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H. B. 4422

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

[Introduced February 3, 2012; referred to the Committee on Government Organization.]

A BILL to amend and reenact §21-3D-1, §21-3D-2, §21-3D-3, §21-3D-4 and §21-3D-9 of the Code of West Virginia, 1931, as amended, all relating to crane operator certification; redefining the term "crane;" expanding the type of equipment for which certification is required to operate; requiring adherence to standards established by the Occupational Safety and Health Administration of the United States Department of Labor; eliminating the dual classification system as of November 10, 2014; authorizing the Commissioner of Labor to issue notices to cease and desist unlawful practices; authorizing the Commissioner of Labor to apply to the circuit court for injunctive relief; limiting reciprocity provisions; and deleting obsolete provisions.

Be it enacted by the Legislature of West Virginia:

That §21-3D-1, §21-3D-2, §21-3D-3, §21-3D-4 and §21-3D-9 of the Code of West Virginia, 1931, as amended, be amended and

1 reenacted, all to read as follows:

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

3 **§21-3D-1. Definitions.**

4 For purposes of this article:

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

7 (b) "Crane" means a power-operated hoisting machine used in
8 construction, demolition or excavation work, which has a power-
9 operated winch and load line and a power-operated boom that moves
10 laterally by the rotation of the machine on a carrier, and which
11 has a manufacturer's rated lifting capacity of ~~five tons~~ two
12 thousand pounds or more as described by the Occupational Safety and
13 Health Administration of the United States Department of Labor
14 under Subpart CC - Cranes and Derricks in Construction, 29 C.F.R
15 §1926.1400 through §1926.1442. "Crane" does not mean a forklift,
16 digger derrick truck, bucket truck or any vehicle, aircraft or
17 helicopter, or equipment which does not have a power-operated winch
18 and load line.

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

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

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

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

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

12 **§21-3D-2. Certification required; exemptions.**

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

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

18 (1) Is a member of the Department of Defense or Armed Forces
19 of the United States or an employee of the United States, when such
20 member or employee is engaged in the work of a crane operator
21 exclusively for such governmental unit; or

22 (2) Is primarily an operator of farm machinery who is
23 performing the work of a crane operator as part of an agricultural
24 operation; or

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

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

4 (5) Is an Operator-in-Training under the direct supervision of
5 a certified crane operator who adheres to the standards set forth
6 by the Occupational Safety and Health Administration of the United
7 States Department of Labor under Subpart CC - Cranes and Derricks
8 in Construction, 29 C.F.R §1926.1427(f),
9 "Prequalification/certification training period" and:

10 (A) Who is enrolled in an industry recognized in-house
11 training course based on the American National Standards Institute
12 Standards for Crane Operators and who is employed by the entity
13 that either taught the training course or contracted to have the
14 training course taught, all of which is approved by the
15 commissioner; or

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

19 (6) Is an employee of and operating a crane at the direction
20 of any manufacturing plant or other industrial establishment,
21 including any mill, factory, tannery, paper or pulp mill, mine,
22 colliery, breaker or mineral processing operation, quarry, refinery
23 or well or is an employee of and operating a crane at the direction
24 of the person, firm or corporation who owns or is operating such

1 plant or establishment;

2 (7) Is an employee of a public utility operating a crane to
3 perform work in connection with facilities used to provide a public
4 service under the jurisdiction of the Public Service Commission,
5 Federal Energy Regulatory Commission or Federal Communications
6 Commission; or

7 (8) Is operating timbering harvesting machinery associated
8 with the production of timber and the manufacturing of wood
9 products.

10 **§21-3D-3. Powers and duties of commissioner.**

11 (a) The commissioner shall:

12 ~~(a)~~ (1) Propose rules for legislative approval in accordance
13 with the provisions of article three, chapter twenty-nine-a of this
14 code, which rules at the minimum must include provisions for:

15 ~~(1)~~ (A) Certification ~~of program for~~ individuals who operate
16 cranes or tower cranes in the State of West Virginia, which
17 ~~certification process must include~~ must require both a written
18 examination and a practical demonstration, and which must ~~utilize~~
19 ~~standards no less restrictive than those prescribed~~ be accredited
20 by the ~~American society of mechanical engineers/American National~~
21 Standards Institute Safety Code and Institute's Personnel
22 Certification Accreditation standards; ~~as of the effective date of~~
23 ~~this article~~ Program: *Provided*, That the rule governing the
24 practical examination must be a separate rule and provide for the

1 implementation of the practical examination on or before July 1,
2 2001. ~~— Provided, however, That the successful completion of a~~
3 ~~training course approved by the commissioner may be substituted for~~
4 ~~the written examination and for the practical demonstration as set~~
5 ~~forth in section four of this article.~~

6 ~~(2)~~ (B) Certification categories including lattice boom truck
7 cranes; lattice boom crawler cranes; fixed cab-telescoping boom
8 cranes; swing cab-telescoping boom cranes; and tower cranes:
9 *Provided*, That the holders of a certification for the large
10 telescoping boom crane, upon application for recertification, will
11 be provided with a one time election to either be certified as an
12 operator of a fixed-cab or swing-cab telescoping boom crane, and
13 that holders of a certification for the small telescoping boom
14 crane, upon application for recertification, will be automatically
15 certified as a fixed cab operator; and

16 ~~(3)~~ (C) Certification renewal requirements of individuals who
17 operate cranes in the State of West Virginia, that ~~may not be more~~
18 ~~restrictive than those prescribed for the individual's initial~~
19 ~~certification, but~~ must include a written examination and a current
20 physician's certificate at least every five years. ~~— Provided, That~~
21 ~~the successful completion of a training course approved by the~~
22 ~~commissioner may be substituted for the written examination.~~

23 ~~(b)~~ (2) Prescribe application forms for original and renewal
24 certification.

1 ~~(c)~~ (3) Set application fees in amounts that are reasonable
2 and necessary to defray the costs of the administration of this
3 article in an amount not to exceed \$75 per year.

4 ~~(d)~~ (4) Set examination and training course fees in an amount
5 not to exceed the actual cost of the examination and the training
6 course.

7 ~~(e)~~ (5) Administer or cause to be administered the written
8 examination, practical demonstrations and the training course as
9 required for certification.

10 ~~(f)~~ (6) Determine the standards for acceptable performance on
11 the written examination, practical demonstration and the required
12 training course: *Provided*, That the minimum standards must be
13 consistent with national standards, current operating procedures
14 and technology and be transferable to other states where possible:
15 *Provided, however*, That the commissioner shall develop standards
16 and criteria to establish a dual classification system of
17 certification and implement this dual system of certification no
18 later than January 1, 2001: *Provided further*, That the dual
19 classification system of certification shall expire as of November
20 10, 2014, after which only persons who meet the eligibility
21 standards for national certification may be certified under this
22 article;

23 ~~(g)~~ (7) Provide the option for applicants and crane operators
24 to take examinations that meet or exceed requirements for national

1 crane operator certification; and

2 ~~(h)~~ (8) Take other action as necessary to enforce this
3 article.

4 (b) The commissioner, or his or her designee, upon receipt of
5 information that a person has engaged in or is engaging in an act
6 that constitutes a violation of this article, may issue a notice to
7 the person to cease and desist and may apply to the circuit court
8 for an order enjoining the act. Upon a showing that the person has
9 engaged in or is engaging in an act that constitutes a violation of
10 this article, the court may order an injunction, restraining order
11 or other order as the court considers appropriate.

12 **§21-3D-4. Minimum certification requirements.**

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

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

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

16 (3) Passes the written examination; ~~;:—Provided, That any~~
17 ~~person who documents at least two thousand hours of on-the-job~~
18 ~~experience operating a crane during the four years immediately~~
19 ~~preceding filing for application, or successfully completes a~~
20 ~~training course approved by the commissioner, and applies for~~
21 ~~certification no later than September 1, 2001, and meets all other~~
22 ~~requirements and pays all applicable fees, is entitled to~~
23 ~~certification without a written examination;~~

24 (4) Passes the practical demonstration: *Provided, That the*

1 practical demonstration approved by the commissioner may be
2 administered on-site by a qualified company representative;
3 ~~Provided, however, That any person who documents at least two~~
4 ~~thousand hours of on-the-job experience operating a crane during~~
5 ~~the preceding four years next prior to filing for application or~~
6 ~~the successful completion of a training course approved by the~~
7 ~~commissioner is entitled to certification without a practical~~
8 ~~demonstration under this article if the person applies for~~
9 ~~certification no later than September 1, 2001, meets all other~~
10 ~~requirements and pays applicable application and examination fees;~~

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

16 (6) Pays the appropriate fees.

17 (b) Certification issued under this article is valid
18 throughout the state and is not assignable or transferable, and
19 subject to the expiration of the dual classification system on
20 November 14, 2014, is valid for one year from the date on which it
21 was issued.

22 ~~(c) Notwithstanding any other provision of this section, the~~
23 ~~Division of Labor may issue a temporary certification, to expire on~~
24 ~~January 1, 2001, to an applicant who: (1) Documents at least two~~

1 ~~thousand hours of on-the-job experience during the preceding four~~
2 ~~years; (2) submits scores for the written examination; and (3)~~
3 ~~provides proof of attendance at an approved crane safety training~~
4 ~~course, in an application for certification filed not later than~~
5 ~~July 1, 2000.~~

6 ~~(d)~~ (c) Notwithstanding any other provision of this article to
7 the contrary, the commissioner shall establish a dual
8 classification system of certification no later than January 1,
9 2001. One classification will provide eligibility for national
10 certification, and the applicant must achieve a passing score of
11 seventy on the national commission for the certification of crane
12 operators written examination. To be classified for West Virginia
13 certification, the commissioner may accept a lesser score on the
14 national commission for the certification of crane operators
15 written examination: *Provided*, That this score may not be less
16 than sixty for state certification: *Provided, however*, That the
17 ~~successful completion of a training course approved by the~~
18 ~~commissioner may be substituted for the written examination and for~~
19 ~~the practical demonstration if the applicant applies for~~
20 ~~certification no later than September 1, 2001. The commissioner~~
21 ~~shall propose a legislative rule as to the dual classification~~
22 ~~system no later than July 1, 2000~~ dual classification system of
23 certification shall expire as of November 10, 2014, after which
24 only persons who meet the eligibility standards for national

1 certification may be certified under this article.

2 **§21-3D-9. Reciprocity.**

3 ~~To the extent that other states provide for the certification~~
4 ~~of crane operators for similar action, the~~ The commissioner, in his
5 or her discretion, may grant certification ~~of the same or~~
6 ~~equivalent classification~~ to persons certified by other states,
7 without examination or without the required training upon
8 satisfactory proof ~~furnished to the commissioner~~ that the
9 qualifications for the applicants are equal to the qualifications
10 ~~of the holders of similar certification in this state: and upon~~
11 ~~payment of the required application fee~~ Provided, That the other
12 states extend similar reciprocity privileges to persons certified
13 by this state.

NOTE: The purpose of this bill is to update the crane operator certification process to meet federal Occupational Safety and Health Administration (OSHA) standards. The bill redefines the term "crane." The bill expands the type of equipment for which certification is required. The bill requires adherence to standards established by the Occupational Safety and Health Administration of the United States Department of Labor. The bill redefines the certification program. The bill eliminates the dual classification system as of November 10, 2014. The bill authorizes the Commissioner of Labor to issue notices to cease and desist unlawful practices. The bill authorizes the Commissioner of Labor to apply to the circuit court for injunctive relief. The bill limits reciprocity provisions. The bill also deletes obsolete provisions.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.