

WEST VIRGINIA LEGISLATURE

SECOND REGULAR SESSION, 2012



ENROLLED

COMMITTEE SUBSTITUTE

FOR

House Bill No. 4422

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



Passed March 10, 2012

To Take Effect Ninety Days From Passage

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H. B. 4422

(BY DELEGATES BUTCHER, WALKER, D. POLING, BOGGS,
CAPUTO, MARTIN, STEPHENS, DISERIO, STORCH,
HAMILTON AND ELLEM)

[Passed March 10, 2012; to take effect ninety days from passage.]

AN ACT 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 a crane for the purposes of the act; clarifying those persons who are exempted from certification; 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; clarifying the minimum requirements for certification; 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; deleting obsolete provisions; and requiring certain crane operators to hold certain classes of certification as of November 10, 2014.

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 more than two thousand pounds. “Crane”
10 does not mean a forklift, digger derrick truck, bucket truck or
11 any vehicle, aircraft or helicopter, or equipment which does
12 not have a power-operated winch and load line.

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

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

19 (e) “Employee” means any individual employed by an
20 employer and also as defined by the commissioner.

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

24 (g) “Training or training course” means a course
25 approved by the commissioner which includes some form of
26 testing throughout, or a final written examination or practical
27 test, or both, which ensures, or tends to ensure that learning
28 has occurred and that the objectives of the training have been
29 realized. The commissioner will evaluate whether the
30 approved training adequately demonstrates competency to
31 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 and:

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

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

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

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

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

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

1 (a) The commissioner shall:

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

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

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

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

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

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

33 that must include the successful completion of a training
34 course approved by the commissioner;

35 (2) Prescribe application forms for original and renewal
36 certification;

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

40 (4) Set examination and training course fees in an amount
41 not to exceed the actual cost of the examination and the
42 training course;

43 (5) Administer or cause to be administered the written
44 examination, practical demonstrations and the training course
45 as required for certification;

46 (6) Determine the standards for acceptable performance
47 on the written examination, practical demonstration and the
48 required training course: *Provided*, That the minimum
49 standards must be consistent with national standards, current
50 operating procedures and technology and be transferable to
51 other states where possible;

52 (7) Provide the option for applicants and crane operators
53 to take examinations that meet or exceed requirements for
54 national crane operator certification; and

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

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

61 a showing that the person has engaged in or is engaging in an
62 act that constitutes a violation of this article, the court may
63 order an injunction, restraining order or other order as the
64 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;

6 (4) Passes the practical demonstration: *Provided*, That
7 the practical demonstration approved by the commissioner
8 may be administered on-site by a qualified company
9 representative; ;

10 (5) Presents the original, or a photographic copy, of a
11 physician's certificate that he or she is physically qualified to
12 drive a commercial motor vehicle as required by 49 C.F.R.
13 §391.41, as of the effective date of this article or an
14 equivalent physician's certificate as approved by the
15 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 is valid for one year from the date on which it was issued.

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

23 (1) Class A certification, which will provide eligibility for
24 national certification, and for which the applicant must
25 achieve a passing score of seventy on the national
26 commission for the certification of crane operators written
27 examination;

28 (2) Class B certification, for which the commissioner may
29 accept a lesser score on the national commission for the
30 certification of crane operators written examination:
31 *Provided*, That this score may not be less than sixty for Class
32 B certification.

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

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

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

§21-3D-9. Reciprocity.

1 The commissioner, in his or her discretion, may grant
2 certification to persons certified by other states, without
3 examination or without the required training upon
4 satisfactory proof that the qualifications for the applicants are
5 equal to the qualifications of this state: *Provided*, That the
6 other states extend similar reciprocity privileges to persons
7 certified by this state.

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

Chairman, House Committee

Chairman, Senate Committee

Originating in the House.

To take effect ninety days from passage.

Clerk of the House of Delegates

Clerk of the Senate

Speaker of the House of Delegates

President of the Senate

The within _____ this the _____
day of _____, 2012.

Governor