

BILL ANALYSIS

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S.B. 2006
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Transportation
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

A recent decision from the Texas Court of Appeals held that the Texas Highway Beautification Act (HBA) is unconstitutional because several of its billboard regulations violate the First Amendment right to free speech. More specifically, the court ruled that the plain language of the HBA defines "outdoor advertising" so broadly that the Act's restrictions on speech apply to both commercial and noncommercial speech. The court also determined that it could not disentangle the constitutional provisions from the unconstitutional ones and therefore it had to rule that two subchapters in their entirety were unconstitutional and that only the legislature can fix the problem.

This decision has been stayed pending a decision from the Texas Supreme Court, but if it stands it means the state will have no billboard regulations. This is problematic for several reasons, including the fact that some of the federal highway money the state receives is contingent on having effective regulations over outdoor advertising.

S.B. 2006 maintains the current scope of billboard regulation in Texas while resolving any free speech conflicts. It does this by shifting the regulatory focus away from a sign's content and instead focuses on whether or not a sign is leased and, therefore, being used for commercial purposes. This allows the state, through the Texas Department of Transportation, to continue to regulate commercial speech in a constitutionally permissive way, while still respecting private property and free speech rights. Finally, it ensures the state may retain its federal highway dollars and continue to regulate in an efficient manner.

As proposed, S.B. 2006 amends current law relating to erecting or maintaining certain outdoor signs regulated by the Texas Department of Transportation.

RULEMAKING AUTHORITY

Rulemaking authority previously granted to the Texas Transportation Commission is modified in SECTION 4 (Section 391.006, Transportation Code), SECTION 8 (Section 391.032, Transportation Code), SECTION 18 (Section 391.065, Transportation Code), and SECTION 32 (Section 394.0205, Transportation Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 201.931(2), Transportation Code, to redefine "license."

SECTION 2. Amends Section 391.001, Transportation Code, by adding Subdivisions (1-a) and (11-a), to define "commercial sign" and "sign."

SECTION 3. Amends Section 391.002(b), Transportation Code, to change a reference to outdoor advertising to commercial signs.

SECTION 4. Amends Section 391.006(a), Transportation Code, as follows:

- (a) Requires the Texas Transportation Commission (TTC), by rule, to establish procedures for accepting and resolving written complaints related to signs that are subject to this chapter, rather than related to outdoor advertising under this chapter.

SECTION 5. Amends the heading to Subchapter B, Chapter 391, Transportation Code, to read as follows:

SUBCHAPTER B. REGULATION OF COMMERCIAL SIGNS GENERALLY

SECTION 6. Amends the heading to Section 391.031, Transportation Code, to read as follows:

Sec. 391.031. UNLAWFUL COMMERCIAL SIGNS; OFFENSE.

SECTION 7. Amends Section 391.031, Transportation Code, by amending Subsection (a) and adding Subsection (b-1), as follows:

(a) Makes conforming changes:

(1) changes reference to advertising to sign; or

(2) includes a sign erected for the purpose of having the sign, rather than its message, seen from the main-traveled way of the interstate or primary system. Makes a conforming change.

(b-1) Provides that a person does not commit an offense if the person:

(1) erects or maintains a commercial sign located within a certain area in which the land use is designated industrial or commercial under authority of law or is not designated as such, but the land use is consistent with an area designated industrial or commercial; and

(2) holds a permit issued by the Texas Department of Transportation (TxDOT) for the sign.

SECTION 8. Amends Section 391.032, Transportation Code, as follows:

Sec. 391.032. New heading: REGULATION OF COMMERCIAL SIGNS IN INDUSTRIAL OR COMMERCIAL AREA. (a) Makes conforming changes.

(b) Makes a conforming change.

SECTION 9. Amends Section 391.033, Transportation Code, as follows:

Sec. 391.033. New heading: ACQUISITION OF COMMERCIAL SIGNS BY COMMISSION. (a) Makes a conforming change.

(b) Makes conforming changes.

SECTION 10. Amends Section 391.034, Transportation Code, as follows:

Sec. 391.034. New heading: NUISANCE; INJUNCTION. (a) Provides that a commercial sign that is erected or maintained in violation of this chapter endangers the health, safety, welfare, morals, and enjoyment, rather than health, safety, welfare, morals, convenience, and enjoyment of the traveling public and the protection of the public investment in the interstate and primary highway systems and is a public nuisance.

(b) and (c) Makes conforming changes.

SECTION 11. Amends Section 391.036, Transportation Code, to provide that TTC's responsibility for the regulation of commercial signs is only on highways on the interstate and primary systems, including interstate highways, state highways, and farm-to-market roads, rather than only on a federal-aid primary highway, interstate highway, state highway, or farm-to-market road.

SECTION 12. Amends Subchapter B, Chapter 391, Transportation Code, by adding Sections 391.038, 391.039, 391.040, 391.041, 391.042, 391.043, and 391.044, as follows:

Sec. 391.038. FACE RESTRICTIONS. (a) Sets forth restrictions for the face area of a commercial sign.

(b) Prohibits the cutout area of a commercial sign from being larger than 20 percent of the sign's surface copy area.

Sec. 391.039. WIND LOAD PRESSURE RESTRICTIONS. (a) Requires that a commercial sign of certain heights be designed to resist the specified wind loads.

(b) Provides the criteria for how the height of a commercial sign is measured.

Sec. 391.040. DETERMINING FACE AREA OF CERTAIN COMMERCIAL SIGNS. Provides that each face area of a double-faced, back-to-back, or V-type commercial sign is considered to be a separate sign for the purpose of determining the face area under Section 391.038.

Sec. 391.041. REPLACEMENT OR REPAIR. (a) Prohibits a commercial sign or a substantial part of a commercial sign that is blown down, destroyed, taken down, or removed for any purpose other than for maintenance or for changing the sign face material from being reerected, reconstructed, or rebuilt unless the sign conforms with this chapter.

(b) Provides that a commercial sign or substantial part of a commercial sign is considered destroyed only if the cost of repairing the sign is a certain amount.

Sec. 391.042. HEIGHT RESTRICTIONS. Sets forth height restrictions for a commercial sign.

Sec. 391.043. SPACE BETWEEN COMMERCIAL SIGNS. Defines "freeway" and sets forth spacing requirements for commercial signs.

Sec. 391.044. DISTANCE OF COMMERCIAL SIGN FROM HIGHWAY. Prohibits a commercial sign from being erected so that any part of the sign's face is closer than five feet to the nearest edge of a right-of-way of a highway.

SECTION 13. Amends the heading to Subchapter C, Chapter 391, Transportation Code, to read as follows:

SUBCHAPTER C. LICENSE AND PERMIT FOR COMMERCIAL SIGNS

SECTION 14. Amends the heading to Section 391.061, Transportation Code, as follows:

Sec. 391.061. LICENSE FOR COMMERCIAL SIGNS; OFFENSE.

SECTION 15. Amends Section 391.061(a), Transportation Code, to make a conforming change.

SECTION 16. Amends Section 391.063, Transportation Code, as follows:

Sec. 391.063. LICENSE FEE. Authorizes TTC to set the amount of a license fee according to a scale graduated by the number of commercial signs owned by the license applicant that are regulated and the number of off-premise signs owned by the license applicant and regulated under Chapter 394 (Regulation of Outdoor Signs on Rural Roads), rather than a scale graduated by the number of units of outdoor advertising and the number of off-premise signs under Chapter 394 owned by a license applicant.

SECTION 17. Amends Section 391.064(a), Transportation Code, to make conforming changes.

SECTION 18. Amends Section 391.065, Transportation Code, as follows:

Sec. 391.065. RULES; FORMS. (a) Authorizes TTC to adopt rules to implement this subchapter and Subchapters A and B, rather than Sections 391.036, 391.061(a), 391.062 (Issuance and Period of License), 391.063, 391.064 (Surety Bond), and 391.066 (Revocation or Suspension of License; Appeal).

(b) Makes a conforming change.

(c) Provides that the limitation provided by this section applies only to rules relating to the occupation of erecting or maintaining commercial signs, rather than the occupation of outdoor advertiser. Makes a conforming change.

(1) and (2) makes no changes to these subdivisions.

SECTION 19. Amends Section 391.0661, Transportation Code, to make a conforming change.

SECTION 20. Amends the heading to Section 391.067, Transportation Code, to read as follows:

Sec. 391.067. PERMIT FOR COMMERCIAL SIGNS; OFFENSE.

SECTION 21. Amends Section 391.067(a) to make conforming changes.

SECTION 22. Amends Sections 391.068(a), (c), (d), and (e), Transportation Code, to make conforming changes.

SECTION 23. Amends Section 391.070(a), Transportation Code, to make conforming changes.

SECTION 24. Amends the heading to Subchapter H, Chapter 391, Transportation Code, to read as follows:

SUBCHAPTER H. REGULATION OF COMMERCIAL SIGNS ON STATE HIGHWAY 288

SECTION 25. Amends Section 391.211(a), Transportation Code, to make a conforming change.

SECTION 26. Amends Section 391.212, Transportation Code, as follows:

Sec. 391.212. New heading: REGULATION OF CERTAIN COMMERCIAL SIGNS.
Makes a conforming change.

SECTION 27. Amends the heading to Section 391.252, Transportation Code, to read as follows:

Sec. 391.252. PROHIBITED COMMERCIAL SIGNS.

SECTION 28. Amends Sections 391.252(a) and (c), Transportation Code, as follows:

(a) Prohibits a person from erecting a commercial, rather than an off-premise, sign that is adjacent to and visible from:

(1) through (19) makes no changes to these subdivisions listing certain roadways.

(c) Makes a conforming change.

SECTION 29. Amends Section 391.253, Transportation Code, as follows:

Sec. 391.253. New heading: REERECTION, RECONSTRUCTION, REPAIR, OR REBUILDING OF COMMERCIAL SIGNS.

(a) through (d) Makes conforming changes.

SECTION 30. Amends Section 391.254(d), Transportation Code, to make a conforming change.

SECTION 31. Amends Section 394.0203, Transportation Code, to authorize TTC to set the amount of a license fee according to a scale graduated by the number of off-premise signs owned by the license applicant regulated under this chapter and commercial signs owned by the applicant regulated under Chapter 391 (Highway Beautification on Interstate and Primary Systems and Certain Roads), rather than off-premise signs and units of outdoor advertising under Chapter 391 owned by a license applicant.

SECTION 32. Amends Section 394.0205(b), Transportation Code, to make nonsubstantive and conforming changes.

SECTION 33. Amends Section 394.0207, Transportation Code, to make a conforming change.

SECTION 34. Repealers: Sections 391.001(10) (relating to the definition of "outdoor advertising"), 391.031(b) (relating to providing that a person does not commit an offense if the person erects or maintains certain outdoor advertising in an area described by Subsection (a)), and 391.061(c) (relating to a person not being required to obtain a license to erect or certain described outdoor advertising).

Repealers: Sections 391.005 (Exemption), 391.037 (Outdoor Advertising by Certain County Agricultural Fairs), and 391.251 (Definitions).

SECTION 35. Effective date: upon passage or September 1, 2017.