

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1967

ENROLLED

SENATE BILL NO. 17

(By Mr. Moreland)

PASSED March 11, 1967

In Effect July 1, 1967 Passage

FILED IN THE OFFICE
ROBERT D. BAILEY
SECRETARY OF STATE
THIS DATE 3-21-67

#17

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Senate Bill No. 17

(By MR. MORELAND)

[Passed March 11, 1967; in effect July 1, 1967.]

AN ACT to repeal article twenty-three, 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-three, relating to the licensing, regulation and control of salvage yards, prescribing areas in which no salvage yards are permitted and areas in which salvage yards are permitted only if screened by fences, providing for the removal of certain salvage yards or the acquisition thereof by purchase or proceeding in eminent domain, declaring salvage yards in violation of the article to be public nuisances which may be abated by court action, providing penalties and providing a severability clause.

Be it enacted by the Legislature of West Virginia:

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twenty-three, chapter seventeen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed, and that a new article twenty-three be enacted in lieu thereof, to read as follows:

ARTICLE 23. SALVAGE YARDS.

§17-23-1. Legislative finding.

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

§17-23-2. Definitions.

As used in this article:

- 2 (a) "Salvage" shall mean old or scrap copper, brass,

3 rope, rags, batteries, paper, rubber, trash, waste, junked,
4 dismantled or wrecked machinery, machines or motor
5 vehicles or any parts of any junked, dismantled or
6 wrecked machinery, machines or motor vehicles, iron,
7 steel and other old or scrap ferrous or nonferrous ma-
8 terials.

9 (b) "Salvage yard" shall mean any place which is
10 maintained, operated or used for the storing, keeping,
11 buying, selling, or processing of salvage, or for the oper-
12 ation and maintenance of a motor vehicle graveyard, and
13 the term shall also include garbage dumps and sanitary
14 fills.

15 (c) "Fence" shall mean an enclosure, barrier or screen
16 constructed of materials or consisting of plantings, natural
17 objects or other appropriate means approved by the com-
18 missioner and located, placed or maintained so as effec-
19 tively to screen at all times salvage yards and the salvage
20 therein contained from the view of persons passing upon
21 the public roads of this state.

22 (d) "Owner or operator" shall include an individual,
23 firm, partnership, association or corporation or the plural
24 thereof.

25 (e) "Commissioner" shall mean the state road com-
26 missioner of West Virginia.

§17-23-3. Issuance of license; disposition of license fees.

No salvage yard or any part thereof shall be established,
2 operated or maintained without a license. The commis-
3 sioner shall have the sole authority to issue such a license,
4 and he shall charge therefor a fee of fifty dollars payable
5 annually in advance. All licenses issued under this sec-
6 tion shall expire on the first day of January following the
7 date of issuance. A license may be renewed from year
8 to year upon paying the commissioner the sum of fifty
9 dollars for each such renewal. All such license fees col-
10 lected under the provisions of this article shall be de-
11 posited in the special fund provided for in section ten of
12 this article.

**§17-23-4. Areas in which no salvage yard permitted; require-
ments for screening; areas in which no screening re-
quired.**

On and after the effective date of this article, (1) no
2 license shall be issued to establish a salvage yard or any
3 part thereof within one thousand feet of the nearest edge

4 of the right of way of any road within the state road
5 system designated and classified or redesignated and re-
6 classified as expressway, trunk line, or feeder, or any road
7 within the state road system designated and classified or
8 redesignated and reclassified for purposes of allocation
9 of federal highway funds as part of the federal-aid inter-
10 state or primary systems, and (2) no license shall be
11 issued to establish a salvage yard or any part thereof
12 within three hundred feet of the nearest edge of the right
13 of way of any state local service road, unless the view
14 thereof from such state local service road shall be effec-
15 tively screened and obscured by fences.

16 The license of any salvage yard duly issued under the
17 former provisions of this article, which salvage yard or
18 any part thereof on the effective date of this article, is

19 (1) within one thousand feet of the nearest edge of the
20 right of way of any road within the state road system
21 designated and classified or redesignated and reclassified
22 as expressway, trunk line, or feeder, or any road within
23 the state road system designated and classified or redesign-
24 ated or reclassified for purposes of allocation of federal

25 highway funds as part of the federal-aid interstate or pri-
26 mary systems or is

27 (2) within three hundred feet of the nearest edge of
28 the right of way of any state local service road, may be
29 renewed only if the view of the said salvage yard and all
30 parts thereof is effectively screened from the adjacent
31 road by fences.

32 Any salvage yard which, on the effective date of this
33 article, is duly licensed under the former provisions of
34 this article may be established or continue to be operated
35 and maintained without screening by fences so long as
36 any part of such salvage yard is (1) not located within
37 one thousand feet of any road within the state road sys-
38 tem designated and classified or redesignated and reclassi-
39 fied as expressway, trunk line, or feeder, or any road with-
40 in the state road system designated and classified or re-
41 designated and reclassified for the purposes of allocation
42 of federal highway funds as part of the federal-aid inter-
43 state or primary systems or is (2) not located within three
44 hundred feet of the nearest edge of the right of way of any
45 state local service road.

§17-23-5. Requirements as to fences.

Fences shall be kept in good order and repair and
2 no advertisement shall be permitted thereon other than
3 the name of the licensee and the nature of the busi-
4 ness conducted on the premises. The height, location,
5 construction, planting, size and composition of any sign
6 or advertisement and maintenance of fences, living or
7 otherwise shall conform to such rules and regulations as
8 are promulgated with respect thereto by the commis-
9 sioner.

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

The costs of screening by fences shall be paid by the
2 salvage yard owner or operator: *Provided*, That if in the
3 opinion of the commissioner, such screening cannot be ac-
4 complished by the usual and ordinary methods, the com-
5 missioner may determine and pay such additional costs
6 as are necessary and required to provide effective screen-
7 ing.

§17-23-7. Exempt areas.

The provisions of this article shall not apply to salvage
2 yards or any parts thereof within municipalities situated

3 in areas zoned industrial, nor to salvage yards or any parts
4 thereof situated in areas within municipalities not
5 zoned industrial but which the commissioner determines
6 are used for industrial activities. The provisions of sec-
7 tion four of this article shall not apply to salvage yards
8 within municipalities in existence on the effective date
9 of this article but not required to be licensed under the
10 former provisions of this article, if the view of said sal-
11 vage yards is effectively screened from the adjacent road
12 by fences.

**§17-23-8. Commissioner's power to pay costs of removal of
salvage yard or to purchase same; no license to be issued
to a salvage yard at a location at which a salvage yard
was terminated unless provisions of this article com-
plied with.**

Whenever a salvage yard is so situated that it or any
2 part thereof is or shall be required to be effectively
3 screened by fences as provided in section four of this
4 article, and the said salvage yard or any part thereof can-
5 not, in the opinion of the commissioner, be effectively
6 screened by fences to comply with the provisions of this

7 article, so that the owner or operator of the salvage yard
8 cannot lawfully continue to operate and do business in
9 compliance with the terms hereof, then and only in such
10 event, the commissioner, in addition to all other powers
11 herein conferred, may (1) with the consent of said owner
12 or operator, pay the cost of removal of all salvage and
13 equipment from such salvage yard to such other location
14 as the said owner or operator may direct whereon a sal-
15 vage yard business may be conducted in compliance with
16 the provisions of this article, or (2) purchase at private
17 sale or acquire by proceeding in eminent domain, in ac-
18 cordance with the provisions of chapter fifty-four of this
19 code, all such property rights and interests, other than
20 title to real property, as are necessary and required to
21 effect a lawful termination of the salvage business con-
22 ducted on any such salvage yard, or on any part thereof.

23 If any salvage yard at any location is terminated under
24 the provisions of this section or by court order as provided
25 in section nine of this article, the commissioner shall not
26 thereafter license any salvage yard at any such location if
27 such location or any part thereof is (1) within one thou-

28 sand feet of the nearest edge of the right of way of any
29 road within the state road system designated and classi-
30 fied or redesignated and reclassified as expressway, trunk
31 line or feeder, or any road within the state road system
32 designated and classified or redesignated and reclassified
33 for purposes of allocation of federal highway funds as
34 part of the federal-aid interstate or primary systems or
35 (2) within three hundred feet of the nearest edge of the
36 right of way of any state local service road, unless and
37 until the view of such salvage yard or any part thereof
38 from such state local service road is screened by fences as
39 provided in this article.

**§17-23-9. Salvage yard in violation of this article is public
nuisance; right to abate nuisance; penalties.**

The establishment, operation or maintenance of a sal-
2 vage yard or any part thereof in violation of any provision
3 of this article is hereby declared to be a public nuisance,
4 and the commissioner or the prosecuting attorney of the
5 county in which such salvage yard or any part thereof is
6 located shall apply to the circuit court or other court of
7 competent jurisdiction of the county in which said salvage

8 yard or any part thereof is located, for an injunction to
9 abate such nuisance. The court shall have authority to
10 hear and decide such questions and grant injunctions or
11 such other relief as the court may deem proper.

12 Any person violating any provision of this article,
13 whether as principal, agent or employee, shall be deemed
14 guilty of a misdemeanor, and, upon conviction thereof,
15 shall be punished by a fine of not less than one hundred
16 dollars nor more than one thousand dollars; and such per-
17 son shall be guilty of a separate offense for each month
18 during a portion of which any violation of this article is
19 committed, continued or permitted: *Provided, however,*
20 That in the event of an appeal from any such conviction,
21 the period between the date a notice of appeal is filed
22 and the date of the final order of the court last considering
23 the appeal shall not be considered a period of continuing
24 in violation of this article.

§17-23-10. Special fund.

There is hereby created a special fund, to the credit of
2 which shall be paid such funds as may from time to time
3 be appropriated by the Legislature, all funds received

4 from licenses issued under section three of this article
5 and all federal funds allocated and distributed to the state
6 of West Virginia in implementation of the provisions of
7 title 23, United States code, relating to junkyards (salvage
8 yards), to be administered by the commissioner in the
9 enforcement and carrying out of the provisions of this
10 article.

§17-23-11. Rules and regulations.

To implement the provisions of this article, the com-
2 missioner is hereby authorized and empowered to promul-
3 gate rules and regulations in accordance with the pro-
4 visions of chapter twenty-nine-a of this code.

§17-23-12. Other statutes not applicable.

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

§17-23-13. Severability.

If any provision of this article or the application thereof
2 to any person or circumstance is held unconstitutional or
3 invalid, such unconstitutionality or invalidity shall not

4 affect other provisions or applications of this article, and
5 to this end the provisions of this article are declared to be
6 severable.

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

William Temper
Chairman Senate Committee

Clayton C. Davidson
Chairman House Committee

Originated in the Senate.

To take effect July 1, 1967.

Howard Negeer
Clerk of the Senate

CA Blankenship
Clerk of the House of Delegates

Howard W. Carson
President of the Senate

H. Leban White
Speaker House of Delegates

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

Stewart C. Smith
Governor

**PRESENTED TO THE
GOVERNOR**

Date 3/17/67

Time 3:45 PM.