

SB 472

FILED

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WEST VIRGINIA LEGISLATURE
SEVENTY-NINTH LEGISLATURE
REGULAR SESSION, 2009

SECRETARY OF STATE



ENROLLED

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 472

(SENATORS UNGER, GREEN, CARUTH
AND STOLLINGS, *original sponsors*)

[Passed April 11, 2009; in effect ninety days from passage.]

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AN ACT to amend and reenact §17-22-1, §17-22-6, §17-22-7, §17-22-8, §17-22-9, §17-22-10, §17-22-11 and §17-22-13 of the Code of West Virginia, 1931, as amended, all relating to amending restrictions on outdoor advertising of businesses located on real property owned or leased by the business advertised.

Be it enacted by the Legislature of West Virginia:

That §17-22-1, §17-22-6, §17-22-7, §17-22-8, §17-22-9, §17-22-10, §17-22-11 and §17-22-13 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 22. OUTDOOR ADVERTISING.

§17-22-1. Legislative finding.

1 The Legislature hereby finds and declares: (a) That
2 outdoor advertising is a legitimate, commercial use of
3 private property adjacent to roads and highways; (b) that
4 outdoor advertising is an integral part of the business and
5 marketing function and an established segment of the
6 national economy which serves to promote and protect
7 private investments in commerce and industry; and (c) that
8 the erection and maintenance of outdoor advertising signs,
9 displays and devices in areas adjacent to federal-aid
10 interstate and primary highways should be regulated in
11 order to protect the public investment in such highways,
12 to promote the recreational value of public travel, to
13 preserve natural beauty and to promote the reasonable,
14 orderly and effective display of such signs, displays and
15 devices.

16 The Legislature further finds and declares that fiscal
17 actualities reflect that the people of the State of West
18 Virginia would suffer economically if the state failed to
19 participate fully in the allocation and apportionment of
20 federal-aid highway funds, more specifically that a
21 reduction in federal-aid highway funds would necessitate
22 increased local taxation to support and maintain the
23 highway program and system, and that it is the intention
24 of this bill, among other things, to provide a statutory
25 basis for regulation of outdoor advertising consistent with
26 the public policy relating to areas adjacent to federal-aid
27 interstate and primary highways declared by the Congress
28 of the United States, in Title 23, United States Code, and
29 that the economic benefit resulting from full participation
30 in the federal highway program would constitute a benefit
31 to the community as a whole.

**§17-22-6. Purchase or condemnation; powers of Commissioner
of Highways; payment to claimants.**

1 The Commissioner of Highways is hereby authorized
2 and empowered to make acquisition of all of the property

3 rights and interest specified in section five of this article
4 by purchase at private sale or, in the event he is unable to
5 do so, by proceeding in eminent domain. Upon any such
6 taking or acquisition pursuant to the provisions of this
7 article, just and full compensation for the sign and lease-
8 hold interest shall be paid directly to the owner thereof,
9 and just and full compensation for the loss of the right to
10 erect and maintain signs shall be paid directly to the
11 owner of the affected real property. In any condemnation
12 proceeding involving such taking or acquisition by the
13 state, the commissioners or jury shall ascertain the com-
14 pensation to which the owner of the sign and leasehold
15 interest is entitled, separate and apart from the compensa-
16 tion to which the owner of the real property is entitled, as
17 provided and authorized in section eighteen, article two,
18 chapter fifty-four of this code.

**§17-22-7. Exceptions to prohibited signs; standards for ex-
cepted signs.**

1 The provisions of section three of this article shall not
2 apply to the following: (a) Directional and other official
3 signs and notices required or authorized by law, including,
4 but not limited to, signs and notices pertaining to natural
5 wonders, farm wineries, mini-distilleries, scenic and
6 historical attractions, which such signs and notices shall
7 conform to standards respecting lighting, size, number,
8 spacing and such other appropriate requirements as may
9 be designated and specified by the Secretary of Transpor-
10 tation of the United States: *Provided*, That the Commis-
11 sioner of Highways shall not establish any standards
12 respecting lighting, size, number, spacing and other
13 appropriate requirements which are stricter than such
14 standards designated and specified by the Secretary of
15 Transportation of the United States; (b) signs, displays and
16 devices advertising the sale or lease of property upon
17 which they are located; and (c) signs, displays and devices
18 advertising activities conducted on the property on which

19 they are located, including markers of underground utility
20 facilities.

**§17-22-8. Exempted areas; agreements between Commissioner
of Highways and United States Secretary of
Transportation.**

1 In order to promote the reasonable, orderly and effec-
2 tive display of outdoor advertising while remaining
3 consistent with the purposes of this article, signs, displays
4 and devices, whose size, lighting and spacing shall be
5 determined by agreement between the Commissioner of
6 Highways of West Virginia and the Secretary of Transpor-
7 tation of the United States, may be erected and main-
8 tained within six hundred sixty feet of the nearest edge of
9 the right-of-way of federal-aid interstate or primary
10 roads, within areas zoned industrial or commercial, or in
11 unzoned commercial or industrial areas, as may be deter-
12 mined by agreement between the Commissioner of High-
13 ways of West Virginia and the Secretary of Transportation
14 of the United States: *Provided*, That any such agreement
15 shall contain a definition of unzoned commercial or
16 industrial areas which reflects existing conditions in this
17 state, such as, without limiting the foregoing, existing land
18 use, availability of land for urban development, topogra-
19 phy and accepted zoning practices now prevailing in this
20 state. Any agreement between the Commissioner of
21 Highways and the Secretary of Transportation relating to
22 size, lighting and spacing shall reflect customary usage in
23 this state. Any agreement between the Commissioner of
24 Highways and the Secretary of Transportation defining
25 unzoned commercial or industrial areas, or relating to size,
26 lighting and spacing, shall be no more restrictive than
27 necessary to secure to this state any federal aid contingent
28 upon compliance with federal laws, or federal rules and
29 regulations relating to outdoor advertising, and shall be
30 subject to amendment or rejection by the Legislature of
31 West Virginia: *Provided, however*, That the terms of any

32 such agreement shall be no more restrictive than those
33 included in any other similar agreement made by the
34 Secretary of Transportation and other states: *Provided*
35 *further*, That such agreement shall provide for its modifi-
36 cation and amendment in the event and to the extent that
37 the Secretary of Transportation and any other state shall
38 thereafter agree to any provisions which shall be less
39 restrictive. The provisions of this section shall not apply
40 to signs, displays and devices referred to in clauses (b) and
41 (c), section seven 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
3 maintained, pursuant to agreement between the Commis-
4 sioner of Highways and the Secretary of Transportation,
5 within the rights-of-way of highways within the fed-
6 eral-aid interstate system, at appropriate distances from
7 interchanges on such interstate system.

§17-22-10. Special fund.

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

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

1 It shall be the function and duty of the Commissioner of
2 Highways to administer and enforce the provisions of this
3 article, and in the performance of his or her duties hereun-

4 der, he or she may assign to division engineers, and other
5 employees in his or her department, such duties as he or
6 she may deem proper. The commissioner is hereby autho-
7 rized and empowered to promulgate rules and regulations
8 implementing the provisions of this article, including rules
9 and regulations permitting the state of West Virginia to
10 comply with the provisions of Title 23, United States
11 Code, relating to the payment of bonuses for the regula-
12 tion of outdoor advertising adjacent to the interstate
13 system and the terms and provisions of any agreement
14 heretofore entered into pursuant to law by and between
15 the Commissioner of Highways of West Virginia and the
16 Secretary of Commerce of the United States relating to the
17 payment of such bonuses, any provisions of this article to
18 the contrary notwithstanding.

**§17-22-13. Licenses required; application; expiration; excep-
tions; revocations; judicial review.**

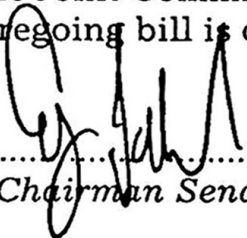
1 No person shall engage or continue in the business of
2 outdoor advertising in this state without first obtaining a
3 license for outdoor advertising from the commissioner; and
4 no person shall construct, erect, operate, use, maintain,
5 lease or sell any outdoor advertising sign, display or device
6 in this state without first obtaining a license from the
7 commissioner. The commissioner shall charge an annual
8 license fee in the amount of \$125, payable in advance, for
9 licensees obtaining up to twenty permits. Licensees,
10 including subsidiaries and affiliates, obtaining twenty-one
11 or more permits shall pay an annual fee of \$1,000, payable
12 in advance. Applications for licenses, or renewal of
13 licenses, shall be made on forms furnished by the commis-
14 sioner and shall contain any pertinent information re-
15 quired by the commissioner and shall be accompanied by
16 the annual fee. Licenses granted under this section expire
17 on June 30 of each year and shall not be prorated. Appli-
18 cations for the renewal of licenses shall be made not less
19 than thirty days prior to the date of expiration. Nothing

20 in this section shall be construed to require any person to
21 obtain a license who constructs, erects, operates, uses or
22 maintains an on-premise sign, display or device solely on
23 his or her own property at the location of the advertised
24 business and within limitations established in rules
25 authorized by section eleven of this article and promul-
26 gated in accordance with state law. The Commissioner of
27 Highways, in his or her discretion, may propose for
28 promulgation an emergency rule as provided in article
29 three, chapter twenty-nine-a of this code that clarifies,
30 explains or implements limitations or restrictions on the
31 construction, erection, operation, use and maintenance of
32 outdoor advertising signs, displays and devices. With the
33 prior written approval of the Commissioner of Highways,
34 a county commission may enact and enforce outdoor
35 advertising ordinances which place limitations or restric-
36 tions on outdoor advertising signs, displays or devices
37 which are in addition to or more restrictive than the
38 limitations or restrictions provided by the Commissioner
39 of Highways in the emergency rule on this subject.

40 The commissioner may, after thirty days' notice in
41 writing to the licensee, make and enter an order revoking
42 any license granted by him or her upon repayment of a
43 proportionate part of the license fee, in any case where he
44 or she finds that any material information required to be
45 given in the application for the license is knowingly false
46 or misleading or that the licensee has violated any of the
47 provisions of this article, unless the licensee, before the
48 expiration of said thirty days, corrects the false or mis-
49 leading information and complies with the provisions of
50 this article. The order shall be accompanied by findings of
51 fact and conclusions of law upon which the order was
52 made and entered. Any person adversely affected by an
53 order made and entered by the commissioner is entitled to
54 judicial review of the order. The judicial review shall be
55 in the circuit court for the county in which the owner of

56 the sign has his or her principal place of business in this
57 state, or in the circuit court of Kanawha County if all
58 parties agree. The judgment of the circuit court is final
59 unless reversed, vacated or modified on appeal to the
60 Supreme Court of Appeals of West Virginia. Legal counsel
61 and services for the commissioner in appeal proceedings in
62 any circuit court and the Supreme Court of Appeals shall
63 be provided by the Attorney General or his or her assis-
64 tants, and in appeal proceedings in any circuit court by the
65 prosecuting attorney of the county as well, all without
66 additional compensation. The commissioner may employ
67 special counsel to represent the commissioner in a particu-
68 lar proceeding.


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


.....
Chairman Senate Committee



.....
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.


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Clerk of the Senate


.....
Clerk of the House of Delegates


.....
President of the Senate


.....
Speaker House of Delegates

The within is approved this the 12th
Day of May, 2009.


.....
Governor

PRESENTED TO THE
GOVERNOR

MAY - 8 2009

Time 10:35