

Superseded 5/10/2016

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

- (1) Outdoor advertising is unlawful when:
 - (a) erected after May 9, 1967, contrary to the provisions of this chapter;
 - (b) a permit is not obtained as required by this part;
 - (c) a false or misleading statement has been made in the application for a permit that was material to obtaining the permit; or
 - (d) the sign for which a permit was issued is not in a reasonable state of repair, is unsafe, or is otherwise in violation of this part.
- (2) The establishment, operation, repair, maintenance, or alteration of any sign contrary to this chapter is also a public nuisance.
- (3) Except as provided in Subsection (4), in its enforcement of this section, the department shall comply with the procedures and requirements of Title 63G, Chapter 4, Administrative Procedures Act.
- (4)
 - (a) The district courts shall have jurisdiction to review by trial de novo all final orders of the department under this part resulting from formal and informal adjudicative proceedings.
 - (b) Venue for judicial review of final orders of the department shall be in the county in which the sign is located.
- (5) If the department is granted a judgment, the department is entitled to have any nuisance abated and recover from the responsible person, firm, or corporation, jointly and severally:
 - (a) the costs and expenses incurred in removing the sign; and
 - (b)
 - (i) \$500 for each day the sign was maintained following the expiration of 10 days after notice of agency action was filed and served under Section 63G-4-201;
 - (ii) \$750 for each day the sign was maintained following the expiration of 40 days after notice of agency action was filed and served under Section 63G-4-201;
 - (iii) \$1,000 for each day the sign was maintained following the expiration of 70 days after notice of agency action was filed and served under Section 63G-4-201; and
 - (iv) \$1,500 for each day the sign was maintained following the expiration of 100 days after notice of agency action was filed and served under Section 63G-4-201.
- (6)
 - (a) Any person, partnership, firm, or corporation who vandalizes, damages, defaces, destroys, or uses any sign controlled under this chapter without the owner's permission is liable to the owner of the sign for treble the amount of damage sustained and all costs of court, including a reasonable attorney's fee, and is guilty of a class C misdemeanor.
 - (b) This Subsection (6) does not apply to the department, its agents, or employees if acting to enforce this part.
- (7) The following criteria shall be used for determining whether an existing sign within an interstate outdoor advertising corridor has as its purpose unlawful off-premise outdoor advertising:
 - (a) whether the sign complies with this part;
 - (b) whether the premise includes an area:
 - (i) from which the general public is serviced according to normal industry practices for organizations of that type; or
 - (ii) that is directly connected to or is involved in carrying out the activities and normal industry practices of the advertised activities, services, events, persons, or products;

- (c) whether the sign generates revenue:
 - (i) arising from the advertisement of activities, services, events, or products not available on the premise according to normal industry practices for organizations of that type;
 - (ii) arising from the advertisement of activities, services, events, persons, or products that are incidental to the principal activities, services, events, or products available on the premise; and
 - (iii) including the following:
 - (A) money;
 - (B) securities;
 - (C) real property interest;
 - (D) personal property interest;
 - (E) barter of goods or services;
 - (F) promise of future payment or compensation; or
 - (G) forbearance of debt;
 - (d) whether the purveyor of the activities, services, events, persons, or products being advertised:
 - (i) carries on hours of operation on the premise comparable to the normal industry practice for a business, service, or operation of that type, or posts the hours of operation on the premise in public view;
 - (ii) has available utilities comparable to the normal industry practice for an entity of that type; and
 - (iii) has a current valid business license or permit under applicable local ordinances, state law, and federal law to conduct business on the premise upon which the sign is located;
 - (e) whether the advertisement is located on the site of any auxiliary facility that is not essential to, or customarily used in, the ordinary course of business for the activities, services, events, persons, or products being advertised; or
 - (f) whether the sign or advertisement is located on property that is not contiguous to a property that is essential and customarily used for conducting the business of the activities, services, events, persons, or products being advertised.
- (8) The following do not qualify as a business under Subsection (7):
- (a) public or private utility corridors or easements;
 - (b) railroad tracks;
 - (c) outdoor advertising signs or structures;
 - (d) vacant lots;
 - (e) transient or temporary activities; or
 - (f) storage of accessory products.
- (9) The sign owner has the burden of proving, by a preponderance of the evidence, that the advertised activity is conducted on the premise.