Enrolled

Committee Substitute

for

Senate Bill 202

BY SENATOR MAYNARD, original sponsor

[Passed March 11, 2016; in effect from passage]
Enr. CS for SB 202

WEST VIRGINIA LEGISLATURE

2016 REGULAR SESSION

Enrolled

Committee Substitute

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[Passed March 11, 2016; in effect from passage]
AN ACT to amend and reenact article 10, chapter 64 of the Code of West Virginia, 1931, as amended, relating generally to the promulgation of administrative rules by the Department of Commerce; authorizing certain of the agencies to promulgate certain legislative rules in the form that the rules were filed in the State Register; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the Legislative Rule-Making Review Committee; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the Legislative Rule-Making Review Committee and with various amendments recommended by the Legislature; directing various agencies to amend and promulgate certain legislative rules; authorizing the Division of Natural Resources to promulgate a legislative rule relating to prohibitions when hunting and trapping; authorizing the Division of Natural Resources to promulgate a legislative rule relating to general hunting; authorizing the Division of Natural Resources to promulgate a legislative rule relating to deer hunting; authorizing the Division of Natural Resources to promulgate a legislative rule relating to wild boar hunting; authorizing the Division of Natural Resources to promulgate a legislative rule relating to elk restoration and management; directing the Division of Labor to promulgate rules relating to the Contractor Licensing Board; authorizing the Division of Labor to promulgate a legislative rule relating to the Elevator Safety Act; authorizing the Division of Labor to promulgate a legislative rule relating to the licensing of elevator mechanics and technicians and registration of apprentices; authorizing the Office of Miners’ Health, Safety and Training to promulgate a legislative rule relating to substance abuse screening standards and procedures; directing the Tourism Commission to amend and promulgate a Division of Tourism rule relating to the direct advertising grants program, repealing certain legislative and procedural rules of certain agencies and boards of the Department of Commerce; authorizing WorkForce West Virginia to promulgate a legislative rule relating to prevailing wage; the repealing the
Commercial Whitewater Advisory Board legislative rule relating to commercial whitewater outfitters; repealing the Commercial Whitewater Advisory Board procedural rule relating to regulations for open governmental proceedings; repealing the Commissioner of Employment Security legislative rule relating to regulations of the Commissioner of Employment Security; repealing the Commissioner of Employment Security legislative rule relating to implementation of a pilot employment supplemental matching program; repealing the Division of Forestry procedural rule relating to Freedom of Information Act requests; repealing the Division of Labor legislative rule relating to the West Virginia safety code for aerial passenger tramways, lifts and tows; repealing the Division of Labor legislative rule relating to the West Virginia Prevailing Wage Act; repealing the Minimum Wage Rate Board legislative rule relating to the West Virginia Prevailing Wage Act; repealing the Division of Natural Resources legislative rule relating to shoreline camping of government owned reservoir areas in West Virginia; repealing the Division of Natural Resources legislative rule relating to special bear hunting; and repealing the Division of Natural Resources procedural rule relating to rules for open government proceedings.

Be it enacted by the Legislature of West Virginia:

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

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

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

(a) The legislative rule filed in the State Register on July 30, 2015, authorized under the authority of section seven, article one, chapter twenty of this code, modified by the Division of Natural Resources to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on October 8, 2015, relating to the Division of Natural Resources (prohibitions when hunting and trapping, 58 CSR 47), is authorized.
(b) The legislative rule filed in the State Register on July 30, 2015, authorized under the authority of section seven, article one, chapter twenty of this code, relating to the Division of Natural Resources (general hunting, 58 CSR 49), is authorized.

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

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

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

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

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

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

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

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

3.1.c.1. Elk biology and life history
Enr. CS for SB 202

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

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

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

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

§64-10-2. Division of Labor.

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

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

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

On page seven, by striking out subsection 10.4 and subdivisions 10.4.1 and 10.4.2 and inserting in lieu thereof the following:
"10.4. The employer and the claimant shall be entitled to a status conference upon request to the Division.

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

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

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

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

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

And, renumbering the remaining subsection.

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

(d) The legislative rule filed in the State Register on July 31, 2015, authorized under the authority of section eleven, article three-c, chapter twenty-one of this code, modified by the Division of Labor to meet the objections of the Legislative Rule-Making Review Committee and
Enr. CS for SB 202

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

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

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

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

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

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


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


The legislature directs the Tourism Commission, pursuant to the authority given to the Commission in section nine, article two, chapter five-b of this code, to promulgate the legislative rule filed in the State Register by the Department of Tourism on May 3, 2010, relating to the Direct Advertising Grants Program (144 CSR 1), with the amendments set forth below:
By amending the title of the rule to replace the authorizing agency, currently identified as the Division of Tourism, with the Tourism Commission;

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

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

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

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

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

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

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

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

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

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

§64-10-5. WorkForce West Virginia.

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

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

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

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

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

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

§64-10-8. Division of Forestry.

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

§64-10-9. Minimum Wage Rate Board.

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

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker of the House of Delegates

The within is approved this the 30th Day of March, 2016.

Governor
PRESENTED TO THE GOVERNOR

Date: 2/1/2015

Time: 10:25 AM