

HOUSE BILL No. 2122

By Representative Otto

1-27

9 AN ACT concerning the highway advertising control act; amending
10 K.S.A. 2008 Supp. 68-2232, 68-2233 and 68-2234 and repealing the
11 existing sections.
12

13 *Be it enacted by the Legislature of the State of Kansas:*

14 Section 1. K.S.A. 2008 Supp. 68-2232 is hereby amended to read as
15 follows: 68-2232. As used in this act the following words and phrases shall
16 have the meanings respectively ascribed to them herein: (a) “Adjacent
17 area” “controlled area” means an area which is adjacent to the right-of-
18 way on any interstate or primary highway and is visible from the main
19 traveled way.

20 (b) “Business area” means any part of an adjacent area, except areas
21 adjacent to scenic byways, designated by the secretary of transportation,
22 which is:

23 (1) Zoned for industrial or commercial activities under the authority
24 of any law or by a local zoning authority; or

25 (2) an unzoned commercial or industrial area as herein defined.

26 (c) “Center line of the highway” means a line equidistant from the
27 edges of the median separating the main traveled ways on a divided high-
28 way, or the center line of the main traveled way on a nondivided highway.

29 (d) “Commercial or industrial activities” means, for the purpose of
30 establishing unzoned commercial or industrial areas, those activities gen-
31 erally recognized as commercial or industrial by local zoning authorities
32 in this state, but excludes the following activities:

33 (1) Outdoor advertising structures;

34 (2) agricultural, forestry, ranching, grazing, farming and related ac-
35 tivities, including, but not limited to, wayside fresh produce stands;

36 (3) transient or temporary activities;

37 (4) activities not visible from the traffic lanes of the main traveled
38 way;

39 (5) activities more than 660 feet from the nearest edge of a highway
40 right-of-way;

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

42 (7) railroad tracks and minor sidings;

43 (8) on-premise or on-property signs as provided for in subsection (c)

- 1 of K.S.A. 68-2233, and amendments thereto, if the on-premise or on-
2 property sign is the only part of the commercial or industrial activity that
3 is visible from the main traveled way;
- 4 (9) any outdoor advertising activity or any other business or com-
5 mercial activity carried on in connection with an outdoor advertising ac-
6 tivity; and
- 7 (10) illegal junkyards as provided for in K.S.A. 68-2201 through 68-
8 2215, and amendments thereto, and junkyards lawfully in existence pur-
9 suant to K.S.A. 68-2207, and amendments thereto.
- 10 (e) “Comprehensive zoning” means zoning by local zoning authorities
11 of each parcel of land under the jurisdiction of the local zoning authority
12 placed in a zoning classification pursuant to a comprehensive plan or
13 reserved for future classification.
- 14 (f) “Department” means the Kansas department of transportation.
- 15 (g) “Erect” means to construct, build, raise, assemble, place, affix,
16 attach, create, paint, draw or in any other way bring into being or estab-
17 lish, but it shall not include any of the foregoing activities when performed
18 as an incident to the change of advertising message or customary main-
19 tenance or repair of a sign structure.
- 20 (h) “Freeway” means any primary highway which is a divided arterial
21 highway with four or more lanes available for through traffic with full
22 control of access and grade separation at intersections.
- 23 (i) “Highway” means a highway as defined by K.S.A. 8-1424, and
24 amendments thereto. For the purpose of this act, a highway shall be
25 considered a highway when the project for improvement and final align-
26 ment has been approved by the appropriate authorities.
- 27 (j) “Interstate highway” means any highway at any time officially des-
28 ignated as a part of the national system of interstate and defense highways
29 by the secretary of transportation and approved by the appropriate au-
30 thority of the federal government.
- 31 (k) “Local zoning authority” means an incorporated city or a county
32 which is authorized by law to zone areas within its jurisdiction and which
33 has an active zoning authority.
- 34 (l) “Main traveled way” means the traveled way of a highway on which
35 through traffic is carried. On a divided highway, the traveled way of each
36 of the separate roadways for traffic in opposite directions is a main trav-
37 eled way, but such term does not include such facilities as frontage roads,
38 turning roadways or parking areas.
- 39 (m) “Maintain” means to keep in a state of continuing existence. A
40 sign must remain substantially the same as it was when permitted on the
41 effective date of compliance with state law. Customary maintenance of a
42 sign includes only change of message, replacing electrical wiring and
43 bulbs, painting of the face and structure, clearing of vegetation on the

- 1 parcel the sign is located, reinforcing the structure and repairing the
2 apron or catwalks or any addition or enhancements to safety equipment
3 on structures including safety cables, railings and other modifications nec-
4 essary to meet current safety standards. An increase in dimension, a
5 change in dimension, any change in location, increase in height or the
6 addition of lighting does not constitute customary maintenance. Addi-
7 tional maintenance activities, other than customary maintenance, require
8 a new sign permit.
- 9 (n) “Primary highway” means any highway, other than an interstate
10 highway, that was part of the federal-aid primary system in existence on
11 June 1, 1991, and any highway which is not on such system but which is
12 on the national highway system.
- 13 (o) “Safety rest area” means an area or site established and main-
14 tained within or adjacent to the highway right-of-way, which area is under
15 public supervision or control and for the convenience of the traveling
16 public.
- 17 (p) “Sign” or “outdoor advertising device” means any outdoor sign
18 structure, display, light, device, notice, bulletin, figure, painting, drawing,
19 message, placard, poster, billboard, vehicle or other thing which is de-
20 signed, intended or used to advertise or inform, any part of the advertising
21 or informative contents which is visible from any place on the main trav-
22 eled way or any portion of an interstate or primary highway.
- 23 (q) “Sign facing” means and includes a sign display or displays at the
24 same location and facing the same direction.
- 25 (r) “Sign display” means a single panel or part of the sign, including
26 trim and background, which contains a message or messages.
- 27 (s) “Sign structure” means and includes all components of the sign,
28 which may include poles, bracings, lateral supports, vehicles, displays and
29 other materials of every kind and nature used to support a facing or
30 facings on which advertising is placed.
- 31 (t) “Traveled way” means the portion of a roadway for the movement
32 of vehicles, exclusive of shoulders and auxiliary lanes.
- 33 (u) “Unzoned commercial or industrial area” means an area which is
34 not zoned by state or local law, regulation or ordinance, which is within
35 660 feet of the nearest edge of the right-of-way of the controlled area,
36 and on which there is located one or more permanent structures devoted
37 to a commercial or industrial activity or on which a commercial or indus-
38 trial activity is actually conducted, whether or not a permanent structure
39 is located thereon, which meets all the requirements specified in subsec-
40 tion (h) of K.S.A. 68-2234, and amendments thereto.
- 41 (v) “Visible” means capable of being seen without visual aid by a
42 person of normal visual acuity.
- 43 (w) “Zoned commercial or industrial areas” means those areas which

1 are comprehensively zoned for business, industry, commerce or trade
2 pursuant to a state or local zoning ordinance or resolution or an area which
3 is zoned for business, industry, commerce or trade pursuant to a state or
4 local zoning ordinance or regulation. Local zoning action must be taken
5 pursuant to the state's zoning enabling statute or constitutional authority
6 in accordance therewith. *Zoning or zoning change created or adopted*
7 *after June 30, 2006*, which is not part of comprehensive zoning or which
8 is created *after June 30, 2006*, primarily to permit advertising devices or
9 structures shall not be recognized as valid zoning for purposes of the
10 Kansas highway advertising control act and the rules and regulations
11 promulgated thereunder, unless there actually exists a commercial or in-
12 dustrial activity as defined under subsection (d) of K.S.A. 68-2232, and
13 amendments thereto.

14 (x) "Secretary" means the secretary of transportation.

15 (y) "Vegetation control" means a program authorized hereunder,
16 providing for the control of vegetation on state rights-of-way which shall
17 be of benefit to the state as well as providing assistance to sign owners.
18 Vegetation control is recognized as part of the maintenance of the state's
19 highway right-of-way as it relates to safety and other highway operations.
20 The secretary shall adopt policies and procedures for the creation of a
21 vegetation control program within 12 months of the effective date of this
22 act.

23 Sec. 2. K.S.A. 2008 Supp. 68-2233 is hereby amended to read as
24 follows: 68-2233. After March 31, 1972, and subject to the provisions of
25 K.S.A. 68-2237, and amendments thereto, no sign shall be erected or
26 maintained in an adjacent area, except the following: (a) Directional and
27 official signs, including, but not limited to, signs pertaining to natural
28 wonders, scenic or historical attractions, churches or rural businesses,
29 which are required or authorized by law and which shall conform to rules
30 and regulations promulgated by the secretary consistent with national
31 policy, except that no such sign or notice shall be erected until an ap-
32 proved sign application and permit is obtained as provided for in K.S.A.
33 68-2236, and amendments thereto. Directional and official signs shall be
34 required to obtain a license but such signs are exempt from payment of
35 the fees required under subsection (c) of K.S.A. 68-2236, and amend-
36 ments thereto;

37 (b) signs advertising the sale or lease of property upon which they are
38 located;

39 (c) on-premise signs advertising activities conducted on the property
40 on which they are located, including, without limiting the generality of
41 the foregoing, goods grown, produced, sold, stored, manufactured, proc-
42 essed or mined thereon; services rendered thereon; and entertainment
43 provided thereon;

- 1 (d) nonconforming signs or advertising devices lawfully in existence
2 on March 31, 1972, or deemed to be nonconforming, provided that no
3 such sign shall be maintained without a license as provided for in K.S.A.
4 68-2236, and amendments thereto;
- 5 (e) conforming signs or advertising devices erected in business areas
6 and which comply with the provisions of K.S.A. 68-2234, and amend-
7 ments thereto. No such sign or advertising device shall be erected until
8 a permit is obtained as provided in K.S.A. 68-2236, and amendments
9 thereto;
- 10 (f) conforming signs or advertising devices legally erected after
11 March 31, 1972, which no longer comply with spacing, size or zoning
12 requirements of K.S.A. 68-2234, and amendments thereto, because of a
13 change in the law, provided that no such sign shall be maintained without
14 a license as required by K.S.A. 68-2236, and amendments thereto. Such
15 signs *or any authorized under zoning or zoning land use change created*
16 *or adopted before June 30, 2006*, shall be considered legal conforming
17 signs *or zoning* with grandfather status;
- 18 (g) in addition to the limitations contained in this section, in order to
19 further the purposes to promote the reasonable, orderly and effective
20 display of outdoor advertising devices along highways adjacent to scenic
21 and historical areas, while protecting the public investment in these high-
22 ways and promoting safety and recreational value of public travel and to
23 preserve natural beauty, no advertising sign, except as permitted under
24 subsections (a), (b) or (c) shall be erected adjacent to any highway which
25 is either:
- 26 (1) A scenic highway or scenic byway designated by the secretary;
 - 27 (2) within 1,000 feet of the boundary line of a Kansas state park, a
28 national park, a state or national wildlife refuge;
 - 29 (3) within 500 feet of any of the following: Public park, garden, rec-
30 reation area, forest preserve, church, school, any public museum or his-
31 torical monument, any safety rest or recreation area which is publicly
32 owned, controlled and maintained pursuant to 23 U.S.C. 319 or any sani-
33 tary or other facility for the accommodation of the motorist which is
34 publicly owned, controlled and maintained pursuant to 23 U.S.C. 319; or
 - 35 (4) within 500 feet of any strip of land, an interest in which has been
36 acquired by the state of Kansas for the restoration, preservation or en-
37 hancement of scenic beauty and which is publicly controlled and main-
38 tained pursuant to 23 U.S.C. 319.
- 39 Sec. 3. K.S.A. 2008 Supp. 68-2234 is hereby amended to read as
40 follows: 68-2234. After March 31, 1972, and subject to the provisions of
41 K.S.A. 68-2233, and amendments thereto, and to subsection (f), signs
42 which are to be erected in a business area shall comply with the following
43 standards: (a) *General*. Signs shall not be erected or maintained which:

- 1 (1) Imitate or resemble any official traffic sign, signal or device; or
2 (2) are erected or maintained upon trees or painted or drawn upon
3 rocks or other natural features.
- 4 (b) *Configuration and size.* (1) Signs shall not be erected with sign
5 faces which exceed 30 feet in height, 60 feet in length or 900 square feet
6 in area, per facing, including border, trim and embellishments, but not
7 including base or apron, supports, and other structural members;
8 (2) the maximum size limitations shall apply to each sign facing;
9 (3) two sign displays not exceeding 450 square feet each may be
10 erected in a facing, side by side or “double decked,” and double-faced,
11 back-to-back or V-type signs shall be permitted and shall be treated as
12 one structure with a maximum area of 900 square feet permitted for each
13 side or facing. To be classified as “back-to-back” there must not be more
14 than 15 feet between structures or faces, to allow for crossbracing;
15 (4) the area of any sign structure shall be measured by the smallest
16 square, rectangle, circle or combination thereof which will encompass the
17 area of the sign display or displays;
18 (5) the height of any portion of the sign structure, excluding cutouts
19 or extensions, as measured vertically from the adjacent edge of the road
20 grade of the main traveled way shall not exceed 50 feet;
21 (6) cutouts or extensions shall be permitted on legal conforming signs
22 at a size not to exceed 30% of the size of the main display area, with a
23 maximum extension of five feet along the top edge, two feet along the
24 sides and 1 ½ feet along the bottom of the main display area. Cutouts or
25 extensions shall not be permitted where the configuration and size
26 requirements of this subsection will be exceeded.
- 27 (c) *Spacing.* (1) Signs shall conform to all applicable building codes
28 and ordinances of the city, county or state, whichever is applicable by
29 reason of the locations of the signs;
30 (2) signs shall not be erected or maintained in such a manner as to
31 obscure or otherwise physically interfere with an official traffic sign, signal
32 or device or to obstruct or physically interfere with a driver’s view of
33 approaching, merging or intersecting traffic;
34 (3) except for official and on-premise signs, as defined in 23 U.S.C.
35 131(c) and as provided for in K.S.A. 68-2233, and amendments thereto,
36 any signs or sign structures visible from any primary highway without fully
37 controlled access:
38 (A) Shall not be spaced less than 300 feet apart outside of incorpo-
39 rated cities;
40 (B) shall not be spaced less than 200 feet apart within incorporated
41 cities;
42 (4) any signs or sign structures visible from any interstate highway or
43 freeway with fully controlled access:

- 1 (A) Shall not be spaced less than 500 feet apart, except for official
2 and on-premise signs, as defined in 23 U.S.C. 131(c), and as provided in
3 K.S.A. 68-2233, and amendments thereto;
- 4 (B) outside the corporate limits of cities, shall not be located within
5 500 feet of an interchange, feeder, intersection at grade, safety rest area
6 or information center regardless of whether the main traveled way is
7 within or outside the city limits. The 500 feet spacing shall be measured
8 from the point at which the pavement widens and the direction of meas-
9 urement shall be along the edge of pavement away from the interchange,
10 collector, intersection at grade, safety rest area or information center. In
11 those interchanges where a quadrant does not have a ramp, the 500 feet
12 for the quadrant at the edge of the intersection is located at the edge of
13 the intersection;
- 14 (5) the minimum distance between two signs prescribed by para-
15 graphs (3) and (4) of this subsection shall be measured along the nearest
16 edge of the pavement between points directly opposite the signs along
17 the same side of the highway. Such minimum distance shall not apply to
18 signs described by subsection (a), (b) or (c) of K.S.A. 68-2233, and amend-
19 ments thereto, nor shall such signs be counted or be used in measuring
20 distances for the purpose of determining compliance with the spacing
21 requirements of this subsection;
- 22 (6) the minimum distances between two signs prescribed by para-
23 graphs (3) and (4) of this subsection shall not apply where such signs are
24 separated by a building, structure, roadway or other obstruction which
25 prevents a view of both signs at the same time by traffic proceedings on
26 any one highway; and
- 27 (7) nothing in this subsection shall be construed as preventing the
28 erection of double-faced, back-to-back or V-type signs with a maximum
29 of two sign displays per sign facing, as permitted by subsection (b). Noth-
30 ing in this subsection shall prevent the owner of a single face sign to
31 change the position of the sign face to a different or opposite direction
32 of traffic flow so long as an additional face or additional square feet are
33 not added to the sign structure. No such change may be affected until
34 approval is granted by the department.
- 35 (d) *Lighting.* (1) Signs shall not be erected which contain, include or
36 are illuminated by any flashing, intermittent, revolving or moving light,
37 except those giving public service information such as, but not limited to,
38 time, date, temperature, weather or news; steadily burning lights in con-
39 figuration of letters or pictures are not prohibited;
- 40 (2) signs shall not be erected or maintained which are not effectively
41 shielded so as to prevent beams or rays of light from being directed at
42 any portion of the traveled way of any interstate or primary highway and
43 are of such intensity or brilliance as to cause glare or to impair the vision

1 of the driver of any motor vehicle or to otherwise interfere with any
2 driver's operation of a motor vehicle; and

3 (3) signs shall not be erected or maintained which are so illuminated
4 that they obscure any official traffic sign, device or signal, or imitate or
5 may be confused with any official traffic sign, device or signal.

6 (e) *Automatic changeable facing signs.* (1) Automatic changeable fac-
7 ing signs shall be permitted within adjacent or controlled areas under the
8 following conditions:

9 (A) The sign does not contain or display flashing, intermittent or mov-
10 ing lights, including animated or scrolling advertising;

11 (B) the changeable facing remains in a fixed position for at least eight
12 seconds;

13 (C) if a message is changed electronically, it must be accomplished
14 within an interval of two seconds or less;

15 (D) the sign is not placed within 1,000 feet of another automatic
16 changeable facing sign on the same side of the highway, with the distance
17 being measured along the nearest edge of the pavement and between
18 points directly opposite the signs along each side of the highway;

19 (E) if the sign is a legal conforming structure it may be modified to
20 an automatic changeable facing sign upon compliance with these stan-
21 dards and approval by the department. A nonconforming structure shall
22 not be modified to create an automatic changeable facing sign;

23 (F) if the sign contains a default design that will freeze the sign in
24 one position if a malfunction occurs; and

25 (G) if the sign application meets all other permitting requirements.

26 (2) The outdoor advertising license shall be revoked for failure to
27 comply with any provision in this subsection.

28 (f) *Application to local zoning authorities.* Nothing in article 22 of
29 chapter 68 of Kansas Statutes Annotated, and amendments thereto, shall
30 be construed as prohibiting a local zoning authority from controlling the
31 erection, maintenance, size, spacing and lighting of signs in all areas
32 within its jurisdiction by adopting standards which may be consistent with,
33 or more or less restrictive than the highway advertising control act, and
34 amendments thereto, except that along interstate highways, the size and
35 spacing requirements of subsections (b) and (c) of K.S.A. 68-2234, and
36 amendments thereto, shall be met. The standards adopted by a local zon-
37 ing authority shall include the regulation of size, of lighting and of spacing
38 of all such signs and shall restrict the erection of new signs, other than
39 signs described by subsections (a), (b) and (c) of K.S.A. 68-2233, and
40 amendments thereto, to zoned commercial or industrial areas.

41 (g) *Prohibition against zoning to permit outdoor advertising.* Zoning
42 action *after June 30, 2006*, which is not part of comprehensive zoning and
43 is created primarily to permit outdoor advertising structures, is not rec-

1 ognized as zoning for purposes of this act.

2 (h) *Unzoned commercial or industrial area qualifications for signs.*

3 (1) To qualify an area as unzoned commercial or industrial for the
4 purpose of outdoor advertising control, one commercial or industrial ac-
5 tivity shall meet all of the following criteria prior to submitting an outdoor
6 advertising permit application:

7 (A) The activity shall maintain all necessary business licenses as may
8 be required by applicable state, county or local law or ordinances;

9 (B) the property used for the activity shall be listed for ad valorem
10 taxes with the county and municipal taxing authorities as required by law;

11 (C) the activity shall be served by utilities, power, telephone, water
12 and sewer or septic and well;

13 (D) the activity shall have direct or indirect vehicular access;

14 (E) the activity must be visible from, and located within 660 feet of
15 the nearest edge of the right-of-way of the controlled route;

16 (F) the commercial or industrial activity must be in operation for a
17 period of 12 months prior to the date of submitting an application for an
18 outdoor advertising permit and license;

19 (G) the activity shall be in operation for at least nine months per year;
20 and

21 (H) the owner or employee shall be present at the site for 20 hours
22 per week;

23 (2) the unzoned area shall include areas on both sides of any two-
24 lane highway, but shall be limited to land on the same side as the com-
25 mercial or industrial activity on any highway with four or more traffic
26 lanes. All measurements shall begin from the outer edges of regularly
27 used buildings, parking lots, storage or processing areas of the commercial
28 or industrial activity, not from the property line of the activity and shall
29 be along the nearest edge of the main traveled way of the controlled route.
30 The proposed sign location must be within 600 feet of the commercial or
31 industrial activity.

32 Sec. 4. K.S.A. 2008 Supp. 68-2232, 68-2233 and 68-2234 are hereby
33 repealed.

34 Sec. 5. This act shall take effect and be in force from and after its
35 publication in the statute book.