

WEST VIRGINIA LEGISLATURE
EIGHTY-FIRST LEGISLATURE
REGULAR SESSION, 2013



ENROLLED

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 250

(SENATOR SNYDER, *ORIGINAL SPONSOR*)

[PASSED APRIL 13, 2013; IN EFFECT FROM PASSAGE.]

SB 250

WEST VIRGINIA LEGISLATURE
SENATE

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E N R O L L E D
COMMITTEE SUBSTITUTE
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Senate Bill No. 250

(SENATOR SNYDER, *original sponsor*)

[Passed April 13, 2013; 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; legislative mandate or authorization for the promulgation of certain legislative rules by various executive or administrative agencies of the state; 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 as amended by the Legislature; repealing the Development Office legislative rule relating to the use of coalbed methane severance tax proceeds; authorizing the Broadband Deployment Council to promulgate a legislative rule relating to broadband deployment grants programs; authorizing the Board of Miner Training, Education and Certification to promulgate a legislative rule relating to the standards for certification of coal mine electricians; authorizing the Division of Natural Resources to promulgate a legislative rule relating to special boating; authorizing the Division of Natural Resources to

promulgate a legislative rule relating to special motorboating; authorizing the Division of Natural Resources to promulgate a legislative rule relating to defining the terms used in all hunting and trapping 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 deer hunting; authorizing the Division of Natural Resources to promulgate a legislative rule relating to general trapping; authorizing the Division of Natural Resources to promulgate a legislative rule relating to special waterfowl hunting; authorizing the Division of Natural Resources to promulgate a legislative rule relating to special fishing; authorizing the Division of Natural Resources to promulgate a legislative rule relating to falconry; authorizing the Division of Labor to promulgate a legislative rule relating to bedding and upholstered furniture; authorizing the Division of Labor to promulgate a legislative rule relating to the Amusement Rides and Amusement Attractions Safety Act; authorizing the Division of Labor to promulgate a legislative rule relating to the supervision of elevator mechanics and apprentices; authorizing the Division of Labor to promulgate a legislative rule relating to the Crane Operator Certification Act; and authorizing the Division of Labor to promulgate a legislative rule relating to the Crane Operator Certification Act – practical examination.

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 BUREAU OF
COMMERCE TO PROMULGATE
LEGISLATIVE RULES.**

§64-10-1. Development Office.

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

§64-10-2. Broadband Deployment Council.

1 The legislative rule filed in the State Register on August
2 10, 2012, authorized under the authority of section four,
3 article fifteen-c, chapter thirty-one, of this code, modified by
4 the Broadband Deployment Council to meet the objections of
5 the Legislative Rule-Making Review Committee and refiled
6 in the State Register on January 22, 2013, relating to the
7 Broadband Deployment Council (broadband deployment
8 grants programs, 208 CSR 1), is authorized.

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

1 The legislative rule filed in the State Register on August
2 22, 2012, authorized under the authority of section six, article
3 seven, chapter twenty-two-a, of this code, modified by the
4 Board of Miners Training, Education and Certification to
5 meet the objections of the Legislative Rule-Making Review
6 Committee and refiled in the State Register on December 17,
7 2012, relating to the Board of Miners Training, Education
8 and Certification (standards for certification of coal mine
9 electricians, 48 CSR 7), is authorized.

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

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

6 (b) The legislative rule filed in the State Register on
7 August 31, 2012, authorized under the authority of section
8 twenty-three, article seven, chapter twenty, of this code,
9 modified by the Division of Natural Resources to meet the
10 objections of the Legislative Rule-Making Review
11 Committee and refiled in the State Register on October 18,
12 2012, relating to the Division of Natural Resources (special
13 motorboating, 58 CSR 27), is authorized.

14 (c) The legislative rule filed in the State Register on
15 August 31, 2012, authorized under the authority of section
16 seven, article one, chapter twenty, of this code, relating to the
17 Division of Natural Resources (defining the terms used in all
18 hunting and trapping rules, 58 CSR 46), is authorized.

19 (d) The legislative rule filed in the State Register on July
20 19, 2012, authorized under the authority of section seven,
21 article one, chapter twenty, of this code, relating to the
22 Division of Natural Resources (prohibitions when hunting
23 and trapping, 58 CSR 47), is authorized.

24 (e) The legislative rule filed in the State Register on
25 August 31, 2012, authorized under the authority of section
26 seven, article one, chapter twenty, of this code, modified by
27 the Division of Natural Resources to meet the objections of
28 the Legislative Rule-Making Review Committee and refiled
29 in the State Register on October 18, 2012, relating to the
30 Division of Natural Resources (deer hunting, 58 CSR 50), is
31 authorized.

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

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

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

47 (i) The legislative rule filed in the State Register on
48 August 31, 2012, authorized under the authority of section
49 seven, article one, chapter twenty, of this code, modified by
50 the Division of Natural Resources to meet the objections of
51 the Legislative Rule-Making Review Committee and refiled
52 in the State Register on October 31, 2012, relating to the
53 Division of Natural Resources (falconry, 58 CSR 65), is
54 authorized with the following amendments:

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

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

60 "2.9. "Passage" means a first-year raptor that is no longer
61 dependent upon parental care.";

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

65 "4.5. A permittee may use a falconry to take any bird
66 species for which there is a depredation order in place in 50
67 CFR at any time in accordance with the conditions of the

68 applicable depredation order. The permittee may not receive
69 any compensation for depredation activities.”;

70 On page four, subdivision 5.3.e., after the word
71 “Falconiform” by inserting a comma and the word
72 “Accipitriform”;

73 On page six, subdivision 7.2.a., by striking out the word
74 “Alymeri” and inserting in lieu thereof the word “Aylmeri”;

75 On page eight, by striking out all of subsection 10.1. and
76 inserting in lieu thereof a new subsection 10.1. to read as
77 follows:

78 “10.1. A raptor taken, possessed, transported or used for
79 falconry purposes shall be marked with: a seamless,
80 numbered band issued by the Division for captive-bred birds
81 or a U. S. Fish and Wildlife Service permanent, non-reusable
82 numbered band issued by the Division for birds originating
83 from the wild. An ISO (International Organization for
84 Standardization)-compliant (134.2 kHz) microchip may be
85 implanted in addition to the band.”;

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

89 “10.3. A permittee must report the loss or removal of any
90 band within five (5) days by filing a Federal form 3-186A
91 either electronically or in paper form. Lost bands must be
92 replaced by a permanent, nonreusable numbered band
93 supplied by the division. Upon remarking the raptor, the
94 permittee shall immediately complete and submit a Federal
95 form 3-186A either electronically or on paper reporting the
96 new band.”;

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

100 “10.6. A permittee shall remove and surrender to the
101 division any markers from an intentionally released raptor
102 which is indigenous to the state. A standard Federal band
103 may be attached to the birds at the discretion of the division
104 prior to release.”;

105 On page nine, subsection 11.1., by striking out the words
106 “both the division and the U. S. Fish and Wildlife Service
107 Regional Law-Enforcement office” and inserting in lieu
108 thereof the words “the division”;

109 And,

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

113 “11.3. Resident General or Master Falconers may take
114 from the wild any species of Falconiform, Accipitriform or
115 Strigiform in West Virginia except: eagles; peregrine falcon
116 (*Falco peregrines*); Northern harrier (*Circus cyaneus*);
117 northern goshawk (*Accipiter gentilis*); American rough-
118 legged hawk (*Buteo lagopus*); barn owl (*Tyto alba*); long-
119 eared owl (*Asio otus*); short-eared owl (*Asio flammeus*); saw-
120 whet owl (*Aegolius acadicus*); merlin (*Falco columbaris*)
121 eyases; and sharp-shinned hawk (*Accipiter straitus*) eyases.”

§64-10-5. Division of Labor.

1 (a) The legislative rule filed in the State Register on
2 August 31, 2012, authorized under the authority of section
3 fifteen, article one-a, chapter forty-seven, of this code,
4 modified by the Division of Labor to meet the objections of

5 the Legislative Rule-Making Review Committee and refiled
6 in the State Register on December 21, 2012, relating to the
7 Division of Labor (bedding and upholstered furniture, 42
8 CSR 12), is authorized with the following amendments:

9 On page two, following subsection 3.6, by striking
10 subsection 3.7 and renumbering the remaining subsections;

11 On page two, subsection 3.9, line two, following the word
12 “manufacturing” and the comma, by striking the word
13 “importing” and the comma;

14 On page three, subsection 5.1, line one, following the
15 word “manufacturing” and the comma, by striking the word
16 “importing” and the comma;

17 On page three, subsection 5.1, line three, following the
18 word “manufacturer” and the comma, by striking the word
19 “importer” and the comma;

20 On page three, subsection 6.1, line one, following the
21 word “manufacturer” and the comma, by striking the word
22 “importer” and the comma;

23 On page three, subsection 6.2, line one, following the
24 word “manufacturer”, by striking the words “or importer”;

25 On page five, subsection 9.3, line one, following the word
26 “manufacturer” and the comma, by striking the word
27 “importer” and the comma;

28 On page five, subdivision 10.1.1, following the word
29 “manufacturer”, by striking the words “or importer”;

30 On page ten, appendix C, line sixteen, by striking out the
31 misspelled word “ADRESS” and inserting in lieu thereof, the
32 word “ADDRESS”;

33 On page eleven, appendix D, line twenty, by striking out
34 the misspelled word “ADRESS” and inserting in lieu thereof,
35 the word “ADDRESS”;

36 On page fourteen, appendix G, line fourteen, by striking
37 out the misspelled word “ADRESS” and inserting in lieu
38 thereof, the word “ADDRESS”;

39 And,

40 On page fifteen, appendix H, line thirteen, by striking out
41 the misspelled word “ADRESS” and inserting in lieu thereof,
42 the word “ADDRESS”;

43 (b) The legislative rule filed in the State Register on
44 August 31, 2012, authorized under the authority of section
45 three, article ten, chapter twenty-one, of this code, modified
46 by the Division of Labor to meet the objections of the
47 Legislative Rule-Making Review Committee and refiled in
48 the State Register on December 21, 2012, relating to the
49 Division of Labor (Amusement Rides and Amusement
50 Attractions Safety Act, 42 CSR 17), is authorized with the
51 following amendments:

52 On pages three and four, by re-designating subdivisions
53 4.1.1., 4.1.2., 4.1.3., 4.1.4., 4.1.5., 4.1.6., 4.1.7., 4.1.8., 4.1.9.,
54 4.1.10. and 4.1.11., as 4.1.a., 4.1.b., 4.1.c., 4.1.d., 4.1.e.,
55 4.1.f., 4.1.g., 4.1.h., 4.1.i., 4.1.j. and 4.1.k.;

56 On page seven, subdivision 9.2.b., line two, after the
57 word “has”, by striking out the word “of”;

58 On page eight, subdivision 10.2.b., line two, after the
59 word “has”, by striking out the word “of”;

60 On page eleven, subsection 17.4, line two, following the
61 words “report of the”, by inserting the word “serious”;

62 On page eleven, subsection 17.5, line one, following the
63 words “document the”, by striking the word “accident” and
64 inserting in lieu thereof the words “serious injury or fatality”;

65 On page eleven, subsection 18.1, line two, following the
66 words “required by”, by striking the words “this section of
67 the rule” and inserting in lieu thereof the words “sections 15
68 or 17 of this rule”;

69 On page eleven, subsection 18.1, line three, following the
70 word “cessation” and the comma, by striking the words
71 “imminent danger notification” and the comma;

72 On page twelve, subsection 19.4, line three, following the
73 word “operation”, by striking the words “is prohibited” and
74 inserting a colon;

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

77 And,

78 On page twelve, by re-designating paragraphs 19.4.2.1.,
79 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.,
80 19.4.b.2., 19.4.b.3., 19.4.b.4., 19.4.b.5., 19.4.b.6.

81 (c) The legislative rule filed in the State Register on
82 August 31, 2012, authorized under the authority of section
83 eleven, article three-c, chapter twenty-one, of this code,
84 modified by the Division of Labor to meet the objections of
85 the Legislative Rule-Making Review Committee and refiled
86 in the State Register on December 21, 2012, relating to the
87 Division of Labor (supervision of elevator mechanics and
88 apprentices, 42 CSR 21A), is authorized, with the following
89 amendments:

11

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90 On page two, subsection 5.1., by un-striking the word
91 “may” and striking out the word “shall”;

92 On page two, subsection 5.2., by un-striking the word
93 “may” and striking out the word “shall”;

94 And,

95 On page six, subsection 9.2, line two, after the word
96 “with”, by striking out the word “the”.

97 (d) The legislative rule filed in the State Register on
98 August 31, 2012, authorized under the authority of section
99 three, article three-d, chapter twenty-one, of this code,
100 modified by the Division of Labor to meet the objections of
101 the Legislative Rule-Making Review Committee and refiled
102 in the State Register on December 21, 2012, relating to the
103 Division of Labor (Crane Operator Certification Act, 42 CSR
104 24), is authorized with the following amendment:

105 On page two, subsection 3.4, line four, following the
106 word “November”, by striking “10” and inserting in lieu
107 thereof “14”.

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

114 On page two, subsection 3.4, line five, following the
115 word “November”, by striking “10” and inserting in lieu
116 thereof “14”;

117 And,

118 On page three, line fifteen, after the stricken subdivision
119 designation 4.5.d., by inserting the subdivision designation
120 4.4.d.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Rocky Ferguson
.....
~~Member~~ ~~Chairman~~ Senate Committee

Danny Wells
.....
Chairman House Committee

Originated in the Senate.

In effect from passage.

Joseph M. Menard
.....
Clerk of the Senate

Suzanne S. Sul
.....
Clerk of the House of Delegates

Joseph
.....
President of the Senate

[Signature]
.....
Speaker of the House of Delegates

2013 MAY -3 PM 12: 10
FILED
SECRETARY OF STATE

The within *is approved* this the *3rd*
Day of *May*, 2013.

Carl Rog Tomblin
.....
Governor

PRESENTED TO THE GOVERNOR

MAY - 1 2013

Time 1:50 pm