

SECOND REGULAR SESSION

SENATE BILL NO. 851

91ST GENERAL ASSEMBLY

INTRODUCED BY SENATOR WESTFALL.

Pre-filed December 20, 2001, and 1,000 copies ordered printed.

TERRY L. SPIELER, Secretary.

3067S.021

AN ACT

To repeal sections 226.540, 226.550, 226.580 and 226.585, RSMo, relating to highway beautification, and to enact in lieu thereof five 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Section A. Sections 226.540, 226.550, 226.580 and 226.585, RSMo, are repealed and five new sections enacted in lieu thereof, to be known as sections 226.540, 226.550, 226.573, 226.580, and 226.585, to read as follows: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] **highways located on the interstate, federal-aid primary system as it existed on June 1, 1991, or the national highway system as amended** 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; **trivision, projection and other changeable message signs shall be allowed subject to Missouri highway and transportation commission regulations;**

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

(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 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] **considered a substantial increase to** 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. **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;**

(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 feet of an existing sign on the same side of the highway;

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]** **the** highway from an unzoned commercial or industrial area as defined in this section **and located adjacent to highways located on the interstate, federal-aid primary system as it existed on June 1, 1991, or the national highway system as amended, unless the opposite side of the highway qualifies as a separate unzoned commercial or industrial 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. [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 20 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. 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] **two hundred dollars** 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. 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] **two hundred dollars**. 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, RSMo, 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] **2002, and prior to August 28, 2003**, shall be [twenty-eight dollars and fifty cents] **fifty dollars. Biennial inspection fees due on or after August 28, 2003, shall be seventy-five dollars. Biennial inspection fees due on or after August 28, 2004, shall be one hundred dollars**; 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.] **In order to effect the more efficient collection of biennial inspection fees, the state highways and transportation commission is encouraged to adopt a renewal system in which all permits on a particular highway are renewed in the same month. In conjunction with the conversion to this renewal system, the state highways and transportation commission is specifically authorized to prorate renewal fees based on changes in renewal dates.**

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.

226.573. The state highways and transportation commission is authorized to adopt administrative rules regulating the use of new technology in outdoor advertising as allowed under federal regulations for 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. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that is promulgated pursuant to the authority delegated in this section shall become effective only if it has been promulgated pursuant to the provisions of chapter 536, RSMo. This section and chapter 536, RSMo, are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536, RSMo, to review, to delay the effective date or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after [August 28, 1999.] **the effective date of this section** shall be invalid and void.

226.580. 1. The following outdoor advertising within six hundred sixty feet of the right-of-way of interstate or primary highways is deemed unlawful and shall be subject to removal:

(1) Signs erected after March 30, 1972, contrary to the provisions of sections 226.500 to 226.600 and signs erected on or after January 1, 1968, but before March 30, 1972, contrary to the sizing, spacing, lighting, or location provisions of sections 226.500 to 226.600 as they appeared in the revised statutes of Missouri 1969; or

(2) Signs for which a permit is not obtained or a biennial inspection fee is [not paid as prescribed in sections 226.500 to 226.600] **more than twelve months past due**; or

(3) Signs which are obsolete; (Signs shall not be considered obsolete solely because they temporarily do not carry an advertising message.) or

(4) Signs that are not in good repair; or

(5) Signs not securely affixed to a substantial structure; or

(6) Signs which attempt or appear to attempt to regulate, warn, or direct the movement of traffic or which interfere with, imitate, or resemble any official traffic sign, signal, or device; or

(7) Signs which are erected or maintained upon trees or painted or drawn upon rocks or other natural features.

2. Signs erected after August 13, 1976, beyond six hundred sixty feet of the right-of-way

outside of urban areas, visible from the main traveled way of the interstate or primary system and erected with the purpose of their message being read from such traveled way, except those signs described in subdivisions (1) and (2) of section 226.520 are deemed unlawful and shall be subject to removal.

3. If a sign is deemed to be unlawful for any of the reasons set out in subsections 1 [and 2] **through 7** of this section, the state highways and transportation commission shall give notice either by certified mail or by personal service to the owner or occupant of the land on which advertising believed to be unlawful is located and the owner of the outdoor advertising structure. Such notice shall specify the basis for the alleged unlawfulness, shall specify the remedial action which is required to correct the unlawfulness and shall advise that a failure to take the remedial action within [thirty] **sixty** days will result in the sign being removed. Within [thirty] **sixty** days after receipt of the notice as to him, the owner of the land or of the structure may remove the sign or may take the remedial action specified or may file an action for administrative review pursuant to the provisions of sections 536.067 to 536.090, RSMo, to review the action of the state highways and transportation commission, or he may proceed under the provisions of section 536.150, RSMo, as if the act of the highways and transportation commission was one not subject to administrative review. Notwithstanding any other provisions of sections 226.500 to 226.600, no outdoor advertising structure erected prior to August 28, 1992, defined as a "structure lawfully in existence" or "lawfully existing", by subdivision (1), (2) or (3) of subsection 2 of section 226.550, shall be removed for failure to have a permit until a notice, as provided in this section, has been issued which shall specify failure to obtain a permit or pay a biennial inspection fee as the basis for alleged unlawfulness, and shall advise that failure to take the remedial action of applying for a permit or paying the inspection fee within [thirty] **sixty** days will result in the sign being removed. **Signs for which biennial inspection fees are delinquent shall not be removed unless the fees are more than twelve months past due and actual notice of the delinquency has been provided to the sign owner.** Upon application made within the [thirty-day] **sixty-day** period as provided in this section, and accompanied by the fee prescribed by section 226.550, together with any inspection fees that would have been payable if a permit had been timely issued, the state highways and transportation commission shall issue a one-time permanent permit for such sign. Such signs with respect to which permits are so issued are hereby determined by the state of Missouri to have been lawfully erected within the meaning of "lawfully erected" as that term is used in Title 23, United States Code, section 131(g), as amended, and shall only be removed upon payment of just compensation, except that the issuance of permits shall not entitle the owners of such signs to compensation for their removal if it is finally determined that such signs are not "lawfully erected" as that term is used in section 131(g) of Title 23 of the United States Code.

4. If **actual** notice as provided in this section is given and neither the remedial action

specified is taken nor an action for review is filed, or if an action for review is filed and is finally adjudicated in favor of the state highways and transportation commission, the state highways and transportation commission shall have authority to immediately remove the unlawful outdoor advertising. The owner of the structure shall be liable for the costs of such removal. The commission shall incur no liability for causing this removal, except for damage caused by negligence of the commission, its agents or employees.

5. If notice as provided in this section is given and an action for review is filed under the provisions of section 536.150, RSMo, or if administrative review pursuant to the provisions of sections 536.067 to 536.090, RSMo, is filed and the state highways and transportation commission enters its final decision and order to remove the outdoor advertising structure, the advertising message contained on the structure shall be removed or concealed by the owner of the structure, at the owner's expense, until the action for judicial review is finally adjudicated. If the owner of the structure refuses or fails to remove or conceal the advertising message, the commission may remove or conceal the advertising message and the owner of the structure shall be liable for the costs of such removal or concealment. The commission shall incur no liability for causing the removal or concealment of the advertising message while an action for review is pending, except if the owner finally prevails in its action for judicial review, the commission will compensate the owner at the rate the owner is actually receiving income from the advertiser pursuant to written lease from the time the message is removed until the judicial review is final.

6. Any signs advertising tourist oriented type business will be the last to be removed.

7. Any signs prohibited by section 226.527 which were lawfully erected prior to August 13, 1976, shall be removed pursuant to section 226.570.

8. The transportation department shall reimburse to the lawful owners of any said nonconforming signs that are now in existence as defined in sections 226.540, 226.550, 226.580 and 226.585, said compensation calculated and/or based on a fair market value and not mere replacement cost.

226.585. **1.** 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. **Vegetation permits shall be issued in accordance with the current rules and regulations promulgated by the highways and transportation commission and shall not be denied without good cause.** 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.

2. Trees and other vegetation located on the highways or public rights-of-way may be removed or trimmed without a permit for the purpose of installation and maintenance of utility facilities permitted in the right-of-way pursuant to section 227.240, RSMo.

3. Nothing in this section shall be construed as prohibiting a rural electric cooperative from exercising its powers pursuant to section 394.080, RSMo. No permit pursuant to this section shall be required by a rural electric cooperative to exercise such powers.

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 are 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.

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