WEST VIRGINIA CODE CHAPTER 17 ARTICLE 22

WV Legislature

§17-22-1. Legislative finding.

The Legislature hereby finds and declares: (a) That outdoor advertising is a legitimate, commercial use of private property adjacent to roads and highways; (b) that outdoor advertising is an integral part of the business and marketing function and an established segment of the national economy which serves to promote and protect private investments in commerce and industry; and (c) that the erection and maintenance of outdoor advertising signs, displays and devices in areas adjacent to federal-aid interstate and primary highways should be regulated in order to protect the public investment in such highways, to promote the recreational value of public travel, to preserve natural beauty and to promote the reasonable, orderly and effective display of such signs, displays and devices.

The Legislature further finds and declares that fiscal actualities reflect that the people of the State of West Virginia would suffer economically if the state failed to participate fully in the allocation and apportionment of federal-aid highway funds, more specifically that a reduction in federal-aid highway funds would necessitate increased local taxation to support and maintain the highway program and system, and that it is the intention of this bill, among other things, to provide a statutory basis for regulation of outdoor advertising consistent with the public policy relating to areas adjacent to federal-aid interstate and primary highways declared by the Congress of the United States, in Title 23, United States Code, and that the economic benefit resulting from full participation in the federal highway program would constitute a benefit to the community as a whole.

WV Legislature

§17-22-2. Definitions.

As used in this article:

The word "sign" shall mean any structure erected for advertising purposes upon which any poster, bill, printing, writing, drawing, painting, or advertising material of any kind or character whatsoever, may be placed, posted, painted, tacked, nailed, glued or otherwise fastened, affixed or displayed.

The word "display" shall mean any poster, bill, printing, writing, drawing, painting, or advertising material of any kind or character whatsoever, designed and intended to draw the attention of the public to any goods, merchandise, property, real or personal, business service, entertainment or amusement, produced, bought, sold, conducted, furnished, or dealt in by any person, which is placed, posted, painted, tacked, nailed, glued or otherwise affixed or fastened to any advertising sign or structure, or otherwise displayed outdoors.

The word "device" shall mean any card, cloth, paper, metal or wooden advertising emblem or sign of any kind or character, which is posted, stuck, glued, tacked, nailed, painted or otherwise fastened or affixed to or upon any fence, post, tree or thing other than an advertising sign or structure.

"Person" shall include an individual, partnership, association, or corporation.

WV Legislature

§17-22-3. Certain outdoor advertising prohibited; when removal required.

Except as provided in this article, no outdoor advertising sign, display, or device shall be erected or maintained within six hundred and sixty feet of the nearest edge of and visible as to informative content from the right-of-way of any road within the state road system designated and classified for purposes of allocation of federal highway funds as part of the federal-aid interstate or primary systems: Provided, however, That no outdoor advertising sign, display or device lawfully in existence adjacent to the federal-aid interstate or primary systems on September 1, 1965, which does not conform to the requirements of this article, shall be required to be removed until July 1, 1970: Provided further, That no other sign, display, or device lawfully erected which does not conform to the requirements of this article shall be required to be removed until the end of the fifth year after such sign, display or devices becomes nonconforming.

WV Legislature

§17-22-4. General restrictions as to outdoor advertising.

The following restrictions shall apply to all advertising signs, displays and devices erected and maintained adjacent to any roads within the state road system, including federal-aid interstate and primary roads.

(1) No advertising sign shall be erected or maintained which involves rapid motion or rotation of the structure or any part thereof: Provided, That an advertising sign that does involve motion or rotation which is not rapid to effect changeable messages shall be permitted in accordance with legislative rules to be proposed by the Division of Highways of the Department of Transportation in accordance with the provisions of article three, chapter twenty-nine-a of this code;

(2) No advertising display or device shall use the word "stop" or "danger" or present or imply the need or requirement of stopping or the existence of danger;

(3) No advertising sign, display or device shall be a copy or imitate a traffic sign or other official sign;

(4) No advertising display or device shall attempt or purport to direct traffic;

(5) No advertising sign shall contain lighting which is not shielded and any lighting shall be of such low intensity as not to cause glare or impair the vision of the operator of any motor vehicle;

(6) No advertising display or device shall be illuminated by any rapid flashing, intermittent light or lights;

(7) No advertising display or device shall be painted, affixed or attached to any natural feature;

(8) No advertising sign, display or device shall hinder the clear, unobstructed view of approaching or merging traffic or obscure from view any traffic sign or other official sign;

(9) No advertising sign, display or device shall be so located as to obscure the view of any connecting road or intersection;

(10) No advertising sign, display or device shall be erected, outside of any municipality, within five hundred feet of any church, school, cemetery, public park, public reservation, public playground or state or national forest except markers for underground utility facilities;

(11) No advertising sign, the permit for which has been applied for subsequent to December 31, 2003, that is composed of stacked sign faces, one on top of the other, on the same structure, facing the same direction, each having more than three hundred square feet is permitted;

WV Legislature

(12) No advertising device which is composed of separate sign faces in a side by side formation, on the same structure, facing the same direction, each having an area of more than three hundred square feet is permitted;

(13) No advertising device, the permit for which has been applied for subsequent to December 31, 2003, which contains a sign facing a single direction may have an area greater than six hundred seventy-two square feet: Provided, That cutouts and extensions which expand the area may be allowed to the extent the area is expanded by no more than thirty percent of its original permitted configuration;

(14) No more than one sign structure is permitted at a location.

WV Legislature

§17-22-5. Payment of compensation upon removal of advertising signs, displays or devices.

Just and full compensation shall be paid upon the removal of any outdoor advertising signs, displays or devices, required by the provisions of section three of this article, which are (i) lawfully in existence at and upon the effective date hereof or (ii) lawfully in existence on or after the effective date hereof adjacent to any highway which shall be designated or redesignated as a part of the federal-aid interstate or primary systems or (iii) lawfully erected after the effective date hereof. Such compensation shall be paid for the following: (a) The taking from the owner of such sign, display or device of all right, title and interest in and to the sign, display or device and of the leasehold or other interest if any, related thereto; and (b) the taking from the owner of the real property on which the sign, display or device is located, of the right to lease, erect and maintain such signs, displays and devices thereon.

WV Legislature

§17-22-6. Purchase or condemnation; powers of Commissioner of Highways; payment to claimants.

The Commissioner of Highways is hereby authorized and empowered to make acquisition of all of the property rights and interest specified in section five of this article by purchase at private sale or, in the event he is unable to do so, by proceeding in eminent domain. Upon any such taking or acquisition pursuant to the provisions of this article, just and full compensation for the sign and leasehold interest shall be paid directly to the owner thereof, and just and full compensation for the loss of the right to erect and maintain signs shall be paid directly to the owner of the affected real property. In any condemnation proceeding involving such taking or acquisition by the state, the commissioners or jury shall ascertain the compensation to which the owner of the sign and leasehold interest is entitled, separate and apart from the compensation to which the owner of the real property is entitled, as provided and authorized in section eighteen, article two, chapter fifty-four of this code.

WV Legislature

§17-22-7. Exceptions to prohibited signs; standards for excepted signs.

The provisions of section three of this article shall not apply to the following: (a) Directional and other official signs and notices required or authorized by law, including, but not limited to, signs and notices pertaining to natural wonders, farm wineries, mini-distilleries, scenic and historical attractions, which such signs and notices shall conform to standards respecting lighting, size, number, spacing and such other appropriate requirements as may be designated and specified by the Secretary of Transportation of the United States: Provided, That the Commissioner of Highways shall not establish any standards respecting lighting, size, number, spacing and other appropriate requirements which are stricter than such standards designated and specified by the Secretary of Transportation of the United States; (b) signs, displays and devices advertising the sale or lease of property upon which they are located; and (c) signs, displays and devices advertising activities conducted on the property on which they are located, including markers of underground utility facilities.

WV Legislature

§17-22-8. Exempted areas; agreements between Commissioner of Highways and United States Secretary of Transportation.

In order to promote the reasonable, orderly and effective display of outdoor advertising while remaining consistent with the purposes of this article, signs, displays and devices, whose size, lighting and spacing shall be determined by agreement between the Commissioner of Highways of West Virginia and the Secretary of Transportation of the United States, may be erected and maintained within six hundred sixty feet of the nearest edge of the right-of-way of federal-aid interstate or primary roads, within areas zoned industrial or commercial, or in unzoned commercial or industrial areas, as may be determined by agreement between the Commissioner of Highways of West Virginia and the Secretary of Transportation of the United States: Provided, That any such agreement shall contain a definition of unzoned commercial or industrial areas which reflects existing conditions in this state, such as, without limiting the foregoing, existing land use, availability of land for urban development, topography and accepted zoning practices now prevailing in this state. Any agreement between the Commissioner of Highways and the Secretary of Transportation relating to size, lighting and spacing shall reflect customary usage in this state. Any agreement between the Commissioner of Highways and the Secretary of Transportation defining unzoned commercial or industrial areas, or relating to size, lighting and spacing, shall be no more restrictive than necessary to secure to this state any federal aid contingent upon compliance with federal laws, or federal rules and regulations relating to outdoor advertising, and shall be subject to amendment or rejection by the Legislature of West Virginia: Provided, however, That the terms of any such agreement shall be no more restrictive than those included in any other similar agreement made by the Secretary of Transportation and other states: Provided further, That such agreement shall provide for its modification and amendment in the event and to the extent that the Secretary of Transportation and any other state shall thereafter agree to any provisions which shall be less restrictive. The provisions of this section shall not apply to signs, displays and devices referred to in clauses (b) and (c), section seven of this article.

www.legislature

§17-22-9. Signs, displays and devices providing information for the traveling public; location.

Signs, displays and devices giving specific information in the interest of the traveling public may be erected and maintained, pursuant to agreement between the Commissioner of Highways and the Secretary of Transportation, within the rights-of-way of highways within the federal-aid interstate system, at appropriate distances from interchanges on such interstate system.

WV Legislature

§17-22-10. Special fund.

There is hereby created a special fund, to the credit of which shall be paid such funds as, from time to time, may be appropriated by the Legislature and all federal funds allocated and distributed to the State of West Virginia in implementation of the provisions of Title 23, United States Code, relating to outdoor advertising, to be administered by the Commissioner of Highways in the enforcement and carrying out of the provisions of this article.

WV Legislature

§17-22-11. Enforcement of provisions by commissioner; rules and regulations.

It shall be the function and duty of the Commissioner of Highways to administer and enforce the provisions of this article, and in the performance of his or her duties hereunder, he or she may assign to division engineers, and other employees in his or her department, such duties as he or she may deem proper. The commissioner is hereby authorized and empowered to promulgate rules and regulations implementing the provisions of this article, including rules and regulations permitting the State of West Virginia to comply with the provisions of Title 23, United States Code, relating to the payment of bonuses for the regulation of outdoor advertising adjacent to the interstate system and the terms and provisions of any agreement heretofore entered into pursuant to law by and between the Commissioner of Highways of West Virginia and the Secretary of Commerce of the United States relating to the payment of such bonuses, any provisions of this article to the contrary notwithstanding.

WV Legislature

§17-22-12. Territory to which article applies; entries for examinations and surveys.

The territory under the jurisdiction of the commissioner for the purposes of this article shall include all of the state. The commissioner and all employees under his direction, in the performance of their functions and duties under the provisions of this article, may enter into and upon any land upon which advertising signs are standing or upon which displays or devices are exhibited and make such examinations and surveys as may be relevant.

WV Legislature

§17-22-13. Licenses required; application; expiration; exceptions; revocations; judicial review.

No person shall engage or continue in the business of outdoor advertising in this state without first obtaining a license for outdoor advertising from the commissioner; and no person shall construct, erect, operate, use, maintain, lease or sell any outdoor advertising sign, display or device in this state without first obtaining a license from the commissioner. The commissioner shall charge an annual license fee in the amount of $125, payable in advance, for licensees obtaining up to twenty permits. Licensees, including subsidiaries and affiliates, obtaining twenty-one or more permits shall pay an annual fee of $1,000, payable in advance. Applications for licenses, or renewal of licenses, shall be made on forms furnished by the commissioner and shall contain any pertinent information required by the commissioner and shall be accompanied by the annual fee. Licenses granted under this section expire on June 30 of each year and shall not be prorated. Applications for the renewal of licenses shall be made not less than thirty days prior to the date of expiration. Nothing in this section shall be construed to require any person to obtain a license who constructs, erects, operates, uses or maintains an on-premise sign, display or device solely on his or her own property at the location of the advertised business and within limitations established in rules authorized by section eleven of this article and promulgated in accordance with state law. The Commissioner of Highways, in his or her discretion, may propose for promulgation an emergency rule as provided in article three, chapter twenty-nine-a of this code that clarifies, explains or implements limitations or restrictions on the construction, erection, operation, use and maintenance of outdoor advertising signs, displays and devices. With the prior written approval of the Commissioner of Highways, a county commission may enact and enforce outdoor advertising ordinances which place limitations or restrictions on outdoor advertising signs, displays or devices which are in addition to or more restrictive than the limitations or restrictions provided by the Commissioner of Highways in the emergency rule on this subject.

The commissioner may, after thirty days' notice in writing to the licensee, make and enter an order revoking any license granted by him or her upon repayment of a proportionate part of the license fee, in any case where he or she finds that any material information required to be given in the application for the license is knowingly false or misleading or that the licensee has violated any of the provisions of this article, unless the licensee, before the expiration of said thirty days, corrects the false or misleading information and complies with the provisions of this article. The order shall be accompanied by findings of fact and conclusions of law upon which the order was made and entered. Any person adversely affected by an order made and entered by the commissioner is entitled to judicial review of the order. The judicial review shall be in the circuit court for the county in which the owner of the sign has his or her principal place of business in this state, or in the circuit court of Kanawha County if all parties agree. The judgment of the circuit court is final unless reversed, vacated or modified on appeal to the Supreme Court of Appeals of West Virginia. Legal counsel and services for the commissioner in appeal proceedings in any circuit court and the Supreme Court of Appeals shall be provided by the Attorney General or his or her

assistants, and in appeal proceedings in any circuit court by the prosecuting attorney of the county as well, all without additional compensation. The commissioner may employ special counsel to represent the commissioner in a particular proceeding.

WV Legislature

§17-22-14. Bond of out-of-state licensee.

No such license as is provided for in section thirteen of this article shall be granted to any person not residing in this state or to any person having his principal place of business outside the state, or which is incorporated outside the state, until such person shall have furnished and filed with the commissioner a bond payable to the state, with surety approved by the commissioner and in form approved by the Attorney General, in the sum of 2,500, conditioned that such licensee shall fulfill all the requirements of law and observe and obey all requirements of this article. Such bond shall remain in full force and effect so long as any obligations of such license to the state shall remain unsatisfied. All sums received from the forfeiture of any bond or bonds required by this section shall be deposited in the special fund created in section ten of this article and such sums shall be administered as provided by said section ten.

WV Legislature

§17-22-15. Permit required for each sign, etc.; applications; refusal of permits; expiration and renewal; change of advertising copy; revocation; fee; judicial review.

(a) Except as in this article otherwise provided, no person shall construct, erect, operate, use, maintain or cause or permit to be constructed, erected, operated, used or maintained any advertising sign, display or device without first obtaining a permit for the advertising sign, display or device from the commissioner and paying the annual fee for the advertising sign, display or device as provided in this section. The commissioner shall not issue a permit to any person who has not obtained the license provided for in section thirteen of this article.

(b) A separate application for a permit shall be made for each separate advertising sign, display or device, on a form furnished by the commissioner, the application shall be signed by the applicant or his or her representative duly authorized in writing to act for him or her and shall describe and set forth the size, shape and the nature of the proposed advertising sign, display or device and its actual or proposed location with sufficient accuracy to enable the commissioner to locate and identify it. Every application for a changeable message sign shall be accompanied by a fee of $500, which shall be retained by the commissioner if the permit is issued. Every application for all other signs shall be accompanied by a fee of $20 for each advertising sign, display or device, which shall be retained by the commissioner if the permit is issued. In addition, a nonrefundable inspection fee of $75 shall be charged for each proposed location along interstate and federal-aid primary highways. A nonrefundable inspection fee of $25 shall be charged for each proposed location along all other public roads. An annual permit renewal fee, not to exceed $60 per permit, shall be charged for renewal of each changeable message sign. Permit renewal fees for all other signs shall be established by legislative rule not to exceed $25 per permit annually. Each portion of an advertising sign upon which a display is posted or exhibited constitutes a separate advertising sign for purposes of this section. If the permit is refused, the commissioner shall make and enter an order to that effect and shall cause a copy of the order to be served on the applicant by certified mail, return receipt requested, and shall refund one-half the fee to the applicant. The order shall be accompanied by findings of fact and conclusions of law upon which the order was made and entered. Each application shall be accompanied by an affidavit of the applicant or his or her agent that the owner or other person in control or possession of the real property upon which the advertising sign, display or device is to be constructed, erected, operated, used or maintained has consented to having the advertising sign, display or device on his or her property. Application shall be made in like manner for a permit to operate, use or maintain any existing advertising sign, display or device. Permits issued under this section expire on June 30 of each year and shall not be prorated and may be renewed upon the payment of a renewal fee as provided in this section. No application is required for a renewal of a permit.

(c) For all signs other than changeable message signs, if more than one side of an advertising sign is used for advertising, a permit application or renewal fee for each side is required. One permit application or renewal fee shall be charged for each changeable message sign. Advertisements sculptured in the round shall be treated as using three sides.

WV Legislature

(d) The holder of a permit, during the term of the permit, has the right to change the advertising copy of the structure or sign for which it was issued without payment of any additional fee.

(e) The commissioner may, after thirty days' notice in writing to the permittee, make and enter an order revoking any permit issued by him or her under this section upon repayment of a proportionate part of the fee in any case where it shall appear to the commissioner that the application for the permit contains knowingly false or misleading information or that the permittee has violated any of the provisions of this article, unless the permittee shall, before the expiration of the thirty days, correct the false or misleading information and comply with the provisions of this article. The order shall be accompanied by findings of fact and conclusions of law upon which the order was made and entered. If the construction, erection, operation, use or maintenance of any advertising sign, display or device for which a permit is issued by the commissioner and the permit fee has been paid as provided for in this section is prevented by any zoning board, commission or other public agency which also has jurisdiction over the proposed advertising sign, display or device, or its site, the fee for the advertising sign, display or device shall be returned by the commissioner and the permit revoked. But one-half the fee shall be considered to have accrued upon the erection of an advertising sign or structure or the display of advertising material followed by any inspection by the commissioner or his or her representatives.

(f) Any person adversely affected by an order made and entered by the commissioner refusing to grant or revoking a permit is entitled to judicial review of the order. The judicial review shall be: (1) In the county in which the person applying for the permit has his or her principal place of business in this state; or (2) in the circuit court for the county in which the sign for which the permit is sought is to be located; or (3) in the circuit court of Kanawha County if all parties agree. The judgment of the circuit court is final unless reversed, vacated or modified on appeal to the Supreme Court of Appeals of West Virginia. Legal counsel and services for the commissioner in appeal proceedings in any circuit court and the Supreme Court of Appeals shall be provided by the Attorney General or his or her assistants, and in appeal proceedings in any circuit court by the prosecuting attorney of the county as well, all without additional compensation. The commissioner may employ special counsel to represent the commissioner in a particular proceeding.

WVLegislature

§17-22-16. Permit identification number for signs; fastening to signs.

Every permit issued by the commissioner shall be assigned a separate identification number and each permittee shall fasten to each advertising sign or device and each advertising display not posted on an advertising sign a label or marker not larger than two inches by six inches, which shall be furnished by the commissioner, and on which shall be plainly visible the permit number, the expiration date of the permit and the name of the permittee. Permittees shall be charged $5 for each label or marker issued. The construction, erection, operation, use or maintenance of an outdoor advertising sign, display or device without having affixed to it a label or marker shall be prima facie evidence that it has been constructed or erected and is being operated, used or maintained in violation of the provisions of this article.

WV Legislature

§17-22-17. Removal of signs, etc., after expiration or revocation of permit.

All outdoor advertising signs, displays, or devices shall be removed by the permittee within thirty days after the date of the expiration or revocation of the permit for the same. Any permittee failing to remove any such advertising sign, display, or device within said thirty days shall be deemed guilty of a misdemeanor. The provisions of this section shall not apply to signs, displays or devices required to be removed pursuant to the terms and provisions of sections three, five, six and eight of this article.

WV Legislature

§17-22-18. Removal, defacing, etc., signs lawfully within highway limits.

Any person who willfully or maliciously displaces, removes, destroys or injures a mile-board, milestone, danger-sign, signal, guide-sign, guidepost, highway sign, or historical marker or any inscription thereon, lawfully within or adjacent to a highway, or who in any manner paints, prints, places, puts or affixes any advertisement upon or to any rock, stone, tree, fence, stump, pole, mile-board, milestone, danger-sign, guide-sign, guidepost, highway sign, historical marker, building or other subject lawfully within the limits of any highway, shall be guilty of a misdemeanor and, shall be punished accordingly.

WV Legislature

§17-22-19. Consent of property owner for erection.

No person shall construct, erect, operate, use or maintain any outdoor advertising sign, display, or device without the permission of the owner or other person in lawful possession or control of the property on which such sign, display, or device is located.

WV Legislature

§17-22-20. Disposition of fees.

All moneys received by the commissioner under the provisions of sections thirteen and fifteen of this article shall be paid by him into the special fund created in section ten of this article and such moneys shall be administered as provided in said section ten.

WV Legislature

§17-22-21. Prohibited signs not to be allowed by other agencies, etc.

No zoning board or commission nor any other public officer or agency shall permit any advertising sign, display, or device which is prohibited under the provisions of this article, nor shall the commissioner permit any advertising sign, display, or device which is prohibited by any other public board, officer or agency in the lawful exercise of its or their powers.

WV Legislature

§17-22-22. Penalties; signs in violation of article declared nuisance; abatement.

Any person, violating any provision of this article, whether as principal, agent or employee, for which violation no other penalty is prescribed, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine of not less than $50 nor more than $500; and such person shall be deemed guilty of a separate offense for each month during any portion of which any violation of this article is committed, continued or permitted. The erection or maintenance of any outdoor advertising sign, display, or device in violation of any provision of this article is hereby declared to be a public nuisance, and in addition to other remedies provided in this chapter, the state road commissioner or the prosecuting attorney of the county in which such sign, display, or device is located may apply to the circuit court, or other court of competent jurisdiction of the county wherein such sign, display, or device is located, for an injunction to abate such nuisance.

The provisions of this section shall not be deemed to prevent the payment of just compensation for signs, displays or devices required to be removed under sections three, five, six and eight of this article.

WV Legislature

§17-22-23. Availability of funds to compensate for required removal of signs, etc.

Notwithstanding any other provision of this article to the contrary, no outdoor advertising sign, display or device shall be removed under the provisions of sections three, five, six or eight of this article unless at the time of such removal there are sufficient funds in the special fund created by section ten of this article to pay the affected parties the just and full compensation required to be paid under the provisions of sections five and six of this article.

WV Legislature

§17-22-24. Effective date.

The provisions of this article shall take effect on January 1, 1968.

WV Legislature

§17-22-25. Separability.

The terms of this article are declared to be separable; and should any word, phrase, sentence or section be declared unconstitutional or otherwise invalid, the remainder of this article shall not thereby be affected, but shall remain in full force and effect.

WV Legislature