

VIRGINIA ACTS OF ASSEMBLY -- 2013 SESSION

CHAPTER 127

An Act to amend and reenact §§ 33.1-348 and 33.1-351 of the Code of Virginia, relating to junkyards; policy and definitions.

[H 2105]

Approved March 6, 2013

Be it enacted by the General Assembly of Virginia:

1. That §§ 33.1-348 and 33.1-351 of the Code of Virginia are amended and reenacted as follows:

§ 33.1-348. Junkyards.

(a) For the purpose of promoting the public safety, health, welfare, convenience and enjoyment of public travel, to protect the public investment in public highways, and to preserve and enhance the scenic beauty of lands bordering public highways, it is hereby declared to be in the public interest to regulate and restrict the establishment, operation, and maintenance of junkyards in areas adjacent to the highways within this Commonwealth.

(b) For the purpose of this section the following definitions shall apply:

(1) "Junk" shall mean old or scrap copper, brass, rope, rags, batteries, paper, trash, rubber, debris, waste, or junked, dismantled, or wrecked automobiles, or parts thereof, iron, steel, and other old or scrap ferrous or nonferrous material.

(2) "Automobile graveyard" shall mean any lot or place which is exposed to the weather and upon which more than five motor vehicles of any kind that are incapable of being operated and which it would not be economically practical to make operative, are placed, located or found. The movement or rearrangement of vehicles within an existing lot or facility does not render this definition inapplicable. The provisions established by this subdivision shall begin with the first day that the vehicle is placed on the subject property.

(3) "Junkyard" shall mean an establishment or place of business which is maintained, operated, or used for storing, keeping, buying, or selling junk, or for the maintenance or operation of an automobile graveyard, and the term shall include garbage dumps and sanitary fills.

(4) "Interstate system" shall mean the system presently defined in ~~subsection (c) of~~ § 103 of Title 23, United States Code.

(5) "Primary highway" shall mean any highway within the State Highway System as established and maintained under Article 2 (§ 33.1-25 et seq.), Chapter 1 of this title, including extensions of such System within municipalities.

(6) "Federal-aid primary highway" shall mean any highway within that portion of the State Highway System as established and maintained under Article 2 (§ 33.1-25 et seq.), Chapter 1 of this title, including extensions of such System within municipalities, which has been approved by the Secretary of Commerce pursuant to ~~subsection (b) of~~ § 103 of Title 23, United States Code.

(7) "Visible" shall mean capable of being seen without visual aid by a person of normal visual acuity.

(8) *"National Highway System" shall mean the federal-aid highway system referenced in § 103 of Title 23, United States Code, and regulations adopted pursuant thereto, which includes those highways that are designated as such by congressional action or designation by the U.S. Secretary of Transportation. Prior to congressional approval or designation by the U.S. Secretary of Transportation, 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 highways as that system existed on June 1, 1991, shall be considered as the National Highway System.*

(c) No junkyard shall be hereafter established, any portion of which is within 1,000' of the nearest edge of the right-of-way of any ~~interstate~~ *National Highway System* highway or primary highway or within 500' of the nearest edge of the right-of-way of any other highway or city street, except the following:

(1) Junkyards which are screened by natural objects, plantings, fences, or other appropriate means so as not to be visible from the main-traveled way of the highway or city street, or otherwise removed from sight.

(2) Junkyards which are located in areas which are zoned for industrial use under authority of state law or in unzoned industrial areas as determined by the Commonwealth Transportation Board.

(3) Junkyards which are not visible from the main-traveled way of the highway or city street.

(d) Any junkyard lawfully in existence on April 4, 1968, which is within 1,000' of the nearest edge of the right-of-way and visible from the main-traveled way of any interstate or federal-aid primary highway, and not located within an industrial area, shall be screened, if feasible, by the Commissioner of Highways at locations on the highway right-of-way or in areas acquired for such purposes outside the

right-of-way, so as not to be visible from the main-traveled way of such highways.

Any junkyard lawfully in existence on April 4, 1968, which is within 1,000' of the nearest edge of the right-of-way of any other primary highway or within 500' of the nearest edge of the right-of-way of any other highway and visible from the main-traveled way of such highway, and not located within an industrial area, may be screened by the Commissioner of Highways in the same manner as junkyards adjacent to ~~interstate or federal-aid primary~~ *National Highway System* highways.

The Commissioner of Highways is hereby authorized to acquire by purchase, gift or the power of eminent domain such lands or interests in lands as may be necessary to provide adequate screening of such junkyards.

(e) When the Commissioner of Highways determines that the topography of the land adjoining ~~an interstate or federal-aid primary~~ *a National Highway System* highway will not permit adequate screening of such junkyards or the screening of such junkyards would not be economically feasible, the Commissioner of Highways shall have the authority to acquire by gift, purchase or the power of eminent domain, such interests in lands as may be necessary to secure the relocation, removal, or disposal of the junkyards, and to pay for the costs of relocation, removal, or disposal, thereof. When the Commissioner of Highways determines that the topography of the land adjoining any other highway will not permit adequate screening or such would not be feasible, the Commissioner *of Highways* may exercise the same authority to relocate such junkyards as is vested in him in regard to ~~interstate and federal-aid primary~~ *National Highway System* highways.

(f) Any junkyard which comes into existence after April 4, 1968, and which cannot be made to conform to this section, is declared to be a public and private nuisance and may be forthwith removed, obliterated or abated by the Commissioner *of Highways* or his representatives. The Commissioner *of Highways* may collect the cost of such removal, obliteration or abatement from the person owning or operating such junkyard.

(g) The Commonwealth Transportation Board is authorized to enter into agreements with the United States as provided in 23 U.S.C. § 136 with respect to control of junkyards.

(h) The Commissioner of Highways shall not be required to expend any funds for screening or relocation under this section unless and until federal-aid matching funds are made available for this purpose.

(i) Any person violating any provision of this section shall be guilty of a misdemeanor.

§ 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.

"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~~ *National Highway System*" means the federal-aid highway system ~~described~~ *referenced* 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~~ *National Highway System* shall be implemented as those highways are designated and approved by congressional action *or designation by the U.S. Secretary of Transportation* 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 *or designation by the U.S. Secretary of Transportation*, 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 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.