

## CHAPTER 44

## ( HB 328 )

AN ACT relating to advertising devices and declaring an emergency.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

➔Section 1. KRS 177.830 is repealed, reenacted, and amended to read as follows:

As used in KRS 177.830 to 177.890, unless the context requires otherwise:

- (1) "Limited-access highway" means a road or highway or bridge constructed pursuant to the provisions of KRS 177.220 to 177.310;
- (2) "Interstate highway" means any highway, road, street, access facility, bridge, or overpass which is designated as a portion of the national system of interstate and defense highways as may be established by law, or as may be so designated by the Transportation Cabinet in the joint construction of the system by the Transportation Cabinet and the United States Department of Transportation, Bureau of Public Roads;
- (3) "Federal-aid primary highway" means any highway, road, street, appurtenant facility, bridge, or overpass which is designated as a portion of the federal-aid primary highway system as may be established by law or as may be so designated by the Transportation Cabinet and the United States Department of Transportation;
- (4) "Turnpike" means any road or highway or appurtenant facility constructed pursuant to the provisions of KRS 177.390 to 177.570, or pursuant to the provisions of any other definition of "turnpike" in the Kentucky Revised Statutes, or any other highway, road, parkway, bridge, or street upon which a toll or fee is charged for the use of motor vehicular traffic;
- (5) "Advertising device" means any billboard, sign, notice, poster, display, or other device, *including the structure erected or used in connection with the display or device and all lighting or other attachments used in connection with the display or device, that is:*
  - (a) *Operated or owned by a person or entity who is earning compensation directly or indirectly from a third party or parties for the placement of a message on the device; and*
  - (b) ~~Intended to attract the attention of operators of motor vehicles on the highways, and shall include a structure erected or used in connection with the display of any device and all lighting or other attachments used in connection therewith. However, it does not include directional or other official signs or signals erected by the state or other public agency having jurisdiction;~~
- (6) "Highway or highways" as used in KRS 177.830 to 177.890 means limited access highway, interstate highway, federal-aid primary highway, or turnpike as defined in KRS 177.830 to 177.890;
- (7) "Commercial or industrial zone" adjacent to a federal-aid primary highway means an area zoned to permit business, commerce or trade pursuant to lawful ordinance or regulation;
- (8) "Unzoned commercial or industrial area" adjacent to a federal-aid primary highway means an area which is not zoned by state or local law, regulation, or ordinance and on which either a commercial or industrial activity is conducted or a permanent structure therefor is located together with the area extending along the highway for such distances as may be determined by regulation promulgated by the secretary of the Transportation Cabinet. Each side of the highway will be considered separately in applying this definition--all measurements shall be from the outer edges of the regularly used buildings, parking lots, storage or processing areas of the activities, not from the property lines of the activities, and shall be along or parallel the edge of the pavement of the highway;
- (9) "Commercial or industrial activities" for purposes of unzoned industrial and commercial areas means those activities generally recognized as commercial or industrial by zoning authorities in this state, except that none of the following activities shall be considered commercial or industrial:
  - (a) Outdoor advertising structures;
  - (b) Agricultural, forestry, ranching, grazing, farming, and related activities, including, but not limited to, wayside fresh produce stands;
  - (c) Activities normally or regularly in operation less than three (3) months of the year;

- (d) Transient or temporary activities;
  - (e) Activities not visible from the main traveled way;
  - (f) Activities more than 300 feet from the nearest edge of the right-of-way;
  - (g) Activities conducted in a building principally used as a residence;
  - (h) Railroad tracks and minor sidings;~~{}~~
- (10) "Urban areas" means those areas having a population of five thousand (5,000) or more which have been designated by the United States Department of Commerce, Bureau of the Census, as an urban area. A list of cities which have designated urban areas shall be maintained by the Transportation Cabinet, Division of Planning, Frankfort, Kentucky 40622. The Transportation Cabinet shall maintain maps indicating the boundaries of the designated areas. The maps shall be available from the Transportation Cabinet for a fee not to exceed five dollars (\$5.00); **and**
- (11) **"Compensation" means the exchange of anything of value, including money, securities, real property interests, personal property interests, goods or services, promises of future payments, or forbearance of debt.**

➔Section 2. KRS 177.841 is repealed, reenacted, and amended to read as follows:

- (1) Except as otherwise provided in KRS 177.830 to 177.890, the erection or maintenance of any advertising device upon or within six hundred sixty (660) feet of the right-of-way of any interstate highway or federal-aid primary highway is prohibited.
- (2) The erection or maintenance of any advertising device located outside of an urban area and beyond six hundred sixty (660) feet of the right-of-way which is legible and/or identifiable from the main traveled way of any interstate highway or federal-aid primary highway is prohibited~~{ with the exception of:~~
  - (a) ~~Directional and official signs and notices;~~
  - (b) ~~Signs advertising the sale or lease of property upon which they are located; or~~
  - (c) ~~Signs advertising activities conducted on the property on which they are located.~~
- (3) **This section shall not apply to directional or other official signs or signals erected by the state or any other public agency having jurisdiction.**

➔Section 3. KRS 177.860 is repealed, reenacted, and amended to read as follows:

**The Transportation Cabinet**~~{The commissioner of the Department of Highways}~~ shall **promulgate administrative regulations in accordance with KRS Chapter 13A, no later than August 1, 2021, to establish:**~~{prescribe by regulations}~~

- (1) **Permit fees for advertising devices not to exceed:**
  - (a) **Two hundred fifty dollars (\$250) for the initial permit application review, site and compliance inspection, and permit issuance; and**
  - (b) **One hundred dollars (\$100) for an annual permit renewal; and**
- (2) Reasonable standards for the advertising devices hereinafter enumerated, designed to protect the safety of and to guide the users of the highways and otherwise to achieve the objectives set forth in KRS 177.850, and the erection and maintenance of any of the following advertising devices, if they comply with the regulations, shall not be deemed a violation of KRS 177.830 to 177.890:
  - (a) **Signs, notices, posters, displays, or other devices that do not meet the definition of advertising device as set forth in Section 1 of this Act**~~{(1) An advertising device which is to be erected or maintained on property for the purpose of setting forth or indicating:~~
    - (a) ~~The name and address of the owner, lessee, or occupant of the property; or~~
    - (b) ~~The name or type of business or profession conducted on the property; or~~
    - (c) ~~Information required or authorized by law to be posted or displayed on the advertising device;~~
  - (b)~~{(2)}~~ **An advertising device which is not visible from any traveled portion of the highway; and**
  - (c)~~{(3)}~~ **An advertising device indicating the sale or leasing of the property upon which it is placed;**

- (4) Advertising devices which otherwise comply with the applicable zoning ordinances and regulations of any county or city, and which are to be located in a commercially or industrially developed area, in which the commissioner of highways determines, in exercise of his sound discretion, that the location of the advertising devices is compatible with the safety and convenience of the traveling public.

→ Section 4. KRS 177.863 is repealed, reenacted, and amended to read as follows:

Within any commercial or industrial zone or unzoned commercial or industrial area adjacent to a federal-aid primary highway, advertising devices shall be subject to the following standards:

- (1) Prohibited advertising devices:
  - (a) Advertising devices that are not clean and in good repair.
  - (b) Advertising devices that are not securely affixed to a substantial structure.
  - (c) Advertising devices which attempt or appear to attempt to direct the movement of traffic or which interfere with, imitate or resemble any official traffic sign, signal or device.
  - (d) Advertising devices which obstruct the view of official signs, or approaching and merging traffic.
  - (e) Advertising devices on trees, or painted upon natural features.
  - (f) Advertising devices exceeding one thousand two hundred fifty (1,250) square feet on each face including border and trim, but excluding supports.
  - (g) Advertising devices advertising an activity that is illegal under state or federal law.
  - (h) Obsolete advertising devices.
- (2) Spacing of advertising devices:
  - (a) No advertising device structure designed to be primarily viewed from a non-limited access federal-aid primary highway shall be erected within three hundred (300) feet of any other such advertising device structure on the same side of the highway, unless separated by a building, natural obstruction or roadway. Provided, however, that in an incorporated municipality such required distance shall be reduced to one hundred (100) feet.
  - (b) Double-faced -- V-type and/or back-to-back advertising device structures shall be one advertising device for spacing purposes.
  - (c) The minimum distance between advertising devices shall be measured along the nearest edge of the pavement between points directly opposite the advertising devices.
  - ~~(d) Advertising devices advertising the sale or lease of the property on which they are located, or advertising the activity conducted thereon, are permitted, and shall not cause any other advertising device to be in violation of this chapter; notwithstanding any contrary provision.~~
- (3) Size of advertising devices:
  - (a) The maximum area for any advertising device shall be one thousand two hundred fifty (1,250) square feet, including border and trim but excluding supports.
  - (b) An advertising device structure may contain one (1) or two (2) advertisements per facing, not to exceed the maximum area.
  - (c) Double faced structures will be permitted with the maximum area being allowed for each facing.
- (4) Lighting of advertising devices:
 

Advertising devices may be illuminated, subject to the following restrictions:

  - (a) Advertising devices which contain, include or are illuminated by any flashing, intermittent, or moving light or lights are prohibited, except those giving public service information such as time, date, temperature, weather, or similar information.
  - (b) Advertising devices which are not effectively shielded as to prevent beams or rays of light from being directed at any portion of the traveled way of the highway which are of such intensity or brilliance as to cause glare or to impair the vision of the driver of any motor vehicle, or which otherwise interfere with any driver's operation of a motor vehicle are prohibited.

- (c) No advertising device shall be so illuminated that it interferes with the effectiveness of or obscures an official traffic sign, device or signal.

➔Section 5. KRS 177.842 is repealed and reenacted to read as follows:

KRS 177.830(10) in conjunction with the prohibition of KRS 177.841(2) shall extend to all applicable outdoor advertising devices erected after January 1, 1976, unless previously determined by a court of competent jurisdiction to be in compliance with the laws, regulations, and rules governing outdoor advertising devices or were situated in an area which was authorized by an existing or previous statute.

➔Section 6. KRS 177.850 is repealed and reenacted to read as follows:

The general purposes of KRS 177.830 to 177.890 and its specific objectives and standards are:

- (1) To provide for maximum visibility along interstate highways, limited-access highways, federal-aid primary highways, turnpikes, and connecting roads or highways;
- (2) To prevent unreasonable distraction of operators of motor vehicles;
- (3) To prevent confusion with regard to traffic lights, signs or signals or otherwise interfere with the effectiveness of traffic regulations;
- (4) To preserve and enhance the natural scenic beauty or the aesthetic features of the aforementioned interstate highways, limited-access highways, federal-aid primary highways, turnpikes, and adjacent areas;
- (5) To promote maximum safety, comfort and well-being of the users of said highways.

➔Section 7. KRS 177.867 is repealed and reenacted to read as follows:

- (1) The commissioner of the Department of Highways is authorized to acquire by purchase, gift, or condemnation pursuant to the Eminent Domain Act of Kentucky and shall pay just compensation upon the removal of the following advertising devices:
  - (a) Those lawfully in existence on October 22, 1965;
  - (b) Those lawfully on any highway designated a part of the interstate or federal-aid primary system on or after October 22, 1965, and before January 1, 1968;
  - (c) Those lawfully erected on or after January 1, 1968;
  - (d) Those lawfully in existence on January 1, 1976; and
  - (e) Those lawfully erected or maintained, or both, between January 1, 1976, and December 31, 1989.
- (2) Compensation shall be paid for the following:
  - (a) The taking from the owner of any such advertising device of all right, title, leasehold, and interest in such advertising device; and
  - (b) The taking from the owner of the real property on which the advertising device is located, of the right to erect and maintain such advertising devices thereon.

➔Section 8. KRS 177.870 is repealed and reenacted to read as follows:

Any advertising device erected, maintained, replaced, relocated, repaired or restored in violation of KRS 177.830 to 177.890 is hereby declared to be, and is, a public nuisance and such device may without notice be abated and removed by any officer or employee of the state Department of Highways or upon request of the commissioner by any peace officer.

➔Section 9. KRS 177.880 is repealed and reenacted to read as follows:

Nothing in KRS 177.830 to 177.890 shall be construed to abrogate or affect the provisions of any municipal ordinance, regulation or resolution which is more restrictive concerning advertising devices than the provisions of KRS 177.830 to 177.890 or of the regulations adopted hereunder; provided that no city, county or urban-county government and no commission, agency or department of any of the foregoing, or any person acting under authority directly or indirectly conferred by any municipal ordinance, regulation or resolution shall have any authority to require any sign or other advertising device which is within its jurisdiction, which was lawfully erected or installed and which is maintained in good repair to be removed without payment of just compensation as provided under KRS 177.867(2).

➔Section 10. KRS 177.890 is repealed and reenacted to read as follows:

The commissioner of highways is hereby authorized to enter into agreements with the United States Secretary of Transportation for the purpose of carrying out the national policy of promoting the safety, convenience and enjoyment of public travel and the free flow of interstate commerce and the protection of the public investment in the national system of interstate and defense highways and federal-aid primary highways within the Commonwealth.

→Section 11. Whereas ensuring that Kentucky advertising devices are regulated for the safety of the traveling public is a compelling and immediate need and a recent court ruling has questioned the Commonwealth's regulatory authority to do so under existing law, an emergency is declared to exist, and this Act takes effect upon its passage and approval by the Governor or upon it otherwise becoming law.

**Signed by Governor March 18, 2021.**