

1 **Senate Bill No. 557**

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

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4 [Introduced February 18, 2011; referred to the Committee on  
5 Transportation and Infrastructure; and then to the Committee on  
6 Finance.]  
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**FISCAL  
NOTE**

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

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

1           That the Code of West Virginia, 1931, as amended, be amended  
2 by adding thereto a new article, designated §17-29-1, §17-29-2,  
3 §17-29-3, §17-29-4, §17-29-5, §17-29-6, §17-29-7, §17-29-8, §17-29-  
4 9, §17-29-10, §17-29-11, §17-29-12, §17-29-13 and §17-29-14, all to  
5 read as follows:

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

7 **§17-29-1. Short title.**

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

10 **§17-29-2. Legislative Purpose.**

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

21 **§17-29-3. Definitions.**

22           The following words when used in this article have the meaning  
23 ascribed to them unless the context clearly indicates a different  
24 meaning:

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

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

4           (3) "Eligibility distance" means the total roadway distance  
5 from the turn on a state highway where a tourist-oriented  
6 directional sign is located to the entry driveway of a tourist-  
7 oriented business and, if necessary, to break a tie between two  
8 otherwise eligible businesses, the eligibility distance shall also  
9 include the distance from the beginning of the entry driveway to  
10 the entry door of the business.

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

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

17          (6) "State highway" means a highway designated by the  
18 commissioner as part of the state highway system of the State of  
19 West Virginia.

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

23          (8) "Tourist-oriented directional sign panel" means an  
24 individual sign panel on a tourist-oriented directional sign that

1 identifies the name of a participating tourist-oriented business,  
2 the direction of turn to reach the business, and the distance to  
3 the business from the turn off the state highway.

4 (9) "Tourist-oriented business" means a private or public  
5 entity, which offers lawful cultural, historical, recreational,  
6 agricultural, educational, entertainment and/or commercial  
7 activities, services or products to the general public, and the  
8 major portion of whose income or visitors are derived during its  
9 normal business season from highway users residing outside the  
10 immediate area of the business.

11 **§17-29-4. Tourist-Oriented Directional Signs Program**  
12 **Authorization.**

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

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

22 **§17-29-5. Compliance with our requirements.**

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

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

4           (2) Local zoning and local zoning authorities; and

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

7 **§17-29-6. Eligibility for participation in program.**

8           Participation in the tourist-oriented directional signs  
9 program is open to tourist-oriented businesses that are unique and  
10 local in nature and located in a rural area. More specifically, to  
11 be eligible for identification on a tourist-oriented directional  
12 sign panel, a tourist-oriented business shall have each of the  
13 following characteristics:

14           (1) It shall offer lawful cultural, historical, recreational,  
15 agricultural, educational, entertainment, or commercial activities,  
16 services and/or products to the general public;

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

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

23           (4) It shall have a permanent location:

24           (A) In a rural area or within the limits of an incorporated

1 municipality having a population of less than two thousand; and

2 (B) On a road within ten miles of the nearest intersection  
3 with a state highway where a tourist-oriented directional sign may  
4 be located.

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

10 (6) A tourist-oriented business offering multiple activities,  
11 services and/or products to the public shall not be eligible for  
12 separate tourist-oriented directional sign panels for separate  
13 portions of the business but only as a single entity.

14 **§17-29-7. Design and content of signs.**

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

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

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

21 (2) It shall have a white legend and border on a blue  
22 background; and

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

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

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

9 (2) It shall have a directional information block twelve  
10 inches wide by fifteen inches high with an arrow pointing in the  
11 direction of the turn and a number stating the distance (to the  
12 nearest tenth of a mile) to the identified business, which block  
13 shall appear on the left side of the panel for left-turn businesses  
14 and on the right side of the panel for right-turn businesses; and

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

17 (d) The content of the legend on each tourist-oriented  
18 directional sign panel shall be limited to the business  
19 identification and directional information described above in this  
20 rule. The legend shall not include any type of business logo or any  
21 form of promotional advertising.

22 **§17-29-8. Criteria for sign location and placement.**

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

1           (1) The division will erect tourist-oriented directional signs  
2 along state highways at intersections with roads where highway  
3 users will turn to reach eligible tourist-oriented businesses that  
4 have qualified to participate in the tourist-oriented directional  
5 signs program.

6           (2) The division will not erect a new tourist-oriented  
7 directional sign on any state highway within the limits of an  
8 incorporated municipality having a population of two thousand or  
9 more according to the most recent decennial census of the United  
10 States Bureau of Census. Tourist-oriented directional signs shall  
11 not be erected outside of such a municipality for a tourist-  
12 oriented business within the limits of such a municipality.

13           (3) In addition, the division will not erect a new tourist-  
14 oriented directional sign, or renew an existing tourist-oriented  
15 directional sign, on any state highway within any incorporated  
16 municipality without the prior written consent of the municipal  
17 government. This written consent must be obtained by the tourist-  
18 oriented business seeking to qualify for participation in the  
19 tourist-oriented directional signs program or by a tourist-oriented  
20 business seeking to renew participation in the tourist-oriented  
21 directional signs program.

22           (4) At intersections where tourist-oriented directional signs  
23 may be erected, the division will erect tourist-oriented  
24 directional signs for each direction of travel along the state

1 highway. Generally, the division will erect a separate tourist-  
2 oriented directional sign for each direction of turn in each  
3 direction of travel, unless the division decides to erect only one  
4 tourist-oriented directional sign in each direction of travel as  
5 provided in subdivision (5), subsection (b) of this section.

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

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

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

15 (1) No more than four tourist-oriented directional sign panels  
16 may be installed on any one tourist-oriented directional sign.

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

22 (3) In the division's discretion, a second set of tourist-  
23 oriented directional sign panels may be installed for a qualified  
24 tourist-oriented business at an additional intersection on a second

1 state highway, but only if the second set of tourist-oriented  
2 directional sign panels does not prevent another qualified tourist-  
3 oriented business from obtaining a first set of tourist-oriented  
4 directional sign panels at that intersection.

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

10 (A) All qualified tourist-oriented businesses that can be  
11 reached by turning left will be placed on the tourist-oriented  
12 directional sign farthest from the intersection in each direction  
13 of travel.

14 (B) All qualified tourist-oriented businesses that can be  
15 reached by turning right will be placed on the tourist-oriented  
16 directional sign nearest to the intersection in each direction of  
17 travel.

18 (C) On each tourist-oriented directional sign, the tourist-  
19 oriented directional sign panels for each qualified tourist-  
20 oriented business will be placed in order of eligibility distance,  
21 with the business having the shortest eligibility distance at the  
22 top and the business with the greatest eligibility distance at the  
23 bottom.

24 (5) If there are not more than four tourist-oriented

1 directional sign panels to be installed for each direction of  
2 travel at an intersection, the division may choose to erect only  
3 one tourist-oriented directional sign for each direction of travel.  
4 In such case, the tourist-oriented directional sign panels for  
5 qualified tourist-oriented businesses that can be reached by  
6 turning left will be installed at the top of the tourist-oriented  
7 directional sign, in order of eligibility distance from shortest to  
8 greatest, and the tourist-oriented directional sign panels for  
9 businesses that can be reached by turning right will be installed  
10 below, in order of eligibility distance from shortest to greatest.

11 **§17-29-9. Application for participation in program.**

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

16 (b) The business shall provide to the commissioner an  
17 affidavit and/or such other evidence as the commissioner may  
18 reasonably request to demonstrate that the major portion of the  
19 business's income or visitors are derived during its normal  
20 business season from highway users residing outside the immediate  
21 area of the business.

22 (c) The business shall obtain and submit to the commissioner  
23 all required written approvals from local governments for erecting  
24 tourist-oriented directional signs within an incorporated

1 municipality.

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

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

11 **§17-29-10. Additional consideration for participation.**

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

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

19 (2) When more than one eligible tourist-oriented business  
20 applies for participation in the tourist-oriented directional signs  
21 program at an intersection where there is not sufficient space to  
22 install tourist-oriented directional sign panels for more than one  
23 business, the division will award installation:

24 (A) To the business from which the commissioner first received

1 a qualified application; or

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

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

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

21 (b) A tourist-oriented business that is open to the public  
22 only on a seasonal basis rather than year-round may qualify for  
23 participation in the tourist-oriented directional signs program  
24 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.

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

1 applicable renewal fees.

2 (3) The applicable annual renewal fees are due thirty days  
3 prior to the expiration of the annual term.

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

10 **§17-29-11. Fees.**

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

15 (1) Application Fee \$25;

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

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

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

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

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

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

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

8 **§17-29-12. Maintenance and financial responsibility.**

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

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

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

24 **§17-29-13. Revocation of participation in program.**

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

4           (1) Has made a false, deceptive or fraudulent statement in its  
5 application or in any other information submitted to the  
6 commissioner;

7           (2) Engages in any deceptive or fraudulent business practice;

8           (3) Fails to pay any required fee on a timely basis;

9           (4) No longer meets the eligibility requirements set forth in  
10 this article;

11           (5) Ceases to operate as a business on a continuing basis in  
12 accordance with the schedule submitted to the commissioner in its  
13 application; or

14           (6) Alters or modifies any tourist-oriented directional sign  
15 or tourist-oriented directional sign panel erected or installed by  
16 the division.

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

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

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

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

7           (B) If the business denies the cited ground for the proposed  
8 revocation, the business shall deliver a written response to the  
9 commissioner stating in detail the basis for the denial and  
10 requesting a hearing before the commissioner or the commissioner's  
11 designee.

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

17           (4) If the business requests a hearing, an informal hearing  
18 will be held before the commissioner or the commissioner's designee  
19 to consider the matter. The decision of the commissioner or the  
20 commissioner's designee shall be made in writing to the business  
21 and shall be final.

22 **§17-29-14. Promulgation of Rules.**

23           The commissioner may promulgate rules to implement the  
24 application approval process and to describe the criteria and

1 procedures it has established in connection therewith. These rules  
2 are not subject to the provisions of chapter twenty-nine-a of this  
3 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.