

1 **ENGROSSED**

2 **COMMITTEE SUBSTITUTE**

3 **FOR**

4 **H. B. 4422**

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

8 [Originating in the Committee on Government Organization.]

9 (February 7, 2012)

10

11 A BILL to amend and reenact §21-3D-1, §21-3D-2, §21-3D-3, §21-3D-4
12 and §21-3D-9 of the Code of West Virginia, 1931, as amended,
13 all relating to crane operator certification; redefining the
14 term "crane;" expanding the type of equipment for which
15 certification is required to operate; requiring adherence to
16 standards established by the Occupational Safety and Health
17 Administration of the United States Department of Labor;
18 eliminating the dual classification system as of November 10,
19 2014; authorizing the Commissioner of Labor to issue notices
20 to cease and desist unlawful practices; authorizing the
21 Commissioner of Labor to apply to the circuit court for
22 injunctive relief; limiting reciprocity provisions; and
23 deleting obsolete provisions.

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

25 That §21-3D-1, §21-3D-2, §21-3D-3, §21-3D-4 and §21-3D-9 of
26 the Code of West Virginia, 1931, as amended, be amended and

1 reenacted, all to read as follows:

2 **ARTICLE 3D. CRANE OPERATOR CERTIFICATION ACT.**

3 **§21-3D-1. Definitions.**

4 For purposes of this article:

5 (a) "Commissioner" means the Commissioner of the Division of
6 Labor, or his or her authorized representative.

7 (b) "Crane" means a power-operated hoisting machine used in
8 construction, demolition or excavation work, which has a power-
9 operated winch and load line and a power-operated boom that moves
10 laterally by the rotation of the machine on a carrier, and which
11 has a manufacturer's rated lifting capacity of ~~five tons or~~ more
12 than two thousand pounds. "Crane" does not mean a forklift, digger
13 derrick truck, bucket truck or any vehicle, aircraft or helicopter,
14 or equipment which does not have a power-operated winch and load
15 line.

16 (c) "Emergency basis" means an occurrence of an event,
17 circumstance or situation that presents an imminent threat to
18 persons or property and constitutes a serious health or safety
19 hazard.

20 (d) "Employer" means any person, firm, corporation or other
21 entity who hires or permits any individual to work.

22 (e) "Employee" means any individual employed by an employer
23 and also as defined by the commissioner.

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

26 (g) "Training or training course" means a course approved by

1 the commissioner which includes some form of testing throughout, or
2 a final written examination or practical test, or both, which
3 ensures, or tends to ensure that learning has occurred and that the
4 objectives of the training have been realized. The commissioner
5 will evaluate whether the approved training adequately demonstrates
6 competency to safely operate cranes.

7 **§21-3D-2. Certification required; exemptions.**

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

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

13 (1) Is a member of the Department of Defense or Armed Forces
14 of the United States or an employee of the United States, when such
15 member or employee is engaged in the work of a crane operator
16 exclusively for such governmental unit; or

17 (2) Is primarily an operator of farm machinery who is
18 performing the work of a crane operator as part of an agricultural
19 operation; or

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

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

23 (5) Is an Operator-in-Training under the direct supervision of
24 a certified crane operator and:

25 (A) Who is enrolled in an industry recognized in-house
26 training course based on the American National Standards Institute

1 Standards for Crane Operators and who is employed by the entity
2 that either taught the training course or contracted to have the
3 training course taught, all of which is approved by the
4 commissioner; or

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

8 (6) Is an employee of and operating a crane at the direction
9 of any manufacturing plant or other industrial establishment,
10 including any mill, factory, tannery, paper or pulp mill, mine,
11 colliery, breaker or mineral processing operation, quarry, refinery
12 or well or is an employee of and operating a crane at the direction
13 of the person, firm or corporation who owns or is operating such
14 plant or establishment;

15 (7) Is an employee of a public utility operating a crane to
16 perform work in connection with facilities used to provide a public
17 service under the jurisdiction of the Public Service Commission,
18 Federal Energy Regulatory Commission or Federal Communications
19 Commission; or

20 (8) Is operating timbering harvesting machinery associated
21 with the production of timber and the manufacturing of wood
22 products.

23 **§21-3D-3. Powers and duties of commissioner.**

24 (a) The commissioner shall:

25 ~~(a)~~ (1) Propose rules for legislative approval in accordance
26 with the provisions of article three, chapter twenty-nine-a of this

1 code, which rules at the minimum must include provisions for:

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

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

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

1 that holders of a certification for the small telescoping boom
2 crane, upon application for recertification, will be automatically
3 certified as a fixed cab operator;

4 ~~(3)~~ (D) Class A certification renewal requirements of
5 individuals who operate cranes in the State of West Virginia, that
6 ~~may not be more restrictive than those prescribed for the~~
7 ~~individual's initial certification, but~~ must include a written
8 examination and a current physician's certificate at least every
9 five years; ~~Provided, That~~ and

10 (E) Class B certification renewal requirements of individuals
11 who operate cranes in the State of West Virginia, that must include
12 the successful completion of a training course approved by the
13 commissioner; ~~may be substituted for the written examination.~~

14 ~~(b)~~ (2) Prescribe application forms for original and renewal
15 certification;

16 ~~(c)~~ (3) Set application fees in amounts that are reasonable
17 and necessary to defray the costs of the administration of this
18 article in an amount not to exceed \$75 per year;

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

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

25 ~~(f)~~ (6) Determine the standards for acceptable performance on
26 the written examination, practical demonstration and the required

1 training course: *Provided*, That the minimum standards must be
2 consistent with national standards, current operating procedures
3 and technology and be transferable to other states where possible;
4 ~~*Provided, however, That the commissioner shall develop standards*~~
5 ~~*and criteria to establish a dual classification system of*~~
6 ~~*certification and implement this dual system of certification no*~~
7 ~~*later than January 1, 2001;*~~

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

11 ~~(h)~~ (8) Take other action as necessary to enforce this
12 article.

13 (b) The commissioner, or his or her designee, upon receipt of
14 information that a person has engaged in or is engaging in an act
15 that constitutes a violation of this article, may issue a notice to
16 the person to cease and desist and may apply to the circuit court
17 for an order enjoining the act. Upon a showing that the person has
18 engaged in or is engaging in an act that constitutes a violation of
19 this article, the court may order an injunction, restraining order
20 or other order as the court considers appropriate.

21 **§21-3D-4. Minimum certification requirements.**

22 (a) The commissioner shall certify an applicant who:

23 (1) Is at least eighteen years of age;

24 (2) Meets the application requirements as prescribed by rule;

25 (3) Passes the written examination; ~~;*—Provided, That any*~~
26 ~~*person who documents at least two thousand hours of on-the-job*~~

~~1 experience operating a crane during the four years immediately
2 preceding filing for application, or successfully completes a
3 training course approved by the commissioner, and applies for
4 certification no later than September 1, 2001, and meets all other
5 requirements and pays all applicable fees, is entitled to
6 certification without a written examination;~~

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

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

23 (6) Pays the appropriate fees.

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

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

9 ~~(d)~~ (c) Notwithstanding any other provision of this article to
10 the contrary, the commissioner shall establish a dual
11 classification system of certification ~~no later than January 1,~~
12 ~~2001.~~ as follows:

13 (1) One classification Class A certification, which will
14 provide eligibility for national certification, and for which the
15 applicant must achieve a passing score of seventy on the national
16 commission for the certification of crane operators written
17 examination;

18 (2) To be classified for West Virginia certification Class B
19 certification, for which the commissioner may accept a lesser score
20 on the national commission for the certification of crane operators
21 written examination: *Provided,* That this score may not be less
22 than sixty for ~~state~~ Class B certification. ~~*Provided, however,*~~
23 ~~That the successful completion of a training course approved by the~~
24 ~~commissioner may be substituted for the written examination and for~~
25 ~~the practical demonstration if the applicant applies for~~
26 ~~certification no later than September 1, 2001. The commissioner~~

1 ~~shall propose a legislative rule as to the dual classification~~
2 ~~system no later than July 1, 2000.~~

3 (d) On and after November 10, 2014:

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

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

13 **§21-3D-9. Reciprocity.**

14 ~~To the extent that other states provide for the certification~~
15 ~~of crane operators for similar action, the The commissioner, in his~~
16 ~~or her discretion, may grant certification of the same or~~
17 ~~equivalent classification to persons certified by other states,~~
18 ~~without examination or without the required training upon~~
19 ~~satisfactory proof ~~furnished to the commissioner~~ that the~~
20 ~~qualifications for the applicants are equal to the qualifications~~
21 ~~of the holders of similar certification in this state: and upon~~
22 ~~payment of the required application fee Provided, That the other~~
23 ~~states extend similar reciprocity privileges to persons certified~~
24 ~~by this state.~~