

WEST VIRGINIA LEGISLATURE

2016 REGULAR SESSION

Committee Substitute

for

Senate Bill 202

BY SENATOR MAYNARD

[Originating in the Committee on the Judiciary; Reported

January 26, 2016.]

1 A BILL 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; authorizing
17 the Division of Labor to promulgate a legislative rule relating to wage payment and
18 collection; authorizing the Division of Labor to promulgate a legislative rule relating to the
19 Elevator Safety Act; authorizing the Division of Labor to promulgate a legislative rule
20 relating to the licensing of elevator mechanics and technicians and registration of
21 apprentices; authorizing the Office of Miners' Health, Safety and Training to promulgate a
22 legislative rule relating to substance abuse screening standards and procedures; directing
23 the Tourism Commission to amend and promulgate a Division of Tourism rule relating to
24 the direct advertising grants program; and authorizing WorkForce West Virginia to
25 promulgate a legislative rule relating to the West Virginia Prevailing Wage Act.

Be it enacted by the Legislature of West Virginia:

1 That article 10, chapter 64 of the Code of West Virginia, 1931, as amended, be amended
2 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”.

§64-10-2. Division of Labor.

1 (a) The legislative rule filed in the State Register on July 31, 2015, authorized under the
2 authority of section nine, article five, chapter twenty-one of this code, modified by the Division of
3 Labor to meet the objections of the Legislative Rule-Making Review Committee and refiled in the
4 State Register on December 9, 2015, relating to the Division of Labor (wage payment and
5 collection, 42 CSR 5), is authorized.

6 (b) The legislative rule filed in the State Register on July 31, 2015, authorized under the
7 authority of section eleven, article three-c, chapter twenty-one of this code, modified by the
8 Division of Labor to meet the objections of the Legislative Rule-Making Review Committee and
9 refiled in the State Register on November 17, 2015, relating to the Division of Labor (Elevator
10 Safety Act, 42 CSR 21), is authorized with the following amendment:

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

13 (c) The legislative rule filed in the State Register on July 31, 2015, authorized under the
14 authority of section eleven, article three-c, chapter twenty-one of this code, relating to the Division
15 of Labor (licensing of elevator mechanics and technicians and registration of apprentices, 42 CSR
16 21A), is authorized with the following amendment:

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

§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.

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

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

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

14 2.4.2. 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 pages one and two, section two, by striking out all of subdivision 2.7.4 and inserting in
18 lieu thereof a new subdivision 2.7.4 to read as follows:

19 2.7.4. Entertainment establishments which include, but are not limited to, pari-mutuel
20 gaming establishments, live performing art centers, sporting organizations or arenas, vineyards
21 or wineries, craft breweries, distilleries, and mini-distilleries;

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

24 6.2. Seventy-five percent (75%) of a project's direct advertising must be directed toward
25 areas outside of the local market or in major out-of-state markets, except for direct advertising for
26 a fair or festival grant authorized by subsection 7.3 of this rule. The Commission reserves the
27 right on a case by case basis to allow local market media in excess of 25% of a project's direct
28 advertising that cost effectively reaches a well-researched target market.;

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

31 7.2. There is hereby established a small grants program to be administered by the
32 Division. Awards under this program shall not exceed \$7,500 per applicant and no applicant shall
33 receive more than one grant per fiscal year. The applicant and partner(s) must provide a minimum
34 of 25 percent of the total project cost. Total grants awarded under this program in any fiscal year
35 shall be used by the applicant solely for advertising purposes. Small grant awards shall require
36 the approval of the director of the Division. Grant applications must be received by established
37 deadlines. No applicant who has received a grant larger than \$7,500 in any fiscal year may apply
38 for a small grant under this section during the same fiscal year.;

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

41 7.3. There is hereby established a Fairs and Festivals grants program to be administered
42 by the Division. Awards under this program shall be limited to Fairs and Festivals, and grants
43 shall not exceed \$5,000 per applicant per year. The applicant must provide a minimum of 50
44 percent of the total project cost, but the requirements of subsection 5.5 of these rules shall not

45 apply to the Fairs and Festivals grants program. Total grants awarded under this program shall
46 be used by the applicant solely for advertising purposes. Fairs and Festivals grant awards shall
47 require the approval of the Director of the Division. Grant applicants must be received by
48 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.