

FIRST REGULAR SESSION

[P E R F E C T E D]

SENATE BILL NO. 205

90TH GENERAL ASSEMBLY

INTRODUCED BY SENATORS WESTFALL AND STAPLES.

Pre-filed January 5, 1999, and 1,000 copies ordered printed.

Read 2nd time January 20, 1999, and referred to the Committee on Transportation.

Reported from the Committee February 22, 1999, with recommendation that the bill do pass and be placed on the Consent Calendar with Senate Committee Amendment No. 1.

Removed from the Consent Calendar, February 23, 1999.

Re-reported from the Committee on Transportation, February 25, 1999, with recommendation that the bill do pass with Senate Committee Amendment No. 1.

Taken up for Perfection March 11, 1999. Bill declared Perfected and Ordered Printed, as amended.

TERRY L. SPIELER, Secretary.

S1004.01P

AN ACT

To repeal sections 226.510, 226.520, 226.525 and 226.540, RSMo 1994, and section 226.550, RSMo Supp. 1998, relating to highway beautification, and to enact in lieu thereof six new sections relating to the same subject.

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

Section A. Sections 226.510, 226.520, 226.525 and 226.540, RSMo 1994, and section 226.550, RSMo Supp. 1998, are repealed and six new sections enacted in lieu thereof, to be known as sections 226.510, 226.520, 226.525, 226.540, 226.550 and 226.573, to read as follows:

226.510. As used in sections 226.500 to 226.600, the following words or phrases mean:

(1) "Freeway primary highway", that part of a **federal-aid** primary highway system, **as of June 1, 1991**, which has been constructed as divided, dual lane fully controlled access facilities with no access to the throughways except the established interchanges. **When existing two-lane highways are being upgraded to four-lane limited access, the regulations for freeway primary highways shall apply as of the date the state highways and transportation commission acquires all access rights on the adjoining right-of-way;**

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

(2) "Interstate system", that portion of the national system of interstate highways located within the boundaries of Missouri, as officially designated or may be hereafter designated by the state highways and transportation commission with the approval of the Secretary of Transportation, pursuant to Title 23, United States Code, as amended;

(3) "Outdoor advertising", an outdoor sign, display, device, figure, painting, drawing, message, plaque, poster, billboard, or other thing designed, intended or used to advertise or inform, any part of the advertising or information contents of which is visible from any point of the traveled ways of the interstate or primary systems;

(4) "Primary system", [that portion of the highways of this state officially designated by the state highways and transportation commission as being in the primary highway system as authorized by the constitution and laws of Missouri] **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;**

(5) "Rest area", an area or site established and maintained within or adjacent to the highway right-of-way under public supervision or control, for the convenience of the traveling public, except that the term shall not include automotive service stations, hotels, motels, restaurants or other commerce facilities of like nature;

(6) "Urban area", an urban place as designated by the Bureau of the Census, having a population of five thousand or more within boundaries to be fixed by the state highways and transportation commission and local officials in cooperation with each other and approved by the Secretary of Transportation, or an urbanized area as designated by the Bureau of the Census within boundaries to be fixed by the state highways and transportation commission and local officials and approved by the Secretary of Transportation. The boundary of the urban area shall, as a minimum, encompass the entire urban place as designated by the Bureau of the Census.

226.520. On and after March 30, 1972, no outdoor advertising shall be erected or maintained within six hundred sixty feet of the nearest edge of the right-of-way and visible from the main traveled way of any highway which is [a] part of the [interstate or primary system] **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** in this state except the following:

(1) Directional and other official signs, including, but not limited to, signs pertaining to natural wonders, scenic and historical attractions, which are required or authorized by law, and which comply with regulations which shall be promulgated by department relative to their lighting, size, number, spacing and such other requirements as may be appropriate to implement sections 226.500 to 226.600, but such regulations shall not be inconsistent with, nor more

restrictive than, such national standards as may be promulgated from time to time by the Secretary of the Department of Transportation of the United States, under subsection (c) of section 131 of Title 23 of the United States Code;

(2) Signs, displays, and devices advertising activities conducted on the property upon which they are located, or services and products therein provided;

(3) Outdoor advertising located in areas which are zoned industrial, commercial or the like as provided in sections 226.500 to 226.600 or under other authority of law;

(4) Outdoor advertising located in unzoned commercial or industrial areas as defined and determined pursuant to sections 226.500 to 226.600;

(5) Outdoor advertising for tourist oriented businesses, and scoreboards used in sporting events or other electronic signs with changeable messages which are not prohibited by federal regulations or local zoning ordinances. Outdoor advertising which is authorized by this subdivision (5) shall only be allowed to the extent that such outdoor advertising is not prohibited by Title 23, United States Code, section 131, as now or thereafter amended, and lawful regulations promulgated thereunder. The general assembly finds and declares it to be the policy of the state of Missouri that the tourism industry is of major and critical importance to the economic well-being of the state and that directional signs, displays and devices providing directional information about goods and services in the interest of the traveling public is essential to the economic welfare of the tourism industry. The general assembly further finds and declares that the removal of directional signs advertising tourist oriented businesses is harmful to the tourism industry in Missouri and that the removal of directional signs within or near areas of the state where there is high concentration of tourist oriented businesses would have a particularly harmful effect upon the economies within such areas. The state highways and transportation commission is authorized and directed to determine those specific areas of the state of Missouri in which there is high concentration of tourist oriented businesses, and within such areas, no directional signs, displays and devices which are lawfully erected, which are maintained in good repair, which provide directional information about goods and services in the interest of the traveling public, and which would otherwise be required to be removed because they are not allowed to be maintained under the provisions of sections 226.500 through 226.600 shall be required to be removed until such time as such removal has been finally ordered by the United States Secretary of Transportation;

(6) The provisions of this section shall not be construed to require removal of signs advertising churches or items of religious significance, items of native arts and crafts, woodworking in native products, or native items of artistic, historical, geologic significance, or hospitals or airports.

226.525. The state highways and transportation commission is directed to erect within the right-of-way of all classes of highways within the state signs and notices pertaining to publicly and

privately owned natural wonders and scenic and historical attractions under the following conditions:

(1) Such signs shall not violate any federal law, rule, or regulation affecting the allocation of federal funds to the state of Missouri or which violate any safety regulation formally promulgated by the state highways and transportation commission[.];

(2) Such official signs shall be limited in content to the name of the attraction and necessary travel information[.];

(3) The state highways and transportation commission shall determine those sites and attractions for which directional and other official signs may be erected as permitted by section 131 of Title 23, United States Code, which it deems of such importance as to justify such signing, using as a guide those publicly or privately owned natural wonders and scenic, historic, educational, cultural, or recreational sites which have been determined to be of general interest[.];

(4) The state highways and transportation commission may require reimbursement for the cost of erection and maintenance of the official directional signs authorized hereunder when sites or attractions are privately owned by other than the state or political subdivisions. The state highways and transportation commission shall prescribe the size, number and locations of such signs based upon its determination of the travelers' need for directional information.

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 [interstate or federal-aid primary highway] **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 [one thousand two] **eight** hundred square feet with a maximum height of thirty feet and a maximum length of [sixty] **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 in rules promulgated by the commission. **In determining the size of a 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 nonconforming for failure to meet the requirements of this section and may be maintained, repaired, or rebuilt as conforming structures; provided that, such maintenance, repair or rebuilding complies with current statutory authority, including but not limited to section 71.288, RSMo, and rules adopted by the department. 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) **Interstate highways and freeways on the federal-aid primary [system] 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 [three] **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 and may be maintained, repaired, or replaced as a conforming structure; provided that, such maintenance, repair or rebuilding complies with current statutory authority, including but not limited to section 71.288, RSMo, and rules adopted by the department;**

b. Within incorporated municipalities, no structure shall be erected within [one] **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 and may be maintained, repaired, or replaced as a conforming structure; provided that, such maintenance, repair or rebuilding complies with current statutory authority, including but not limited to section 71.288, RSMo, and rules adopted by the department;**

(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) 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) 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" [mean] **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 [whether or not a permanent structure is located thereon,] 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 highway from an unzoned commercial or industrial area as defined in this section;

(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 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.

(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 **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. 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. 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.

226.573. 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 the effective date of this section shall be invalid and void.

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