

HOUSE BILL 2326

By McDonald

AN ACT to amend Tennessee Code Annotated, Section 54-21-104 and Section 54-21-105, relative to permits for outdoor advertising devices and sanctions for failure to comply with the Billboard Regulation and Control Act of 1972.

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

SECTION 1. Tennessee Code Annotated, Section 54-21-104, is amended by designating the existing subsection (a) as subsection (a)(1) and adding a new subsection (a)(2) as follows:

(2) No person shall construct, erect, operate, use, maintain, or cause or permit to be constructed, erected, operated, used, or maintained, any outdoor advertising within or on the right-of-way of any highway on the interstate or primary highway system. It shall be the responsibility of the person(s) constructing, erecting, operating, using, or maintaining any outdoor advertising to verify that such outdoor advertising is not on or within the right-of-way of any such highway.

SECTION 2. Tennessee Code Annotated, Section 54-21-105, is amended by adding the following new subsection:

(c)

(1) In addition to any other action authorized in this section, the commissioner shall not issue or transfer any outdoor advertising permit(s) or tag(s), or issue any annual renewal permit(s) for any existing outdoor advertising device(s), to any person who has erected an outdoor advertising device without first obtaining a permit and tag as required under § 54-21-104, nor shall the commissioner issue any permit(s) or tag(s) to any other person employed by or a

company affiliated with such person, until such person has removed the unlawful outdoor advertising device or, in the event the department has removed the device, has made full payment to the state in the amount of three (3) times the cost of removal, as well as payment of any other fees, costs or damages as provided in § 54-21-105(b).

(2) Any existing outdoor advertising device that is not issued an annual renewal permit in accordance with this subsection (c) shall also be subject to removal as an unlawful outdoor advertising device by any means authorized in § 54-21-105.

(3) All gross revenues received or payable from the operation of any outdoor advertising device erected without first obtaining a permit as required under § 54-21-104 shall be forfeited to the state and placed in the highway fund for the administration of this chapter or any other purpose authorized under § 54-21-106. The chancery court for Davidson County, Tennessee, shall have authority to issue appropriate orders for the enforcement of this subsection (c)(3), including without limitation the authority to establish a constructive trust for an accounting and receipt of revenues obtained from the operation of the outdoor advertising device.

(4) Notwithstanding any other provision of law to the contrary, jurisdiction over any case or controversy arising from the enforcement of this subsection (c) or any other action taken by the commissioner under § 54-21-105 shall be vested exclusively in the chancery court for Davidson County, Tennessee.

(5) It shall be no defense to any enforcement action taken under § 54-21-105 that the person who erects or operates an outdoor advertising device without first obtaining a permit and tag as required under § 54-21-104 may then have a

pending contested case proceeding under § 4-5-301, et seq., of the Uniform Administrative Procedures Act in which such person's entitlement to a permit for the outdoor advertising device is at issue.

(6)

(A) In the event that the department of transportation determines that an outdoor advertising device has been constructed or erected, or that such device is being operated, used, or maintained, within or on the right-of-way of a highway on the interstate or primary highway system, such outdoor advertising device shall be subject to removal by the department of transportation, whether or not a permit has been issued for such device.

(B) Before exercising this right of removal, the department of transportation shall give such notice to the owner or operator of the device as may be required under Tennessee Code Annotated § 54-5-136(a)(1), if the name and address of the owner or operator can be ascertained upon reasonable inquiry.

(C) If the owner or operator of the device does not remove the device from the right-of-way within the time period specified by the department in the notice, the department may remove and dispose of the device as it may determine in its discretion, without incurring any liability to the owner or operator thereof or to any other person whatsoever, and the owner or operator of the device shall be liable to the department for all costs arising from the removal, transporting and disposal of the device.

(D) In addition, the commissioner shall not issue or transfer any outdoor advertising permit(s) or tag(s), or issue any annual renewal

permit(s) for any existing outdoor advertising device(s), to any person who has failed to remove the outdoor advertising device from the highway right-of-way after receiving notice from the department as provided in this subsection (c)(6), nor shall the commissioner issue any permit(s) or tag(s) to any other person employed by or a company affiliated with such person, until such person has removed the device or, in the event the department has removed the device, until such person has made full payment to the department of all costs of removal, transporting and disposal of the device as provided herein.

SECTION 3. This act shall take effect upon becoming a law, the public welfare requiring it.