

# **WEST VIRGINIA LEGISLATURE**

**2017 REGULAR SESSION**

**Engrossed**

**Committee Substitute**

**for**

**Senate Bill 535**

BY SENATORS CARMICHAEL (MR. PRESIDENT) AND

PREZIOSO

(BY REQUEST OF THE EXECUTIVE)

[Originating in the Committee on Government

Organization; reported on March 21, 2017]



1 A BILL to repeal §5B-2-8, §5B-2-8a, §5B-2-9, §5B-2-11, §5B-2-12 and §5B-2-12a of the Code of  
2 West Virginia, 1931, as amended; to amend and reenact §5B-1-2 of said code; and to  
3 amend said code by adding thereto a new article, designated §5B-2I-1, §5B-2I-2, §5B-2I-  
4 3, §5B-2I-4, §5B-2I-5, §5B-2I-6, §5B-2I-7 and §5B-2I-8, all relating to the reorganization  
5 of the Division of Tourism; transferring all powers and duties of the Tourism Commission  
6 to the new West Virginia Tourism Office; requiring quarterly meetings; restructuring the  
7 Tourism Advertising Partnership Program as a cooperative advertising program  
8 administered by the West Virginia Tourism Office; vesting in the executive director all  
9 authority for expenditures of funds in the Tourism Promotion Fund; and requiring  
10 confidentiality of certain private information.

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

1 That §5B-2-8, §5B-2-8a, §5B-2-9, §5B-2-11, §5B-2-12 and §5B-2-12a of the Code of West  
2 Virginia, 1931, as amended, be repealed; that §5B-1-2 of said code be amended and reenacted;  
3 and that said code be amended by adding thereto a new article, designated §5B-2I-1, §5B-2I-2,  
4 §5B-2I-3, §5B-2I-4, §5B-2I-5, §5B-2I-6, §5B-2I-7 and §5B-2I-8, all to read as follows:

**ARTICLE 1. DEPARTMENT OF COMMERCE.**

**§5B-1-2. Agencies, boards, commissions, divisions and offices comprising the  
Department of Commerce.**

1 The Department of Commerce consists of the following agencies, boards, commissions,  
2 divisions and offices, including all of the allied, advisory, affiliated or related entities, which are  
3 incorporated in and administered as part of the Department of Commerce:

4 (1) Division of Labor provided in article one, chapter twenty-one of this code, which  
5 includes:

6 (A) Occupational Safety and Health Review Commission provided in article three-a,  
7 chapter twenty-one of this code; and

8 (B) Board of Manufactured Housing Construction and Safety provided in article nine,  
9 chapter twenty-one of this code;

10 (2) Office of Miners' Health, Safety and Training provided in article one, chapter twenty-  
11 two-a of this code. The following boards are transferred to the Office of Miners' Health, Safety  
12 and Training for purposes of administrative support and liaison with the Office of the Governor:

13 (A) Board of Coal Mine Health and Safety and Coal Mine Safety and Technical Review  
14 Committee provided in article six, chapter twenty-two-a of this code;

15 (B) Board of Miner Training, Education and Certification provided in article seven, chapter  
16 twenty-two-a of this code; and

17 (C) Mine Inspectors' Examining Board provided in article nine, chapter twenty-two-a of this  
18 code;

19 (3) The West Virginia Development Office provided in article two, chapter five-b of this  
20 code;

21 (4) Division of Natural Resources and Natural Resources Commission provided in article  
22 one, chapter twenty of this code;

23 (5) Division of Forestry provided in article one-a, chapter nineteen of this code;

24 (6) Geological and Economic Survey provided in article two, chapter twenty-nine of this  
25 code;

26 (7) Workforce West Virginia provided in chapter twenty-one-a of this code, which includes:

27 (A) Division of Unemployment Compensation;

28 (B) Division of Employment Service;

29 (C) Division of Workforce Development; and

30 (D) Division of Research, Information and Analysis;

31 (8) Division of Energy provided in article two-f, chapter five-b of this code; and

32 (9) ~~Division of Tourism~~ West Virginia Tourism Office and the Tourism Commission  
33 provided in article ~~two~~ two-i, chapter five-b of this code.

**ARTICLE 2I. WEST VIRGINIA TOURISM OFFICE.**

**§5B-2I-1. Short title.**

1           This article shall be known and cited as the West Virginia Tourism Act of 2017.

**§5B-2I-2. West Virginia Tourism Office.**

1           The Division of Tourism is continued within the Department of Commerce but is hereafter  
2 designated and shall be known as the West Virginia Tourism Office. All references in this code  
3 to the Division of Tourism shall be construed as references to the West Virginia Tourism Office.

**§5B-2I-3. Appointment and compensation of the Executive Director of the West Virginia Tourism Office.**

1           (a) The West Virginia Tourism Office is under the direction and charge of the Executive  
2 Director of the West Virginia Tourism Office.

3           (b) The Executive Director shall be appointed by the Governor: *Provided*, That the person  
4 -serving as Commissioner of Tourism at the time of enactment of this section in 2017, shall be the  
5 Executive Director of the West Virginia Tourism Office and serve at the will and pleasure of the  
6 Governor. The executive director's salary shall be set by the Governor. The executive director  
7 shall be a competent person, having executive ability and knowledge of publicity, advertising and  
8 tourism promotion.

**§5B-2I-4. Powers and duties of the West Virginia Tourism Office.**

1           (a) The West Virginia Tourism Office, under the direction and charge of the Executive  
2 Director of the West Virginia Tourism Office, shall develop and implement a comprehensive  
3 tourism advertising, promotion and development strategy for West Virginia. "Comprehensive  
4 tourism advertising, promotion and development strategy" means a plan that outlines strategies  
5 and activities designed to continue, diversify and expand the tourism base of the state as a whole;  
6 create tourism jobs; develop a highly skilled tourism workforce; facilitate business access to  
7 capital for tourism; advertise and market the resources offered by the state with respect to tourism  
8 advertising, promotion and development; facilitate cooperation among local, regional and private

9 tourism enterprises; improve infrastructure on a state, regional and community level in order to  
10 facilitate tourism development; improve the tourism business climate generally; and leverage  
11 funding from sources other than the state, including local, federal and private sources. In addition  
12 to all other power and duties of the West Virginia Tourism Office by other provisions of this code,  
13 the West Virginia Tourism Office shall:

14 (1) Coordinate media events to promote a positive image of West Virginia and new  
15 investment in the tourist industry;

16 (2) Provide comprehensive strategic planning services to existing tourism enterprises;

17 (3) Promote attractions of West Virginia in other states;

18 (4) Provide advertising, marketing and communications goods and services, including,  
19 without limitation, a cooperative advertising program to facilitate and allow participation in the  
20 West Virginia Tourism Office's advertising and marketing campaigns and activities, to state  
21 agencies, departments, units of state or local government, private tourism enterprises and other  
22 persons, entities or private enterprises, including, without limitation, convention and visitors'  
23 bureaus; and

24 (5) Distribute West Virginia informational publications and manage the West Virginia  
25 Welcome Centers.

26 (b) In developing its strategies, plans and campaigns, the West Virginia Tourism Office  
27 shall consider the following:

28 (1) Improvement and expansion of existing tourism marketing and promotion activities;

29 (2) Promotion of cooperation among municipalities, counties and the West Virginia  
30 Infrastructure and Jobs Development Council in funding physical infrastructure to enhance the  
31 potential for tourism development.

32 (c) The West Virginia Tourism Office shall have the power and duty:

33 (1) To acquire for the state in the name of the West Virginia Tourism Office by purchase,  
34 lease or agreement, or accept or reject for the state, in the name of the West Virginia Tourism

35 Office, gifts, donations, contributions, bequests or devises of money, security or property, both  
36 real and personal, and any interest in such property, to effectuate or support the purposes of this  
37 article;

38 (2) To make recommendations to the Governor and the Legislature of any legislation  
39 deemed necessary to facilitate the carrying out of any of the foregoing powers and duties and to  
40 exercise any other power that may be necessary or proper for the orderly conduct of the business  
41 of the West Virginia Tourism Office and the effective discharge of the duties of the West Virginia  
42 Tourism Office;

43 (3) To cooperate and assist in the production of motion pictures and television and other  
44 communications;

45 (4) To purchase advertising time or space in or upon any medium generally engaged or  
46 employed for said purpose to advertise and market the resources of the state or to inform the  
47 public at large or any specifically targeted group or industry about the benefits of living in, investing  
48 in, producing in, buying from, contracting with, or in any other way related to, the State of West  
49 Virginia or any business, industry, agency, institution or other entity therein;

50 (5) To promote and disseminate information related to the attractions of the state through  
51 the operation of the state's telemarketing initiative, which telemarketing initiative shall include a  
52 centralized reservation and information system for state parks and recreational facilities;

53 (6) To take such additional factors as may be necessary to carry out the duties and  
54 programs described in this article; and

55 (7) To provide assistance to and assist with retention and expansion of existing tourism-  
56 related enterprises in the state and to recruit or assist in the recruitment of new tourism-related  
57 enterprises to the state.

58 (d) The West Virginia Tourism Office may charge and collect reasonable fees for goods  
59 and services it provides to state agencies, departments, units of state or local government or other  
60 person, entity or enterprise. All moneys collected by the West Virginia Tourism Office shall be

61 deposited in the Tourism Promotion Fund and used in accordance with the provisions of this  
62 article.

63 (e) The West Virginia Tourism Office may engage and retain one or more advertising and  
64 marketing agencies, consultants, enterprises, firms or persons, as deemed by the Executive  
65 Director of the West Virginia Tourism Office, in his or her sole discretion, necessary or advisable  
66 to assist the West Virginia Tourism Office in carrying out its powers and duties as set forth in this  
67 article. In the procurement of advertising agencies, consultants, enterprises or persons, from time  
68 to time, estimated to cost \$250,000 or more, the Executive Director of the West Virginia Tourism  
69 Office shall encourage such advertising and marketing agencies, consultants, enterprises, firms  
70 or persons to submit an expression of interest, which shall include a statement of qualifications,  
71 including anticipated concepts and proposed advertising, marketing and advertising campaigns.  
72 All potential contracts shall be announced by public notice published as a Class II legal  
73 advertisement in compliance with the provisions of article three, chapter fifty-nine of this code. A  
74 committee of three to five representatives of the West Virginia Tourism Office and/or the Tourism  
75 Commission, as selected by the chair of the Tourism Commission, shall evaluate the statements  
76 of qualifications and other materials submitted by interested firms and select three firms which, in  
77 their opinion, are best qualified to perform the desired service. The committee shall then rank, in  
78 order of preference, the three firms selected and shall commence scope of service and price  
79 negotiations with the first ranked firm. If the West Virginia Tourism Office is unable to negotiate  
80 a satisfactory contract with the first ranked firm, at a fee determined to be fair and reasonable,  
81 price negotiations with the firm of second choice shall commence. Failing accord with the second  
82 ranked firm, the committee shall undertake price negotiations with the third ranked firm. If the  
83 West Virginia Tourism Office is unable to negotiate a satisfactory contract with any of the selected  
84 firms, the office shall select additional firms in order of their competence and qualifications and it  
85 shall continue negotiations in accordance with this section until an agreement is reached.

86 If the procurement of the services is estimated by the executive director to cost less than  
87 \$250,000, the West Virginia Tourism Office shall conduct discussions with three or more firms  
88 solicited on the basis of known or submitted qualifications for the assignment prior to the awarding  
89 of any contract: *Provided*, That if a judgment is made that special circumstances exist and that  
90 seeking competition is not practical, the West Virginia Tourism Office may, with the prior written  
91 approval of the Secretary of Commerce, select a firm on the basis of previous satisfactory  
92 performance and knowledge of the West Virginia Tourism Office's needs. After selection, the  
93 West Virginia Tourism Office and selected firm shall develop the scope of desired services and  
94 negotiate a contract.

95 (f) The Executive Director of the West Virginia Tourism Office may, in order to carry out  
96 the powers and duties of the West Virginia Tourism Office described in this article, employ  
97 necessary personnel, contract with professional or technical experts or consultants and purchase  
98 or contract for the necessary equipment or supplies.

99 (g) The Executive Director of the West Virginia Tourism Office may designate, in writing,  
100 with the written consent of the Secretary of Commerce, a list of positions within the West Virginia  
101 Tourism Office that shall be exempt from coverage under the state's classified service.

102 (h) The West Virginia Tourism Office shall submit a report annually to the Governor,  
103 Secretary of Commerce and the Legislature about the development of the tourism industry in the  
104 state and the necessary funding required by the state to continue the development of the tourism  
105 industry.

106 (i) The West Virginia Tourism Office and the Executive Director of the West Virginia  
107 Tourism Office shall engage, collaborate, assist and cooperate with the West Virginia  
108 Development Office, when and as appropriate, to facilitate retention, expansion, recruitment and  
109 location of existing and new tourism-related enterprises.

**§5B-2I-5. Public-private partnerships.**

1 (a) The West Virginia Tourism Office may enter into contractual or joint venture  
2 agreements with one or more nonprofit corporations organized pursuant to the corporate laws of  
3 the state, organized to permit qualification pursuant to Section 501(c) of the Internal Revenue  
4 Code and organized for purposes of the promotion and development of tourism in West Virginia,  
5 and funded from sources other than the state. Members of the Tourism Commission provided in  
6 this article are authorized to sit on the board of directors of such private nonprofit corporations.

7 (b) From time to time the, West Virginia Tourism Office may enter into joint ventures  
8 wherein the West Virginia Development Office and one or more said nonprofit corporations share  
9 in the development and funding of tourism advertising, promotion and development programs and  
10 campaigns.

11 (c) All contracts and joint venture agreements entered into pursuant to this section for  
12 longer than one fiscal year shall contain, in substance, a provision that the contract shall be  
13 considered canceled without further obligation on the part of the state if the Legislature, or, where  
14 appropriate, the federal government shall fail to appropriate sufficient funds therefor or shall act  
15 to impair the contract or cause it to be canceled.

**§5B-2I-6. Tourism Promotion Fund; use of funds.**

1 (a) There is continued in the State Treasury the special revenue fund known as the  
2 Tourism Promotion Fund created under prior enactment of section nine, article one, chapter five-  
3 b of this code.

4 (b) Moneys deposited in the fund each year shall be used solely for marketing, direct  
5 advertising, business development and public relations promoting travel and tourism within the  
6 state and the state's image and brand identity at the discretion and direction of the Executive  
7 Director of the West Virginia Tourism Office. "Direct advertising" means advertising which  
8 includes, but is not limited to, television, radio, mailings, newspaper, magazines, digital marketing,  
9 including the Internet and social media, and outdoor billboards or any combination thereof. Any  
10 balance remaining at the end of any fiscal year does not revert to the General Revenue Fund, but

11 shall remain in the fund for expenditures in accordance with the provisions of this section:  
12 Provided, That if on January 1, 2018, the bonds authorized by the provisions of section sixteen-  
13 b, article fifteen, chapter thirty-one of this code, for improvements to Cacapon State Park and  
14 Beech Fork State Park have not been issued and sold and a contract for one or more of those  
15 projects has not been entered into by the state, then all spending authority under this subsection  
16 shall cease and all moneys in the fund shall revert immediately to the General Revenue Fund of  
17 the state.

18 (c) Effective July 1, 2017, the Tourism Advertising Partnership Program and all related  
19 legislative or procedural rules shall cease, except as necessary for the Tourism Commission to  
20 settle, finalize and conclude all outstanding advertising grants or other financial obligations of the  
21 Tourism Commission respecting funds in the Tourism Promotion Fund previously approved,  
22 expended or obligated by the Tourism Commission as of the effective date of this article pursuant  
23 to subdivision (2), subsection (e), section seven of this article and be replaced by a cooperative  
24 advertising program to be created and established by the West Virginia Tourism Office, under  
25 and pursuant to section four of this article, to offer, facilitate and allow participation in the West  
26 Virginia Tourism Office's advertising and marketing campaigns and activities, to state agencies,  
27 departments, units of state or local government, private tourism enterprises and other persons,  
28 entities or private enterprises, including, without limitation, convention and visitors' bureaus. The  
29 Executive Director of the West Virginia Tourism Office shall establish and publish a fee schedule,  
30 which shall include a match of state funds to program participant's funds, for participation in the  
31 cooperative advertising program.

**§5B-2I-7. Tourism Commission; members, appointment and expenses.**

1 (a) There is continued within the Department of Commerce an independent Tourism  
2 Commission, which is a body corporate and politic, constituting a public corporation and  
3 government instrumentality.

4 (b) The Tourism Commission consists of the following fifteen members:

5 (1) The Secretary of Commerce, or his or her designee, ex officio;

6 (2) The Secretary of Transportation or his or her designee, ex officio;

7 (3) Twelve members appointed by the Governor, with the advice and consent of the  
8 Senate, representing participants in the state's tourism industry. Ten of the members shall be  
9 from the private sector, one shall be a director employed by a convention and visitors bureau and  
10 one shall be a member of a convention and visitors bureau. In making the appointments, the  
11 Governor may select from a list provided by the West Virginia Hospitality and Travel Association  
12 of qualified applicants. Of the twelve members so appointed, no less than three shall be from  
13 each congressional district within the state and shall be appointed to provide the broadest  
14 geographic distribution which is feasible;

15 (4) One member to be appointed by the Governor to represent public sector nonstate  
16 participants in the tourism industry within the state.

17 (c) Each member appointed by the Governor serves a staggered term of four years. Any  
18 member whose term has expired serves until his or her successor has been appointed. Any  
19 person appointed to fill a vacancy serves only for the unexpired term. Any member is eligible for  
20 reappointment. In case of a vacancy in the office of a member, the vacancy shall be filled by the  
21 Governor in the same manner as the original appointment.

22 (d) The chair of the Tourism Commission shall be appointed by the Governor from  
23 members then serving on the commission, and serves at the will and pleasure of the Governor.

24 (e) The Tourism Commission shall:

25 (1) Assist the Executive Director of the West Virginia Tourism Office in the development  
26 and implementation of the state's comprehensive tourism advertising, marketing, promotion and  
27 development strategy; and

28 (2) Take all actions necessary to settle, finalize and conclude all outstanding advertising  
29 grants or other financial obligations of the Tourism Commission respecting funds in the Tourism

30 Promotion Fund previously approved, expended or obligated by the Tourism Commission as of  
31 the effective date of this article.

32 (f) Members of the Tourism Commission are not entitled to compensation for services  
33 performed as members. Each member from the private sector is entitled to reimbursement for  
34 reasonable expenses incurred in the discharge of their official duties. All expenses incurred by  
35 members from the private sector shall be paid in a manner consistent with guidelines of the Travel  
36 Management Office of the Department of Administration and are payable solely from the funds of  
37 the West Virginia Tourism Office or from funds appropriated for that purpose by the Legislature.  
38 Liability or obligation is not incurred by the West Virginia Tourism Office beyond the extent to  
39 which moneys are available from funds of the authority or from the appropriations.

40 (g) Members shall meet quarterly as designated by the chair.

**§5B-2I-8. Confidentiality.**

1 Any documentary material, data or other writing made or received by the West Virginia  
2 Tourism Office, the West Virginia Development Office or the Tourism Commission, for the  
3 purpose of furnishing assistance to a new or existing business are exempt from the provisions of  
4 article one, chapter twenty-nine-b of this code: *Provided*, That any agreement entered into or  
5 signed by the West Virginia Tourism Office or the West Virginia Development Office which  
6 obligates public funds is subject to inspection and copying pursuant to the provisions of that article  
7 as of the date the agreement is entered into, signed or otherwise made public.

NOTE: The purpose of this bill is to reorganize the Division of Tourism as the new West Virginia Tourism Office. It transfers certain powers and duties of the Tourism Commission to the new West Virginia Tourism Office, and sets a requirement for quarterly meetings. Additionally, the bill restructures the Tourism Advertising Partnership Program as a cooperative advertising program administered by the new West Virginia Tourism Office and vests in the Executive Director all authority for expenditures of funds in the Tourism Promotion Fund.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.