

AMENDED IN ASSEMBLY APRIL 23, 2009

AMENDED IN ASSEMBLY MARCH 24, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

**ASSEMBLY BILL**

**No. 109**

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**Introduced by Assembly Member Feuer**

January 13, 2009

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

LEGISLATIVE COUNSEL'S DIGEST

AB 109, as amended, 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, *unless it complies with a specified permitting process*. 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 messages other than official traffic operations or public safety messages. *The bill would also prohibit the painting, installation, or application of a supergraphic, as defined, to an exterior building wall until the State Fire Marshal promulgates safety regulations governing these signs.* 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:*

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

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

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

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

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

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

24 (f) It is the intent of the Legislature to protect the public safety  
25 ~~by prohibiting, until January 1, 2012, the construction of new~~ by  
26 *requiring local jurisdictions to follow the procedures in this act*  
27 *to ascertain the safety impacts of proposed new* digital advertising  
28 displays, or the conversion, enhancement, improvement,  
29 modification, modernization, or alteration, other than routine  
30 maintenance, of existing advertising displays into digital  
31 advertising displays, that are visible from a state, county, or city  
32 highway, ~~in order to provide the Legislature adequate time to~~

1 analyze the safety studies described in this section, hold public  
2 hearings throughout the state on the findings of those studies, and  
3 revise state law as appropriate.

4 (g) *It is the intent of the Legislature to protect the public safety*  
5 *by prohibiting, until January 1, 2012, the construction of, or*  
6 *conversion, enhancement, improvement, modification,*  
7 *modernization, or alteration of an official highway changeable*  
8 *message sign, as defined, for the purpose of displaying commercial*  
9 *messages in addition to official traffic operations or public safety*  
10 *messages.*

11 *SEC. 2. (a) Numerous municipalities and states have raised*  
12 *safety concerns regarding the very large graphic advertising*  
13 *displays known as “supergraphics” that are painted or installed*  
14 *on, or applied to, exterior building walls.*

15 *(b) The key issue of concern with supergraphics is that they*  
16 *often cover buildings, windows, and fire escapes, endangering the*  
17 *lives of building occupants and firefighting personnel as well as*  
18 *property.*

19 *(c) It is the intent of the Legislature to protect the public safety*  
20 *and property by prohibiting the painting, installation, or*  
21 *application of supergraphics to exterior building walls until the*  
22 *State Fire Marshal promulgates regulations concerning approved*  
23 *materials, appropriate placement, and characteristics providing*  
24 *safe ingress and egress for building occupants and firefighting*  
25 *personnel.*

26 ~~SEC. 2.~~

27 *SEC. 3. Section 5420 is added to the Business and Professions*  
28 *Code, to read:*

29 5420. (a) (1) No advertising display subject to this chapter,  
30 or any other advertising display that is visible from a highway, as  
31 defined in Section 5213, that is under state, county, or city  
32 jurisdiction, other than an advertising display described in Section  
33 5272, shall be constructed as, or converted, enhanced, improved,  
34 modified, modernized, or altered into, a digital advertising display,  
35 unless the permitting authority follows the procedures set forth in  
36 subdivision (d).

37 (2) ~~No~~ *Until January 1, 2012, no official highway changeable*  
38 *message sign shall be constructed as, or enhanced, upgraded,*  
39 *improved, modified, modernized, or altered into, a digital*

1 advertising display for the purpose of displaying messages other  
2 than official traffic operations or public safety messages.

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

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

16 (c) A civil penalty of three thousand five hundred dollars  
17 (\$3,500) shall apply for each day that an advertising display or  
18 official highway changeable message sign is in violation of this  
19 section. Furthermore, the owner of a display or sign in violation  
20 of this section shall be required to disgorge profits gained over the  
21 period during which the display or sign is in violation. The civil  
22 penalty shall be assessed and recovered in an action brought by  
23 the Attorney General or by any district attorney, county counsel,  
24 or city attorney, who is also authorized to seek an injunction against  
25 further violation of this section.

26 (d) *A permitting authority may issue a permit for a digital*  
27 *advertising display only if it includes the following actions and*  
28 *considerations in its permitting process:*

29 (1) *Upon receipt of an application for a permit for a digital*  
30 *advertising display, all residents, property owners, neighborhood*  
31 *councils, and homeowner associations within 1,000 feet of the*  
32 *proposed digital advertising display, or within 1,500 feet if the top*  
33 *of the proposed display will be more than 54 feet above the ground,*  
34 *shall be given 60 days’ notice regarding the pending permit*  
35 *application and the date, time, and location for a public hearing*  
36 *concerning the application. Notification shall include the name of*  
37 *the applicant, the size, location, and orientation of the proposed*  
38 *digital advertising display, the name and address of the permitting*  
39 *authority, and the location where the application is available for*  
40 *review.*

1 (2) *The applicant shall be required to submit, in conjunction*  
2 *with the permit application, a site plan, a layout plan, and an*  
3 *elevation plan, along with a fee equal to the cost of the safety*  
4 *assessment to be conducted by the permitting authority, as follows:*

5 (A) *The site plan shall include all natural features, buildings,*  
6 *and structures that may affect sight distance. The site plan shall*  
7 *include all highways as defined in Section 5213, the highway*  
8 *boundaries, highway names and designations, mile distances along*  
9 *state highways, all existing advertising displays in the area, traffic*  
10 *signs and traffic signals, the approximate extent of the visual zone,*  
11 *and the dimensions and position of the digital advertising display*  
12 *for which a permit is sought.*

13 (B) *The layout plan shall be on a scale of 1:2000 and shall*  
14 *show, for a distance of not less than 1,000 feet from the proposed*  
15 *site of the digital advertising display being applied for, all the*  
16 *information as required for the site plan, the positions from which*  
17 *elevations or photographs are provided, horizontal curve positions,*  
18 *highway gradients, speed limits, light standards, and any other*  
19 *information required by the permitting authority that will allow a*  
20 *detailed evaluation of any factor that could affect highway safety.*

21 (C) *The elevation plan may consist of photographs and shall*  
22 *include details of the position from which an elevation plan is*  
23 *provided or a photograph has been taken, the distance from the*  
24 *proposed digital advertising display, and the position of the display*  
25 *and its structure in relationship to its surroundings and the*  
26 *highway.*

27 (3) (A) *Upon receipt of the application and fee by the permitting*  
28 *authority, a letter shall be sent to the applicant confirming receipt*  
29 *of the application. The initial evaluation of the application shall*  
30 *consist of locating the site on a plan and verifying the information*  
31 *submitted with the application. The applicant may be required to*  
32 *provide additional information, as determined by the permitting*  
33 *authority. The initial evaluation shall include criteria such as the*  
34 *area of control along the highway and location relative to*  
35 *interchanges or intersections. An application may be rejected*  
36 *based on the initial evaluation.*

37 (B) *Following the initial evaluation, if the application is not*  
38 *rejected, the permitting authority shall conduct a site visit. The*  
39 *site visit shall consist of recording the position of all physical*  
40 *features such as highway signs, bridges, gradients, highway marks,*

1 and hazardous locations. Photographs of the proposed sign's  
2 location shall be taken and a video of the relevant highways may  
3 be taken to provide later reference as to the position of highway  
4 signs and other traffic safety devices or signals. The evaluation of  
5 applications may be completed with the site visit, or the permitting  
6 authority may require the applicant to provide additional  
7 information. Accident statistics shall be obtained for each site and  
8 hazards posed by the proposed display shall be considered.

9 (C) The permitting authority shall consider driver safety on  
10 highways, as defined in Section 5213, within view of the proposed  
11 digital advertising display in determining whether or not to issue  
12 a permit for any digital advertising display. Brightness of the  
13 proposed display, frequency of message change, location in  
14 complex driving environments, spacing between the proposed  
15 display and other advertising displays, the likelihood and extent  
16 of driver distraction due to the display, and potential for confusion  
17 with official highway changeable message signs are among the  
18 factors to be considered by the permitting authority before a permit  
19 may be issued. Digital advertising displays shall not present a  
20 physical safety hazard to pedestrians or vehicles, or obscure the  
21 view of existing highway signs and traffic signals, and the proposed  
22 display shall be a safe distance away from highway signs and  
23 traffic signals so that the flow of information to the driver is not  
24 disrupted. Other factors to be considered include the size and  
25 configuration of the digital advertising display, the speed limit on  
26 the highway, and the position of the display, which shall not  
27 distract motorists' attention at merge or diverge areas, curves,  
28 interchanges, or intersections.

29 (D) After concluding its final evaluation, the permitting authority  
30 shall hold the public hearing required pursuant to paragraph (1),  
31 and thereafter shall make its decision to issue or deny a permit to  
32 the applicant. A letter of approval or disapproval shall be sent to  
33 the applicant. The applicant may appeal an adverse decision to a  
34 court. The standard of review shall be whether the permitting  
35 authority's decision was arbitrary or capricious.

36 (4) The permitting authority may not rely solely upon the  
37 applicant's assessment of the safety impacts of the proposed digital  
38 advertising display, but shall conduct its own assessment, based  
39 on the most current independent safety studies available. The

1 *permitting authority's application fee shall cover its reasonable*  
2 *costs in that regard.*

3 *(5) A permit issued pursuant to this subdivision shall not*  
4 *constitute a vested right as to the digital advertising display. The*  
5 *permit may be revised or revoked if the digital advertising display*  
6 *is subsequently found to be unsafe in any regard. Any alteration*  
7 *to a permitted digital advertising display required by the permitting*  
8 *authority to meet the authority's safety requirements shall not*  
9 *constitute a taking requiring compensation.*

10 *(6) If a digital advertising display permitted and erected under*  
11 *this subdivision is subsequently found to be unsafe, and the owner*  
12 *of the display cannot alter the display to meet the permitting*  
13 *authority's safety standards, the owner of the display shall remove*  
14 *the display at its own expense within 10 days and may not seek*  
15 *compensation from the permitting authority exercising its police*  
16 *power to protect the public health and safety.*

17 *(e) No "supergraphic," defined as a very large graphic*  
18 *advertising display that is painted or installed on, or applied to,*  
19 *an exterior building wall, may be installed until the State Fire*  
20 *Marshal promulgates safety regulations governing these signs.*  
21 *The regulations shall specify the type of materials that may be*  
22 *used for these signs, which materials may not conduct heat,*  
23 *smolder, drip, or create toxic smoke, and must be capable of being*  
24 *torn away, as well as appropriate placement for these signs and*  
25 *characteristics providing safe ingress and egress for building*  
26 *occupants and firefighting personnel.*

27 ~~(d)~~

28 *(f) Enactment of this section constitutes the exercise of the*  
29 *state's police power to protect the public health and safety.*

30 ~~(e)~~

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

37 ~~(f)~~

38 *(h) It is the intent of the Legislature to supersede any ordinances,*  
39 *agreements, or stipulated judgments by and between local and*  
40 *regional agencies and public or private persons or entities that are*

1 in conflict with this section, except that nothing in this section is  
2 intended to preclude ordinances or regulations by local jurisdictions  
3 that impose restrictions on digital advertising displays *or*  
4 *supergraphics* greater than those imposed by this section.  
5 ~~(g) This section shall remain in effect only until January 1, 2012,~~  
6 ~~and as of that date is repealed, unless a later enacted statute, that~~  
7 ~~is enacted before January 1, 2012, deletes or extends that date.~~

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