

SENATE BILL 3646

By Ketron

AN ACT to amend Tennessee Code Annotated, Title 13,
Chapter 7, relative to nonconforming property.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 13-7-208, is amended by deleting subsections (b) through (l).

SECTION 2. Tennessee Code Annotated, Title 13, Chapter 7, is amended by adding the following language as a new part 5:

13-7-501.

This part shall be known and may be cited as the "Tennessee Non-Conforming Property Act."

13-7-502.

It is the public policy of the state and the purpose of this part to protect private property legally developed and constructed prior to the adoption of new zoning regulations by any governmental agency of this state or its political subdivisions where newly adopted regulations restrict, in whole or in part, the continued use and enjoyment of the property and the conduct thereon. The general assembly finds that these non-conforming properties are a species of property right entitled to continued protection, that run with the land and that those rights may only be given up when the property owner intentionally and voluntarily relinquishes them, or receives just compensation for the involuntary loss of development rights caused by new zoning regulations. This part shall be interpreted and construed broadly so as to protect private property rights.

13-7-503.

As used in this part, unless the context otherwise requires:

(1) "Block" means a unit of land bounded by streets or by a combination of streets and public land, railroad rights-of-way, waterways or any other barrier to the continuity of development;

(2) "Motor vehicle business establishment" means a business establishment that sells operable motor vehicles and all the motor vehicles have been previously titled, excluding any franchised retail motor vehicle dealership located on property that is principally used for the marketing and display of new motor vehicles, whether by sale, rental, lease or other commercial or financial means that is primarily housed in a structure and characterized by a mixture of the following secondary supporting uses:

(A) An inventory of new or used motor vehicles in operating condition for sale or lease either on the same parcel or at a location affiliated with a franchised retail motor vehicle dealership; and

(B) On-site facilities for the repair and service of motor vehicles previously sold, rented or leased by the retail motor vehicle dealership;

(3) "Non-conforming property" means property where the use of land and improvements thereon, including but not limited to, buildings, signs, principal and accessory structures, operations, facilities, activities, materials, and equipment were legally in existence and compliant with zoning regulations in effect prior to the effective date of the new zoning regulations such that the conduct on the property no longer conforms or complies, in whole or in part, with the present land use restrictions and requirements;

(4) "Off-site sign" means any sign that advertises or gives direction to any business, product, service, attraction or any other purpose or interest off the premises,

other than to establishments located on the site where the sign is located (on-site or on-premise sign);

(5) "Owner" means the fee simple owner of the property or the owner's designee. The protections of this part shall run with the land so that the property will be protected regardless of any change in ownership; and

(6) "Sign" means any device, fixture, or structure that uses form, graphic, illumination, symbol, or writing to advertise, announce, or identify a person or entity or to communicate information of any kind

13-7-504.

Any non-conforming property shall be allowed to continue its pre-existing use and conduct on the land.

13-7-505.

Any non-conforming property shall be allowed to expand its pre-existing use and conduct on the land and construct additional facilities provided there is a reasonable amount of space for expansion on the property so as to avoid nuisances to adjoining landowners. No building permit or similar authorization for such an expansion shall be denied.

13-7-506.

(a) Any non-conforming property shall be allowed to destroy present facilities, in whole or in part, and replace or reconstruct new facilities, provided that the replacement or reconstruction will not change or increase the pre-existing size, scope and nature of the continued conduct on the land. No building permit or similar authorization shall be denied.

(b) Any non-conforming property which is wholly destroyed by the owner for the purpose of redevelopment that increases the pre-existing size, scope and nature of the

continued conduct on the land shall comply with the front, rear, and side setbacks, if applicable; however, no other local zoning or development regulation shall apply to such redevelopment.

13-7-507.

(a) The property rights protected in this part shall continue indefinitely so long as the owner does not intentionally and voluntarily abandon the use of and conduct on the property, or until the owner intentionally and voluntarily changes the property so as to conform to current zoning regulations. Discontinuation of the use of and conduct on the non-conforming property will not constitute abandonment unless the owner intentionally and voluntarily intended to abandon.

(b) In any contested matter regarding the non-conforming property, including an appeal to the local board of zoning appeals, the government has the burden of proving that the property owner intentionally and voluntarily abandoned the non-conforming property, including showing proof of an overt act of abandonment.

13-7-508.

(a) This part applies to all local governments including those which adopt zoning regulations under any provision of title 13, as well as any local government which has adopted or will adopt in the future zoning regulations under any private act or law of local applicability, except as herein provided below.

(b) This part does not apply to:

(1) Any municipality defined as a premier type tourist resort according to §67-6-103(a)(3)(B).

(2) Any home rule municipality; provided, however, that subject to the approval of the local legislative body, a home rule municipality may opt into this part.

(c) This part applies only to the property containing the nonconforming use or conduct of the owner and does not operate to permit expansion through the acquisition of additional property.

13-7-509.

(a) This part applies to all signs, provided however that any expansion of off-site signs shall be limited as follows:

(1) Any off-site sign smaller than a standard 8-sheet poster which, for the purposes of this subsection (a), means an off-site sign with overall dimensions of at least five feet four inches (5' 4") to six feet two inches (6' 2") in height and eleven feet four inches (11' 4") to twelve feet two inches (12' 2") in width shall not be expanded to a size greater than a standard 8-sheet poster;

(2) Any standard 8-sheet poster shall not be expanded to a size greater than a 30-sheet poster which, for the purposes of this section, means an off-site sign with overall dimensions of twelve feet three inches (12' 3") in height and twenty-four feet six inches (24' 6") in width;

(3) Any standard 30-sheet poster shall not be expanded to a size greater than any standard bulletin which, for the purposes of this section, means any off-site sign with overall dimensions of ten feet (10') to fourteen feet (14') in height and thirty-six feet (36') to forty-eight feet (48') in width;

(4) Any standard bulletin shall not be expanded to a size greater than any super bulletin which, for the purposes of this section, means any off-site sign with overall dimensions of sixteen feet (16') to twenty feet (20') in height and sixty feet (60') in width;

(5) Any super bulletin shall not be expanded; or

(6) Any off-site sign with a height larger than standard 8-sheet poster height or width larger than standard 8-sheet poster width but not meeting the definition of a standard 8-sheet poster, a standard 30-sheet poster, a standard bulletin, or a standard super bulletin shall not be expanded by more than one hundred percent (100%) of its surface area.

(b) When the use permitted to continue to expand, or to be rebuilt pursuant to any section of this part is an off-premises sign, such use shall not preclude any new or additional conforming use or structure on the property on which the sign structure is located or on any adjacent property under the same ownership; provided, however, that any such new or additional use or structure does not result in any violations of the applicable zoning restrictions other than those non-conformities associated with the off-premises sign.

13-7-510.

(a) In any municipality having a metropolitan form of government and a population of more than five hundred thousand (500,000), according to the 2010 federal census or any subsequent federal census, any non-conforming motor vehicle business establishment may be terminated after notice and a hearing before the board of zoning appeals upon a finding that all of the following have been established in the record before the board of zoning appeals:

(1) Another motor vehicle business establishment is located within the one thousand feet (1,000') of the non-conforming motor vehicle business establishment, in the same block as the non-conforming motor vehicle business establishment, or in the block across a public street or road from the block in which the non-conforming motor vehicle business establishment is located;

(2) The parcel on which the non-conforming motor vehicle business establishment is located has less than two hundred fifty feet (250') of frontage on any public street or road, excluding any portion of the frontage not owned or leased by the licensed operator of the non-conforming motor vehicle business establishment; and

(3) At least ten percent (10%) of the inventory of the non-conforming motor vehicle business establishment at any point in time consists of motor vehicles titled pursuant to title 55, chapter 3, part 2, including, but not limited to, vehicles with salvage titles, flood titles, rebuilt titles, or nonrepairable vehicle certificates. The operator of the non-conforming motor vehicle business establishment shall make the titles for all of the vehicles located on the premises of the non-conforming motor vehicle business establishment immediately available upon request of a local zoning inspection official, or produce the original titles at the office of the local zoning inspection official within three (3) business days of the request by the local zoning inspection official. The failure of the non-conforming motor vehicle business establishment to make the titles for the vehicles located on the premises of the non-conforming motor vehicle business establishment available to the local zoning inspection official in accordance with this section shall create a rebuttable presumption that at least ten percent (10%) of the inventory of the non-conforming motor vehicle business establishment consists of the motor vehicles titled pursuant to title 55, chapter 3, part 2.

(b) All other industrial, commercial or other business establishments in any municipality with a metropolitan form of government and a population of more than five hundred thousand (500,000), according to the 2010 federal census or any subsequent

federal census, shall be entitled to continue to operate, expand or rebuild pursuant to this part.

13-7-511.

Any proposed zoning legislation that will create a non-conforming property or properties if enacted, must provide in addition to the public notice required pursuant to § 13-7-105 and § 13-7-203, notice by certified mail, thirty (30) days before the required public hearings, to each owner of property which will become, in whole or in part, non-conforming or non-compliant if the legislation is enacted.

13-7-512.

(a) If a property owner appeals to a local board of zoning appeals contending that the property in question is legally non-conforming, any decision of the board concluding that the property is not non-conforming, shall be based upon clear and convincing evidence, with written findings of fact justifying the conclusion of the board.

(b) Any property owner who sues a local government in order to validate the legal non-conforming use or conduct on a property, or is sued by a local government when the property is legally non-conforming, is entitled to recover attorneys' fees under the "Equal Access to Justice Act of 1984" in § 29-37-101 et seq.

(c) If a property owner defends against an appeal filed by non-governmental parties, where the administrative body has concluded that the property is legally non-conforming as defined in this part, the owner is entitled to recover attorneys' fees against the non-governmental parties in the same manner as provided for in the "Equal Access to Justice Act of 1984", in § 29-37-101 et seq.

SECTION 3. This act shall take effect July 1, 2012, the public welfare requiring it and shall apply to all petitions for land use review filed on or after the effective date of this act.