

WEST VIRGINIA TOURISM ACT OF 2017
WEST VIRGINIA CODE §5B-2I-1, ET. SEQ.

§5B-2I-1. Short title.

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

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

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

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

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

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

(a) The West Virginia Tourism Office, under the direction and charge of the Executive Director of the West Virginia Tourism Office, 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 West Virginia Tourism Office by other provisions of this code, the West Virginia Tourism Office shall:

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

(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 West Virginia Tourism Office'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; and

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

(b) In developing its strategies, plans and campaigns, the West Virginia Tourism Office 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.

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

(1) To acquire for the state in the name of the West Virginia Tourism Office by purchase, lease or agreement, or accept or reject for the state, in the name of the West Virginia Tourism Office, 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 West Virginia Tourism Office and the effective discharge of the duties of the West Virginia Tourism Office;

(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 factors as may be necessary to carry out the 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 West Virginia Tourism Office 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 West Virginia Tourism Office shall be deposited in the Tourism Promotion Fund and used in accordance with the provisions of this article.

(e) The West Virginia Tourism Office may engage and retain one or more advertising and marketing agencies, consultants, enterprises, firms or persons, as deemed by the Executive Director of the West Virginia Tourism Office, in his or her sole discretion, necessary or advisable to assist the West Virginia Tourism Office 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 Executive Director of the West Virginia Tourism Office 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 the provisions of article three, chapter fifty-nine of this code. A committee of three to five representatives of the West Virginia Tourism Office and/or the Tourism Commission, as selected by the chair of the Tourism Commission, 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 West Virginia Tourism Office 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 West Virginia Tourism Office 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 executive director to cost less than \$250,000, the West Virginia Tourism Office 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 West Virginia Tourism Office may, with the prior written approval of the Secretary of Commerce, select a firm on the basis of previous satisfactory performance and knowledge of the West Virginia Tourism Office's needs. After selection, the West Virginia Tourism Office and selected firm shall develop the scope of desired services and negotiate a contract.

(f) The Executive Director of the West Virginia Tourism Office may, in order to carry out the powers and duties of the West Virginia Tourism Office 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.

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

(h) The West Virginia Tourism Office shall submit a report annually to the Governor, Secretary of Commerce 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.

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

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

(a) The West Virginia Tourism Office 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 Commission provided in this article are authorized to sit on the board of directors of such private nonprofit corporations.

(b) From time to time the West Virginia Tourism Office may enter into joint ventures wherein the West Virginia Development Office 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.

§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 section nine, article one, chapter five-b 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 and the state's image and brand identity at the discretion and direction of the Executive Director of the West Virginia Tourism Office. "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 the provisions of 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 Commission to settle, finalize and conclude all outstanding advertising grants or other financial obligations of the Tourism Commission respecting funds in the Tourism Promotion Fund previously approved, expended or obligated by the Tourism Commission as of the effective date of this article pursuant to subdivision (2), subsection (e), section seven of this article and be replaced by a cooperative advertising program to be created and established by the West Virginia Tourism Office, under and pursuant to section four of this article, to offer, facilitate and allow participation in the West Virginia Tourism Office'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 Executive Director of the West Virginia Tourism Office 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.

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

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

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

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

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

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

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

(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 Commission 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 Commission shall:

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

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

(f) Members of the Tourism Commission are not entitled to compensation for services performed as members. Each member from the private sector 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 West Virginia Tourism Office or from funds appropriated for that purpose by the Legislature. Liability or obligation is not incurred by the West Virginia Tourism Office beyond the extent to which moneys are available from funds of the authority or from the appropriations.

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

§5B-2I-8. Confidentiality.

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