

# **WEST VIRGINIA LEGISLATURE**

## **2016 REGULAR SESSION**

**Introduced**

### **House Bill 2940**

**2015 Carryover**

(BY DELEGATE R. SMITH)

[Introduced January 13, 2016; referred to the  
Committee on Roads and Transportation then  
Finance.]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,  
 2 designated §17-29-1, §17-29-2, §17-29-3, §17-29-4, §17-29-5, §17-29-6, §17-29-7, §17-  
 3 29-8, §17-29-9, §17-29-10, §17-29-11, §17-29-12, §17-29-13 and §17-29-14, all relating  
 4 to creating the Tourist-Oriented Directional Signs Program; stating legislative purpose;  
 5 setting forth application and eligibility requirements; establishing design and content  
 6 guidelines; establishing sign location and placement criteria; establishing fee schedule;  
 7 setting forth maintenance responsibility; permitting revocation of participation in the  
 8 program; granting that the rule making is exempt from the state Administrative Procedures  
 9 Act, but shall be filed with the Secretary of State; and defining terms.

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

1 That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new  
 2 article, designated §17-29-1, §17-29-2, §17-29-3, §17-29-4, §17-29-5, §17-29-6, §17-29-7, §17-  
 3 29-8, §17-29-9, §17-29-10, §17-29-11, §17-29-12, §17-29-13 and §17-29-14, all to read as follows:

**ARTICLE 29. TOURIST-ORIENTED DIRECTIONAL SIGNS PROGRAM.**

**§17-29-1. Short title.**

1 This article shall be known and may be cited as the "Tourist-Oriented Directional Signs  
 2 Program."

**§17-29-2. Legislative purpose.**

1 The purpose of the Tourist-Oriented Directional Signs Program is to establish criteria for  
 2 participation in and administration of a program for the installation of tourist-oriented directional  
 3 signs within the rights-of-way of state highways in rural areas of the State of West Virginia. Tourist-  
 4 oriented directional signs are guide signs to be placed within the rights-of-way of state highways  
 5 in rural areas of the State of West Virginia to display business identification and directional  
 6 information for tourist-oriented businesses not located on a state highway that attract highway

7 users from outside the immediate area of the business.

**§17-29-3. Definitions.**

1 The following words when used in this article have the meaning ascribed to them unless  
2 the context clearly indicates a different meaning:

3 "Commissioner" means the West Virginia Commissioner of Highways.

4 "Division" means the West Virginia Division of Highways.

5 "Eligibility distance" means the total roadway distance from the turn on a state highway  
6 where a tourist-oriented directional sign is located to the entry driveway of a tourist-oriented  
7 business and, if necessary, to break a tie between two otherwise eligible businesses, the eligibility  
8 distance shall also include the distance from the beginning of the entry driveway to the entry door  
9 of the business.

10 "Immediate area of the business" means the area within a twenty-mile radius of the  
11 business.

12 "Rural" means an area outside the limits of an incorporated municipality having a  
13 population of two thousand or more according to the most recent decennial census of the United  
14 States Bureau of Census.

15 "State highway" means a highway designated by the commissioner as part of the state  
16 highway system of the State of West Virginia.

17 "Tourist-oriented directional sign" means an official sign structure placed within the right-  
18 of-way of a state highway that contains one or more tourist-oriented directional sign panels. These  
19 signs shall be topped with tourist area designation panels at the request of the Division of Tourism.

20 "Tourist-oriented directional sign panel" means an individual sign panel on a tourist-  
21 oriented directional sign that identifies the name of a participating tourist-oriented business, the  
22 direction of turn to reach the business, and the distance to the business from the turn off the state

23 highway.

24 "Tourist-oriented business" means a private or public entity, which offers lawful cultural,  
25 historical, recreational, agricultural, educational, entertainment or commercial activities, services  
26 or products to the general public; and the major portion of whose income or visitors are derived  
27 during its normal business season from highway users residing outside the immediate area of the  
28 business.

**§17-29-4. Tourist-Oriented Directional Signs Program authorization.**

1 (a) There is hereby created and established a tourist-oriented directional signs program.

2 (b) Tourist-oriented directional signs are available to lawful cultural, historical, recreational,  
3 agricultural, educational or entertaining activities, state and national parks, and commercial  
4 activities that are unique and local in nature, and the major portion of whose income or visitors  
5 are derived during its normal business season from motorists not residing in the immediate area  
6 of the activity.

**§17-29-5. Compliance with other requirements.**

1 In all respects, the erection of tourist-oriented directional signs shall comply with:

2 (1) The manual and specifications for uniform system of traffic-control devices adopted by  
3 the commissioner pursuant to section one, article three, chapter seventeen-c of this code;

4 (2) Local zoning authorities; and

5 (3) Outdoor advertising laws and rules set forth in article twenty-two of this chapter.

**§17-29-6. Eligibility for participation in program.**

1 Participation in the tourist-oriented directional signs program is open to tourist-oriented  
2 businesses that are unique and local in nature and located in a rural area. More specifically, to  
3 be eligible for identification on a tourist-oriented directional sign panel, a tourist-oriented business  
4 shall have each of the following characteristics:

5 (1) It shall offer lawful cultural, historical, recreational, agricultural, educational,  
6 entertainment or commercial activities, services or products to the general public;

7 (2) It shall be unique and local in nature, and not part of a chain of businesses having a  
8 common name under common ownership and management or under a franchise arrangement;

9 (3) It shall derive the major portion of its income or visitors, during its normal business  
10 season, from highway users residing outside the immediate area of the business;

11 (4) It shall have a permanent location:

12 (A) In a rural area or within the limits of an incorporated municipality having a population  
13 of less than two thousand; and

14 (B) On a road within ten miles of the nearest intersection with a state highway where a  
15 tourist-oriented directional sign may be located; and

16 (5) It shall be open to the public on a regular schedule, at least five days per week and  
17 eight hours per day (holidays excepted), throughout the year. However, a tourist-oriented  
18 business open on a seasonal basis may be eligible for participation in the tourist-oriented  
19 directional sign program.

20 (6) A tourist-oriented business offering multiple activities, services or products to the public  
21 is not eligible for separate tourist-oriented directional sign panels for separate portions of the  
22 business but only as a single entity.

**§17-29-7. Design and content of signs.**

1 (a) Each tourist-oriented directional sign may have no more than four tourist-oriented  
2 directional sign panels.

3 (b) Each tourist-oriented directional sign panel shall be constructed as follows:

4 (1) It shall have a standard size of sixty inches wide by fifteen inches high;

5 (2) It shall have a white legend and border on a blue background; and

6           (3) It shall have a sign face fabricated from reflective sheeting applied to one-tenth inch  
7 flat sheet aluminum sign blank.

8           (c) The legend on each tourist-oriented directional sign panel shall be designed as follows:

9           (1) It shall have a message block forty-eight inches wide by fifteen inches high identifying  
10 the legal name or "doing business as" name of the eligible tourist-oriented business, which  
11 message shall be in upper case letters and may not exceed two lines nor more than fifteen  
12 characters per line, including all letters, symbols and spaces;

13           (2) It shall have a directional information block twelve inches wide by fifteen inches high  
14 with an arrow pointing in the direction of the turn and a number stating the distance (to the nearest  
15 tenth of a mile) to the identified business, which block shall appear on the left side of the panel  
16 for left-turn businesses and on the right side of the panel for right-turn businesses; and

17           (3) All letters and numerals in the legend shall be four inches in height.

18           (d) The content of the legend on each tourist-oriented directional sign panel shall be limited  
19 to the business identification and directional information described above in this section. The  
20 legend may not include any type of business logo or any form of promotional advertising.

**§17-29-8. Criteria for sign location and placement.**

1           (a) The location criteria for erecting tourism-oriented directional signs are as follows:

2           (1) The division shall erect tourist-oriented directional signs along state highways at  
3 intersections with roads where highway users turn to reach eligible tourist-oriented businesses  
4 that have qualified to participate in the tourist-oriented directional signs program.

5           (2) The division may not erect a new tourist-oriented directional sign on any state highway  
6 within the limits of an incorporated municipality having a population of two thousand or more  
7 according to the most recent decennial census of the United States Bureau of Census. Tourist-  
8 oriented directional signs may not be erected outside of such a municipality for a tourist-oriented

9 business within the limits of such a municipality.

10 (3) In addition, the division may not erect a new tourist-oriented directional sign, or renew  
11 an existing tourist-oriented directional sign, on any state highway within any incorporated  
12 municipality without the prior written consent of the municipal government. This written consent  
13 must be obtained by the tourist-oriented business seeking to qualify for participation in the tourist-  
14 oriented directional signs program or by a tourist-oriented business seeking to renew participation  
15 in the tourist-oriented directional signs program.

16 (4) At intersections where tourist-oriented directional signs may be erected, the division  
17 shall erect tourist-oriented directional signs for each direction of travel along the state highway.  
18 Generally, the division shall erect a separate tourist-oriented directional sign for each direction of  
19 turn in each direction of travel, unless the division decides to erect only one tourist-oriented  
20 directional sign in each direction of travel as provided in subdivision (5), subsection (b) of this  
21 section.

22 (5) Tourist-oriented directional signs should be located at least two hundred feet in  
23 advance of the intersection, and they should be spaced at least two hundred feet from another  
24 tourist-oriented directional sign or any other traffic control sign.

25 (6) The location of other traffic control devices, including regulatory, warning and guide  
26 signs, shall take precedence over the location of tourist-oriented directional signs.

27 (b) The criteria for installing and placing tourist-oriented directional sign panels are as  
28 follows:

29 (1) No more than four tourist-oriented directional sign panels may be installed on any one  
30 tourist-oriented directional sign.

31 (2) Subject to space limitations, the division shall install one tourist-oriented directional  
32 sign panel for a qualified tourist-oriented business on a tourist-oriented directional sign in each

33 direction of travel at the intersection that provides the shortest eligibility distance to that business.

34 (3) In the division's discretion, a second set of tourist-oriented directional sign panels may  
35 be installed for a qualified tourist-oriented business at an additional intersection on a second state  
36 highway, but only if the second set of tourist-oriented directional sign panels does not prevent  
37 another qualified tourist-oriented business from obtaining a first set of tourist-oriented directional  
38 sign panels at that intersection.

39 (4) Tourist-oriented directional sign panels for qualified tourist-oriented businesses shall  
40 be grouped by direction of turn. The placement of tourist-oriented directional sign panels on  
41 tourist-oriented directional signs shall be as follows, except as provided in subdivision (5) of this  
42 subsection:

43 (A) All qualified tourist-oriented businesses that can be reached by turning left shall be  
44 placed on the tourist-oriented directional sign farthest from the intersection in each direction of  
45 travel.

46 (B) All qualified tourist-oriented businesses that can be reached by turning right shall be  
47 placed on the tourist-oriented directional sign nearest to the intersection in each direction of travel.

48 (C) On each tourist-oriented directional sign, the tourist-oriented directional sign panels  
49 for each qualified tourist-oriented business shall be placed in order of eligibility distance, with the  
50 business having the shortest eligibility distance at the top and the business with the greatest  
51 eligibility distance at the bottom.

52 (5) If there are not more than four tourist-oriented directional sign panels to be installed  
53 for each direction of travel at an intersection, the division may choose to erect only one tourist-  
54 oriented directional sign for each direction of travel. In such case, the tourist-oriented directional  
55 sign panels for qualified tourist-oriented businesses that can be reached by turning left shall be  
56 installed at the top of the tourist-oriented directional sign, in order of eligibility distance from



57 shortest to greatest, and the tourist-oriented directional sign panels for businesses that can be  
58 reached by turning right shall be installed below, in order of eligibility distance from shortest to  
59 greatest.

**§17-29-9. Application for participation in program.**

1 (a) To qualify for participation in the tourist-oriented directional signs program, an eligible  
2 tourist-oriented business must complete an application, including business identification and  
3 directional information, on a form provided by the commissioner.

4 (b) The business shall provide to the commissioner an affidavit or such other evidence as  
5 the commissioner may reasonably request to demonstrate that the major portion of the business's  
6 income or visitors are derived during its normal business season from highway users residing  
7 outside the immediate area of the business.

8 (c) The business shall obtain and submit to the commissioner all required written  
9 approvals from local governments for erecting tourist-oriented directional signs within an  
10 incorporated municipality.

11 (d) The business shall, as part of its application, agree to hold the State of West Virginia,  
12 the division and its officers, employees, representatives, contractors and agents harmless for any  
13 loss of business that may be caused by any damage to or removal of a tourist-oriented directional  
14 sign or tourist-oriented directional sign panel as a result of highway construction, highway  
15 maintenance or any other reason.

16 (e) The business shall tender the payment of all fees as required in section eleven of this  
17 article.

**§17-29-10. Additional consideration for participation.**

1 (a) The division's approval of a tourist-oriented business's application for participation in  
2 the tourist-oriented directional signs program is subject to the availability of space as follows:

3           (1) The commissioner may approve the application only if there is space available to install  
4 tourist-oriented directional sign panels for the business as provided in section eight of this article.

5           (2) When more than one eligible tourist-oriented business applies for participation in the  
6 tourist-oriented directional signs program at an intersection where there is not sufficient space to  
7 install tourist-oriented directional sign panels for more than one business, the division shall award  
8 installation:

9           (A) To the business from which the commissioner first received a qualified application; or

10           (B) If the commissioner received more than one qualified application on the same date,  
11 the commissioner shall award installation to the business with the greatest eligibility distance.

12           (3) The division shall refund payment of the initial permit fee, but not the application fee,  
13 as established in section eleven of this article, to a tourist-oriented business whose application  
14 for participation in the tourist-oriented directional signs program has been denied based on  
15 insufficient space in accordance with subdivision (2) of this subsection.

16           (4) Where, because of insufficient space, the commissioner has denied an eligible tourist-  
17 oriented business's application for a tourist-oriented directional sign panel at the intersection, the  
18 commissioner may approve an application by that business for a tourist-oriented directional sign  
19 panel at another intersection having a greater eligibility distance where space is available if, in  
20 the judgment of the commissioner, the sign would provide suitable directional information to  
21 highway users.

22           (b) A tourist-oriented business that is open to the public only on a seasonal basis rather  
23 than year-round may qualify for participation in the tourist-oriented directional signs program  
24 subject to the following additional considerations:

25           (1) In its application to the commissioner, the business must provide a schedule of its  
26 regular seasonal dates of operation when it is open to the public; and

27           (2) The business shall pay an additional seasonal business fee each year, as provided in  
28 section eleven of this article, for the placement and removal of a "Closed" placard over the  
29 directional information portion of the tourist-oriented directional sign panel, or for the temporary  
30 removal and storage and reinstallation of the tourist-oriented directional sign panel, during the  
31 seasons of the year when the business is closed to the public. This additional fee shall be  
32 payable to the division with the business's initial application for participation in the tourist-oriented  
33 directional signs program and with each annual renewal of participation.

34           (c) Annual renewal of participation. --

35           (1) After the commissioner has approved an application to participate in the Tourist-  
36 Oriented Directional Signs Program, the qualifying tourist-oriented business may continue to  
37 participate in the program on a renewable annual basis thereafter so long as the business remains  
38 in compliance with this article and pays all applicable fees in accordance with section eleven of  
39 this article.

40           (2) The annual term shall begin on the date the division installs the business's tourist-  
41 oriented directional sign panels on a state highway and expires on the anniversary of that date  
42 each year thereafter unless timely renewed by payment of all applicable renewal fees.

43           (3) The applicable annual renewal fees are due thirty days prior to the expiration of the  
44 annual term.

45           (d) The division may inspect a tourist-oriented business at any time after the business has  
46 made application for participation in the Tourist-Oriented Directional Signs Program to assure that  
47 the business meets all eligibility requirements or other requirements to qualify for continuing  
48 participation in the program.

**§17-29-11. Fees.**

1           (a) To cover the cost of erecting signs and administering the Tourist-Oriented Directional

2 Signs Program, each participating tourist-oriented business shall pay the division the following  
3 fees:

4 (1) Application Fee, \$25;

5 (2) Initial Permit Fee (per tourist-oriented directional sign panel), \$150; and

6 (3) Annual Renewal Fee (per tourist-oriented directional sign panel), \$25.

7 (b) In addition, a participating tourist-oriented business shall pay the division the following  
8 fees as applicable to that particular business:

9 (1) Seasonal business fee (annually per tourist-oriented directional sign panel), \$25; and

10 (2) Replacement fee (per tourist-oriented directional sign panel replaced or changed),  
11 \$150.

12 (c) Fees may not be prorated based on the seasonal closing of any business.

13 (d) Fees may not be reimbursed if a business closes during an annual term or if tourist-  
14 oriented directional sign panels are removed by the division based on a violation of this article.

**§17-29-12. Maintenance and financial responsibility.**

1 (a) The division shall install all tourist-oriented directional signs and tourist-oriented  
2 directional sign panels on state highway rights-of-way, subject to the payment of all required fees  
3 by participating tourist-oriented businesses.

4 (b) Each participating tourist-oriented business shall be responsible for the cost of  
5 replacing tourist-oriented directional sign panels that have been damaged or destroyed by acts of  
6 vandalism, natural causes or accidents. When it is necessary to replace a sign, the division shall  
7 assess, and the participating tourist-oriented business shall pay, the required replacement fee,  
8 as provided in section eleven of this article.

9 (c) The division has no liability for any loss of business that may result because a tourist-  
10 oriented directional sign panel is, for any reason, temporarily absent from a tourist-oriented

11 directional sign on a state highway.

**§17-29-13. Revocation of participation in program.**

1 (a) The commissioner may revoke the privilege of participation in the tourist-oriented  
2 directional signs program if it finds that any participating tourist-oriented business:

3 (1) Has made a false, deceptive or fraudulent statement in its application or in any other  
4 information submitted to the commissioner;

5 (2) Engages in any deceptive or fraudulent business practice;

6 (3) Fails to pay any required fee on a timely basis;

7 (4) No longer meets the eligibility requirements set forth in this article;

8 (5) Ceases to operate as a business on a continuing basis in accordance with the schedule  
9 submitted to the commissioner in its application; or

10 (6) Alters or modifies any tourist-oriented directional sign or tourist-oriented directional  
11 sign panel erected or installed by the division.

12 (b) The procedures for revocation are as follows:

13 (1) Prior to revoking the privilege of participating in the tourist-oriented directional signs  
14 program, the commissioner shall notify the tourist-oriented business in writing of the grounds for  
15 the proposed revocation. The notice shall be sent by certified and regular mail. Notices sent  
16 by regular mail shall be presumed to have been received by the business within three business  
17 days after mailing.

18 (2) Within fifteen days after receipt of the notice to correct the condition cited as the ground  
19 for the proposed revocation, the business shall either:

20 (A) Correct the condition cited as ground for the proposed revocation, and provide  
21 sufficient written proof thereof to the satisfaction of the commissioner; or

22 (B) If the business denies the cited ground for the proposed revocation, the business shall

23 deliver a written response to the commissioner stating in detail the basis for the denial and  
24 requesting a hearing before the commissioner or the commissioner's designee.

25 (3) If the business fails to correct the cited ground(s) for revocation or fails to respond  
26 within fifteen days, the commissioner shall send the business a written notice of revocation and  
27 remove all tourist-oriented directional sign panels for that business from the state highway rights-  
28 of-way.

29 (4) If the business requests a hearing, an informal hearing shall be held before the  
30 commissioner or the commissioner's designee to consider the matter. The decision of the  
31 commissioner or the commissioner's designee shall be made in writing to the business and is  
32 final.

**§17-29-14. Rule-making; exemption.**

1 The commissioner may promulgate rules to implement the application approval process  
2 and to describe the criteria and procedures it has established in connection therewith. These  
3 rules are not subject to the provisions of chapter twenty-nine-a of this code, but shall be filed with  
4 the Secretary of State.

NOTE: The purpose of this bill is to create the Tourist-Oriented Directional Signs Program. The bill states the legislative purpose. The bill sets forth the application and eligibility requirements for the program. The bill establishes the design and content guidelines and sign location and placement criteria. The bill also establishes a fee schedule and sets forth maintenance responsibility. The bill permits revocation of participation in the program. Further, the bill authorizes rule making to be exempt from the state Administrative Procedures Act, but shall be filed with the Secretary of State. The bill additionally defines terms.

This article is new; therefore, it has been completely underscored.