

OUTDOOR ADVERTISING AMENDMENTS

2011 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Michael E. Noel

Senate Sponsor: _____

LONG TITLE

General Description:

This bill modifies the Transportation Code by amending provisions relating to outdoor advertising.

Highlighted Provisions:

This bill:

- ▶ provides and amends definitions;
- ▶ enacts restrictions and requirements for an advertising structure that is on the premise of a public assembly facility;
- ▶ specifies requirements for a changeable message sign face on a public assembly facility;
- ▶ increases the amount that the Department of Transportation is entitled to recover in certain circumstances for unlawful outdoor advertising;
- ▶ specifies the criteria that shall be used for determining whether a sign has as its purpose unlawful off premise outdoor advertising;
- ▶ provides that the sign owner has the burden of proving, by a preponderance of the evidence, that the advertised activity is conducted on the premises; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:



28 None

29 **Utah Code Sections Affected:**

30 AMENDS:

31 **72-7-502**, as last amended by Laws of Utah 2009, Chapter 170

32 **72-7-504.5**, as enacted by Laws of Utah 2003, Chapter 166

33 **72-7-505**, as last amended by Laws of Utah 2002, Chapter 298

34 **72-7-508**, as last amended by Laws of Utah 2008, Chapter 382



36 *Be it enacted by the Legislature of the state of Utah:*

37 Section 1. Section **72-7-502** is amended to read:

38 **72-7-502. Definitions.**

39 As used in this part:

40 (1) "Clearly visible" means capable of being read without obstruction by an occupant
41 of a vehicle traveling on the main traveled way of a street or highway within the visibility area.

42 (2) "Commercial or industrial activities" means those activities generally recognized as
43 commercial or industrial by zoning authorities in this state, except that none of the following
44 are commercial or industrial activities:

45 (a) agricultural, forestry, grazing, farming, and related activities, including wayside
46 fresh produce stands;

47 (b) transient or temporary activities;

48 (c) activities not visible from the main-traveled way;

49 (d) activities conducted in a building principally used as a residence; and

50 (e) railroad tracks and minor sidings.

51 (3) (a) "Commercial or industrial zone" means only:

52 ~~[(a)]~~ (i) those areas within the boundaries of cities or towns that are used or reserved
53 for business, commerce, or trade, or zoned as a highway service zone, under enabling state
54 legislation or comprehensive local zoning ordinances or regulations;

55 ~~[(b)]~~ (ii) those areas within the boundaries of urbanized counties that are used or
56 reserved for business, commerce, or trade, or zoned as a highway service zone, under enabling
57 state legislation or comprehensive local zoning ordinances or regulations;

58 ~~[(c)]~~ (iii) those areas outside the boundaries of urbanized counties and outside the

59 boundaries of cities and towns that:

60 [~~(i)~~] (A) are used or reserved for business, commerce, or trade, or zoned as a highway
61 service zone, under comprehensive local zoning ordinances or regulations or enabling state
62 legislation; and

63 [~~(ii)~~] (B) are within 8420 feet of an interstate highway exit, off-ramp, or turnoff as
64 measured from the nearest point of the beginning or ending of the pavement widening at the
65 exit from or entrance to the main-traveled way; or

66 [~~(iii)~~] (iv) those areas outside the boundaries of urbanized counties and outside the
67 boundaries of cities and towns and not within 8420 feet of an interstate highway exit, off-ramp,
68 or turnoff as measured from the nearest point of the beginning or ending of the pavement
69 widening at the exit from or entrance to the main-traveled way that are reserved for business,
70 commerce, or trade under enabling state legislation or comprehensive local zoning ordinances
71 or regulations, and are actually used for commercial or industrial purposes.

72 [~~(4)~~] (b) "Commercial or industrial zone" does not mean areas zoned for the sole
73 purpose of allowing outdoor advertising.

74 [~~(5)~~] (4) "Comprehensive local zoning ordinances or regulations" means a
75 municipality's comprehensive plan required by Section 10-9a-401, the municipal zoning plan
76 authorized by Section 10-9a-501, and the county master plan authorized by Sections
77 17-27a-401 and 17-27a-501. Property that is rezoned by comprehensive local zoning
78 ordinances or regulations is rebuttably presumed to have not been zoned for the sole purpose of
79 allowing outdoor advertising.

80 [~~(6)~~] (5) "Directional signs" means signs containing information about public places
81 owned or operated by federal, state, or local governments or their agencies, publicly or
82 privately owned natural phenomena, historic, cultural, scientific, educational, or religious sites,
83 and areas of natural scenic beauty or naturally suited for outdoor recreation, that the department
84 considers to be in the interest of the traveling public.

85 [~~(7)~~] (6) (a) "Erect" means to construct, build, raise, assemble, place, affix, attach,
86 create, paint, draw, or in any other way bring into being.

87 (b) "Erect" does not include any activities defined in Subsection [~~(7)~~] (6)(a) if they are
88 performed incident to the change of an advertising message or customary maintenance of a
89 sign.

90 ~~[(8)]~~ (7) "Highway service zone" means a highway service area where the primary use
91 of the land is used or reserved for commercial and roadside services other than outdoor
92 advertising to serve the traveling public.

93 ~~[(9)]~~ (8) "Information center" means an area or site established and maintained at rest
94 areas for the purpose of informing the public of:

- 95 (a) places of interest within the state; or
- 96 (b) any other information that the department considers desirable.

97 ~~[(10)]~~ (9) "Interchange or intersection" means those areas and their approaches where
98 traffic is channeled off or onto an interstate route, excluding the deceleration lanes, acceleration
99 lanes, or feeder systems, from or to another federal, state, county, city, or other route.

100 ~~[(11)]~~ (10) "Maintain" means to allow to exist, subject to the provisions of this chapter.

101 ~~[(12)]~~ (11) "Maintenance" means to repair, refurbish, repaint, or otherwise keep an
102 existing sign structure safe and in a state suitable for use, including signs destroyed by
103 vandalism or an act of God.

104 ~~[(13)]~~ (12) "Main-traveled way" means the through traffic lanes, including auxiliary
105 lanes, acceleration lanes, deceleration lanes, and feeder systems, exclusive of frontage roads
106 and ramps. For a divided highway, there is a separate main-traveled way for the traffic in each
107 direction.

108 (13) "Major sponsor" means a sponsor of a public assembly facility or of a team or
109 event held at the facility where the amount paid by the sponsor to the owner of the facility, to
110 the team, or for the event is at least \$100,000 per year.

111 (14) "Official signs and notices" means signs and notices erected and maintained by
112 public agencies within their territorial or zoning jurisdictions for the purpose of carrying out
113 official duties or responsibilities in accordance with direction or authorization contained in
114 federal, state, or local law.

115 (15) "Off-premise signs" means signs located in areas zoned industrial, commercial, or
116 H-1 and in areas determined by the department to be unzoned industrial or commercial that
117 advertise an activity, service, event, person, or product located on premises other than the
118 premises at which the advertising occurs.

119 (16) "On-premise signs" means signs used to advertise the major activities conducted
120 on the property where the sign is located.

121 (17) "Outdoor advertising" means any outdoor advertising structure or outdoor
122 structure used in combination with an outdoor advertising sign or outdoor sign within the
123 outdoor advertising corridor which is visible from a place on the main-traveled way of a
124 controlled route.

125 (18) "Outdoor advertising corridor" means a strip of land 350 feet wide, measured
126 perpendicular from the edge of a controlled highway right-of-way.

127 (19) "Outdoor advertising structure" or "outdoor structure" means any sign structure,
128 including any necessary devices, supports, appurtenances, and lighting that is part of or
129 supports an outdoor sign.

130 (20) "Point of widening" means the point of the gore or the point where the intersecting
131 lane begins to parallel the other lanes of traffic, but the point of widening may never be greater
132 than 2,640 feet from the center line of the intersecting highway of the interchange or
133 intersection at grade.

134 (21) "Public assembly facility" means a convention facility as defined under Section
135 59-12-602 and that:

136 (a) includes all contiguous interests in land, improvements, and utilities acquired,
137 constructed, and used in connection with the operation of the public assembly facility, whether
138 the interests are owned or held in fee title or a lease or easement for a term of at least 40 years,
139 and regardless of whether the interests are owned or operated by separate governmental
140 authorities or districts;

141 [~~(a)~~] (b) is wholly or partially funded by public money; [~~and~~]

142 [~~(b)~~] (c) requires a person attending an event at the public assembly facility to purchase
143 a ticket or that otherwise charges for the use of the public assembly facility as part of its regular
144 operation[-]; and

145 (d) has a minimum and permanent seating capacity of at least 12,000 people.

146 (22) "Public assembly facility sign" means a sign located on a public assembly facility
147 that only advertises the public assembly facility, major sponsors, events, the sponsors of events
148 held or teams playing at the facility, and products sold or services conducted at the facility.

149 [~~(22)~~] (23) "Relocation" includes the removal of a sign from one situs together with the
150 erection of a new sign upon another situs in a commercial or industrial zoned area as a
151 substitute.

152 [~~(23)~~] (24) "Relocation and replacement" means allowing all outdoor advertising signs
153 or permits the right to maintain outdoor advertising along the interstate, federal aid primary
154 highway existing as of June 1, 1991, and national highway system highways to be maintained
155 in a commercial or industrial zoned area to accommodate the displacement, remodeling, or
156 widening of the highway systems.

157 [~~(24)~~] (25) "Remodel" means the upgrading, changing, alteration, refurbishment,
158 modification, or complete substitution of a new outdoor advertising structure for one permitted
159 pursuant to this part and that is located in a commercial or industrial area.

160 [~~(25)~~] (26) "Rest area" means an area or site established and maintained within or
161 adjacent to the right-of-way by or under public supervision or control for the convenience of
162 the traveling public.

163 [~~(26)~~] (27) "Scenic or natural area" means an area determined by the department to
164 have aesthetic value.

165 [~~(27)~~] (28) "Traveled way" means that portion of the roadway used for the movement
166 of vehicles, exclusive of shoulders and auxiliary lanes.

167 [~~(28)~~] (29) (a) "Unzoned commercial or industrial area" means:

168 (i) those areas not zoned by state law or local law, regulation, or ordinance that are
169 occupied by one or more industrial or commercial activities other than outdoor advertising
170 signs;

171 (ii) the lands along the highway for a distance of 600 feet immediately adjacent to
172 those activities; and

173 (iii) lands covering the same dimensions that are directly opposite those activities on
174 the other side of the highway, if the department determines that those lands on the opposite side
175 of the highway do not have scenic or aesthetic value.

176 (b) In measuring the scope of the unzoned commercial or industrial area, all
177 measurements shall be made from the outer edge of the regularly used buildings, parking lots,
178 storage, or processing areas of the activities and shall be along or parallel to the edge of
179 pavement of the highway.

180 (c) All signs located within an unzoned commercial or industrial area become
181 nonconforming if the commercial or industrial activity used in defining the area ceases for a
182 continuous period of 12 months.

183 ~~[(29)]~~ (30) "Urbanized county" means a county with a population of at least 125,000
184 persons.

185 ~~[(30)]~~ (31) "Visibility area" means the area on a street or highway that is:

186 (a) defined at one end by a line extending from the base of the billboard across all lanes
187 of traffic of the street or highway in a plane that is perpendicular to the street or highway; and

188 (b) defined on the other end by a line extending across all lanes of traffic of the street
189 or highway in a plane that is:

190 (i) perpendicular to the street or highway; and

191 (ii) 500 feet from the base of the billboard.

192 Section 2. Section **72-7-504.5** is amended to read:

193 **72-7-504.5. Public assembly facility signs -- Restrictions.**

194 (1) Signs on the premises of a public assembly facility that do not bring rental income
195 to the owner of the public assembly facility may advertise:

196 ~~[(1)]~~ (a) the name of the facility, including identifiable venues or stores within the
197 facility; and

198 ~~[(2)]~~ (b) principal or accessory products or services offered on the property and
199 activities conducted on the property as permitted by 23 C.F.R. Section 750.709, including:

200 ~~[(a)]~~ (i) events being conducted in the facility or upon the premises, including the
201 sponsor of the current event; and

202 ~~[(b)]~~ (ii) products or services sold at the facility and activities conducted on the
203 property that produce significant income to the operation of the facility.

204 (2) An advertising structure described in Subsection (1):

205 (a) shall be located on a public assembly facility or on a parcel contiguous to the public
206 assembly facility;

207 (b) shall be under the same ownership as the public assembly facility; and

208 (c) may not be separated from the public assembly facility by a public road.

209 (3) An advertising structure described in Subsection (1) may only promote a maximum
210 of seven major sponsors and the sponsor of a current event at any one time.

211 (4) An advertising structure described in Subsection (1) may not be located on narrow
212 land held by easement or anything other than a fee interest unless it is a part of a public
213 assembly facility.

214 (5) A public assembly facility is exempt from the requirement under this part to have a
215 state outdoor advertising permit.

216 Section 3. Section **72-7-505** is amended to read:

217 **72-7-505. Sign size -- Sign spacing -- Location in outdoor advertising corridor --**
218 **Limit on implementation.**

219 (1) (a) Except as provided in Subsection (2), a sign face within the state may not exceed
220 the following limits:

221 (i) maximum area - 1,000 square feet;

222 (ii) maximum length - 60 feet; and

223 (iii) maximum height - 25 feet.

224 (b) No more than two facings visible and readable from the same direction on the
225 main-traveled way may be erected on any one sign structure. Whenever two facings are so
226 positioned, neither shall exceed the maximum allowed square footage.

227 (c) Two or more advertising messages on a sign face and double-faced, back-to-back,
228 stacked, side-by-side, and V-type signs are permitted as a single sign or structure if both faces
229 enjoy common ownership.

230 (d) A changeable message sign is permitted if the interval between message changes is
231 not more frequent than at least eight seconds and the actual message rotation process is
232 accomplished in three seconds or less.

233 (e) The illumination of an electronic changeable message sign may not be limited,
234 except to prevent an electronic sign face from increasing ambient lighting levels by more than
235 0.3 footcandles when measured:

236 (i) perpendicular to the sign face; and

237 (ii) at a distance in feet calculated by taking the square root of the product of the
238 following:

239 (A) the area of the electronic sign face measured in square feet; and

240 (B) 100.

241 (2) (a) An outdoor sign structure located inside the unincorporated area of a
242 nonurbanized county may have the maximum height allowed by the county for outdoor
243 advertising structures in the commercial or industrial zone in which the sign is located. If no
244 maximum height is provided for the location, the maximum sign height may be 65 feet above

245 the ground or 25 feet above the grade of the main traveled way, whichever is greater.

246 (b) An outdoor sign structure located inside an incorporated municipality or urbanized
247 county may have the maximum height allowed by the municipality or urbanized county for
248 outdoor advertising structures in the commercial or industrial zone in which the sign is located.
249 If no maximum height is provided for the location, the maximum sign height may be 65 feet
250 above the ground or 25 feet above the grade of the main traveled way, whichever is greater.

251 (3) Except as provided in Section 72-7-509:

252 (a) Any sign allowed to be erected by reason of the exceptions set forth in Subsection
253 72-7-504(1) or in H-1 zones may not be closer than 500 feet to an existing off-premise sign
254 adjacent to an interstate highway or limited access primary highway, except that signs may be
255 erected closer than 500 feet if the signs on the same side of the interstate highway or limited
256 access primary highway are not simultaneously visible.

257 (b) Signs may not be located within 500 feet of any of the following which are adjacent
258 to the highway, unless the signs are in an incorporated area:

259 (i) public parks;

260 (ii) public forests;

261 (iii) public playgrounds;

262 (iv) areas designated as scenic areas by the department or other state agency having and
263 exercising this authority; or

264 (v) cemeteries.

265 (c) (i) (A) Except under Subsection (3)(c)(ii), signs may not be located on an interstate
266 highway or limited access highway on the primary system within 500 feet of an interchange, or
267 intersection at grade, or rest area measured along the interstate highway or freeway from the
268 sign to the nearest point of the beginning or ending of pavement widening at the exit from or
269 entrance to the main-traveled way.

270 (B) Interchange and intersection distance limitations shall be measured separately for
271 each direction of travel. A measurement for each direction of travel may not control or affect
272 any other direction of travel.

273 (ii) A sign may be placed closer than 500 feet from the nearest point of the beginning
274 or ending of pavement widening at the exit from or entrance to the main-traveled way, if:

275 (A) the sign is replacing an existing outdoor advertising use or structure which is being

276 removed or displaced to accommodate the widening, construction, or reconstruction of an
277 interstate, federal aid primary highway existing as of June 1, 1991, or national highway system
278 highway; and

279 (B) it is located in a commercial or industrial zoned area inside an urbanized county or
280 an incorporated municipality.

281 (d) The location of signs situated on nonlimited access primary highways in
282 commercial, industrial, or H-1 zoned areas between streets, roads, or highways entering the
283 primary highway shall not exceed the following minimum spacing criteria:

284 (i) Where the distance between centerlines of intersecting streets, roads, or highways is
285 less than 1,000 feet, a minimum spacing between structures of 150 feet may be permitted
286 between the intersecting streets or highways.

287 (ii) Where the distance between centerlines of intersecting streets, roads, or highways
288 is 1,000 feet or more, minimum spacing between sign structures shall be 300 feet.

289 (e) All outdoor advertising shall be erected and maintained within the outdoor
290 advertising corridor.

291 (4) Subsection (3)(c)(ii) may not be implemented until:

292 (a) the Utah-Federal Agreement for carrying out national policy relative to control of
293 outdoor advertising in areas adjacent to the national system of interstate and defense highways
294 and the federal-aid primary system is modified to allow the sign placement specified in
295 Subsection (3)(c)(ii); and

296 (b) the modified agreement under Subsection (4)(a) is signed on behalf of both the state
297 and the United States Secretary of Transportation.

298 Section 4. Section **72-7-508** is amended to read:

299 **72-7-508. Unlawful outdoor advertising -- Adjudicative proceedings -- Judicial**
300 **review -- Costs of removal -- Civil and criminal liability for damaging regulated signs --**
301 **Immunity for Department of Transportation.**

302 (1) Outdoor advertising is unlawful when:

303 (a) erected after May 9, 1967, contrary to the provisions of this chapter;

304 (b) a permit is not obtained as required by this part;

305 (c) a false or misleading statement has been made in the application for a permit that
306 was material to obtaining the permit; or

307 (d) the sign for which a permit was issued is not in a reasonable state of repair, is
308 unsafe, or is otherwise in violation of this part.

309 (2) The establishment, operation, repair, maintenance, or alteration of any sign contrary
310 to this chapter is also a public nuisance.

311 (3) Except as provided in Subsection (4), in its enforcement of this section, the
312 department shall comply with the procedures and requirements of Title 63G, Chapter 4,
313 Administrative Procedures Act.

314 (4) (a) The district courts shall have jurisdiction to review by trial de novo all final
315 orders of the department under this part resulting from formal and informal adjudicative
316 proceedings.

317 (b) Venue for judicial review of final orders of the department shall be in the county in
318 which the sign is located.

319 (5) If the department is granted a judgment, the department is entitled to have any
320 nuisance abated and recover from the responsible person, firm, or corporation, jointly and
321 severally:

322 (a) the costs and expenses incurred in removing the sign; and

323 (b) ~~[\$100]~~ (i) \$500 for each day the sign was maintained following the expiration of 10
324 days after notice of agency action was filed and served under Section 63G-4-201[-];

325 (ii) \$750 for each day the sign was maintained following the expiration of 40 days after
326 notice of agency action was filed and served under Section 63G-4-201;

327 (iii) \$1,000 for each day the sign was maintained following the expiration of 70 days
328 after notice of agency action was filed and served under Section 63G-4-201; and

329 (iv) \$1,500 for each day the sign was maintained following the expiration of 100 days
330 after notice of agency action was filed and served under Section 63G-4-201.

331 (6) (a) Any person, partnership, firm, or corporation who vandalizes, damages, defaces,
332 destroys, or uses any sign controlled under this chapter without the owner's permission is liable
333 to the owner of the sign for treble the amount of damage sustained and all costs of court,
334 including a reasonable attorney's fee, and is guilty of a class C misdemeanor.

335 (b) This Subsection (6) does not apply to the department, its agents, or employees if
336 acting to enforce this part.

337 (7) The following criteria shall be used for determining whether an existing sign has as

338 its purpose unlawful off-premise outdoor advertising:
339 (a) whether the sign complies with this part;
340 (b) whether the premise includes an area:
341 (i) from which the general public is serviced according to normal industry practices for
342 organizations of that type; or
343 (ii) that is directly connected to or is involved in carrying out the activities and normal
344 industry practices of the advertised activities, services, events, persons, or products;
345 (c) whether the sign generates revenue:
346 (i) arising from the advertisement of activities, services, events, or products not
347 available on the premises according to normal industry practices for organizations of that type;
348 (ii) arising from the advertisement of activities, services, events, persons, or products
349 that are incidental to the principal activities, services, events, or products available on the
350 premise; and
351 (iii) including the following:
352 (A) money;
353 (B) securities;
354 (C) real property interest;
355 (D) personal property interest;
356 (E) barter of goods or services;
357 (F) promise of future payment or compensation; or
358 (G) forbearance of debt;
359 (d) whether the purveyor of the activities, services, events, persons, or products being
360 advertised:
361 (i) carries on hours of operation on the premise comparable to the normal industry
362 practice for a business, service, or operation of that type, or posts the hours of operation on the
363 premise in public view;
364 (ii) has available utilities comparable to the normal industry practice for an entity of
365 that type; and
366 (iii) has a current valid business license or permit under applicable local ordinances,
367 state law, and federal law to conduct business on the premise upon which the sign is located;
368 (e) whether the advertisement is located on the site of any auxiliary facility that is not

369 essential to, or customarily used in, the ordinary course of business for the activities, services,
370 events, persons, or products being advertised; or

371 (f) whether the sign or advertisement is located on property that is not contiguous to a
372 property that is essential and customarily used for conducting the business of the activities,
373 services, events, persons, or products being advertised.

374 (8) The following do not qualify as a business under Subsection (7):

375 (a) public or private utility corridors or easements;

376 (b) railroad tracks;

377 (c) outdoor advertising signs or structures;

378 (d) vacant lots;

379 (e) transient or temporary activities; or

380 (f) storage of accessory products.

381 (9) The sign owner has the burden of proving, by a preponderance of the evidence, that
382 the advertised activity is conducted on the premise.

Legislative Review Note

as of 2-14-11 11:00 AM

Office of Legislative Research and General Counsel