WEST VIRGINIA CODE CHAPTER 17 ARTICLE 23

WV Legislature

§17-23-1. Legislative finding.

The Legislature hereby finds and declares that the establishment, operation, maintenance and use of salvage yards in areas adjacent to state roads, including federal-aid interstate and primary roads, is unsightly, visually offensive, depresses the value of the public investment in such roads, detracts from the safety and recreational value of travel thereon and destroys natural beauty, and therefore should be controlled in order to protect the public investment in such highways, to promote the safety and recreational value of public travel thereupon, and to preserve natural beauty.

WV Legislature

§17-23-2. Definitions.

As used in this article:

"Abandoned salvage yard" means any unlicensed salvage yard or any salvage yard that was previously licensed but upon which the license has not been renewed for more than one year.

"Commissioner" means the Commissioner of the West Virginia Division of Highways.

"Fence" means an enclosure, barrier or screen constructed of materials or consisting of plantings, natural objects, or other appropriate means approved by the commissioner and located, placed, or maintained so as effectively to screen, at all times, salvage yards and the salvage therein contained from the view of persons passing upon the public roads of this state.

"Occupied private residence" means a private residence which is occupied for at least six months each year.

"Owner or operator" includes an individual, firm, partnership, association or corporation, or the plural thereof.

"Regional distribution and dismantling center" means a facility that removes usable vehicle parts and offers them for resale through a national supply network. The regional distribution and dismantling center (i) does not receive vehicles from individuals; (ii) removes useable parts and stores said parts in an onsite warehouse facility; (iii) removes and processes all fluids and tires from the vehicles; and, (iv) stores the remainder of the vehicle in the confines of the screened property prior to being rotated out of the inventory.

A regional distribution and dismantling center is not a salvage yard as defined in this section.

"Residential community" means an area wherein five or more occupied private residences are located within any 1,000-foot radius.

"Salvage" means old or scrap brass, copper, iron, steel, other ferrous or nonferrous materials, batteries, or rubber and any junked, dismantled or wrecked machinery, machines or motor vehicles or any parts of any junked, dismantled or wrecked machinery, machines or motor vehicles.

"Salvage yard" means any place which is maintained, operated or used for the storing, keeping, buying, selling, or processing of salvage, or for the operation and maintenance of a motor vehicle graveyard: *Provided*, That no salvage yard shall accept, store or process more than 100 waste tires unless it has all permits necessary to operate a monofill, waste tire processing facility or solid waste facility. Any salvage yard which currently has on its premises more than 100 waste tires not on a vehicle must establish a plan in conjunction

WV Legislature

with the Department of Environmental Protection for the proper disposal of the waste tires.

"Waste tire" means any continuous solid or pneumatic rubber covering designed to encircle the wheel of a vehicle but which has been discarded, abandoned, or is no longer suitable for its original, intended purpose nor suitable for recapping, or other beneficial use, as defined in §22-15A-2 of this code, because of wear, damage or defect. A tire is no longer considered to be suitable for its original intended purpose when it fails to meet the minimum requirements to pass a West Virginia motor vehicle safety inspection. Used tires located at a commercial recapping facility or tire dealer for the purpose of being reused or recapped are not waste tires.

"Waste tire monofill or monofill" means an approved solid waste facility where waste tires not mixed with any other waste are placed for the purpose of long-term storage for eventual retrieval for marketing purposes.

"Waste tire processing facility" means a solid waste facility or manufacturer that accepts waste tires generated by sources other than the owner or operator of the facility for processing by such means as cryogenics, pyrolysis, pyroprossing cutting, splitting, shredding, quartering, grinding or otherwise breaking down waste tires for the purposes of disposal, reuse, recycling or marketing.

WV Legislature

§17-23-3. License required; issuance; fee; renewal; disposition of fees.

No salvage yard or any part thereof shall be established, operated or maintained without a state license. The commissioner shall have the sole authority to issue such a state license, and he or she shall charge therefore a fee of $200 payable annually in advance. No license shall be issued to any salvage yard that contains more than one hundred waste tires which are not mounted on wheels on vehicles or machines unless the salvage yard has received a license, permit or approval from the Division of Environmental Protection for storage, use or processing of waste tires or has entered into an agreement with the Division of Environmental Protection for the proper disposal of the waste tires. All licenses issued under this section shall expire on January 1, following the date of issuance. A license may be renewed from year to year upon paying the commissioner the sum of $200 for each renewal. All renewal license fees collected under the provisions of this article shall be deposited in the special fund provided for in section ten of this article.

WV Legislature

§17-23-4. Areas where establishment prohibited; screening requirements; existing licensed yards; approval permit required; issuance; county planning commission criteria satisfied; fee.

(a) On and after the effective date of this article: (1) No license may be issued to establish a salvage yard, or any part thereof, within 1,000 feet of the nearest edge of the right-of-way of any road within the state road system designated and classified or redesignated and reclassified as expressway, trunkline or feeder, or any road within the state road system designated and classified or redesignated and reclassified for purposes of allocation of federal highway funds as part of the federal-aid interstate or primary systems: *Provided*, That this limitation may not apply to landfills established and maintained by the state or any county or municipality if such landfill is effectively screened and obscured by natural objects, plantings, fences or other appropriate means so as not to be visible from the main traveled way of the system; and (2) no license may be issued to establish a salvage yard, or any part thereof, within 500 feet of the nearest edge of the right-of-way of any state local service road, unless the view thereof from such state local service road shall be effectively screened and obscured by fences: *Provided, however*, That this limitation may not apply to landfills established and maintained by the state or any county or municipality if the landfill is effectively screened and obscured by natural objects, plantings, fences or other appropriate means so as not to be visible from the main traveled way of the system; and (3) no license may be issued allowing a salvage yard within 1,000 feet of the nearest occupied private residence, unless waived by the owner of such residence, or within 5,000 feet of the nearest occupied private residence which is part of a residential community. The provisions of this paragraph, as amended, shall apply only to salvage yards licensed after April 1, 1988.

(b) The license of any salvage yard duly issued under the former provisions of this article, which salvage yard, or any part thereof, on the effective date of this article, is: (1) Within 1,000 feet of the nearest edge of the right-of-way of any road within the state road system designated and classified or redesignated and reclassified as expressway, trunkline or feeder, or any road within the state road system designated and classified or redesignated and reclassified for purposes of allocation of federal highway funds as part of the federal-aid interstate or primary systems; or is (2) within 500 feet of the nearest edge of the right-of-way of any state local service road; or is (3) within 1,000 feet of the nearest occupied private residence or within 5,000 feet of the nearest occupied private residence which is part of a residential community, may be renewed only if the view of the said salvage yard, and all parts thereof, are effectively screened from the adjacent road by natural objects, plantings, fences or other appropriate means, or a waiver is obtained from the owner of an occupied private residence. The provisions of this paragraph, as amended, shall apply only to salvage yards licensed after April 1, 1988.

(c) Any salvage yard which, on the effective date of this article, is duly licensed under the former provisions of this article may be established or continue to be operated and maintained without screening by natural objects, plantings, fences or other appropriate means so long as any part of such salvage yard is: (1) Not located within 1,000 feet of any

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road within the state road system designated and classified, or redesignated and reclassified as expressway, trunkline or feeder, or any road within the state road system designated and classified or redesignated and reclassified for the purposes of allocation of federal highway funds as part of the federal-aid interstate or primary systems; or is (2) not located within 500 feet of the nearest edge of the right-of-way of any state local service road; or is (3) not located within 1,000 feet of the nearest residence or within 5,000 feet of the nearest occupied private residence which is part of a residential community. Notwithstanding any other provision of this section to the contrary, ownership of a salvage yard duly licensed under the former provisions of this article and continuously maintained and licensed since July 1, 1998, may be sold or otherwise transferred, and the salvage yard is eligible for relicensure and may continue to be operated under the same legal requirements that would have been applicable had the change in ownership not occurred.

(d) On or after July 1, 1984, any owner or operator establishing, operating or maintaining a salvage yard for which a license is required under the provisions of this article, is hereby required to first obtain an approval permit from the county planning commission, or if the county does not have a county planning commission, from an appropriate office or agency designated by the county commission, in which the salvage yard is located. The county planning commission, or designated agency or office, shall promulgate such reasonable rules including, but not limited to, determining the effect of the proposed salvage yard on residential, business or commercial property investment and values, establishing a quota for the number of salvage yards in the county, and the social, economic and environmental impact on community growth and development in utilities, health, education, recreation, safety, welfare and convenience, if any, before issuing such approval permit. These rules shall conform to guidelines established in rules promulgated by the commissioner. The fee for the approval permit shall be $25, payable upon the filing of the application on forms to be designated and approved by the county planning commission or designated office or agency.

(e) Upon the granting of an approval permit by the county planning commission, the owner or operator shall then apply to the commissioner for a license to operate. The commissioner may issue a license to the applicant, but only after an approval permit has issued in the first instance and the location of the salvage yard is in compliance with the location requirements of §17-23-4 of this code. The approval permit requirement of this section does not apply to any owner or operator who has established, or is operating or maintaining, a salvage yard prior to July 1, 1984.

(f) A regional distribution and dismantling center may qualify for a specialized regional distribution and dismantling license from the Commissioner of the Division of Highways under this article provided that the regional distribution and dismantling center is not visible within 1,000 feet of the nearest edge of the right-of-way of an interstate highway or federal-aid primary highway and it obtains approval of, and is permitted by, the county commission as provided in this section.

WV Legislature

§17-23-5. Requirements as to fences.

Fences shall be kept in good order and repair and no advertisement shall be permitted thereon other than the name of the licensee and the nature of the business conducted on the premises. The height, location, construction, planting, size and composition of any sign or advertisement and maintenance of fences, living or otherwise, shall conform to such rules and regulations as are promulgated with respect thereto by the commissioner.

WV Legislature

§17-23-6. Payment of costs of screening.

The costs of screening by fences shall be paid by the salvage yard owner or operator: Provided, That if in the opinion of the commissioner, such screening cannot be accomplished by the usual and ordinary methods, the commissioner may determine and pay such additional costs as are necessary and required to provide effective screening.

WV Legislature

§17-23-7. Exempt areas in municipalities.

The provisions of this article shall not apply to salvage yards or any parts thereof within municipalities situated in areas zoned industrial, nor to salvage yards or any parts thereof situated in areas within municipalities not zoned industrial but which the commissioner determines are used for industrial activities. The provisions of section four of this article shall not apply to salvage yards within municipalities in existence on the effective date of this article but not required to be licensed under the former provisions of this article, if the view of said salvage yards is effectively screened from the adjacent road by fences.

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§17-23-8. Authority of commissioner to remove or purchase certain yards; restrictions on relicensing at location where yard terminated.

Whenever a salvage yard is so situated that it or any part thereof is or shall be required to be effectively screened by fences as provided in section four of this article, and the said salvage yard or any part thereof cannot, in the opinion of the commissioner, be effectively screened by fences to comply with the provisions of this article, so that the owner or operator of the salvage yard cannot lawfully continue to operate and do business in compliance with the terms hereof, or if a salvage yard has been abandoned, then and only in such events, the commissioner, in addition to all other powers herein conferred, may (1) with the consent of said owner or operator pay the cost of removal of all salvage and equipment from such salvage yard to such other location as the said owner or operator may direct whereon a salvage yard business may be conducted in compliance with the provisions of this article, or (2) purchase at private sale or acquire by proceeding in eminent domain, in accordance with the provisions of chapter fifty-four of this code, all such property rights and interests, other than title to real property, as are necessary and required to effect a lawful termination of the salvage business conducted on any such salvage yard, or on any part thereof.

If any salvage yard at any location is terminated under the provisions of this section or by court order as provided in section nine of this article, the commissioner shall not thereafter license any salvage yard at any such location if such location or any part thereof is (1) within one thousand feet of the nearest edge of the right-of-way of any road within the state road system designated and classified or redesignated and reclassified as expressway, trunkline or feeder, or any road within the state road system designated and classified or redesignated and reclassified for purposes of allocation of federal highway funds as part of the federal-aid interstate or primary systems or (2) within five hundred feet of the nearest edge of the right-of-way of any state local service road unless and until the view of such salvage yard or any part thereof from such state local service road is screened by fences as provided in this article.

WV Legislature

§17-23-9. Violations declared public nuisance; abatement; injunctions; penalties.

The establishment, operation or maintenance of a salvage yard or any part thereof in violation of any provision of this article is hereby declared to be a public nuisance, and the commissioner or the prosecuting attorney of the county in which such salvage yard or any part thereof is located shall apply to the circuit court or other court of competent jurisdiction of the county in which said salvage yard or any part thereof is located, for an injunction to abate such nuisance. The court shall have authority to hear and decide such questions and grant injunctions or such other relief as the court may deem proper.

Any person violating any provision of this article, whether as principal, agent or employee, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine of not less than $100 nor more than $1,000; and such person shall be guilty of a separate offense for each month during a portion of which any violation of this article is committed, continued or permitted: Provided, however, That in the event of an appeal from any such conviction, the period between the date a notice of appeal is filed and the date of the final order of the court last considering the appeal shall not be considered a period of continuing in violation of this article.

WV Legislature

§17-23-10. Special fund.

There is hereby created a special fund, to the credit of which shall be paid such funds as may from time to time be appropriated by the Legislature, all funds received from licenses issued under section three of this article 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 junkyards (salvage yards), to be administered by the commissioner in the enforcement and carrying out of the provisions of this article.

WV Legislature

§17-23-11. Rules and regulations.

To implement the provisions of this article, the commissioner is hereby authorized and empowered to promulgate rules and regulations in accordance with the provisions of chapter twenty-nine-a of this code.

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§17-23-12. Certain other code provisions inapplicable.

The provisions of section seven, article twelve, chapter eleven, and article thirteen-a, chapter eleven of this code, shall not apply to salvage yards covered by the provisions of this article.

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§17-23-13. Severability.

If any provision of this article or the application thereof to any person or circumstance is held unconstitutional or invalid, such unconstitutionality or invalidity shall not affect other provisions or applications of this article, and to this end the provisions of this article are declared to be severable.

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