

ASSEMBLY BILL

No. 109

Introduced by Assembly Member Feuer

January 13, 2009

An act to add and repeal Section 5420 of the Business and Professions Code, relating to outdoor advertising.

LEGISLATIVE COUNSEL'S DIGEST

AB 109, as introduced, Feuer. Outdoor advertising: digital advertising displays.

Existing law, the Outdoor Advertising Act, provides for the regulation by the Department of Transportation of advertising displays, as defined, within view of public highways, as specified.

This bill, until January 1, 2012, would prohibit an advertising display that is visible from a state, county, or city highway, as specified, from being constructed as, or converted, enhanced, improved, modified, modernized, or altered into, a digital advertising display, as defined. The bill, until January 1, 2012, would also prohibit an official highway changeable message sign, as defined, from being constructed as, or converted, enhanced, improved, modified, modernized or altered into, a digital advertising display for the purpose of displaying commercial messages in addition to official traffic operations or public safety messages. The bill would provide for civil penalties for a violation of these provisions and provide other remedies for enforcement. The bill would also state the intent of the Legislature.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. The Legislature finds and declares all of the following:

(a) Numerous municipalities and states have raised safety concerns regarding the construction and conversion of advertising displays along and on state, county, and city highways into digital advertising displays.

(b) The key issues of concern are potential distraction to motorists due to brightness, rapid changes in the signs, and proximity to complex driving environments and areas of high traffic congestion; diversion of attention from official highway signs; and spacing, among other factors.

(c) The Federal Highway Administration is expected to release, in early 2009, Phase 1 of a study indicating a need for more research on the safety impacts of commercial electronic variable message signs, referred to in this act as digital advertising displays.

(d) In early 2009, the American Association of State Highway and Transportation Officials is expected to release a critical review of studies in 50 countries around the world over the last 10 years on safety impacts of digital advertising displays.

(e) In 2010, the Federal Highway Administration is expected to release Phase 2 of the study referred to in subdivision (c), consisting of field work and conclusions concerning safety impacts of digital advertising displays.

(f) It is the intent of the Legislature to protect the public safety by prohibiting, until January 1, 2012, the construction of new digital advertising displays, or the conversion, enhancement, improvement, modification, modernization, or alteration, other than routine maintenance, of existing advertising displays into digital advertising displays, that are visible from a state, county, or city highway, in order to provide the Legislature adequate time to analyze the safety studies described in this section, hold public hearings throughout the state on the findings of those studies, and revise state law as appropriate.

SEC. 2. Section 5420 is added to the Business and Professions Code, to read:

5420. (a) (1) No advertising display subject to this chapter, or any other advertising display that is visible from a highway, as defined in Section 5213, that is under state, county, or city

jurisdiction, other than an advertising display described in Section 5272, shall be constructed as, or converted, enhanced, improved, modified, modernized, or altered into, a digital advertising display.

(2) No official highway changeable message sign shall be constructed as, or enhanced, upgraded, improved, modified, modernized, or altered into, a digital advertising display for the purpose of displaying commercial messages in addition to official traffic operations or public safety messages.

(b) (1) For purposes of this section, “digital advertising display” means an advertising display of still, scrolling, or moving images, including video and animation, that may be changed remotely through electronic means and utilizes a series of grid lights, including cathode ray, light-emitting diode display (LED), plasma screen, liquid crystal display (LCD), fiber optic, or other electronic media or technology. “Digital advertising display” includes a message center, as defined in Section 5216.4.

(2) For purposes of this section, “official highway changeable message sign” means a traffic control device owned and operated by or on behalf of the department or a local or regional transportation agency designed to provide the public with traffic operations and public safety information.

(c) A civil penalty of three thousand five hundred dollars (\$3,500) shall apply for each day that an advertising display or official highway changeable message sign is in violation of this section. Furthermore, the owner of a display or sign in violation of this section shall be required to disgorge profits gained over the period during which the display or sign is in violation. The civil penalty shall be assessed and recovered in an action brought by the Attorney General or by any district attorney, county counsel, or city attorney, who is also authorized to seek an injunction against further violation of this section.

(d) Enactment of this section constitutes the exercise of the state’s police power to protect the public health and safety.

(e) Notwithstanding Section 5227 or any other provision of law, it is the intent of the Legislature to occupy the whole field of regulation with regard to the subject matter of this section. Accordingly, this section constitutes a matter of statewide concern and shall apply to and within the territory of charter cities and charter counties.

- 1 (f) It is the intent of the Legislature to supersede any ordinances,
2 agreements, or stipulated judgments by and between local and
3 regional agencies and public or private persons or entities that are
4 in conflict with this section, except that nothing in this section is
5 intended to preclude ordinances or regulations by local jurisdictions
6 that impose restrictions on digital advertising displays greater than
7 those imposed by this section.
- 8 (g) This section shall remain in effect only until January 1, 2012,
9 and as of that date is repealed, unless a later enacted statute, that
10 is enacted before January 1, 2012, deletes or extends that date.