

# WEST VIRGINIA LEGISLATURE

## 2022 REGULAR SESSION

Introduced

### House Bill 4388

FISCAL  
NOTE

BY DELEGATES STATLER AND SUMMERS

[Introduced January 25, 2022; Referred to the  
Committee on Finance]

1 A BILL to amend and reenact §17-22-13 and §17-22-15 of Code of West Virginia, 1931, as  
2 amended, all relating to exempting nonprofit organizations from the fee requirements for  
3 obtaining a license or permit for outdoor advertising.

*Be it enacted by the Legislature of West Virginia:*

## **ARTICLE 22. OUTDOOR ADVERTISING.**

### **§17-22-13. Licenses required; application; expiration; exceptions; revocations; judicial review.**

1 (a) No person shall engage or continue in the business of outdoor advertising in this state  
2 without first obtaining a license for outdoor advertising from the commissioner; and no person  
3 shall construct, erect, operate, use, maintain, lease or sell any outdoor advertising sign, display  
4 or device in this state without first obtaining a license from the commissioner.

5 (b) The commissioner shall charge an annual license fee in the amount of \$125, payable  
6 in advance, for licensees obtaining up to 20 permits. Licensees, including subsidiaries and  
7 affiliates, obtaining 21 or more permits shall pay an annual fee of \$1,000, payable in advance.

8 (c) The commissioner shall not require a nonprofit organization to pay an annual license  
9 fee. Any nonprofit organization that seeks a license shall provide all information and in the manner  
10 prescribed by subsection (d).

11 (d) Applications for licenses, or renewal of licenses, shall be made on forms furnished by  
12 the commissioner and shall contain any pertinent information required by the commissioner and  
13 shall be accompanied by the annual fee, if one is required. Licenses granted under this section  
14 expire on June 30 of each year and shall not be prorated. Applications for the renewal of licenses  
15 shall be made not less than 30 days prior to the date of expiration. Nothing in this section shall be  
16 construed to require any person to obtain a license who constructs, erects, operates, uses or  
17 maintains an on-premise sign, display or device solely on his or her own property at the location  
18 of the advertised business and within limitations established in rules authorized by section eleven  
19 of this article and promulgated in accordance with state law.

20           (e) The Commissioner of Highways, in his or her discretion, may propose for promulgation  
21 an emergency rule as provided in §29A-3-1 *et seq.* of this code that clarifies, explains or  
22 implements limitations or restrictions on the construction, erection, operation, use and  
23 maintenance of outdoor advertising signs, displays and devices. With the prior written approval  
24 of the Commissioner of Highways, a county commission may enact and enforce outdoor  
25 advertising ordinances which place limitations or restrictions on outdoor advertising signs,  
26 displays or devices which are in addition to or more restrictive than the limitations or restrictions  
27 provided by the Commissioner of Highways in the emergency rule on this subject.

28           (f) The commissioner may, after 30 days' notice in writing to the licensee, make and enter  
29 an order revoking any license granted by him or her upon repayment of a proportionate part of  
30 the license fee, in any case where he or she finds that any material information required to be  
31 given in the application for the license is knowingly false or misleading or that the licensee has  
32 violated any of the provisions of this article, unless the licensee, before the expiration of said 30  
33 days, corrects the false or misleading information and complies with the provisions of this article.  
34 The order shall be accompanied by findings of fact and conclusions of law upon which the order  
35 was made and entered. Any person adversely affected by an order made and entered by the  
36 commissioner is entitled to judicial review of the order. The judicial review shall be in the circuit  
37 court for the county in which the owner of the sign has his or her principal place of business in  
38 this state, or in the circuit court of Kanawha County if all parties agree. The judgment of the circuit  
39 court is final unless reversed, vacated or modified on appeal to the Supreme Court of Appeals of  
40 West Virginia. Legal counsel and services for the commissioner in appeal proceedings in any  
41 circuit court and the Supreme Court of Appeals shall be provided by the Attorney General or his  
42 or her assistants, and in appeal proceedings in any circuit court by the prosecuting attorney of the  
43 county as well, all without additional compensation. The commissioner may employ special  
44 counsel to represent the commissioner in a particular proceeding.

**§17-22-15. Permit required for each sign, etc.; applications; exceptions; refusal of permits;**

**expiration and renewal; change of advertising copy; revocation; fee; judicial review.**

1 (a) Except as in this article otherwise provided, no person shall construct, erect, operate,  
2 use, maintain or cause or permit to be constructed, erected, operated, used or maintained any  
3 advertising sign, display or device without first obtaining a permit for the advertising sign, display  
4 or device from the commissioner and paying the annual fee for the advertising sign, display or  
5 device as provided in this section. The commissioner shall not issue a permit to any person who  
6 has not obtained the license provided for in section thirteen of this article.

7 (b) A separate application for a permit shall be made for each separate advertising sign,  
8 display or device, on a form furnished by the commissioner. ~~the~~ The application shall be signed  
9 by the applicant or his or her representative duly authorized in writing to act for him or her and  
10 shall describe and set forth the size, shape and the nature of the proposed advertising sign,  
11 display or device and its actual or proposed location with sufficient accuracy to enable the  
12 commissioner to locate and identify it. Every application for a changeable message sign shall be  
13 accompanied by a fee of \$500, which shall be retained by the commissioner if the permit is issued.  
14 Every application for all other signs shall be accompanied by a fee of \$20 for each advertising  
15 sign, display or device, which shall be retained by the commissioner if the permit is issued. In  
16 addition, a nonrefundable inspection fee of \$75 shall be charged for each proposed location along  
17 interstate and federal-aid primary highways. A nonrefundable inspection fee of \$25 shall be  
18 charged for each proposed location along all other public roads. An annual permit renewal fee,  
19 not to exceed \$60 per permit, shall be charged for renewal of each changeable message sign.  
20 Permit renewal fees for all other signs shall be established by legislative rule not to exceed \$25  
21 per permit annually. Each portion of an advertising sign upon which a display is posted or  
22 exhibited constitutes a separate advertising sign for purposes of this section. If the permit is  
23 refused, the commissioner shall make and enter an order to that effect and shall cause a copy of  
24 the order to be served on the applicant by certified mail, return receipt requested, and shall refund  
25 one-half the fee to the applicant. The order shall be accompanied by findings of fact and

26 conclusions of law upon which the order was made and entered. Each application shall be  
27 accompanied by an affidavit of the applicant or his or her agent that the owner or other person in  
28 control or possession of the real property upon which the advertising sign, display or device is to  
29 be constructed, erected, operated, used or maintained has consented to having the advertising  
30 sign, display or device on his or her property. Application shall be made in like manner for a permit  
31 to operate, use or maintain any existing advertising sign, display or device. Permits issued under  
32 this section expire on June 30 of each year and shall not be prorated and may be renewed upon  
33 the payment of a renewal fee as provided in this section. No application is required for a renewal  
34 of a permit.

35 (c) Notwithstanding the language in subsection (b), the commissioner shall not require a  
36 a nonprofit organization pay a permit fee, inspection fee, or renewal fee. A non-profit organization  
37 is still required to furnish all applications and information required by the commissioner for the  
38 permitting process.

39 ~~(e)~~ (d) For all signs other than changeable message signs, if more than one side of an  
40 advertising sign is used for advertising, a permit application or renewal fee for each side is  
41 required. One permit application or renewal fee shall be charged for each changeable message  
42 sign. Advertisements sculptured in the round shall be treated as using three sides.

43 ~~(d)~~ (e) The holder of a permit, during the term of the permit, has the right to change the  
44 advertising copy of the structure or sign for which it was issued without payment of any additional  
45 fee.

46 ~~(e)~~ (f) The commissioner may, after 30 days' notice in writing to the permittee, make and  
47 enter an order revoking any permit issued by him or her under this section upon repayment of a  
48 proportionate part of the fee in any case where it shall appear to the commissioner that the  
49 application for the permit contains knowingly false or misleading information or that the permittee  
50 has violated any of the provisions of this article, unless the permittee shall, before the expiration  
51 of the 30 days, correct the false or misleading information and comply with the provisions of this

52 article. The order shall be accompanied by findings of fact and conclusions of law upon which the  
53 order was made and entered. If the construction, erection, operation, use or maintenance of any  
54 advertising sign, display or device for which a permit is issued by the commissioner and the permit  
55 fee has been paid as provided for in this section is prevented by any zoning board, commission  
56 or other public agency which also has jurisdiction over the proposed advertising sign, display or  
57 device, or its site, the fee for the advertising sign, display or device shall be returned by the  
58 commissioner and the permit revoked. But one-half the fee shall be considered to have accrued  
59 upon the erection of an advertising sign or structure or the display of advertising material followed  
60 by any inspection by the commissioner or his or her representatives.

61 ~~(f)~~ (g) Any person adversely affected by an order made and entered by the commissioner  
62 refusing to grant or revoking a permit is entitled to judicial review of the order. The judicial review  
63 shall be: (1) In the county in which the person applying for the permit has his or her principal place  
64 of business in this state; or (2) in the circuit court for the county in which the sign for which the  
65 permit is sought is to be located; or (3) in the circuit court of Kanawha County if all parties agree.  
66 The judgment of the circuit court is final unless reversed, vacated or modified on appeal to the  
67 Supreme Court of Appeals of West Virginia. Legal counsel and services for the commissioner in  
68 appeal proceedings in any circuit court and the Supreme Court of Appeals shall be provided by  
69 the Attorney General or his or her assistants, and in appeal proceedings in any circuit court by  
70 the prosecuting attorney of the county as well, all without additional compensation. The  
71 commissioner may employ special counsel to represent the commissioner in a particular  
72 proceeding.

NOTE: The purpose of this bill is to exempt nonprofit organizations from paying fees for outdoor advertising.

Strike-throughs indicate language that would be stricken from a heading or the present law, and underscoring indicates new language that would be added.