

1 COMMITTEE SUBSTITUTE

2 FOR

3 **Senate Bill No. 557**

4 (By Senators Williams, Miller, Minard and D. Facemire)

5 _____
6 [Originating in the Committee on Transportation and
7 Infrastructure; reported February 23, 2011.]
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9
10 A BILL to amend the Code of West Virginia, 1931, as amended, by
11 adding thereto a new article, designated §17-29-1, §17-29-2,
12 §17-29-3, §17-29-4, §17-29-5, §17-29-6, §17-29-7, §17-29-8,
13 §17-29-9, §17-29-10, §17-29-11, §17-29-12, §17-29-13 and §17-
14 29-14, all relating to creating the Tourist-Oriented
15 Directional Signs Program; stating legislative purpose;
16 setting forth application and eligibility requirements;
17 establishing design and content guidelines; establishing sign
18 location and placement criteria; establishing fee schedule;
19 setting forth maintenance responsibility; permitting
20 revocation of participation in the program; authorizing
21 rulemaking to be exempt from the State Administrative
22 Procedures Act; and defining terms.

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

24 That the Code of West Virginia, 1931, as amended, be amended
25 by adding thereto a new article, designated §17-29-1, §17-29-2,
26 §17-29-3, §17-29-4, §17-29-5, §17-29-6, §17-29-7, §17-29-8, §17-29-

1 9, §17-29-10, §17-29-11, §17-29-12, §17-29-13 and §17-29-14, all to
2 read as follows:

3 **ARTICLE 29. TOURIST-ORIENTED DIRECTIONAL SIGNS PROGRAM.**

4 **§17-29-1. Short title.**

5 This article shall be known and may be cited as the "Tourist-
6 Oriented Directional Signs Program."

7 **§17-29-2. Legislative Purpose.**

8 The purpose of the Tourist-Oriented Directional Signs Program
9 is to establish criteria for participation in and administration of
10 a program for the installation of tourist-oriented directional
11 signs within the rights-of-way of state highways in rural areas of
12 the State of West Virginia. Tourist-oriented directional signs are
13 guide signs to be placed within the rights-of-way of state highways
14 in rural areas of the State of West Virginia to display business
15 identification and directional information for tourist-oriented
16 businesses not located on a state highway that attract highway
17 users from outside the immediate area of the business.

18 **§17-29-3. Definitions.**

19 The following words when used in this article have the meaning
20 ascribed to them unless the context clearly indicates a different
21 meaning:

22 (1) "Commissioner" means the West Virginia Commissioner of
23 Highways.

24 (2) "Division" means the West Virginia Division of Highways.

25 (3) "Eligibility distance" means the total roadway distance

1 from the turn on a state highway where a tourist-oriented
2 directional sign is located to the entry driveway of a tourist-
3 oriented business and, if necessary, to break a tie between two
4 otherwise eligible businesses, the eligibility distance shall also
5 include the distance from the beginning of the entry driveway to
6 the entry door of the business.

7 (4) "Immediate area of the business" means the area within a
8 twenty-mile radius of the business.

9 (5) "Rural" means an area outside the limits of an
10 incorporated municipality having a population of two thousand or
11 more according to the most recent decennial census of the United
12 States Bureau of Census.

13 (6) "State highway" means a highway designated by the
14 commissioner as part of the state highway system of the State of
15 West Virginia.

16 (7) "Tourist-oriented directional sign" means an official sign
17 structure placed within the right-of-way of a state highway that
18 contains one or more tourist-oriented directional sign panels.

19 (8) "Tourist-oriented directional sign panel" means an
20 individual sign panel on a tourist-oriented directional sign that
21 identifies the name of a participating tourist-oriented business,
22 the direction of turn to reach the business, and the distance to
23 the business from the turn off the state highway.

24 (9) "Tourist-oriented business" means a private or public
25 entity, which offers lawful cultural, historical, recreational,
26 agricultural, educational, entertainment or commercial activities,

1 services or products to the general public; and the major portion
2 of whose income or visitors are derived during its normal business
3 season from highway users residing outside the immediate area of
4 the business.

5 **§17-29-4. Tourist-Oriented Directional Signs Program**
6 **Authorization.**

7 (a) There is hereby created and established a tourist-oriented
8 directional signs program.

9 (b) Tourist-oriented directional signs shall be available to
10 lawful cultural, historical, recreational, agricultural,
11 educational or entertaining activities, state and national parks,
12 and commercial activities that are unique and local in nature, and
13 the major portion of whose income or visitors are derived during
14 its normal business season from motorists not residing in the
15 immediate area of the activity.

16 **§17-29-5. Compliance with other requirements.**

17 In all respects, the erection of tourist-oriented directional
18 signs shall comply with:

19 (1) The manual and specifications for uniform system of
20 traffic-control devices adopted by the commissioner pursuant to
21 section one, article three, chapter seventeen-c of this code;

22 (2) Local zoning authorities; and

23 (3) Outdoor advertising laws and rules set forth in article
24 twenty-two of this chapter.

25 **§17-29-6. Eligibility for participation in program.**

1 Participation in the tourist-oriented directional signs
2 program is open to tourist-oriented businesses that are unique and
3 local in nature and located in a rural area. More specifically, to
4 be eligible for identification on a tourist-oriented directional
5 sign panel, a tourist-oriented business shall have each of the
6 following characteristics:

7 (1) It shall offer lawful cultural, historical, recreational,
8 agricultural, educational, entertainment or commercial activities,
9 services or products to the general public;

10 (2) It shall be unique and local in nature, and not part of a
11 chain of businesses having a common name under common ownership and
12 management or under a franchise arrangement;

13 (3) It shall derive the major portion of its income or
14 visitors, during its normal business season, from highway users
15 residing outside the immediate area of the business;

16 (4) It shall have a permanent location:

17 (A) In a rural area or within the limits of an incorporated
18 municipality having a population of less than two thousand; and

19 (B) On a road within ten miles of the nearest intersection
20 with a state highway where a tourist-oriented directional sign may
21 be located; and

22 (5) It shall be open to the public on a regular schedule, at
23 least five days per week and eight hours per day (holidays
24 excepted), throughout the year: *Provided*, That a tourist-oriented
25 business open on a seasonal basis may be eligible for participation
26 in the tourist-oriented directional sign program.

1 (6) A tourist-oriented business offering multiple activities,
2 services or products to the public shall not be eligible for
3 separate tourist-oriented directional sign panels for separate
4 portions of the business but only as a single entity.

5 **§17-29-7. Design and content of signs.**

6 (a) Each tourist-oriented directional sign shall have no more
7 than four tourist-oriented directional sign panels.

8 (b) Each tourist-oriented directional sign panel shall be
9 constructed as follows:

10 (1) It shall have a standard size of sixty inches wide by
11 fifteen inches high;

12 (2) It shall have a white legend and border on a blue
13 background; and

14 (3) It shall have a sign face fabricated from reflective
15 sheeting applied to one-tenth inch flat sheet aluminum sign blank.

16 (c) The legend on each tourist-oriented directional sign panel
17 shall be designed as follows:

18 (1) It shall have a message block forty-eight inches wide by
19 fifteen inches high identifying the legal name or "doing business
20 as" name of the eligible tourist-oriented business, which message
21 shall be in upper case letters and shall not exceed two lines nor
22 more than fifteen characters per line, including all letters,
23 symbols and spaces;

24 (2) It shall have a directional information block twelve
25 inches wide by fifteen inches high with an arrow pointing in the
26 direction of the turn and a number stating the distance (to the

1 nearest tenth of a mile) to the identified business, which block
2 shall appear on the left side of the panel for left-turn businesses
3 and on the right side of the panel for right-turn businesses; and

4 (3) All letters and numerals in the legend shall be four
5 inches in height.

6 (d) The content of the legend on each tourist-oriented
7 directional sign panel shall be limited to the business
8 identification and directional information described above in this
9 rule. The legend shall not include any type of business logo or any
10 form of promotional advertising.

11 **§17-29-8. Criteria for sign location and placement.**

12 (a) The location criteria for erecting tourism-oriented
13 directional signs are as follows:

14 (1) The division will erect tourist-oriented directional signs
15 along state highways at intersections with roads where highway
16 users will turn to reach eligible tourist-oriented businesses that
17 have qualified to participate in the tourist-oriented directional
18 signs program.

19 (2) The division will not erect a new tourist-oriented
20 directional sign on any state highway within the limits of an
21 incorporated municipality having a population of two thousand or
22 more according to the most recent decennial census of the United
23 States Bureau of Census. Tourist-oriented directional signs shall
24 not be erected outside of such a municipality for a tourist-
25 oriented business within the limits of such a municipality.

26 (3) In addition, the division will not erect a new tourist-

1 oriented directional sign, or renew an existing tourist-oriented
2 directional sign, on any state highway within any incorporated
3 municipality without the prior written consent of the municipal
4 government. This written consent must be obtained by the tourist-
5 oriented business seeking to qualify for participation in the
6 tourist-oriented directional signs program or by a tourist-oriented
7 business seeking to renew participation in the tourist-oriented
8 directional signs program.

9 (4) At intersections where tourist-oriented directional signs
10 may be erected, the division will erect tourist-oriented
11 directional signs for each direction of travel along the state
12 highway. Generally, the division will erect a separate tourist-
13 oriented directional sign for each direction of turn in each
14 direction of travel, unless the division decides to erect only one
15 tourist-oriented directional sign in each direction of travel as
16 provided in subdivision (5), subsection (b) of this section.

17 (5) Tourist-oriented directional signs should be located at
18 least two hundred feet in advance of the intersection, and they
19 should be spaced at least two hundred feet from another tourist-
20 oriented directional sign or any other traffic control sign.

21 (6) The location of other traffic control devices, including
22 regulatory, warning and guide signs, shall take precedence over the
23 location of tourist-oriented directional signs.

24 (b) The criteria for installing and placing tourist-oriented
25 directional sign panels are as follows:

26 (1) No more than four tourist-oriented directional sign panels

1 may be installed on any one tourist-oriented directional sign.

2 (2) Subject to space limitations, the division will install
3 one tourist-oriented directional sign panel for a qualified
4 tourist-oriented business on a tourist-oriented directional sign in
5 each direction of travel at the intersection that provides the
6 shortest eligibility distance to that business.

7 (3) In the division's discretion, a second set of tourist-
8 oriented directional sign panels may be installed for a qualified
9 tourist-oriented business at an additional intersection on a second
10 state highway, but only if the second set of tourist-oriented
11 directional sign panels does not prevent another qualified tourist-
12 oriented business from obtaining a first set of tourist-oriented
13 directional sign panels at that intersection.

14 (4) Tourist-oriented directional sign panels for qualified
15 tourist-oriented businesses shall be grouped by direction of turn.
16 The placement of tourist-oriented directional sign panels on
17 tourist-oriented directional signs will be as follows, except as
18 provided in subdivision (5) of this subsection:

19 (A) All qualified tourist-oriented businesses that can be
20 reached by turning left will be placed on the tourist-oriented
21 directional sign farthest from the intersection in each direction
22 of travel.

23 (B) All qualified tourist-oriented businesses that can be
24 reached by turning right will be placed on the tourist-oriented
25 directional sign nearest to the intersection in each direction of
26 travel.

1 (C) On each tourist-oriented directional sign, the tourist-
2 oriented directional sign panels for each qualified tourist-
3 oriented business will be placed in order of eligibility distance,
4 with the business having the shortest eligibility distance at the
5 top and the business with the greatest eligibility distance at the
6 bottom.

7 (5) If there are not more than four tourist-oriented
8 directional sign panels to be installed for each direction of
9 travel at an intersection, the division may choose to erect only
10 one tourist-oriented directional sign for each direction of travel.
11 In such case, the tourist-oriented directional sign panels for
12 qualified tourist-oriented businesses that can be reached by
13 turning left will be installed at the top of the tourist-oriented
14 directional sign, in order of eligibility distance from shortest to
15 greatest, and the tourist-oriented directional sign panels for
16 businesses that can be reached by turning right will be installed
17 below, in order of eligibility distance from shortest to greatest.

18 **§17-29-9. Application for participation in program.**

19 (a) To qualify for participation in the tourist-oriented
20 directional signs program, an eligible tourist-oriented business
21 must complete an application, including business identification and
22 directional information, on a form provided by the commissioner.

23 (b) The business shall provide to the commissioner an
24 affidavit or such other evidence as the commissioner may reasonably
25 request to demonstrate that the major portion of the business's
26 income or visitors are derived during its normal business season

1 from highway users residing outside the immediate area of the
2 business.

3 (c) The business shall obtain and submit to the commissioner
4 all required written approvals from local governments for erecting
5 tourist-oriented directional signs within an incorporated
6 municipality.

7 (d) The business shall, as part of its application, agree to
8 hold the State of West Virginia, the division and its officers,
9 employees, representatives, contractors and agents harmless for any
10 loss of business that may be caused by any damage to or removal of
11 a tourist-oriented directional sign or tourist-oriented directional
12 sign panel as a result of highway construction, highway maintenance
13 or any other reason.

14 (e) The business shall tender the payment of all fees as
15 required in section eleven of this article.

16 **§17-29-10. Additional consideration for participation.**

17 (a) The division's approval of a tourist-oriented business's
18 application for participation in the tourist-oriented directional
19 signs program is subject to the availability of space as follows:

20 (1) The commissioner will approve the application only if
21 there is space available to install tourist-oriented directional
22 sign panels for the business as provided in section eight of this
23 article.

24 (2) When more than one eligible tourist-oriented business
25 applies for participation in the tourist-oriented directional signs
26 program at an intersection where there is not sufficient space to

1 install tourist-oriented directional sign panels for more than one
2 business, the division will award installation:

3 (A) To the business from which the commissioner first received
4 a qualified application; or

5 (B) If the commissioner received more than one qualified
6 application on the same date, the commissioner will award
7 installation to the business with the greatest eligibility
8 distance.

9 (3) The division shall refund payment of the Initial Permit
10 Fee, but not the Application Fee, as established in section eleven
11 of this article, to a tourist-oriented business whose application
12 for participation in the tourist-oriented directional signs program
13 has been denied based on insufficient space in accordance with
14 subdivision (2) of this subsection.

15 (4) Where, because of insufficient space, the commissioner has
16 denied an eligible tourist-oriented business's application for a
17 tourist-oriented directional sign panel at the intersection, the
18 commissioner may approve an application by that business for a
19 tourist-oriented directional sign panel at another intersection
20 having a greater eligibility distance where space is available if,
21 in the judgment of the commissioner, the sign would provide
22 suitable directional information to highway users.

23 (b) A tourist-oriented business that is open to the public
24 only on a seasonal basis rather than year-round may qualify for
25 participation in the tourist-oriented directional signs program
26 subject to the following additional considerations:

1 (1) In its application to the commissioner, the business must
2 provide a schedule of its regular seasonal dates of operation when
3 it is open to the public; and

4 (2) The business shall pay an additional seasonal business fee
5 each year, as provided in section eleven of this article, for the
6 placement and removal of a "Closed" placard over the directional
7 information portion of the tourist-oriented directional sign panel,
8 or for the temporary removal and storage and reinstallation of the
9 tourist-oriented directional sign panel, during the seasons of the
10 year when the business is closed to the public. This additional fee
11 shall be payable to the division with the business's initial
12 application for participation in the tourist-oriented directional
13 signs program and with each annual renewal of participation.

14 (c) Annual Renewal of Participation.

15 (1) After the commissioner has approved an application to
16 participate in the Tourist-Oriented Directional Signs Program, the
17 qualifying tourist-oriented business may continue to participate in
18 the program on a renewable annual basis thereafter so long as the
19 business remains in compliance with this article and pays all
20 applicable fees in accordance with section eleven of this article.

21 (2) The annual term shall begin on the date the division
22 installs the business's tourist-oriented directional sign panels on
23 a state highway and shall expire on the anniversary of that date
24 each year thereafter unless timely renewed by payment of all
25 applicable renewal fees.

26 (3) The applicable annual renewal fees are due thirty days

1 prior to the expiration of the annual term.

2 (d) The division may inspect a tourist-oriented business at
3 any time after the business has made application for participation
4 in the Tourist-Oriented Directional Signs Program to assure that
5 the business meets all eligibility requirements or other
6 requirements to qualify for continuing participation in the
7 tourist-oriented directional signs program.

8 **§17-29-11. Fees.**

9 (a) To cover the cost of erecting signs and administering the
10 Tourist-Oriented Directional Signs Program, each participating
11 tourist-oriented business shall pay the division the following
12 fees:

13 (1) Application Fee \$25;

14 (2) Initial Permit Fee (per tourist-oriented directional sign
15 panel) \$150; and

16 (3) Annual Renewal Fee (per tourist-oriented directional sign
17 panel) \$50.

18 (b) In addition, a participating tourist-oriented business
19 shall pay the division the following fees as applicable to that
20 particular business:

21 (1) Seasonal Business Fee (annually per tourist-oriented
22 directional sign panel) \$50; and

23 (2) Replacement Fee (per tourist-oriented directional sign
24 panel replaced or changed) \$150.

25 (c) Fees will not be prorated based on the seasonal closing of
26 any business.

1 (d) Fees will not be reimbursed if a business closes during an
2 annual term or if tourist-oriented directional sign panels are
3 removed by the division based on a violation of this article.

4 **§17-29-12. Maintenance and financial responsibility.**

5 (a) The division will install all tourist-oriented directional
6 signs and tourist-oriented directional sign panels on state highway
7 rights-of-way, subject to the payment of all required fees by
8 participating tourist-oriented businesses.

9 (b) Each participating tourist-oriented business shall be
10 responsible for the cost of replacing tourist-oriented directional
11 sign panels that have been damaged or destroyed by acts of
12 vandalism, natural causes or accidents. When it is necessary to
13 replace a sign, the division will assess, and the participating
14 tourist-oriented business shall pay, the required replacement fee,
15 as provided in section eleven of this article.

16 (c) The division shall have no liability for any loss of
17 business that may result because a tourist-oriented directional
18 sign panel is, for any reason, temporarily absent from a tourist-
19 oriented directional sign on a state highway.

20 **§17-29-13. Revocation of participation in program.**

21 (a) The commissioner may revoke the privilege of participation
22 in the tourist-oriented directional signs program if it finds that
23 any participating tourist-oriented business:

24 (1) Has made a false, deceptive or fraudulent statement in its
25 application or in any other information submitted to the
26 commissioner;

- 1 (2) Engages in any deceptive or fraudulent business practice;
- 2 (3) Fails to pay any required fee on a timely basis;
- 3 (4) No longer meets the eligibility requirements set forth in
4 this article;
- 5 (5) Ceases to operate as a business on a continuing basis in
6 accordance with the schedule submitted to the commissioner in its
7 application; or
- 8 (6) Alters or modifies any tourist-oriented directional sign
9 or tourist-oriented directional sign panel erected or installed by
10 the division.

11 (b) The procedures for revocation are as follows:

12 (1) Prior to revoking the privilege of participating in the
13 tourist-oriented directional signs program, the commissioner will
14 notify the tourist-oriented business in writing of the grounds for
15 the proposed revocation. The notice will be sent by certified and
16 regular mail. Notices sent by regular mail will be presumed to have
17 been received by the business within three business days after
18 mailing.

19 (2) Within fifteen days after receipt of the notice to correct
20 the condition cited as the ground for the proposed revocation, the
21 business shall either:

22 (A) Correct the condition cited as ground for the proposed
23 revocation, and provide sufficient written proof thereof to the
24 satisfaction of the commissioner; or

25 (B) If the business denies the cited ground for the proposed
26 revocation, the business shall deliver a written response to the

1 commissioner stating in detail the basis for the denial and
2 requesting a hearing before the commissioner or the commissioner's
3 designee.

4 (3) If the business fails to correct the cited ground(s) for
5 revocation or fails to respond within fifteen days, the
6 commissioner will send the business a written notice of revocation
7 and remove all tourist-oriented directional sign panels for that
8 business from the state highway rights-of-way.

9 (4) If the business requests a hearing, an informal hearing
10 will be held before the commissioner or the commissioner's designee
11 to consider the matter. The decision of the commissioner or the
12 commissioner's designee shall be made in writing to the business
13 and shall be final.

14 **§17-29-14. Promulgation of Rules.**

15 The commissioner may promulgate rules to implement the
16 application approval process and to describe the criteria and
17 procedures it has established in connection therewith. These rules
18 are not subject to the provisions of chapter twenty-nine-a of this
19 code, but shall be filed with the Secretary of State.

NOTE: The purpose of this bill is to create the Tourist-Oriented Directional Signs Program. The bill states the legislative purpose. The bill sets forth the application and eligibility requirements for the program. The bill establishes the design and content guidelines and sign location and placement criteria. The bill also establishes a fee schedule and sets forth maintenance responsibility. The bill permits revocation of participation in the program. Further, the bill authorizes rulemaking to be exempt from the state Administrative Procedures Act. The bill additionally defines terms.

This article is new; therefore, strike-throughs and underscoring have been omitted.