

PORT OF PHILADELPHIA - AMEND REGULATION OF PILOTS AND PILOTAGE

Act of Jun. 23, 1993, P.L. 114, No. 27

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Session of 1993

No. 1993-27

SB 503

AN ACT

Amending the act of March 29, 1803 (P.L.542, No.156), entitled "An act to establish a Board of Wardens for the port of Philadelphia, and for the regulation of pilots and pilotages, and for other purposes therein mentioned," further providing for power of commissioners to license pilots, for rules of disputes, for review of proceedings, for neglect of duties and for disabled vessels; providing for inactive status, for refresher training, for grounds for discipline, for disciplinary sanctions, for additional pilotage, for compulsory pilotage and for penalties; and making repeals.

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

Section 1. Section 4 of the act of March 29, 1803 (P.L.542, No.156), entitled "An act to establish a Board of Wardens for the port of Philadelphia, and for the regulation of pilots and pilotages, and for other purposes therein mentioned," amended June 8, 1907 (P.L.469, No.317), is amended to read:

Section 4. The [Board of Commissioners of] Navigation **Commission** for the [river] Delaware **River** and its navigable tributaries shall have full power and authority, under the limitations hereinafter prescribed, to grant licenses to persons to act as pilots in the [bay and river] Delaware **Bay and River and their navigable tributaries**, and to make rules for their government while employed in that service; to decide, on application of the parties in interest, all differences which may arise between masters, owners, and consignees of ships or vessels, and pilots, except in cases hereinafter excepted; **to establish regulations governing the application, qualifications, recruitment, selection and training of apprentices**; and to make, ordain, and publish such rules and regulations, and with such penalties for the breach thereof in respect of the matters aforesaid, as they shall deem fitting and proper: Provided, That if any person or persons, whomsoever, shall have considered themselves aggrieved by any decision or penalty imposed, said person or persons shall have the right to have such decision or penalty reviewed [by the Court of Common Pleas of the County of Philadelphia; but proceedings for such review must be begun within thirty days after the decision is rendered or penalty imposed by the said Board of Commissioners of Navigation. After due notice to the parties in interest, and the hearing thereof, the court shall determine the subject matter, and shall make such order in the premises as they may think the said Board of Commissioners of Navigation should have made, and shall make such order for the payment of the costs, by one or more of the parties to the proceedings, as justice may require] **under 2 Pa.C.S. Ch. 7 Subch. A (relating to judicial review of Commonwealth agency action).**

Section 2. Section 17 of the act, amended October 12, 1984 (P.L.946, No.184), is amended to read:

Section 17. (a) Every person not now a licensed pilot, and who desires to exercise the profession of pilot in the [bay and river] Delaware **Bay and River**, shall apply [in person to the aforesaid Board of Commissioners of Navigation,] **to the Navigation Commission for the Delaware River and its navigable tributaries** for a license to entitle [him] **the person** to follow that occupation; and it shall be the duty of the [said Board of Commissioners of] Navigation **Commission** to call to their assistance as many pilots of the first class as they may see fit, not less than three in number, to examine every person so applying, as to [his] **the person's** fitness in all respects to perform the duties of a pilot, and to grant licenses to all such as they deem qualified, according to their respective abilities: Those of the first class, to persons capable of piloting [ships or] vessels of any practicable draught of water; those of the second class, to persons capable of piloting [ships or] vessels drawing [thirty-five] **forty-five** feet of water, or under; those of the third class, to persons capable of piloting [ships or] vessels drawing [thirty] **forty** feet of water, or under; [and] those of the fourth class, to persons capable of piloting [ships or] vessels drawing [twenty-five] **thirty-five** feet of water, or under; **those of the fifth class, to persons capable of piloting vessels drawing thirty feet of water or under; and those of the sixth class, to persons capable of piloting vessels drawing twenty-five feet of water or under;** which licenses shall be in force for one year from the date thereof, and until the pilots, respectively, shall next after the expiration of the year, arrive with any [ship or] vessel at the Port of Philadelphia, and no longer; but every pilot delivering up [his] **the person's** license shall be entitled to receive a new one in lieu thereof, giving like security as hereinafter directed, unless it shall appear to the [said Board of Commissioners of] Navigation **Commission** that the person applying is disqualified from exercising the duties of a pilot; and if any person shall in any manner exercise or attempt to exercise the profession of a pilot [in the bay or river Delaware], except in vessels under [seventy-five] **one hundred** tons burden, **in the Delaware Bay or River** without license duly granted, or at any time after [his] **the person's** license shall have expired, [he] **the person shall be liable for a civil penalty in an amount up to twice the amount of pilotage, as calculated under existing law, and shall also be guilty of a misdemeanor, and, upon conviction thereof, [he] shall be imprisoned for not less than one month nor more than one year, and be fined a sum not exceeding two hundred dollars, at the discretion of the court.**

(b) The Navigation Commission, after notice and hearing, is authorized to impose a civil penalty in accordance with subsection (a). Such penalty shall be payable one-half to the Navigation Commission and one-half to the Society for the Relief of Distressed and Decayed Pilots, their Widows and Children.

(c) The Navigation Commission may bring an action in the courts of this Commonwealth or any other court of competent jurisdiction to enforce the provisions of this section and shall recover in the action, in addition to any penalty imposed pursuant to subsection (b), for the benefit of the Navigation Commission and the Society for the Relief of Distressed and Decayed Pilots, their Widows and Children, all attorney fees and costs incurred in prosecuting the action.

Section 3. Section 18 of the act, amended June 16, 1972 (P.L.470, No.150), is amended to read:

[Section 18. No license shall be granted to any person to act as a pilot of the fourth class in the bay and river Delaware, unless he has reached the age of eighteen years, and has served a regular apprenticeship of four years on board a pilot-boat; nor shall any license of the third class be granted to any person, unless he shall have served at least one year as a fourth class pilot, and no person shall be eligible for a license of the second class who has not served one year in the fourth class and at least one year in the third class and no person shall be eligible for a license of the first class who has not served a total of at least four years in the second, third and fourth classes, with at least one year of such service having been served in the second class. During the last two years of apprenticeship, apprentices shall make at least forty-eight trips each year, up or down the Delaware, in vessels with first or second class pilots; and it shall be the duty of every pilot, who shall so bring up or take down an apprentice, to report to the office of the Board of Commissioners of Navigation, with such apprentice, at the end of the trip. The name of every such apprentice, together with the name of the vessel and her master, in which every such apprentice shall have come up or gone down, shall be recorded by the Board of Commissioners of Navigation in a book to be kept by them for that purpose. This act to apply to apprentices whose indentures are now recorded. All indentures of apprentices to pilots shall be recorded in the office of the Board of Commissioners of Navigation aforesaid; nor shall any license be granted until the person applying shall have given bond, with one sufficient surety, to the said president, in any sum not exceeding five hundred dollars nor less than three hundred dollars, conditioned for the true and faithful performance of the duties and services required by this act, and that he shall not aid or assist in defrauding the revenue of the United States, and that he will deliver up the license, to him granted, when required by the said Board of Commissioners of Navigation in pursuance of the provisions of this act.]

Section 18. (a) No license shall be granted to any person to act as a pilot of the sixth class in the Delaware Bay and River unless the person has reached the age of 21 years and has served a regular apprenticeship as hereafter described, nor shall any pilot be entitled to the grant of a license as a pilot of a higher class unless the person shall first have served for at least one year as a licensed pilot in each lower class of license. To be granted a license of the first class, a pilot must have served at least one year as a sixth, fifth, fourth, third and second class pilot.

(b) According to the needs and dictates of commerce, the public interest and public safety, the Navigation Commission shall from time to time solicit applications for and make appointments of apprentice pilots. No person shall be appointed to be an apprentice who does not hold a baccalaureate degree from a recognized and duly certified college or university or a maritime academy operated by the United States or another state, or a United States Coast Guard-issued license to serve as third mate on all oceans aboard vessels of one thousand six hundred tons, or a higher class of license. The period of apprenticeship shall be four years, except for apprentices who, at the time of their appointment, hold a license issued by the United States Coast Guard to serve as third mate on all oceans aboard vessels of at least one thousand six hundred tons, whose apprenticeship need be no longer than three years. During the apprenticeship, all apprentices must make a total of at least

five hundred trips over the route in vessels with first or second class pilots, and it shall be the duty of every pilot who shall so bring up or take down an apprentice to make a report of the trip as directed by the Navigation Commission.

(c) No license shall be granted until the person applying shall have given bond, with one sufficient surety, to the Navigation Commission in a sum not exceeding five hundred dollars nor less than three hundred dollars conditioned for the true and faithful performance of the duties and service required by this act and that the person shall not aid or assist in defrauding the revenue of the United States and that the person will deliver up the license when required by the Navigation Commission in pursuance of the provisions of this act.

(d) The provisions of subsection (a) shall apply to all apprentices appointed in May 1989 and thereafter. Should any apprentice appointed in May 1989 or thereafter hold a license as a pilot of the fourth or higher class without first having served for one year as a sixth-class pilot and one year as a fifth-class pilot, the person shall surrender the license and be issued a license of the appropriate class based on the pilot's experience and time of service as soon as possible following the effective date of this act.

Section 4. Section 19 of the act, amended June 8, 1907 (P.L.469, No.317), is amended to read:

[Section 19. If any person having a license as a pilot shall, for the space of two weeks, refuse or wilfully neglect to execute the duties of a pilot, every pilot, upon due proof thereof, shall forfeit his license; and if upon satisfactory proof being made to the said Board of Commissioners of Navigation that any pilot, while having charge of a ship or vessel, shall be intoxicated, it shall be the duty of said Board of Commissioners of Navigation to suspend such pilot, for any term not less than one year, and, in case of such suspension, the pilot shall deliver to the said Board of Commissioners of Navigation his license, to be kept by them until the time for which he shall have been suspended shall have expired; and if a pilot is the second time intoxicated, while having charge of any ship or vessel, such pilot shall be deprived of his license, and be forever thereafter incapable of acting as a pilot in the bay and river Delaware; and if any pilot shall enter into any combination, with a view of preventing any other person from executing such duties, every such pilot, being thereof duly convicted, shall forfeit his license as a pilot in the bay and river Delaware; and if it should happen that the number of pilots necessary for the port of Philadelphia should be reduced by decease, removal, or otherwise, as to occasion much inconvenience to the trade of the State, in such case the said Board of Commissioners of Navigation are hereby empowered to grant certificates to such person or persons as they may find qualified to act as pilots, for the space of six months, subject to be renewed if occasion should require it, and subject to the like rules, orders, and regulations, and liable to the like fines, penalties, and forfeitures, as other pilots who shall be appointed by virtue of this act.]

Section 19. If a pilot shall fail to exercise his profession for any consecutive ninety-day period, the pilot shall be deemed to be on inactive status. A pilot on inactive status is forbidden from piloting vessels. A pilot may be removed from inactive status upon certification to the Navigation Commission that the pilot has made such refresher trips over the route as shall be deemed necessary by the Navigation Commission to assure that the pilot is fully familiar with conditions along the

route. Refresher trips shall be made in the company of a first-class pilot.

Section 5. Section 28 of the act is amended to read:

Section 28. And be it further enacted by the authority aforesaid[,]:

(a) That the compensation to be paid to pilots for conducting to or from the city of Philadelphia, all [dismated] **dismasted** or otherwise crippled [vessel or] vessels, which shall have been in any wise injured, so as to occasion to the said pilots any extraordinary care or trouble, shall not exceed double the amount what they otherwise would have been entitled to, of which the Board of Wardens shall judge.

(b) **A vessel which has suffered a casualty limiting the capabilities of its steering, propulsion or navigational equipment or which is otherwise limited by its speed, draft or other factor in its ability to navigate such that its navigation will be of extraordinary duration or will occasion its pilot extraordinary care or trouble shall be obliged to receive two licensed pilots and pay to each the full amount of pilotage required by this act. In the event that such services are provided by a single pilot, he may charge up to double the pilotage amount calculated in accordance with the rates under this act.**

(c) **Outbound deep draft vessels, as defined by the Navigation Commission, shall be assigned two pilots for the outbound passage, and the vessel's pilotage rate for such passage shall be doubled to account for the use of the two pilots.**

Section 6. Section 29 of the act, amended July 10, 1969 (P.L.154, No.62), is amended to read:

[Section 29. Every ship or vessel arriving from or bound to any foreign port or place shall be obliged to receive a pilot, except as hereinafter excepted; and it shall be the duty of the master of every ship or vessel, within thirty-six hours next after the arrival of any ship or vessel at the port of Philadelphia, to make a report to the said Board of Commissioners of Navigation of the name of such ship or vessel, her draught of water, and the name of the pilot who shall have conducted her to the port; and, where any such ship or vessel shall be outward-bound, the master of such ship or vessel shall make known to the said Board of Commissioners of Navigation her name, and the name of the pilot who is to conduct her to the Capes, and her draught of water at that time; and it shall be the duty of the president of the said Board of Commissioners of Navigation to enter every such ship or vessel in a book, to be kept by him for that purpose, without fee or reward; and if a master of any ship or vessel shall fail to make such report, he shall forfeit and pay the sum of ten dollars:

Provided, That a ship or vessel inward-bound, to any port or place on the bay or river Delaware, which is not spoken or offered the services of a pilot outside of a straight line drawn from Cape May Light to Cape Henlopen Light, shall be exempt from the duty of taking a pilot; and the vessel, as well as her master, owners, agents, or consignees, shall be exempt from the duty of paying pilotage, half-pilotage, or any penalty whatsoever, in case of her neglect or refusal so to do:

Provided, further, That any ship or vessel employed in or licensed for the coasting-trade, or any ship or vessel solely coal-laden with coal mined in the United States, shall be exempt from the duty of employing a pilot; and the vessel, as well as her master, owners, agents, or consignees, shall be exempt from the duty of paying pilotage, half-pilotage, or any penalty

whatsoever, in case of their neglect or refusal so to do, except ships or vessels under register, bound to or from the States or Territories of the United States, on the Pacific Ocean; but any ship or vessel voluntarily taking a pilot shall pay a fee which is no more than the fee for pilotage as is prescribed in case of a vessel bound to or from a foreign port.]

Section 29. (a) Except vessels of less than one hundred gross tons, every foreign vessel and every vessel engaged in foreign commerce or trade entering, departing or underway upon the Delaware Bay or River and their navigable tributaries, including the C. & D. Canal, and such other waters designated pilot waters by the Navigation Commission shall be obliged to receive and employ a pilot licensed by this Commonwealth or the State of Delaware.

(b) As used in this section, a vessel engaged in foreign trade shall be defined as a vessel carrying any cargo loaded in a foreign port or destined for a foreign port, as well as any vessel in ballast, having discharged its cargo of foreign origin, unless the vessel has specific orders to a port in the United States at which it is to load cargo. Orders to a vessel to proceed to Delaware Bay, to sea or any other place for orders or instructions shall not be deemed such specific orders.

(c) If a vessel refuses or neglects to take and employ a pilot, the vessel, its master, owner, operator, charterer, consignee or agent shall:

(1) forfeit and pay to a pilot suing for same a sum equal to the pilotage of the vessel, recoverable by an action in the courts of this Commonwealth, or the pilot may pursue his remedy by filing an action in admiralty in a United States court, either in personam or in rem, to enforce the lien given him on the vessel as the pilot may see fit and proper to do;

(2) be liable, in an administrative proceeding before the Navigation Commission, to pay a civil penalty of up to twenty-five thousand dollars which penalty shall be payable one-half to the Commonwealth and one-half to the Society for the Relief of Distressed and Decayed Pilots, their Widows and Children; and

(3) be liable to the pilot for all costs and attorney fees incurred in bringing the action.

Section 7. Section 31 of the act, amended July 29, 1953 (P.L.983, No.244), is amended to read:

[Section 31. If any pilot shall misbehave himself in the execution of his duty, so that damage shall accrue by reason of his negligence or incapacity, it shall be lawful for the Board of Commissioners of Navigation to appoint a time and place of hearing, of which due notice shall be given such pilot, and, upon due proof being made thereof to the said Board of Commissioners of Navigation, it shall be lawful for them to fine such pilot, in any sum not exceeding the amount of the pilotage of the ship or vessel to which such damage shall have happened, for the use of decayed pilots, their widows and children, or to suspend such pilot for any term which the said Board of Commissioners of Navigation may deem proper; and in every case of suspension the pilot shall deliver up his license to the said Board of Commissioners of Navigation, to be by them kept till the time for which he may have been suspended shall have expired: Provided always, That any one who shall consider himself aggrieved by the decision of the said Board of Commissioners of Navigation shall have the right to have such decision reviewed by the Court of Common Pleas of the said county of Philadelphia: And provided further, Nothing herein

shall prevent any person or persons recovering his or their damages in a court having jurisdiction over the same.]

Section 31. (a) Pilots regulated under this chapter shall be subject to disciplinary action if after a hearing the Navigation Commission finds:

- (1) illegal, incompetent or negligent conduct in the performance of piloting;
 - (2) failure to file a marine casualty report;
 - (3) failure to obey rules of the nautical road;
 - (4) inability on the part of the pilot to practice the profession with reasonable skill and safety by reason of physical illness;
 - (5) inability on the part of the pilot to practice the profession with reasonable skill and safety by reason of loss of motor skill;
 - (6) inability on the part of the pilot to practice the profession with reasonable skill and safety by reason of emotional disorder or mental illness, including alcohol or drug abuse; or
 - (7) violation of a lawful provision of this chapter or any lawful regulation established thereunder.
- (b) In considering any of the foregoing conditions, the Navigation Commission may order a pilot to submit to a reasonable physical or mental examination.

(c) Subject to the requirements of 2 Pa.C.S. (relating to administrative law and procedure), no license shall be restricted, suspended or revoked by the Navigation Commission, and no pilot's right to practice shall be limited by the Navigation Commission until the pilot has been given notice and an opportunity to be heard in accordance with 2 Pa.C.S.

Section 8. The act is amended by adding sections to read:

Section 31.1. (a) The Navigation Commission may impose any of the following sanctions, singly or in combination, when it finds that one or more of the conditions or violations set forth in section 31 apply to a pilot regulated by this act:

- (1) issue a letter of reprimand;
- (2) censure a pilot;
- (3) place a pilot on probationary status and require the pilot to:
 - (i) report regularly to the Navigation Commission upon the matters which are the basis of the probation;
 - (ii) limit all practice and professional activities to those areas prescribed by the Navigation Commission;
 - (iii) continue or renew the pilot's professional education until the required degree of skill has been attained in those areas which are the basis of the probation; or
 - (iv) attend an alcohol or drug treatment program approved by the Navigation Commission;
- (4) levy a fine not to exceed \$1,000;
- (5) suspend the pilot's license; or
- (6) revoke the pilot's license.

(b) The Navigation Commission may withdraw or reduce conditions of probation when it finds that the deficiencies which required the action have been remedied.

(c) The Navigation Commission may temporarily suspend a pilot's license under circumstances determined by the Navigation Commission to be an immediate and clear danger to public health and safety. The Navigation Commission shall issue an order to that effect without a hearing, but upon due notice to the licensee concerned at his or her last known address, which shall include a written statement of all allegations against the licensee. The Navigation Commission shall thereupon commence

formal action to suspend, revoke or restrict the license of the person concerned as otherwise provided for in this act. All actions shall be taken promptly and without delay. Within thirty days following the issuance of an order temporarily suspending a license, the Navigation Commission shall conduct or cause to be conducted a preliminary hearing to determine that there is a prima facie case supporting the suspension. The licensee 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 Navigation Commission, but in no event longer than one hundred eighty days.

Section 37. (a) All pilots, upon being issued an original license or upon renewal thereof, shall pay to the Navigation Commission a fee to be fixed by the Navigation Commission by regulation but not to exceed two hundred fifty dollars, which shall be subject to review in accordance with the act of June 25, 1982 (P.L.633, No.181) , known as the "Regulatory Review Act." If the projected revenues to be generated by fees, fines and civil penalties imposed under this act are not sufficient to match expenditures over the renewal period, the Navigation Commission shall increase the fees by regulation, subject to review under the "Regulatory Review Act," so that the projected revenues will meet or exceed projected expenditures.

(b) If the Bureau of Professional and Occupational Affairs determines that the fees established by the Navigation Commission are inadequate to meet the minimum enforcement efforts required, the Bureau of Professional and Occupational Affairs, after consultation with the Navigation Commission, shall increase the fees by regulation subject to review under the "Regulatory Review Act" so that adequate revenue is raised to meet the required enforcement effort.

Section 9. The following acts and parts of acts are repealed:

Section 4 of the act of March 13, 1817 (P.L.109, No.87), entitled "A supplement to the act, entitled 'An act to establish a Board of Wardens for the port of Philadelphia, for the regulation of pilots and pilotages, and for other purposes therein mentioned.'"

Sections 1, 2 and 3 of the act of February 4, 1846 (P.L.30, No.27), entitled "A supplement to an act passed March twenty-ninth, Anno Domini one thousand eight hundred and three, to establish a board of wardens of the port of Philadelphia, and for other purposes."

Section 604-A of the act of April 9, 1929 (P.L.177, No.175), known as The Administrative Code of 1929.

Section 10. This act shall take effect as follows:

(1) The repeal of section 604-A of The Administrative Code of 1929 shall take effect upon the effective date of the first regulation promulgated under section 37 of the act.

(2) The remainder of this act shall take effect in 60 days.

APPROVED--The 23rd day of June, A. D. 1993.

MARK S. SINGEL

ACTING GOVERNOR