

1 **ENROLLED**

2 COMMITTEE SUBSTITUTE

3 FOR

4 **Senate Bill No. 250**

5 (SENATOR SNYDER, *original sponsor*)

6 \_\_\_\_\_  
7 [Passed April 13, 2013; in effect from passage.]  
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9

10 AN ACT to amend and reenact article 10, chapter 64 of the Code of  
11 West Virginia, 1931, as amended, relating generally to the  
12 promulgation of administrative rules by the Department of  
13 Commerce; legislative mandate or authorization for the  
14 promulgation of certain legislative rules by various executive  
15 or administrative agencies of the state; authorizing certain  
16 of the agencies to promulgate certain legislative rules in the  
17 form that the rules were filed in the State Register;  
18 authorizing certain of the agencies to promulgate certain  
19 legislative rules with various modifications presented to and  
20 recommended by the Legislative Rule-Making Review Committee;  
21 authorizing certain of the agencies to promulgate certain  
22 legislative rules with various modifications presented to and  
23 recommended by the Legislative Rule-Making Review Committee  
24 and as amended by the Legislature; repealing the Development  
25 Office legislative rule relating to the use of coalbed methane  
26 severance tax proceeds; authorizing the Broadband Deployment

1 Council to promulgate a legislative rule relating to broadband  
2 deployment grants programs; authorizing the Board of Miner  
3 Training, Education and Certification to promulgate a  
4 legislative rule relating to the standards for certification  
5 of coal mine electricians; authorizing the Division of Natural  
6 Resources to promulgate a legislative rule relating to special  
7 boating; authorizing the Division of Natural Resources to  
8 promulgate a legislative rule relating to special  
9 motorboating; authorizing the Division of Natural Resources to  
10 promulgate a legislative rule relating to defining the terms  
11 used in all hunting and trapping rules; authorizing the  
12 Division of Natural Resources to promulgate a legislative rule  
13 relating to prohibitions when hunting and trapping;  
14 authorizing the Division of Natural Resources to promulgate a  
15 legislative rule relating to deer hunting; authorizing the  
16 Division of Natural Resources to promulgate a legislative rule  
17 relating to general trapping; authorizing the Division of  
18 Natural Resources to promulgate a legislative rule relating to  
19 special waterfowl hunting; authorizing the Division of Natural  
20 Resources to promulgate a legislative rule relating to special  
21 fishing; authorizing the Division of Natural Resources to  
22 promulgate a legislative rule relating to falconry;  
23 authorizing the Division of Labor to promulgate a legislative  
24 rule relating to bedding and upholstered furniture;  
25 authorizing the Division of Labor to promulgate a legislative  
26 rule relating to the Amusement Rides and Amusement Attractions

1 Safety Act; authorizing the Division of Labor to promulgate a  
2 legislative rule relating to the supervision of elevator  
3 mechanics and apprentices; authorizing the Division of Labor  
4 to promulgate a legislative rule relating to the Crane  
5 Operator Certification Act; and authorizing the Division of  
6 Labor to promulgate a legislative rule relating to the Crane  
7 Operator Certification Act - practical examination.

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

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

11 **ARTICLE 10. AUTHORIZATION FOR BUREAU OF COMMERCE TO PROMULGATE**  
12 **LEGISLATIVE RULES.**

13 **§64-10-1. Development Office.**

14 The legislative rule filed in the Office of the Secretary of  
15 State, authorized under the prior enactment of section twenty-a,  
16 article thirteen-a, chapter eleven of this code, relating to the  
17 Development Office (use of coalbed methane severance tax proceeds,  
18 145 CSR 13), is repealed.

19 **§64-10-2. Broadband Deployment Council.**

20 The legislative rule filed in the State Register on August 10,  
21 2012, authorized under the authority of section four, article  
22 fifteen-c, chapter thirty-one of this code, modified by the  
23 Broadband Deployment Council to meet the objections of the  
24 Legislative Rule-Making Review Committee and refiled in the State  
25 Register on January 22, 2013, relating to the Broadband Deployment  
26 Council (broadband deployment grants programs, 208 CSR 1), is

1 authorized.

2 **§64-10-3. Board of Miners Training, Education and Certification.**

3 The legislative rule filed in the State Register on August 22,  
4 2012, authorized under the authority of section six, article seven,  
5 chapter twenty-two-a of this code, modified by the Board of Miners  
6 Training, Education and Certification to meet the objections of the  
7 Legislative Rule-Making Review Committee and refiled in the State  
8 Register on December 17, 2012, relating to the Board of Miners  
9 Training, Education and Certification (standards for certification  
10 of coal mine electricians, 48 CSR 7), is authorized.

11 **§64-10-4. Division of Natural Resources.**

12 (a) The legislative rule filed in the State Register on August  
13 31, 2012, authorized under the authority of section seven, article  
14 one, chapter twenty of this code, relating to the Division of  
15 Natural Resources (special boating, 58 CSR 26), is authorized.

16 (b) The legislative rule filed in the State Register on August  
17 31, 2012, authorized under the authority of section twenty-three,  
18 article seven, chapter twenty of this code, modified by the  
19 Division of Natural Resources to meet the objections of the  
20 Legislative Rule-Making Review Committee and refiled in the State  
21 Register on October 18, 2012, relating to the Division of Natural  
22 Resources (special motorboating, 58 CSR 27), is authorized.

23 (c) The legislative rule filed in the State Register on August  
24 31, 2012, authorized under the authority of section seven, article  
25 one, chapter twenty of this code, relating to the Division of  
26 Natural Resources (defining the terms used in all hunting and

1 trapping rules, 58 CSR 46), is authorized.

2 (d) The legislative rule filed in the State Register on July  
3 19, 2012, authorized under the authority of section seven, article  
4 one, chapter twenty of this code, relating to the Division of  
5 Natural Resources (prohibitions when hunting and trapping, 58 CSR  
6 47), is authorized.

7 (e) The legislative rule filed in the State Register on August  
8 31, 2012, authorized under the authority of section seven, article  
9 one, chapter twenty of this code, modified by the Division of  
10 Natural Resources to meet the objections of the Legislative Rule-  
11 Making Review Committee and refiled in the State Register on  
12 October 18, 2012, relating to the Division of Natural Resources  
13 (deer hunting, 58 CSR 50), is authorized.

14 (f) The legislative rule filed in the State Register on August  
15 31, 2012, authorized under the authority of section seven, article  
16 one, chapter twenty of this code, relating to the Division of  
17 Natural Resources (general trapping, 58 CSR 53), is authorized.

18 (g) The legislative rule filed in the State Register on August  
19 31, 2012, authorized under the authority of section seven, article  
20 one, chapter twenty of this code, relating to the Division of  
21 Natural Resources (special waterfowl hunting, 58 CSR 58), is  
22 authorized.

23 (h) The legislative rule filed in the State Register on August  
24 31, 2012, authorized under the authority of section seven, article  
25 one, chapter twenty of this code, relating to the Division of  
26 Natural Resources (special fishing, 58 CSR 61), is authorized.

1 (i) The legislative rule filed in the State Register on August  
2 31, 2012, authorized under the authority of section seven, article  
3 one, chapter twenty of this code, modified by the Division of  
4 Natural Resources to meet the objections of the Legislative Rule-  
5 Making Review Committee and refiled in the State Register on  
6 October 31, 2012, relating to the Division of Natural Resources  
7 (falconry, 58 CSR 65), is authorized with the following amendments:

8 On page one, subsection 2.8., after the word "Falconiformes"  
9 by inserting a comma and the words "the Order Accipitriformes";

10 On page one, after subsection 2.8., by inserting a new  
11 subsection 2.9. to read as follows:

12 "2.9. "Passage" means a first-year raptor that is no longer  
13 dependent upon parental care.";

14 On page three, by striking out all of subsection 4.5. and  
15 inserting in lieu thereof a new subsection 4.5. to read as follows:

16 "4.5. A permittee may use a falconry to take any bird species  
17 for which there is a depredation order in place in 50 CFR at any  
18 time in accordance with the conditions of the applicable  
19 depredation order. The permittee may not receive any compensation  
20 for depredation activities.";

21 On page four, subdivision 5.3.e., after the word "Falconiform"  
22 by inserting a comma and the word "Accipitriform";

23 On page six, subdivision 7.2.a., by striking out the word  
24 "Alymeri" and inserting in lieu thereof the word "Aylmeri";

25 On page eight, by striking out all of subsection 10.1. and  
26 inserting in lieu thereof a new subsection 10.1. to read as

1 follows:

2 "10.1. A raptor taken, possessed, transported or used for  
3 falconry purposes shall be marked with: a seamless, numbered band  
4 issued by the Division for captive-bred birds or a U. S. Fish and  
5 Wildlife Service permanent, non-reusable numbered band issued by  
6 the Division for birds originating from the wild. An ISO  
7 (International Organization for Standardization)-compliant (134.2  
8 kHz) microchip may be implanted in addition to the band.";

9 On page eight, by striking out all of subsection 10.3. and  
10 inserting in lieu thereof a new subsection 10.3. to read as  
11 follows:

12 "10.3. A permittee must report the loss or removal of any band  
13 within five (5) days by filing a Federal form 3-186A either  
14 electronically or in paper form. Lost bands must be replaced by a  
15 permanent, nonreusable numbered band supplied by the division.  
16 Upon remarking the raptor, the permittee shall immediately complete  
17 and submit a Federal form 3-186A either electronically or on paper  
18 reporting the new band.";

19 On page nine, by striking out all of subsection 10.6. and  
20 inserting in lieu thereof a new subsection 10.6. to read as  
21 follows:

22 "10.6. A permittee shall remove and surrender to the division  
23 any markers from an intentionally released raptor which is  
24 indigenous to the state. A standard Federal band may be attached  
25 to the birds at the discretion of the division prior to release.";

26 On page nine, subsection 11.1., by striking out the words

1 "both the division and the U. S. Fish and Wildlife Service Regional  
2 Law-Enforcement office" and inserting in lieu thereof the words  
3 "the division";

4 And,

5 On page nine, by striking out all of subsection 11.3. and  
6 inserting in lieu thereof a new subsection 11.3. to read as  
7 follows:

8 "11.3. Resident General or Master Falconers may take from the  
9 wild any species of Falconiform, Accipitriform or Strigiform in  
10 West Virginia except: eagles; peregrine falcon (*Falco peregrines*);  
11 Northern harrier (*Circus cyaneus*); northern goshawk (*Accipiter*  
12 *gentilis*); American rough-legged hawk (*Buteo lagopus*); barn owl  
13 (*Tyto alba*); long-eared owl (*Asio otus*); short-eared owl (*Asio*  
14 *flammeus*); saw-whet owl (*Aegolius acadicus*); merlin (*Falco*  
15 *columbaris*) eyases; and sharp-shinned hawk (*Accipiter straitus*)  
16 eyases."

17 **§64-10-5. Division of Labor.**

18 (a) The legislative rule filed in the State Register on August  
19 31, 2012, authorized under the authority of section fifteen,  
20 article one-a, chapter forty-seven of this code, modified by the  
21 Division of Labor to meet the objections of the Legislative Rule-  
22 Making Review Committee and refiled in the State Register on  
23 December 21, 2012, relating to the Division of Labor (bedding and  
24 upholstered furniture, 42 CSR 12), is authorized with the following  
25 amendments:

26 On page two, following subsection 3.6, by striking subsection



1 3.7 and renumbering the remaining subsections;

2 On page two, subsection 3.9, line two, following the word  
3 "manufacturing" and the comma, by striking the word "importing" and  
4 the comma;

5 On page three, subsection 5.1, line one, following the word  
6 "manufacturing" and the comma, by striking the word "importing" and  
7 the comma;

8 On page three, subsection 5.1, line three, following the word  
9 "manufacturer" and the comma, by striking the word "importer" and  
10 the comma;

11 On page three, subsection 6.1, line one, following the word  
12 "manufacturer" and the comma, by striking the word "importer" and  
13 the comma;

14 On page three, subsection 6.2, line one, following the word  
15 "manufacturer", by striking the words "or importer";

16 On page five, subsection 9.3, line one, following the word  
17 "manufacturer" and the comma, by striking the word "importer" and  
18 the comma;

19 On page five, subdivision 10.1.1, following the word  
20 "manufacturer", by striking the words "or importer";

21 On page ten, appendix C, line sixteen, by striking out the  
22 misspelled word "ADRESS" and inserting the in lieu thereof, the  
23 word "ADDRESS";

24 On page eleven, appendix D, line twenty, by striking out the  
25 misspelled word "ADRESS" and inserting the in lieu thereof, the  
26 word "ADDRESS";

1 On page fourteen, appendix G, line fourteen, by striking out  
2 the misspelled word "ADRESS" and inserting the in lieu thereof, the  
3 word "ADDRESS";

4 And,

5 On page fifteen, appendix H, line thirteen, by striking out  
6 the misspelled word "ADRESS" and inserting the in lieu thereof, the  
7 word "ADDRESS";.

8 (b) The legislative rule filed in the State Register on August  
9 31, 2012, authorized under the authority of section three, article  
10 ten, chapter twenty-one of this code, modified by the Division of  
11 Labor to meet the objections of the Legislative Rule-Making Review  
12 Committee and refiled in the State Register on December 21, 2012,  
13 relating to the Division of Labor (Amusement Rides and Amusement  
14 Attractions Safety Act, 42 CSR 17), is authorized with the  
15 following amendments:

16 On pages three and four, by re-designating subdivisions  
17 4.1.1., 4.1.2., 4.1.3., 4.1.4., 4.1.5., 4.1.6., 4.1.7., 4.1.8.,  
18 4.1.9., 4.1.10. and 4.1.11., as 4.1.a., 4.1.b., 4.1.c., 4.1.d.,  
19 4.1.e., 4.1.f., 4.1.g., 4.1.h., 4.1.i., 4.1.j. and 4.1.k.;

20 On page seven, subdivision 9.2.b., line two, after the word  
21 "has", by striking out the word "of";

22 On page eight, subdivision 10.2.b., line two, after the word  
23 "has", by striking out the word "of";

24 On page eleven, subsection 17.4, line two, following the words  
25 "report of the", by inserting the word "serious";

26 On page eleven, subsection 17.5, line one, following the words

1 "document the", by striking the word "accident" and inserting in  
2 lieu thereof the words "serious injury or fatality";

3 On page eleven, subsection 18.1, line two, following the words  
4 "required by", by striking the words "this section of the rule" and  
5 inserting in lieu thereof the words "sections 15 or 17 of this  
6 rule";

7 On page eleven, subsection 18.1, line three, following the  
8 word "cessation" and the comma, by striking the words "imminent  
9 danger notification" and the comma;

10 On page twelve, subsection 19.4, line three, following the  
11 word "operation", by striking the words "is prohibited" and  
12 inserting a colon;

13 On page twelve, by re-designating subdivisions 19.4.1 and  
14 19.4.2 as 19.4.a. and 19.4.b.;

15 And,

16 On page twelve, by re-designating paragraphs 19.4.2.1.,  
17 19.4.2.2., 19.4.2.3., 19.4.2.4., 19.4.2.5., 19.4.2.6. as 19.4.b.1.,  
18 19.4.b.2., 19.4.b.3., 19.4.b.4., 19.4.b.5., 19.4.b.6.

19 (c) The legislative rule filed in the State Register on August  
20 31, 2012, authorized under the authority of section eleven, article  
21 three-c, chapter twenty-one of this code, modified by the Division  
22 of Labor to meet the objections of the Legislative Rule-Making  
23 Review Committee and refiled in the State Register on December 21,  
24 2012, relating to the Division of Labor (supervision of elevator  
25 mechanics and apprentices, 42 CSR 21A), is authorized, with the  
26 following amendments:

1           On page two, subsection 5.1., by un-striking the word "may"  
2 and striking out the word "shall";

3           On page two, subsection 5.2., by un-striking the word "may"  
4 and striking out the word "shall";

5           And,

6           On page six, subsection 9.2, line two, after the word "with",  
7 by striking out the word "the".

8           (d) The legislative rule filed in the State Register on August  
9 31, 2012, authorized under the authority of section three, article  
10 three-d, chapter twenty-one of this code, modified by the Division  
11 of Labor to meet the objections of the Legislative Rule-Making  
12 Review Committee and refiled in the State Register on December 21,  
13 2012, relating to the Division of Labor (Crane Operator  
14 Certification Act, 42 CSR 24), is authorized with the following  
15 amendment:

16           On page two, subsection 3.4, line four, following the word  
17 "November", by striking "10" and inserting in lieu thereof "14".

18           (e) The legislative rule filed in the State Register on August  
19 21, 2012, authorized under the authority of section three, article  
20 three-d, chapter twenty-one of this code, relating to the Division  
21 of Labor (Crane Operator Certification Act - practical examination,  
22 42 CSR 25), is authorized with the following amendments:

23           On page two, subsection 3.4, line five, following the word  
24 "November", by striking "10" and inserting in lieu thereof "14";

25           And,

26           On page three, line fifteen, after the stricken subdivision

1 designation 4.5.d., by inserting the subdivision designation  
2 4.4.d..”