

1 **ENROLLED**

2 **COMMITTEE SUBSTITUTE**

3 **FOR**

4 **H. B. 4422**

5 (By Delegates Butcher, Walker, D. Poling, Boggs,  
6 Caputo, Martin, Stephens, Diserio, Storch,  
7 Hamilton and Ellem)

8 [Passed March 10, 2012; in effect ninety days from passage.]

9  
10 AN ACT to amend and reenact §21-3D-1, §21-3D-2, §21-3D-3, §21-3D-4  
11 and §21-3D-9 of the Code of West Virginia, 1931, as amended,  
12 all relating to crane operator certification; redefining a  
13 crane for the purposes of the act; clarifying those persons  
14 who are exempted from certification; expanding the type of  
15 equipment for which certification is required to operate;  
16 requiring adherence to standards established by the  
17 Occupational Safety and Health Administration of the United  
18 States Department of Labor; clarifying the minimum  
19 requirements for certification; authorizing the Commissioner  
20 of Labor to issue notices to cease and desist unlawful  
21 practices; authorizing the Commissioner of Labor to apply to  
22 the circuit court for injunctive relief; limiting reciprocity  
23 provisions; deleting obsolete provisions; and requiring  
24 certain crane operators to hold certain classes of  
25 certification as of November 10, 2014.

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

1           That §21-3D-1, §21-3D-2, §21-3D-3, §21-3D-4 and §21-3D-9 of  
2 the Code of West Virginia, 1931, as amended, be amended and  
3 reenacted, all to read as follows:

4 **ARTICLE 3D. CRANE OPERATOR CERTIFICATION ACT.**

5 **§21-3D-1. Definitions.**

6           For purposes of this article:

7           (a) "Commissioner" means the Commissioner of the Division of  
8 Labor, or his or her authorized representative.

9           (b) "Crane" means a power-operated hoisting machine used in  
10 construction, demolition or excavation work, which has a power-  
11 operated winch and load line and a power-operated boom that moves  
12 laterally by the rotation of the machine on a carrier, and which  
13 has a manufacturer's rated lifting capacity of more than two  
14 thousand pounds. "Crane" does not mean a forklift, digger derrick  
15 truck, bucket truck or any vehicle, aircraft or helicopter, or  
16 equipment which does not have a power-operated winch and load line.

17           (c) "Emergency basis" means an occurrence of an event,  
18 circumstance or situation that presents an imminent threat to  
19 persons or property and constitutes a serious health or safety  
20 hazard.

21           (d) "Employer" means any person, firm, corporation or other  
22 entity who hires or permits any individual to work.

23           (e) "Employee" means any individual employed by an employer  
24 and also as defined by the commissioner.

25           (f) "Tower crane" means a crane in which a boom, swinging jib,  
26 or other structural member is mounted on a vertical mast or tower.

1 (g) "Training or training course" means a course approved by  
2 the commissioner which includes some form of testing throughout, or  
3 a final written examination or practical test, or both, which  
4 ensures, or tends to ensure that learning has occurred and that the  
5 objectives of the training have been realized. The commissioner  
6 will evaluate whether the approved training adequately demonstrates  
7 competency to safely operate cranes.

8 **§21-3D-2. Certification required; exemptions.**

9 (a) A person may not operate a crane or tower crane without  
10 certification issued under this article except for those persons  
11 exempted under subsection (b) of this section.

12 (b) A person is not required to obtain certification under  
13 this article if the person:

14 (1) Is a member of the Department of Defense or Armed Forces  
15 of the United States or an employee of the United States, when such  
16 member or employee is engaged in the work of a crane operator  
17 exclusively for such governmental unit; or

18 (2) Is primarily an operator of farm machinery who is  
19 performing the work of a crane operator as part of an agricultural  
20 operation; or

21 (3) Is operating a crane on an emergency basis; or

22 (4) Is operating a crane for personal use and not for profit  
23 on the site of real property which the person owns or leases; or

24 (5) Is an Operator-in-Training under the direct supervision of  
25 a certified crane operator and:

26 (A) Who is enrolled in an industry recognized in-house

1 training course based on the American National Standards Institute  
2 Standards for Crane Operators and who is employed by the entity  
3 that either taught the training course or contracted to have the  
4 training course taught, all of which is approved by the  
5 commissioner; or

6 (B) Who is enrolled in an apprenticeship program or training  
7 program for crane operators approved by the United States  
8 Department of Labor, Bureau of Apprenticeship and Training;

9 (6) Is an employee of and operating a crane at the direction  
10 of any manufacturing plant or other industrial establishment,  
11 including any mill, factory, tannery, paper or pulp mill, mine,  
12 colliery, breaker or mineral processing operation, quarry, refinery  
13 or well or is an employee of and operating a crane at the direction  
14 of the person, firm or corporation who owns or is operating such  
15 plant or establishment;

16 (7) Is an employee of a public utility operating a crane to  
17 perform work in connection with facilities used to provide a public  
18 service under the jurisdiction of the Public Service Commission,  
19 Federal Energy Regulatory Commission or Federal Communications  
20 Commission; or

21 (8) Is operating timbering harvesting machinery associated  
22 with the production of timber and the manufacturing of wood  
23 products.

24 **§21-3D-3. Powers and duties of commissioner.**

25 (a) The commissioner shall:

26 (1) Propose rules for legislative approval in accordance with

1 the provisions of article three, chapter twenty-nine-a of this  
2 code, which rules at the minimum must include provisions for:

3 (A) A Class A certification program for individuals who  
4 operate cranes or tower cranes in the State of West Virginia, which  
5 must require both a written examination and a practical  
6 demonstration, and which must be accredited by the American  
7 National Standards Institute's Personnel Certification  
8 Accreditation Program;

9 (B) A Class B certification program for individuals who  
10 operate cranes or tower cranes in the State of West Virginia, which  
11 must require the successful completion of a training course;

12 (C) Certification categories including lattice boom truck  
13 cranes; lattice boom crawler cranes; fixed cab-telescoping boom  
14 cranes; swing cab-telescoping boom cranes; and tower cranes:  
15 *Provided*, That the holders of a certification for the large  
16 telescoping boom crane, upon application for recertification, will  
17 be provided with a one time election to either be certified as an  
18 operator of a fixed-cab or swing-cab telescoping boom crane, and  
19 that holders of a certification for the small telescoping boom  
20 crane, upon application for recertification, will be automatically  
21 certified as a fixed cab operator;

22 (D) Class A certification renewal requirements of individuals  
23 who operate cranes in the State of West Virginia, that must include  
24 a written examination and a current physician's certificate at  
25 least every five years; and

26 (E) Class B certification renewal requirements of individuals

1 who operate cranes in the State of West Virginia, that must include  
2 the successful completion of a training course approved by the  
3 commissioner;

4 (2) Prescribe application forms for original and renewal  
5 certification;

6 (3) Set application fees in amounts that are reasonable and  
7 necessary to defray the costs of the administration of this article  
8 in an amount not to exceed \$75 per year;

9 (4) Set examination and training course fees in an amount not  
10 to exceed the actual cost of the examination and the training  
11 course;

12 (5) Administer or cause to be administered the written  
13 examination, practical demonstrations and the training course as  
14 required for certification;

15 (6) Determine the standards for acceptable performance on the  
16 written examination, practical demonstration and the required  
17 training course: *Provided*, That the minimum standards must be  
18 consistent with national standards, current operating procedures  
19 and technology and be transferable to other states where possible;

20 (7) Provide the option for applicants and crane operators to  
21 take examinations that meet or exceed requirements for national  
22 crane operator certification; and

23 (8) Take other action as necessary to enforce this article.

24 (b) The commissioner, or his or her designee, upon receipt of  
25 information that a person has engaged in or is engaging in an act  
26 that constitutes a violation of this article, may issue a notice to

1 the person to cease and desist and may apply to the circuit court  
2 for an order enjoining the act. Upon a showing that the person has  
3 engaged in or is engaging in an act that constitutes a violation of  
4 this article, the court may order an injunction, restraining order  
5 or other order as the court considers appropriate.

6 **§21-3D-4. Minimum certification requirements.**

7 (a) The commissioner shall certify an applicant who:

8 (1) Is at least eighteen years of age;

9 (2) Meets the application requirements as prescribed by rule;

10 (3) Passes the written examination;

11 (4) Passes the practical demonstration: *Provided*, That the  
12 practical demonstration approved by the commissioner may be  
13 administered on-site by a qualified company representative; ;

14 (5) Presents the original, or a photographic copy, of a  
15 physician's certificate that he or she is physically qualified to  
16 drive a commercial motor vehicle as required by 49 C.F.R. §391.41,  
17 as of the effective date of this article or an equivalent  
18 physician's certificate as approved by the commissioner; and

19 (6) Pays the appropriate fees.

20 (b) Certification issued under this article is valid  
21 throughout the state and is not assignable or transferable, and is  
22 valid for one year from the date on which it was issued.

23

24 (c) Notwithstanding any other provision of this article to the  
25 contrary, the commissioner shall establish a dual classification  
26 system of certification as follows:

1 (1) Class A certification, which will provide eligibility for  
2 national certification, and for which the applicant must achieve a  
3 passing score of seventy on the national commission for the  
4 certification of crane operators written examination;

5 (2) Class B certification, for which the commissioner may  
6 accept a lesser score on the national commission for the  
7 certification of crane operators written examination: *Provided,*  
8 That this score may not be less than sixty for Class B  
9 certification.

10 (d) On and after November 10, 2014:

11 (1) All individuals who operate cranes in the State of West  
12 Virginia which are governed by the provisions of the Occupational  
13 Safety and Health Administration of the United States Department of  
14 Labor, 29 C.F.R §1926.1400, Subpart CC, are required to hold a  
15 Class A certification; and

16 (2) All individuals who operate cranes in the State of West  
17 Virginia which are not governed by any provision of the  
18 Occupational Safety and Health Administration of the United States  
19 Department of Labor are required to hold a Class B certification.

20 **§21-3D-9. Reciprocity.**

21 The commissioner, in his or her discretion, may grant  
22 certification to persons certified by other states, without  
23 examination or without the required training upon satisfactory  
24 proof that the qualifications for the applicants are equal to the  
25 qualifications of this state: *Provided,* That the other states  
26 extend similar reciprocity privileges to persons certified by this

1 state.