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HOUSE BILL 101

**51ST LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2013**

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 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 a license and  
3 an endorsement and has successfully passed a practical  
4 examination administered by a council-approved examining vendor  
5 or 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 a license and an endorsement.

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 in-  
6 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 shall subject the  
6 person who is operating the hoisting equipment to the penalties  
7 as 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 60-15-11 NMSA 1978 (being Laws 1993,  
12 Chapter 183, Section 11, as amended) is amended to read:

13           "60-15-11. ~~[REPRIMAND]~~ FINES--DENIAL, SUSPENSION OR  
14 REVOCAION OF LICENSE--STOP WORK ORDERS--INJUNCTIVE  
15 PROCEEDINGS--VIOLATIONS.--~~[The department may reprimand or fine~~  
16 ~~a licensee or suspend or revoke the license of a licensee,~~  
17 ~~pursuant to the findings of a hearing of the council, for~~  
18 ~~negligent or reckless operation of hoisting equipment,~~  
19 ~~violation of the rules and regulations adopted by the~~  
20 ~~department or for any violation of the provisions of the~~  
21 ~~Hoisting Operators Safety Act.]~~

22           A. Notwithstanding any other provision of the  
23 Hoisting Operators Safety Act, the department upon reasonable  
24 cause that a violation of the provisions of the Hoisting  
25 Operators Safety Act or a rule adopted pursuant to that act has

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1 occurred that creates a health or safety risk for the  
2 community, which requires immediate action, may issue a stop  
3 work order. At any time after service of the order to stop  
4 work, the person may request a prompt hearing to determine  
5 whether a violation occurred. If a person fails to comply with  
6 a stop work order within twenty-four hours, the department may  
7 bring a suit for a temporary restraining order and for  
8 injunctive relief to prevent further violations.

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

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

20 (1) operate, or employ a person to operate,  
21 hoisting equipment in construction, demolition or excavation  
22 work without a valid license issued pursuant to the Hoisting  
23 Operators Safety Act;

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

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

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

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

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

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

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

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

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

24                   F. The department may issue a citation and fine to  
25 an individual or business for violation of the provisions of

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1 the Hoisting Operators Safety Act. The amount of such fines  
2 and terms of such orders shall be established by the department  
3 by rule subject to the limitations of Section 60-15-13 NMSA  
4 1978."

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

7 "60-15-13. [~~VIOLATIONS--CRIMINAL~~] CIVIL AND  
8 ADMINISTRATIVE PENALTIES.--

9 A. A person who [~~operates a crane without a~~  
10 ~~hoisting operator's license is guilty of a misdemeanor and~~  
11 ~~shall be punished by a fine of not less than one hundred~~  
12 ~~dollars (\$100) or more than three hundred dollars (\$300) or by~~  
13 ~~imprisonment of not more than six months or both~~] engages in  
14 unlicensed operation may be assessed an administrative penalty  
15 not to exceed one thousand dollars (\$1,000).

16 B. An employer, [~~or his representative who~~  
17 ~~knowingly, willingly or intentionally allows a person not~~  
18 ~~licensed under the Hoisting Operators Safety Act to operate~~  
19 ~~hoisting equipment is guilty of a misdemeanor and shall be~~  
20 ~~punished by a fine of not more than five hundred dollars (\$500)~~  
21 ~~or imprisonment of not more than six months or both~~] firm,  
22 partnership, corporation, association or other organization  
23 that knowingly violates the provisions of the Hoisting  
24 Operators Safety Act may be assessed an administrative penalty  
25 not to exceed five thousand dollars (\$5,000).

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1 C. Any licensed hoisting operator who violates  
2 [any] a provision of the Hoisting Operators Safety Act may be  
3 assessed [~~a civil~~] an administrative penalty not to exceed [~~one~~  
4 ~~thousand dollars (\$1,000) for each day during any portion of~~  
5 ~~which a violation occurs~~] five thousand dollars (\$5,000).

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

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

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

23 "60-15-14. HOISTING OPERATORS LICENSURE EXAMINING  
24 COUNCIL--APPOINTED.-- [~~The "hoisting operators licensure~~  
25 ~~examining council" is created. The superintendent shall~~

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1 ~~appoint no fewer than five members to the council with~~  
2 ~~consideration being given to geographical representation. One~~  
3 ~~member of the council shall be a class I hoisting operator;~~  
4 ~~another member of the council shall be a contractor, as defined~~  
5 ~~by Section 60-13-3 NMSA 1978, who employs one or more hoisting~~  
6 ~~operators; one member shall be a representative of organized~~  
7 ~~labor; and the other members shall be public members who are~~  
8 ~~not licensed hoisting operators. The members of the council~~  
9 ~~shall serve at the pleasure of the superintendent and their~~  
10 ~~duties shall include:]~~

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

- 18 (1) one class I hoisting operator;  
19 (2) one contractor, as defined by Section  
20 60-13-3 NMSA 1978, who employs at least one hoisting operator;  
21 (3) one representative of organized labor; and  
22 (4) two members from the public at large who  
23 are not licensed hoisting operators.

24 B. The duties of the council include:

- 25 [A.] (1) reviewing and approving the

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1 applications, qualifications and examinations of applicants for  
2 licensure as hoisting operators and recommending to the  
3 superintendent whether licensure should be granted based on  
4 their evaluation of the operating experience and competence of  
5 the applicants;

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

8 G.] (3) proceeding according to regulations  
9 adopted by the department; and

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

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