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HOUSE BILL 768

49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009

INTRODUCED BY

Rodolpho "Rudy" S. Martinez

AN ACT

RELATING TO LICENSING; MAKING AMENDMENTS TO THE HOISTING
OPERATORS SAFETY ACT; CLARIFYING LICENSE REQUIREMENTS AND
EXEMPTIONS; PROVIDING FOR ADMINISTRATIVE PENALTIES RATHER THAN
CRIMINAL OR CIVIL PENALTIES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 60-15-4 NMSA 1978 (being Laws 1993,
Chapter 183, Section 4, as amended) is amended to read:

"60-15-4. LICENSE REQUIRED--EXEMPTION.--

A. No person shall operate hoisting equipment in
construction, demolition or excavation work when the hoisting
equipment is used to hoist or lower individuals or material
unless the person is licensed under the Hoisting Operators
Safety Act or the operation is exempt pursuant to Subsection M
of Section 60-15-3 NMSA 1978.

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1 B. ~~[A person who has successfully completed an~~
2 ~~in-house training course approved by the hoisting operators~~
3 ~~licensure examining council may operate hoisting equipment~~
4 ~~without a license as required by Subsection A of this section~~
5 ~~for a period of one year after successful completion of that~~
6 ~~course. One year after successful completion of an in-house~~
7 ~~training course approved by the council, a person must be~~
8 ~~licensed pursuant to Section 60-15-7 NMSA 1978, except that the~~
9 ~~requirement for passing a written examination pursuant to that~~
10 ~~section shall be waived.] Operating hoisting equipment without~~
11 ~~a license shall be considered unlicensed operation and shall~~
12 ~~subject the person who is operating the hoisting equipment and~~
13 ~~the employer, or the employer's representative, that allows a~~
14 ~~person not licensed under the Hoisting Operators Safety Act to~~
15 ~~operate hoisting equipment to the penalties as provided in that~~
16 ~~act.~~

17 C. The ~~[operator's]~~ licensee's employer is subject
18 to applicable regulations controlling the use and operation of
19 cranes as promulgated by the occupational safety and health
20 administration, the mine safety and health administration or
21 the American national standards institute."

22 Section 2. Section 60-15-7 NMSA 1978 (being Laws 1993,
23 Chapter 183, Section 7, as amended) is amended to read:

24 "60-15-7. REQUIREMENTS FOR LICENSURE.--

25 A. The department shall issue a license for a class

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1 I hoisting operator with a conventional crane, hydraulic crane
2 or tower crane endorsement to ~~[a person]~~ an applicant who files
3 a completed application, accompanied by the required fees, and
4 who submits satisfactory evidence that ~~[he]~~ the applicant:

5 (1) is at least twenty-one years of age;

6 (2) has passed a written examination as
7 prescribed by the department or has successfully completed an
8 employer's in-house training program approved by the council;

9 (3) has had a physical examination, including
10 substance abuse testing, within the twelve-month period
11 preceding the date of ~~[his]~~ application, showing that the
12 applicant is in satisfactory physical condition for performing
13 the functions of a class I hoisting operator; and

14 ~~[(4) has had at least three years' experience~~
15 ~~in operating hoisting equipment with a manufacturer's rating~~
16 ~~capacity equal to or greater than fifty tons and a boom length~~
17 ~~of one hundred feet for a conventional crane endorsement,~~
18 ~~equipment with a manufacturer's rating capacity equal to or~~
19 ~~greater than one hundred tons and a boom length of one hundred~~
20 ~~feet for a hydraulic crane endorsement or a tower crane of any~~
21 ~~size or type for a tower crane endorsement or otherwise~~
22 ~~demonstrates his operating experience and competency by~~
23 ~~completing an examination]~~

24 (4) has completed at least five hundred hours
25 of seat time in the type of hoisting equipment for which the

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1 applicant seeks an endorsement and license or has successfully
2 passed a practical examination administered by a council-
3 approved examining vendor or completed an employer's in-house
4 training course approved by the council in the type of hoisting
5 equipment for which the applicant seeks an endorsement and
6 license.

7 B. The department shall issue a license for a class
8 II hoisting operator to ~~[a person]~~ an applicant who files a
9 completed application, accompanied by the required fees, and
10 who submits satisfactory evidence that ~~[he]~~ the applicant:

11 (1) is at least eighteen years of age;

12 (2) has passed a written examination
13 prescribed by the department or has successfully completed an
14 employer's in-house training course approved by the council;

15 (3) has had a physical examination, including
16 substance abuse testing, within the twelve-month period
17 preceding the date of ~~[his]~~ application, showing that the
18 applicant is in satisfactory physical condition for performing
19 the functions of a class II hoisting operator; and

20 (4) has ~~[had at least two years' experience]~~
21 completed at least five hundred hours of seat time in the
22 actual operation of hydraulic cranes with over ten tons and up
23 to one hundred tons lifting capacity with a maximum boom length
24 of one hundred fifty feet, regardless of mounting or means of
25 mobility or ~~[otherwise demonstrates his operating experience]~~

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1 ~~and competency by examination prescribed by the department]~~ has
2 successfully passed a practical examination administered by a
3 council-approved examining vendor or has completed an
4 employer's in-house training course approved by the council in
5 the type of hoisting equipment for which the applicant seeks a
6 license.

7 C. A class II hoisting operator who seeks to become
8 licensed as a class I hoisting operator shall keep a log book
9 of [~~his~~] the class II hoisting operator's seat time and must
10 accumulate five hundred hours of seat time under the direct
11 supervision of a class I hoisting operator.

12 D. The department shall issue a license for a class
13 III hoisting operator to [~~a person~~] an applicant who files a
14 completed application, accompanied by the required fees, and
15 who submits satisfactory evidence that [~~he~~] the applicant:

- 16 (1) is at least eighteen years of age;
17 (2) has passed an examination prescribed by
18 the department; and
19 (3) has had a physical examination, including
20 substance abuse testing, within the twelve-month period
21 preceding the date of [~~his~~] application, showing that the
22 applicant is in satisfactory physical condition for performing
23 the functions of a class III hoisting operator.

24 E. A class III hoisting operator who seeks to
25 become licensed as a class I or class II hoisting operator

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1 shall keep a log book of [~~his~~] the class III hoisting
2 operator's seat time and must accumulate five hundred hours of
3 seat time [~~or six thousand hours of experience~~] under the
4 direct supervision of a class I or class II hoisting operator
5 who is properly licensed in the kind of crane being operated.

6 F. A class III hoisting operator shall not operate
7 hoisting equipment unless under the direct supervision of a
8 class I or class II hoisting operator who is properly licensed
9 in the type of hoisting equipment being operated.

10 G. The department shall issue a temporary hoisting
11 operator license to an applicant who files a completed
12 application, accompanied by the required fees, and who submits
13 satisfactory evidence that the applicant:

14 (1) is at least eighteen years of age;

15 (2) is participating in an in-house training
16 course approved by the council; and

17 (3) has had a physical examination, including
18 substance abuse testing, within the twelve-month period
19 preceding the date of application, showing that the applicant
20 is in satisfactory physical condition for performing the
21 functions of a hoisting operator.

22 H. A hoisting operator with a temporary license
23 shall only operate hoisting equipment for the employer who
24 provided the approved in-house training course and shall not
25 operate hoisting equipment unless under the direct supervision

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1 of a class I or class II hoisting operator who is properly
2 licensed in the type of hoisting equipment being operated.

3 I. A temporary hoisting operator license shall be
4 valid for two years and is not subject to extension or renewal.

5 J. A person with a temporary hoisting operator
6 license may be granted a class III license pursuant to Section
7 60-15-7 NMSA 1978, except the requirement for passing a written
8 examination pursuant to Section 60-15-7 NMSA 1978 shall be
9 waived."

10 Section 3. Section 60-15-8 NMSA 1978 (being Laws 1993,
11 Chapter 183, Section 8, as amended) is amended to read:

12 "60-15-8. LICENSE RENEWAL.--

13 A. A license issued pursuant to Section 60-15-7
14 NMSA 1978 shall be valid for two years from the date of
15 issuance.

16 B. License renewal procedures shall be prescribed
17 by the department by [~~regulation~~] rule.

18 [~~C. A person who is employed as a class I hoisting~~
19 ~~operator, a class II hoisting operator or a class III hoisting~~
20 ~~operator after his license has expired is guilty of a~~
21 ~~misdemeanor and shall be punished by a fine of not less than~~
22 ~~one hundred dollars (\$100) or more than three hundred dollars~~
23 ~~(\$300) or by imprisonment for not more than six months or~~
24 ~~both.~~]

25 C. Any license not renewed by the expiration date

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1 shall be considered expired, and the licensee shall not operate
2 hoisting equipment within the state until the license is
3 renewed. Operating hoisting equipment with an expired license
4 shall be considered unlicensed operation and subject the person
5 who is operating the hoisting equipment to the penalties as
6 provided in the Hoisting Operators Safety Act.

7 D. The department shall adopt and promulgate rules
8 for renewal of an expired license and may require the licensee
9 to reapply as a new applicant."

10 Section 4. Section 60-15-9 NMSA 1978 (being Laws 1993,
11 Chapter 183, Section 9) is amended to read:

12 "60-15-9. LICENSE FEES.--Applicants for licensure shall
13 pay ~~[a fee]~~ nonrefundable licensing fees set by the department
14 not to exceed:

15 A. ~~[seventy-five dollars (\$75.00)]~~ two hundred
16 dollars (\$200) for an initial license or a renewal; and

17 B. administrative or reinstatement fees not to
18 exceed one thousand dollars (\$1,000)

19 ~~[B. five dollars (\$5.00) per month in late fees for~~
20 ~~failure to renew a license within the allocated time period]."~~

21 Section 5. Section 60-15-11 NMSA 1978 (being Laws 1993,
22 Chapter 183, Section 11, as amended) is amended to read:

23 "60-15-11. ~~[REPRIMAND--FINES--SUSPENSION OR REVOCATION OF~~
24 ~~LICENSE]~~ CEASE AND DESIST--INJUNCTIVE PROCEEDINGS--
25 VIOLATIONS.--~~[The department may reprimand or fine a licensee~~

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1 ~~or suspend or revoke the license of a licensee, pursuant to the~~
2 ~~findings of a hearing of the council, for negligent or reckless~~
3 ~~operation of hoisting equipment, violation of the rules and~~
4 ~~regulations adopted by the department or for any violation of~~
5 ~~the provisions of the Hoisting Operators Safety Act.]~~

6 A. Notwithstanding any other provision of the
7 Hoisting Operators Safety Act, the department upon reasonable
8 cause that a violation of the provisions of the Hoisting
9 Operators Safety Act or a rule adopted pursuant to that act has
10 occurred that creates a health or safety risk for the
11 community, which requires immediate enforcement, may issue a
12 cease and desist order to require a person to cease violations.
13 At any time after service of the order to cease and desist, the
14 person may request a prompt hearing to determine whether a
15 violation occurred. If a person fails to comply with a cease
16 and desist order within twenty-four hours, the department may
17 bring a suit for a temporary restraining order and for
18 injunctive relief to prevent further violations.

19 B. Whenever the department possesses evidence that
20 indicates a person has engaged in or intends to engage in an
21 act or practice constituting a violation of the Hoisting
22 Operators Safety Act or a rule adopted pursuant to that act,
23 the department may seek temporarily or permanently to restrain
24 or to enjoin the act or practice. The department shall not be
25 required to post a bond when seeking a temporary or permanent

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1 injunction.

2 C. Unless otherwise provided in the Hoisting
3 Operators Safety Act, it is a violation of that act for a
4 person to:

5 (1) operate or employ a person to operate
6 hoisting equipment in construction, demolition or excavation
7 work in this state without possessing a valid license issued
8 pursuant to the Hoisting Operators Safety Act;

9 (2) refuse to comply with a cease and desist
10 order issued by the department;

11 (3) refuse or fail to comply with the
12 provisions of the Hoisting Operators Safety Act or a rule
13 adopted pursuant to that act;

14 (4) make a material misstatement in an
15 application for licensure;

16 (5) intentionally make a material misstatement
17 to the department during an official investigation;

18 (6) aid or abet another in violating
19 provisions of the Hoisting Operators Safety Act, or a rule
20 adopted pursuant to that act;

21 (7) alter or falsify a license issued by the
22 department; or

23 (8) fail to furnish to the department, its
24 investigators or its representatives information requested by
25 the department in the course of an official investigation.

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1 D. Disciplinary proceedings may be instituted by
2 sworn complaint by any person, including department staff or a
3 committee member, and shall conform with the provisions of the
4 Uniform Licensing Act.

5 E. The department may issue a citation and fine to
6 an individual or business for violation of the provisions of
7 the Hoisting Operators Safety Act. The amount of such fines
8 and terms of such orders shall be established by the department
9 by rule subject to the limitations of Section 60-15-13 NMSA
10 1978."

11 Section 6. Section 60-15-13 NMSA 1978 (being Laws 1993,
12 Chapter 183, Section 13, as amended) is amended to read:

13 "60-15-13. [~~VIOLATIONS--CRIMINAL~~] CIVIL AND
14 ADMINISTRATIVE PENALTIES.--

15 A. A person who [~~operates a crane without a~~
16 ~~hoisting operator's license is guilty of a misdemeanor and~~
17 ~~shall be punished by a fine of not less than one hundred~~
18 ~~dollars (\$100) or more than three hundred dollars (\$300) or by~~
19 ~~imprisonment of not more than six months or both] engages in
20 unlicensed operation may be assessed an administrative penalty
21 not to exceed ten thousand dollars (\$10,000).~~

22 B. An employer, [~~or his representative who~~
23 ~~knowingly, willingly or intentionally allows a person not~~
24 ~~licensed under the Hoisting Operators Safety Act to operate~~
25 ~~hoisting equipment is guilty of a misdemeanor and shall be~~

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1 ~~punished by a fine of not more than five hundred dollars (\$500)~~
2 ~~or imprisonment of not more than six months or both] firm,~~
3 ~~partnership, corporation, association or other organization~~
4 ~~that knowingly violates the provisions of the Hoisting~~
5 ~~Operators Safety Act may be assessed an administrative penalty~~
6 ~~not to exceed twenty-five thousand dollars (\$25,000).~~

7 C. ~~[Any licensed hoisting operator]~~ A licensee who
8 violates ~~[any]~~ a provision of the Hoisting Operators Safety Act
9 may be assessed ~~[a civil]~~ an administrative penalty not to
10 exceed one thousand dollars (\$1,000) for each day ~~[during any~~
11 ~~portion of which]~~ a violation occurs not to exceed ten thousand
12 dollars (\$10,000).

13 D. The department may bring an action in a court of
14 competent jurisdiction to enjoin ~~[any]~~ a person from violating
15 ~~[any]~~ or to enforce the provisions of the Hoisting Operators
16 Safety Act. If the court finds that a violation has occurred,
17 the person who committed the violation shall be liable for the
18 expenses incurred by the department in investigating and
19 enforcing the provisions of that act plus reasonable
20 ~~[attorneys']~~ attorney fees and costs associated with court
21 action.

22 ~~[E. Notwithstanding any other provision of the~~
23 ~~Uniform Licensing Act or the Hoisting Operators Safety Act, the~~
24 ~~department may assess an administrative penalty not to exceed~~
25 ~~one thousand dollars (\$1,000) for any violation specified in~~

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1 ~~the Hoisting Operators Safety Act in addition to or instead of~~
2 ~~revocation or suspension of a license.]"~~

3 Section 7. Section 60-15-14 NMSA 1978 (being Laws 1993,
4 Chapter 183, Section 14, as amended) is amended to read:

5 "60-15-14. HOISTING OPERATORS LICENSURE EXAMINING
6 COUNCIL--APPOINTED--POWERS AND DUTIES.--

7 A. The "hoisting operators licensure examining
8 council" is created. The superintendent shall appoint no fewer
9 than five members to the council with consideration being given
10 to geographical representation. One member of the council
11 shall be a class I hoisting operator; another member of the
12 council shall be a contractor, as defined by Section 60-13-3
13 NMSA 1978, who employs one or more hoisting operators; one
14 member shall be a representative of organized labor; and the
15 other members shall be public members who are not licensed
16 hoisting operators. The members of the council shall serve at
17 the pleasure of the superintendent. ~~[and their duties shall~~
18 ~~include]~~ Members of the council are entitled to per diem and
19 mileage as provided for nonsalaried public employees in the Per
20 Diem and Mileage Act and shall receive no other compensation,
21 perquisite or allowance.

22 B. The duties of the council shall include:

23 ~~[A.]~~ (1) reviewing and approving the
24 applications, qualifications and examinations of applicants for
25 licensure as hoisting operators and recommending to the

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1 superintendent whether licensure should be granted based on
2 their evaluation of the operating experience and competence of
3 the applicants;

4 [B-] (2) reporting findings and
5 recommendations from the hearings to the superintendent; and

6 [C-] (3) proceeding according to regulations
7 adopted by the department."

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