

CHAPTER 388

TRANSPORTATION

SENATE BILL 21-263

BY SENATOR(S) Zenzinger and Smallwood, Moreno;
also REPRESENTATIVE(S) Bird and Van Winkle, Bennett, Lontine, Ortiz, Ricks.

AN ACT**CONCERNING THE REGULATION OF OUTDOOR ADVERTISING.**

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. In Colorado Revised Statutes, 43-1-403, **amend** (1) and (1.5)(b); **repeal** (4), (13), and (14); and **add** (1.3) as follows:

43-1-403. Definitions. As used in this part 4, unless the context otherwise requires:

(1) "Advertising device" means any outdoor sign, display, device, figure, painting, drawing, message, placard, poster, billboard, or any other contrivance designed, intended, or used to advertise or ~~to give information in the nature of advertising~~ **INFORM**, FOR WHICH COMPENSATION IS DIRECTLY OR INDIRECTLY PAID OR EARNED IN EXCHANGE FOR ITS ERECTION OR EXISTENCE BY ANY PERSON OR ENTITY, and having the capacity of being visible from the travel way of any state highway, except any advertising device on a vehicle using the highway OR ANY ADVERTISING DEVICE THAT IS PART OF A COMPREHENSIVE DEVELOPMENT. The term "vehicle using the highway" does not include any vehicle parked near said highway for advertising purposes.

(1.3) "COMPENSATION" MEANS THE EXCHANGE OF ANYTHING OF VALUE, INCLUDING MONEY, SECURITIES, REAL PROPERTY INTERESTS, PERSONAL PROPERTY INTERESTS, GOODS OR SERVICES, PROMISE OF FUTURE DEVELOPMENT, EXCHANGE OF FAVOR, OR FORBEARANCE OF DEBT.

(1.5) (b) "Comprehensive development" includes all land used or to be used or occupied for the activities of the development, including buildings, parking, storage

Capital letters or bold & italic numbers indicate new material added to existing law; dashes through words or numbers indicate deletions from existing law and such material is not part of the act.

and service areas, streets, driveways, and reasonably necessary landscaped areas. A comprehensive development includes only land that is used for a purpose reasonably related to the activities of the development. ~~other than an attempt to qualify the land for on-premise advertising.~~

(4) ~~"Directional advertising device" includes, but is not limited to: Advertising devices containing directional information to facilitate emergency vehicle access to remote locations or 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, and religious sites; and areas of natural scenic beauty or naturally suited for outdoor recreation, deemed to be in the interest of the traveling public. Such devices shall conform to standards promulgated by the department pursuant to section 43-1-415, which standards shall conform to the national policy.~~

(13) ~~"Official advertising device" means any advertising device erected for a public purpose authorized by law, but the term shall not include devices advertising any private business.~~

(14) ~~"On-premise advertising device" means:~~

~~(a) An advertising device advertising the sale or lease of the property on which it is located or advertising activities conducted on the property on which it is located; or~~

~~(b) An advertising device located within a comprehensive development that advertises any activity conducted in the comprehensive development, so long as the placement of the advertising device does not cause a reduction of federal aid highway moneys pursuant to 23 U.S.C. sec. 131.~~

SECTION 2. In Colorado Revised Statutes, 43-1-404, **amend** (1)(e)(I)(B) and (1)(f)(I); and **repeal** (1)(a), (1)(b), (1)(c), (1)(e)(I)(C), (1)(e)(I)(D), and (1)(e)(I)(E) as follows:

43-1-404. Advertising devices allowed - exception. (1) The following advertising devices as defined in section 43-1-403 may be erected and maintained when in compliance with all provisions of this part 4 and the rules adopted by the department:

(a) ~~Official advertising devices;~~

(b) ~~On-premise advertising devices;~~

(c) ~~Directional advertising devices;~~

(e) (I) Advertising devices located along primary and secondary highways in areas which were zoned for industrial or commercial uses under authority of state law on and after January 1, 1970, provided:

(B) The advertising device ~~shall~~ **MUST** be located within one thousand feet of an industrial or commercial building. ~~in place. and~~

(C) ~~The advertising device shall only inform the traveling public of necessary goods or services available within a five-mile radius of the advertising device; necessary goods and services shall be limited to lodging, camping, food, gas, vehicle repair, health-related goods or services, recreational facilities or services, and places of cultural importance; and~~

(D) ~~No person providing necessary goods or services shall be eligible for more than two advertising devices pursuant to this paragraph (c); and~~

(E) ~~The advertising device shall predominately display the name and location of the necessary goods or services advertised.~~

(f) (I) Notwithstanding any other provision of law, with the exception of section 43-1-416, any advertising device, except for a nonconforming advertising device, may contain a message center display with movable parts and a changeable message that is changed by electronic processes or by remote control. The illumination of an advertising device containing a message center display is not the use of a flashing, intermittent, or moving light for the purposes of any rule, regulation, and standard promulgated by the department or any agreement between the department and the secretary of transportation of the United States. No message center display may include any illumination that is in motion or appears to be in motion, that changes in intensity or exposes its message for less than four seconds, or that has an interval between messages of less than one second. No advertising device with a message center display may be placed within one thousand feet of another advertising device with a message center display on the same side of a highway AND FACING THE SAME DIRECTION OF TRAVEL. No message center display may be placed in violation of section 131 of title 23 of the United States code.

SECTION 3. In Colorado Revised Statutes, 43-1-406, **amend** (5) as follows:

43-1-406. Bonus areas. (5) The following ~~shall be~~ ARE exempt from the provisions of this section but ~~shall~~ MUST in all respects comply with applicable rules and regulations issued by the department:

- (a) ~~On-premise advertising devices;~~
- (b) Advertising devices located in a Kerr area; AND
- (c) Advertising devices located in a Cotton area.
- (d) ~~Directional or official advertising devices.~~

SECTION 4. In Colorado Revised Statutes, 43-1-407, **amend** (1) introductory portion and (1)(a); and **repeal** (1)(b) as follows:

43-1-407. Permits. (1) A permit from the department ~~shall be~~ IS required for the erection or maintenance of the following advertising devices:

- (a) Each nonconforming advertising device as defined in section 43-1-403 (12); AND

(b) Each directional advertising device as defined in section 43-1-403 (4), except that the following advertising devices shall not require permits:

(I) Advertising devices which are no larger than eight square feet and which advertise farms, ranches, or nonprofit educational, veterans', religious, charitable, or civic organizations; or

(H) Directory signs no larger than thirty-two square feet, the sole purpose of which is to provide direction to individual farms or ranches by way of individual signs, each of which is no larger than eight square feet.

SECTION 5. In Colorado Revised Statutes, 43-1-408, **amend** (1) introductory portion and (1)(e); **repeal** (1)(d); and **add** (2) and (3) as follows:

43-1-408. Application for permit - contents - rules. (1) Application for a permit for each advertising device shall MUST be made on a form provided by the department, shall be signed by the applicant or his THE APPLICANT'S duly authorized officer or agent, and shall show INCLUDE:

(d) The year in which the advertising device was erected;

(e) An agreement by the applicant to erect and maintain the advertising device in a safe, sound, and good condition; AND

(2) UPON THE DEPARTMENT'S RECEIPT OF A COMPLETE APPLICATION FOR A PERMIT WHICH SATISFIES EACH OF THE REQUIREMENTS IN SUBSECTION (1) OF THIS SECTION AND OTHERWISE MEETS THE DEPARTMENT'S CONDITIONS, THE DEPARTMENT HAS THIRTY DAYS TO ISSUE, BY FIRST CLASS MAIL TO THE ADDRESS PROVIDED BY THE APPLICANT, EITHER A PERMIT OR A PRELIMINARY DECISION DENYING THE APPLICATION FOR PERMIT.

(3) THE APPLICANT MAY APPEAL ANY PRELIMINARY DECISION DENYING THE APPLICATION FOR A PERMIT BY REQUESTING A HEARING IN WRITING WITHIN THIRTY DAYS OF THE DEPARTMENT MAILING THE NOTICE OF THE DENIAL OF THE APPLICATION FOR A PERMIT TO THE APPLICANT. IF THE APPLICANT TIMELY APPEALS, THE MATTER MUST PROCEED IN ACCORDANCE WITH THE "STATE ADMINISTRATIVE PROCEDURE ACT", ARTICLE 4 OF TITLE 24, THOUGH THE DEPARTMENT MAY, BY RULE, CREATE PROCEDURES FOR EXPEDITED REVIEW OF DENIALS AND ISSUANCE OF FINAL AGENCY DECISIONS IF THE APPLICANT CONSENTS TO THE EXPEDITED REVIEW.

SECTION 6. In Colorado Revised Statutes, 43-1-412, **amend** (2)(a) as follows:

43-1-412. Notice of noncompliance - removal authorized. (2) (a) If no permit has been obtained for the advertising device as required by this part 4, the department shall give written notice by certified mail to the owner of the property on which the advertising device is located informing said THE landowner that the device is illegal and requiring him THE LANDOWNER within sixty days of receipt of the notice to remove the device, or have a permit obtained if such permit may be issued and advising him EXECUTE AN AFFIDAVIT UNDER THE PENALTY OF PERJURY AS EVIDENCE THAT SAID DEVICE IS NOT AN ADVERTISING DEVICE AS DEFINED IN SECTION 43-1-403 (1), OR OBTAIN A PROPER PERMIT. THE WRITTEN NOTICE MUST

ADVISE THE OWNER of the right to request the department to conduct a hearing.

SECTION 7. In Colorado Revised Statutes, 43-1-415, **amend** (1) and (4) as follows:

43-1-415. Administration and enforcement - authority for agreements - rules. (1) The department shall administer and enforce the provisions of this part 4 and shall promulgate and enforce rules ~~regulations~~, and standards necessary to carry out the provisions of this part 4 including, but not limited to:

(a) ~~Regulations~~ RULES necessary to qualify the state for payments made available by congress to those states that meet federal standards of roadside advertising control;

(b) ~~Regulations~~ RULES relating to the maintenance of nonconforming advertising devices;

(c) ~~Regulations~~ RULES to control the erection and maintenance on all state highways of ~~official advertising devices, directional advertising devices, on-premise advertising devices,~~ and advertising devices located in areas zoned for industrial or commercial uses;

(d) ~~Regulations~~ RULES governing the removal and acquisition of nonconforming advertising devices;

(e) ~~Regulations~~ RULES necessary to permit the exemption of tourist-related advertising devices by the secretary of transportation under 23 U.S.C. sec. 131 (o);

(f) ~~Regulations~~ RULES governing specific information signs under section 43-1-420.

(4) The rules ~~and regulations~~ of the department ~~shall~~ MUST not impose any additional requirements or more strict requirements than those imposed by this part 4.

SECTION 8. In Colorado Revised Statutes, **amend** 43-1-417 as follows:

43-1-417. Violation and penalty. (1) The erection OF ANY ADVERTISING DEVICE WITHOUT A PERMIT FROM THE DEPARTMENT WHERE ONE IS REQUIRED BY THIS PART 4, OR THE use or maintenance of any advertising device in violation of any provision of this part 4 is declared to be illegal. ~~and~~; In addition to other remedies provided by law, INCLUDING THE DEPARTMENT'S ABILITY TO SEEK A COURT ORDER ENJOINING VIOLATIONS, the department is authorized to institute AN appropriate action or proceeding to prevent or remove such violation in any district court of competent jurisdiction. The removal of any advertising device unlawfully erected, USED, OR MAINTAINED shall be at the expense of the person who erects and maintains such A device.

(2) Any person who violates any ~~provisions~~ PROVISION of this part 4, ~~is guilty of a misdemeanor and upon conviction~~ BEING FOUND LIABLE thereof, ~~shall be punished by~~ SHALL BE SUBJECT TO a fine of not less than one hundred dollars nor more than

one thousand dollars for each ~~offense~~ VIOLATION, AS ORDERED BY A COURT OF COMPETENT JURISDICTION. Each day of violation of ~~the provisions~~ A PROVISION of this part 4 shall constitute a separate ~~offense~~ VIOLATION. THE DEPARTMENT SHALL ENFORCE THE PROVISIONS OF THIS PART 4 THROUGH A CIVIL ACTION.

(3) (a) ~~Except as provided in section 43-1-421, no person other than the department without written approval of the department shall erect or maintain~~ ONLY THE DEPARTMENT, OR A PERSON WITH THE WRITTEN APPROVAL OF THE DEPARTMENT, MAY ERECT OR MAINTAIN any advertising device located either wholly or partly within the right-of-way of any state highway that is a part of the state highway system, including streets within cities, cities and counties, and incorporated towns. All advertising devices so located WITHOUT APPROVAL BY THE DEPARTMENT are hereby declared to be public nuisances, and any law enforcement officer or peace officer in the state of Colorado or employee of the department is hereby authorized and directed to remove ~~the same~~ THESE DEVICES without notice.

(b) ~~The department may grant written permission to erect official advertising devices within the right-of-way of any state highway.~~

SECTION 9. In Colorado Revised Statutes, 43-1-419, **amend** (1)(a) as follows:

43-1-419. Scenic byways - Independence pass scenic area highway.

(1) (a) State highways designated as scenic byways by the transportation commission ~~shall~~ MUST have no new advertising devices erected which are visible from the highway. ~~except the following:~~

- (f) ~~Official advertising devices, as defined in section 43-1-403 (13);~~
- (H) ~~On-premise advertising devices, as defined in section 43-1-403 (14); or~~
- (HH) ~~Directional advertising devices, as defined in section 43-1-403 (4).~~

SECTION 10. In Colorado Revised Statutes, **repeal** 43-1-421 as follows:

43-1-421. On-premise advertising device - extension authorized.

(1) ~~Notwithstanding any other provision of law and except as otherwise provided in subsection (2) of this section, on-premise advertising devices shall be allowed to extend over existing rights-of-way and future rights-of-way as described in section 43-1-210 (3) of any state highway if all of the following requirements are met:~~

- (a) ~~The on-premise advertising device is attached to and extended from a building and only advertises activities or services offered in that building;~~
- (b) ~~The building and attached on-premise advertising device is adjacent to the state highway within a city, city and county, or incorporated town having authority over the state highway pursuant to section 43-2-135;~~
- (c) ~~The on-premise advertising device does not restrict pedestrian traffic and is not a safety hazard to the motoring public; and~~
- (d) ~~Before erecting the on-premise advertising device, the owner of the~~

~~on-premise advertising device obtains written permission from the city, city and county, or incorporated town.~~

~~(2) This section shall not apply if the department determines that compliance with this section will cause denial of federal moneys that would otherwise be available or would otherwise be inconsistent with federal law, but only to the extent necessary to prevent denial of the moneys or to eliminate the inconsistency with federal law. The department shall pursue every lawful remedy available to obtain permission or authority, if required by federal law, to apply this section in any such case.~~

SECTION 11. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, or safety.

Approved: June 30, 2021