

SECOND REGULAR SESSION
SENATE COMMITTEE SUBSTITUTE FOR

SENATE BILL NO. 1064

93RD GENERAL ASSEMBLY

Reported from the Committee on Economic Development, Tourism and Local Government, March 9, 2006, with recommendation that the Senate Committee Substitute do pass.

5187S.04C

TERRY L. SPIELER, Secretary.

AN ACT

To repeal sections 226.530 and 226.580, RSMo, and to enact in lieu thereof two new sections relating to outdoor advertising.

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

Section A. Sections 226.530 and 226.580, RSMo, are repealed and two new sections enacted in lieu thereof, to be known as sections 226.530 and 226.580, to read as follows:

226.530. 1. The state highways and transportation commission [is required to] **shall** issue one-time permanent permits as provided in section 226.550 for the erection and maintenance of outdoor advertising along [the interstate and primary highway systems and] **any interstate highways, the federal-aid primary system as it existed on June 1, 1991, or the national highway system as amended.**

2. **The commission is authorized to void any permit under any of the following conditions and no compensation shall be paid:**

(1) **When there has been any misrepresentation of a material fact by the applicant on a permit application and the sign is removed under section 226.580;**

(2) **When the commission determines that a change has been made to a conforming sign by the sign owner and the sign has been removed under section 226.580; or**

(3) **When the commission determines that a substantial change has been made to a nonconforming sign by the sign owner such that the sign's nonconforming status was terminated and the sign was removed**

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

18 **under the commission's administrative rules for maintenance of**
19 **nonconforming signs.**

20 **3. The commission is also authorized to void any permit when**
21 **the commission determines that such permit has been erroneously**
22 **issued by department of transportation staff in violation of any state**
23 **law or administrative rule and the outdoor advertising shall be subject**
24 **to removal and compensation shall be paid under section 226.570.**

25 **4. Subject to section 226.540, the commission is authorized to**
26 **promulgate only those rules and regulations of minimal necessity and consistent**
27 **with customary use to secure to this state any federal aid contingent upon**
28 **compliance with federal laws, rules and regulations relating to outdoor**
29 **advertising. No rule or portion of a rule promulgated under the authority of this**
30 **section shall become effective unless it has been promulgated pursuant to the**
31 **provisions of section 536.024, RSMo.**

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

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

9 (2) Signs for which a permit is not obtained or a biennial inspection fee
10 is more than twelve months past due; or

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

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

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

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

18 (7) Signs which are erected or maintained upon trees or painted or drawn
19 upon rocks or other natural features; **or**

20 **(8) Signs for which a permit was obtained based on a**
21 **misrepresentation of a material fact.**

22 2. Signs erected after August 13, 1976, beyond six hundred sixty feet of

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

27 3. If a sign is deemed to be unlawful for any of the reasons set out in
28 subsections 1 to 7 of this section, the state highways and transportation
29 commission shall give notice either by certified mail or by personal service to the
30 owner or occupant of the land on which advertising believed to be unlawful is
31 located and the owner of the outdoor advertising structure. Such notice shall
32 specify the basis for the alleged unlawfulness, shall specify the remedial action
33 which is required to correct the unlawfulness and shall advise that a failure to
34 take the remedial action within sixty days will result in the sign being
35 removed. Within sixty days after receipt of the notice as to him, the owner of the
36 land or of the structure may remove the sign or may take the remedial action
37 specified or may file an action for administrative review pursuant to the
38 provisions of sections 536.067 to 536.090, RSMo, to review the action of the state
39 highways and transportation commission, or he may proceed under the provisions
40 of section 536.150, RSMo, as if the act of the highways and transportation
41 commission was one not subject to administrative review. Notwithstanding any
42 other provisions of sections 226.500 to 226.600, no outdoor advertising structure
43 erected prior to August 28, 1992, defined as a "structure lawfully in existence" or
44 "lawfully existing", by subdivision (1), (2) or (3) of subsection 3 of section 226.550,
45 shall be removed for failure to have a permit until a notice, as provided in this
46 section, has been issued which shall specify failure to obtain a permit or pay a
47 biennial inspection fee as the basis for alleged unlawfulness, and shall advise
48 that failure to take the remedial action of applying for a permit or paying the
49 inspection fee within sixty days will result in the sign being removed. Signs for
50 which biennial inspection fees are delinquent shall not be removed unless the fees
51 are more than twelve months past due and actual notice of the delinquency has
52 been provided to the sign owner. Upon application made within the sixty-day
53 period as provided in this section, and accompanied by the fee prescribed by
54 section 226.550, together with any inspection fees that would have been payable
55 if a permit had been timely issued, the state highways and transportation
56 commission shall issue a one-time permanent permit for such sign. Such signs
57 with respect to which permits are so issued are hereby determined by the state
58 of Missouri to have been lawfully erected within the meaning of "lawfully erected"

59 as that term is used in Title 23, United States Code, Section 131(g), as amended,
60 and shall only be removed upon payment of just compensation, except that the
61 issuance of permits shall not entitle the owners of such signs to compensation for
62 their removal if it is finally determined that such signs are not "lawfully erected"
63 as that term is used in Section 131(g) of Title 23 of the United States Code.

64 4. If actual notice as provided in this section is given and neither the
65 remedial action specified is taken nor an action for review is filed, or if an action
66 for review is filed and is finally adjudicated in favor of the state highways and
67 transportation commission, the state highways and transportation commission
68 shall have authority to immediately remove the unlawful outdoor
69 advertising. The owner of the structure shall be liable for the costs of such
70 removal. The commission shall incur no liability for causing this removal, except
71 for damage caused by negligence of the commission, its agents or employees.

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

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

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

92 8. The [transportation department] **state highways and**
93 **transportation commission** shall reimburse to the lawful owners of any said
94 nonconforming signs that are now in existence as defined in sections 226.540,

95 226.550, 226.580 and 226.585, said compensation calculated and/or based on a
96 fair market value and not mere replacement cost.

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Bill

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