

No. 2008-100

AN ACT

HB 647

Relating to crane operator licensure; establishing the State Board of Crane Operators; conferring powers and imposing duties relative to regulating the practice of crane operation; imposing penalties; and making an appropriation.

TABLE OF CONTENTS

Chapter 1. Preliminary Provisions

Section 101. Short title.

Section 102. Definitions.

Chapter 3. State Board of Crane Operators

Section 301. Board.

Section 302. Powers and duties of board.

Chapter 5. Licensure

Section 501. Licensure.

Section 502. Qualifications.

Section 503. Crane operators in other states, territories or Dominion of Canada.

Section 504. Duration of license.

Section 505. Reporting of multiple licensure.

Section 506. License without certification.

Chapter 7. Administration and Enforcement

Section 701. Fees, fines and civil penalties.

Section 702. Violation of act.

Section 703. Refusal, suspension or revocation of license.

Section 704. Suspensions and revocations.

Section 705. Temporary and automatic suspensions.

Section 706. Reinstatement of license.

Section 707. Surrender of suspended or revoked license.

Section 708. Injunction.

Section 709. Subpoenas and oaths.

Chapter 21. Miscellaneous Provisions

Section 2101. Appropriation.

Section 2102. Regulations.

Section 2103. Effective date.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

CHAPTER 1
PRELIMINARY PROVISIONS

Section 101. Short title.

This act shall be known and may be cited as the Crane Operator Licensure Act.

Section 102. Definitions.

The following words and phrases when used in this act shall have the meanings given to them in this section unless the context clearly indicates otherwise:

“Board.” The State Board of Crane Operators.

“Certification.” Certification from the National Commission for the Certification of Crane Operators or another organization found by the State Board of Crane Operators (NCCCO) to offer an equivalent testing and certification program meeting the applicable requirements of the American Society of Mechanical Engineers ASME B30.5 as relating to mobile cranes, ASME B30.3 or the requirements of ASME B30.4 as relating to tower cranes and the accreditation requirements of the National Commission for Certifying Agencies or the American National Standards Institute.

“Commissioner.” The Commissioner of Professional and Occupational Affairs within the Department of State.

“Conviction.” Includes a judgment, an admission of guilt or a plea of nolo contendere.

“Crane.” A power-operated hoisting machine that has a power-operated winch, load line and boom moving laterally by the rotation of the machine on a carrier or base which has a manufacturer’s rated maximum lifting capacity of 15 tons or more as specified in ASME B30.5 and includes a derrick, crawler crane and wheel-mounted crane of both truck and self-propelled wheel type. The term includes a tower crane, which has a manufacturer’s rated maximum lifting capacity of ten meter tons or more, as specified in ASME B30.3 and ASME B30.4. The term does not include a crane or drag line used in coal mining operations, forklift, digger derrick truck, aircraft, bucket truck, vehicle or machine not having a power-operated winch, tow truck or wrecking crane when used for towing or vehicle recovery, locomotive crane, load line or crane used in longshore or other intermodal operations or a crane used in manufacturing applications.

“Crane operator.” An individual licensed by the State Board of Crane Operators to operate a crane.

“Department.” The Department of State of the Commonwealth.

“Immediate supervision.” Circumstances in which the crane operator is in the immediate area of the trainee, within visual sighting distance and able to effectively communicate with the trainee.

“Trainee.” An individual who has not been issued a license under this act or obtained certification but who is authorized to operate a crane as set forth in this act when under the immediate supervision of a crane operator.

CHAPTER 3
STATE BOARD OF CRANE OPERATORS

Section 301. Board.

(a) Establishment.—There is hereby established the State Board of Crane Operators within the department.

(b) Composition.—The board shall consist of the following:

(1) The commissioner.

(2) Two public members.

(3) Four professional members. Professional members shall have been actively engaged in crane-related operations in this Commonwealth for at least five years immediately preceding appointment. Except as set forth in subsection (f), professional members shall be licensed under this act as crane operators.

(c) Meeting.—The board shall meet within 30 days after the appointment of the initial members and shall:

(1) Establish procedures for the board's operation and administration of this act.

(2) Develop application forms for licensure.

(3) Circulate application forms.

(4) Educate the public regarding the requirements of being licensed to operate a crane and to hold oneself out as a crane operator in this Commonwealth.

(d) Term of membership.—Professional and public members shall be appointed by the Governor with the advice and consent of the Senate. Professional and public members shall be citizens of the United States and residents of this Commonwealth. Except as provided in subsection (e), professional and public members shall serve a term of four years or until a successor has been appointed and qualified but in no event longer than six months beyond the four-year period. In the event that a member dies or resigns or otherwise is disqualified during the term of office, a successor shall be appointed in the same way and with the same qualifications and shall hold office for an unexpired term. A professional or public member shall not be eligible to hold more than two consecutive terms.

(e) Initial appointments.—For professional and public members first appointed to the board pursuant to this act, the term of office shall be as follows:

(1) Three members shall serve for a term of four years.

(2) Two members shall serve for a term of three years.

(3) One member shall serve for a term of two years.

(f) Professional members and initial appointments.—A professional member initially appointed to the board pursuant to this act need not be licensed at the time of appointment but at the time of appointment must have satisfied eligibility requirements for licensure, including holding current certification, as a crane operator as provided in this act.

(g) Quorum.—A majority of the members of the board shall constitute a quorum. Except for temporary and automatic suspensions under section 705, a member may not be counted as part of a quorum or vote on any issue unless the member is physically in attendance at the meeting.

(h) Chairperson.—The board shall select annually a chairperson from among its members.

(i) Expenses.—With the exception of the commissioner, each member of the board shall receive \$60 per diem when actually attending to the work of the board. A member shall also receive the amount of reasonable traveling, hotel and other necessary expenses incurred in the performance of the member's duties in accordance with Commonwealth regulations.

(j) Forfeiture.—A professional or public member who fails to attend three consecutive meetings shall forfeit the member's seat unless the commissioner, upon written request from the member, finds that the member should be excused from a meeting because of illness or the death of a family member.

(k) Training seminars.—A public member who fails to attend two consecutive statutorily mandated training seminars in accordance with section 813(e) of the act of April 9, 1929 (P.L.177, No.175), known as The Administrative Code of 1929, shall forfeit the member's seat unless the commissioner, upon written request from the public member, finds that the public member should be excused from a meeting because of illness or the death of a family member.

(l) Frequency of meetings.—The board shall meet at least four times a year in the City of Harrisburg and at such additional times as may be necessary to conduct the business of the board.

Section 302. Powers and duties of board.

The board shall have the following powers and duties:

(1) To provide for and regulate the licensing of individuals engaged in operating a crane.

(2) To issue licenses, renew licenses, reinstate licenses, refuse to renew, suspend and revoke licenses as provided in this act.

(3) To administer and enforce the provisions of this act.

(4) To investigate applications for licensure and to determine the eligibility of an individual applying for licensure.

(5) To promulgate and enforce regulations, not inconsistent with this act, as necessary only to carry into effect the provisions of this act. This paragraph includes the setting of fees and the adoption of standards for certification of crane operators. Regulations shall be adopted in conformity with the provisions of the act of July 31, 1968 (P.L.769, No.240), referred to as the Commonwealth Documents Law, and the act of June 25, 1982 (P.L.633, No.181), known as the Regulatory Review Act.

(6) To keep minutes and records of all its transactions and proceedings.

(7) To submit annually to the department an estimate of financial requirements of the board for its administrative, legal and other expenses.

(8) To submit annually a report to the Consumer Protection and Professional Licensure Committee of the Senate and the Professional Licensure Committee of the House of Representatives. The report shall include a description of the types of complaints received, status of cases, the action which has been taken and the length of time from initial complaint to final resolution.

(9) To submit annually to the Appropriations Committee of the Senate and the Appropriations Committee of the House of Representatives, 15 days after the Governor has submitted a budget to the General Assembly, a copy of the budget request for the upcoming fiscal year which the board previously submitted to the department.

CHAPTER 5 LICENSURE

Section 501. Licensure.

(a) General rule.—Except as provided in subsection (c), an individual may not operate a crane, offer himself for employment as an individual who may operate a crane or hold himself out as a crane operator unless licensed by the board.

(b) Business entities.—Except as provided in subsection (c), an individual, corporation, partnership, firm or other entity shall not employ an individual to operate a crane or allow or direct an individual to operate a crane unless the individual is licensed under this act.

(c) Trainee.—For purposes of acquiring the experience necessary to obtain certification, a trainee who has passed a written examination of the National Commission for the Certification of Crane Operators or of a national association deemed equivalent by the board may operate a crane when under the immediate supervision of a crane operator. In order to qualify as a trainee under this subsection, the individual must be 18 years of age or older and have demonstrated, to the satisfaction of the person employing the crane operator, that the trainee is physically capable of operating a crane.

(d) Duty of crane operator.—When providing immediate supervision to a trainee pursuant to subsection (c), the crane operator shall have no other duties.

(e) Title.—An individual who holds a license as a crane operator or is maintained on inactive status pursuant to section 504(b) shall have the right to use the title “licensed crane operator” and the abbreviation “L.C.O.” No other individual shall use the title “licensed crane operator” or the abbreviation “L.C.O.” Except as provided in subsection (c), no other individual shall hold himself out as being able to operate a crane or being authorized to operate a crane.

(f) Additional requirement.—A license to operate a crane shall be valid only in conjunction with certification if the licensee maintains a current certification in the specialty for which the crane operator is certified.

(g) Specialties.—The board shall establish specialties for licensure. Specialties shall include:

- (1) Tower crane.
- (2) Lattice boom crawler.
- (3) Lattice boom truck.
- (4) Telescopic boom crane with a rotating control station.
- (5) Telescopic boom crane with a fixed control station.
- (6) Any other specialty deemed appropriate by the board.

Section 502. Qualifications.

(a) General rule.—To be eligible to apply for licensure, an applicant must fulfill the following requirements:

- (1) Be of good moral character.
- (2) Be 18 years of age or older.
- (3) Hold current certification.
- (4) Pay the fee set by the board.

(b) Renewal of license.—In the case of a licensee applying for renewal of license where certification will expire before the biennial renewal cycle will expire, the licensee shall submit evidence satisfactory to the board that the licensee has renewed certification. Failure to maintain certification or to submit evidence of renewal of certification shall subject the licensee to disciplinary action. The board shall promulgate regulations setting forth the evidence necessary to demonstrate renewal of certification as provided in this subsection.

(c) Convictions prohibited.—

(1) The board shall not issue a license to an individual who has been convicted of a felony under the act of April 14, 1972 (P.L.233, No.64), known as The Controlled Substance, Drug, Device and Cosmetic Act, or an offense under the laws of another jurisdiction which, if committed in this Commonwealth, would be a felony under The Controlled Substance, Drug, Device and Cosmetic Act unless:

- (i) at least ten years have elapsed from the date of conviction;
- (ii) the individual satisfactorily demonstrates to the board that the individual has made significant progress in personal rehabilitation since the conviction such that licensure of the individual should not be expected to create a substantial risk of harm to the health and safety of crane operators, trainees or the public or a substantial risk of further criminal violations; and
- (iii) the individual otherwise satisfies the qualifications provided in this act.

(2) An individual's statement on the application declaring the absence of a conviction shall be deemed satisfactory evidence of the absence of a conviction, unless the board has some evidence to the contrary.

Section 503. Crane operators in other states, territories or Dominion of Canada.

The board may issue a license to an individual who has licensure or its equivalent as a crane operator in any other state or territory of the United

States or the Dominion of Canada, if all of the following requirements are met:

- (1) The individual is currently certified by the National Commission for the Certification of Crane Operators.
- (2) The individual meets the requirements set forth in section 502.
- (3) The individual pays the required fee.

Section 504. Duration of license.

(a) Duration of license.—A license issued pursuant to this act shall be on a biennial basis. The biennial expiration date shall be established by the board in consultation with the commissioner. Application for renewal of a license shall biennially be forwarded to an individual holding a current license prior to the expiration date of the current renewal biennium. The application form must indicate whether certification will expire before the biennial renewal cycle will expire.

(b) Inactive status.—An individual licensed under this act may request an application for inactive status. The application form may be completed and returned to the board. Upon receipt of an application, the individual shall be maintained on inactive status without fee and shall be entitled to apply for a licensure renewal at any time. An individual who requests the board to activate his license and who has been on inactive status for a period of five consecutive years shall, prior to receiving an active license, satisfy the requirements of the board's regulations for ensuring continued competence, including holding current certification and remitting the required fee. The board shall promulgate regulations to carry into effect the provisions of this subsection.

Section 505. Reporting of multiple licensure.

A crane operator who is also licensed to operate a crane in any other state, territory, possession of the United States or country shall report this information to the board on the biennial registration application. A licensee shall report any disciplinary action taken in another state, territory, possession of the United States or country to the board on the biennial registration application or within 90 days of final disposition, whichever is sooner. Multiple licensure shall be noted by the board on the crane operator's record, and the state, territory, possession or country shall be notified of any disciplinary actions taken by the board against the crane operator in this Commonwealth.

Section 506. License without certification.

(a) Eligibility.—For a period of one year following the effective date of this section, an individual shall be eligible for licensure without certification, as required by this act, if the individual:

- (1) meets the qualifications under section 502, except section 502(a)(3) and the requirements set forth in either paragraph (2) or (3) of this subsection;
- (2) has passed a practical examination administered by NCCCO. Proof of successful completion of the practical examination shall be provided to the board; or

(3) can document five or more years' experience immediately preceding the date of application for licensure to operate a crane as defined in this act. Licenses granted under this provision shall be issued only for the operation of cranes where documentation, acceptable to the board, has been provided. Licenses issued pursuant to this section shall only authorize the operation of a crane within the experience documented and accepted by the board.

(b) **Renewal.**—Licenses issued under this section are not required to obtain certification for purposes of biennial renewal under section 502(b).

CHAPTER 7 ADMINISTRATION AND ENFORCEMENT

Section 701. Fees, fines and civil penalties.

(a) **Fees.**—All fees required under this act shall be fixed by the board by regulation and shall be subject to the act of June 25, 1982 (P.L.633, No.181), known as the Regulatory Review Act. If the revenues raised by the fees, fines and civil penalties imposed under this act are not sufficient to meet expenditures over a two-year period, the board shall increase those fees by regulation so that projected revenues will meet or exceed projected expenditures.

(b) **Fee increase.**—If the Bureau of Professional and Occupational Affairs determines that the fees established by the board under subsection (a) are inadequate to meet the minimum enforcement efforts required by this act, then the bureau, after consultation with the board and subject to the Regulatory Review Act, shall increase the fees by regulation in an amount such that adequate revenues are raised to meet the required enforcement effort.

(c) **Deposit of fees.**—All fees, fines and civil penalties imposed in accordance with this act shall be paid into the Professional Licensure Augmentation Account established pursuant to, and for use in accordance with, the act of July 1, 1978 (P.L.700, No.124), known as the Bureau of Professional and Occupational Affairs Fee Act.

(d) **Permitted fees.**—The board may charge a fee, as set by the board by regulation, for licensure, for renewing licensure and for other services of the board as permitted by this act or by regulation.

Section 702. Violation of act.

(a) **Criminal penalty.**—A person violating¹ a provision of this act or a regulation of the board commits a misdemeanor of the third degree and shall, upon conviction, be sentenced to pay a fine of not more than \$1,000 or to imprisonment for not more than six months for the first violation. For the second and each subsequent conviction, the person, upon conviction, shall be sentenced to pay a fine of not more than \$2,000 or to imprisonment for not less than six months or more than one year, or both.

¹“penalty.—Violating” in enrolled bill.

(b) Civil penalty.—In addition to any other civil remedy or criminal penalty provided for in this act, the board, by a vote of the majority of the maximum number of the authorized membership of the board as provided by law or by a vote of the majority of the duly qualified and confirmed membership or a minimum of five members, whichever is greater, may levy a civil penalty of up to \$1,000 on any of the following:

(1) A crane operator who violates a provision of this act.

(2) An individual who operates a crane in violation of this act.

(3) An individual who holds himself out as a crane operator without being properly licensed as provided in this act. This paragraph shall not apply to a trainee under section 501(c).

(4) A person that violates section 501(b).

(c) Procedure.—The board shall levy the civil penalty set forth in subsection (b) only after affording the accused the opportunity for a hearing as provided in 2 Pa.C.S. (relating to administrative law and procedure).

Section 703. Refusal, suspension or revocation of license.

(a) General rule.—The board may refuse, suspend or revoke a license in a case where the board finds:

(1) The licensee is negligent or incompetent in operating a crane.

(2) The licensee is unable to operate a crane with reasonable skill and safety by reason of mental or physical illness or condition or physiological or psychological dependence upon alcohol, hallucinogenic or narcotic drugs or other drugs which tend to impair judgment or coordination, so long as such dependence shall continue. In enforcing this paragraph, the board shall, upon probable cause, have authority to compel a licensee to submit to a mental or physical examination as designated by the board. After notice, hearing, adjudication and appeal failure of a licensee to submit to such examination when directed shall constitute an admission of the allegations unless failure is due to circumstances beyond the licensee's control, consequent upon which a default and final order may be entered without the taking of testimony or presentation of evidence. A licensee affected under this paragraph shall at reasonable intervals be afforded the opportunity to demonstrate that the licensee can resume competent, safe and skillful operation of a crane.

(3) The licensee has willfully or repeatedly violated any of the provisions of this act or a regulation of the board.

(4) The licensee has committed fraud or deceit in:

(i) the operation of a crane; or

(ii) securing licensure or certification.

(5) The licensee has been convicted of a felony or a crime of moral turpitude, or received probation without verdict, disposition in lieu of trial or an Accelerated Rehabilitative Disposition in the disposition of felony charges in the courts of this Commonwealth, the United States or any other state, territory, possession of the United States or any other country.

(6) The licensee has had the licensee's license suspended or revoked or has received other disciplinary action by the proper licensing authority in another state, territory, possession of the United States or country.

(7) With respect to the operation of a crane, the licensee has acted in such a manner as to present an immediate and clear danger to health, safety or property.

(8) The licensee possessed, used, acquired or distributed a controlled substance.

(9) The licensee has been found guilty of unprofessional conduct. Unprofessional conduct shall include departure from or failing to conform to operating practices or professional standards embraced by the crane operating profession, including those recognized by the American Society of Mechanical Engineers ASME B30.5 and an agency of the Federal Government. In a proceeding based on this paragraph, actual injury to a person or damage to property need not be established.

(10) The licensee falsely advertised or made misleading, deceptive, untrue or fraudulent material representations regarding licensure, certification or operation of a crane.

(b) Acts authorized.—When the board finds that the license of crane operator may be refused, revoked or suspended pursuant to subsection (a), the board may:

(1) Deny the application for a license.

(2) Administer a public reprimand.

(3) Revoke, suspend, limit or otherwise restrict a license.

(4) Require a licensee to submit to the care, counseling or treatment of a physician or a psychologist designated by the board.

(5) Suspend enforcement of its finding and place a licensee on probation with the right to vacate the probationary order for noncompliance.

(6) Restore or reissue, in its discretion, a suspended license and impose any disciplinary or corrective measure which it might originally have imposed.

Section 704. Suspensions and revocations.

Disciplinary action shall be imposed only by majority vote of the members of the board after a hearing. An action of the board shall be taken subject to the right of notice, hearing and adjudication and the right of appeal, in accordance with 2 Pa.C.S. (relating to administrative law and procedure). The board, by majority action, may reissue a license which has been suspended. If a license has been revoked, the board shall reissue a license only in accordance with section 706.

Section 705. Temporary and automatic suspensions.

(a) General rule.—A license issued under this act may be temporarily suspended under circumstances determined by the board to be an immediate and clear danger to public health or safety. The board shall issue an order to that effect without a hearing, but upon due notice, to the licensee concerned at the licensee's last known address, which shall include a written statement

of all allegations against the licensee. The provisions of section 704 shall not apply to temporary suspension. Formal action to suspend, revoke or restrict the license of the crane operator shall be commenced as otherwise provided for in this act. All actions shall be taken promptly and without delay. Within 30 days following the issuance of an order temporarily suspending a license, the board shall conduct or cause to be conducted a preliminary hearing to determine that there is a prima facie case supporting the suspension. The crane operator whose license has been temporarily suspended may be present at the preliminary hearing and may be represented by counsel, cross-examine witnesses, inspect physical evidence, call witnesses, offer evidence and testimony and make a record of the proceedings. If it is determined that there is not a prima facie case, the suspended license shall be immediately restored. The temporary suspension shall remain in effect until vacated by the board, but in no event longer than 180 days.

(b) Commitment of crane operator.—A license issued under this act shall automatically be suspended upon the legal commitment of a crane operator to an institution because of mental incompetency from any cause upon filing with the board a certified copy of such commitment, conviction of a felony under the act of April 14, 1972 (P.L.233, No.64), known as The Controlled Substance, Drug, Device and Cosmetic Act, or conviction of an offense under the laws of another jurisdiction, which, if committed in Pennsylvania, would be a felony under The Controlled Substance, Drug, Device and Cosmetic Act. Automatic suspension under this subsection shall not be stayed pending an appeal of a conviction. Restoration of the license shall be made as provided in the case of revocation or suspension of a license.

Section 706. Reinstatement of license.

Unless ordered to do so by the Commonwealth Court or an appeal therefrom, the board shall not reinstate the license of an individual which has been revoked. An individual whose license has been revoked may reapply for a license after a period of at least five years but must meet all of the licensing requirements of this act.

Section 707. Surrender of suspended or revoked license.

The board shall require an individual whose license has been suspended or revoked to return the license in such manner as the board directs. Failure to do so, upon conviction thereof, shall be a misdemeanor of the third degree.

Section 708. Injunction.

Whenever, in the judgment of the board, a person has engaged in an act or practice which constitutes or will constitute a violation of this act, the board or its agents may make application to the appropriate court for an order enjoining such act or practice and, upon a showing by the board that the person has engaged or is about to engage in such act or practice, an injunction, restraining order or such order as may be appropriate shall be granted by the court. The remedy by injunction is in addition to any other civil or criminal prosecution and punishment.

Section 709. Subpoenas and oaths.

(a) Authority granted.—The board shall have the authority to issue subpoenas, upon application of an attorney responsible for representing the Commonwealth in disciplinary matters before the board, for the purpose of investigating alleged violations of the act or regulation of the board. The board shall have the power to subpoena witnesses, to administer oaths, to examine witnesses and to take such testimony or compel the production of such books, records, papers and documents as it may deem necessary or proper in and pertinent to any proceeding, investigation or hearing held or had by the board. The board is authorized to apply to the Commonwealth Court to enforce its subpoenas. The court may impose limitations on the scope of the subpoena as is necessary to prevent unnecessary intrusion into client confidential information.

(b) Disciplinary matters.—An attorney responsible for representing the Commonwealth in disciplinary matters before the board shall maintain current records of all reported alleged violations and periodically review the records for the purpose of determining that each alleged violation has been resolved in a timely manner.

CHAPTER 21 MISCELLANEOUS PROVISIONS

Section 2101. Appropriation.

The sum of \$85,000, or as much thereof as may be necessary, is hereby appropriated from the Professional Licensure Augmentation Account to the department for the payment of costs associated with processing licenses and renewing licenses, for the operation of the board and for other costs associated with this act. The appropriation shall be repaid by the board within three years of the beginning of issuance of licenses by the board.

Section 2102. Regulations.

Within 18 months of the effective date of this section, the board shall promulgate regulations to carry out this act.

Section 2103. Effective date.

This act shall take effect as follows:

- (1) This section shall take effect immediately.
- (2) Sections 501, 503, 702 and 706 shall take effect in 24 months.
- (3) The remainder of this act shall take effect in 60 days.

APPROVED—The 9th day of October, A.D. 2008.

EDWARD G. RENDELL