

Act No. 533
Public Acts of 1998
Approved by the Governor
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STATE OF MICHIGAN
89TH LEGISLATURE
REGULAR SESSION OF 1998

Introduced by Senators Stille, Bennett and A. Smith

ENROLLED SENATE BILL No. 445

AN ACT to amend 1972 PA 106, entitled "An act to provide for the licensing, regulation and control of outdoor advertising adjacent to certain highways; to prescribe certain powers and duties; to promulgate rules; to provide penalties for violations; and to repeal certain acts and parts of acts," by amending sections 2, 3, 4, 5, 6, 7, 9, 10, 13, 15, 17, 19, and 22 (MCL 252.302, 252.303, 252.304, 252.305, 252.306, 252.307, 252.309, 252.310, 252.313, 252.315, 252.317, 252.319, and 252.322), section 4 as amended by 1990 PA 153, and by adding sections 11 and 25.

The People of the State of Michigan enact:

Sec. 2. As used in this act:

(a) "Business area" means an adjacent area which is zoned under authority of state, county, township or municipal zoning authority for industrial or commercial purposes, customarily referred to as "b" or business, "c" or commercial, "i" or industrial, "m" or manufacturing, and "s" or service, and all other similar classifications and which is within a city, village, or charter township or is within 1 mile of the corporate limits of a city, village, or charter township or is beyond 1 mile of the corporate limits of a city, village, or charter township and contains 1 or more permanent structures devoted to the industrial or commercial purposes described in this subdivision and which extends along the highway a distance of 800 feet beyond each edge of the activity. Each side of the highway is considered separately in applying this definition except where it is not topographically feasible for a sign or sign structure to be erected or maintained on the same side of the highway as the permanent structure devoted to industrial or commercial purposes, a business area may be established on the opposite side of a primary highway in an area zoned commercial or industrial or in an unzoned area with the approval of the state highway commission. A permanent structure devoted to industrial or commercial purposes does not result in the establishment of a business area on both sides of the highway. All measurements shall be from the outer edge of the regularly used building, parking lot or storage or processing area of the commercial or industrial activity and not from the property lines of the activities and shall be along or parallel to the edge or pavement of the highway. Commercial or industrial purposes are those activities generally restricted to commercial or industrial zones in jurisdictions that have zoning. In addition, the following activities shall not be considered commercial or industrial:

(i) Agricultural, animal husbandry, forestry, grazing, farming, and related activities, including, but not limited to, wayside fresh produce stands.

(ii) Transient or temporary activities.

(iii) Activities not visible from the main-traveled way.

(iv) Activities conducted in a building principally used as a residence, or in a building located on property that is used principally for residential purposes or for activities recited in subparagraph (i).

(v) Railroad tracks and minor sidings.

(vi) Outdoor advertising.

- (vii) Activities more than 660 feet from the main-traveled way.
 - (viii) Activities that have not been in continuous operation of a business or commercial nature for at least 2 years.
 - (ix) Public utility facilities, whether regularly staffed or not.
 - (x) Structures associated with on-site outdoor recreational activities such as riding stables, golf course shops, and campground offices.
 - (xi) Activities conducted in a structure for which an occupancy permit has not been issued or which is not a fully enclosed building, having all necessary utility service and sanitary facilities required for its intended commercial or industrial use.
 - (xii) A storage facility for a business or other activity not located on the same property, except a storage building having at least 10 separate units that are available to be rented by the public.
- (b) "Unzoned commercial or industrial area" means an area which is within an adjacent area, which is not zoned by state or local law, regulation or ordinance, which contains 1 or more permanent structures devoted to the industrial or commercial purposes described in subdivision (a), and which extends along the highway a distance of 800 feet beyond each edge of the activity. Each side of the highway is considered separately in applying this definition except where it is not topographically feasible for a sign or sign structure to be erected or maintained on the same side of the highway as the permanent structure devoted to industrial or commercial purposes, an unzoned commercial or industrial area may be established on the opposite side of a primary highway in an area zoned commercial or industrial or in an unzoned area with the approval of the state highway commission. A permanent structure devoted to industrial or commercial purposes does not result in the establishment of an unzoned commercial or industrial area on both sides of the highway. All measurements shall be from the outer edge of the regularly used building, parking lot or storage or processing area of the commercial or industrial activity and not from the property lines of the activities and shall be along or parallel to the edge or pavement of the highway. Commercial or industrial purposes are those activities generally restricted to commercial or industrial zones in jurisdictions that have zoning. In addition, the following activities shall not be considered commercial or industrial:
- (i) Agricultural, animal husbandry, forestry, grazing, farming and related activities, including, but not limited to, wayside fresh produce stands.
 - (ii) Transient or temporary activities.
 - (iii) Activities not visible from the main-traveled way.
 - (iv) Activities conducted in a building principally used as a residence, or in a building located on property that is used principally for residential purposes or for activities recited in subparagraph (i).
 - (v) Railroad tracks and minor sidings.
 - (vi) Outdoor advertising.
 - (vii) Activities more than 660 feet from the main-traveled way.
 - (viii) Activities that have not been in continuous operation of a business or commercial nature for at least 2 years.
 - (ix) Public utility facilities, whether regularly staffed or not.
 - (x) Structures associated with on-site outdoor recreational activities such as riding stables, golf course shops, and campground offices.
 - (xi) Activities conducted in a structure for which an occupancy permit has not been issued or which is not a fully enclosed building, having all necessary utility service and sanitary facilities required for its intended commercial or industrial use.
 - (xii) A storage facility for a business or other activity not located on the same property, except a storage building having at least 10 separate units that are available to be rented by the public.
- (c) "Erect" means to construct, build, raise, assemble, place, affix, attach, create, paint, draw, or in any other way bring into being or establish.
- (d) "Interstate highway" means a highway officially designated as a part of the national system of interstate and defense highways by the department and approved by the appropriate authority of the federal government.
- (e) "Freeway" means a divided highway of not less than 2 lanes in each direction to which owners or occupants of abutting property or the public do not have a right of ingress or egress to, from or across the highway, except at points determined by or as otherwise provided by the authorities responsible therefor.
- (f) "Primary highway" means a highway, other than an interstate highway or freeway, officially designated as a part of the primary system as defined in section 131 of title 23 of the United States Code, 23 U.S.C. 131, by the department and approved by the appropriate authority of the federal government.
- (g) "Main-traveled way" means the traveled way of a highway on which through traffic is carried. The traveled way of each of the separate roadways for traffic in opposite directions is a main-traveled way of a divided highway. It does not include facilities as frontage roads, turning roadways or parking areas.

(h) "Sign" means any outdoor sign, display, device, figure, painting, drawing, message, placard, poster, billboard, or other thing, whether placed individually or on a T-type, V-type, back to back or double-faced display, designed, intended or used to advertise or inform.

(i) "Sign structure" means the assembled components which make up an outdoor advertising display, including but not limited to uprights, supports, facings and trim. Such sign structure may contain 1 or 2 signs per facing and may be double-faced, back to back, T-type or V-type.

(j) "Visible" means a sign that has a message that is capable of being seen and read by a person of normal visual acuity when traveling in a motor vehicle.

(k) "Location" means a place where there is located a single, double-faced, back to back, T-type, or V-type sign structure.

(l) "Maintain" means to allow to exist and includes the periodic changing of advertising messages, customary maintenance and repair of signs and sign structures.

(m) "Abandoned sign or sign structure" means a sign or sign structure subject to the provisions of this act, the owner of which has failed to secure a permit, has failed to identify the sign or sign structure or has failed to respond to notice.

(n) "Department" means the state transportation department.

(o) "Adjacent area" means the area measured from the nearest edge of the right of way of an interstate highway, freeway, or primary highway and extending 3,000 feet perpendicularly and then along a line parallel to the right-of-way line.

(p) "Person" means any individual, partnership, private association, or corporation, state, county, city, village, township, charter township, or other public or municipal association or corporation.

(q) "On-premises sign" means a sign advertising activities conducted or maintained on the property on which it is located. The boundary of the property shall be as determined by tax rolls, deed registrations, and apparent land use delineations. When a sign consists principally of brand name or trade name advertising and the product or service advertised is only incidental to the principal activity, or if it brings rental income to the property owner or sign owner, it shall be considered the business of outdoor advertising and not an on-premises sign. Signs on narrow strips of land contiguous to the advertised activity, or signs on easements on adjacent property, when the purpose is clearly to circumvent the intent of this act, shall not be considered on-premises signs.

Sec. 3. To improve and enhance scenic beauty consistent with section 131 of title 23 of the United States Code, 23 U.S.C. 131, the legislature finds it appropriate to regulate and control outdoor advertising and outdoor advertising as it pertains to tobacco adjacent to the interstate highway, freeway, and primary highway systems, and outdoor advertising as it pertains to tobacco on secondary highway, major street, and local roads within this state and that outdoor advertising is a legitimate accessory commercial use of private property, is an integral part of the marketing function and an established segment of the economy of this state. In addition, the legislature finds it appropriate to protect minors from exposure to advertising that encourages them to illegally possess tobacco.

Sec. 4. This act regulates and controls the size, lighting, and spacing of signs and sign structures in adjacent areas and occupies the whole field of that regulation and control except for the following:

(a) A city, village, township, or charter township may enact ordinances to regulate and control the size, lighting, and spacing of signs and sign structures, but the ordinances shall not permit a sign or sign structure that is otherwise prohibited by this act or require or cause the removal of lawfully erected signs or sign structures subject to this act without the payment of just compensation. A sign owner shall apply for an annual permit pursuant to section 6 for each sign to be maintained or to be erected within that city, village, charter township, or township. A sign erected or maintained within that city, village, township, or charter township shall also comply with all applicable provisions of this act.

(b) A city, village, charter township, or township vested by law with authority to enact zoning codes has full authority under its own zoning codes or ordinances to establish commercial or industrial areas and the actions of a city, village, charter township, or township in so doing shall be accepted for the purposes of this act. However, except as provided in subdivision (a), zoning which is not part of a comprehensive zoning plan and is taken primarily to permit outdoor advertising structures shall not be accepted for purposes of this act. A zone in which limited commercial or industrial activities are permitted as incidental to other primary land uses is not a commercial or industrial zone for outdoor advertising control purposes.

(c) An ordinance or code of a city, village, township, or charter township that existed on March 31, 1972 and that prohibits signs or sign structures is not made void by this act.

(d) A county, on its own initiative or at the request of a city, village, township, or charter township within that county, may prepare a model ordinance as described in subdivision (a). A city, village, township, or charter township within that county may adopt the model ordinance.

Sec. 5. A person shall not engage or continue to engage in outdoor advertising through the erection, use or maintenance of any signs in an adjacent area where the facing of the sign is visible from an interstate highway, freeway, or primary highway, except as provided in this act. A sign having a facing visible from more than 1 state highway or other public road shall comply with the requirements for outdoor advertising for each state highway and each public road from which it is visible.

Sec. 6. A sign owner shall apply for an annual permit on a form prescribed by the department for each sign to be maintained or to be erected in an adjacent area where the facing of the sign is visible from an interstate highway, freeway, or primary highway. A sign owner shall apply for a separate sign permit for each sign for each highway subject to this act from which the facing of the sign is visible. The owner shall apply for the permit for such signs which become subject to this act because of a change in highway designation or other reason not within the control of the sign owner within 2 months after the sign becomes subject to this act. The form shall require the name and business address of the applicant, the name and address of the owner of the property on which the sign is to be located, the date the sign, if currently maintained, was erected, the zoning classification of the property, a precise description of where the sign is or will be situated and a certification that the sign is not prohibited by section 18(a), (b), (c), or (d) and that the sign does not violate any provisions of this act. The sign permit application shall include a statement signed by the owner of the land on which the sign is to be placed, acknowledging that no trees or shrubs in the adjacent highway right-of-way may be removed, trimmed, or in any way damaged or destroyed without the written authorization of the department. The department may require documentation to verify the zoning, the consent of the land owner, and any other matter considered essential to the evaluation of the compliance with this act.

Sec. 7. (1) A permit fee is payable annually in advance, to be credited to the state trunk line fund. The fee is \$100.00 for the first year except that signs in existence prior to a highway's change in designation or jurisdiction which would require signs to be permitted shall only be required to pay the permit renewal amount as provided in subsection (2). The department shall establish an annual expiration date for each permit and may change the expiration date of existing permits to spread the permit renewal activity over the year. Permit fees may be prorated the first year. An application for the renewal of a permit shall be filed with the department at least 30 days before the expiration date.

(2) For signs greater than 8 square feet and up to and including 300 square feet, the annual permit renewal fee is \$25.00. For signs greater than 300 square feet, the annual permit renewal fee is \$40.00. Signs of the service club and religious category as defined in rules promulgated by the department are not subject to an annual renewal fee.

Sec. 9. Except for signs existing on March 31, 1972, a permit shall be issued or denied within 10 business days after proper receipt of the permit form and the permit fee from the applicant. A permit shall not be issued for a sign which is prohibited by section 18(a), (b), (c), or (d). A permit shall not be issued for a sign that violates this act unless the sign is eligible for removal compensation under section 22.

Sec. 10. The owner of a sign allowed under section 13(1)(b) or (c) is not required to obtain a permit for that sign.

Sec. 11. A person who destroys trees or shrubs within a highway right-of-way for the purpose of making a sign, whether proposed or existing, more visible is guilty of a felony punishable by imprisonment for not more than 2 years or a fine of not more than \$10,000.00, or both. If a court determines that trees or shrubs within a highway right-of-way have been removed by the sign owner, the land owner, or an agent of either party for the purpose of making a sign more visible, the sign shall be considered illegal and the department may remove the sign pursuant to the procedures contained in section 19.

Sec. 13. (1) A sign shall not be erected or maintained in an adjacent area where the facing of the sign is visible from an interstate highway, freeway, or primary highway except the following:

(a) Directional and other official signs, including, but not limited to, signs pertaining to natural wonders, scenic and historical attractions, which are required or authorized by law, and which comply with rules promulgated by the department relative to the lighting, size, number, and spacing thereof.

(b) Signs advertising the sale or lease of real property upon which they are located.

(c) On-premises signs.

(d) Signs located in a business area or an unzoned commercial and industrial area and that comply with sections 12, 15, 16, and 17 except that a sign not described in subdivision (a), (b), or (c) shall not be erected or maintained beyond 660 feet of the nearest edge of the right of way.

(2) If the department is authorized by law to designate scenic areas along an interstate highway, freeway, or primary highway, signs shall not be erected or maintained within areas so designated unless located within a business area or an unzoned commercial or industrial area where signs may be erected or maintained in compliance with this act.

Sec. 15. (1) All signs erected or maintained in business areas or unzoned commercial and industrial areas shall comply with the following size requirements and limitations:

(a) In counties of less than 425,000 population, signs shall not exceed 1,200 square feet in area, including border or trim but excluding ornamental base or apron, supports and other structural members.

(b) In counties having a population of 425,000 or more, signs of a size exceeding 1,200 square feet in area but not in excess of 6,500 square feet in area, including border or trim but excluding ornamental base or apron, supports and other structural members, shall be permitted if the department determines that the signs are in accord with customary usage in the area where the sign is located.

(c) For signs erected after the effective date of the amendatory act that added this subdivision, signs on a sign structure shall not be stacked 1 on top of another. For signs erected prior to the effective date of the amendatory act that added this subdivision, the sign or sign structure shall not be modified to provide a sign or sign structure that is stacked 1 on top of another.

(2) Maximum size limitations shall apply to each side of a sign structure. Signs may be placed back to back, side by side or in V-type or T-type construction, with not more than 2 sign displays to each side. Any such sign structure shall be considered as 1 sign for the purposes of this section.

Sec. 17. (1) Along interstate highways and freeways, a sign structure located in a business area or unzoned commercial or industrial area shall not be erected closer than 1,000 feet to another sign structure on the same side of the highway.

(2) Along primary highways within the limits of an incorporated municipality a sign structure shall not be closer than 500 feet to another sign structure.

(3) Along primary highways in areas outside of the limits of an incorporated municipality a sign structure shall not be closer than 500 feet to another sign structure.

(4) The provisions of this section do not apply to signs separated by a building or other visual obstruction in such a manner that only 1 sign located within the spacing distances is visible from the highway at any time, provided that the building or other visual obstruction has not been created for the purpose of visually obstructing either of the signs at issue.

(5) Along interstate highways and freeways located outside of incorporated municipalities, a sign structure shall not be permitted adjacent to or within 500 feet of an interchange, an intersection at grade or a safety roadside rest area. The 500 feet shall be measured from the point of beginning or ending of pavement widening at the exit from, or entrance to, the main-traveled way.

(6) Official signs as described in section 13(1)(a) and on-premises signs shall not be counted nor shall measurements be made from them for purposes of determining compliance with the spacing requirements provided in this section.

(7) The spacing requirements provided in this section apply separately to each side of the highway.

(8) The spacing requirements provided in this section shall be measured along the nearest edge of the pavement of the highway between points directly opposite each sign.

(9) A sign that was erected in compliance with the spacing requirements of this section that were in effect at the time when the sign was erected, but which does not comply with the spacing requirements of this section as modified by the amendatory act that added this subsection, shall not be considered unlawful as that term is used in section 22.

Sec. 19. (1) Signs and their supporting structures erected or maintained in violation of this act may be removed by the department in the manner prescribed in this section.

(2) There shall be mailed to the owner of the sign by certified mail a notice that the sign or its supporting sign structure violates stated specified provisions of this act and is subject to removal. If the owner's address cannot be determined, a notice shall be posted on the sign. The posted notice shall be written on red waterproof paper stock of a size not less than 8 1/2 inches by 11 inches. The notice shall be posted in the area designated by section 12 for the placing of permit numbers, in a manner so that it is visible from the highway faced by the sign or sign structure.

(3) If the sign or sign structure is not removed or brought into compliance with this act within 60 days following the date of posting or mailing of written notice or within such further time as the department may allow in writing the sign or sign structure shall be considered to be abandoned.

(4) The department shall conduct a hearing pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, at which it shall confirm that the sign is abandoned, that due process has been observed, and that the sign may be removed by the department without payment of compensation and at the expense of the owner. Signs or sign structures considered abandoned, and any other sign or sign structure erected or maintained in violation of this act that is not eligible for removal compensation as provided in section 22, shall be removed by the department forthwith or upon the expiration of such further time as the department allows. The department may recover as a

penalty from the owner of the sign or sign structure, or if he cannot be found, the owner of the real property upon which the sign or sign structure is located, double the cost of removal or \$50.00, whichever is greater.

(5) The department, its agents and employees, and any person acting under the authority of, or by contract with the department, may enter upon private property without liability for so doing in connection with the posting or the removal of any sign or sign structure pursuant to this act.

(6) The department may contract on a negotiated basis without competitive bidding with a permittee under this act for the removal of any sign or sign structure pursuant to this act.

Sec. 22. (1) Just compensation shall be paid from the state trunk line fund upon the removal by or in behalf of the department of any sign or sign structure lawfully in existence on March 31, 1972 but which does not comply with the requirements of sections 13(1)(d), 15, 16, and 17 and any sign or sign structure lawfully erected after March 31, 1972 but which thereafter becomes unlawful because of a change in the designation of the highway or in the zoning of the area in which it is located.

(2) Each removal constitutes a taking and appropriation by the state of the following:

(a) From the owner of the sign or sign structure, all right, title and interest in and to the sign or sign structure, and the owner's leasehold related thereto.

(b) From the owner of the real property on which the sign or sign structure is located immediately prior to its removal, the right to erect and maintain signs on that property, other than those described in section 13(1)(a), (b), and (c).

(3) The compensation to be paid pursuant to this section shall be paid to the persons entitled to it upon presentation to the department of such information as the department may reasonably require.

(4) Unless a sign is exempt under section 10, its owner shall secure and shall keep in force a permit under sections 6 and 7. Compliance with this subsection is a condition for eligibility for compensation. Compensation shall not be paid for any sign, including a sign described in subsection (1), which is removed by the department because it is abandoned.

Sec. 25. It is the intent of the legislature that the state fund a study to analyze the effect of the amendatory act that added this section and to make recommendations to the legislature of any additional changes to this act that should be considered. At a minimum, the study shall consider all of the following:

(a) Whether regulatory authority under this act should be extended to counties.

(b) Whether height restrictions of signs and sign structures should be regulated and, if so, whether distinctions should be made between areas of the state.

(c) The effect of changes to this act on the ability of businesses to advertise their goods and services within the state.

Enacting section 1. Section 11 of the highway advertising act of 1972, 1972 PA 106, as added by this amendatory act takes effect April 1, 1999.

Carol Morey Viventi

Secretary of the Senate.

Mary Beaulieu

Clerk of the House of Representatives.

Approved _____

Governor.