

CHAPTER 21: LABOR

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§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.

§21-3D-3. Powers and duties of commissioner:

(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 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.

§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:

(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-5. Denial, suspension, revocation, or reinstatement of certification:

- (a) The commissioner may deny, suspend, revoke or reinstate certification.
- (b) A violation of this article or rule adopted pursuant to this article is grounds for the denial, suspension, revocation or refusal to reinstate certification and permits the imposition of disciplinary action: *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 an opportunity for hearing held before the commissioner or his designee wherein the crane operator will be provided the opportunity to present evidence in person, by counsel or both and after which, if 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.
- (c) Operation of a crane in violation of this article or other provision of this code may result in the suspension of certification for not less than twenty-four hours nor more than one year, or revocation of certification until reinstated.
- (d) Each certified crane operator shall carry proof of certification on his or her person during operation of a crane.
- (e) A person whose certification has been revoked may apply for certification one year after the date of the revocation.

§21-3D-6. Effect of accident:

(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-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.

(e) 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.

§21-3D-8. Crane operator certification fund; fees; disposition of funds:

(a) There is hereby established a crane operator certification fund in the state treasurer's office.

(b) The commissioner may set reasonable application fees for the issuance or renewal of certificates and other services associated with crane operator certification.

(c)(1) The commissioner shall receive and account for all money that is derived pursuant to the provisions of this article. The commissioner shall pay all money collected into the crane operator certification fund that has been established pursuant to subsection (a), section eight of this article, with the exception of money received as fines. This money shall be used exclusively by the commissioner for purposes of administration and enforcement of his or her duties pursuant to this article.

(2) Expenditures from the crane operator certification fund shall be for the purposes set forth in this article and are not authorized from collections but are to be made only in accordance with appropriation by the Legislature in accordance with the provisions of article three, chapter twelve of this code and upon the fulfillment of the provisions set forth in article two, chapter five-a of this code: *Provided*, That for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-nine, expenditures are authorized from collections rather than pursuant to an appropriation by the Legislature. Amounts collected which are found from time to time to exceed the funds needed for purposes set forth in this article may be transferred to other accounts or funds and redesignated for other purposes by appropriation of the Legislature.

§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.