WEST VIRGINIA LEGISLATURE
SECOND REGULAR SESSION, 1998

ENROLLED

Com. Sub. for
House Bill No. 4105

(Delegates Kuhn, Manuel, Seacrist, 
Tillis, Petit, Linch and Wilson)

Passed March 12, 1998

In Effect Ninety Days from Passage
ENROLLED

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.

For purposes of this article:

(a) "Commissioner" means the commissioner of the division of labor, or his or her authorized representative.

(b) "Crane" means a power-operated hoisting machine used in construction, demolition or excavation work, which has a power-operated winch and load line and a power-operated boom that moves laterally by the rotation of the machine on a carrier, and which has a manufacturer's rated lifting capacity of five tons or more. "Crane" does not include a forklift, digger derrick truck, bucket truck or any vehicle or equipment which does not have a power-operated winch and load line.

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

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

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

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

(a) Commencing with the first day of January, two thousand and notwithstanding the provisions contained in
subsection (b) of this section, a person may not operate a crane with a lifting capacity of five tons or more without certification issued under this article.

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

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

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

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

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

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

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

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

(6) Is an employee of and operating a crane at the direction of any manufacturing plant or other industrial establishment, including any mill, factory, tannery, paper or pulp mill, mine, colliery, breaker or mineral processing operation, quarry, refinery or well, or is an employee of and operating a crane at the direction of the person, firm or corporation who owns or is operating such plant or establishment;
(7) Is an employee of a public utility operating a crane to perform work in connection with facilities used to provide a public service under the jurisdiction of the public service commission, federal energy regulatory commission or federal communications commission; or,

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


The commissioner shall:

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

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

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

(3) Certification renewal requirements of individuals who operate cranes in the state of West Virginia, that may not be more restrictive than those prescribed for the individual’s initial certification, but shall include a written examination and a current physician’s certificate at least every five years;
(b) Prescribe application forms for original and renewal certification.

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

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

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

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

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

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

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

(a) The commissioner shall certify an applicant who:

(1) Is at least eighteen years of age;

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

(3) Passes the written examination;

(4) Passes the practical demonstration: Provided, That any person who documents at least two thousand hours of on-the-job experience operating a crane during the preceding four years next prior to filing for application is entitled to certification without a practical demonstration under this article if the person applies for certification no later than the first day of January, two thousand, meets all
other requirements and pays applicable application and examination fees; 

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

(6) Pays the application and examination fees. 

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

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

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

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

(c) Operation of a crane in violation of this article or other provision of this code may result in the suspension of certification for not less than twenty-four hours nor more than one year, or revocation of certification until reinstated.
(d) Each certified crane operator shall carry proof of certification on his or her person during operation of a crane.

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


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

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

§21-3D-7. Penalties.

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

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

(1) Having any measurable alcohol in his or her system; or,
(2) Under the influence of any controlled substance, as defined by subdivision (d), section one hundred one, article one, chapter sixty-a of this code; or

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

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

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

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

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

(1) The clerk of the court in which a person is convicted for an offense described in this section shall forward to the commissioner a transcript of the judgment of conviction. If the conviction is the judgment of a magistrate court, the magistrate court clerk shall forward the transcript when the person convicted has not requested an appeal within twenty days of the sentencing for such conviction. If the conviction is the judgment of a circuit court, the circuit clerk shall forward the transcript when the person convicted has not filed a notice of intent to file
a petition for appeal or writ of error within thirty days after the judgment was entered; and,

(2) If, upon examination of the transcript of the judgment of conviction, the commissioner shall determine that the person was convicted for any of the offenses described in this section, the commissioner shall make and enter an order revoking or suspending the person’s certificate to operate a crane in this state. The order shall contain the reasons for the revocation or suspension and the revocation or suspension periods provided for by this article or by rule. Further, the order shall give the procedures for requesting a hearing. The person shall be advised in the order that because of the receipt of a transcript of the judgment of conviction by the commissioner a presumption exists that the person named in the transcript of the judgment of conviction is the person named in the commissioner’s order and such constitutes sufficient evidence to support revocation or suspension and that the sole purpose for the hearing held under this section is for the person requesting the hearing to present evidence that he or she is not the person named in the transcript of the judgment of conviction. A copy of the order shall be forwarded to the person by registered or certified mail, return receipt requested. No revocation or suspension shall become effective until ten days after receipt of a copy of the order; and,

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

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

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

(a) There is hereby established a crane operator certification fund in the state treasurer’s office.
(b) The commissioner may set reasonable application fees for the issuance or renewal of certificates and other services associated with crane operator certification.

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

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

§21-3D-9. Reciprocity.

To the extent that other states provide for the certification of crane operators for similar action, the commissioner, in his or her discretion, may grant certification of the same or equivalent classification to persons certified by other states, without examination upon satisfactory proof furnished to the commissioner that the qualifications for the applicants are equal to the qualifications of the holders of similar certification in this state, and upon payment of the required application fee.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

[Signature]
Chairman Senate Committee

[Signature]
Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

[Signature]
Clerk of the Senate

[Signature]
Clerk of the House of Delegates

[Signature]
President of the Senate

Speaker of the House of Delegates

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

[Signature]
Governor
PRESENTED TO THE
GOVERNOR
Date 3/00/98
Time 4:31 pm