

1 **COMMITTEE SUBSTITUTE**

2 **FOR**

3 **H. B. 4422**

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

7 [Originating in the Committee on Government Organization.]

8 (February 7, 2012)

9

10 A BILL 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 the
13 term "crane;" expanding the type of equipment for which
14 certification is required to operate; requiring adherence to
15 standards established by the Occupational Safety and Health
16 Administration of the United States Department of Labor;
17 eliminating the dual classification system as of November 10,
18 2014; authorizing the Commissioner of Labor to issue notices
19 to cease and desist unlawful practices; authorizing the
20 Commissioner of Labor to apply to the circuit court for
21 injunctive relief; limiting reciprocity provisions; and
22 deleting obsolete provisions.

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

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

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

2 **§21-3D-1. Definitions.**

3 For purposes of this article:

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

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

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

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

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

26 (f) "Tower crane" means a crane in which a boom, swinging jib,

1 or other structural member is mounted on a vertical mast or tower.

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

9 **§21-3D-2. Certification required; exemptions.**

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

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

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

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

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

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

25 (5) Is an Operator-in-Training under the direct supervision of
26 a certified crane operator who adheres to the standards set forth

1 by the Occupational Safety and Health Administration of the United
2 States Department of Labor under Subpart CC - Cranes and Derricks
3 in Construction, 29 C.F.R §1926.1427(f),
4 "Prequalification/certification training period" and:

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

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

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

21 (7) Is an employee of a public utility operating a crane to
22 perform work in connection with facilities used to provide a public
23 service under the jurisdiction of the Public Service Commission,
24 Federal Energy Regulatory Commission or Federal Communications
25 Commission; or

26 (8) Is operating timbering harvesting machinery associated

1 with the production of timber and the manufacturing of wood
2 products.

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

4 (a) The commissioner shall:

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

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

23 ~~(2)~~ (B) Certification categories including lattice boom truck
24 cranes; lattice boom crawler cranes; fixed cab-telescoping boom
25 cranes; swing cab-telescoping boom cranes; and tower cranes:
26 *Provided*, That the holders of a certification for the large

1 telescoping boom crane, upon application for recertification, will
2 be provided with a one time election to either be certified as an
3 operator of a fixed-cab or swing-cab telescoping boom crane, and
4 that holders of a certification for the small telescoping boom
5 crane, upon application for recertification, will be automatically
6 certified as a fixed cab operator; and

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

14 ~~(b)~~ (2) Prescribe application forms for original and renewal
15 certification.

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

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

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

25 ~~(f)~~ (6) Determine the standards for acceptable performance on
26 the written examination, practical demonstration and the required

1 training course: *Provided*, That the minimum standards must be
2 consistent with national standards, current operating procedures
3 and technology and be transferable to other states where possible:
4 *Provided, however*, That the commissioner shall develop standards
5 and criteria to establish a dual classification system of
6 certification and implement this dual system of certification no
7 later than January 1, 2001: *Provided further*, That the dual
8 classification system of certification shall expire as of November
9 10, 2014, after which only persons who meet the eligibility
10 standards for national certification may be certified under this
11 article;

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

15 ~~(h)~~ (8) Take other action as necessary to enforce this
16 article.

17 (b) The commissioner, or his or her designee, upon receipt of
18 information that a person has engaged in or is engaging in an act
19 that constitutes a violation of this article, may issue a notice to
20 the person to cease and desist and may apply to the circuit court
21 for an order enjoining the act. Upon a showing that the person has
22 engaged in or is engaging in an act that constitutes a violation of
23 this article, the court may order an injunction, restraining order
24 or other order as the court considers appropriate.

25 **§21-3D-4. Minimum certification requirements.**

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

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

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

3 (3) Passes the written examination;~~;~~ ~~Provided, That any~~
4 ~~person who documents at least two thousand hours of on-the-job~~
5 ~~experience operating a crane during the four years immediately~~
6 ~~preceding filing for application, or successfully completes a~~
7 ~~training course approved by the commissioner, and applies for~~
8 ~~certification no later than September 1, 2001, and meets all other~~
9 ~~requirements and pays all applicable fees, is entitled to~~
10 ~~certification without a 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 ~~Provided, however, That any person who documents at least two~~
15 ~~thousand hours of on-the-job experience operating a crane during~~
16 ~~the preceding four years next prior to filing for application or~~
17 ~~the successful completion of a training course approved by the~~
18 ~~commissioner is entitled to certification without a practical~~
19 ~~demonstration under this article if the person applies for~~
20 ~~certification no later than September 1, 2001, meets all other~~
21 ~~requirements and pays applicable application and examination fees;~~

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

1 (6) Pays the appropriate fees.

2 (b) Certification issued under this article is valid
3 throughout the state and is not assignable or transferable, and
4 subject to the expiration of the dual classification system on
5 November 10, 2014, is valid for one year from the date on which it
6 was issued.

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

15 ~~(d)~~ (c) Notwithstanding any other provision of this article to
16 the contrary, the commissioner shall establish a dual
17 classification system of certification no later than January 1,
18 2001. One classification will provide eligibility for national
19 certification, and the applicant must achieve a passing score of
20 seventy on the national commission for the certification of crane
21 operators written examination. To be classified for West Virginia
22 certification, the commissioner may accept a lesser score on the
23 national commission for the certification of crane operators
24 written examination: *Provided,* That this score may not be less
25 than sixty for state certification: *Provided, however,* That the
26 ~~successful completion of a training course approved by the~~

1 ~~commissioner may be substituted for the written examination and for~~
2 ~~the practical demonstration if the applicant applies for~~
3 ~~certification no later than September 1, 2001. The commissioner~~
4 ~~shall propose a legislative rule as to the dual classification~~
5 ~~system no later than July 1, 2000~~ dual classification system of
6 certification shall expire as of November 10, 2014, after which
7 only persons who meet the eligibility standards for national
8 certification may be certified under this article.

9 **§21-3D-9. Reciprocity.**

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