

WEST VIRGINIA LEGISLATURE

2016 REGULAR SESSION

Enrolled

Committee Substitute

for

Senate Bill 202

BY SENATOR MAYNARD, *original sponsor*

[Passed March 11, 2016; in effect from passage]

1 AN ACT to amend and reenact article 10, chapter 64 of the Code of West Virginia, 1931, as
2 amended, relating generally to the promulgation of administrative rules by the Department
3 of Commerce; authorizing certain of the agencies to promulgate certain legislative rules in
4 the form that the rules were filed in the State Register; authorizing certain of the agencies
5 to promulgate certain legislative rules with various modifications presented to and
6 recommended by the Legislative Rule-Making Review Committee; authorizing certain of
7 the agencies to promulgate certain legislative rules with various modifications presented
8 to and recommended by the Legislative Rule-Making Review Committee and with various
9 amendments recommended by the Legislature; directing various agencies to amend and
10 promulgate certain legislative rules; authorizing the Division of Natural Resources to
11 promulgate a legislative rule relating to prohibitions when hunting and trapping; authorizing
12 the Division of Natural Resources to promulgate a legislative rule relating to general
13 hunting; authorizing the Division of Natural Resources to promulgate a legislative rule
14 relating to deer hunting; authorizing the Division of Natural Resources to promulgate a
15 legislative rule relating to wild boar hunting; authorizing the Division of Natural Resources
16 to promulgate a legislative rule relating to elk restoration and management; directing the
17 Division of Labor to promulgate rules relating to the Contractor Licensing Board;
18 authorizing the Division of Labor to promulgate a legislative rule relating to the Elevator
19 Safety Act; authorizing the Division of Labor to promulgate a legislative rule relating to the
20 licensing of elevator mechanics and technicians and registration of apprentices;
21 authorizing the Office of Miners' Health, Safety and Training to promulgate a legislative
22 rule relating to substance abuse screening standards and procedures; directing the
23 Tourism Commission to amend and promulgate a Division of Tourism rule relating to the
24 direct advertising grants program, repealing certain legislative and procedural rules of
25 certain agencies and boards of the Department of Commerce; authorizing WorkForce
26 West Virginia to promulgate a legislative rule relating to prevailing wage; the repealing the

27 Commercial Whitewater Advisory Board legislative rule relating to commercial whitewater
28 outfitters; repealing the Commercial Whitewater Advisory Board procedural rule relating
29 to regulations for open governmental proceedings; repealing the Commissioner of
30 Employment Security legislative rule relating to regulations of the Commissioner of
31 Employment Security; repealing the Commissioner of Employment Security legislative
32 rule relating to implementation of a pilot employment supplemental matching program;
33 repealing the Division of Forestry procedural rule relating to Freedom of Information Act
34 requests; repealing the Division of Labor legislative rule relating to the West Virginia safety
35 code for aerial passenger tramways, lifts and tows; repealing the Division of Labor
36 legislative rule relating to the West Virginia Prevailing Wage Act; repealing the Minimum
37 Wage Rate Board legislative rule relating to the West Virginia Prevailing Wage Act;
38 repealing the Division of Natural Resources legislative rule relating to shoreline camping
39 of government owned reservoir areas in West Virginia; repealing the Division of Natural
40 Resources legislative rule relating to special bear hunting; and repealing the Division of
41 Natural Resources procedural rule relating to rules for open government proceedings.

Be it enacted by the Legislature of West Virginia:

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

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

§64-10-1. Division of Natural Resources.

1 (a) The legislative rule filed in the State Register on July 30, 2015, authorized under the
2 authority of section seven, article one, chapter twenty of this code, modified by the Division of
3 Natural Resources to meet the objections of the Legislative Rule-Making Review Committee and
4 refiled in the State Register on October 8, 2015, relating to the Division of Natural Resources
5 (prohibitions when hunting and trapping, 58 CSR 47), is authorized.

6 (b) The legislative rule filed in the State Register on July 30, 2015, authorized under the
7 authority of section seven, article one, chapter twenty of this code, relating to the Division of
8 Natural Resources (general hunting, 58 CSR 49), is authorized.

9 (c) The legislative rule filed in the State Register on July 30, 2015, authorized under the
10 authority of section seven, article one, chapter twenty of this code, relating to the Division of
11 Natural Resources (deer hunting, 58 CSR 50), is authorized.

12 (d) The legislative rule filed in the State Register on July 30, 2015, authorized under the
13 authority of section seven, article one, chapter twenty of this code, relating to the Division of
14 Natural Resources (wild boar hunting, 58 CSR 52), is authorized.

15 (e) The legislative rule filed in the State Register on July 30, 2015, authorized under the
16 authority of section five-h, article two, chapter twenty of this code, modified by the Division of
17 Natural Resources to meet the objections of the Legislative Rule-Making Review Committee and
18 refiled in the State Register on October 29, 2015, relating to the Division of Natural Resources
19 (elk restoration and management, 58 CSR 74), is authorized with the following amendment:

20 On page one, section three, after the section heading “**§58-74-3. Elk Management**
21 **Plan.**”, by adding the following:

22 “3.1. An Elk Management Plan has been developed by the Division which will guide the
23 Division’s management decisions as it relates to the state’s active elk restoration project.

24 3.1.a. The elk management plan will follow an adaptive management approach and the
25 plan will be updated on a 5-year basis.

26 3.1.b. The Division shall solicit public comments on the draft elk management plan and
27 will take public input under consideration prior to finalizing the plan.

28 3.1.c. The elk management plan will include, but is not limited to, the following plan
29 components.

30 3.1.c.1. Elk biology and life history

31 3.1.c.2. Overview of elk reintroduction feasibility studies”.

32 (f) The legislative rule effective on January 1, 1983, authorized under the authority of
33 section seven, article one, chapter twenty of this code, relating to the Division of Natural
34 Resources (shoreline camping of government owned reservoir areas in West Virginia, 58 CSR
35 30), is repealed.

36 (g) The legislative rule effective on May 9, 1995, authorized under the authority of section
37 seven, article one, chapter twenty of this code, relating to the Division of Natural Resources
38 (special bear hunting, 58 CSR 48), is repealed.

39 (h) The procedural rule effective on October 9, 1996, authorized under the authority of
40 section seven, article one, chapter twenty of this code, relating to the Division of Natural
41 Resources (rules for open government proceedings, 58 CSR 1), is repealed.

§64-10-2. Division of Labor.

1 (a) The Legislature directs the West Virginia Contractor Licensing Board to promulgate
2 the legislative rule filed in the State Register on May 13, 2005, authorized under the authority of
3 section five, article eleven, chapter twenty-one of this code, relating to the West Virginia
4 Contractor Licensing Act (West Virginia Contractor Licensing Act, 28 CSR 2), with the
5 amendment set forth below:

6 On page seven, subsection 3.29 by striking “\$15,000” and inserting in lieu thereof
7 “\$40,000.”

8 (b) The legislative rule filed in the State Register on July 31, 2015, authorized under the
9 authority of section nine, article five, chapter twenty-one of this code, modified by the Division of
10 Labor to meet the objections of the Legislative Rule-Making Review Committee and refiled in the
11 State Register on December 9, 2015, relating to the Division of Labor (wage payment and
12 collection, 42 CSR 5), is authorized with the following amendment:

13 On page seven, by striking out subsection 10.4 and subdivisions 10.4.1 and 10.4.2 and
14 inserting in lieu thereof the following:

15 “10.4. The employer and the claimant shall be entitled to a status conference upon request
16 to the Division.

17 10.4.1. At that time, the employer and the claimant shall have the opportunity to review all
18 records collected by the Division during its investigation relating to the wage claim with respect to
19 all portions of the investigation that the Division has not resolved in favor of the employer.

20 10.4.2. Within twenty (20) days of the conclusion of the status conference, an employer
21 or the claimant may prepare and submit a written statement and/or evidence for consideration by
22 the Division.”

23 (c) The legislative rule filed in the State Register on July 31, 2015, authorized under the
24 authority of section one, article five-c, chapter twenty-one, of this code, modified by the Division
25 of Labor to meet the objections of the Legislative Rule-making Review Committee and refiled in
26 the State Register on December 9, 2015, relating to the Division of Labor (minimum wage and
27 maximum hours, 42 CSR 8), is authorized with the following amendments:

28 On page 1, section 2, by adding a new subsection, designated subsection 2.2, to read as
29 follows:

30 “2.2. Pursuant to W. Va. Code § 21-5C-1(e), the provisions of this rule relating to maximum
31 hours and overtime compensation are not enforceable against or applicable to any individual,
32 partnership, association, corporation, person or group of persons or similar unit if eighty percent
33 of the persons employed by him or her are subject to any federal act relating to maximum hours
34 and overtime compensation.”

35 And, renumbering the remaining subsection.

36 On page 8, former subsection 6.3, by striking out the remainder of the subsection.

37 (d) The legislative rule filed in the State Register on July 31, 2015, authorized under the
38 authority of section eleven, article three-c, chapter twenty-one of this code, modified by the
39 Division of Labor to meet the objections of the Legislative Rule-Making Review Committee and

40 refiled in the State Register on November 17, 2015, relating to the Division of Labor (Elevator
41 Safety Act, 42 CSR 21), is authorized with the following amendment:

42 On page 1, subsection 3.1, by striking out the word “Three” and inserting in lieu thereof
43 the word “Two”.

44 (e) The legislative rule filed in the State Register on July 31, 2015, authorized under the
45 authority of section eleven, article three-c, chapter twenty-one of this code, relating to the Division
46 of Labor (licensing of elevator mechanics and technicians and registration of apprentices, 42 CSR
47 21A), is authorized with the following amendment:

48 On page 1, subsection 3.2, by striking out the word “Three” and inserting in lieu thereof
49 the word “Two”.

50 (f) The legislative rule effective on May 26, 1983, authorized under the authority of section
51 two, article three, chapter twenty-one of this code, relating to the Division of Labor (West Virginia
52 safety code for aerial passenger tramways, lifts and tows, 42 CSR 2), is repealed.

53 (g) The legislative rule effective on December 31, 1982, authorized under the authority of
54 article five-a, chapter twenty-one of this code, relating to the Division of Labor (West Virginia
55 Prevailing Wage Act, 42 CSR 7), is repealed.

§64-10-3. Office of Miners’ Health, Safety and Training.

1 The legislative rule filed in the State Register on July 30, 2015, authorized under the
2 authority of section fourteen, article six, chapter twenty-two-a of this code, relating to the Office of
3 Miners’ Health, Safety and Training (substance abuse screening standards and procedures, 56
4 CSR 19), is authorized.

§64-10-4. Tourism Commission.

1 The legislature directs the Tourism Commission, pursuant to the authority given to the
2 Commission in section nine, article two, chapter five-b of this code, to promulgate the legislative
3 rule filed in the State Register by the Department of Tourism on May 3, 2010, relating to the Direct
4 Advertising Grants Program (144 CSR 1), with the amendments set forth below:

5 By amending the title of the rule to replace the authorizing agency, currently identified as
6 the Division of Tourism, with the Tourism Commission;

7 On page one, section two, by striking out all of subdivision 2.4.2 and inserting in lieu
8 thereof a new subdivision 2.4.2 to read as follows:

9 2.4.2. Entertainment establishments which include, but are not limited to, pari-mutuel
10 gaming establishments, live performing art centers, sporting organizations or arenas, vineyards
11 or wineries, craft breweries, distilleries, and mini-distilleries;

12 On pages one and two, section two, by striking out all of subdivision 2.7.4 and inserting in
13 lieu thereof a new subdivision 2.7.4 to read as follows:

14 2.7.4. Entertainment establishments which include, but are not limited to, pari-mutuel
15 gaming establishments, live performing art centers, sporting organizations or arenas, vineyards
16 or wineries, craft breweries, distilleries, and mini-distilleries;

17 On page six, section six, by striking out all of subsection 6.2 and inserting in lieu thereof a
18 new subsection 6.2 to read as follows:

19 6.2. Seventy-five percent (75%) of a project's direct advertising must be directed toward
20 areas outside of the local market or in major out-of-state markets, except for direct advertising for
21 a fair or festival grant authorized by subsection 7.3 of this rule. The Commission reserves the
22 right on a case by case basis to allow local market media in excess of 25% of a project's direct
23 advertising that cost effectively reaches a well-researched target market.;

24 On page eight, section seven, by striking out all of subsection 7.2 and inserting in lieu
25 thereof a new subsection 7.2 to read as follows:

26 7.2. There is hereby established a small grants program to be administered by the
27 Division. Awards under this program shall not exceed \$7,500 per applicant and no applicant shall
28 receive more than one grant per fiscal year. The applicant and partner(s) must provide a minimum
29 of 25 percent of the total project cost. Total grants awarded under this program in any fiscal year
30 shall be used by the applicant solely for advertising purposes. Small grant awards shall require

31 the approval of the director of the Division. Grant applications must be received by established
32 deadlines. No applicant who has received a grant larger than \$7,500 in any fiscal year may apply
33 for a small grant under this section during the same fiscal year.

34 On page eight, section seven, by striking out all of subsection 7.3 and inserting in lieu
35 thereof a new subsection 7.3 to read as follows:

36 7.3. There is hereby established a Fairs and Festivals grants program to be administered
37 by the Division. Awards under this program shall be limited to Fairs and Festivals, and grants
38 shall not exceed \$5,000 per applicant per year. The applicant must provide a minimum of 50
39 percent of the total project cost, but the requirements of subsection 5.5 of these rules shall not
40 apply to the Fairs and Festivals grants program. Total grants awarded under this program shall
41 be used by the applicant solely for advertising purposes. Fairs and Festivals grant awards shall
42 require the approval of the Director of the Division. Grant applicants must be received by
43 established deadlines.

§64-10-5. WorkForce West Virginia.

1 The legislative rule filed in the State Register on November 6, 2015, authorized under the
2 authority of section eleven, article five-a, chapter twenty-one of this code, modified by the
3 WorkForce West Virginia to meet the objections of the Legislative Rule-Making Review
4 Committee and refiled in the State Register on December 4, 2015, relating to the WorkForce West
5 Virginia (West Virginia Prevailing Wage Act, 96 CSR 4), is authorized.

§64-10-6. Commercial Whitewater Advisory Board.

1 (a) The legislative rule effective on October 8, 1987, authorized under the authority of
2 section twenty-three-a, article two, chapter twenty of this code, relating to the Commercial
3 Whitewater Advisory Board (commercial whitewater outfitters, 182 CSR 1), is repealed.

4 (b) The procedural rule effective on August 31, 1987, authorized under the authority of
5 section three, article nine-a, chapter twenty of this code, relating to the Commercial Whitewater
6 Advisory Board (regulations for open governmental proceedings, 182 CSR 2), is repealed.

§64-10-7. Commissioner of Employment Security.

1 (a) The legislative rule effective on May 1, 1991, authorized under the authority of article
2 two, chapter twenty-one-a of this code, relating to the Commissioner of Employment Security
3 (regulations of the Commissioner of Employment Security, 83 CSR 1), is repealed.

4 (b) The legislative rule effective on September 2, 1983, authorized under the authority of
5 section five, article two-a, chapter twenty-one-a of this code, relating to Commissioner of
6 Employment Security (implementation of a pilot employment supplemental matching program, 84
7 CSR 2), is repealed.

§64-10-8. Division of Forestry.

1 The procedural rule effective on June 1, 2004, authorized under the authority of section
2 three, article three, chapter twenty-nine-a of this code, relating to the Division of Forestry
3 (Freedom of Information Act requests, 22 CSR 4), is repealed.

§64-10-9. Minimum Wage Rate Board.

1 The legislative rule effective on January 1, 1983, authorized under the authority of article
2 five-a, chapter twenty-one of this code, relating to the Minimum Wage Rate Board (West Virginia
3 Prevailing Wage Act, 43 CSR 1), is repealed.

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

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Chairman, Senate Committee

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Chairman, House Committee

Originated in the Senate.

In effect from passage.

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Clerk of the Senate

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Clerk of the House of Delegates

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President of the Senate

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Speaker of the House of Delegates

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Day of, 2016.

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Governor