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HOUSE BILL 304

By Bulso

AN ACT to amend Tennessee Code Annotated, Title 4; Section 5-5-114; Section 6-54-144; Title 7; Section 15-2-116; Title 49; Title 55; Title 58 and Title 65, Chapter 31, Part 1, relative to the display of flags.

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

SECTION 1. Tennessee Code Annotated, Title 4, Chapter 1, Part 4, is amended by adding the following as a new section:

(a) As used in this section, "display":

(1) Means to exhibit or place anywhere a passerby may see the object; and

(2) Includes, but is not limited to, painting, projecting, or otherwise causing to come into existence the image of a flag on a public courthouse, roadway, or sidewalk.

(b) Except as required by §§ 55-9-103 and 55-9-104, a governmental entity, or agency thereof, shall not display, or permit the display of, any flag, including, but not limited to, an image or stylized version of a political flag, other than the flag of the United States or the official flag of the state of Tennessee on a public courthouse, roadway, or sidewalk that is under the jurisdiction of the governmental entity, or agency thereof.

(c) Any citizen of this state has standing to file a civil action against a governmental entity, or agency thereof, to enforce this part. The judge presiding over an action brought pursuant to this subsection (c) shall award a citizen-plaintiff who prevails in the action the costs that the citizen reasonably incurred to bring the action, including reasonable attorneys' fees and expenses.

SECTION 2. Tennessee Code Annotated, Title 7, Chapter 51, is amended by adding the following as a new part:

7-51-2601.

As used in this part:

(1) "Display":

(A) Means to exhibit or place anywhere a passerby may see the object; and

(B) Includes, but is not limited to, painting, projecting, or otherwise causing to come into existence the image of a flag on a public courthouse, roadway, or sidewalk; and

(2) "Local government" means a municipality or county, or an agency or unit of the municipality or county.

7-51-2602.

(a) Except as required by §§ 55-9-103 and 55-9-104, a local government shall not display, or permit the display of, any flag, including, but not limited to, an image or stylized version of a political flag, other than the flag of the United States or the official flag of the state of Tennessee on a public courthouse, roadway, or sidewalk that is under the local government's jurisdiction.

(b) Any citizen of this state has standing to file a civil action against a local government to enforce this part. The judge presiding over an action brought pursuant to this subsection (b) shall award a citizen-plaintiff who prevails in the action the costs that the citizen reasonably incurred to bring the action, including reasonable attorneys' fees and expenses.

SECTION 3. Tennessee Code Annotated, Section 49-1-201(c)(16), is amended by adding "in accordance with § 49-6-2005" after "public school buildings".

SECTION 4. Tennessee Code Annotated, Section 49-6-2005, is amended by adding the following as a new subsection:

(c)

(1) An LEA or public charter school shall not display, nor permit any of its employees or agents to display, a flag other than the following on or in a public school:

(A) The United States flag;

(B) The official Tennessee state flag;

(C) A flag that cannot be disturbed or altered pursuant to § 4-1-412;

(D) The POW/MIA flag;

(E) A flag that represents an Indian tribe, as defined in 25 U.S.C. § 5304;

(F) A flag that represents a city, county, metropolitan government, or other political subdivision of this state;

(G) A flag that represents any unit, branch, or other division of the armed forces, including, but not limited to, an ROTC program;

(H) The current, official flag of a country or political subdivision thereof;

(I) A flag that represents a college or university;

(J) A flag that is displayed temporarily as part of a bona fide course curriculum;

(K) An official school flag; or

(L) The flag of an organization duly authorized to use a public school building; provided, that the flag of an organization duly authorized

to use a public school building may only be displayed at the time and place that the organization is authorized to use school property.

(2) This subsection (c) applies, and must be construed by any court to apply, only to the extent permitted by the Constitution of Tennessee, Article I, § 19, and the First Amendment to the United States Constitution. If any provision in this subsection (c) is held to violate the Constitution of Tennessee, Article I, § 19, or the First Amendment to the United States Constitution, then the other provisions of this subsection (c) are severable and are not affected by such determination.

(3) A parent or guardian of a student who is enrolled in and attends, or of a child who is eligible to enroll in and attend, a school operated by an LEA or public charter school has standing to file a civil action against the LEA or public charter school in a chancery court to enforce this subsection (c); provided, that, prior to filing an action pursuant to this subdivision (c)(3), the parent or guardian must first provide written notice of the alleged violation of subsection (c) to the LEA or public charter school and allow the LEA or public charter school ten (10) days to remedy a violation.

(4) For purposes of this subsection (c), "display" means to exhibit or place anywhere students may see the object.

SECTION 5. Tennessee Code Annotated, Section 58-4-302(b)(1), is amended by deleting the subdivision and substituting instead:

(1) A building that serves as the main administrative building of the county; provided, that the building is not a courthouse. If the building that serves as the main administrative building of the county is a courthouse, the POW/MIA flag may be displayed at another building where county government offices are located;

SECTION 6. This act takes effect upon becoming a law, the public welfare requiring it.