

NORTH CAROLINA GENERAL ASSEMBLY
1975 SESSION

CHAPTER 568
SENATE BILL 351

AN ACT TO AMEND THE NORTH CAROLINA OUTDOOR ADVERTISING CONTROL ACT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 136-128(2), as the same appears in Volume 3B of the General Statutes, is amended by adding at the end thereof the following:

"and are also so designated by interstate numbers. As to highways under construction so designated as interstate highways pursuant to the above procedures, the highway shall be a part of the interstate system for the purposes of this Article on the date the location of the highway has been approved finally by the appropriate federal authorities."

Sec. 2. G.S. 136-128(3), as the same appears in Volume 3B of the General Statutes, is amended by adding at the end of that sentence thereof the following:

", whether the same be permanent or portable installation."

Sec. 3. G.S. 136-128(4), as the same appears in Volume 3B of the General Statutes, is amended by adding at the end thereof the following:

"and are also so designated by N.C. or U.S. numbers. As to highways under construction so designated as primary highways pursuant to the above procedures, the highway shall be a part of the primary system for purposes of this Article on the date the location of the highway has been approved finally by the appropriate federal or State authorities."

Sec. 4. G.S. 136-128, as the same appears in Volume 3B of the General Statutes, is amended by adding at the end thereof the following additional provisions to read as follows:

- "(6) 'Erect' means to construct, build, raise, assemble, place, affix, attach, create, paint, draw, or in any other way bring into being or establish.
- (7) 'Visible' means capable of being seen (whether or not legible) without visual aid by a person of normal visual acuity.
- (8) 'State law' means a State constitutional provision or statute, or an ordinance; rule or regulation enacted or adopted by a State agency or political subdivision of a State pursuant to a State Constitution or statute.
- (9) 'Illegal sign' means one which was erected and/or maintained in violation of State law.
- (10) 'Unzoned area' shall mean an area where there is no zoning in effect.
- (11) 'Nonconforming sign' shall mean a sign which was lawfully erected but which does not comply with the provisions of State law or State rules and regulations passed at a later date or which later fails to comply with State law or State rules or regulations due to changed conditions. Illegally erected or maintained signs are not nonconforming signs.
- (12) 'Urban area' shall mean an area within the boundaries or limits of any incorporated municipality having a population of five thousand or more as determined by the latest available federal census."

Sec. 5. G.S. 136-129, as the same appears in Volume 3B of the General Statutes is amended by deleting the date "July 6, 1967," in the first paragraph thereof and, in its place, by adding the following words:

"the effective date of this Article as determined by G.S. 136-140".

Sec. 6. The Outdoor Advertising Control Act, Article 11, of Chapter 136, as the same appears in Volume 3B, is amended by adding a new section, G.S. 136-129.1, immediately following G.S. 136-129 and immediately preceding G.S. 136-130, such new section to read as follows:

"§ 136-129.1. Limitations of outdoor advertising devices beyond 660 feet. — No outdoor advertising shall be erected or maintained beyond 660 feet of the nearest edge of the right-of-way of the interstate or primary highways in this State outside of urban areas so as to be visible and intended to be read from the main traveled way except the following:

- (1) Directional and other official signs and notices, which signs and notices shall include those authorized and permitted by Chapter 136 of the General Statutes, which include but are not limited to official signs and notices pertaining to natural wonders, scenic and historic attractions and signs erected and maintained by a public utility, electric or telephone membership corporation, or municipality for the purpose of giving warning of or information as to the location of an underground cable, pipeline or other installation.
- (2) Outdoor advertising which advertises the sale or lease of property upon which it is located.
- (3) Outdoor advertising which advertises activities conducted on the property upon which it is located." Sec. 7. G.S. 136-130, as the same appears in Volume 3B of the General Statutes, is amended by rewriting the same to read as follows:

"§ 136-130. Regulation of advertising. — The Board of Transportation is authorized to promulgate rules and regulations in the form of ordinances governing:

- (1) the erection and maintenance of outdoor advertising permitted in G.S. 136-129,
- (2) the erection and maintenance of outdoor advertising permitted in G.S. 136-129.1,
- (3) the specific requirements and procedures for obtaining a permit for outdoor advertising as required in G.S. 136-133 and for the administrative procedures for appealing a decision at the agency level to refuse to grant or in revoking a permit previously issued, and
- (4) the administrative procedures for appealing a decision at the agency level to declare any outdoor advertising illegal and a nuisance as pursuant to G.S. 136-134, as may be necessary to carry out the policy of the State declared in this Article. The Board of Transportation, in its discretion, may delegate to the Secretary of Transportation the authority to promulgate such rules and regulations on its behalf."

Sec. 8. G.S. 136-131, as the same appears in Volume 3B of the General Statutes, is hereby amended by adding in the first paragraph thereof after the words "Which are prohibited under the provisions of G.S. 136-129," the following words:

"or G.S. 136-129.1,".

Sec. 9. G.S. 136-131, as the same appears in Volume 3B of the General Statutes, is amended by deleting the "July 6, 1967," dates in the first paragraph thereof and, in their places, by adding the following words: "the effective date of this Article as determined by G.S. 136-140".

Sec. 10. G.S. 136-131, as the same appears in Volume 3B of the General Statutes, is amended by deleting the words "erect and" in the sixth line of the third paragraph and in the sixth line in the fourth paragraph.

Sec. 11. G.S. 136-133, as the same appears in Volume 3B of the General Statutes, is amended by rewriting the same to read as follows:

"§ 136-133. Permits required. — 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 Board of Transportation or its agents pursuant to the procedures set out by rules and regulations promulgated by the Board of Transportation or the Secretary of Transportation. The permit shall be valid until revoked for nonconformance with this Article or rules and regulations promulgated by the Board of Transportation or the Secretary of Transportation thereunder. Any person aggrieved by the decision of the Board of Transportation or its agents in refusing to grant or in revoking a permit may appeal the decision in accordance with the rules and regulations enacted by the Board of Transportation or Secretary of Transportation pursuant to this Article to the Secretary of Transportation who shall make the final decision on the agency appeal. The Board of Transportation shall have the authority to charge reasonable permit fees to defray the costs of administering the permit procedures under this Article."

Sec. 12. G.S. 136-134, as the same appears in Volume 3B of the General Statutes, is amended by rewriting the same to read as follows:

"§ 136-134. Illegal advertising. — Any outdoor advertising erected or maintained after the effective date of this Article as determined by G.S. 136-140, in violation of the provisions of this Article or rules and regulations promulgated by the Board of Transportation or Secretary of Transportation, or any outdoor advertising maintained without a permit regardless of the date of erection shall be illegal and shall constitute a nuisance. The Board of Transportation or its agents shall give 30 days' notice to the owner of the illegal outdoor advertising with the exception of the owner of unlawful portable outdoor advertising for which the Board of Transportation shall give five days' notice, if such owner is known or can by reasonable diligence be ascertained, to remove the outdoor advertising or to make it conform to the provisions of this Article or rules and regulations promulgated by the Board of Transportation or the Secretary of Transportation hereunder. The Board of Transportation or its agents shall have the right to remove the illegal outdoor advertising at the expense of the said owner if the said owner fails to act within 30 days after receipt of such notice or five days for owners of portable outdoor advertising.

The Board of Transportation or its agents may enter upon private property for the purpose of removing the outdoor advertising prohibited by this Article or rules and regulations promulgated by the Board of Transportation or the Secretary of Transportation hereunder without civil or criminal liability. Any person aggrieved by the decision declaring the outdoor advertising structure illegal shall be granted the right to appeal the decision in accordance with the terms of the rules and regulations enacted by the Board of Transportation or the Secretary of Transportation pursuant to this Article to the Secretary of Transportation who shall make the final decision on the agency appeal."

Sec. 13. The Outdoor Advertising Control Act, Article 11 of Chapter 136, as the same appears in Volume 3B, is amended by adding a new section, G.S. 136-134.1, immediately following G.S. 136-134 and immediately preceding G.S. 136-135, such new section to read as follows:

"§ 136-134.1. Judicial review. — Any person who is aggrieved by a final decision of the Secretary of Transportation after exhausting all administrative remedies made available to him by rules and regulations enacted pursuant to this Article is entitled to judicial review of such decision under this Article. In order to obtain judicial review of the Secretary of Transportation's decision under this Article, the person seeking review must file a petition in

the Superior Court of Wake County within 30 days after written copy of the decision of the Secretary of Transportation is served upon the person seeking review. Failure to file such a petition within the time stated shall operate as a waiver of the right of such person to review under this Chapter.

The petition shall state explicitly what exceptions are taken to the decision of the Secretary of Transportation and what relief petitioner seeks. Within 10 days after the petition is filed with the court, the person seeking the review shall serve copies of the petition by registered mail, return receipt requested, upon the Board of Transportation or the Secretary of Transportation. Within 30 days after receipt of the copy of the petition for review, or within such additional time as the court may allow, the Secretary of Transportation shall transmit to the reviewing court a certified copy of the written decision.

At any time before or during the review proceeding, the aggrieved party may apply to the reviewing court for an order staying the operation of the decision of the Secretary of Transportation pending the outcome of the review. The court may grant or deny the stay in its discretion upon such terms as it deems proper. The review of the decision of the Secretary of Transportation under this Article shall be conducted by the court without a jury and shall hear the matter de novo pursuant to the rules of evidence as applied in the general court of justice. The court, after hearing the matter may affirm, reverse or modify the decision if the decision is:

1. in violation of constitutional provisions; or
2. not made in accordance with this Article or rules or regulations promulgated by the Board of Transportation or Secretary of Transportation; or
3. affected by other error of law.

The party aggrieved shall have the burden of showing that the decision was violative of one of the above.

A party to the review proceedings, including the agency, may appeal to the appellate division from the final judgment of the Superior Court under the rules of procedure applicable in civil cases. The appealing party may apply to the Superior Court for a stay for its final determination or a stay of the administrative decision, whichever shall be appropriate, pending the outcome of the appeal to the appellate division."

Sec. 14. G.S. 136-135, as the same appears in Volume 3B of the General Statutes, is amended by rewriting the same to read as follows:

"§ 136-135. **Enforcement provisions.** — Any person, firm, corporation or association placing, erecting or maintaining outdoor advertising along the interstate system or primary system in violation of this Article or rules and regulations promulgated by the Board of Transportation or the Secretary of Transportation shall be guilty of a misdemeanor. In addition thereto, the Board of Transportation or the Secretary of Transportation may seek injunctive relief in the Superior Court of Wake County and require the outdoor advertising to conform to the provisions of this Article or rules and regulations promulgated pursuant hereto, or require the removal of the said illegal outdoor advertising."

Sec. 15. G.S. 136-140, as the same appears in Volume 3B of the General Statutes, is amended by adding thereto the words "United States" after the word "the" and before the words "Secretary of Transportation" on the seventh line of this section.

Sec. 16. This act shall become effective on July 1, 1975.

In the General Assembly read three times and ratified, this the 12th day of June, 1975.