

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.

B. Operating hoisting equipment without a license shall be considered unlicensed operation and shall subject the person who is operating the hoisting equipment and the employer, or the employer's representative, that allows a person not licensed under the Hoisting Operators Safety Act to operate hoisting equipment to the penalties as provided in that act.

C. The licensee and the licensee's employer shall be subject to applicable regulations controlling the use and

operation of cranes as promulgated by the occupational safety and health administration, the mine safety and health administration or the American national standards institute."

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

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

A. The department shall issue a license for a class I hoisting operator with a conventional crane, hydraulic crane or tower crane endorsement to an applicant who files a completed application, accompanied by the required fees, and who submits satisfactory evidence that the applicant:

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

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

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

(4) within the past three years, has completed at least five hundred hours of seat time in the type of hoisting equipment for which the applicant seeks a license and an endorsement and has successfully passed a practical examination administered by a council-approved examining

vendor or completed an employer's in-house training course approved by the council in the type of hoisting equipment for which the applicant seeks a license and an endorsement.

B. The department shall issue a license for a class II hoisting operator to an applicant who files a completed application, accompanied by the required fees, and who submits satisfactory evidence that the applicant:

(1) is at least eighteen years of age;

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

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

(4) within the past three years, has completed at least five hundred hours of seat time in the actual operation of hydraulic cranes with over ten tons and up to one hundred tons lifting capacity with a maximum boom length of one hundred fifty feet, regardless of mounting or means of mobility and has successfully passed a practical examination administered by a council-approved examining vendor or has completed an employer's in-house training course approved by the council in the type of hoisting equipment for

which the applicant seeks a license.

C. A class II hoisting operator who seeks to become licensed as a class I hoisting operator shall keep a log book of the class II hoisting operator's seat time and must accumulate five hundred hours of seat time under the direct supervision of a class I hoisting operator.

D. The department shall issue a license for a class III hoisting operator to an applicant who files a completed application, accompanied by the required fees, and who submits satisfactory evidence that the applicant:

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

E. A class III hoisting operator who seeks to become licensed as a class I or class II hoisting operator shall keep a log book of the class III hoisting operator's seat time within the past three years and must accumulate five hundred hours of seat time under the direct supervision of a class I or class II hoisting operator who is properly licensed in the kind of crane being operated.

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

G. The department shall recognize an in-house hoisting operator card issued to an applicant who:

- (1) is at least eighteen years of age;
- (2) is participating in an in-house training course approved by the council; and
- (3) has had a physical examination, including substance abuse testing, within the twelve-month period preceding the date of application, showing that the applicant is in satisfactory physical condition for performing the functions of a hoisting operator.

H. A person with an in-house hoisting operator card shall only operate hoisting equipment for the employer who provided the approved in-house training course. The employer of a person with an in-house hoisting operator card shall provide that operator with supervision and additional training by a class I or class II hoisting operator who is properly licensed in the type of hoisting equipment being operated to ensure compliance and safe operation of the hoisting equipment pursuant to the Hoisting Operators Safety Act.

I. An in-house hoisting operator card shall be

valid for two years and is not subject to extension or renewal."

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

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

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

B. License renewal procedures shall be prescribed by the department by rule.

C. Any license not renewed by the expiration date shall be considered expired, and the licensee shall not operate hoisting equipment within the state until the license is renewed. Operating hoisting equipment with an expired license shall be considered unlicensed operation and shall subject the person who is operating the hoisting equipment to the penalties as provided in the Hoisting Operators Safety Act.

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

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

"60-15-11. FINES--DENIAL, SUSPENSION OR REVOCATION OF LICENSE--STOP WORK ORDERS--INJUNCTIVE PROCEEDINGS--

VIOLATIONS.--

A. Notwithstanding any other provision of the Hoisting Operators Safety Act, the department upon reasonable cause that a violation of the provisions of the Hoisting Operators Safety Act or a rule adopted pursuant to that act has occurred that creates a health or safety risk for the community, which requires immediate action, may issue a stop work order. At any time after service of the order to stop work, the person may request a prompt hearing to determine whether a violation occurred. If a person fails to comply with a stop work order within twenty-four hours, the department may bring a suit for a temporary restraining order and for injunctive relief to prevent further violations.

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

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

- (1) operate, or employ a person to operate,

hoisting equipment in construction, demolition or excavation work without a valid license issued pursuant to the Hoisting Operators Safety Act;

(2) refuse to comply with a stop work order issued by the department;

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

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

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

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

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

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

D. The department may deny, suspend or revoke a license for a violation of the rules adopted by the department pursuant to the Hoisting Operators Safety Act or for a violation of the provisions of that act.

E. Disciplinary proceedings may be instituted by sworn complaint by any person, including department staff or a member of the council, and shall conform with the provisions of the Uniform Licensing Act.

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

SECTION 5. Section 60-15-13 NMSA 1978 (being Laws 1993, Chapter 183, Section 13, as amended) is amended to read:

"60-15-13. CIVIL AND ADMINISTRATIVE PENALTIES.--

A. A person who engages in unlicensed operation may be assessed an administrative penalty not to exceed one thousand dollars (\$1,000).

B. An employer, firm, partnership, corporation, association or other organization that knowingly violates the provisions of the Hoisting Operators Safety Act may be assessed an administrative penalty not to exceed five thousand dollars (\$5,000).

C. Any licensed hoisting operator who violates a provision of the Hoisting Operators Safety Act may be assessed an administrative penalty not to exceed five thousand dollars (\$5,000).

D. The department may bring an action in a court of competent jurisdiction to enforce the provisions of or to enjoin a person from violating the provisions of the Hoisting Operators Safety Act. If the court finds that a violation has occurred, the person who committed the violation shall be liable for the expenses incurred by the department in investigating and enforcing the provisions of that act plus reasonable attorney fees and costs associated with court action."

SECTION 6. Section 60-15-14 NMSA 1978 (being Laws 1993, Chapter 183, Section 14, as amended) is amended to read:

"60-15-14. HOISTING OPERATORS LICENSURE EXAMINING COUNCIL--APPOINTED.--

A. The "hoisting operators licensure examining council" is created. The members of the council shall serve at the pleasure of the superintendent. The superintendent shall appoint at least five members to the council with consideration given to geographical representation and proportional representation of operator, contractor, labor and public members. The members of the council shall include at least:

- (1) one class I hoisting operator;
- (2) one contractor, as defined by Section 60-13-3 NMSA 1978, who employs at least one hoisting operator;
- (3) one representative of organized labor;

and

(4) two members from the public at large who are not licensed hoisting operators.

B. The duties of the council include:

(1) reviewing and approving the applications, qualifications and examinations of applicants for licensure as hoisting operators and recommending to the superintendent whether licensure should be granted based on their evaluation of the operating experience and competence of the applicants;

(2) reporting findings and recommendations from the hearings to the superintendent;

(3) proceeding according to regulations adopted by the department; and

(4) approving examinations and training programs that meet the requirements of the federal occupational safety and health administration, United States department of labor or occupational health and safety bureau of the department of environment."

SECTION 7. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2013. _____