

HB 4210

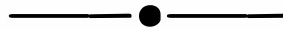
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OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

SECOND REGULAR SESSION, 2006



ENROLLED

COMMITTEE SUBSTITUTE
FOR

House Bill No. 4210

(By Delegates Mahan, Palumbo, Cann,
Pino, Armstead and Overington)



Passed March 10, 2006

In Effect from Passage

FILED

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COMMITTEE SUBSTITUTE

FOR

H. B. 4210

(BY DELEGATES MAHAN, PALUMBO, CANN,
PINO, ARMSTEAD AND OVERINGTON)

[Passed March 10, 2006: in effect from passage.]

AN ACT to amend and reenact article 10, chapter 64 of the Code of West Virginia, 1931, as amended; all relating generally to the promulgation of administrative rules by the Department of Commerce and the procedures relating thereto; legislative mandate or authorization for the promulgation of certain legislative rules by various executive or administrative agencies of the state; authorizing certain of the agencies to promulgate certain legislative rules in the form that the rules were filed in the State Register; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the Legislative Rule-Making Review Committee; authorizing certain of the agencies to promulgate certain legislative rules as amended by the Legislature; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the

Legislative Rule-Making Review Committee and as amended by the Legislature; authorizing the Division of Forestry to promulgate a legislative rule relating to ginseng; authorizing the Office of Miners Health, Safety and Training to promulgate a legislative rule relating to safety provisions for clearing crews; authorizing the Division of Natural Resources to promulgate a legislative rule relating to commercial whitewater outfitters; authorizing the Division of Natural Resources to promulgate a legislative rule relating to boating; authorizing the Division of Natural Resources to promulgate a legislative rule relating to the rules governing the public use of West Virginia State Parks, State Forests and State Wildlife Management Areas under the Division; authorizing the Division of Natural Resources to promulgate a legislative rule relating to terms defining the terms to be used concerning all hunting and trapping rules; authorizing the Division of Natural Resources to promulgate a legislative rule relating to wild boar hunting; authorizing the Division of Natural Resources to promulgate a legislative rule relating to special waterfowl hunting; authorizing the Division of Natural Resources to promulgate a legislative rule relating to falconry; authorizing the Division of Natural Resources to promulgate a legislative rule relating to lifetime hunting, trapping and fishing licenses; authorizing the Division of Natural Resources to promulgate a legislative rule relating to miscellaneous permits and licenses; authorizing the Division of Labor to promulgate a legislative rule relating to the West Virginia Manufactured Housing Construction and Safety Standards Board; authorizing the Division of Labor to promulgate a legislative rule relating to nurse overtime complaints; and authorizing the Division of Tourism to promulgate a legislative rule relating to the Direct Advertising Grants Program.

Be it enacted by the Legislature of West Virginia:

That article 10, chapter 64 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 10. AUTHORIZATION FOR BUREAU OF COMMERCE TO
PROMULGATE LEGISLATIVE RULES.**

§64-10-1. Division of Forestry.

1 The legislative rule filed in the State Register on the
2 twenty-ninth day of July, two thousand five, authorized under
3 the authority of section three, article one-a, chapter nineteen of
4 this code, modified by the Division of Forestry to meet the
5 objections of the Legislative Rule-Making Review Committee
6 and refiled in the State Register on the eighteenth day of
7 October, two thousand five, relating to the Division of Forestry
8 (Ginseng, 22 CSR 1), is authorized, with the following amend-
9 ment:

10 On page six, by striking out subsection 13.1 in its entirety
11 and renumbering the remaining subsections.

§64-10-2. Office of Miners Health, Safety and Training.

1 The legislative rule filed in the State Register on the
2 sixteenth day of March, two thousand five, authorized under the
3 authority of section six, article one, chapter twenty-two-a of this
4 code, modified by the Office of Miners Health, Safety and
5 Training to meet the objections of the Legislative Rule-Making
6 Review Committee and refiled in the State Register on the tenth
7 day of June, two thousand five, relating to the Office of Miners
8 Health, Safety and Training (Safety provisions for clearing
9 crews, 56 CSR 2), is authorized, with the following amend-
10 ments:

11 On page twelve, section twenty-one, following subsection
12 21.2, by inserting the following:

13 “21.3. The employer shall provide annual continuing
14 training of at least eight hours covering the subjects listed in
15 subdivision 21.1.b for each employee, including supervisors, at
16 no cost to the employee.”

§64-10-3. Division of Natural Resources.

1 (a) The legislative rule filed in the State Register on the
2 twenty-ninth day of July, two thousand five, authorized under
3 the authority of section twenty-three-a, article two, chapter
4 twenty of this code, modified by the Division of Natural
5 Resources to meet the objections of the Legislative
6 Rule-Making Review Committee and refiled in the State
7 Register on the seventeenth day of October, two thousand five,
8 relating to the Division of Natural Resources (Commercial
9 whitewater outfitters, 58 CSR 12), is authorized.

10 (b) The legislative rule filed in the State Register on the
11 twenty-ninth day of July, two thousand five, authorized under
12 the authority of sections thirteen, twenty-two, twenty-two-a and
13 twenty-three, article seven, chapter twenty of this code,
14 modified by the Division of Natural Resources to meet the
15 objections of the Legislative Rule-Making Review Committee
16 and refiled in the State Register on the seventeenth day of
17 October, two thousand five, relating to the Division of Natural
18 Resources (Boating, 58 CSR 25), is authorized.

19 (c) The legislative rule filed in the State Register on the
20 twenty-ninth day of July, two thousand five, authorized under
21 the authority of section seven, article one, chapter twenty of this
22 code, modified by the Division of Natural Resources to meet
23 the objections of the Legislative Rule-Making Review Commit-
24 tee and refiled in the State Register on the eighteenth day of
25 October, two thousand five, relating to the Division of Natural
26 Resources (Public use of West Virginia State Parks, State
27 Forests and State Wildlife Management Areas under the
28 Division of Natural Resources, 58 CSR 31), is authorized with
29 the amendments set forth below:

30 On page one, subsection 1.1, after the words, "Division of
31 Natural Resources" by inserting the words "Parks and Recre-
32 ation Section";

33 On page three, subsection 2.21, after the words “Chief
34 Logan,” by changing the comma to a colon, striking out “except
35 in the” and inserting following: “*Provided*, That beer, wine and
36 alcoholic beverages may be served in the restaurant,”;

37 On page three, subsection 2.21, after the words “conference
38 center” by inserting the words “without prior written authoriza-
39 tion from the Director”;

40 And,

41 On page four, subsection 2.21, after the words “prohibited
42 by posted signs” by changing the period to a colon and inserting
43 the following: “*Provided*, That any person, group or association
44 sponsoring a private party at the multi-purpose log barn at
45 Prickett’s Fort State Park may provide beer, wine, liquor and all
46 other alcoholic beverages for guests at a private party as long as
47 the party is not open to the general public.”

48 (d) The legislative rule filed in the State Register on the
49 twenty-ninth day of July, two thousand five, authorized under
50 the authority of section seven, article one, chapter twenty of this
51 code, modified by the Division of Natural Resources to meet
52 the objections of the Legislative Rule-Making Review Commit-
53 tee and refiled in the State Register on the seventeenth day of
54 October, two thousand five, relating to the Division of Natural
55 Resources (Terms defining the terms to be used concerning all
56 hunting and trapping rules, 58 CSR 46), is authorized, with the
57 following amendment:

58 On page two, subsection 2.10, after the words “Individual
59 Permanently Disabled in the Lower Extremities” by striking out
60 the remainder of subsection 2.10 and inserting in lieu thereof
61 the following: “means an individual who is permanently and
62 totally disabled due to paralysis or disease in the lower half of

63 the body, which makes it impossible to ambulate successfully
64 more than two hundred feet without assistance”.

65 (e) The legislative rule filed in the State Register on the
66 twenty-ninth day of July, two thousand five, authorized under
67 the authority of section seven, article one, chapter twenty of this
68 code, relating to the Division of Natural Resources (Wild boar
69 hunting, 58 CSR 52), is authorized.

70 (f) The legislative rule filed in the State Register on the
71 twenty-ninth day of July, two thousand five, authorized under
72 the authority of section seven, article one, chapter twenty of this
73 code, relating to the Division of Natural Resources (Special
74 waterfowl hunting, 58 CSR 58), is authorized.

75 (g) The legislative rule filed in the State Register on the
76 twenty-ninth day of July, two thousand five, authorized under
77 the authority of section seven, article one, chapter twenty of this
78 code, relating to the Division of Natural Resources (Miscella-
79 neous permits and licenses, 58 CSR 64), is authorized, with the
80 following amendments:

81 On page four, subsection 3.6, by striking out the words “A
82 public hearing will be conducted” and inserting in lieu thereof
83 the words “The Division of Natural Resources will conduct a
84 public hearing”;

85 On page four, subsection 3.7, after the period, by inserting
86 the following: “If the chief accepts a recommendation to deny
87 the granting of a permit or license, he must notify the applicant
88 of the denial and the reasons therefor.” and by striking out
89 subdivision 3.7.1 in its entirety;

90 On page four, subsection 4.1, by striking out the words
91 “Except as provided in Section 4.1.1 of this rule, all” and
92 inserting in lieu thereof the words “A commercial shooting

93 preserve license issued under W. Va. Code §20-2-54 expires on
94 June 30 of the fiscal year of issue. All other”;

95 On page four, subsection 4.1, by striking out the word
96 “will”;

97 On page four, by striking out subdivision 4.1.1 in its
98 entirety;

99 On page five, subsection 5.3, by striking out the word “as”;

100 On page five, subsection 6.2, by striking out “A captive
101 deer facility must be inspected by both Division of Natural
102 Resources, Wildlife Resources and Law Enforcement personnel
103 and an inspection form completed.” and inserting in lieu thereof
104 the following: “Personnel from both the Division of Natural
105 Resources, Wildlife Resources Section and the Division of
106 Natural Resources, Law Enforcement Section will inspect
107 captive cervid facilities and complete an inspection form.”;

108 On page eleven, subsection 7.4, by striking out the word
109 “will”;

110 On page eleven, subsection 7.4, by striking out the words
111 “or not the license” and inserting in lieu thereof the word “it”;

112 On page eleven, subsection 7.4.1, by striking out “There
113 shall be a” and inserting in lieu thereof “The”;

114 On page eleven, subsection 7.4.1, by striking out “of” and
115 inserting in lieu thereof “is”;

116 On page eleven, subsection 7.4.1, by adding the following
117 sentence at the end of the subdivision: “The fee for renewal of
118 a captive cervid facility license is \$250.”;

119 On page eleven, subdivision 7.4.2, by striking out the words
120 “A public hearing will be conducted” and inserting in lieu
121 thereof the words “The Division of Natural Resources will
122 conduct a public hearing”;

123 On page eleven, by striking out subdivision 7.4.3 in its
124 entirety and inserting in lieu thereof the following:

125 “7.4.3. “A unique and permanent identifying license
126 number, corresponding to the number assigned to the premises
127 by the National Animal Identification System, shall be issued
128 to each licensed captive cervid facility. The applicant must
129 supply this number to the West Virginia Division of Natural
130 Resources with the application for a captive cervid facility
131 license.”;

132 On page eleven, subdivision 7.4.5, by striking out the words
133 “direct or”;

134 On pages eleven and twelve, by striking out all of subdivi-
135 sion 7.4.7 and by renumbering the remaining subdivisions;

136 On page twelve, subdivision 7.4.8, by striking out the
137 words “posts must be spaced at 20 feet maximum for T post or
138 30 feet maximum for rigid post; brace posts must be buried at
139 least 4 feet in rocky soil and 6 feet in sandy soil or concrete
140 must be used to provide equal stability; line posts must be
141 buried to 3 feet” and inserting in lieu thereof the words “posts
142 must be properly spaced and anchored”;

143 On page twelve, subdivision 7.4.13, by striking out the
144 word “daily”;

145 On page twelve, subdivision 7.4.13, after the word “pests”
146 by striking out the words “Food and water containers shall be
147 kept clean. Hay, straw or other bedding material must be
148 replaced as needed. All waste must be disposed of in a legal

149 manner.” and inserting in lieu thereof “and is in accordance
150 with best management practices”;

151 On page twelve, subdivision 7.4.14, by striking out the
152 word “state” and inserting in lieu thereof the words “West
153 Virginia”;

154 On page twelve, subdivision 7.4.14, by striking out the
155 word “accredited” and inserting in lieu thereof the words “West
156 Virginia licensed”;

157 On page twelve, at the end of subdivision 7.4.14, after the
158 words “brucellosis testing.” by inserting the following: “The
159 collection of samples for CWD testing shall be performed by
160 trained personnel within the West Virginia Division of Natural
161 Resources or by a trained veterinarian employed by the West
162 Virginia Department of Agriculture. For the purpose of
163 collecting tissue for CWD testing, the captive cervid facility
164 licensee has four options: (1) the licensee may deliver to a West
165 Virginia Division of Natural Resources District Office the head
166 of the cervid; (2) the licensee may deliver to a West Virginia
167 Division of Natural Resources District Office the entire cervid
168 with the head intact; (3) the licensee may contact the West
169 Virginia Division of Natural Resources and a trained represen-
170 tative of the West Virginia Division of Natural Resources
171 and/or a trained veterinarian employed by the West Virginia
172 Department of Agriculture shall go to the facility and obtain the
173 tissue samples; or (4) the licensee may deliver the entire cervid
174 with the head intact to the West Virginia Department of
175 Agriculture lab in Moorefield, West Virginia, and upon delivery
176 of the cervid carcass, the West Virginia Department of Agricul-
177 ture shall notify the West Virginia Division of Natural Re-
178 sources of the delivery. After the West Virginia Division of
179 Natural Resources and/or the West Virginia Department of
180 Agriculture have obtained sufficient and necessary tissue

181 samples, the remaining tissue may be shared with the captive
182 cervid facility licensee.”;

183 On page twelve, subdivision 7.4.15, by striking out “The
184 co-mingling of different Cervid species or Cervid species and
185 livestock will not be permitted in the same pens without written
186 approval of the Director. If different Cervid species are housed
187 at the same facility, they must be separated into different pens
188 that are double-fenced or otherwise prohibit contact between
189 the different species.” and inserting in lieu thereof the follow-
190 ing: “Co-mingling of different cervid species will be allowed if
191 the population density is at least 20,000 square feet per animal
192 and if all best management practices are followed by the captive
193 cervid facility.”;

194 On page twelve, subdivision 7.4.15, after the words
195 “material from” by striking out “different Cervid species” and
196 inserting in lieu thereof the words “captive cervids”;

197 On page twelve, subdivision 7.4.15, after the word “ex-
198 posed” by striking out “to other Cervids in separate pens or”;

199 On page thirteen, subdivision 7.4.16, by striking out the
200 word “shall” and inserting in lieu thereof the word “may”;

201 On page thirteen, subdivision 7.4.16, by striking out the
202 words “such verification”;

203 On page thirteen, subdivision 7.4.18, after the words “50
204 yards” by striking out the words “Except that a” and inserting
205 in lieu thereof the word “A”;

206 On page thirteen, subdivision 7.4.18, after the words “in the
207 ear” by striking out the word “shall” and inserting in lieu
208 thereof the word “is”;

209 On page thirteen, subdivision 7.4.19, by striking out the
210 word “An” and inserting in lieu thereof the words “A licensee
211 shall maintain an”;

212 On page thirteen, subdivision 7.4.19, by striking out the
213 words “will be maintained”;

214 On page thirteen, subdivision 7.4.19, after the word
215 “permits” by striking out the period and the words “Records
216 shall show” and inserting in lieu thereof the words “and shall
217 include”;

218 On page thirteen, subdivision 7.4.20, by striking out the
219 word “A” and inserting in lieu thereof the words “A licensee
220 shall forward a”;

221 On page thirteen, subdivision 7.4.20, by striking out the
222 words “shall be forwarded”;

223 On page thirteen, subdivision 7.4.20, by striking out the
224 words “Prior approval shall be obtained from the Director for
225 the movement of captive cervids, and shall be conditional on
226 negative test results and herd accreditation for TB and
227 brucellosis as defined by the USDA.” and inserting in lieu
228 thereof the following: “A licensee must obtain prior approval
229 from the Director to move captive cervids. The Director may
230 grant approval on a case-by-case basis. All captive cervid
231 facilities must enroll the cervid herds in accreditation programs
232 for brucellosis and TB as defined by the USDA: *Provided*, That
233 captive cervid facilities licensed after August 9, 2005 may only
234 accept cervids from TB accredited herds that also meet all
235 requirement of CWD monitoring and surveillance programs”;

236 On page thirteen, subdivision 7.4.20, after the words
237 “performed by” by striking out the words “an accredited” and
238 inserting in lieu thereof the words “a West Virginia licensed”;

239 On page thirteen, by striking out subdivision 7.4.21 in its
240 entirety and inserting in lieu thereof the following:

241 “7.4.20. A captive cervid facility licensed after August 9,
242 2005, may receive animals coming from a herd within the state
243 only if the proposed transfer is from a herd that has an ongoing
244 and appropriate CWD surveillance record for at least 60
245 months. If a licensee has a monitoring program which has been
246 in effect for at least 36 months, the Director may, after review-
247 ing the facility’s monitoring records, approve intra-state
248 movement of cervids from the facility’s herd: *Provided*, That
249 intra-state movement of captive cervids may be approved by the
250 Director on a case-by-case basis.”;

251 On page thirteen, by striking out subdivision 7.4.22 in its
252 entirety and inserting in lieu thereof the following:

253 “7.4.21. A captive cervid facility in this state may not
254 receive animals that have originated from or been housed with
255 animals originating from any state that has a confirmed CWD
256 or tuberculosis (TB) positive cervid in the last 60 months. A
257 captive cervid facility in this state may not receive genetic
258 material that originates from any state that has a confirmed
259 CWD or tuberculosis (TB) positive cervid in the last 60
260 months.”;

261 On page thirteen, subdivision 7.4.23, by striking out the
262 words “an accredited” and inserting in lieu thereof the words “a
263 West Virginia licensed”;

264 On page thirteen, at the end of subdivision 7.4.24, by
265 changing the period to a colon and adding the following
266 proviso: “*Provided*, That fawns below the age of six (6) months
267 may be moved or transferred if the fawn originates from a
268 certified tuberculous free herd and is tagged with a unique
269 marker visible from 50 yards.”;

270 On page fourteen, subdivision 7.4.25, by striking out the
271 word “Every” and inserting the word “A licensee will make
272 every”;

273 On page fourteen, subdivision 7.4.25, by striking out the
274 words “will be made”;

275 On page fourteen, subdivision 7.4.25, by striking out the
276 word “All” and inserting in lieu thereof the words “A licensee
277 shall report all known”;

278 On page fourteen, subdivision 7.4.25, by striking out the
279 words “shall be reported”;

280 On page fourteen, subdivision 7.4.25, by striking out “24”
281 and inserting in lieu thereof “8”;

282 On page fourteen, subdivision 7.4.25, after the word
283 “Captain” by changing the period to a comma and inserting the
284 following: “District WRS Game Biologist or the county
285 conservation officer.”;

286 On page fourteen, subdivision 7.4.25, after the words
287 “captive Cervid license” by striking out the remainder of the
288 subdivision and inserting in lieu thereof the following: “Any
289 negligent act that results in captive cervids escaping is a
290 violation of the license.”;

291 On page fourteen, subdivision 7.4.26, after the words
292 “transmissible diseases.” by striking out the remainder of the
293 subdivision and inserting in lieu thereof the following: “All
294 costs for killing an animal that escapes due to a negligent act,
295 including collecting samples and testing, are the responsibility
296 of the licensee.”;

297 On page fourteen, subdivision 7.4.27, by striking out
298 “shall” and inserting in lieu thereof the word “may”;

299 On page fourteen, subdivision 7.4.28, by striking out the
300 words “The” and inserting in lieu thereof the words “An
301 authorized representative of the Director shall periodically
302 inspect the”;

303 On page fourteen, subdivision 7.4.28, by striking out the
304 words “shall be periodically inspected by an authorized
305 representative of the Director”;

306 On page fourteen, subdivision 7.4.30, by striking out the
307 word “Any” and inserting in lieu thereof the words “The
308 licensee shall report any”;

309 On page fourteen, subdivision 7.4.30, by striking out the
310 words “shall be reported”;

311 On page fourteen, subdivision 7.4.31, by striking out the
312 word “Appropriate” and inserting in lieu thereof the words “The
313 licensee shall submit appropriate”;

314 On page fourteen, subdivision 7.4.31, by striking out the
315 word “must be submitted”;

316 On page fourteen, subdivision 7.4.31, by striking out the
317 words “may also be required.” and inserting in lieu thereof the
318 following: “is also required. Any captive cervid that is fourteen
319 months of age or older that dies or is slaughtered must be tested
320 for TB and brucellosis by a USDA certified, West Virginia
321 licensed veterinarian if sufficient samples are available. These
322 test results shall be made available to the West Virginia
323 Department of Agriculture and the West Virginia Division of
324 Natural Resources.”;

325 On page fourteen, subdivision 7.4.32, by striking out the
326 words “It shall be the licensee’s responsibility to ensure that”
327 and insert in lieu thereof “The licensee shall notify”;

328 On page fourteen, subdivision 7.4.32, by striking out the
329 words “is notified”;

330 On page fourteen, subdivision 7.4.33, after the words
331 “outside the infected captive Cervid facility.” by striking out
332 the remainder of the subdivision.

333 And,

334 On page fourteen, after subdivision 7.4.33, by adding a new
335 subdivision to read as follows:

336 “7.4.33. The West Virginia Department of Agriculture and
337 the West Virginia Division of Natural Resources shall work
338 together to develop accreditation programs for captive cervids
339 for diseases including Tuberculosis (TB), brucellosis, and
340 chronic wasting disease (CWD). Captive cervid facilities are
341 required to enroll their herds in the USDA-APHIS CWD herd
342 certification program, when the program becomes effective. In
343 addition, a herd plan shall be developed that minimally includes
344 actions described in the USDA-APHIS final rule, or if not
345 available the proposed rule, that apply to the positive herd,
346 epidemiologically linked herds, and the facility.”

347 (h) The legislative rule filed in the State Register on the
348 twenty-ninth day of July, two thousand five, authorized under
349 the authority of section seven, article one, chapter twenty of this
350 code, modified by the Division of Natural Resources to meet
351 the objections of the Legislative Rule-Making Review Commit-
352 tee and refiled in the State Register on the thirteenth day of
353 October, two thousand five, relating to the Division of Natural
354 Resources (Falconry, 58 CSR 65), is authorized.

355 (i) The legislative rule filed in the State Register on the
356 twenty-ninth day of July, two thousand five, authorized under
357 the authority of section seven, article two-b, chapter twenty of
358 this code, relating to the Division of Natural Resources (Life-

359 time hunting, trapping and fishing licenses, 58 CSR 67), is
360 authorized.

§64-10-4. Division of Labor.

1 (a) The legislative rule filed in the State Register on the
2 twenty-ninth day of July, two thousand five, authorized under
3 the authority of section four, article nine, chapter twenty-one of
4 this code, modified by the Division of Labor to meet the
5 objections of the legislative rule-making review committee and
6 refiled in the State Register on the first day of November, two
7 thousand five, relating to the Division of Labor (West Virginia
8 Manufactured Housing Construction and Safety Standards
9 Board, 42 CSR 19), is authorized, with the following amend-
10 ments:

11 On page thirteen, section ten-a, subsection two, subdivision
12 (a), paragraph (iii), by striking the words “American National
13 Standards Institute, A225.1 Installation Standard for Manufac-
14 tured Homes” and inserting in lieu thereof the words “National
15 Fire Protection Association 225 Model Manufactured Home
16 Installation Standard”;

17 On page nineteen, section fifteen, by striking subsection
18 15.1 in its entirety;

19 On page twenty, section fifteen, by striking subsections
20 15.4 and 15.5 in their entirety;

21 On page twenty-one, section fifteen, by striking subsection
22 15.12 in its entirety; and

23 By renumbering the remaining subsections in section
24 fifteen of the Legislative rule.

25 (b) The legislative rule filed in the State Register on the
26 tenth day of February, two thousand five, authorized under the

27 authority of section four, article five-f, chapter twenty-one of
28 this code, modified by the Division of Labor to meet the
29 objections of the legislative rule-making review committee and
30 refiled in the State Register on the eighteenth day of January,
31 two thousand six, relating to the Division of Labor (nurse
32 overtime complaints, 42 CSR 30), is authorized.

§64-10-5. Division of Tourism.

1 The legislative rule filed in the State Register on the
2 twenty-seventh day of July, two thousand five, authorized under
3 the authority of section nine, article two, chapter five-b of this
4 code, modified by the Division of Tourism to meet the objec-
5 tions of the legislative rule-making review committee and
6 refiled in the State Register on the eleventh day of January, two
7 thousand six, relating to the Division of Tourism (Direct
8 Advertising Grants Program, 144 CSR 1), is authorized, with
9 the following amendments:

10 On page one, following section 144-1-1, by striking out all
11 of section 144-1-2 and inserting in lieu thereof the following:

“§144-1-2. Definitions.

1 2.1 “Applicant” means a for profit or non-profit entity or
2 organization located within the state that promotes tourism
3 within the state and is also a destination. The term “applicant”
4 may not include vendors that would be supplying services paid
5 for out of grant funds, schools or camps.

6 2.2 “Application” means a written request for tourism
7 promotion funds pursuant to this rule containing all forms,
8 information and attachments executed by the applicant and all
9 partners, if applicable.

10 2.3. "Amenity" includes spa services, golf courses, full-
11 service restaurants, skiing or snow activities, tennis, horseback
12 riding, hiking trails, boating or fishing.

13 2.4. "Attraction" means an entity which is at least one of
14 the following:

15 2.4.1. A cultural or historic site or event which includes, but
16 is not limited to, fairs or festivals, heritage and historic sites and
17 museums;

18 2.4.2. Entertainment establishments which include, but are
19 not limited to, pari-mutuel gaming establishments, live per-
20 forming art centers, sporting organizations or arenas, vineyards
21 or wineries;

22 2.4.3. Scenic or natural areas such as show caves or
23 caverns;

24 2.4.4. Theme or Amusement Parks;

25 2.4.5. Zoos, Aquariums or Wild Animal Parks;

26 2.4.6. Recreational Activities, including but not limited to
27 whitewater rafting, skiing and snow activities, mountain biking,
28 hunting and fishing.

29 2.5. "Code" means the Code of West Virginia.

30 2.6. "Commission" means the Tourism Commission created
31 pursuant to §5B-2-8 of the Code.

32 2.7. "Destination" means one of the following:

33 2.7.1. A region or area located within the state containing
34 three or more attractions;

35 2.7.2. An independent activity located within the state;

36 2.7.3. A cultural or historic site or event which includes, but
37 is not limited to, fairs or festivals, heritage and historic sites and
38 museums;

39 2.7.4. Entertainment establishments which include, but are
40 not limited to, pari-mutuel gaming establishments, live per-
41 forming art centers, sporting organizations or arenas, vineyards
42 or wineries;

43 2.7.5. Scenic or natural sites such as show caves or caverns;

44 2.7.6. Theme or Amusement Parks; or

45 2.7.7. Zoos, Aquariums or Wild Animal Parks;

46 2.8. "Destination Inn or Bed and Breakfast" means a
47 lodging facility located within the state whose recognized
48 reputation for service and amenities are the primary motivating
49 factor for visitors to travel to the area where it is located.

50 2.9. "Division" means the Division of Tourism created
51 pursuant to §5B-2-8 of the code.

52 2.10. "Fulfillment" means printed materials used to respond
53 to an inquiry requesting additional information generated by
54 direct advertising or printed materials provided to the division,
55 a state park, the national park service or other government
56 agency for direct advertising.

57 2.11. "Grant Period" means the twelve month period
58 running from the beginning project date through the ending
59 project date and any extensions granted by the commission
60 pursuant to subdivision 8.4.3. of this rule.

61 2.12. "Independent Activity" means an entity or organiza-
62 tion which attracts a minimum of eighty-five percent (85%) of

63 its visitors from outside the local market and is at least one of
64 the following:

65 2.12.1. An entity or organization which provides recre-
66 ational activities including, but not limited to, whitewater
67 rafting, skiing and snow activities, mountain biking, hunting
68 and fishing, bus tours, dinner cruises and sightseeing tours;

69 2.12.2. A Resort;

70 2.12.3. A Destination Inn or Bed and Breakfast;

71 2.12.4. An entity or organization offering vacation rentals; or

72 2.12.5. Destination shopping.

73 2.13. "Local Market" means the geographic area within
74 fifty (50) miles of a destination.

75 2.14. "Partner" means an entity or organization located
76 within the state making a financial contribution toward the
77 applicant's match requirement for an application for grant funds
78 for a collaborative marketing program with a central advertising
79 message directing tourists to a destination being represented by
80 the applicant. The term "partner" may not include vendors that
81 would be supplying services paid for out of grant funds.

82 2.15. "Resort" means a full-service lodging facility that is
83 frequented for relaxation or recreational purposes and offers at
84 least two amenities.

85 2.16. "Return on Investment" means the measure of a
86 project's ability to use grant funds to generate additional value,
87 including, but not limited to additional bookings and reserva-
88 tions.

89 2.17. "Total project cost" means the total of all proposed
90 eligible expenditures contained within an application.

91 2.18. "Vacation Rental" means a lodging facility including
92 chalets, cabins or condominiums. The term "vacation rental"
93 may not include hotels or motels.";

94 On page two, subsection 3.2, following the word "destina-
95 tion" by striking "/attraction";

96 On page two, subsection 3.7, following the word "destina-
97 tion" by striking the words "or attraction";

98 On page four, subdivision 4.3.4., following the word
99 "funding" and the period, by adding the following:

100 "Applications for projects that include repeat marketing
101 efforts shall contain information demonstrating that such repeat
102 marketing efforts are in addition to regular ongoing advertising
103 activities.";

104 On page four, following subdivision 4.3.9. by adding the
105 following:

106 "4.3.10. The project supports advertising activities that are
107 over and above regular ongoing advertising activities.";

108 On page four, following section 144-1-5, by striking out all
109 of section 144-1-6 and inserting in lieu thereof the following:

"§144-1-6. Eligible and ineligible expenditures of grant funds.

1 6.1. Grant funds may only be used to pay for eligible
2 expenditures for direct advertising. Eligible expenses for direct
3 advertising include, but are not limited to the following:

4 6.1.1. The costs of advertising on television, radio, or other
5 telecommunications media, in newspapers, magazines or other

6 print media, direct mail advertising, and outdoor advertising or
7 any combination thereof;

8 6.1.2. The costs of purchasing and using mailing lists for
9 direct mail promotions;

10 6.1.3. The costs for United States postage used for direct
11 mail and fulfillment for direct advertising: Provided, That if
12 bulk mail is appropriate, the applicant must use bulk mail and
13 reimbursement will be limited to the bulk mail rate; and if bulk
14 mail is not appropriate, reimbursement will be limited to the
15 cost of United States mail first class postage;

16 6.1.4. The costs of printing travel related literature: Pro-
17 vided, That sixty percent (60%) of such literature is used as
18 fulfillment for direct advertising within the approved applica-
19 tion or approved request for modification of an approved
20 application; or

21 6.1.5. Registration fees for consumer and trade shows:
22 Provided, That the participation in such shows is for the
23 purpose of attracting visitors to the state.

24 6.2. Eighty percent (80%) of a project's direct advertising
25 must be directed toward areas outside of the local market or in
26 major out-of-state markets, except for direct advertising for a
27 fair or festival grant authorized by subsection 7.3 of this rule.

28 6.3. Notwithstanding the provisions of subsection 6.2 of
29 this rule, all direct advertising in the form of billboards must be
30 directed toward areas outside of the local market or in major
31 out-of-state markets, except billboards for a fair or festival
32 grant authorized by subsection 7.3 of this rule.

33 6.4. All direct advertising in the form of billboards must
34 have a creative concept or layout approved by the Division in

35 order for any of its cost to be considered an eligible expenditure.

36 6.5. Any direct advertising related to real estate must be for
37 vacation rentals only. Any portion of direct advertising relating
38 to the sale of real estate must be pro-rated. A creative concept
39 must be submitted with any application or request for modifica-
40 tion of an approved application for direct advertising relating to
41 real estate. Advertisements for the sale of real estate in visitor
42 guides and brochures must be grouped on a specific page or
43 pages and those pages pro-rated from the grant at the time of
44 the submission of the application. (Example: CVB X has a 32
45 page visitor guide and has determined that area realtors will
46 take up 2 pages - CVB X must disclose this in its grant applica-
47 tion and media breakout and the totals must request funding for
48 only 30 pages.) No direct advertising for real estate sales or
49 realty agencies are permitted within cooperative advertising,
50 unless such ads are specifically and clearly delineated as
51 vacation rentals only.

52 6.6. Direct advertising may be in the form of cooperative
53 advertising which is advertising that represents a community,
54 region, county, multi-county or statewide organization and may
55 include tourism businesses or organizations that enhance the
56 destination for which the grant is to cover. Cooperative adver-
57 tising must be entirely directed toward areas outside the local
58 market or in major out-of-state markets. All cooperative
59 advertising must have a creative concept approved by the
60 Division in order for any of its cost to be considered an eligible
61 expenditure.

62 6.7. Eligible expenses may include production expenses for
63 direct advertising in the media categories provided in this
64 subsection. The total cost of such production expenses may not
65 exceed fifteen (15%) of the total cost of the direct advertising
66 and in no event may the total cost of such production expenses
67 exceed \$22,500, for any one of the following media categories:

68 6.7.1. Printed material, including the printing of direct mail
69 and travel related literature;

70 6.7.2. Print media;

71 6.7.3. Television and radio; and

72 6.7.4. Billboards.

73 6.8. Grant funds may not be used to pay for ineligible
74 expenditures. Ineligible expenditures include, but are not
75 limited to the following:

76 6.8.1. Regular and ordinary business costs of the applicant
77 including, but not limited to, supplies, personnel, phone, normal
78 postage, distribution and shipping expenses or travel costs;

79 6.8.2. Any costs associated with preparation of the direct
80 advertising grant application;

81 6.8.3. Costs for the rental or purchase of real estate;

82 6.8.4. Construction costs;

83 6.8.5. Costs of political or lobbying activities of any kind;

84 6.8.6. Membership fees or dues to any organization, or
85 solicitation of membership to any organization through adver-
86 tising within a grant program authorized by this rule;

87 6.8.7. Costs associated with the start up of any business or
88 publication even if the business or publication may be totally or
89 partially devoted to the promotion of tourism in the state;

90 6.8.8. The cost of purchase of audio/visual equipment;

91 6.8.9. Costs of alcoholic beverages;

92 6.8.10. Costs for any expenditure not identified in the
93 application, unless the Commission grants prior approval in
94 writing;

95 6.8.11. Costs of any public relations or research expense;

96 6.8.12. Costs for key rings, bumper stickers, mugs or any
97 other similar promotional item;

98 6.8.13. Event production expenses, including costs for
99 audio equipment, awards, entertainment, portable restrooms,
100 labor or refreshments;

101 6.8.14. Costs relating to fund-raising activities;

102 6.8.15. Costs associated with retail advertising, except for
103 destination shopping which is able to produce verification that
104 said destination attracts a minimum of eighty-five (85%) of its
105 visitors from outside the local market: Provided, That no retail
106 advertising may include price point advertising;

107 6.8.16. Costs of Tourist Oriented Directional Signs (TODS)
108 and logo signs for gas, food, lodging and camping;

109 6.8.17. Costs of sponsorships; or

110 6.8.18. Costs of items for resale.”;

111 On page six, in the fourth line of section 7.2, following the
112 word “exceed” by striking “2,500” and inserting in lieu thereof
113 “7,500”;

114 On page six, in the fourth line of section 7.2, following the
115 word “applicant” by striking “in any given quarter as defined
116 from time to time by the Division” and inserting in lieu thereof
117 “and no applicant shall receive more than two grants per fiscal
118 year”;

119 On page six, in the seventh line of section 7.2, following the
120 words “minimum of” by striking “50” and inserting in lieu
121 thereof “25”;

122 On page six, in the ninth line of section 7.2, following the
123 word “exceed” by striking “750,000” and inserting in lieu
124 thereof “2,000,000”;

125 On page six, in the fourteenth line of section 7.2, following
126 the word “date” and the period by inserting the following:

127 “No applicant who has received a grant larger than \$7,500
128 in any fiscal year may apply for a small grant under this section
129 during the same fiscal year: *Provided*, That a nonprofit entity
130 may apply for and receive small grants even if it has received
131 large grants in the same fiscal year.”

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



Chairman Senate Committee



Chairman House Committee

Originating in the House.

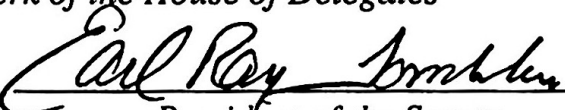
In effect from passage.



Clerk of the Senate



Clerk of the House of Delegates



President of the Senate



Speaker of the House of Delegates

The within is approved this the 4th
day of April, 2006.



Governor

PRESENTED TO THE
GOVERNOR

MAR 23 2006

Time 3:20 