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WEST VIRGINIA LEGISLATURE

SECOND REGULAR SESSION, 1998



ENROLLED

Com. Sub. for House Bill No. 4105

(Delegates Kuhn, Manuel, Seacrist,
Tillis, Pettit, Lynch and Wilison)



Passed March 12, 1998

In Effect Ninety Days from Passage

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COMMITTEE SUBSTITUTE

FOR

H. B. 4105

(BY DELEGATES KUHN, MANUEL, SEACRIST,
TILLIS, PETTIT, LINCH AND WILLISON)

[Passed March 12, 1998; in effect ninety days from passage.]

AN ACT to amend chapter twenty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article three-d, relating to the certification of crane operators; providing definitions; identifying the commencement date; distinguishing who is required to be certified; authorizing the commissioner of the division of labor to propose rules; providing that rules include the certification process, categories and renewal requirements; setting forth additional duties of the commissioner; authorizing the minimum certification requirements; permitting the commissioner to deny, suspend, revoke or reinstate certification in certain instances; requiring certified crane operators to carry proof of certification while operating a crane; allowing application for certification after revocation; requiring due process procedures be followed prior to revocation, suspension or other disciplinary action; providing for fines and criminal penalties upon conviction of operating a crane without certification; providing for fines and criminal penalties upon conviction of knowingly and intentionally operating a crane under the influence of certain substances; providing for fines

and criminal penalties upon conviction of employing, permitting or directing certain crane operators; establishing a crane operator certification fund and providing procedures therefor; and, authorizing reciprocity.

Be it enacted by the Legislature of West Virginia:

That chapter twenty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article three-d, 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
5 machine used in construction, demolition or excavation
6 work, which has a power-operated winch and load line and
7 a power-operated boom that moves laterally by the
8 rotation of the machine on a carrier, and which has a
9 manufacturer's rated lifting capacity of five tons or more.
10 "Crane" does not include a forklift, digger derrick truck,
11 bucket truck or any vehicle or equipment which does not
12 have a power-operated winch and load line.

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

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

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

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

1 (a) Commencing with the first day of January, two
2 thousand and notwithstanding the provisions contained in

3 subsection (b) of this section, a person may not operate a
4 crane with a lifting capacity of five tons or more without
5 certification issued under this article.

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

8 (1) Is a member of the armed forces of the United
9 States or an employee of the United States, when such
10 member or employee is engaged in the work of a crane
11 operator exclusively for such governmental unit; or,

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

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

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

19 (5) Is under the direct supervision of a certified crane
20 operator, and,

21 (A) Who is enrolled in an industry recognized in-
22 house training course based on the American national
23 standards institute standards for crane operators and who
24 is employed by the entity that either taught the training
25 course or contracted to have the training course taught, all
26 of which is approved by the commissioner; or,

27 (B) Who is enrolled in an apprenticeship program or
28 training program for crane operators approved by the
29 United States department of labor, bureau of
30 apprenticeship and training;

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

39 (7) Is an employee of a public utility operating a
40 crane to perform work in connection with facilities used to
41 provide a public service under the jurisdiction of the
42 public service commission, federal energy regulatory
43 commission or federal communications commission; or,

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

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

1 The commissioner shall:

2 (a) Propose rules for legislative approval in
3 accordance with the provisions of article three, chapter
4 twenty-nine-a of this code, no later than the first day of
5 July, one thousand nine hundred ninety-eight, which rules
6 at the minimum shall include provisions for:

7 (1) Certification of individuals who operate cranes in
8 the state of West Virginia, which certification process shall
9 include a written examination and a practical
10 demonstration, and shall utilize standards no less restrictive
11 than those prescribed by the American society of
12 mechanical engineers/American national standards
13 institute safety code as of the effective date of this article:
14 *Provided*, That the rule governing the practical
15 examination shall be a separate rule and shall provide for
16 the implementation of the practical examination on or
17 before the first day of January, two thousand one.

18 (2) Certification categories that shall include lattice
19 boom truck cranes; lattice boom crawler cranes; small
20 telescoping boom cranes, with a lifting capacity of at least
21 five tons but not more than seventeen and one-half tons;
22 and large telescopic boom cranes, with a lifting capacity
23 greater than seventeen and one-half tons;

24 (3) Certification renewal requirements of individuals
25 who operate cranes in the state of West Virginia, that may
26 not be more restrictive than those prescribed for the
27 individual's initial certification, but shall include a written
28 examination and a current physician's certificate at least
29 every five years;

30 (b) Prescribe application forms for original and
31 renewal certification.

32 (c) Set application fees in amounts that are reasonable
33 and necessary to defray the costs of the administration of
34 this article in an amount not to exceed seventy-five dollars
35 per year.

36 (d) Set examination fees in an amount not to exceed
37 the actual cost of the examination.

38 (e) Administer or cause to be administered the written
39 examination and practical demonstrations as required for
40 certification.

41 (f) Determine the standards for acceptable
42 performance on the written examination and practical
43 demonstration: *Provided*, That the minimum standards
44 shall be consistent with national standards and transferable
45 to other states where possible.

46 (g) If requested by an individual who fails an
47 examination, provide the person a written analysis of the
48 person's performance on the examination.

49 (h) Take other action as necessary to enforce this
50 article.

§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
4 by rule;

5 (3) Passes the written examination;

6 (4) Passes the practical demonstration: *Provided*, That
7 any person who documents at least two thousand hours of
8 on-the-job experience operating a crane during the
9 preceding four years next prior to filing for application is
10 entitled to certification without a practical demonstration
11 under this article if the person applies for certification no
12 later than the first day of January, two thousand, meets all

13 other requirements and pays applicable application and
14 examination fees;

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

21 (6) Pays the application and examination fees.

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

§21-3D-5. Denial, suspension, revocation, or reinstatement of certification.

1 (a) The commissioner may deny, suspend, revoke or
2 reinstate certification.

3 (b) A violation of this article or rule adopted pursuant
4 to this article is grounds for the denial, suspension,
5 revocation or refusal to reinstate certification and permits
6 the imposition of disciplinary action: *Provided*, That no
7 disciplinary action against a crane operator may be
8 imposed without a proper prior notice as served under
9 section one, article two, chapter fifty-six of this code, and
10 an opportunity for hearing held before the commissioner
11 or his designee wherein the crane operator will be
12 provided the opportunity to present evidence in person, by
13 counsel or both and after which, if the commissioner finds
14 a violation of this article has occurred, the commissioner
15 may impose any disciplinary action permitted in this
16 article: *Provided, however*, That the provisions of
17 subsection (e) of section seven of this article have not been
18 met.

19 (c) Operation of a crane in violation of this article or
20 other provision of this code may result in the suspension
21 of certification for not less than twenty-four hours nor
22 more than one year, or revocation of certification until
23 reinstated.

24 (d) Each certified crane operator shall carry proof of
25 certification on his or her person during operation of a
26 crane.

27 (e) A person whose certification has been revoked
28 may apply for certification one year after the date of the
29 revocation.

§21-3D-6. Effect of accident.

1 (a) The commissioner may suspend or revoke the
2 certification of a person involved in an accident relating to
3 the operation of a crane by that person: *Provided*, That no
4 disciplinary action against a crane operator may be
5 imposed without a proper prior notice as served under
6 section one, article two, chapter fifty-six of this code, and
7 hearing held before the commissioner or his or her
8 designee wherein the crane operator will be provided the
9 opportunity to present evidence in person, by counsel or
10 both and after which, the commissioner finds a violation
11 of this article has occurred, the commissioner may impose
12 any disciplinary action permitted in this article: *Provided*,
13 *however*, That the provisions of subsection (e) of section
14 seven of this article have not been met.

15 (b) If the commissioner makes a finding that the
16 accident was caused by the actions or omissions of the
17 certificate holder, the commissioner may require the
18 certificate holder to retake and pass the certification
19 examination and/or demonstration before the certificate
20 holder may apply to have the certification reinstated.

§21-3D-7. Penalties.

1 (a) A person required to obtain certification under this
2 article, who operates a crane without certification, is guilty
3 of a misdemeanor and, upon conviction thereof, shall be
4 fined not less than fifty dollars nor more than five
5 hundred dollars for each violation.

6 (b) No person may knowingly or intentionally drive
7 or operate a crane while:

8 (1) Having any measurable alcohol in his or her
9 system; or,

10 (2) Under the influence of any controlled substance,
11 as defined by subdivision (d), section one hundred one,
12 article one, chapter sixty-a of this code; or

13 (3) Under the combined influence of alcohol and any
14 controlled substance or any other drug.

15 A person who violates this subsection is guilty of a
16 misdemeanor and, upon conviction thereof, shall be fined
17 not less than one hundred dollars nor more than one
18 thousand dollars. In addition to the fine, the commissioner
19 of labor shall revoke the person's certification for not less
20 than one year.

21 (c) An employer who knowingly employs, permits or
22 directs a person to operate a crane without proper
23 certification is guilty of a misdemeanor and, upon
24 conviction thereof, shall be fined not less than one
25 hundred dollars nor more than one thousand dollars for
26 each violation.

27 (d) A person, operating a crane, who fails to produce
28 the certification within twenty-four hours after request of
29 the commissioner or his or her authorized representative,
30 is guilty of a misdemeanor and, upon conviction thereof,
31 shall be fined not less than fifty dollars nor more than one
32 hundred dollars.

33 (e) If a person is convicted for an offense described in
34 this section, and does not act to appeal the conviction
35 within the time periods as hereinafter described, then the
36 person's certification may be revoked or suspended in
37 accordance with the provisions of this article, and, further:

38 (1) The clerk of the court in which a person is
39 convicted for an offense described in this section shall
40 forward to the commissioner a transcript of the judgment
41 of conviction. If the conviction is the judgment of a
42 magistrate court, the magistrate court clerk shall forward
43 the transcript when the person convicted has not requested
44 an appeal within twenty days of the sentencing for such
45 conviction. If the conviction is the judgment of a circuit
46 court, the circuit clerk shall forward the transcript when
47 the person convicted has not filed a notice of intent to file

48 a petition for appeal or writ of error within thirty days
49 after the judgment was entered; and,

50 (2) If, upon examination of the transcript of the
51 judgment of conviction, the commissioner shall determine
52 that the person was convicted for any of the offenses
53 described in this section, the commissioner shall make and
54 enter an order revoking or suspending the person's
55 certificate to operate a crane in this state. The order shall
56 contain the reasons for the revocation or suspension and
57 the revocation or suspension periods provided for by this
58 article or by rule. Further, the order shall give the
59 procedures for requesting a hearing. The person shall be
60 advised in the order that because of the receipt of a
61 transcript of the judgment of conviction by the
62 commissioner a presumption exists that the person named
63 in the transcript of the judgment of conviction is the
64 person named in the commissioner's order and such
65 constitutes sufficient evidence to support revocation or
66 suspension and that the sole purpose for the hearing held
67 under this section is for the person requesting the hearing
68 to present evidence that he or she is not the person named
69 in the transcript of the judgment of conviction. A copy of
70 the order shall be forwarded to the person by registered or
71 certified mail, return receipt requested. No revocation or
72 suspension shall become effective until ten days after
73 receipt of a copy of the order; and,

74 (3) The provisions of this subsection shall not apply if
75 an order reinstating the crane operator's certification of
76 the person has been entered by the commissioner prior to
77 the receipt of the transcript of the judgment of conviction,
78 and,

79 (4) For the purposes of this section, a person is
80 convicted when the person enters a plea of guilty or is
81 found guilty by a court or jury.

**§21-3D-8. Crane Operator Certification Fund; Fees;
Disposition of funds.**

1 (a) There is hereby established a crane operator
2 certification fund in the state treasurer's office.

3 (b) The commissioner may set reasonable application
4 fees for the issuance or renewal of certificates and other
5 services associated with crane operator certification.

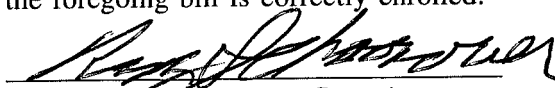
6 (c)(1) The commissioner shall receive and account for
7 all money that is derived pursuant to the provisions of this
8 article. The commissioner shall pay all money collected
9 into the crane operator certification fund that has been
10 established pursuant to subsection (a), section eight of this
11 article, with the exception of money received as fines. This
12 money shall be used exclusively by the commissioner for
13 purposes of administration and enforcement of his or her
14 duties pursuant to this article.

15 (2) Expenditures from the crane operator certification
16 fund shall be for the purposes set forth in this article and
17 are not authorized from collections but are to be made
18 only in accordance with appropriation by the Legislature
19 in accordance with the provisions of article three, chapter
20 twelve of this code and upon the fulfillment of the
21 provisions set forth in article two, chapter five-a of this
22 code: *Provided*, That for the fiscal year ending the
23 thirtieth day of June, one thousand nine hundred ninety-
24 nine, expenditures are authorized from collections rather
25 than pursuant to an appropriation by the Legislature.
26 Amounts collected which are found from time to time to
27 exceed the funds needed for purposes set forth in this
28 article may be transferred to other accounts or funds and
29 redesignated for other purposes by appropriation of the
30 Legislature.

§21-3D-9. Reciprocity.

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

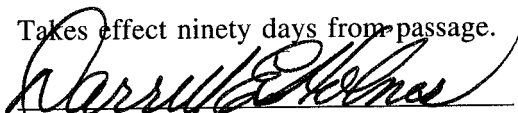
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.


Chairman Senate Committee

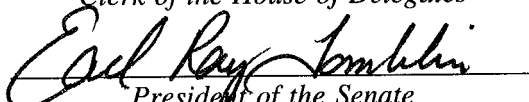

Chairman House Committee

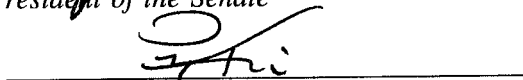
Originating in the House.

Takes effect ninety days from passage.



Clerk of the Senate


Clerk of the House of Delegates


President of the Senate


Speaker of the House of Delegates

The within approved this the 25th
day of March, 1998.


Governor

PRESENTED TO THE

GOVERNOR

Date

3/20/98

Time

4:00 pm