

VIRGINIA ACTS OF ASSEMBLY -- 2000 SESSION

CHAPTER 432

An Act to amend and reenact §§ 33.1-351 and 33.1-370 of the Code of Virginia, relating to outdoor advertising.

[H 1223]

Approved April 4, 2000

Be it enacted by the General Assembly of Virginia:

1. That §§ 33.1-351 and 33.1-370 of the Code of Virginia are amended and reenacted as follows:

§ 33.1-351. Policy; definitions.

In order to promote the safety, convenience, and enjoyment of travel on and protection of the public investment in highways within this Commonwealth, to attract tourists and promote the prosperity, economic well-being, and general welfare of the Commonwealth, and to preserve and enhance the natural scenic beauty or aesthetic features of the highways and adjacent areas, the General Assembly declares it to be the policy of the Commonwealth that the erection and maintenance of outdoor advertising in areas adjacent to the rights-of-way of the highways within the Commonwealth shall be regulated in accordance with the terms of this article and regulations promulgated by the Commonwealth Transportation Board pursuant thereto.

The following terms, wherever used or referred to in this article, shall have the following meanings unless a different meaning clearly appears from the context:

"Advertisement" means any writing, printing, picture, painting, display, emblem, drawing, sign, or similar device which is posted or displayed outdoors on real property and is intended to invite or to draw the attention or to solicit the patronage or support of the public to any goods, merchandise, real or personal property, business, services, entertainment, or amusement manufactured, produced, bought, sold, conducted, furnished, or dealt in by any person; the term shall also include any part of an advertisement recognizable as such.

"Advertising structure" means any rigid or semirigid material, with or without any advertisement displayed thereon, situated upon or attached to real property outdoors, primarily or principally for the purpose of furnishing a background or base or support upon which an advertisement may be posted or displayed.

"Business of outdoor advertising" means the erection, use or maintenance of advertising structures or the posting or display of outdoor advertisements by any person who receives profit gained from rentals or any other compensation from any other person for the use or maintenance of such advertising structures or the posting or display of such advertisements, except reasonable compensation for materials and labor used or furnished in the actual erection of advertising structures or the actual posting of advertisements. The business of outdoor advertising shall not include the leasing or rental of advertising structures or advertisements used to advertise products, services, or entertainment sold or provided on the premises where the advertising structures or advertisement is located.

"Certification Acceptance Program" means a program which will allow any person, firm, or corporation owning five or more signs, advertisements, or outdoor advertising structures within a municipality to inspect their own signs, advertisements, or outdoor advertising structures two times during each calendar year, with inspections at least four to six months apart, and certify to the Commonwealth Transportation Commissioner that the inspections have been performed and that their outdoor advertising structures meet all applicable laws, rules, and regulations in lieu of paying an annual permit fee as required in §§ 33.1-360, 33.1-361, and 33.1-362. The Commonwealth Transportation Commissioner may, after a hearing, decertify any person, firm, or corporation that fails to perform the required inspections annually or whose sign, advertisement, or outdoor advertising structures are found in violation of any federal, state or local law, rule, or regulation and shall collect all permit fees for the year the decertification occurs and all subsequent years if the Commissioner finds that the violation has been committed.

"Highway" means every way or place of whatever nature open to the use of the public for purposes of vehicular travel in this Commonwealth.

"Municipalities" means cities and incorporated towns.

"Person" includes an individual, partnership, association or corporation.

"Post" means post, display, print, paint, burn, nail, paste or otherwise attach.

"Real property" includes any property physically attached or annexed to real property in any manner whatsoever.

"Town" means an incorporated town.

"Historic place, museum or shrine" includes only places that are maintained wholly at public expense or by a nonprofit organization.

"Information center" means an area or site established and maintained at rest areas for the purpose of informing the public of places of interest within the Commonwealth and providing such other information as the Commonwealth may consider desirable.

"Rest area" means an area or site established and maintained within or adjacent to the right-of-way or under public supervision or control, for the convenience of the traveling public.

"Centerline of the highway" means a line equidistant from the edges of the median separating the main traveled ways of a divided highway, or the centerline of the main traveled way of a nondivided highway.

"Interchange" means a grade separated intersection with one or more turning roadways for travel between intersection legs, or an intersection at grade, where two or more highways join or cross.

"Legible" means capable of being read without visual aid by a person of normal visual acuity.

"Maintain" means to allow to exist.

"Main traveled way" means the traveled way of a highway on which through traffic is carried. In the case of a divided highway, the traveled way of each of the separated roadways for traffic in opposite directions is a main traveled way. It does not include such facilities as frontage roads, turning roadways, or parking areas.

"National highway system" means the federal-aid highway system described in subsection (b) of § 103 of Title 23, United States Code, and regulations adopted pursuant thereto. For the purpose of this article, outdoor advertising controls on the national highway system shall be implemented as those highways are designated and approved by congressional action and such designation and approval shall be kept on file in the central office of the Department of Transportation and placed in the minutes of the Commonwealth Transportation Board by the Commonwealth Transportation Commissioner. Prior to congressional approval, highways classified as National System of Interstate and Defense Highways, Dwight D. Eisenhower National System of Interstate and Defense Highways, Interstate System, or federal-aid primary as defined herein shall be considered as the national highway system.

"National System of Interstate and Defense Highways," "Dwight D. Eisenhower National System of Interstate and Defense Highways," and "Interstate System" means the system presently defined in subsection (e) of § 103 of Title 23, United States Code.

"Federal-aid primary highway" means any highway within that portion of the State Highway System as established and maintained under Article 2 (§ 33.1-25 et seq.) of Chapter 1 of Title 33.1, including extensions of such system within municipalities, which has been approved by the Secretary of Transportation pursuant to subsection (b) of § 103 of Title 23, United States Code, as that system existed on June 1, 1991.

"Scenic area" means any public park, area of particular scenic beauty or historical significance designated as a scenic area by the Commonwealth Transportation Board.

"Sign" means any outdoor sign, display, device, figure, painting, drawing, message, placard, poster, billboard, or other thing which is designed, intended, or used to advertise or inform, any part of the advertising or informative contents of which is visible from any highway.

"Trade name" shall include brand name, trademark, distinctive symbol, or other similar device or thing used to identify particular products or services.

"Traveled way" means the portion of a roadway for the movement of vehicles, exclusive of shoulders.

"Turning roadway" means a connecting roadway for traffic turning between two intersection legs of an interchange.

"Visible" means capable of being seen (whether or not legible) without visual aid by a person of normal visual acuity.

"Distance from edge of a right-of-way" shall be the horizontal distance measured along a line normal or perpendicular to the centerline of the highway.

"Urban area" means an urbanized area or, in the case of an urbanized area encompassing more than one state, that part of the "urbanized area" within the Commonwealth, or an urban place.

"Urban place" means an area so designated by the United States Bureau of the Census having a population of 5,000 or more and not within any urbanized area, within boundaries fixed by the Commonwealth Transportation Commissioner, in his discretion, in cooperation with the governing bodies of the several counties, towns or cities affected and the appropriate federal authority. Such boundaries shall, as a minimum, encompass the entire urban place designated by the United States Bureau of the Census.

"Urbanized area" means an area so designated by the United States Bureau of the Census, within boundaries fixed by the Commonwealth Transportation Commissioner, in his discretion, in cooperation with the governing bodies of the several counties, towns or cities affected and the appropriate federal authority. Such boundaries shall, as a minimum, encompass the entire urbanized area within a state as designated by the United States Bureau of the Census.

A "nonconforming sign," "nonconforming advertisement," or "nonconforming advertising structure" is one which was lawfully erected adjacent to any highway in the ~~interstate, national highway system, or federal-aid primary system as that system existed on June 1, 1991~~ Commonwealth, but which does not

comply with the provisions of state law, state regulations, or ordinances adopted by local governing bodies passed at a later date or which later fails to comply with state law, state regulations, or ordinances adopted by local governing bodies due to changed conditions.

"Virginia byway" and "scenic highway" mean those highways designated by the Commonwealth Transportation Board pursuant to Article 5 (§ 33.1-62 et seq.) of Chapter 1 of this title. For the purposes of the article, a Virginia byway shall mean a scenic byway as referenced in Title 23, United States Code, § 131 (s).

§ 33.1-370. Special provisions pertaining to interstate, national highway system, and federal-aid primary highways.

A. Notwithstanding the territorial limitation set out in § 33.1-353, no sign or advertisement adjacent to any interstate, national highway system, or federal-aid primary highway shall be erected, maintained or displayed which is visible from the main traveled way within 660 feet of the nearest edge of the right-of-way, except as provided in subsections B and D of this section, and outside of an urban area no sign or advertisement beyond 660 feet of the nearest edge of the right-of-way of any interstate, national highway system, or federal-aid primary highway which is visible from the main traveled way shall be erected, maintained, or displayed with the purpose of its message being read from the main traveled way, except as set forth in subsection C.

B. The following signs, advertisements or advertising structures may be erected, maintained and displayed within 660 feet of the right-of-way of any interstate, national highway system, or federal-aid primary highway:

Class 1 - Official signs. - Directional and official signs and notices, which signs and notices shall include, but not be limited to, signs and notices pertaining to the availability of food, lodging, vehicle service and tourist information, natural wonders, scenic areas, museums and historic attractions, as authorized or required by law; however, where such signs or notices pertain to facilities or attractions which are barrier free, such signs or notices shall contain the International Barrier Free Symbol. The Commonwealth Transportation Board shall determine the type, lighting, size, location, number, and other requirements of signs of this class.

Class 2 - On-premises signs. - Signs not prohibited by other parts of this article which are consistent with the applicable provisions of this section and which advertise the sale or lease of, or activities being conducted upon, the real property where the signs are located; provided, that any such signs, which are located adjacent to and within 660 feet of any interstate highway and do not lie in commercial or industrial zones within the boundaries of incorporated municipalities, as such boundaries existed on September 21, 1959, wherein the use of real property adjacent to the Interstate System is subject to municipal regulation or control, or in areas where land use as of September 21, 1959, was clearly established by state law as industrial or commercial, shall comply with the following requirements:

1. Not more than one sign advertising the sale or lease of the same property may be erected or maintained in such manner as to be visible to traffic proceeding in any one direction on any one interstate highway;

2. Not more than one sign, visible to traffic proceeding in any one direction on any one interstate highway and advertising activities being conducted upon the real property where the sign is located, may be erected or maintained more than fifty feet from the advertised activity, and no such sign may be located more than 250 feet from the center of the advertised activity; and

3. No sign, except one which is not more than fifty feet from the advertised activity, that displays any trade name which refers to or identifies any service rendered or product sold, shall be erected or maintained unless the name of the advertised activity is displayed as conspicuously as such trade name.

Class 3 - Other signs. - Any signs or advertisements which are located within areas adjacent to any interstate, national highway system, or federal-aid primary highway which are zoned industrial or commercial under authority of state law, or in unzoned commercial or industrial areas as determined by the Commonwealth Transportation Board from actual land uses. The Commonwealth Transportation Board shall determine the size, lighting and spacing of signs of this class, provided that such determination shall be no more restrictive than valid federal requirements on the same subject.

C. The following signs, advertisements or advertising structures may be erected, maintained and displayed beyond 660 feet of the right-of-way of any interstate, national highway system, or federal-aid primary highway outside of urban areas.

1. Class 1 and Class 2 signs, advertisements or advertising structures set forth in subsection B of this section.

2. All other signs, advertisements or advertising structures erected, maintained or displayed more than 660 feet from the nearest edge of the right-of-way of an interstate, national highway system, or federal-aid primary highway; unless said sign or advertisement is visible from the main traveled way of said highways and erected, maintained or displayed with the purpose of its message being read from the main traveled way of said highways.

In determining whether a sign, advertisement or advertising structure is "erected, maintained or displayed with the purpose of its being read" the Commissioner is not limited to, but will consider, the nature of the business or product advertised thereon, the availability of such business or product to users

of the controlled highway, the visibility of the sign, advertisement or advertising structure from the main traveled way of the controlled highway (such visibility may be measured by considering the size or height of the sign, advertisement or advertising structure; the configuration, size, and height of recognizable emblems, images, and lettering thereon; the angle of the sign, advertisement or advertising structure to the main traveled way of the controlled highway; the degree to which physical obstructions hinder the view of the sign, advertisement or advertising structure from the main traveled way of the controlled highway; and the time which such sign, advertisement or advertising structure is exposed to view by travelers on the main traveled way of the controlled highway traveling at the maximum and minimum speeds posted).

D. In order to provide information in the specific interest of the traveling public, the Commonwealth Transportation Board is hereby authorized to maintain maps and to permit informational directories and advertising pamphlets to be made available at rest areas, and to establish information centers at rest areas for the purpose of informing the public of places of interest within the Commonwealth and providing such other information as may be considered desirable.

E. Notwithstanding any other provision of law, lawfully erected and maintained nonconforming signs, advertisements, and advertising structures shall not be removed *or eliminated by amortization* under state law or local ordinances without compensation as described in subsection F of this section.

F. The Commonwealth Transportation Commissioner is authorized to acquire by purchase, gift or the power of eminent domain and to pay just compensation upon the removal of nonconforming signs, advertisements or advertising structures lawfully erected and maintained under state law or state regulations. Provided, however, subsequent to November 6, 1978, whenever any local ordinance which is more restrictive than state law requires the removal of such signs, advertisements, or advertising structures, the local governing body shall initiate the removal of such signs, advertisements, or advertising structures with the Commissioner, who shall have complete authority to administer the removal of such signs, advertisements, or advertising structures. Upon proof of payment presented to the local governing bodies, the local governing bodies shall reimburse the Commissioner the funds expended which are associated with the removal of such signs, advertisements, or advertising structures required by local ordinances, less any federal funds received for such purposes. Notwithstanding the above, nothing shall prohibit the local governing bodies from removing signs, advertisements, or advertising structures which are made nonconforming solely by local ordinances so long as those ordinances require the local governing bodies to pay 100 percent of the cost of removing them and just compensation upon their removal.

Such compensation is authorized to be paid only for the taking from the owner of such sign or advertisement of all right, title, leasehold and interest in such sign or advertisement, and the taking from the owner of the real property on which the sign or advertisement is located, of the right to erect and maintain such sign or advertisement thereon.

The Commonwealth Transportation Commissioner shall not be required to expend any funds under this section unless and until federal-aid matching funds are made available for this purpose.