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:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(g) the applicant shall have 20/20 vision, either corrected or uncorrected, and no defects in color or depth perception; and

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

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

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

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

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

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

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

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

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

(b) any felony defined in article one hundred twenty, one hundred twenty-five, one hundred thirty, one hundred thirty-five, one hundred forty, one hundred forty-five, one hundred fifty, one hundred fifty-five, one hundred sixty, one hundred seventy, one hundred seventy-five, two hundred, two hundred ten, two hundred twenty, two hundred twenty-one, two hundred forty, two hundred sixty-five, four hundred sixty, four hundred seventy, four hundred eighty-five, or four hundred ninety or section 190.26 of the penal law or section fifty-three-e of the railroad law; or

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

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

ence with flight crew members or flight attendants as defined in 49 U.S.C. 46504; commission of certain crimes aboard aircraft in flight as defined in 49 U.S.C. 46506; carrying a weapon or explosive aboard aircraft as defined in 49 U.S.C. 46505; conveying false information and threats as defined in 49 U.S.C. 46507; aircraft piracy outside the special aircraft jurisdiction of the United States as defined in U.S.C. 46502(b); lighting violation involving transporting controlled substances as defined in 49 U.S.C. 46315; unlawful entry into an aircraft or airport area that serves air carriers or foreign air carriers contrary to established security requirements as defined in 49 U.S.C. 46314; destruction of an aircraft or aircraft facility as defined in 18 U.S.C. 32; espionage as defined in 18 U.S.C. 793, 794, or 3077; sedition as defined in 18 U.S.C. 2384, 2385, or section four of the Subversive Activities Control Act of 1950; treason as defined in 6 U.S.C. 2381; violence at international airports as defined in 18 U.S.C. 37; conspiracy or solicitation as defined in 18 U.S.C. 371 or 373; or

(e) an attempt or conspiracy to commit any of the offenses specified in paragraph (a), (b), (c) or (d) of this subdivision.

The board of commissioners shall promptly notify the applicant in writing whether or not such person may be eligible for a license as a docking pilot to which the provisions of this section apply based upon his or her criminal history. Unless otherwise specified by law or regulation, the applicant shall have fourteen days from the date of a written notice of disqualification to challenge the accuracy of the criminal history record information. If no challenge is filed or if the determination of the accuracy of the criminal history record information upholds the disqualification, the board of commissioners shall notify the applicant that he or she has been disqualified from being licensed as a docking pilot.

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

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

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

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

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

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

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