

HB0254S01 compared with HB0254

~~text~~ shows text that was in HB0254 but was deleted in HB0254S01.

Inserted text shows text that was not in HB0254 but was inserted into HB0254S01.

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Representative Calvin R. Musselman proposes the following substitute bill:

UNLAWFUL OUTDOOR ADVERTISING AMENDMENTS

2019 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Calvin R. Musselman

Senate Sponsor: _____

LONG TITLE

General Description:

This bill amends provisions related to the calculation of penalties for unlawful outdoor advertising.

Highlighted Provisions:

This bill:

- ▶ allows the Department of Transportation to issue a citation and levy a fine for a person guilty of unlawful outdoor advertising;
- ▶ amends provisions related to the calculation of penalties for unlawful outdoor advertising, including:
 - when to begin counting days on which a violation exists; and
 - what days are omitted from a calculation based on changes in the sign found to be in violation; and

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- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

72-7-508, as last amended by Laws of Utah 2017, Chapter 260

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

Section 1. 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

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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), 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;

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(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;

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- (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.

(10) (a) (i) ~~The~~ If the department has previously issued a written warning to a person for a violation of Subsection (1)(b) or (e), and the person has not cured the violation within 10 days of the mailing of the written warning, the department may issue a citation to ~~a~~ the person ~~who has violated Subsection (1)(b) or (e);~~ at the time that the department issues a notice of agency action for the violation or any subsequent violation.

(ii) If the department issues a citation as described in Subsection (10)(a)(i), the department may impose a fine not to exceed \$500.

~~(a)~~ (b) If the department has issued two or more notices of violation of or a citation for a violation of Subsection ~~(1)(e)~~ (1)(b) or (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)~~ (1)(b) or (e);
- (iii) has a present ownership interest in the property upon which the sign is located, or in a unified commercial development as defined in Section 72-7-504.6;
- (iv) had an ownership interest in the property upon which the sign is located, or in a unified commercial development as defined in Section 72-7-504.6, on one or more of the days the sign was in violation of Subsection ~~(1)(e)~~ (1)(b) or (e);
- (v) received or became entitled to receive compensation in any form for the unlawful outdoor advertising; or
- (vi) solicited the advertising.

~~(b)~~ (c) In an action under Subsection (10)~~(a)~~(b):

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(i) the provisions of Subsections (7) and (8) 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.

~~[(e)]~~ (d) If the department is granted judgment in an action under this Subsection (10), 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.

(e) (i) Subject to Subsection (10)(e)(ii), for purposes of calculating the number of days on which the sign was used for unlawful off-premises outdoor advertising as described in Subsection (10)(d), the department shall count each day that the sign was maintained after the first notice of agency action was filed and served under Section 63G-4-201.

(ii) For purposes of calculating the number of days on which the sign was used for unlawful off-premises outdoor advertising as described in Subsection (10)(d), if a sign was modified, removed, disabled, or relocated after the receipt of notice of violation, and thereafter, prior to judgment, was reinstalled, relocated, substituted, or reactivated in an unlawful manner, the department shall count each day that the sign was maintained after the first notice of agency action was filed and served under Section 63G-4-201.

(iii) The calculations described in Subsections (10)(e)(i) and (ii) are only applicable for actions taken for violations of this Subsection (10) for which:

(A) the owner of the sign was never issued an off-premise outdoor advertising permit;
and

(B) at least one condition described in Subsection (7) exists.