

CHAPTER 943

H.B. No. 2386

An Act relating to licensing and regulation of certain pilots, pilotage rates, and pilot service.

Be it enacted by the Legislature of the State of Texas:

ARTICLE 1. GENERAL PROVISIONS

SECTION 1.01. SHORT TITLE. This Act may be cited as the Galveston County Pilots Licensing and Regulatory Act.

SECTION 1.02. DEFINITIONS. In this Act:

(1) "Pilot" means a person who is licensed as a branch pilot or certified as a deputy branch pilot under this Act.

(2) "Board" means the board of pilot commissioners created under this Act.

(3) "Pilotage rates" means the amount of remuneration a pilot may lawfully charge vessels for his services.

(4) "Pilot services" means acts of a pilot in conducting a vessel through the navigable water within the boundaries of the state and the ports in which he is licensed or certified as a pilot.

(5) "Vessel" means every oceangoing vessel navigating the water within the board's jurisdiction except vessels exempt from payment of pilotage rates under this Act.

(6) "Port" means a place in this state into which vessels enter or from which vessels depart that is located in Galveston County and the waterway leading to that place from the Gulf of Mexico.

(7) "Consignee" means the master, owner, agent, subagent, person, firm, or corporation or any combination of these that enters or clears a vessel at the office of the collector of customs.

SECTION 1.03. APPLICATION OF ACT. This Act applies to all ports located in Galveston County.

SECTION 1.04. EXEMPTION FOR CERTAIN VESSELS. The requirement to use a licensed pilot under this Act does not apply to a vessel exempt from payment of state pilotage rates under federal law.

ARTICLE 2. BOARD OF PILOT COMMISSIONERS

SECTION 2.01. CREATION OF BOARD. A board of pilot commissioners is created for the ports of Galveston County.

SECTION 2.02. BOARD MEMBERSHIP. The board is composed of five commissioners from Galveston County appointed by the governor with the advice and consent of the senate.

SECTION 2.03. TERM OF OFFICE. (a) Except for the initial appointments, appointed members hold office for staggered terms of four years. A member holds office until that member's successor is appointed and qualified.

(b) In making the initial appointments, the governor shall designate two appointed members for terms expiring February 1, 1987, two for terms expiring February 1, 1988, and one for a term expiring February 1, 1990. The governor shall make the initial appointments on or before February 1, 1986.

SECTION 2.04. PROHIBITED INTEREST. A person who has any conflict of interest or is directly or indirectly interested in any business affected by or connected with the performance of his duties as a pilot commissioner may not be a member of the board.

SECTION 2.05. OATH. Before beginning to serve as a member of the board, each board member shall take and subscribe, before someone authorized to administer oaths, an oath to discharge faithfully and impartially the duties of office.

SECTION 2.06. ADMINISTRATION AND RULES. The board shall administer this Act in each of the ports within its jurisdiction and may adopt rules to carry out this Act and may perform any acts or functions necessary to carry out those powers and duties under this Act.

SECTION 2.07. JURISDICTION OF BOARD. The board shall have exclusive jurisdiction over piloting of vessels in this state between the Gulf of Mexico and the ports within the board's jurisdiction, as well as intermediate stops and landing places for vessels on navigable streams wholly or partially located within the board's jurisdiction.

SECTION 2.08. BOARD DUTIES. The board shall:

- (1) recommend to the governor the number of pilots necessary to provide adequate pilot services for the ports under the board's jurisdiction;
- (2) accept applications for pilot licenses and certificates and determine whether or not each applicant meets the qualifications for a pilot or deputy pilot in this Act;
- (3) provide names of all qualified applicants for certificates to the pilot association office or offices of Galveston County;
- (4) submit to the governor the names of persons who have qualified under this Act to be appointed as branch pilots for the ports of Galveston County;
- (5) approve any changes of the locations for pilot stations;
- (6) establish pilotage rates to be charged for piloting vessels within the board's jurisdiction;
- (7) establish times during which pilot services will be available;
- (8) hear and determine complaints relating to the conduct of pilots;
- (9) make recommendations to the governor concerning any pilot whose license or certificate should not be renewed or should be revoked;
- (10) adopt rules and issue orders to pilots and vessels when necessary to secure efficient pilot services within the board's jurisdiction;
- (11) institute investigations or hearings or both to consider casualties, accidents, or any other action that violates this Act;
- (12) provide penalties to be imposed on any person who is not appointed a branch pilot for the port who pilots any ship or vessel into or out of the port, channel, or waterway under the jurisdiction of the board;
- (13) approve a training program for deputy branch pilots; and
- (14) establish a pilot review board consisting of two branch pilots and three members of the marine industry, who reside in Galveston County to hear and review complaints against pilots and to make recommendations to the board concerning the complaints.

SECTION 2.09. UNFAIR DISCRIMINATION PROHIBITED. (a) In all its duties, including rule making, the board shall not sanction discriminatory practices nor discriminate against any applicant, licensed pilot, branch pilot, or deputy branch pilot on account of race, religion, sex, ethnic origin, or national origin.

(b) Remedies for violation of this section shall be sought as provided in Section 3.03 of this Act.

ARTICLE 3. BOARD PROCEDURES

SECTION 3.01. GENERAL PROCEDURES. Except as specifically provided by this Act, Chapter 271, Acts of the 60th Legislature, Regular Session, 1967 (Article 6252-17, Vernon's Texas Civil Statutes), applies to actions and proceedings under this Act.

SECTION 3.02. ADDITIONAL NOTICE. The board shall give at least 10 days' notice of its intention to adopt a rule or to change pilotage rates by mailing by registered mail such notice to the pilot association office or offices for Galveston County and to all known consignees and to all known associations of consignees which are operating in Galveston County at such time. A copy of the proposed rule or change shall be included with such notice. In addition, a copy of the proposed rule or change shall be posted at the county courthouse for public inspection.

SECTION 3.03. JUDICIAL REVIEW. Proceedings for judicial review of a board decision shall be brought in a district court in Galveston County.

ARTICLE 4. PILOTS' LICENSES OR CERTIFICATES

SECTION 4.01. LICENSES AND CERTIFICATES. It shall be unlawful for a person to provide pilot services as a branch pilot or deputy branch pilot unless that person has a valid license or certificate issued under this Act for the ports within the jurisdiction of the board in which the pilot services are to be provided.

SECTION 4.02. QUALIFICATIONS FOR A LICENSE. (a) To be eligible for a license as a branch pilot for the ports within the jurisdiction of the board, a person must:

- (1) be at least 25 years of age;
 - (2) be a United States citizen;
 - (3) as of the date that the license is issued, have resided in the state for a continuous period of not less than two years;
 - (4) have at least two years' service as a deputy branch pilot and successfully complete the board approved training program;
 - (5) have exercised control of navigation of vessels such as he would pilot; and
 - (6) have extensive experience in the docking and undocking of oceangoing vessels.
- (b) In addition to the qualifications stated in Subsection (a) of this section, the applicant must be found by the board to be in good mental and physical health, to have good moral character, and to possess the requisite skill as a navigator and pilot to perform competently and safely the duties of a branch pilot.

SECTION 4.03. QUALIFICATIONS FOR A CERTIFICATE. (a) To be eligible for a certificate as a deputy branch pilot for ports within the board's jurisdiction, a person must:

- (1) be at least 25 years of age;
 - (2) be a United States citizen; and
 - (3) be appointed by a branch pilot.
- (b) In addition to the qualifications stated in Subsection (a) of this section, the applicant must be found by the board to be in good mental and physical health, to have good moral character, and to possess the requisite skill as a navigator and pilot to perform competently and safely the duties of a deputy branch pilot.

SECTION 4.04. APPLICATION FOR LICENSE OR CERTIFICATE. (a) An applicant for a branch pilot's license or a deputy branch pilot's certificate shall submit a written application to the board.

(b) The application shall be submitted to the board in the form and in the manner required by the board in its rules.

SECTION 4.05. CONSIDERATION OF APPLICATION. As part of its consideration of applications for licenses and certificates, the board may, if it deems it advisable, examine and decide on the qualifications of the applicant for the position of branch or deputy pilot.

SECTION 4.06. APPOINTMENT OF BRANCH PILOTS. (a) On filing of the bond and oath provided by Section 4.09 of this Act, the board shall certify to the governor that the branch pilot has duly qualified to act as a branch pilot, and on receiving this certification, the governor shall issue to the branch pilot, in the name and under the seal of the state, a commission to serve as a branch pilot from the ports within the jurisdiction of the board, across intermediate bars, to and from the open gulf.

(b) The governor shall appoint the number of pilots necessary to provide adequate pilot services for each of the ports in Galveston County under the board's jurisdiction.

SECTION 4.07. APPOINTMENT OF DEPUTY PILOTS. (a) Subject to examination and approval of the board, each branch pilot may appoint two deputy pilots.

(b) A branch pilot who appoints a deputy pilot without the approval of the board shall forfeit his own appointment as a branch pilot.

(c) An additional deputy pilot may be appointed if the branch pilot and the board mutually consider such an appointment advisable.

SECTION 4.08. TERMS OF LICENSES AND CERTIFICATES. (a) A license issued under this Act expires four years from the date it is issued or renewed.

(b) A certificate issued under this Act expires two years from the date it is issued and is not renewable.

SECTION 4.09. OATH AND BOND. (a) Before entering into service as a pilot, a person appointed to be branch pilot or deputy branch pilot shall take the official oath which shall be endorsed on the bond required by this section.

(b) Each pilot shall execute a bond for \$25,000 conditioned on compliance with the laws, rules, and orders relating to pilots and on the faithful performance of the pilot's duties and payable to the governor.

(c) Each bond must be approved by the board.

SECTION 4.10. RENEWAL OF BRANCH PILOT LICENSE. (a) Every four years, on written application and successful qualification, a branch pilot's license shall be renewed by the governor on recommendation of the board for an additional four-year term unless the board determines that probable cause exists for not renewing the license.

(b) Probable cause exists for not renewing a license if the board finds that the licensee no longer possesses one or more of the qualifications stated in this Act for pilots or suffers from a disability that will affect his ability to serve as a pilot.

(c) If the board determines that it has probable cause for not renewing a license, it shall give notice of this fact to the licensee not less than 60 days before expiration of the license and, on request, shall offer the licensee the opportunity for a hearing after proper notice to consider whether or not cause exists for not renewing the license.

(d) If the board finds at the conclusion of the hearing that no cause exists for nonrenewal, the board shall make recommendations to the governor for the renewal of such license for another term.

(e) If a pilot does not contest the board's decision not to renew the license or if the board after its hearing finds that there is probable cause for nonrenewal, the board shall issue a written order recommending to the governor that the license not be renewed, and the governor shall refuse renewal of the license.

(f) Denial of renewal of a pilot's license does not prevent the former licensee from applying for a new license and being reappointed by the governor at a later time if the licensee then meets all qualifications for a license under this Act.

SECTION 4.11. DEPUTY BRANCH PILOTS. (a) A deputy branch pilot's certificate expires two years from the date it is issued.

(b) No person may be issued more than one deputy branch pilot's certificate within any period of five consecutive years.

(c) A deputy branch pilot's certificate may be suspended or revoked by the board in the same manner and for the same reasons provided for branch pilots' licenses by Section 4.12 of this Act.

SECTION 4.12. SUSPENSION AND REVOCATION OF A LICENSE. (a) On complaint or on its own motion and after notice and hearing, the board may suspend a pilot's license for up to six months or may recommend to the governor revocation of a pilot's license if the board finds that the pilot has:

- (1) failed to demonstrate and maintain the qualifications for a license required by this Act;
- (2) used narcotics or other types of drugs, chemicals, or controlled substances as defined by law that impair the pilot's ability to perform his duties skillfully and efficiently;
- (3) used alcohol to an extent that impairs the pilot's ability to perform his duties skillfully and efficiently;
- (4) violated a provision of this Act or rules adopted by the board under this Act which were material to the performance of his duties at the time of the violation;
- (5) made a material misstatement in the application for a license;
- (6) obtained or attempted to obtain a license under this Act by fraud or misrepresentation;
- (7) charged pilotage rates other than those approved by the board;
- (8) intentionally refused to pilot a vessel when requested to do so by the master or person responsible for navigation of the vessel except when, in the judgment of the pilot, movement of the vessel would have constituted a hazard to life or property or when pilotage charges due and owed remained unpaid by the person ordering the pilot services;
- (9) been absent from duty in violation of rules of the board and without authorization;
- (10) aided or abetted another pilot in failing to perform his duties; or
- (11) been guilty of carelessness, neglect of duty, intentional unavailability for normal performance of duties, refusal to perform duties, misconduct, or incompetence while on duty.

(b) If the board determines that a license should be suspended or revoked, it shall issue a written order stating its findings and suspending the license for a specifically stated period or recommending to the governor revocation of the license.

(c) On receiving the board's order recommending revocation of a license, the governor shall revoke the license except where an appeal has been taken and then the governor shall revoke the license only after the order is upheld.

(d) A suspension based on the recommendation of a pilot review board takes effect immediately on issuance of the board's order. Revocation takes effect immediately on issuance of the governor's decision.

SECTION 4.13. PAYMENT OF LICENSED PILOTS. (a) If a person who is not licensed or certified under this Act pilots a vessel in violation of this Act, that person and the consignee of the vessel are liable to a state licensed or certified pilot in that jurisdiction, on written demand, for an amount equal to the pilotage rates that would have been applicable.

(b) If suit is filed to collect the compensation owed to a pilot under Subsection (a) of this section, the court may include in any final judgment in favor of the pilot an award to cover court costs and reasonable attorney's fees.

ARTICLE 5. PILOTAGE RATES

SECTION 5.01. EXISTING PILOTAGE RATES. Pilotage rates in effect on the effective date of this Act remain in effect until the board adopts other pilotage rates.

SECTION 5.02. NOTICE AND HEARING. Before different pilotage rates are adopted by the board under this Act, notice shall be given and a hearing held.

SECTION 5.03. PILOTAGE RATE APPLICATION. (a) An application for the establishment of a new rate of pilotage may be filed with each commissioner by one or more pilots or by the owner, agent, or other person defined as consignee of a vessel; provided such application for increase or decrease of rates shall contain a brief statement of the circumstances which, it is alleged, warrant the requested action of the commissioners and shall also contain a certificate that the applicant has submitted copies of the application to all known pilots and to all known consignees and to all known associations of consignees operating in Galveston County at the time of the application.

(b) In the event the notice required is in fact given and no written objection on the part of any legitimately interested party is received by any commissioner within 20 days after said notice is sent, the commissioners shall proceed to act upon the application as they see fit without further proceedings and shall file their action thereupon with the county clerk as provided in Subsection (i) of this section, within 20 days after the initial 20-day notice period.

(c) In the event any commissioner receives in writing an objection to the application from any person, firm, or corporation who appears to have a legitimate interest in the application within 20 days after notice of the filing of the application was given, the commissioners shall hold a hearing within 20 days after the expiration of the initial 20-day notice period for the filing of any objection to the application and shall notify the applicants, the persons objecting to the application, and such other parties as the commissioners may in their sole discretion determine to be interested in the proceedings and shall file their decision with the county clerk as provided in Subsection (i) of this section within 20 days after the close of the hearing.

(d) Said hearing shall be held at a convenient and public place in any one of the ports affected and shall be open to the public. At the hearing all parties, upon demonstrating a legitimate interest in the application, shall have the right to be heard, to present evidence and, to the extent deemed practical by the commissioners, to cross-examine the witnesses appearing to testify at the hearing.

(e) After receipt of the evidence offered by the parties and such arguments and briefs as the commissioners may desire to receive, the application shall be granted, denied, or modified by the commissioners.

(f) In determining their action upon any application, the commissioners shall consider:

- (1) characteristics of vessels to be piloted;
- (2) the average number of hours spent by a pilot in the performance of pilot services;
- (3) costs to pilots to provide the required pilot services;
- (4) the effect, including economic factors affecting the shipping industry within the area, which the granting, refusal, or modification of the application would have upon the port or ports within the jurisdiction of the commissioners and the citizens residing in it;
- (5) an adequate and reasonable compensation to the pilots and a fair return upon the equipment and vessels which they employ in connection with their duties;

(6) the relationship between the pilotage rates in the ports under the commissioners' jurisdiction and the rates applying in other ports of this state and competitive ports in other states.

(g) The action of the commissioners in granting, denying, or modifying the application shall be final.

(h) The commissioners shall have the authority to assess the actual cost of reporting and secretarial services necessarily incurred in connection with any hearing against one or more of the applicants and objecting parties as shall appear to the commissioners to be fair and just. The commissioners may further require that any applicant or objecting party deposit a sum against said costs as a condition of presenting its application or objection. The costs authorized by this subsection shall be strictly limited to the actual and reasonable costs of reporting and stenographic services.

(i) A copy of the commissioners' order with respect to the application shall be filed in the office of the county clerk, and said order shall state when it is effective. No pilotage charges in excess of those in existence at the time of passage of this Act shall be made with respect to the ports of Galveston County except pursuant to such an order so filed by the commissioners.

(j) New pilotage rates may not be established more often than once every 12 months.

SECTION 5.04. FINANCIAL INFORMATION. (a) At least 10 days before the date set for a pilotage rate hearing, the pilots who are licensed or certified to serve the port for which new pilotage rates are being considered shall submit in writing to the board and to any party designated by the board complete accounts of:

- (1) all amounts received from performance of pilot services, organized by categories or classifications of rates, if rates are set in that manner;
- (2) all earnings from capital assets devoted to providing pilot service;
- (3) all expenses incurred in connection with activities for which these amounts were received and earned; and
- (4) estimates of receipts and expenses anticipated to result from the requested changes in pilotage rates.

(b) The information shall be provided for the calendar or fiscal year closest preceding the date of the application, updated to be within 60 days of the date of the application.

(c) The board may require relevant additional information it considers necessary to determine proper pilotage rates.

SECTION 5.05. APPEAL OF BOARD DECISION. Any party aggrieved by the decision may seek judicial review of the board's decision after all administrative remedies have been exhausted.

SECTION 5.06. EMERGENCY PILOTAGE RATES. (a) The board may establish emergency pilotage rates, for periods not to exceed 30 days, to replace existing pilotage rates for the period of the emergency if the board finds that a natural or man-made disaster has created a substantial hazard to piloting vessels into and out of a port and that the existence of this hazard overrides the necessity to comply with normal pilotage rate-setting procedures.

(b) In adopting emergency pilotage rates, the board is not required to comply with the procedures in this Act and in its rules relating to adoption of pilotage rates. Emergency pilotage rates may not be appealed.

(c) The board shall adopt rules to carry out the provisions of this section.

SECTION 5.07. LIABILITY. (a) Compensation based on lawfully established pilotage rates shall be paid by the consignee liable for its payment for vessels employing pilots.

(b) A pilot who charges pilotage rates different from those established under this Act for the port in which he serves as a pilot is liable to each person who was charged a pilotage rate other than the lawfully authorized pilotage rate for double the amount of pilotage.

(c) If a person must file suit to collect the amount owed under this section, the court may include in any final judgment in favor of that person an award to cover court costs and reasonable attorney's fees.

ARTICLE 6. MISCELLANEOUS PROVISIONS

SECTION 6.01. CONSIGNEE LIABLE FOR PILOT COMPENSATION. (a) The consignee for each vessel is responsible for obtaining pilot services for the vessel under the consignee's control and for paying compensation based on pilotage rates adopted under this Act to the pilots who pilot the vessel into and out of the port area.

(b) Each pilot who lawfully offers to serve a vessel but is denied such service is entitled to recover compensation based on pilotage rates adopted under this Act from the consignee in any court of competent jurisdiction.

SECTION 6.02. TRANSITION. (a) Persons who are branch pilots serving a port covered under this Act on the effective date of this Act shall continue to serve as branch pilots until their current commissions expire, at which time each will be eligible for license renewal under the license renewal provisions of this Act, and those branch pilots shall be governed by this Act from its effective date.

(b) Persons who were appointed deputy branch pilots before the effective date of this Act shall be issued deputy branch pilot certificates by the board in whose jurisdiction they are acting as deputy branch pilots on requesting the certificate in writing and without having to comply with other procedural provisions of this Act. A certificate shall be issued for a term of two years unless the deputy branch pilot has less than two years to serve as a deputy branch pilot in which case the certificate shall be issued for the remaining time the deputy is required to serve. Deputy branch pilots in ports covered by this Act shall be governed by this Act from its effective date.

SECTION 6.03. LITIGATION. This Act does not apply to any matter that on the effective date of this Act is involved in litigation, and the law in effect before the adoption of this Act shall continue to apply to such litigation and shall continue in effect for that limited purpose.

SECTION 6.04. EFFECTIVE DATE. This Act takes effect on September 1, 1985.

SECTION 6.05. OTHER LAWS. This Act does not affect the existing laws for ports in other counties of this state, including Articles 8248 through 8257 and 8264 through 8280, Revised Statutes; and these laws shall have no application to the ports within the provisions of this Act.

SECTION 6.06. EMERGENCY. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Passed by the House on May 17, 1985, by a non-record vote; House concurred in Senate amendments to H.B. No. 2386 on May 27, 1985, by a non-record vote; passed by the Senate, with amendments, on May 26, 1985, by the following vote: Yeas 31, Nays 0.

Approved: June 15, 1985

Effective: September 1, 1985