

MAINE STATE LEGISLATURE

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(EMERGENCY)
(Governor's Bill)
FIRST REGULAR SESSION

ONE HUNDRED AND TENTH LEGISLATURE

Legislative Document

No. 1249

S. P. 427

In Senate, March 11, 1981

Referred to the Committee on Business Legislation. Sent down for concurrence and ordered printed.

MAY M. ROSS, Secretary of the Senate

Presented by Senator Collins of Knox.

Cosponsors: Representative Mitchell of Vassalboro, Representative L. M. Higgins of Scarborough and Senator Clark of Cumberland.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED AND EIGHTY-ONE

**AN ACT to Bring the Maine Traveler Information Services Act into Conformity
with the United States Constitution.**

Emergency preamble. Whereas, Acts of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, on December 22, 1980, the United States Court of Appeals for the First Circuit declared the Maine Traveler Information Services Act unconstitutional to the extent that it prohibits noncommercial speech by means of highway signs; and

Whereas, the absence of legislation controlling outdoor advertisements is detrimental to the preservation of scenic resources and is hazardous to highway users; and

Whereas, the absence of legislation controlling off-premises commercial outdoor advertising may render the State vulnerable to the imposition of a penalty of a reduction of 10% in its federal highway funds, pursuant to the provisions of the Federal Highway Beautification Act, United States Code, Title 23, Section 131 (d); and

Whereas, the absence of legislation authorizing the Commissioner of Transportation to continue the compensated removal of off-premises commercial

outdoor advertising signs, which began in the fall of 1979 and on which over \$2,000,000 of federal and state funds have been expended, jeopardizes the state's ability to obtain the federal funding necessary to complete the removal program; and

Whereas, the absence of legislation controlling off-premises commercial outdoor advertising may render the State vulnerable to having to repay all federal funds thus far provided for the compensated removal of commercial signs, which funds constitute 75% of the amount thus far expended; and

Whereas, although the State has taken an appeal of the decision of the First Circuit to the United States Supreme Court, the appeal may be terminated at any time, at which point the State will be without any legislation controlling or authorizing the removal of off-premises commercial outdoor advertising signs; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

Be it enacted by the People of the State of Maine, as follows:

Sec. 1. 23 MRSA § 1903, sub-§ 3, as enacted by PL 1977, c. 494, § 1, is amended to read:

3. Interstate system or interstate highway. "Interstate system" or "interstate highway" means any state highway which is or does become part of the national system of interstate or defense highways, as described in the United States Code, Title 23, section 103(d) and amendments thereto or replacements thereof.

Sec. 2. 23 MRSA § 1903, sub-§ 7, as enacted by PL 1977, c. 494, § 1, is amended by adding at the end a new sentence to read:

Other information may be displayed by means of logos authorized pursuant to section 1910.

Sec. 3. 23 MRSA § 1910, as amended by PL 1979, c. 477, § 5, is repealed and the following enacted in its place:

§ 1910. Types and arrangements of signs

Subject to this chapter, the commissioner, with the advice of the Travel Information Advisory Council, shall regulate the size, shape, color, lighting, manner of display and lettering of official business directional signs. These regulations shall require uniformity among signs in accordance with the following minimum requirements: Signs shall be of uniform sizes; uniform colors shall be specified for each type of service and facility; lettering shall be of uniform type; logos shall not exceed a uniform size; and posts shall be of a uniform sign, shape and color. A symbol may be specified for each type of eligible service or facility for inclusion upon official business directional signs.

Sec. 4. 23 MRSA § 1913, sub-§ 1, ¶¶ E - H, as repealed and replaced by PL 1979, c. 477, § 7, are repealed and the following enacted in their place:

E. Signs showing the place and time of service or meetings of religious and civic organizations in the municipality or township. Each religious or civic organization may erect no more than 4 signs. No sign may exceed in size 24 inches by 30 inches;

F. Memorial signs or tablets;

G. Hand-held or similar signs not affixed to the ground or buildings; and

H. Signs bearing political messages, relating to an election, primary or referendum, provided that these signs may not be placed within the right-of-way prior to 6 weeks before the election, primary or referendum to which they relate and must be removed by the candidate or political committee not later than one week thereafter.

Sec. 5. 23 MRSA § 1913, sub-§ 1, ¶¶ I and J, as repealed and replaced by PL 1979, c. 477, § 7, are repealed.

Sec. 6. 23 MRSA § 1913, sub-§ 1-A is enacted to read:

1-A. Types of signs outside the right-of-way. The following signs may be erected and maintained outside of the public right-of-way without license or permit under this chapter as follows:

A. Signs erected by a public, civic, philanthropic, charitable or religious organization announcing an auction, public supper, lawn sale, campaign or drive, or other like event, or soliciting contributions;

B. Signs erected by fairs and expositions within the county where the activity is located;

C. Signs bearing religious messages and signs showing the time and place of services or meetings of religious and civic organizations;

D. Signs erected by nonprofit historical and cultural institutions. Each institution, which has certified its nonprofit status with the commissioner, may erect no more than 2 signs with a surface area not to exceed 50 square feet per sign; and

E. Signs bearing political messages.

Sec. 7. 23 MRSA § 1913, sub-§ 2, as repealed and replaced by PL 1979, c. 477, § 7, is repealed and the following enacted in its place:

2. Regulations. The commissioner may promulgate regulations and orders, including prohibitions, to protect highway safety and implement the intent of this chapter.

The signs referred to in this section shall be subject to regulation, including prohibition, as set forth in section 1922.

Sec. 8. 23 MRSA § 1913, sub-§ 2-A is enacted to read:

2-A. Zones. The commissioner may promulgate regulations permitting signs, including signs bearing commercial messages, in any zone or area of the State, together with regulations concerning the dimensions, construction, illumination and other characteristics of such signs if the Attorney General certifies to the commissioner that the United States Supreme Court has determined that signs in such zones or areas must be permitted.

Sec. 9. 23 MRSA § 1913, sub-§ 3, first sentence, as repealed and replaced by PL 1979, c. 477, § 7, is amended to read:

None of the signs referred to in ~~subsection 1~~ **this section** shall be erected or maintained on any traffic control signs or devices, public utility poles or fixtures or upon any trees.

Sec. 10. 23 MRSA § 1913, sub-§ 4, as repealed and replaced by PL 1979, c. 477, § 7, is amended to read:

4. Interstate system. None of the signs referred to in ~~subsection 1~~ **this system**, other than signs conforming with the provisions of subsection 1, paragraphs B and C, shall be located within the right-of-way limits of the interstate system or within 660 feet of the nearest edge of the interstate system and erected in such a fashion that the message may be read from the interstate highway.

Sec. 11. 23 MRSA § 1915, sub-§ 1, as enacted by PL 1977, c. 494, § 1, is amended to read:

1. Payment of compensation. Compensation shall be paid for the removal of any sign lawfully erected as of ~~the effective date of this chapter~~ **January 1, 1978**, and which is visible from the interstate or primary systems, except no compensation shall be paid if such sign is exempt as provided in section 1913 and no compensation shall be paid for the removal of signs subject to immediate removal pursuant to section 1924, subsection 3.

Sec. 12. 23 MRSA § 1915, sub-§ 6, as amended by PL 1979, c. 477, § 12, is further amended to read:

6. Maintenance of lawfully erected signs. Any sign lawfully erected as of ~~the effective date of this Act~~ **January 1, 1978**, in accordance with section 1924, subsections 1 and 2, may be maintained until removed by the commissioner under subsection 7 or by section 1916.

Sec. 13. 23 MRSA § 1916, sub-§ 2, first sentence, as enacted by PL 1977, c. 494, § 1, is amended to read:

Any sign lawfully erected as of ~~the effective date of this Act~~ **January 1, 1978**, may be maintained in accordance with section 1924 for 6 years after that date in order to amortize the value thereof.

Sec. 14. 23 MRSA § 1924, sub-§ 1, last sentence, as enacted by PL 1977, c. 494, § 1, is amended to read:

This subsection shall not allow the erection of any sign, pursuant to that license, after ~~the effective date of this chapter January 1, 1978~~, nor shall this subsection allow the maintenance of any sign removed pursuant to sections 1915 and 1916.

Sec. 15. 23 MRSA § 1924, sub-§ 3, as last amended by PL 1979, c. 477, § 16, is further amended to read:

3. Existing directional signs. Upon implementation of this chapter, the commissioner may remove, or require to be removed, any existing directional sign erected and maintained pursuant to section 1153, Title 32, section 2722 prior to its repeal, and any sign erected and maintained pursuant to Title 32, section 2715 prior to its repeal, which does not qualify as an on-premise sign as defined by section 1914, ~~provided any such sign shall be removed no later than 6 years after January 1, 1978~~ **no later than 6 years after January 1, 1978.**

Sec. 16. 23 MRSA § 1925, as enacted by PL 1977, c. 494, § 1, is repealed and the following enacted in its place:

§ 1925. Administration of chapter

The commissioner shall administer this chapter with the advice of the Travel Information Advisory Council. The commissioner may employ, subject to the Personnel Law, clerical and other assistants required for the administration of this chapter. The commissioner may delegate to personnel of the Department of Transportation the authority to administer this chapter. The commissioner may promulgate rules and regulations to administer the various provisions of this chapter that are consistent with the provisions thereof. The commissioner may execute contracts and other agreements to carry out the purposes of this chapter.

Emergency clause. In view of the emergency cited in the preamble, this Act shall take effect when approved.

STATEMENT OF FACT

The purpose of this bill is, as set forth in the emergency preamble, to amend the Maine Travelers Information Services Act to limit its scope over noncommercial outdoor advertising, as required by the United States Court of Appeals for the First Circuit in its decision in John Donnelly and Sons, Inc. v. Campbell, decided on December 22, 1980. This bill will enable the State to complete its off-premises commercial billboard removal program and avoid being vulnerable to having to repay over \$1,500,000 which it has thus far received from the Federal Government for sign removal.

The text of the bill is the same as that of the 1977 Act, as amended by the Legislature in 1979, with the following exceptions.

1. The definition of "official business directional signs" set forth in section

1903, subsection 7, is amended by the addition of a single sentence making it clear that information other than route and distance may be included on these signs.

2. The guidelines set forth in section 1910, which the Commissioner of Transportation is to follow in establishing the official business directional sign system, are amended to eliminate a limitation on the maximum size of the signs.

3. Section 1913 is amended to remove all restrictions on signs outside of the public right-of-way which bear a religious or political message or announce an event or fund drive of a religious, civic, charitable, philanthropic or public organization. Signs erected by fairs and expositions or nonprofit historical and cultural institutions are also allowed, without restriction, outside of the public right-of-way.

Section 1913 also allows signs of governmental or quasi-governmental bodies, signs on moving vehicles, including bumper strips, or rolling stock of companies, signs identifying bus stops and fare zone limits, hand-held signs, memorial signs or tablets, signs showing time and place of meetings or services of civic or religious groups and signs bearing political messages to be erected within the public right-of-way. Some restrictions are placed on these signs.

4. Also in section 1913, the commissioner is given the authority to permit, by regulation, signs in any zone or area of the State in which the Attorney General certifies that the United States Supreme Court has determined that the State may not prohibit commercial off-premises advertising entirely, but may only regulate such advertising. This provides for the possibility that the United States Supreme Court will make such a ruling in the case of *Metromedia, Inc. v. City of San Diego* which is now before it. The State has joined in that case as *amicus curiae*. A decision in the *Metromedia* case is expected in mid-summer, at which time the Legislature may not be in session. This bill, therefore, is intended to allow the commissioner to permit such commercial advertising as the Supreme Court may require and, thereby, preserve the constitutionality of the Maine Traveler Information Services Act.