_____ BILL NO. _____

INTRODUCED BY _____

BY REQUEST OF THE DEPARTMENT OF TRANSPORTATION

A BILL FOR AN ACT ENTITLED: “AN ACT TRANSFERRING THE AUTHORITY AND RESPONSIBILITY FOR OUTDOOR ADVERTISING RULEMAKING AND HEARINGS FROM THE TRANSPORTATION COMMISSION TO THE DEPARTMENT OF TRANSPORTATION; PROVIDING RULEMAKING AUTHORITY; AMENDING SECTIONS 75-15-102, 75-15-103, 75-15-105, 75-15-111, 75-15-121, 75-15-122, AND 75-15-131, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.”

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

Section 1. Section 75-15-102, MCA, is amended to read:

"**75-15-102. Policy.** The legislature finds and declares that in order to promote the safety, convenience, and enjoyment of travel on and protection of the public investment in highways within this state and to preserve and enhance the natural scenic beauty or aesthetic features of the highways and adjacent areas, it shall be the policy of this state that the erection and maintenance of outdoor advertising in areas adjacent to the right-of-way of the interstate and primary systems within this state shall be regulated in accordance with the terms of this part and the rules promulgated by the ~~commission~~ department pursuant ~~thereto~~ to the policy. It is the intention of the legislature in this part to provide a statutory basis for regulation of outdoor advertising consistent with the public policy relating to areas adjacent to the interstate and primary systems declared by congress in Title 23, United States Code, "Highways"."

Section 2. Section 75-15-103, MCA, is amended to read:

"**75-15-103. Definitions.** As used in this part, the following definitions apply:

(1) "Commercial or industrial activities" means those activities generally recognized as commercial or industrial by zoning authorities in this state, except that none of the following activities are considered commercial or industrial:

(a) agricultural, forestry, grazing, farming, and related activities, including wayside fresh produce stands;

(b) transient or temporary activities;

(c) activities not visible from the main-traveled way;

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

(e) railroad tracks and minor sidings;

(f) activities more than 660 feet from the nearest edge of the right-of-way.

(2) "Commercial or industrial zone" means an area that is used or reserved for business, commerce, or trade pursuant to comprehensive local zoning ordinances, regulations, or enabling state legislation, including highway service areas lawfully zoned as highway service zones, where the primary use of the land is or is reserved for commercial and roadside services, other than outdoor advertising, to serve the traveling public. Areas temporarily zoned as commercial or industrial by an interim zoning district or interim regulation adopted as an emergency measure pursuant to 76-2-206 are not covered by this definition.

(3) "Commission" means the transportation commission of Montana.

(4) "Department" means the department of transportation.

(5) "Information center" means an area or site established or maintained at safety rest areas for the purpose of informing the public of places of interest within the state and providing other information that the commission or the department may consider desirable.

(6) "Interchange" or "intersection" means those areas and their approaches where traffic is channeled off or onto an interstate route, including the deceleration lanes or acceleration lanes from or to another federal, state, county, city, or other route.

(7) "Interstate system" means that portion of the national system of interstate and defense highways located within this state as officially designated or as may be designated by the commission and approved by the secretary pursuant to the provisions of Title 23, United States Code, "Highways".

(8) "Maintain" means to allow to exist, subject to the provisions of this part.

(9) "Maintenance" means to repair, refurbish, repaint, or otherwise keep an existing sign structure in a state suitable for use.

(10) "Outdoor advertising" means any outdoor sign, display, light, device, figure, painting, drawing,

message, plaque, poster, billboard, or other structure that is designed, intended, or used to advertise or inform and that is visible from any place on the main-traveled way of the interstate or primary systems.

(11) "Primary system" means that portion of connected main highways as officially designated or as may be designated by the commission and approved by the secretary pursuant to the provisions of Title 23, United States Code, "Highways".

(12) "Safety rest area" means an area or site established and maintained within or adjacent to the right-of-way, by or under public supervision or control, for the convenience of the traveling public.

(13) "Secretary" means the secretary of the United States department of transportation.

(14) "Unzoned commercial or industrial area" means an area not zoned by state or local law, regulation, or ordinance that is occupied by one or more commercial or industrial activities, other than outdoor advertising, on the lands along the highway for a distance of 600 feet immediately adjacent to the activities.

(15) "Urban area" means an urbanized area or place, as designated by the United States bureau of the census, that has a population of 5,000 or more and that is within boundaries fixed by the department. The boundaries must at a minimum encompass the entire urban place designated by the bureau of the census.

(16) "Visible" means capable of being seen and legible without visual aid by a person of normal visual acuity."

Section 3. Section 75-15-105, MCA, is amended to read:

"**75-15-105. Relaxation of regulations if federal law changed.** In the event the general requirements of Title 23, United States Code, "Highways", or existing rules and regulations of the United States department of transportation become amended or changed to less restrictive conditions than presently exist, then the ~~commission~~ department shall amend or change the rules that it may have adopted to come into conformity with the federal law, rule, and regulation."

Section 4. Section 75-15-111, MCA, is amended to read:

"**75-15-111. Outdoor advertising prohibited in proximity to highway -- exceptions.** (1) Outdoor advertising may not be erected or maintained that is within 660 feet of the nearest edge of the right-of-way and that is visible from any place on the main-traveled way of an interstate or primary system, except:

(a) directional and other official signs and notices, which signs and notices include but are not limited to signs and notices pertaining to natural wonders and scenic and historical attractions, as authorized or required by law;

(b) signs, displays, and devices advertising the sale or lease of property upon which they are located;

(c) signs, displays, and devices advertising activities conducted on the property upon which they are located;

(d) signs, displays, and devices located in areas that are zoned industrial or commercial by a bona fide state, county, or local zoning authority;

(e) signs, displays, and devices located in unzoned commercial or industrial areas, which areas must be determined from actual land uses and by agreement between the department and the secretary and defined by rules adopted by the ~~commission~~ department. The exception granted by this subsection is limited to two signs and may not apply to signs, displays, and devices located within an unzoned area in which the commercial or industrial activity used in defining the area has ceased for a period of 9 months.

(f) signs or displays advertising the cultural exhibits of nonprofit historical or arts organizations if the signs or displays conform with the standards provided in ~~Title~~ 23~~, Code of Federal Regulations~~ CFR, ~~section~~ part 750, subpart B; or

(g) signs that are consistent with the policy of this state and with the national policy set forth in 23 U.S.C. 131 and the regulations promulgated under 23 U.S.C. 131 and that are designed to provide information in the specific interest of the traveling public as provided in 60-5-504, 60-5-505, 60-5-511 through 60-5-513, and 60-5-519 through 60-5-521.

(2) Outdoor advertising authorized under subsections (1)(a), (1)(d), and (1)(e) must conform with standards contained in and must bear permits required in rules that are adopted by the ~~commission~~ department and this part.

(3) Outdoor advertising may not be erected or maintained beyond 660 feet of the nearest edge of the right-of-way of an interstate or primary highway outside of an urban area if the outdoor advertising is or was erected with the purpose of its message being read from the main-traveled way and visible from the main-traveled way unless the outdoor advertising meets the criteria of subsections (1)(a), (1)(b), or (1)(c). If the

outdoor advertising meets that criteria, it must conform with standards contained in rules that are adopted by the ~~commission~~ department and with this part.

(4) An outdoor advertising structure in an unzoned commercial or industrial area that is lawfully in existence on April 21, 1995, that meets the size requirements in 75-15-113, but that exceeds the restrictions in subsection (1)(e) of this section:

(a) must be classified as nonconforming by the department;

(b) may not be increased in size;

(c) may be maintained each year if the value of the materials used in the maintenance does not exceed 75% of the value of all of the materials required to replace the sign new; and

(d) may be replaced, if damaged, at up to and including 100% of its replacement cost."

Section 5. Section 75-15-121, MCA, is amended to read:

"**75-15-121. ~~Commission rules~~ Rules authorized.** The ~~commission~~ department may adopt rules to control the erection and maintenance of outdoor advertising along the interstate and primary highway systems in ~~conformance~~ conformity with the terms of this part and ~~in conformity~~ with 23 U.S.C. 131, as amended."

Section 6. Section 75-15-122, MCA, is amended to read:

"**75-15-122. Permits required -- identification tags -- preexisting structures -- fees.** (1) (a) A sign authorized by 75-15-111(1)(a), (1)(d), and (1)(e) may not be constructed or maintained without a permit. Applications for permits must be made to the department on forms furnished by it. The department shall require reasonable information to be furnished, including a statement that the owner or occupant of the land has consented to the erection or maintenance of the sign on the land. A permit must be obtained for each sign, and the application for the permit must be accompanied by a nonrefundable, initial fee.

(b) Permits must be issued for 3 years, assigned a permit number, and renewed every 3 years after issuance upon payment of a fee without the filing of a new application. All fees received must be paid into the highway account in the state special revenue fund.

(c) The fees described in subsections (1)(a) and (1)(b) are to be determined by the square footage of the sign face and established, by rule, by the ~~commission~~ department to cover the costs of administering and

enforcing this section.

(2) The department shall issue with each new permit a permanent identification tag not larger than 36 square inches that must be affixed to the sign in a position readily visible from the highway.

(3) Notwithstanding the foregoing provisions of this section, the department shall issue permits and identification tags upon application and payment of the requisite fee for a structure lawfully in existence on June 23, 1971, and the permits must be renewed for a period of time as is prescribed in this section unless the structure is removed for improper maintenance.

(4) Notwithstanding the foregoing provisions of this section, the department shall issue permits and identification tags upon application and payment of the requisite fee for outdoor advertising lawfully in existence on June 23, 1971, and made nonconforming by virtue of 75-15-111(3), and the permits must be renewed for a period of time as is prescribed in this section unless the structure is removed for improper maintenance."

Section 7. Section 75-15-131, MCA, is amended to read:

"**75-15-131. Entry to inspect -- notice of unlawful advertising -- remedial action.** (1) The department may enter upon lands bearing outdoor advertising and make examination of such advertising.

(2) The department shall give notice in writing, either by certified mail or by personal service, to the owner or occupant of the land on which advertising believed to be unlawful is located and to the owner of the outdoor advertising structure if the latter is known or, if unknown, by posting notice in a conspicuous place on the structure of its intention to remove the unlawful advertising. Within 45 days after the notice, the owner of the land or of the structure may make a written request for a hearing before the ~~commission~~ department to show cause why the structure should not be removed.

(3) If a hearing before the ~~commission~~ department is not requested or if there is no appeal taken from the ~~commission's~~ department's decision at the hearing or if the ~~commission's~~ department's decision is affirmed on appeal, the department shall immediately remove or cause to be removed the unlawful outdoor advertising. The department may, upon final determination by the ~~commission~~ department that an item of outdoor advertising is unlawful, enter upon lands bearing such advertising and remove the unlawful advertising.

(4) The owner of the structure and the owner or occupant of the land are jointly and severally liable for the costs of the removal."

NEW SECTION. **Section 8. Effective date.** [This act] is effective on passage and approval.

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