WEST VIRGINIA LEGISLATURE
SEVENTY-NINTH LEGISLATURE
REGULAR SESSION, 2009

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.
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; and (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 necessitate increased local taxation to support and maintain the highway program and system, and that it is the intention of this bill, among other things, to provide a statutory basis for regulation of outdoor advertising consistent with the public policy relating to areas adjacent to federal-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.

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

The Commissioner of Highways is hereby authorized and empowered to make acquisition of all of the property
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 directly 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 section eighteen, article two, chapter fifty-four of this code.

§17-22-7. Exceptions to prohibited signs; standards for excepted signs.

The provisions of section three of this article shall not apply to the following: (a) Directional and other official signs and notices required or authorized by law, including, but not limited to, signs and notices pertaining to natural wonders, farm wineries, mini-distilleries, 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 Commissioner of Highways 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
§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 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 Commissioner of Highways of West Virginia and the Secretary of Transportation of the United States, may be erected and maintained within six hundred 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 determined by agreement between the Commissioner of Highways of West Virginia and the Secretary of Transportation of the United States: Provided, That any such agreement shall contain a definition of unzoned commercial or industrial areas which reflects existing conditions in this state, such as, without limiting the foregoing, existing land use, availability of land for urban development, topography and accepted zoning practices now prevailing in this state. Any agreement between the Commissioner of Highways and the Secretary of Transportation relating to size, lighting and spacing shall reflect customary usage in this state. Any agreement between the Commissioner of Highways and the Secretary of Transportation defining unzoned commercial or industrial areas, or relating to size, lighting and spacing, shall be no more restrictive than necessary to secure to this state any federal aid contingent upon compliance with federal laws, or federal rules and regulations relating to outdoor advertising, and shall be subject to amendment or rejection by the Legislature of West Virginia: Provided, however, That the terms of any
such agreement shall be no more restrictive than those included in any other similar agreement made by the Secretary of Transportation and other states: Provided further, That such agreement shall provide for its modification and amendment in the event and to the extent that the Secretary of Transportation and any other state shall thereafter agree to any provisions which shall be less restrictive. The provisions of this section shall not apply to signs, displays and devices referred to in clauses (b) and (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 in the interest of the traveling public may be erected and maintained, pursuant to agreement between the Commissioner of Highways and the Secretary of Transportation, within the rights-of-way of highways within the federal-aid interstate system, at appropriate distances from interchanges on such interstate system.

§17-22-10. Special fund.

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


1 It shall be the function and duty of the Commissioner of Highways to administer and enforce the provisions of this article, and in the performance of his or her duties hereun-
der, he or she may assign to division engineers, and other
employees in his or her department, such duties as he or
she may deem proper. The commissioner is hereby autho-
ized and empowered to promulgate rules and regulations
implementing the provisions of this article, including rules
and regulations permitting the state of West Virginia to
comply with the provisions of Title 23, United States
Code, relating to the payment of bonuses for the regu-
lation of outdoor advertising adjacent to the interstate
system and the terms and provisions of any agreement
heretofore entered into pursuant to law by and between
the Commissioner of Highways of West Virginia and the
Secretary of Commerce of the United States relating to the
payment of such bonuses, any provisions of this article to
the contrary notwithstanding.

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

No person shall engage or continue in the business of
outdoor advertising in this state without first obtaining a
license for outdoor advertising 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 a license from the
commissioner. The commissioner shall charge an annual
license fee in the amount of $125, payable in advance, for
licensees obtaining up to twenty permits. Licensees,
including subsidiaries and affiliates, obtaining twenty-one
or more permits shall pay an annual fee of $1,000, payable
in advance. Applications for licenses, or renewal of
licenses, shall be made on forms furnished by the commis-
sioner and shall contain any pertinent information re-
quired by the commissioner and shall be accompanied by
the annual fee. Licenses granted under this section expire
on June 30 of each year and shall not be prorated. Appli-
cations 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 on-premise sign, display or device solely on his or her own property at the location of the advertised business and within limitations established in rules authorized by section eleven of this article and promulgated in accordance with state law. The Commissioner of Highways, in his or her discretion, may propose for promulgation an emergency rule as provided in article three, chapter twenty-nine-a of this code that clarifies, explains or implements limitations or restrictions on the construction, erection, operation, use and maintenance of outdoor advertising signs, displays and devices. With the prior written approval of the Commissioner of Highways, a county commission may enact and enforce outdoor advertising ordinances which place limitations or restrictions on outdoor advertising signs, displays or devices which are in addition to or more restrictive than the limitations or restrictions provided by the Commissioner of Highways in the emergency rule on this subject.

The commissioner may, after thirty days' notice in writing to the licensee, make and enter an order revoking any license granted by him or her upon repayment of a proportionate part of the license fee, in any case where he or she finds that any material information 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 the licensee, before the expiration of said thirty days, corrects the false or misleading information and complies with the provisions of this article. The order shall be accompanied by findings of fact and conclusions of law upon which the order was made and entered. Any person adversely affected by an order made and entered by the commissioner is entitled to judicial review of the order. The judicial review shall be in the circuit court for the county in which the owner of
the sign has his or her principal place of business in this state, or in the circuit court of Kanawha County if all parties agree. The judgment of the circuit court is 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 or her 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.
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.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within is approved this the...

Day of...

2009.

Governor