

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

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COMMITTEE SUBSTITUTE FOR

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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.

*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

2 or referred to in this article, shall have the following mean-  
3 ings unless a different meaning clearly appears from the  
4 context:

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

14 (b) "Advertising structure" means any structure erected  
15 for advertising purposes, with or without any advertisement  
16 displayed thereon, situated upon or attached to real property  
17 outdoors, upon which any poster, bill, printing, painting,

18 device or other advertisement of any kind whatsoever may  
19 be placed, posted, painted, tacked, nailed or otherwise  
20 fastened, affixed or displayed.

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

26 (d) "Business of outdoor advertising" means the busi-  
27 ness of constructing, erecting, operating, using, maintaining,  
28 leasing or selling outdoor advertising structures, or outdoor  
29 advertising signs or outdoor advertisements.

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

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

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

35 (h) "Person" includes an individual, partnership, asso-  
36 ciation or corporation;

37 (i) "Post" means post, display, print, paint, burn, nail,  
38 paste or otherwise attach;

39 (j) "Real property" includes any property physically  
40 attached or annexed to real property in any manner what-  
41 soever;

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

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

Sec. 3. *Territory to Which Article Applies; Entries; Ex-*  
2 *aminations and Surveys.* The territory under the jurisdiction  
3 of the commissioner for the purposes of this article shall  
4 include all of the state outside the corporate limits of any  
5 city or town. The commissioner and all employees under  
6 his direction, in the performance of their functions and  
7 duties under the provisions of this article, may enter into  
8 and upon any land upon which advertising structures are  
9 standing or upon which advertising signs or advertisements  
10 are displayed and make such examinations and surveys as  
11 may be relevant.

Sec. 4. *Licensed Outdoor Advertisers.* No person shall  
2 engage or continue in the business of outdoor advertising  
3 in this state outside the corporate limits of any city or town  
4 without first obtaining a license therefor from the commis-  
5 sioner; and no person shall construct, erect, operate, use,  
6 maintain, lease or sell any outdoor advertising structure or  
7 outdoor advertising sign or outdoor advertisement in this  
8 state outside the corporate limits of any city or town without  
9 first obtaining such a license from the commissioner. The  
10 fee for such license, hereby imposed for revenue for the  
11 use of the state, shall be one hundred dollars per annum,  
12 payable annually in advance. Applications for licenses, or  
13 renewal of licenses, shall be made on forms furnished by  
14 the commissioner and shall contain such pertinent informa-  
15 tion as the commissioner may require, and shall be accom-  
16 panied by the annual fee. Licenses granted under this section  
17 shall expire on the thirtieth day of June of each year, and  
18 shall not be prorated. Applications for the renewal of licenses  
19 shall be made not less than thirty days prior to the date of  
20 expiration. Nothing in this section shall be construed to  
21 require any person to obtain a license who constructs, erects,

22 operates, uses or maintains an outdoor advertising structure  
23 or outdoor advertising sign or outdoor advertisement solely  
24 on his own property, as herein provided.

25 The commissioner shall have authority, after thirty days  
26 notice in writing to the licensee, to revoke any license granted  
27 by him upon repayment of a proportionate part of the license  
28 fee, in any case where he shall find that any material informa-  
29 tion required to be given in the application for the license  
30 is knowingly false or misleading or that the licensee has  
31 violated any of the provisions of this act, unless such licensee  
32 shall, before the expiration of said thirty days, correct such  
33 false or misleading information and comply with the pro-  
34 visions of this act. Any person whose license is so revoked  
35 may, within thirty days from the date of such revocation,  
36 appeal from the decision of the commissioner to the circuit  
37 court of Kanawha county by presenting to the court or the  
38 judge thereof, after five days notice in writing to the com-  
39 missioner, an affidavit made by the licensee or by his duly  
40 authorized agent or attorney, setting forth the fact of such  
41 revocation and that the same was without just cause.

Sec. 5. *Bond Required From Out of State Licensee.* No

2 such license as is provided for in section four of this article  
3 shall be granted to any person not residing in this state or  
4 to any person having his principal place of business outside  
5 the state, or which is incorporated outside the state, until  
6 such person shall have furnished and filed with the commis-  
7 sioner a bond payable to the state, with surety approved by  
8 the commissioner and in form approved by the attorney  
9 general, in the sum of two thousand five hundred dollars,  
10 conditioned that such licensee shall fulfill all requirements  
11 of law and observe and obey all the requirements of this  
12 article. Such bond shall remain in full force and effect so  
13 long as any obligations of such licensee to the state shall  
14 remain unsatisfied.

Sec. 6. *Individual Device Permits; Fees.* (a) Except as  
2 in this article otherwise provided, no person shall construct,  
3 erect, operate, use, maintain, or cause or permit to be con-  
4 structed, erected, operated, used or maintained any adver-  
5 tising structure, outdoor advertising sign or outdoor adver-  
6 tisement, outside any unincorporated city or town, without  
7 first obtaining a permit therefor from the commissioner and  
8 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

30 applicant or his agent that the owner or other person in  
31 control or possession of the real property upon which such  
32 advertisement, advertising sign or advertising structure is  
33 to be constructed, erected, operated, used, maintained, posted  
34 or displayed has consented thereto. Application shall be made  
35 in like manner for a permit to operate, use, maintain or display  
36 any existing advertisement, advertising sign or advertising  
37 structure. Permits issued hereunder shall expire on the  
38 thirtieth day of June of each year, and shall not be prorated,  
39 and may be renewed upon the payment of the same fee required  
40 to be paid upon application for a permit. No application  
41 shall be required for a renewal of a permit.

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

46 (d) The holder of a permit shall during the term thereof,  
47 have the right to change the advertising copy on the structure  
48 or sign for which it was issued without payment of any  
49 additional fee.

50 (e) The commissioner may after thirty days notice in

51 writing to the permittee, revoke any permit issued by him  
52 under this section upon repayment of a proportionate part  
53 of the fee in any case where it shall appear to the commis-  
54 sioner that the application for the permit contains knowingly  
55 false or misleading information or that the permittee has  
56 violated any of the provisions of this article, unless such per-  
57 mittee shall, before the expiration of said thirty days, correct  
58 such false or misleading information and comply with the  
59 provisions of this article. If the construction, erection, opera-  
60 tion, use, maintenance and display of any advertisement,  
61 advertising sign or advertising structure for which a permit  
62 is issued by the commissioner and the permit fee has been  
63 paid as above provided, shall be prevented by any zoning  
64 board, commission or other public agency which also has  
65 jurisdiction over the proposed advertisement, advertising  
66 sign or advertising structure, or its site, the fee for such  
67 advertisement, advertising sign or advertising structure shall  
68 be returned by the commissioner and the permit revoked. But  
69 one-half the fee shall be deemed to have accrued upon the  
70 erection of an advertising sign or advertising structure or

71 the display of an advertisement followed by an inspection  
72 by the commissioner or his representatives.

73 (f) Any person aggrieved by any action of the commis-  
74 sioner in refusing to grant or in revoking a permit under  
75 this section may, within thirty days from the date of such  
76 refusal or revocation, appeal from the decision of the com-  
77 missioner to the circuit court of Kanawha county by present-  
78 ing to the court or the judge thereof in vacation, after five  
79 days notice in writing to the commissioner, an affidavit made  
80 by such person or by his duly authorized agent or attorney,  
81 setting forth the fact of such refusal or revocation, as the  
82 case may be, and that the action of the commissioner was  
83 without cause.

Sec. 7. *Identification.* Every permit issued by the com-  
2 missioner shall be assigned a separate identification number,  
3 and it shall be the duty of each permittee to fasten to each  
4 advertising structure and each advertising sign and each  
5 advertisement not posted or displayed on an advertising  
6 structure a label or marker not larger than two inches by  
7 six inches, which shall be furnished by the commissioner,  
8 and on which shall be plainly visible the said permit number,

9 the expiration date of the permit, and the name of the  
10 permittee. The construction, erection, operation, use or main-  
11 tenance of an outdoor advertising structure, advertising sign  
12 or advertisement without having affixed thereto such a label  
13 or marker shall be prima facie evidence that the same has  
14 been constructed or erected and is being operated, used or  
15 maintained in violation of the provisions of this article.

Sec. 8. *Removal.* All outdoor advertisements, advertising  
2 signs and advertising structures shall be removed by the per-  
3 mittee within thirty days after the date of the expiration or  
4 revocation of the permit for the same. Any permittee failing  
5 to remove any such advertisement, advertising sign or ad-  
6 vertising structure within said thirty days shall be deemed  
7 guilty of a misdemeanor.

Sec. 9. *Certain Outdoor Advertising Prohibited.* No ad-  
2 vertisement, advertising sign or advertising structure shall  
3 be constructed, erected, used, operated or maintained:

4 (a) Within five hundred feet of any church, school, ceme-  
5 tery, public park, public reservation, public playground, state  
6 or national forest, outside the limits of any incorporated city  
7 or town (except that they may be constructed, erected, oper-

8 ated, used or maintained within unincorporated towns and  
9 villages which are within state or national forests);

10 (b) Which involves motion or rotation of any part of the  
11 structure;

12 (c) Which uses the word "stop" or "danger" promi-  
13 nently displayed, or presents or implies the need or require-  
14 ment of stopping or the existence of danger, or which is a  
15 copy or imitation of official signs;

16 (d) Which prevents persons using any U. S. highway,  
17 state highway or county road from obtaining an unobstructed  
18 view of approaching vehicles, or which are on the inside of  
19 any curve on any such highway or road in such manner as  
20 to prevent persons using them from obtaining an unob-  
21 structed view of approaching vehicles.

Sec. 10. *Outdoor Advertising on Highways.* Any person  
2 who wilfully or maliciously displaces, removes, destroys or  
3 injures a mile-board, milestone, danger-sign, signal, guide-  
4 sign, guide-post, highway sign, or historical marker or any  
5 inscription thereon, lawfully within or adjacent to a high-  
6 way, or who in any manner paints, prints, places, puts or  
7 affixes any advertisement upon or to any rock, stone, tree,

8 fence, stump, pole, mile-board, milestone, danger-sign, guide-  
9 sign, guide-post, highway sign, historical marker, building  
10 or other subject lawfully within the limits of any highway,  
11 shall be guilty of a misdemeanor and shall be punished ac-  
12 cordingly.

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

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

Sec. 13. *Harmony of Regulations.* No zoning board or  
2 commission nor any other public officer or agency, shall  
3 permit any advertisement or advertising structure which is  
4 prohibited under the provisions of this article, nor shall the  
5 commissioner permit any advertisement or advertising struc-

6 ture which is prohibited by any other public board, officer  
7 or agency in the lawful exercise of its or their powers.

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

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

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

19 (c) Those upon real property posted or displayed



20 by the owner, or by the authority of the owner, stating that  
21 real property is for sale or rent;

22 (d) Official notices or advertisements posted or displayed  
23 by or under the direction of any public or court officer in  
24 the performance of his official or directed duties, or by trus-  
25 tees under deeds of trust, deeds of assignment or other similar  
26 instruments;

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

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

36 (g) Notices of any railroad, bridge, ferry or other trans-  
37 portation or transmission company necessary for the direc-  
38 tion or safety of the public;

39 (h) Signs, notices or symbols for the information of  
40 aviators as to location, direction and landings and conditions

41 affecting safety in aviation erected or authorized by the com-  
42 missioner ;

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

46 (j) Signs or notices containing two square feet or less,  
47 placed at a junction of two or more roads in the state high-  
48 way system denoting only the distance or direction of a  
49 residence or place of business ;

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

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

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

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

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

61 (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  
64 farm building which is at least one hundred feet from the  
65 center line of any highway.

Sec. 15. *Violation a Nuisance; Abatement.* Any advertise-  
2 ment, advertising sign or advertising structure, which is con-  
3 structed, erected, operated, used, maintained, posted, or  
4 displayed in violation of this article, is hereby declared to be  
5 a public and private nuisance and shall be forthwith removed,  
6 obliterated or abated by the commissioner or his representa-  
7 tives, and for that purpose they may enter upon private  
8 property without incurring any liability therefor: *Provided,*  
9 *however,* That if any outdoor advertising structure or out-  
10 door advertising sign of the value of one hundred dollars  
11 or more bears thereon the name of the owner thereof, and  
12 said owner holds an unexpired license issued under section  
13 four of this article, the said owner shall be given written  
14 notice of the alleged violation, and shall have thirty days  
15 after the receipt thereof within which to show that the said  
16 advertisement, advertising sign or advertising structure does  
17 not violate the provisions of this article.

Sec. 16. *Penalties.* Any person, violating any provision of  
2 this article, whether as principal, agent or employee, for  
3 which violation no other penalty is prescribed, shall be guilty  
4 of a misdemeanor and upon conviction thereof, shall be pun-  
5 ished by a fine of not less than ten dollars nor more than  
6 three hundred dollars; and such person shall be deemed guilty  
7 of a separate offense for each month during any portion of  
8 which any violation of this article is committed, continued  
9 or permitted. The existence of any advertising copy on any  
10 outdoor advertising structure or outdoor advertising sign or  
11 advertisement outside incorporated areas shall constitute  
12 prima facie evidence that the said outdoor advertising struc-  
13 ture or outdoor advertising sign or advertisement was con-  
14 structed, erected, operated, used, maintained or displayed  
15 with the consent and approval and under the authority of the  
16 person whose goods or services are advertised thereon.

Sec. 17. *Separability of Provisions.* If any provision of this  
2 article, or the application thereof to any person or circum-  
3 stance, is held invalid, the remainder of this article, and the  
4 application of such provisions to other persons or circum-  
5 stances, shall not be affected thereby.

STATE OF TEXAS

Sec. 18. All acts and parts of acts inconsistent with this  
2 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 17<sup>th</sup> day of March,

1939

*Wm S. Brown*

SECRETARY OF STATE

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

*E. O. Wiseman*

Chairman Senate Committee

*Reed B. Walter*

Chairman House Committee

Originated in the *House of Delegates*

Takes effect *ninety days from* passage.

*Shadrach*

Clerk of the Senate

*Geo. Hall*

Clerk of the House of Delegates

*Wm. M. ...*

President of the Senate

*James Tay Thomas*

Speaker House of Delegates

The within.....this the.....

day of ....., 1939.



.....  
Governor.