

## BILL ANALYSIS

Senate Research Center

H.B. 599  
By: Eissler (Wentworth)  
Transportation & Homeland Security  
5/13/2005  
Engrossed

### AUTHOR'S/SPONSOR'S STATEMENT OF INTENT

The Texas Department of Transportation is responsible for regulating outdoor off-premise advertising that is visible from a roadway. A permit is required for such a sign, but the reality is that many signs are erected without permits. The lack of adequate laws has resulted in ineffective enforcement of these illegal signs and has led to diminished quality of life in communities, visual blight, and negative impacts on regional economic development efforts. H.B. 599 provides additional enforcement tools for illegal off-premise signs visible along rural roads.

### RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

### SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 391.001, Transportation Code, to define "billboard."

SECTION 2. Amends Section 391.031(a), Transportation Code, to provide that a person commits an offense if the person erects, rather than willfully erects, or maintains outdoor advertising, or allows outdoor advertising, other than a billboard, to be erected or maintained in a certain manner on property owned by the person.

SECTION 3. Amends the heading to Section 391.034, Transportation Code, to read as follows:

Sec. 391.034. NUISANCE OUTDOOR ADVERTISING; INJUNCTION

SECTION 4. Amends Sections 391.035(a) and (c), Transportation Code, as follows:

(a) Authorize the attorney general or a district or county attorney of the county in which the violation is alleged to have occurred to sue to collect the penalty.

(c) Requires a penalty collected under this section to be deposited to the credit of the state highway fund if collected by the attorney general and to the credit of the county road and bridge fund of the county in which the violation occurred if collected by a district or county attorney.

SECTION 5. Amends Subchapter B, Chapter 391, Transportation Code, by adding Sections 391.038 and 391.039, as follows:

Sec. 391.038. ADMINISTRATIVE PENALTY. (a) Authorizes the Texas Transportation Commission (commission), in lieu of a suit to collect a civil penalty, after notice and an opportunity for a hearing before the Texas Department of Transportation (TxDOT), to impose an administrative penalty against a person who intentionally violates this chapter (Regulation Outdoor Advertising Generally) or a rule adopted by the commission under this chapter. Provides that each day a violation continues is a separate violation.

(b) Prohibits the amount of the administrative penalty from exceeding the maximum amount of a civil penalty under Section 391.035.

(c) Provides that a proceeding under this section is a contested case under Chapter 2001 (Administrative Procedure), Government Code.

(d) Requires an administrative penalty collected under this section to be deposited to the credit of the state highway fund.

Sec. 391.039. REVOCATION OF PERMIT IN ADDITION TO OTHER PENALTY.

(a) Requires a court to order the revocation of the permit issued under Section 391.068 (Issuance of Permit) that a person holds for a location at which a violation under this chapter occurs if it is shown at the trial of the person for the collection of a civil penalty under Section 391.035 or at an appeal of an administrative penalty under Section 391.038 that a judgment for a civil penalty, the imposition of an administrative penalty, or a final order for an administrative penalty that was not timely appealed was previously imposed under this chapter against the person.

(b) Provide that the revocation of a permit under this section is in addition to any other penalty that may be imposed under this chapter.

SECTION 6. Amends Section 394.003, Transportation Code, by adding Subsection (d), to provide that this chapter does not apply to a temporary directional sign or kiosk erected by a political subdivision as part of a program approved by the commission and administered by the political subdivision on a highway within the boundaries of the political subdivision.

SECTION 7. Amends the heading to Section 394.021, Transportation Code, to read as follows:

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

SECTION 8. Amends Section 394.021, Transportation Code, by amending Subsection (a) and adding Subsections (c), (d), and (e), as follows:

(a) Provides that a person commits an offense if the person erects, rather than may not erect, an off-premise sign unless the person first obtains a permit under this subchapter from the commission.

(c) Provides that a person commits an offense if the person commits certain actions.

(d) Provides that an offense under this section is a misdemeanor punishable by a fine of not less than \$500 or more than \$1,000. Provides that each day of the proscribed conduct is a separate offense.

(e) Provides that it is a defense to prosecution for an offense under this chapter that the person removed the unauthorized sign not later than the 45th day after the date the person received a citation for the offense. Requires the court, if the court is satisfied with the evidence produced by the person to establish a defense under this subsection, to dismiss the charge.

SECTION 9. Amends Section 394.081, Transportation Code, by amending Subsections (a) and (c) and adding Subsection (d), as follows:

(a) Provides that in addition to being subject to a criminal penalty or injunctive action, a person who intentionally violates this chapter or a rule adopted by the commission under this chapter is liable for a civil penalty of not less than \$150 or more than \$1,000 for each violation, depending on the seriousness of the violation and whether the person has previously violated this chapter. Provides that each day a violation continues is a separate violation. Makes nonsubstantive changes.

(c) Requires a civil penalty collected under this section to be deposited to the credit of the state highway fund if collected by the attorney general and to the credit of the county road and bridge fund if collected by a district or county attorney.

(d) Requires the attorney general or the district or county attorney for the county in which the violation is alleged to have occurred, before a suit may be brought for a violation of this chapter, to give the person charged with the violation a written notice that includes certain information.

SECTION 10. Amends Subchapter E, Chapter 394, Transportation Code, by adding Section 394.087, as follows:

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

(b) Requires an owner of a sign that is a public nuisance under Subsection (a), or the owner of the property on which the sign is located, on written notice by certified mail from TxDOT, to remove the sign. Authorizes TxDOT, if the sign is not removed within 45 days of the date of the notice, to direct the attorney general to apply for an injunction to require the removal of the sign.

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

SECTION 11. Makes application of this Act prospective.

SECTION 12. Effective date: September 1, 2005.