

SENATE BILL 415

Introduced by Fritz, et al.

2/16	Introduced
2/16	Referred to Highways & Transportation
2/16	First Reading
2/16	Fiscal Note Requested
2/18	Hearing
2/18	Tabled in Committee
2/22	Fiscal Note Received
2/23	Fiscal Note Printed

Senate BILL NO. 415

INTRODUCED BY

Ed *Raney* *Harper* *Rean*
 A BILL FOR AN ACT ENTITLED: "AN ACT PROHIBITING THE
 INDISCRIMINATE USE OF OUTDOOR ADVERTISING ALONG THE HIGHWAYS

OF MONTANA; PROVIDING CERTAIN EXEMPTIONS; PROVIDING
 COMPENSATION FOR OWNERS OF PROHIBITED SIGNS; AMENDING
 SECTIONS 60-5-514 AND 60-5-522, MCA; REPEALING SECTIONS
 75-15-101, 75-15-102, 75-15-103, 75-15-104, 75-15-105,
 75-15-111, 75-15-112, 75-15-113, 75-15-121, 75-15-122,
 75-15-123, 75-15-124, 75-15-131, 75-15-132, 75-15-133, AND
 75-15-134, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1.** Legislative findings. The
 legislature finds and declares the following:

(1) A large and increasing number of tourists visit
 Montana each year, and as a result, the tourism industry is
 one of the largest sources of income for Montanans, with an
 increasing number of persons directly or indirectly
 dependent upon the tourism industry for their livelihood.

(2) Scenic resources of great value are distributed
 throughout the state and have contributed greatly to its
 economic development by attracting tourists, permanent and
 part-time residents, new industries, and cultural

facilities.

(3) The scattering of commercial outdoor advertising
 throughout the state is detrimental to the preservation of
 those scenic resources and to the economic base of the state
 and is an ineffective method of providing information to
 tourists about available facilities.

(4) The proliferation of commercial outdoor advertising
 is hazardous to highway users.

NEW SECTION. **Section 2.** Purpose -- policy. In order to
 promote scenic values, as well as public health and safety
 and other aspects of the general welfare, it is the policy
 of the state and the purpose of [sections 1 through 13] to
 prohibit the indiscriminate use of commercial outdoor
 advertising.

NEW SECTION. **Section 3.** Definitions. As used in
 [sections 1 through 13], unless the context requires
 otherwise, the following definitions apply:

(1) "Commercial outdoor advertising" means a sign that
 advertises, calls attention to, or directs a person to a
 business or association of any kind, that is visible from a
 highway or other public right-of-way, and that has the
 primary purpose of attracting patrons to a business,
 association, profession, commodity, product, institution,
 service, entertainment, person, place, thing, or activity.

(2) "On-premises sign" means an accessory sign that

1 directs attention to a business, profession, commodity,
2 product, service, entertainment, thing, or activity carried
3 on, sold, or offered on the same premises.

4 (3) "Residential directional sign" means an
5 off-premises sign erected and maintained by an individual to
6 indicate the location of the individual's residence.

7 (4) "Sign" means any structure, display, device, or
8 representation that is designed or used to advertise or call
9 attention to any thing, person, business, activity, or place
10 and that is visible from any highway or other right-of-way.
11 The term does not include the flag, pennant, or insignia of
12 any nation, state, or town. Whenever the dimensions of a
13 sign are specified, they include panels and frames.

14 (5) "Traffic control sign or device" means a sign or
15 device that has been erected by officers having jurisdiction
16 over the highway and that is an official route marker; a
17 guide sign; a warning sign; a sign directing traffic to or
18 from a bridge, ferry, or airport; or a sign regulating
19 traffic.

20 NEW SECTION. Section 4. Prohibition of commercial
21 outdoor advertising. A person may not erect or maintain
22 commercial outdoor advertising visible to the traveling
23 public except as permitted in Title 60, chapter 5, part 5,
24 and [sections 5 and 6].

25 NEW SECTION. Section 5. On-premises signs. An owner or

1 occupant of real property may erect and maintain on the
2 owner's or occupant's property on-premises signs advertising
3 the sale or lease of the property or activities being
4 conducted on the property. The following requirements apply
5 to each on-premises sign:

6 (1) Except for signs existing on [the effective date of
7 this act] or signs attached to or part of the building in
8 which the advertised activities are being conducted, the
9 total area of an on-premises sign may not exceed 150 square
10 feet. The area of a sign advertising the sale or lease of
11 real estate by the owner or an agent may not exceed 6 square
12 feet.

13 (2) Except for signs existing on [the effective date of
14 this act], an on-premises sign may not extend more than 25
15 feet above ground level or, if the sign is attached to or is
16 part of a building, 10 feet above the roof of the building.

17 NEW SECTION. Section 6. Exemptions. The following
18 signs are exempt from the requirements of [sections 1
19 through 13]:

20 (1) a sign located on or in the rolling stock of a
21 common carrier;

22 (2) a sign on a registered and inspected motor vehicle;

23 (3) a sign, not exceeding 260 square inches, that
24 identifies the regular routed stops of a common carrier;

25 (4) a sign, not exceeding 64 square feet in area, that

1 is erected and maintained by a city or town outside the
 2 highway right-of-way, that shows the place and time of
 3 services or meetings of churches and civic organizations in
 4 the city or town, and that includes a panel identifying the
 5 name of the city or town, the charter date, the date the
 6 city or town was founded, or any other significant date in
 7 the history of the city or town that the city or town wishes
 8 to identify. The panel may bear the wording "Welcome to" the
 9 particular city or town. More than four signs of this type
 10 may not be erected and maintained at an intersection or
 11 interchange.

12 (5) a residential directional sign, not exceeding 400
 13 square inches in area, that is situated along a highway
 14 other than a controlled-access highway, but not within the
 15 highway right-of-way;

16 (6) an official traffic control sign or device;

17 (7) a local government sign, including traffic and
 18 similar regulatory devices, legal notices, and warnings at
 19 railroad crossings;

20 (8) a sign permitted under Title 60, chapter 5, part 5;

21 (9) a sign to be maintained for not more than 2 weeks
 22 that announces an auction or a campaign, drive, or event of
 23 a civic, philanthropic, or religious organization;

24 (10) a memorial sign or tablet;

25 (11) a sign erected by a county fair or exposition for a

1 period not to exceed 6 weeks; and

2 (12) a directional sign, not exceeding 4 square feet,
 3 that provides directions to places of business that offer
 4 for sale agricultural products harvested or produced on the
 5 premises where the sale is taking place.

6 NEW SECTION. **Section 7. Other regulations applying to**
 7 **permitted signs.** (1) A permitted sign, on-premises sign,
 8 residential directional sign, or other exempt sign may not
 9 be erected or maintained along a highway and visible from
 10 the highway if the sign:

11 (a) interferes with, imitates, or resembles any
 12 official traffic control sign or device or attempts or
 13 appears to attempt to direct the movement of traffic;

14 (b) prevents the driver of a motor vehicle from having
 15 a clear and unobstructed view of a traffic control sign or
 16 device or of approaching or merging traffic;

17 (c) (i) contains, includes, or is illuminated by any
 18 flashing intermittent or moving lights; or

19 (ii) moves or has any animated or moving parts;

20 (d) has any lighting, unless the lighting is
 21 effectively shielded to prevent beams or rays of light from
 22 being directed at the traveled portion of a highway or
 23 unless the lighting is of such low intensity or brilliance
 24 that it does not cause glare or impair the vision of the
 25 driver of any motor vehicle or otherwise interfere with the

operation of a motor vehicle;

(e) is located upon a tree or painted or drawn upon a rock or other natural feature. This restriction does not apply to residential directional signs.

(f) advertises, calls attention to, or directs a person to a business, profession, commodity, product, service, entertainment, or activity not carried on, produced, sold, or offered in this state or to an activity of any kind that has already occurred or has otherwise terminated; or

(g) is in violation of or at variance with any federal law or regulation.

(2) An on-premises sign may not be erected if it is located to be readable primarily from a controlled-access highway.

(3) An on-premises sign, residential directional sign, or other exempt sign may not be erected or maintained if the sign:

(a) advertises activities that are illegal under any state or federal law applicable at the location of the sign or of the activities;

(b) is not clean or in good repair;

(c) is not securely affixed to a substantial structure; or

(d) except as provided in Title 60, is located within the limits of the highway right-of-way.

NEW SECTION. Section 8. Compensation for removal of other outdoor advertising. (1) The department of transportation may use available appropriated highway funds, in an amount not to exceed \$300,000, for the purpose of matching federal funds made available for monetary compensation for the taking or removal of commercial outdoor advertising on state highways.

(2) Compensation must be paid upon the taking or removal of commercial outdoor advertising under [sections 1 through 13].

(3) The highway commission shall adopt rules for the awarding of compensation and shall use the federal regulations for compensation as guidelines regulations.

NEW SECTION. Section 9. Removal of signs. (1) (a) Subject to the provisions of [section 10], the owner of a sign that is not an on-premises sign or an exempt sign meeting the requirements set forth in [sections 1 through 13] but that was lawfully erected and maintained prior to [the effective date of this act] shall remove the sign within 30 days of receipt of an order of removal made by the department of transportation. An order may not be made by the department unless adequate funds are available, as provided in [section 8], to compensate the owner for the sign.

(b) Upon failure of the owner to remove the sign, the

1 director of the department of transportation may order
2 removal of the sign by the department. The department shall
3 then remove the sign at the expense of the owner. The
4 expense may be recovered by the state in an action filed in
5 the Montana district court having jurisdiction in the area
6 in which the sign is located.

7 (c) If a request is made by the property owner or sign
8 owner within the 30-day period, the department shall remove,
9 without charge to the owner, a sign required to be removed
10 pursuant to this section.

11 (2) Subject to the provisions of [section 10], the
12 owner of a sign that is not an on-premises or an exempt sign
13 meeting the requirements set forth in [sections 1 through
14 13], other than a sign that was lawfully erected and
15 maintained prior to [the effective date of this act], is in
16 violation of [sections 1 through 13] until it is removed.
17 The director of the department of transportation or the
18 director's designee may, upon failure of the owner to remove
19 the sign, order its removal, and the department shall remove
20 the sign at the expense of the owner. The expense may be
21 recovered by the state in an action filed in the Montana
22 district court having jurisdiction in the area in which the
23 sign is located. A copy of the order of removal must be sent
24 by certified mail to the owner.

25 NEW SECTION. **Section 10.** Transition period. Commercial

1 outdoor advertising lawfully erected and maintained before
2 [the effective date of this act] may be maintained until
3 January 1, 1995, or 5 years from the date the sign was first
4 erected, whichever is later.

5 NEW SECTION. **Section 11.** Notice -- exception. (1)
6 After the expiration of the period specified in [section
7 10], the department of transportation shall order removal of
8 commercial outdoor advertising erected or maintained in
9 violation of [sections 1 through 13] that was lawfully
10 erected and maintained prior to [the effective date of this
11 act]. Before ordering the removal of a sign, the department
12 shall give notice of the reasons for the order by certified
13 mail, with return receipt requested, to the person owning or
14 controlling the advertising.

15 (2) This section does not apply to any sign that is
16 required to be removed by virtue of the federal Highway
17 Beautification Act of 1965, as amended, or any other federal
18 law, rule, or regulation that affects the allocation of
19 federal highway funds or other funds to or for this state or
20 any agency or local government.

21 NEW SECTION. **Section 12.** Penalty. A person who erects
22 or maintains a sign in violation of [sections 1 through 13]
23 may be fined not more than \$1,000 or imprisoned not more
24 than 30 days, or both. Each day the violation continues is a
25 separate offense.

1 NEW SECTION. **Section 13.** Local ordinances. [Sections 1
2 through 13] do not supersede the provisions of any local
3 ordinance that has requirements that are more strict than
4 those of [sections 1 through 13] but are not inconsistent
5 with [sections 1 through 13], whether the ordinances were
6 enacted before or after [the effective date of this act].

7 **Section 14.** Section 60-5-514, MCA, is amended to read:

8 "60-5-514. Business eligibility -- criteria --
9 restrictions. (1) To be eligible for placement of a business
10 sign on a specific information sign panel, a business
11 establishment shall meet standards for "GAS", "FOOD",
12 "LODGING", and "CAMPING" services in rules adopted by the
13 department pursuant to guidelines in the Manual on Uniform
14 Traffic Control Devices, as amended.

15 (2) (a) Each business identified on a specific
16 information sign shall provide assurance of its conformity
17 with all applicable laws concerning the provision of public
18 accommodations without regard to race, color, sex, culture,
19 social origin or condition, or political or religious ideas.

20 (b) If such a business violates any of these laws, it
21 loses eligibility for business identification on a specific
22 information sign.

23 (3) No A business that owns any outdoor advertising
24 structure in violation of the provisions of Title--75,
25 chapter--15,--part--17, may be [sections 1 through 13] is not

1 eligible for business identification on a specific
2 information sign for 1 year after the illegal outdoor
3 advertising structure is removed unless the owner
4 voluntarily removes it within 45 30 days of receiving
5 notification an order of removal under 75-15-131 [section
6 9]."

7 **Section 15.** Section 60-5-522, MCA, is amended to read:

8 "60-5-522. Business eligibility -- criteria --
9 restrictions. (1) To be eligible for business identification
10 on a tourist-oriented directional sign, a business
11 establishment shall meet the following standards for a
12 business, service, or activity:

13 (a) Gas, food, lodging, and camping services must:

14 (i) be licensed and approved by the state and local
15 agencies regulating the particular type of business;

16 (ii) provide an acceptable level of service to the
17 public;

18 (iii) be in continuous operation at least 8 hours a day,
19 5 days a week, including Saturday or Sunday; and

20 (iv) have a telephone and restroom facilities available
21 for public use.

22 (b) Recreation services must:

23 (i) be licensed and approved by state and local
24 agencies as required by law;

25 (ii) provide to families and the public activities of

1 interest in which people participate for purposes of
2 physical exercise, collective amusement, or enjoyment of
3 nature. ~~Such~~ The activities may include hiking, golfing,
4 skiing, boating, swimming, picnicking, fishing, and
5 horseback riding.

6 (c) Tourist services must:

7 (i) be licensed as required by law;

8 (ii) be open to the public at least 8 hours a day, 5
9 days a week, including Saturday or Sunday, during the normal
10 tourist season; and

11 (iii) provide a natural, recreational, historical,
12 cultural, educational, or entertainment activity or a unique
13 or unusual commercial or nonprofit activity, from which the
14 major portion of income or visitors is derived during normal
15 business seasons from motorists not residing in the
16 immediate area of the activity.

17 (2) (a) Each business identified on a tourist-oriented
18 directional sign shall provide assurance of its conformity
19 with all applicable laws concerning the provision of public
20 accommodations without regard to race, color, sex, culture,
21 social origin or condition, or political or religious ideas.

22 (b) If a business violates any of these laws, it loses
23 eligibility for business identification on a
24 tourist-oriented directional sign.

25 (3) No A business that owns any outdoor advertising

1 structure in violation of the provisions of ~~Title--75,~~
2 ~~chapter--15,--part--17,--may-be~~ [sections 1 through 13] is not
3 eligible for business identification on a tourist-oriented
4 directional sign for 1 year after the illegal outdoor
5 advertising structure is removed unless the owner
6 voluntarily removes it within 45 30 days of receiving
7 ~~notification~~ an order of removal under ~~75-15-131~~ [section
8 9]."

9 NEW SECTION. Section 16. Severability. If a part of
10 this act is invalid, all valid parts that are severable from
11 the invalid part remain in effect. If a part of this act is
12 invalid in one or more of its applications, the part remains
13 in effect in all valid applications that are severable from
14 the invalid applications.

15 NEW SECTION. Section 17. Repealer. Sections 75-15-101,
16 75-15-102, 75-15-103, 75-15-104, 75-15-105, 75-15-111,
17 75-15-112, 75-15-113, 75-15-121, 75-15-122, 75-15-123,
18 75-15-124, 75-15-131, 75-15-132, 75-15-133, and 75-15-134,
19 MCA, are repealed.

20 NEW SECTION. Section 18. Effective date. [This act] is
21 effective on passage and approval.

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for SB0415, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

An act prohibiting the indiscriminate use of outdoor advertising along the highways of Montana; providing certain exemptions; providing compensation for owners of prohibited signs; and providing an immediate effective date.

ASSUMPTIONS:

1. "Commercial Outdoor advertising" means any sign that advertises, calls attention to, or directs a person to a business or association of any kind, that is visible from a highway or other public right-of-way, and that has the primary purpose of attracting patrons to a business, association, profession, commodity, product, institution, service, entertainment, person, place, thing, or activity.
2. Commercial outdoor advertising lawfully erected and maintained before the effective date of this act may be maintained until January 1, 1995, or 5 years from the date the sign was first erected, whichever is later.
3. It is assumed that 90% of the affected signs will be removed by June 30, 1995. The remaining 10% will be removed individually on the fifth anniversary after being erected.
4. There are 740 existing legal non-conforming signs, 333 of which will be removed by June 30, 1994 and 333 of which will be removed by June 30, 1995.
5. The average cost to purchase each sign is \$8,100, based on 450 sq. ft. sign @ \$18.00 per sq. ft. Removal costs for each sign is \$725.00 based on \$600.00 for labor and \$125 for removal.
6. Federal participation is available for the removal of legal-non-conforming signs on an 80/20 basis.
7. There are 2,510 existing legally permitted signs erected since 1972, 1,130 of which will be removed by June 30, 1994 and 1,129 will be removed by June 30, 1995.
8. The average cost to purchase each sign is \$8,100 and the average cost to remove each sign is \$725.

FISCAL IMPACT:

(continued)

David Lewis 2.22.93
DAVID LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

H. Fritz 2/23/93
HARRY FRITZ, PRIMARY SPONSOR DATE

Fiscal Note for SB0415, as introduced

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FISCAL IMPACT:

Expenditures:

	FY '94			FY '95		
	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>
FTE	651.88	651.88	0	651.88	651.88	0
Personal Services	\$23,759,493	\$ 23,759,493	\$ 0	\$24,088,375	\$ 24,088,375	\$ 0
Operating	35,524,784	48,435,759	12,910,975	35,323,764	48,225,914	12,902,150
Equipment	458,588	458,588	0	374,565	374,565	0
Capital Outlay	108,434	108,434	0	108,434	108,434	0
Total	\$59,851,299	\$ 72,762,274	\$12,910,975	\$59,895,138	\$ 72,797,288	\$12,902,150
Funding:						
State Special Revenue	\$59,762,385	\$ 70,322,380	\$10,559,995	\$59,806,224	\$ 70,357,394	\$10,551,170
Federal Special Revenue	88,914	2,439,894	2,350,980	88,914	2,439,894	2,350,980

EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES:

The Department of Transportation (DOT) does not have the authority to fund the sign removal costs for signs adjacent to highways not included under current maintenance agreements with county and local authorities. The impact on county and local authorities is unknown.

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:

The remaining 10% of the signs would have to be removed individually on their five year anniversary at an additional cost of \$2,868,125 (\$2,345,685 state special revenue, \$522,440 federal revenue).

(continued)

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TECHNICAL NOTES:

The proposed legislation represents a significant change from the existing Outdoor Advertising Control Act. The bill presents several technical issues with respect to enforcement:

1. The definition in Section 3 is not sufficient to give clear guidance of what is a "permitted sign". The term "permitted sign" is used in Section 7 of the bill. If it means existing permitted signs under the present law, all of that has been repealed and the DOT has no authority to continue permitting.
2. The definition of commercial outdoor advertising indicates that it is anything that is visible from a "highway or other public right-of-way". This is a substantial expansion over the existing controls for the DOT which are presently limited to the Interstate and primary highways.
3. Section 8, part (3) allows the Highway Commission to adopt rules for awarding compensation for illegal signs and indicates that federal regulations for compensation should be employed as guidelines. This may conflict with Article II, Section 29 of the Montana Constitution which states that where there is a taking of private property, the owner must be paid "just compensation" as required under the eminent domain statutes.
4. The removal of supposed illegal signs placed in the future can be viewed as a taking of private property which requires due process protection. The present law allows contested case situations under the Montana Administrative Procedures Act, which is not preserved in this bill.
5. The department is not granted any right of entry to inspect illegal signs on existing landowner's property.
6. There is no adequate rule making authority for the department for contested cases or enforcement.
7. The repealing of the existing Outdoor Advertising Act, specifically in sections 75-15-104 and 75-15-105, MCA, could abrogate the federal-state agreement that was entered into in 1972. At this time, DOT has not discussed the impacts of this legislation with representatives of the Federal Highway Administration.

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