

VIRGINIA ACTS OF ASSEMBLY -- 2012 SESSION

CHAPTER 145

An Act to amend and reenact §§ 33.1-351, 33.1-360, 33.1-361, and 33.1-362 of the Code of Virginia, relating to permit applications for outdoor advertising.

[H 646]

Approved March 7, 2012

Be it enacted by the General Assembly of Virginia:

1. That §§ 33.1-351, 33.1-360, 33.1-361, and 33.1-362 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.

"Billboard sign" means any sign, advertisement, or advertising structure as defined in this section owned by a person, firm, or corporation in the business of outdoor advertising.

"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.

"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.

"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 Commissioner of Highways 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 fees required in §§ 33.1-360, 33.1-361, and 33.1-362. The Commissioner of Highways 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.

"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.

"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.

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

"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.

"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.

"Lawfully erected" means any sign that was erected pursuant to the issuance of a permit from the Commissioner of Highways under § 33.1-360 unless the local governing body has evidence of noncompliance with ordinances in effect at the time the sign was erected.

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

"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.

"Maintain" means to allow to exist.

"Municipalities" means cities and incorporated towns.

"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 Commissioner of Highways. 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.

A "nonconforming sign," "nonconforming advertisement," or "nonconforming advertising structure" is one which was lawfully erected adjacent to any highway in the 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.

"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.

"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.

"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.

"Town" means an incorporated town.

"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.

"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 Commissioner of Highways, 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 Commissioner of Highways, 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.

"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).

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

§ 33.1-360. Permits required.

Except as in this article otherwise provided, no person, whether engaged in the business of outdoor advertising or not, shall erect, use, maintain, post or display any advertisement or advertising structure in this Commonwealth, outside of municipalities, without first obtaining a permit therefor from the Commissioner of Highways and paying the annual fee therefor, as provided in this article. A permit shall be required for an off-premises sign, advertisement, or advertising structure authorized by § 33.1-370 if it is located within a municipality and is visible from the main traveled way of any interstate, federal-aid primary, or national highway system highway ~~unless the owner of such sign, advertisement, or advertising structure has entered in a Certification Acceptance Program as described in § 33.1-351. Owners of signs, advertisements, or advertising structures within municipalities shall have until December 1, 1993, to obtain a permit from the Commissioner or to remove the sign, advertisement, or advertising structure. The Commissioner of Highways shall notify the owners of known signs, advertisements, or advertising structures within municipalities by August 1, 1993.~~

No bond or permit must be required for the posting or display of any advertisement posted or displayed on any advertising structure or space for which a permit has been issued or renewed for the then current calendar year under the provisions of this article unless such permit has been revoked.

§ 33.1-361. Applications for permits; fees.

A separate application for a permit shall be made for each separate advertisement or advertising structure, on a form furnished by the Commissioner of Highways, which application shall be signed by the applicant or his representative duly authorized in writing to act for him and shall describe and set forth the size, shape and the nature of the advertisement or advertising structure it is proposed to post, display, erect or maintain and its actual or proposed location with sufficient accuracy to enable the Commissioner of Highways to identify such advertisement or advertising structure and to find its actual or proposed location.

Each application shall be accompanied by an application fee in an amount determined as follows on the basis of the area of the advertisement or advertising structure for which the permit is sought, according to the following schedule:

1. ~~Three Fifteen~~ dollars if such area does not exceed ~~thirty-two~~ 74 square feet;
2. ~~Five dollars and fifty cents~~ *Thirty dollars* if such area exceeds ~~thirty-two~~ 74 square feet but does not exceed ~~seventy-four~~ 1,824 square feet; and
3. ~~Twenty One hundred sixty-five~~ dollars if such area exceeds ~~seventy-four~~ 1,824 square feet but does not exceed 424 square feet
4. ~~Twenty-five~~ dollars if such area exceeds 424 square feet but does not exceed 624 square feet; and
5. ~~An additional fifteen dollars for each 200 square feet of such area in excess of 624 square feet except, within municipalities, the fifteen-dollar fee for each additional 200 square feet of such area in excess of 624 square feet shall not apply.~~

In the computation of fees under this section, each side of advertisement or advertising structure used or constructed to be used shall be separately considered. *If the applicant elects to use an electronic application, the fee shall be reduced by \$5 per application.*

The fee shall be retained by the Commissioner of Highways if the permit is issued. If the permit is refused, the Commissioner of Highways shall refund one-half the application fee to the applicant.

In addition to the above, on any original application for an advertisement or advertising structure there shall be imposed an inspection charge of ~~fifty dollars~~ \$50 for any advertisement or advertising structure to be located on an interstate, federal-aid primary, or national highway system highway and ~~twenty-five dollars~~ \$25 on any other highway. ~~Inspection fees shall not be charged within municipalities for any such sign, advertisement, or advertising structure in existence on July 1, 1993.~~

Each application shall be accompanied by the written consent, or in lieu thereof a copy certified by an officer authorized to take acknowledgments to deeds in this Commonwealth, of the owner of the real property upon which such advertisement or advertising structure is to be erected, used, maintained, posted or displayed, or of such other person having the legal right to grant such consent, or of the duly authorized agent of such owner, or other person; provided, that in the marsh or meadowland owned by the Commonwealth along either side of the causeway leading from the mainland to the town of Chincoteague, the legal right to grant such consent shall be vested in the governing body of such town.

Application shall be made in like manner for a permit to use, maintain or display an existing

advertisement or advertising structure.

§ 33.1-362. Duration and renewal of permit.

Except as provided in § 33.1-365, permits issued hereunder shall run for the calendar year, and may be renewed upon application made upon forms furnished by the Commissioner and the payment of the same fee required to be paid upon application for a permit. *Fees for renewal of permits using the Virginia Department of Transportation's electronic application renewal process shall be reduced by \$5 per permit being renewed.* Permits will not be extended or renewed in cases where the permittee has not exercised the privilege of erecting such advertising structure or displayed such advertisement during the period for which the permit was issued. Annual permits issued after December fifteenth will cover the following calendar year.