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HOUSE BILL NO. 804

Offered January 14, 2004

Prefiled January 14, 2004

A BILL to amend and reenact §§ 33.1-351 and 33.1-375.1 of the Code of Virginia, relating to definitions and certain laws on outdoor advertising in sight of public highways.

Patron—Petersen

Referred to Committee on Transportation

Be it enacted by the General Assembly of Virginia:**1. That §§ 33.1-351 and 33.1-375.1 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~~^{the} 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~~^{that} 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, *political candidacy or referendum*, entertainment, or amusement manufactured, produced, bought, sold, conducted, furnished, *supported, opposed*, 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.

"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~~^{that} 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.

"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

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59 as established and maintained under Article 2 (§ 33.1-25 et seq.) of Chapter 1 of Title 33.1, including
60 extensions of such system within municipalities, which has been approved by the Secretary of
61 Transportation pursuant to subsection (b) of § 103 of Title 23, United States Code, as that system
62 existed on June 1, 1991.

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

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

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

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

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

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

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

80 "Maintain" means to allow to exist.

81 "Municipalities" means cities and incorporated towns.

82 "National highway system" means the federal-aid highway system described in subsection (b) of
83 § 103 of Title 23, United States Code, and regulations adopted pursuant thereto. For the purpose of this
84 article, outdoor advertising controls on the national highway system shall be implemented as those
85 highways are designated and approved by congressional action and such designation and approval shall
86 be kept on file in the central office of the Department of Transportation and placed in the minutes of the
87 Commonwealth Transportation Board by the Commonwealth Transportation Commissioner. Prior to
88 congressional approval, highways classified as National System of Interstate and Defense Highways,
89 Dwight D. Eisenhower National System of Interstate and Defense Highways, Interstate System, or
90 federal-aid primary as defined herein shall be considered as the national highway system.

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

94 A "nonconforming sign," "nonconforming advertisement," or "nonconforming advertising structure" is
95 one ~~which~~that was lawfully erected adjacent to any highway in the Commonwealth, but which does not
96 comply with the provisions of state law, state regulations, or ordinances adopted by local governing
97 bodies passed at a later date or ~~which~~that later fails to comply with state law, state regulations, or
98 ordinances adopted by local governing bodies due to changed conditions.

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

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

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

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

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

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

110 "Town" means an incorporated town.

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

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

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

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

119 "Urban place" means an area so designated by the United States Bureau of the Census having a
120 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.

"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.

§ 33.1-375.1. Commissioner may enter into certain agreements; penalties.

A. The Commonwealth Transportation Commissioner may enter into agreements with the local governing body of Fairfax County authorizing local law-enforcement agencies or other local governmental entities to act as agents of the Commissioner for the purpose of (i) enforcing the provisions of § 33.1-373 and (ii) collecting the penalties and costs provided for in that section. However, no local governing body shall enter into any such agreement until it has held a public hearing thereon.

B. Notwithstanding the provisions of § 33.1-373, one-half of the penalties and costs collected under this section shall be paid to the affected locality, and the remainder shall be remitted to the Commissioner and paid into the Highway Maintenance and Operating Fund.

C. Notwithstanding the foregoing provisions of this section, the following signs and advertising shall not be subject to the agreements provided for in subsection A of this section:

1. Signs and advertising supporting an individual's candidacy for elected public office or other ballot issues, provided this exception shall not include signs and advertising in place more than three days *before or three days* after the election to which they apply.

2. Signs and advertising promoting and/or providing directions to a special event to be held at a specified date stated on the sign or advertising, provided this exception shall not include special event signs in place more than three days *before the commencement of the event or three days* after the conclusion of the special event.

3. Other signs and advertising erected for no more than three days.

D. Notwithstanding the foregoing provisions of this section, the Commissioner may enter into agreements with the local governing bodies of localities to which the foregoing provisions of this section do not apply to authorize those governing bodies to act as agents of the Commissioner and the Department in enforcing the provisions of § 33.1-373. The limitations applicable to agreements entered into under subsections A through C of this section shall not apply to agreements entered into under this subsection.