WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1967

ENROLLED

HOUSE BILL No. 845

(By Mr. (Signature))

PASSED

1967

In Effect

FILED IN THE OFFICE
ROBERT D. BAILEY
SECRETARY OF STATE
THIS DATE 3-21-62
ENROLLED

House Bill No. 845
(By MR. SPEAKER, MR. WHITE)

[Passed March 11, 1967; in effect ninety days from passage.]

AN ACT to repeal article twenty-two, chapter seventeen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, and to enact in lieu thereof a new article twenty-two, relating to the licensing, regulation and control of outdoor advertising and the purchase or condemnation of certain outdoor advertising signs, displays, devices, leaseholds, property rights and interests, including the right to use certain lands for the erection and maintenance of such signs, displays, or devices, and payment of the costs of removal of outdoor advertising signs, displays, or devices; providing for the issuance of licenses and permits; providing for the revocation of li-
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licenses and judicial review thereof and for denial or revocation of permits and judicial review thereof; and providing penalties.

Be it enacted by the Legislature of West Virginia:

That article twenty-two, chapter seventeen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed, and that a new article twenty-two be enacted in lieu thereof, to read as follows:

ARTICLE 22. OUTDOOR ADVERTISING.

§17-22-1. Legislative finding.

1 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; (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 necessi-
tate increased local taxation to support and maintain the state road program and system, and that it is the inten-
tion of this bill, among other things, to provide a statu-
tory basis for regulation of outdoor advertising consistent with the public policy relating to areas adjacent to fed-
eral-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.

1 As used in this article:

2 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.

3 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.

4 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.

§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 first, one thousand nine hundred sixty-five, which does not conform to the requirements of this article, shall be required to be removed until July first, one thousand nine hundred seventy: 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 device becomes nonconforming.

§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;

(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.

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

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

§17-22-6. Purchase or condemnation; powers of state road
commissioner; payment to claimants.

1 The state road commissioner is hereby authorized and
2 empowered to make acquisition of all of the property
3 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 di­
rectly 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
chapter fifty-four, article two, section eighteen of this
code.


1. The provisions of section three of this article shall not
apply to the following: (a) Directional and other offi­
cial signs and notices required or authorized by law, in­
cluding but not limited to signs and notices pertaining
to natural wonders, 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 state road commissioner 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.

§17-22-8. Exempted areas.

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 state road commis-

er of West Virginia and the secretary of transporta-
tion of the United States, may be erected and maintained
within six hundred and 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 deter-
mined by agreement between the state road commissioner
of West Virginia and the secretary of transportation of
the United States: Provided, That any such agree-
ment shall contain a definition of unzoned commer-
cial or industrial areas which reflects existing conditions
in this state, such as, without limiting the foregoing, ex-
ist land use, availability of land for urban develop-
ment, topography, and accepted zoning practices now pre-
vailing in this state. Any agreement between the state
road commissioner and the secretary of transportation
relating to size, lighting and spacing shall reflect cus-
tomary usage in this state. Any agreement between the
state road commissioner and the secretary of transporta-
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25 tion defining unzoned commercial or industrial areas, or
26 relating to size, lighting and spacing, shall be no more
27 restrictive than necessary to secure to this state any
28 federal-aid contingent upon compliance with federal
29 laws, or federal rules and regulations relating to outdoor
30 advertising, and shall be subject to amendment or rejec-
31 tion by the Legislature of West Virginia:  *Provided, how-
32 ever,* That the terms of any such agreement shall be no
33 more restrictive than those included in any other similar
34 agreement made by the secretary of transportation and
35 other states:  *Provided further,* That such agreement
36 shall provide for its modification and amendment in the
37 event and to the extent that the secretary of transporta-
38 tion and any other state shall thereafter agree to any
39 provisions which shall be less restrictive. The provisions
40 of this section shall not apply to signs, displays, and de-
41 vices referred to in clauses (b) and (c) of section seven
42 of this article.

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

1 Signs, displays and devices giving specific information
2 in the interest of the traveling public may be erected and
maintained, pursuant to agreement between the state
road commissioner and the secretary of transportation,
within the rights of way of highways within the federal-
aid interstate system, at appropriate distances from in-
terchanges on such interstate system.

§17-22-10. Special fund.

1 There is hereby created a special fund, to the credit
2 of which shall be paid such funds as from time to time
3 may be appropriated by the Legislature and all federal
4 funds allocated and distributed to the state of West Vir-
ginia in implementation of the provisions of Title 23,
6 United States Code, relating to outdoor advertising, to
7 be administered by the state road commissioner in the
8 enforcement and carrying out of the provisions of this
9 article.

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

1 It shall be the function and duty of the state road com-
2 missioner to administer and enforce the provisions of
3 this article, and in the performance of his duties here-
4 under, he may assign to division engineers, and other
5 employees in his department, such duties as he may deem
proper. The commissioner is hereby authorized and em-
powered to promulgate rules and regulations implement-
ing the provisions of this article, including rules and
regulations permitting the state of West Virginia to com-
ply 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 hereto-
fore entered into pursuant to law by and between the
state road commissioner of West Virginia and the secre-
tary of commerce of the United States relating to the
payment of such bonuses, any provisions of this article
to the contrary notwithstanding.

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

The territory under the jurisdiction of the commis-
sioner 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 func-
tions 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.

§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 therefor 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 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 information as the commissioner may require, and shall be accompanied 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 sign, display, or device solely on his
own property.

The commissioner shall have authority, after thirty
days' notice in writing to the licensee, to make and enter
an order revoking any license granted by him upon re-
payment 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 article, unless such
licensee shall, before the expiration of said thirty days,
correct such false or misleading information and comply
with the provisions of this article. Such order shall be
accompanied by findings of fact and conclusions of law
upon which such order was made and entered. Any
person adversely affected by an order made and en-
tered by the commissioner is entitled to judicial review
thereof. Such judicial review shall be in the circuit court
for the county in which the owner of such sign has his
principal place of business in this state, or in the circuit
court of Kanawha county if all parties agree thereto.
The judgment of the circuit court shall be final unless re-
versed, 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 assistants, and in appeal
proceedings in any circuit court by the prosecuting attor-
ney of the county as well, all without additional compen-
sation. The commissioner may employ special counsel
to represent the commissioner in a particular proceeding.


No such license as is provided for in section thirteen
of this article shall be granted to any person not resid-
ing in this state or to any person having his principal
place of business outside the state, or which is incor-
porated outside the state, until such person shall have
furnished and filed with the commissioner a bond pay-
able to the state, with surety approved by the commis-
sioner 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 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. 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.

§17-22-15. Permit required for each sign, etc.; application; 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 therefor from the commissioner and paying the annual fee therefor, as herein provided. The commissioner shall not issue such 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, which application shall be signed by the applicant or his representative duly authorized in writing to act for him, 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 shall be accompanied by a fee of one dollar for each advertising sign, display, or device, which fee shall be retained by the commissioner if the permit is issued. Each portion of an advertising sign upon which a display is posted or exhibited shall constitute 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 such order to be served on such applicant by certified mail, return receipt requested, and shall refund one-half the fee to the applicant. Such order shall be accompanied by findings of fact and conclusions of law upon which
such order was made and entered. 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 advertising sign, display, or device is to be constructed, erected, operated, used or maintained, has consented thereto. Application shall be made in like manner for a permit to operate, use or maintain any existing advertising sign, display or device. 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 sign 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 shall have authority, after thirty days notice in writing to the permittee, to make and enter an order revoking 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 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 such permittee shall, before the expiration of said thirty days, correct such false or misleading information and comply with the provisions of this article. Such order shall be accompanied by findings of fact and conclusions of law upon which such 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 above provided, shall be 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 such advertising sign, display, or
device 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 structure or the display of advertising material followed by an inspection by the commissioner or his 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 thereof. Such judicial review shall be (1) in the county in which the person applying for the permit has his 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 thereto. The judgment of the circuit court shall be 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
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.

§17-22-16. Permit identification number.

Every permit issued by the commissioner shall be as-
signed a separate identification number, and it shall be
the duty of each permittee to 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 visi-
ble the said permit number, the expiration date of the
permit, and the name of the permittee. The construc-
tion, erection, operation, use or maintenance of an out-
door advertising sign, display, or device 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.
§17-22-17. Removal after expiration or revocation of permit.

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

§17-22-18. Signs and structures lawfully within highway
limits; penalty for destruction or unlawful use.

1 Any person who willfully or maliciously displaces, re-
2 moves, destroys or injures a mile-board, milestone, dan-
3 ger-sign, signal, guide-sign, guide post, highway sign, or
4 historical marker or any inscription thereon, lawfully
5 within or adjacent to a highway, or who in any manner
6 paints, prints, places, puts or affixes any advertisement
7 upon or to any rock, stone, tree, fence, stump, pole, mile-
8 board, milestone, danger-sign, guide-sign, guide-post,
9 highway sign, historical marker, building or other sub-
ject lawfully within the limits of any highway, shall be
guilty of a misdemeanor and shall be punished accord-
ingly.


No person shall construct, erect, operate, use or main-
tain 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.


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.


No zoning board or commission nor any other public
officer or agency, shall permit any advertising sign, dis-
play, 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.

§17-22-22. Penalties; 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 fifty dollars nor more than five 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 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, dis-
plays or devices required to be removed under sections three, five, six and eight of this article.

§17-22-23. Availability of funds before removal.

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.


The provisions of this article shall take effect on the first day of January, one thousand nine hundred sixty-eight.


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

William Tempas
Chairman Senate Committee

Clayton C. Davidson
Chairman House Committee

Originated in the House.

Takes effect ninety days from passage.

J. Howard Peake
Clerk of the Senate

O. A. Blankenship
Clerk of the House of Delegates

Howard W. Carson
President of the Senate

W. Labor White
Speaker House of Delegates

The within approved this the 17 day of March, 1967.

H. C. Smith
Governor
PRESENTED TO THE
GOVERNOR

Date 3/12/67

Time 4:00 P.M.