

COMMITTEE SUBSTITUTE

FOR

H. B. 4422

(BY DELEGATES BUTCHER, WALKER, D. POLING, BOGGS,
CAPUTO, MARTIN, STEPHENS, DISERIO, STORCH,
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 as described by the Occupational Safety and Health
11 Administration of the United States Department of Labor

12 under Subpart CC - Cranes and Derricks in Construction, 29
13 C.F.R. §1926.1400 through §1926.1442. "Crane" does not
14 mean a forklift, digger derrick truck, bucket truck or any
15 vehicle, aircraft or helicopter, or equipment which does not
16 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
22 other entity who hires or permits any individual to work.

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

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

28 (g) "Training or training course" means a course
29 approved by the commissioner which includes some form of
30 testing throughout, or a final written examination or practical

31 test, or both, which ensures, or tends to ensure that learning
32 has occurred and that the objectives of the training have been
33 realized. The commissioner will evaluate whether the
34 approved training adequately demonstrates competency to
35 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

16 on the site of real property which the person owns or leases;

17 or

18 (5) Is an Operator-in-Training under the direct

19 supervision of a certified crane operator who adheres to the

20 standards set forth by the Occupational Safety and Health

21 Administration of the United States Department of Labor

22 under Subpart CC - Cranes and Derricks in Construction, 29

23 C.F.R §1926.1427(f), “Prequalification/certification training

24 period” and:

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

26 training course based on the American National Standards

27 Institute Standards for Crane Operators and who is employed

28 by the entity that either taught the training course or

29 contracted to have the training course taught, all of which is

30 approved by the commissioner; or

31 (B) Who is enrolled in an apprenticeship program or

32 training program for crane operators approved by the United

33 States Department of Labor, Bureau of Apprenticeship and
34 Training;

35 (6) Is an employee of and operating a crane at the
36 direction of any manufacturing plant or other industrial
37 establishment, including any mill, factory, tannery, paper or
38 pulp mill, mine, colliery, breaker or mineral processing
39 operation, quarry, refinery or well or is an employee of and
40 operating a crane at the direction of the person, firm or
41 corporation who owns or is operating such plant or
42 establishment;

43 (7) Is an employee of a public utility operating a crane to
44 perform work in connection with facilities used to provide a
45 public service under the jurisdiction of the Public Service
46 Commission, Federal Energy Regulatory Commission or
47 Federal Communications Commission; or

48 (8) Is operating timbering harvesting machinery
49 associated with the production of timber and the
50 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 (A) Certification ~~of~~ program for individuals who
7 operate cranes or tower cranes in the State of West Virginia,
8 which ~~certification process must include~~ must require both a
9 written examination and a practical demonstration, and which
10 ~~must utilize standards no less restrictive than those prescribed~~
11 be accredited by the ~~American society of mechanical~~
12 ~~engineers/American National Standards Institute Safety Code~~
13 ~~and~~ Institute's Personnel Certification Accreditation
14 ~~standards, as of the effective date of this article~~ Program:
15 *Provided*, That the rule governing the practical examination
16 must be a separate rule and provide for the implementation of
17 the practical examination on or before July 1, 2001.
18 ~~*Provided, however*, That the successful completion of a~~

19 ~~training course approved by the commissioner may be~~
20 ~~substituted for the written examination and for the practical~~
21 ~~demonstration as set forth in section four of this article.~~

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

33 (3) (C) Certification renewal requirements of individuals
34 who operate cranes in the State of West Virginia, that ~~may~~
35 ~~not be more restrictive than those prescribed for the~~
36 ~~individual's initial certification, but~~ must include a written
37 examination and a current physician's certificate at least

38 every five years. ~~Provided, That the successful completion~~
39 ~~of a training course approved by the commissioner may be~~
40 ~~substituted for the written examination.~~

41 (b) (2) Prescribe application forms for original and
42 renewal certification.

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

46 (d) (4) Set examination and training course fees in an
47 amount not to exceed the actual cost of the examination and
48 the training course.

49 (e) (5) Administer or cause to be administered the written
50 examination, practical demonstrations and the training course
51 as required for certification.

52 (f) (6) Determine the standards for acceptable
53 performance on the written examination, practical
54 demonstration and the required training course: *Provided,*
55 That the minimum standards must be consistent with national
56 standards, current operating procedures and technology and

57 be transferable to other states where possible: *Provided,*
58 *however,* That the commissioner shall develop standards and
59 criteria to establish a dual classification system of
60 certification and implement this dual system of certification
61 no later than January 1, 2001: *Provided further, That the dual*
62 *classification system of certification shall expire as of*
63 *November 10, 2014, after which only persons who meet the*
64 *eligibility standards for national certification may be certified*
65 *under this article;*

66 ~~(g)~~ (7) Provide the option for applicants and crane
67 operators to take examinations that meet or exceed
68 requirements for national crane operator certification; and

69 ~~(h)~~ (8) Take other action as necessary to enforce this
70 article.

71 (b) The commissioner, or his or her designee, upon
72 receipt of information that a person has engaged in or is
73 engaging in an act that constitutes a violation of this article,
74 may issue a notice to the person to cease and desist and may
75 apply to the circuit court for an order enjoining the act. Upon

76 a showing that the person has engaged in or is engaging in an
77 act that constitutes a violation of this article, the court may
78 order an injunction, restraining order or other order as the
79 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 subject to the expiration of the dual classification system on
36 November 10, 2014, is valid for one year from the date on
37 which it was issued.

38 ~~(c) Notwithstanding any other provision of this section,~~
39 ~~the Division of Labor may issue a temporary certification, to~~
40 ~~expire on January 1, 2001, to an applicant who. (1)~~
41 ~~Documents at least two thousand hours of on-the-job~~
42 ~~experience during the preceding four years; (2) submits~~
43 ~~scores for the written examination, and (3) provides proof of~~
44 ~~attendance at an approved crane safety training course, in an~~
45 ~~application for certification filed not later than July 1, 2000.~~

46 ~~(d)~~ (c) Notwithstanding any other provision of this article
47 to the contrary, the commissioner shall establish a dual
48 classification system of certification no later than January 1,
49 2001. One classification will provide eligibility for national
50 certification, and the applicant must achieve a passing score
51 of seventy on the national commission for the certification of

52 crane operators written examination. To be classified for
53 West Virginia certification, the commissioner may accept a
54 lesser score on the national commission for the certification
55 of crane operators written examination: *Provided*, That this
56 score may not be less than sixty for state certification:
57 *Provided, however*, That the ~~successful completion of a~~
58 ~~training course approved by the commissioner may be~~
59 ~~substituted for the written examination and for the practical~~
60 ~~demonstration if the applicant applies for certification no~~
61 ~~later than September 1, 2001. The commissioner shall~~
62 ~~propose a legislative rule as to the dual classification system~~
63 ~~no later than July 1, 2000~~ dual classification system of
64 certification shall expire as of November 10, 2014, after
65 which only persons who meet the eligibility standards for
66 national certification may be certified under this article.

§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.