

EXCERPTS FROM
WEST VIRGINIA CODE
CHAPTER 17
ROADS AND HIGHWAYS

WEST VIRGINIA CODE CHAPTER 17. ROADS AND HIGHWAYS.
ARTICLE 20. ROADSIDE MEMORIAL MARKERS.

§17-20-1. Roadside memorial markers authorized.

Notwithstanding any provision of section one, article nineteen of this chapter to the contrary, the commissioner of highways is authorized to propose legislative rules for promulgation in accordance with the provisions of chapter twenty-nine-a of this code providing for the placement of memorial markers or other tributes within state highway rights-of-way to memorialize people who have died as a result of vehicle related accidents.

§17-20-2. Roadside memorial marker criteria.

(a) Legislative rules proposed pursuant to section one of this article shall provide for the placement of markers in a manner that increases public awareness of highway safety and promotes the safe use of the highways and their rights-of-way. The rules shall prescribe circumstances under which:

- (1) Memorial markers may be placed near to where a fatal accident occurred, considering available space, property owner complaints or other constraints; and
- (2) Decorations, flowers or other memorial ornaments or tributes may be placed on the right-of-way by family members.

(b) Notwithstanding any provision of the rules to the contrary, the commissioner may direct or cause the removal of any memorial marker or tribute from a state highway right-of-way, without notice, upon the determination by the commissioner that the removal is necessary for construction, maintenance, safety or other purpose. The state of West Virginia, its agencies and subdivisions, and their officers and employees shall not be liable for any claims arising as a result of the removal of a marker or tribute.

EXCERPTS FROM
TITLE 157
LEGISLATIVE RULE
DEPARTMENT OF TRANSPORTATION
DIVISION OF HIGHWAYS
SERIES 6
USE OF STATE ROAD RIGHTS OF WAY AND ADJACENT AREAS
ROADSIDE MEMORIALS AND ROADSIDE MEMORIAL SIGNS

2.33. "Roadside memorials" means any of the various kinds of tributes, typically ornamental, placed alongside the roadway to memorialize people who have died as a result of vehicular accidents. Roadside memorials include and are limited to temporary memorials, permanent memorials, and roadside memorial signs. For the purposes of this rule, "temporary memorials" includes, but is not limited to the various types of decorations, flags, flowers (cut and artificial) and other lightweight objects or ornamentation commonly used at funerals or at gravesides as a tribute to the dead. "Permanent memorials" are items such as plaques, stone monuments and etc., which are typically self-supported, intended to last many years and require a more significant installation or mounting process. "Roadside memorial signs" are official signs, provided and placed by the Division of Highways, installed at or near the site where a fatal motor vehicle accident occurred considering available space and other constraints, and of a design approved by the Commissioner.

2.52. "Immediate family members" include father, mother, son, daughter, siblings, parents, spouse, parents-in-law, children-in-law, grandparent, grandchildren, step-parents, step-brothers, step-sisters, step-children, foster children, and individuals in a legal guardianship relationship.

§157-6-4. Rules for Issuance of Permits for Making Openings or Placing Structures; In, Upon, Along, Over, Under and Across State Roads.

4.1. General Regulations for Issuance of Permits.

4.1.a. Form of Application. Applications for permission to perform work within highway right of way as provided in W. Va. Code, §17-16-6, must be made on the Division's standard permit form. The applicant must provide full information concerning the work to be done and must include a sketch.

4.1.b. Signature Required. Applications must be signed by the applicant or his or her duly authorized representative.

4.1.c. Security. The applicant must deposit security with the Division in the form of a certified check, money order, or executed bond, with surety satisfactory to the Division, to cover any damage the Division may sustain due to granting the permit, including any expense incurred in restoring the highway

to its original condition, or the proper repair of any and all damages that may result within one (1) year from the date of the completion of the permitted work.

4.1.d. Completion Date. The application must state the date the proposed work is to be completed.

4.1.e. Approval of Application. Applicants for permits must file the original and three (3) copies of the application with the District Engineer in whose district the work is proposed. Before any work can be started, the application must be approved by the District Engineer or the Director of the Maintenance Division.

4.1.f. Inspection. The permitted work must be done under the supervision and to the satisfaction of the Division. The applicant must agree to reimburse the Division for any inspection costs incurred under the permit as provided in W. Va. Code, §17-16-6.

4.1.g. Notification. The applicant must notify the Division at least 48 hours in advance of the date on which work will begin.

4.1.h. Control of Traffic. The traveling public must be protected at all times in accordance with the Division's manual, "Traffic Control for Streets and Highway Construction and Maintenance Operations." This manual may be obtained by contacting the Division's central headquarters in Charleston or any of the Division's district headquarters.

4.1.i. The applicant will repair, at his or her expense, damage to the road, resulting at any time, from work authorized under the permit. Unsatisfactory repairs may be corrected by the Division or its authorized agent and the cost thereof billed to and paid by the applicant.

4.1.j. Save Harmless. The person, firm or corporation to whom a permit is issued must agree to save harmless the State, the Commissioner, and any and all officers, agents and employees of the Division from any damages to persons or property arising or resulting from work authorized or done under the permit.

4.1.k. Liability. The Division assumes no liability for damage to the proposed installation by reason of construction or maintenance work on the road.

4.1.l. Removal. All permits granted shall be subject to the removal of the installation by the permittee at no cost to the Division when required for improvement of the road, and subject to all rules now or hereinafter adopted by the Commissioner.

4.1.m. Cancellation. The Commissioner reserves the right at any time to cancel any permit in the event the applicant or the person by whom the work is being done thereunder fails to comply with the terms and conditions under which it is granted.

9.1. Purpose. This section provides requirements for the placement of roadside memorials within the rights of way of the State's highways by or on behalf of family members or friends for the sole purpose of memorializing persons who have died as a result of vehicle related accidents.

9.2. General Requirements. All roadside memorials must be placed at or near the location of a fatal vehicular accident in compliance with the following rules:

9.2.a. Within the highway right of way, as far from the travel lanes as reasonably possible and not on private property nor in front of or alongside private property or residences unless express permission has been obtained from the property owner.

9.2.b. Clear of ditches, culvert pipes, bridges and other highway features that require access for maintenance.

9.2.c. Behind the guardrail, if one is present, except that temporary memorials may be tied to a guardrail post with lightweight string, wire or tape and must be easily removable for maintenance purposes.

9.2.d. Roadside memorials may not be placed in any median, nor may they be affixed to any bridge, tree, fence, sign or lighting pole, utility pole, traffic signal pole, signs, etc.

9.2.e. Roadside memorials may not interfere with any traffic control device or be a hazard to the motoring public in any way including, but not limited to, restricting drivers' or other road users' sight distance; having any light-reflecting parts or materials, or any means of illumination; or mimicking or imitating any official traffic control device.

9.2.f. . Persons placing or visiting roadside memorials or roadside memorial signs are responsible for their own safety and must act in a responsible, safe manner including parking completely clear of the travel lanes, even if it means walking some distance.

9.2.g. Removal of roadside memorials. Division of Highways personnel will normally not remove roadside memorials that meet the requirements of this rule. However, the Commissioner has the authority to direct or cause the removal of any roadside memorial, without notice, within a state highway right of way upon determining that removal is necessary for construction, maintenance, safety or other purpose.

9.2.h If more than one person applies for a roadside memorial sign for the same victim or for multiple victims of the same accident, the applications will be consolidated and treated as one.

9.3 Temporary Memorials. Temporary memorials must be installed in accordance with the following rules:

9.3.a. Temporary memorials may not exceed surface dimensions of four feet in length by four feet in width and should be self supporting. Any structural or support members of the memorial are limited to a diameter no greater than three inches if wooden or one-quarter inch if metal.

9.3.b. Before placing a temporary memorial, a person must contact the nearest Division of Highways office. The person will be asked questions concerning the intended placement and construction of the temporary memorial so that appropriate guidance may be provided. Also, the Division employee will record the person's name, address and phone number for future contact, if required.

9.4. Permanent Memorials. Permanent memorials are items such as plaques, stone monuments and etc., which are typically self-supported, intended to last many years and require a more significant installation and mounting process. These memorials are allowed only if a permit has been obtained from the Division. Application for the permit may be made through the District Office having jurisdiction, on Division of Highways Form MM-109, which may be found on the Department of Transportation's Web site, www.WVDOT.com.

9.5 Roadside Memorial Signs. Roadside memorial signs are official signs provided and placed by the Division of Highways. Roadside memorial signs must be installed in accordance with the following rules:

9.5.a. Roadside memorial signs may be installed at or near the site where a fatal motor vehicle accident occurred, at a location considering available space and other constraints. The signs shall be of a design approved by the Commissioner.

9.5.b . The provision and placement of a roadside memorial sign is a service by the Division of Highways and does not create any right or privilege.

9.5.c .Within three years following the date of a fatal motor vehicle accident, a member or members of the immediate family of the victim may make a written request to the Commissioner of Highways, on an application form specified by the Division of Highways, for the placement of a roadside memorial sign at or near the site of the accident. Blank application forms are available for downloading at the West Virginia Department of Transportation's Web site, <http://www.wvdot.com>

9.5.d. The applicant shall, upon request, provide the Commissioner with sufficient documentation to verify the relationship between the applicant and the victim.

9.5.e. Upon receipt of the application and any additional required documentation, the Division will review the information submitted and any other available official records or reports to establish the location and circumstances of the accident.

9.5.f. Permanent memorials or roadside memorial signs will not be permitted or erected to recognize persons whose wrongful conduct was the proximate cause of the accident. If the Division's review discloses clear and convincing evidence that the accident resulted from the commission of a serious traffic offense as defined in the West Virginia Code, Section 17C-5-1 *et seq.*, or from the use of a vehicle in the commission of a felony, or from flight from a police officer, the Commissioner shall deny the application and shall so inform the applicant(s) in writing, specifying the reason for the denial. The written decision of the Commissioner is final.

9.5.g. Only one sign will be permitted per victim and the sign may memorialize more than one victim.

9.5.h. If an application for a roadside memorial sign is granted, the Commissioner shall so inform the applicant in writing. Upon the receipt of a non-refundable payment of two hundred

dollars (\$200), the Division shall procure and install the sign and shall notify the applicant in writing when the sign has been installed.

9.5.i. The initial payment of two hundred dollars (\$200) shall compensate the Division for its review of the application, the installation of the roadside memorial sign and its maintenance for a period of three years from the date of installation. The applicant may make a second, optional payment of two hundred dollars (\$200) to extend the display and maintenance of the sign for one additional three-year period. The Division will repair or replace the sign at its election, once during each three year period if damaged or destroyed.. At the end of the initial or renewal period, whichever come later, the sign will be removed and offered to the applicant(s).

9.5.j. If at any time during the application and fabrication process another member of the victim's immediate family objects to the sign, the process shall be halted and the application, the two hundred dollar (\$200) fee, and the related documentation shall be returned to the applicant. If the sign has been installed, the Division shall remove it and furnish it to the applicant, and the Division shall retain the two hundred dollar (\$200) fee.