

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

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SENATE BILL 254\*

Commerce Committee Substitute Adopted 4/7/99

House Committee Substitute Favorable 7/13/99

Short Title: Outdoor Advertising Control Act/AB.

(Public)

Sponsors:

Referred to:

March 8, 1999

A BILL TO BE ENTITLED

AN ACT TO INCREASE VARIOUS OUTDOOR ADVERTISING PERMIT FEES, EXPAND CURRENT NOTIFICATION REQUIREMENTS, AND MODIFY AND UPDATE THE OUTDOOR ADVERTISING CONTROL ACT WITH RESPECT TO VENUE REQUIREMENTS, DEFINITIONS, AND PARTIES RESPONSIBLE FOR PAYMENT OF REMOVAL OF ILLEGAL OUTDOOR ADVERTISING.

The General Assembly of North Carolina enacts:

Section 1. G.S. 136-133 reads as rewritten:

"§ 136-133. Permits required.

(a) No person shall erect or maintain any outdoor advertising within 660 feet of the nearest edge of the right-of-way of the interstate or primary highway system, except those allowed under G.S. 136-129, subdivisions (2) and (3) in this Article, or beyond 660 feet of the nearest edge of the right-of-way of the interstate or primary highway system, except those allowed under G.S. 136-129.1, subdivisions (2) and (3), without first obtaining a permit from the Department of Transportation or its agents pursuant to the procedures set out by rules and regulations promulgated-adopted by the Department of Transportation. The permit shall be valid until revoked for nonconformance with this Article or rules and regulations promulgated-adopted by the Department of Transportation

1 ~~thereunder.~~ Transportation. Any person aggrieved by the decision of the Department of  
2 Transportation or its agents in refusing to grant or in revoking a permit may appeal the  
3 decision in accordance with the rules ~~and regulations enacted~~ adopted by the Department of  
4 Transportation pursuant to this Article to the Secretary of Transportation who shall make  
5 the final decision on the agency appeal. The Department of Transportation shall have the  
6 authority to charge permit fees to defray the costs of administering the permit procedures  
7 under this Article. The fees for directional signs as set forth in G.S. 136-129(1) and G.S.  
8 136-129.1(1) shall not exceed a ~~twenty dollar (\$20.00)~~ forty dollar (\$40.00) initial fee and  
9 a ~~fifteen dollar (\$15.00)~~ thirty dollar (\$30.00) annual renewal fee. The fees for outdoor  
10 advertising structures, as set forth in G.S. 136-129(4) and (5) shall not exceed a ~~sixty~~  
11 ~~dollar (\$60.00)~~ one hundred twenty dollar (\$120.00) initial fee and a ~~thirty dollar (\$30.00)~~  
12 sixty dollar (\$60.00) annual renewal fee.

13 (b) If outdoor advertising is under construction and the Department of  
14 Transportation determines that a permit has not been issued for the outdoor advertising,  
15 the Department may require that all work on the outdoor advertising cease until the  
16 owner of the outdoor advertising shows that the outdoor advertising does not violate this  
17 section. The Pstopwork order shall be prominently posted on the outdoor advertising  
18 structure, and no further notice of the stopwork order is required. The failure of an owner  
19 of outdoor advertising to comply immediately with the stopwork order shall subject the  
20 outdoor advertising to removal by the Department of Transportation or its agents.  
21 Outdoor advertising is under construction when it is in any phase of construction prior to  
22 the attachment and display of the advertising message in final position for viewing by the  
23 traveling public. The cost of removing outdoor advertising by the Department of  
24 Transportation or its agents pursuant to this section shall be assessed against the owner of  
25 the unpermitted outdoor advertising by the Department of Transportation. No stopwork  
26 order may be issued when the Department of Transportation process agent has been  
27 served with a court order allowing the sign to be constructed."

28 Section 2. G.S. 136-134 reads as rewritten:

29 "**§ 136-134. Illegal advertising.**

30 Any outdoor advertising erected or maintained adjacent to the right-of-way of the  
31 interstate or primary highway system after the effective date of this Article as determined  
32 by G.S. 136-140, in violation of the provisions of this Article or rules ~~and regulations~~  
33 ~~promulgated~~ adopted by the Department of Transportation, or any outdoor advertising  
34 maintained without a permit regardless of the date of erection shall be illegal and shall  
35 constitute a nuisance. The Department of Transportation or its agents shall give 30 days'  
36 notice to the owner of the illegal outdoor advertising with the exception of the owner of  
37 unlawful portable outdoor advertising for which the Department of Transportation shall  
38 give five days' notice, if such owner is known or can by reasonable diligence be  
39 ascertained, to remove the outdoor advertising or to make it conform to the provisions of  
40 this Article or rules ~~and regulations~~ ~~promulgated~~ adopted by the Department of  
41 Transportation hereunder. The Department of Transportation or its agents shall have the  
42 right to remove the illegal outdoor advertising at the expense of the ~~said~~ owner if the ~~said~~  
43 owner fails to ~~act~~ remove the outdoor advertising or to make it conform to the provisions

1 of this Article or rules issued by the Department of Transportation within 30 days after  
2 receipt of such notice or five days for owners of portable outdoor advertising. The  
3 Department of Transportation or its agents may enter upon private property for the  
4 purpose of removing the outdoor advertising prohibited by this Article or rules ~~and~~  
5 ~~regulations promulgated-adopted~~ by the Department of Transportation hereunder without  
6 civil or criminal liability. The costs of removing the outdoor advertising, whether by the  
7 Department of Transportation or its agents, shall be assessed against the owner of the  
8 illegal outdoor advertising by the Department of Transportation. Any person aggrieved  
9 by the decision declaring the outdoor advertising structure illegal shall be granted the  
10 right to appeal the decision in accordance with the terms of the rules and regulations  
11 enacted by the Department of Transportation pursuant to this Article to the Secretary of  
12 Transportation who shall make the final decision on the agency appeal."

13 Section 3. Chapter 136 of the General Statutes is amended by adding a new  
14 section to read:

15 "**§ 136-134.2. Notification requirements.**

16 When the Department of Transportation notifies a permit applicant, permit holder, or  
17 the owner of an outdoor advertising structure that the application is denied, the permit  
18 revoked, or the structure is in violation of this Article or rules issued pursuant to this  
19 Article, it shall do so in writing by certified mail, return receipt requested, and shall  
20 include a copy of this Article and all rules issued pursuant to this Article.

21 If the Department of Transportation fails to include a copy of this Article and the  
22 rules, the time period during which the permit applicant, permit holder, or owner of the  
23 outdoor advertising structure has to request a review hearing shall be tolled until the  
24 Department of Transportation provides the required materials."

25 Section 4. G.S. 136-135 reads as rewritten:

26 "**§ 136-135. Enforcement provisions.**

27 Any person, firm, corporation or association, placing, erecting or maintaining outdoor  
28 advertising along the interstate system or primary system in violation of this Article or  
29 rules ~~and regulations promulgated-adopted~~ by the Department of Transportation shall be  
30 guilty of a Class 1 misdemeanor. In addition thereto, the Department of Transportation  
31 may seek injunctive relief in the Superior Court of Wake County or of the county where  
32 the outdoor advertising is located and require the outdoor advertising to conform to the  
33 provisions of this Article or rules ~~and regulations promulgated-adopted~~ pursuant hereto, or  
34 require the removal of the said illegal outdoor advertising."

35 Section 5. Chapter 136 of the General Statutes is amended by adding a new  
36 section to read:

37 "**§ 136-18.7. Fees.**

38 The fee for a selective vegetation removal permit issued pursuant to G.S. 136-18(5),  
39 (7), and (9) is two hundred dollars (\$200.00)."

40 Section 6. G.S. 136-127 reads as rewritten:

41 "**§ 136-127. Declaration of policy.**

42 The General Assembly hereby finds and declares that outdoor advertising is a  
43 legitimate commercial use of private property adjacent to roads and highways but that the

1 erection and maintenance of outdoor advertising signs and devices in areas in the vicinity  
2 of the right-of-way of the interstate and primary ~~highways~~ highway systems within the  
3 State should be controlled and regulated in order to promote the safety, health, welfare  
4 and convenience and enjoyment of travel on and protection of the public investment in  
5 highways within the State, to prevent unreasonable distraction of operators of motor  
6 vehicles and to prevent interference with the effectiveness of traffic regulations and to  
7 promote safety on the highways, to attract tourists and promote the prosperity, economic  
8 well-being and general welfare of the State, and to preserve and enhance the natural  
9 scenic beauty of the highways and areas in the vicinity of the State highways and to  
10 promote the reasonable, orderly and effective display of such signs, displays and devices.  
11 It is the intention of the General Assembly to provide and declare herein a public policy  
12 and statutory basis for the regulation and control of outdoor advertising."

13 Section 7. G.S. 136-128 reads as rewritten:

14 **"§ 136-128. Definitions.**

15 As used in this Article:

- 16 (1) "Erect" means to construct, build, raise, assemble, place, affix, attach,  
17 create, paint, draw, or in any other way bring into being or establish.
- 18 (1a) "Illegal sign" means one which was erected and/or maintained in  
19 violation of State law.
- 20 (1b) "Information center" means an area or site established and maintained at  
21 safety rest areas for the purpose of informing the public of places of  
22 interest within the State and providing such other information as the  
23 Department of Transportation may consider desirable.
- 24 (2) "Interstate system" means that portion of the National System of  
25 Interstate and Defense Highways located within the State, as officially  
26 designated, or as may hereafter be so designated, by the Department of  
27 Transportation, or other appropriate authorities and are also so  
28 designated by interstate numbers. As to highways under construction so  
29 designated as interstate highways pursuant to the above procedures, the  
30 highway shall be a part of the interstate system for the purposes of this  
31 Article on the date the location of the highway has been approved  
32 finally by the appropriate federal authorities.
- 33 (2a) "Nonconforming sign" shall mean a sign which was lawfully erected but  
34 which does not comply with the provisions of State law or State rules  
35 and regulations passed at a later date or which later fails to comply with  
36 State law or State rules or regulations due to changed conditions.  
37 Illegally erected or maintained signs are not nonconforming signs.
- 38 (3) "Outdoor advertising" means any outdoor sign, display, light, device,  
39 figure, painting, drawing, message, plaque, poster, billboard, or any  
40 other thing which is designed, intended or used to advertise or inform,  
41 any part of the advertising or information contents of which is visible  
42 from any place on the main-traveled way of the interstate or primary  
43 system, whether the same be permanent or portable installation.

- 1 (4) "~~Primary systems~~"~~means that portion of connected main highways, as~~  
2 ~~now officially designated, or as may hereafter be so designated by the~~  
3 ~~Department of Transportation as primary system, or other appropriate~~  
4 ~~authorities and are also so designated by N.C. or U.S. numbers.~~ means  
5 the federal-aid primary system in existence on June 1, 1991, and any  
6 highway which is not on that system but which is on the National  
7 Highway System. As to highways under construction so designated as  
8 primary highways pursuant to the above procedures, the highway shall  
9 be a part of the primary system for purposes of this Article on the date  
10 the location of the highway has been approved finally by the appropriate  
11 federal or State authorities.
- 12 (5) "Safety rest area" means an area or site established and maintained  
13 within or adjacent to the highway right-of-way by or under public  
14 supervision or control, for the convenience of the traveling public.
- 15 (6) "State law" means a State constitutional provision or statute, or an  
16 ordinance, rule or regulation enacted or adopted by a State agency or  
17 political subdivision of a State pursuant to a State Constitution or  
18 statute.
- 19 (7) "Unzoned area" shall mean an area where there is no zoning in effect.
- 20 (8) "Urban area" shall mean an area within the boundaries or limits of any  
21 incorporated municipality having a population of five thousand or more  
22 as determined by the latest available federal census.
- 23 (9) "Visible" means capable of being seen (whether or not legible) without  
24 visual aid by a person of normal visual acuity."

25 Section 8. G.S. 136-129 reads as rewritten:

26 **"§ 136-129. Limitations of outdoor advertising devices.**

27 No outdoor advertising shall be erected or maintained within 660 feet of the nearest  
28 edge of the right-of-way of the interstate or primary ~~highways~~ highway systems in this  
29 State so as to be visible from the main-traveled way thereof after the effective date of this  
30 Article as determined by G.S. 136-140, except the following:

- 31 (1) Directional and other official signs and notices, which signs and notices  
32 shall include those authorized and permitted by Chapter 136 of the  
33 General Statutes, which include but are not limited to official signs and  
34 notices pertaining to natural wonders, scenic and historic attractions and  
35 signs erected and maintained by a public utility, electric or telephone  
36 membership corporation, or municipality for the purpose of giving  
37 warning of or information as to the location of an underground cable,  
38 pipeline or other installation.
- 39 (2) Outdoor advertising which advertises the sale or lease of property upon  
40 which it is located.
- 41 (2a) Outdoor advertising which advertises the sale of any fruit or vegetable  
42 crop by the grower at a roadside stand or by having the purchaser pick  
43 the crop on the property on which the crop is grown provided: (i) the

1 sign is no more than two feet long on any side; (ii) the sign is located on  
2 property owned or leased by the grower where the crop is grown; (iii)  
3 the grower is also the seller; and (iv) the sign is kept in place by the  
4 grower for no more than 30 days.

5 (3) Outdoor advertising which advertises activities conducted on the  
6 property upon which it is located.

7 (4) Outdoor advertising, in conformity with the rules and regulations  
8 promulgated by the Department of Transportation, located in areas  
9 which are zoned industrial or commercial under authority of State law.

10 (5) Outdoor advertising, in conformity with the rules and regulations  
11 promulgated by the Department of Transportation, located in unzoned  
12 commercial or industrial areas."

13 Section 9. G.S. 136-129.1 reads as rewritten:

14 **"§ 136-129.1. Limitations of outdoor advertising devices beyond 660 feet.**

15 No outdoor advertising shall be erected or maintained beyond 660 feet of the nearest  
16 edge of the right-of-way of the interstate or primary ~~highways~~ highway systems in this  
17 State outside of the urban areas so as to be visible and intended to be read from the main-  
18 traveled way except the following:

19 (1) Directional and other official signs and notices, which signs and notices  
20 shall include those authorized and permitted by Chapter 136 of the  
21 General Statutes, which include but are not limited to official signs and  
22 notices pertaining to natural wonders, scenic and historic attractions and  
23 signs erected and maintained by a public utility, electric or telephone  
24 membership corporation, or municipality for the purpose of giving  
25 warning of or information as to the location of an underground cable,  
26 pipeline or other installation.

27 (2) Outdoor advertising which advertises the sale or lease of property upon  
28 which it is located.

29 (3) Outdoor advertising which advertises activities conducted on the  
30 property upon which it is located."

31 Section 10. G.S. 136-136 reads as rewritten:

32 **"§ 136-136. Zoning changes.**

33 All zoning authorities shall give written notice to the Department of Transportation of  
34 the establishment or revision of any commercial and industrial zones within 660 feet of  
35 the right-of-way of interstate or primary ~~highways~~ highway systems. Notice shall be by  
36 registered mail sent to the offices of the Department of Transportation in Raleigh, North  
37 Carolina, within 15 days after the effective date of the zoning change or establishment."

38 Section 11. This act is effective when it becomes law.