WEST VIRGINIA LEGISLATURE
SECOND REGULAR SESSION, 2000

ENROLLED

COMMITTEE SUBSTITUTE
FOR
House Bill No. 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 division of labor, or his or her authorized representative.

3 (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 mean a forklift, digger derrick truck, bucket truck or any vehicle, aircraft or helicopter, or equipment which does not have a power-operated winch and load line.

4 (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.

5 (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.

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

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

(a) Commencing with the first day of September, two thousand one 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, two thousand, which rules at the minimum must include provisions for:

(1) Certification of individuals who operate cranes in the state of West Virginia, which certification process must include a written examination and a practical demonstration, and must 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 must be a separate rule and provide for the implementation of the practical examination on or before the first day of July, two thousand one: Provided, however, That the successful completion of a training course approved by the commissioner may be substituted for the written examination and for the practical demonstration as set forth in section four of this article.

(2) Certification categories that must 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 must include a written examination and a current physician’s certificate at least every five years: Provided, That the successful completion of a training course approved by the commissioner may be substituted for the written examination.
(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 and training course fees in an amount not to exceed the actual cost of the examination and the training course.

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

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

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

(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: Provided, That any person who documents at least two thousand hours of on-the-job experience operating a crane during the four years immediately preceding filing for application, or successfully completes a training course approved by the commissioner, and applies for certification no later that the first day of September, two thousand one, and meets all other requirements and pays all applicable fees, is entitled to certification without a written examination;

(4) Passes the practical demonstration: Provided, That the practical demonstration approved by the commissioner may be administered on-site by a qualified company representative: Provided, however, 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 or the successful completion of a training course approved by the commissioner is entitled to certification without a practical demonstration under this article if the person applies for certification no later than the first day of September, two thousand one, 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, training or examination fees as is appropriate.

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

(d) Notwithstanding any other provision of this article to the contrary, the commissioner shall establish a dual classification system of certification no later than the first day of January, two thousand one. One classification will provide eligibility for national certification, and the applicant must achieve a passing score of seventy on the national commission for the certification of crane operators written examination. To be classified for West Virginia certification, the commissioner may accept a lesser score on the national commission for the certification of crane operators written examination: Provided, That this score may not be less than sixty for state certification: Provided, however, That the successful completion of a training course approved by the commissioner may be substituted for the written examination and for the practical demonstration if the applicant applies for certification no later than the first day of September, two thousand one. The commissioner shall propose a legislative rule as to the dual classification system no later than the first day of July, two thousand.


(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 written certification examination, or practical demonstration or both the certification examination and the practical demonstration or successfully completes a training course approved by the commissioner before the certificate holder may apply to have the certification reinstated.

§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 or without the required training 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.
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originating in the House.

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 __________ day of __________, 2000.

Governor
PRESENTED TO THE GOVERNOR

Date 3/31/02
Time 3:50 pm