

TRANSPORTATION CODE

TITLE 6. ROADWAYS

SUBTITLE H. HIGHWAY BEAUTIFICATION

CHAPTER 392. HIGHWAY BEAUTIFICATION ON STATE HIGHWAY RIGHT-OF-WAY

SUBCHAPTER A. LANDSCAPE AND MAINTENANCE

Sec. 392.001. PLANTING TREES ON RIGHTS-OF-WAY. (a) The department shall plant and care for a substantial number of pecan trees on United States and state highway rights-of-way throughout the state.

(b) In an area where the climate is unsuitable for pecan trees or where pecan trees present a safety hazard, the department shall plant other indigenous or adaptable trees that do not present a safety hazard.

(c) The cost of acquiring, planting, and caring for the pecan trees shall be paid from the state highway fund.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

Sec. 392.002. XERISCAPE REQUIREMENTS FOR ROADSIDE PARKS.

(a) The department shall use and require the use of xeriscape practices in:

- (1) the construction of roadside parks; and
- (2) the maintenance of roadside parks.

(b) In implementing this section, the department shall follow the guidelines adopted under Section [2166.404](#), Government Code.

(c) In this section:

(1) "Roadside park" includes a rest area, picnic area, welcome station, or other facility that is:

(A) provided for the convenience of the traveling public;

(B) within or adjacent to a highway right-of-way; and

(C) under the jurisdiction of the department.

(2) "Xeriscape" has the meaning assigned by Section [2166.404](#), Government Code.

(d) Expired.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 165, Sec. 17.19(23), eff. Sept. 1, 1997.

Sec. 392.003. DONATIONS FOR LANDSCAPE INSTALLATION OR MAINTENANCE. The commission by rule shall establish a program under which the department may accept from any source, including an individual or a private business or organization, donations of landscape materials for state highways, as authorized by Section 201.206. The program may provide for the department to enter into an agreement with an individual or private business or organization for the individual or entity to provide, at no cost to the department, services for the installation or maintenance of landscaping on state highways.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1083 (H.B. 3422), Sec. 1, eff. June 14, 2013.

Sec. 392.004. REGIONALLY APPROPRIATE LANDSCAPING. The department shall establish guidelines for a beautification project on a state highway right-of-way that require the use of only regionally appropriate plants.

Added by Acts 2015, 84th Leg., R.S., Ch. 939 (H.B. 3302), Sec. 1, eff. September 1, 2015.

#### SUBCHAPTER B. SIGNS ON STATE HIGHWAY RIGHT-OF-WAY

Sec. 392.031. DEFINITIONS. In this subchapter:

(1) "Sign" means an outdoor sign, display, light, device, figure, painting, drawing, message, plaque, poster, or other thing designed, intended, or used to advertise or inform.

(2) "State highway right-of-way" means the right-of-way of a highway designated as part of the state highway system.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

Sec. 392.032. OFFENSE. (a) A person may not place or

maintain a sign on a state highway right-of-way unless authorized by state law.

(b) A person commits an offense if the person violates this section.

(c) An offense under this section is a Class C misdemeanor. Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

Sec. 392.0325. EXCEPTION. (a) A person may submit a request to the department for an exception to this subchapter for a sign that is attached to a building located on property other than a state highway right-of-way and that refers to a commercial activity or business located in the building if the sign:

- (1) consists solely of the name of the establishment;
- (2) identifies the establishment's principal product or services; or
- (3) advertises the sale or lease of the property on which the sign is located.

(b) The department shall approve a request submitted under Subsection (a) if the department:

- (1) determines that the sign will not constitute a safety hazard;
- (2) determines that the sign will not interfere with the construction, reconstruction, operation, or maintenance of the highway facility; and

(3) obtains the approval of the Federal Highway Administration if approval is required under federal law.

(c) This subchapter does not apply to a temporary directional sign or kiosk erected by a political subdivision as part of a program approved by the department and administered by the political subdivision on a highway within the boundaries of the political subdivision.

(d) This subchapter does not apply to a sign placed in the right-of-way by a public utility or its contractor for purposes of the utility.

Added by Acts 1999, 76th Leg., ch. 442, Sec. 3, eff. June 18, 1999.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 612 (H.B. 413), Sec. 1, eff.

September 1, 2007.

Sec. 392.033. REMOVAL AND DISPOSAL OF ILLEGAL SIGN. (a) Except as provided by Section 392.034, the department, without prior notice to the owner of the sign, may remove a sign that is placed or maintained in violation of this subchapter.

(b) If the owner's identity and mailing address are displayed on the sign or are otherwise reasonably ascertainable, the department shall notify the owner in writing that the sign:

(1) has been removed; and

(2) may be disposed of unless the owner claims the sign on or before the 10th day after the removal date.

(c) If the owner of the sign does not claim the sign on or before the 10th day after the removal date, the department may dispose of the sign.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

Sec. 392.034. ENCROACHMENT. (a) The department shall give written notice of encroachment to the owner of a sign that:

(1) is on property other than a state highway right-of-way;

(2) is maintained under a written permit or agreement; and

(3) encroaches on the state highway right-of-way.

(b) If the owner of the sign does not correct the encroachment before the 31st day after the date of receipt of the notice, the department may remove the sign under Section 392.033.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

Sec. 392.035. REMOVAL COSTS. (a) The owner of a sign removed by the department under Section 392.033 is liable to the department for removal costs.

(b) Removal costs received by the department under this section shall be deposited to the credit of the state highway fund.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

Sec. 392.0355. CIVIL PENALTY. (a) A person who places or

commissions the placement of a sign on a state highway right-of-way that is not otherwise authorized by law may be liable for a civil penalty. The attorney general or a district or county attorney of the county in which the placement of a sign on a state highway right-of-way is alleged to have occurred may sue to collect the penalty.

(b) The amount of the civil penalty is not less than \$500 or more than \$1,000 for each violation, depending on the seriousness of the violation and whether the person has previously violated this chapter. A separate penalty may be collected for each day a continuing violation occurs.

(c) A penalty collected under this section shall be deposited to the credit of the state highway fund if collected by the attorney general and to the credit of the county road and bridge fund of the county in which the violation occurred if collected by a district or county attorney.

Added by Acts 2007, 80th Leg., R.S., Ch. 612 (H.B. 413), Sec. 2, eff. September 1, 2007.

Sec. 392.036. DEFENSE. It is a defense to prosecution or suit for a violation under this chapter if at the time of the alleged violation the defendant is a candidate for elective public office and the sign is placed:

- (1) by a person other than the defendant; and
- (2) in connection with a campaign for an elective public office by the defendant.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 612 (H.B. 413), Sec. 3, eff. September 1, 2007.

Sec. 392.037. RULES. The commission may adopt rules to enforce this subchapter.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

Sec. 392.038. EFFECT OF OTHER LAW OR ORDINANCE. If this subchapter conflicts with another law or a local ordinance, the

more restrictive provision applies.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.