

SENATE BILL 2188

By Johnson

AN ACT to amend Tennessee Code Annotated, Title 54,
Chapter 17 and Title 54, Chapter 21, relative to
outdoor advertising.

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

SECTION 1. Tennessee Code Annotated, Section 54-17-109, is amended by deleting the section and substituting instead the following:

The following advertising structures, or parts of the structures, are excepted from the provisions of § 54-17-108:

(1) On-premises devices, as defined in § 54-21-102; provided, that:

(A) The outdoor advertising message is contained within a sign face that does not exceed one hundred square feet (100 sq. ft.) in area;
and

(B) If more than one on-premises device is located on the same property, the devices are located at least one thousand feet (1,000') apart along the highway frontage;

(2) Outdoor advertising devices that do not exceed eight square feet (8 sq. ft.) in the maximum area of the sign face within which any message is displayed; provided, however, that devices located in close proximity to one another to create, create the appearance of, or function as a single sign face will be measured together as a single device for the purposes of applying this subdivision (2). This subdivision (2) does not apply to a device that:

(A) Contains any flashing, intermittent, or moving lights;

(B) Has illumination directed at any portion of the traveled way of any highway on the interstate system or primary system or is of such intensity or brilliance as to cause glare or impair the vision of a driver of a motor vehicle or otherwise interfere with a driver's operation of a motor vehicle;

(C) Is located or illuminated in a way that obscures or otherwise interferes with the effectiveness of any official traffic control sign, signal, or device, or interferes with a driver's view of approaching, merging, or intersecting traffic; or

(D) Has a digital display;

(3) Official signs and notices, as defined in § 54-21-102;

(4) Utility signs, as defined in § 54-21-102; and

(5) Advertisements, advertising signs, and advertising structures within the corporate limits of cities or towns.

SECTION 2. Tennessee Code Annotated, Title 54, Chapter 17, Part 1, is amended by adding the following as a new section:

54-17-117.

If any provision of this chapter or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this chapter which can be given effect without the invalid provision or application, and to that end the provisions of this chapter are declared to be severable.

SECTION 3. Tennessee Code Annotated, Section 54-17-206(a), is amended by deleting subdivisions (3) and (4).

SECTION 4. Tennessee Code Annotated, Section 54-17-206(b), is amended by deleting the subsection and substituting instead the following:

(b) The following advertising structures are exempt from the provisions of § 54-17-108 as applied to the Tennessee parkway system under this section:

(1) On-premises devices, as defined in § 54-21-102; provided, that:

(A) The sign face on each sign is no larger than five hundred square feet (500 sq. ft.); and

(B) If more than one sign is located on the same property, the signs are located at least one thousand feet (1,000') apart along the highway frontage;

(2) Outdoor advertising devices that do not exceed fifty square feet (50 sq. ft.) in the maximum area of the sign face within which any message is displayed, and that do not exceed ten feet (10') in width or height, including border and trim but excluding any supporting posts or structure; provided, however, that devices located in close proximity to one another to create, create the appearance of, or function as a single sign face will be measured together as a single device for the purposes of applying this subdivision (b)(2). This subdivision (b)(2) does not apply to a device that:

(A) Contains any flashing, intermittent, or moving lights;

(B) Has illumination directed at any portion of the traveled way of any highway on the interstate system or primary system or is of such intensity or brilliance as to cause glare or impair the vision of a driver of a motor vehicle or otherwise interfere with a driver's operation of a motor vehicle;

(C) Is located or illuminated in a way that obscures or otherwise interferes with the effectiveness of any official traffic control sign, signal, or device, or interferes with a driver's view of approaching, merging, or intersecting traffic; or

(D) Has a digital display;

- (3) Official signs and notices, as defined in § 54-21-102;
- (4) Utility signs, as defined in § 54-21-102; and
- (5) Advertisements, advertising signs, and advertising structures within the corporate limits of cities or towns.

SECTION 5. Tennessee Code Annotated, Title 54, Chapter 17, Part 2, is amended by adding the following as a new section:

54-17-208.

If any provision of this chapter or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this chapter which can be given effect without the invalid provision or application, and to that end the provisions of this chapter are declared to be severable.

SECTION 6. Tennessee Code Annotated, Section 54-21-102(2), is amended by deleting the language "off-premise advertising device" and substituting instead "off-premises device".

SECTION 7. Tennessee Code Annotated, Section 54-21-102, is amended by deleting the language "outdoor advertising device" wherever it appears and substituting instead "off-premises device".

SECTION 8. Tennessee Code Annotated, Section 54-21-102(3), is amended by deleting the word "transportation" and substituting instead "transportation, and, as the context requires, employees of the department of transportation acting under the authority of the commissioner to administer this chapter".

SECTION 9. Tennessee Code Annotated, Section 54-21-102(15), is amended by deleting the language "United States Code" and substituting instead "United States Code, including highways designated as part of the National Highway System and highways formerly designated as part of the federal-aid primary system".

SECTION 10. Tennessee Code Annotated, Section 54-21-102, is amended by adding the following as new, appropriately designated subdivisions:

() "Business facility" means a building with functioning utility services that has regular hours of operation on a year-round basis, together with any immediately adjacent outbuildings, parking areas, or other physical spaces arranged and designed to be used in immediate connection with the building, for the purpose of conducting a commercial or industrial enterprise for profit; provided, however, that "business facility" does not mean:

(A) An outdoor advertising structure;

(B) Structures that are used to store equipment or materials used in the production, or for the storage, of crops, livestock, or forestry products;

(C) A temporary structure or a structure operated only on a seasonal basis;

(D) A building primarily used as a residence or residential facility;

(E) A recreational facility, such as a campground, golf course, tennis court, park, zoo, or similar facility, except for the portion of such facility occupied by a building that has functioning utility services and regular hours of operation on a year-round basis, together with any immediately adjacent parking area;

(F) A public or private utility transmission facility, such as an electric or telephone pole or wire, a cellular communication tower, or a similar utility transmission facility, except that a water tower may be considered an on-premises device; or

(G) Railroad tracks;

() "Compensation" means the exchange of anything of value, including money, securities, real property interests, personal property interests, goods or services, promise of future payment, or forbearance of debt;

() "Department" means the department of transportation;

() "Facility open to the public" means a building with functioning utility services that has regular hours of operation on a year-round basis, together with any immediately adjacent outbuildings, parking areas, or other physical spaces arranged and designed to be used in immediate connection with such a building, for the purpose of conducting an activity open to the public or providing a service to members of the public, including places of worship, facilities of nonprofit or charitable organizations, educational facilities, meeting halls, and government offices; provided, however, that "facility open to the public" does not mean:

(A) An outdoor advertising structure;

(B) Structures that are used to store equipment or materials used in the production, or for the storage, of crops, livestock, or forestry products;

(C) A temporary structure or a structure operated only on a seasonal basis;

(D) A building primarily used as a residence or residential facility;

(E) A recreational facility, such as a campground, golf course, tennis court, park, zoo, or similar facility, except for the portion of such facility occupied by a building that has functioning utility services and regular hours of operation on a year-round basis, together with any immediately adjacent parking area;

(F) A public or private utility transmission facility, such as an electric or telephone pole or wire, a cellular communication tower, or a similar utility transmission facility, except that a water tower may be considered an on-premises device; or

(G) Railroad tracks;

() "Official signs and notices" means signs and notices erected and maintained by public officers or public agencies within their territorial or zoning jurisdiction in accordance with direction or authorization contained in federal, state, or local law for the purposes of carrying out an official duty or responsibility, including traffic control devices and historical markers erected or authorized by federal, state, or local government agencies;

() "Off-premises device" means:

(A) Outdoor advertising that is not located within fifty feet (50') of, or on the same parcel of property and on the same side of the highway as, a business facility or facility open to the public; or

(B) Outdoor advertising for which compensation is received for the display of any message on the outdoor advertising or compensation is given for the right to locate or operate the outdoor advertising on another person's property; provided, however, that this does not mean a device for which a business facility or facility open to the public located and leasing space within a larger parcel of property, such as a shopping mall or office park, provides compensation for the display of outdoor advertising on a device located upon the same larger parcel of property;

() "On-premises device" means:

(A)

(i) Outdoor advertising that is located within fifty feet (50') of, and on the same parcel of property and on the same side of the highway as, a business facility or facility open to the public; or

(ii) Outdoor advertising located on a water tower owned or operated by a business facility or facility open to the public; and

(B) Outdoor advertising for which no compensation is received for the display of a message on the device and no compensation is given for the right to locate or operate the device on another person's property, except in the case of a device for which a business facility or facility open to the public located and leasing space within a larger parcel of property, such as a shopping mall or office park, provides compensation for the display of outdoor advertising on a device located upon the same larger parcel of property;

() "Residence" or "residential facility" means a stationary building with functioning utility services, together with any immediately adjacent outbuildings, parking areas, or other physical spaces arranged and designed to be used in immediate connection with such a building, for the primary purpose of providing dwelling space for single-family or multiple-family occupancy;

() "Utility signs" means warning signs, notices, or markers that are customarily erected and maintained for operational and public safety purposes by publicly or privately owned utilities, railroads, ferries, airports, or other entities that provide utility or transportation services; and

() "Visible" means capable of being seen, whether or not readable, without visual aid by a person of normal visual acuity.

SECTION 11. Tennessee Code Annotated, Section 54-21-103, is amended by deleting the section and substituting instead the following:

(a) No off-premises device shall be erected or maintained within six hundred sixty feet (660') of the nearest edge of the right-of-way and visible from the main traveled way of the interstate or primary highway systems in this state, except as follows:

(1) Off-premises devices located in areas that are zoned industrial or commercial under authority of law and whose size, lighting, and spacing are

consistent with customary use as determined by agreement between the state and the secretary of transportation of the United States;

(2) Off-premises devices located in unzoned commercial or industrial areas as may be determined by agreement between the state and the secretary of transportation of the United States and subject to regulations promulgated by the commissioner; and

(3) Non-conforming off-premises devices permitted in accordance with § 54-21-104 and the department's outdoor advertising regulations.

(b) The following categories of outdoor advertising are not subject to the restrictions of subsection (a):

(1) Official signs and notices;

(2) On-premises devices;

(3) Outdoor advertising devices that do not exceed fifty square feet (50 sq. ft.) in the maximum area of the sign face within which any message is displayed, and which do not exceed ten feet (10') in width or height, including border and trim but excluding any supporting posts or structure; provided, however, that devices located in close proximity to one another to create, create the appearance of, or function as a single sign face will be measured together as a single device for the purposes of applying this subdivision (b)(3). This subdivision (b)(3) does not apply to a device that:

(A) Contains any flashing, intermittent, or moving lights;

(B) Has illumination directed at any portion of the traveled way of any highway on the interstate system or primary system or is of such intensity or brilliance as to cause glare or impair the vision of a driver of a

motor vehicle or otherwise interfere with a driver's operation of a motor vehicle;

(C) Is located or illuminated in a way that obscures or otherwise interferes with the effectiveness of any official traffic control sign, signal, or device, or interferes with a driver's view of approaching, merging, or intersecting traffic; or

(D) Has a digital display;

(4) Landmark signs lawfully in existence on October 22, 1965, as authorized under 23 U.S.C. § 131 and 23 CFR § 750.710; and

(5) Utility signs.

(c) No sign shall be erected or maintained within six hundred sixty feet (660') of the nearest edge of the right-of-way and visible from the main traveled way of the interstate or primary highway systems in this state that imitates, resembles, or interferes with any official traffic control sign, signal, or device or attempts or appears to attempt to control or direct the movement of traffic on the traveled way of any public highway.

SECTION 12. Tennessee Code Annotated, Section 54-21-104, is amended by deleting the language "commissioner" wherever it appears and substituting instead "department".

SECTION 13. Tennessee Code Annotated, Section 54-21-104(a)(1), is amended by deleting the language "outdoor advertising" and substituting instead "off-premises device".

SECTION 14. Tennessee Code Annotated, Section 54-21-104(a)(2), is amended by deleting the language "outdoor advertising device" wherever it appears and substituting instead "off-premises device".

SECTION 15. Tennessee Code Annotated, Section 54-21-104(b)(2), is amended by deleting the language "existing outdoor advertising device" and substituting instead "existing off-premises device".

SECTION 16. Tennessee Code Annotated, Section 54-21-104(b)(2)(B), is amended by deleting the language "outdoor advertising" wherever it appears.

SECTION 17. Tennessee Code Annotated, Section 54-21-104(b)(2), is amended by deleting the language "of transportation" wherever it appears, and is further amended by deleting the language "department of transportation's" and substituting instead "department's".

SECTION 18. Tennessee Code Annotated, Section 54-21-104(b)(2)(E), is amended by deleting the language "outdoor advertising" wherever it appears and substituting instead "off-premises".

SECTION 19. Tennessee Code Annotated, Section 54-21-104(b)(2)(F), is amended by deleting the language "outdoor advertising" wherever it appears and substituting instead "off-premises".

SECTION 20. Tennessee Code Annotated, Section 54-21-104(b)(2)(G), is amended by deleting the language "outdoor advertising" and substituting instead "off-premises".

SECTION 21. Tennessee Code Annotated, Section 54-21-104(b)(3), is amended by deleting the language "outdoor advertising" wherever it appears and substituting instead "off-premises".

SECTION 22. Tennessee Code Annotated, Section 54-21-104(b)(4), is amended by deleting the language "outdoor advertising" and substituting instead "off-premises".

SECTION 23. Tennessee Code Annotated, Section 54-21-104(b), is amended by adding the following as a new subdivision (5):

(5) Any advertising structure existing along the parkway system by and for the sole benefit of a nonprofit organization that is exempt from federal income tax under § 501(a) of the Internal Revenue Code (26 U.S.C. § 501(a)), by virtue of being an organization described in § 501(c)(3) of the Internal Revenue Code (26 U.S.C. §

501(c)(3)), is exempt from the payment of fees for permits or tags under this subsection (b).

SECTION 24. Tennessee Code Annotated, Section 54-21-104(c)(2), is amended by deleting the language "outdoor advertising" and substituting instead "off-premises".

SECTION 25. Tennessee Code Annotated, Section 54-21-105(a)(1), is amended by deleting the subdivision and substituting instead the following:

(1) Any person, either owner or lessee, of any outdoor advertising who has failed to act in accordance with § 54-21-103 or § 54-21-104 shall remove the outdoor advertising immediately.

SECTION 26. Tennessee Code Annotated, Section 54-21-105, is amended by adding the following language as a new subsection (f):

(f)

(1) If outdoor advertising qualifies as an on-premises device by location under § 54-21-102() (A), but the department has reason to believe that the owner or operator of the device has received, or is receiving, compensation for the display of messages on the device or has given, or is giving, compensation to another person for the right to locate or operate outdoor advertising on the other person's property such that the outdoor advertising does not meet the requirements of § 54-21-102() (B), the department may issue an investigative demand upon the owner or operator of the device, or upon the owner of the property, for the purpose of obtaining relevant documents or information to determine whether the device qualifies as an on-premises device.

(2) If after being served with an investigative demand by the department under subdivision (f)(1), the person provides the requested documents or information and the department determines that the sign does not qualify as an

on-premises device and is being operated in violation of § 54-21-103 or § 54-21-104, the department shall issue a written order to the owner or operator of the sign explaining the basis for determining that the outdoor advertising does not qualify as an on-premises device and directing the owner or operator of the device to remedy the violation by applying for the applicable outdoor advertising permit, or by removing the unlawful device, as appropriate, by the date set forth in the order, which shall be no less than sixty (60) days after the date of the order.

(3) The person may appeal the department's order under subdivision (f)(2) by filing a written notice of appeal with the department within thirty (30) days of the date on which the order is issued. If an appeal is timely filed with the department, the department shall initiate a contested case proceeding under the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, to hear the person's appeal.

(4) If a person fails to comply with the department's investigative demand under subdivision (f)(1), or if the department reasonably believes the documents or information provided are incomplete or inaccurate, the department may initiate a contested case proceeding under the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, to compel the production of relevant documents or information and to determine whether the outdoor advertising qualifies as an on-premises device under § 54-21-102() or is being operated in violation of § 54-21-103 or § 54-21-104 and therefore subject to enforcement action under § 54-5-105.

SECTION 27. Tennessee Code Annotated, Section 54-21-107, is amended by deleting the section.

SECTION 28. Tennessee Code Annotated, Section 54-21-109(a), is amended by deleting the language "outdoor advertising signs, displays and" and substituting instead "off-premises".

SECTION 29. Tennessee Code Annotated, Section 54-21-109(a), is amended by deleting the language "extended to signs, displays and" and substituting instead "extended to".

SECTION 30. Tennessee Code Annotated, Section 54-21-109(a), is amended by deleting the language "signs, displays or" and substituting instead "off-premises".

SECTION 31. Tennessee Code Annotated, Section 54-21-118, is amended by deleting the language "No outdoor advertising" and substituting instead "No off-premises device".

SECTION 32. Tennessee Code Annotated, Section 54-21-118, is amended by deleting the language "render the outdoor advertising" and substituting instead "render the off-premises device".

SECTION 33. Tennessee Code Annotated, Section 54-21-118, is amended by deleting the language "Valid permits for outdoor advertising structures" wherever it appears and substituting instead "Valid permits for off-premises devices".

SECTION 34. Tennessee Code Annotated, Section 54-21-121(a), is amended by deleting the language "outdoor advertising device" and substituting instead "off-premises device".

SECTION 35. Tennessee Code Annotated, Section 54-21-121(a), is amended by deleting the language "Outdoor advertising devices" and substituting instead "Off-premises devices".

SECTION 36. Tennessee Code Annotated, Section 54-21-122(b)(3), is amended by deleting the language "uses" and substituting instead "contains".

SECTION 37. Tennessee Code Annotated, Section 54-21-122(b)(3), is amended by deleting the language "to give public information, such as time, date, temperature or weather, or

to provide the price of a product, the amount of a lottery prize or similar numerical information supplementing the content of a message otherwise displayed on the" and substituting instead "within a larger non-digital".

SECTION 38. Tennessee Code Annotated, Section 54-21-123, is amended by deleting the language "outdoor advertising" and substituting instead "off-premises".

SECTION 39. Tennessee Code Annotated, Title 54, Chapter 21, is amended by adding the following as a new section:

54-21-124.

If any provision of this chapter or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this chapter which can be given effect without the invalid provision or application, and to that end the provisions of this chapter are declared to be severable.

SECTION 40. This act shall take effect upon becoming a law, the public welfare requiring it.