

Concerns With The Effect Of House Bill 379 On Billboard Regulation

KRC has voiced concerns to sponsors Rep. Thomas and Bechler concerning House Bill 379, which would allow electronic advertising devices that are currently exempted from regulation, to advertise off-site activities of non-profit organizations in addition to on-site business information.

While well-intended, the bill could result both in expansion of use of multi-message electronic advertising devices beyond what is currently allowed in the Commonwealth, and would allow currently-exempted on-site advertising devices to advertise off-site activities in a manner that could undercut the current distinction between regulated advertising billboards and exempt advertising of on-site businesses.

Initially, multiple message electronic billboards are currently not allowed in Kentucky unless approved by the local government in whose jurisdiction the billboard is located. HB 379 would appear to allow use of multiple-message electronic devices, since it would allow an on-site device to advertise both on-site business information and off-site non-profit activities, anywhere in the Commonwealth without regard to whether local governments so allow. Multiple-message electronic billboards remain controversial due to potential effects on driver distraction.

A second concern is that the bill could unintentionally open the door to converting exempt on-site advertising devices into commercial billboards. The bill would allow electronic advertising billboards located on the premises of a business or organization to advertise activities and products offered both on the property and off-site activities by charitable nonprofit organizations or groups. Such content-based restrictions on billboard messages are disfavored and have already been subject to judicial challenge. If the restriction to "non-profit" off-site activities were held unconstitutional, that limitation could be struck by a reviewing court, leading to general allowance of advertising of off-site activities by exempt on-site devices regardless of whether they are non- or for-profit.

Finally, HB 379 would likely result in a loss of revenue to Kentucky. Federal law at 23 U.S.C. 131(c) requires that states maintain "effective control" of outdoor advertising devices such that signs, displays, or devices within the protected area of the federal Interstate and Primary highway system be limited to directional and

official signs and notices, signs advertising the sale or lease of property upon which they are located, and those advertising activities conducted on the property on which they are located. 23 U.S.C. 131(b) requires that Federal-aid highway funds apportioned to any state determined to having not made provision for such effective control "shall be reduced by amounts equal to 10% per annum of the amounts which would otherwise be apportioned to such State." A 10% reduction in federal funds for Kentucky would result in approximately \$73 million of lost revenue annually. Additional costs would be incurred by the cabinet in the form of having to regulate such signs.

For these reasons, KRC opposes House Bill 379.