

HB0356S02 compared with HB0356S01

~~text~~ shows text that was in HB0356S01 but was deleted in HB0356S02.

Inserted text shows text that was not in HB0356S01 but was inserted into HB0356S02.

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Representative Mike K. McKell proposes the following substitute bill:

ON PREMISE SIGNAGE AMENDMENTS

2017 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Mike K. McKell

Senate Sponsor: _____

LONG TITLE

General Description:

This bill amends definitions related to an on-premise sign and a comprehensive development.

Highlighted Provisions:

This bill:

- ▶ defines "comprehensive development";
- ~~▶ amends the definition of "public assembly facility" by reducing the defined seating capacity;~~
- ▶ amends certain location restrictions for an advertising structure owned by a public assembly facility;
- ▶ amends provisions related to signage in a comprehensive development; and
- ▶ makes technical changes.

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Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

72-7-502, as last amended by Laws of Utah 2016, Chapter 299

72-7-504, as last amended by Laws of Utah 2016, Chapter 299

~~72-7-504.5, as last amended by Laws of Utah 2011, Chapter 346~~

72-7-508, as last amended by Laws of Utah 2016, Chapter 299

REPEALS:

72-7-504.6, as enacted by Laws of Utah 2016, Chapter 299

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

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

72-7-502. Definitions.

As used in this part:

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

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

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

(b) transient or temporary activities;

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

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

(e) railroad tracks and minor sidings.

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

(i) those areas within the boundaries of cities or towns that are used or reserved for business, commerce, or trade, or zoned as a highway service zone, under enabling state

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legislation or comprehensive local zoning ordinances or regulations;

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

(iii) those areas outside the boundaries of urbanized counties and outside the boundaries of cities and towns that:

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

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

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

(b) "Commercial or industrial zone" does not mean areas zoned for the sole purpose of allowing outdoor advertising.

(4) "Comprehensive development" means a development that complies with the following:

(a) the development is comprised of commercial, institutional, or industrial activities;

(b) the development is located on land on one side of a controlled route;

(c) the lots or parcels within the development are contiguous except for:

(i) public or private roadways, railroad rights-of-way, or utility areas that provide access or service to the development; or

(ii) conservation or waterway areas incorporated into the development;

(d) the development has been developed by a single developer, including successors;

(e) the development has a common identity, with an interrelated plan for common signage, and holds itself out as a planned common development;

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(f) the development has common areas for parking, amenities, or landscaping that are actively managed or maintained by a permanent association, binding arrangement, or irrevocable covenant or other agreement that includes all owners within the boundaries of the development; and

(g) the development must exclude narrow strips of land when the sole purpose is facilitating on-premise signage, such as common areas or other lands not used for commercial, industrial, or institutional purposes.

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

~~[(5)]~~ (6) "Contiguous" means that a portion of one parcel of land is situated immediately adjacent to, and shares a common boundary with, a portion of another parcel of land.

~~[(6)]~~ (7) "Controlled route" means any route where outdoor advertising control is mandated by state or federal law, including under this part and under the Utah-Federal Agreements described in Section 72-7-501.

~~[(7)]~~ (8) "Directional signs" means signs containing information about public places owned or operated by federal, state, or local governments or their agencies, publicly or privately owned natural phenomena, historic, cultural, scientific, educational, or religious sites, and areas of natural scenic beauty or naturally suited for outdoor recreation, that the department considers to be in the interest of the traveling public.

~~[(8)]~~ (9) (a) "Erect" means to construct, build, raise, assemble, place, affix, attach, create, paint, draw, or in any other way bring into being.

(b) "Erect" does not include any activities defined in Subsection ~~[(8)]~~ (9)(a) if they are performed incident to the change of an advertising message or customary maintenance of a sign.

~~[(9)]~~ (10) "Highway service zone" means a highway service area where the primary use of the land is used or reserved for commercial and roadside services other than outdoor

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advertising to serve the traveling public.

~~[(10)]~~ (11) "Information center" means an area or site established and maintained at rest areas for the purpose of informing the public of:

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

~~[(11)]~~ (12) "Interchange or intersection" means those areas and their approaches where traffic is channeled off or onto an interstate route, excluding the deceleration lanes, acceleration lanes, or feeder systems, from or to another federal, state, county, city, or other route.

~~[(12)]~~ (13) "Maintain" means to allow to exist, subject to the provisions of this chapter.

~~[(13)]~~ (14) "Maintenance" means to repair, refurbish, repaint, or otherwise keep an existing sign structure safe and in a state suitable for use, including signs destroyed by vandalism or an act of God.

~~[(14)]~~ (15) "Main-traveled way" means the through traffic lanes, including auxiliary lanes, acceleration lanes, deceleration lanes, and feeder systems, exclusive of frontage roads and ramps. For a divided highway, there is a separate main-traveled way for the traffic in each direction.

~~[(15)]~~ (16) "Major sponsor" means a sponsor of a public assembly facility or of a team or event held at the facility where the amount paid by the sponsor to the owner of the facility, to the team, or for the event is at least \$100,000 per year.

~~[(16)]~~ (17) "Official signs and notices" means signs and notices erected and maintained by public agencies within their territorial or zoning jurisdictions for the purpose of carrying out official duties or responsibilities in accordance with direction or authorization contained in federal, state, or local law.

~~[(17)]~~ (18) "Off-premise sign" means a sign located in an area zoned industrial, commercial, or H-1 and in an area determined by the department to be unzoned industrial or commercial that advertises an activity, service, event, person, or product located on premises other than the premises on which the sign is located.

~~[(18)]~~ (19) "On-premise sign" means a sign used to advertise the sale or lease of, or activities conducted on, the property on which the sign is located.

~~[(19)]~~ (20) "Outdoor advertising" means any outdoor advertising structure or outdoor structure used in combination with an outdoor advertising sign or outdoor sign within the

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outdoor advertising corridor which is visible from a place on the main-traveled way of a controlled route.

~~[(20)]~~ (21) "Outdoor advertising corridor" means a strip of land 660 feet wide, measured perpendicular from the edge of a controlled highway right-of-way.

~~[(21)]~~ (22) "Outdoor advertising structure" or "outdoor structure" means any sign structure, including any necessary devices, supports, appurtenances, and lighting that is part of or supports an outdoor sign.

~~[(22)]~~ (23) "Point of widening" means the point of the gore or the point where the intersecting lane begins to parallel the other lanes of traffic, but the point of widening may never be greater than 2,640 feet from the center line of the intersecting highway of the interchange or intersection at grade.

~~[(23)]~~ (24) "Public assembly facility" means a convention facility as defined under Section 59-12-602 that:

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

(b) is wholly or partially funded by public money;

(c) requires a person attending an event at the public assembly facility to purchase a ticket or that otherwise charges for the use of the public assembly facility as part of its regular operation; and

(d) has a minimum and permanent seating capacity of at least ~~10,000~~ 5,000 people.

~~[(24)]~~ (25) "Public assembly facility sign" means a sign located on a public assembly facility that only advertises the public assembly facility, major sponsors, events, the sponsors of events held or teams playing at the facility, and products sold or services conducted at the facility.

~~[(25)]~~ (26) "Relocation" includes the removal of a sign from one situs together with the erection of a new sign upon another situs in a commercial or industrial zoned area as a substitute.

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~~[(26)]~~ (27) "Relocation and replacement" means allowing all outdoor advertising signs or permits the right to maintain outdoor advertising along the interstate, federal aid primary highway existing as of June 1, 1991, and national highway system highways to be maintained in a commercial or industrial zoned area to accommodate the displacement, remodeling, or widening of the highway systems.

~~[(27)]~~ (28) "Remodel" means the upgrading, changing, alteration, refurbishment, modification, or complete substitution of a new outdoor advertising structure for one permitted pursuant to this part and that is located in a commercial or industrial area.

~~[(28)]~~ (29) "Rest area" means an area or site established and maintained within or adjacent to the right-of-way by or under public supervision or control for the convenience of the traveling public.

~~[(29)]~~ (30) "Scenic or natural area" means an area determined by the department to have aesthetic value.

~~[(30)]~~ (31) "Traveled way" means that portion of the roadway used for the movement of vehicles, exclusive of shoulders and auxiliary lanes.

~~[(31)]~~ (32) (a) "Unzoned commercial or industrial area" means:

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

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

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

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

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

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~~[(32)]~~ (33) "Urbanized county" means a county with a population of at least 125,000 persons.

~~[(33)]~~ (34) "Visibility area" means the area on a street or highway that is:

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

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

(i) perpendicular to the street or highway; and

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

Section 2. Section **72-7-504** is amended to read:

72-7-504. Advertising prohibited near interstate or primary system -- Exceptions -- Logo advertising -- Department rules.

(1) As used in this section, "specific service trailblazer sign" means a guide sign that provides users with business identification or directional information for services and eligible activities that are advertised on a logo advertising sign authorized under Subsection (3)(a)(i).

(2) Outdoor advertising that is capable of being read or comprehended from any place on the main-traveled way of an interstate or primary system may not be erected or maintained, except:

(a) directional and other official signs and notices authorized or required by law, including signs and notices pertaining to natural wonders and scenic and historic attractions, informational or directional signs regarding utility service, emergency telephone signs, buried or underground utility markers, and above ground utility closure signs;

(b) on-premise signs advertising the sale or lease of property upon which the on-premise signs are located;

(c) on-premise signs advertising major activities conducted on the property where the on-premise signs are located;

(d) public assembly facility signs;

(e) on-premise signs within a ~~[unified commercial]~~ comprehensive development as ~~[described]~~ defined in Section ~~[72-7-504.6]~~ 72-7-502, and in accordance with Subsection 72-7-508(8), so long as the placement of ~~{the signs}~~ a sign within a comprehensive ~~{developments}~~ development does not cause a reduction in federal aid money or funds pursuant

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to 23 U.S.C. Sec. 131;

(f) signs located in a commercial or industrial zone;

(g) signs located in unzoned industrial or commercial areas as determined from actual land uses; and

(h) logo advertising under Subsection (3).

(3) (a) The department may itself or by contract erect, administer, and maintain informational signs:

(i) on the main-traveled way of an interstate or primary system, as it existed on June 1, 1991, specific service signs for the display of logo advertising and information of interest, excluding specific service trailblazer signs as defined in rules adopted in accordance with Section 41-6a-301, to the traveling public if:

(A) the department complies with Title 63G, Chapter 6a, Utah Procurement Code, in the lease or other contract agreement with a private party for the sign or sign space; and

(B) the private party for the lease of the sign or sign space pays an amount set by the department to be paid to the department or the party under contract with the department under this Subsection (3); and

(ii) only on rural conventional roads as defined in rules adopted in accordance with Section 41-6a-301 in a county of the fourth, fifth, or sixth class for tourist-oriented directional signs that display logo advertising and information of interest to the traveling public if:

(A) the department complies with Title 63G, Chapter 6a, Utah Procurement Code, in the lease or other contract agreement with a private party for the tourist-oriented directional sign or sign space; and

(B) the private party for the lease of the sign or sign space pays an amount set by the department to be paid to the department or the party under contract with the department under this Subsection (3).

(b) The amount shall be sufficient to cover the costs of erecting, administering, and maintaining the signs or sign spaces.

(c) (i) Any sign erected pursuant to this Subsection (3) which was existing as of March 1, 2015, shall be permitted as if it were in compliance with this Subsection (3).

(ii) A noncompliant sign shall only be permitted for the contract period of the advertising contract.

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(iii) A new advertising contract may not be issued for a noncompliant sign.

(d) The department may consult the Governor's Office of Economic Development in carrying out this Subsection (3).

(4) (a) Revenue generated under Subsection (3) shall be:

(i) applied first to cover department costs under Subsection (3); and

(ii) deposited in the Transportation Fund.

(b) Revenue in excess of costs under Subsection (3)(a) shall be deposited in the General Fund as a dedicated credit for use by the Governor's Office of Economic Development no later than the following fiscal year.

(5) Outdoor advertising under Subsections (2)(a), (f), (g), and (h) shall conform to the rules made by the department under Sections 72-7-506 and 72-7-507.

Section 3. Section ~~{72-7-504.5}~~ 72-7-508 is amended to read:

~~{~~ 72-7-504.5. Public assembly facility signs — Restrictions.

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

~~—— (a) the name of the facility, including identifiable venues or stores within the facility; and~~

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

~~—— (i) events being conducted in the facility or upon the premises, including the sponsor of the current event; and~~

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

~~—— (2) An advertising structure described in Subsection (1):~~

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

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

~~—— (c) may not be separated from the public assembly facility by a [public road] controlled route.~~

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

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

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

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

‡ **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;

(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; or

(e) a sign in the outdoor advertising corridor is permitted by the local zoning authority as an on-premise sign and the sign, from time to time or continuously, advertises an activity, service, event, person, or product located on property other than the property on which the sign is located.

(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 Subsections (4) and (10), 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 in an action brought under Subsection (4),

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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

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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 or is located outside of a comprehensive development.

(8) (a) A sign within an outdoor advertising corridor is not unlawful under this part if the sign is within a comprehensive development **and complies with Subsections (8)(b) and (c).**

(b) An on-premise sign within a comprehensive development:

(i) may advertise businesses, services, or ~~operations~~ **activities** occurring within the comprehensive development consistent with Subsection (7);

(ii) must include the name of the comprehensive development prominently displayed

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on each sign face visible from a place on the main-traveled way of a controlled route; and

(iii) may not advertise a business, services, or operations for properties that have been removed or revoked from inclusion within the comprehensive development through the termination of the association, covenant, or agreement.

(c) An off-premise sign within a comprehensive development may advertise a business, service, or activity occurring outside of the comprehensive development only in accordance with a permit issued in accordance with Section 72-7-507.

(~~f~~d) Upon request of the department, a developer or owner advertising on a sign within a comprehensive development within an outdoor advertising corridor shall provide documents confirming compliance with the requirements of a comprehensive development, including maps or plats depicting the boundaries of the comprehensive development.

(~~8~~) (9) 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~~) (10) The sign owner has the burden of proving, by a preponderance of the evidence, that the advertised activity is conducted on the premise.

(~~10~~) (11) (a) If the department has issued two or more notices of violation of Subsection (1)(e) for an existing sign within the last three years, the department may bring an action to enforce in any state court of competent jurisdiction against a person, firm, or corporation that satisfies one or more of the following prerequisites:

- (i) has a present ownership interest in the sign;
- (ii) had an ownership interest in the sign on one or more of the days the sign was in violation of Subsection (1)(e);
- (iii) has a present ownership interest in the property upon which the sign is located, or in contiguous property [~~as defined in Subsection 72-7-504.6(1)] in accordance with Subsection (8);~~
- (iv) had an ownership interest in the property upon which the sign is located[~~, or in~~

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contiguous property as defined in ~~Subsection 72-7-504.6(1),~~ on one or more of the days the sign was in violation of Subsection (1)(e);

(v) received or became entitled to receive compensation in any form for the unlawful outdoor advertising; or

(vi) solicited the advertising.

(b) In an action under Subsection ~~[(10)]~~ (11)(a):

(i) except as provided in Subsection ~~[(10)]~~ (11)(c), the provisions of Subsections (7) and ~~[(8)]~~ (9) apply; and

(ii) the defendants have the burden of proving, by a preponderance of the evidence, that the advertising in question is lawful under this part.

(c) In an action under Subsection ~~[(10)]~~ (11)(a), for an on-premise sign within a ~~[unified commercial]~~ comprehensive development ~~[Section 72-7-504.6]~~ Subsection (8) applies.

(d) If the department is granted judgment in an action under this Subsection ~~[(10)]~~ (11), the department is entitled to recover from the defendants, jointly and severally, \$1,500 for each day on which the sign was used for unlawful off-premises outdoor advertising.

Section ~~5~~4. **Repealer.**

This bill repeals:

Section **72-7-504.6, Unified commercial development.**