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SENATE

WEST VIRGINIA LEGISLATURE

SECOND REGULAR SESSION, 2000



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COMMITTEE SUBSTITUTE
FOR

House Bill No. 4645

(By Delegates Pettit, Martin, Kuhn and Shelton)



Passed March 10, 2000

In Effect Ninety Days from Passage

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LEGISLATIVE COUNCIL

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H. B. 4645

(BY DELEGATES PETTIT, MARTIN, KUHN AND SHELTON)

[Passed March 10, 2000; in effect ninety days from passage.]

AN ACT to amend and reenact sections one, two, three, four, six, and nine, article three-d, chapter twenty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to certification of crane operators; excluding aircraft and helicopter from the definition of crane; defining additional terms; extending certain implementation dates; directing the labor commissioner to propose additional legislative rules and setting forth new time frames; permitting the successful completion of a commissioner-approved training course be substituted for the written examination or for the practical demonstration in some instances; allowing the practical demonstration be administered on-site by a qualified company representative; permitting experience or training to be substituted for the written examination or practical demonstration until September 1, 2001; allowing the labor commissioner to set fees for training courses; requiring the labor commissioner to set standards, criteria and establish a

dual classification certification; setting forth components towards a national classification and a state classification certification; setting forth time limits; and authorizing certification reciprocity without the required training.

Be it enacted by the Legislature of West Virginia:

That sections one, two, three, four, six and nine, article three-d, chapter twenty-one of the code of West Virginia, one thousand nine hundred thirty-one, 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 used
5 in construction, demolition or excavation work, which has a
6 power-operated winch and load line and a power-operated
7 boom that moves laterally by the rotation of the machine on a
8 carrier, and which has a manufacturer’s rated lifting capacity of
9 five tons or more. “Crane” does not mean a forklift, digger
10 derrick truck, bucket truck or any vehicle, aircraft or helicopter,
11 or equipment which does not have a power-operated winch and
12 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) "Training or training course" means a course approved
22 by the commissioner which includes some form of testing
23 throughout, or a final written examination or practical test, or
24 both, which ensures, or tends to ensure that learning has
25 occurred and that the objectives of the training have been
26 realized. The commissioner will evaluate whether the approved
27 training adequately demonstrates competency to safely operate
28 cranes.

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

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

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

8 (1) Is a member of the armed forces of the United States or
9 an employee of the United States, when such member or
10 employee is engaged in the work of a crane operator exclu-
11 sively 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 agricul-
14 tural 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 profit
17 on the site of real property which the person owns or leases; or,

18 (5) Is under the direct supervision of a certified crane
19 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 by
23 the entity that either taught the training course or contracted to
24 have the training course taught, all of which is approved by the
25 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 direction
31 of any manufacturing plant or other industrial establishment,
32 including any mill, factory, tannery, paper or pulp mill, mine,
33 colliery, breaker or mineral processing operation, quarry,
34 refinery or well, or is an employee of and operating a crane at
35 the direction of the person, firm or corporation who owns or is
36 operating such plant or establishment;

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

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

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

1 The commissioner shall:

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

6 (1) Certification of individuals who operate cranes in the
7 state of West Virginia, which certification process must include
8 a written examination and a practical demonstration, and must
9 utilize standards no less restrictive than those prescribed by the
10 American society of mechanical engineers/American national
11 standards institute safety code as of the effective date of this
12 article: *Provided*, That the rule governing the practical exami-
13 nation must be a separate rule and provide for the implementa-
14 tion of the practical examination on or before the first day of
15 July, two thousand one: *Provided, however*, That the successful
16 completion of a training course approved by the commissioner
17 may be substituted for the written examination and for the
18 practical demonstration as set forth in section four of this
19 article.

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

26 (3) Certification renewal requirements of individuals who
27 operate cranes in the state of West Virginia, that may not be
28 more restrictive than those prescribed for the individual's initial
29 certification, but must include a written examination and a
30 current physician's certificate at least every five years: *Pro-*
31 *vided*, That the successful completion of a training course
32 approved by the commissioner may be substituted for the
33 written examination.

34 (b) Prescribe application forms for original and renewal
35 certification.

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

39 (d) Set examination and training course fees in an amount
40 not to exceed the actual cost of the examination and the training
41 course.

42 (e) Administer or cause to be administered the written
43 examination, practical demonstrations and the training course
44 as required for certification.

45 (f) Determine the standards for acceptable performance on
46 the written examination, practical demonstration and the
47 required training course: *Provided*, That the minimum standards
48 must be consistent with national standards, current operating
49 procedures and technology and be transferable to other states
50 where possible: *Provided, however*, That the commissioner
51 shall develop standards and criteria to establish a dual classifi-
52 cation system of certification and implement this dual system
53 of certification no later than the first day of January, two
54 thousand one.

55 (g) Provide the option for applicants and crane operators to
56 take examinations that meet or exceed requirements for national
57 crane operator certification.

58 (h) Take other action as necessary to enforce this 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 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 immedi-
8 ately preceding filing for application, or successfully completes
9 a training course approved by the commissioner, and applies for
10 certification no later than the first day of September, two
11 thousand one, and meets all other requirements and pays all
12 applicable fees, is entitled to certification without a written
13 examination;

14 (4) Passes the practical demonstration: *Provided*, That the
15 practical demonstration approved by the commissioner may be
16 administered on-site by a qualified company representative:
17 *Provided, however*, That any person who documents at least
18 two thousand hours of on-the-job experience operating a crane
19 during the preceding four years next prior to filing for applica-
20 tion or the successful completion of a training course approved
21 by the commissioner is entitled to certification without a
22 practical demonstration under this article if the person applies
23 for certification no later than the first day of September, two
24 thousand one, meets all other requirements and pays applicable
25 application and 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 equivalent
30 physician's certificate as approved by the commissioner; and,

31 (6) Pays the application, training or examination fees as is
32 appropriate.

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

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

45 (d) Notwithstanding any other provision of this article to
46 the contrary, the commissioner shall establish a dual classifica-
47 tion system of certification no later than the first day of
48 January, two thousand one. One classification will provide
49 eligibility for national certification, and the applicant must
50 achieve a passing score of seventy on the national commission
51 for the certification of crane operators written examination. To
52 be classified for West Virginia certification, the commissioner
53 may accept a lesser score on the national commission for the
54 certification of crane operators written examination: *Provided*,
55 That this score may not be less than sixty for state certification:
56 *Provided, however*, That the successful completion of a training
57 course approved by the commissioner may be substituted for
58 the written examination and for the practical demonstration if
59 the applicant applies for certification no later than the first day
60 of September, two thousand one. The commissioner shall
61 propose a legislative rule as to the dual classification system no
62 later than the first day of July, two thousand.

§21-3D-6. Effect of accident.

1 (a) The commissioner may suspend or revoke the certifica-
2 tion of a person involved in an accident relating to the operation
3 of a crane by that person: *Provided*, That no disciplinary action
4 against a crane operator may be imposed without a proper prior
5 notice as served under section one, article two, chapter fifty-six

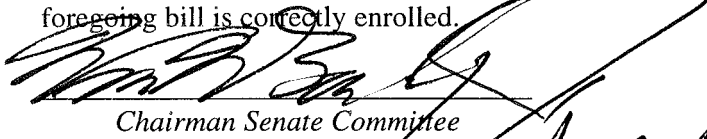
6 of this code, and hearing held before the commissioner or his or
7 her designee wherein the crane operator will be provided the
8 opportunity to present evidence in person, by counsel or both
9 and after which, the commissioner finds a violation of this
10 article has occurred, the commissioner may impose any
11 disciplinary action permitted in this article: *Provided, however,*
12 That the provisions of subsection (e) of section seven of this
13 article have not been met.

14 (b) If the commissioner makes a finding that the accident
15 was caused by the actions or omissions of the certificate holder,
16 the commissioner may require the certificate holder to retake
17 and pass the written certification examination, or practical
18 demonstration or both the certification examination and the
19 practical demonstration or successfully completes a training
20 course approved by the commissioner before the certificate
21 holder may apply to have the certification reinstated.

§21-3D-9. Reciprocity.

1 To the extent that other states provide for the certification
2 of crane operators for similar action, the commissioner, in his
3 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.

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



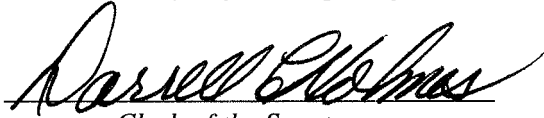
Chairman Senate Committee



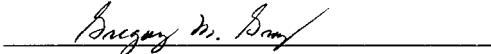
Chairman House Committee

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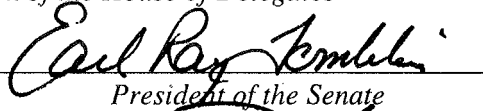
In effect ninety days from passage.



Clerk of the Senate



Clerk of the House of Delegates

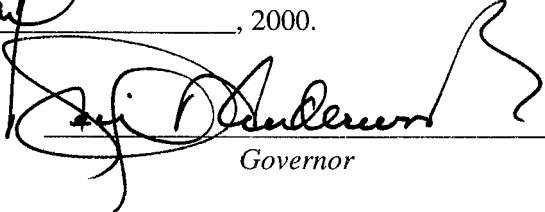


President of the Senate



Speaker of the House of Delegates

The within approved this the 7th
day of April, 2000.



Governor

PRESENTED TO THE

GOVERNOR

Date 3/31/00

Time 3:50 pm