

LEGISLATIVE BILL 213

Approved by the Governor May 27, 1975

Introduced by Bereuter, 24

AN ACT to amend sections 39-1302, 39-1320, 39-1320.06, and 39-1320.07, Reissue Revised Statutes of Nebraska, 1943, and section 39-1320.09, Revised Statutes Supplement, 1974, relating to outdoor advertising; to control advertising along the National System of Interstate and Defense Highways and federal-aid primary roads; to provide exclusions; to provide compensation for removal; to provide for the placing of informational panels as prescribed; to repeal the original sections; and to declare an emergency.

Be it enacted by the people of the State of Nebraska,

Section 1. Except as provided in this act, the erection or maintenance of any advertising sign, display, or device beyond six hundred sixty feet of the right-of-way of the National System of Interstate and Defense Highways and visible from the main-traveled way of such highway system is hereby prohibited.

The following signs shall be permitted:

(1) Directional and official signs to include, but not be limited to, signs and notices pertaining to natural wonders, scenic attractions, and historical attractions. Such signs shall comply with standards and criteria established by regulations of the Department of Roads as promulgated from time to time;

(2) Signs, displays, and devices advertising the sale or lease of property upon which such media are located;

(3) Signs, displays, and devices advertising activities conducted on the property on which such media are located; and

(4) Signs in existence in accordance with sections 39-1320 to 39-1320.03, and 39-1320.06 to 39-1320.11, to include landmark signs, signs on farm structures, markers, and plaques of historical or artistic significance.

Sec. 2. Any nonconforming sign shall be removed no later than five years after the effective date of this

act.

Sec. 3. Just compensation shall be paid upon the removal of any advertising sign, display, or device lawfully erected or in existence prior to the effective date of this act and not conforming to the provisions of this act except as otherwise authorized by this act. The Department of Roads shall not be required to expend any funds under the provisions of this act unless and until federal-aid matching funds are made available for this purpose.

Sec. 4. That section 39-1302, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

39-1302. As used in sections 39-1301 to 39-1362, unless the context otherwise requires:

(1) Abandon shall mean to reject all or part of the department's rights and responsibilities relating to all or part of a fragment, section, or route on the state highway system;

(2) Alley shall mean an established passageway for vehicles and pedestrians affording a secondary means of access in the rear to properties abutting on a street or highway;

(3) Arterial highway shall mean a highway primarily for through traffic, usually on a continuous route;

(4) Channel shall mean a natural or artificial watercourse;

(5) Connecting link shall mean the roads, streets, and highways designated as part of the state highway system and which are within the corporate limits of any city or village in this state;

(6) Controlled access facility shall mean a highway or street especially designed for through traffic, and over, from, or to which owners or occupants of abutting land or other persons have no right or easement or only a controlled right or easement of access, light, air, or view by reason of the fact that their property abuts upon such controlled access facility or for any other reason. Such highways or streets may be freeways or they may be parkways;

(7) Department shall mean the Department of Roads of the State of Nebraska;

(8) Easement shall mean a right acquired by public authority to use or control property for a designated highway purpose;

(9) Expressway shall mean a divided arterial highway for through traffic with full or partial control of access and generally with grade separations at intersections;

(10) Freeway shall mean an expressway with full control of access;

(11) Frontage road shall mean a local street or road auxiliary to an arterial highway for service to abutting property and adjacent areas and for control of access;

(12) Highway shall mean a road or street, including the entire area within the right-of-way, which has been designated a part of the state highway system;

(13) Map shall mean a drawing or other illustration or a series of drawings or illustrations which may be considered together to complete a representation;

(14) Mileage shall mean the aggregate distance in miles without counting double mileage where there are one-way or divided roads, streets, or highways;

(15) Parking lane shall mean an auxiliary lane primarily for the parking of vehicles;

(16) Parkway shall mean an arterial highway for noncommercial traffic, with full or partial control of access, and usually located within a park or a ribbon of park-like development;

(17) Person shall include bodies politic and corporate, societies, communities, the public generally, individuals, partnerships, joint stock companies, and associations;

(18) Relinquish shall mean to surrender all or part of the rights and responsibilities relating to all or part of a fragment, section, or route on the state highway system to a political or governmental subdivision or public corporation of Nebraska;

(19) Right of access shall mean the rights of ingress and egress to or from a road, street, or highway, and the rights of owners or occupants of land abutting a road, street, or highway or other persons to a way or

means of approach, light, air, or view;

(20) Right-of-way shall mean land, property, or interest therein, usually in a strip, acquired for or devoted to a road, street, or highway;

(21) Road shall mean a public way for the purposes of vehicular travel, including the entire area within the right-of-way. A road designated as part of the state highway system may be called a highway, while a road in an urban area may be called a street;

(22) Roadside shall mean the area adjoining the outer edge of the roadway. Extensive areas between the roadways of a divided highway may also be considered roadside;

(23) Roadway shall mean the portion of a highway, including shoulders, for vehicular use;

(24) State highway purposes shall have the meaning set forth in subsection (2) of section 39-1320;

(25) State highway system shall mean the roads, streets, and highways shown on the map provided for in section 39-1311, as forming a group of highway transportation lines for which the department shall be the primary authority. The state highway system shall include, but not be limited to, rights-of-way, connecting links, drainage facilities, and the bridges, appurtenances, easements, and structures used in conjunction with such roads, streets, and highways;

(26) Street shall mean a public way for the purposes of vehicular travel in a city or village and shall include the entire area within the right-of-way;

(27) Structure shall mean anything constructed or erected, the use of which requires permanent location on the ground or attachment to something having a permanent location;

(28) Title shall mean the evidence of a person's right to property or the right itself;

(29) Traveled way shall mean the portion of the roadway for the movement of vehicles, exclusive of shoulders and auxiliary lanes;

(30) Written instrument shall mean a deed or any other document that states a contract, agreement, gift, or transfer of property;

(31) Displaced person shall mean any individual, family, business or farm operation which moves from real property acquired for state highway purposes or for a federal aid highway;

(32) Individual shall mean a person who is not a member of a family;

(33) Family shall mean two or more persons living together in the same dwelling unit who are related to each other by blood, marriage, adoption or legal guardianship;

(34) Business shall mean any lawful activity conducted primarily for the purchase and resale, manufacture, processing or marketing of products, commodities, or other personal property, or for the sale of services to the public, or by a nonprofit corporation;

(35) Farm operation shall mean any activity conducted primarily for the production of one or more agricultural products or commodities for sale and home use, and customarily producing such products or commodities in sufficient quantity to be capable of contributing materially to the operator's support;

(36) Federal-aid primary roads shall mean roads, streets and highways, whether a part of the state highway system, county road systems or city streets, which have been designated as federal-aid primary roads by the department and approved by the Secretary of Transportation of the United States, and shown on the maps provided for in section ~~39-4320:90~~ 39-1311;

(37) Commercial activity shall mean those activities generally recognized as commercial by zoning authorities in this state, and industrial activity shall mean those activities generally recognized as industrial by zoning authorities in this state, except that none of the following shall be considered commercial or industrial:

(a) Outdoor advertising structures;

(b) General agricultural, forestry, ranching, grazing, farming and related activities, including but not limited to, wayside fresh produce stands;

(c) Activities normally or regularly in operation less than three months of the year;

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

(e) Railroad tracks and minor sidings; and

(f) Activities more than six hundred sixty feet from the nearest edge of the right-of-way of the road or highway;

(38) Unzoned commercial or industrial area for purposes of control of outdoor advertising shall mean all areas within six hundred sixty feet of the nearest edge of the right-of-way of the interstate and federal-aid primary systems which are not zoned by state or local law, regulation or ordinance and on which there is located one or more permanent structures devoted to a business or industrial activity or on which a commercial or industrial activity is conducted, whether or not a permanent structure is located thereon, the area between such activity and the highway, and the area along the highway extending outward six hundred feet from and beyond each edge of such activity, and in the case of the primary system may include the unzoned lands on both sides of such road or highway to the extent of the same dimensions; Provided, those lands on the opposite side of the highway are not deemed scenic or having aesthetic value as determined by the department. In determining such an area, measurements shall be made from the furthest or outermost edges of the regularly-used area of the commercial or industrial activity, structures, normal points of ingress and egress, parking lots, storage and processing areas constituting an integral part of such commercial or industrial activity; and

(39) Zoned commercial or industrial areas shall mean those areas within six hundred sixty feet of the nearest edge of the right-of-way of the National System of Interstate and Defense Highways and all federal-aid primary roads, zoned by state or local authorities for industrial or commercial activities.

Sec. 5. That section 39-1320, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

39-1320. (1) The department is hereby authorized to acquire, either temporarily or permanently, lands, real or personal property or any interests therein, or any easements deemed to be necessary or desirable for present or future state highway purposes by gift, agreement, purchase, exchange, condemnation, or otherwise. Such lands or real property may be acquired in fee simple or in any lesser estate. It is the intention of the Legislature that all property leased or purchased from the owner shall receive a fair price.

(2) State highway purposes, as referred to in subsection (1) of this section or otherwise in sections 39-1301 to 39-1362, shall include provision for, but shall not be limited to, the following:

(a) The construction, reconstruction, relocation, improvement, and maintenance of the state highway system. The right-of-way for such highways shall be of such width as is deemed necessary by the department;

(b) Adequate drainage in connection with any highway, cuts, fills, or channel changes and the maintenance thereof;

(c) Controlled access facilities, including air, light, view, and frontage and service roads to highways;

(d) Weighing stations, shops, offices, storage buildings and yards, and road maintenance or construction sites;

(e) Road material sites, sites for the manufacture of road materials, and access roads to such sites;

(f) The preservation of objects of attraction or scenic value adjacent to, along, or in close proximity to highways and the culture of trees and flora which may increase the scenic beauty of such highways;

(g) Roadside areas or parks adjacent to or near any highway;

(h) The exchange of property for other property to be used for rights-of-way or other purposes set forth in subsection (1) or (2) of this section if the interests of the state will be served and acquisition costs thereby reduced;

(i) The maintenance of an unobstructed view of any portion of a highway so as to promote the safety of the traveling public;

(j) The construction and maintenance of stock trails and cattle passes;

(k) The erection and maintenance of marking and warning signs and traffic signals;

(l) The construction and maintenance of sidewalks and highway illumination;

(m) The control of outdoor advertising ~~within the area adjacent to and within six hundred sixty feet of which is visible from~~ the nearest edge of the right-of-way of the National System of Interstate and Defense Highways and all federal-aid primary roads, to the end that this state may comply with the provisions of 23 United States Code 131, as amended; and

(n) The relocation of, or giving assistance in the relocation of individuals, families, businesses, or farm operations occupying premises acquired for state highway or federal aid road purposes.

(3) The procedure to condemn property, authorized by subsection (1) of this section or elsewhere in sections 39-1301 to 39-1362 shall be exercised in the manner set forth in sections 76-704 to 76-724, or as provided by section 39-1323, as the case may be.

Sec. 6. That section 39-1320.06, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

39-1320.06. Except as provided in this act, the erection or maintenance of any advertising sign, display, or device ~~within the area adjacent to and within six hundred sixty feet of the right-of-way which is visible from the main traveled way~~ of the National System of Interstate and Defense Highways, and the system of federal-aid primary roads of the State of Nebraska, ~~and visible from the main traveled way of such highway or road~~ is hereby prohibited. On-premise signs, and directional ~~or other~~ and official signs, and notices as defined and controlled in the department's rules and regulations shall be permitted.

(1) Other signs controlled in accordance with the federal-state agreement shall be permitted, if conforming to the provisions of this act, in the following areas:

(a) All zoned commercial or industrial areas within the boundaries of incorporated municipalities, as those boundaries existed on September 21, 1959, and all other areas where the land use as of September 21, 1959, was clearly established by law or ordinance as industrial or commercial ~~and which are within six hundred sixty feet of the nearest edge of the right-of-way of any portion of the National System of Interstate and Defense Highways~~ in which outdoor advertising signs, displays, and devices may be visible from the main-traveled way of ~~such system the National System of Interstate and Defense Highways; Provided, that no such signs, displays, or devices shall be permitted in areas in which advertising control~~

easements have been acquired;

(b) All zoned and unzoned commercial and industrial areas ~~within six-hundred--sixty--feet--of--the nearest--edge--of--the--right-of-way in which outdoor advertising signs, displays, and devices may be visible from the main-traveled way of those portions of the National System of Interstate and Defense Highways constructed upon right-of-way, any part of the width of which was acquired on or before July 1, 1956; 7-in-which outdoor-advertising-signs, displays, and devices--may--be visible--from--the--main-traveled-way--of--such--system; Provided,~~ that no such signs, displays, or devices shall be permitted in areas in which advertising control easements have been acquired; and

(c) All zoned and unzoned commercial and industrial areas ~~within six-hundred--sixty--feet--of--the nearest-edge-of-the-right-of-way-of-all-portions--of--all federal-aid-primary-roads-within-the-State-of-Nebraska in which outdoor advertising signs, displays, and devices may be visible from the main-traveled way of such--roads all portions of all federal-aid primary roads within the State of Nebraska; Provided,~~ that no such signs, displays, or devices shall be permitted in areas in which advertising control easements have been acquired; and :

(1) All signs, displays, or devices beyond six hundred sixty feet of the edge of the right-of-way of the federal-aid interstate, federal-aid primary roads, and outside of urban areas which are visible from the main-traveled way are prohibited except those which are authorized to be erected by the Federal-Aid Highway Acts of 1965, 1970, and 1974, and those signs whose advertising message is only visible from a secondary road or street but not visible from the main-traveled way of such federal-aid roads or the National System of Interstate and Defense Highways.

(2) In the areas described in subdivision (1) of this section, advertising signs, displays, and devices shall be allowed to be erected in accordance with the following criteria:

(a) Whenever a bona fide state, county, or local zoning authority has made a determination of customary use, as to size, lighting and spacing, such determination may be accepted in lieu of criteria established by regulation in the zoned commercial and industrial areas described in subdivision (1) of this section within the geographical jurisdiction of such authority unless conflicting with laws not contained in this section, or with the rules and regulations of the department; and

(b) In all other areas described in subdivision (1) of this section, the following criteria shall apply:

(i) On-premise signs as defined and controlled in the department's rules and regulations shall be permitted;

(ii) Those signs referred to as being permitted in the October, 1968, federal-state agreement shall be permitted when in conformity with the rules and regulations of the department;

(iii) Within the areas in which, according to the provisions of this act, advertising signs will be permitted, such signs shall conform to standards and criteria as to height, width, spacing, and lighting as set forth in the rules and regulations of the department;

(iv) Nothing contained in this act shall be construed to allow any person or persons, except the department, to erect signs within the right-of-way of any portion of the state highway system or, except the county, to erect official signs within the right-of-way of any portion of the county road system;

(v) Nothing contained in this act shall be construed to prevent the department from acquiring easements for the control of outdoor advertising;

(vi) Nothing contained in this act shall be construed to require the removal of signs in zoned and unzoned commercial and industrial areas, as defined in section 39-1302, lawfully in existence on March 27, 1972, which signs may under this act remain and continue in place even if nonconforming; and

(vii) The powers conferred by this act are supplementary and additional powers, and nothing contained in this act shall be deemed amendatory or in derogation of any other grant of power or authority to the department.

Sec. 7. That section 39-1320.07, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

39-1320.07. It shall be unlawful for any person to place or cause to be placed, ~~within six hundred sixty feet of the nearest edge of the right-of-way of any state highway, portion of the state highway system, or federal-aid primary road, any advertising sign, display, or device which is visible from the main-traveled way of the National System of Interstate and Defense Highways or~~

federal-aid primary roads or upon land not owned by such person, any advertising sign, display, or device, without first procuring from the owner of such land a written lease from the owner of such land authorizing the erection or emplacement of such advertising sign, display, or device and a permit from the Department of Roads authorizing such display or device to be erected as permitted by the advertising laws, rules, and regulations of this state.

Sec. 8. That section 39-1320.09, Revised Statutes Supplement, 1974, be amended to read as follows:

39-1320.09. The department may at its discretion require permits for advertising signs, displays, or devices which are placed or allowed to exist along or upon any interstate or primary highway or at any point within six hundred sixty feet of the right-of-way thereof visible from the main-traveled way, except for signs located within an area of fifty feet of any commercial or industrial building on the premises. Such permits shall be renewed biennially. Each sign shall bear on the side facing the highway the permit number in a readily observable place for inspection purposes from the highway right-of-way. The department is authorized to charge a fee to be not less than twenty-five cents or not to exceed fifteen dollars for each permit and renewal permit for each individual sign. The department shall promulgate rules and regulations establishing, and from time to time adjusting, the annual fees for the permits to cover the costs of administering the provisions of sections 39-1320.01, 39-1320.09, and 39-1320.10 and may by rule and regulation provide exceptions from the payment of fees for signs advertising eleemosynary or nonprofit public service activities, signs designating historical sites, and farm and ranch directional signs. The department may revoke the permit for noncompliance reasons and remove the sign if, after thirty days' notification to the sign owner, the sign remains in noncompliance. Printed sale bills not exceeding two hundred sixteen square inches in size shall not require a permit if otherwise conforming.

Sec. 9. (1) Signs, displays, and devices giving specific information of interest to the traveling public shall be erected by the Department of Roads and maintained within the right-of-way at appropriate distances from interchanges on the National System of Interstate and Defense Highways and from roads of the state primary system as shall conform with the rules promulgated by the Department of Roads. Such rules shall be consistent with national standards promulgated from time to time by the appropriate authority of the federal

government pursuant to Title 23, section 131, paragraph f, of the United States Code, except as provided in this section.

(2) For purposes of this section, specific information of interest to the traveling public shall mean only information about public places for outdoor recreation, camping, lodging, eating, and motor fuel and associated services, including trade names. Each business so advertised shall be in operation sixteen hours per day, seven days per week, with telephone and restroom facilities, motor fuel, oil, and water. Information on motor fuel and associated services may include vehicle service and repair where the same are available.

Sec. 10. (1) Commercial vendors using informational signs shall furnish informational panels to the Department of Roads and pay to the department an annual fee of twenty-five dollars for each informational panel for posting such informational panels.

(2) Upon receiving the informational panels and the annual twenty-five dollar fee, the Department of Roads shall post the informational panels and the commercial vendor shall not be required to remove any advertising device, except any advertising device which was unlawfully erected in violation of any provision of this act, as a condition precedent to the posting of such informational panels by the Department of Roads.

(3) There is hereby created in the state treasury a fund to be known as the Highway Beautification Fund and all funds received for the posting of informational panels shall be deposited in such fund. Such fund shall be expended for the administration of sections 9 and 10 of this act.

Sec. 11. That original sections 39-1302, 39-1320, 39-1320.06, and 39-1320.07, Reissue Revised Statutes of Nebraska, 1943, and section 39-1320.09, Revised Statutes Supplement, 1974, are repealed.

Sec. 12. Since an emergency exists, this act shall be in full force and take effect, from and after its passage and approval, according to law.