

# STATE OF NEW YORK

7289

2017-2018 Regular Sessions

## IN ASSEMBLY

April 21, 2017

Introduced by M. of A. TITONE -- read once and referred to the Committee on Governmental Operations

AN ACT to amend the executive law and the navigation law, in relation to enhancing the security within the port of New York and the ports of New Jersey to prevent acts of domestic terrorism and licensing pilotage upon the waters within such ports

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. The executive law is amended by adding a new section 837-t  
2 to read as follows:

3 § 837-t. Criminal history records search for certain licenses for  
4 pilotage upon the waters within the port of New York and the ports of  
5 New Jersey. 1. As used in this section:

6 (a) "Board" shall mean the board of commissioners of pilots of the  
7 state of New York.

8 (b) "Applicant" shall mean a person applying for a license pursuant to  
9 section ninety-one-c of the navigation law, which requires the  
10 submission of fingerprints.

11 2. As a condition of eligibility for such licenses, the board shall  
12 obtain two sets of the applicant's fingerprints and submit such finger-  
13 prints to the division for purposes of determining the criminal history  
14 of the applicant.

15 3. The first set of fingerprints received by the division shall be  
16 used to identify the applicant and to conduct a criminal history records  
17 search of the division's New York state files to determine whether or  
18 not such applicant has a criminal history in this state. The division  
19 shall forward the second set of such applicant's fingerprints to the  
20 federal bureau of investigation for the purpose of a nationwide criminal  
21 history record check to determine whether such applicant has a criminal  
22 history in any other state or federal jurisdiction.

EXPLANATION--Matter in italics (underscored) is new; matter in brackets  
[-] is old law to be omitted.

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4. The division shall promptly transmit the reports of the New York state criminal record search to the executive director of the board. The federal bureau of investigation reports of nationwide criminal records searches shall be transmitted to the executive director of the board by the most direct means authorized by federal law, rules, and regulations. All such reports, when received by the board, shall be marked confidential and securely stored, and shall not be disclosed to any person other than the applicant, although the contents of the report may be disclosed to the members of the board.

5. (a) Each applicant shall sign a release authorizing the board to submit such applicant's fingerprints to the division and the federal bureau of investigation, and for the executive director of the board to receive the results of such criminal history record searches supplied by the division and the federal bureau of investigation. Such release shall also advise the applicant that a criminal history record search will be conducted concerning the applicant and that he or she may obtain a copy of his or her criminal history record and seek correction of any information contained in such record pursuant to regulations promulgated by the division.

(b) Each such applicant shall, in advance, make payment to the board of the fee required pursuant to subdivision eight-a of section eight hundred thirty-seven of this article and any fee imposed by the federal bureau of investigation.

§ 2. The navigation law is amended by adding a new section 89 to read as follows:

§ 89. Pilotage upon the waters within the port of New York or the ports of New Jersey. 1. Every foreign vessel and every American vessel under register operating upon the waters within the port of New York or the ports of New Jersey shall take a Sandy Hook pilot or a docking pilot licensed under the authority of this article or of the laws of the state of New Jersey or a person heretofore licensed as a Hell Gate pilot. A licensed Sandy Hook pilot taken on a vessel pursuant to section eighty-eight of this article may be joined by such a docking pilot who is engaged for the purposes of docking or undocking such vessel when the vessel is operating upon the waters within the port of New York or the ports of New Jersey.

2. It shall be unlawful for any person not licensed as a Sandy Hook pilot or as a docking pilot under this article, or under the laws of the state of New Jersey (except a vessel's master assisted by a Sandy Hook pilot or docking pilot in close proximity to the berth), to dock or undock or to conduct any in-harbor movement of any foreign vessel or American vessel under register operating upon the waters within the port of New York or the ports of New Jersey. It shall likewise be unlawful for any master or person on board a tug or towboat to tow any such vessel upon the waters within the port of New York or the ports of New Jersey without engaging the services of a Sandy Hook pilot or a docking pilot licensed under this article, or under the laws of the state of New Jersey.

3. Violation of this section shall be a misdemeanor punishable by a fine not exceeding five thousand dollars or by imprisonment not exceeding sixty days. Any person authorizing such an unlicensed person to act as a Sandy Hook pilot or as a docking pilot in violation of this section shall forfeit and pay the sum of five thousand dollars to the board of commissioners of pilots.

§ 3. The navigation law is amended by adding a new section 91-c to read as follows:

1     § 91-c. Licensing of docking pilots upon the waters within the port of  
2 New York and the ports of New Jersey. 1. A "docking pilot" is a ship  
3 docking and/or undocking and/or in-harbor movement specialist who meets  
4 the qualifications set forth in this section, and who receives a license  
5 from said board of commissioners of pilots to perform such activities  
6 within the port of New York and the ports of New Jersey with respect to  
7 foreign vessels and American vessels under register operating upon the  
8 waters of such ports. The commissioners, or a majority of them, shall  
9 license, without fee, persons as docking pilots. The term of a docking  
10 pilot's license, and each renewal thereof, shall be for one year. Appli-  
11 cation for renewal of a license as a docking pilot shall be made prior  
12 to the expiration of the license of such docking pilot. A docking  
13 pilot's license shall be renewed without fee upon an applicant's showing  
14 continuation of fulfillment of the requirements of subdivision two or  
15 three of this section. If any docking pilot will attain the age of  
16 sixty-five years within a year of the date of the issuance or renewal of  
17 a license, then the license shall terminate as of the date of such age  
18 attainment.

19     2. The board of commissioners, or a majority of them, shall license as  
20 "docking pilots" those applicants who, upon meeting the same physical  
21 and operational requirements prescribed in the regulations of the board  
22 in effect as of the effective date of this subdivision, provide, within  
23 ninety days of the effective date of this subdivision, conclusive  
24 evidence documenting satisfaction of the following requirements:

25     (a) the applicant shall be the holder of a valid first class pilot  
26 license or first class pilot endorsement to a license issued by the  
27 United States Coast Guard and extended as necessary for all areas of the  
28 port of New York and the ports of New Jersey; and

29     (b) the applicant shall have been for the two years immediately prior  
30 thereto actively engaged, as a regular occupation, in conducting dock-  
31 ings and/or undockings with or without the assistance of tugboats or  
32 conducting in-harbor movements of one hundred or more seagoing commer-  
33 cial ships of at least ten thousand registered gross tons upon the  
34 waters within the port of New York or the ports of New Jersey other than  
35 as a crew member aboard any of such vessels; or

36     (c) as an alternative to the requirements of paragraphs (a) and (b) of  
37 this subdivision, the applicant is qualified pursuant to subdivision  
38 three of this section.

39     3. The board of commissioners shall review submitted applications and  
40 shall license as docking pilots those applicants who provide conclusive  
41 evidence documenting that they have been actively engaged in a training  
42 program to become a docking pilot in the port of New York or the ports  
43 of New Jersey for no less than six months prior to the effective date of  
44 this subdivision and who can meet the following additional requirements:

45     (a) the applicant shall be the holder of a valid first class pilot  
46 license or first class pilot endorsement to a license issued by the  
47 United States Coast Guard and extended as necessary for all areas of the  
48 port of New York and the ports of New Jersey;

49     (b) the applicant shall present evidence demonstrating a minimum of  
50 ten years' experience in the maritime industry (that may include credit-  
51 ed maritime college education for licensed graduates) working aboard  
52 vessels in the deck department, not less than half of which were served  
53 in the capacity of a licensed mate or master;

54     (c) the applicant must submit written proof of having observed two  
55 hundred or more dockings and/or undockings and/or in-harbor movements of  
56 seagoing commercial ships of at least ten thousand registered gross tons

1 upon the waters within the port of New York or the ports of New Jersey  
2 other than as a crew member aboard any of such vessels and having  
3 performed twenty-five or more dockings and/or undockings and/or in-har-  
4 bor movements under the observation of a ship docking and/or undocking  
5 and/or in-harbor movement specialist or a person who subsequent to such  
6 observation is licensed as a docking pilot;

7 (d) the applicant shall be at least eighteen years of age and less  
8 than sixty-five years of age;

9 (e) the applicant shall be a United States citizen;

10 (f) the applicant shall have a bachelor's degree from an accredited  
11 four year college or university, with equal credit given for deck  
12 department training while employed by, or under the direct supervision  
13 of, a company operating vessel assist tugs in the port of New York or  
14 ports of New Jersey, a docking pilot association in the port of New York  
15 or ports of New Jersey or time enrolled as a student at an accredited  
16 maritime academy in the United States;

17 (g) the applicant shall have 20/20 vision, either corrected or uncor-  
18 rected, and no defects in color or depth perception; and

19 (h) the applicant does not have a disqualifying conviction described  
20 in this section.

21 4. The board of commissioners shall not grant a license for a docking  
22 pilot to any applicant who has a disqualifying conviction. The board of  
23 commissioners shall not grant a license for a docking pilot unless it  
24 has determined, consistent with the standards of this section, that no  
25 criminal history record information exists on file in the federal bureau  
26 of investigation, criminal justice information services, or the division  
27 of criminal justice services which would disqualify that individual from  
28 being licensed. The board of commissioners shall require the finger-  
29 printing of applicants for a docking pilot's license and shall safeguard  
30 the information derived from searches of the records of the division of  
31 criminal justice services and the federal bureau of investigation based  
32 on the use of such fingerprints. The board of commissioners shall also  
33 develop a form to be used in connection with the submission of finger-  
34 prints that contains any other information that may be relevant to  
35 consideration of the licensee and that shall also:

36 (a) inform the applicant that the board is required to request his or  
37 her criminal history information from the division of criminal justice  
38 services and the federal bureau of investigation and review such infor-  
39 mation pursuant to this section; and

40 (b) inform the applicant that he or she has the right to obtain,  
41 review, and seek correction of his or her criminal history information  
42 pursuant to regulations and procedures established by the division of  
43 criminal justice services.

44 5. Criminal history records search. The board shall obtain from each  
45 applicant two sets of fingerprints and the division of criminal justice  
46 services processing fee imposed pursuant to subdivision eight-a of  
47 section eight hundred thirty-seven of the executive law and any fee  
48 imposed by the federal bureau of investigation. The board shall promptly  
49 transmit such fingerprints and fees to the division of criminal justice  
50 services for its full search and retain processing. The division of  
51 criminal justice services is authorized to submit the fingerprints and  
52 the appropriate fee to the federal bureau of investigation for a  
53 national criminal history record check pursuant to public law 92-534.  
54 The division of criminal justice services and the federal bureau of  
55 investigation shall forward such criminal history record to the board in  
56 a timely manner. For the purposes of this section the term "criminal

1 history record" shall mean a record of all convictions of crimes and any  
2 pending criminal charges maintained on an individual by the division of  
3 criminal justice services and the federal bureau of investigation.

4 6. Confidentiality of records. All such criminal history records proc-  
5 essed and sent pursuant to this section shall be confidential pursuant  
6 to the applicable federal and state laws, rules, and regulations, and  
7 shall not be published or in any way disclosed to persons other than the  
8 board, unless otherwise authorized by law. No cause of action against  
9 the board of commissioners or the division of criminal justice services  
10 for damages related to the dissemination of criminal history records  
11 pursuant to this section shall exist when such board or division of  
12 criminal justice services has reasonably and in good faith relied upon  
13 the accuracy and completeness of criminal history information furnished  
14 to it by qualified agencies.

15 7. Delineation of a disqualifying criminal conviction. The board of  
16 commissioners shall review the criminal history record, if any, of an  
17 applicant covered by this section to determine whether or not that  
18 applicant has a disqualifying criminal conviction in his or her back-  
19 ground. A disqualifying criminal conviction shall be evidenced by a  
20 criminal history record check which reveals a conviction within the  
21 preceding ten years of any of the following:

22 (a) a violent felony offense, as that term is defined in section 70.02  
23 of the penal law; or

24 (b) any felony defined in article one hundred twenty, one hundred  
25 twenty-five, one hundred thirty, one hundred thirty-five, one hundred  
26 forty, one hundred forty-five, one hundred fifty, one hundred fifty-  
27 five, one hundred sixty, one hundred seventy, one hundred seventy-five,  
28 two hundred, two hundred ten, two hundred twenty, two hundred twenty-  
29 one, two hundred forty, two hundred sixty-five, four hundred sixty, four  
30 hundred seventy, four hundred eighty-five, or four hundred ninety or  
31 section 190.26 of the penal law or section fifty-three-e of the railroad  
32 law; or

33 (c) any offense in another jurisdiction which includes all of the  
34 essential elements of such violent felony offense or such felony  
35 offenses defined in article one hundred twenty, one hundred twenty-five,  
36 one hundred thirty, one hundred thirty-five, one hundred forty, one  
37 hundred forty-five, one hundred fifty, one hundred fifty-five, one  
38 hundred sixty, one hundred seventy, one hundred seventy-five, two  
39 hundred, two hundred ten, two hundred twenty, two hundred twenty-one,  
40 two hundred forty, two hundred sixty-five, four hundred sixty, four  
41 hundred seventy, four hundred eighty-five, or four hundred ninety or  
42 section 190.26 of the penal law or section fifty-three-e of the railroad  
43 law and for which a sentence of imprisonment for more than one year was  
44 authorized in the other jurisdiction and is authorized in this state,  
45 regardless of whether such sentence was imposed; or

46 (d) any of the following federal offenses: misconduct or neglect of  
47 ship officers as defined in 18 U.S.C. 1115; fraud and false statements  
48 as defined in 18 U.S.C. 1001; influencing or injuring an officer or  
49 juror as defined in 18 U.S.C. 1503; obstruction of criminal investi-  
50 gations as defined in 18 U.S.C. 1510; violation of MARPOL Protocol as  
51 defined in 33 U.S.C. 1908; sending an unseaworthy vessel to sea as  
52 defined in 46 U.S.C. 10908; forgery of certificates, false marking of  
53 aircraft, and other aircraft registration violations as defined in 49  
54 U.S.C. 46306; interference with air navigation as defined in 49 U.S.C.  
55 46308; improper transportation of a hazardous material as defined in 49  
56 U.S.C. 46312; aircraft piracy as defined in 49 U.S.C. 46502; interfer-



1 ence with flight crew members or flight attendants as defined in 49  
2 U.S.C. 46504; commission of certain crimes aboard aircraft in flight as  
3 defined in 49 U.S.C. 46506; carrying a weapon or explosive aboard  
4 aircraft as defined in 49 U.S.C. 46505; conveying false information and  
5 threats as defined in 49 U.S.C. 46507; aircraft piracy outside the  
6 special aircraft jurisdiction of the United States as defined in U.S.C.  
7 46502(b); lighting violation involving transporting controlled  
8 substances as defined in 49 U.S.C. 46315; unlawful entry into an  
9 aircraft or airport area that serves air carriers or foreign air carri-  
10 ers contrary to established security requirements as defined in 49  
11 U.S.C. 46314; destruction of an aircraft or aircraft facility as defined  
12 in 18 U.S.C. 32; espionage as defined in 18 U.S.C. 793, 794, or 3077;  
13 sedition as defined in 18 U.S.C. 2384, 2385, or section four of the  
14 Subversive Activities Control Act of 1950; treason as defined in 6  
15 U.S.C. 2381; violence at international airports as defined in 18 U.S.C.  
16 37; conspiracy or solicitation as defined in 18 U.S.C. 371 or 373; or  
17 (e) an attempt or conspiracy to commit any of the offenses specified  
18 in paragraph (a), (b), (c) or (d) of this subdivision.

19 The board of commissioners shall promptly notify the applicant in  
20 writing whether or not such person may be eligible for a license as a  
21 docking pilot to which the provisions of this section apply based upon  
22 his or her criminal history. Unless otherwise specified by law or regu-  
23 lation, the applicant shall have fourteen days from the date of a writ-  
24 ten notice of disqualification to challenge the accuracy of the criminal  
25 history record information. If no challenge is filed or if the determi-  
26 nation of the accuracy of the criminal history record information  
27 upholds the disqualification, the board of commissioners shall notify  
28 the applicant that he or she has been disqualified from being licensed  
29 as a docking pilot.

30 Every holder of a license as a docking pilot shall have a continuing  
31 obligation to promptly notify the board of commissioners of any  
32 conviction of a crime punishable by more than one year in prison. The  
33 failure to so notify the board shall be grounds for immediate termi-  
34 nation of employment.

35 8. Licensure as a docking pilot does not entitle or permit the holder  
36 of said license to pilot foreign vessels or American vessels under  
37 register as they enter or depart the port of New York or the ports of  
38 New Jersey by the way of Sandy Hook or by the way of Sands Point or  
39 Execution Rocks. Nothing in this section shall preclude a Sandy Hook  
40 pilot from docking and/or undocking such vessels with or without tugs at  
41 the request of the vessel's master, nor from conducting in-harbor move-  
42 ments of such vessels upon the waters within the port of New York or the  
43 ports of New Jersey, nor from discharge until completion of transit for  
44 the vessels described in section eighty-eight-a of this article.

45 § 4. Section 95 of the navigation law, as added by chapter 880 of the  
46 laws of 1947, is amended to read as follows:

47 § 95. Regulation of pilots and persons employing them. 1. The board of  
48 commissioners may alter or amend any existing regulation for pilots, and  
49 make, duly promulgate, and enforce new rules or regulations, not incon-  
50 sistent with the laws of this state or of the United States, which shall  
51 be binding and effective upon all pilots licensed under this article,  
52 and upon all parties employing such pilots. The commissioners may also  
53 regulate the stationing of pilot boats for the purpose of putting **Sandy**  
54 **Hook** pilots aboard and taking of them off vessels bound to and from the  
55 port of New York or the ports of New Jersey and may designate the areas  
56 in which such vessels shall be boarded and left by such pilots. Such

1 commissioners may declare and enforce forfeitures of pilotage upon any  
2 mismanagement or neglect of duty by the pilots licensed by them. Such  
3 commissioners, in order to prevent any of the pilots licensed by them  
4 from combining injuriously with each other, or with other persons, and  
5 to prevent any person licensed by them from acting as a pilot during his  
6 or her suspension, or after his or her license has been revoked, may  
7 declare, impose and collect fines and penalties not exceeding two  
8 hundred fifty dollars for each such offense. The commissioners may also  
9 establish and enforce all other needful rules and regulations for the  
10 conduct of the pilots licensed by them, and the parties employing them.  
11 Such commissioners may enforce and receive accounts of all moneys  
12 collected for pilotage by the pilots licensed by them and may impose and  
13 collect from such pilots a sum not exceeding three per centum on the  
14 amount thereof to defray their necessary expenses, including clerk hire  
15 and office rent.

16 2. The board of commissioners is authorized to issue photographic  
17 identification cards to any pilots licensed under this article.

18 § 5. This act shall take effect immediately; provided, however, that  
19 section two of this act shall take effect on the one hundred eightieth  
20 day after it shall have become a law.