

FIRST REGULAR SESSION

SENATE BILL NO. 247

91ST GENERAL ASSEMBLY

INTRODUCED BY SENATORS WESTFALL AND STAPLES.

Read 1st time January 9, 2001, and 1,000 copies ordered printed.

TERRY L. SPIELER, Secretary.

0961S.021

AN ACT

To repeal sections 226.540, 226.550 and 226.585, RSMo 2000, relating to highway beautification, and to enact in lieu thereof three new sections relating to the same subject, with an emergency clause.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Sections 226.540, 226.550 and 226.585, RSMo 2000, are repealed and three new sections enacted in lieu thereof, to be known as sections 226.540, 226.550 and 226.585, to read as follows:

226.540. Notwithstanding any other provisions of sections 226.500 to 226.600, outdoor advertising shall be permitted within six hundred and sixty feet of the nearest edge of the right-of-way of any interstate or primary highway in areas zoned industrial, commercial or the like and in unzoned commercial and industrial areas as defined in this section, subject to the following regulations which are consistent with customary use in this state:

(1) Lighting:

(a) No revolving or rotating beam or beacon of light that simulates any emergency light or device shall be permitted as part of any sign. No flashing, intermittent, or moving light or lights will be permitted except scoreboards and other illuminated signs designating public service information, such as time, date, or temperature, or similar information, will be allowed;

(b) External lighting, such as floodlights, thin line and gooseneck reflectors are permitted, provided the light source is directed upon the face of the sign and is effectively shielded so as to prevent beams or rays of light from being directed into any portion of the main traveled way of the federal-aid primary highways as of June 1, 1991, and all highways designated as part of the

EXPLANATION--Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

National Highway System by the National Highway System Designation Act of 1995 and those highways subsequently designated as part of the National Highway System and the lights are not of such intensity so as to cause glare, impair the vision of the driver of a motor vehicle, or otherwise interfere with a driver's operation of a motor vehicle;

(c) No sign shall be so illuminated that it interferes with the effectiveness of, or obscures, an official traffic sign, device, or signal;

(2) Size of signs:

(a) The maximum area for any one sign shall be eight hundred square feet with a maximum height of thirty feet and a maximum length of seventy-two feet, inclusive of border and trim but excluding the base or apron, supports, and other structural members. The area shall be measured as established **herein and** in rules promulgated by the commission. In determining the size of a **conforming or nonconforming** sign structure, temporary cutouts and extensions installed for the length of a specific display contract shall not be included in calculating the size of the permanent display; provided the actual square footage of such temporary cutouts or extensions may not exceed thirty-three percent of the permanent display area;

(b) The maximum size limitations shall apply to each side of a sign structure, and signs may be placed back to back, double faced, or in V-type construction with not more than two displays to each facing, but such sign structure shall be considered as one sign;

(c) After August 28, 1999, no new sign structure shall be erected in which two or more displays are stacked one above the other. Stacked structures existing on or before August 28, 1999, in accordance with sections 226.500 to 226.600 shall **[not]** be deemed **legal** nonconforming **[for failure to meet the requirements of this section until such sign's structure is modified, repaired, replaced or rebuilt] and may be maintained in accordance with the provisions of sections 226.500 to 226.600**. Structures displaying more than one display on a horizontal basis shall be allowed, provided that total display areas do not exceed the maximum allowed square footage for a sign structure pursuant to the provisions of paragraph (a) of subdivision (2) of this section;

(3) Spacing of signs:

(a) **On all** interstate highways, **[and]** freeways **[on the] and nonfreeway** federal-aid primary highways as of June 1, 1991, and all highways designated as part of the National Highway System by the National Highway System Designation Act of 1995 and those highways subsequently designated as part of the National Highway System:

a. No sign structure shall be erected within **[five hundred] one thousand** feet of an existing sign on the same side of the highway. **Signs erected in accordance with the provisions of sections 226.500 to 226.600 prior to the effective date of this provision which fail to meet the requirements of this provision shall be deemed legal nonconforming as defined herein provided that the use of temporary cutouts and extensions on such nonconforming signs is allowed under Missouri highway and**

transportation commission and Federal Highway Administration regulations. In the event federal or state regulations prohibit the use of temporary cutouts or extensions on nonconforming signs, all signs erected prior to the effective date of this act, in compliance with sections 226.500 to 226.600 shall be considered conforming for all purposes and may be maintained or rebuilt in its present location;

b. Outside of incorporated municipalities, no structure may be located adjacent to or within five hundred feet of an interchange, intersection at grade, or safety rest area. Such five hundred feet shall be measured from the beginning or ending of the pavement widening at the exit from or entrance to the main traveled way. For purpose of this subparagraph, the term "incorporated municipalities" shall include "urban areas", except that such "urban areas" shall not be considered "incorporated municipalities" if it is finally determined that such would have the effect of making Missouri be in noncompliance with the requirements of Title 23, United States Code, Section 131;

(b) [Nonfreeway federal-aid primary highways as of June 1, 1991, and all highways designated as part of the National Highway System by the National Highway System Designation Act of 1995 and those highways subsequently designated as part of the National Highway System:

a. Outside incorporated municipalities, no structure shall be erected within five hundred feet of an existing sign on the same side of the highway. Sign structures existing prior to August 28, 1999, which complied with the requirements of this section when erected shall not be deemed nonconforming for failure to comply with the spacing provisions of this section until such sign's structure is modified, repaired, replaced or rebuilt;

b. Within incorporated municipalities, no structure shall be erected within five hundred feet of an existing sign. Sign structures existing prior to August 28, 1999, which complied with the requirements of this section when erected shall not be deemed nonconforming for failure to comply with the spacing provisions of this section until such sign's structure is modified, repaired, replaced or rebuilt;

(c) The spacing between structure provisions of subdivision (3) of this section do not apply to signs which are separated by buildings, natural surroundings, or other obstructions in such manner that only one sign facing located within such distance is visible at any one time. Directional or other official signs or those advertising the sale or lease of the property on which they are located, or those which advertise activities on the property on which they are located, including products sold, shall not be counted, nor shall measurements be made from them for the purpose of compliance with spacing provisions;

[(d)] (c) No sign shall be located in such manner as to obstruct or otherwise physically interfere with the effectiveness of an official traffic sign, signal, or device or obstruct or physically interfere with a motor vehicle operator's view of approaching, merging, or intersecting traffic;

[(e)] (d) The measurements in this section shall be the minimum distances between outdoor advertising sign structures measured along the nearest edge of the pavement between points

directly opposite the signs along each side of the highway and shall apply only to outdoor advertising sign structures located on the same side of the highway involved;

(4) As used in this section, the words "unzoned commercial and industrial land" shall be defined as follows: that area not zoned by state or local law or ordinance and on which there is located one or more permanent structures used for a commercial business or industrial activity or on which a commercial or industrial activity is actually conducted together with the area along the highway extending outwardly six hundred feet from and beyond the edge of such activity. All measurements shall be from the outer edges of the regularly used improvements, buildings, parking lots, landscaped, storage or processing areas of the commercial or industrial activity and along and parallel to the edge of the pavement of the highway. [On nonfreeway federal-aid primary highways as of June 1, 1991, and all highways designated as part of the National Highway System by the National Highway System Designation Act of 1995 and those highways subsequently designated as part of the National Highway System, where there is an unzoned commercial or industrial area on one side of the road as described in this section, the term "unzoned commercial or industrial land" shall also include those lands directly opposite on the other side of the highway to the extent of the same dimensions.] Unzoned land shall not include:

(a) Land on the opposite side of an interstate, [or freeway] primary **or a national highway system** highway from an unzoned commercial or industrial area as defined in this section, **unless the opposite side of the highway is a separate unzoned commercial area;**

(b) Land zoned by a state or local law, regulation, or ordinance;

[(c) Land on the opposite side of a nonfreeway primary highway which is determined by the proper state authority to be a scenic area;]

(5) "Commercial or industrial activities" as used in this section means those which are generally recognized as commercial or industrial by zoning authorities in this state, except that none of the following shall be considered commercial or industrial:

(a) Outdoor advertising structures;

(b) Agricultural, forestry, ranching, grazing, farming, and related activities, including seasonal roadside fresh produce stands;

(c) Transient or temporary activities;

(d) Activities more than six hundred sixty feet from the nearest edge of the right-of-way or not visible from the main traveled way;

(e) Activities conducted in a building principally used as a residence;

(f) Railroad tracks and minor sidings;

(6) The words "unzoned commercial or industrial land" shall also include all areas not specified in this section which constitute an "unzoned commercial or industrial area" within the meaning of the present Section 131 of Title 23 of the United States Code, or as such statute may be amended. As used in this section, the words "zoned commercial or industrial area" shall refer

to those areas zoned commercial or industrial by the duly constituted zoning authority of a municipality, county, or other lawfully established political subdivision of the state, or by the state **and upon which there is located one or more permanent structures used for a commercial or industrial activity and on which a commercial or industrial activity is actually conducted together with the area along the highway extending outwardly six hundred feet from and beyond the edge of such activity.** [Unzoned] Commercial or industrial activities as used in this section are limited to those activities:

(a) In which the primary use of the property is commercial or industrial in nature;

(b) Which are clearly visible from the highway and recognizable as a commercial business;

(c) Which are permanent as opposed to temporary or transitory and of a nature that would customarily be restricted to commercial or industrial zoning in areas comprehensively zoned; and

(d) In determining whether the primary use of the property is commercial or industrial pursuant to paragraph (a) of this subdivision, the state highways and transportation commission shall consider the following factors:

a. The presence of a permanent and substantial building;

b. The existence of utilities and [required] **local** business licenses, if any, for the commercial activity;

c. On-premise signs or other identification;

d. [Communication with the business owner that can be accomplished at regular intervals either in person, by telephone, by fax machine, by electronic mail or by some other business means] **The presence of an owner or employee on the premises for at least twenty hours per week;**

(7) In zoned commercial and industrial areas, whenever a state, county or municipal zoning authority has adopted laws or ordinances which include regulations with respect to the size, lighting and spacing of signs, which regulations are consistent with the intent of sections 226.500 to 226.600 and with customary use, then from and after the effective date of such regulations, and so long as they shall continue in effect, the provisions of this section shall not apply to the erection of signs in such areas. Notwithstanding any other provisions of this section, after August 28, 1992, with respect to any outdoor advertising which is regulated by the provisions of subdivision (1), (3) or (4) of section 226.520 or subsection 1 of section 226.527:

(a) No county or municipality shall issue a permit to allow a regulated sign to be newly erected without a permit issued by the state highways and transportation commission;

(b) A county or municipality may charge a reasonable one-time permit or inspection fee to assure compliance with local wind load and electrical requirements when the sign is first erected, but a county or municipality may not charge a permit or inspection fee for such sign after such initial fee. Changing the display face or performing routine maintenance shall not be considered as erecting a new sign;

(8) The state highways and transportation commission on behalf of the state of Missouri, may seek agreement with the Secretary of Transportation of the United States under Section 131 of Title 23, United States Code, as amended, that sections 226.500 to 226.600 are in conformance with that Section 131 and provides effective control of outdoor advertising signs as set forth therein. If such agreement cannot be reached and the penalties under subsection (b) of Section 131 are invoked, the attorney general of this state shall institute proceedings described in subsection (1) of that Section 131.

226.550. 1. **(1)** No outdoor advertising which is regulated by subdivision (1), (3) or (4) of section 226.520 or subsection 1 of section 226.527 shall be erected or maintained on or after August 28, 1992, without a one-time permanent permit issued by the state highways and transportation commission. Application for permits shall be made to the state highways and transportation commission on forms furnished by the commission and shall be accompanied by a permit fee of twenty-eight dollars and fifty cents for all signs; except that, tax-exempt religious organizations as defined in subdivision (11) of section 313.005, RSMo, service organizations as defined in subdivision (12) of section 313.005, RSMo, veterans' organizations as defined in subdivision (14) of section 313.005, RSMo, and fraternal organizations as defined in subdivision (8) of section 313.005, RSMo, shall be granted a permit for signs less than seventy-six square feet without payment of the fee. In the event a permit holder fails to erect a sign structure within twenty-four months of issuance, said permit shall expire and a new permit must be obtained prior to any construction;

(2) On or after the effective date of this act, no new permits for outdoor advertising structures shall be issued unless the applicant voluntarily surrenders or revokes two or more existing outdoor advertising permits for each new permit until such time as the overall number of legally permitted and erected structures on Missouri's interstate, federal-aid primary highways as of June 1, 1991, and all highways designated as part of the national highway system by the National Highway Designation Act of 1995 is eleven thousand or less. The square footage of the new structure may not exceed the total square footage of the permits surrendered. The requirement for permit applicants to void two or more permits for each permit issued shall be automatically and permanently repealed and terminated immediately upon the release of the Missouri highway and transportation commission's annual report indicating the overall number of sign structures on Missouri's primary, interstate and national highway system's highways is eleven thousand or less;

(3) Outdoor advertising permit holders who voluntarily or involuntarily surrender existing permits but do not seek to immediately obtain a new permit may receive credit for each outdoor advertising permit surrendered which may be used to obtain permits at any time during which subdivision (2) of this subsection is in effect;

(4) The Missouri highway and transportation commission shall publish and release an annual report indicating the overall number of permitted off-premise outdoor advertising structures on Missouri's interstate, federal-aid primary highways as of June 1, 1991, and all highways designated as part of the national highway system by the National Highway Designation Act of 1995. Said report shall indicate the number of signs as of July 1 of each calendar year and shall be publicly released by September 1 of each calendar year.

2. No outdoor advertising which is regulated by subdivision (1), (3) or (4) of section 226.520 or subsection 1 of section 226.527 which was erected prior to August 28, 1992, shall be maintained without a one-time permanent permit for outdoor advertising issued by the state highways and transportation commission. If a one-time permanent permit was issued by the state highways and transportation commission after March 30, 1972, and before August 28, 1992, it is not necessary for a new permit to be issued. If a one-time permanent permit was not issued for a lawfully erected and lawfully existing sign by the state highways and transportation commission after March 30, 1972, and before August 28, 1992, a one-time permanent permit shall be issued by the commission for each sign which is lawfully in existence on the day prior to August 28, 1992, upon application and payment of a permit fee of twenty-eight dollars and fifty cents. All applications and fees due pursuant to this subsection shall be submitted before December 31, 1992.

3. For purposes of sections 226.500 to 226.600, the terminology "structure lawfully in existence" or "lawfully existing" sign or outdoor advertising shall, nevertheless, include the following signs unless the signs violate the provisions of subdivisions (3) to (7) of subsection 1 of section 226.580:

(1) All signs erected prior to January 1, 1968;

(2) All signs erected before March 30, 1972, but on or after January 1, 1968, which would otherwise be lawful but for the failure to have a permit for such signs prior to March 30, 1972, except that any sign or structure which was not in compliance with sizing, spacing, lighting, or location requirements of sections 226.500 to 226.600 as the sections appeared in the revised statutes of Missouri 1969, wheresoever located, shall not be considered a lawfully existing sign or structure;

(3) All signs erected after March 30, 1972, which are in conformity with sections 226.500 to 226.600;

(4) All signs erected in compliance with sections 226.500 to 226.600 prior to the effective date of this act.

4. On or after August 28, 1992, the state highways and transportation commission may, in addition to the fees authorized by subsections 1 and 2 of this section, collect a biennial inspection fee every two years after a state permit has been issued. Biennial inspection fees due after August 28, 1992, shall be twenty-eight dollars and fifty cents; except that, tax-exempt religious organizations as defined in subdivision (11) of section 313.005, RSMo, service organizations as

defined in subdivision (12) of section 313.005, RSMo, veterans' organizations as defined in subdivision (14) of section 313.005, RSMo, and fraternal organizations as defined in subdivision (8) of section 313.005, RSMo, shall not be required to pay such fee.

5. In order to effect collection from a sign owner of delinquent and unpaid biennial inspection fees which are payable pursuant to this section, or delinquent removal costs pursuant to section 226.580, the state highways and transportation commission may require any delinquent fees to be paid before a permit is issued to the delinquent sign owner for any new sign.

6. Sign owners or owners of the land on which signs are located must apply to the state highways and transportation commission for biennial inspection and submit any fees as required by this section on or before December 31, 1992. For a permitted sign which does not have a permit, a permit shall be issued at the time of the next biennial inspection.

7. The state highways and transportation commission shall deposit all fees received for outdoor advertising permits and inspection fees in the state road fund, keeping a separate record of such fees, and the same may be expended by the commission in the administration of sections 226.500 to 226.600.

226.585. The state transportation department may cut and trim any vegetation on the highway right-of-way which interferes with the effectiveness of or obscures a lawfully erected billboard, or the highways and transportation commission shall promulgate reasonable rules and regulations to permit the cutting and trimming of such vegetation on the highway or right-of-way by the owner of such billboard. **The right to a vegetation permit shall be automatic, absent a showing of clear and convincing proof that such a permit would pose a risk to public safety.** Such rules and regulations shall be promulgated within twelve months after August 28, 1992, or the commission shall suspend the collection of the biennial inspection fees prescribed by section 226.550 until such rules are promulgated, and such rules may include authority to charge a reasonable fee for such [permission] permit. This section shall not apply if its implementation would have the effect of making Missouri be in noncompliance with requirements of Title 23, United States Code, section 131.

Section B. Because aesthetic highways and right-of-ways are important to Missouri citizens, sections 226.540, 226.550 and 226.585 of this act is deemed necessary for the immediate preservation of the public health, welfare, peace and safety, and is hereby declared to be an emergency act within the meaning of the constitution, and sections 226.540, 226.550 and 226.585 of this act shall be in full force and effect upon its passage and approval.