

HB 3076

FILED

2009 APR 11 PM 3: 02

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

# WEST VIRGINIA LEGISLATURE

FIRST REGULAR SESSION, 2009



# ENROLLED

COMMITTEE SUBSTITUTE

FOR

**House Bill No. 3076**

(By Delegates Martin, Walker, Butcher, D. Poling,  
M. Poling, Boggs, Perry, Caputo, Hamilton and Ellem)



Passed April 7, 2009

In Effect Ninety Days from Passage

ENROLLED FILED

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FOR

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

**H. B. 3076**

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(BY DELEGATES MARTIN, WALKER, BUTCHER, D. POLING,  
M. POLING, BOGGS, PERRY, CAPUTO, HAMILTON AND ELLEM)

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[Passed April 7, 2009; in effect ninety days from passage.]

AN ACT to amend and reenact §21-3D-1, §21-3D-2, §21-3D-3, §21-3D-4, and §21-3D-7 of the Code of West Virginia, 1931, as amended, all relating to the regulation and operation of cranes; providing new definition for tower crane; establishing certification renewal requirements for crane operators; providing for automatic certification of certain crane operators; and creating a penalty for operation of tower cranes without certification.

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

That §21-3D-1, §21-3D-2, §21-3D-3, §21-3D-4, and §21-3D-7 of the Code of West Virginia, 1931, 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  
5 used in construction, demolition or excavation work, which  
6 has a power-operated winch and load line and a power-  
7 operated boom that moves laterally by the rotation of the  
8 machine on a carrier, and which has a manufacturer's rated  
9 lifting capacity of five tons or more. "Crane" does not mean  
10 a forklift, digger derrick truck, bucket truck or any vehicle,  
11 aircraft or helicopter, or equipment which does not have a  
12 power-operated winch and 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) "Tower crane" means a crane in which a boom,  
22 swinging jib, or other structural member is mounted on a  
23 vertical mast or tower.

24 (g) "Training or training course" means a course  
25 approved by the commissioner which includes some form of  
26 testing throughout, or a final written examination or practical  
27 test, or both, which ensures, or tends to ensure that learning

28 has occurred and that the objectives of the training have been  
29 realized. The commissioner will evaluate whether the  
30 approved training adequately demonstrates competency to  
31 safely operate cranes.

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

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

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

6 (1) Is a member of the Armed Forces of the United States  
7 or an employee of the United States, when such member or  
8 employee is engaged in the work of a crane operator  
9 exclusively for such governmental unit; or

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

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

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

17 (5) Is under the direct supervision of a certified crane  
18 operator and:

19 (A) Who is enrolled in an industry recognized in-house  
20 training course based on the American National Standards  
21 Institute Standards for Crane Operators and who is employed  
22 by the entity that either taught the training course or

23 contracted to have the training course taught, all of which is  
24 approved by the commissioner; or

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

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

42 (8) Is operating timbering harvesting machinery  
43 associated with the production of timber and the  
44 manufacturing of wood 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, which rules at the minimum must include  
5 provisions for:

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

21 (2) Certification categories including lattice boom truck  
22 cranes; lattice boom crawler cranes; fixed cab-telescoping  
23 boom cranes; swing cab-telescoping boom cranes; and tower  
24 cranes: *Provided*, That the holders of a certification for the  
25 large telescoping boom crane, upon application for  
26 recertification, will be provided with a one time election to  
27 either be certified as an operator of a fixed-cab or swing-cab  
28 telescoping boom crane, and that holders of a certification for  
29 the small telescoping boom crane, upon application for  
30 recertification, will be automatically certified as a fixed cab  
31 operator.

32 (3) Certification renewal requirements of individuals who  
33 operate cranes in the State of West Virginia, that may not be  
34 more restrictive than those prescribed for the individual's  
35 initial certification, but must include a written examination  
36 and a current physician's certificate at least every five years:  
37 *Provided*, That the successful completion of a training course  
38 approved by the commissioner may be substituted for the  
39 written examination.

40 (b) Prescribe application forms for original and renewal  
41 certification.

42 (c) Set application fees in amounts that are reasonable  
43 and necessary to defray the costs of the administration of this  
44 article in an amount not to exceed \$75 per year.

45 (d) Set examination and training course fees in an amount  
46 not to exceed the actual cost of the examination and the  
47 training course.

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

51 (f) Determine the standards for acceptable performance  
52 on the written examination, practical demonstration and the  
53 required training course: *Provided*, That the minimum  
54 standards must be consistent with national standards, current  
55 operating procedures and technology and be transferable to  
56 other states where possible: *Provided, however*, That the  
57 commissioner shall develop standards and criteria to establish  
58 a dual classification system of certification and implement  
59 this dual system of certification no later than January 1, 2001.

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

63 (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  
6 any person who documents at least two thousand hours  
7 of on-the-job experience operating a crane during the  
8 four years immediately preceding filing for application,  
9 or successfully completes a training course approved by  
10 the commissioner, and applies for certification no later  
11 than September 1, 2001, and meets all other  
12 requirements and pays all applicable fees, is entitled to  
13 certification without a written examination;

14 (4) Passes the practical demonstration: *Provided*, That the  
15 practical demonstration approved by the commissioner may  
16 be administered on-site by a qualified company  
17 representative: *Provided, however*, That any person who  
18 documents at least two thousand hours of on-the-job  
19 experience operating a crane during the preceding four years  
20 next prior to filing for application or the successful  
21 completion of a training course approved by the  
22 commissioner is entitled to certification without a practical  
23 demonstration under this article if the person applies for  
24 certification no later than September 1, 2001, meets all other  
25 requirements and pays applicable application and  
26 examination fees;

27 (5) Presents the original, or a photographic copy, of a  
28 physician's certificate that he or she is physically qualified to  
29 drive a commercial motor vehicle as required by 49 C.F.R.  
30 §391.41, as of the effective date of this article or an  
31 equivalent physician's certificate as approved by the  
32 commissioner; and

33 (6) Pays the appropriate fees.



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

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

45 (d) Notwithstanding any other provision of this article to  
46 the contrary, the commissioner shall establish a dual  
47 classification system of certification no later than January 1,  
48 2001. One classification will provide eligibility for national  
49 certification, and the applicant must achieve a passing score  
50 of seventy on the national commission for the certification of  
51 crane operators written examination. To be classified for  
52 West Virginia certification, the commissioner may accept a  
53 lesser score on the national commission for the certification  
54 of crane operators written examination: *Provided*, That this  
55 score may not be less than sixty for state certification:  
56 *Provided, however*, That the successful completion of a  
57 training course approved by the commissioner may be  
58 substituted for the written examination and for the practical  
59 demonstration if the applicant applies for certification no  
60 later than September 1, 2001. The commissioner shall  
61 propose a legislative rule as to the dual classification system  
62 no later than July 1, 2000.

#### §21-3D-7. Penalties.

1 (a) A person required to obtain certification under this  
2 article, who operates a crane or tower crane without

3 certification, is guilty of a misdemeanor and, upon conviction  
4 thereof, shall be fined not less than \$50 nor more than \$500  
5 for each violation.

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

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

10 (2) Under the influence of any controlled substance, as  
11 defined by subdivision (d), section one hundred one, article  
12 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 not  
17 less than \$100 nor more than \$1,000. In addition to the fine,  
18 the Commissioner of Labor shall revoke the person's  
19 certification for not less than one year.

20 (c) An employer who knowingly employs, permits or  
21 directs a person to operate a crane or tower crane without  
22 proper certification is guilty of a misdemeanor and, upon  
23 conviction thereof, shall be fined not less than \$100 nor more  
24 than \$1,000 for each violation.

25 (d) A person, operating a crane or tower crane, who fails  
26 to produce the certification within twenty-four hours after  
27 request of the commissioner or his or her authorized  
28 representative, is guilty of a misdemeanor and, upon  
29 conviction thereof, shall be fined not less than \$50 nor more  
30 than \$100.

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

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


47 (2) If, upon examination of the transcript of the judgment  
48 of conviction, the commissioner shall determine that the  
49 person was convicted for any of the offenses described in this  
50 section, the commissioner shall make and enter an order  
51 revoking or suspending the person's certificate to operate a  
52 crane or tower crane in this state. The order shall contain the  
53 reasons for the revocation or suspension and the revocation  
54 or suspension periods provided by this article or by rule.  
55 Further, the order shall give the procedures for requesting a  
56 hearing. The person shall be advised in the order that  
57 because of the receipt of a transcript of the judgment of  
58 conviction by the commissioner a presumption exists that the  
59 person named in the transcript of the judgment of conviction  
60 is the person named in the commissioner's order and such  
61 constitutes sufficient evidence to support revocation or  
62 suspension and that the sole purpose for the hearing held  
63 under this section is for the person requesting the hearing to  
64 present evidence that he or she is not the person named in the

65 transcript of the judgment of conviction. A copy of the order  
66 shall be forwarded to the person by registered or certified  
67 mail, return receipt requested. No revocation or suspension  
68 shall become effective until ten days after receipt of a copy  
69 of the order; and

70 (3) The provisions of this subsection do not apply if an  
71 order reinstating the crane or tower crane operator's  
72 certification of the person has been entered by the  
73 commissioner prior to the receipt of the transcript of the  
74 judgment of conviction; and

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

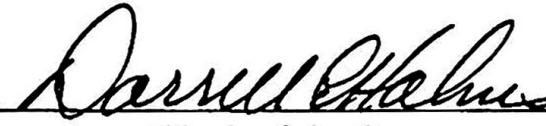
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

  
\_\_\_\_\_  
Chairman Senate Committee

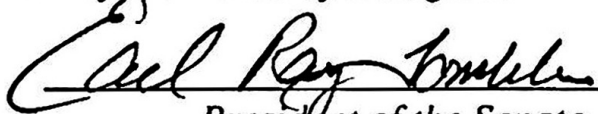
  
\_\_\_\_\_  
Chairman House Committee

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 is approved this the 11<sup>th</sup>  
day of April, 2009.

  
\_\_\_\_\_  
Governor

PRESENTED TO THE  
GOVERNOR

APR 9 2009

Time 4:20pm