

E N G R O S S E D

COMMITTEE SUBSTITUTE

FOR

H. B. 4422

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HAMILTON AND ELLEM)

(Originating in the Committee on Government Organization.]
[February 7, 2012]

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 reenacted, all to read as follows:

ARTICLE 3D. CRANE OPERATOR CERTIFICATION ACT.

§21-3D-1. Definitions.

1 For purposes of this article:

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

4 (b) "Crane" means a power-operated hoisting machine
5 used in construction, demolition or excavation work, which
6 has a power-operated winch and load line and a power-
7 operated boom that moves laterally by the rotation of the
8 machine on a carrier, and which has a manufacturer's rated
9 lifting capacity of ~~five tons or more~~ than two thousand

10 pounds. "Crane" does not mean a forklift, digger derrick
11 truck, bucket truck or any vehicle, aircraft or helicopter, or
12 equipment which does not have a power-operated winch and
13 load line.

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

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

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

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

25 (g) "Training or training course" means a course
26 approved by the commissioner which includes some form of
27 testing throughout, or a final written examination or practical
28 test, or both, which ensures, or tends to ensure that learning

29 has occurred and that the objectives of the training have been
30 realized. The commissioner will evaluate whether the
31 approved training adequately demonstrates competency to
32 safely operate cranes.

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

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

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

6 (1) Is a member of the Department of Defense or Armed
7 Forces of the United States or an employee of the United
8 States, when such member or employee is engaged in the
9 work of a crane operator exclusively for such governmental
10 unit; or

11 (2) Is primarily an operator of farm machinery who is
12 performing the work of a crane operator as part of an
13 agricultural operation; or

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

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

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

19 (A) Who is enrolled in an industry recognized in-house
20 training course based on the American National Standards
21 Institute Standards for Crane Operators and who is employed
22 by the entity that either taught the training course or
23 contracted to have the training course taught, all of which is
24 approved by the commissioner; or

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

29 (6) Is an employee of and operating a crane at the
30 direction of any manufacturing plant or other industrial
31 establishment, including any mill, factory, tannery, paper or
32 pulp mill, mine, colliery, breaker or mineral processing
33 operation, quarry, refinery or well or is an employee of and

34 operating a crane at the direction of the person, firm or
35 corporation who owns or is operating such plant or
36 establishment;

37 (7) Is an employee of a public utility operating a crane to
38 perform work in connection with facilities used to provide a
39 public service under the jurisdiction of the Public Service
40 Commission, Federal Energy Regulatory Commission or
41 Federal Communications Commission; or

42 (8) Is operating timbering harvesting machinery
43 associated with the production of timber and the
44 manufacturing of wood products.

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

1 (a) The commissioner shall:

2 (a) (1) Propose rules for legislative approval in
3 accordance with the provisions of article three, chapter
4 twenty-nine-a of this code, which rules at the minimum must
5 include provisions for:

6 (1) (A) A Class A certification of program for individuals
7 who operate cranes or tower cranes in the State of West

8 Virginia, which ~~certification process must include~~ must
9 require both a written examination and a practical
10 demonstration, and which must ~~utilize standards no less~~
11 ~~restrictive than those prescribed~~ be accredited by the
12 ~~American society of mechanical engineers/American~~
13 ~~National Standards Institute Safety Code and~~ Institute's
14 ~~Personnel Certification Accreditation standards, as of the~~
15 ~~effective date of this article: Provided, That the rule~~
16 ~~governing the practical examination must be a separate rule~~
17 ~~and provide for the implementation of the practical~~
18 ~~examination on or before July 1, 2001: Provided, however,~~
19 ~~That the successful completion of a training course approved~~
20 ~~by the commissioner may be substituted for the written~~
21 ~~examination and for the practical demonstration as set forth~~
22 ~~in section four of this article: Program;~~

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

27 (2) (C) Certification categories including lattice boom
28 truck cranes; lattice boom crawler cranes; fixed cab-
29 telescoping boom cranes; swing cab-telescoping boom
30 cranes; and tower cranes: *Provided*, That the holders of a
31 certification for the large telescoping boom crane, upon
32 application for recertification, will be provided with a one
33 time election to either be certified as an operator of a fixed-
34 cab or swing-cab telescoping boom crane, and that holders of
35 a certification for the small telescoping boom crane, upon
36 application for recertification, will be automatically certified
37 as a fixed cab operator;

38 (3) (D) Class A certification renewal requirements of
39 individuals who operate cranes in the State of West Virginia,
40 ~~that may not be more restrictive than those prescribed for the~~
41 ~~individual's initial certification, but~~ must include a written
42 examination and a current physician's certificate at least
43 every five years; ~~*Provided, That*~~ and

44 (E) Class B certification renewal requirements of
45 individuals who operate cranes in the State of West Virginia,

46 that must include the successful completion of a training
47 course approved by the commissioner; ~~may be substituted for~~
48 ~~the written examination.~~

49 (b) (2) Prescribe application forms for original and
50 renewal certification;

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

54 (d) (4) Set examination and training course fees in an
55 amount not to exceed the actual cost of the examination and
56 the training course;

57 (e) (5) Administer or cause to be administered the written
58 examination, practical demonstrations and the training course
59 as required for certification;

60 (f) (6) Determine the standards for acceptable
61 performance on the written examination, practical
62 demonstration and the required training course: *Provided,*
63 That the minimum standards must be consistent with national
64 standards, current operating procedures and technology and

65 be transferable to other states where possible; *Provided,*
66 ~~however, That the commissioner shall develop standards and~~
67 ~~criteria to establish a dual classification system of~~
68 ~~certification and implement this dual system of certification~~
69 ~~no later than January 1, 2001;~~

70 (g) (7) Provide the option for applicants and crane
71 operators to take examinations that meet or exceed
72 requirements for national crane operator certification; and

73 (h) (8) Take other action as necessary to enforce this
74 article.

75 (b) The commissioner, or his or her designee, upon
76 receipt of information that a person has engaged in or is
77 engaging in an act that constitutes a violation of this article,
78 may issue a notice to the person to cease and desist and may
79 apply to the circuit court for an order enjoining the act. Upon
80 a showing that the person has engaged in or is engaging in an
81 act that constitutes a violation of this article, the court may
82 order an injunction, restraining order or other order as the
83 court considers appropriate.

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

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

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

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

5 (3) Passes the written examination; ~~Provided, That any~~
6 ~~person who documents at least two thousand hours of on-the-~~
7 ~~job experience operating a crane during the four years~~
8 ~~immediately preceding filing for application, or successfully~~
9 ~~completes a training course approved by the commissioner,~~
10 ~~and applies for certification no later than September 1, 2001,~~
11 ~~and meets all other requirements and pays all applicable fees,~~
12 ~~is entitled to certification without a written examination;~~

13 (4) Passes the practical demonstration: *Provided, That*
14 the practical demonstration approved by the commissioner
15 may be administered on-site by a qualified company
16 representative; ~~Provided, however, That any person who~~
17 ~~documents at least two thousand hours of on-the-job~~
18 ~~experience operating a crane during the preceding four years~~

19 ~~next prior to filing for application or the successful~~
20 ~~completion of a training course approved by the~~
21 ~~commissioner is entitled to certification without a practical~~
22 ~~demonstration under this article if the person applies for~~
23 ~~certification no later than September 1, 2001, meets all other~~
24 ~~requirements and pays applicable application and~~
25 ~~examination fees;~~

26 (5) Presents the original, or a photographic copy, of a
27 physician's certificate that he or she is physically qualified to
28 drive a commercial motor vehicle as required by 49 C.F.R.
29 §391.41, as of the effective date of this article or an
30 equivalent physician's certificate as approved by the
31 commissioner; and

32 (6) Pays the appropriate fees.

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

36 ~~(c) Notwithstanding any other provision of this section,~~
37 ~~the Division of Labor may issue a temporary certification, to~~

38 ~~expire on January 1, 2001, to an applicant who: (1)~~
39 ~~Documents at least two thousand hours of on-the-job~~
40 ~~experience during the preceding four years; (2) submits~~
41 ~~scores for the written examination, and (3) provides proof of~~
42 ~~attendance at an approved crane safety training course, in an~~
43 ~~application for certification filed not later than July 1, 2000.~~

44 ~~(d)~~ (c) Notwithstanding any other provision of this article
45 to the contrary, the commissioner shall establish a dual
46 classification system of certification ~~no later than January 1,~~
47 ~~2001.~~ as follows:

48 (1) ~~One classification~~ Class A certification, which will
49 provide eligibility for national certification, and for which the
50 applicant must achieve a passing score of seventy on the
51 national commission for the certification of crane operators
52 written examination;

53 (2) ~~To be classified for West Virginia certification~~ Class
54 B certification, for which the commissioner may accept a
55 lesser score on the national commission for the certification
56 of crane operators written examination: *Provided*, That this

57 score may not be less than sixty for ~~state~~ Class B
58 certification. ~~Provided, however, That the successful~~
59 ~~completion of a training course approved by the~~
60 ~~commissioner may be substituted for the written examination~~
61 ~~and for the practical demonstration if the applicant applies for~~
62 ~~certification no later than September 1, 2001. The~~
63 ~~commissioner shall propose a legislative rule as to the dual~~
64 ~~classification system no later than July 1, 2000.~~

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

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

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

§21-3D-9. Reciprocity.

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