

1 HOUSE BILL 393

2 **50TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2011**

3 INTRODUCED BY

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10 AN ACT

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

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

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

19 "60-15-4. LICENSE REQUIRED--EXEMPTION.--

20 A. No person shall operate hoisting equipment in
21 construction, demolition or excavation work when the hoisting
22 equipment is used to hoist or lower individuals or material
23 unless the person is licensed under the Hoisting Operators
24 Safety Act or the operation is exempt pursuant to Subsection M
25 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 and the licensee's
18 employer ~~[is]~~ shall be subject to applicable regulations
19 controlling the use and operation of cranes as promulgated by
20 the occupational safety and health administration, the mine
21 safety and health administration or the American national
22 standards institute."

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

25 "60-15-7. REQUIREMENTS FOR LICENSURE.--

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1 A. The department shall issue a license for a class
2 I hoisting operator with a conventional crane, hydraulic crane
3 or tower crane endorsement to ~~[a person]~~ an applicant who files
4 a completed application, accompanied by the required fees, and
5 who submits satisfactory evidence that ~~[he]~~ the applicant:

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

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

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

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

25 (4) within the past three years, has completed

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

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

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

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

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

21 (4) within the past three years, has ~~[had at~~
22 ~~least two years' experience]~~ completed at least five hundred
23 hours of seat time in the actual operation of hydraulic cranes
24 with over ten tons and up to one hundred tons lifting capacity
25 with a maximum boom length of one hundred fifty feet,

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

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

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

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

25 E. A class III hoisting operator who seeks to

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

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

12 G. The department shall issue an in-house hoisting
13 operator card to an applicant who files a completed
14 application, accompanied by the required fees, and who submits
15 satisfactory evidence that the applicant:

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

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

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

24 H. A person with an in-house hoisting operator card
25 shall only operate hoisting equipment for the employer who

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

8 I. An in-house hoisting operator card shall be
9 valid for two years and is not subject to extension or
10 renewal."

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

13 "60-15-8. LICENSE RENEWAL.--

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

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

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

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

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

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

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

16 A. [~~seventy-five dollars (\$75.00)~~] two hundred
17 dollars (\$200) for an initial license, a change in class or a
18 renewal; and

19 B. [~~five dollars (\$5.00) per month in late fees for~~
20 ~~failure to renew a license within the allocated time period]~~
21 administrative or reinstatement fees not to exceed one thousand
22 dollars (\$1,000)."

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

25 "60-15-11. [~~REPRIMAND~~] FINES--DENIAL, SUSPENSION OR

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1 REVOCATION OF LICENSE--STOP WORK ORDERS--INJUNCTIVE
2 PROCEEDINGS--VIOLATIONS. -- [~~The department may reprimand or fine~~
3 ~~a licensee or suspend or revoke the license of a licensee,~~
4 ~~pursuant to the findings of a hearing of the council, for~~
5 ~~negligent or reckless operation of hoisting equipment,~~
6 ~~violation of the rules and regulations adopted by the~~
7 ~~department or for any violation of the provisions of the~~
8 ~~Hoisting Operators Safety Act.]~~

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

21 B. Whenever the department possesses evidence that
22 indicates a person has engaged in or intends to engage in an
23 act or practice constituting a violation of the Hoisting
24 Operators Safety Act or a rule adopted pursuant to that act,
25 the department may seek temporarily or permanently to restrain

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1 or to enjoin the act or practice. The department shall not be
2 required to post a bond when seeking a temporary or permanent
3 injunction.

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

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

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

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

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

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

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

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

25 (8) fail to furnish to the department, its

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1 investigators or its representatives information requested by
2 the department in the course of an official investigation.

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

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

11 F. The department may issue a citation and fine to
12 an individual or business for violation of the provisions of
13 the Hoisting Operators Safety Act. The amount of such fines
14 and terms of such orders shall be established by the department
15 by rule subject to the limitations of Section 60-15-13 NMSA
16 1978."

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

19 "60-15-13. [~~VIOLATIONS--CRIMINAL~~] CIVIL AND
20 ADMINISTRATIVE PENALTIES.--

21 A. A person who [~~operates a crane without a~~
22 ~~hoisting operator's license is guilty of a misdemeanor and~~
23 ~~shall be punished by a fine of not less than one hundred~~
24 ~~dollars (\$100) or more than three hundred dollars (\$300) or by~~
25 ~~imprisonment of not more than six months or both] engages in~~

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1 unlicensed operation may be assessed an administrative penalty
2 not to exceed one thousand dollars (\$1,000).

3 B. An employer, [~~or his representative who~~
4 ~~knowingly, willingly or intentionally allows a person not~~
5 ~~licensed under the Hoisting Operators Safety Act to operate~~
6 ~~hoisting equipment is guilty of a misdemeanor and shall be~~
7 ~~punished by a fine of not more than five hundred dollars (\$500)~~
8 ~~or imprisonment of not more than six months or both] firm,
9 partnership, corporation, association or other organization
10 that knowingly violates the provisions of the Hoisting
11 Operators Safety Act may be assessed an administrative penalty
12 not to exceed ten thousand dollars (\$10,000).~~

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

19 D. The department may bring an action in a court of
20 competent jurisdiction to enjoin [~~any~~] a person from violating
21 [~~any~~] or to enforce the provisions of the Hoisting Operators
22 Safety Act. If the court finds that a violation has occurred,
23 the person who committed the violation shall be liable for the
24 expenses incurred by the department in investigating and
25 enforcing the provisions of that act plus reasonable

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1 [attorneys¹] attorney fees and costs associated with court
2 action.

3 [E. ~~Notwithstanding any other provision of the~~
4 ~~Uniform Licensing Act or the Hoisting Operators Safety Act, the~~
5 ~~department may assess an administrative penalty not to exceed~~
6 ~~one thousand dollars (\$1,000) for any violation specified in~~
7 ~~the Hoisting Operators Safety Act in addition to or instead of~~
8 ~~revocation or suspension of a license.]"~~

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

11 "60-15-14. HOISTING OPERATORS LICENSURE EXAMINING
12 COUNCIL--APPOINTED.-- ~~[The "hoisting operators licensure~~
13 ~~examining council" is created. The superintendent shall~~
14 ~~appoint no fewer than five members to the council with~~
15 ~~consideration being given to geographical representation. One~~
16 ~~member of the council shall be a class I hoisting operator;~~
17 ~~another member of the council shall be a contractor, as defined~~
18 ~~by Section 60-13-3 NMSA 1978, who employs one or more hoisting~~
19 ~~operators; one member shall be a representative of organized~~
20 ~~labor; and the other members shall be public members who are~~
21 ~~not licensed hoisting operators. The members of the council~~
22 ~~shall serve at the pleasure of the superintendent and their~~
23 ~~duties shall include:]~~

24 A. The "hoisting operator licensure examining
25 council" is created. Members of the council are entitled to

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1 per diem and mileage as provided for nonsalaried public
2 employees pursuant to the Per Diem and Mileage Act and shall
3 receive no other compensation, perquisite or allowance. The
4 members of the council shall serve at the pleasure of the
5 superintendent. The superintendent shall appoint at least five
6 members to the council with consideration given to geographical
7 representation and proportional representation of operator,
8 contractor, labor and public members. The members of the
9 council shall include at least:

10 (1) one class I hoisting operator;

11 (2) one contractor, as defined by Section
12 60-13-3 NMSA 1978, who employs at least one hoisting operator;

13 (3) one representative of organized labor; and

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

16 B. The duties of the council include:

17 ~~[A.]~~ (1) reviewing and approving the
18 applications, qualifications and examinations of applicants for
19 licensure as hoisting operators and recommending to the
20 superintendent whether licensure should be granted based on
21 their evaluation of the operating experience and competence of
22 the applicants;

23 ~~[B.]~~ (2) reporting findings and
24 recommendations from the hearings to the superintendent; ~~and~~

25 ~~C.]~~ (3) proceeding according to regulations

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1 adopted by the department; and
2 (4) approving examinations and training
3 programs that meet the requirements of the federal occupational
4 safety and health administration, United States department of
5 labor or occupational health and safety bureau of the
6 department of environment."

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