of automatically both. If a criminal penalty is imposed, violations of statutes related to off-premise signs would be a misdemeanor offense punishable by a fine of between \$500 and \$1,000. Each day of violation would count as a separate offense.

In lieu of a civil penalty or criminal enforcement under Chapter 391, the bill would authorize the Texas Department of Transportation (TxDOT) to impose an administrative penalty against a person who commits an offense. The penalty could not exceed the amount for which a civil penalty may be imposed and would be deposited to the credit of the state highway fund.

The bill would establish procedures related to enforcement of provisions of Chapter 394. In addition, for violations of Chapter 394, Transportation Code, the state would be authorized to recover administrative and legal costs and expenses from a sign owner or the owner of the property on which a sign is removed as a nuisance.

Provisions of the bill would authorize when civil penalties are pursued under either Chapter 391 or Chapter 394, which under current statute may be pursued and collected only by the Office of the Attorney General (OAG) for deposit into the state highway fund, that penalties could be collected by a district or county attorney for deposit into the county road and bridge fund.

The OAG and TxDOT both indicate any expenses associated with enforcement and civil actions could be absorbed using existing resources. In addition, it is assumed that the amount in penalties collected would not be significant. The same is anticipated for local government entities.

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies: 302 Office of the Attorney General, 601 Department of Transportation

LBB Staff: JOB, KJG, DB

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 80TH LEGISLATIVE REGULAR SESSION

February 8, 2007

TO: Honorable Mike Krusee, Chair, House Committee on Transportation

FROM: John S. O'Brien, Director, Legislative Budget Board

IN RE: HB412 by Eissler (Relating to erecting or maintaining certain outdoor signs or advertising; creating an offense; providing penalties.), **As Introduced**

No significant fiscal implication to the State is anticipated.

The bill would amend the Transportation Code as it relates to erecting or maintaining outdoor signs and advertising and erecting off-premise signs without a permit. Provisions of the bill would authorize civil penalties, which under current statute may be pursued and collected only by the Office of the Attorney General (OAG) for deposit into the state highway fund, to be collected by a district or county attorney for deposit into the county road and bridge fund. Violations of statutes related to off-premise signs would be a misdemeanor offense punishable by a fine of between \$500 and \$1,000. Each day of violation would count as a separate offense.

In lieu of a civil penalty, the bill would authorize the Texas Department of Transportation (TxDOT) to impose an administrative penalty against a person who commits an offense. The penalty could not exceed the amount for which a civil penalty may be imposed and would be deposited to the credit of the state highway fund.

The bill would establish procedures related to enforcement. In addition, for violations of Chapter 394, Transportation Code, the state would be authorized to recover administrative and legal costs and expenses from a sign owner or the owner of the property on which a sign is removed as a nuisance.

The OAG and TxDOT both indicate any expenses associated with enforcement and civil actions could be absorbed using existing resources. In addition, it is assumed that the amount in penalties collected would not be significant. The same is anticipated for local government entities.

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies: 302 Office of the Attorney General, 601 Department of Transportation

LBB Staff: JOB, KJG, DB

