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
(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.]

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.

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 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.

(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.

(f) “Tower crane” means a crane in which a boom, swinging jib, or other structural member is mounted on a vertical mast or tower.

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

(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
(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 timber harvesting machinery associated with the production of timber and the manufacturing of wood products.


1 The commissioner shall:

2 (a) Propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code, which rules at the minimum must include provisions for:
(1) Certification of individuals who operate cranes or tower 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 and personnel certification accreditation standards; 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 July 1, 2001: 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 including lattice boom truck cranes; lattice boom crawler cranes; fixed cab-telescoping boom cranes; swing cab-telescoping boom cranes; and tower cranes: Provided, That the holders of a certification for the large telescoping boom crane, upon application for recertification, will be provided with a one time election to either be certified as an operator of a fixed-cab or swing-cab telescoping boom crane, and that holders of a certification for the small telescoping boom crane, upon application for recertification, will be automatically certified as a fixed cab operator.

(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.
(a) 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 $75 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.

(c) 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 January 1, 2001.

(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 (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 than September 1, 2001, 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 September 1, 2001, 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 appropriate 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.

(c) Notwithstanding any other provision of this section, the Division of Labor may issue a temporary certification, to expire on January 1, 2001, 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 July 1, 2000.

(d) Notwithstanding any other provision of this article to the contrary, the commissioner shall establish a dual classification system of certification no later than January 1, 2001. 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 September 1, 2001. The commissioner shall propose a legislative rule as to the dual classification system no later than July 1, 2000.

§21-3D-7. Penalties.

(a) A person required to obtain certification under this article, who operates a crane or tower crane without
certification, is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $50 nor more than $500 for each violation.

(b) No person may knowingly or intentionally drive or operate a crane or tower 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 $100 nor more than $1,000. 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 or tower crane without proper certification is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $100 nor more than $1,000 for each violation.

(d) A person, operating a crane or tower 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 $50 nor more than $100.
(c) 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 or tower crane in this state. The order shall contain the reasons for the revocation or suspension and the revocation or suspension periods provided 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 do not apply if an order reinstating the crane or tower 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.
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

[Signature]

Chairman House Committee

[Signature]

Originating in the House.

In effect ninety days from passage.

Clerk of the Senate

[Signature]

Clerk of the House of Delegates

[Signature]

President of the Senate

[Signature]

Speaker of the House of Delegates

[Signature]

The within approved this the 11th day of April, 2009.

Governor

[Signature]
PRESENTED TO THE GOVERNOR

APR 9 2009

Time [Signature]