

First Regular Session
Seventy-third General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 21-0992.01 Pierce Lively x2059

SENATE BILL 21-263

SENATE SPONSORSHIP

Zenzinger and Smallwood,

HOUSE SPONSORSHIP

(None),

Senate Committees
Local Government

House Committees

A BILL FOR AN ACT

101 CONCERNING THE REGULATION OF OUTDOOR ADVERTISING.

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov>.)

The bill makes a number of modifications to the "Outdoor Advertising Act" (act), including the following:

- Removing distinctions in the act based on the information on an advertising device, in order to create a content-neutral test for applying the act;
- Modifying the regulation by the act of advertising devices with a message center display, so that such devices may not be placed within 1,000 feet of each other on the same side

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters or bold & italic numbers indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

- of a highway and facing the same direction of travel;
- Revising the permitting system under the act to establish a timeline for the issuance of a permit or the rejection of a permit application and to create a process to appeal the denial of a permit application;
- Allowing a property owner to maintain a potential advertising device on their property without a permit, if the property owner executes an affidavit attesting that the potential advertising device is not an advertising device as defined under the act;
- Modifying the enforcement provisions in the act to remove the current misdemeanor penalty for violations of the act and to ensure that the Colorado department of transportation has the authority to seek a court order enjoining violations of the act;
- Removing exceptions from the act that allow the erection of new advertising devices along state highways designated as scenic byways by the transportation commission; and
- No longer allowing on-premise advertising devices to extend over the existing and future right-of-ways of any state highway.

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

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

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

6 (1) "Advertising device" means any outdoor sign, display, device,
7 figure, painting, drawing, message, placard, poster, billboard, or any other
8 contrivance designed, intended, or used to advertise or ~~to give~~
9 ~~information in the nature of advertising~~ INFORM, FOR WHICH
10 COMPENSATION IS DIRECTLY OR INDIRECTLY PAID OR EARNED IN
11 EXCHANGE FOR ITS ERECTION OR EXISTENCE BY ANY PERSON OR ENTITY,
12 and having the capacity of being visible from the travel way of any state
13 highway, except any advertising device on a vehicle using the highway

1 OR ANY ADVERTISING DEVICE THAT IS PART OF A COMPREHENSIVE
2 DEVELOPMENT. The term "vehicle using the highway" does not include
3 any vehicle parked near said highway for advertising purposes.

4 (1.3) "COMPENSATION" MEANS THE EXCHANGE OF ANYTHING OF
5 VALUE, INCLUDING MONEY, SECURITIES, REAL PROPERTY INTERESTS,
6 PERSONAL PROPERTY INTERESTS, GOODS OR SERVICES, PROMISE OF FUTURE
7 DEVELOPMENT, EXCHANGE OF FAVOR, OR FORBEARANCE OF DEBT.

8 (1.5) (b) "Comprehensive development" includes all land used or
9 to be used or occupied for the activities of the development, including
10 buildings, parking, storage and service areas, streets, driveways, and
11 reasonably necessary landscaped areas. A comprehensive development
12 includes only land that is used for a purpose reasonably related to the
13 activities of the development. ~~other than an attempt to qualify the land for~~
14 ~~on-premise advertising.~~

15 (4) ~~"Directional advertising device" includes, but is not limited to:~~
16 ~~Advertising devices containing directional information to facilitate~~
17 ~~emergency vehicle access to remote locations or about public places~~
18 ~~owned or operated by federal, state, or local governments or their~~
19 ~~agencies; publicly or privately owned natural phenomena, historic,~~
20 ~~cultural, scientific, educational, and religious sites; and areas of natural~~
21 ~~scenic beauty or naturally suited for outdoor recreation, deemed to be in~~
22 ~~the interest of the traveling public. Such devices shall conform to~~
23 ~~standards promulgated by the department pursuant to section 43-1-415,~~
24 ~~which standards shall conform to the national policy.~~

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

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

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

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

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

13 **43-1-404. Advertising devices allowed - exception.** (1) The
14 following advertising devices as defined in section 43-1-403 may be
15 erected and maintained when in compliance with all provisions of this
16 part 4 and the rules adopted by the department:

17 (a) ~~Official advertising devices;~~

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

19 (c) ~~Directional advertising devices;~~

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

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

25 (C) ~~The advertising device shall only inform the traveling public~~
26 ~~of necessary goods or services available within a five-mile radius of the~~
27 ~~advertising device; necessary goods and services shall be limited to~~

1 ~~lodging, camping, food, gas, vehicle repair, health-related goods or~~
2 ~~services, recreational facilities or services, and places of cultural~~
3 ~~importance; and~~

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

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

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

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

1 as follows:

2 **43-1-406. Bonus areas.** (5) The following ~~shall be~~ ARE exempt
3 from the provisions of this section but ~~shall~~ MUST in all respects comply
4 with applicable rules ~~and regulations~~ issued by the department:

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

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

11 **43-1-407. Permits.** (1) A permit from the department ~~shall be~~ IS
12 required for the erection or maintenance of the following advertising
13 devices:

14 (a) Each nonconforming advertising device as defined in section
15 43-1-403 (12); AND

16 (b) ~~Each directional advertising device as defined in section~~
17 ~~43-1-403 (4), except that the following advertising devices shall not~~
18 ~~require permits:~~

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

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

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

1 **43-1-408. Application for permit - contents - rules.**

2 (1) Application for a permit for each advertising device ~~shall~~ MUST be
3 made on a form provided by the department, ~~shall be~~ signed by the
4 applicant or ~~his~~ THE APPLICANT'S duly authorized officer or agent, and
5 ~~shall show~~ INCLUDE:

- 6 (d) ~~The year in which the advertising device was erected;~~
- 7 (e) An agreement by the applicant to erect and maintain the
8 advertising device in a safe, sound, and good condition; AND

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

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

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

1 **43-1-412. Notice of noncompliance - removal authorized.**

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

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

15 **43-1-415. Administration and enforcement - authority for**
16 **agreements - rules.** (1) The department shall administer and enforce the
17 provisions of this part 4 and shall promulgate and enforce rules
18 ~~regulations~~, and standards necessary to carry out the provisions of this
19 part 4 including, but not limited to:

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

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

25 (c) ~~Regulations~~ RULES to control the erection and maintenance on
26 all state highways of ~~official advertising devices, directional advertising~~
27 ~~devices, on-premise advertising devices, and advertising devices located~~

1 in areas zoned for industrial or commercial uses;

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

4 (e) ~~Regulations~~ RULES necessary to permit the exemption of
5 tourist-related advertising devices by the secretary of transportation under
6 23 U.S.C. sec. 131 (o);

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

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

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

14 **43-1-417. Violation and penalty.** (1) The erection OF ANY
15 ADVERTISING DEVICE WITHOUT A PERMIT FROM THE DEPARTMENT WHERE
16 ONE IS REQUIRED BY THIS PART 4, OR THE use or maintenance of any
17 advertising device in violation of any provision of this part 4 is declared
18 to be illegal. ~~and~~; In addition to other remedies provided by law,
19 INCLUDING THE DEPARTMENT'S ABILITY TO SEEK A COURT ORDER
20 ENJOINING VIOLATIONS, the department is authorized to institute AN
21 appropriate action or proceeding to prevent or remove such violation in
22 any district court of competent jurisdiction. The removal of any
23 advertising device unlawfully erected, USED, OR MAINTAINED shall be at
24 the expense of the person who erects and maintains such A device.

25 (2) Any person who violates any ~~provisions~~ PROVISION of this part
26 4, ~~is guilty of a misdemeanor and upon conviction~~ BEING FOUND LIABLE
27 thereof, ~~shall be punished by~~ SHALL BE SUBJECT TO a fine of not less than

1 one hundred dollars nor more than one thousand dollars for each ~~offense~~
2 VIOLATION, AS ORDERED BY A COURT OF COMPETENT JURISDICTION. Each
3 day of violation of ~~the provisions~~ A PROVISION of this part 4 shall
4 constitute a separate ~~offense~~ VIOLATION. THE DEPARTMENT SHALL
5 ENFORCE THE PROVISIONS OF THIS PART 4 THROUGH A CIVIL ACTION.

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

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

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

22 **43-1-419. Scenic byways - Independence pass scenic area**
23 **highway.** (1) (a) State highways designated as scenic byways by the
24 transportation commission ~~shall~~ MUST have no new advertising devices
25 erected which are visible from the highway. ~~except the following:~~

26 ~~(f) Official advertising devices, as defined in section 43-1-403~~
27 ~~(13);~~

1 ~~(H) On-premise advertising devices, as defined in section~~
2 ~~43-1-403 (14); or~~

3 ~~(HH) Directional advertising devices, as defined in section~~
4 ~~43-1-403 (4).~~

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

7 **43-1-421. On-premise advertising device - extension**
8 **authorized.** ~~(1) Notwithstanding any other provision of law and except~~
9 ~~as otherwise provided in subsection (2) of this section, on-premise~~
10 ~~advertising devices shall be allowed to extend over existing rights-of-way~~
11 ~~and future rights-of-way as described in section 43-1-210 (3) of any state~~
12 ~~highway if all of the following requirements are met:~~

13 ~~(a) The on-premise advertising device is attached to and extended~~
14 ~~from a building and only advertises activities or services offered in that~~
15 ~~building;~~

16 ~~(b) The building and attached on-premise advertising device is~~
17 ~~adjacent to the state highway within a city, city and county, or~~
18 ~~incorporated town having authority over the state highway pursuant to~~
19 ~~section 43-2-135;~~

20 ~~(c) The on-premise advertising device does not restrict pedestrian~~
21 ~~traffic and is not a safety hazard to the motoring public; and~~

22 ~~(d) Before erecting the on-premise advertising device, the owner~~
23 ~~of the on-premise advertising device obtains written permission from the~~
24 ~~city, city and county, or incorporated town.~~

25 ~~(2) This section shall not apply if the department determines that~~
26 ~~compliance with this section will cause denial of federal moneys that~~
27 ~~would otherwise be available or would otherwise be inconsistent with~~

1 ~~federal law, but only to the extent necessary to prevent denial of the~~
2 ~~moneys or to eliminate the inconsistency with federal law. The~~
3 ~~department shall pursue every lawful remedy available to obtain~~
4 ~~permission or authority, if required by federal law, to apply this section~~
5 ~~in any such case.~~

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