WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1939

ENROLLED
Committee Sub. for

HOUSE BILL No. 263
(Originating in the Committee on
the Judiciary)
(By Mr. __________________________)

PASSED March 11, 1939

In Effect ninety days from Passage
AN ACT to amend chapter seventeen of the code of West Virginia, one thousand nine hundred thirty-one, by adding thereto a new article to be designated article twenty-one, regulating outdoor advertising outside of the corporate limits of cities and incorporated towns in sight of public highways; providing for licensing persons engaged in the business of outdoor advertising and for the issuance of permits for advertisements and advertising structures; prohibiting certain advertisements and advertising structures; and providing for the removal of advertisements and advertising structures illegally posted, displayed, erected, used or maintained; prescribing the powers and duties of certain officers relating thereto; and prescribing penalties for violations of this article.
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Be it enacted by the Legislature of West Virginia:

That chapter seventeen of the code of West Virginia, one thousand nine hundred thirty-one, be amended by adding thereto a new article to be designated article twenty-one, to read as follows:

Section 1. Definitions. The following terms, wherever used or referred to in this article, shall have the following meanings unless a different meaning clearly appears from the context:

(a) "Advertisement" means any writing, printing, picture, painting, display, emblem, drawing, sign, or similar device intended to invite or to draw the attention of the public to any goods, merchandise, property, real or personal, business services, entertainment or amusement, manufactured, produced, bought, sold, conducted, furnished or dealt in by any person which is posted, painted, tacked, nailed or otherwise displayed outdoors on real property, and includes any part of an advertisement recognizable as such.

(b) "Advertising structure" means any structure erected for advertising purposes, with or without any advertisement displayed thereon, situated upon or attached to real property outdoors, upon which any poster, bill, printing, painting,
device or other advertisement of any kind whatsoever may be placed, posted, painted, tacked, nailed or otherwise fastened, affixed or displayed.

(c) "Advertising sign" means any card, cloth, paper, metal, painted or wooden sign of any character, posted, stuck, glued, tacked, painted or otherwise fastened or affixed to or upon any fence, post, tree, wall or thing other than an advertising structure.

(d) "Business of outdoor advertising" means the business of constructing, erecting, operating, using, maintaining, leasing or selling outdoor advertising structures, or outdoor advertising signs or outdoor advertisements.

(e) "Commissioner" means the state road commissioner;

(f) "State" means the state of West Virginia;

(g) "Highway" means every way or place of whatever nature open to the use of the public for purposes of vehicular travel in this state, outside of cities and incorporated towns;

(h) "Person" includes an individual, partnership, association or corporation;

(i) "Post" means post, display, print, paint, burn, nail, paste or otherwise attach;
(j) "Real property" includes any property physically attached or annexed to real property in any manner what-
soever;

(k) "Town" means an incorporated town or city.

Sec. 2. Enforcement of Provisions by Commissioner. It shall be the function and duty of the commissioner to ad-
minister and enforce the provisions of this article. He may, in the performance of his duties hereunder, assign to division engineers, and other employees in his department such duties as he may prescribe.

Sec. 3. Territory to Which Article Applies; Entries; Ex-
aminations and Surveys. The territory under the jurisdiction of the commissioner for the purposes of this article shall include all of the state outside the corporate limits of any city or town. 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 structures are standing or upon which advertising signs or advertisements are displayed and make such examinations and surveys as may be relevant.
Sec. 4. **Licensed Outdoor Advertisers.** No person shall
engage or continue in the business of outdoor advertising
in this state outside the corporate limits of any city or town
without first obtaining a license therefor from the commis-
sioner; and no person shall construct, erect, operate, use,
maintain, lease or sell any outdoor advertising structure or
outdoor advertising sign or outdoor advertisement in this
state outside the corporate limits of any city or town without
first obtaining such a license from the commissioner. The
fee for such license, hereby imposed for revenue for the
use of the state, shall be one hundred dollars per annum,
payable annually in advance. Applications for licenses, or
renewal of licenses, shall be made on forms furnished by
the commissioner and shall contain such pertinent informa-
tion as the commissioner may require, and shall be accom-
panied by the annual fee. Licenses granted under this section
shall expire on the thirtieth day of June 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 outdoor advertising structure
or outdoor advertising sign or outdoor advertisement solely
on his own property, as herein provided.

The commissioner shall have authority, after thirty days
notice in writing to the licensee, to revoke any license granted
by him upon repayment of a proportionate part of the license
fee, in any case where he shall find that any material informa-
tion 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 act, unless such licensee
shall, before the expiration of said thirty days, correct such
false or misleading information and comply with the pro-
visions of this act. Any person whose license is so revoked
may, within thirty days from the date of such revocation,
appeal from the decision of the commissioner to the circuit
court of Kanawha county by presenting to the court or the
judge thereof, after five days notice in writing to the com-
missioner, an affidavit made by the licensee or by his duly
authorized agent or attorney, setting forth the fact of such
revocation and that the same was without just cause.

Sec. 5. Bond Required From Out of State Licensee.
such license as is provided for in section four 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 two thousand five hundred dollars, conditioned that such licensee shall fulfill all requirements of law and observe and obey all the requirements of this article. Such bond shall remain in full force and effect so long as any obligations of such licensee to the state shall remain unsatisfied.

Sec. 6. Individual Device Permits; Fees. (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 structure, outdoor advertising sign or outdoor advertisement, outside any unincorporated city or town, without first obtaining a permit therefor from the commissioner and paying the annual fee therefor, as herein provided. The
9 commissioner shall not issue such a permit to any person
10 who has not obtained the license provided for in section four
11 of this article.

12 (b) A separate application for a permit shall be made
13 for each separate advertisement, advertising sign or adver-
14 tising structure, on a form furnished by the commissioner,
15 which application shall be signed by the applicant or his
16 representative duly authorized in writing to act for him,
17 and shall describe and set forth the size, shape and the nature
18 of the proposed advertisement, advertising sign or advertis-
19 ing structure, and its actual or proposed location with suffi-
20 cient accuracy to enable the commissioner to locate and
21 identify it. Every application shall be accompanied by a fee
22 of one dollar for each advertisement, advertising sign or
23 advertising structure, which fee shall be retained by the com-
24 missioner if the permit is issued. Each portion of an adver-
25 tising structure upon which an advertisement is posted or
26 displayed shall constitute a separate advertising structure
27 for purposes of this section. If the permit is refused, the
28 commissioner shall refund one-half the fee to the applicant.
29 Each application shall be accompanied by an affidavit of the
applicant or his agent that the owner or other person in control or possession of the real property upon which such advertisement, advertising sign or advertising structure is to be constructed, erected, operated, used, maintained, posted or displayed has consented thereto. Application shall be made in like manner for a permit to operate, use, maintain or display any existing advertisement, advertising sign or advertising structure. Permits issued hereunder shall expire on the thirtieth day of June of each year, and shall not be prorated, and may be renewed upon the payment of the same fee required to be paid upon application for a permit. No application shall be required for a renewal of a permit.

(c) If more than one side of an advertising structure is used for advertising, a fee for each such side shall be required. Advertisements sculptured in the round shall be treated as using three sides.

(d) The holder of a permit shall during the term thereof, have the right to change the advertising copy on 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, revoke any permit issued by him under this section upon repayment of a proportionate part of the fee in any case where it shall appear to the commis-sioner 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 such per-mittee shall, before the expiration of said thirty days, correct such false or misleading information and comply with the provisions of this article. If the construction, erection, opera-tion, use, maintenance and display of any advertisement, advertising sign or advertising structure for which a permit is issued by the commissioner and the permit fee has been paid as above provided, shall be prevented by any zoning board, commission or other public agency which also has jurisdiction over the proposed advertisement, advertising sign or advertising structure, or its site, the fee for such advertisement, advertising sign or advertising structure shall be returned by the commissioner and the permit revoked. But one-half the fee shall be deemed to have accrued upon the erection of an advertising sign or advertising structure or
the display of an advertisement followed by an inspection by the commissioner or his representatives.

(f) Any person aggrieved by any action of the commissioner in refusing to grant or in revoking a permit under this section may, within thirty days from the date of such refusal or revocation, appeal from the decision of the commissioner to the circuit court of Kanawha county by presenting to the court or the judge thereof in vacation, after five days notice in writing to the commissioner, an affidavit made by such person or by his duly authorized agent or attorney, setting forth the fact of such refusal or revocation, as the case may be, and that the action of the commissioner was without cause.

Sec. 7. Identification. Every permit issued by the commissioner shall be assigned a separate identification number, and it shall be the duty of each permittee to fasten to each advertising structure and each advertising sign and each advertisement not posted or displayed on an advertising structure 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 said permit number,
the expiration date of the permit, and the name of the permittee. The construction, erection, operation, use or maintenance of an outdoor advertising structure, advertising sign or advertisement without having affixed thereto such a label or marker shall be prima facie evidence that the same has been constructed or erected and is being operated, used or maintained in violation of the provisions of this article.

Sec. 8. Removal. All outdoor advertisements, advertising signs and advertising structures 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 advertisement, advertising sign or advertising structure within said thirty days shall be deemed guilty of a misdemeanor.

Sec. 9. Certain Outdoor Advertising Prohibited. No advertisement, advertising sign or advertising structure shall be constructed, erected, used, operated or maintained:

(a) Within five hundred feet of any church, school, cemetery, public park, public reservation, public playground, state or national forest, outside the limits of any incorporated city or town (except that they may be constructed, erected, oper-
ated, used or maintained within unincorporated towns and
villages which are within state or national forests);
(b) Which involves motion or rotation of any part of the
structure;
(c) Which uses the word "stop" or "danger" prominently displayed, or presents or implies the need or require-
ment of stopping or the existence of danger, or which is a
copy or imitation of official signs;
(d) Which prevents persons using any U. S. highway,
state highway or county road from obtaining an unobstructed
view of approaching vehicles, or which are on the inside of
any curve on any such highway or road in such manner as
to prevent persons using them from obtaining an unob-
structed view of approaching vehicles.

Sec. 10. Outdoor Advertising on Highways. Any person
who wilfully or maliciously displaces, removes, destroys or
injures a mile-board, milestone, danger-sign, signal, guide-
sign, guide-post, highway sign, or historical marker or any
inscription thereon, lawfully within or adjacent to a high-
way, 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, guide-post, 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.

Sec. 11. No person shall construct, erect, operate, use or maintain any outdoor advertising structure, outdoor advertising sign or advertisement without the permission of the owner or other person in lawful possession or control of the property on which such structure or sign is located.

Sec. 12. Disposition of Fees. All moneys received by the commissioner under the provisions of this article shall be paid by him into the state treasury, and allocated to the state road commission for use, in the administration of this article and in the construction and maintenance of secondary roads.

Sec. 13. Harmony of Regulations. No zoning board or commission nor any other public officer or agency, shall permit any advertisement or advertising structure which is prohibited under the provisions of this article, nor shall the commissioner permit any advertisement or advertising struc-
tute which is prohibited by any other public board, officer
or agency in the lawful exercise of its or their powers.

Sec. 14. Certain Advertisements Excepted. The following
advertisements, advertising signs and the advertising struc-
tures, or parts thereof, upon which they are posted or dis-
played, are excepted from all the provisions of this article,
except those contained in subsections (b), (c) and (d) of
section nine hereof:

(a) Those constructed, erected, operated, used or main-
tained by the owner or lessee of a place of business or residence
on land belonging to said owner or lessee and not more than
two hundred fifty feet from such place of business or resi-
dence, and relating solely to merchandise, services or enter-
tainment sold, produced, manufactured or furnished at such
place of business or residence;

(b) Those constructed, erected, operated, used, or main-
tained on any farm by the owner or lessee of such farm
and relating solely to farm produce, merchandise, services
or entertainment sold, produced, manufactured or furnished
on such farm;

(c) Those upon real property posted or displayed
by the owner, or by the authority of the owner, stating that real property is for sale or rent;

d) Official notices or advertisements posted or displayed by or under the direction of any public or court officer in the performance of his official or directed duties, or by trustees under deeds of trust, deeds of assignment or other similar instruments;

e) Danger or precautionary signs relating to the premises on which they are, or signs warning of the condition of or dangers of travel on a highway, erected or authorized by the commissioner; or forest fire warning signs erected under authority of the state conservation department and signs, notices or symbols erected by the United States Government under the direction of the United States Forestry Service;

f) Signs relating solely to any city, town, village or historic place or shrine;

g) Notices of any railroad, bridge, ferry or other transportation or transmission company necessary for the direction or safety of the public;

h) Signs, notices or symbols for the information of aviators as to location, direction and landings and conditions
affecting safety in aviation erected or authorized by the commissioner;

(i) Advertisements, advertising signs and advertising structures not visible from any highway or other public place;

(j) Signs or notices containing two square feet or less, placed at a junction of two or more roads in the state highway system denoting only the distance or direction of a residence or place of business;

(k) Signs or notices erected or maintained upon property giving the name of the owner, lessee or occupant of the premises;

(l) Advertisements, advertising signs and advertising structures within the corporate limits of cities and towns;

(m) Historical markers erected by duly constituted and authorized public authorities;

(n) Highway markers and signs erected or caused to be erected, by the commissioner or the state road commission;

(o) Signs erected upon property warning the public against hunting, fishing or trespassing thereon;

(p) Signs erected by Red Cross authorities relating to
62 Red Cross Emergency Stations.

63 (q) Signs painted on a barn, stable, or other permanent farm building which is at least one hundred feet from the center line of any highway.

Sec. 15. Violation a Nuisance; Abatement. Any advertisement, advertising sign or advertising structure, which is constructed, erected, operated, used, maintained, posted, or displayed in violation of this article, is hereby declared to be a public and private nuisance and shall be forthwith removed, obliterated or abated by the commissioner or his representatives, and for that purpose they may enter upon private property without incurring any liability therefor: Provided, however, That if any outdoor advertising structure or outdoor advertising sign of the value of one hundred dollars or more bears thereon the name of the owner thereof, and said owner holds an unexpired license issued under section four of this article, the said owner shall be given written notice of the alleged violation, and shall have thirty days after the receipt thereof within which to show that the said advertisement, advertising sign or advertising structure does not violate the provisions of this article.
Sec. 16. *Penalties*. 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 ten dollars nor more than three hundred dollars; 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 existence of any advertising copy on any outdoor advertising structure or outdoor advertising sign or advertisement outside incorporated areas shall constitute prima facie evidence that the said outdoor advertising structure or outdoor advertising sign or advertisement was constructed, erected, operated, used, maintained or displayed with the consent and approval and under the authority of the person whose goods or services are advertised thereon.

Sec. 17. *Separability of Provisions*. If any provision of this article, or the application thereof to any person or circumstance, is held invalid, the remainder of this article, and the application of such provisions to other persons or circumstances, shall not be affected thereby.
Sec. 18. All acts and parts of acts inconsistent with this article are hereby repealed.

I certify that the foregoing act, having been presented to the Governor for his approval, and not having been returned by him to the House of the Legislature in which it originated within the time prescribed by the constitution of the state, has become a law without his approval.

This the 17th day of March, 1939.

[Signature]

SECRETARY OF STATE
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the House of Delegates

Takes effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within this the day of, 1939.

Governor.