WEST VIRGINIA CODE CHAPTER 5b ARTICLE 2I

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§5B-2I-1. Short title.

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

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§5B-2I-2. West Virginia Department of Tourism.

The West Virginia Department of Tourism, previously continued from the West Virginia Tourism Office and the Division of Tourism, is hereby continued as a department of the executive branch of state government. All references in this code to the Division of Tourism or to the West Virginia Tourism Office shall be construed as references to the West Virginia Department of Tourism. As used in this article, "department" means the Department of Tourism.

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§5B-2I-3. Office of Secretary of Department of Tourism.

(a) The Secretary of the Department of Tourism is the chief executive officer of the department. The Governor shall appoint the secretary, by and with the advice and consent of the Senate, for the term for which the Governor is elected, and the secretary shall serve at the will and pleasure of the Governor. Any reference in this code to the "Executive Director" or "Commissioner" of the West Virginia Tourism Office means the Secretary of the Department of Tourism. As used in this article, "secretary" means the Secretary of the Department of Tourism.

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§5B-2I-4. Powers and duties of the Department of Tourism.

(a) The Department of Tourism, under the direction and charge of the secretary, shall develop and implement a comprehensive tourism advertising, promotion, and development strategy for West Virginia. "Comprehensive tourism advertising, promotion and development strategy" means a plan that outlines strategies and activities designed to continue, diversify and expand the tourism base of the state as a whole; create tourism jobs; develop a highly skilled tourism workforce; facilitate business access to capital for tourism; advertise and market the resources offered by the state with respect to tourism advertising, promotion and development; facilitate cooperation among local, regional and private tourism enterprises; improve infrastructure on a state, regional and community level in order to facilitate tourism development; improve the tourism business climate generally; and leverage funding from sources other than the state, including local, federal and private sources. In addition to all other power and duties of the department by other provisions of this code, the department shall:

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

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

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

(4) Provide advertising, marketing and communications goods and services, including, without limitation, a cooperative advertising program to facilitate and allow participation in the department’s advertising and marketing campaigns and activities, to state agencies, departments, units of state or local government, private tourism enterprises and other persons, entities, or private enterprises, including, without limitation, convention and visitors’ bureaus;

(5) Distribute West Virginia informational publications and manage the West Virginia Welcome Centers; and

(6) Coordinate programs, initiatives, and production of materials relating to the branding and marketing of the state, and its departments and agencies, and to provide greater coherence in such programs, initiatives, and materials across the departments and agencies of the state.

(b) In developing its strategies, plans and campaigns, the department shall consider the following:

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

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

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(c) The Department of Tourism shall have the following powers and duties:

(1) To acquire for the state in the name of the department by purchase, lease, or agreement, or to accept or reject for the state, in the name of the department, gifts, donations, contributions, bequests or devises of money, security or property, both real and personal, and any interest in such property, to effectuate or support the purposes of this article;

(2) To make recommendations to the Governor and the Legislature of any legislation deemed necessary to facilitate the carrying out of any of the foregoing powers and duties and to exercise any other power that may be necessary or proper for the orderly conduct of the business of the department and the effective discharge of the duties of the department;

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

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

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

(6) To take such additional actions as may be necessary to carry out the powers, duties and programs described in this article; and

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

(d) The Department of Tourism may contract with the Division of Highways to sell advertising space on the WV511 website to promote in-state tourism and raise capital for technological improvements to the website: *Provided*, That 50 percent of the money collected for sale of advertising space is deposited into the Tourism Promotion Fund and the other 50 percent of the money collected from the sale of advertising space is remitted to the Division of Highways pursuant to the contract.

(e) The Department of Tourism may charge and collect reasonable fees for goods and services it provides to state agencies, departments, units of state or local government or other person, entity, or enterprise. All moneys collected by the department shall be deposited in the Tourism Promotion Fund and used in accordance with the provisions of this

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article.

(f) The Department of Tourism may engage and retain one or more advertising and marketing agencies, consultants, enterprises, firms, or persons, as deemed by the secretary, in his or her sole discretion, necessary or advisable to assist the department in carrying out its powers and duties as set forth in this article. In the procurement of advertising agencies, consultants, enterprises, or persons, from time to time, estimated to cost $250,000 or more, the secretary shall encourage such advertising and marketing agencies, consultants, enterprises, firms, or persons to submit an expression of interest, which shall include a statement of qualifications, including anticipated concepts and proposed advertising, marketing and advertising campaigns. All potential contracts shall be announced by public notice published as a Class II legal advertisement in compliance with §59-3-3 of this code. A committee of three to five representatives of the department or the Tourism Advisory Council, as selected by the secretary, shall evaluate the statements of qualifications and other materials submitted by interested firms and select three firms which, in their opinion, are best qualified to perform the desired service. The committee shall then rank, in order of preference, the three firms selected and shall commence scope of service and price negotiations with the first-ranked firm. If the department is unable to negotiate a satisfactory contract with the first-ranked firm, at a fee determined to be fair and reasonable, price negotiations with the firm of second choice shall commence. Failing accord with the second-ranked firm, the committee shall undertake price negotiations with the third-ranked firm. If the department is unable to negotiate a satisfactory contract with any of the selected firms, the office shall select additional firms in order of their competence and qualifications and it shall continue negotiations in accordance with this section until an agreement is reached.

If the procurement of the services is estimated by the secretary to cost less than $250,000, the department shall conduct discussions with three or more firms solicited on the basis of known or submitted qualifications for the assignment prior to the awarding of any contract: *Provided*, That if a judgment is made that special circumstances exist and that seeking competition is not practical, the department may select a firm on the basis of previous satisfactory performance and knowledge of the department's needs. After selection, the department and selected firm shall develop the scope of desired services and negotiate a contract.

(g) The secretary of the Department of Tourism may, in order to carry out the powers and duties of the department described in this article, employ necessary personnel, contract with professional or technical experts or consultants and purchase or contract for the necessary equipment or supplies.

(h) The secretary of the Department of Tourism may designate, in writing, a list of positions within the department that shall be exempt from coverage under the state's classified service: *Provided*, That beginning on July 1, 2025, all employees of the Department of Tourism shall be exempt from the state grievance procedures as set forth in §6C-2-1 *et seq*. of this code and from the classified civil service system under §29-6-1 *et seq*. of this code

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except that:

(1) All employees of the Department of Tourism who are currently members of the classified civil service system shall retain their status as long as they remain in their current position, and all employees of the Department of Tourism who currently have recourse to the state grievance procedures will continue to have access to the state grievance procedures as long as they remain in their current position; and

(2) Any employee of the Department of Tourism that leaves his or her position and remains an employee within the Department of Tourism shall, at that time, be transferred to the classified-exempt service system as defined in §29-6-2(g) of this code and be exempted from the state grievance procedures as set forth in §6C-2-1 *et seq*. of this code.

(i) The secretary shall have the authority to designate certain employees' status under the classified civil service system and grievance procedures as may be deemed necessary to comply with federal regulation, or the requirements for receipt of federal funding or assistance.

(j) Nothing in this article shall prevent a person, at the secretary's discretion, from serving in multiple positions within the Department of Tourism.

(k) Subsection (h) of this section shall not apply to any position appointed by the Governor.

(l) Nothing in this section shall exempt the Department of Tourism from the provisions of this code prohibiting nepotism, favoritism, discrimination, or unethical practices related to the promotion, transfer, layoff, removal, discipline, and compensation of state employees.

(m) The Department of Tourism shall submit a report annually to the Governor and the Legislature about the development of the tourism industry in the state and the necessary funding required by the state to continue the development of the tourism industry.

(n) The Department of Tourism and the secretary shall engage, collaborate, assist, and cooperate with the Department of Economic Development, when and as appropriate, to facilitate retention, expansion, recruitment, and location of existing and new tourism-related enterprises.

(o) The Department of Tourism shall utilize, to the fullest extent practicable and efficient, existing resources of the Department of Commerce for functions necessary for the operation of the department but which functions are not directly related to the purposes of the department listed above. The Department of Tourism may enter into such agreements with the Department of Commerce or other agencies of this state as may be necessary or advisable to utilize existing resources of this state.

(p) The Department of Tourism shall be exempt from §5A-3-1 *et seq*. of this code.

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

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

(b) From time to time the department may enter into joint ventures wherein the Department of Economic Development and one or more said nonprofit corporations share in the development and funding of tourism advertising, promotion and development programs and campaigns.

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

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

(a) There is continued in the State Treasury the special revenue fund known as the Tourism Promotion Fund created under prior enactment of §5B-1-9 of this code.

(b) Moneys deposited in the fund each year shall be used solely for marketing, direct advertising, business development and public relations promoting travel and tourism within the state or the state's image and brand identity at the discretion and direction of the secretary of the Department of Tourism. "Direct advertising" means advertising which includes, but is not limited to, television, radio, mailings, newspaper, magazines, digital marketing, including the Internet and social media, and outdoor billboards or any combination thereof. Any balance remaining at the end of any fiscal year does not revert to the General Revenue Fund, but shall remain in the fund for expenditures in accordance with this section.

(c) Effective July 1, 2017, the Tourism Advertising Partnership Program and all related legislative or procedural rules shall cease, except as necessary for the Tourism Advisory Council to settle, finalize and conclude all outstanding advertising grants or other financial obligations of the Tourism Advisory Council respecting funds in the Tourism Promotion Fund previously approved, expended or obligated by the Tourism Advisory Council as of the effective date of this article pursuant to §5B-2I-7(e) (2) of this code and be replaced by a cooperative advertising program to be created and established by the Department of Tourism, under and pursuant to §5B-2I-4 of this code, to offer, facilitate and allow participation in the department's advertising and marketing campaigns and activities, to state agencies, departments, units of state or local government, private tourism enterprises and other persons, entities or private enterprises, including, without limitation, convention and visitors' bureaus. The secretary of the Department of Tourism shall establish and publish a fee schedule, which shall include a match of state funds to program participant's funds, for participation in the cooperative advertising program.

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§5B-2I-7. Tourism Advisory Council; members, appointment, and expenses.

(a) There is continued within the Department of Tourism an independent Tourism Advisory Council.

(b) The Tourism Advisory Council consists of the following 11 members:

(1) The Director of the Department of Economic Development or his or her designee, ex officio;

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

(3) Nine members appointed by the Governor, with the advice and consent of the Senate, representing participants in the state's tourism industry.

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

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

(e) The Tourism Advisory Council shall:

(1) Advise the secretary of the Department of Tourism in the development and implementation of the state's comprehensive tourism advertising, marketing, promotion, and development strategy; and

(2) Take all actions, in consultation with the secretary, necessary to settle, finalize, and conclude all outstanding advertising grants or other financial obligations of the Tourism Advisory Council respecting funds in the Tourism Promotion Fund previously approved, expended, or obligated by the Tourism Advisory Council as of the effective date of this article.

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

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

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§5B-2I-8. Confidentiality.

Any documentary material, data or other writing made or received by the Department of Tourism, the West Virginia Department of Economic Development, or the Tourism Advisory Council, for the purpose of furnishing assistance to a new or existing business, or of developing or implementing a comprehensive tourism advertising, promotion, and development strategy pursuant to §5B-2I-4 of this code, are exempt from §29B-1-1 *et seq*. of this code: *Provided*, That any agreement entered into or signed by the Department of Tourism or the Department of Economic Development which obligates public funds is subject to inspection and copying pursuant to §29B-1-1 *et seq*. of this code as of the date the agreement is entered into, signed or otherwise made public.

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