

WEST VIRGINIA LEGISLATURE

2017 REGULAR SESSION

ENROLLED

Committee Substitute

for

Senate Bill 535

BY SENATORS CARMICHAEL (MR. PRESIDENT) AND

PREZIOSO

(BY REQUEST OF THE EXECUTIVE)

[Passed April 8, 2017; in effect 90 days from passage]

1 AN ACT to repeal §5B-2-8, §5B-2-8a, §5B-2-9, §5B-2-11, §5B-2-12 and §5B-2-12a of the Code
2 of 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 generally to tourism
5 promotion; continuing the West Virginia Division of Tourism Office; creating the West
6 Virginia Tourism Act of 2017; creating the position of Executive Director of the West
7 Virginia Tourism Office and setting forth the authority of the executive director; authorizing
8 the Governor to appoint the executive director and set his or her salary; clarifying that the
9 executive director shall serve as Commissioner of Tourism until establishment of the West
10 Virginia Tourism Office; making the position of executive director one of will and pleasure;
11 establishing qualifications for the position of executive director; establishing powers and
12 duties of the West Virginia Tourism Office; authorizing the West Virginia Tourism Office to
13 enter into private-public agreements and to charge and collect fees for goods and services
14 it supplies; authorizing the West Virginia Tourism Office to retain services necessary to
15 carry out its duties; establishing criteria for retaining services; authorizing the executive to
16 employ necessary personnel and to contract for professional, technical and consulting
17 services and purchase equipment and supplies; authorizing the executive director, at the
18 consent of the Secretary of Commerce, to compile a list on classified service exempt
19 positions; requiring the West Virginia Tourism Office to publish and disseminate an annual
20 report; directing the West Virginia Tourism Office and its director to collaborate with the
21 West Virginia Development Office; authorizing cancellation of contracts and joint venture
22 agreements without further obligation of the state and setting the conditions precedent
23 therefor; continuing the Tourism Promotion Fund in the State Treasury; directing that
24 moneys in the fund be spent solely for tourism promotion; defining terms; exempting
25 unspent moneys in fund from reverting to the General Revenue Fund; eliminating the
26 Tourism Advertising Partnership Program effective July 1, 2017, with exceptions for

27 resolution of outstanding obligations; directing the establishment of a cooperative
28 advertising program within the West Virginia Tourism Office; authorizing the West Virginia
29 Tourism Office to establish a fee schedule for participants in the cooperative advertising
30 program; continuing an independent Tourism Commission within the Department of
31 Commerce; establishing membership of Tourism Commission; requiring that gubernatorial
32 appointments to the board be subject to the advice and consent of the Senate; setting
33 forth qualifications of board members; establishing duties of the commission; and
34 providing that documents, data and other writings related to furnishing assistance to
35 businesses, other than agreements entered into by the West Virginia Tourism Office or
36 West Virginia Development Office which obligate public funds, are exempt from disclosure
37 under the Freedom of Information Act.

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

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

.....
Chairman, Senate Committee

.....
Chairman, House Committee

Originated in the Senate.

In effect 90 days from passage.

.....
Clerk of the Senate

.....
Clerk of the House of Delegates

.....
President of the Senate

.....
Speaker of the House of Delegates

The within this the.....
Day of, 2017.

.....
Governor