

ACT 126

S.B. NO. 556

A Bill for an Act Relating to Pilotage.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 462A-1, Hawaii Revised Statutes, is amended to read as follows:

**“§462A-1 Definitions.** As used in this chapter:

- (1) [“Board” means a board of pilot commissioners established pursuant to this chapter.] “Department” means the department of commerce and consumer affairs.
- (2) “Director” means the director of the department of commerce and consumer affairs.
- [ (2) ] (3) “License” means a pilot’s license issued pursuant to this chapter.
- [ (3) ] (4) “Pilot” means a state pilot licensed pursuant to this chapter as a port pilot or a deputy port pilot.
- [ (4) ] (5) “Pilotage waters” means the waters of this State covered by this chapter.
- [ (5) ] (6) “Vessel” means every description of watercraft, other than a seaplane on the water, used or capable of being used as a means of transportation on water. Each tug and each of its tows shall be considered a separate vessel.”

SECTION 2. Section 462A-2, Hawaii Revised Statutes, is repealed.

SECTION 3. Section 462A-3, Hawaii Revised Statutes, is amended to read as follows:

**“§462A-3 Powers and duties of the [board] director<sup>1</sup>.** [The board shall have powers and perform the duties hereinafter set forth and such other powers and duties as may be provided by law:] In addition to any other duties and powers granted by this chapter the director shall:

- [(1)] (1) Adopt rules pursuant to chapter 91, not inconsistent with law, which shall be binding upon all pilots licensed by the board and upon all parties employing such pilots; and from time to time<sup>2</sup> revise or amend such rules as may be necessary to enable the board to carry into effect the provisions of this chapter. The rules shall include but shall not be limited to:
  - (A) Establishment of the qualifications of and examinations for any person applying for a pilot’s license;
  - (B) Issuance, suspension, or revocation of any pilot’s license and regulation of the number of pilots that may be licensed;
- (2) Hear and decide complaints made in writing against any pilot for any misbehavior or neglect or breach of rules, which it deems material to be investigated;

- (3) Administer oaths and compel the attendance of witnesses at such hearing<sup>3</sup> as it may conduct;]
- (1) Grant licenses to port pilots and deputy port pilots pursuant to this chapter;
- (2) Make, amend, or repeal rules in accordance with chapter 91 as may be necessary to carry out the purposes of this chapter which are to provide for maximum efficiency in navigating vessels entering or leaving the waters of this State; maintain a pilotage system devoted to the preservation, and protection of lives, property and vessels entering or leaving waters of the State; and ensure an adequate supply of qualified pilots in aid of commerce and navigation.
- (3) Develop appropriate standards for licensure including examinations and investigations to determine whether persons applying for full pilot, port pilot, or deputy port pilot licenses are qualified;
- (4) Enforce this chapter and rules adopted pursuant thereto;
- (5) Suspend, revoke or deny the issuance of any license for any cause prescribed by this chapter, or for any violation of the rules;
- (6) Investigate any person for violations of any provisions of this chapter;
- (7) Adopt methods to improve disciplinary and enforcement program against violations of this chapter.
- [ (4) (8) Do all things reasonable, necessary<sup>2</sup> and expedient to insure proper and safe pilotage and to facilitate the efficient administration of this chapter."

SECTION 4. Section 462A-4, Hawaii Revised Statutes, is repealed.

SECTION 5. Section 462A-5, Hawaii Revised Statutes, is repealed.

SECTION 6. Section 462A-6, Hawaii Revised Statutes, is amended to read as follows:

**"§462A-6 Duration and renewal of license.** All licenses shall expire on June 30 of even-numbered years. All applicants for renewal of license shall submit a renewal application and comply with all applicable rules of the [board] department. No applicant shall be denied a renewal of his license, except as provided in [section 462A-8,] this chapter, as long as he possesses the qualifications established by the [board] department and remains in active service as a pilot in the State."

SECTION 7. Section 462A-8, Hawaii Revised Statutes, is amended to read as follows:

**"§462A-8 Denial, suspension, or revocation.** The [board] director may deny the issuance of a license to any applicant, and may suspend or revoke the license of any pilot [upon satisfactory proof that such applicant or pilot] for any of the following reasons:

- (1) [Has willfully disobeyed] Violation of this chapter or any rule adopted by the board;
- (2) [Has negligently lost or damaged any vessel which he was piloting] Loss, damage, or injury due to negligent pilotage;
- (3) [Is habitually intoxicated] Habitual use of any substance rendering [him] a pilot unfit to be entrusted with the charge of a vessel;
- (4) [Is] Inability to physically or mentally [incapable of performing] perform the duties of a pilot;<sup>4</sup>

- (5) [Is no longer actively serving] Failure to maintain active service as a pilot in the State.
- (6) Procurement of a license through fraudulent misrepresentation or deceit;
- (7) Participation in any unfair or deceptive act or practice as prohibited by section 480-2;
- (8) Violation of any law or regulation intended to promote marine safety or protect navigational waters;
- (9) Failure to report marine accidents in accordance with the rules of this chapter;
- (10) Failure to maintain a current and valid federal pilots license issued in accordance with title 46, USC chapter 71."

SECTION 8. Section 462A-11, Hawaii Revised Statutes, is amended to read as follows:

"§462A-11 Rates of pilotage. The [board] director shall establish the rates of pilotage for vessels subject to this chapter as follows:

- (1) The rates of pilotage in effect upon passage of this bill shall remain in effect until changed by the [board] director pursuant to this chapter.
- (2) No rate shall be increased, lowered or altered without a public hearing in accordance with chapter 91. Due notice of hearing shall be mailed at least thirty days prior to the date of hearing to the individual licensed pilots, the pilot's association, and all owners, charterers, operators, and agents of vessels who have registered with the board.
- (3) The [board] director, in setting rates of pilotage, shall fix such amounts as will be a fair charge for the services rendered with due regard to necessary operating expenses, maintenance of, depreciation on, and return on investment for property used in the business of pilotage, and the rates and charges of pilotage at comparable ports of the United States.
- (4) Persons aggrieved by the [board's] director's decision setting the rates of pilotage may appeal to circuit court as provided in chapter 91."

SECTION 9. Section 462A-12, Hawaii Revised Statutes, is repealed.

SECTION 10. Section 462A-13, Hawaii Revised Statutes, is repealed.

SECTION 11. Section 462A-15, Hawaii Revised Statutes, is amended to read as follows:

"§462A-15 Pilot association. The pilots licensed under this chapter, each of whom shall be deemed an individual contractor, may form a nonprofit association which shall not be deemed a partnership or corporation for liability purposes, in order to provide such arrangements and facilities as may be necessary and desirable for the efficient dispatching of vessels and rendering of pilotage services required under this chapter. The association shall have no control over the selection of persons to be licensed as pilots or their discharge. The association shall have no direction over the manner in which an individual pilot performs his duties. The association may adopt any working rules that are not inconsistent with the law or of the rules of the [board] department."

SECTION 12. Section 462A-16, Hawaii Revised Statutes, is repealed.

SECTION 13. Section 462A-19, Hawaii Revised Statutes, is amended to read as follows:

**"§462A-19 Exempt vessels.** This chapter does not apply to:

- (1) Any vessel required by the laws of the United States of America to be under the direction and control of a federally licensed pilot;
- (2) Public vessels of the United States of America;
- (3) Motorboats as defined in section 1 of the Federal Motorboat Act of 1940; or
- (4) Fishing vessels that have been issued a fishery license or appropriately endorsed registry under the laws of the United States of America.

[If any such exempt vessel employs a pilot, such pilot shall be entitled to receive, as compensation for the person's services, pilotage fees in the amount prescribed by the rules of the board.]

This section provides minimum pilotage requirements, and is not intended to negate the department of transportation's responsibility for the safety of all ports and shore waters in the State, nor does it limit the department's right to require additional pilotage should that department determine it is necessary to ensure safety in the ports or shore waters of the State."

SECTION 14. Section 462A-20, Hawaii Revised Statutes, is amended to read as follows:

**"§462A-20 Hearings; appeal.** (a) Before any applicant may be denied a license, and before any pilot shall have his license suspended or revoked by the [board,] department, the applicant or pilot shall be given a hearing pursuant to chapter 91.

(b) An applicant who has been denied a license, and a pilot whose license has been suspended or revoked may appeal the [board's] department's decision to a circuit court as provided in chapter 91."

SECTION 15. Section 26H-4, Hawaii Revised Statutes, is amended to read as follows:

**"§26H-4 Repeal dates.** (a) The following chapter is hereby repealed effective December 31, 1984:

- (1) Chapter 436D (Board of Acupuncture)
- (b) The following chapters are hereby repealed effective December 31, 1985:

- (1) Chapter 460 (Board of Osteopathic Examiners)
- (2) Chapter 461 (Board of Pharmacy)
- (3) Chapter 455 (Board of Examiners in Naturopathy)
- (4) Chapter 463E (Podiatry)
- (5) Chapter 451A (Board of Hearing Aid Dealers and Fitters)
- (6) Chapter 457B (Board of Examiners of Nursing Home Administrators)
- (7) Chapter 448H (Elevator Mechanics Licensing Board)
- [(8) Chapter 462A (Board of Pilot Commissioners)]

- (c) The following chapters are hereby repealed effective December 31, 1986:

- (1) Chapter 437 (Motor Vehicle Industry Licensing Board)
- (2) Chapter 437B (Motor Vehicle Repair Industry Board)
- (3) Chapter 440 (Boxing Commission)
- (4) Chapter 460J (Pest Control Board)

- (5) Chapter 438 (Board of Barbers)
  - (6) Chapter 439 (Board of Cosmetology)
  - (d) The following chapters are hereby repealed effective December 31,
- 1987:
- (1) Chapter 458 (Board of Dispensing Opticians)
  - (2) Chapter 459 (Board of Examiners in Optometry)
  - (3) Chapter 452 (Board of Massage)
  - (4) Chapter 471 (Board of Veterinary Examiners)
  - (5) Chapter 441 (Cemeteries and Mortuaries)
  - (6) Chapter 463 (Board of Detectives and Guards)
  - (e) The following chapters are hereby repealed effective December 31,
- 1988:
- (1) Chapter 465 (Board of Certification for Practicing Psychologists)
  - (2) Chapter 468E (Board of Speech Pathology and Audiology)
  - (3) Chapter 359L (Factory Built Housing Advisory Board)
  - (4) Chapter 468B (Solar Energy Device Dealers)
  - (5) Chapter 468K (Travel Agencies)
  - (6) Chapter 373 (Commercial Employment Agencies)
  - (7) Chapter 442 (Board of Chiropractic Examiners)
  - (8) Chapter 448 (Board of Dental Examiners)
  - (f) The following chapters are hereby repealed effective December 31,
- 1989:
- (1) Chapter 444 (Contractors License Board)
  - (2) Chapter 448E (Board of Electricians and Plumbers)
  - (3) Chapter 464 (Board of Registration of Professional Engineers, Architects, and Surveyors)
  - (4) Chapter 466 (Board of Public Accountancy)
  - (5) Chapter 467 (Real Estate Commission)
  - (g) The following chapters are hereby repealed effective December 31,
- 1990:
- (1) Chapter 447 (Dental Hygienists)
  - (2) Chapter 453 (Board of Medical Examiners)
  - (3) Chapter 457 (Board of Nursing)[.]
  - (4) Chapter 462A (Pilotage)."

SECTION 16. Statutory material to be repealed is bracketed. New statutory material is underscored.<sup>5</sup>

SECTION 17. This Act shall take effect upon its approval.

(Approved May 28, 1985.)

#### Notes

- 1. Should be underscored.
- 2. A “,” is missing.
- 3. Formerly read “hearings”.
- 4. “Or” is missing.
- 5. Edited pursuant to HRS §23G-16.5.