WEST VIRGINIA LEGISLATURE
SECOND REGULAR SESSION, 2012

ENROLLED

COMMITTEE SUBSTITUTE
FOR
House Bill No. 4422

(By Delegates Butcher, Walker, D. Poling, Boggs, Caputo, Martin, Stephens, Diserio, Storch, Hamilton and Ellem)

Passed March 10, 2012

To Take 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-9 of the Code of West Virginia, 1931, as amended, all relating to crane operator certification; redefining a crane for the purposes of the act; clarifying those persons who are exempted from certification; expanding the type of equipment for which certification is required to operate; requiring adherence to standards established by the Occupational Safety and Health Administration of the United States Department of Labor; clarifying the minimum requirements for certification; authorizing the Commissioner of Labor to issue notices to cease and desist unlawful practices; authorizing the Commissioner of Labor to apply to the circuit court for injunctive relief; limiting reciprocity provisions; deleting obsolete provisions; and requiring certain crane operators to hold certain classes of certification as of November 10, 2014.

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-9 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 more than two thousand pounds. “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 Department of Defense or 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 an Operator-in-Training 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.


(a) The commissioner shall:
(1) 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:

(A) A Class A certification program for individuals who operate cranes or tower cranes in the State of West Virginia, which must require both a written examination and a practical demonstration, and which must be accredited by the American National Standards Institute’s Personnel Certification Accreditation Program;

(B) A Class B certification program for individuals who operate cranes or tower cranes in the State of West Virginia, which must require the successful completion of a training course;

(C) 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;

(D) Class A certification renewal requirements of individuals who operate cranes in the State of West Virginia, that must include a written examination and a current physician’s certificate at least every five years; and

(E) Class B certification renewal requirements of individuals who operate cranes in the State of West Virginia,
that must include the successful completion of a training course approved by the commissioner;

(2) Prescribe application forms for original and renewal certification;

(3) 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;

(4) Set examination and training course fees in an amount not to exceed the actual cost of the examination and the training course;

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

(6) 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;

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

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

(b) The commissioner, or his or her designee, upon receipt of information that a person has engaged in or is engaging in an act that constitutes a violation of this article, may issue a notice to the person to cease and desist and may apply to the circuit court for an order enjoining the act. Upon
§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 the practical demonstration approved by the commissioner may be administered on-site by a qualified company representative;

(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 article to the contrary, the commissioner shall establish a dual classification system of certification as follows:

a showing that the person has engaged in or is engaging in an act that constitutes a violation of this article, the court may order an injunction, restraining order or other order as the court considers appropriate.
(1) Class A certification, which will provide eligibility for national certification, and for which the applicant must achieve a passing score of seventy on the national commission for the certification of crane operators written examination;

(2) Class B certification, for which 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 Class B certification.

(d) On and after November 10, 2014:

(1) All individuals who operate cranes in the State of West Virginia which are governed by the provisions of the Occupational Safety and Health Administration of the United States Department of Labor, 29 C.F.R § 1926.1400, Subpart CC, are required to hold a Class A certification; and

(2) All individuals who operate cranes in the State of West Virginia which are not governed by any provision of the Occupational Safety and Health Administration of the United States Department of Labor are required to hold a Class B certification.

§21-3D-9. Reciprocity.

The commissioner, in his or her discretion, may grant certification to persons certified by other states, without examination or without the required training upon satisfactory proof that the qualifications for the applicants are equal to the qualifications of this state: Provided, That the other states extend similar reciprocity privileges to persons certified by this state.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman, House Committee

Chairman, Senate Committee

Originating in the House.

To take effect ninety days from passage.

Clerk of the House of Delegates

Clerk of the Senate

Speaker of the House of Delegates

President of the Senate

The within ___ days of passage, this the ___ day of ___ , 2012.

Governor
PRESENTED TO THE GOVERNOR

MAR 27 2012

Time 1:30 pm